REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

GREGORIO VILLAMAR ARAÑO, Petitioner,	**C.T.A. CASE NO. 7491**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 2 8 2009 2:30 p.m.

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DECISION

CASTAÑEDA JR., *J.*:

This is a Petition for Review filed by Gregorio Villamar Araño pursuant to Section 7 of Republic Act No. 1125, as amended by Republic Act No. 9282[1], seeking the review and reversal of the denial of his protest by respondent Commissioner of Internal Revenue.

Petitioner Gregorio Villamar Araño is an individual taxpayer, with address at 141-B Naga Road, Pulang Lupa, Las Piñas City and may be served with the Court's processes through his counsel, with address at Kho Bustos Malcontento Argosino Law Offices, Suite 1103, 11th Floor, Prestige Tower Condominium, Emerald Avenue, Ortigas Center, Pasig City. Petitioner

[1] As further amended by Republic Act No. 9503.

has a duly issued Tax Identification Number (TIN) 110-572-659 by the Bureau of Internal Revenue (BIR).[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, the government agency charged with the assessment and collection of all national internal revenue taxes, fees, and charges, as well as the enforcement of all forfeitures, penalties, and fines connected therewith.

Petitioner was the President of Discovery Drug–Las Piñas, Inc., (Discovery Drug) in 2003, for which he earned income as an employee of the said company. In 2003, Discovery Drug was engaged in the drugstore business as evidenced by its Certificate of Incorporation and TIN 219-611-059-003.

On November 29, 2005, respondent issued a Formal Assessment Notice with Assessment Notice Nos. IT-0004-03-05-0423 and VT-0004-03-05-0423 against petitioner, for his alleged deficiency income and value-added taxes for the year 2003, in the amounts of P14,017,868.16 and P4,488,889.77, respectively.

On December 19, 2005, petitioner protested the assessment, claiming that it was illegal and unfounded for respondent to assess him of deficiency taxes because petitioner is being assessed for the alleged deficiency taxes of another taxpayer, particularly, Discovery Drug.[3]

Respondent, speaking through Regional Director Nelson M. Aspe, denied the protest and reiterated the assessment against petitioner for

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[2] Par. 1.1, Admitted Facts, Joint Stipulation of Facts and Issues, *rollo*, p. 76.
[3] Exhibit "C".

deficiency income tax and value-added tax on May 2, 2006.[4] The denial of the protest prompted petitioner to file this Petition for Review on June 15, 2006.

On October 5, 2006, acting on respondent's "Manifestation with Motion to Admit Answer", the Court, with liberality, admitted respondent's Answer filed by registered mail on August 10, 2006. The said Answer raised the following Special and Affirmative Defenses:

> "4. He reiterates and re-pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 5. Petitioner was not assessed of the deficiency income tax and value-added tax not as president of a corporation but as the sole proprietor of Discovery Drug and not Discovery Drug-Las Piñas Inc. based on petitioner's registration with the respondent's Bureau with the TIN No. 110-572-659-000 per Certificate of Registration No. OCN 9R0000051179, including the registration of three (3) branches of Discovery Drug with TIN 110-572-659-001 to 003, aside from being also the registered owner of the Discovery Drug Wholesaler;
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> 6. The assessments were the result of the computerized matching conducted by the respondent's Bureau on the sales of the suppliers of Discovery Drug where a discrepancy was discovered against the purchases declared in the petitioner's returns, which amount was deemed undeclared sales and accordingly, treated a undeclared income pursuant to Section 2 of the National Internal Revenue Code (NIRC);
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> 6. Petitioner was also assessed of deficiency VAT on his/its undeclared income pursuant to Sections 105, 106 and 108 of the NIRC;
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> 7. The said assessments were based on actual facts, as the same were determined from the Annual Reports on Third Party Information on Sales Per Taxpayer, which were actually reports of sellers/suppliers of their sales to certain purchasers;

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[4] Exhibit "D".

8. Assessments are presumed correct and official functions are presumed to be done regularly;

9. The burden of proof to prove that the assessments are not correct rests on the petitioner."

On April 24, 2008, petitioner filed his Formal Offer of Evidence[5], submitting Exhibits "A" to "HHH", inclusive of submarkings. The Court admitted all the afore-mentioned exhibits, except Exhibits "A" to "A-3", "A-4" to "A-5", "B" to "B-3", "B-4" to "B-7", "E", "F", "G", "H", "H-1", "H-2", "H-3", "H-4", "FF", and "GG" for failure to present the originals for comparison, in a Resolution[6] dated July 22, 2008.

In a Resolution dated September 1, 2008, upon Motion of petitioner, respondent was declared to have waived his right to present evidence, considering the absence of the latter's counsel during several hearing dates set for the initial presentation of his evidence.

On November 27, 2008, this case was submitted for Decision with only petitioner's Memorandum filed by registered mail on November 3, 2008; respondent having failed to file his Memorandum despite the extension of time granted by the Court.

Hence this Decision.

In their Joint Stipulation of Facts and Issues, the parties presented the following issues[7] for this Court's resolution:

"1. Whether or not Petitioner is liable for deficiency income tax under Formal Assessment Notice (FAN) No. IT-0004-03-05-0423 issued on November 29, 2005 in the amount of P14,017,868;

[5] Docket, pp. 163-168.
[6] Docket, pp. 283-284.
[7] Docket, pp. 78-79.

2. Whether or not Petitioner is liable for the deficiency value-added tax under Formal Assessment Notice (FAN) No. VT-0004-03-05-0423 issued on November 29, 2005 in the amount of P4,488,889.77;

3. Whether or not the assessment of the Respondent is correct;

4. Whether or not Petitioner is a registered taxpayer in the BIR under the trade name, Discovery Drug, as sole proprietor.

5. Whether or not Petitioner is personally liable for tax liabilities of a corporation, if any."

The issues raised by the parties can be summed up into two, namely: (1) whether petitioner can be held liable for the deficiency taxes of Discovery Drug; and (2) if so, whether the assessments issued against him are correct.

Petitioner avers that he is an individual taxpayer, who served as president of Discovery Drug in 2003, and for that same year earned income as an employee of the former. Petitioner explains that it was Discovery Drug which was engaged in the business and not him. He maintains that respondent assessed petitioner in his personal capacity for the alleged deficiency taxes on business of Discovery Drug. In pursuing the said assessment, respondent did not allege the principle of "piercing the veil of corporate entity". Respondent simply ignored the principle of separation of the personality of the corporation from its incorporators and its shareholders.

In order to prove his allegations, petitioner formally offered, among others, Exhibits "E", "F", "G", and "H". These exhibits are the Certificate of Incorporation, Articles of Incorporation, By-Laws, and BIR Certificate of Registration of Discovery Drug-Las Piñas, Inc., respectively. However, all these exhibits were denied admission by this Court in a Resolution[8] dated July 22, 2008, for petitioner's failure to present their originals for comparison. Effectively, no documentary evidence was presented by petitioner to prove the due incorporation of Discovery Drug-Las Piñas, Inc. and consequently, the latter's separate personality.

Petitioner however was able to offer the testimonies, via Judicial Affidavit, of Zenaida Araño and Lorenza A. Abamonga. They testified that they know of Discovery Drug-Las Piñas, Inc., being incorporators and stockholders thereof. They identified the Articles of Incorporation and the By-Laws of Discovery Drug-Las Piñas. Pertinent portions of these Judicial Affidavits are hereunder quoted for easy reference, to wit:

Judicial Affidavit[9] of Zenaida Araño:

> "5. Q. Ms. Witness, do you recall a corporation named Discovery Drug-Las Pinas, Inc. (DDLPI)?
> A: Yes, sir.
>
> 6. Q. How did you come to know of Discovery Drug-Las Piñas, Inc.?
> A. I am one of its incorporators and stockholders, sir and I was elected as Treasurer of the said Corporation.
>
> 7. Q. Do you have evidence to show that you are one of the incorporators and stockholders of Discovery Drug Las Piñas, Inc., as well as its Treasurer?
> A. Yes, sir. This can be shown in the Articles of Incorporation and By-Laws of Discovery Drug-Las Piñas, Inc. which were filed with the Securities and Exchange Commission.
>
> 8. Q. If shown to you, will you be able to identify the same?
> A. Yes, sir.

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[8] *Rollo*, pp. 283-284.
[9] Exhibit "GGG", *rollo*, pp. 108-118.

9. Q. I am showing to you the Articles of Incorporation of DDLPI previously marked as **Exhibit 'F'** wherein on page 2, paragraph 5 hereof, there is a name Zenaida Araño as one of the incorporators; on page 2, paragraph 8, a certain Zenaida Araño was listed as subscriber of one (1) share of stock of DDLPI and on p. 3, paragraph 10 hereof, it was mentioned that a certain Zenaida Araño was elected as treasurer of DDLPI. What is the relation of this document to the Articles of Incorporation that you earlier mentioned?
A: This is the same document, sir.

10. Q. Would you know if petitioner is one of the incorporators, shareholder and officer of DDLPI?
A. Petitioner Gregorio Araño is one of the incorporators, shareholder and President of DDLPI, sir.

11. Q. Do you have evidence to show that petitioner is one of the incorporators, shareholder and President of DDLPI?
A. This also shown in the Articles of Incorporation which I previously identified, sir.

12. Q. Since you are an incorporator, shareholder and treasurer of DDLPI, would you know when DDLPI was incorporated with the Securities and Exchange Commission (SEC)?
A. DDLPI was incorporated on April 30, 2002, sir.

13. Q. Do you have evidence to show that DDLPI was incorporated with the SEC on April 30, 2002?
A. Yes, sir. A certificate of incorporation was issued by the SEC in favor of DDLPI on April 30, 2002.

14. Q. I am showing to you a certified machine copy of the Certificate of Incorporation of DDLPI dated April 30, 2002 with Company Reg. No. A200206469 previously marked as **Exhibit 'B'**. What is the relation of this document to the Certificate of Incorporation which you previously mentioned?
A. This is the same document, sir.

15. Q. Did you have DDLPI registered with the Bureau of Internal Revenue (BIR) for taxation purposes? Je

A. Yes, sir.

16. Q. Do you have evidence to show that DDLPI was registered with the BIR for taxation purposes?
A. Yes, sir. DDLPI was issued a Certificate of Registration by the BIR.

17. Q. am showing to you a Certificate of Registration dated January 20, 2003 issued by the BIR, Revenue Region No. 008, Revenue District No. 053 in favor of DDLPI with Taxpayer Identification No. (TIN) 219-611-059-002 previously marked as **Exhibit 'H'**. What is the relation of this document to the Certificate of Registration that you previously mentioned?
A. This is the same document, sir."

Judicial Affidavit[10] of Lorenza A. Abamonga:

"1. Q: Do you know Mr. Gregorio Villamar Araño, the petitioner in the above-entitled case?
A: Yes sir, I worked for him before.

2. Q: Ms. Witness, do you recall a corporation named Discovery Drug-Las Piñas, Inc. (DDLPI)?
A: Yes, sir.

3. Q: How did you come to know of Discovery Drug-Las Piñas, Inc.?
A: I am one of its incorporators and stockholders, sir, I was its Manager.

4. Q: Do you have evidence to show that you are one of the incorporators and stockholders of Discovery Drug Las Piñas, Inc.?
A: Yes, sir. This can be shown in the Articles of Incorporation and By-Laws of Discovery Drug-Las Piñas, Inc. which were filed with the Securities and Exchange Commission.

5. Q: If shown to you, will you be able to identify the same?
A: Yes, sir.

6. Q: I am showing to you the Articles of Incorporation of DDLPI previously marked as **Exhibit 'F'** wherein

[10] Exhibit "HHH", *rollo*, pp. 264-273.

on page 2, paragraph 5 hereof, there is a name Lorenza Agustin as one of the incorporators, What is the relation of this document to the Articles of Incorporation that you earlier mentioned?
A: This is the same document, sir.

7. Q: Would you know if petitioner is one of the incorporators, shareholder and officer of DDLPI?
A: Petitioner Gregorio Araño is one of the incorporators, shareholder and President of DDLPI, sir.

8. Q: Do you have evidence to show that petitioner is one of the incorporators, shareholder and President of DDLPI?
A: This is also shown in the Articles of Incorporation which I previously identified, sir.

9. Q: Since you are an incorporator, shareholder and Manager of DDLPI, would you know when DDLPI was incorporated with the Securities and Exchange Commission (SEC)?
A: DDLPI was incorporated on April 30, 2002, sir.

10. Q: Do you have evidence to show that DDLPI was incorporated with the SEC on April 30, 2002?
A: Yes, sir. A certificate of incorporation was issued by the SEC in favor of DDLPI on April 30, 2002.

11. Q: I am showing to you a certified machine copy of the Certificate of Incorporation of DDLPI dated April 30, 2002 with Company Reg. No. A200206469 previously marked as Exhibit 'E' (sic). What is the relation of this document to the Certificate of Incorporation which you previously mentioned?
A: This is the same document, sir.

12. Q: Did you have DDLPI registered with the Bureau of Internal Revenue (BIR) for taxation purposes?
A: Yes, sir.

13. Q: Do you have evidence to show that DDLPI was registered with the BIR for taxation purposes?
A: Yes, sir. DDLPI was issued a Certificate of Registration by the BIR.

14. Q: I am showing to you a Certificate of Registration dated January 20, 2003 issued by the BIR,

> Revenue Region No. 008, Revenue District No. 053 in favor of DDLPI with Taxpayer Identification No. (TIN) 219-611-059-002 previously marked as **Exhibit 'H'**. What is the relation of this document to the Certificate of Registration that you previously mentioned?
>
> A: This is the same document, sir."

Further, in the stipulations of facts, respondent admitted that petitioner Gregorio V. Araño is an individual taxpayer, with address at 141 B Naga Road, Pulang Lupa, Las Piñas, City, and with TIN 110-572-659.[11]

A perusal of the assessment would however show that it was instead issued against "Gregorio Villamar Arano (Discovery Drug)".

The Court agrees with petitioner that the assessment is illegal and unfounded on the ground that petitioner was assessed for the deficiency taxes of another taxpayer - Discovery Drug-Las Piñas, Inc. As testified to by petitioner's witnesses, Discovery Drug-Las Piñas, Inc. is a stock corporation with SEC Registration No. A200206469, incorporated on April 30, 2002. It has its own TIN, which is 219-611-059-003. As it was categorically stated in the Formal Assessment Notice and in the Decision on the protest of petitioner that the assessment for income tax and value-added tax arose from undeclared income from undeclared purchases of Discovery Drug, petitioner correctly argued that the said assessment is illegal.

Respondent, in denying petitioner's protest, claims that petitioner is liable to pay the deficiency income tax because the undeclared purchases, as generated by the BIR Relief System on October 20, 2004, were the purchases of a business with the trade name Discovery Drug and not of Discovery Drug-Las Piñas, Inc. According to respondent, petitioner was being assessed in his

[11] Par. 1.1, Admitted Facts, Joint Stipulation of Facts and Issues, *rollo*, p. 76.

personal capacity as a sole proprietor of Discovery Drug and not as an officer of Discovery Drug-Las Piñas, Inc.

Respondent however failed to submit any evidence to refute the testimonial evidence presented by petitioner. Instead, when the case was called for respondent's initial presentation of evidence on September 1, 2008, only petitioner's counsel appeared. And upon such counsel's motion, respondent was declared to have waived his right to present evidence. It also appears in the records that counsel for respondent was absent for the past three hearing dates set for the initial presentation of his evidence.

Sections 34 and 35 of Rule 132 of the Rules of Court provide:

> "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.
>
> SEC. 35. *When to make offer.* - As regards the testimony of a witness, the offer must be made at the time the witness is called to testify."
>
> Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.

Based on the foregoing, it is imperative that a party offers his/her evidence. Respondent clearly failed in this regard. While respondent transmitted to this Court the BIR Records of this case, respondent neither presented such records as evidence, nor did he formally offer them.

In the case of *Dizon vs. Court of Tax Appeals, et. al.*[12], the Supreme Court again said that this Court is a court of record. Cases filed here are litigated *de novo*, and party-litigants must prove every minute aspect of their cases. Indubitably, no evidentiary value can be given to pieces of evidence

[12] G.R. No. 140944, April 30, 2008.

submitted by the BIR, as the rules on documentary evidence require that such documents be formally offered before this Court.

In the present case, petitioner was able to show, albeit through testimonial evidence that Discovery Drug-Las Piñas Inc. was incorporated in 2002. This case is an assessment for the alleged deficiency taxes of Gregorio V. Araño, as sole proprietor of Discovery Drug for the year 2003. With the incorporation of Discovery Drug in 2002, there is no basis to hold herein petitioner for the deficiency taxes of the former. The mere fact that petitioner is the president of Discovery Drug-Las Piñas, Inc. cannot, by itself, serve as basis to hold the former liable for the tax deficiencies of the latter.

As agreed to by the parties, basic is the rule in corporation law that the corporation has separate legal personality from its officers and stockholders. A corporation is distinct from the people composing it; and the obligations incurred by the corporation, acting through its directors, officers and employees are its sole liabilities.[13] While not in fact and in reality a person, the law treats a corporation as though it were a person by process of fiction or by regarding it as an artificial person distinct and separate from its individual stockholders.[14]

In Corporation law, there is a doctrine called "piercing the veil of corporate entity," which provides that when valid grounds exist, the legal fiction that a corporation is an entity with a juridical personality separate and distinct from its members or stockholders may be disregarded. In such cases, the corporation will be considered as a mere association of persons. The

[13]Pars. 1.4.1 and 1.4.2, Joint Stipulation of Facts and Issues, *rollo*, p. 77, citing *Santos vs. NLRC*, 254 SCRA 673.
[14]*Remo, Jr. vs. The Hon. Intermediate Appellate Court, et al.*, G.R. No. 67626. April 18, 1989.

members or stockholders of the corporation will be considered as the corporation, *viz.*, liability will attach directly to the officers and stockholders. The doctrine applies when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the mere *alter ego* or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[15]

It is elementary, however, that before the separate juridical personality of a corporation may be disregarded, the alleged wrongdoing must be clearly and convincingly established. It cannot be presumed.[16] In this case, there was no showing of any basis for the piercing of corporate veil; hence, petitioner cannot be held liable for the payment of deficiency taxes of Discovery Drug-Las Piñas, Inc.

In view of the foregoing, the Court finds no need to address the issue of correctness of the amount of assessment.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, Assessment Notice Nos. IT-0004-03-05-0423 and VT-0004-03-05-0423 for deficiency income tax and value-added tax issued against petitioner is hereby **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

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

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[15] *Umali, et al. vs. Court of Appeals*, G.R. No. 89561, September 13, 1990, 189 SCRA 529
[16] *Luxuria Homes, Inc., et al. vs. Court of Appeals, et al.*, G.R. No. 125986, January 28, 1999, 302 SCRA 315

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice