REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

CITY OF DAVAO and BELLA LINDA N. TANJILI in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City,
Petitioners,

- versus -

SAN MIGUEL OFFICERS CORPS, INC.,
Respondent.

CTA EB NO. 1628
(CTA AC No. 161)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN , ***and***
MANAHAN, *JJ.*

Promulgated:

DEC 19 2018 3:50 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

Before the Court is the **Motion for Reconsideration** filed by petitioners through registered mail on May 15, 2018 which the Court received on May 23, 2018, with respondent's **Comment (To Petitioner's Motion for Reconsideration dated 11 May 2018)** posted on August 24, 2018 which the Court received on September 7, 2018.

Petitioners' motion assails the Decision promulgated on April 10, 2018 (assailed Decision) which denied the Petition for Review for lack of merit. The dispositive portion thereof states:

> "**WHEREFORE**, finding no cogent reason to disturb the findings and conclusions reached by the First Division in the assailed Decision dated October 3, 2016 as well as in the assailed Resolution dated February 17, 2017, the same are **AFFIRMED**. Accordingly, the Petition for Review filed with the Court *En Banc* on March 20, 2017 *via* registered mail is **DENIED** for lack of merit.
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> **SO ORDERED."**

In its motion for reconsideration, petitioners contend that the Court *en banc* erred: 1) in holding that respondent is merely a holding company, rather than a non-bank financial intermediary; 2) in holding that, as respondent, as well as the San Miguel shares it held, were declared to be owned by the Government, they are national government property exempt from local tax; and 3) in not taking into account the factual findings of the lower court that respondent is a Non-bank Financial Intermediary by owning and holding shares of stock of San Miguel Corporation, as the dividends and interest income received by the respondent are not considered incidental to its business, but are the principal income of the latter in the regular course of its business.

In support of the denial of the petitioners' motion, respondent argues that the Court correctly held that it was entitled to a refund or credit of the 0.55% local business taxes collected for the first and second quarters of taxable year 2011 based on the dividend and interest income for the year 2010 on the basis of the following: 1) Section 133(A) of the Local Government Code (LGC) makes it erroneous and illegal for petitioners to collect local business tax on the dividends and interest income of respondent because it is not a bank or a financial institution; 2) being a holding company, respondent's dividend and interest income are not subject to local business tax; and 3) respondent, as well as its SMC shares and income derived therefrom, are national government property exempt from local business tax.

We agree with respondent.

In the Decision, *We* discussed the matter, thus:

> " x x x Davao City's taxing power does not extend to the levy of income tax,[1] except when levied on banks and other

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[1] Section 133(a) of the 1991 LGC provides:

financial institutions under Section 143(f) of the 1991 LGC.[2] The dividends[3] and interests[4] in this case are therefore not subject to the city's taxing power, unless SMOCI is a bank or other financial institution.

Section 131(e) of the 1991 LGC defines the term "banks and other financial institutions", as follows:

> "'Banks and other financial institutions' include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder."

The 1991 LGC does not define the term "non-bank financial intermediary"; hence, resort to applicable laws, rules and regulations is proper.

The National Internal Revenue Code (NIRC) of 1997, as amended, defines the term "non-bank financial intermediary" in Section 22(W), thus:

> "The term *'non-bank financial intermediary'* means a financial intermediary, as defined in Section 2(D)(c) of Republic Act No. 337, as amended, otherwise known as the General Banking Act, authorized by the *Bangko Sentral ng Pilipinas* (BSP) to perform quasi-banking activities."

SECTION 133. *Common Limitations on the Taxing Power of Local Government Units.* – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
(a) Income tax, except when levied on banks and financial institutions[.]

2 Section 143(f) of the 1991 LGC provides:

SECTION 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:
(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

3 Section 32(A)(7) of the NIRC of 1997, as amended.

4 Section 32(A)(4) of the NIRC of 1997, as amended.

The Bureau of Internal Revenue, in turn, elaborated on the said definition. Section 2.3 of Revenue Regulations No. 09-2004 reads as follows, *viz*:

> '*Non-bank Financial Intermediaries* — shall refer to persons or entities whose *principal functions* include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally.'

The General Banking Act,[5] on the other hand, defines 'financial intermediaries' in Section 2-D(c), thus:

> "'Financial intermediaries' shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others."

Additionally, the Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas ("BSP") ("BSP Manual") defines 'financial intermediaries' in Section 4.101Q.1, as follows:

> '**§ 4101Q.1** ***Financial intermediaries.*** **–** *Financial intermediaries* shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them,

[5] Republic Act No. 337, as amended by Presidential Decree No. 71.

acquired by them, or otherwise coursed through them either for their own account or for the account of others.

Principal shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.

Functions shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.

a. To be considered a **financial intermediary**, a person or entity **must perform any of the following functions on a regular and recurring, not on an isolated basis**: a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;

b. Use principally the funds received for acquiring various types of debt or equity securities;

c. Borrow against, or lend on, or buy or sell debt or equity securities;

d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;

e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from

> transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.
>
> Non-banking financial intermediaries shall include the following:
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> 1) A person or entity licensed and/ or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.
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> (2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term *financing, finance, investment, lending* and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.
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> (3) A person or entity performing any of the functions enumerated in Items *a* to *e* of this Subsection."

The above definitions show that non-bank financial intermediaries are persons or entities primarily engaged in "lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others." More importantly, to be considered a non-bank financial intermediary, the entity must perform any of the functions stated therein on a regular and recurring basis and not on an isolated basis.

Indeed, respondent cannot be considered a bank or other non-bank financial institution, more specifically, a non-bank financial intermediary, since it is not engaged in lending money, investing, reinvesting or trading securities and/or foreign exchange either for its own account or for the account of others on a regular and recurring basis. It appears from the records that respondent acquired SMC shares only once after its incorporation and has not bought any shares of stocks or invested in any other corporation other than in SMC. Hence, it is properly classified as an isolated transaction.

Petitioners also argue that the Court *en banc* failed to appreciate the most credible and convincing proof that respondent is a non-bank financial intermediary which is found in its primary purpose as contained in its amended Articles of Incorporation.

Indeed, as opined in the Dissenting Opinion of Justice Belosillo in *Commissioner of Internal Revenue v. Court of Appeals*[6], "[t]he main evidence of the purpose of a corporation should be its articles of incorporation and by-laws, for such purpose is required by statute to be stated in the articles of incorporation, and the by-laws outline the administrative organization of the corporation which, in turn, is supposed to insure or facilitate the accomplishment of said purpose."

Considering that the primary purpose of respondent expressly prohibits it from acting as an investment company or a securities broker and/or dealer - types of non-bank financial intermediaries - to qualify respondent as a non-bank financial intermediary would be in error. It is, as held in *Our* Decision and as indicated in SMOCI's Amended AOI, a holding company.

With regard to petitioners' argument that the *COCOFED*[7] case does not fall squarely with the case at bar because it did not delve on the taxability of the fund or on its income but solely on the nature of ownership of the said SMC shares of stock, *We* find that it unpersuasive.

In the Decision, we discussed the issue in this manner:

> "The ruling in *COCOFED* placed the subject San Miguel shares and its dividends, and any income therefrom, beyond the scope of the taxing power of Davao City. The exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the 1991 LGC. Under paragraph (o) of this provision, local government units have no power to impose any tax, fee or charge on the National Government:
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> > 'SECTION 133. *Common Limitations on the Taxing Power of Local Government Units.* – Unless

[6] G.R. No. 124043, October 14, 1998.

[7] *Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

> otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> xxx xxx xxx
>
> (o) **Taxes, fees or charges, of any kind on the National Government**, its agencies and instrumentalities, and local government units.'[8]

Since the subject shares are owned by the government, it follows that the dividends and any income therefrom are also owned by the government. Thus, the same is not within the power of the Davao City to tax. Any earnings of the San Miguel shares belong to the government. Any local tax imposed on SMOCI, is imposed on the national government. This is clearly in contravention of Section 133(o) of the 1991 LGC."

Considering the foregoing, the Motion for Reconsideration of petitioner is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

I reiterate my Dissenting Opinion
JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[8] *Emphasis supplied.*

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice