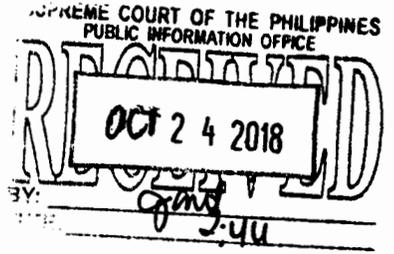




Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION



BOARD OF INVESTMENTS,
Petitioner,

G.R. No. 219927

Present:

- versus -

LEONARDO-DE CASTRO,
 BERSAMIN,*
 DEL CASTILLO,
 LEONEN,** and
 TIJAM, JJ.

SR METALS, INC.,
Respondent.

Promulgated:
OCT 03 2018

X-----

DECISION

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 Decision³ and the August 11, 2015 Resolution⁴ 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

* On official leave.

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

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.

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 Registration⁸ as a new producer of beneficiated nickel ore on a non-pioneer status in relation to its proposed Nickel Project.⁹

On June 4, 2008, petitioner approved the application and issued Certificate of Registration No. 2008-113¹⁰ 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 Certifications¹⁴ 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 letter¹⁶ to respondent informing it of the *Sangguniang Bayan*'s Resolution requesting for the cancellation of respondent's

⁶ *Rollo*, Volume I, p. 14.

⁷ *Id.* at 15.

⁸ *Id.* at 97-145 and 146-147.

⁹ *Id.* at 15.

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.

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 letter¹⁸ 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 letter²⁰ informing respondent that the Board, during its July 30, 2013 Meeting, 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.
- 

¹⁷ Id. at 168-172.

¹⁸ Id. at 188.

¹⁹ Id. at 190-194.

²⁰ Id. at 196-197.

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 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.

²¹ Id. at 62.

²² Id. at 68-69.

²³ Id. at 70.

²⁴ Id. at 70-71.

²⁵ Id. at 72-73.

III.

WHETHER X X X PETITIONER OBSERVED DUE PROCESS IN WITHDRAWING RESPONDENT'S X X X [ITH] INCENTIVE.²⁶

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 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-forum shopping³¹ 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 of 2015, 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 with the requirements under the 2007 IPP by making substantial investments in fixed assets and by submitting progress reports on the

²⁶ *Rollo*, Volume II, p. 1205.

²⁷ *Id.* at 1217-1222.

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.

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 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

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).

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

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

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).

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 x x x (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).

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.

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.

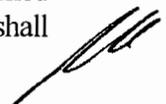
Respondent, however, highlights the failure of petitioner to follow the procedure for the Cancellation of Registration provided in Sections 1 to 4, Rule II of the 2004 BOI Revised Rules, which reads:

RULE II
Cancellation of Registration

SECTION 1. Initiate Cancellation Proceedings. — The ‘Department’ concerned shall initiate cancellation procedures against BOI-registered enterprises. It shall

⁴⁴ 656 Phil. 403 (2011).

⁴⁵ *Id.* at 420-421.



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:

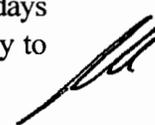
- a.) The status of registration of the enterprise;
- b.) The grounds for the cancellation of registration, a statement of the acts or omissions constituting the same, a statement of facts to establish compliance by the Board with the due notice requirement mandated under Article 7 of E.O. 226, the law 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;
- 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 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 in reversing and setting aside its

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

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

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

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.

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 Sheet⁵¹ and respondent's Certificate of Registration⁵² 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 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 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:
 - 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.

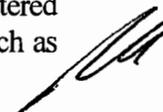
'Another Line' refers to new facilities used in the production of the registered product/service. This line may use a facility common to an existing line such as

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.



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

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

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:



⁵³ Id. at 192.

⁵⁴ Id. at 193.

⁵⁵ Id.

(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 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] un rebutted 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**.



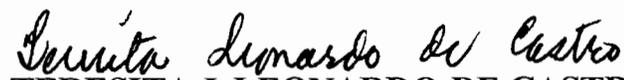
⁵⁶ Id. at 68-69.

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

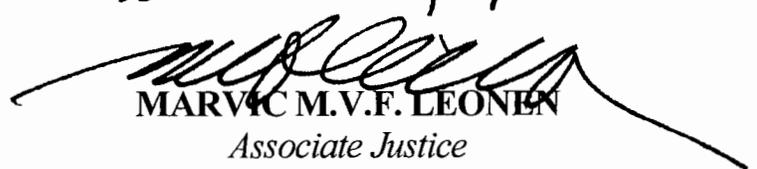
SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Chief Justice

(On official leave)
LUCAS P. BERSAMIN
Associate Justice

See dissenting opinion

MARVIC M.V.F. LEONEN
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


TERESITA J. LEONARDO-DE CASTRO
Chief Justice