REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

FRESH N' FAMOUS FOODS, INC., Petitioner,	**CTA CASE NO. 8173**
- versus -	Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 22 2017 4:14 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

THE CASE

For the Court's resolution is respondent's Motion for Reconsideration (Decision dated 15 December 2016) filed on January 24, 2017, with petitioner's Opposition (To Respondent's Motion for Reconsideration dated 23 January 2017) filed via registered mail on February 13, 2017.

Respondent seeks reconsideration of the Decision[1] promulgated on December 15, 2016 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Thus, the assailed Decision of respondent dated August 17, 2010 upholding the Final Assessment Notice dated January 23, 2004 is **REVERSED** and **SET ASIDE**. Accordingly, the assessment against petitioner for deficiency income tax, deficiency value-added tax, deficiency expanded withholding tax, deficiency documentary stamp tax, and

[1] Docket, vol. V, pp. 2362-2377.

> compromise penalty for taxable year 2000 is hereby **CANCELLED**.[2]

In his Motion for Reconsideration, respondent prays that the Court reverse and set aside the assailed Decision, and that his Decision dated August 17, 2010 be affirmed in all respects plus interest computed from August 17, 2010. Petitioner raises the following grounds:

> I. THE HONORABLE COURT ERRED IN DECLARING THAT PETITIONER'S PETITION FOR REVIEW WAS TIMELY FILED AND COGNIZABLE BY THE HONORABLE COURT.
>
> II. THE HONORABLE COURT ERRED IN DECLARING THAT NO VALID ASSESSMENT WAS SENT TO PETITIONER FOR ITS TAX LIABILITIES FOR TAXABLE YEAR 2000.[3]

On the other hand, petitioner prays that the Court deny responent's Motion for Reconsideration (Decision dated 15 December 2016) for lack of merit.

After due consideration of his arguments, the Court finds respondent's Motion for Reconsideration (Decision dated 15 December 2016) bereft of merit.

Stating that petitioner failed to prove that it received respondent's Decision dated August 17, 2010 on September 6, 2010, respondent claims that the Petition for Review was not timely filed on October 6, 2010. Respondent harps on the fact that the receipt on September 6, 2010 was merely an allegation in paragraph 1.2 in the Petition for Review, and that this was denied in paragraph 1 of his Answer.

A review of respondent's Answer[4] reveals that he ineffectively denied the date of receipt by petitioner, and resultantly admitted the same.

Section 10 of Rule 8 of the Rules of Court provides:

> Sec. 10 *Specific denial.* – A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant

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[2] Docket, vol. V, p. 2376.
[3] Id. at pp. 2378-2379.
[4] Docket, vol. I, pp. 208-211.

desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial.

In *Capitol Motors Corporation v. Yabut*,[5] the Supreme Court held –

We agree with defendant-appellant that one of the modes of specific denial contemplated in Section 10, Rule 8, is a denial by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint. The question, however, is whether paragraph 2 of defendant-appellant's answer constitutes a specific denial under the said rule. We do not think so. In *Warner Barnes & Co., Ltd. vs. Reyes, et al.*, G.R. No. L-9531, May 14, 1958 (103 Phil. 662), this Court said that **the rule authorizing the answer to the effect that the defendant has no knowledge or information sufficient to form a belief as to the truth of an averment and giving such answer the effect of denial, does not apply where the fact as to which want of knowledge is asserted, is so plainly and necessarily within the defendant's knowledge that his averment must be palpably untrue.** In said case the suit was one for foreclosure of mortgage, and a copy of the deed of mortgage was attached to the complaint; thus, according to this Court, it would have been easy for the defendants to specifically allege in their answer whether or not they had executed the alleged mortgage. The same thing can be said in the present case, where a copy of the promissory note sued upon was attached to the complaint. The doctrine in *Warner Barnes & Co., Ltd.* Was reiterated in *J.P. Juan & Sons, Inc. vs. Lianga Industries, Inc.*, G.R. No. L-25137, July 28, 1969 (28 SCRA 807). xxx

It becomes evident from all the above doctrines that a mere allegation of ignorance of the facts alleged in the complaint, is insufficient to raise an issue; the defendant must aver positively or state how it is that he is ignorant of the facts so alleged.[6] *(Emphasis supplied.)*

Paragraph 1 of respondent's Answer reads:

1. [He] **ADMITS** the material allegations contained in paragraphs 1.1 and 1.2 of the Petition for Review only insofar as the existence of the "Decision" promulgated 17 August 2010 signed

[5] G.R. No. L-28140, 32 SCRA 1, March 19, 1970.
[6] Id. at 4-6.

> by the Commissioner of Internal Revenue and the fact of filing of the instant Petition for Review on 6 October 2010 but specifically denies the date of actual receipt of the said Decision by the petitioner for lack of knowledge sufficient to form a belief as to the truth thereof;[7] (*Emphasis in the original. Underscoring supplied.*)

Nowhere in the Answer does respondent aver positively or explain why he is ignorant of the date of receipt by petitioner. Such statement – that respondent lacks knowledge sufficient to form a belief of the truth of the date of service – on its own, is absurd. The date of receipt by petitioner is indeed plainly and necessarily within respondent's knowledge. The Court finds it incredible that respondent has no knowledge of having served the said Decision on petitioner.

Not having specifically denied the date of receipt by petitioner of respondent's Decision dated August 17, 2010, the same is deemed admitted.[8]

The second ground raised by respondent in his Motion for Reconsideration has been thoroughly considered and threshed out in the assailed Decision. We reiterate our ruling that –

> In the present case, no valid notice of assessment was sent to petitioner. Petitioner was denied its right to due process as it was not properly informed of the basis of its tax liabilities. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. An invalid assessment bears no valid fruit. Hence, respondent also violated petitioner's right to due process when he issued the Preliminary Collection Notice dated April 13, 2004 and the Warrant of Distraint and/or Levy.
>
> Consequently, respondent's allegation that the FAN dated January 23, 2004 already attained finality for failure of petitioner to protest the same is devoid of merit. Petitioner cannot be expected to protest the FAN without receiving the same and being properly informed of the basis of the assessment.

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[7] Docket, vol. I, p. 208.

[8] Section 11 of Rule 10 of the Rules of Court provides:
Sec. 11. *Allegations not specifically denied deemed admitted.* – **Material averment in the complaint,** other than those as to the amount of unliquidated damages, **shall be deemed admitted when not specifically denied.** Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied under oath. (*Emphasis supplied.*)

> Considering that no valid notice of assessment was sent to petitioner, the assessment against petitioner for its alleged tax liabilities for taxable year 2000, based on the FAN dated January 23, 2004 must be cancelled.[9]

Despite notice of petitioner's new address, respondent sent the FAN, FLD, and Details of Discrepancies to petitioner's old address, depriving the latter the opportunity to contest the same. And now, respondent boldly insists that he has no knowledge as to the service upon petitioner of his Decision dated August 17, 2010. Respondent's service of documents relating to the assessment in this case is disconcerting at best.

WHEREFORE, finding no compelling reason to reverse the ruling of the Court in the assailed Decision, respondent's Motion for Reconsideration (Decision dated 15 December 2016) is hereby **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

9 Docket, vol. V, pp. 2375-2376.