REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

SEVENSEAS GROUP CUSTOMER SERVICES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9900

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

NOV 10 2023; 10:05 AM

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RESOLUTION

MANAHAN, *J.:*

For resolution is respondent's *Motion for Reconsideration* posted on July 26, 2023 and received by the Court on August 1, 2023 with petitioner's *Comment (on Respondent's Motion for Reconsideration Re: Decision dated June 26, 2023)* filed on August 11, 2023.

Respondent seeks reconsideration of the Court's Decision promulgated on June 26, 2023, 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 May 28, 2018, and the Closure Order (SN: RR8-047-006CO) dated July 4, 2018, all issued against petitioner, are hereby **CANCELLED** and **SET ASIDE**.

Respondent is further **ORDERED** to:

(i) **REMOVE** the Closure Order and Notice to the Public which was posted on the main door of petitioner's office; and

(ii) **RESTRAIN** from collecting taxes based on the 48-Hour Notice, 5-Day VCN and Closure Order.

SO ORDERED."

Quoted below are the grounds raised by respondent to support his Motion for Reconsideration, to wit:

A.

The respondent maintains that the Honorable Court lacks jurisdiction because petitioner failed to exhaust its administrative remedy based on RMO No. 3-2009.

B.

The conduct of TVCD (Tax Verification Compliance Division *(sic)*) as surveillance was deemed valid as short-duration surveillance (Tax Compliance Check) under Item III (2) of RMO No. 3-2009. Therefore, it was erroneous for this Honorable Court to declare that the respondent resorted to a piecemeal application of RMO Nos. 9-2006 and 3-2009.

C.

Petitioner was accorded due process under RMO No. 3-2009.

D.

Petitioner's failure to address the non-issuance of receipts and renewal of its ATP validates the Closure Order.

Respondent insists that the Court lacks jurisdiction to take cognizance of the instant case as the initial remedy of petitioner is found in the provisions of Revenue Memorandum Order (RMO) No. 3-2009 and contends that in accord with the doctrine of exhaustion of administrative remedies, the latter should have been availed of first by petitioner prior to the filing of a judicial appeal. The quick resort by petitioner to judicial relief by filing a Petition for Review with the Court is seen by respondent as premature because it should have first complied with the findings of the Bureau of Internal Revenue (BIR) relative to its alleged non-issuance of receipts and non-renewal of its Authority to Print (ATP). *om*

Respondent further disagrees with the conclusion of the Court in the assailed Decision that his office did not follow the prescribed procedures under RMO No. 3-2009 in conducting the Tax Verification Compliance Drive (TVCD) particularly the requirement of initiating "surveillance activities" before the issuance of the Closure Order of petitioner's business premises. On the contrary, respondent asserts that a surveillance was properly conducted in accordance with RMO 3-2009 and distinguished three (3) types of surveillance under RMO 3-2009 namely: Covert Surveillance, Overt Surveillance, and Short-Duration Surveillance (Tax Compliance Check), with the last one conducted in the case of petitioner. This alleged compliance with the process outlined in RMO 3-2009 spurs the respondent to contradict the Court's ruling that petitioner's right to due process has been violated. In fine, respondent mentions that petitioner was given ample opportunity to address and/or dispute the findings of the BIR but did not do so and instead requested an extension of thirty (30) days which is not valid under the provisions of RMO 3-2009. In conclusion, respondent maintains that petitioner's failure to address its non-issuance of official receipts and renewal of its ATP validates the Closure Order issued by the BIR.

Petitioner's Counter-Arguments

Petitioner counters that the remedy under RMO 3-2009 is not applicable to its present situation because it has nothing "to rectify" in regard to the findings of the BIR as clarified in its letter dated June 1, 2018. Petitioner alleges that contrary to the findings of the BIR, it correctly declared its sales and paid the penalties for the late filing of its value-added tax (VAT) returns for taxable years 2016, 2017 and the first quarter of 2018, consequently, no under-declaration of sales/receipts occurred. Alternatively, assuming that there was a violation of the doctrine of exhaustion of administrative remedies, petitioner claims that respondent failed to invoke it at the proper time and such alleged violation does not affect the court's jurisdiction over the instant Petition for Review.

Petitioner also contravenes the allegation of respondent that the TVCD is equivalent to the "Short Duration Surveillance" contemplated under RMO 3-2009 and maintains that the two are distinct from each other. Petitioner describes the "Short Duration Surveillance" as the "type of surveillance wherein the business operations of the target taxpayer are observed for purposes of detecting non-compliance with the Bureau's primary and secondary registration requirements" while the TVCD is the BIR's project to expand its tax base, enhance tax compliance and consequently boost its tax collection efforts. From these descriptions, petitioner contends that unlike the "surveillance," a TVCD does not have a targeted taxpayer. It maintains that the BIR's failure to conduct surveillance activities invalidates the latter's subsequent actions and issuances such as the forty-eight (48)-Hour Notice, the five (5)-Day VAT Compliance Notice (VCN) and the Closure Order.

RULING OF THE COURT

We find respondent's contention without merit.

To reiterate what has been clarified in the assailed Decision, the jurisdiction of the Court is not limited to cases involving decisions or inactions of the Commissioner of Internal Revenue (CIR) on disputed assessments but also decisions or inactions over "other matters arising under the 1997 National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue."[1]

It must be recalled that petitioner elevated an appeal with the Court questioning the validity of the 48-Hour Notice, the 5-Day VCN and the Closure Order all issued by the BIR pursuant to the provisions of RMO No. 3-2009 and RMO No. 9-2006 implementing Section 115 of the 1997 NIRC,[2] as amended, thus, covered under the category of "other matters". As the assailed Decision explained, "the legality or validity of the issuance of the 48-Hour Notice, 5-Day VCN and Closure

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[1] Section 7 (a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282.

[2] Section 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 Section114; 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.

Order are related to the aforesaid powers of the CIR to determine tax compliance by taxpayers," and as such is covered by the term "other matters". The Court in the assailed Decision correctly assumed jurisdiction over the Petition for Review.

The so-called remedies provided under RMO 3-2009 relate to the methods of complying with the aforesaid issuances of the BIR but do not address the urgent need of petitioner to question their validity. As correctly argued by petitioner, it does not aim to rectify the findings of the BIR as regards its alleged non-compliance because it claims that it has properly declared the correct taxable sales and filed its VAT Returns as required by Section 114 of the 1997 NIRC, as amended. Further, in the case of *iScale Solutions, Inc. vs. Commissioner of Internal Revenue,*[3] this Court ruled thus:

> "A reading of RMO 3-2009, however, does not provide any remedies of appeal to the CIR should the response of the Regional Director be adverse to the taxpayer. The next step would be the issuance of a Closure Order."

As to the issuance of the 48-Hour Notice, 5-Day VCN and Closure Order, we find no persuasive reason to modify or reverse our earlier ruling that these orders of the respondent are invalid for violating petitioner's right to due process. First, no surveillance or stocktaking took place before these were issued in contravention of the process provided under RMO 3-2009. As found by the Court, respondent "implicitly admits that no surveillance was conducted against petitioner before the issuance of the 48-Hour Notice, 5-day VCN and the Closure Order." Second, the BIR did not follow the post-TVCD procedures outlined in RMO 9-2006 as testified to by his own witness, revenue officer (RO) Mark M. Secretario.[4]

Based on the foregoing discussion, we find no cogent reason to depart from the Court's ruling in the assailed Decision.

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[3] CTA Case No. 9845 dated June 30, 2021.
[4] Portions of the testimony of Mr. Mark M. Secretario are quoted in the assailed Decision, Court Docket, pp. 856-876. *am*

WHEREFORE, premises considered, the *Motion for Reconsideration* filed by respondent is hereby **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice