REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Special Third Division

SR METALS, INC., *Petitioner,*	**CTA Case No. 9253**
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Members: **FABON-VICTORINO,** *Acting Chairperson, and* **RINGPIS-LIBAN,** *JJ.*
	Promulgated: NOV 14 2018 4:00 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

This case involves the judicial protest filed by SR Metals, Inc. against the assessment issued by the Commissioner of Internal Revenue for its alleged deficiency income tax for calendar year (CY) 2012, in the aggregate amount of Seventy-Six Million One Hundred Ninety-Nine Thousand Sixteen Pesos and 75/100 (₱76,199,016.75), inclusive of interest and compromise penalty.

THE FACTS

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 Avenue, Bonifacio Global City, Taguig City. It is duly registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 238-048-815.[1]

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), docket, p. 280.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner was granted Certificate of Registration No. 2008-113 by the Board of Investments (BOI) on June 4, 2008, entitling it to Income Tax Holiday (ITH) incentive for four (4) years from said date[2], or until June 3, 2012[3].

However, petitioner's entitlement to ITH was withdrawn by the BOI on February 28, 2012. Petitioner was informed of the withdrawal on May 30, 2012 in a letter which reads:[4]

"24 May 2012

Mr. Miguel Alberto V. Gutierrez
President, SR Metals, Inc.
Unit 4, 2/F Topy Building 1
Economia Street, Bagumbayan
Quezon City

Dear **Mr. Gutierrez**:

This pertains to the Certificate of Registration (CR) No. 2008-113 dated 04 June 2008 issued by the Board of Investments (BOI) to SR Metals, Inc., (SR Metals).

On 07 October 2010, the Office of the Sangguniang Bayan of the Municipality of Tubay Agusan del Norte submitted Resolution No. 2010-090 dated 31 August 2010 requesting for the cancellation of the said BOI CR. In compliance with the requirements of due process, SR Metals was provided with the opportunity to be heard and to submit evidence in support of its position.

[2] Exhibit "P-7", docket, pp. 347-353.
[3] Exhibit "P-15", docket, p. 212.
[4] Exhibit "P-10", docket, p. 364.

Upon conduct of investigation and thorough evaluation of the issues, the facts and evidence presented, the arguments of SR Metals raised in the Reply dated 27 April 2011, and the position of other government agencies concerned, the Board in its 28 February 2012 Meeting resolved that the Income Tax Holiday incentive of SR Metals under BOI CR No. 2008-113 be withdrawn for the following reasons:

a. Failure to comply with the requirements on New Projects under the 2007 Investment Priorities Plan *viz*:

   i. establishment of another line (beneficiation plant)
   ii. infusion of new investments in fixed assets

b. Failure to comply with the Specific Terms and Conditions *viz*:

   i. commitment to submit a progress report on the implementation of the registered project
   ii. adherence to project timetable, specifically on acquisition of machinery/equipment

Please be advised accordingly.

By Authority of the Board

Very truly yours,

LUCITA P. REYES
Executive Director"

The withdrawal of petitioner's ITH incentive was affirmed with finality by the BOI on August 12, 2013.[5]

On May 22, 2014, petitioner received Letter of Authority (LOA) No. LOA-121-2014-00000043 dated May 7, 2014 from the BIR Excise Large Taxpayers Audit Division (ELTAD) I, authorizing Revenue Officers (ROs)

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[5] Exhibit "P-11", docket, pp. 365-366.

Rogelio Gonzales, Ana Veronica Asis, Ma. Daisy Loyola, Cleofel Parungao, and Group Supervisor Edgar Espiritu to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for CY 2012.[6]

On December 4, 2014, the BOI Decision was reversed by the Court of Appeals (CA) Special Second Division in CA-G.R. SP No. 131511 entitled *SR Metals, Inc. vs. Board of Investments*[7], and on August 11, 2015, the CA Former Special Second Division denied BOI's Motion for Reconsideration of the said decision.[8]

A Waiver of the Statute of Limitations was executed by petitioner on January 26, 2015, extending the period to assess until June 30, 2016.[9]

On October 1, 2015, petitioner received a Preliminary Assessment Notice[10] (PAN) dated September 18, 2015 from the BIR ELTAD I, assessing petitioner for deficiency income tax in the amount of ₱74,493,603.35, deficiency expanded withholding tax (EWT) in the amount of ₱2,837,591.88, fringe benefit tax (FBT) in the amount of ₱4,072,070.91, documentary stamp tax (DST) in the amount of ₱389,994.40, and compromise penalties in the amount of ₱91,000.00, inclusive of surcharges and interest, for CY 2012.[11]

Petitioner responded to the PAN through a letter filed on October 13, 2015, arguing that the deficiencies are devoid of factual and legal bases, and attaching therein the CA Resolution denying the Motion for Reconsideration filed by the BOI in CA-G.R. SP No. 131511.[12]

Subsequently, a Memorandum dated November 3, 2015 was prepared by ROs Gonzales, Parungao, and Loyola where they noted that petitioner had already paid the amount of ₱7,457,377.51 for the deficiency EWT, FBT, and DST, but the issue on income tax remained and was protested by the taxpayer.[13]

On November 11, 2015, petitioner received the Formal Letter of Demand (FLD) dated November 3, 2015 and the Final Assessment Notice (FAN) dated November 11, 2015, assessing petitioner for alleged deficiency income taxes for

[6] Par. 3, JSFI, docket, pp. 280-281; Exhibit "R-1", BIR Records, p. 1.
[7] Exhibit "P-13", docket, pp. 253-271.
[8] Exhibit "P-14", docket, pp. 272-274.
[9] Exhibit "R-4", BIR Records, p. 241.
[10] Exhibit "P-1", docket, pp. 339-342.
[11] Par. 4, JSFI, docket, p. 281.
[12] Exhibit "P-2", docket, p. 343.
[13] Exhibit "R-7", BIR Records, pp. 310-311.

CY 2012 in the total amount of ₱76,199,016.75, inclusive of penalties, surcharges and interest. The foregoing amount is broken down in the FLD as follows:[14]

	Exempt	Regular	Total
Taxable Income	165,541,340.75	46,101,387.76	211,642,728.51
Add: Additional Income and disallowance per audit			
Total Taxable Income per audit	165,541,340.75	46,101,387.76	211,642,728.51
Tax due at 30%	49,662,402.23	13,830,416.33	63,492,818.55
Less: Tax Credit/payments			
Prior years excess credits MCIT		12,142.86	
Income tax payment other than MCIT from previous quarter		771,473.94	
Tax paid on previously filed return		13,334,259.37	14,117,876.17
Basic tax still due	49,662,402.23	(287,459.84)	49,662,402.23
Surcharge			
Interest			26,486,614.52
TOTAL			**76,149,016.75**

Respondent, in his FLD and FAN, likewise assessed petitioner for compromise penalties amounting to ₱50,000.00 on account of the latter's alleged failure to pay the assessed income taxes at the time required by law or regulations.

On December 7, 2015, petitioner filed its Protest against the FLD and requested for a reconsideration of the assessments for CY 2012. Again, petitioner invoked in its Protest (a) the Decision issued by the CA on December 4, 2014 in *SR Metals, Inc. vs. Board of Investments*[15], reversing the BOI's resolution to withdraw petitioner's ITH incentive, and (b) the CA Resolution dated August 11, 2015 denying the BOI's Motion for Reconsideration.[16]

On January 6, 2016, petitioner received the Final Decision on Disputed Assessment[17] (FDDA) dated December 14, 2015, sustaining the assessment for

[14] Par. 5, JSFI, docket, pp. 281-282; Exhibit "P-3", docket, pp. 344-346.
[15] Exhibit "P-13", docket, pp. 253-271.
[16] Par. 7, JSFI, docket, p. 282; Exhibit "P-5", docket, p. 233.
[17] Exhibit "P-6", docket, p. 234; Exhibit "R-11", BIR Records, p. 361.

alleged deficiency income taxes amounting to ₱76,199,016.75 on substantially the same grounds relied upon by respondent in the PAN and the FLD.[18]

Hence, petitioner filed the instant Petition for Review on February 5, 2016.

In his Answer[19] filed on March 22, 2016, respondent interposed the following special and affirmative defenses:

> "4. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses.
>
> 5. Petitioner's Income Tax Holiday (ITH) entitlement issued by the Board of Investments (BOI) under C.R. 2008-113 dated 4 June 2008 was withdrawn as of 28 February 2012. Hence, petitioner's taxable income is subject to tax at the rate of 30% pursuant to Section 27(A) of the National Internal Revenue Code of 1997, as amended (NIRC of 1997) which provides;
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>> **SEC. 27. Rates of Income tax on Domestic Corporations. –**
>>
>> **(A) In General.** – Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22(B) of this Code and taxable under this Title as a corporation, organized in, or existing under the laws of the Philippines: Provided, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%).
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>> In the case of corporations adopting the fiscal-year accounting period, the taxable income shall be computed without regard to the specific date when specific sales, purchases and other transactions occur. Their income and expenses for the fiscal year shall be

[18] Par. 8, JSFI, docket, pp. 282-283.
[19] Docket, pp. 147-151.

deemed to have been earned and spent equally for each month of the period.

The corporate income tax rate shall be applied on the amount computed by multiplying the number of months covered by the new rate within the fiscal year by the taxable income of the corporation for the period, divided by twelve.

Provided, further, That the President, upon the recommendation of the Secretary of Finance, may effective January 1, 2000, allow corporations the option to be taxed at fifteen percent (15%) of gross income as defined herein, after the following conditions have been satisfied:

(1) A tax effort ratio of twenty percent (20%) of Gross National Product (GNP);

(2) A ratio of forty percent (40%) of income tax collection to total tax revenues;

(3) A VAT tax effort of four percent (4%) of GNP; and

(4) A 0.9 percent (0.9%) ratio of the Consolidated Public Sector Financial Position (CPSFP) to GNP.

The option to be taxed based on gross income shall be available only to firms whose ratio of cost of sales to gross sales or receipts from all sources does not exceed fifty-five percent (55%).

The election of the gross income tax option by the corporation shall be irrevocable for three (3) consecutive taxable years during which the corporation is qualified under the scheme.

For purposes of this Section, the term '***gross income***' derived from business shall be equivalent to gross sales less sales returns, discounts and allowances and cost of goods sold.

'***Cost of goods sold***' shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use.

For a trading or merchandising concern, '***cost of goods sold***' shall include the invoice cost of the goods sold, plus import duties, freight in transporting the goods to the place where the goods are actually sold, including insurance while the goods are in transit.

For a manufacturing concern, '***cost of goods manufactured and sold***' shall include all costs of production of finished goods, such as raw materials used, direct labor and manufacturing overhead, freight cost, insurance premiums and other costs incurred to bring the raw materials to the factory or warehouse.

In the case of taxpayers engaged in the sale of service, '***gross income***' means gross receipts less sales returns, allowances and discounts."

6. Hence, petitioner's net taxable income from its registered activity as new producer of beneficiated nickel silicate ore/lateric nickel ore on a non-pioneer status, in relation to its proposed nickel project is subject to 30% regular corporate income tax imposed under Section 72(A) of the NIRC of 1997.

7. The Court of Appeal's *(sic)* Decision and Resolution reversing the BOI's Resolution withdrawing petitioner's ITH incentives is not yet final since the BOI filed before the Supreme Court a Petition for Review on Certiorari captioned *as Board of Investments vs. SR Metals, Inc., G.R. No. 219927 (CA G.R. SP No. 131511)* praying that the CA's Decision dated 4 December 2014 and Resolution dated 11 August 2015 be reversed and set aside.

> 8. The absence of a Certificate of Entitlement to ITH issued by the BOI in favor of petitioner is sufficient legal basis for respondent to deny petitioner's availment of ITH. A Certificate for Entitlement for Income Tax Holiday is a necessary requisite for entitlement to such incentive. Thus, petitioner's claims for income tax exemption has no basis in law and in fact.
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> 7. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called *(CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671)*. It is incumbent upon the taxpayer to prove the contrary *(Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397)* and failure to do so shall vest legality on respondent's actions and assessments.
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> 8. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment *(Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, 10 March 1995)*."

Thereafter, a Notice of Pre-Trial Conference[20] was issued by the Court on March 28, 2016, setting the case for pre-trial conference on June 28, 2016. Accordingly, respondent's Pre-Trial Brief[21] was filed on April 7, 2016; while petitioner's Pre-Trial Brief[22] was filed on June 24, 2016.

The parties filed their Joint Stipulation of Facts and Issues[23] on July 20, 2016. Subsequently, a Pre-Trial Order[24] was issued on August 3, 2016 and the pre-trial was deemed terminated.

During trial, petitioner presented Atty. Ida A. Juico[25] as its witness. Afterwards, petitioner filed its Formal Offer of Evidence[26] on October 20, 2016, consisting of Exhibits "P-1" to P-15-a", inclusive of submarkings.

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[20] Docket, pp. 153-156.
[21] Docket, pp. 157-162.
[22] Docket, pp. 183-202.
[23] Docket, pp. 280-296.
[24] Docket, pp. 304-314.
[25] Exhibit "P-15", docket, pp. 204-222; Minutes of the Hearing dated October 10, 2016, docket, p. 324.
[26] Docket, pp. 327-337.

In the Resolution[27] dated December 7, 2016, the Court admitted all of petitioner's formally offered exhibits.

On the other hand, respondent presented Mr. Rogelio P. Gonzales[28] as his witness and then filed his Formal Offer of Evidence[29] on May 4, 2017, consisting of Exhibits "R-1" to "R-13-a".

In the Resolution[30] dated October 20, 2017, the Court admitted all of respondent's evidence.

The Court declared the case deemed submitted for decision on December 11, 2017,[31] considering respondent's Memorandum[32] filed on November 24, 2017 and petitioner's Memorandum[33] filed on November 27, 2017.

THE ISSUES

The parties submitted the following issues for the Court's resolution:[34]

"**A. Issues for petitioner**

I. Whether or not the assessment for alleged deficiency income taxes against petitioner for CY 2012 should be cancelled and withdrawn for lack of legal and factual basis.

A. Whether or not the decision of the CA in the *SRMI vs. BOI* case (CA-G.R. SP No. 131511) should be recognized and given effect by the BIR, notwithstanding the pendency of the BOI's appeal of such decision to the Supreme Court.

[27] Docket, pp. 372-373.
[28] Exhibit "R-13", docket, pp. 171-176; Minutes of the Hearing dated April 24, 2017, docket, p. 380.
[29] Docket, pp. 383-387.
[30] Docket, pp. 411-412.
[31] Resolution dated December 11, 2017, docket, p. 446.
[32] Docket, pp. 416-420.
[33] Docket, pp. 417-442.
[34] Statement of Issues To Be Tried and Resolved, JSFI, docket, pp. 284-286.

B. Whether or not the issue in the *SRMI vs. BOI* case regarding the withdrawal of petitioner's ITH incentive constitutes a prejudicial question which must first be resolved with finality before petitioner may be validly assessed for alleged deficiency income taxes.

C. Whether or not petitioner is liable to pay deficiency income tax for taxable year 2012, inclusive of interest, penalties, and surcharges in the aggregate amount of Php76,199,016.75.

D. Whether or not petitioner is liable for the assessed compromise penalty amounting to Php50,000.00.

E. Whether or not petitioner is liable to pay 20% deficiency and delinquency interest for late payment until fully paid pursuant to Section 249 of the Tax Code.

B. Issue for respondent

I. Whether or not petitioner is liable to pay the aggregate amount of ₱76,199,016.75 as deficiency income tax for taxable year 2012, plus 25% surcharge and 20% deficiency and delinquency interest for late payment until fully paid pursuant to Section 248 and 249 of the Tax Code.

THE RULING OF THE COURT

The Petition for Review was Timely Filed

The Court shall first determine the timeliness of the filing of the Petition for Review.

Section 228 of the National Internal Revenue Code of 1997, as amended, provides for the period and the manner to protest an assessment, to wit:

"SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision,** or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." (*Emphasis supplied*)

Section 228 of the NIRC of 1997, as amended, is implemented by Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-13. The pertinent provision provides:

"3.1.4. *Disputed Assessment.* – **The taxpayer or its authorized representative or tax agent may protest administratively against the aforesaid FLD/FAN within**

thirty (30) days from date of receipt thereof. The taxpayer protesting an assessment may file a written request for reconsideration or reinvestigation defined as follows:

(i) *Request for reconsideration* – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or of law or both.

(ii) *Request for reinvestigation* – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or of law or both.

The taxpayer shall state in his protest (i) the nature of protest whether reconsideration or reinvestigation, specifying newly discovered or additional evidence he intends to present if it is a request for reinvestigation, (ii) date of assessment notice, and (iii) the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect.

xxx xxx xxx

If the protest is denied, in whole or in part, by the Commissioner's duly authorized representative, the taxpayer may either: (i) appeal to the Court of Tax Appeals (CTA) within thirty (30) days from date of receipt of the said decision; or (ii) elevate his protest through request for reconsideration to the Commissioner within thirty (30) days from date of receipt of the said decision. No request for reinvestigation shall be allowed in administrative appeal and only issues raised in the decision of the Commissioner's duly authorized representative shall be entertained by the Commissioner.

If the protest is not acted upon by the Commissioner's duly authorized representative within one hundred eighty (180) days counted from the date of filing of the protest in case of a request for reconsideration; or from date of submission by the taxpayer of the required documents within sixty (60) days from the date of

> filing of the protest in case of a request for reinvestigation, the taxpayer may either: (i) appeal to the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (ii) await the final decision of the Commissioner's duly authorized representative on the disputed assessment." (*Emphasis supplied*)

Petitioner received the FAN/FLD on November 11, 2015. Consequently, it had until December 10, 2015 to file its protest thereon. Records show that it filed its Request for Reconsideration on December 7, 2015. Therefore, its administrative protest was timely filed.

Based on the provisions above, respondent had until June 5, 2016 to decide on petitioner's protest. Considering petitioner's receipt of the FDDA on January 6, 2016, petitioner had until February 5, 2016 to appeal to this Court. Petitioner appealed the FDDA on February 5, 2016. Therefore, the instant Petition for Review was likewise timely filed.

Petitioner's ITH is Valid and Subsisting

Petitioner argues that the CA Decision in the *SR Metals, Inc. vs. Board of Investments* case should be accorded respect notwithstanding the pendency of the BOI's appeal to the Supreme Court, considering that the CA expressly upheld petitioner's entitlement to the ITH incentive and annulled and set aside the decision of the BOI.

Petitioner contends that, even assuming that the CA's Resolution has not yet attained finality on account of the BOI's pending appeal with the Supreme Court, its findings on petitioner's entitlement to the ITH incentive remains valid and binding, until and unless they are reversed by the Supreme Court.

Petitioner argues that even if the CA Decision has not yet become final and executory, still a final resolution in the *SR Metals, Inc. vs. Board of Investments* case affirming the withdrawal of petitioner's ITH incentive is a condition *sine qua non* for respondent to set aside petitioner's ITH incentive and subject it to the regular income tax rate. The issue in the *SR Metals, Inc. vs. Board of Investments* case, *i.e.*, whether or not the BOI erred in withdrawing petitioner's entitlement to the ITH incentive, should be considered as a "prejudicial question" which must first be resolved before respondent can assess petitioner for deficiency income taxes and move for the collection of such tax liabilities. Although the doctrine of prejudicial question is generally applicable in a situation involving a civil question and a criminal action, in several cases, the Supreme Court has used the same in situations involving two civil cases, or a civil and an administrative case. Therefore, it could not be assessed any deficiency income tax without a final decision withdrawing petitioner's ITH incentive.

On the other hand, respondent argues that since petitioner's ITH entitlement was withdrawn as of February 28, 2012, its taxable income is subject to tax at the rate of thirty percent (30%) pursuant to Section 27(A) of the Tax Code. Respondent avers that the CA's Decision and Resolution reversing the BOI's Resolution withdrawing petitioner's ITH incentives is not yet final since the BOI filed before the Supreme Court a Petition for Review on Certiorari captioned as *Board of Investments vs. SR Metals, Inc.*, with docket no. G.R. No. 219927.

Respondent contends that a Certificate of Entitlement (COE) for ITH is a necessary requisite for entitlement to such incentive; hence, its absence is sufficient legal basis for respondent to deny petitioner's availment of ITH.

Pursuant to Revenue Memorandum Circular (RMC) No. 14-2012[35], BOI-registered enterprises are required to submit their COEs to ITH within thirty (30) days from filing of their Income Tax Returns, as among the requirements for their enjoyment of ITH or preferential tax privileges.

However, the records are bereft of any evidence that petitioner was able to secure a COE for taxable year 2012 and that it has submitted the same to the BIR. The ground for the said tax assessment, according to respondent, was the failure of the petitioner to submit the required COE, as proof and/or evidence of tax exemption, within the prescribed period pursuant to RMC No. 014-12.

During the pendency of this case, the Supreme Court promulgated its decision in *Board of Investments vs. SR Metals, Inc.*[36] (BOI Case) wherein it held that the withdrawal of herein petitioner's ITH incentive was without basis as it was not supported by the law and the evidence. It agreed with the Court of Appeals' findings that petitioner never made any representation that it would be building a beneficiation plant and that no such requirement existed under the terms and conditions of both the Project Approval Sheet, the Certificate of Registration, and the 2007 IPP, hence, the BOI cannot use those as grounds to withdraw the ITH incentive of petitioner.

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[35] Subject: 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, dated April 4, 2012.
[36] G.R. No. 219927, October 3, 2018.

It appears, therefore, that the final arbiter of controversies, the Supreme Court, has already settled the matter and this Court takes judicial notice of the same.

Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them.[37] Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not bona fide disputed.[38]

The foundation for judicial notice may be traced to the civil and canon law maxim, manifesta (or notoria) non indigent probatione.[39] The taking of judicial notice means that the court will dispense with the traditional form of presentation of evidence. In so doing, the court assumes that the matter is so notorious that it would not be disputed.

The concept of judicial notice is embodied in Rule 129 of the Revised Rules on Evidence. Rule 129 either requires the court to take judicial notice, inter alia, **of the official acts of the x x x judicial departments of the Philippines,**[40] or gives the court the discretion to take judicial notice of matters ought to be known to judges because of their judicial functions.[41] Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them.[42] Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not bona fide disputed.[43]

The *BOI Case* declared the withdrawal of petitioner's ITH Incentive as baseless. Conversely, petitioner is entitled to the ITH Incentive as stated in its Certificate of Registration No. 2008-113. Although the BOI is not a party to this case, it cannot be ignored that the subject matter in both the *BOI Case* and the

[37] Republic vs. Sandiganbayan, December 16, 2011, G.R. No. 152375, citing Ricardo J. Francisco, The Revised Rules of Court in the Philippines, Evidence, Part I, 1997 ed., pp. at 69.
[38] *Id.,* citing Oscar M. Herrera, supra note 121, at 72.
[39] *Id.*, citing Jovito R. Salonga, *Philippine Law of Evidence*, p. 540, 2nd ed., 1958 at 45; and Eduardo B. Peralta, Jr., Perspectives of Evidence, 2005, p. 52, citing 1 Jones on Evidence, p. 209.
[40] Section 1, Rule 129 of the Revised Rules on Evidence.
[41] Id., Section 2.
[42] Ricardo J. Francisco, supra note 37, at 69.
[43] Oscar M. Herrera, supra note 38, at 72.

instant case pertain to the very same Certificate of Registration from which the ITH Incentive granted to petitioner is based.

Respondent cannot be faulted for pursuing his duty under the Tax Code and assessing petitioner's taxable income at the regular rate of thirty percent (30%) pursuant to Section 27(A) of the Tax Code since the latter failed to submit a COE which would prove its entitlement to the ITH Incentive.

Neither can petitioner be faulted for failing to provide the necessary COE as it was withdrawn by the BOI, an action which petitioner questioned through the legal remedies available to it. Fortunately for petitioner, it eventually prevailed in its legal battle. Clearly, petitioner was entitled to the ITH Incentive during the period of the subject assessment.

Under the principle of stare decisis or rule of binding precedent, the general rule is that decisions of the Supreme Court have the force and effect of law and are binding upon the courts.[44] The Supreme Court by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only Supreme Court from whose decisions all other courts take their bearings.[45]

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. The Final Decision on Disputed Assessment that found petitioner liable for basic deficiency income tax for taxable year 2012 in the amount of ₱76,199,016.75 is hereby **CANCELLED** and **WITHDRAWN.**

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[44] *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005, 478 SCRA 61.
[45] *Commissioner of Internal Revenue v. Michel J. Lhuillier*, G.R. No. 150947, July 15, 2003, 406 SCRA 178; *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, CTA EB No. 1215, April 28, 2015.

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest 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's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Acting Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice