REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

VALHALLA PROPERTIES LIMITED, 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. 137

Members:

BAUTISTA, *Chairperson*
FABON- VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 1 5 2016
3:20 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review[1] assailing the Decision dated November 10, 2014[2] and Order dated April 20, 2015[3] of the Regional Trial Court (RTC), Branch 17 of the City of Davao (trial court) in Civil Case No. 35,681-14, upholding the assessment on petitioner of 0.55% local business tax for the third and fourth quarters of 2011 in the amount of one million three hundred three thousand sixty nine and 42/100 pesos (₱1,300,069.42).

The Facts

Petitioner Valhalla Properties Limited, Inc. (VPLI) is a corporation duly organized in 1983 and existing under Philippine laws. It is registered with the Securities and Exchange Commission (SEC). On December 22, 2009, the SEC

[1] Under Rule 4, Sec. 3(a)(3) of the Revised Rules of the CTA (RRCTA).
[2] Docket, pp. 39-48.
[3] Id. at 49-50.

approved the transfer of VPLI's principal office address from Makati City to Legaspi Oil Compound, Km. 9.5, Sasa, Davao City.[4]

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).

VPLI was among the fourteen holding companies formed in 1983 for the purpose of owning and holding shares of stock of San Miguel Corporation (SMC).[5] In 1986, the said holding companies, including VPLI, 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.

VPLI was a registered owner of SMC common shares, from which VPLI occasionally received cash and stock dividends. In October 2009, VPLI became the registered owner of 31,411,848 preferred shares of SMC, after the Supreme Court approved the conversion of an equal number of SMC common shares into preferred shares. The cash dividends received by VPLI from the SMC preferred shares were invested by it in Treasury Bills or other government securities from which it earned additional interest.[6]

In 2010, VPLI received ₱238,411,869.28 from its SMC preferred shares, consisting of ₱235,588,860.00 in dividends and ₱2,823,009.28 in interest income from money market placements.

In the meantime, the Supreme Court *En Banc*, in *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic of the Philippines*,[7] declared the fourteen holding companies and the SMC shares held by them to be owned by the government.

On January 20, 2014, VPLI received from respondent Treasurer a Business Tax Order of Payment[8] dated January 20, 2014 for ₱1,303,069.42. 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.[9]

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4 Docket, p. 11.

5 The Coconut Industry Investment Fund, created by Presidential Decree No. 961, was invested to acquire corporations operating oil mills. Since these corporations were not authorized to invest in shares of stocks, they formed holding companies for the purpose of buying and holding SMC shares.

6 Docket, p. 11.

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

8 Docket, pp. 79-82.

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

On March 21, 2014, VPLI filed a written administrative protest against the assessment.[10] VPLI'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 VPLI 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.[11]

In its letter dated April 15, 2014,[12] VPLI 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[13] (LGC), which does not require payment under protest for business tax.

In a letter dated May 5, 2014,[14] 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 VPLI's protest.

On June 9, 2014, VPLI filed a Petition for Review[15] 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 Decision[16] dated November 10, 2014, the trial court dismissed the petition for review. The trial court found that VPLI 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. Consequently, for petitioner's failure to perfect its protest as prescribed by the Revenue Code of Davao City, the assessments made by respondents became final and executory. The dispositive portion reads:

> **WHEREFORE**, premises considered, for lack of merit, the Petition for Review under Section 195 of Republic Act No.

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10 Docket, pp. 83-90.
11 Id. at 91.
12 Id. at 92-97.
13 Republic Act No. 7160.
14 Docket, p. 98.
15 Id. at 99-115.
16 Supra, note 2.

7160 filed by petitioner, Valhalla Properties Limited, Inc., is hereby **DISMISSED**.

Accordingly, petitioner is hereby directed to pay the respondents the amount of One Million Three Hundred Three Thousand Sixty Nine and 42/100 (₱1,303,069.42) Pesos, representing the 0.55% local business tax for the third and fourth quarters of 2011 on the dividends derived from its shares of stock and interest on its money market placements derived from San Miguel Corporation.

SO ORDERED.[17]

The trial court denied VPLI's Motion for Reconsideration in the Order[18] dated April 20, 2015, finding no cogent/imperative reason to disturb or modify its findings in the Decision dated November 10, 2014.[19]

Hence, the present Petition for Review,[20] which was filed on June 8, 2015. On July 3, 2015, the Court ordered[21] respondents to comment on the petition, within ten days from notice.[22] They filed their Comment[23] on July 27, 2015 via registered mail.

In a Resolution[24] dated August 24, 2015, the Court gave due course to the petition and ordered the parties to submit their respective memoranda. VPLI filed its Memorandum[25] on October 1, 2015; while respondents filed their Memorandum[26] on October 23, 2015. Thus, the Court deemed the case submitted for resolution in a Resolution[27] dated November 11, 2015.

The Issues

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

THE ASSESSMENT AGAINST VPLI FOR 0.55% LOCAL BUSINESS TAX ON THE DIVIDENDS ON ITS SMC

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17 Docket, p. 48.
18 Supra, note 3.
19 Docket, p. 50.
20 Id. at 8-33.
21 Id. at 173-174.
22 Respondents received the Resolution dated July 3, 2015 on July 16, 2015. Docket, p.179.
23 Docket, pp. 179-197.
24 Id. at 201-202.
25 Id. at 227-256.
26 Id. at 206-224.
27 Id. at 261.

SHARES OF STOCK AND INTERESTS ON ITS MONEY MARKET PLACEMENTS FOR THE TAXABLE YEAR 2010 SHOULD BE CANCELLED ON THE FOLLOWING GROUNDS:

A.

VPLI IS NOT A BANK OR A FINANCIAL INSTITUTION.

B.

VPLI IS NOT ENGAGED IN BUSINESS THAT IS SUBJECT TO LOCAL BUSINESS TAX UNDER SECTION 143 OF REP. ACT. NO. 7160.

C.

VPLI'S INCOME PARTAKE THE NATURE OF PUBLIC FUNDS; THUS, BUSINESS TAX CANNOT BE IMPOSED ON THE SAME.

D.

THE REQUIREMENT OF PAYMENT UNDER PROTEST UNDER SECTION 423 OF THE 2005 REVENUE CODE OF THE CITY OF DAVAO IS VOID FOR BEING CONTRARY TO THE LOCAL GOVERNMENT CODE.[28]

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,

[28] Docket, pp. 14-15.

OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991".

II.

THE COURT A QUO WAS CORRECT IN DISMISSING THE CASE AS THE SAME HAS NOT ACQUIRED JURISDICTION, CONSIDERING THAT PETITIONER FAILED TO COMPLY WITH THE PRE-REQUISITE OF PAYING FIRST THE ENTIRE TAX AS ASSESSED BEFORE FILING A PROTEST WITH THE CITY TREASURER'S OFFICE.[29]

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;

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

3. Whether VPLI's income partake 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 their own revenues 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 VPLI under the following provision of the LGC:[30]

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[29] Docket, p. 185.

[30] 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.

> 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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> 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 of the City of Davao 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.[31] Respondent Treasurer has no discretion on whether to act on the protest before it is paid, or to require VPLI to pay under protest as required by the ordinance.

Hence, once VPLI 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

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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.

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

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,[32] and compliance by all affected thereby is mandatory.[33] In this case, since the 2005 Revenue Code had not been declared invalid, VPLI'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, VPLI 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 based on Section 143 of the LGC.

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:
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> **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.
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> 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:

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

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

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 CONVERTED SMC SERIES 1 PREFERRED SHARES TOTALING 753,848,312 SHARES SUBJECT OF THE RESOLUTION OF THE COURT DATED SEPTEMBER 17, 2009 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID OR ISSUED THEREON AFTER THAT DATE, 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.

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.[34]

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:

[34] Supra, note 5, as modified by Supreme Court in its Resolution dated September 4, 2012 clarifying the Decision dated January 24, 2012 in the same case. The underscored portion originally read: "**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**". The Resolution dated September 4, 2012 also DENIED with FINALITY the Motion for Reconsideration filed by petitioners therein.

x x x

> (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.

Hence, although the protest was not perfected, the assessment is void *ab initio* and must be cancelled. Further, the assets of VPLI, 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 VPLI'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 VPLI, which is a private company. Hence, according to respondents, Section 133(o) of the LGC is not applicable in this case.[35]

It is of no moment that prior to *COCOFED*, VPLI 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 VPLI 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 VPLI 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.[36]

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 were derived from the SMC shares that the government owns. Moreover, these shares were 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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[35] Docket, p. 194.
[36] Supra, note 7.

Any earnings of the SMC shares belong to the government. Any local tax imposed on VPLI, 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.*,[37] 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 VPLI 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.[38] VPLI 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 there that all SMC 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, having been acquired using coconut levy funds, 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 VPLI not having perfected its protest, the assessment must still be cancelled, for the Supreme Court's ruling in *COCOFED* has already taken VPLI 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 Decision dated November 10, 2014 and the Order dated April 20, 2015 of the Regional Trial Court, Branch 17 of the City of

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[37] G.R. No. 178030, December 15, 2010.
[38] *Philippine Fisheries Development Authority v. Court of Appeals*, G.R. No. 169836, 31 July 2007.

Davao in Civil Case No. 35,681-14 are hereby **REVERSED and SET ASIDE**. The Assessment dated January 20, 2014 is hereby **CANCELLED**.

SO ORDERED.

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