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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:
JAN 14 2020 12:45 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

This resolves Respondent's "Motion for Reconsideration (Re: Decision dated 24 September 2019)"[1] ("Motion for Reconsideration") filed on October 11, 2019, with Petitioner's "Comment/Opposition [to Respondent's Motion for Reconsideration (Re: Decision dated 24 September 2019) dated 9 October 2019]"[2] seeking to set aside the Decision[3] promulgated on September 24, 2019 ("Assailed Decision"), the dispositive portion of which reads:

> "**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

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1 Rollo, pp. 203-209.
2 *Id.*, pp. 217-227
3 *Id.*, pp. 183-194.

Respondent against Petitioner for taxable year 2011 is **CANCELLED**.

SO ORDERED."[4]

In his motion for reconsideration, Respondent raises the following arguments:

1) The Court erred in invalidating the deficiency income tax assessment against Petitioner for taxable year 2011; and

2) The Decision of the Supreme Court dated October 03, 2018 in *Board of Investments v. SR Metals, Inc.*[5] ("*BOI v. SR Metals*") cannot be applied retroactively.

On the other hand, Petitioner, in its Comment/Opposition, asserts that the grounds relied upon by Respondent in his motion deserve scant consideration, for the following reasons:

1) The issuance of a Certificate of Entitlement ("COE") required by Respondent, rests upon the validity of Petitioner's Income Tax Holiday ("ITH") incentive. Such withdrawal of Petitioner's ITH incentive was already decided by the Supreme Court in favor of Petitioner in *BOI v. SR Metals*; and

2) The Court properly took judicial notice of *BOI v. SR Metals* in rendering the Assailed Decision.

We resolve to deny the motion for lack of merit.

Review of Respondent's arguments shows that the same were sufficiently addressed and passed upon in the Assailed Decision. At any rate, the Court shall reiterate the pertinent portions of said Decision in order to prove its point.

Respondent insists that Petitioner cannot avail the ITH incentive under the Omnibus Investments Code of 1987[6]. A COE is a formal requirement for entitlement to such incentive. Thus, even if Petitioner may be successful in ultimately having the revocation by the Board of Investments ("BOI") of its incentive be reversed, still, as of the time it filed its Income Tax Return for

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[4] *Id.*, p. 193.
[5] G.R. No. 219927, October 03, 2018.
[6] Executive Order No. 226, July 16, 1987.

taxable year 2011, it is not in possession of a COE. Moreover, Respondent argues that the subsequent Decision in *BOI v. SR Metals* cannot alter the established fact that when it issued the subject assessment, Petitioner had no COE in order for it to be entitled to ITH incentive for taxable year 2011.

Respondent is mistaken.

The Supreme Court in *BOI v. SR Metals* declared unequivocally that the withdrawal by the BOI of Petitioner's ITH incentive was baseless and unwarranted. Conversely, Petitioner is entitled to the ITH incentive as stated in its Certificate of Registration No. 2008-113[7], although it is not in possession of a COE which was required to be submitted for taxable year 2011.

This Court cannot ignore that the subject matter in both *BOI v. SR Metals* and the instant case pertain to the very same Certificate of Registration from which the ITH incentive granted to Petitioner is based. We cannot also ignore that the withdrawal of the said incentive by the BOI was without basis.

It is true that Respondent cannot be faulted for pursuing his duty under the National Internal Revenue Code (NIRC) of 1997, as amended, and assessing Petitioner's taxable income at the regular rate of thirty percent (30%) pursuant to Section 27(A) of the Code since the latter failed to submit a COE which would prove its entitlement to the ITH Incentive. And yet, neither can Petitioner be faulted for failing to provide the necessary COE as it was erroneously withdrawn by the BOI.

The ruling however in *BOI v. SR Metals* is crystal clear. Petitioner was entitled to the ITH incentive during the period of the subject assessment.

It bears stressing that decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[8] Decisions of the Supreme Court have the force and effect of law and are binding upon the courts.[9] In this regard, We have no other option but to abide by the ruling of the Supreme Court in *BOI v. SR Metals*.

WHEREFORE, finding no cogent reason to reverse the Assailed Decision, Respondent's "Motion for Reconsideration (Re: Decision dated 24 September 2019)" is **DENIED** for lack of merit.

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7 Docket, p. 347.

8 Visayas Geothermal Power Company v. Commissioner of Internal Revenue, G.R. No. 197525, June 4, 2014.

9 Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company, G.R. No. 140230, December 15, 2005.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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
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