REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

REBECCA D. DUKA, OWNER/SOLE PROPRIETOR OF DUKA GENERAL MERCHANDISE, as represented by GIL D. DUKA AND/OR CELIA D. DUKA, *Petitioner,*	**CTA CASE NO. 10393** Members: **RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
- versus -	
CAESAR R. DULAY, COMMISSIONER OF INTERNAL REVENUE, AND ROZIL R. LOZARES, REGIONAL DIRECTOR OF REVENUE REGION NO. 10, LEGAZPI CITY, *Respondents.*	Promulgated: NOV 13 2024 2:52 pm

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RESOLUTION

RINGPIS-LIBAN, J.

Before this Court is respondents' **Motion for Reconsideration (Decision dated 29 May 2024)** filed on June 11, 2024, with **Petitioner's Comment/Opposition to the Motion for Reconsideration (Decision dated 29 May 2024)** filed through registered mail on July 29, 2024.

On May 29, 2024, the Court promulgated a Decision cancelling respondents' *48-Hour Notice*, the *Five (5)-Day VAT Compliance Notice (5-Day VCN)* and the *Closure Order* issued against petitioner for failing to observe the latter's constitutional right to due process of law, the dispositive portion of which reads as follows:

> "**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 petitioner, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED."

In their Motion, respondents primarily insist that due process was observed in the issuance of the *48-Hour Notice, 5-Day VCN* dated September 24, 2020, and *Closure Order (SN: CO-RR10-068-005-2020)* dated October 14, 2020. Respondents recall that during the *Mission Order No. 068404* dated February 24, 2020, the post evaluation of petitioner's Point of Sale (POS) machines reflected enormous discrepancies in the revenue officers' evaluation of the electronic journals, z-readings, sales books and manual sales books of petitioner. Respondents continue that there was a clear finding of undeclared sales of more than thirty percent (30%) for taxable years 2018 and 2019 amounting to ₱2,949,599,999.78 and ₱1,830,460,287.99, respectively, which led to the closure of petitioner's business.

Respondents also assert that the conduct of post evaluation is within the powers of the Commissioner of Internal Revenue (CIR). Respondents clarify that their failure to conduct the ten (10)-day surveillance under Revenue Memorandum Order (RMO) No. 03-2009[1] is not fatal to their cause since, as testified by Revenue Officer (RO) Diana V. Millena, the purpose for the issuance of the *Mission Order* was not for the conduct of an "Oplan Kandado", but for the post-evaluation of the usage of petitioner's POS machines relating to the 2018 and 2019 transactions. And, since the 2018 and 2019 transactions had already occurred and were already entered in the POS machines, the ROs had nothing left to do for the post evaluation, but to generate the electronic sales journals and z-readings – hence, surveillance is not anymore necessary. Respondents further argue that the issuance of the *Mission Order* in this case, for the post-evaluation of the POS machines, is covered by RMO No. 15-2018[2], which is an exercise of respondents' regulatory function in ensuring that the POS machines are properly performing its functions under the existing regulations.

Moreover, respondents aver that they need not comply with the procedures laid down in RMO No. 03-2009 as it was not the main basis for the closure of petitioner's business. Respondents allege that the closure of petitioner's business is mainly anchored on Section 115 of the National Internal Revenue Code (NIRC) of 1997, as amended, which empowers the CIR to suspend the business operations of a taxpayer and temporarily close the business establishment for failure to issue receipts or invoices.

Lastly, respondents submit that the essence of due process in administrative proceedings is the opportunity to explain one's side or seek a

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[1] "SUBJECT: 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", dated January 15, 2009.

[2] "SUBJECT: 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" dated February 8, 2018.

reconsideration of the action or ruling. Respondents expound that petitioner was accorded every opportunity to contest or file a protest on the result of the surveillance they conducted. In fact, as explained by RO Millena, there was an adjustment made in the findings after the ROs considered the explanations made by petitioner's witness.

On the other hand, in its Comment, petitioner maintains that the Court correctly ruled that its right to due process was violated when respondents failed to properly observe the surveillance procedures mandated by RMO No. 03-2009. Petitioner asseverates that the subject *Mission Order* was issued for, among other, conducting surveillance activities covering the period of February 26, 2020 to March 20, 2020. Petitioner stresses that respondents' own witness, RO Millena, admitted in her testimony that they failed to comply with the surveillance requirement under said RMO by conducting the "surveillance" only for a day and for 4 hours only despite the minimum requirement of 10 days.

Petitioner further claims that while the CIR has the power to conduct post evaluation activities, such power however cannot compensate for non-compliance with the surveillance requirement required by RMO No. 03-2009. Petitioner argues that respondents' act of immediately proceeding with the post evaluation after conducting a one-day visit to the taxpayer, and the fact that it failed to complete the 10-day minimum period of surveillance, is in clear violation petitioner's substantive right to due process.

Lastly, petitioner maintains that the sending of notices in total disregard to procedures laid down by law is not sufficient basis to prove compliance with due process. As such, all other subsequent actions done by respondents in violation of petitioner's substantive right to due process such as the issuance of the *48-Hour Notice*, *5-day VCN*, and the *Closure Order* should be declared void.

After due consideration, the Court finds respondent's Motion for Reconsideration bereft of merit. Notably, the arguments raised in respondents' Motion are mere reiterations of the arguments raised in their Memorandum, which have already been considered and discussed extensively in the Decision.

Nonetheless, the Court reiterates that the Bureau of Internal Revenue (BIR)'s power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. The rule is that taxes must be collected reasonably and ***in accordance with the prescribed procedure.***[3] As aptly held in the case of *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.,*[4] "[w]hile indeed the government has an interest in the swift collection of taxes, its assessment and collection should be exercised

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[3] *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation, et seq.,* G.R. Nos. 197945 and 204119-20, July 9, 2018.
[4] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

justly and fairly, and always ***in strict adherence to the requirements of the law and of the BIR's own rules.***"

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*, 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.

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondents in their Motion for Reconsideration, the Court finds no compelling reason to reverse or modify the Decision promulgated on May 29, 2024.

WHEREFORE, premises considered, respondents' Motion for Reconsideration (Decision dated 29 May 2024) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice