REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

REBECCA D. DUKA,
Respondent.

CTA *EB* NO. 3050
(CTA Case No. 10393)

Present:

RINGPIS-LIBAN, *P.J.,*
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
DEC 22 2025 3:30 P

x - x

DECISION

CUI-DAVID, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed by petitioner Commissioner of Internal Revenue ("petitioner" or "CIR"), seeking the reversal of the *Decision*[2] dated May 29, 2024 (assailed *Decision*) and the *Resolution*[3] dated November 13, 2024 (assailed *Resolution*) of the Court's Second Division (Court in Division), which cancelled and set aside the following issuances against respondent Rebecca D. Duka (respondent): the undated 48-Hour Notice, the 5-Day VAT Compliance Notice (VCN) dated September 24, 2020, and the Closure Order (SN: CO-RR10-068-005-2020) dated October 14, 2020.

---

1 *En Banc* (*EB*) Docket, pp. 8–19.
2 *Id.* at 37–58.
3 *Id.* at 60–64.

THE PARTIES

Petitioner is the CIR of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of his office, including inter alia, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the Tax Code. He may be served with pleadings and court processes at the 7th floor, Room 703, Litigation Division, BIR National Office Building, Senator Miriam Defensor-Santiago Avenue, Diliman, Quezon City.[4]

Respondent is the owner of a sole proprietorship duly organized and registered with the Department of Trade and Industry under the trade name of DUKA GENERAL MERCHANDISE (DGM), with principal office address at Cabid-an, Sorsogon City, Philippines, and primarily engaged in the retail business.[5]

THE FACTS AND PROCEEDINGS

The relevant facts, as found by the Court in Division in the assailed *Decision*, are as follows:

> On February 24, 2020, the BIR, through...RD Lozares, issued Revenue Region Special Order ("RRSO") No. 38-2020, directing certain Revenue Officers ("ROs") to undertake **Cash Register Machines/Point-of-Sale (CRM/POS) Post Evaluation and Z-Reading Generation for taxable years 2018 and 2019**, within the jurisdiction of Revenue District Office ("RDO") No. 68, Sorsogon City, to apprehend the business establishment of [respondent] for violating all internal revenue laws, rules and regulations in the conduct of business and to take proper action thereon.
>
> On the same date, the BIR, through...RD Lozares, issued *Mission Order* No. MSO2001 000068404 addressed to the same ROs relative to the said RRSO No. 38-2020.
>
> In the *Final Memorandum Report* dated April 01, 2020 prepared by the said ROs, the latter recommended the issuance of an electronic *Letter of Authority* for taxable years 2018 and 2019, and a *48-Hour Notice* for the same years.

---

4 *Id.* at 2, *Petition for Review*, Parties.
5 *Id.* at 38, Decision dated May 29, 2024.

Thereafter, the BIR issued an undated *48-Hour Notice* against [respondent], which was received by the latter on June 01, 2020. The said *48-Hour Notice* reads, in part, as follows:

> "A comparison of the Z-Reading (Accumulated Balance — new and old) and the Declaration of your Income Tax Return for Taxable years 2018 and 2019 would indicate that the under declaration is more than 30% compared to the actual sales.
>
> Please find herewith attached computations as Annex 'A', the computation of the total deficiency taxes for TY2018 and 2019 amounting to **Php2,949,599,999.78 (696%) and Php1,830,460,287.99 (413%)** as a result of the above under declarations, for your ready reference.
>
> For this reason, we are giving you a period of Forty-Eight hours from receipt hereof, within which to explain under oath why you should not be dealt with administratively, for suspension of your business or temporary closure of your establishments, and/or criminal liable for violation of pertinent provisions of the Tax Code, as amended."

On June 03, 2020, [respondent] filed with the BIR the letter of even date, in response to the said *48-Hour Notice*, stating, among others, that the Head Information Technology Officer and Systems Administrator of Basebyte Software and Consultancy Services explained to her that the "current grand total" and "previous grand total" are not actually the sales data recorded by each POS terminal independent and exclusive from the other terminal. Rather, they are cumulative, centralized, and compounding sales data generated from other terminals depending on which terminal was closed first or last.

Thereafter, the BIR, through...RD Lozares, issued the letter dated June 10, 2020, which was received by [respondent] on June 17, 2020, informing the latter of its answer to her letter, and that it shall proceed with the issuance of the *Five (5)-Day VAT Compliance Notice ("5-Day VCN").*

On September 24, 2020, [respondent] received the *5-Day VCN* issued by the BIR on even date, demanding from [respondent] to rectify her alleged violation by reflecting her *"correct taxable sales/receipts for the taxable years 2018 and 2019 amounting to Php260,498,942.37 (38.056%) and Php193,647,763.49 (30.411%)."*

W

[Respondent] then filed her *Verified Response/Protest* against the said *5-Day VCN* on September 29, 2020. However, the same was denied, for lack of factual and legal basis, by...RD Lozares in the letter dated October 05, 2020, which was received by [respondent] on October 06, 2020.

[Respondent] filed with the BIR a *Request for Reconsideration of the Denial of Protest* on October 07, 2020.

On October 14, 2020, Deputy Commissioner for Operations Group Arnel SD. Guballa issued the *Closure Order (SN: CO-RR10-068-005-2020)* against [respondent]. Notably, the latter refused to receive the same. Thus, the BIR resorted to tender of service, by leaving a copy thereof in the premises of [respondent]'s business, and through substituted service, by serving the copy of the said *Closure Order* to barangay officials.

[Respondent] filed the present *Petition for Review* on November 05, 2020.

[Petitioner] posted [an] *Answer* on February 15, 2021, interposing the following special and affirmative defenses, to wit: (1) the Court has no jurisdiction over the instant case; (2) that the *48-Hour Notice* and the *5-Day VCN* were issued in accordance with law and the rules legitimately citing [respondent's] violations, and affording the latter of her right to due process; (3) the conduct of the surveillance activities authorized under the *Mission Order*, issued in accordance with Revenue Memorandum Order ("RMO") No. 03-2009, is valid; and (4) the findings of the surveillance have legal and factual bases.

After a full-blown trial where both parties presented evidence in support of their respective claims, the Court in Division rendered a *Decision* granting respondent's *Petition for Review* due to violation of her right to due process. The dispositive portion of the assailed *Decision* reads:

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **GRANTED**. Accordingly, the undated *48-Hour Notice*, the *5-Day VCN* dated September 24, 2020, and the *Closure Order* (SN: CO-RR10-068-005-2020) dated October 14, 2020, all issued against [respondent], are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Petitioner then filed a *Motion for Reconsideration (Decision dated 29 May 2024)*[6] on June 11, 2024, to which respondent filed a *[Respondent]'s Comment/Opposition To the Motion for Reconsideration (Decision dated 29 May 2024)*[7] by registered mail on July 29, 2024.

On November 13, 2024, the Court in Division issued the assailed *Resolution*, denying petitioner's *Motion for Reconsideration* for being mere reiterations of the arguments already considered and discussed extensively in the assailed *Decision*. The *fallo* of the assailed *Resolution* states:

> **WHEREFORE**, premises considered, [petitioner]'s Motion for Reconsideration (Decision dated 29 May 2024) is **DENIED** for lack of merit.
>
> **SO ORDERED**.

Thus, petitioner filed the instant *Petition for Review* with the Court *En Banc* on December 19, 2024.

Following the Court *En Banc*'s directive,[8] respondent filed a *Comment/Opposition (To the Petition for Review dated 16 December 2024)*[9] on March 3, 2025.

On March 17, 2025, the Court *En Banc* referred the case to the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) for mediation, pursuant to Section II of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.[10]

On May 28, 2025, the case was submitted for decision,[11] following the PMC-CTA's filing of Form 6 – No Agreement to Mediate[12] dated April 22, 2025, stating that the parties decided not to have their case mediated.

THE ISSUE

Petitioner assigns to the Court in Division the following lone error:

6 Division Docket – Vol. 6, pp. 2327–2352.
7 *Id.* at 2359–2369.
8 *EB* Docket, p. 66, Notice of Resolution dated February 14, 2025.
9 *Id.* at 67–80.
10 *Id.* at 85, Notice of Resolution.
11 *Id.* at 87, Notice of Resolution.
12 *Id.* at 86.

WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED WHEN IT CANCELLED AND SET ASIDE THE 48-HOUR NOTICE, THE 5-DAY VAT COMPLIANCE NOTICE (VCN) DATED SEPTEMBER 24, 2020, AND THE CLOSURE ORDER (SN: CO-RRL0-068-005-2020) DATED OCTOBER 14, 2020 ISSUED TO RESPONDENT.

Petitioner's arguments

Petitioner contends that the Court in Division erred in ruling that respondent's right to due process was violated. He claims that due process was duly observed throughout the implementation of the Mission Order and the ensuing closure proceedings.

Petitioner asserts that revenue officers (ROs) conducted a post-evaluation of respondent's Point-of-Sale (POS) machines and related records pursuant to Mission Order No. 00068404 dated February 24, 2020. The evaluation allegedly revealed substantial underdeclaration of sales for taxable years (TYs) 2018 and 2019, amounting to approximately ₱2.9 billion and ₱1.8 billion, respectively. Given that the understatement exceeded 30% of respondent's declared sales, petitioner maintains that the closure was justified under Section 115[13] of the National Internal Revenue Code (NIRC) of 1997, as amended, which authorizes the suspension of business operations in cases of substantial underdeclaration or failure to issue receipts or invoices.

Petitioner further argues that the post-evaluation conducted by its ROs was a lawful exercise of the CIR's authority under Section 6 of the NIRC of 1997, as amended, to conduct surveillance and inventory-taking of goods for tax enforcement purposes. He stresses that the Mission Order was

---

[13] SEC. 115. *Power of the Commissioner to Suspend the Business Operations of a Taxpayer.* - The Commissioner or his authorized representative is hereby empowered to suspend the business operations and temporarily close the business establishment of any person for any of the following violations:

(a) In the case of a VAT-registered Person. –
(1) Failure to issue invoices;
(2) Failure to file a value-added tax return as required under Section 114; or
(3) Understatement of taxable sales by thirty percent (30%) or more of his correct taxable sales for the taxable quarter.

(b) Failure of any Person to Register as Required under Section 236.

The temporary closure of the establishment shall be for the duration of not less than five (5) days and shall be lifted only upon compliance with whatever requirements prescribed by the Commissioner in the closure order.

The power of the Commissioner to suspend shall include the blocking of digital services performed or rendered in the Philippines by a digital service provider. This shall be implemented by the Department of Information and Communications Technology (DICT), through the National Telecommunications Commission (NTC).

W

issued, not for the conduct of surveillance under Revenue Memorandum Order (RMO) No. 3-2009, [14] but for post-evaluation of respondent's POS machines in accordance with RMO No. 15-2018,[15] which governs the extraction and analysis of Z-readings and eSales journals to determine whether taxpayers have correctly declared their sales. Since the transactions under review pertained to TYs 2018 and 2019, petitioner contends that a ten (10)-day surveillance in 2020 would have been meaningless because the transactions had already occurred. Thus, the absence of surveillance cannot invalidate the proceedings.

Petitioner also emphasizes that respondent was accorded every opportunity to explain the findings of the BIR. After the 48-Hour Notice was issued, respondent was allowed to submit documents and explanations, which were reviewed by the ROs. These submissions led to an adjustment of the assessment from billions to millions of pesos, showing that the BIR considered respondent's explanations. Petitioner maintains that this process satisfied the essence of administrative due process, citing *Vivo v. Philippine Amusement and Game Corporation (PAGCOR)*,[16] where the Supreme Court held that due process merely requires notice and an opportunity to be heard, whether orally or through pleadings. Petitioner also asserts that the findings of post-evaluation have factual and legal basis, as they were extracted from respondent's POS machines and books of accounts.

Respondent's arguments

Respondent counters that her right to due process was violated because the BIR failed to comply with the mandatory surveillance requirement under RMO No. 3-2009. She points out that RO Diana Millena (Millena), who conducted the post-evaluation, admitted under oath that the supposed surveillance lasted only four hours and was conducted during a single visit, contrary to the 10-day minimum surveillance period required under the said RMO.

---

[14] Amendment and Consolidation of the Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Administrative Sanction of Suspension and Temporary Closure of Business, January 15, 2009.

[15] Policies, Guidelines and Procedures on the Implementation of the Post Evaluation of the Cash Register Machines (CRM), Point-of-Sale (POS) Machines and Other Sales Receipting System Software, including the Extraction of Data from Electronic Sales (eSales) Journal and Z-Reading, February 8, 2018.

[16] G.R. No. 187854, November 12, 2013 [Per J. Bersamin, *En Banc*].

Respondent asserts that the absence of valid surveillance precludes her classification as a "non-compliant taxpayer" and renders the subsequent 48-Hour Notice, 5-Day VCN, and Closure Order void. She maintains that post-evaluation cannot replace the mandatory surveillance procedure, and that the issuance of notices alone does not satisfy due process, pursuant to *Commissioner of Internal Revenue v. Fitness by Design, Inc.*[17] and *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[18]

THE COURT *EN BANC'S* RULING

The Court En Banc has jurisdiction over the instant case.

Before addressing the merits of the case, the Court *En Banc* first determines whether the present *Petition for Review* was timely filed.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) states:

> SEC. 3. *Who may appeal; period to file petition.* —
>
> ....
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Emphasis supplied)

Records show that petitioner received the assailed *Resolution* denying his *Motion for Reconsideration* on December 4, 2024.[19] Thus, petitioner had fifteen (15) days therefrom, or until December 19, 2024, to file a petition for review before the Court *En Banc*. As the instant *Petition for Review* was filed on December 19, 2024, it was filed within the reglementary period.

---

[17] G.R. No. 215957, November 9, 2016 [Per J. Leonen, Second Division].
[18] G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division].
[19] Division Docket – Vol. 6, p. 2371, *Notice of Resolution*.

hr

Having established the timeliness of the filing, the Court *En Banc* also finds that it has jurisdiction to take cognizance of this case under Section 2(a)(1), Rule 4[20] of the RRCTA.

Now, on the merits.

After a careful evaluation of the parties' arguments and the records, the Court *En Banc* finds the *Petition for Review* **devoid of merit**. A review of the case shows that the arguments advanced by petitioner were already resolved by the Court in Division in the assailed rulings.

The Court in Division did not err in cancelling and setting aside the 48-hour Notice, the 5-day VCN, and the Closure Order for violation of respondent's right to due process.

The records show that the Mission Order issued to the ROs expressly directed them to conduct, among others, the following activity:

> 1. To monitor sales and/or place of business establishment [of respondent] *under observation or surveillance* for violation of bookkeeping rules and regulations, particularly on non-issuance of sales invoice or receipts.[21] (Italics supplied)

However, as aptly found by the Court in Division, RO Millena's testimony revealed that the supposed surveillance consisted of only a single four-hour visit. This falls short of the minimum 10-day surveillance period mandated under Part IV(4) of RMO No. 3-2009,[22] which provides that surveillance "shall be conducted for a minimum period of 10 days and a maximum period of thirty (30) days, unless otherwise extended in writing by the authorized signatory." Petitioner presented no proof of compliance with, or exemption from, this requirement.

---

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

[21] Division Docket – Vol. IV, p. 1583, Exhibit "P-2"; BIR Records, p. 1 (Exhibit "R-13"), Exhibit "R-2".

[22] 4. Overt Surveillance shall be conducted for a minimum period of ten (10) days and a maximum period of thirty (30) days, unless otherwise extended in writing by the authorized signatory. A weekly progress report shall be rendered by the concerned implementing officers to the Head of the Investigating Office/Division.

It bears emphasis that RMO No. 3-2009 prescribes the procedural safeguards under the BIR's *Oplan Kandado* program. It mandates the conduct of prior surveillance or stocktaking to determine a taxpayer's actual compliance before the issuance of a 48-Hour Notice, a 5-Day VCN, or a Closure Order. This surveillance serves a critical due process function by ensuring that enforcement actions are based on verified observations of non-compliance. Non-observance of this step renders the closure order void for lack of factual and procedural basis.

Petitioner argues that the closure was justified under Section 115[23] of the NIRC of 1997, as amended, which authorizes the suspension of business operations in cases of substantial underdeclaration or failure to issue receipts or invoices and that the Mission Order was issued not for surveillance under RMO No. 3-2009, but for post-evaluation of respondent's POS machines pursuant to RMO No. 15-2018, which governs the extraction and analysis of Z-readings and eSales journals.

Petitioner's reliance on RMO No. 15-2018 is misplaced. While Section 115 of the NIRC of 1997, as amended, empowers the CIR to suspend business operations for violations such as failure to issue receipts, understatement of sales, or failure to file VAT returns, this statutory power must be exercised in accordance with the procedures prescribed in RMO No. 3-2009, which governs the procedural framework for implementing business closure under Section 115 of the NIRC of 1997, as amended. Part IV (Policies) of the said RMO reiterates the statutory basis for closure (*i.e.*, Section 115 of the NIRC of 1997, as amended) and imposes a mandatory surveillance period:

> IV. POLICIES
>
> 1. The National Internal Revenue Code, as amended, (hereinafter referred to as "NIRC") empowers the Commissioner of Internal Revenue to suspend the business operations of a taxpayer on certain grounds, pertinent provisions of which provides:
>
> > *SEC. 115. Power of the Commissioner to Suspend the Business Operations of a Taxpayer. — The Commissioner or his authorized representative is hereby empowered to suspend the business*

23 *Supra* note 13.

operations and temporarily close the business establishment of any person for any of the following violations:

(a) In the case of a VAT-registered Person. –

(1) Failure to issue receipts or invoices;
(2) Failure to file a value-added tax return as required under Section 114; or
(3) Understatement of taxable sales or receipts by thirty percent (30%) or more of his correct taxable sales or receipts for the taxable quarter.

(b) Failure of any Person to Register as Required under Section 236. -

....

4. Overt Surveillance shall be conducted for a minimum period of ten (10) days and a maximum period of thirty (30) days, unless otherwise extended in writing by the authorized signatory. ...

Moreover, Part V (Guidelines and Procedures) of the same RMO outlines the **mandatory procedures** for surveillance activities as a prerequisite to business closure, which include acquisition of preliminary information on the taxpayer, conduct of surveillance pursuant to a duly issued Mission Order, performance of surveillance activities (covert or overt), conduct of surveillance for taxpayers using POS machines, analysis of surveillance results, and recommendation for closure based on said results:

V. GUIDELINES AND PROCEDURES

A. Surveillance Activities

1. Prelude to Surveillance

Acquiring preliminary information on the person to be placed under surveillance is necessary for an effective implementation thereof. Before the actual surveillance, the Head of the Investigating Office/Division must:

....

2. Conduct of Surveillance

....

2.2. ***Mandatory Requirement for the Conduct of Surveillance*** *and Apprehension of Business Establishments*

lw

> *for Non-Compliance with the Provisions of Section 113, 114, 236, 237 and 238 of the NIRC, as amended.* — No surveillance activities shall be conducted nor apprehension effected unless the same has been authorized by a mission order issued in accordance with the provisions of this Order.
>
> ....
>
> 2.4. Performance of Surveillance Activities
>
> Generally, surveillance may be either covert or overt. Covert surveillance will eventually become overt surveillance once the implementing officer informs the SUBJECT of his presence and purpose.
>
> ....
>
> 2.4.3. **Conduct of Surveillance for Taxpayers Using** Cash Register Machines (CRMs) and **Point-of-Sale Machines (POSs)**
>
> ....
>
> 3. Analysis of Surveillance Results
>
> ....
>
> 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.** (Emphases supplied)

From the foregoing, it is clear that Section 115 of the NIRC of 1997, as amended, cannot be invoked independently of the safeguards prescribed under RMO No. 3-2009, which specifically governs the procedure for the closure of business establishments. RMO No. 15-2018 merely supplements the procedures for post-evaluation of POS machines, and does not authorize closure of business establishments absent compliance with RMO No. 3-2009. Hence, petitioner's reliance on RMO No. 15-2018 to justify the omission of surveillance is unavailing. The post-evaluation, which relied solely on extracted POS data, does not constitute substantial evidence of respondent's violation. Without prior surveillance, the findings lack reliability and probative value.

As the Supreme Court emphasized in *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*[24] while the government's power to tax is vital, it must be exercised with due regard to taxpayers' constitutional rights. Any deviation from mandatory procedural requirements in tax enforcement measures constitutes a denial of due process.

The Court *En Banc* likewise rejects petitioner's contention that respondent was afforded adequate opportunity to be heard. The issuance of notices during post-evaluation cannot cure the fundamental defect of non-compliance with the required surveillance procedure. The right to notice and hearing presupposes that the proceedings were validly initiated in accordance with the law. In this case, the absence of valid surveillance invalidates the classification of respondent as a "non-compliant taxpayer," and necessarily nullifies the subsequent notices and the closure order itself.

The Court *En Banc* affirms the Court in Division's stance on this matter:

> Herein, the Court found that respondents clearly failed to observe the prescribed procedure in the issuance of the *48-Hour Notice, 5-Day VCN*, and *Closure Order* in RMO No. 03-2009. Part III (1) of the said RMO defines a ***non-compliant taxpayer*** as a taxpayer who, as **a result of surveillance/stocktaking activities**, has been found to have committed the violations enumerated in the said RMO, and who, notwithstanding the issuance of several notices of violations, continues to refuse to comply with the requirements provided under existing rules and regulations.
>
> Based on the pertinent provisions of RMO No. 03-2009, it is clear that a surveillance is necessary before the BIR can issue a *48-Hour Notice, 5-Day VCN*, and *Closure Order*, to a *non-compliant taxpayer*. However, respondents admitted that no surveillance was ever conducted before the issuance of the subject notices. Failing said requirement, petitioner cannot therefore be considered as a *non-compliant taxpayer* to warrant the issuance of the subject *48-Hour Notice, 5-Day VCN*, and *Closure Order*.
>
> As to respondents' argument that the issuance of the *Mission Order* for the post-evaluation of the POS machines is covered by RMO No. 15-2018, the Court is not swayed. Incidentally, the said RMO does not provide for the procedure and guidelines in the issuance of the *48-Hour Notice, 5-Day VCN*,

---

[24] G.R. No. 185371, December 8, 2010 [Per J. Mendoza, Second Division].

> and *Closure Order*, which is the subject matter of petitioner's Petition for Review.
>
> Thus, for respondents' failure to act in accordance with the prescribed procedures before issuing the subject notices, respondents have indeed violated petitioner's right to due process of law. Correspondingly, the said notices are void, and thus, cannot be given effect.[25]

In sum, the BIR's failure to observe the mandatory surveillance procedure under RMO No. 3-2009 violated respondent's right to due process. The issuance of the 48-Hour Notice, 5-Day VCN, and Closure Order without factual or procedural basis renders them void.

Accordingly, the Court *En Banc* affirms the Court in Division's finding that the BIR's actions were tainted with procedural infirmities that invalidated the closure proceedings. The absence of valid surveillance vitiates the entire proceedings and renders the Closure Order null and void.

WHEREFORE, premises considered, the instant *Petition for Review* filed by the Commissioner of Internal Revenue on December 19, 2024 is **DENIED** for lack of merit.

The *Decision* dated May 29, 2024, and the *Resolution* dated November 13, 2024, of the Court's Second Division in CTA Case No. 10393 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

---

[25] *EB* Docket, p. 63, Resolution dated November 13, 2024.

x---x

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

x---x

CERTIFICATION

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

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice