REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

Q-CLEAN LIVING PHILS., CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8586

Members:

CASTAÑEDA, JR., Chairperson,
CASANOVA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

FEB 12 2016 8:57 Am

x- -x

RESOLUTION

CASTAÑEDA, JR., J.:

For resolution of the Court is respondent's **Motion for Reconsideration (Decision promulgated on October 30, 2015)** filed through registered mail on November 16, 2015 and received by the Court on November 26, 2015, with petitioner's **Comment/Opposition** filed on January 22, 2016.

For easy reference, the dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, in view thereof, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent's assessments as to petitioner's deficiency Value Added Tax and income tax for the year 2007 under Assessment Notice No. AO-038-B028-07 in the total

amounts of P1,414,045.66 and P1,967,022.74, respectively, are hereby declared **CANCELLED AND WITH NO FORCE AND EFFECT**.

SO ORDERED."

Respondent argues in her motion that there is a presumption that the Final Assessment Notice (FAN) was duly received by petitioner in the regular course of the mail. Considering that the FAN was sent through mail on December 21, 2010, it could not have been received by petitioner beyond one month from mailing. As such, the filing of protest on March 14, 2012 was beyond the reglementary period. Moreover, petitioner failed to submit the required documents as evidenced by a memorandum and letter sent to petitioner.

On the other hand, petitioner avers that the timeliness of its protest was not raised as issue by the parties and that respondent did not deny the same. Petitioner likewise contends that it timely filed its protest and submitted the required documents.

The issues to be resolved in this case are: (1) Whether respondent duly proved that the FAN was received by petitioner in the regular course of mail; and (2) Whether petitioner duly submitted the required documents.

The Court denies the instant motion.

Respondent has the burden to prove that the FAN was received in the regular course of mail

The assailed Decision states:

"The Court notes that nowhere from the pieces of evidence submitted by the parties can it be found the date of receipt by petitioner of the subject assessments. Nevertheless, it was alleged in the instant Petition that: *ge*

> '9. Petitioner made a timely protest in a letter dated 07 March 2011, which was duly received by the Respondent on 14 March 2011. xxx'[1]

Significantly, respondent denied the aforesaid allegation in this manner:

> '3. Respondent **ADMITS** material allegations in paragraphs 6, 7, 8, 9 and 13 of the Petition for Review as to the existence of xxx Protest Letter dated March 7, 2011 xxx but **SPECIFICALLY DENIES** the date of receipt thereof **and the rest of the allegations stated therein for lack of knowledge or information sufficient to form a belief as to the truth thereof** and for reasons stated in the **SPECIAL AND AFFIRMATIVE DEFENSES OF THIS ANSWER**;'

A careful analysis of respondent's Answer reveals that she made a general denial, not a specific denial, as to the timeliness of petitioner's protest, albeit the use of the word 'specifically'. In this regard, it has been held that a 'general denial does not become specific by the use of the word specifically. When matters of whether the defendant alleges having no knowledge or information sufficient to form a belief are plainly and necessarily within the defendant's knowledge, an alleged ignorance or lack of information will not be considered as a specific denial.'

In the absence of any evidence and considering that respondent failed to specifically deny the material averment of petitioner *vis a vis* the timeliness of the filing of its protest, such allegation is deemed admitted under Section 11, Rule 8 of the Revised Rules of Court. Thus, the Court rules that the administrative protest was timely filed."

For its failure to specifically deny the date of receipt of the FAN by petitioner, respondent is of the view that the aforesaid presumption should apply.

---

[1] The Material Facts and Antecedent Proceedings, Petition for Review, par. 9, Docket, Vol. I, p. 11.

Respondent's view is devoid of merit.

In the case of *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*,[2] the Supreme Court explained the concept of the presumption in this wise:

> "In *Protectors Services, Inc. v. Court of Appeals*, this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee."[3]

In *Barcelon*, petitioner therein denied receipt of the assessment notice. Consequently, the Supreme Court explained that a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

In the instant case, there is no direct denial by petitioner of the receipt of the FAN. However, it alleges that it received the FAN on March 14, 2011. On the other hand, respondent relies on the presumption that the FAN was duly received in the regular course of the mail and as such, it could not have been received by petitioner beyond one month from date of mailing.

While the instant case is not on all fours with *Barcelon*, the doctrine enunciated therein equally applies in this case. When petitioner alleged in the Petition that it received the FAN on March 14, 2011, respondent had the opportunity to specifically deny the same if the allegation was untrue. However, respondent failed to do so. Moreover, respondent had the opportunity during the course of

---

[2] G.R. No. 157064, August 7, 2006.
[3] Id., citing 386 Phil. 611, 623 (2000) and *Republic v. Court of Appeals*, G.R. No. L-38540, 30 April 1987, 149 SCRA 351, 355.

the trial to present evidence as to the date of receipt of the FAN by petitioner. Again, she did not do so.

In other words, the *Barcelon case* instructs that when receipt of the FAN is controverted or, in this case, alleged to have been received on a certain date, the burden shifts to respondent to show that the FAN was received not on the date alleged by petitioner. The disputable presumption will not work in favor of respondent if the same was controverted or disputed. Hence, when petitioner advanced that it received the FAN on March 14, 2011, the burden shifted to respondent to show that the same was received on a different date. Respondent, however, failed to discharge this burden.

Petitioner duly submitted the required documents

Respondent asserts that petitioner failed to submit the required documents as evidenced by the memorandum and letter prepared by the revenue officers stating that they did not receive the same.

Weighing the evidentiary scale between the memorandum and letter prepared by the revenue officers, as against the documents submitted by petitioner, the Court sees no cogent reason to deviate from its previous findings that:

> "A perusal of the records shows that, indeed, petitioner submitted before the BIR pertinent documents to dispute the subject assessments. Thus, at the time of the filing of its protest, petitioner presented a Certification from Philip Morris Manufacturing Inc. (Philip Morris) that the latter's purchases from petitioner in 2007 amount only to P2,273,500.00. When the BIR further required petitioner to submit additional documents in the letter[4] dated March 13, 2012, petitioner immediately requested for the assistance of Philip Morris to produce the said documents. Meanwhile, on November 27, 2012, petitioner through its counsel requested for the BIR to issue the Details of Withholding Agents/Payors and Payees/Income Recipient Records, which the BIR issued to petitioner on November 29, 2012.

[4] Exhibit "K", Docket, Vol. I, p. 261.

> These pieces of evidence presented by petitioner belie respondent's assertion that petitioner failed to submit the required documents. Hence, the Court rules that the subject assessments did not become final, executory and demandable."

Thus, the presence of the documents presented by petitioner instantly belies respondent's assertion that it did not receive the pertinent documents required from petitioner.

To conclude, respondent failed to present evidence to show that the FAN was received on an earlier date. The disputable presumption that the FAN was received in the course of the mail cannot be applied in favor of respondent when the same is disputed. Furthermore, records show that petitioner submitted the documents required by respondent. Hence, the denial of respondent's motion is in order.

WHEREFORE, in view thereof, respondent's Motion for Reconsideration (Decision promulgated on October 30, 2015) is hereby **DENIED**, for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice