Republic of the Philippines
**COURT OF TAX APPEALS**
Quezon City

***EN BANC***

| | |
|---|---|
| **COMMISSIONER OF INTERNAL REVENUE AND PERFECTO L. ARANAS REGIONAL DIRECTOR OF REVENUE REGION No. 19, DAVAO CITY,** Petitioners, | **CTA EB NO. 1174** (CTA Case No. 8315) |
| -versus- | Present: DEL ROSARIO, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS, and RINGPIS-LIBAN, JJ. |
| **ELRIC AUXILIARY SERVICES CORPORATION/SACRED HEART GAS STATION,** Respondent. | Promulgated: MAR 03 2016 1:41pm |

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# DECISION

***MINDARO-GRULLA, J.:***

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2] dated February 17, 2014, rendered by the Second Division

[1] 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 Division 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;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En banc Docket, pp. 32-46.

of this Court in CTA Case No. 8315, and its Resolution[3] dated April 30, 2014.

Petitioners Commissioner of Internal Revenue and Perfecto L. Aranas, Regional Director of Revenue Region No. 19, Davao City, assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated February 17, 2014:

> *"**WHEREFORE**, finding merit, the instant Petition for Review is hereby **GRANTED.** The 48-Hour Notice and the 5-Day VCN, dated May 26, 2011 and June 9, 2011, respectively, are hereby declared **NULL** and **VOID**. Respondents are hereby enjoined from enforcing the same.*
>
> ***SO ORDERED."***

Resolution dated April 30, 2014:

> *"**WHEREFORE**, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.*
>
> ***SO ORDERED."***

The pertinent facts as narrated by this Court's Division in its Decision are as follows:

> *"Petitioner Elric Auxiliary Services Corporation/ Sacred Heart Gas Station is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business and office at Cogon, Digos City, Davao del Sur.*
>
> *Respondent Commissioner of Internal Revenue is the chief or head of the Bureau of Internal Revenue, with the powers and duties to comprehend the assessment and collection of taxes, fees, and charges, and the enforcement of all forfeitures, penalties and fines connected therewith. The respondent's principal place of business is at BIR National Office Building, Agham Road, Diliman, Quezon*

[3] En banc Docket, pp. 47-49.

*City, where she may be served with summons and other court processes. Likewise, respondent Perfecto L. Aranas is the Regional Director of Revenue Region No. 19, Bolton Extension, Davao City, where he may be served with summons and other court processes.*

*Petitioner received on June 1, 2011 the 48-Hour Notice dated May 26, 2011. The 48-Hour Notice alleged that respondents conducted a ten-day surveillance from April 16, 2010 to April 25, 2010 of the gas station located at Cogon, Digos City, Davao del Sur. As a result of the said ten-day surveillance, respondents found petitioner liable for alleged deficiency VAT amounting to P1,196,583.13.*

*On June 3, 2011, petitioner filed its explanation under oath arguing and declaring that it is not liable for the alleged VAT deficiency ofP1,196,583.13. On June 21, 2011, petitioner received the 5-Day VCN dated June 9, 2011 reiterating the demand for payment of the alleged deficiency VAT.*

*On June 24, 2011, petitioner, through counsel, sent a follow-up letter requesting a response to their letter-explanation under oath dated June 1, 2011. On July 5, 2011, petitioner received respondents' letter-response dated June 28, 2011 denying petitioner's plea and holding petitioner liable for the alleged deficiency VAT of P1,196,583. 13.*

*Counting thirty (30) days from July 5, 2011, the date of receipt of the letter-response, petitioner filed this Petition for Review with the Court of Tax Appeals on August 4, 2011.*

*xxx.*

*Respondents filed an Answer on September 9, 2011. In addition to specific denials of the petitioner's averments, respondents also pleaded special and affirmative defenses, arguing mainly that the instant case is not within the jurisdiction of the Court of Tax Appeals. Respondents argued further that petitioner's reliance on Section 228 as implemented by Revenue Regulation No. 12-99 is misplaced, as the 48-Hour Notice and the 5-Day VCN should not be treated as assessment notices under Section 228.*

*The Court ordered the filing of pre-trial brief, and scheduled the pre-trial conference on October 13, 2011. Respondents and petitioner filed their pre-trial brief on September 19, 2011 and November 9, 2011, respectively.*

*At the motion of the petitioner, the pre-trial conference was reset and held on November 24, 2011, during which the parties were ordered to submit a joint stipulation of facts and issues.*

*On January 25, 2012, petitioner manifested that despite the earnest efforts of the parties-litigants, they have failed to agree on a joint stipulation of facts and issues. The Court noted the manifestation and ordered the initial presentation of petitioner's evidence.*

*On March 15, 2012, petitioner submitted the Judicial Affidavit of its witness, Mr. Edwin B. Jurial. As rescheduled, the presentation of petitioner's sole witness was held on March 19, 2012. Petitioner was ordered to file its Formal Offer of Evidence.*

*Petitioner filed its Formal Offer of Exhibits on May 3, 2012, through registered mail. On May 28, 2012, respondents filed its Motion to Admit Attached Comment with Comment (on Petitioner's Formal Offer of Exhibits).*

*The Court admitted petitioner's exhibits through Resolutions dated June 6, 2012 and September 19, 2012.*

*On July 24, 2012, respondents filed a Motion to Dismiss arguing that the instant petition is not within the Court of Tax Appeals' jurisdiction. Petitioner failed to file a comment on respondent's motion.*

*On September 19, 2012, this Court denied respondents' motion to dismiss for lack of merit.*

*On October 17, 2012, respondents presented its Exhibits for marking and comparison. The initial presentation of the evidence for respondents was set on November 28, 2012. Respondents presented two witnesses, Ms. Meriam Nahine-Abalos and Mr. Raymond Austria, before resting its case.*

*On January 22, 2013, after extensions were granted, respondents filed its Formal Offer of Documentary Evidence. Petitioner failed to comment on respondents' Formal Offer. On April 5, 2013, this Court resolved to admit respondents' Exhibits except for Exhibits "1" "5" "6" and "15". Upon motion for reconsideration, Exhibit "1" was also admitted through this Court's resolution dated June 10, 2013.*

*This case was submitted for decision on August 13, 2013, considering that petitioner filed its Memorandum,*

> *through registered mail on May 24, 2013 and received by this Court on June 6, 2013, and respondents filed its Memorandum on July 12, 2013.*[4]"

On February 17, 2014, this Court's Division granted respondent's[5] petition, declared null and void the 48-Hour Notice and 5-Day VAT Compliance Notice, and enjoined petitioners[6] from enforcing the same.

Petitioners filed a Motion for Reconsideration. Said motion was denied for lack of merit, hence, the instant petition was filed.

Petitioners raised the following issues:

"**ASSIGNED ERRORS**

I. THE HONORABLE SECOND DIVISION ERRED IN RULING THAT IT HAS JURISDICTION OVER THE CASE.

II. THE HONORABLE SECOND DIVISION ERRED IN RULING THAT THE 48-HOUR NOTICE AND THE 5-DAY VCN ARE NULL AND VOID.[7]"

Petitioners argued that the Honorable Court has no jurisdiction to oversee or review the administrative enforcement of the provisions of NIRC and assuming the Honorable Court has jurisdiction on OPLAN KANDADO, respondent was accorded due process.

The Court received respondent's Comment on the petition on August 27, 2014. Respondent claims that the issues raised by the petitioners were the same issues raised *C*

[4] En Banc Docket, pp. 32-35.
[5] Elric Auxiliary Services Corporation/Sacred Heart Gas Station is the petitioner in the petition before this Court's Division and respondent in the petition before the Court *En Banc.*
[6] CIR and Perfecto L. Aranas, Regional Director of Rev. Reg. No. 19, Davao City are the respondents in the petition before this Court's Division and petitioners in the petition before the Court En Banc.
[7] En Banc Docket, p. 10.

in their Motion to Dismiss and Motion for Reconsideration which were already sufficiently addressed and passed upon by the Court's Division.

We find no merit on the petition.

The Court of Tax Appeals' jurisdiction is not limited to a decision, ruling or inaction of the CIR on disputed assessment. The Court has jurisdiction to determine if the 48-Hour Notice and 5-Day VAT Compliance Notice issued by the BIR are valid.

To sum up petitioners' first assigned error, petitioners claim that there is no assessment in this case and the issue is petitioners' Oplan Kandado pursuant to Section 115 "Power of the Commissioner to Suspend the Business Operations of a Taxpayer" as implemented by Revenue Memorandum Order No. 3-2009, which is purely an administrative enforcement measure. Furthermore, petitioners claim that what can be elevated before the Court is the decision, ruling or inaction of the CIR on disputed assessments, thus, the claim of the Court's lack of appellate jurisdiction in the case. Petitioner is incorrect.

The appellate jurisdiction of this Court is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. This Court also has jurisdiction in other cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue pursuant to Section 7 (a) (1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[8], as well as Rule 4, Section 3 (a) (1), in relation to Rule 8, Section 4(a), of the Revised Rules

[8] Sec. 7. *Jurisdiction.* -The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1)Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
x x x x x x

of the Court of Tax Appeals (RRCTA)[9]. In the case of Phillippine Journalist, Inc. vs. CIR[10], the Supreme Court has already setttled that this Court also has jurisdiction over cases that arise out of the NIRC or related laws administered by the Bureau of Internal Revenue. To wit:

> *"xxx. Section 7(1) of Republic Act No. 1125, the Act Creating the Court of Tax Appeals, provides for the jurisdiction of that special court:*
>
> > *SEC. 7. Jurisdiction. - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided -*
> >
> > *(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***

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RULE 4
JURISDICTION OF THE COURT

Sec. 3. *Cases within the jurisdiction of the Court in Division.* - The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x

RULE 8
PROCEDURE IN CIVIL CASES

Sec. 4. *Where to appeal; mode of appeal.* -

(a) An Appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected; the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

10 G.R. No. 162852, December 16, 2004.

> ***by the Bureau of Internal Revenue;*** *(Emphasis supplied).*
>
> *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.*
>
> *This is not the first case where the CTA validly ruled on issues that did not relate directly to a disputed assessment or a claim for refund. In Pantoja v. David, we upheld the jurisdiction of the CTA to act on a petition to invalidate and annul the distraint orders of the Commissioner of Internal Revenue. Also, in Commissioner of Internal Revenue v. Court of Appeals, the decision of the CTA declaring several waivers executed by the taxpayer as null and void, thus invalidating the assessments issued by the BIR, was upheld by this Court.*

Concomitantly, the "Oplan Kandado" through the 48-Hour Notice and 5-Day VAT Compliance Notice pursuant to Section 115 "Power of the Commissioner to Suspend the Business Operations of a Taxpayer" of the National Internal Revenue Code (NIRC), as amended, and implemented by Revenue Memorandum Order No. 3-2009, falls within the meaning of "other matters arising under the National Internal Revenue Code". Thus, We find that the Court's Division did not err and aptly ruled as follows:

> *"The issue of this Court's jurisdiction over the instant case has already been settled in the Resolution dated September 19, 2012, as follows:*
>
> > *" ... Contrary to respondents' contentions, the jurisdiction of this Court is not limited to cases involving disputed assessment but also decisions over 'other matters'. Section 7 of Republic Act (R.A.) No. 1125, as amended, pertinently provides that:*
> >
> > *XXX*
> >
> > *Based on the abovequoted provision and in conformity with the principle of ejusdem generis, the*

> *term 'other matters' would refer to those cases which do not necessarily involve disputed assessments or refunds but controversies arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue (BIR).*
>
> *XXX*
>
> *The subject matter of this case is the nullification of the Forty-Eight (48) Hour Notice and Five-Day (5) Compliance Notice, due to the circumstances that led to their issuance. Admittedly, they were issued pursuant to the power of the CIR enunciated in Section 115 of the NIRC of 1997, that is, the power to suspend the business operations of a taxpayer. Without dispute, the controversy clearly falls within the meaning of '**other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue'.***
>
> *Lastly, a taxpayer adversely affected by a decision of the BIR should appeal to this Court within thirty days from receipt of the said decision. xxx*
>
> *In this case, the Forty-Eight (48) Hour Notice was received by petitioner on June 1, 2011. On June 3, 2011, respondents received petitioner's explanation letter under oath. On June 21, 2011, petitioner received a Five (5)-Day Compliance Notice. Petitioner, through a letter dated June 23, 2011, requested respondents to respond to its explanation letter under oath, alleging therein that the compliance notice did not delve into its explanation letter under oath. In a letter received by petitioner on July 5, 2011, respondents denied petitioner's request for reconsideration. Counting thirty (30) days from the denial, petitioner had until August 4, 2011 to appeal before this Court. Considering that the instant case was filed on August 4, 2011, this Court has jurisdiction over the case for being filed on time." (Emphasis on the original; citations omitted)*

As to the issue whether the Court in Division was correct in declaring null and void the 48-Hour Notice and 5-Day VAT Compliance Notice, petitioners claim that respondent has been afforded due process having given the opportunity to refute the findings of the revenue officers.

Furthermore petitioners maintain that the 48-Hour Notice and 5-Day VAT Compliance Notice have factual and legal bases as they contain details and computations as well as provisions of law on which they are based.

On the contrary, We find that the 48-Hour Notice and 5-Day VAT Compliance Notice have no factual bases. Other than a statement that the result of the surveillance resulted in a VAT liability, the basis thereof must likewise be disclosed. Petitioners in their 48-Hour Notice and 5-Day VAT Compliance Notice, claimed that the surveillance resulted in sales in various dates and amounts but failed to indicate the basis thereof. Thus, We find that the Court's Division did not err and aptly ruled as follows:

> *"The basis and the method of how respondents computed the said sales amounts were not set forth in the notice. The results of the 10-day surveillance show only the following information:*

| *Date* | | *Sales* |
|---|---|---|
| *16-Apr-2010* | *P* | *328,577.55* |
| *17-Apr-2010* | | *336,630.90* |
| *18-Apr-2010* | | *271,235.96* |
| *19-Apr-2010* | | *314,074.80* |
| *20-Apr-2010* | | *268,616.57* |
| *21-Apr-2010* | | *317,500.00* |
| *22-Apr-2010* | | *281,673.87* |
| *23-Apr-2010* | | *306,973.59* |
| *24-Apr-2010* | | *319,836.62* |
| *25-Apr-2010* | | *290,845.01* |
| *Total* | *P* | *3,035,964.87* |
| *Divided by:* | | |
| *No. of Days of Surveillance* | | *10* |
| *Average Sales per Day* | | *303,596.49* |
| *Average Sales per Day-Net of VAT* | | *271,068.29* |
| *Multiplied by:* | | |
| *No. of Days in a year* | | *365* |
| *Annual Sales per Surveillance* | *P* | *98,939,926.57* |

*xxx xxx xxx.*

*Respondents argue that the assessment for deficiency VAT was made pursuant to Section 6(C) of the NIRC of 1997, as amended, to wit:*

> *"Sec. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –*
>
> *xxx*
>
> *(C) Authority to Conduct Inventory-taking, Surveillance and to Prescribe Presumptive Gross Sales and Receipts.- The Commissioner may, at any time during the taxable year, order inventory-taking of goods of any taxpayer as a basis for determining his internal revenue tax liabilities, or may place the business operations of any person, natural or juridical, under observation or surveillance if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal revenue tax purposes. The findings may be used as the basis for assessing the taxes for the other months or quarters of the same or different taxable years and such assessment shall be deemed prima facie correct.*
>
> *When it is found that a person has failed to issue receipts and invoices in violation of the requirements of Section 113 and 237 of this Code, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declarations made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, after taking into account the sales, receipts, income or other taxable base of other persons engaged in similar businesses under similar situations or circumstances or after considering other relevant information may prescribe a minimum amount of such gross receipts, sales and taxable base, and such amount so prescribed shall be prima facie correct for purposes of determining the internal revenue tax liabilities of such person. "(Emphasis supplied)*

*Admittedly, respondents may use the findings of the surveillance as basis for assessing the taxes for the other months or quarters of the same or taxable years. Indeed, it is accepted that even an assessment based on estimates is prima facie valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously.*

> *Unfortunately, in the instant case, this Court cannot determine the basis of respondents' findings regarding the sales amounts during the surveillance period. Respondents did not describe how the surveillance was conducted nor did they explain the methods used in arriving at their estimates. There is no way for this Court to determine the factual basis used by respondents, and whether the same gives rise to a reasonable estimate. Without such information, the sales amounts used by respondent cannot be considered as prima facie valid as they appear to have been arrived at without any basis.*
>
> *Absent any explanation regarding the factual basis of the results of the surveillance, the taxpayer cannot be deemed to be sufficiently informed about the basis for the assessment of the VAT liability, in order to adequately respond to or specifically refute the computed VAT liability.*
>
> *Furthermore, We agree with petitioner that the results of surveillance cannot be the basis of the assessment for the other quarters of different taxable years. It is true that Section 6(C) of the NIRC of 1997, as amended, specifically states that the "findings may be used as the basis for assessing the taxes for the other months or quarters of the same or different taxable years." However, such assessment must still comply with the test of reasonableness, and must not be arbitrary and capricious."*

In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizens right is amply protected by the Bill of Rights under the Constitution. Thus, while taxes are the lifeblood of the government, the power to tax has its limits, in spite of all its plenitude. [11]

Accordingly, finding no reversible error, the Court En Banc finds no cogent reason or justification to disturb the conclusions reached by the CTA Second Division.

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[11] Commissioner of Internal Revenue vs. Metro Star Superama, Inc., G.R. No. 185371, December 8, 2010.

**WHEREFORE,** premises considered, the petition is **DENIED** for lack of merit. The Decision of the Second Division of this Court in CTA Case No. 8315, promulgated on February 17, 2014, and its Resolution promulgated on April 30, 2014, are hereby **AFFIRMED**. No pronouncement as to costs.

**SO ORDERED.**

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

WE CONCUR:

*(With Dissenting Opinion)*
**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**LOVELL R. BAUTISTA**
Associate Justice

*(on leave)*
**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

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

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

Ma. Belen

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

## C E R T I F I C A T I O N

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

**ROMAN G. DEL ROSARIO**
Presiding Justice

REPUBLIC OF THE PHILIPPINES
***Court of Tax Appeals***
QUEZON CITY

## ***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE AND PERFECTO L. ARANAS REGIONAL DIRECTOR OF REVENUE REGION NO. 19, DAVAO CITY,**

*Petitioners,*

-versus-

**ELRIC AUXILIARY SERVICES CORPORATION/SACRED HEART GAS STATION,**

*Respondent.*

**CTA EB NO. 1174**
(CTA Case No. 8315)

Present:

**DEL ROSARIO**, *PJ,*
**CASTAÑEDA, JR.,**
**BAUTISTA,**
**UY,**
**CASANOVA,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**COTANGCO-MANALASTAS**, *and*
**RINGPIS-LIBAN**, *JJ.*

Promulgated:
MAR 03 2016 1:10pm

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# DISSENTING OPINION

***DEL ROSARIO, PJ.:***

In her *ponencia,* the Honorable Associate Justice Cielito N. Mindaro-Grulla denied the instant Petition for Review and affirmed the assailed Decision on a finding that the Court of Tax Appeals (CTA) has jurisdiction over other matters that arise out of the National Internal Revenue Code (NIRC), of 1997, as amended, or other related laws administered by the Bureau of Internal Revenue (BIR), citing *Philippine Journalist, Inc. v. Commissioner of Internal Revenue* (Philippine Journalist).[1]

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[1] G.R. No. 162852, December 16, 2004.

With all due respect, I am, however, of the opinion that the Philippine Journalist case, wherein the Supreme Court upheld the jurisdiction of the CTA to rule on the validity of an act done (issuance of Warrant of Distraint and Levy) by the Commissioner of Internal Revenue (CIR) as it falls under other matters arising under the NIRC of 1997, as amended, is not applicable in the case at bar as the denial of respondent's protest against the Five (5)-Day Value-Added Tax (VAT) Compliance Notice (5-Day VCN) issued by the Regional Director is not an act done by the CIR.

In this regard, Revenue Memorandum Order (RMO) No. 3-2009[2] provides for the procedure and guidelines in the conduct of surveillance and implementation of the administrative sanction of suspension and temporary closure of business, *viz*:

> "B. Suspension or Temporary Closure of Business.
>
> 1. Grounds. – The following shall be the only grounds for suspension or temporary closure of business:
>
>    (a) Failure to issue receipts or invoices by a VAT-registered or registrable taxpayer;
>    (b) Failure to file a Value-Added Tax return;
>    (c) Understatement of taxable sales or receipts by 30% or more of the correct amount thereof in the case of a VAT-registered or registrable taxpayer; or,
>    (d) Failure to register.
>
> 2. Procedures for Recommending the Suspension or Temporary Closure of Business.
>
>    2.1. Documentary Requirements
>
>    The recommendation of the concerned head of the investigating office/division to the Regional Director or ACIR Enforcement Service (ES) or ACIR, Large Taxpayers Service (LTS), as the case may be, to suspend or temporarily close business shall invariably be accompanied by documentary proof in support of the particular violations, as follows:
>
>    xxx xxx xxx
>
>    2.4 Understatement of Taxable Sales by 30% or More

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[2] Dated January 15, 2009.

2.4.1. The return filed;
2.4.2. The taxpayer's records or part thereof as will show or from which it can be shown by other competent evidence that an understatement of sales/receipt has been committed. Invariably, the investigating enforcement officer should take custody over these records under proper receipt as evidence;
2.4.3. The documents or certified copies thereof obtained through access into records of third persons or entities as provided under Sec. 5 of the NIRC, as amended, which tend to show the actual sales/receipts of the taxpayer;
2.4.4. The memorandum report of the investigating revenue enforcement officer; or,
2.4.5. The prescribed reportorial forms, including workings papers reflecting the details of the investigator's finding of understatement.

xxx xxx xxx

3. Confrontational Requirements

3.1 Consistent with the requirements of due process, **the report of the handling Revenue Officer shall be concurred in by the Head of the investigating office. The findings of the investigating office shall be reviewed by a Review Board** composed of the following:

xxx xxx xxx

3.1.3 The Commissioner of Internal Revenue shall serve as the Overall Chairman of the Regional Office Review Boards and the National Office Review Board.

The Review Board must act on reports within five (5) days from receipt thereof. The Review Boards shall convene, upon the initiative of the chairperson, whenever necessary.

If a report is approved by a Review Board, **the concerned Regional Director or the ACIR, Enforcement Service/LTS, as the case may be, shall, in his capacity as Chair of the Review Board, sign and issue to the taxpayer concerned a Forty-Eight (48) Hour Notice, requiring him to explain under oath within forty-eight (48) hours why he should not be dealt with administratively, by suspension of business or temporary closure of his establishment, and/or criminally, for violation of pertinent provisions of the Tax Code.**

xxx xxx xxx

3.2 Upon the taxpayer's submission of the explanation, or if none is submitted on or before the deadline, the Review Board headed by the Regional Director or the ACIR, Enforcement/LTS, shall decide whether or not to terminate the case, or to pursue administrative/criminal action against the taxpayer, as the case may be.

3.3. **If a Review Board deems it necessary to pursue administrative or criminal action against a non-compliant taxpayer, it shall cause the preparation of a 5-Day VAT Compliance Notice (VCN) [Annex D]**, which shall be issued in lieu of the 10-Day VCN, to expedite the resolution of the case at hand. **The 5-Day VCN shall be signed by the Chair of the Review Board concerned**.

3.3.1. The 5-Day VCN, with details of the findings of the investigating office as approved by the Review Board, shall be served immediately to the taxpayer by the Regional Director/ACIR-Enforcement Service, as the case may be.

3.3.2. The 5-Day VCN shall likewise state the particular provision(s) of the NIRC that was/were violated by the taxpayer, and for which rectification must be done, including the payment of the required deficiency taxes and penalties due therefor.

3.3.3. The taxpayer may again refute the findings of the BIR within two (2) days from receipt of the VCN, and submit his response to the Review Board.

3.3.4. The Review Board shall, in turn, immediately transmit the taxpayer's response to the Investigating Office concerned, for evaluation.

3.3.5. The Investigating Office concerned shall, within three (3) days from receipt thereof, evaluate, a taxpayer's response to a 5-Day VCN, and prepare the corresponding response thereto. The response letter shall then be signed by the Chair of the Review Board.

3.3.6. Upon receipt by the BIR of the protest, the running of the five (5)-day compliance period is deemed suspended, and shall resume only upon receipt by the taxpayer of the BIR's resolution on the protest.

C. Execution and Enforcement

1. In the event that a taxpayer –
    - Refuses, neglects or fails to submit within the prescribed period, a response to a VCN;
    - Submitted a response that was later found to be insufficient; or,
    - Refuses, neglects or fails to comply with the terms of the 5-Day VCN,

the Review Board concerned shall prepare a memorandum report recommending the closure of the establishment, for the approval of the Commissioner. **Said report shall include the proposed Closure Order, supported by the necessary documentation, for the approval and signature of the Commissioner**.

xxx xxx xxx"
(Emphases supplied)

Pursuant to the aforequoted provisions of RMO 3-09, the procedure for the issuance of a Closure Order due to the understatement of sales by 30% or more, is as follows:

First – The handling Revenue Officer pursuant to a Mission Order shall submit a report to the Head of the Investigating Office;

Second – The Head of the Investigating Office must concur with the said report;

Third – The findings of the Investigating Office shall be reviewed by a Review Board, within five (5) days from receipt of the report;

Fourth – Upon approval of the report, the Regional Director as Chair of the Review Board may issue a Forty-Eight (48) Hour Notice, requiring the taxpayer to explain under oath, within forty eight (48) hours why he should not be dealt with administratively, by suspension of business or temporary closure of his establishment;

Fifth – Upon submission of the explanation, or if none is submitted, and the Review Board deems it necessary to pursue administrative or criminal action against the non-compliant taxpayer, the Review Board shall issue a 5-Day

VAT Compliance Notice (VCN), signed by the Regional Director;

Sixth – The taxpayer has two (2) days from receipt of the 5-Day VCN to protest the findings of the BIR and submit the same to the Review Board;

Seventh – The Review Board shall immediately transmit the taxpayer's protest to the Investigating Office which has three (3) days from receipt thereof, to evaluate and prepare the corresponding response thereto;

**Eighth – The response letter shall then be signed by the Regional Director.**

**Ninth – If the submitted protest is found to be insufficient or denied, the Review Board shall prepare a memorandum report recommending the closure of the establishment, for the approval of the Commissioner.**

**Tenth – The Commissioner of Internal Revenue shall then issue and sign the Closure Order, if she finds it warranted.**

In this case, records show that respondent received a copy of the 48-Hour Notice on June 1, 2011. Respondent filed its response thereto on June 3, 2011. On June 21, 2011, respondent received the 5-Day VCN. On June 24, 2011, respondent filed a protest letter against the 5-Day VCN. On July 5, 2011, respondent received petitioners' response-letter dated June 28, 2011 denying its protest and holding respondent liable for the alleged deficiency VAT amounting to Php1,196,583.13.

Instead of waiting for the issuance of the memorandum report by the Review Board and the action of the CIR, pursuant to RMO 3-09, respondent immediately filed a Petition for Review with the CTA questioning the denial of its protest by the Regional Director.

**At this point, it must be emphasized that the denial of the protest letter against the 5-Day VCN is merely a procedural step**

**anent the propriety of the issuance of a Closure Order by the CIR. The response-letter dated June 28, 2011 did not state nor should it be considered as the final decision of the CIR on a disputed assessment of deficiency VAT which is appealable to the CTA. Otherwise stated, the Regional Director's response-letter dated June 28, 2011 is not an assessment or a final action which the taxpayer may immediately assail before the CTA.** Truth to tell, no less than RMO 3-09 is categorical in saying that "surveillance results" constitute merely as an appropriate basis to issue a Letter of Authority and, if warranted, the conduct of an assessment against a taxpayer.

Paragraph V (A) (4) of RMO 3-09 states:

> "4. Action on Surveillance Results
>
> If after the conclusion of the surveillance, there is a sufficient ground for the closure of the establishment as provided for under Section 115 of the NIRC, as amended, a recommendation shall be made to effect such closure.
>
> If the result of the surveillance made likewise indicates that the taxpayer had not been, in fact, correctly reporting income for tax purposes, and that the veracity of his accounting records is not reliable, **the Commissioner or Regional Director concerned shall issue a Letter of Authority (LA) for the investigation of the taxpayer. The Revenue Officer named in the LA shall proceed with the audit and cause the assessment of the taxpayer's internal revenue tax liabilities, based either on: (1) surveillance, pursuant to Section 6 (c); (2) best evidence rule, as provided under Section 6(B), NIRC, as amended; and/or (3) the result of the tax audit**." (Emphasis supplied)

Parenthetically, the CTA, as a court of special jurisdiction, can only take cognizance of matters clearly within its jurisdiction,[3] specifically those enumerated under **Section 7 of Republic Act (RA) 1125, as amended.** Outside of such enumeration, this Court has no jurisdiction. Settled is the rule that jurisdiction over the subject matter is conferred by law.[4] Since the CTA is a court of limited jurisdiction, its

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[3] *Commissioner of Internal Revenue v. Silicon Philippines, Inc.*, G.R. No. 169778, March 12, 2014.

[4] *Tyson's Super Concrete, Inc. vs. Court of Appeals,* G.R. No. 140081, June 23, 2005.

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jurisdiction to take cognizance of a case should be clearly conferred, should not be deemed to exist on mere implication, and should not be exercised beyond the power that the legislature has given.

**As afore-discussed, considering that the denial of respondent's protest against the 5-Day VCN was signed and issued only by the Regional Director in his capacity as the Chair of the Review Board, said denial is not a decision of the CIR contemplated under Section 7 of RA No. 1125, as amended.** Thus, the CTA has no jurisdiction over respondent's Petition for Review filed in CTA Case No. 8315. The assailed Decision must, therefore, be set aside as any judgment rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal.[5]

All told, I **VOTE** to **GRANT** the instant Petition for Review and to **REVERSE** and **SET ASIDE** the Decision dated February 17, 2014 and the Resolution dated April 30, 2014. Accordingly, Elric Auxiliary Services Corporation's Petition for Review filed in CTA Case No. 8135 should appropriately be DISMISSED, without prejudice to the actions which the Bureau of Internal Revenue may pursue under RMO 3-09 and other relevant laws and regulations, if appropriate.

**ROMAN G. DEL ROSARIO**
Presiding Justice

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[5] *Suntay v. Gocolay*, G.R. No. 144892, September 23, 2005.