REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF MAKATI AND JESUSA E. CUNETA, in her capacity as the MAKATI CITY TREASURER,
Petitioners,

-versus-

DMCI HOLDINGS, INC.,
Respondent.

CTA *EB* NO. 2634
(CTA AC No. 234)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, *and*
FERRER-FLORES, *JJ.*

Promulgated:
SEP 18 2023 4:25 pm

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DECISION

CUI-DAVID, J.:

Before this Court is a Petition for Review[1] filed by petitioners under Section 3(b), Rule 8[2] of the Revised Rules of the Court of Tax Appeals (RRCTA), assailing the Decision dated February 10, 2022 (assailed Decision)[3] and the Resolution dated May 11, 2022 (assailed Resolution)[4] rendered by the Court's Third Division (Court in Division) in CTA AC No. 234, with the following dispositive portions:

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[1] *En Banc* (*EB*) Docket, pp. 1-18.
[2] SEC. 2. *Cases within the jurisdiction of the Court En Banc.* – The Court *En Banc* shall exercise exclusive appellate jurisdiction to review by appeal the following: ...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[3] *EB* Docket, pp. 20-37.
[4] *Id.*, pp. 39-43.

Assailed Decision dated February 10, 2022:

> **WHEREFORE**, the present *Petition for Review* is **DENIED** for lack of merit.
>
> Accordingly, the Decision dated September 5, 2019 and the Order dated December 12, 2019, both rendered by RTC-Branch 146, in Civil Case No. 15-684, are hereby **AFFIRMED**.
>
> **SO ORDERED.**

Assailed Resolution dated May 11, 2022:

> **WHEREFORE**, premises considered, petitioners' Motion for Reconsideration (Re: Decision Promulgated on February 10, 2022 on the Amended Petition for Review filed by Petitioner on September 4, 2020) is **DENIED** for lack of merit.
>
> **SO ORDERED.**

THE PARTIES[5]

Petitioners are the City of Makati and Ms. Jesusa E. Cuneta, in her capacity as the City Treasurer of the former. Petitioner City of Makati is a local government unit (LGU) existing under Republic Act (RA) No. 7854, with address at Makati City Hall, J.P. Rizal Street, Makati City.

Respondent DMCI Holdings, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines with principal office address at the 3rd Floor, DACON Building, 2281 Don Chino Roces Avenue, Makati City. It is registered with petitioner City of Makati as a holding company.

THE FACTS

The facts, as found by the Court in Division, are as follows:

> On March 30, 2015, respondent received the *Notice of Assessment* dated March 18, 2015 issued by then Makati City Treasurer, Nelia A. Barlis, for alleged deficiency taxes, fees and charges in the amount of ₱65,730,711.30, for taxable years 2011 to 2013.

[5] *Supra*, note 3, p. 21.

Respondent then filed its letter dated May 28, 2015 with the Office of the Makati City Treasurer on May 29, 2015, requesting that the tax liabilities of respondent be re-assessed to exclude assessments on dividend income and local business taxes already paid by it.

On June 15, 2015, respondent received the letter dated June 8, 2015 issued by then OIC-Makati City Treasurer, Andrea Pacita S. Guintu, denying respondent's request for the cancellation of the *Notice of Assessment* for lack of merit; and enjoining respondent to settle the deficient amount in local business taxes, fees and charges, within the period stipulated in the said *Notice* or file its protest in a court of competent jurisdiction.

Respondent herein then filed its *Petition* before the Regional Trial Court of Makati City on July 15, 2015, praying for the immediate cancellation and permanent nullification of the *Notice of Assessment* dated March 18, 2015 and the *Final Assessment Notice* (or letter) dated June 8, 2015, in the aggregate amount of ₱65,730,711.30. The case was docketed as Civil Case No. 15-684, and was raffled to RTC-Branch 143.

On September 4, 2015, Ms. Nelia A. Barlis, as City Treasurer, and Ms. Andrea Pacita S. Guintu, as OIC-Makati City Treasurer, both of petitioner City of Makati, filed their *Answer (Re: Petition dated 13 July 2015)*, alleging certain special and/or affirmative defenses, to wit: (1) for its business permits and license in Makati City, respondent applied as a holding company in and was classified as such by Makati City; (2) as a holding company, respondent was taxed under Section 3A.02 (p) in relation to Section 3A.02 (h) of the Revised Makati Revenue Code (RMRC); (3) Section 3A.02 (p), in relation to Sections 3A.02 (g) and 3A.02 (h), was never questioned in accordance with Section 7B.14 (Taxpayers' Remedies) paragraph (d) of the RMRC and therefore, remains to be valid; (4) the City Treasurer of Makati argued correctly against the claims of respondent; and (5) the cited case of *DMCI-MPIC Water Co., Inc. v. Makati City, et al.* (Civil Case No. 13-089, and now, CTA Case No. 146) and *Michigan Holdings, Inc. v. The City Treasurer of Makati* are still pending in this Court, and thus, have not yet attained finality.

On September 21, 2015, respondent filed its *Reply (To Respondent's Answer dated September 4, 2015)*.

Further proceedings then ensued.

For failure of the parties to amicably settle through Judicial Dispute Resolution Conference, Civil Case No. 15-684 was re-raffled to RTC-Branch 146.

On September 5, 2019, RTC-Branch 146 promulgated the assailed Decision.

Petitioners then filed their *Motion for Reconsideration (Re: Decision dated September 5, 2019)* on October 2, 2019. Respondent filed its *Comment (On respondents' Motion for Reconsideration dated September 23, 2019)* on November 4, 2019.

Subsequently, RTC-Branch 146 issued the assailed Order dated December 12, 2019.

Petitioner filed its *Petition for Review (Re: Decision dated September 5, 2019)* on February 6, 2020.

In the Resolution dated March 2, 2020, the Court ordered petitioners to take appropriate actions relative to its observations and finding that the parties referred in the original petition are not properly labeled, within a period of ten (10) days from notice. Petitioners then filed a *Manifestation of Compliance* on September 4, 2020, thereby submitting the present *Amended Petition for Review (Petition for Review filed February 6, 2020).*

Subsequently, in the Resolution dated September 17, 2020, the Court ordered petitioners to submit a compliant *Amended Verification and Certification of Non-Forum Shopping* within ten (10) days from notice. In compliance thereto, petitioners submitted their *Compliance (Re: Resolution dated September 17, 2020)* on October 28, 2020, attaching therewith the *Amended Verification and Certification of Non-Forum Shopping.*

In the Resolution dated November 11, 2020, the Court ordered respondent to file its comment on the *Amended Petition for Review (Petition for Review filed February 6, 2020),* within ten (10) days from notice. Thus, on February 3, 2021, respondent filed its *Comment [On the Amended Petition for Review dated March 2, 2022].*

The Court deemed the instant case submitted for decision on February 24, 2021.

Thereafter, in the Resolution dated June 28, 2021, the Court ordered the Branch Clerk of Court of RTC-Branch 146, Makati City to elevate the entire original records of Civil Case No. 15-684. In compliance thereto, the RTC-Branch 146 transmitted the entire records of the case, consisting of two (2) volumes, on November 25, 2021.

On February 10, 2022, the Court in Division promulgated the assailed Decision,[6] to which petitioners filed a *Motion for Reconsideration (Re: Decision Promulgated on February 10, 2022 on the Amended Petition for Review filed by Petitioner on September 4, 2020)*[7] on March 16, 2022, with respondent's *Opposition (to the Motion for Reconsideration dated March 16, 2022)*[8] filed on March 25, 2022.

On May 11, 2022, the Court in Division promulgated the assailed Resolution[9] denying petitioners' motion for reconsideration.

Aggrieved, petitioners filed the instant *Petition for Review*[10] with the Court *En Banc*.

On July 7, 2022, the Court *En Banc* issued a Resolution[11] ordering respondent to file its comment within ten calendar days from receipt thereof.

On August 2, 2022, the Court *En Banc* received respondent's *Comment*[12] filed through registered mail on July 25, 2022, which was found by the Court *En Banc* to be insufficient in number of copies and ordered respondent to submit additional six copies within ten days from notice.[13]

On August 16, 2022, respondent filed its *Compliance*[14] submitting six additional copies of its comment, which the Court *En Banc* noted.[15]

On September 20, 2022, this case was submitted for decision.[16]

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[6] *Supra*, note 3.
[7] Division Docket, unpaged.
[8] *Id.*
[9] *Supra*, note 4.
[10] *Supra*, note 1.
[11] *EB* Docket, pp. 45-46.
[12] *Id.*, pp. 48-64.
[13] Minute Resolution dated August 4, 2022, *id.*, p. 66.
[14] *Id.*, pp. 67-70.
[15] Minute Resolution dated August 16, 2022, *id.*, p. 71.
[16] Resolution, *id.*, pp. 73-75.

THE ISSUE

Petitioners assigned the following errors for this Court's resolution:

A. UNLESS REPEALED BY CONGRESS, SECTION 187 OF THE LOCAL GOVERNMENT CODE REMAINS TO BE THE PROPER AND EXCLUSIVE PROCEDURE TO QUESTION THE CONSTITUTIONALITY OF (sic) LEGALITY OF TAX ORDINANCES AND REVENUE MEASURES.

B. SECTIONS 3A.02 (P) OF THE REVISED MAKATI REVENUE CODE IN RELATION TO SECTION 3A.02 (G) AND (H) AS WELL AS SECTION 7B.14(c) REMAIN TO BE VALID SINCE THEY WERE NEVER QUESTIONED NOR ATTACKED DIRECTLY UNDER SECTION 187 OF THE LOCAL GOVERNMENT CODE.

C. THE COURT HAD NO JURISDICTION TO RULE ON THE VALIDITY OR CONSTITUTIONALITY OF SECTIONS 3A.02 (P) OF THE REVISED MAKATI REVENUE CODE IN RELATION TO SECTION 3A.02 (G) AND (H) AS WELL AS SECTION 7B.14(c).

Petitioners' arguments:

Petitioners believe that the Court in Division exceeded its power in declaring certain provisions of the Revised Makati Revenue Code (RMRC), a valid and existing ordinance, as void and inoperative, considering that Section 187 of the Local Government Code (LGC) provides the procedure for nullifying tax ordinances and revenue measures. Petitioners insist that any question on the legality and validity of the tax ordinance should be filed before the Secretary of Justice (SOJ), and failure to do is fatal to respondent's cause.

Respondent's arguments:

Respondent contends that the CTA has exclusive jurisdiction to resolve all tax problems, including the validity or constitutionality of the provisions of a local tax ordinance. Respondent argues that petitioners' reliance on Section 187 of the LGC is misplaced as this case seeks to nullify petitioners' deficiency assessments under Section 195 of the LGC, not the declaration of nullity of petitioners' tax ordinance. Hence, the

rule on exhaustion of administrative remedy before the SOJ under Section 187 will not apply.

Respondent adds that even assuming that recourse to the SOJ was mandatory, this present case is an exception to Section 187 of the LGC as this involves pure questions of law and strong public interest as found by the Court in Division in its assailed Resolution.

Respondent insists that the Court in Division correctly ruled that the local business tax (LBT) assessments on respondent's income as a holding company have no legal basis, citing *The City Treasurer of Makati City v. Michigan Holdings, Inc.* (*Michigan*),[17] which declared that a holding company is not covered within the definition of "banks and other financial institutions" subject of LBT on interest income.

THE COURT *EN BANC*'S RULING

The instant Petition for Review was timely filed.

Under Section 3(b), Rule 8[18] of the RRCTA, a petition for review must be filed with this Court within fifteen (15) days from receipt of the copy of the questioned resolution of the Court in Division.

Petitioners received a copy of the assailed Resolution on May 24, 2022. Counting fifteen (15) days, petitioners had until June 8, 2022, to file a petition for review with the Court *En Banc.*

Petitioners filed this Petition for Review on June 8, 2022; hence, timely filed.

We now proceed to the merits of the case.

[17] G.R. No. 224322 (Notice), March 24, 2021.
[18] *Supra*, note 2.

This case is triggered by an Assessment Notice that was protested and appealed under Section 195 of the LGC; hence, Section 187 of the LGC does not apply.

Petitioners claim that the CTA has no jurisdiction to rule on the validity of the pertinent provisions of the RMRC because they were not directly questioned in accordance with Section 187 of the LGC.

Respondent counters that this case originated from the original action filed with the RTC Makati City to protest its LBT assessment under Section 195 of the LGC. In questioning the validity of the deficiency assessment, respondent argued that Section 3A.02 (p), in relation to Section 3A.02 (h), which subjected holding companies to LBT, is an *ultra vires* exercise of taxing power under the LGC and the Tax Code.

We find for respondent.

This involves a local tax case decided by the RTC Makati City in the exercise of its original jurisdiction that was appealed to the Court in Division. From the decision and resolution of the Court in Division, it was appealed to the Court *En Banc* and is therefore within the exclusive appellate jurisdiction of this Court to review by appeal, under Section 2(a) (2), Rule 4[19] of the RRCTA.

In its petition before the RTC Makati City, respondent sought the permanent nullification of the Notice of Assessment that included assessments on dividend income and LBT already paid by respondent. Said petition was filed within thirty (30) days from respondent's receipt of petitioners' letter denying respondent's letter request to re-assess respondent's tax liabilities *per* the Notice of Assessment.

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[19] SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
...
(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and ...

The RTC Makati City then promulgated its Decision nullifying the Assessment Notice for erroneously assessing respondent of deficiency taxes pertaining to its management fees and the investment income and revenues from its employees' benefit plan.

As the case emanated from petitioners' issuance of the Notice of Assessment, which respondent formally protested and appealed to the RTC, the petition was filed in accordance with Section 195, to wit:

> SEC. 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests, and penalties. **Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment**; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest** or from the lapse of the sixty (60)-day period prescribed herein **within which to appeal with the court of competent jurisdiction** otherwise the assessment becomes conclusive and unappealable. (*Emphases supplied*)

And so, Section 187 of the LGC, which outlines the procedure for questioning the constitutionality or legality of a tax ordinance, does not apply:

> SEC. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.* — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided, further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not

> have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

In fact, what respondent put in issue[20] before the RTC Makati City is whether petitioners are empowered to levy taxes on respondent's income as a holding company, the propriety of the assessments made, and whether its cancellation and nullification are warranted.[21] Respondent did not question the legality or constitutionality of the RMRC or any of its provisions. The RTC Makati City and the Court in Division resolved the issue, among others, by declaring inapplicable the RMRC provisions incorrectly applied by petitioners in issuing the Assessment Notice.

At any rate, the Supreme Court, in several cases,[22] has previously relaxed the rule on exhaustion of administrative remedies due to non-compliance with Section 187 of the LGC given the more substantive matters, such as when the issue involved is purely a legal question.[23]

In the proceedings before the RTC Makati City, petitioners waived the presentation of their evidence given the stipulation of facts made during the pre-trial.[24] Clearly, there was no dispute on any factual matters; hence, petitioners did not see the need to present evidence. As this petition does not only raise pure questions of law but also involves substantive matters imperative for the Court to resolve, this case constitutes an exception to the general rule.

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[20] Stipulated by the parties during pre-trial *per* the Decision dated September 5, 2019, Division Docket, p. 24.
[21] Decision dated September 5, 2019, Division Docket, p. 24.
[22] *Municipality of San Mateo, Isabela v. Smart Communucations, Inc.*, G.R. No. 219506, June 23, 2021, citing *Alliance of Quezon City Homeowners' Association, Inc. v. Quezon City Government*, G.R. No. 230651, September 18, 2018; see also *Ferrer v. Bautista*, G.R. No. 210551, June 30, 2015; *Alta Vista Golf and Country Club v. City of Cebu*, G.R. No. 180235, January 20, 2016; *Cagayan Electric Power and Light Co., Inc. (CEPALCO) v. City of Cagayan De Oro*, G.R. No. 191761, November 14, 2012; *Ongsuco v. Malones*, G.R. No. 182065, October 27, 2009.
[23] *Alta Vista Golf and Country Club v. City of Cebu*, G.R. No. 180235, January 20, 2016, citing *Ongsuco v. Malones*, G.R. No. 182065, October 27, 2009.
[24] Decision dated September 5, 2019, Division Docket, p. 24.

The Court in Division did not err in setting aside Section 7B.14 (c) of the RMRC.

Petitioners insist that the Court in Division has no jurisdiction in invalidating Section 7B.14(c) of the RMRC, which provides:

> SEC. 7B.14. *Taxpayer's Remedies.* — ...
> (c) Payment under protest — No protest, however, shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipt the words "paid under protest." A copy of the tax receipt shall be attached to the written protest contesting the assessment.

The Court in Division correctly invalidated Section 7B.14 (c) of the RMRC concerning "payment under protest" for being inconsistent with Section 195[25] of the LGC, which does not require prior payment to validly protest the assessment. The taxpayer's remedy to protest without payment is affirmed by the Supreme Court in the *City of Manila and Office of the Treasurer of Manila v. Cosmos Bottling Corporation*,[26] *viz.*:

> Clearly, when **a taxpayer** is assessed a deficiency local tax, fee or charge, he **may protest** it **under Section 195 even without making payment of such assessed tax, fee or charge**. This is **because the law on local government taxation**, save in the case of real property tax, **does not expressly require "payment under protest" as a procedure prior to instituting the appropriate proceeding in court**. This implies that the success of a judicial action questioning the validity or correctness of the assessment is not necessarily hinged on the previous payment of the tax under protest.
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> ...
>
> (a) Where no payment is made, the taxpayer's procedural remedy is governed strictly by **Section 195**. That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to appeal

[25] SEC. 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests, and penalties. **Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment**; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest** or from the lapse of the sixty (60)-day period prescribed herein **within which to appeal with the court of competent jurisdiction** otherwise the assessment becomes conclusive and unappealable.

[26] G.R. No. 196681, June 27, 2018.

> the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment. (*Emphases and underscoring supplied*)

In setting aside Section 7B.14(c) of the RMRC, the Court is simply guided by the well-established doctrine that ordinances, which are inferior in status, should not contravene and should remain consistent with the law.[27] Otherwise, the ordinance is void.[28]

The Court in Division correctly ruled that respondent cannot be taxed under Section 3A.02(h) of the RMRC.

Petitioners taxed respondent, as a holding company, under Section 3A.02(p) of the RMRC, in relation to subsections (g) and (h) thereof, which state:

> SEC. 3A.02. *Imposition of Tax.* — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:
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> ...
>
> (g) On Contractors and other independent contractors defined in SEC. 3A.01 (t) of Chapter III of this Code; and on owners or operators of business establishments rendering or offering services such as; advertising agencies; ... **business management services**; collecting agencies; ...
>
> With gross sales or receipts for the preceding calendar year in the amount of: ...
>
> (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

[27] *Ferrer, Jr. v. City Mayor Herbert Bautista*, G.R. No. 210551, June 30, 2015, citing *Legaspi v. City of Cebu*, G.R. No. 159110, December 10, 2013; *City of Manila v. Hon. Laguio, Jr.*, G.R. No. 118127, April 12, 2005.
[28] *Tan v. Pereña*, G.R. No. 149743, February 18, 2005, citing *Solicitor General v. Metropolitan Manila Authority*, G.R. No. 107282, December 11, 1991, *Tatel v. Municipality of Virac*, G.R. No. 40243, March 11, 1992, and *Magtajas v. Pryce Properties*, G.R. No. 111097, July 20, 1994.

> 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 (I) 1, as provided in this code.
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> ...
>
> (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. (*Emphasis supplied*)

Petitioners assert that since respondent is a holding company, it must be taxed at a rate prescribed under Section 3A.02(g) or 3A.02(h) of the RMRC. In this case, petitioners assessed respondent under the rate specified in Section 3A.02(h) of the RMRC, *i.e.*, 20% of 1% of its gross receipts.

Petitioners are mistaken.

It is settled that LBT under Section 143[29] of the LGC is levied on the entity's gross receipts derived from the conduct of its *principal* trade or business.[30] While respondent may be subject to LBT on its gross receipts derived from the conduct of its principal trade or business as a holding company[31] following Section 143 of the LGC, its dividend and interest income derived

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[29] SEC. 143. *Tax on Business.* — The municipality may impose taxes on the following businesses:
(a) On manufacturers, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders of liquors, distilled spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, in accordance with the following schedule: ...
(b) On wholesalers, distributors, or dealers in any article of commerce of whatever kind or nature in accordance with the following schedule: ...
(c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsection (a), (b) and (d) of this Section: ...
(d) On retailers. ...
(e) On contractors and other independent contractors, in accordance with the following schedule: ...
(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.
(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (P50.00) per peddler annually.
(h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.
The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein.

[30] *City of Davao v. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 29, 2019.

[31] *The City Treasurer of Makati City v. Michigan Holdings, Inc.*, G.R. No. 224322 (Notice), March 24, 2021, citing *City of Davao v. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 29, 2019.

from investment on shares of stock and other money market placements cannot be subject to LBT because such income is not derived from the pursuit of its principal business activity.[32]

For respondent to be properly assessed under Section 3A.02(h) of the RMRC, petitioners must show that respondent is doing business as a bank or a non-bank financial intermediary.

The Court in Division has meticulously discussed that respondent does not fall under the purview of "banks and other financial institutions" as defined under Section 131(e)[33] of the LGC and that respondent is neither a financial intermediary nor lending investor, finance and investment company, pawnshop, money shop, insurance business, stock market, stockbroker, and dealer in securities. As a "holding company," respondent's main business is simply to hold shares to control the policies of its subsidiaries;[34] thus, respondent cannot be taxed under Section 3A.02(h) of the RMRC.

Also, the Supreme Court has already settled that holding companies are not liable for LBT pursuant to Section 143(f) of the LGC as they are not considered banks or non-bank financial intermediaries.[35] Consequently, petitioners' assessment of respondent pursuant to Section 3A.02(h) of the RMRC is erroneous.

In fine, the RTC Makati City did not err in, and the Court in Division in sustaining, the cancellation of the subject assessment, levying LBT on respondent's other income, namely, its management fees, investment income, and revenues from its employees' benefit pension plan for being *ultra vires*.

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[32] *The City Treasurer of Makati City v. Michigan Holdings, Inc.*, G.R. No. 224322 (Notice), March 24, 2021.
[33] SEC. 131. *Definition of Terms.* — When used in this Title, the term: ...
(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; ...
[34] *City of Davao v. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 29, 2019.
[35] *City of Davao v. First Meridian Development, Inc.*, G.R. No. 240078 (Notice), October 19, 2022, citing *City of Davao v. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 29, 2019; *City of Davao v. AP Holdings, Inc.*, G.R. No. 245887, January 22, 2020; *City of Davao v. Toda Holdings, Inc.*, G.R. No. 248167 (Notice), June 30, 2020; *City of Davao v. Fernandez Holdings, Inc.*, G.R. No. 248820 (Notice), July 7, 2021 and *City of Davao v. ARC Investors, Inc.*, G.R. No. 249668 (Resolution), July 13, 2022.

WHEREFORE, premises considered, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated February 10, 2022 and the Resolution dated May 11, 2022 promulgated by the Court's Third Division in CTA AC No. 234 are **AFFIRMED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON OFFICIAL BUSINESS
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice