REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

RANDY ALLIED VENTURES. INC., Petitioner,	**CTA AC NO. 131**
	Members:
- versus -	**BAUTISTA,** *Chairperson* **FABON- VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City, Respondent.	Promulgated: AUG 12 2016 10:30 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review[1] assailing the Orders dated October 15, 2014[2] and December 17, 2014[3] of the Regional Trial Court (RTC), Branch 16 of the City of Davao (trial court) in Civil Case No. 35,674-14, upholding the assessment on RAVI of 0.55% local business tax for the third and fourth quarters of 2011 in the amount of one million four hundred and 20/100 pesos (₱1,000,400.20).

The Facts

Petitioner Randy Allied Ventures, Inc. (RAVI) is a corporation duly organized in 1983 and existing under Philippine laws. It is registered with the Securities and Exchange Commission (SEC). On January 11, 2010, the SEC

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1 Under Rule 4, Sec. 3(a)(3) of the Revised Rules of the CTA (RRCTA).
2 Id. at pp. 29-41.
3 Id. at p. 41.

approved the transfer of RAVI's principal office address from Makati City to Legaspi Oil Compound, Sasa, Davao City.

Respondent City of Davao is a local government unit created by law, with principal office at City Hall, San Pedro Street, Davao City. Respondent Rodrigo S. Riola is the City Treasurer of Davao City (respondent Treasurer).

RAVI was among the fourteen holding companies formed in 1983 for the purpose of owning and holding shares of stock of San Miguel Corporation (SMC). In 1986, the said holding companies, including RAVI, were sequestered by the Philippine Commission on Good Government (PCGG). Subsequently, various cases were filed to resolve the ownership of the holding companies and the SMC shares of stock held by them.

Until October 2009, RAVI was a registered owner of SMC common shares, from which RAVI occasionally received cash and stock dividends.

In 2010, RAVI received ₱183,034,999.16 from its SMC preferred shares, consisting of ₱180,864,202.50 in dividends and ₱2,170,796.66 in interest income from money market placements.

In October 2012, RAVI became the registered owner of 24,115,227 preferred shares of SMC, after the Supreme Court approved the conversion of an equal number of SMC common shares into preferred shares. The dividends received by RAVI from the SMC preferred shares were deposited in a trust account, which earned interest from money market placements.

In the meantime, the Supreme Court *En Banc*, in *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic of the Philippines*,[4] declared the fourteen holding companies and the SMC shares held by them to be owned by the government.

On January 20, 2014, RAVI received from respondent Treasurer a Business Tax Order of Payment[5] dated January 20, 2014 for ₱1,000,400.20. This amount corresponds to 0.55% local business tax on the dividends derived from its SMC shares and the interest on its money market placements for the third and fourth quarters of 2011, in accordance with Section 69(f) of the 2005 Revenue Code of the City of Davao.[6]

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

5 Docket, pp. 43-46.

6 Davao City Ordinance No. 158-05, December 25, 2005.

On March 21, 2014, RAVI filed a written administrative protest against the assessment.[7] RAVI's main contention is that the tax imposed on the dividends and its income was improper because it is not a bank or non-bank financial institution.

In a letter dated April 4, 2014, respondent Treasurer required RAVI to submit proof of payment of the assessed business tax before its protest may be resolved, citing Section 423 of the 2005 Revenue Code of the City of Davao.[8]

In its letter dated April 15, 2014,[9] RAVI argued that the City of Davao had no authority to impose additional requirements before a protest may be entertained, other than those required by the Local Government Code[10] (LGC), which does not require payment under protest for business tax.

In a letter dated May 5, 2014,[11] respondent Treasurer reiterated the requirement under the 2005 Revenue Code of the City of Davao. Respondent Treasurer pointed out that it is a valid ordinance, with which he shall abide. Not having made the requisite payment, respondent Treasurer did not act on RAVI's protest.

On June 9, 2014, RAVI filed a Petition for Review[12] dated June 6, 2014 with the RTC of Davao City, pursuant to Section 195 of the LGC.

The Rulings of the Trial Court

In the Order[13] dated October 15, 2014, the trial court dismissed the petition for review. The trial court found that RAVI is a financial intermediary, and that the imposition by the City of Davao of the 0.55% local business tax on the dividends derived from its SMC shares and the interest on its money market placements for the third and fourth quarters of 2011 was proper. The dispositive portion reads:

> **FOR REASONS STATED**, the instant "Petition for Review" filed by the petitioner under Section 195 of Republic Act No. 7160 is hereby **DENIED** and/or **DISMISSED.**
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> **SO ORDERED.**[14]

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7 Docket, pp. 47-54.
8 Docket, p. 116.
9 Docket, pp. 117-122.
10 Republic Act No. 7160.
11 Docket, p. 123.
12 Docket, p. 124
13 Supra, note 2.
14 Docket, p. 41.

The trial court denied RAVI's Motion for Reconsideration in the Order[15] dated December 17, 2014, finding no cogent reason to alter, modify or set aside the Order dated October 15, 2014.

Hence, the present Petition for Review,[16] which was filed on February 6, 2015.

On March 4, 2015, the Court ordered respondents to comment on the petition within ten days from notice. Respondents received copies of the petition on May 11, 2015.[17] They filed their Comment[18] on May 21, 2015 via registered mail.

In a Resolution[19] dated June 15, 2015, the Court ordered the parties to submit their respective memoranda. RAVI filed its Memorandum[20] on July 20, 2015; while respondents filed their Memorandum[21] on August 7, 2015, by registered mail. Thus, the Court deemed the case submitted for resolution in a Resolution dated August 24, 2015.

The Issues

RAVI set forth the following arguments in the present Petition for Review:

> The assessment against RAVI for 0.55% local business tax for the third and fourth quarters of 2011 on the dividends on its SMC shares of stock and interests on its money market placements for the taxable year 2010 should be cancelled on the following grounds:
>
> A.
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> Under Section 133 (A) of Rep. Act No. 7160, it is erroneous and illegal for respondents to collect a 0.55% local business tax on the dividends and interest earned by RAVI, because it is not a bank or a financial institution.

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15 Docket, p. 42.
16 Docket, pp. 5-26.
17 Docket, p. 197.
18 Docket, pp. 197-210.
19 Docket, p. 214.
20 Docket, pp. 216-245.
21 Docket, pp. 253-271.

B.

RAVI is not engaged in business that is subject to local business tax under Section 143 of Rep. Act. No. 7160.

C.

RAVI's income partake the nature of public funds; thus, business tax cannot be imposed on the same.[22]

On the other hand, respondents presented the following arguments:

I.

THE IMPOSITION OF LOCAL BUSINESS TAX AGAINST THE PETITIONER'S RECEIPT OF DIVIDENDS AND INTEREST INCOME FROM SAN MIGUEL CORPORATION, BEING A NON-BANK FINANCIAL INTERMEDIARY, IS A VALID EXERCISE OF THE TAXING POWER OF THE CITY AND DULY SANCTIONED UNDER SECTION 143(F) OF R.A. 7160, OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991".

II.

THE COURT A QUO DID NOT EVEN ACQUIRE JURISDICTION OF THIS CASE, CONSIDERING THAT PETITIONER FAILED TO COMPLY WITH THE PRE-REQUISITE OF PAYING FIRST THE ENTIRE TAX ASSESSED BEFORE FILING A PROTEST WITH THE CITY TREASURER'S OFFICE.[23]

The issues for the resolution of the Court can be summarized as follows:

1. Whether respondent Treasurer is justified in insisting on compliance with Section 423 of the 2005 Revenue Code of the City of Davao;

[22] Docket, p. 12.
[23] Id. at p. 200.

2. Whether RAVI is a non-bank financial institution, upon which the 0.55% business tax can be imposed; and

3. Whether RAVI's income partakes the nature of public funds, which cannot be subjected to local business tax.

The Court's Ruling

We grant the petition.

Perfection of the Protest is Immaterial

The Local Government Code authorizes cities to raise its own revenue by allowing it to impose taxes that provinces and municipalities may impose, subject to the limitations provided in the LGC. In this case, the City of Davao imposed a business tax on RAVI under the following provisions of the LGC:[24]

> SECTION 143. Tax and Business - The municipality may impose taxes on the following business:
>
> (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

This provision is implemented in the 2005 Revenue Code of the City of Davao, thus:

> Section 69. Imposition of Tax. – There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts hereafter prescribed:

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[24] In relation to Section 151 of the LGC, which provides:

> SECTION 151. Scope of Taxing Powers. - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this code.
>
> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

x x x

> *F. On Banks and Other Financial Institutions*, at the rate of fifty-five percent (55%) of one percent (1%) of 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. All other income and receipts not herein enumerated shall be excluded in the computation of tax.

The 2005 Revenue Code provides a system of payment before protest. The enforcement of this ordinance is a ministerial function of the treasurer, as the alter ego of the mayor.[25] Respondent Treasurer has no discretion on whether to act on the protest before it is paid, or to require RAVI to pay under protest as required by the ordinance.

Hence, once RAVI sought to protest the subject assessment, it was incumbent upon respondent Treasurer to enforce the provision of the 2005 Revenue Code of the City of Davao requiring payment of the tax before entertaining the protest. It goes without saying that it is also incumbent upon taxpayers to comply with the same.

An ordinance is valid, unless declared otherwise,[26] and compliance by all affected thereby is mandatory.[27] In this case, since the 2005 Revenue Code had not been declared invalid, RAVI's non-compliance therewith rendered its protest unfiled.

However, regardless of whether the protest was perfected is immaterial, for a valid protest presumes a valid assessment, which is lacking in this case.

The Assessment is Ultra Vires

The Business Tax Order of Payment was issued on January 20, 2014. *COCOFED* was promulgated on January 24, 2012. At the time the subject assessment was issued, RAVI and the SMC shares it holds were already declared owned by government. Hence, the City of Davao no longer had any authority to issue the said Business Tax Order of Payment.

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[25] *Ongsuco v. Malones*, G.R. No. 182065, October 27, 2009.

[26] *Smart Communications, Inc. v. Municipality of Malvar, Batangas*, G.R. No. 204429, February 18, 2014.

[27] Article 3, Civil Code of the Philippines.

The Local Government Code authorizes cities to raise their own revenue by allowing them to impose taxes that provinces and municipalities may impose, subject to the limitations provided in the LGC. In this case, the City of Davao imposed a business tax on RAVI under the following provision:[28]

> SECTION 143. Tax and Business - The municipality may impose taxes on the following business:
>
> (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

In *COCOFED*, the Supreme Court held:

> The Partial Summary Judgment in Civil Case No. 0033-F dated May 7, 2004, is hereby **MODIFIED**, and shall read as follows:
>
> > **WHEREFORE, the MOTION FOR EXECUTION OF PARTIAL SUMMARY JUDGMENT (RE: CIIF BLOCK OF SMC SHARES OF STOCK)** dated August 8, 2005 of the plaintiff is hereby denied for lack of merit. However, this Court orders the severance of this particular claim of Plaintiff. The Partial Summary Judgment dated May 7, 2004 is now considered a separate final and appealable judgment with respect to the said CIIF Block of SMC shares of stock.
> >
> > The Partial Summary Judgment rendered on May 7, 2004 is modified by deleting the last paragraph of the dispositive portion, which will now read, as follows:

[28] In relation to Section 151 of the LGC, which provides:

> SECTION 151. Scope of Taxing Powers. - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this code.
>
> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

WHEREFORE, in view of the foregoing, we hold that:

The Motion for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed, et al) filed by Plaintiff is hereby **GRANTED. ACCORDINGLY, THE CIIF COMPANIES, NAMELY:**

1. Southern Luzon Coconut Oil Mills (SOLCOM);
2. Cagayan de Oro Oil Co., Inc. (CAGOIL);
3. Iligan Coconut Industries, Inc. (ILICOCO);
4. San Pablo Manufacturing Corp. (SPMC);
5. Granexport Manufacturing Corp. (GRANEX); and
6. Legaspi Oil Co., Inc. (LEGOIL),

AS WELL AS THE 14 HOLDING COMPANIES, NAMELY:

1. Soriano Shares, Inc.;
2. ACS Investors, Inc.;
3. Roxas Shares, Inc.;
4. Arc Investors; Inc.;
5. Toda Holdings, Inc.;
6. AP Holdings, Inc.;
7. Fernandez Holdings, Inc.;
8. SMC Officers Corps, Inc.;
9. Te Deum Resources, Inc.;
10. Anglo Ventures, Inc.;
11. Randy Allied Ventures, Inc.;
12. Rock Steel Resources, Inc.;
13. Valhalla Properties Ltd., Inc.; and
14. First Meridian Development, Inc.

AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALING 33,133,266 SHARES AS OF 1983 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID AND ISSUED THEREON AS WELL AS ANY INCREMENTS THERETO ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE

> **DECLARED OWNED BY THE GOVERNMENT TO BE USED ONLY FOR THE BENEFIT OF ALL COCONUT FARMERS AND FOR THE DEVELOPMENT OF THE COCONUT INDUSTRY, AND ORDERED RECONVEYED TO THE GOVERNMENT.**
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> **THE COURT AFFIRMS THE RESOLUTIONS ISSUED BY THE SANDIGANBAYAN ON JUNE 5, 2007 IN CIVIL CASE NO. 0033-A AND ON MAY 11, 2007 IN CIVIL CASE NO. 0033-F, THAT THERE IS NO MORE NECESSITY OF FURTHER TRIAL WITH RESPECT TO THE ISSUE OF OWNERSHIP OF (1) THE SEQUESTERED UCPB SHARES, (2) THE CIIF BLOCK OF SMC SHARES, AND (3) THE CIIF COMPANIES. AS THEY HAVE FINALLY BEEN ADJUDICATED IN THE AFOREMENTIONED PARTIAL SUMMARY JUDGMENTS DATED JULY 11, 2003 AND MAY 7, 2004.**
>
> **SO ORDERED.**[29]

The ruling in *COCOFED* placed the subject SMC shares and its dividends, and any income therefrom, beyond the scope of the taxing power of the City of Davao. The exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code. Under paragraph (o) of this provision, local government units have no power to impose any tax, fee or charge on the National Government:

> 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:
>
> x x x

[29] Supra, note 4.

(o) Taxes, fees or charges, of any kind on the National Government, its agencies and instrumentalities, and local government units.

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 City of Davao to tax. This, especially since the Supreme Court held that it shall be used only for a specific public function: for the benefit of all coconut farmers and the development of the coconut industry.

Hence, although the protest was not perfected, the assessment is void *ab initio* and must be cancelled. It is beyond the authority of the City of Davao to impose the subject tax. Further, the assets of RAVI, which all stem from SMC shares it has held since 1983, cannot be used to pay the said assessment.

Respondents argue that *COCOFED* may not be applied in the instant case since the Supreme Court merely identified the nature of RAVI's assets as government assets, but does not delve into the taxability of the fund or its income. Respondents claim that the tax being imposed by Davao City is not on the fund itself, but only on the dividends and interest income accruing to the fund, which is still in the hands of RAVI, which is a private company. Hence, according to respondents, Section 133(o) of the LGC is not applicable in this case.[30]

It is of no moment that prior to *COCOFED*, RAVI had been operating as a private corporation. *COCOFED* had changed the factual milieu. Respondents' argument that the fund is still in the hands of a private company also fails in light of *COCOFED*, which specifically declared RAVI and the thirteen other holding companies as owned by the government.

Besides, even if we were to contravene the Supreme Court's ruling and hold that RAVI is a private corporation, its assets cannot be used to pay the tax assessed by the City of Davao. Public property cannot be used for any private purpose.[31]

The Supreme Court declared the SMC shares, as of 1983, and all increments thereto as owned by the government. The tax imposed in this case is on the dividends and money market placement earnings from the dividends. All are derived from the SMC shares that the government owns. Moreover, these shares are declared to be for a specific purpose: to be used only for the benefit of all coconut farmers and the development of the coconut industry.

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[30] Docket, pp. 207-208.
[31] Supra, note 4.

Any earnings of the SMC shares belong to the government. Any local tax imposed on RAVI, is imposed on the national government. This is clearly in contravention of Section 133(o) of the LGC.

Although the dividends were declared and income therefrom accrued in 2010, and *COCOFED* promulgated in 2014, the City of Davao still cannot impose the subject tax. In *Philippine Fisheries Development Authority (PFDA) v. Central Board of Assessment Appeals, et al.*,[32] a prior ruling that declared the PFDA a government instrumentality promulgated after the issuance of the assessment was cause for the cancellation of the assessment therein, being without the power of the LGU concerned. Here, the Supreme Court declared RAVI and the SMC shares and all income therefrom as owned by the government in 2012, **before** the assessment was issued in 2014. With more reason should the assessment in this case be cancelled.

A government instrumentality is defined as an agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter.[33] RAVI does not exactly fit in that definition. However, to our mind, it is akin to one, in light of the character of the assets it owns and manages.

To reiterate, the Supreme Court held that all SMC shares of stock held by the holding companies, as of 1983, together with all dividends declared, paid and issued thereon as well as any increments thereto are owned by the government to be used only for the benefit of all coconut farmers and for the development of the coconut industry. It cannot be clearer that the income from subject shares is not subject to local business taxes.

Hence, despite RAVI not having perfected its protest, the assessment must still be cancelled, for the Supreme Court's ruling in *COCOFED* has already taken RAVI and its assets outside the scope of City of Davao's taxing power.

In view of the foregoing discussion, we find it unnecessary to discuss the other issues raised by the parties.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The Orders dated October 15, 2014 and December 17, 2014 of the Regional Trial Court, Branch 16 of the City of Davao in Civil Case

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32 G.R. No. 178030, December 15, 2010.

33 *Philippine Fisheries Development Authority v. Court of Appeals*, G.R. No. 169836, 31 July 2007.

No. 35,674-14 are hereby **REVERSED and SET ASIDE**. The Assessment dated January 14, 2014 is hereby **CANCELLED**.

SO ORDERED.

Ma. Belen S.-

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice