REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1435** (CTA Case No. 8586)
- versus -	Members: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
Q-CLEAN LIVING PHILS. CORP., Respondent.	Promulgated: JUN 23 2017 3:20 p.m.

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DECISION

RINGPIS-LIBAN, *J.:*

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated October 30, 2015 (assailed Decision) and Resolution[2] dated February 12, 2016 (assailed Resolution) of the Court of Tax Appeals Second Division (Second Division), cancelling the assessments Petitioner issued to Respondent for deficiency income tax and value-added tax for the period covering January 1, 2007 to December 31, 2007.

The Facts

[1] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova concurring. Docket, pp. 609-622.

[2] *Id.*, pp. 656-661.

The facts as found by the Second Division are as follows:

[Respondent] Q-Clean Living Phils., Corp. is a domestic corporation duly organized and existing under Philippine laws, with principal office at No. 53 Visayas Avenue, VASRA, Quezon City.

[Petitioner] is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of [his] office, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. [He] holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

By virtue of Letter of Authority No. 00033762 dated June 1, 2010 and Letter Notice No. 038-TRS-07-AD-00102 dated October 29, 2009, the BIR conducted an investigation of [respondent]'s income/other (issue-based) tax returns for the period covering January 1, 2007 to December 31, 2007. Consequently, the BIR issued a Preliminary Assessment Notice (PAN) for deficiency income tax in the amount of P1,967,022.74 and for deficiency Value Added Tax (VAT) in the amount of P1,414,045.66, respectively.

On December 15, 2010, [petitioner] issued its Final Assessment Notices (FAN), finding [respondent] liable for deficiency income tax and VAT for the said amounts. On even date, [petitioner] also issued a Formal Letter of Demand (FLD) with Details of Discrepancies.

On March 14, 2011, [respondent] filed a letter purporting to be a protest of the FANs before the BIR. On January 13, 2012, [petitioner] issued its Final Decision on the Disputed Assessment (FDDA).

On February 2, 2012, [respondent] filed a "follow-up letter" before the BIR, requesting for the re-evaluation of its assessment. On March 13, 2012, [petitioner] replied to [respondent], requesting the latter to submit additional documents.

On October 15, 2012, the BIR issued a second FDDA which was received by [respondent] on November 5, 2012. On November 27, 2012, [respondent], through Meneses Gonzalez & Gupit Law Offices, filed with the BIR a letter which partly reads:

> "In view of the above, may we request that the details of the Details of Withholding Agents/Payors and Payees/Income Recepient[sic] Records be generated and issued to our client emanating from Philip Morris Manufacturing Inc. be presented for the purpose of giving the opportunity to present its position on the matter as provided in RMO 17-2009 due to the presentation of conflicting document.
>
> May we likewise request that an extension of time be granted to our client on the 30 day period granted to the taxpayer to appeal this matter to the Court of Tax Appeals due to the incidents mentioned above to finally settle the said matter."

On December 5, 2012, [respondent] filed through registered mail the instant Petition for Review.[3]

The Ruling of the Second Division

On October 30, 2015, the Second Division promulgated the assailed Decision granting the Petition for Review, the dispositive portion of which 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**.[4]

Aggrieved, Petitioner filed a Motion for Reconsideration on November 16, 2015 via registered mail and received by the Court on November 26, 2015, which the Second Division denied in the assailed Resolution, thus:

> **WHEREFORE**, in view thereof, respondent's Motion for Reconsideration (Decision promulgated on October 30, 2015) is hereby **DENIED**, for lack of merit.[5]

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3 *Id.*, pp. 609-611.
4 *Id.*, p. 621.
5 *Id.*, p. 661.

On March 08, 2016, Petitioner filed a Motion for Extension of Time to File Petition for Review,[6] which the Court granted in a Resolution dated March 14, 2016.[7]

On March 14, 2016, Petitioner filed the present Petition for Review.[8]

On April 01, 2016, the Court issued a Resolution[9] which ordered Respondent to comment on the Petition for Review. Respondent filed on April 20, 2016 a Motion for Extension of Time to File Comment,[10] which the Court granted on April 22, 2016,[11] giving Respondent until May 02, 2016 within which to file his comment. On May 02, 2016, Respondent filed its Comment[12] via registered mail.

On May 30, 2016, the Court issued a Resolution[13] giving due course to the instant petition, and requiring the parties to submit their respective memoranda. Petitioner filed its Memorandum[14] on July 04, 2016. On the other hand, Respondent filed its Memorandum[15] on July 20, 2016 via registered mail.

On August 15, 2016, the Court issued a Resolution[16] submitting the case for decision.

The Issues

Petitioner raises the following grounds in support of its petition:

1. The Honorable Court erred in ruling that Respondent filed both the administrative protest and the Petition for Review within the reglementary period.

2. The Honorable Court erred in ruling that Respondent was able to submit the required documents.

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6 Rollo, pp. 1-3. Record shows that petitioner received the assailed Resolution on February 22, 2016; Docket, p. 655.
7 *Id.*, p. 4.
8 *Id.*, pp. 5-26.
9 *Id.*, pp. 46-47.
10 *Id.*, pp. 48-52.
11 *Id.*, p. 53.
12 *Id.*, pp. 99-138.
13 *Id.*, pp. 143-144.
14 *Id.*, pp. 145-157.
15 *Id.*, pp. 184-208.
16 *Id.*, pp. 210-211.

3. The Honorable Court En Banc should dismiss the Petition for Review in CTA Case No. 8586 for lack of jurisdiction over the subject matter.[17]

The Ruling of the Court

We deny the petition.

Respondent's Administrative Claim was Filed on Time

Petitioner submits that the Second Division erred in ruling that Respondent was able to file its Protest within the thirty (30) day reglementary period under Section 228 of the NIRC of 1997, and therefore the assessment became final, executory and demandable. To bolster its argument, Petitioner relied on the presumption regarding timely receipt of letters in the ordinary course of mail under Section 3(v) of Rule 131 of the Rules of Court, to wit:

> "**Section 3.** *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> x x x
>
> (v) That a letter duly directed and mailed was received in the regular course of the mail[.]"[18]

Petitioner alleges that the Final Assessment Notice ("FAN") issued on December 15, 2010 was mailed on December 21, 2010. Applying the presumption under the Rules of Court, Petitioner insists that "regular course of mail" would connote that the FAN was received by Petitioner within a reasonable period of time, that is, not beyond one (1) month from the date of mailing. Thus, when Petitioner filed its protest to the FAN only on March 14, 2011 or almost three (3) months from the date of mailing, the reglementary period to file had already expired.

Petitioner's argument is flawed.

It is worth reiterating that the same issue was already raised by Petitioner in its Motion for Reconsideration,[19] and was already passed upon and extensively discussed by the Second Division in the assailed Resolution:

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[17] *Id.*, pp. 9.
[18] Rules of Court, Rule 131, Section 3(v).
[19] Docket, pp. 625-627.

"[Petitioner]'s view is devoid of merit.

In the case of *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, 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."

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 [respondent] of the receipt of the FAN. However, it alleges that it received the FAN on March 14, 2011. On the other hand, [petitioner] 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 [respondent] beyond one month from date of mailing.

While the instant case is not all fours with *Barcelon*, the doctrine enunciated therein equally applies in this case. When [respondent] alleged in the Petition that it received the FAN on March 14, 2011, [petitioner] had the opportunity to specifically deny the same if the allegation was untrue. However, [petitioner] failed to do so. Moreover, [petitioner] had the opportunity during the course of the trial to present evidence as to the date of receipt of the FAN by [respondent]. Again, [he] 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 [petitioner] to show that the FAN was received not on the date alleged by the [respondent]. The disputable presumption will not work in favor of [petitioner] if the same was controverted or disputed. Hence, when [respondent] advanced that it received the FAN on March 14, 2011, the burden shifted to [petitioner] to show that the same was received on a different date. [Petitioner], however, failed to discharge this burden."[20]

Indeed, the Supreme Court in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[21] declared that, in proving the taxpayer's receipt of notice, the BIR could have simply presented the "registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the Petitioner or its authorized representative. And if said documents cannot be located, [the BIR] at the very least, should have submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts."

This Petitioner failed to do.

Moreover, Petitioner's denial in his Answer as to the timeliness of Respondent's Protest proved to be more damaging for its cause. Applying the doctrine enunciated by the Supreme Court in *Agrifina Aquintey v. Spouses Tibong*,[22] the Second Division pointed out in the assailed Decision that Petitioner failed to make a specific denial when it made a sweeping statement that it lacked knowledge as to when Respondent received the FAN:

> "A careful analysis of [petitioner's] Answer reveals that [he] made a general denial, not a specific denial, as to the timeliness of [respondent'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.'"[23]

This is in consonance with the long established procedural doctrine laid down by the Supreme Court that where the averments in the pleading are based on documents which are in the opposing party's possession, or are presumed to be known by him, or are readily ascertainable by him, a general allegation of lack

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[20] *Id.*, p. 659-660.
[21] G. R. No. 185371, December 8, 2010.
[22] G.R. No. 166704, December 20, 2006.
[23] Docket, pp. 617-618.

of knowledge or information thereof on his part will not be considered a specific denial but an admission. In the cases of *Philippine Advertising Counselors v. Revilla*[24] and *Gutierrez v. Court of Appeals*[25], it was held:

> "an unexplained denial of information and belief of a matter of record, the means of information concerning which are within the control of the pleader, or are readily accessible to him, is evasive and is insufficient to constitute an effective denial."

In the case at bar, Petitioner was the one who mailed the FAN. Hence, he could have checked with the Postmaster the registry return receipt or return card to determine the exact date of receipt by Respondent of the FAN. He did not do so, as a consequence of which, he failed to specifically deny the material averment of Respondent in its Petition for Review as to the timeliness of the filing of its Protest.

Applying Section 11 of Rule 8 of the Rules of Court, such allegation is deemed admitted, *viz*:

> "**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."

Respondent's Judicial Claim was Filed on Time

Petitioner avers that Respondent's Petition for Review *a quo* was filed out of time on December 12, 2012, Respondent having received the FDDA on November 05, 2012. Consequently, the Second Division did not acquire jurisdiction.

We disagree.

Records show that although the Second Divsion received the Petition on December 12, 2012, the same was actually filed on 05 December 2012 *via* registered mail, the date indicated in the registry receipt attached to the Petition for Review.[26] Section 3, Rule 13 of the Rules of Court provides that if a pleading is filed by registered mail, then the date of mailing shall be considered as the date of filing –

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[24] G.R. No. L-31869, August 08, 1973.
[25] G.R. No. L-31611, November 29, 1976.
[26] Docket, p. 20.

> "Sec. 3. *Manner of filing.* - The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, **the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing**, payment, or deposit in court. The envelope shall be attached to the record of the case. (Emphasis Supplied)"

Thus, it is clear that the aforementioned Petition was filed within thirty (30) days from the date Respondent received the FDDA issued by the Petitioner, counted from November 05, 2012. This is well within the thirty (30) day reglementary period under Section 228 of the NIRC of 1997, *viz*:

> "SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings...
>
> xxx
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision** or inaction **may appeal to the Court of Tax Appeals <u>within thirty (30) days</u> from receipt of the said decision**, or from the lapse of one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable**. (Emphasis and Underscoring Supplied)"

As correctly found by the Second Division in the assailed Decision, Respondent's judicial claim was timely filed.[27]

Respondent was Able to Submit the Required Documents in Support of its Protest

Petitioner argues that Respondent failed to submit the relevant documents in support of its Protest within sixty (60) days from the date of filing, in

[27] *Id.*, p. 618.

accordance with Section 228 of the NIRC of 1997; hence, the assessment has already become final, executory and demandable. On the other hand, Respondent avers that it timely submitted the supporting documents.

We agree with Respondent.

This Court upholds the finding of the Second Division that the presence of the following documents presented by Respondent belies Petitioner's assertion –

> "A perusal of the records shows that, indeed, [respondent] submitted before the BIR pertinent documents to dispute the subject assessments. Thus, at the time of the filing of its protest, [respondent] 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 [respondent] to submit additional documents in the letter dated March 13, 2012, [respondent] immediately requested for the assistance of Philip Morris to produce the said documents. Meanwhile, on November 27, 2012, [respondent] 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 [respondent] on November 29, 2012."[28]

In fact, the submission of the Certification from Philip Morris Manufacturing Inc. was reiterated by Respondent not just once, but twice, in its correspondence with Petitioner after the filing of Respondent's Protest on March 14, 2011 – the first one in Respondent's follow-up letter dated February 02, 2012[29] and secondly in the letter dated November 27, 2012 sent by Respondent's counsel on its behalf.[30]

Moreover, a perusal of the evidence on record shows that Petitioner granted Respondent's request for re-investigation and that Petitioner was informed of such fact through a letter dated September 13, 2011.[31] BIR Revenue Regulation 18-2013 clearly provides that "[n]o request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable." Put simply, Petitioner could not have granted Respondent's request for re-investigation if it failed to submit all relevant supporting documents in support of its Protest within sixty (60) days from date of filing. This being so, Petitioner cannot now argue otherwise.

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[28] *Id.*, p. 619.
[29] Exhibit "I".
[30] Exhibit "N".
[31] Undated Memorandum addressed to Norma P. Ceroma, OIC of Assessment Division marked as Exhibit "R-12".

WHEREFORE, finding no cogent reason to disturb the findings and conclusions reached by the Second Division in the assailed Decision dated October 30, 2015 as well as in the assailed Resolution dated February 12, 2016, the same are hereby **AFFIRMED**. Accordingly, the Petition for Review filed with the Court *En Banc* on March 14, 2016 is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice