REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
****

AP HOLDINGS, INC., Petitioner,	**CTA AC NO. 156** (Civil Case No. 34,848-13)
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** ***JJ.***
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City, Respondents.	**Promulgated:** JAN 3 0 2017 3:05 p.m.

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DECISION

CASANOVA, *J.*:

This is an appeal pursuant to Section 4(a)[1] Rule 8 of the Revised Rules of the Court of Tax Appeals, *via* the instant Petition for Review[2], filed on November 9, 2015. The Petition seeks to reverse and set aside the Decision dated June 22, 2015[3] and Order dated September 11, 2015[4] rendered by the Regional Trial Court (RTC)-Branch 16 of Davao City in dismissing AP Holdings, Inc.'s claim for refund or credit of local business taxes collected for the 1st and 2nd quarters of 2011 in the aggregate

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[1] **SEC. 4.** ***Where to appeal; mode of appeal.*** –

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[2] Docket, pp. 8-31

[3] RTC Records, pp. 330-339

[4] *Ibid.*, p. 369

amount of Seven Hundred Twenty Three Thousand Five Hundred Thirty One and 50/100 Pesos (₱723,531.50).

Petitioner AP Holdings, Inc. (API) is a corporation duly organized and existing under Philippine laws with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City.[5] It may be served with notices and other Court processes through its counsel, Carag De Mesa Zaballero San Pablo & Abiera Law Offices, with office address at Suite 2606, 26th Floor, The Atlanta Centre, No. 31 Annapolis Street, Greenhills, San Juan City, Metro Manila.

Respondent City of Davao is a local government unit duly created by law whose address is located at City Hall Building, San Pedro Street, Davao City, while, respondent Hon. Rodrigo S. Riola ("respondent City Treasurer") is the incumbent City Treasurer of Davao City and is being impleaded in his official capacity as it was he who issued the 0.55% local business tax assessment on the dividends and interests received by API for taxable year 2010.

Respondent City of Davao and respondent City Treasurer (hereinafter collectively referred to as "public respondents") may be served summons, notices and other Court processes at their respective offices at the City Hall Building, San Pedro Street, Davao City.

In 2010, petitioner received the total amount of Two Hundred Sixty Three Million One Hundred Two Thousand Three Hundred Sixty Nine and 37/100 Pesos (₱263,102,369.37), as dividends from its San Miguel Corporation (SMC) Preferred shares of stock and interest from its money market placements, computed as follows:

Nature of Income	Amount
Dividends from SMC Shares	₱260,020, 537.49
Interest from Money Market Placements	3,081,831.88
TOTAL	₱ 263,102,369.37

For the first half of 2011, respondent City of Davao, through respondent City Treasurer, issued a Business Tax Order of Payment against petitioner. Respondent City Treasurer assessed petitioner a 0.55% local business tax for the first and second quarters of 2011 on the

[5] Paragraph 11, II. The Parties, Petition for Review, Docket, p. 11

dividends derived from its SMC shares of stock and interests on its money market placements for 2010, in the amount of Seven Hundred Twenty-Three Thousand Five Hundred Thirty-One and 50/100 Pesos (₱723,531.50). While petitioner disagreed with the Order of Payment it, nonetheless, paid the same under protest as shown below:

Period Covered	Date of Payment	O.R. Nos.	Amount
Jan – Mar 2011	1/28/2011[6]	5791192 A	₱ 361,765.75
Apr – Jun 2011	4/25/2011[7]	9884248 A	361,765.75
TOTAL			**₱723,531.50**

On September 13, 2012, petitioner filed with respondent City Treasurer its written administrative claim for refund or credit[8].

Claiming inaction by respondent City Treasurer, petitioner filed on January 17, 2013 a Petition for Review[9] with the RTC of Davao City. The case was docketed as Civil Case No. 34,848-13 and was initially raffled to RTC-Branch 17. Thereafter, public respondents filed their Answer[10] on April 1, 2013.

During the August 18, 2014 court hearing, the RTC-Branch 17 of Davao City ordered that the case be subjected to Judicial Dispute Resolution (JDR) for a possible settlement due to the parties' manifestation that they are currently in negotiations for a possible compromise.

However, on September 23, 2014, the parties expressed that there is no possibility of an amicable settlement as of the moment. Thus, in an Order[11] of even date, the RTC-Branch 17 of Davao City remanded the record of the case to the Office of the Clerk of Court for re-raffling to the other branches.

The case was re-raffled to the RTC-Branch 16 of Davao City. Thereafter, trial ensued.

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[6] Annex "P-3", Petition for Review, p. 43
[7] Annex "P-4", Petition for Review, p. 44
[8] Annex "P-5", Petition for Review, pp. 45-54
[9] RTC Records, pp. 3-20
[10] *Ibid.*, pp. 95-102
[11] *Id.*, p. 289

On June 22, 2015, the RTC-Branch 16 of Davao City rendered the assailed Decision[12], dismissing the Petition for Review based on the ground that petitioner is considered as a non-bank financial intermediary, since its primary purpose in its Amended Articles of Incorporation, resembles the definition of a financial intermediary as defined under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP). The *fallo* of the Decision reads:

> "**FOR REASONS STATED**, the instant 'Petition for Tax Refund or Credit under Section 156, R.A. 7160' filed by the Petitioner is hereby **DENIED** and/or **DISMISSED**.
>
> **SO ORDERED**."

On August 29, 2015, petitioner filed a Motion for Reconsideration[13] praying that the above Decision be reversed by ordering public respondents to refund or credit the amount of ₱723,531.50, plus legal interest, which was erroneously collected from petitioner.

On September 11, 2015, the RTC-Branch 16 of Davao City issued an Order[14] denying petitioner's Motion for Reconsideration for lack of merit.

Aggrieved, petitioner elevated the matter on November 9, 2015, to the Court of Tax Appeals (CTA), *via* the instant Petition for Review[15].

On November 24, 2015, this Court issued a Resolution[16] ordering public respondents to file their comment within ten (10) days from receipt thereof. Complying thereon, public respondents filed, through registered mail, on January 4, 2016 their Comment[17] to petitioner's Petition for Review.

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[12] *Supra* No. 3
[13] RTC Docket, pp. 340-353
[14] *Supra* No. 4
[15] *Supra* No. 2
[16] Docket, p. 142
[17] *Ibid.*, pp. 143-157

In the Resolution[18] dated January 19, 2016, this Court gave the parties a period of thirty (30) days to file their respective memorandum, and further ordered the Branch Clerk of Court or the Officer-In-Charge of the RTC-Branch 16, City of Davao to elevate the entire original records of the case pursuant to Section 5(b), Rule 6 of the Revised Rules of the Court of Tax Appeals.

Thus, in a letter[19] dated February 29, 2016, the Clerk of Court V of the RTC-Branch 16 of Davao City, Atty. Jocelyn M. Alibang-Salud, transmitted the entire original records of the case in compliance with this Court's directive. On March 22, 2016, this Court noted said transmittal.[20]

Then, on February 22, 2016, petitioner submitted its Memorandum [21] while public respondents submitted their Memorandum[22] on March 14, 2016.

Accordingly, in the March 31, 2016 Resolution[23], the instant case was deemed submitted for decision.

The sole issue[24] raised by petitioner for this Court's resolution is "Whether or not API is entitled to a refund or credit of the 0.55% local business taxes collected for the first and second [*quarters*] of 2011 on the dividends on its SMC Preferred Shares and interest on its Money Market Placements for the taxable year 2010."

On the other hand, the sole issue[25] raised by public respondents is "Whether or not the petitioner is considered as a 'Bank and Other Financial Institution (Non-Bank Financial Intermediary) so as to be subject to the imposition and assessment of local business tax under Section 143 (f) of R.A. 7160, otherwise known as the 'Local Government Code of 1991' on its receipt of dividends and interest income from San Miguel Corporation."

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[18] *Id.*, p. 160
[19] *Id.*, p. 189
[20] Resolution, *Id.*, p. 193
[21] Docket, pp. 161-187
[22] *Ibid.*, pp. 194-210
[23] *Id.*, p. 212
[24] IV. Issue, Petition for Review, *id.*, p. 15
[25] Statement of the Issue, Memorandum, Docket, pp. 198-199

In support of its appeal, petitioner mainly argues that, under Section 133 (a) of Republic Act (RA) No. 7160, as amended, it is erroneous and illegal for a local government unit to collect a 0.55% local business tax on the dividends and interests earned by a taxpayer which is not a bank or financial institution. Petitioner claims that, contrary to the findings of the court *a quo*, it is not a bank or a financial institution considering that before one is considered as a non-bank financial intermediary, the performance of "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" should be on a regular and recurring basis, and not an isolated transaction. Moreover, petitioner insists that its primary purpose is to be a holding company and not to engage in the business of investing or lending money or securities as a non-bank financial intermediary; in fact, even its Amended Articles of Incorporation expressly states that "it shall not act as an investment company or a securities broker and/or dealer", thus, petitioner is expressly prohibited from acting as an investment company or securities broker and/or dealer.

On the other hand, in their comment, public respondents assert that even though petitioner's Amended Articles of Incorporation contains a statement that it is expressly prohibited from acting as an investment company or securities broker and/or dealer, petitioner's business purpose, nonetheless, is wittingly broad enough to catch all the descriptive function of a non-bank financial intermediary. Thus, petitioner is deemed as a "non-bank financial intermediary or an investment company" by virtue of its investment and money market placements in SMC.

After due consideration of the arguments presented by the parties, this Court finds no merit in the instant petition.

Generally, local government units are prohibited from levying taxes on income tax, except when levied on banks and other financial institutions.[26] Since, obviously, petitioner is not a banking institution, this Court is left with the question of whether petitioner may be considered as a financial institution.

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[26] Section 133 (a), LGC of 1991

Incidentally, Section 131 (e) of RA No. 7160[27], otherwise known as the "Local Government Code (LGC) of 1991" and, as adopted under Section 5 (b3) of City Ordinance No. 158-05, Series of 2005, otherwise known as the "2005 Revenue Code of the City of Davao", defines banks and other financial institutions as follows:

> "**Section 131.** *Definition of Terms.* - When used in this Title, the term:
>
> *x x x*
>
> (e) *'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**;
>
> *x x x" (Emphasis Ours)*

As gleaned above, Section 131 (e) defines banks and other financial institutions by giving examples of such rather than providing a concrete description of its definition. The said section further qualifies its definition by including the phrase *as defined under applicable laws, or rules and regulations thereunder.* Clearly, reference to other definitions of the same import under applicable laws, or rules and regulations may be resorted to.

Since financial institutions include, by reference, non-bank financial intermediaries,[28] Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions[29] defines financial intermediaries in this wise:

> "**§ 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, acquired by them, or

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[27] "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991" dated October 10, 1991
[28] *Ibid.*
[29] Q Regulations

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.

x x x" *(Emphases and Underscoring Ours)*

Verily, financial intermediaries are those whose principal functions include, 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. Thus, to determine whether petitioner's business includes the principal function of a financial intermediary, reference to petitioner's primary purpose, as indicated in its Amended Articles of Incorporation[30] is necessary, *viz*:

"PRIMARY PURPOSE

The primary purpose for which such Corporation is formed is:

To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities,

[30] Exhibit "A-1" for the Petitioner, RTC Records, pp. 177-186; Paragraph 2, Joint Stipulation of Facts and Issues, RTC Records, pp. 262-263; Annex "P-10", Petition for Review, pp. 100-111

> **contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership**, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination 'holding corporation', and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation." *(Emphasis Ours)*

From the foregoing, the scope of petitioner's primary purpose is extensive enough to cover most of the principal functions of a financial intermediary. Bearing in mind that the nature of petitioner's business, which consists solely in owning a substantial number of shares of stock and equity in SMC, from which it regularly receives dividends in millions of pesos and, thereafter, reinvests it in money market placements in the same company to maximize its profit, petitioner is clearly deemed to be engaged in the business of investing or placement of funds or evidences of indebtedness which is well within the purview of a financial institution. In fact, and, as correctly held by the court *a quo*, "even an obtuse legal mind can conclude that the scope of petitioner's primary business purpose in its Amended Articles of Incorporation is wittingly or unwittingly broad enough to **catch all** the descriptive functions of a Financial Intermediary."

Moreover, this Court also finds no merit in petitioner's allegation that to be considered a financial intermediary, a person must perform any of the functions stated in the definition given on a regular and recurring, not on an isolated basis.

Having been organized as a stock corporation, petitioner is presumed to have been organized with the end in view of earning a profit. The fact that petitioner's primary purpose in its Amended Articles of Incorporation provides that petitioner was organized to purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign; and, coupled by the fact that petitioner has a continuing huge chunk of investment in shares of stocks of SMC from which it regularly receives millions of pesos in dividends and reinvests them in money market placement in the same company to attain maximum profit negates petitioner's allegation that it does not perform the principal functions of a financial intermediary on a regular and recurring basis. Also, the fact that petitioner has no other business, except its investment in SMC, shows its real intent to engage solely and primarily in the business of stock investment and money market placements in the said company; thus, any profit received by petitioner is a direct consequence of its business engagements and not just mere incidental thereto.

In the same way, petitioner, further, insists that its amended articles of incorporation prohibit it from acting as an investment company of securities broker and/or dealer. The primary purpose for which petitioner was formed expressly states that "*x x x* provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation." As such, petitioner should not be classified as a financial institution.

This Court is not convinced.

The self-imposed prohibition in the last phrase of petitioner's primary purpose in its Amended Articles of Incorporation does not guarantee that petitioner will not engage in any of the said activities. Verily, by actually engaging in the business of stock investment and money market placements in SMC, the said proviso was negated and should, therefore, be disregarded. As held in the assailed Decision dated June 22, 2015 by the court *a quo*:

> "While the primary purpose of Petitioner appears to set a qualification or condition that: **'provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.'**, said

proviso in the Court's mind is a classic evasion by Petitioner from the requirement to secure a secondary license for investment company under the regulation of the Bangko Sentral ng Pilipinas for non-banking financial intermediaries, per second paragraph of **Section 4101Q.1 of MANUAL OF REGULATIONS FOR NON-BANK FINANCIAL INSTITUTIONS,** to wit:

> 'Non-banking financial intermediaries shall include the following:
>
> (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**.
>
> *x x x*'

Petitioner cannot hide under the cloak of their evasive proviso, because Petitioner is glaringly and clearly under the category of a Financial Intermediary." [31]

Accordingly, based on the foregoing definition and petitioner's acts of investing in equity securities, holding of assets consisting of shares of stocks and placement of funds in SMC on a regular and recurring basis explicitly affirms the conclusion that petitioner is a non-bank financial intermediary whose income may, therefore, be subjected to business tax under Section 143 (f)[32] of the LGC of 1991, as amended.

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[31] At page 9 of the Decision, RTC Records, p. 338

[32] "**Section 143. Tax on Business.** — The municipality may impose taxes on the following businesses:

xxx

(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.

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WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Dissenting Opinion)
CATHERINE T. MANAHAN
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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AP HOLDINGS, INC.,
Petitioner,

-versus-

CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City,
Respondents.

CTA AC No. 156

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 30 2017
3:05 p.m.

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DISSENTING OPINION

MANAHAN, *J.:*

With due respect to the *ponencia*, I register my dissent to the conclusions of the Court.

The *ponencia* found that AP Holdings, Inc. (API) was properly taxed by the City of Davao as a non-bank financial intermediary (NBFI) thereby denying API's claim for refund/credit of paid business taxes for the 1st and 2nd quarters of 2011 in the total amount of Php723,531.50. The *ponencia* affirmed the classification of API as a NBFI.

However, I disagree with the classification of API as a NBFI.

The pertinent provisions relied upon for the assessment of API as a NBFI are quoted below:

Local Government Code (LGC)[1]

> Section 131. Definition of Terms. – When used in this Title, the term:

[1] Republic Act No. 7160, October 10, 1992.

xxx

(e) "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;[2]

xxx

Section. 143. Tax on Business. – The municipality may impose taxes on the following businesses:

xxx

(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.

xxx

Bangko Sentral ng Pilipinas (BSP)'s Manual of Regulations for Non-Bank Financial Institutions (BSP Manual)

Section 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, 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

[2] Underscoring supplied.

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.

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:

(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.

(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.

(3) <u>A person or entity performing any of the functions in Items a to e of this Subsection</u>.[3]

Based on the foregoing provisions, interests and dividends may only be taxed by a local government unit (LGU) when it is earned by a bank or other financial institution.

In the instant case, API was made to pay local business tax on the ground that it is a NBFI, which API vigorously protests on the ground that it is a holding company. Thus, it must be determined whether API was correctly classified as a NBFI.

I find that there is insufficient ground to classify API as a financial institution, specifically as a NBFI. I agree with the reasoning of the Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy in Anglo Ventures, Inc. v. City of Davao et al.[4], and First Meridian Development, Inc. v. City of Davao et al.[5], respectively, and other similar cases, in concluding that the involved companies should not be classified as NBFI.

First, API is not an entity authorized by the BSP to perform quasi-banking functions, nor was it shown that API has a registration with any government regulatory body as a NBFI.

Second, there was no showing that API has held itself out nor advertised itself as a NBFI. It is noteworthy that API's name itself shows that it is a holding company, not a lending, investing, or financing company.

Third, while API's primary purpose, as stated in its AOI, <u>may</u> involve one of the activities enumerated in the BSP Manual, it was not shown that API conducted these activities as its

[3] Underscoring supplied.
[4] CTA AC No. 155, July 12, 2016.
[5] CTA AC No. 132, August 26, 2016.

principal function and on a regular and recurring basis. In fact, an examination of API's primary purpose shows that API fits the definition of a holding company, rather than a NBFI. The Securities and Exchange Commission (SEC) defines a holding company as:

> A holding company has been defined by the Commission in several opinions. A holding company has been aptly defined as "a corporation organized to hold the stock of another or other corporations." Its essential feature is that it holds stock. The term "holding company" is equivalent to a parent corporation, having such an interest in another corporation, or power of control, that it may elect its directors and influence management. A parent or holding company is one that controls another as a subsidiary or affiliate by the power to elect its management. Affiliates are those concerns that are subject to common control and operated as part of a system.[6]

Like the BSP Manual, the SEC Opinion relies on the AOI for classifying a corporation. Thus, the "primary purpose of the corporation determines its classification."[7] It is the corporation's purpose clause that confers, as well as limits, the powers that a corporation may exercise.[8] A portion of API's primary purpose is quoted below:

> ...and to do every act and thing covered generally by the denomination 'holding corporation, and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.[9]

From the foregoing, API is rightfully classified as a holding company, and not an NBFI.

Finally, the Supreme Court's statement that API was merely one of many companies formed or organized solely for

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[6] SEC-OGC Opinion NO. 15-15, November 3, 2015 (underscoring supplied, citations omitted).
[7] *Id.*
[8] *Id.*
[9] Docket, CTA AC Case No. 156. Petition for Review, p.12.

the purpose of holding SMC shares,[10] underlines API's function as a holding company.

Therefore, finding that API cannot be classified as a NBFI pursuant to the requirements in the BSP Manual, it cannot be taxed as such by the City of Davao. Accordingly, the amounts paid by API as local business tax amounting to Php723,531.50 for the 1st and 2nd quarters of 2011 were erroneously collected and paid and must be refunded to API.

In view of the foregoing, I vote to grant API's Petition for Review.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

[10] COCOFED v. Republic, G.R. Nos. 177857 and 177858, January 24, 2012, 663 SCRA 514.