REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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THE MUNICIPAL TREASURER OF THE MUNICIPALITY OF CLAVER, represented by CARYL DEE LUKBAN, Petitioner,	**CTA AC No. 183** (Civil Case No. 8208)
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
PLATINUM GROUP METALS CORPORATION (PGMC), Respondent.	***Promulgated:*** AUG 09 2018, 3:00 pm

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DECISION

UY, *J.*:

Before this Court is a *Petition for Review*[1] filed by petitioner Municipal Treasurer of the Municipality of Claver, against respondent Platinum Group Metals Corporation, praying for the annulment of the Decision[2] dated February 14, 2017 rendered by the Regional Trial Court of Surigao City – Branch 29 (RTC – Branch 29), in Civil Case No. 8208, entitled *"Platinum Group Metals Corporation, Petitioner, vs. Municipal Treasurer of the Municipality of Claver, Respondent,"* the dispositive portion of which reads:

> "WHEREFORE, Judgment is hereby rendered declaring the assessment for local business taxes by the Municipal Treasurer of the Municipality of Claver, Surigao del Norte, against petitioner Platinum Metals Group *(sic)* Corporation (PGMC) for the year 2014 in the amount of Php83,981,477.43 for the year 2015 and

[1] Docket (CTA AC No. 183), pp. 8 to 28.
[2] Docket (CTA AC No. 183), pp. 31 to 34; RTC Docket (Civil Case No. 8208), pp. 244 to 247.

Php61,833,811.88 for the year 2016 as void and of no effect for lack of legal basis.

SO ORDERED."

THE FACTS

As culled from the records below, the undisputed facts of the case are as follows:

Petitioner Municipal Treasurer is the local official in charge of the collection of local taxes, fees, and charges and the examination of books of accounts and pertinent records of taxpayers in order to ascertain, assess, and collect the correct amount of taxes, fees, or charges in the Municipality of Claver, Surigao del Norte.[3]

Respondent Platinum Group Metals Corporation is a domestic corporation organized and existing under the laws of the Republic of the Philippines with office address at 7th Floor Corporate Business Center, 151 Paseo de Roxas corner Arnaiz Street, Makati City.[4]

Petitioner issued a Notice of Assessment dated April 18, 2016, requiring respondent to settle the assessed local taxes for calendar years 2015 and 2016, amounting to ₱83,981,477.43 and ₱61,833,811.88, respectively. The said Notice was received by respondent on April 28, 2016.[5]

On July 15, 2016, petitioner received a copy of respondent's letter dated June 22, 2016, protesting the assessed local taxes on the ground that its supposed Income Tax Holiday purportedly confirmed by the court with finality extended the same privilege to cover the supposed "bonus years" as provided under the first paragraph of Article 39(a)(1) of the Omnibus Investment Code.[6]

However, in the letter dated July 28, 2016, petitioner reiterated its demand from respondent to pay the assessed local taxes.[7]

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[3] Par. 2, *Petition for Review*, RTC Docket (Civil Case No. 8208), pp. 1 to 2.
[4] Par. 1, *Petition for Review*, RTC Docket (Civil Case No. 8208), p. 1.
[5] Par. 3, *Petition for Review* vis-à-vis Par. 9, *Comment*, RTC Docket (Civil Case No. 8208), pp. 2 and 65.
[6] Par. 4, *Petition for Review* vis-à-vis Par. 10, *Comment*, RTC Docket (Civil Case No. 8208), pp. 2 and 65.
[7] Par. 5, *Petition for Review* vis-à-vis Par. 11, *Comment*, RTC Docket (Civil Case No. 8208), pp. 2 and 65.

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Consequently, respondent filed a *Petition for Review*[8] with RTC – Branch 29 on August 26, 2016, praying for the cancellation and declaration of nullity of the above-stated assessments. The case was docketed as Civil Case No. 8208.

Thereafter, RTC – Branch 29 rendered the assailed Decision dated February 14, 2017,[9] declaring petitioner's assessment for local business taxes against respondent in the amount of ₱83,981,477.43 for the year 2015 and ₱61,833,811.88 for the year 2016, as void and of no effect for lack of legal basis.

Petitioner then filed the instant *Petition for Review* before this Court on March 20, 2017, praying for the annulment of the said Decision dated February 14, 2017.

In the Resolution dated April 4, 2017,[10] respondent was directed to file its *Comment*, not a motion to dismiss, within ten (10) days from notice. In the same Resolution, the Clerk of Court of RTC – Branch 29 was directed to elevate the entire original records of Civil Case No. 8208 to this Court within ten (10) days from notice.

On May 5, 2017, respondent filed its *Comment (To the Petition for Review dated 17 March 2017).*[11]

Subsequently, the parties were directed to file their respective memoranda within thirty (30) days from notice.[12]

In the meantime, this Court directed the Clerk of Court of RTC – Branch 29 in the Resolution dated July 18, 2017,[13] to show cause why he/she should not be cited for contempt for failure to elevate the entire original records of Civil Case No. 8208 to this Court. The said Clerk of Court filed a *Motion for Extension of Time To Elevate Records with Explanation* on October 4, 2017,[14] praying that he be given three (3) days to comply with the order of this Court to elevate the entire records as directed. On October 9, 2017, the same Clerk of Court forwarded the entire records of Civil Case No. 8208.[15]

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[8] RTC Docket (Civil Case No. 8208), pp. 1 to 11.
[9] RTC Docket (Civil Case No. 8208), pp. 244 to 247.
[10] Docket (CTA AC No. 183), pp. 176 to 177.
[11] Docket (CTA AC No. 183), pp. 276 to 299.
[12] Resolution dated June 5, 2017, Docket (CTA AC No. 183), pp. 367 to 368.
[13] Docket (CTA AC No. 183), p. 450.
[14] Docket (CTA AC No. 183), p. 455.
[15] Docket (CTA AC No. 183), p. 458.

With the filing of petitioner's *Memorandum* on June 28, 2017,[16] and respondent's *Memorandum* on July 6, 2017,[17] the instant case was submitted for decision on October 26, 2017.[18]

Hence, this Decision.

THE ISSUES

Petitioner raises the following issues for resolution, to wit:

"I

WHETHER RESPONDENT'S INCOME TAX INCENTIVES UNDER ARTICLE 39(A)(1) OF THE OMNIBUS INVESTMENT CODE, PARTICULARLY THE SUPPOSED BONUS YEARS IN 2014 AND 2015 EXTEND ALSO TO LOCAL TAXES LEVIED BY LOCAL GOVERNMENTS.

II

WHETHER RESPONDENT'S SUPPOSED INCOME TAX INCENTIVES UNDER ARTICLE 39(A)(1) OF THE OMNIBUS INVESTMENT CODE WAS DULY EXTENDED BY THE BOI IN 2014 AND 2015.

III

WHETHER THE LAWS CITED BY THE TRIAL COURT IN JUSTIFYING THE NULLIFICATION OF THE QUESTIONED ASSESSMENT DO NOT SUPPORT RESPONDENT'S CLAIMED EXEMPTION FROM THE ASSESSED LOCAL BUSINESS TAXES."[19]

Petitioners' arguments:

Petitioner argues that respondent's income tax incentives under Article 39(A)(1) of the Omnibus Investment Code, particularly the alleged "bonus years" in 2014 and 2015 do not apply or extend to local taxes levied by local governments. Allegedly, the said provision relating to bonus years following the expiration of the income tax

[16] Docket (CTA AC No. 183), pp. 369 to 391.
[17] Docket (CTA AC No. 183), pp. 423 to 444.
[18] Docket (CTA AC No. 183), p. 465.
[19] Docket (CTA AC No. 183), pp. 13 to 14, and 402 to 403.

holiday periods has been effectively repealed by the Local Government Code (LGC).

Moreover, petitioner contends that the supposed extension of respondent's income tax incentives in 2014 and 2015 under Article 39(A)(1) of the Omnibus Investment Code has not been proven by any evidence.

Finally, petitioner avers that the trial court and respondent miserably failed to point to any specific provision of law, conferring on respondent, in clear and plain terms, exemption from the assessed local business tax.

Respondent's counter-arguments:

For its part, respondent counter-argues that the RTC – Branch 29's ruling that the assessment against respondent is void and in accordance with its incentives under Article 39(a)(1) of the Omnibus Investment Code and Section 133(g) in relation to Section 193 of the LGC; and that the findings of RTC – Branch 29 that the income tax holiday incentives of respondent under the said Article 39(a)(1) for eight (8) years was documented and admitted by petitioner, are correct.

THE COURT'S RULING

The instant *Petition for Review* is meritorious.

The crux of the controversy hinges on whether or not respondent's Income Tax Holiday may be a legal justification to the non-imposition of the subject local business taxes upon respondent for calendar years 2014 and 2015.

We answer in the negative.

Local government units may not impose business taxes against BOI-registered pioneer or non-pioneer companies for a certain period of time only.

Section 5, Article X of the 1987 Constitution grants to local government units the power to create its own revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. By virtue thereof, Sections 129 and 133(g) of the LGC of 1991 were enacted, *inter alia*, reiterating the said constitutional provision and providing a certain limitation on the said power. These provisions read:

> "SEC. 129. *Power to Create Source of Revenue.* – **Each local government unit shall exercise its power to create its own source of revenue and to levy taxes, fees, and charges <u>subject to provisions herein</u>,** consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units." *(Emphasis and underscoring supplied)*
>
> "SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units.* – **Unless otherwise provided herein, the exercise of the taxing powers of** provinces, cities, **municipalities**, and barangays **shall not extend to the levy of the following:**
>
> xxx xxx xxx
>
> (g) **Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer <u>for a period of six (6) and (4) four years, respectively from the date of registration</u>**;" *(Emphases and underscoring supplied)*

Based on the foregoing, it is clear that local government units, such as the Municipality of Claver, Surigao del Norte, may not impose taxes on business enterprises certified by the Board of Investments (BOI) for a period of six (6) years, for pioneer, or of four (4) years, for non-pioneer, from the date of registration. Conversely, after the applicable period, the said local government units may already exercise their power to tax and impose business taxes on the said enterprises.

In this case, under Certificate of Registration No. 2007-217 dated November 16, 2007,[20] respondent is duly registered with the

[20] RTC Docket (Civil Case No. 8208), pp. 39 to 45; Docket (CTA AC No. 183), pp. 37 to 43.

BOI as a "New Producer of Beneficiated Nickel Ore" and the latter has classified respondent as "NON-PIONEER, WITH PIONEER INCENTIVES BEING LOCATED IN LESS DEVELOPED AREA". Thus, since respondent is a non-pioneer enterprise, the applicable period is four (4) years from the date of its registration with the BOI. Correspondingly, from November 16, 2007 (respondent's registration date with the BOI) until November 16, 2010, the Municipality of Claver, Surigao del Norte, may not impose any local taxes to respondent.

After the said period, however, the said Municipality may already impose business taxes against respondent. Such being the case and since the subject local business taxes pertain to calendar years 2015 to 2016, the same taxes may be legally imposed by the same Municipality against respondent.

The extension of respondent's supposed Income Tax Holiday is of no moment in the imposition of local business taxes by the Municipality of Claver after the period stated under Section 133(g) of the LGC of 1991.

Without doubt, Article 39(a)(1) of Executive Order (EO) No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended by Republic Act (RA) No. 7918, grants BOI-registered enterprises an Income Tax Holiday for a certain period of time, to wit:

> "ART. 39. *Incentives to Registered Enterprises.* – **All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:**
>
> (a) ***Income Tax Holiday.*** –
>
> (1) **For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be <u>fully exempt from income taxes levied by the national government</u>.** Subject to such guidelines as may be prescribed by the Board, the income tax exemption will be extended for another year in each of the following cases:

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> (i) The project meets the prescribed ratio of capital equipment to number of workers set by the Board;
>
> (ii) Utilization of indigenous raw materials at rates set by the Board;
>
> (iii) The net foreign exchange savings or earnings amount to at least US$500,000.00 annually during the first three (3) years of operation.
>
> The preceding paragraph notwithstanding, **no registered pioneer firm may avail of this incentive for a period exceeding eight (8) years.**" *(Emphases and underscoring supplied)*

Thus, upon registration with the BOI, an enterprise may enjoy an Income Tax Holiday for six (6) years, if it is classified as *"pioneer"*, or for four (4) years, if its classification is *"non-pioneer"*. Such respective period may be extended for another year under specific instances and after compliance with certain requirements prescribed by the BOI; but in no case may a registered pioneer firm avail of such Income Tax Holiday exceeding eight (8) years.

It must be emphasized, however, that the said incentive under Article 39(a)(1) of EO No. 226, as amended by RA No. 7918, refers to **a full exemption from income taxes levied by the national government**. It does ***not*** extend or pertain to **an exemption from business taxes imposed by local government units**.

In this case, the taxes that were imposed by the Municipality of Claver, Surigao del Norte, are business taxes.[21] Thus, notwithstanding the Income Tax Holiday, or any extension on the period thereof, granted to respondent, the same is of no moment.

If at all, what legally prevented the Municipality of Claver from taxing respondent of business taxes is the aforequoted Section 133(g) of the LGC of 1991, which, as already pointed out, limits the taxing powers of local government units to impose taxes on business enterprises certified to by the BOI for a period of six (6) years, for pioneer, or of four (4) years, for non-pioneer, from the date of registration. After the applicable period, however, the said local government units may already impose business taxes on the said enterprises.

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[21] RTC Docket (Civil Case No. 8208), pp. 17 to 25; Docket (CTA AC No. 183), pp. 44 to 52.

We cannot subscribe to the contention of respondent in its *Comment* filed on May 5, 2017,[22] that its income tax incentives under the said Article 39(a)(1), particularly the "bonus years" in 2014 and 2015 equally applies to the local business taxes levied by petitioner, as provided under Section 133(g) in relation to Section 193 of the LGC.

Upon a cursory reading of Article 39(a)(1) of EO No. 226, as amended by RA No. 7918, vis-à-vis Section 133(g) in relation to Section 193 of the LGC of 1991, this Court cannot conclude that the legislature intended that the grant of the tax incentive under the said Article 39(a)(1) may extend or may be construed as a limitation as well on the power of local government units to impose business taxes on BOI-registered firms.

To be clear, the grant of tax exemption under Article 39(a)(1) of EO No. 226, as amended by RA No. 7918, and that under Section 133(g) of the LGC of 1991, are mutually exclusive, and this can be surmised from the different wordings of the said provisions. While the periods of tax exemption are the same, the similarity between the said provisions ends there. A comparison of the differences between the said provisions is as follows:

<u>**Particulars**</u>	<u>**Article 39(a)(1), EO No. 226**</u>	<u>**Section 133(g)**</u>, <u>**LGC**</u>
Type of Tax Exemption	Exemption from <u>income</u> taxes	Exemption from <u>all</u> taxes
Taxing authority concerned	National Government	Local Government Units
Extension of tax incentive	Available	Not available

From the foregoing, it can be discerned that the two (2) provisions grant separate and distinct tax incentives. Article 39(a)(1) refers to an exemption from income taxes that may be imposed by <u>the national government</u>; while Section 133(g) deals with an exemption from "Taxes" that may be levied <u>by local government units</u>. And while the Income Tax Holiday may be extended under Article 39(a)(1), the same cannot be done on the tax incentive given under Section 133(g).

As for Section 193[23] of the LGC of 1991, the same is wanting of any indication to support respondent's contention that the income tax

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[22] Docket (CTA AC No. 183), pp. 276 to 300, at p. 281.

[23] "SEC. 193. *Withdrawal of Tax Exemption Privileges.* — Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local

incentives under the above-stated Article 39(a)(1) equally applies to the local business taxes imposed by the Municipality of Claver.

Needless to state, since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken.[24]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, the Decision dated February 14, 2017 rendered by the RTC – Branch 29, in Civil Case No. 8208, is hereby **CANCELLED** and **SET ASIDE**. The assessments for local business taxes by petitioner Municipal Treasurer of the Municipality of Claver, Surigao del Norte, against respondent Platinum Group Metals Corporation (PGMC) in the amount of ₱83,981,477.43 for the year 2015 and ₱61,833,811.88 for the year 2016 are hereby **UPHELD**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."

[24] *Mactan Cebu International Airport Authority vs. Ferdinand J. Marcos, et al.*, G.R. No. 120082, September 11, 1996.

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson