REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

***Special Third Division***

**FIRST BALFOUR, INC.,**
*Petitioner,*

**-versus-**

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA CASE NO. 8984**

**Members:**

**FABON-VICTORINO,** *and*
**RINGPIS-LIBAN, JJ.**

**Promulgated:**
JAN 25 2019
11:18 a.m.

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# DECISION

**RINGPIS-LIBAN, J.**

## STATEMENT OF THE CASE

This resolves the Petition for Review filed by First Balfour, Inc. to seek the cancellation and setting aside of the Warrant of Garnishment dated September 3, 2014 and the declaration as null and void of the alleged Assessment No. F-044-LNTF-07-VT-IT-MC-027 for taxable year 2007 in the total amount of ₱27,881,861.15 as referred and/or mentioned in the Warrant of Garnishment.

## THE FACTS

Petitioner First Balfour, Inc. 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, Paranaque City, Philippines.[1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed

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[1] Par. 3, Joint Stipulation of Facts and Issues (JSFI), docket, p. 247

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) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

While the United Coconut Planters Bank (UCPB) is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at the UCPB Corporate Offices, 7907 Makati Avenue, Makati City, Philippines.[2]

On January 9, 2015, petitioner received a Letter[3] of even date from UCPB informing it that its deposit with the said bank in the amount of ₱2,538,798.06 has been garnished and that it shall be released through a Manager's Check in favor of respondent's office.[4]

At the same time, UCPB furnished petitioner with a Letter[5] dated January 8, 2015, which was sent by respondent CIR's office to UCPB directing it to garnish and surrender petitioner's deposit. The same Letter provides that a Warrant of Garnishment dated September 3, 2014 was issued pursuant to Assessment No. F-044-LNTF-07-VT-IT-MC-027 for taxable year 2007 purportedly involving deficiency value-added tax (VAT), income tax and MC, amounting to ₱27,881,861.15.[6]

Thus, assailing the garnishment of its account, petitioner filed the instant Petition for Review[7] with Motion to Suspend Collection of Taxes on February 6, 2015.

During the hearing[8] on March 3, 2015, petitioner presented its witness, Mr. Eladio S. Feraer, in support of the Motion for Suspension of Collection of Taxes.

Petitioner claims that while it may not necessarily become bankrupt from a premature collection of tax by respondent, petitioner nonetheless stands to suffer much and will continue to suffer more from the said unfortunate circumstances in the event the Court will not stop respondent from pursuing its collection efforts, which is premised already on a patently null and void and highly questionable tax deficiency assessment.[9]

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[2] Par. 1, JSFI, docket, p. 246
[3] Exhibit "P-1", docket, p. 284
[4] Par. 14, Petition for Review, p. 10
[5] Exhibit "P-2", BIR Records, p. 80
[6] Exhibit "P-3", BIR Records, p. 34
[7] Docket, pp. 6-28
[8] Minutes of the Hearing, March 3, 2015, docket, p. 78
[9] Par. 34, Memorandum (Re: Motion to Suspend Collection of Tax) filed on March 9, 2015, docket, p. 92

In its Comment[10], respondent contends that the Motion for Suspension of Collection of Taxes should not be granted on the following grounds: (1) the Court has no authority to take cognizance of petitioner's Motion for Suspension of Collection of Taxes for want of jurisdiction over the Petition for Review previously filed; and (2) petitioner will not suffer an irreparable damage.

On March 19, 2015, respondent filed, through registered mail and received by the Court on March 26, 2015, a Motion to Dismiss[11] for lack of jurisdiction. Respondent claims that the Court has no jurisdiction on the ground that (1) the Warrant of Garnishment is not a decision contemplated under Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282; and (2) the filing of the Petition for Review has been time-barred, as the counting of the 30-day period to appeal should have been counted from the receipt of the September 4, 2014 Letter of UCPB.

On July 13, 2015, the Court issued a Resolution[12] denying respondent's Motion to Dismiss. The Court held that pursuant to Section 7 of RA No. 1125, as amended, and as held by the Supreme Court in *Commissioner of Internal Revenue vs. Josefina Leal* and *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[13], the Court of Tax Appeals has jurisdiction over "other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue", which includes acting on a petition to invalidate and annul the distraint or garnishment orders of respondent CIR, as in this case.

With regard to the timeliness of the filing of the Petition for Review, the Court held that the 30-day period to appeal should be counted from the receipt of the UCPB Letter dated January 9, 2015, as petitioner is deemed to have acquired knowledge of the assessment against it. Thus, petitioner seasonably filed its Petition for Review on February 6, 2015. Consequently, the Court has jurisdiction over the case.

In the same Resolution, the Court granted petitioner's Motion to Suspend Collection, with the condition of posting a surety bond; which was complied with by petitioner.[14]

A Notice of Pre-Trial Conference[15] was issued by the Court, setting the case for pre-trial conference on October 6, 2015. Accordingly, petitioner's Pre-

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[10] Comment/Opposition (To Petitioner's Motion for the Suspension of Collection of Taxes) filed via registered mail on March 9, 2015 and received by the Court on March 20, 2015, docket, pp. 100-105
[11] Docket, pp. 124-128
[12] Docket, pp. 152-165
[13] G.R. No. 113459, November 18, 2002 and G.R. No. 162852, December 16, 2004, respectively
[14] Compliance (Re: Resolution dated July 13, 2015), docket, pp. 166-169
[15] Docket, pp. 191-192

Trial Brief[16] was filed on October 2, 2015 while respondent's Pre-Trial Brief[17] was filed on September 30, 2015 through registered mail and received by the Court on October 15, 2015.

The pre-trial conference ensued.[18] Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[19] on October 22, 2015. Accordingly, the Court issued a Pre-Trial Order[20] on November 26, 2015 and the pre-trial was deemed terminated.

During trial, petitioner presented Mr. Eladio S. Feraer[21] as its witness.

Witness **Mr. Eladio S. Feraer** stated that he is the Treasurer of petitioner[22], and testified that petitioner did not receive a Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN), Formal Letter of Demand (FLD) or even the Warrant of Garnishment from respondent and that it was UCPB that informed petitioner of the enforcement of the collection of the alleged deficiency taxes by respondent.[23]

He further testified that petitioner received a letter[24] from UCPB dated January 9, 2015, wherein UCPB informed petitioner that its deposit of ₱2,538,798.06 has been garnished and the same will be released through a "Manager's Check FAO: Bureau of Internal Revenue IFO First Balfour, Inc.".

Witness Feraer stated that UCPB also furnished petitioner with a Letter[25] dated January 8, 2015 received by UCPB from respondent which demanded that UCPB surrender the amount duly garnished, and a Warrant of Garnishment which it had received from respondent.[26] The Warrant of Garnishment[27] stated that First Philippine Balfour Beatty, Inc. with Taxpayer Identification No. 005-012-774-000 and address at 2/F Hatch Asia Global City Center 31st corner 2nd Avenue, E. Square IT Park, Bonifacio Global City, Taguig City has been assessed internal revenue taxes amounting to ₱27,881,861.15.

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[16] Docket, pp. 226-233
[17] Docket, pp. 242-244
[18] Minutes of the Hearing dated October 25, 2016, docket, p. 226
[19] Docket, pp. 246-252
[20] Docket, pp. 254-260
[21] Minutes of the Hearing, dated January 25, 2016, docket, p. 268; Judicial Affidavit, October 2, 2015, docket, pp. 194-205
[22] Q/A No. 2, Judicial Affidavit of Mr. Eladio S. Feraer, October 2, 2015, docket, pp. 194-195.
[23] Q/A No. 9, Judicial Affidavit of Mr. Eladio S. Feraer, October 2, 2015, docket, pp. 194-195.
[24] Exhibit "P-1", docket, p. 284
[25] Exhibit "P-2", BIR Records, p. 80
[26] Q/A Nos. 10-16, Judicial Affidavit of Mr. Eladio S. Feraer, October 2, 2015, docket, pp. 196-198.
[27] Exhibit "P-3", BIR Records, p. 43

With regard to prescription, he mentioned that the income tax and VAT returns for taxable year 2007 have been filed, the latest of which was filed on May 9, 2008 for income tax and on January 23, 2008 for VAT; hence, the assessment issued on October 29, 2012 was already issued beyond the three (3)-year prescriptive period under the Tax Code.

Petitioner's Formal Offer of Evidence[28] was filed on February 26, 2016. Exhibits "P-1", "P-2 ", "P-3", "P-4", "P-5", "P-5-a", "P-6", "P-6-a", "P-7", "P-7-a", "P-8", "P-8-a", "P-9", "P-9-a", "P-10", "P-10-a", "P-11", and "P-11-a" were admitted by the Court pursuant to the Resolutions[29] dated March 30, 2016 and June 8, 2016.

On the other hand, respondent presented Revenue Officer (RO) Allen T. Ocampo[30] on April 18, 2016.

Witness **Revenue Officer Allen T. Ocampo** stated that he is the revenue officer who conducted the verification on whether the tax liabilities of petitioner were already settled.[31] He testified that the Warrant of Garnishment was constructively served at the address of First Philippines Balfour Beatty, Inc., witnessed by his two co-employees, since the said company could not be located. According to RO Ocampo, the said warrant was received by the guard of the building where First Philippine Balfour Beatty. Inc. is supposed to hold office.[32]

On May 11, 2016, respondent filed a Motion for Issuance of Subpoena Ad Testificandum and Duces Tecum[33] for the presentation or testimony of respondent's witness, Atty. Cecilia M. Cabatit, Legal Officer-Branch, Trust and Operations Department of UCPB, to prove that petitioner First Balfour, Inc. was formerly "First Philippines Balfour Beatty. Inc.".

In the Resolution[34] dated May 16, 2016, the Court granted respondent's Motion for Issuance of Subpoena Ad Testificandum and Duces Tecum and allowed the subpoena to be issued against Atty. Cecilia M. Cabatit.

On June 15, 2016, respondent filed another Motion for Issuance of Subpoena Ad Testificandum and Duces Tecum[35] to compel Mr. Rodrigo H. Prada to appear and testify and to bring with him documents which are relevant to prove that petitioner First Balfour, Inc. was formerly First

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[28] Docket, pp. 276-283
[29] Docket, pp. 312 and 386
[30] Minutes of the Hearing dated April 18, 2016, docket, p. 357; Exhibit "R-22", docket, pp. 313-324
[31] Q/A No. 6, Judicial Affidavit of RO Allen T. Ocampo, docket, p. 314
[32] TSN, April 18, 2016, pp. 16-25
[33] Docket, pp. 363-365
[34] Docket, pp. 371-372
[35] Docket, pp. 390-391

Philippines Balfour Beatty, Inc., since his testimony will cover information relative to petitioner's bank deposit or account with UCPB intended to be garnished by respondent pursuant to the Warrant of Garnishment.[36]

In its Comment/Opposition[37], petitioner countered that respondent's motion should not be granted on the ground that none of the requisites under Section 3[38] of Rule 21 of the Revised Rules of Civil Procedure were complied with. Respondent did not at all specify what documents he seeks to be the subject of the subpoena; neither does respondent indicate the relevancy of whatever these documents may be.[39] Further, petitioner argues that respondent's instant motion to have UCPB employees testify against petitioner and produce documents involving petitioner's bank deposit is clearly against Republic Act No. 1405[40] and should not be allowed.[41] Petitioner added that the witness and the document in the motion were not mentioned or presented during the pre-trial.

The Court, in its Resolution[42] dated July 21, 2016, denied the Motion for Issuance of Subpoena Ad Testificandum and Duces Tecum dated June 14, 2016.

Respondent presented witness Atty. Cecilia M. Cabatit on November 15, 2016, while witness RO Amelita A. Escober was presented on May 16, 2017.

Witness **Atty. Cecilia M. Cabatit** stated that she belongs to the Legal Services Group, particularly to the Branch Trust and Operations Department of UCPB.[43] She testified that she received the Warrant of Garnishment[44] dated September 3, 2014 issued by respondent, instructing the bank to garnish the account of First Philippines Balfour Beatty, Inc.[45] and that UCPB sent a reply[46] dated October 30, 2014 to respondent that there is an account with the Tektite Branch under First Balfour, Inc. formerly "First Philippine Balfour, Beatty, Inc.".[47]

[36] Par. 4, Motion for Issuance of Subpoena Ad Testificandum and Duces Tecum, docket, p. 390
[37] Docket, pp. 418-427
[38] SEC. 3. *Form and contents.* - A subpoena shall state the name of the court and the title of the action or investigation, shall be directed to the person whose attendance is required, and in the case of a subpoena *duces tecum*, it shall also contain a reasonable description of the books, documents or things demanded which must appear to the court *prima facie* relevant.
[39] Pars. 4-6, Comment/Opposition (Re: Motion for Issuance of Subpoena Ad Testificandum and Duces Tecum dated June 15, 2016), docket, p. 419
[40] An Act Prohibiting Disclosure of or Inquiry into deposits with any Banking Institution and Providing Penalty Therefor
[41] Par. 17, Comment/Opposition (Re: Motion for Issuance of Subpoena Ad Testificandum and Duces Tecum dated June 15, 2016), docket, p. 422
[42] Docket, pp. 451-456
[43] TSN dated November 15, 2016, p. 9
[44] Exhibit "P-3", BIR Records, p. 34
[45] TSN dated November 15, 2016, pp. 11-12
[46] Exhibit "R-15", BIR Records, p. 60
[47] TSN dated November 15, 2016, p. 12

She further testified that UCPB received a reply letter[48] dated November 11, 2014 from respondent requesting for the issuance of the check in its favor. In reply, UCPB sent a letter[49] dated November 27, 2014 stating that the bank received two letters dated September 17, 2014 and November 17, 2014 from First Balfour, Inc. questioning the decision of the bank to garnish its account on the reasons that the TIN and address stated in the warrant are different from petitioner's and that no warrant was received by petitioner. Atty. Cabatit also stated that petitioner was formerly First Philippine Balfour, Beatty, Inc. based on the documents furnished by UCPB Tektite Branch where the garnished account of petitioner is located.

Witness **RO Amelita A. Escober** stated that she is the Team Head of LN Task Force. She identified Letter Notice No. 044-RLF07-00-00011[50] that was issued by their Division addressed to petitioner. She claims that the notices, including the Letter Notice, PAN and FAN, were sent through registered mail to the address of First Philippine Balfour Beatty, Inc..[51] During cross-examination, when asked if there is proof of receipt by the taxpayer, she stated there was none but only referred to the alleged registry receipt and the transmittal to the Head, BIR-Philippine Postal Corporation.[52]

Respondent's Formal Offer of Evidence[53] was filed on August 2, 2017. Exhibits "R-23" and "R-24" were admitted by this Court, pursuant to the Resolution[54] dated September 20, 2017.

The Court declared the case submitted for decision on February 7, 2018,[55] considering petitioner's Memorandum[56] filed on November 8, 2017 and respondent's Memorandum[57] filed on February 2, 2018.

## THE ISSUES

The parties summitted the following issues for the Court's resolution:[58]

1. Whether or not the petitioner's constitutional right to due process was violated given the absence of any assessment from the BIR;

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[48] Exhibit "R-16", BIR Records, p. 62
[49] Exhibit "R-17", BIR Records, p. 63
[50] Exhibit "R-1", BIR Records, p. 4
[51] TSN, May 16, 2017, pp. 10-22
[52] TSN, May 16, 2017, p. 11
[53] Docket, pp. 584-585
[54] Docket, pp. 618-619
[55] Docket, p. 677
[56] Docket, pp. 628-652
[57] Docket, pp. 672-674
[58] Issues to be resolved, JSFI, docket, p. 248

2. Whether or not the tax assessments referred under the Warrant of Garnishment dated September 3, 2014 against petitioner is null and void;

3. Whether or not the Warrant of Garnishment dated September 3, 2014 is likewise null and void;

4. Whether or not the period to assess petitioner has already prescribed pursuant to Section 203 of the Tax Code;

5. Whether or not petitioner has unpaid and/or deficiency taxes for taxable year 2007; and

6. Whether or not petitioner is liable to pay the deficiency income tax and value-added tax for calendar year 2007.

## PETITIONER'S ARGUMENTS

Petitioner asserts that neither respondent CIR nor his representatives furnished petitioner with any Letter of Authority, PAN, FAN, or even the Warrant of Garnishment. In fact, petitioner only came to know of the alleged deficiency taxes through UCPB.[59] Clearly, the absence of the issuance thereof to petitioner is in violation of petitioner's right to due process.[60]

Petitioner argues that if indeed a tax assessment has been issued by respondent involving petitioner's alleged deficiency taxes for taxable year 2007, the same is null and void as it contravenes the mandate of Section 228 of the Tax Code, which expressly provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment is void.[61]

Petitioner further states that without a valid assessment, there can be no collection of taxes.[62] Thus, the purported Warrant of Garnishment dated September 3, 2014 mentioned in respondent's Letter dated January 8, 2015 to UCPB directing the latter to surrender the garnished amount, without first informing petitioner, in writing, of its alleged deficiency taxes through an assessment is void.[63]

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[59] Par. 21, Petition for Review, docket, p. 11
[60] Par. 29, Petition for Review, docket, p. 14
[61] Par. 46, Petition for Review, docket, p. 18
[62] Par. 49, Petition for Review, docket, p. 19
[63] Par. 50, Petition for Review, docket, p. 19

Petitioner adds that there being no written assessment received by petitioner for its alleged deficiency taxes for taxable year 2007, it inevitably follows that the period to assess petitioner has already prescribed.[64]

## RESPONDENT'S COUNTER-ARGUMENTS

In his Answer, respondent CIR interposes the following arguments: (1) the Warrant of Garnishment is not a decision contemplated under Section 7 of RA No. 1125, as amended by RA No. 9282, that is appealable to the Court of Tax Appeals; (2) assuming that the Warrant of Garnishment is appealable to this Court, the filing of the instant petition is already time-barred as it should have been filed thirty (30) days from receipt of the September 4, 2014 Letter and not from the January 9, 2015 Letter; (3) petitioner was assessed for deficiency income tax and VAT for taxable year 2007, which is within the prescriptive period in cases of false or fraudulent returns, as petitioner was used merely as an adjunct, business conduit or alter ego by First Philippine Balfour Beatty, Inc. to perpetrate fraud in violation of tax laws, therefore the doctrine of "piercing the corporate veil" should be applied and the fiction of the corporation's separate and distinct personality must be disregarded; and (4) the tax assessment notices issued by respondent was sent to petitioner through registered mail, hence, it is presumed to have been received by the addressee in the ordinary course of mail.[65]

## RULING OF THE COURT

***The Court has jurisdiction over the instant Petition for Review***

As stated in the Resolution dated July 13, 2015,[66] this Court has jurisdiction over the case pursuant to Section 7 of RA No. 1125, as amended by RA No. 9282. In *Commissioner of Internal Revenue vs. Josefina Leal* and *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue*[67] the Supreme Court held that the CTA has jurisdiction over "other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue", which includes acting on a petition to invalidate and annul the distraint or garnishment orders of respondent CIR.

Based on the pleadings, petitioner raised as an issue the validity of the assessment of alleged deficiency taxes. There is no doubt therefore that it falls under the category of "other matters." This Court has jurisdiction pursuant to Section 7(a)(1) of RA No. 1125, as amended.

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[64] Par. 58, Petition for Review, docket, p. 21
[65] Answer, docket, pp. 184-186
[66] Resolution, docket, pp. 152-165.
[67] G.R. No. 113459, November 18, 2002 and G.R. No. 162852, December 16, 2004, respectively

As to the timeliness of the filing of the Petition for Review, Section 11 of R.A. 1125, as amended, provides as follows:

> Sec. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Boar of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
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> Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period by law to act thereon. Xxx
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> xxx xxx xxx

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.

***Petitioner's constitutional right to due process was violated considering the absence of assessment from the BIR***

Pursuant to Section 228 of the NIRC of 1997, as amended, it is mandated that the taxpayer shall be informed in writing of the facts and laws on which the assessment is made, otherwise, the assessment is void, *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: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> 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 within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

The above requirement stems from the basic constitutional right to due process, which was discussed in *Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et al.*[68], wherein the Supreme Court held that due process requires that the assessment be served and received by the taxpayer, to wit:

> "An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. To enable the taxpayer to determine his remedies thereon, **due process requires that it must be served on and received by the taxpayer**. Accordingly, an affidavit, which was executed by revenue officers stating the

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[68] G.R. No. 128315, June 29, 1999

tax liabilities of a taxpayer and attached to a criminal complaint for tax evasion, cannot be deemed an assessment that can be questioned before the Court of Tax Appeals." (*Emphasis supplied*)

Further, in the case of *Commissioner of Internal Revenue v. Dominador Menguito*[69], the due process requirement was reiterated by the Supreme Court:

> "xxx The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. **Due process requires that it must be served on and received by the taxpayer.**" (*Emphasis supplied*)

In the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*[70], the Supreme Court, adopting the decision of this Court, held:

> "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:
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> > '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

[69] G.R. No. 167560, September 17, 2008.
[70] G.R. No. 157064, August 7, 2006

> 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).'

> xxx **What is essential to prove the fact of mailing is 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, Respondent 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 Court does not put much credence to the self serving documentations made by the BIR personnel especially if they are unsupported by substantial evidence establishing the fact of mailing. Thus:

>> 'While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayers intervention, notice or control, without adequate supporting evidence cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.' (*Nava vs. CIR*, 13 SCRA 104, January 30, 1965).

> xxx xxx xxx

> The failure of the respondent to prove receipt of the assessment by the Petitioner leads to the conclusion that no assessment was issued. Consequently, the government's right to issue an assessment for the said period has already prescribed. (*Industrial Textile Manufacturing Co. of the Phils., Inc. vs. CIR* CTA Case 4885, August 22, 1996)." *(Emphasis supplied)*

Respondent contends that the tax assessment notices it issued were sent to petitioner though registered mail, hence, it is presumed to have been received by the addressee in the ordinary course of mail.

A perusal of the testimonies of respondent's witnesses shows that respondent failed to prove that petitioner actually received the notices that were sent through registered mail.

On cross examination, Ms. Amelita A. Escober testified[71] as follows:

ATTY. CAJALNE

Q Now, in the Letter Notice I've observed that, if you will agree with me that there is no indication of a date when should supposed taxpayer should present its documents, do you agree?

MS. ESCOBER

A Yes, sir, but it is in the RMO that they have to present the documents during thirty (30) days from receipt of the LN.

ATTY. CAJALNE

Q All right, and since you mentioned about receipt, how was this sent to the subject taxpayer, First Philippine Balfour Beatty, Inc.?

MS. ESCOBER

A Yes, it was sent through registered mail.

ATTY. CAJALNE

Q And can you tell us when was this received by First Philippine Balfour Beatty, Inc.?

MS. ESCOBER

A I don't have the date when it was received but I have the Transmittal from the BIR Philippine Postal Inc. that it was mailed through registered mail, it's in the... as attachment.

ATTY. CAJALNE

Q BIR Records?

MS. ESCOBER

A Yes.

ATTY. CAJALNE
Q Can you check again?

MS. ESCOBER

A It's in Exhibit "R-2-b".

ATTY. CAJALNE

Q "R-2-b"?

[71] TSN dated May 16, 2017, pp. 10-21.

MS. ESCOBER

A Yes, First Philippine Balfour.
ATTY. CAJALNE

Q Or is this Exhibit "R-2-b" that you're identifying refers to the Follow-Up Letter that you sent?

MS. ESCOBER

A Yes, sir.

ATTY. CAJALNE

Q So this "R-2-b" does not refer to the Letter Notice that I am asking you a while ago?

MS. ESCOBER

A But there is a registry receipt number here.

ATTY. CAJALNE

Q All right, but my question to you a while ago was when did the supposed taxpayer, First Philippine Balfour Beatty, Inc., received the Letter Notice?

MS. ESCOBER

A It's on August 3, 2009.

ATTY. CAJALNE

Q This was the date sent out?

MS. ESCOBER

A Yes.

ATTY. CAJALNE

Q So it's not the date of receipt?

MS. ESCOBER

A We really don't know because it is sent through registered mail.

ATTY. CAJALNE

Q But do you agree that there is supposed to be a return card for that?

MS. ESCOBER

A Yes, but it is with the General Services Division and they have only issued this Transmittal to the Philippine Postal.

ATTY. CAJALNE

Q All right. And you were not able to secure that to that Division?

MS. ESCOBER

A No.

ATTY. CAJALNE

Q All right. You also identified Exhibit "R-2", the Follow-Up Letter dated March 7, 2012, which you yourself prepared?

MS. ESCOBER

A Yes, sir.

ATTY. CAJALNE

Q All right. And this Follow-Up Letter was only prepared on March 7, 2012 despite the fact that the Letter Notice was issued on July 1, 2009?

MS. ESCOBER

A Yes, sir.

ATTY. CAJALNE

Q So it took almost three (3) years to make a follow-up to First Philippine Balfour Beatty, Inc., correct?

MS. ESCOBER

A Yes, sir, because it was originally assigned to Enrique Pinos, the Revenue Officer, but then he was transferred to another district and then later on he retired. So as Team Head, I have to take over.

ATTY. CAJALNE

Q Okay, so you sent a Follow-Up Letter to First Philippine Balfour Beatty, Inc. at the address indicated in Bonifacio Global City, right?

MS. ESCOBER

A Yes, as per registration in the BIR.

ATTY. CAJALNE

Q So this was also sent through registered mail?

MS. ESCOBER

A Yes, sir.

ATTY. CAJALNE

Q And you also mentioned in your Follow-Up Letter a period, I will quote on the second paragraph, second sentence, *"We made it clear to you that* *your failure to respond within fifteen (15) days from receipt thereof will consider you in default."*

Can you point to me where in the Letter Notice that there is a period to comply of a 15 day period?

MS. ESCOBER

A It's not written here.

ATTY. CAJALNE

Q All right, another question is, you mentioned that this was sent through registered mail again?

MS. ESCOBER

A Yes, sir.

ATTY. CAJALNE

Q All right, and you identified Exhibit "R-2-b" as to the date of the sending out through registered mail?

MS. ESCOBER

A Yes.

ATTY. CAJALNE

Q Can you tell us when was this received by the First Philippine Balfour Beatty, Inc.?

MS. ESCOBER

A I cannot tell you, sir, because that is in the Transmittal, only that the Division in charge for the mailing said that this is the Transmittal they have made to the Philippine Postal, so we assumed that it was released for mailing.

ATTY. CAJALNE

Q Yes, all right. Now, the third document which you identified is the Notice for Informal Conference dated March 28, 2012 as Exhibit "R-3", is this the same document?

MS. ESCOBER

A Yes, sir.

ATTY. CAJALNE

Q All right. And this was also sent to First Philippine Balfour Beatty, Inc. in the same address indicated Bonifacio Global City through registered mail?

MS. ESCOBER

A Yes, sir, the address appearing in the registration system of the BIR.

ATTY. CAJALNE

Q All right, and you also identified a Transmittal marked as Exhibit "R-3-d" and this does not also show the date of receipt of the Notice of Informal Conference, correct?

MS. ESCOBER

A But there is a stamped there from the BIR Postal Office that it was sent April 16.

ATTY. CAJALNE

Q It was sent out?

MS. ESCOBER

A Yes.

ATTY. CAJALNE

All right.

MS. ESCOBER

A Through registered mail.

ATTY. CAJALNE

Q And next document that you identified in your Judicial Affidavit as Exhibit "R-4" is the Memorandum dated April 27, 2012 wherein you recommended for the issuance of a Preliminary Assessment Notice?

MS. ESCOBER

A Yes, sir, because they failed to appear as per Notice for Informal Conference so we have to assess.

ATTY. CAJALNE

Q The reason that you indicated is that, I will quote on the second paragraph, *"The taxpayer failed to respond within the prescribed time allowable pursuant to RMO 17-2009"*, correct?
MS. ESCOBER

A Yes.

ATTY. CAJALNE

Q But again a while ago you mentioned that you cannot tell us when those notices was received by First Philippine Beatty, Inc.?

MS. ESCOBER

A Yes, it is with the Post Office.

ATTY. CAJALNE

Q How were you able to determine that the taxpayer failed to respond within the prescribed time?

MS. ESCOBER

A Because they did not appear in our office.

ATTY. CAJALNE

Q But were you able to determine that they were properly notified or they received the notices?

MS. ESCOBER

A We assumed that since it was sent through registered mail and no return as "RTS return to sender", then we assumed that it was received by the taxpayer.

ATTY. CAJALNE

Q So it's purely based on your assumption?

MS. ESCOBER

A No, based on the stamped here which we rely with the registry receipt.

xxx xxx xxx

ATTY. CAJALNE

Q And this Preliminary Assessment Notice based on your Judicial Affidavit was also sent to the First Philippine Balfour Beatty, Inc.?

MS. ESCOBER

A Yes, sir.

ATTY. CAJALNE

Q Through registered mail also?

MS. ESCOBER

A Yes, sir.

ATTY. CAJALNE

Q And finally, the document that you identified in your Judicial Affidavit is Exhibit "R-6" which is the Final Assessment Notice?

MS. ESCOBER

A Yes, sir.

ATTY. CAJALNE

Q Sent to First Philippine Balfour Beatty, Inc. in the same address?

MS. ESCOBER

A Yes.

ATTY. CAJALNE

Q Which practically is the same with the Preliminary Assessment Notice, correct?

MS. ESCOBER

A Yes, sir.

ATTY. CAJALNE

Q All right, and this Final Assessment Notice was also sent through registered mail?

MS. ESCOBER

A Yes, sir.

ATTY. CAJALNE

Q With no indication of proof of receipt by the taxpayer?

MS. ESCOBER

A Yes, sir.

ATTY. CAJALNE

All right.

MS. ESCOBER

A But with the Transmittal also from the Philippine Postal.

Applying the cited ruling of the Supreme Court, respondent failed to prove that petitioner actually received the notices which were sent through registered mail. Respondent merely relied on the alleged registry receipt and transmittal to the Head, BIR-Philippine Postal Corporation. Respondent failed to present and to formally offer the return card or other documents that would show that said notices were indeed received by petitioner.

Thus, the right to due process of petitioner was violated when petitioner, without receiving any notice from respondent, was only informed through a Letter dated January 9, 2015 issued by UCPB that a Warrant of Garnishment was issued by respondent, instructing the bank to garnish the account of petitioner. Based on the Warrant[72], it was issued against First Philippine Balfour Beatty, Inc. with TIN 005-012-774-000 and business address at 2/F Hatch Asia Global City Center, 31st corner 2nd Ave., E. Square IT Park, Bonifacio Global City, Taguig City and not to petitioner with TIN 000-286-115-000[73] and business address at Benpres Building, Exchange Road corner Meralco Avenue, Pasig City in 2007[74].

The fact that petitioner did not receive any notice of assessment, even the Warrant of Garnishment, from respondent is a clear violation of its right to due process, which is contrary to the requirement under Section 228 of the NIRC of 1997, as amended.

***There is no convincing evidence that petitioner is an alter ego of First Philippine Balfour Beatty, Inc.***

Respondent avers that petitioner was used merely as an adjunct, business conduit or alter ego by First Philippine Balfour Beatty, Inc. to perpetrate fraud in violation of tax laws, therefore, the doctrine of "piercing the corporate veil" should be applied and the fiction of the corporation's separate and distinct personality must be disregarded.

In *California Manufacturing Company, Inc. vs. Advanced Technology System, Inc.*[75], the Supreme Court ruled that in order for the doctrine to apply, the wrongdoing must be established by a clear and convincing evidence. We quote:

> "Any piercing of the corporate veil must be done with caution. As the CA had correctly observed, it must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. Moreover, the wrongdoing must be clearly and convincingly established. *Sarona v. NLRC* instructs, thus:
>
> > Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the

[72] Exhibit "P-3", BIR Records, p. 34.
[73] Exhibit "P-6", docket, p. 291.
[74] Exhibit "P-6", docket, p. 291.
[75] G.R. No. 202454, April 25, 2017

concept of corporate entity was not meant to promote unfair objectives."

Respondent merely relied on the testimony of Atty. Cabatit, the Letter of UCPB dated October 30, 2014 and the Amended Articles of Incorporation, without doing any further investigation. On this note, respondent failed to present clear and convincing evidence that petitioner is an alter ego of First Philippine Balfour Beatty, Inc. Hence, the doctrine of "piercing the corporate veil" cannot be applied.

Considering the foregoing discussion, no valid assessment for taxable year 2007 was issued against petitioner. Accordingly, the subject Warrant of Garnishment is also void.

***The period to assess petitioner has already prescribed pursuant to Section 203 of the Tax Code***

Assuming that an assessment of the deficiency internal revenue taxes for taxable year 2007 issued by respondent was received by petitioner, the assessment is still void for being issued beyond the 3-year prescriptive period. As provided in Section 203 of the NIRC of 1997, as amended, which states:

> "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 above-quoted provision, internal revenue taxes must be assessed by the government within three (3) years from the last day prescribed by law for the filing of the tax return or from the date of actual filing of such return, whichever comes later. Accordingly, an assessment notice issued after the said three-year prescriptive period is no longer valid and effective.[76]

An examination of the income tax and VAT returns of petitioner for taxable year 2007 shows that the Annual Income Tax Return was filed on May 9, 2008, while the latest Quarterly VAT Return was filed on January 23, 2008. In computing the 3-year prescriptive period, respondent had until May 9, 2011

[76] *Commissioner of Internal Revenue vs. Kudos Metal Corporation*, G.R. No. 178087, May 5, 2010

for income tax and January 23, 2011 for VAT to assess petitioner for alleged deficiency income tax and VAT for taxable year 2007, as seen in the table below:

| **Tax Return** | **Date of Filing Prescribed by Law**[77] | **Date Filed** | **Last Day to Assess** |
|---|---|---|---|
| Annual Income Tax Return[78] | April 15, 2008 | May 9, 2008 | May 9, 2011 |
| 1st Quarterly VAT Return[79] | April 25, 2007 | August 24, 2007 | August 24, 2010 |
| 2nd Quarterly VAT Return[80] | July 25, 2007 | August 24, 2007 | August 24, 2010 |
| 3rd Quarterly VAT Return[81] | October 25, 2007 | January 23, 2008 | January 23, 2011 |
| 4th Quarterly VAT Return[82] | January 25, 2008 | January 23, 2008 | January 23, 2011 |

Based on the testimony of RO Escober, the Final Assessment Notice was sent to petitioner through registered mail on November 5, 2012, which is clearly beyond the 3-year period to assess. No waiver from the taxpayer was presented to the respondent to extend the said period. Accordingly, applying Section 203 of the NIRC of 1997, as amended, the period to assess petitioner for taxable year 2007 has already lapsed.

**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.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**I CONCUR:**

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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[77] Section 114, NIRC of 1997, as amended
[78] Exhibit "P-6", docket, p. 291
[79] Exhibit "P-7", docket, p. 294
[80] Exhibit "P-8", docket, p. 297
[81] Exhibit "P-9", docket, p. 300
[82] Exhibit "P-10", docket, p. 303