REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ADVANCED WORLD SYSTEM, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8977

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
JUL 3 1 2018 : 10:59am

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RESOLUTION

MINDARO-GRULLA, *J.*:

For resolution is respondent's **Motion for Reconsideration (Of the Decision dated 19 March 2018)**, filed through registered mail on April 16, 2018 and received by the Court on April 20, 2018, with petitioner's **Comment [To Motion for Reconsideration]**, filed on April 27, 2018.

Respondent seeks reconsideration of the Court's Decision dated March 19, 2018, the disposition portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Final Decision on Disputed Assessment and the Formal Assessment Notice issued by respondent against petitioner for taxable year 2006 covering deficiency income are hereby **CANCELLED and SET ASIDE**.
>
> **SO ORDERED**."

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In assailing the said Decision, respondent anchors his arguments on the ground that the Court erred in ruling that petitioner can avail of the income tax holiday on the activities registered with the Board of Investments (BOI) and on those registered with the Philippine Economic Zone Authority (PEZA).

Respondent contends that an ecozone enterprise cannot simultaneously avail of the two sets of fiscal incentives provided under Section 23 of Republic Act (R.A.) No. 7916. According to respondent, petitioner had registered its activities located in Muntinlupa and Cebu Offices with the BOI as pioneer enterprise on certain research and development and as a new service firm in the field of software development to which the latter enjoys a six-year income tax holiday from the start of commercial operations in September 2001 until September 2007. It is further alleged that petitioner also opted to register its business activities with the PEZA in 2006. Respondent alleges that although the business activities of petitioner are located in different cities/locations, it involves only one entity.

Respondent maintains that the prohibition on simultaneous availment refers to the availment per entity and not activity per city or location. Allegedly, the reason behind such prohibition is because of the consolidated filing of taxes made by the same entity regardless of the locations of its different offices/activities, and the said filing of consolidated tax returns are made in the head office, and not per locations but per taxpayer. Respondent insists that when petitioner registered its activities with PEZA while enjoying the fiscal incentives already granted by BOI, there was a simultaneous availment made by petitioner of the income tax holiday for the same project or activity although its offices are located in different locations. As such, the deficiency income tax assessment must allegedly be upheld.

On the other hand, petitioner claims that respondent's motion is a mere rehash of his Memorandum. Petitioner posits that there is no prohibition against registering one activity with PEZA and another activity with BOI by the same corporation. Allegedly, what the law prohibits is the simultaneous availment of PEZA incentive and BOI incentive for the same activity. Petitioner points out that despite of its disclosure that the other activities in its Muntinlupa and Cebu offices were registered with the BOI, PEZA approved its registration subject to the following: (i) registration of a new and separate entity that will eventually undertake the PEZA-registered activity; and (ii) maintenance of separate books of account for the PEZA-registered activity in the meantime that the new entity is pending registration, which were both satisfied by petitioner. It is also averred by petitioner that upon such approval, its PEZA registration and entitlement to income tax holiday became effective, and the PEZA did not withdraw or revoke the said registration and entitlement to income tax holiday.

After a thorough evaluation of respondent's arguments, the Court finds that the same involve facts and issues which have already been passed upon in the assailed Decision.

It is worthy to reiterate the assailed Decision, *viz*:

> "Stated differently, both the PEZA and the BOI may grant Income Tax Holiday to enterprises registered with them.
>
> On September 18, 2001, petitioner registered with the BOI its service activities in its Muntinlupa and Cebu offices as a pioneer enterprise on certain research and development and a new service firm in the field of software development. Under such registration, petitioner enjoys, among other incentives, a six (6)-year ITH from the start of commercial operations in September 2001 until September 2007.
>
> On March 14, 2005, petitioner registered with the PEZA its activities in its Makati office, and was granted one (1) year to enjoy the incentives thereon with a condition, which reads as follows:
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>> 'Within one (1) year from the date of signing of (the Registration Agreement), the REGISTRANT shall file an application with PEZA for registration of a new/separate entity to exclusively handle its PEZA-registered project at the Multinational Bancorporation Centre (MB) subject to PEZA-approval; unless prior to or upon the end of the one-year period, the Citibank-Frabelle Building in Alabang and the PDI Condominium at Cebu City, where its other BOI-registered

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> operations are located are proclaimed as PEZA IT Buildings and the REGISTRANT's project in the said buildings are likewise registered with PEZA, or if a PEZA policy is issued allowing PEZA-registered enterprises to maintain their non-PEZA registered projects under the same entity registered with PEZA.'

Through the Letters dated February 22, 2006 and June 22, 2006, the PEZA granted petitioner's request for an extension in the registration of a new/separate entity until June 30, 2006 and August 1, 2006, respectively.

On July 31, 2006, the new entity as required by PEZA was registered under the name of 'Advanced World Solutions, Inc.'. Accordingly, the registered activity undertaken by petitioner in its Makati office was taken over by the newly-registered entity.

On August 25, 2006, PEZA cancelled the petitioner's registration as an Ecozone IT Enterprise at the Multinational Bancorporation Centre.

Clearly, petitioner is not only BOI-registered, but was also a PEZA-registered. Accordingly, petitioner can avail of the Income Tax Holiday on the activities registered with the BOI, and on those registered with the PEZA. Petitioner's entitlement to the incentive arose from projects/activities in different locations duly registered with different authorities. Also, the incentive was granted pursuant to different laws. Thus, contrary to the respondent's allegation, there was no simultaneous availment of the Income Tax Holiday incentive for the same project/activity in the same site/location."

As already ruled, there was no simultaneous availment of incentives in this case because petitioner's entitlement to the incentive arose from projects/activities in different locations duly registered with different authorities, and pursuant to different laws.

Since respondent failed to raise matters substantially plausible which could merit a reversal of the ruling in the assailed Decision, the Court finds the instant motion bereft of merit.

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WHEREFORE, premises considered, respondent's **Motion for Reconsideration (of the Decision dated 19 March 2018)** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice