REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
****

MAKATI CITY AND THE CITY TREASURER OF MAKATI CITY, Petitioners,	**CTA AC NO. 172** (Civil Case No. 13-982)
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
METRO PACIFIC TOLLWAYS DEVELOPMENT CORPORATION, Respondent.	**Promulgated:** DEC 01 2017

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10:00 a.m.

RESOLUTION

CASANOVA, J.:

Before this Court is petitioners' **Motion for Reconsideration (of the Decision dated 20 September 2017)** filed on October 10, 2017, with respondent's **Comment/Opposition (To: Motion for Reconsideration)** filed on November 3, 2017.

On September 20, 2017, this Court promulgated its Decision over the instant case, upholding the conclusions reached in the assailed Decision dated December 1, 2015 and Resolution dated June 21, 2016 both rendered by the Regional Trial Court (RTC) – Branch 143 of Makati City. The dispositive portion of this Court's Decision reads as follows:

> "**WHEREFORE,** premises considered, the Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Aggrieved thereby, petitioners filed the instant Motion, again, reiterating the provisions of the Revised Makati Revenue Code[1] (RMRC) on holding companies, particularly Section 3A.02(p), in relation to subsections (g) and (h). Petitioners stress that having been classified as a holding company, it is axiomatic that the tax rate of 20% of 1% shall be imposed unequivocally on the holding company's gross sales and/or receipts without any other requirement whatsoever. They also insist that the foregoing Section of the RMRC was never questioned before the Secretary of Justice, in accordance with Section 7B.14(d) of the same Code which provides for the taxpayer's legal remedies. Consequently, the said Section is still a valid tax provision of the RMRC.

On the other hand, in its Comment, respondent claims that the reference made to subsections (g) and (h) of Section 3A.02 merely pertains to the rate of local business tax (LBT) that a local sanggunian may impose on a holding company's gross sales and/or receipts excluding its passive income. Respondent continues that nowhere under the RMRC is it stated that a holding company shall be taxed as a bank or financial institution. To impose the same to holding companies is considered a tax on income which is proscribed by the Local Government Code (LGC) of 1991, as amended.

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

Notably, the arguments proffered in the instant Motion are mere rehash of the arguments already raised and resolved, not only by this Court, but by the court *a quo* as well. Thus, to discuss anew the issues reiterated in the instant Motion would only be mere superfluity.

Again, this Court emphasizes that, generally, the imposition of taxes on holding companies is not expressly prohibited by Republic Act (RA) No. 7160[2], otherwise known as the "Local Government Code of 1991". Thus, a local government unit has autonomy to impose taxes on any other businesses not otherwise specified under the Local Government Code (LGC) of 1991, as amended. However, such autonomy, though, is not without limits.

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[1] City Ordinance No. 2004-A-025 which took effect on January 1, 2006
[2] Which took effect on January 1, 1992

As held in the CTA *En Banc* case of *MICHIGAN HOLDINGS, INC. vs. THE CITY TREASURER OF MAKATI CITY, NELIA A. BARLIS*[3], dividend income is excluded from gross receipts for purposes of imposition of LBT, *viz.*:

> **"Dividend Income Not Subject to Local Business Tax**
>
> Section 133 (a) of the Local Government Code expressly provides that the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax, except when levied on banks and other financial institutions.
>
> Section 131 (e) of the LGC defines 'banks and other financial institutions' to 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.' This enumeration appears to be exclusive of other entities. Nowhere in the entirety of Section 131 is a holding company mentioned. However, this, by itself, does not place holding companies beyond the reach of local taxation, except on their income.
>
> Section 143 of the Local Government Code is the law on local business taxes. Subsection (f) thereof expressly allows local taxation on banks and other financial institutions on their income from dividends, based on gross receipts of the preceding calendar year. What Section 3A.02 (h) of the Revised Makati Revenue Code did was to expand the taxpayer base to encompass '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, moneyshops, insurance companies, stock markets, stock brokers, dealers in securities, including pre-need companies, foreign exchange.' The Treasurer of Makati City, while invoking this Section 3A.02 (h), made it applicable to holding companies, such as Michigan Holdings, by virtue of Section 3A.02(p), which provides that holding companies 'shall be taxed at the rate prescribed either

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[3] CTA EB Case No. 1093 (CTA AC No. 99), June 17, 2015

under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year.'

Section 3A.02 (h) of the Revised Makati Revenue Code, which took effect on January 1, 2006, imposes a local business tax on the dividend income of certain taxable entities. Section 3A.02 (p) makes holding companies liable for this business tax.

> 'Section 3A.02 (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.'

Thus, Section 3A.02 (p) in relation to Section 3A.02 (h), both of the Revised Makati Revenue Code, violates the limit set by Section 133 (a) of the Local Government Code.

Indeed, if the business of a holding company is in the same class as that of a bank or other financial institutions, the Makati City tax ordinance could simply have included holding companies in its Section 3A.02 (h), instead of placing them all by themselves in Section 3A.02 (p) and then making the tax rates in either Section 3A.02 (h) or (g) applicable to them. That holding companies, exclusively, were placed in a separate section, shows that they comprise a category distinct from the class of 'banks and other financial institutions' as defined by Section 131 (e) of the LGC. **That holding companies were subjected to a tax on dividend income which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions, shows a deliberate intent to circumvent the prohibition laid down by Section 133 (a) that the taxing powers of LGUs shall not extend to the levy of income tax, except on banks and other financial institutions.**

There is more.

Section 27 (D) of the National Internal Revenue Code deals with rates of tax on certain passive incomes. Subsection (4) thereof, covering intercorporate dividends, states that 'Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax' — meaning corporate income tax. Dividends are instead subject, under

Section 27 (D) (1), to 'a final tax at the rate of twenty percent (20%).'

> 'Under Section 27(D)(4) of the Tax Code, dividends received by a domestic corporation from another corporation are not subject to the corporate income tax. Such intracorporate dividends are some of the passive incomes that are subject to the 20% final tax, just like interest on bank deposits. Intracorporate dividends, being already subject to the final tax on income, no longer form part of the bank's gross income under Section 32 of the Tax Code for purposes of the corporate income tax.'

Thus, Section 3A.02 (p) in relation to Section 3A.02 (h), both of the Revised Makati Revenue Code, likewise violates Section 27 (D) (4) of the National Internal Revenue Code.

Section 3A.02 (p) of the Revised Makati Revenue Code is thus an *ultra vires* exercise of local taxing power, and cannot be given effect without violating the principle that an ordinance can neither amend nor repeal but must conform to a statute." *(Emphases Ours and Citations Omitted)*

Accordingly, finding no reversible error, this Court finds no cogent justification to disturb the conclusions reached in the assailed Decision dated September 20, 2017.

WHEREFORE, premises considered, petitioners' Motion for Reconsideration (of the Decision dated 20 September 2017) is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice