REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2116** (CTA Case No. 8984)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
FIRST BALFOUR, INC., Respondent.	Promulgated: JAN 14 2021 4:10 p.m.

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DECISION

BACORRO-VILLENA, J.:

Assailing the Special Third Division's Decision dated 25 January 2019[1] and Resolution dated 05 July 2019[2], respectively, in CTA Case No. 8984, entitled *First Balfour, Inc. v. Commissioner of Internal Revenue and United Coconut Planters Bank*, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the present Petition for Review[3] on 13 August 2019 pursuant to Section 3(b)[4], Rule 8, in relation

[1] Division Docket, Volume II, pp. 680-703; Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justice Esperanza R. Fabon-Victorino, concurring.

[2] Id., pp. 730-733.

[3] *Rollo*, pp. 5-12.

[4] **SEC. 3**. *Who may appeal; period to file petition.*

...

to Section 2(a)[5], Rule 4 of the Revised Rules of the Court of Tax Appeals[6] (**RRCTA**).

Petitioner is the head of the Bureau of Internal Revenue (**BIR**), the government agency tasked to, among others, collect all national internal revenue taxes and has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws or portions thereof administered by the BIR.[7]

Respondent First Balfour, Inc. (**respondent**) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at KM. 19 West Service Road, Barangay Marcelo Green, Sucat, Parañaque City, Philippines.[8]

Previously, respondent herein was constrained to implead United Coconut Planters Bank (**UCPB**) as co-respondent in the case before the Third Division as the entity being directed by the BIR to comply with a Warrant of Garnishment (**WG**) dated 03 September 2014, issued against respondent. However, UCPB was no longer impleaded in the instant case.

<u>FACTS OF THE CASE</u>

In its letter dated 04 September 2014[9], UCPB notified respondent that a WG was issued by the BIR pertaining to respondent First

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

5 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
...

6 A.M. No. 05-11-07-CTA.

7 Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, p. 247.

8 Id.

9 Annex "C" of the prior Petition for Review, id., p. 36.

Philippine Balfour Beatty, Inc. with Taxpayer Identification Number (TIN) 005-012-774-000.[10]

Respondent, through its letters dated 17 September 2014[11] and 17 November 2014[12] to UCPB, assailed the latter's unilateral act of putting respondent's account on hold. In these letters, respondent informed UCPB that it neither received a WG nor an assessment from the BIR and that the WG referred thereto does not pertain to respondent (as it patently mentioned a company with a name and TIN different from respondent's name and TIN).[13]

On 09 January 2015, respondent received a Letter[14] of even date from UCPB informing the former that its deposit in the amount of ₱2,538,798.06 with UCPB has been garnished and the same will be released to petitioner through a manager's check.

At the same time, UCPB furnished respondent a copy of BIR's Letter dated 08 January 2015[15] to UCPB, directing the latter to garnish and surrender respondent's deposit. The same letter provides that a WG dated 03 September 2014[16] was issued pursuant to Assessment No. F-044-LNTF-07-VT-IT-MC-027 for taxable year (**TY**) 2007 involving deficiency Value-Added Tax (**VAT**), Income Tax (**IT**) and MC.[17]

PROCEEDINGS BEFORE THE THIRD DIVISION

In disagreement with the BIR's actions, respondent filed the prior Petition for Review with Motion for Suspension of Collection of Taxes (**Motion for Suspension**) on 06 February 2015.[18]

For the hearing on the Motion for Suspension on 03 March 2015, respondent presented Eladio S. Feraer (**Feraer**) who testified through

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10 Paragraph 18 of the prior Petition for Review, id., p. 11.
11 Annex "D" of the prior Petition for Review and Exhibits "R-25" and "R-26", id., pp. 37-38.
12 Annex "D-1" of the prior Petition for Review and Exhibits "R-27" and "R-28", id., pp. 39-40.
13 Paragraph 19 of the prior Petition for Review, id., p. 11.
14 Exhibit "P-1", id., p. 284.
15 Exhibit "P-2", BIR Records, p. 80.
16 Exhibit "P-3", id., p. 43.
17 Referring to Miscellaneous Charges.
18 Division Docket, Volume I, pp. 6-28.

his Judicial Affidavit[19] that: (1) he is the Treasurer of respondent; (2) respondent did not receive a Preliminary Assessment Notice (**PAN**), Final Assessment Notice (**FAN**), Formal Letter of Demand (**FLD**) or even the WG from the BIR and it was only when UCPB informed respondent of the enforcement of collection that it was made aware of the BIR's assessment of deficiency taxes against it; and, (3) the premature enforcement of collection of ₱27,881,861.15 subject of the assessment will result in delays and stoppage in respondent's operations, compromise the payroll of its employees, breach its contractual obligations and expose it to unwanted suits from creditors.

In his Comment/Opposition[20], petitioner contended that the Court has no authority to take cognizance of respondent's Motion for Suspension for want of jurisdiction as the WG is not a decision contemplated under Section 7 of Republic Act (**RA**) No. 1125, as amended by RA 9282, and that the reckoning point of the 30-day period to appeal to this Court should be from the receipt of the 04 September 2014 letter of UCPB. Petitioner also added that assuming the Court in Division has jurisdiction, the prayer for suspension order must still be denied since respondent will not suffer irreparable damage if said suspension order would not be issued.

On 19 March 2015, petitioner filed a Motion to Dismiss[21], reiterating his position that the Court in Division has no jurisdiction over the case.

In its Comment/Opposition[22], respondent contended that the question involving the WG falls within the scope of "other matters" that arise out of the NIRC of 1997, as amended, or other laws administered by the BIR.

Per Resolution dated 13 July 2015[23], the Third Division granted respondent's Motion for Suspension and denied petitioner's Motion to Dismiss.

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19 Id., pp. 58-64.
20 Id., pp. 100-105.
21 Id., pp. 124-128.
22 Id., pp. 141-150.
23 Id., pp. 152-165.

During the trial on the merits, Feraer was again presented as respondent's witness. Through his Judicial Affidavit[24], he added that the assessments subject of the case have already prescribed given that more than three (3) years have lapsed from the date of filing of respondent's returns and no assessment has yet been received by respondent, as shown by the following table:

Tax Return	**Date of last filing of return**	**Last day to assess**	**Date of issuance of assessment (as inferred from WG)**	**Period lapsed**
IT for 2007	09 May 2008	09 May 2011	29 October 2012	More than 3 years from date of filing of return
VAT for 1st quarter	24 August 2007	24 August 2010	29 October 2012	More than 3 years from date of filing of return
VAT for 2nd quarter	24 August 2007	24 August 2010	29 October 2012	More than 3 years from date of filing of return
VAT for 3rd quarter	23 January 2008	23 January 2011	29 October 2012	More than 3 years from date of filing of return
VAT for 4th quarter	23 January 2008	23 January 2011	29 October 2012	More than 3 years from date of filing of return

On cross examination[25], Feraer declared further that: (1) there is another letter from UCPB which was received earlier than the letter dated 09 January 2015[26]; (2) they did not receive the WG, and what they received is a letter from UCPB attaching the WG[27]; (3) respondent did not receive any document from the BIR[28]; and, (4) First Philippine

24 Exhibit "P-11", id., pp. 194-205; see Order dated on 02 October 2015.
25 TSN of 25 January 2016.
26 Id., p. 8.
27 Id., p. 10
28 Id.

Balfour Beatty, Inc. was respondent's subsidiary prior to 2002.[29] No re-direct examination was conducted.[30]

On 26 February 2016, respondent then filed its Formal Offer of Evidence[31] (**FOE**), for its Exhibits "P-1" to "P-11", inclusive of sub-markings. The Court admitted respondent's evidence.[32]

On 18 April 2016, petitioner presented his first witness, Revenue Officer (**RO**) Allen T. Ocampo (**Ocampo**), who testified, through his Judicial Affidavit[33], that: (1) the Notice/Letters, PAN and FAN were issued to inform respondent of its deficiency taxes for TY 2007; (2) Zenaida U. Floresca (**Floresca**), OIC-Chief at the Collection Division of BIR Revenue Region No. 8 issued a Preliminary Collection Letter (**PCL**) and the same was mailed to respondent as evidenced by Registry Receipt No. 3692; (3) Floresca issued a Final Notice Before Seizure (**FNBS**), dated 21 April 2014, to give respondent the last opportunity to make the necessary settlement of its tax liabilities; (4) after he examined the documents pursuant to a Memorandum of Assignment dated 04 July 2014, Floresca issued a Warrant of Distraint and/or Levy (**WDL**) dated 02 September 2014; (5) Floresca later on issued the WG dated 03 September 2014 addressed to UCPB informing it that petitioner will seize, distrain and garnish respondent's deposit and property under its control or possession; (6) thereafter, Atty. Cecilia M. Cabatit (**Atty. Cabatit**) of UCPB issued a letter dated 30 October 2014 to inform him and Floresca that pursuant to the WG, UCPB has deemed as "frozen" the amount of ₱2,538,798.06 in the account of "First Balfour, Inc.", formerly, "First Philippine Balfour Beatty, Inc."; (7) Atty. Cabatit issued a Letter dated 27 November 2014 informing Floresca that UCPB will hold the release of the garnished funds due to the two letters it received from respondent; (8) Floresca issued a Letter dated 08 January 2015 with attached Securities and Exchange Commission (**SEC**) General Information Sheet (**GIS**) of First Philippine Balfour Beatty, Inc. and of respondent (to inform UCPB that most of the stockholders/officers of First Philippine Balfour Beatty, Inc. are the very same persons who control and manage respondent

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29 Id., p. 14.
30 Id., p. 23.
31 Division Docket, Volume I, pp. 276-283.
32 *Per* Resolution dated 30 March 2016 (Division Docket, id., p. 312), Exhibit "P-3" was initially denied admission but in Resolution dated 01 August 2016 (Division Docket, id., Volume II, pp. 458-459), the same was subsequently admitted to form part of respondent's evidence.
33 Division Docket, Volume I, pp. 313-324.

and thus UCPB should surrender the amount duly garnished to the BIR); and, (9) the BIR reached the conclusion that there is commonality in the stockholders and officers between the two corporations, as shown by the following table:

Name of stockholder/officer	Position in FIRST PHILIPPINE BALFOUR BEATTY, INC.	Position in FIRST BALFOUR, INC.
Oscar M. Lopez	Chairman & CEO	Chairman Emeritus
Florello R. Estuar	President	Vice-Chairman & CEO
Peter D. Garrucho	Stockholder	Stockholder
Elpidio L. Ibanez	Stockholder	Stockholder
Anthony L. Fernandez	Vice-President	President & COO
Rey G. Villar	Vice-President	EVP
Eduardo G. Makalintal	Corporate Secretary	Corporate Secretary
Eileen C. Pangalangan	Asst. Corp. Secretary	Asst. Corp. Secretary

On cross examination[34], RO Ocampo testified that: (1) the PCL was issued to [First] Philippine Balfour Beatty, Inc. with the address indicated at Second Floor, Heart Asia Global City[35] and the same was served through registered mail with registry receipt but with no return card[36]; (2) for the Monthly Summary of Taxes Assessed-Unprotested which was also addressed to First Philippine Balfour Beatty, Inc., there was no date indicated for the date of receipt of the taxpayer[37]; (3) for the FAN, there was no date indicated in the column FAN due date[38]; (4) the FNBS was also addressed to First Philippine Balfour Beatty, Inc. with TIN 005-012-774-000 and there was no tax registry receipt because it may have been misplaced[39]; (5) the WDL also issued against First Philippine Balfour Beatty, Inc. was constructively served upon the said corporation by furnishing the security guard on duty of the Hatski Centre with two witnesses, namely, Ramon Victornelis and Philip Viduya who are his co-employees[40]; (6) he did not obtain any other document aside from the GIS (which he requested *via* an internet link) as basis for him to say that the two corporations have almost same stockholders or directors[41]; and, (7) the TIN of First Philippine Balfour

34 TSN of 18 April 2016.
35 Id., p. 11.
36 Id., p. 13.
37 Id., pp. 13-14.
38 Id., p. 14.
39 Id., p. 15.
40 Id., pp. 15-21.
41 Id., pp. 27-28.

Beatty, Inc. is 005-012-774-000 while respondent's TIN is 000-286-115-000 with address at Kilometer 19, West Service Road, Brgy. Marcelo, Sucat, Parañaque City.[42] Thereafter, no re-direct examination was conducted.[43]

Subsequently, petitioner presented Atty. Cabatit as his second witness, who testified[44] that: (1) respondent vehemently objected to the garnishment of its deposit with UCPB Tektite Branch[45]; (2) as for the bank's basis for saying that respondent was formerly First Philippine Balfour Beatty, Inc., respondent submitted its Amended Articles of Incorporation wherein it changed its name to from "First Philippine Balfour Beatty, Inc." to "First Balfour, Inc."[46]; and, (3) UCPB held the release of the garnished funds to the BIR because it received two (2) letters from respondent (dated 17 September 2014 and 17 November 2014[47], respectively).

Respondent did not conduct cross examination following its continuing objection against Atty. Cabatit's presentation as witness.[48]

On 16 May 2017, petitioner presented his last witness, Amelita A. Escober (**Escober**), who testified, through her Judicial Affidavit[49], that the following were issued and served by registered mail upon respondent: (1) Letter Notice No. 044-RLF07-00-00011 with attached Details of Taxpayer's Suppliers Records, on 03 August 2009; (2) Follow-up Letter dated 07 March 2012, on 12 March 2012; (3) NIC dated 28 March 2012, on 16 April 2012; (4) PAN dated 01 October 2012, on 04 October 2012; and, (5) FAN with the attached Details of Discrepancies and Assessment Notices all dated 29 October 2012, on 05 November 2012.

On cross examination[50], Escober declared that: (1) the subject of the Letter Notice is First Philippine Balfour Beatty, Inc. and the TIN

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42 Id., pp. 29-30.
43 Id., p. 38.
44 TSN of 15 November 2016.
45 Id., p. 14.
46 Id., p. 15.
47 Id., pp. 19-20.
48 Id., p. 33.
49 Exhibit "R-29", Division Docket, Volume II, pp. 506-513.
50 TSN of 16 May 2017.

indicated is 005-012-774[51]; (2) the said Letter Notice contained no indication of the date when the taxpayer should present its documents[52]; (3) the same Letter Notice was sent through registered mail and they were not able to secure the corresponding return card[53]; (4) it took them almost three (3) years to make a follow-up with First Philippine Balfour Beatty, Inc.[54]; (5) she could not tell when First Philippine Balfour Beatty, Inc. received the said letter[55]; and, (6) there was no proof of the FAN's receipt.[56]

Petitioner did not conduct any cross-examination.[57]

On 28 July 2017, petitioner filed his FOE[58], offering in evidence Exhibits "R-23" to "R-28", inclusive of sub-markings. After respondent filed its Comment and/or Opposition on 08 September 2017[59], the Court in Division resolved to admit Exhibits "R-23" and "R-24" and deny Exhibits "R-25"[60], "R-26"[61], "R-27"[62] and "R-28"[63] for failure to present the originals for comparison. Petitioner filed an MR[64] thereto but the Third Division denied the same in its Resolution dated 15 December 2017.[65]

Respondent then filed its Memorandum on 08 November 2017[66] while petitioner filed his own through registered mail on 25 January 2018 (and received by the Court on 02 February 2018[67]).

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51 Id., p. 7.
52 Id., p. 10.
53 Id., pp. 10-13.
54 Id., pp. 13-14.
55 Id., p. 15.
56 Id., p. 20.
57 Id., p. 21.
58 Division Docket, Volume II, pp. 565-567.
59 Id., pp. 605-612.
60 Page 1 of Letter by First Balfour, Inc. to UCPB dated September 17, 2014, id., Volume I, p.37.
61 Page 2 of Letter by First Balfour, Inc. to UCPB dated September 17, 2014, id., p. 38.
62 Page 1 of Letter by First Balfour, Inc. to UCPB dated November 17, 2014, id., p. 39.
63 Page 2 of Letter by First Balfour, Inc. to UCPB dated November 17, 2014, id., p. 40.
64 Division Docket, Volume II, pp. 620-622.
65 Id., pp. 666-670.
66 Id., pp. 628-652.
67 Id., pp. 672-674.

On 25 January 2019, the Special Third Division[68] rendered the assailed Decision[69], the dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the Petition for Review filed by First Balfour, Inc. is hereby **GRANTED**. Accordingly, the deficiency tax assessment under Assessment No. F-044-LNTF-07-VT-IT-MC-027 for taxable year 2007 is **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**
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> ...

Petitioner filed an MR[70] with respondent's Comment and/or Opposition[71], but the said MR was denied in the 05 July 2019 Resolution[72] of the Special Third Division.

PROCEEDINGS BEFORE THE COURT *EN BANC*

In his bid to have the assailed Decision and Resolution set aside, petitioner filed with the Court *En Banc* the instant Petition for Review.[73] On 14 October 2019, respondent filed its Comment and/or Opposition[74] thereto. After the parties appeared before the Philippine Mediation Center Unit, they decided not to have their case mediated.[75] Thus, on 15 January 2020, the instant Petition for Review was submitted for decision.[76]

In the instant case, the parties similarly invoke their respective positions which they have raised before the Third Division.

For petitioner, the prior Petition for Review was filed out of time as respondent should have filed the same within thirty (30) days from the receipt of the 04 September 2014 letter of UCPB. According to him,

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68 The Third Division was reconstituted after the issuance of the CTA Administrative Circular No. 02-18 dated 18 September 2018 entitled "Reorganizing the Three (3) Divisions of the Court."
69 Supra at note 1.
70 Division Docket, Volume II, pp. 709-712.
71 Id., pp. 719-726.
72 Supra at note 2.
73 Supra at note 3.
74 *Rollo*, pp. 53-61.
75 PMC-CTA Form No. 6 - No Agreement to Mediate dated 18 December 2019, id., p. 66.
76 *Rollo*, pp. 68-69.

it is unjustifiable for respondent to take the 09 January 2015 letter as the appealable decision especially so when the latter is a mere reiteration of the former.

Petitioner adds that respondent discreetly changed its name and business address without informing him to evade its obligation with the BIR. As such, petitioner wants this Court to pierce respondent's corporate veil since it is a mere alter ego of another corporation, the First Philippine Balfour Beatty, Inc. (where most of the stockholders or officers of those corporations are the same).

On the other hand, respondent maintains that its prior Petition for Review was timely filed, given that the 04 September 2014 letter of UCPB was not part of petitioner's evidence that the Court in Division admitted. Respondent adds that it was only upon its receipt of the 09 January 2015 letter that it became manifest that the letters and garnishment were indeed directed to it.

Respondent also claims that petitioner did not present any document, particularly, the GIS of either respondent or of First Philippine Balfour Beatty, Inc. to duly identify the stockholders of these corporations.

Lastly, respondent avers that petitioner admitted that he did not send anything to respondent and that until the filing of the instant Petition for Review, there has been no communication, correspondence or notice in any form coming from petitioner and addressed to respondent with respect to the matter at hand.

RULING OF THE COURT *EN BANC*

After an assiduous review of the records of the case, the Court *En Banc* finds no merit in the instant Petition for Review.

THE COURT IN DIVISION HAD JURISDICTION OVER THE PRIOR PETITION FOR REVIEW.

Petitioner mainly argues that respondent's prior Petition for Review was filed out of time. Petitioner insists that even assuming (without admitting) that the WG is appealable to this Court, it should have filed its prior Petition for Review within thirty (30) days from receipt of UCPB's letter dated 04 September 2014 or until 04 October 2014, since UCPB already informed respondent that its account has been put on hold pursuant to the WG. Because respondent failed to file the prior Petition for Review on time, the Third Division had no jurisdiction to take cognizance of the case.

We do not agree.

In *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[77], the Supreme Court already ruled that the second part of Section 7(1) of RA 1125 covers other cases that arise out of the NIRC or related laws administered by the BIR, *viz:*

> ...
>
> The first assigned error relates to the jurisdiction of the CTA over the issues in this case. The Court of Appeals ruled that only decisions of the BIR denying a request for reconsideration or reinvestigation may be appealed to the CTA. Since the petitioner did not file a request for reinvestigation or reconsideration within thirty (30) days, the assessment notices became final and unappealable. The petitioner now argue that the case was brought to the CTA because the warrant of distraint or levy was illegally issued and that no assessment was issued because it was based on an invalid waiver of the statutes of limitations.
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> We agree with petitioner. Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court:
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>> SEC. 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –

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77 G.R. No. 162852, 16 December 2004; Emphasis in the original text.

> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue Code or other laws or part of law administered by the Bureau of Internal Revenue**[.]
>
> The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The second part of the provision covers other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. The wording of the provision is clear and simple. It gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected.
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> ...

Moreover, in *Commissioner of Internal Revenue v. Hambrecht & Quist Philippines, Inc.*[78], it was held that "... the BIR's right to collect taxes may be considered as covered by the term 'other matters' over which the CTA has appellate jurisdiction."

As to the timeliness of the filing of the prior Petition for Review, We also hold that the same was reckoned correctly from the receipt of UCPB's letter dated 09 January 2015 and *not* from the letter dated 04 September 2014.

It must be emphasized that, in the 04 September 2014 letter, respondent was simply notified that UCPB received a "Notice of Garnishment – BIR Warrant of Garnishment No. WG-RR8-2014-08-0295-10 Revenue Region No. 8, Makati City" against respondent's current account. However, the records do not show that respondent was likewise furnished with a copy of the alleged WG on the same day.

On the other hand, according to respondent's witness (Feraer), it was only through UCPB's letter (which respondent received on 09 January 2015) that it was informed of the issuance of the WG.[79] In fact, Feraer further testified that respondent did not receive any

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78 G.R. No. 169225, 17 November 2010.
79 TSN of 25 January 2016, p. 9.

document from the BIR and respondent only obtained a copy of the WG from UCPB.[80]

Since respondent only received a copy of the WG on 09 January 2015, the 30-day period to file an appeal with this Court should be counted from the receipt of such and not from the 04 September 2014 letter which merely contained a notification from UCPB as to the existence of the WG.

As correctly ruled by the Special Third Division in the assailed Decision:

> ...
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> In this case, however, petitioner alleged that it was unaware that an assessment was issued by respondent until it received a letter from UCPB dated January 9, 2015 informing petitioner that a Warrant of Garnishment was issued by respondent, instructing the bank to garnish petitioner's account and to issue a check in its favor. It was only then that petitioner was furnished a copy of the Warrant of Garnishment indicating the Letter Notice from which the said Warrant was based upon. In this regard, the reckoning period of thirty (30) days is from the day when petitioner learned that a Warrant of Garnishment had been issued against it, that is on January 9, 2015. Hence, petitioner has until February 8, 2015 to file an appeal. This Petition for Review was seasonably filed on February 6, 2015. Consequently, the Court has jurisdiction over the case.
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> ...

PETITIONER FAILED TO PRESENT CLEAR AND CONVINCING EVIDENCE TO WARRANT THE PIERCING OF THE VEIL OF CORPORATE FICTION.

According to petitioner, respondent is formerly named First Philippine Balfour Beatty, Inc. and most of the stockholders/officers of the latter are the very same stockholders/officers of respondent. To support his claim, petitioner relied on Atty. Cabatit's testimony, the Certificate of Amended Articles of Incorporation of respondent,

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80 Id., p. 10.

Amended Articles of Incorporation and the Certificate of Filing as well as on the printout of the screenshot of respondent's[81] GIS and allegedly that of First Philippine Balfour Beatty, Inc.[82]

It bears stressing that petitioner did not formally offer the supposed GIS of respondent and that of the First Philippine Balfour Beatty, Inc. As the records also show, these documents were only provisionally marked (being mere photocopies).[83]

In *Commissioner of Internal Revenue v. Jerry Ocier*[84], the Supreme Court ruled that for evidence to be considered, the same must be formally offered, *viz*:

> ...
>
> The petitioner does not deny the failure to formally offer BIR's evidence against the respondent, but insists that such failure was not fatal considering that the respondent's liability for the CGT and DST for the transfer of the BW Resources shares had still been established by the evidence on record. Even so, the petitioner contends that the CTA *En Banc* should still have relied also on BIR's pieces of evidence, even if not formally offered, because said pieces of evidence had been duly identified by Josephine D. Madera, Revenue Officer of the National Investigation Division of the BIR, and incorporated in the records of the case.
>
> The petitioner's contention cannot be sustained.
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> ...
>
> In our view, the CTA *En Banc* thereby correctly ruled that the petitioner did not establish that an actual sale of the shares of stocks from the respondent to Tan had occurred because it had not formally offered its evidence. **Such offer of evidence was indispensable to the consideration of the evidence by the trial court. The necessity of the formal offer of evidence has been suitably stressed in *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*** thusly:

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81 Exhibits "R-20-a" to "R-20-c", BIR Records, pp. 67-69.
82 Exhibits "R-19-b"to "R-19-d", id., pp. 74-76.
83 Exhibits "R-19" to "R-19-g" and "R-20" to "R-20-f", BIR Records, pp. 64-78.
84 G.R. No. 192023, 21 November 2018; Citations omitted, emphasis supplied in the original text and supplied.

Under Section 8 of Republic Act (R.A.) No. 1125, the CTA is categorically described as a court of record. As such, it shall have the power to promulgate rules and regulations for the conduct of its business, and as may be needed, for the uniformity of decisions within its jurisdiction. Moreover, as cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. **Thus, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA.** Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:

> SEC. 34. Offer of evidence. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

Although in a long line of cases, we have relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court, we exercised extreme caution in applying the exceptions to the rule, as pronounced in *Vda. de Oñate v. Court of Appeals*, thus:

> From the foregoing provision, **it is clear that for evidence to be considered, the same must be formally offered.** Corollarily, the mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence of a party. In *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385, 388-389 (1990)], we had the occasion to make a distinction between identification of documentary evidence and its formal offer as an exhibit. We said that the first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit while the second is done only when the party rests its case and not before. A party, therefore, may opt to formally offer his evidence if he believes that it

> will advance his cause or not to do so at all. In the event he chooses to do the latter, the trial court is not authorized by the Rules to consider the same.

...

In fact, the alleged GIS of First Philippine Balfour Beatty, Inc. did not even contain such corporate name as to enable this Court to verify if the persons named therein are truly the corporate officers and directors of said corporation.

At any rate, even if this Court would consider the foregoing as evidence offered and admitted, they would not be enough for this Court to disregard the separate juridical personalities of the corporations involved. To justify the piercing of the veil of corporate fiction, there must be proof that the corporation is being used as a cloak or cover for fraud or illegality, or to work injustice.[85]

To recall, petitioner merely relied on respondent's Amended Articles of Incorporation as well as on the supposed GIS of the two corporations involved, without presenting any further or additional evidence to establish that First Philippine Balfour Beatty, Inc. merely used respondent to cover fraud or any illegality, or to work injustice.

As the Supreme Court held in *China Banking Corporation v. Dyne-Sem Electronics Corporation*[86], the wrongdoing must be proven clearly and convincingly and mere identity in the incorporators and stockholders of two or more corporations will not necessarily lead to the inference that one is the alter ego of another, to wit:

> ...
>
> **To disregard the separate juridical personality of a corporation, the wrongdoing must be proven clearly and convincingly**.
>
> In this case, petitioner failed to prove that Dyne-Sem was organized and controlled, and its affairs conducted, in a manner that made it merely an instrumentality, agency, conduit or adjunct of

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[85] See *Alicia E. Gala, et al. v. Ellice Agro-Industrial Corporation, et al.*, G.R. No. 156819, 11 December 2003.

[86] G.R. No. 149237, 11 June 2006; Citations omitted and emphasis supplied.

> Dynetics, or that it was established to defraud Dynetics' creditors, including petitioner.
>
> The similarity of business of the two corporations did not warrant a conclusion that respondent was but a conduit of Dynetics. As we held in *Umali v. Court of Appeals,* "the mere fact that the businesses of two or more corporations are interrelated is not a justification for disregarding their separate personalities, absent sufficient showing that the corporate entity was purposely used as a shield to defraud creditors and third persons of their rights."
>
> ...
>
> Finally, it may be true that respondent later hired Dynetics' former Vice-President Luvinia Maglaya and Assistant Corporate Counsel Virgilio Gesmundo. From this, however, we cannot conclude that respondent was an alter ego of Dynetics. **In fact, even the overlapping of incorporators and stockholders of two or more corporations will not necessarily lead to such inference and justify the piercing of the veil of corporate fiction. Much more has to be proven.**
>
> ...

Moreover, in *Jardine Davies, Inc. v. JRB Realty, Inc.*[87], the Supreme Court similarly ruled that the existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the corporate veil, *viz:*

> ...
>
> **The existence of interlocking directors, corporate officers and shareholders, which the respondent court considered, is not enough justification to pierce the veil of corporate fiction, in the absence of fraud or other public policy considerations**. But even when there is dominance over the affairs of the subsidiary, the doctrine of piercing the veil of corporate fiction applies only when such fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime. To warrant resort to this extraordinary remedy, there must be proof that the corporation is being used as a cloak or cover for fraud or illegality, or to work injustice. Any piercing of the corporate veil has to be done with caution. The wrongdoing must be clearly and convincingly established. It cannot just be presumed.
>
> ...

[87] G.R. No. 151438, 15 July 2005; Citations omitted and emphasis supplied.

Considering petitioner's failure to present clear and convincing evidence, the Court could not allow petitioner's questioned WG to be enforced against respondent. As the records so yield, the previous issuances of the BIR (such as the Letter Notice, Follow-up Letter, NIC, PAN, FAN, PCL, FNBS, WDL) were not for respondent but were intended for First Philippine Balfour Beatty, Inc.

At any rate, the Special Third Division correctly cancelled and set aside the supposed deficiency tax arising from Assessment No. F-044-LNTF-07-VT-IT-MC-027 for having been issued in violation of the due process requirement as well as the 3-year period to assess under Section 203 of the NIRC of 1997, as amended, which would be discussed briefly below.

PETITIONER DID NOT ACCORD RESPONDENT DUE PROCESS.

In the instant case, petitioner utterly failed to prove that he properly served the notices on respondent through registered mail and that the latter duly received them.

As borne by the records of the case, the BIR issued said notices to First Philippine Balfour Beatty, Inc. with the TIN of <u>005-12-774-000</u> and address at 2/F Hatch Asia Global City Ctr 31st St. corner 2nd Ave., E-Square IT Park, Bonifacio Global City, Taguig, Metro Manila. On the other hand, respondent clearly established that its TIN is <u>000-286-115-000</u> and its registered address is at KM. 19 West Service Road, Barangay Marcelo Green, Sucat, Parañaque City, Philippines. Evidently, petitioner failed to properly furnish respondent with notices intended for it, thereby violating its right to due process.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[88], the Supreme Court reiterated the rule that if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee and that the taxpayer must first be informed

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[88] G.R. No. 185371, 08 December 2010; Citations omitted, emphasis in the original text and supplied.

that he is liable for deficiency taxes before proceeding with collection, to wit:

> ...
>
> On the matter of service of a tax assessment, a further perusal of our ruling in *Barcelon* is instructive, viz:
>
>> Jurisprudence is replete with cases holding that **if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. The *onus probandi* was shifted to respondent to prove by contrary evidence that the Petitioner received the assessment in the due course of mail.** The Supreme Court has consistently held that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee (Republic vs. Court of Appeals, 149 SCRA 351). Thus as held by the Supreme Court in *Gonzalo P. Nava vs. Commissioner of Internal Revenue*, 13 SCRA 104, January 30, 1965:
>>
>>> "**The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and (b) that it was mailed**. Once these facts are proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mail. But if one of the said facts fails to appear, the presumption does not lie. (VI, Moran, Comments on the Rules of Court, 1963 ed, 56-57 citing Enriquez vs. Sunlife Assurance of Canada, 41 Phil 269)."
>
> ...
>
> **Indeed, Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN. He must be informed of the facts and the law upon which the assessment is made. The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection**

> **without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence.**
>
> ...

THE RIGHT OF PETITIONER TO ASSESS RESPONDENT HAS PRESCRIBED.

Lastly, petitioner issued the subject assessments after the period to assess of three (3) years has already prescribed. Section 203 of the NIRC of 1997, as amended, provides:

> ...
>
> SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
>
> ...

Based on the testimony of petitioner's witness, Escober, the Assessment Notices dated 29 October 2012 were sent to petitioner by registered mail only on 05 November 2012.[89] Thus, as shown in the following table, petitioner's right to assess respondent has clearly prescribed:

Tax Return	Date of filing	Last day to assess
IT for 2007	09 May 2008	09 May 2011
VAT for 1st quarter	24 August 2007	24 August 2010
VAT for 2nd quarter	24 August 2007	24 August 2010
VAT for 3rd quarter	23 January 2008	23 January 2011
VAT for 4th quarter	23 January 2008	32 January 2011

89 Question and Answer No. 42, Judicial Affidavit of Amelita A. Escober, Division Docket, Volume II, p. 511.

With the discussions above, the Court *En Banc* finds no sufficient reason to disturb the assailed Decision and Resolution.

WHEREFORE, with the foregoing, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the Decision dated 25 January 2019 and Resolution dated 05 July 2019, respectively, of the Special Third Division in CTA Case No. 8984, entitled *First Balfour, Inc. v. Commissioner of Internal Revenue and United Coconut Planters Bank*, are hereby **AFFIRMED**. Further, petitioner Commissioner of Internal Revenue or any person duly acting on his behalf is **ENJOINED** from proceeding with the collection of the taxes assessed against respondent First Balfour, Inc., arising from Assessment No. F-044-LNTF-07-VT-IT-MC-027 for taxable year 2007 in the total amount of ₱27,881,861.15 as indicated in the Warrant of Garnishment dated 03 September 2014.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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