Supreme Court E-Library

fees, the cost of arbitration was also charged against TIEZA. The said award was affirmed by the Court of Appeals, and the Court sustains the same.[61]

WHEREFORE, the Amended Decision of the Court of Appeals dated April 6, 2015 and its Resolution dated July 22, 2015 in CA-G.R. SP No. 131024, upholding the Final Award of the Arbitral Tribunal dated July 16, 2013 in CIAC Case 28-2012, are **AFFIRMED**. It is hereby clarified that the imposition of legal interest at the rate of six percent (6%) on the total monetary award of ₱10,178,440.17 shall be reckoned from the finality of this Decision until full payment.

SO ORDERED.

Leonen, A. Reyes, Jr., and *J. Reyes, Jr., JJ.*, concur.

Gesmundo, J., on official business.

FIRST DIVISION

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

BOARD OF INVESTMENTS, *petitioner, vs.* **SR METALS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING; THE OFFICER-IN-CHARGE (OIC) OF THE BOARD OF INVESTMENT (BOI) HAS THE AUTHORITY TO SIGN

---

[*] Designated additional member per Special Order No. 2588 dated August 28, 2018.

Supreme Court E-Library

THE VERIFICATION AND CERTIFICATION.— Although it appears that the verification and certification of non-forum shopping was not among the list of official documents mentioned in Department Order No. 14-39, series of 2014, the Court is still inclined to uphold the authority of OIC Halili-Dichosa to sign the same. In Memorandum Order No. 2015-080, Supervising Director Halili-Dichosa was designated OIC of petitioner **in the interest of service** as the Undersecretary/Managing Head was on an official trip. Considering the rationale of the said Memorandum, the Court finds that any doubt as to the authority of OIC Halili-Dichosa to file the instant case and to sign the verification and certification of non-forum shopping should be resolved in favor of the government. Obviously, OIC Halili-Dichosa caused the filing of the instant Petition in the performance of her duties and in order to protect the interests of the government. Thus, it is more prudent for the Court to decide the instant Petition on the merits rather than to dismiss it on a mere technicality.

2. ID.; APPEALS; RULE 45 PETITION; PETITIONER ATTACHED THE MATERIAL PORTIONS OF THE RECORDS AS WOULD SUPPORT THE PETITION.— The determination of what pleadings are material to the Petition is up to the Court. In this case, the Court finds that the pleadings filed before the CA were not material considering that most of the attachments to these pleadings were already attached to the instant Petition. What is important is that the assailed Decision and Resolution, the letters and issuances of petitioner as well as the documents submitted by respondent to petitioner were all attached to the Petition. Besides, such failure has been cured as the CA records have been elevated before the Court.

3. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS, DEFINED; RESPONDENT WAS AFFORDED DUE PROCESS IN CASE AT BAR.— Due process in administrative proceedings is defined as "the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of." Because of the nature of administrative proceedings, administrative agencies are usually given a wide latitude or sufficient leeway in applying technical rules of procedure. In this case, although there may have been infirmities or lapses in initiating the cancellation process, the Court,

Supreme Court E-Library

nonetheless, finds that essentially respondent was afforded due process since it was informed of the allegations against it and was given ample opportunity to refute the same. Records show that respondent received the letter dated April 11, 2011 informing it of the allegations made by the *Sangguniang Bayan* and of the *Sangguniang Bayan's* request for the cancellation of respondent's BOI registration; that the said letter required respondent to file a reply within 15 days from receipt of the same; that respondent was allowed to submit evidence to refute the allegations against it; and that respondent sought reconsideration of the withdrawal of its ITH incentive. These clearly show that the essence of due process was complied with.

4. ID.; ADMINISTRATIVE LAW; OMNIBUS INVESTMENT CODE; AS RESPONDENT NEVER MADE ANY REPRESENTATION THAT IT WOULD BE BUILDING A BENEFICIATION PLANT IN ITS APPLICATION, IT IS ENTITLED TO AN INCOME TAX HOLIDAY (ITH) INCENTIVE.— x x x [T]he Court agrees with the findings of the CA that the withdrawal of respondent's ITH incentive was not supported by the law and the evidence. In its Application for Registration, respondent asked that it "be considered as a NEW PRODUCER OF BENEFICIATED SILICATE ORE on the basis of its newly granted [Mineral Production Sharing Agreement] and newly adopted beneficiation process." Clearly, respondent never made any representation that it would be building a beneficiation plant. Moreover, there was nothing in the terms and conditions of both the Project Approval Sheet and respondent's Certificate of Registration as well as in the 2007 IPP to indicate that a construction of a new plant was required for respondent to be registered as a "new project." x x x Since there was no such requirement under the terms and conditions of both the Project Approval Sheet and respondent's Certificate of Registration as well as in the 2007 IPP, petitioner cannot use this as ground to withdraw respondent's ITH incentive.

5. ID.; ID.; ID.; ID.; A COMMITMENT TO BUILD A BENEFICIATION PLANT DOES NOT NECESSARILY REQUIRE THE CONSTRUCTION OF AN INDUSTRIAL BUILDING OR STRUCTURE SINCE A BENEFICIATION PLANT COULD ALSO BE AN ASSEMBLAGE OF EQUIPMENT AND MACHINERIES WHERE THE

BENEFICIATION PROCESS COULD BE DONE.— x x x [E]ven if respondent did commit to build a beneficiation plant, the Court agrees with respondent that a commitment to build a beneficiation plant does not necessarily require the construction of an industrial building or structure, as a beneficiation plant could also be an assemblage of equipment and machineries where the beneficiation process could be done. In this case, respondent was able to prove that it has a beneficiation plant, consisting of x x x equipment and machineries[.] x x x

LEONEN, *J.*, *dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; OMNIBUS INVESTMENT CODE (E.O. 226); RESPONDENT'S REPEATED REFERRAL TO A BENEFICIATION PLANT IN ITS PROJECT FEASIBILITY REPORT BELIES ITS ASSERTION THAT IT NEVER REPRESENTED THAT IT WOULD INSTALL A BENEFICIATION PLANT; IT WAS THE CONSTRUCTION OF THE BENEFICIATED PLANT AND THE PURCHASE OF THE NEW EQUIPMENT THAT CHARACTERIZED RESPONDENT AS A NEW PRODUCER.— SR Metals' repeated referral to a beneficiation plant in its Project Feasibility Report belies its assertion that it never represented that it would install a beneficiation plant which would be valued at ₱43,650,000.00. More importantly though, it was the construction of a beneficiated plant and the purchase of new pieces of equipment that characterized SR Metals as a new producer because without those two (2) substantial capital investments, it would have been considered to have merely expanded its existing mining operations and would not have qualified for the fiscal incentive of a full income tax holiday. This is evident with how the Board of Investments initially rejected SR Metals' application as a "new producer" and suggested that it file an application for an "expanding" producer instead since it was already engaged in small-scale mining. It was only upon SR Metals' request for a reconsideration and upon its commitment that it would build a beneficiation plant that the Board of Investments reconsidered its earlier decision and approved SR Metals' application as "new producer."

Supreme Court E-Library

2. ID.; ID.; ID.; ONLY NEW REGISTERED FIRMS OR NEW PROJECTS, AND EXPANDING FIRMS ARE QUALIFIED FOR AN INCOME TAX HOLIDAY.— An income tax holiday is one of the incentives for registered enterprises provided for in Executive Order No. 226[.] x x x Article 39(a)(1) clearly provides that only new registered firms or new projects may qualify for either a four (4)-year or six (6)-year income tax holiday. Article 39(a)(2) likewise provides a similar incentive to expanding firms, but only for a period of three (3) years and only in proportion to their expansion. Thus, it is understandable why SR Metals would insist on being considered as a new producer because the fiscal incentives given to an expanding producer simply pales in comparison to those available to a new producer.

3. ID.; ID.; ID.; THE BOARD OF INVESTMENT (BOI) HAS THE POWER TO PROCESS, APPROVE AND/OR IMPOSE TERMS AND CONDITIONS FOR APPLICATIONS FOR REGISTRATION, SUSPEND OR CANCEL REGISTRATION AND DETERMINE IF A REGISTERED ENTERPRISE IS QUALIFIED FOR FISCAL INCENTIVES.— [T]he decision on whether or not SR Metals should be classified as a new producer ultimately belongs with the Board of Investments pursuant to its duty to process and approve applications for registration, and to its power to impose the terms and conditions for applications for registration. The Board of Investments likewise has the principal authority to determine if a registered enterprise falls under the specific activities that may qualify for fiscal incentives under the annual Investment Priorities Plan. Consequently, it has the power to either cancel or suspend a registration or an incentive, for the registered enterprise's failure to maintain the required qualifications or its violation of the terms of registration. In the case at bar, the 2007 Investment Priorities Plan provided three (3) different types of new projects: (1) a newly formed or incorporated enterprise; (2) an existing enterprise with a proposed project that is entirely different from its existing business operation; and (3) an existing enterprise which will put up another line or new facility, i.e., physical structure and equipment, and will infuse new investment into its existing business operation. A registered enterprise will have to fall under any of the three (3) classifications for new projects to quality for an income tax holiday; and the Board of

Supreme Court E-Library

Investments, with its mandate of implementing Executive Order No. 226, is the government body empowered to determine if a registered enterprise satisfies the established requirements.

4. **ID.; ID.; ID.; ID.; THE BOI DETERMINATION THAT IN VIEW OF RESPONDENT'S FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF ITS REGISTRATION THERE IS A NEED TO REVOKE ITS PREVIOUS ENTITLEMENT TO AN INCOME TAX HOLIDAY MUST BE RESPECTED.—** The Board of Investments found that SR Metals failed to comply with the terms and conditions of its registration; thus, there is a need to revoke its previous entitlement to an income tax holiday[.] x x x This Court has consistently deferred to the factual findings of administrative agencies as they are the recognized experts in their fields and they can resolve problems in their respective fields "with more expertise and dispatch than can be expected from the legislature or courts of justice." Thus, this Court has accorded respect and even finality to the factual findings of administrative bodies as a tacit recognition of their expertise and technical knowledge over issues falling squarely within their jurisdictions. x x x An income tax holiday is bestowed on a new project to encourage investors to set up businesses and to contribute to the country's economic growth. The fiscal incentive is also meant to help registered enterprises recoup their substantial initial investments by giving them a reprieve from paying income tax for a few years. However, like any privilege, the income tax holiday comes with conditions and requirements which must be fulfilled for its continued enjoyment. With its failure to put up a physical structure, i.e., the beneficiation plant, *and* pieces of equipment, SR Metals cannot be classified as a new project under the 2007 Investment Priorities Plan. Hence, it is not entitled to an income tax holiday and the Board of Investments did not err in revoking its entitlement to it.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Follosco Morallos & Herce for respondent.

Supreme Court E-Library

D E C I S I O N

DEL CASTILLO, *J.*:

"The cardinal rule is that any decision or ruling promulgated by an administrative body must have something to support itself."[1]

Before the Court is a Petition for Review on *Certiorari*[2] filed under Rule 45 of the Rules of Court assailing the December 4, 2014 Decision[3] and the August 11, 2015 Resolution[4] of the Court of Appeals (CA), in CA-G.R. SP No. 131511.

Factual Antecedents

Petitioner Board of Investments (BOI) is a government agency created under Republic Act (RA) No. 5186.[5] It is an attached agency of the Department of Trade and Industry (DTI) and is the lead government agency responsible for the promotion of investments in the Philippines.[6] Respondent SR Metals, Inc., on the other hand, is a corporation engaged in the business of mining in Tubay, Agusan Del Norte.[7]

On April 3, 2008, respondent filed with petitioner an Application for Registration[8] as a new producer of beneficiated nickel ore on a non-pioneer status in relation to its proposed Nickel Project.[9]

---

[1] *Alimario v. Commission on Audit*, 295 Phil. 760, 766 (1993).

[2] *Rollo*, Volume I, pp. 13-47.

[3] *Id.* at 54-71; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Remedios A. Salazar-Fernando and Socorro B. Inting.

[4] *Id*. at 72-73.

[5] *Rollo*, Volume II, p. 1243.

[6] *Rollo*, Volume I, p. 14.

[7] *Id* at 15.

[8] *Id*. at 97-145 and 146-147.

[9] *Id*. at 15.

Supreme Court E-Library

On June 4, 2008, petitioner approved the application and issued Certificate of Registration No. 2008-113[10] in favor of respondent as a new producer of beneficiated nickel silicate ore/ lateritic nickel ore on a non-pioneer status. Accordingly, respondent was granted an Income Tax Holiday (ITH) incentive under the Omnibus Investment Code for the period 2008 to 2012.[11]

On August 31,2010, the *Sangguniang Bayan* of the Municipality of Tubay issued Resolution No. 2010-090,[12] requesting the cancellation of respondent's BOI registration on the following grounds:

> (1) [that respondent was] not a manufacturer or product processor or a beneficiation plant;
>
> (2) [that respondent] was engaged in the direct shipping of unprocessed ore which employed the method of open-cut mining contrary to what [was] stated in its [Certificate of] Registration as a new producer of beneficiated nickel silicate ore/lateritic nickel ore; and
>
> (3) [that respondent] applied for tax exemption x x x without informing or consulting the [M]unicipality of Tubay and the immediate stakeholders.[13]

To prove its claims, the *Sangguniang Bayan* submitted to petitioner Certifications[14] from the Municipal Engineer's Office, the Municipal Assessor's Office, and the Municipal Planning and Development Office attesting that respondent had no industrial building or processing plant declared under its name.[15]

On April 11, 2011, petitioner issued a letter[16] to respondent informing it of the *Sangguniang Bayan's* Resolution requesting

---

[10] *Id*. at 173.

[11] *Id*. at 151.

[12] *Id*. at 155-156.

[13] *Id*. at 55.

[14] *Id*. at 157-159.

[15] *Id*. at 56.

[16] *Id* at 160-161.

Supreme Court E-Library

for the cancellation of respondent's BOI registration. In the same letter, petitioner directed respondent to submit a reply within 15 days from receipt of the said letter.

In its Reply,[17] respondent explained that it was a producer of beneficiated nickel/lateritic nickel ore; that it was registered as a new producer of beneficiated nickel silicate ore/lateritic nickel ore, and not as a beneficiation plant; and that consultation with the concerned local government was not required under the 2007 Investment Properties Plan (IPP).

Ruling of the Board of Investments

On May 24, 2012, petitioner issued a letter[18] informing respondent that, during the February 12, 2012 Board Meeting, the Board resolved to withdraw respondent's ITH incentive for failure to comply with:

> (1) the requirements on new projects under the 2007 IPP, specifically the establishment of another line (beneficiation plant) and the infusion of new investment in fixed assets; and
>
> (2) the Specific Terms and Conditions attached to respondent's Project Approval Sheet and Certificate of Registration, requiring respondent to submit a progress report on the implementation of the registered project and to adhere to a project timetable on the acquisition of machinery/equipment.

Respondent sought reconsideration, submitting a summary of the major equipment composing the beneficiation plant as well as a summary of machineries and equipment and the individual proofs of ownership of the machineries and equipment it had acquired.[19]

On August 12, 2013, petitioner issued a letter[20] informing respondent that the Board, during its July 30, 2013 Meeting,

---

[17] *Id*. at 168-172.

[18] *Id*. at 188.

[19] *Id*. at 190-194.

[20] *Id*. at 196-197.

Supreme Court E-Library

resolved to deny respondent's motion for reconsideration for the following reasons:

(1) late filing;

(2) failure to raise new grounds or information that would warrant a reversal of the Board's Resolution withdrawing respondent's ITH incentive; and

(3) absence of another line and new investment in fixed assets.

Unfazed, respondent elevated the matter before the CA *via* a Petition under Rule 43 of the Rules of Court.

Ruling of the Court of Appeals

On December 4, 2014, the CA rendered the assailed Decision finding respondent entitled to the ITH incentive under the Omnibus Investment Code. The CA ruled that there was nothing in the 2007 IPP requiring respondent to construct a beneficiation plant in order to avail of the ITH incentive.[21] The CA also found that, contrary to the findings of petitioner, respondent infused new investments in fixed assets, submitted progress reports, and complied with the project timetable.[22] Thus, there was no reason for petitioner to withdraw the ITH incentive in favor of respondent. The CA further said that respondent was denied due process when petitioner (1) failed to inform respondent that a formal administrative investigation had already been initiated against it; (2) withdrew respondent's ITH incentive on grounds other than those raised in the Resolution issued by the *Sangguniang Bayan*; and (3) denied respondent's motion for reconsideration for late filing.[23] The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant Petition for Review is Granted. The assailed resolutions of the [BOI] embodied in its letters dated May 24, 2012 and August 12, 2013 withdrawing the

---

[21] *Id*. at 62.

[22] *Id*. at 68-69.

[23] *Id*. at 70.

Supreme Court E-Library

ITH entitlement of [respondent] are hereby ANNULLED and SET ASIDE.

SO ORDERED.[24]

Petitioner moved for reconsideration but the CA denied the same in its August 11, 2015 Resolution.[25]

Hence, petitioner filed the instant Petition, interposing the following issues:

I.

WHETHER X X X THE TERMS AND CONDITIONS OF RESPONDENT'S X X X PROJECT APPROVAL SHEET AND BOI [CERTIFICATE OF REGISTRATION] INCLUDE THE COMMITMENT TO ESTABLISH A BENEFICIATION PLANT.

II.

WHETHER X X X THE GRANT OF [ITH] INCENTIVE IS A MATTER OF RIGHT UPON APPROVAL OF RESPONDENT'S X X X [APPLICATION FOR] REGISTRATION AND DESPITE ITS FAILURE TO ABIDE BY THE TERMS AND CONDITIONS OF ITS [CERTIFICATE OF] REGISTRATION

III.

WHETHER X X X PETITIONER OBSERVED DUE PROCESS IN WITHDRAWING RESPONDENT'S X X X [ITH] INCENTIVE.[2]

Petitioner's Arguments

Petitioner contends that the grant of ITH incentive is not a right but a privilege and that it is premised on the enterprise's compliance with the requirements of the 2007 IPP.[27] In this case, petitioner claims that, upon evaluation of respondent's compliance with the terms and condition of its ITH incentive

---

[24] *Id*. at 70-71.

[25] *Id*. at 72-73.

[26] *Rollo*, Volume II, p. 1205.

[27] *Id*. at 1217-1222.

entitlement, it found that respondent was not entitled to an ITH incentive as it failed to fulfill its commitment to infuse huge capital investments and construct a beneficiation plant.[28] Petitioner likewise points out that the ore processing activity of respondent was different from what was described in its application for registration as a new producer.[29] Thus, petitioner maintains that it did not err in cancelling respondent's entitlement to an ITH incentive.

As to the issue of due process, petitioner avers that respondent was accorded due process as it was informed of its violations and was given ample opportunity to explain its side and present evidence.[30]

Respondent's Arguments

Respondent, on the other hand, puts in issue the lack of authority of the Officer-in-Charge (OIC), BOI Managing Head, Ma. Corazon Halili-Dichosa (OIC Halili-Dichosa), to sign the verification and certification of non-form shopping[31] as well as the failure of petitioner to attach material portions of the records of the case.[32] Respondent argues that there was nothing in Memorandum Order No. 2015-080, series of2015, dated October 9, 2015 to indicate that the OIC is authorized to sign the verification and certification of non-forum shopping as it is not among the list of official documents mentioned in Department Order No. 14-39, series of 2014.[33]

As to the merits of the case, respondent insists that the CA correctly ruled that the withdrawal of respondent's ITH incentive was without any basis since respondent was able to comply

---

[28] *Id*. at 1206-1213.]

[29] *Id*. at 1214-1216.

[30] *Id*. at 1223-1227.

[31] *Id*. at 1261-1268.

[32] *Id*. at 1268-1276.

[33] *Id*. at 1261-1263.

Supreme Court E-Library

with the requirements under the 2007 IPP by making substantial investments in fixed assets and by submitting progress reports on the implementation of its new project.[34] Respondent also echoes the view of the CA that there was nothing in the 2007 IPP to suggest that an actual physical structure or building must be erected to be registered as a new project as the same could refer to an equipment such as a conveyor belt.[35] In fact, respondent was registered as a new project because of its newly adopted beneficiation process, not because of any alleged representation to construct a beneficiation plant.[36] In any case, respondent claims that it has an assemblage of equipment and machineries which comprise its beneficiation plant.[37] Finally, respondent likewise asserts that the withdrawal of its ITH incentive was without due process as petitioner failed to comply with the procedure laid down in the 2004 Revised Rules of Procedure on the Cancellation of Registration under Republic Act No. 5135, Presidential Decree No. 1789, *Batas Pambansa Blg.* 391 and Executive Order No. 226 (2004 BOI Revised Rules).[38]

The Court's Ruling

The Petition must be denied.

The Officer-in-Charge is authorized to sign the verification and certification of non-forum shopping.

Respondent questions the authority of OIC Halili-Dichosa to sign the verification and certification of non-forum shopping. Respondent claims that Memorandum Order No. 2015-080 only authorized OIC Halili-Dichosa to sign and approve vouchers, contracts, orders, and other official documents included in Department Order No. 14-39. And since the verification and

---

[34] *Id.* at 1296-2303 (should be 1303).

[35] *Id.* at 1285-1287 and 1292-1296.

[36] *Id.* at 1277-1291.

[37] *Id.* at 1291-1292.

[38] *Id.* at 2303-2310 (should be 1303-1310).

Supreme Court E-Library

certification of non-forum shopping of the instant Petition is not included in the list of official documents, OIC Halili-Dichosa had no authority to file the instant Petition and sign the verification and certification of non-forum shopping of the same.

Although it appears that the verification and certification of non-forum shopping was not among the list of official documents mentioned in Department Order No. 14-39, series of 2014, the Court is still inclined to uphold the authority of OIC Halili-Dichosa to sign the same. In Memorandum Order No. 2015-080, Supervising Director Halili-Dichosa was designated OIC of petitioner **in the interest of service** as the Undersecretary/ Managing Head was on an official trip. Considering the rationale of the said Memorandum, the Court finds that any doubt as to the authority of OIC Halili-Dichosa to file the instant case and to sign the verification and certification of non-forum shopping should be resolved in favor of the government. Obviously, OIC Halili-Dichosa caused the filing of the instant Petition in the performance of her duties and in order to protect the interests of the government. Thus, it is more prudent for the Court to decide the instant Petition on the merits rather than to dismiss it on a mere technicality.

Besides, in recent cases, the Court has allowed certain officials and employees to sign the verification and certification of non-forum shopping on behalf of the company without need of a board resolution. These are the chairperson of the board of directors, the president of a corporation, the general manager or acting general manager, the personnel officer, the employment specialist in a labor case, and other officials and employees who are "in a position to verify the truthfulness and correctness of the allegations in the petition."[39] In this case, the Court considers OIC Halili-Dichosa to be in a position to verify the truthfulness and correctness of the allegations stated in the instant Petition.[40]

---

[39] *Swedish Match Phils., Inc. v. The Treasurer of the City of Manila*, 713 Phil. 240, 248-249 (2013) citing *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*, 568 Phil. 572, 580-585 (2008).

[40] See *Philippine Health Insurance Corporation v. Our Lady of Lourdes Hospital*, 773 Phil. 28, 36 (2015).

Supreme Court E-Library

Petitioner attached the material portions of the records as would support the Petition.

Respondent contends that the failure of petitioner to attach copies of the pleadings filed before the CA, namely: (1) respondent's Petition for Review; (2) petitioner's Comment; (3) respondent's Reply to Comment; (4) the Memoranda of the parties; (5) petitioner's Motion for Reconsideration; and (6) respondent's Comment/Opposition, is a ground for the dismissal of the instant case under Sections 4(d)[41] and 5,[42] of Rule 45 of the Rules of Court.

The Court does not agree.

The determination of what pleadings are material to the Petition is up to the Court.[43] In this case, the Court finds that the pleadings filed before the CA were not material considering that most of the attachments to these pleadings were already attached to the instant Petition. What is important is that the assailed Decision and Resolution, the letters and issuances of petitioner as well as the documents submitted by respondent to petitioner were

---

[41] SECTION 4. *Contents of petition*. - The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall xxx (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42.

[42] SECTION 5. *Dismissal or denial of petition*. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

[43] *Esguerra v. Trinidad*, 547 Phil. 99, 106 (2007).

all attached to the Petition. Besides, such failure has been cured as the CA records have been elevated before the Court.

In *F.A.T. Kee Computer Systems, Inc. v. Online Networks International, Inc.*,[44] the Court explained that:

> Rule 45, Section 4 of the Rules of Court indeed requires the attachment to the petition for review on *certiorari* 'such material portions of the record as would support the petition.' However, such a requirement was not meant to be an ironclad rule such that the failure to follow the same would merit the outright dismissal of the petition. In accordance with Section 7 of Rule 45, 'the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate.' More importantly, Section 8 of Rule 45 declares that '[i]f the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice.' Given that the TSN of the proceedings before the RTC forms part of the records of the instant case, the failure of FAT KEE to attach the relevant portions of the TSN was already cured by the subsequent elevation of the case records to this Court. This pronouncement is likewise in keeping with the doctrine that procedural rules should be liberally construed in order to promote their objective and assist the parties in obtaining just, speedy and inexpensive determination of every action or proceeding.[45]

Having disposed of the procedural matters, the Court shall proceed to the substantive issues.

Respondent was afforded due process.

Petitioner imputes error on the CA in finding that respondent was not afforded due process. Petitioner insists that respondent was informed in the letter dated April 11, 2011 of its violation and was given several opportunities to refute the same.

Respondent, however, highlights the failure of petitioner to follow the procedure for the Cancellation of Registration provided

---

[44] 656 Phil. 403 (2011).

[45] *Id.* at 420-421.

Supreme Court E-Library

in Sections 1 to 4, Rule II of the 2004 BOI Revised Rules, which reads:

RULE II
Cancellation of Registration

SECTION 1. Initiate Cancellation Proceedings. - The 'Department' concerned shall initiate cancellation procedures against BOI-registered enterprises. It shall prepare a Memorandum for the cancellation of the BOI registration based on any of the ground/s so enumerated in Rule I, Section 2, par. (a) to (k). The same shall be supported by substantial evidence on record.

At the instance of any interested party and upon finding of reasonable basis to prove that the registered enterprise has committed any of the grounds for the cancellation of registration under Section 2 of these rules, the Department concerned shall prepare a 'show-cause letter of cancellation of registration' addressed to the subject BOI registered enterprise requiring it to explain in writing why its registration should not be cancelled.

SECTION 2. Memorandum; Contents. - The Memorandum for the cancellation of registration shall contain the following:

a.) The status of registration of the enterprise;

b.) The grounds for the cancellation of registration, a statement of the acts or omissions constituting the same, a statement of facts to establish compliance by the Board with the due notice requirement mandated under Article 7 of E.O. 226, the law and evidence in support of its findings and a recommendation for the cancellation of registration including:

(i) The imposition of fines and penalties, including the payment of interest, with basis therefor;

(ii) A recommendation for an order of refund, if warranted by the facts/evidence at hand;

SECTION 3. Complaint by an Interested Party; Contents. - Any interested party may file a verified complaint for the cancellation of the registration of any BOI -registered enterprise. It shall contain the following:

a.) Name and address of the Complainant and his legal capacity to file the complaint;

Supreme Court E-Library

b.) Name and address of the registered enterprise complained of;

c.) Ground/s for the cancellation of registration and the acts or omissions complained of as constituting the same; and

SECTION 4. Show-Cause Letter of Cancellation; Contents. - The 'show-cause letter' shall be addressed to the registered enterprise concerned and shall contain the following:

a) Ground/s for the cancellation of the registration;

b) Acts and/or omissions constituting the same;

c) Imposition of fines and/or penalties, whenever applicable;

d) Order of refund of incentives, whenever applicable;

e) Order for the registered enterprise to file its 'Reply' within fifteen (15) days from receipt of the 'show-cause' letter with a proviso that failure or inability to reply within such period will constrain the Office to immediately recommend the cancellation of the registration of the subject enterprise by way of a Memorandum.

Respondent claims that the Resolution of the *Sangguniang Bayan* of the Municipality of Tubay cannot be considered as a verified complaint nor can the letter dated April 11, 2011 be deemed as a show-cause letter. Petitioner likewise cannot claim that it initiated *motu proprio* proceedings against respondent considering that it failed to prepare a memorandum as required under Section 1 of the BOI Revised Rules.

Due process in administrative proceedings is defined as "the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of."[46] Because of the nature of administrative proceedings, administrative agencies are usually given a wide latitude or sufficient leeway in applying technical rules of procedure.[47]

In this case, although there may have been infirmities or lapses in initiating the cancellation process, the Court, nonetheless, finds that essentially respondent was afforded due

---

[46] *Padilla v. Hon. Sto. Tomas*, 312 Phil. 1095, 1103 (1995).

[47] *Saunar v. Ermita*, G.R. No. 186502, December 13, 2017.

Supreme Court E-Library

process since it was informed of the allegations against it and was given ample opportunity to refute the same. Records show that respondent received the letter dated April 11, 2011 informing it of the allegations made by the *Sangguniang Bayan* and of the *Sangguniang Bayan's* request for the cancellation of respondent's BOI registration; that the said letter required respondent to file a reply within 15 days from receipt of the same; that respondent was allowed to submit evidence to refute the allegations against it; and that respondent sought reconsideration of the withdrawal of its ITH incentive. These clearly show that the essence of due process was complied with.

It must be stressed though that in finding that respondent was afforded due process, the Court is not implying that rules of procedures may be brushed aside or trivialized. What the Court is saying is that the rigid application of the rules of procedure should be avoided if it would result in delay or frustrate rather than promote substantial justice.[48]

However, while respondent was not deprived of due process, the Court, nevertheless, finds that, as aptly found by the CA, the withdrawal of the ITH incentive was without any basis.

Respondent is entitled to an ITH incentive.

Petitioner claims that the CA erred m reversing and setting aside its resolutions withdrawing respondent's ITH incentives. Petitioner maintains that respondent failed to comply with the terms and conditions attached to its Certificate of Registration; specifically, respondent failed to:

1) establish another line (beneficiation plant) contrary to its representations;

2) infuse new investment in fixed assets;

3) submit progress reports; and

4) adhere to its project timetable.

---

[48] *Ben Line Agencies Philippines, Inc. v. Madson*, G.R. No. 195887, January 10, 2018.

Supreme Court E-Library

However, after a careful review of the records, the Court agrees with the findings of the CA that the withdrawal of respondent's ITH incentive was not supported by the law and the evidence.

In its Application for Registration,[49] respondent asked that it "be considered as a NEW PRODUCER OF BENEFICIATED SILICATE ORE on the basis of its newly granted [Mineral Production Sharing Agreement] and newly adopted beneficiation process."[50] Clearly, respondent never made any representation that it would be building a beneficiation plant. Moreover, there was nothing in the terms and conditions of both the Project Approval Sheet[51] and respondent's Certificate of Registration[52] as well as in the 2007 IPP to indicate that a construction of a new plant was required for respondent to be registered as a "new project." The pertinent provision of the General Guidelines of the 2007 IPP reads:

X. PROJECT TYPE AND STATUS

1. New Projects

Other than the normal definition of a new project, i.e., one to be undertaken by a newly formed/incorporated enterprise, the following are deemed new projects:

a Project to be establish by an existing enterprise with existing business operation(s) entirely distinct and different from the proposed project in terms of either final product or service, production process, equipment or raw material.

b. Project to be established by an existing enterprise along the same line of business as any of its existing operations provided it meets the following:

---

[49] Letter dated April 30, 2008 (Re: Reconsideration of [respondent's] BOI Application as New Producer of Beneficiated Nickel Silicate Ore; *rollo*, Volume I, pp. 146-147.

[50] *Id*. at 147.

[51] *Id*. at 149-154.

[52] *Id*. at 173.

Supreme Court E-Library

i. the new project will involve the establishment of another line that may be put up in a site either outside or contiguous to its existing premises or compound.

'Another Line' refers to new facilities used in the production of the registered product/service. This line may use a facility common to an existing line such as warehouse, finishing, quality control or laboratory.

'New Facility' refer to the space or area, physical structure and equipment provided for a particular purpose or segment of the production process/service activity.

ii. There is new investment in fixed assets and working capital.

x x x x x x x x x

Since there was no such requirement under the terms and conditions of both the Project Approval Sheet and respondent's Certificate of Registration as well as in the 2007 IPP, petitioner cannot use this as ground to withdraw respondent's ITH incentive.

In any case, even if respondent did commit to build a beneficiation plant, the Court agrees with respondent that a commitment to build a beneficiation plant does not necessarily require the construction of an industrial building or structure, as a beneficiation plant could also be an assemblage of equipment and machineries where the beneficiation process could be done. In this case, respondent was able to prove that it has a beneficiation plant, consisting of the following equipment and machineries:

1) Kleeman Mobile Process Screen;
2) Commander Power Screen.
3) Commander Trommel Washer;
4) Terex Mobile Crusher;
5) CAT 950 Front Loader;
6) CAT 320 Backhoe; and
7) HM 350 Komatsu Articulated Trucks.[53]

[53] *Id*. at 192.

Supreme Court E-Library

As to petitioner's allegations that respondent failed (1) to infuse new investments in fixed assets; (2) to submit progress reports; and (3) to adhere to its project timetable, these are belied by the evidence. In fact, records show that respondent has invested a total of ₱1,151,666,643.01 for equipment and machineries, which are being used to produce beneficiated nickel silicate ore,[54] and has submitted progress reports to petitioner.[55] Quoted below are the findings of the CA on these matters, which the Court adopts as its own:

> As for [respondent's] alleged failure to infuse new investments in fixed assets and acquisition of machinery/equipment, We find that, based on the evidence submitted by [respondent], which [petitioner] has not refuted or disputed, [respondent] has:
>
> (a) already invested a total amount of One Billion One Hundred Fifty-One Million Six Hundred Sixty-Six Thousand Six Hundred Forty-Three Pesos and 1/100 (Php1,151,666,643.01);
>
> (b) acquired, developed and/or constructed new facilities such as mine structures (i.e. ore stockyards and pier yards, dumpsites, haul roads, drainage canals, setting ponds) and support facilities (i.e. office building, motor pool/ME shop, bunkhouses and recreational facility, beaching areas or causeway); and
>
> (c) acquired major equipment components of the beneficiation plant (i.e. 1 unit of Kleeman Mobiscreen, 1 unit of Caterpillar Model 320 DL HE, 2 units of Komatsu HM350-2, 1 unit of Commander Power Screen, 1 unit of Caterpillar 950H Wheel Loader, 2 units of Komatsu HM 350-1, 1 unit of Terex Mobile Crusher and 1 unit of Caterpillar Model 320 DL HE).
>
> We cannot agree with [petitioner's] contention that [respondent] failed to comply with the project time table incorporated in its BOI [Certificate of Registration] because allegedly [respondent] purchased major equipment only in 2012. We find that [respondent] has sufficiently explained and proved that the pieces of equipment acquired in 2012 were merely a re-fleeting of old equipment and the acquisition of Kleeman Mobiscreen (used in screening crushed material from sized material) by [respondent] in 2012 is not evidence that before that, [respondent] has no existent and fully functional beneficiation

---

[54] *Id*. at 193.

Supreme Court E-Library

process, albeit sizing, prior to the acquisition of Kleeman Mobiscreen in 2012, was done manually. We note [petitioner's] unsupported contention is highlighted by [respondent's] unrebutted claim that [petitioner] has not made any site inspection to be able to say that [respondent] has no beneficiation plant or has not infused new investment in terms of fixed assets, equipment and machineries.

We cannot likewise uphold [petitioner's] finding that [respondent] failed to submit progress reports as required under its BOI [Certificate of Registration]. Documentary evidence submitted by [respondent] includes such reports as filed negating BOI's finding. WE also note that [respondent] has, in fact [been] issued a Certificate of Good Standing by the Director of the Supervision and Monitoring Department of BOI.[56]

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.[57]

WHEREFORE, the Petition is hereby **DENIED**. The assailed December 4, 2014 Decision and the August 11, 2015 Resolution of the Court of Appeals, in CA-G.R SP No. 131511 are hereby **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, C.J., and *Tijam, JJ.*, concur.

Bersamin, J., on official leave.

Leonen, *J.*, dissents, see dissenting opinion.

---

[55] *Id*.

[56] *Id*. at 68-69.

[57] *Gala v. Ellice Agro-Industrial Corporation*, 463 Phil. 846-859 (2003).

[*] Per raffle dated September 12, 2018 vice *J*. Jardeleza who recused due to prior action as Solicitor General.

Supreme Court E-Library

DISSENTING OPINION

LEONEN, *J.:*

Administrative agencies are the recognized experts in their fields and can resolve problems in their respective fields with competence and precision. This Court has, thus, accorded respect and even finality to the factual findings of administrative bodies, as a tacit recognition of their expertise and technical knowledge over issues falling squarely within their jurisdictions.

The Board of Investments was created[1] pursuant to Republic Act No. 5186 or the Investment Incentives Act. It is tasked to carry out the state policy of encouraging Filipino and foreign investments in the fields of agriculture, mining, and manufacturing to increase national income and exports, and to promote greater economic stability.[2] It is also the government body with the primary responsibility of implementing the provisions of Executive Order No. 226 or the Omnibus Investments Code of 1987.

The *ponencia* reversed the Board of Investments' withdrawal of SR Metals, Inc.'s (SR Metals) Income Tax Holiday incentive, as the withdrawal was purportedly not supported by substantial evidence since SR Metals complied with the requirements for the fiscal incentive.

Respectfully, I disagree.

On April 3, 2008, SR Metals filed an application as "new producer" of beneficiated nickel ore on a non-pioneer status before the Board of Investments.[3] It submitted the following documents in support of its application:

a) Application Letter dated March 28, 2008; . . .

b) Duly Accomplished BOI Form No. 501 (Application for Registration); . . .

---

[1] Rep. Act No. 5186, Sec. 13.

[2] Rep. Act No. 5186, Sec. 2.

[3] *Rollo,* p. 1197.

Supreme Court E-Library

c) SR Metals' Project Feasibility Report . . . ; and

d) SR Metals' letter dated April 30, 2008. . . .[4]

On May 22, 2008, the Board of Investments approved SR Metals' application as a new producer pursuant to the 2007 Investments Priorities Plan, which required an existing establishment in the same line of business to set up a new facility composed of a physical structure and equipment to be considered as a new project:

X. Project Type and Status

1. New Projects

Other than the normal definition of a new project, i.e., one to be undertaken by a newly formed/incorporated enterprise, the following are deemed new projects:

a. Project to be established by an existing enterprise with existing business operation(s) entirely distinct and different from the proposed project in terms of either final product or service, production process, equipment or raw materials;

b. Project to be established by an *existing enterprise along the same line of business as any of its existing operations*, provided it meets the following:

i) The new project will involve the establishment of another line that may be put up in a site either outside or contiguous to its existing premises or compound.

"Another Line" refers to new facilities used in the production of the registered product/service. This line may use a facility common to an existing line such as warehouse, finishing, quality control, or laboratory.

"New Facility" refers to the space or area, physical structure and equipment provided for a particular purpose or segment of the production process/service activity.

ii) There is new investment in fixed assets and working capital.[5] (Emphasis supplied)

---

[4] *Id*. at 1207.

Supreme Court E-Library

In approving SR Metals' application as new producer, the Board of Investments fully expected it to construct a beneficiated plant as it repeatedly committed to do so in its application and supporting documents:

26. A perusal of these documents would show that [SR Metals] repeatedly described that it would utilize a beneficiation process/ plant for its new enterprise subject of its application for registration. The relevant portions of the above documents are herein quoted:

a. In its letter dated April 30, 2008, reiterating its request for the [Board of Investments] to resolve that it is qualified as a "new producer" of beneficiated nickel silicate ore, and not merely an "expansion", viz.:

> "First, [SR Metals] is new in the production of beneficiated nickel silicate ore. **In its previous mining operations, [SR Metals] had not been engaged in the process of "beneficiation"** of minerals in its mining project in Tubay[,] Agusan Del Norte. As previously discussed in our application, the process of beneficiation is described as "the most efficient way in which the nickel ore mostly saprolite ores with soft and hard ores could be segregated by **using a beneficiation/ processing plant."**
>
> "Now therefore, [SR Metals] can be considered as a NEW PRODUCER OF BENEFICIATED SILICATE ORE on the basis of its newly granted [Mineral Production Sharing Agreements] and newly adopted beneficiation process."

b. [SR Metals'] Project Feasibility Report described the mining method it would undertake for its project:

> "3.8 Description of Mining Method
>
> Mining and processing sequence are as follows:
>
> - Clearing
> - Stripping
> - Mining
> - Beneficiation
> - Concentrating

[5] Board of Investment's 2007 Investments Priorities Plan.

Supreme Court E-Library

- Hauling or beneficiated and concentrated products to pier stockyards
- Shipping of the ore

3.8.4 Beneficiation

This is the most efficient way in which the ore mostly saprolite ores with soft and hard ores could be segregated by using a beneficiation/processing plant."

c. SR Metals' Project Feasibility Report further stated the use of a beneficiation plant to implement its mining method/ processes:

"[T]he estimated initial volume of investment to implement the Project is Php364,594,150.00 or US$8,102,092.00. The Project Management will undertake mining operation and **a beneficiation plant will be constructed/installed** for the efficient segregation of soft and hard [o]res. The Company will be buying its own heavy equipment.

d. In its Feasibility Project Report, SR Metals indicated that it will make a fixed investment of ₱43,650,000.00 for the beneficiation plant.[6] (Emphasis in the original)

SR Metals' repeated referral to a beneficiation plant in its Project Feasibility Report belies its assertion that it never represented that it would install a beneficiation plant which would be valued at ₱43,650,000.00.[7]

More importantly though, it was the construction of a beneficiated plant and the purchase of new pieces of equipment that characterized SR Metals as a new producer because without those two (2) substantial capital investments, it would have been considered to have merely expanded its existing mining operations and would not have qualified for the fiscal incentive of a full income tax holiday.

This is evident with how the Board of Investments initially rejected SR Metals' application as a "new producer" and

---

[6] *Rollo,* pp. 1207-1209.

[7] *Id*. at 1278.

Supreme Court E-Library

suggested that it file an application for an "expanding" producer instead since it was already engaged in small-scale mining. It was only upon SR Metals' request for a reconsideration and upon its commitment that it would build a beneficiation plant that the Board of Investments reconsidered its earlier decision and approved SR Metals' application as "new producer."[8]

An income tax holiday is one of the incentives for registered enterprises provided for in Executive Order No. 226:

> 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:
>
> 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.
>
> (2) For a period of three (3) years from commercial operation, registered expanding firms shall be entitled to an exemption from income taxes levied by the National Government proportionate to their expansion under such terms and conditions as the Board may determine; Provided, however, That during the period within which this incentive is availed of by the expanding firm it shall not be entitled to additional deduction for incremental labor expense.

---

[8] *Id*. at 1197-1198.

Supreme Court E-Library

(3) The provision of Article 7 (14) notwithstanding, registered firms shall not be entitled to any extension of this incentive. (Emphasis supplied)

Article 39(a)(1) clearly provides that only new registered firms or new projects may qualify for either a four (4)-year or six (6)-year income tax holiday. Article 39(a)(2) likewise provides a similar incentive to expanding firms, but only for a period of three (3) years and only in proportion to their expansion. Thus, it is understandable why SR Metals would insist on being considered as a new producer because the fiscal incentives given to an expanding producer simply pales in comparison to those available to a new producer.

Nonetheless, the decision on whether or not SR Metals should be classified as a new producer ultimately belongs with the Board of Investments pursuant to its duty to process and approve applications for registration, and to its power to impose the terms and conditions for applications for registration.[9] The Board of Investments likewise has the principal authority to determine if a registered enterprise falls under the specific activities that may qualify for fiscal incentives under the annual Investment Priorities Plan.[10] Consequently, it has the power to either cancel or suspend a registration or an incentive, for the registered enterprise's failure to maintain the required qualifications or its violation of the terms of registration.[11]

In the case at bar, the 2007 Investment Priorities Plan provided three (3) different types of new projects: (1) a newly formed or incorporated enterprise; (2) an existing enterprise with a proposed project that is entirely different from its existing business operation; and (3) an existing enterprise which will put up another line or new facility, i.e., physical structure and equipment, and will infuse new investment into its existing business operation.

A registered enterprise will have to fall under any of the three (3) classifications for new projects to qualify for an income

---

[9] Exec. Order No. 226, Article 7(3).

[10] Exec. Order No. 226, Article 7(1).

[11] Exec. Order No. 226, Article 7(8).

Supreme Court E-Library

tax holiday; and the Board of Investments, with its mandate of implementing Executive Order No. 226, is the government body empowered to determine if a registered enterprise satisfies the established requirements.

The Board of Investments found that SR Metals failed to comply with the terms and conditions of its registration; thus, there is a need to revoke its previous entitlement to an income tax holiday:

> In petitioner's evaluation, it found [SR Metals] wanting in its compliance with the terms and conditions of its registration, to wit: 1) establishment of another line (beneficiation plant); 2) infusion of new investments in fixed assets; 3) submission of a progress report; and 4) adherence to project timetable specifically on the acquisition of machinery. As a result of [SR Metals'] failure to comply with the conditions attached to its registration and the grant of [income tax holiday] incentive, [SR Metals'] entitlement to such incentive did not accrue. It follows then that petitioner can revoke/cancel [SR Metals'] [income tax holiday] entitlement. To repeat, facts warrant the complete revocation of [SR Metals'] registration, but petitioner only merited the withdrawal of [income tax holiday] incentive to [SR Metals].[12]

This Court has consistently deferred to the factual findings of administrative agencies as they are the recognized experts in their fields and they can resolve problems in their respective fields "with more expertise and dispatch than can be expected from the legislature or courts of justice."[13] Thus, this Court has accorded respect and even finality to the factual findings of administrative bodies as a tacit recognition of their expertise and technical knowledge over issues falling squarely within their jurisdictions.[14]

---

[12] *Rollo,* p. 1219.

[13] *Solid Homes v. Payawal,* 257 Phil. 914, 921 (1989) [Per *J.* Cruz, First Division].

[14] *JMM Promotions and Management v. Court of Appeals*, 439 Phil. 1, 10-11 (2002) [Per *J.* Corona, Third Division]; *Spouses Calvo v. Spouses Vergara*, 423 Phil. 939, 947 (2001) [Per *J.* Quisumbing, Second Division]; *Alvarez v. PICOP Resources, Inc.*, 538 Phil. 348, 397 (2006) [Per *J.* Chico-Nazario, First Division].

Supreme Court E-Library

Similar to the respect accorded to their factual findings, the interpretation by administrative agencies of their own rules and regulations is likewise given great respect by this Court, as evident in *Eastern Telecommunications Philippines, Inc. v. International Communication Corporation:*[15]

> The NTC, being the government agency entrusted with the regulation of activities coming under its special and technical forte, and possessing the necessary rule-making power to implement its objectives, is in the best position to interpret its own rules, regulations and guidelines. The Court has consistently yielded and accorded great respect to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.[16] (Citations omitted)

An income tax holiday is bestowed on a new project to encourage investors to set up businesses and to contribute to the country's economic growth. The fiscal incentive is also meant to help registered enterprises recoup their substantial initial investments by giving them a reprieve from paying income tax for a few years. However, like any privilege, the income tax holiday comes with conditions and requirements which must be fulfilled for its continued enjoyment.

With its failure to put up a physical structure, i.e., the beneficiation plant, *and* pieces of equipment, SR Metals cannot be classified as a new project under the 2007 Investment Priorities Plan. Hence, it is not entitled to an income tax holiday and the Board of Investments did not err in revoking its entitlement to it.

ACCORDINGLY, I vote to **GRANT** the petition and **REVERSE** and **SET ASIDE** the Court of Appeals December 4, 2014 Decision and August 11, 2015 Resolution in CA-G.R. SP No. 131511.

---

[15] 516 Phil. 518 (2006) [Per *J.* Austria-Martinez, Special Second Division].

[16] *Id.* at 521.

Supreme Court E-Library

SECOND DIVISION

[G.R. No. 221548. October 03, 2018]

RENERIO M. VILLAS, *petitioner, vs.* **C.F. SHARP CREW MANAGEMENT, INC.,** *respondent.*

[G.R. No. 221561. October 3, 2018]

C.F. SHARP CREW MANAGEMENT, INC., *petitioner, vs.* **RENERIO M. VILLAS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); 2010 POEA-STANDARD EMPLOYMENT CONTRACT; DISABILITY BENEFITS; WHEN THERE ARE TWO CONFLICTING VIEWS ON THE EXTENT OF DISABILITY AND THE PARTIES FAILED TO SEEK THE OPINION OF A THIRD DOCTOR, THE LABOR TRIBUNAL AND THE COURTS SHALL EVALUATE THE RESPECTIVE MERITS OF THE CONFLICTING MEDICAL ASSESSMENTS.— There are conflicting views on the extent of disability of Villas in this case. x x x [S]ince there were two conflicting findings by two different physicians, the parties should have moved to seek the opinion of a third doctor. They failed to do so. The Court has ruled that in the event that no third doctor is appointed by the parties, the labor tribunal and the courts shall evaluate the respective merits of the conflicting medical assessments of the company-designated doctor on one hand, and the seafarer's chosen physician, on the other. That is the procedure followed by the PVA in this case. The PVA observed that, contrary to the findings by the company-designated physician that Villas was already fit to work, he still had difficulty in gripping objects. The PVA also examined the medical reports and noted that Dr. Flordelis recommended the continuance of Villas' physical therapy but instead, Villas was cleared from Rehabilitation Medicine standpoint and was eventually declared fit to work. The foregoing