REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SR METALS, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9256

Members:

Castañeda, Jr., *Chairperson,*
Casanova
Manahan, *JJ.*

Promulgated:

AUG 0 8 2018 4:05 pm

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RESOLUTION

Castañeda, Jr. ***J.:***

On June 1, 2018, petitioner SR Metals, Inc. filed a Motion for Reconsideration (of the Decision dated 15 May 2018)[1] with respondent's Opposition (Re: Motion for Reconsideration dated 15 May 2018)[2] filed on June 21, 2018.

Said motion sought the reversal and setting aside of the decision promulgated on May 15, 2018 (assailed Decision), the dispositive portion of which 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**

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[1] Docket, Vol. II, pp. 529-573.
[2] *Id.,* Vol. II, pp. 576-580; the Motion for Reconsideration is dated June 1, 2018.

THREE THOUSAND FOUR HUNDRED NINETY-EIGHT PESOS AND SIXTY-SIX CENTAVOS (₱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		₱ 48,644,253.32
Add:	25% Surcharge	12,161,063.33
Total		**₱ 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 Dec. 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 ₱116,406,364.55 representing the sum of the basic deficiency income tax of ₱48,644,253.32, 25% surcharge ₱12,161,063.33 and deficiency interest of ₱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."

Petitioner argues that the deficiency assessment for taxable year 2011 is barred by prescription considering that the waivers were defective, to wit: (1) the person who signed the waivers, which were presented by the respondent during the trial, had no written authority in the form of a Resolution from its Board of Directors (BOD). Absent such written authorization, these waivers failed to comply with the requirements of Section 222(b) of the 1997 Internal Revenue Code (NIRC), as amended, and Revenue Memorandum Order (RMO) No. 20-90 as modified by Revenue Delegation Authority Order (RDAO) No. 05-01, thus, rendering such waivers null and void as ruled in the cases of *Philippine Journalist, Inc. v. Commissioner of Internal Revenue,*[3] *Commissioner of Internal Revenue v. Kudos Metal* gk

[3] G.R. No. 162852, December 16, 2004.

Corporation,[4] *Commissioner of Internal Revenue v. The Stanley Works Sales (Phils.), Incorporated,*[5] *Systems Technology Institute, Inc. v. Commissioner of Internal Revenue,*[6] *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.,*[7] and *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*[8]; and, (2) the waivers did not specify the kind and amount of taxes under investigation to be covered by such waivers.

Petitioner further insists that the pendency of the case of *Board of Investments v. SR Metals Inc.* in the Supreme Court (SC) constitutes a prejudicial question in the instant case and that the literal and strict application of Revenue Memorandum Circular (RMC) No. 014-12 would give the Board of Investments (BOI) an unbridled power to withdraw the Income Tax Holiday (ITH) incentive of petitioner just by delaying the issuance of the Certificate of ITH Entitlement (COE) resulting in absurdity and injustice which is frowned upon by the Court.

Again, petitioner also insists that the decision of the BOI dated February 28, 2012 where the latter revoked petitioner's ITH incentive should not be given retroactive effect and that respondent should have recognized and applied the decision of the Court of Appeals (CA) where it upheld petitioner's entitlement to the ITH incentive and set aside the decision of the BOI.

Petitioner also argues that the simultaneous imposition of the deficiency and delinquency interest is erroneous for being inconsistent with the current law and applicable regulations and jurisprudence.

On the other hand, respondent, in its opposition, argues that the CA's decision is not yet final and the absence of the required COE is sufficient legal basis for respondent to deny petitioner's availment of ITH incentive.

We deny the instant motion.

Matters raised for the first time in the Motion for

[4] G.R. No. 178087, May 5, 2010.
[5] G.R. No. 187589, December 3, 2014.
[6] CTA Case No. 7984, April 17, 2013.
[7] G.R. No. 213943, March 22, 2017.
[8] G.R. No. 220835, July 26, 2017.

Reconsideration are not allowed

The records of the case reveal that the issues pertaining to the defective waivers were raised only by the petitioner in the instant motion for reconsideration. The issues were neither raised in its petition for review nor the subject waivers included in its Pre-Trial Brief and Formal Offer of Evidence. Moreover, such issues were not argued in its Memorandum for consideration in the promulgation of the assailed decision.

In the case of *Development Bank of the Philippines v. West Negros College, Inc.*[9], the Supreme Court ruled that matters raised for the first time in the motion for reconsideration are not allowed and courts are precluded from entertaining them, to wit:

> These questions are largely factual in nature and beyond the province of this Court to determine, not being a trier of facts. **Moreover, it is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.** On appeal, only errors specifically assigned and properly argued in the brief will be considered, with the exception of those affecting jurisdiction over the subject matter as well as plain and clerical errors. (*Emphasis supplied*)

The rationale of such decision was further explained in the case of *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue,*[10] to wit:

> "<u>It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings.</u> The Court cannot simply grant the plea of the CIR that the procedural rules be relaxed based on the general averment of the interest of substantive justice. <u>It should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. Procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules.</u> While in certain instances, the Court allows a relaxation in the application of the rules, it never intends to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases of

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[9] G.R. No. 152359, May 21, 2004.
[10] G.R. No. 157594, March 09, 2010.

> demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice. (*Underscoring supplied*)

Further, the records of this case reveal that petitioner's responsible officer, Mr. Miguel Alberto Gutierrez, who signed the alleged defective waivers appears to have an apparent authority.

In petitioner's Amended Articles of Incorporation,[11] it reveals that Mr. Gutierrez had a stock subscription of 26,000 shares making him one of petitioner's incorporators and stockholders. He is also a signatory in petitioner's Directors' Certificate of Amendment of the Articles of Incorporation[12] holding himself as one of its members in the BOD.

Moreover, in a letter dated May 24, 2012[13] of the BOI and the undated letter of protest[14] to the Bureau of Internal Revenue (BIR), it was indicated that Mr. Miguel Alberto Gutierrez is petitioner's President. In the case of *Advance Paper Corporation et al. v. Arma Traders Corporation et al.*,[15] the Supreme Court ruled that a president of a corporation may bind the latter even without first securing BOD's approval, to wit:

> **"[A]pparent authority is derived not merely from practice. Its existence may be ascertained through** (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words the apparent authority to act in general, with which it clothes him; or (2) **the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation.** [emphases and underscores ours]

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[11] Docket, Vol. I, Annex "A", Petition for Review, pp. 36-44; Exhibit "P-14", pp. 354-363.
[12] Docket, Vol. I, pp. 362-63.
[13] *Id.,* Vol. I, Exhibit "P-8", p. 223.
[14] *Id.,* Vol I, Annex "E", Petition for Review, p. 50; Exhibit "P-4", p. 215.
[15] G.R. No. 176897, December 11, 2013.

> In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, we ruled that the doctrine of apparent authority is applied when the petitioner, through its president Antonio Punsalan Jr., entered into the First Contract without first securing board approval. Despite such lack of board approval, petitioner did not object to or repudiate said contract, thus 'clothing' its president with the power to bind the corporation.
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> "Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation. **In the absence of a charter or bylaw provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties.**"

Accordingly, the issue on the alleged defective waivers will not be entertained because this Court is precluded from doing so as discussed above.

Simultaneous application of deficiency interest and delinquency interest is allowed under the law

As to its argument that simultaneous imposition of the deficiency interest and delinquency interest is erroneous, Section 249 of the 1997 National Internal Revenue Code (NIRC), as amended, provides that:

> "**SEC. 249. Interest.** -
>
> **(A) In General.** - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> **(B) Deficiency Interest.** - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> **(C) Delinquency Interest.** - In case of failure to pay:

(1) The amount of the tax due on any return to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.[2]

(D) Interest on Extended Payment. - If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid."

Nowhere in the said provision nor in the other provisions of the 1997 NIRC, as amended, does it provide that the simultaneous imposition of a deficiency and delinquency interest is prohibited. To emphasize, the *deficiency interest* is applied when there is a non-payment of a tax due from the date prescribed for its payment until the amount is fully paid. On the other hand, *delinquency interest* is applied when there is a failure to pay a deficiency tax, or any surcharge or interest thereon on the due date.

In the case of *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*,[16] the Supreme Court allowed the imposition of delinquency interest even after the imposition of deficiency interest, to wit:

"The Court likewise holds the imposition of delinquency interest under Section 249 (c) (3) of the 1997 NIRC to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made."

[16] G.R. No. 197117, April 10, 2013.

However, such imposable interest may only be imposed until December 31, 2017 considering the effectivity of Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion" (TRAIN) Law, on January 1, 2018 which prohibits the double imposition of interest penalties.

Prejudicial Question is not applicable when the resolution of a pending civil case does not affect an administrative proceeding

As discussed in the May 15, 2018 Decision, petitioner did not succeed in proving its entitlement to the Income Tax Holiday (ITH) incentive for taxable year 2011 by failing to show the COE within the deadline as required in RMC 14-2012:[17]

> "Petitioner also raised the issue of prejudicial question considering that the issue of the validity of the withdrawal of said ITH incentive is pending in the Supreme Court. It also cited the case of *Antonio Abacan Jr. et al. v. Northwestern University, Inc.* where the Supreme Court applied said doctrine involving a civil case and an administrative case, to wit:
>
>> 'Technically, there would be no prejudicial question to speak of in this case, if we are to consider the general rule that a prejudicial question comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. However,

[17] "The Memoranda entered into between the BIR and Board of Investments (BOI) and BOI-Autonomous Region of Muslim Mindanao (BOI-ARMM); and BIR and Philippine Economic Zone Authority (PEZA), both entered into on March 1, 2007, contain provisions limiting the authority of the BIR to investigate returns filed by enterprises under BOI's, BOI-ARMM's and PEZA's jurisdictions. Said provisions are contrary to law, and thus for this reason, said MOAs are hereby being revoked.

BOI, BOI-ARMM and PEZA registered enterprises are thus subject to the same rules and regulations affecting regular taxpayers, and must submit properly accomplished requirements and documents within the time-frame prescribed by pertinent issuances. Likewise, these enterprises are required to submit their certificate for entitlement to ITH or preferential treatment within thirty (30) days from filing of their ITRs, as among the requirements for their enjoyment of ITH or preferential tax privileges.

This revocation takes effect immediately. All revenue officials and employees are hereby enjoined to give this circular as wide publicity as possible."

> considering the rationale behind the principle of prejudicial question, **being to avoid two conflicting decisions**, prudence dictates that we apply the principle underlying the doctrine to the case at bar.
>
> A prejudicial question is that which arises in a case, the resolution of which is a logical antecedent of the issue involved therein and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court but the jurisdiction to try and resolve it must be lodged in another court or tribunal.' (*Emphasis supplied*)

As shown above, the rationale of the high court in the application of said doctrine is to avoid two conflicting decisions in that particular case.

However, in the instant case, there will be no conflicting decision between the high court's probable decision and the respondent's assessment.

<u>Petitioner should be aware that the ground for the said tax assessment 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. Hence, even if petitioner will be successful in securing a favorable decision from the high court, still it can not submit the required COE within the prescribed taxable period as mandated under the said RMC</u>.

It is true that the causal effect of the withdrawal of such ITH incentive is the non-issuance of the required COE but petitioner cannot fault the respondent in performing its main duty which is to assess and collect the rightful internal revenue taxes.

It is only proper for the respondent to issue the necessary assessment upon failure of the petitioner to comply with the required submission of the COE under RMC No. 014-12." [18] (*Underscoring supplied*)

In *Municipality of Cainta v. City of Pasig and Uniwide Sales Warehouse Club, Inc.*,[19] the Supreme Court held that an action for tax collection can proceed despite the pending cases in the Regional Trial Court and the Court of Appeals which pose a prejudicial question, thus:

"*<u>The action for tax collection can proceed despite the pendency of</u>*

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[18] Docket, Vol II. pp. 520-521.
[19] G.R. No. 176703, June 28, 2017.

the boundary dispute case before the RTC-Antipolo and the petition for certiorari before the CA.

There is no merit to Cainta's contention that the RTC-Pasig should have dismissed or suspended the proceedings for tax collection on the ground of *litis pendentia* / forum shopping or the existence of a prejudicial question, respectively, in view of the pending boundary dispute case before the RTC-Antipolo.

There was no *litis pendentia* or forum shopping as would justify the dismissal of the tax collection case. The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to res judicata in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.

As correctly found by the RTC-Pasig and affirmed by the CA, the first and second requisites are wanting. Uniwide is not a party to the boundary dispute case between Cainta and Pasig, and the first action is for settlement of boundary dispute while the second action is for collection of tax.

Moreover, the third requisite is also wanting, because regardless of which party is successful, a judgment in the boundary dispute case will not amount to res judicata in the tax collection case. As discussed above, the basis for determining which LGU has the apparent right to collect local taxes is the location as appearing on the certificate of title, unless an amendment thereto is duly made. It must be noted that during the subject years, the TCTs show that the subject properties are situated in Pasig, giving the latter the apparent right to collect taxes thereon, which is precisely the subject of the action under consideration. For this same reason, the Court cannot sustain Cainta's contention that the boundary dispute case presented a prejudicial question warranting the suspension of the tax collection case.

There is also no merit to the contention that it was erroneous for the RTC-Pasig to proceed with the tax collection case despite Cainta's filing of a petition for certiorari with the CA. A special civil action for certiorari under Rule 65 is an original or independent action. An independent action does not interrupt the course of the case unless there be a writ of injunction stopping it. Although Cainta's petition for certiorari sought the issuance of a temporary restraining order and/or preliminary injunction, none was issued by the CA. In any case, said petition had already been decided by the CA against Cainta on 30 September 2004, which

> became final and executory on 28 October 2004." (*Underscoring supplied and citations omitted*)

As in the cited case, although there is a favorable CA decision obtained by the petitioner herein, the same is still on appeal before the Supreme Court and, thus, has not attained finality with respect to the annulment of the BOI resolutions withdrawing petitioner's ITH. In addition, as far the respondent CIR is concerned, it is not a party to the CA case and is, therefore, not bound the by findings of the court therein and is correct in proceeding with the assessment. Finally and more importantly, the petitioner did not obtain any order *restraining* the assessment conducted by the respondent or suspending the trial of this case because of the alleged existence of a prejudicial question in the CA case.

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

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

With all due respect, please see my Concurring and Dissenting Opinion.

CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
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-versus-

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 08 2018 4:05 pm

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Concurring and Dissenting Opinion

MANAHAN, J.:

I concur with the majority's disposition of the matters pertaining to the alleged waivers and simultaneous application of deficiency interest and delinquency interest. However, with due respect, I disagree with their disquisition on the issue of prejudicial question.

Petitioner's argument that the pendency of its Supreme Court (SC) case against the Board of Investments (BOI), the issue of which is the validity of the BOI's withdrawal of the income tax holiday (ITH) incentive of petitioner, constitutes a prejudicial question, has a factual and legal basis.

In the decision[1] rendered by the Special Second Division of the Court of Appeals (CA) in the case of *Board of Investments v. SR Metals Inc.*, it annulled and set aside the BOI resolution withdrawing petitioner's ITH incentive. Said decision was eventually elevated to the SC by the BOI and currently pending in the high court.

Even if respondent is not a party to the said SC case, if a favorable decision will be rendered by the SC, petitioner's ITH

[1] Docket, Vol. I, Decision promulgated on December 4, 2014, Exhibit "P-11", pp. 232-249.

incentive will be restored. On the other hand, if an adverse decision will be rendered against the petitioner, the assessment will be affirmed. Thus, the issue being resolved by the SC constitutes a prejudicial question which will determine the validity of the assailed assessment.

In the case of *Pedro III Fortich-Celdran et al. v. Ignacio A. Celdran et at.*[2], the Supreme Court explained what the essence of a prejudicial question is, to wit:

> A pre-judicial question is one that arises in a case, **the resolution of which is a logical antecedent to the issue involved therein**, and the cognizance of which pertains to another tribunal; that is, it is determinative of the case before the court and jurisdiction to pass upon the same is lodged in another tribunal. (*Emphasis supplied*)

Although prejudicial question does not affect the pendency of the civil case in an administrative proceeding as ruled in the assailed resolution, this ponente begs to differ since the cases involved herein are the final resolution by the SC of the validity of the withdrawal of the ITH incentives by the BOI and the legality of respondent's tax assessment against the petitioner which is pending in the Court *a quo*.

Unlike in the cited case of *Municipality of Cainta v. City of Pasig and Uniwide Sales Warehouse Club, Inc.* of the assailed resolution, where the issue is a boundary dispute as to which local government unit (LGU) should the private party pay its local taxes, the issue in the instant case is the rightful enjoyment of ITH incentive that will determine the validity of respondent's tax assessment. Hence, it is not applicable in the instant case.

In the *Cainta case*, the private party, Uniwide Sales Warehouse Club, Inc. (Uniwide), will still be liable to pay its local taxes either to the Municipality of Cainta or the City of Pasig. On the other hand, in the instant case, the SC decision will determine petitioner's enjoyment of ITH incentive and it will retroact from the time BOI withdrew petitioner's incentive. Hence, it will be determinative of the validity of respondent's tax assessment.

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[2] G.R. No. L-22677, February 28, 1967.

Moreover, in *Cainta case*, there will be no conflicting decision on the part of Uniwide because upon promulgation by the Court of its decision, the latter may only affirm the payment to the LGU which received the payment or it will direct the same to transfer such payment to the other LGU upon resolution of the boundary dispute.

However, the promulgation of a potential conflicting decision by this Court with that of the SC on the validity of the tax assessment as a result of the restoration of petitioner's ITH incentives is highly probable if the latter sustains said CA decision and this Court sustains respondent's tax assessment. Thus, it is prudent for this Court to hold in abeyance the disposition of the instant motion until the final action of the high court.

As aptly ruled in the case of *Antonio Abacan Jr. et al. v. Northwestern University, Inc.*[3] "xxx the rationale behind the principle of prejudicial question, (is) xxx **to avoid two conflicting decisions** xxx."

In view of the foregoing, in the interest of substantial justice without compromising the procedure of this Court, I rule to **HOLD IN ABEYANCE** the resolution of the instant Motion for Reconsideration (of the Decision dated 15 May 2018) during the pendency of the SC case and order the parties to inform this Court of the final SC action on the case of *Board of Investments v. SR Metals Inc.* within five (5) days from their receipt of said action.

CATHERINE T. MANAHAN
Associate Justice

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[3] G.R. No. 140777 dated April 8, 2005.