REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2049** (CTA Case No. 9253)
	Present:
- **versus** -	**DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO, *JJ.***
SR METALS, INC., Respondent.	Promulgated: JAN 31 2020 3:15 p.m.

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DECISION

BACORRO-VILLENA, J.:

Before the Court is a Petition for Review[1] pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals

[1] Dated 02 May 2019, *Rollo*, pp. 7-22.

[2] **SEC. 3.** *Who may appeal; period to file petition.* –

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

(RRCTA), filed by petitioner Commissioner of Internal Revenue **(petitioner/CIR)**. Petitioner seeks the reversal of the Special Third Division's (**Special Third Division**'s) Decision and Resolution dated 14 November 2018[3] and 03 April 2019[4], respectively, in CTA Case No. 9253, entitled *SR Metals, Inc. v. Commissioner of Internal Revenue.*

FACTS OF THE CASE

Prior to the proceedings in CTA Case No. 9253, respondent SR Metals, Inc. (**respondent/SRMI**) was registered on 04 June 2008 with the Board of Investments (**BOI**) under Certificate of Registration No. 2008-113[5]. As a BOI-registered enterprise, SRMI enjoyed an Income Tax Holiday (**ITH**) incentive for four (4) years from its registration, thus exempting it from payment of income taxes pursuant to the Omnibus Investments Code of 1987.[6]

On 28 February 2012, the BOI withdrew respondent's ITH incentive. Aggrieved by the BOI's decision, respondent appealed to the Court of Appeals (**CA**) in a case captioned as *SR Metals, Inc. v. Board of Investments* (**SRMI v. BOI**), with docket number CA-G.R. SP No. 131511.

On 04 December 2014, the CA promulgated its decision[7] in *SRMI v. BOI,* reversing the BOI's decision and thereby reinstating respondent's ITH incentive. The BOI timely filed its Motion for Reconsideration (**MR**) but the CA affirmed its earlier decision.[8] The BOI then elevated the matter to the Supreme Court in a case entitled *Board of Investments v. SR Metals Inc.* (**BOI v. SRMI**).[9]

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[3] Division Docket, pp. 448-465.

[4] Id., pp. 501-504.

[5] Exhibit "P-7", id., pp. 347-353.

[6] **Article 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 fully exempt from income taxes levied by the National Government.** 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...

(Emphasis supplied)

[7] Exhibit "P-13", Division Docket, supra, pp. 253-271.

[8] Resolution dated 11 August 2015; Exhibit "P-14", id., pp. 272-274.

[9] G.R. No. 219927, 03 October 2018.

In the *interim*, petitioner issued Letter of Authority (**LOA**) No. LOA-121-2014-00000043, dated 07 May 2014, authorizing the named revenue officers (**ROs**) to examine respondent's books of accounts and other pertinent records relating to respondent's internal revenue taxes for calendar year (**CY**) 2012.[10]

On 01 October 2015, respondent received from the Bureau of Internal Revenue (**BIR**) a Preliminary Assessment Notice (**PAN**) dated 18 September 2015, assessing it for deficiency income tax, among others, in the amount of ₱74,493,603.35. In its Reply to the PAN, respondent informed the BIR of the CA's decision and resolution in *SRMI v. BOI*. However, on 11 November 2015, respondent still received a Formal Letter of Demand (**FLD**) and Final Assessment Notice (**FAN**).[11] In the details of discrepancies attached to the FLD, the BIR maintained the BOI's withdrawal of respondent's ITH incentive. Respondent filed its protest to the FLD and contended that the CA's resolution had not yet attained finality. On 14 December 2015, petitioner denied the same in its Final Decision on Disputed Assessment (**FDDA**).[12] On 06 January 2016, SRMI received petitioner's FDDA.

On 05 February 2016, respondent filed its Petition for Review before this Court and the case was raffled to its Third Division.

Trial ensued thereafter but during the pendency of the proceedings, the Supreme Court, on 03 October 2018, promulgated its decision in *BOI v. SRMI*, affirming the CA's decision and resolution, and likewise affirming respondent's ITH incentive. Taking its cue, the Special Third Division, in its assailed Decision of 14 November 2018, granted respondent's Petition for Review. The dispositive portion of the Decision reads:

> ...
>
> **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.**[13]

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10 *Rollo*, pp. 30-31.
11 Dated 03 November 2015 and 11 November 2015, respectively; id., p. 31.
12 Id. p. 32.
13 Supra at note 3, p. 464.

...

Petitioner filed his MR[14] but then, the Special Third Division found no cogent reason to deviate from its 14 November 2018 Decision and thus denied the MR on 03 April 2019. Hence, the present petition.

ISSUE

The petitioner assigns a single error to the assailed decision and resolution of the CTA's Special Third Division, as follows:

> **THE SPECIAL THIRD DIVISION OF THE HONORABLE COURT ERRED WHEN IT CANCELLED THE DEFICIENCY INCOME TAX ASSESSMENT BASED ON THE DECISION OF THE SUPREME COURT IN *BOARD OF INVESTMENTS vs. SR METALS, INC.* WHERE IT WAS HELD THAT THE WITHDRAWAL OF PETITIONER'S INCOME TAX HOLIDAY INCENTIVE WAS WITHOUT BASIS.**[15]

ARGUMENTS

In support of the above issue, petitioner argues that, despite the Supreme Court's decision in *BOI v. SRMI*, respondent should not have been exempted from paying income taxes for CY 2012. It was assessed because it essentially failed to submit the Certificate of Entitlement (**COE**) to the ITH incentive, as required by Revenue Memorandum Circular (**RMC**) No. 14-12[16] entitled *Revocation of Memoranda of Agreement dated March 1, 1997 between BIR and Board of Investments*

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[14] Filed on 04 December 2018, Division Docket, pp. 467-475.

[15] *Rollo*, p. 11.

[16] 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.

(BOI) and BOI-Autonomous Region of Muslim Mindanao (BOI-ARMM); and BIR and PEZA, circularized under RMC Nos. 15-2007 and 17-2007, respectively.

Petitioner further relies on the decision of this Court's Second Division in CTA Case No. 9256, entitled *SR Metals, Inc. v. Commissioner of Internal Revenue,* promulgated on 15 May 2018, involving the same parties. There, the Second Division denied SRMI's petition for review on the ground of its failure to submit the COE, thereby upholding the BOI's withdrawal of its ITH and sustaining the BOI's assessment of deficiency income tax (against it).

On the other hand, respondent insists that, as reflected in the details of discrepancies attached to the FLD and the FDDA, it was not the lack of the COE but rather the BOI's withdrawal of SRMI's ITH incentive which became the basis of the BIR's assessment. At any rate, it maintains that the failure to provide the COE within the prescribed period was caused by BOI's illegal withdrawal of its ITH. Respondent therefore claims that the conclusions reached by the Special Third Division were proper and in accord with the Supreme Court's decision in *BOI v. SRMI.*

RULING OF THE COURT *EN BANC*

At the onset, it must be noted that the decision of this Court's Second Division in CTA Case No. 9256 was reached months prior to the Supreme Court's pronouncement in *BOI v. SRMI.* Thus, at that time, the propriety of the BOI's withdrawal of respondent's ITH incentive was still in dispute. There being no injunctive action against the BIR's assessment of respondent, the Second Division, in CTA Case No. 9256, could not be faulted for maintaining the assessment's validity (at the time).

The advent of the Supreme Court's decision in *BOI v. SRMI,* however, severely changed the circumstances of the parties. The Supreme Court, in affirming the CA's decision, held:

> ...
> All told, the Court finds that **the withdrawal of respondent's ITH incentive was without any basis**, and thus, affirms the ruling of the CA reversing and setting aside the resolutions embodied in petitioner's letters dated May 24, 2012 and August 12, 2013. As a

> general rule, factual findings of administrative agencies are not interfered with; an exception, however, is when said findings are not supported by substantial evidence, such as in the instant case.[17]
>
> ...

Therefore, as it turns out, respondent should have never lost its ITH incentive in the first place. In effect, any BIR assessment of respondent for deficiency income taxes from the time of the BOI's withdrawal of respondent's incentive up to the time the decision in *BOI v. SRMI* was promulgated should be rendered invalid; unless, other sufficient legal reasons exist to deny respondent's entitlement to the ITH incentive. It is in this respect that petitioner insists on respondent's failure to submit its COE. However, as the Special Third Division correctly pointed out, respondent could not be faulted for failing to provide the BIR a COE. As the records show, by 2012, the BOI had already withdrawn its ITH incentive. As petitioner quoted from the Second Division's decision in CTA Case No. 9256, the fact remains, to wit:

> ...
>
> The evidence will show that petitioner failed to secure the necessary COE for taxable year 2011. In *(sic)* letter dated June 5, 2012 of Mr. Guillermo Laquindanum, Director, Supervision and Monitoring Department of the BOI to the petitioner, it informed the latter that *(sic)* BOI cannot issue the required COE for the said taxable year in view of the withdrawal of petitioner's ITH incentive.[18]
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> ...

Given the impossibility on the part of respondent to procure a COE for CY 2012, the Court *En Banc* is unable to agree with petitioner that respondent must nonetheless be held liable for its income tax deficiencies.

Petitioner's argument that this Court (through its Second Division) had ruled otherwise before also deserves scant consideration. We find no inconsistencies between the decision of the Second Division in CTA Case No. 9256 and the Special Third Division's assailed 14 November 2018 Decision.

As earlier stated, the Second Division's decision in CTA Case No. 9256 was reached prior to the Supreme Court's decision in *BOI v.*

[17] Supra at note 9; Emphasis supplied.
[18] *Rollo*, p. 14.

SRMI, and the BOI's decision to withdraw respondent's ITH incentive had yet to be finally overturned; hence, there was no way for respondent to procure a COE from the BOI during the years it failed to do so. It was only during the proceedings before the Special Third Division (in herein case, CTA Case No. 9253) that the Supreme Court had already decided with finality the right of respondent to the ITH incentive. Consequently, the Special Third Division had no other choice but to rule in accordance with the Supreme Court's decision.

Indubitably, the Special Third Division's assailed Decision was reached pursuant to the settled principle of *stare decisis et non quieta movere* which means "stand by the decisions and disturb not what is settled."[19] This concept proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike.[20] Aside from this principle, the Special Third Division was also similarly bound to submit to the dictates of sound reason when it decided even in the absence of a COE since, to rule contrarily would penalize respondent for something that was beyond its control.

It is the Court *En Banc*'s view therefore that respondent's failure to provide a COE for CY 2012 was borne *not* out of its own neglect but rather, it was an inescapable result of BOI's withdrawal of its ITH during the year in question - a withdrawal that the Supreme Court had now concluded to be unjust.

Furthermore, even assuming *ex argumenti* that varying conclusions were reached by the Second and Special Third Divisions in their respective decisions, the Court *En Banc* remains unbound to follow either. Decisions of lower courts are not binding precedent. The principle of *stare decisis* applies only to cases decided by the Supreme Court[21] as it is only its decisions which carry the weight of law pursuant to Article 8[22] of the New Civil Code.

In the case of *The Philippine Veterans Affairs Office v. Brigida V. Segundo*[23], the Supreme Court ruled:

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19 *Lazatin et al. v. Hon. Desierto, et al.*, G.R. No. 147097, 05 June 2009.
20 Id.
21 *United Coconut Planters Bank v. Spouses Uy*, G.R. No. 204039, 10 January 2018. *See also: Fermin v. People*, G.R. No. 157643, 28 March 2008.
22 **Art. 8.** Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
23 G.R. No. L-51570, 15 August 1988.

> ...
> Let it be admonished that decisions of the Supreme Court "applying or interpreting the laws or the Constitution ... form part of the legal system of the Philippines," and, as it were, "laws" by their own right because they interpret what the laws say or mean. Unlike rulings of the lower courts, which bind the parties to specific cases alone, our judgments are universal in their scope and application, and equally mandatory in character. Let it be warned that to defy our decisions is to court contempt.
> ...

The same basic doctrine was reiterated in *Amelia D. De Mesa et al. v. Pepsi Cola Products Phils., Inc. et al.*[24]:

> ...
> The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:
>
> ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.
>
> It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.
> ...

WHEREFORE, the foregoing considered, petitioner's Petition for Review filed on 02 May 2019 is hereby **DISMISSED** for lack of merit. Accordingly, the 14 November 2018 Decision and the 03 April 2019 Resolution of the Special Third Division in CTA Case No. 9253, entitled *SR Metals, Inc. v. Commissioner of Internal Revenue*, are **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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24 G.R. Nos. 153063-70, 19 August 2005.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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.

ROMAN G. DEL ROSARIO
Presiding Justice