REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

METRO PACIFIC RESOURCES, INC. (Formerly: Cypress Harbour Properties, Inc.), *Petitioner,*	**CTA AC NO. 174**
-versus-	Members: **BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
MAKATI CITY AND NELIA A. BARLIS, IN HER CAPACITY AS INCUMBENT CITY TREASURER OF MAKATI CITY, *Respondents.*	Promulgated: FEB 19 2018 3:30 p.m.

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RESOLUTION

BAUTISTA, J.:

For resolution is respondents' Motion for Reconsideration (of the Decision dated 21 November 2017) ("Motion for Reconsideration") filed on December 19, 2017; with Comment/Opposition (To: Motion for Reconsideration) ("Comment") from petitioner filed on January 22, 2018.

On November 21, 2017, the Court promulgated a Decision[1] ("Assailed Decision"), the dispositive portion of which states:[2]

> **WHEREFORE,** premises considered, the Petition for Review is hereby **GRANTED**. The March 18, 2016 Decision and the August 5, 2016 Order, both of the Regional Trial Court Branch 57 of Makati City, denying petitioner's claim for refund of local business tax for taxable year 2010 are hereby **REVERSED** and **SET ASIDE**. Accordingly, respondents are **ORDERED** to refund to petitioner the amount of **Six Million Eight Hundred Ninety-Six Thousand Three Hundred**

[1] *Records, AC No. 174, Decision,* pp. 219-243.
[2] *Id.,* p. 242.

Eighty-Five Pesos and Thirty-Four Centavos (Php6,896,385.34), representing erroneously collected local business tax for taxable year 2010.

SO ORDERED.

In their Motion for Reconsideration, respondents aver that *Section 3A.02(p)*[3], in relation to *Section 3A.02(h)*[4] *of the Revised Makati Revenue Code*[5] *("RMRC")*, is clear and unequivocal that a holding company shall be taxed as a specific class of its own, at the rate of twenty percent (20%) of one percent (1%) on its gross sales and/or receipts, as prescribed under *Section 3A.02(h)*, without reference to it being a contractor or an owner or operator of banks or other financial institutions. Since petitioner itself admitted that it is "holding company," respondents claim that, applying the pertinent provision of the *RMRC*, petitioner need not be a service contractor nor an owner or operator of banks and other financial institutions before *Section 3A.02(h) of the RMRC* may apply to it.

Respondents reiterate that *Section 3A.02(p) of the RMRC*, in relation to *subsections (g) and (h)*, was never questioned pursuant to *Section 7B.14(d)*[6], and thus, remains to be valid.

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[3] SECTION. 3A.02. *Imposition of Tax*. – There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

xxx xxx xxx

(p) On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year.

[4] SECTION. 3A.02. *Imposition of Tax*. – There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

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(h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) 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, investments, dividends, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l) 1, as provided in this code.

[5] *Makati City Ordinance No. 2004-A-025*, October 27, 2005.

[6] SECTION 7B.14. *Taxpayer's Remedies*. –

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(d) Claim for Refund or Tax Credit. – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim of refund or credit has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

Anent the applicability of *Orleyte Company (Philippine Branch) v. The City of Makati*[7] *("Orleyte")* to the instant case, respondents posit that the *Orleyte* case cannot be applied because in that case: *(1)* the Court ruled that the RTC of Makati City erred in classifying *Orleyte* as a holding company-management service, while in the present case, petitioner was correctly classified as a holding company; and *(2)* the taxable years involved therein were 2001-2002, 2002-2003, and 2003-2004, where the Old Makati Revenue Code is applicable, while here, *RMRC* is the one applicable. Respondents restate that petitioner cannot rely on *Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis*[8] *("Michigan")* since it is still pending resolution at the Supreme Court, and thus, to rely on the same is premature and *sub-judice.*

Assuming that petitioner is entitled for a refund, respondents reiterate that the same may be granted only in the form of a tax credit pursuant to *Section 7B.14(d) of the RMRC.* In any case, respondents insist that petitioner was unable to overcome the burden of proving that it is entitled to the refund being prayed for.

Finally, respondents submit that the Petition should be dismissed outright for failure of petitioner to furnish copies thereof upon respondents and the RTC Branch 57 of Makati City of the Petition for Review, in violation of *Section 1, Rule 7 of the Revised Rules of the Court of Tax Appeals*[9] *("RRCTA"),* in relation to *Sections 1, 2 and 3, Rule 42 of the Revised Rules on Civil Procedure.*

In its Comment, petitioner counters that the Court did not err in directing respondents to refund to petitioner the amount of Php6,896,385.34, representing erroneously collected local business tax ("LBT") for taxable year ("TY") 2010.

Petitioner insists that it is a holding company akin to that of a contractor, and not an investment company nor a bank and/or other

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The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligations payable to the Local Government of the City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year.

[7] CTA AC No. 80, November 14, 2012.

[8] CTA *EB* No. 1093, June 17, 2015.

[9] *A.M. No. 05-11-07-CTA*, November 22, 2005.

financial institution; and that, as such it should be taxed under *Section 3A.02(g) of the RMRC*, and not under *Section 3A.02(h)* thereof.

Petitioner restates that *Section 3A.02(p) of the RMRC* does not authorize respondents to arbitrarily include dividend, interest, and other items of passive income in the taxable gross receipts of holding companies. Petitioner posits that said *Section 3A.02(p)* makes reference to *Sections 3A.02(g)* or *3A.02(h)* only for purposes of determining the applicable LBT rate on holding companies, but it does not provide guidelines on how to compute or what to include under gross sales and/or receipts upon which the LBT rate shall be applied; and that, hence, the general definition of gross sales and/or receipts under the *Section 131(n)*[10] *of the 1991 Local Government Code*[11] and the *Section IB.01*[12] *of the RMRC* should apply.

Petitioner avers that a non-bank or non-financial institution, such as itself, is subject to LBT only on amounts received for services performed by it, as laid down in the *Orleyte* case. Moreover, petitioner asserts that the Court has already ruled in *Michigan* that dividend income is not subject to LBT, except when levied on banks and other financial institutions.

Petitioner further counters that the Court correctly ruled that it may be granted either a tax refund or tax credit certificate, contrary to what respondents claim that in case the claim for refund is found to be meritorious, the same may only be granted in the form of credit.

Petitioner continues that the instant case involves a purely legal question; and that since respondents have admitted all the factual

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[10] SECTION 131. *Definition of Terms.* - When used in this Title, the term:

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(n) "Gross Sales or Receipts" include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT);

[11] *Republic Act No. 7160,* January 1, 1992.

[12] SECTION IB.01. *Words Defined in this Code.* - When used in the Code. -

xxx xxx xxx

(g) Gross Sales or Receipts include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually or constructively received during the taxable year for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT) paid by the taxpayer.

allegations of petitioner during trial, the case is already ripe for adjudication. Accordingly, petitioner claims that it is erroneous for the RTC to base its decision on the alleged failure of petitioner to present substantial evidence in support of its claim.

Finally, petitioner avers that respondents were not denied of due process considering that, notwithstanding its inadvertent failure to attach proof of service to the Petition for Review, respondents were nevertheless notified of the case and were given ample time to file their comment to the Petition, raising substantial issues therein.

The Court will now resolve respondents' Motion for Reconsideration, and finds no merit therein.

The arguments are not new. The Court finds the same to be mere rehashes of that which have already been amply discussed, analyzed and passed upon by the Court in the Assailed Decision. Consequently, the Court finds respondents' Motion for Reconsideration devoid of merit.

Respondents still insist that *Orleyte* is not applicable because it was decided prior to the effectivity of the *RMRC*, wherein no similar provision on holding companies yet.

The applicability of *Orleyte* in the present case is of no moment considering that the issues involved herein is the rate to be used and the tax basis for a holding company, as in petitioner. Otherwise stated, the issue is whether petitioner should be taxed under *Section 3A.02(g)* or *(h)*, in relation to *Section 3A.02 (p) of the RMRC*. Records reveal that petitioner is not an investment company, nor a bank or other financial institution. Consequently, it is erroneous for respondents to assess petitioner for deficiency LBT at the rate of twenty (20%) of one percent (1%) of its dividend income pursuant to *Section 3A.02(h) of the RMRC*.

Respondents also claim that *Michigan* cannot be relied upon because the same is still pending resolution of the Supreme Court, and thus, to rely on the same is premature and *sub-judice*.

The Court is not convinced.

The doctrine highlighted in said case, that is, that dividend income is not subject to LBT except when levied on banks and other financial institutions, were applied to the much later case of *The City of Makati and Nelia A. Barlis, in her capacity as Incumbent City Treasurer of Makati City v. Metro Pacific Investments Corporation*[13] and in the most recent case of *The City of Makati and The City Treasurer of Makati v. CEMCO Holdings, Inc.*[14]. Until such time when this ruling is overruled or superseded by another, or reversed or modified by the Supreme Court, the same remain to be valid and effective, and is still controlling.

All told, the Court finds no justifiable reason to deviate from the findings made in the Assailed Decision.

WHEREFORE, premises considered, respondents' Motion for Reconsideration (of the Decision dated 21 November 2017) filed on December 19, 2017 is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated November 21, 2017 is hereby **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[13] CTA AC No. 143, July 20, 2016.
[14] CTA AC No. 166, January 6, 2017.