

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF CTA EB No. 2624
INTERNAL REVENUE, (CTA Case No. 9845)
Petitioner,

Present:
DEL ROSARIO, PJ,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.

- versus -

iSCALE SOLUTIONS, INC.,
Respondent.

Promulgated:

AUG 23 2023

3:10 pm

X-----X

DECISION

REYES-FAJARDO, J.:

This Petition for Review¹ dated May 24, 2022, filed by the Commissioner of Internal Revenue assails the Decision² dated June 30, 2021 and Resolution³ dated April 20, 2022 in CTA Case No. 9845, whereby the Court in Division nullified Regional Director Glen A. Geraldino (RD Geraldino)'s Forty-Eight (48)-Hour Notice dated February 9, 2018, and Five (5)-day Value-Added Tax (VAT) Compliance Notice (VCN) dated March 18, 2018, issued against iScale Solutions, Inc.

¹ Rollo, at pp. 5 to 20.

² *Id.* at pp. 28 to 55.

³ *Id.* at pp. 58 to 65.

412

THE PARTIES

Petitioner Commissioner of Internal Revenue has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, and other matters arising under the 1997 National Internal Revenue Code (NIRC), as amended, or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR).

On the other hand, respondent iScale Solutions, Inc. is a corporation duly organized and existing under the laws of the Philippines, with principal business address at 7th Floor, Salustiana D. Ty Tower, 104 Paseo de Roxas, Makati City. The primary purpose of petitioner is to engage in the business of creating, designing, inventing, and developing software and other computer applications, and supplying, transferring, assigning, selling and/or exporting to foreign clients such software and other computer applications created, designed, invented, and developed by the corporation.⁴

THE FACTS

On June 28, 2017, petitioner, through RD Geraldino, issued Letter of Authority (LOA) SN: eLA201500049326,⁵ authorizing Revenue Officer Melissa Baes (RO Baes) and Group Supervisor Rebecca Pandapatan (GS Pandapatan), of Revenue District No. 047-East Makati, to examine respondent's books of accounts and other accounting records for all internal revenue taxes for taxable year (TY) 2016.

During the audit investigation, RO Baes and GS Pandapatan discovered that respondent failed to issue official receipts.⁶ With the regular tax audit conducted against respondent, an unofficial Preliminary Summary of Tax Deficiencies was issued against respondent.⁷ No Mission Order for the conduct of *Oplan Kandado*

⁴ Par. 19, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket - Vol. 1, p. 238.

⁵ Pars. 1, 2, and 11, Summary of Admitted Facts, JSFI, Docket - Vol. 1, pp. 234 to 236; Exhibit "P-8," Docket - Vol. 1, p. 475; Exhibit "R-1," Docket - Vol. 2, p. 567.

⁶ Par. 5, Summary of Admitted Facts, JSFI, Docket - Vol. 1, p. 235.

⁷ Pars. 4 and 22, Summary of Admitted Facts, JSFI, Docket - Vol. 1, pp. 235, and 239 to 240, respectively; Exhibit "P-9," Docket - Vol. 1, pp. 477 to 478; Exhibit "R-5," Docket - Vol. 2, pp. 569 to 570.

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under Revenue Memorandum Order (RMO) No. 3-2009,⁸ was issued against respondent.⁹

On February 20, 2018, respondent received a Forty-Eight (48)-Notice dated February 9, 2018, issued by RD Geraldino, informing it of its alleged failure to issue sales invoices or receipts, and to reflect its correct taxable sales/receipts for the period January 1, 2016 to December 31, 2016, and giving respondent the opportunity to refute such findings. Said 48-Hour Notice further stated that respondent's failure to explain its side will result in the suspension of business operations and temporary closure of its business establishment pursuant to Section 115 of the NIRC, as amended, as implemented by RMO No. 3-2009.¹⁰

In its letter dated February 22, 2018, respondent answered the Forty-Eight (48)-Hour Notice, to wit: a) it admitted violation of Sections 113 and 237 of the NIRC, as amended; and b) it had corrected its VAT Returns to reflect the proper discrepancy in revenue.¹¹

On March 16, 2018, respondent received a letter dated March 12, 2018, issued by Revenue District Officer Florante R. Aninag (RDO Aninag), stating that respondent's failure to pay the deficiency VAT will lead to the recommendation of the issuance of the Five (5)-Day VCN, pursuant to Section 115 of the NIRC, as amended, as implemented by RMO No. 3-2009.¹²

On March 19, 2018, respondent sent to RDO Aninag a letter explaining its compliance with the Forty-Eight (48)-Hour Notice.¹³

⁸ 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.

⁹ Par. 21, Summary of Admitted Facts, JSFI, Docket - Vol. 1, p. 239.

¹⁰ Par. 12, Summary of Admitted Facts, JSFI, Docket - Vol. 1, pp. 236 to 237; Exhibit "P-4," Docket - Vol. 1, p. 471; Exhibit "R-8," Docket - Vol. 2, p. 574.

¹¹ Par. 13, Summary of Admitted Facts, JSFI, Docket - Vol. 1, p. 237; Exhibit "P-10," Docket - Vol. 1, p. 479; Exhibit "R-9," Docket - Vol. 2, p. 575.

¹² Par. 14, Summary of Admitted Facts, JSFI, Docket - Vol. 1, p. 237; Exhibit "P-11," Docket - Vol. 1, pp. 480 to 481; Exhibit "R-10," Docket - Vol. 2, pp. 576 to 577.

¹³ Par. 15, Summary of Admitted Facts, JSFI, Docket - Vol. 1, p. 237; Exhibit "P-12," Docket - Vol. 1, p. 482.

442

On April 2, 2018, respondent received a Five (5)-Day VCN dated March 18, 2018 issued by RD Geraldino.¹⁴

On April 6, 2018, respondent submitted its letter to the BIR dated April 5, 2018, transmitting photocopies of the official receipts issued to its non-resident clients.¹⁵

On May 3, 2018, respondent received the letter dated April 18, 2018 issued by RDO Mahinardo G. Mailig (RDO Mailig), informing the former that its failure to pay the deficiency VAT will lead to the recommendation of the issuance of the Closure Order pursuant to Section 115 of the NIRC, as implemented by RMO No. 3-2009.¹⁶

On June 4, 2018, respondent filed a Petition for Review with Petition for Writ of Preliminary Prohibitory Injunction¹⁷ before the Court in Division, assailing RDO Mailig's letter dated April 18, 2018.

On June 30, 2021, the Court in Division rendered the assailed Decision, the dispositive portion of which states:

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**.

Accordingly, respondent (now petitioner) Geraldino's 48-Hour Notice dated February 9, 2018 and 5-day VAT Compliance Notice dated March 18, 2018 issued against petitioner (now respondent), are hereby **DECLARED NULL** and **VOID**.

SO ORDERED.

On October 26, 2021, petitioner filed a *Motion for Reconsideration*¹⁸ on the assailed Decision dated June 30, 2021.

¹⁴ Par. 16, Summary of Admitted Facts, JSFI, Docket - Vol. 1, p. 237; Exhibit "P-5," Docket - Vol. 1, p. 472.

¹⁵ Par. 17, Summary of Admitted Facts, JSFI, Docket - Vol. 1, p. 238, Exhibit "P-13," Docket- Vol. 1, pp. 483 to 484; Exhibit "R-13," Docket- Vol. 2, pp. 581 to 582.

¹⁶ Pars. 6 and 18, Summary of Admitted Facts, JSFI, Docket- Vol. 1, pp. 235 and 238, respectively; Exhibit "P-3," Docket- Vol. 1, pp. 469 to 470; Exhibit "R-14," Docket- Vol. 2, pp. 583 to 584.

¹⁷ Docket- Vol. 1, pp. 10 to 24.

¹⁸ Docket- Vol. 2, pp. 662 to 674.

On April 20, 2022, the Court in Division rendered the equally assailed Resolution, the dispositive portion of which states:

WHEREFORE, premises considered, respondents' [petitioner's] Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

On May 26, 2022, petitioner filed a *Petition for Review* with the Court *En Banc*, docketed as CTA EB No. 2624,¹⁹ to which respondent filed its *Comment on Petitioner's Petition for Review* on July 8, 2022.²⁰

Under Resolution dated August 23, 2022, CTA EB No. 2624 was submitted for decision.²¹

THE ISSUE

Did the Court in Division err in declaring null and void the Forty-Eight (48)-Hour Notice dated February 9, 2018, and Five (5)-day VCN dated March 18, 2018, issued against respondent?

THE ARGUMENTS

Petitioner argues that respondent failed to exhaust administrative remedies before elevating the case to the CTA on account of its failure to demand for the issuance of certification under paragraph (5) of Section VII of RMO No. 3-2009.²²

¹⁹ *Rollo*, pp. 5 to 20. Filed through registered mail, within the extended period granted, per Minute Resolution dated May 30, 2022.

²⁰ *Id* at, pp. 87 to 92.

²¹ *Id* at, pp. 94 to 95.

²² VII. Compliance by Taxpayer

1. The Closure Order shall only be lifted if the violations/s as stated in the 5-Day VAT Compliance Notice is rectified by the taxpayer by: ...

...

5. A copy of such certification, together with the copies of the Certificate of Registration, AAB/Collection Agent Official Receipt and/or VAT returns filed, or other documents to prove compliance, shall be submitted to the Review Board as evidence of the

Petitioner also claims that the issuance of the Forty-Eight (48)-Hour Notice and Five (5)-Day VCN are valid since an LOA dated June 28, 2017 was issued to RO Baes and GS Pandapatan, authorizing them to investigate respondent for TY 2016. He adds that said tax agents are authorized to report respondent's violation regarding the non-issuance of receipts, discovered during the tax audit they conducted. For these reasons, the issuance of a Mission Order and the conduct of surveillance under RMO No. 3-2009 may be dispensed with.

Petitioner as well insists that the issuance of closure order is an administrative remedy independent from the collection of deficiency tax assessment. Thus, a void deficiency assessment does not render the Closure Order void because the failure of the respondent to issue receipts pursuant to Sections 113 and 237 of the NIRC, as amended, is one of the grounds for temporary closure of respondent's business and/or the filing of appropriate criminal action as provided under RMO No. 3-2009.

By way of Comment,²³ respondent echoes the Court in Division's conclusion that respondent need not wait for the issuance of a Closure Order before elevating the case to the CTA. Specifically, since BIR's *Oplan Kandado* under RMO No. 3-2009 is an implementation of Sections 113, 114, and 237 of the NIRC, as amended, the Court has jurisdiction as it falls within the meaning of "other matters" under the NIRC or other laws administered by the BIR.

Respondent also counters that it is a Mission Order, and not an LOA, which is required to be issued prior to the conduct of surveillance and apprehension of business establishments for non-compliance with the provisions of Sections 113, 114, 236, 237 and 238 of the NIRC, as amended, under Section V(A)(2)(2.2) of RMO 3-2009.

RULING

The Petition is denied.

subsequent compliance made which shall be the basis for the recommendation of the lifting of the closure order as provided in Section VII hereof.

23 ...
Comment on Petitioner's Petition for Review dated July 7, 2022, *Rollo*, at pp. 87 to 92.

Section 7(a)(1) of Republic Act (RA) No. 1125, as amended, by RA Nos. 9282,²⁴ recognizes the CTA's jurisdiction over the decisions of petitioner involving other matters arising under the NIRC or related laws administered by the BIR:

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;

...

Section 3(a)(1), Rule 4 of the Revised Rules of the CTA²⁵ explained that the CTA in Division has jurisdiction over the decision of petitioner involving other matters arising under the NIRC or other laws administered by the BIR:

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;

...

²⁴ An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, otherwise known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

²⁵ A.M. No. 05-11-07-CTA.

Commissioner of Internal Revenue v. Court of Tax Appeals (Second Division) and Petron Corporation (Petron),²⁶ construed the phrase “other matters arising under this Code,” as one having direct relation to penalties imposed on internal revenue taxes, fees, and charges, among others:

As the CIR aptly pointed out, the phrase “other matters arising under this Code,” as stated in the second paragraph of Section 4 of the NIRC, should be understood as pertaining to those matters directly related to the preceding phrase “disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto” and must therefore not be taken in isolation to invoke the jurisdiction of the CTA. In other words, the subject phrase should be used only in reference to cases that are, to begin with, subject to the exclusive appellate jurisdiction of the CTA, i.e., those controversies over which the CIR had exercised her quasi-judicial functions or her power to decide disputed assessments, refunds or internal revenue taxes, fees or other charges, penalties imposed in relation thereto, not to those that involved the CIR's exercise of quasi-legislative powers.²⁷

Among the penalties intimated in *Petron* is the suspension and temporary closure of the business of any person, endowed to petitioner, under Section 115 of the NIRC, as amended. Said provision reads:

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 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.

...

²⁶ G.R. No. 207843, July 15, 2015. (Citations omitted)

²⁷ Boldfacing supplied.

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To be sure, we are aware of the Court in Division's position that RMO No. 3-2009 implements Sections 113, 237, and 114, of the NIRC, as amended. Yet, a *wholistic* reading of such issuance shows that these provisions of law were merely mentioned to support the grounds for petitioner to validly order the suspension and temporary closure of business for non-compliance with essential requirements, such as: the issuance of receipts, filing of returns, declaration of taxable transactions, taxpayer registration, and paying the correct amount of taxes. What RMO No. 3-2009 *really* implements is Section 115 of the NIRC, as amended. Consider the following policy in said issuance:²⁸

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 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.

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."

Thus, this Order shall provide the guidelines governing the enforcement of the administrative sanction of suspension and temporary closure of business relative to the following provisions of the NIRC, as amended:

SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons.- ...

SEC. 114. Return and Payment of Value-Added Tax.- ...

SEC. 236. Registration Requirements.- ...

SEC 237. Issuance of Receipts or Sales or Commercial Invoices.-...

*SEC. 238. Printing of Receipts or Sales or Commercial Invoices. ...*²⁹

In fine, an *appeal* of the BIR's action referred to in Section 115 of the NIRC, as amended, as implemented by RMO No. 3-2009 requires petitioner's issuance of the closure order.

Relevantly, *Elmer Montero v. Santiago Montero, Jr. and Charlie Montero*³⁰ decreed that a court's jurisdiction over the subject matter of a particular action is **determined by the plaintiff's allegations in the complaint and and the principal relief he seeks** in the light of the law that apportions the jurisdiction of courts.

As alleged in its Petition in CTA Case No. 9845, on February 20, 2018, respondent received the BIR's Forty-Eight (48)-Hour Notice,³¹ to which it filed a letter-reply dated February 22, 2018.³² On April 2, 2018, respondent received the Five (5)-Day VCN,³³ to which it filed a letter-reply³⁴ dated April 5, 2018. As admitted by respondent in its Petition for Review in CTA Case No. 9845, the circumstance which led the latter to seek redress with the Court in Division was RDO Mailig's Letter³⁵ it received on May 3, 2018,³⁶ the relevant portion of which states:

²⁹ Boldfacing supplied.

³⁰ G.R. No. 217755, September 18, 2019. Boldfacing supplied.

³¹ Par. 9, Petition for Review with Petition for Writ of Preliminary Injunction. Docket- Vol. 1, p. 12.

³² Par. 11, Petition for Review with Petition for Writ of Preliminary Injunction. Docket- Vol. 1, p. 13.

³³ Par. 14, Petition for Review with Petition for Writ of Preliminary Injunction. Docket- Vol. 1, p.13.

³⁴ Par. 15, Petition for Review with Petition for Writ of Preliminary Injunction. Docket- Vol. 1, p.13.

³⁵ Exhibit "P-3," Docket- Vol. 1, pp.469 to 470.

³⁶ Nature of the Petition, Petition for Review with Petition for Writ of Preliminary Injunction. Docket- Vol. 1, pp. 10 to 11. It states:

1. This is a Petition for Review under Rule 4 Section 3(a)(1) of S.C. AM No. 05-11-07-CTA, otherwise known as the Revised Rules of the Court of Tax Appeals, and pursuant to Section 228 of the NIRC of 1997, as amended with a Petition for the issuance of a Writ of Preliminary Prohibitory Injunction pursuant to Rule 58, 1997 Rules of Civil Procedure. **This Petition seeks to appeal the denial by the Revenue District Officer Mahinardo G. Mailig (Revenue District No. 47-East Makati) of [petitioner]'s response/protest letter to the 5-day VAT Compliance Notice issued**

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Applying the foregoing provisions of the law and the corresponding court rulings in your case, we are unfortunately precluded from accepting and/or recognizing your dispute. Please be further informed that failure on your part to pay the deficiency Value Added Tax will lead us to the recommendation of the issuance of the CLOSURE ORDER, pursuant to Section 115 of the National Internal Revenue Code, as implemented by Revenue Memorandum Order No. 3-2009 dated January 15, 2009, otherwise known as "OPLAN KANDADO".

For your information and guidance.

(Sgd.)
MAHINARDO G. MAILIG
Revenue District Officer³⁷

What we can refract from RDO Mailig's Letter is: *first*, respondent's justification is without merit; and *second*, respondent must pay the purported deficiency VAT, lest RDO Mailig's team recommend to petitioner the issuance of a closure order against the respondent, based on Section 115 of the NIRC, as amended, as implemented by RMO No. 3-2009. Black defines the word recommend as "[t]o advise or counsel."³⁸ It means that RDO Mailig would *advise* petitioner to issue a closure order, who, in turn, may, or may *not* adopt the former's recommendation. Item V(C)(1) of RMO No. 3-2009 explains the next phase:

V. GUIDELINES AND PROCEDURES

...
C. Execution and Enforcement
...

1. In the event that a taxpayer-

by BIR Regional Director Glen A. Geraldino, Revenue Region No. 8-Makati City. The letter of denial of Revenue District Officer Mailig was dated April 18, 2018. It was received by herein [respondent] on May 3, 2018. The letter of denial advises herein [respondent] of the eventual issuance of a Closure Order, pursuant to Section 115 National Internal Revenue Code, as implemented by Revenue Memorandum Order No. 3-2009, dated January 15, 2009, otherwise known as Oplan Kandado.

2. Attached hereto as Annex "A" is the original received letter of denial dated April 18, 2018, was received by Petitioner on May 3, 2018. Boldfacing supplied.

³⁷ Additional boldfacing and underscoring supplied.

³⁸ Black's Law Dictionary, Revised Fourth Edition, p. 1436.

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- 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 (Annex "E"), supported by the necessary documentation, for the approval and signature of the Commissioner.

...

2. The signed Closure Order shall be returned by the Office of the Commissioner, together with all supporting documents, to the Review Board concerned, for immediate service to the non-compliant taxpayer.
3. The service of the Closure Order shall be accompanied by a copy of the memorandum report of the Review Board concerned, duly approved by the Commissioner, indicating therein the basis for the Closure.

...³⁹

According to Section V(C)(1) of RMO No. 3-2009, the ensuing step is for petitioner to act on RDO Mailig's recommendation. If he finds said recommendation with merit, petitioner will then issue and sign the closure order, and served the same to respondent. Reading this in conjunction with Section 115 of the NIRC, as amended, it is petitioner's closure order that is the matter subject of an *appeal* with the Court in Division, and *not* RDO Mailig's *recommendation* of closure of business against respondent. As petitioner has yet to issue execute and enforce a closure order, there is nothing for the Court in Division to review through *appeal*. Therefore, respondent's challenge of RDO Mailig's letter, *recommending* closure against respondent, along with the BIR's anterior letters, such as the Forty-Eight (48)-Hour Notice and Five (5)-day VCN, through an *appeal* before the Court in Division, is improper.

³⁹ Emphasis supplied.

472

The proper remedy for respondent to challenge RDO Mailig's Letter, the Forty-Eight (48)-Hour Notice and the Five (5)-day VCN is a special civil action for certiorari under Rule 65 of the Rules of Court.

*Golden Donuts, Inc. v. Commissioner of Internal Revenue (Golden Donuts)*⁴⁰ is instructive. In said case, Golden Donuts, Inc. (GDI) received from the BIR, a new LOA (2017 LOA), authorizing the examination of its books of accounts for TY 2007 on May 2, 2017. The period covered in the 2017 LOA was the very same period covered by an LOA it had previously received on June 20, 2008. The BIR also issued a subpoena *duces tecum* (SDT) against GDI to compel it to submit additional documents pertaining to TY 2007. GDI filed a Petition for Review with Urgent Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction before the CTA in Division, seeking to: (1) invalidate the 2017 LOA and SDT; and (2) terminate the BIR investigation, against it. The CTA, both Division and *En Banc*, ruled that it has no jurisdiction to entertain GDI's appeal. Bunking on *Grecia-Cuerdo v. City of Manila*,⁴¹ *Golden Donuts* ordained that the CTA has jurisdiction over interlocutory actions of the BIR, and that the proper procedure in impugning said actions is through a special civil action for certiorari under Rule 65 of the Rules of Court:

Under Section 7 of R.A. 9282 which expanded the jurisdiction of the CTA, the latter is given exclusive appellate jurisdiction over "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 or other laws administered by the Bureau of Internal Revenue." Following the ruling of the Court in *City of Manila*, the CTA may take cognizance of a petition for *certiorari* to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR in issuing the 2017 LOA against GDI as well as the subpoena *duces tecum* considering that a previous investigation of the same taxable year 2007 was already conducted pursuant to the 2008 LOA and GDI has already settled its tax liabilities arising out of said investigation.

Also, in the case of *Banco de Oro v. Republic*, the Court ruled that:

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive

⁴⁰ G.R. No. 252816, February 3, 2021

⁴¹ G.R. No. 175723, February 4, 2014. Citations omitted.

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jurisdiction to resolve all tax problems. **Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.**

However, in this case, instead of filing a petition for certiorari under Rule 65 before the CTA to question the interlocutory orders of the BIR, GDI filed a petition for review. Obviously, GDI availed of the wrong remedy. Nevertheless, in accordance with the liberal spirit pervading the Rules of Court, the interest of substantial justice and considering that the petition for review was filed within the 30-day reglementary period under Section 9 of R.A. 9282 which is within the 60-day reglementary period to file a petition for certiorari under Rule 65 of the Rules of Court, and because of the significance of the issue on jurisdiction, the Court deems it proper and justified to relax the rules and, thus, treat the petition for review as petition for certiorari.⁴²

Respondent impugned RDO Mailig's Letter, the Forty-Eight (48)-Hour Notice and the Five (5)-day VCN, all of which pertain to the various phases of the closure process under Section 115 of the NIRC, as amended, as implemented by RMO No. 3-2009. These are interlocutory in nature, as petitioner has yet to issue an actual closure order. Consistent with *Golden Donuts*, the proper recourse of respondent is to assail said letters, through a special civil action for *certiorari* under Rule 65 of the Rules of Court. Having availed of a wrong remedy, this would ordinarily lead to dismissal of the case.

Yet, *Golden Donuts* still treated an erroneous appeal by GDI as a Petition for Certiorari under Rule 65 of the Rules of Court considering the liberal spirit pervading the Rules of Court and GDI's timely filing of the Petition within the timeframe prescribed in Rule 65 of the Rules of Court, as amended. The Supreme Court in *Golden Donuts*, also noted CTA's apparent lack of jurisdiction.

Here, respondent's Petition for Review with Petition for Writ of Preliminary Injunction in CTA Case No. 9845 was timely filed within the prescribed period under Section 4, Rule 65⁴³ of the Rules of Court, as amended. Respondent was also able to demonstrate that the BIR

⁴² Additional boldfacing supplied.

⁴³ Sec. 4 - When and where to file the petition. -The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion. ...

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gravely abused its discretion, tantamount to lack of jurisdiction, in the issuance of the Forty-Eight (48)-Hour Notice dated February 9, 2018, the Five (5)-day VCN dated March 18, 2018 and RDO Mailig's Letter, against respondent. Thus, like in *Golden Donuts*, we shall consider respondent's Petition for Review with Petition for Writ of Preliminary Injunction in CTA Case No. 9845, as a Petition for Certiorari, filed pursuant to Rule 65 of the Rules of Court.

Towards this end, *Idul v. Alster Int'l Shipping Services, Inc., et al.*⁴⁴ ruled that "[i]n order to avail of the remedy of *certiorari* under Rule 65, the following must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law." These conditions were duly met. Bear in mind:

First. The BIR personnel who issued the Forty-Eight (48)-Hour Notice dated February 9, 2018, Five (5)-day VCN dated March 18, 2018, and RDO Mailig's Letter, are given the discretion to investigate errant taxpayers and accordingly, recommend the closure and suspension of respondent's business operations. Undoubtedly, these personnel exercise "quasi-judicial function," a term which applies to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.⁴⁵

Second. The BIR personnel acted with grave abuse of discretion, amounting to lack of jurisdiction, in issuing the Forty-Eight (48)-Hour Notice dated February 9, 2018, the Five (5)-day VCN and RDO Mailig's Letter.

Specifically, Item V(A)(2)(2.1) and (2.2) of RMO 3-2009 unequivocally mandates the issuance of a Mission Order, prior to the conduct of surveillance and apprehension of business establishments for non-compliance with the provisions of Section 113, 114, 236, 237 and 238 of the NIRC, as amended:

⁴⁴ G.R. No. 209907, June 23, 2021.

⁴⁵ See *The Honorable Monetary Board, et al. v. Philippine Veterans Bank*, G.R. No. 189571, January 21, 2015.

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V. GUIDELINES AND PROCEDURES

A. Surveillance Activities

...

2. Conduct of Surveillance

2.1 Conduct of Surveillance

2.1 Revenue Officer Authorized to Conduct Surveillance Activities on Business establishments for Possible Violations of Sections 113, 114, 236, 237 and 238 of the NIRC, as amended.- At least two (2) implementing officers comprised of Revenue Officers (ROs) (Assessment/Excise), Intelligence Officers (Ios) and special Investigators (Sis) assigned in the following investigating offices/divisions **shall be authorized to conduct surveillance activities on identified business establishment based on a validly issued mission order** signed by the concerned authorized revenue official: ...

2.2 Mandatory Requirement for the Conduct of Surveillance and Apprehension of Business Establishments 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. ⁴⁶

...

4. Action on Surveillance Results

If after the conclusion of the surveillance, there is sufficient ground for the closure of the establishment as provided under Section 115 of the NIRC, as amended, a recommendation shall be made to effect such closure.

...

Indeed, the validity of the BIR's surveillance activities, and eventual recommendation to close business establishments, are hinged on the presence of a **valid Mission Order**. Conversely, the absence of a valid Mission Order renders the BIR's surveillance activities, and resultant recommendation to close business establishments, void. As admitted by the parties, there was

⁴⁶ Boldfacing supplied.

no Mission Order issued by the proper authorities against respondent for the conduct of RMO No. 3-2009.⁴⁷

In view thereof, the BIR had no authority to recommend the closure of respondent's business operations. By issuing the Forty-Eight (48)-Hour Notice, the Five (5)-Day VCN, and RDO Mailig's Letter, *sans* a valid Mission Order, the BIR agents impermissibly traversed the bounds of their discretion, amounting to lack of jurisdiction. The same actions, too, expose the BIR's wanton disregard of respondent's right to due process.

Third. The Forty-Eight (48)-Hour Notice, the Five (5)-Day VCN, and RDO Mailig's Letter, are interlocutory in nature, as petitioner has yet to issue a closure order; hence, these issuances are *not* subject of an appeal.

Ergo, the Court in Division committed no reversible error in nullifying the Forty-Eight (48)-Hour Notice dated February 9, 2018, and the Five (5)-day VCN dated March 18, 2018, issued against respondent.

On a final note, while the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenets of due process.⁴⁸

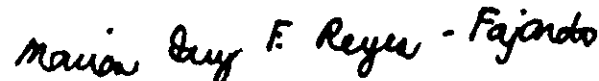
WHEREFORE, the Petition for Review dated May 24, 2022, filed by the Commissioner of Internal Revenue, is **DENIED**, for lack of merit. The assailed Decision dated June 30, 2021 and Resolution dated April 20, 2022, in CTA Case No. 9845, are **AFFIRMED**.

⁴⁷ See Page 5 of the Pre-Trial Order, Docket - Vol. 1, pp. 342 to 353; and Par. 21, Summary of Admitted Facts, JSFI, Docket - Vol. 1, p. 239.

⁴⁸ See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., et seq.*, G.R. Nos. 201398-99 and 201418-19, October 3, 2018.

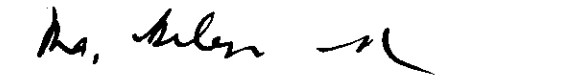
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SO ORDERED.

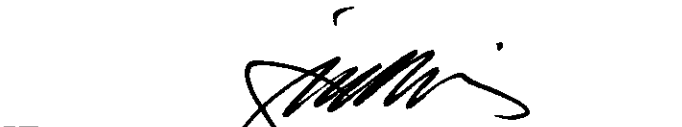

MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:


ROMAN G. DEL ROSARIO
Presiding Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

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.


ROMAN G. DEL ROSARIO
Presiding Justice