2

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*EN BANC*

**SR METALS, INC.,**

Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**

Respondent.

**CTA EB NO. 1922**
(CTA Case No. 9256)

Present:
**DEL ROSARIO,** *P.J.*,
**CASTAÑEDA, JR.,**
**UY,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:
SEP 24 2019
2:36 p.m.

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

# DECISION

**RINGPIS-LIBAN, *J.*:**

## The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated May 15, 2018 ("Assailed Decision") and Resolution[2] dated August 08, 2018 ("Assailed Resolution") of the Court of Tax Appeals Second Division ("Second Division"), upholding the assessment Respondent issued against Petitioner for deficiency income tax for taxable year 2011 amounting to Php60,805,316.65 basic tax and twenty-five percent (25%) surcharge, plus deficiency and delinquency interests.

---

1 Penned by Associate Justice Catherine T. Manahan, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova concurring; Docket, pp. 511-526.

2 Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Caesar A. Casanova concurring and Associate Justice Catherine T. Manahan concurring and dissenting; *Id.*, pp. 582-595.

The dispositive portion of the Assailed Decision reads:

"**WHEREFORE**, premises considered, the Petition for Review of SR Metals, Inc. is hereby **DENIED** for lack of merit. Consequently, the Final Assessment Notice for deficiency income tax issued by respondent against petitioner for taxable year 2011 is hereby **AFFIRMED**.

Accordingly, petitioner SR Metals, Inc. is **ORDERED TO PAY ONE HUNDRED SIXTY-TWO MILLION TWO HUNDRED THREE THOUSAND FOUR HUNDRED NINETY-EIGHT PESOS AND SIXTY-SIX CENTAVOS ([Php]162,203,498.66)**, for deficiency income tax for taxable year 2011, inclusive of the 25% surcharge imposed under Sections 248(A)(3) of the 1997 NIRC, as amended, computed as follows:

| | | |
|---|---|---|
| Basic Deficiency Income Tax | | [Php]48,644,253.32 |
| Add: | 25% Surcharge | 12,161,063.33 |
| **Total** | | **[Php]60,805,316.65** |

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax computed from April 15, 2012 to [December] 31, 2017 pursuant to Section 249(B) of the 1997 NIRC, as amended, in the amount of Php55,601,047.90:

(b) Delinquency interest at the rate of 20% per annum on the total amount of Php60,805,316.65 and on the 20% deficiency interest which have accrued as afore-stated in (a) computed from January 13, 2016 to December 31, 2017 pursuant to Section 249(C) of the 1997 NIRC, as amended, in the amount of Php45,797,134.11.

(c) Delinquency interest at the rate of twelve percent (12%) per annum on the total amount of [Php]116,406,364.55 representing the sum of the basic deficiency income tax of [Php]48,644,253.32, 25% surcharge [Php]12,161,063.33 and deficiency interest of [Php]55,601,047.90 computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended by RA No. 10963.

**SO ORDERED.**"[3]

Meanwhile, the Assailed Resolution provides:

"**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration (of the Decision dated 15 May 2018)** is denied for lack of merit.

**SO ORDERED.**"[4]

## The Parties

Petitioner SR Metals, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office address at C2 Building, Room 501-505, 28th Street corner 7th Ave. Bonifacio Global City, Taguig City.[5]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") vested under the law with the authority to carry out the functions, duties, and responsibilities of said Office, including inter alia, the power to act decide disputed assessments, cancel and abate tax liabilities pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other tax laws, rules and regulations.[6]

## The Facts

The facts as found hy the Second Division are as follows:

"On May 2, 2013, petitioner SRMI received Letter of Authority (LOA) No. LOA-121-2013-00000031 dated April 11, 2013 from the BIR Excise Large Taxpayers Audit Division I, authorizing Revenue Officers Denver Gomez, Edalyn Naty Dayacap, Evangeline Casipe, Roque Jr. Doloiras, and group Supervisor Lanie Luna to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the taxable year ending December 31, 2011.

On July 30, 2015, petitioner received a Preliminary Assessment Notice (PAN) dated July 30, 2015 from the BIR Large Taxpayers Service, assessing it for deficiency IT in the amount of

---

[3] *Id.*, pp. 524-525.
[4] *Id.*, p. 592.
[5] *Id.*, Decision, The Parties, pp. 511-512.
[6] *Id.*, Decision, The Parties, p. 512.

Php80,682,824.55, deficiency withholding tax on compensation (WTC) in the amount of Php578,707.40, final withholding tax (FWT) in the amount of Php1,713,681.51 and administrative penalties in the amount of Php150,000.00, inclusive of surcharges and interest, for the taxable year ending December 21, 2011.

On September 18, 2015, petitioner opted to pay the corresponding deficiency WTC and FWT assessments, as well as the administrative penalties provided in the PAN through the Bureau of Internal Revenue (BIR) Electronic Filing and Payment system (eFPS).

On October 8, 2015, petitioner received a Formal Letter of Demand (FLD) with attached Details of Discrepancies and a Final Assessment Notice (FAN), both issued on October 7, 2015 on the alleged deficiency IT for CY 2011 in the total amount of Php83,135,028.01, inclusive of surcharges and interest, computed as follows:

| | |
|---|---|
| Taxable Income per Return | Php162,130,433.20 |
| Adjustment: Interest Expense Limitation/Tax Arbitrage | 17,077.88 |
| Taxable Income per Audit | 162,147,511.08 |
| Regular Income Tax Rate (Note: ITH withdrawn by BOI) | 30% |
| Tax Due per Audit | 48,644,253.32 |
| Less: Tax Payments/Credits | 0.00 |
| Basic Income Tax Deficiency | 48,644,253.32 |
| Interest (4/ 14/12 to 10/31/15) | 34,490,774.69 |
| Deficiency Income Tax Due | Php83,135,028.01 |

The above computation was made on the basis of the Board of Investment's (BOI) decision to withdraw or revoke petitioner's income tax holiday (ITH) incentive.

On October 13, 2015, petitioner filed its protest and requested for a reconsideration of the said assessment.

On January 13, 2016, petitioner received a copy of the FDDA sustaining the assessment for alleged deficiency income taxes amounting Php83,135,028.01 on substantially the same premise that petitioner's ITH incentive has already been revoked by the BOI. Hence, on February 12, 2016, petitioner SRMI filed the instant petition."[7]

[7] *Id.*, pp. 511-513.

### *The Ruling of the Second Division*

On May 15, 2018, the Second Division promulgated the Assailed Decision denying the Petition for Review. The Assailed Decision upheld the deficiency income tax assessment issued by Respondent against Petitioner since the latter failed to submit the required Certificate of Entitlement ("COE") for taxable year 2011, as proof and/or evidence of its tax exemption, within the prescribed period, pursuant to Revenue Memorandum Circular ("RMC") No. 14-12[8]. Entitlement of the Income Tax Holiday ("ITH") incentive is not automatic, the Court *a quo* reasoned.

Aggrieved, Petitioner filed a "Motion for Reconsideration (of the Decision dated 15 May 2018)"[9] on June 01, 2018, which the Second Division denied in the Assailed Resolution on August 08, 2018. In denying Petitioner's motion for reconsideration, majority of the Justices of the Second Division declared that the pendency of the case *Board of Investments v. SR Metals, Inc.* in the Supreme Court does not constitute a prejudicial question, since the resolution of the same does not affect the present controversy. Justice Catherine T. Manahan however dissented and reasoned that the final resolution by the Supreme Court on the validity of the withdrawal of the ITH incentives by the Board of Investments ("BOI") would have an effect on the legality of Respondent's current tax assessment against Petitioner.

### *The Proceedings in the Court of Tax Appeals En Banc*

On August 30, 2018, Petitioner filed a "Motion for Extension of Time to File Petition for Review (Re: Decision dated 15 May 2018 and Resolution dated 8 August 2018 of the Second Division, Court of Tax Appeals)"[10], which the Court granted in a Minute Resolution dated September 03, 2018.[11]

On September 14, 2018, Petitioner filed the present "Petition for Review"[12].

On September 27, 2018, the Court issued a Resolution[13] which ordered Respondent to comment on the Petition for Review.

---

8 Revocation of Memoranda of Agreement dated March 1, 1997 between BIR and Board of Investments (BOI) and BOI Autonomous Region of Muslim Mindanao (BOI-ARMM); and BIR and PEZA, circularized under RMC Nos. 15-2007 and 17- 2007 respectively, April 04, 2012.

9 Docket, pp. 529-572.

10 Rollo, pp. 1-6. Record shows that Petitioner received the Assailed Resolution on August 15, 2018; Docket, p. 581.

11 *Id.*, p. 40.

12 *Id.*, pp. 41-101.

13 *Id.*, pp. 136-137.

On October 12, 2018, Respondent filed a "Motion for Extension of Time to File Comment (Re: Petition for Review dated 14 September 2018)"[14], which the Court granted in a Minute Resolution dated October 16, 2018.[15] Consequently, on October 19, 2018, Respondent filed its "Opposition (Re: Petition for Review dated 14 September 2018)"[16] ("Opposition").

On November 22, 2018, the Court issued a Resolution[17] which gave due course to the Petition for Review, and submitted the instant case for decision.

On November 16, 2018, Petitioner filed a "Compliance and Manifestation", attaching a copy of the Supreme Court's Decision dated October 03, 2018 in the case of *Board of Investments v. SR Metals, Inc.*[18], in compliance with Justice Manahan's Concurring and Dissenting Opinion in the Assailed Resolution.

In a Resolution dated February 21, 2019, this Court noted said compliance and ruled that the Supreme Court's decision shall be considered in deciding the instant case.

## Assignment of Errors

Petitioner raises the following grounds in support of its petition:

1) The Second Division erred when it failed to consider that the evidence on record show that the assessment is barred by prescription;

2) The Second Division erred when it failed to consider the pending case of *Board of Investments v. SR Metals, Inc.* docketed as G.R. No. 219927 (CA-G.R. SP No. 131511), which constitutes a prejudicial question that must first be resolved with finality, before Petitioner may be validly assessed for alleged deficiency income taxes;

3) Too literal and strict application of RMC 14-12 would give the BOI an unbridled power to withdraw ITH incentive just by delaying issuance of the COE, which would result in absurdity and injustice which is frowned upon by the Court;

---

14 *Id.*, pp. 138-141.
15 *Id.*, p. 142.
16 *Id.*, pp. 143-147.
17 *Id.*, pp. 149-150.
18 G.R. No. 219927, October 03, 2018.

4) The Decision of the BOI on February 28, 2012, revoking Petitioner's ITH incentive should not be given retroactive effect for purposes of imposing tax on Petitioner's income from taxable year 2011;

5) The Decision of the Court of Appeals in the *SR Metals, Inc.* v. *Board of Investments* (CA-G.R. SP No. 131511) should be recognized and given effect by the BIR, notwithstanding the pendency of the BOI's appeal to the Supreme Court;

6) The simultaneous imposition of the deficiency and delinquency interest is erroneous for being inconsistent with applicable regulations and jurisprudence; and

7) Petitioner is not liable to pay deficiency income tax for taxable year 2011, inclusive of interest, penalties, and surcharges in the aggregate amount of Php162,203,498.66.[19]

**<u>The Arguments of Parties</u>**

Petitioner mainly argues that Respondent's assessment was anchored on the cancellation of Petitioner's ITH incentive by the BOI. To avoid the possibility that the decision of the Supreme Court in the *Board of Investments v. SR Metals, Inc.* conflicts with the Second Division's decision, the principle of prejudicial question should be applied.

Moreover, it would be an unjust interpretation of RMC No. 14-12 if a taxpayer is assessed just because it fails to secure a COE within thirty (30) days from the filing of its income tax return, even though a competent court subsequently rules that the BOI's decision to withdraw the ITH incentive was invalid.

Lastly, the assessment is nevertheless void for being issued beyond the prescriptive period, the waivers being defective.

On the other hand, Respondent in his Opposition counters that Petitioner failed to raise valid grounds to warrant the reversal of the court *a quo*'s rulings. The absence of a COE to ITH issued by the BOI in favor of Petitioner is sufficient legal basis for Respondent to deny Petitioner's availment of ITH. Thus, Petitioner's claim for income tax exemption has no basis in fact and in law.

---

[19] Rollo, pp. 47-48.

## The Ruling of the Court

### *Timeliness of Petition*

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration (of the Decision dated 15 May 2018)", on August 08, 2018. Petitioner received said Resolution on August 15, 2018. Pursuant to Rule 4, Section 2(a)(1)[20] in relation to Rule 8, Section 3(b)[21] of the Revised Rules of the Court of Tax Appeals[22] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until August 30, 2018 within which to file its petition for review.

On August 30, 2018, Petitioner timely filed a "Motion for Extension of Time to File Petition for Review (Re: Decision dated 15 May 2018 and Resolution dated 8 August 2018 of the Second Division, Court of Tax Appeals)", praying for an extension of fifteen (15) days or until September 14, 2018 within which to file its petition for review. The Court granted the same in a Minute Resolution dated September 03, 2018.

On September 14, 2018, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

### ***The income tax assessment should be cancelled***

---

[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:
>
> xxx xxx xxx
>
> > (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[21] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

> (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. (Rules of Court, Rule 42, sec. 1a)

[22] A.M. No. 05-11-07-CTA, November 22, 2005.

As found by the Second Division, the basis for Respondent's deficiency income tax assessment for taxable year 2011 was the withdrawal or revocation by the BOI of Petitioner's ITH incentive entitlement. For failure by Petitioner to secure the necessary COE for taxable year 2011, the court *a quo* concluded that Petitioner failed to prove its entitlement to ITH incentive for the said year. For that sole reason, the imposition of the regular income tax rate of thirty percent (30%) was upheld.

The pertinent portion of the Assailed Decision reads:

"In respondent's FLD, the deficiency income tax assessment is presented as follows:

| | |
|---|---:|
| Taxable Income per Return | [Php]162,130,433.20 |
| Adjustment: Interest Expense Limitation/Tax Arbitrage | 17,077.88 |
| Taxable Income per Audit | [Php]162,147,511.08 |
| Regular Income Tax Rate (note: ITH withdraw by BOI) | 30% |
| Tax Due per Audit | [Php]48,644,253.32 |
| Less: Tax Payments/Credits | - |
| Basic Income Tax Deficiency | [Php]48,644,253.32 |
| *Interest (4/15/12 to 10/31/15) | 34,490,774.69 |
| **Deficiency Income Tax Due** | **[Php]83,135,028.01** |

The assessment arose from respondent's imposition of 30% income tax on petitioner's declared exempt net income per return in the amount of [Php]162,130,433.20 and disallowance of petitioner's interest expense in the amount of [Php]17,077.88.

As shown in the Details of Discrepancies (Annex A of the FLD), respondent's imposition of 30% regular income tax rate on petitioner's declared exempt net income of P162,130,433.20 was based on the following finding:

> b.) Revocation of ITH Incentive — **The income tax holiday incentive entitlement as a BOI registered enterprise provided under Article 39(a) of Executive Order No. 226 as amended by R.A. 7918 was <u>withdrawn/revoked</u> <u>on the taxable year under audit</u> and is still currently subject to court proceedings on the question of its legality, therefore, the regular income tax rate of 30% should be imposed** in order to compute the tax due pursuant to Section 27(A) of the Tax Code.

**Considering that petitioner failed to prove its entitlement to ITH incentive for taxable year 2011,**

> **respondent's deficiency income tax assessment on the net income of P162,130,433.20 is upheld."**[23]

**On October 03, 2018 however, the Supreme Court already promulgated a decision in *Board of Investments v. SR Metals, Inc.*[24] which affirmed the ruling of the Court of Appeals in CA-G.R. SP No. 131511 and held that the withdrawal by the BOI of Petitioner's ITH incentive was without any basis,** *viz:*

> "***Respondent is entitled to an ITH incentive.***
>
> xxx xxx xxx
>
> However, after a careful review of the records, <u>the Court agrees with the findings of the CA that the withdrawal of respondent's ITH incentive was not supported by the law and the evidence</u>.
>
> In its Application for Registration, respondent asked that it 'be considered as a NEW PRODUCER OF BENEFICIATED SILICATE ORE on the basis of its newly granted [Mineral Production Sharing Agreement] and newly adopted beneficiation process.' Clearly, respondent never made any representation that it would be building a beneficiation plant. Moreover, there was nothing in the terms and conditions of both the Project Approval Sheet and respondent's Certificate of Registration as well as in the 2007 IPP to indicate that a construction of a new plant was required for respondent to be registered as a 'new project.' The pertinent provision of the General Guidelines of the 2007 IPP reads:
>
> xxx xxx xxx
>
> Since there was no such requirement under the terms and conditions of both the Project Approval Sheet and respondent's Certificate of Registration as well as in the 2007 IPP, petitioner cannot use this as ground to withdraw respondent's ITH incentive.
>
> In any case, even if respondent did commit to build a beneficiation plant, the Court agrees with respondent that a commitment to build a beneficiation plant does not necessarily require the construction of an industrial building or structure, as a beneficiation plant could also be an assemblage of equipment and machineries where the beneficiation process could be done. In this

23 *Emphasis and underscoring supplied.*
24 G.R. No. 219927.

> case, respondent was able to prove that it has a beneficiation plant....
>
> xxx xxx xxx
>
> As to petitioner's allegations that respondent failed (1) to infuse new investments in fixed assets; (2) to submit progress reports; and (3) to adhere to its project timetable, these are belied by the evidence. In fact, records show that respondent has invested a total of [Php]l,151,666,643.01 for equipment and machineries, which are being used to produce beneficiated nickel silicate ore, and has submitted progress reports to petitioner....
>
> xxx xxx xxx
>
> <u>All told, the Court finds that the withdrawal of respondent's ITH incentive was without any basis, and thus, affirms the ruling of the CA reversing and setting aside the resolutions embodied in petitioner's letters dated May 24, 2012 and August 12, 2013.</u> As a general rule, factual findings of administrative agencies are not interfered with; an exception, however, is when said findings are not supported by substantial evidence, such as in the instant case."[25]

In view of the above pronouncement by the High Court, Respondent's only ground for assessment becomes devoid of merit. It follows therefore that the deficiency income tax assessment against Petitioner should also be invalidated.

With the above disquisition, a discussion on the remaining issues is deemed unwarranted.

**WHEREFORE**, premises considered, the Petition for Review filed with the Court *En Banc* on September 14, 2018 is **GRANTED**. Accordingly, the May 15, 2018 Decision and August 08, 2018 Resolution in CTA Case No. 9256 is **REVERSED** and **SET ASIDE**. The deficiency income tax assessment issued by Respondent against Petitioner for taxable year 2011 is **CANCELLED**.

**SO ORDERED.**

Ma. Belen

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

---

[25] *Underscoring supplied.*

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

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

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
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