REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

ARC INVESTORS, INC., Petitioner,	**CTA AC No. 153** **(Civil Case No. 34,849-2013)**
- versus -	***Members:*** **DEL ROSARIO,** *Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City, Respondents.	***Promulgated:*** JAN 16 2017 3:40 p.m.

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DECISION

UY, J.:

This is a Petition for Review filed on November 9, 2015 by ARC Investors, Inc. (ARCI) against the City of Davao and its City Treasurer, praying that judgment be rendered ordering the refund or credit of the amount of ₱2,204,494.00, plus legal interests, allegedly representing the 0.55% local business taxes for the first and second quarters of 2011 that were erroneously and illegally collected from it on January 18, 2011 and April 25, 2011, respectively.

THE FACTS

Petitioner ARCI is a domestic corporation incorporated in 1983 whose primary purpose, as stated in its Amended Articles of Incorporation, is as follows:

"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, 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 therefore 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."[1]

Since its incorporation, petitioner ARCI's principal office address was located in Makati City, Metro Manila. Subsequently, on December 16, 2009, the Board of Directors of ARCI approved the transfer of its principal office address to Legaspi Oil Compound, Km. 9.5, Sasa, Davao City and the consequent amendment of Article III of its Articles of Incorporation.[2] It was duly admitted by the parties that petitioner ARCI is not a bank.[3]

On the other hand, 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;[4] while respondent Rodrigo S. Riola ("respondent Riola" for brevity) is the incumbent City Treasurer of Davao City and is being impleaded in his official capacity as it was his office which allegedly collected erroneously and illegally from petitioner 0.55% local business taxes on the dividends and interest received by petitioner.[5]

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[1] Par. 3, Joint Stipulation Facts and Issues (JSFI), RTC Docket, pp. 274 to 275; Exhibits "A" and "A-1", RTC Records, pp. 169 to 181, and 184 to 193.
[2] Par. 3.1, JSFI, RTC Docket, p. 275.
[3] Refer to Par. 16, JSFI, RTC Docket, p. 288.
[4] Par. 17, JSFI, RTC Docket, p. 288.
[5] Par. 18, JSFI, RTC Docket, p. 288.

From October 2009, petitioner ARCI has been the registered owner of 105,689,360 preferred shares of stock in San Miguel Corporation (SMC) after the Supreme Court *En Banc* approved the conversion of petitioner ARCI's common shares of stocks in SMC to the said preferred shares. The dividends received by petitioner ARCI from their SMC preferred shares were deposited in trust accounts which earned interest from money market placements.[6]

In 2010, petitioner ARCI obtained the amount of ₱801,634,060.07 from dividends on its SMC preferred shares and interests on its money market placements, broken down as follows:[7]

Nature of income	Amount
Dividends	₱ 792,670,200.00
Interest	8,963,860.07
TOTAL	**₱ 801,634,060.07**

On January 18, 2011 and April 25, 2011, respondents collected from petitioner ARCI a 0.55% local business tax for the first and second quarters of 2011, respectively, based on the gross receipts derived by petitioner ARCI from the said dividends and interests for taxable year 2010 in the aggregate amount of ₱2,204,494.00, as evidenced by Official Receipt Nos. 5791184 A and 9884249 A.[8] The imposition by the respondents on petitioner ARCI is a local graduated business tax as provided under Section 69(f) of Ordinance No. 0158-05, Series of 2005, otherwise known as the 2005 Revenue Code of Davao City, in relation to Section 5 (b3) of the same code.[9]

On September 13, 2012, petitioner ARCI filed with respondent Riola a written claim for refund or credit of the 0.55% local business taxes collected in the first and second quarters of 2011, in compliance with the requirements provided in Section 196 of Republic Act (RA) No. 7160.[10]

Due to the inaction of respondent Riola on the said administrative claim,[11] petitioner ARCI filed a *Petition* before the Regional Trial Court (RTC) of Davao City (Branch 16) on January 17,

[6] Refer to Par. 26, JSFI, RTC Docket, p. 291.
[7] Refer to Par. 27, JSFI, RTC Docket, p. 291.
[8] Refer to Pars. 20 and 28, JSFI, RTC Docket, pp. 289 and 292.
[9] Refer to Par. 21, JSFI, RTC Docket, p. 290.
[10] Refer to Pars. 25 and 29, JSFI, RTC Docket, pp. 290 and 292.
[11] Refer to Par. 15, JSFI, RTC Docket, p.288; Refer also to Pars. 25 and 29, JSFI, RTC Docket, pp. 290 and 292.

2013.[12] The case was docketed as Civil Case No. 34,849-2013 entitled *"ARC Investors, Inc., versus City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City"*.[13]

Subsequently, the RTC denied the *Petition* in its Decision dated June 22, 2015,[14] the pertinent portion of which reads:

> "To stress, the income of the Petitioner Corporation comes only from two sources, to wit:
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> 1. ***Dividends from ARCI's SMC Shares; and***
> 2. ***Interest Income from ARCI's Money Market Placements*** *(Par. 11, Petition)*
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> In short, these ***dividends and interests*** are not considered incidental to its business quest, but are the **principal** *(defined above as **Principal** shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental)* incomes of Petitioner's Corporation in the regular course of its business in line with the Primary Purpose of its Amended Articles of Incorporation.
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> As such, being categorized as a **Financial Intermediary**, petitioner's principal income falls under the coverage of **paragraph (f), Section 143 of RA No. 7160 of the Local Government Code of 1991**, to wit:
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> > *"SECTION 143. Tax on Business. – **The municipality may impose taxes on the following businesses**:*
> >
> > *xxx xxx 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*

[12] RTC Docket, p. 3.
[13] *Supra.*
[14] Annex "P-1", Petition for Review, Docket, pp. 32 to 41; RTC Records, pp. 339 to 348.

> *property and profit from exchange for sale of property, insurance premium.*"
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> **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**.
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> **SO ORDERED**."

Petitioner ARCI then filed a *Motion for Reconsideration* on August 20, 2015,[15] arguing that the RTC erroneously held that it is subject to local business tax as a non-bank financial intermediary. However, this *Motion for Reconsideration* was denied by the RTC in its Order dated September 11, 2015,[16] which reads:

> "After considering the arguments raised in the ***'Motion for Reconsideration'*** filed by Petitioner through counsel, on the Order of this Decision dated June 22, 2015 (*denying and/or dismissing Petitioner's Petition*), along with the '**Comment etc**' filed by the Public Respondent through counsel, the Court finds no cogent reason to alter, modify or set aside the assailed Decision dated June 22, 2015.
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> As such, the ***'Motion for Reconsideration'*** filed by the Petitioner through counsel is hereby **DENIED**.
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> **SO ORDERED**."

Thus, petitioner filed the instant *Petition for Review* on November 9, 2015.[17]

In the Resolution dated December 9, 2015,[18] the Court directed respondents to file their comment on the petition, not a motion to dismiss, within ten (10) days from notice thereof. In addition, the Branch Clerk of Court of RTC Branch 16 of Davao City was directed to elevate the entire original records of Civil Case No. 34,849-2013.

On January 28, 2016, respondents filed, through registered mail, their *Motion to Admit Belated Comment* which was received by

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[15] RTC Records, pp. 349 to 360.
[16] Annex "P-2", Petition for Review, Docket, p. 42; RTC Records, p. 377.
[17] Docket, pp. 8 to 29.
[18] Docket, pp. 145 to 146.

the Court on February 12, 2016,[19] attaching their *Comment* thereto.[20]

On March 17, 2016, the Court received the entire original records of Civil Case No. 34,860-2013 from the RTC.[21]

Subsequently, in the Resolution dated March 22, 2016,[22] the Court granted respondents' *Motion to Admit Belated Comment* and consequently, their *Comment* was admitted. In the same Resolution, the case was submitted for decision.

Hence, this Decision.

THE ISSUE

Petitioner ARCI raises the following issue to be resolved by this Court, to wit:

> "WHETHER OR NOT ARCI 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."[23]

Petitioner ARCI's arguments:

Petitioner ARCI argues that it is entitled to a refund or credit of the 0.55% local business taxes collected for the first and second quarters of 2011 on its SMC preferred shares dividends and on interests on its money market placements for taxable year 2010 on the following grounds:

1. Under Section 133(A) of RA No. 7160, it is erroneous and illegal for respondents to collect a 0.55% local business tax on the dividends and interests earned by a taxpayer which is not a bank or a financial institution; and

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[19] Docket, pp. 147 to 149.
[20] Docket, pp. 150 to 163.
[21] Docket, p. 166.
[22] Docket, pp. 169 to 170.
[23] Docket, p. 15.

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2. Petitioner ARCI is not a bank or non-bank financial institution and is not engaged in business that is subject to local business tax under Section 143 of RA No. 7160.

Respondents' counter-arguments:

Respondents, on the other hand, argue that the imposition of local business tax against petitioner ARCI's receipt of dividends and interest income from SMC, 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 RA No. 7160. They contend that petitioner is deemed *"a bank and other financial institution"*, specifically, a *"non-bank financial intermediary or an investment company"*, by virtue of its investment and money placements in SMC.

According to respondents, the business purpose of petitioner ARCI as contained in its Amended Articles of Incorporation is wittingly and unwittingly broad enough to catch all the descriptive functions of a non-bank financial intermediary as provided under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the *Bangko Sentral ng Pilipinas*.

Respondents further assert that petitioner ARCI's Articles of Incorporation stating that it shall not act as investment company or securities broker or dealer is not a conclusive proof that it is not a bank or other financial institution. They claim that being a stock corporation, petitioner ARCI is presumed to have been organized to engage in business with the end view of a profit.

It is the view of respondents that the definition of gross sales/receipts under Section 131(n) of RA No. 7160 stating that it does not include dividends and interest income as component of sales or receipts is a general definition of such term, which cannot defeat a specific and clear provision of taxability of dividends and interest income, as provided under Section 143(f) of the same Code.

Thus, the opinion of the Bureau of Local Government Finance that petitioner is exempt from local business tax for not being a bank and other financial institution, is allegedly not binding upon the issue involved in this case, as it is not an administrative agency whose findings on question of facts and law are given weight and respect in the courts.

Lastly, respondents argue that even if it is assumed that petitioner ARCI's income partakes the nature of public funds pursuant to the ruling of the Supreme Court in *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines*[24] [that since the Coconut Industry Invest Fund (CIIF) Block of SMC shares were acquired using the coconut levy funds, the same should be treated as government assets], nevertheless, it does not exempt petitioner ARCI from the payment of local business tax on its dividends and interest income pursuant to Section 143(f) of RA No. 7160.

THE COURT'S RULING

The instant *Petition for Review* is meritorious.

Respondents may not impose business tax on dividends and interest income received by petitioner since there is no showing that petitioner is a non-bank financial intermediary.

Respondents insist that petitioner is a non-bank financial intermediary, and therefore subject to local business tax.

We disagree.

Section 131(e) of the RA No. 7160, otherwise known as the Local Government Code (LGC) of 1991, states the scope of the term *"Banks and other financial institutions"*, to wit:

> "SEC. 131. *Definition of Terms.* — When used in this Title, the term:
>
> xxx xxx 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,

[24] G.R. Nos. 177857-58, January 24, 2012.

> **as defined under applicable laws, or rules and regulations thereunder**;" *(Emphases supplied)*

According to the foregoing provision, *"non-bank financial intermediaries"*, *inter alia*, are included in the term *"Banks and other financial institutions"*; and that the term *"non-bank financial intermediaries"* are those that are *"as defined under applicable laws, or rules and regulations thereunder"*.

The term *"non-bank financial intermediary"*, in turn, has been defined by Section 22(W) of the National Internal Revenue Code (NIRC) of 1997 as follows:

> "(W) The term 'non-bank financial intermediary' means a financial intermediary, as defined in Section 2(D)(c) of Republic Act No. 337, as amended, otherwise known as the General Banking Act, **authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities.**" *(Emphasis supplied)*

In relation thereto, Section 2-D(c) of Republic Act (RA) No. 337, as amended by Presidential Decree (PD) No. 71, reads as follows:

> "(c) '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 to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others;"

Furthermore, Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions, as follows, viz:

> "**§ 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.
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> *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.

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.

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> (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) A person or entity performing any of the functions enumerated in Items a to e of this Subsection." *(Underscoring supplied)*

Taking into consideration all the foregoing provisions, the following are the basic requirements for a person or entity to be considered as a *"non-bank financial intermediary"*, to wit:

1) The person or entity is *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"*;[25]

2) The principal functions of the said person or entity *"include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others"*;[26] and

3) The person or entity must perform any of the following functions on a regular and recurring, not on an isolated, basis, to wit:

    1. 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;

    2. Use principally the funds received for acquiring various types of debt or equity securities;

    3. Borrow against, or lend on, or buy or sell debt or equity securities;

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[25] This is pursuant to Section 131(e) of the LGC of 1991, in relation to Section 22(W) of the NIRC of 1997 and Section 2-D(c) of RA No. 337, as amended by PD No. 71.

[26] This is pursuant to Section 2-D(c) of RA No. 337, as amended by PD No. 71; and Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions.

4. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;

5. 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.

Applying the foregoing, there is no indication that petitioner ARCI falls under these requirements.

The *first requirement* has not been met as it was not proven, nor was it shown, that petitioner is *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"*. Thus, on this score alone, petitioner ARCI cannot be treated as a non-bank financial intermediary.

The *second requirement* is likewise not satisfied. While it may be true that the functions of petitioner ARCI on the basis of its primary purpose as stated in its Amended Articles of Incorporation may cover the functions of a non-bank financial intermediary, it was not shown that said functions are *"principal"* in nature, *i.e.*, *"chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental"*. No evidence was presented to show that the stated functions were principally done by petitioner in the taxable year concerned.

Moreover, it was never established that the enumerated functions under the *third requirement* were performed by petitioner *"on a regular and recurring, not on an isolated, basis"*. Neither was it shown that petitioner ARCI held itself out, nor advertised itself, as a non-banking financial intermediary.

Needless to state, the determination of this Court must rest on all the evidence introduced and its ultimate determination must find support in credible evidence; and in order to stand judicial scrutiny, the assessment must be based on facts.[27]

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[27] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

Such being the case, the Court finds that petitioner is not a non-bank financial intermediary. Accordingly, the interests and dividends it received from the preceding calendar year may **not** be the subject of local business tax imposed by the respondent City of Davao.

As petitioner ARCI belongs to the CIIF block of SMC shares, which were declared to be owned by the Government, any tax imposed upon petitioner is in effect, a tax on the Government.

While petitioner ARCI did not argue, in the instant *Petition for Review*, the applicability or significance of the ruling in the case of *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines*,[28] that since the CIIF Block of SMC shares were acquired using the coconut levy funds, the same should be treated as government assets, respondents contend that notwithstanding the said ruling of the Supreme Court, it does not exempt petitioner ARCI from the payment of local business tax on its dividends and interest income pursuant to Section 143(f) of RA No. 7160.

Respondents' contention, however, is without merit.

As a brief background on the antecedents of the instant case, on July 14, 1976, Presidential Decree (PD) No. 961 established the Coconut Industry Investment Fund ("CIIF") from a portion of the levy imposed on the initial sale by coconut farmers of copra and coconut products; administered by the United Coconut Planters Bank; and pursuant to the mandate of PD No. 961, the CIIF invested in various oil mills also known as the CIIF Oil Mills Group (OMG).

Sometime in 1983, the CIIF OMG incorporated fourteen (14) holding companies for the purpose of owning and holding shares of stock of SMC which were sold by the group of Mr. Andres Soriano; and petitioner ARCI is one of these fourteen (14) holding companies.

In 1986, CIIF OMG and the said holding companies, including the petitioner ARCI, were sequestered by the PCGG.

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[28] G.R. Nos. 177857-58, January 24, 2012.

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In its Decision dated January 24, 2012 and Resolution dated September 4, 2012, the Supreme Court declared that the SMC shares held by the 14 holding companies, including the petitioner, are owned by the government. Thus, in *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines*,[29] the Supreme Court ruled as follows:

> **"The CIIF Companies and the CIIF Block of SMC shares are public funds/assets**
>
> From the foregoing discussions, it is fairly established that the coconut levy funds are special public funds. Consequently, any property purchased by means of the coconut levy funds should likewise be treated as public funds or public property, subject to burdens and restrictions attached by law to such property.
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> In this case, the 6 CIIF Oil Mills were acquired by the UCPB using coconut levy funds. On the other hand, the 14 CIIF holding companies are wholly owned subsidiaries of the CIIF Oil Mills. Conversely, these companies were acquired using or whose capitalization comes from the coconut levy funds. However, as in the case of UCPB, UCPB itself distributed a part of its investments in the CIIF oil mills to coconut farmers, and retained a part thereof as administrator. The portion distributed to the supposed coconut farmers followed the procedure outlined in PCA Resolution No. 033-78. And as the administrator of the CIIF holding companies, the UCPB authorized the acquisition of the SMC shares. In fact, these companies were formed or organized solely for the purpose of holding the SMC shares. As found by the Sandiganbayan, the 14 CIIF holding companies used borrowed funds from the UCPB to acquire the SMC shares in the aggregate amount of P1.656 Billion.
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> **Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds funds, which have been established to be public in character it goes without saying that these acquired corporations and assets ought to be regarded and treated as government assets. <u>Being government properties, they are accordingly owned by the Government</u>, for the coconut industry pursuant to**

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[29] *Supra.*

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> **currently existing laws.** *(Underscoring and emphases supplied)*

In light of the foregoing pronouncement of the Supreme Court, and since the SMC shares of stock are declared owned by the government, the same and any income that may accrue therefrom, cannot be subject to any local tax, fee or charge, pursuant to Section 133(o) of RA No. 7160, which provides as follows:

> "SEC. 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**:
>
> xxx xxx xxx
>
> (o) **Taxes, fees or charges of any kind on the National Government**, its agencies and instrumentalities, and local government units." *(Emphases supplied)*

In the said case, it is clearly shown that petitioner ARCI is one of the *"CIIF companies"*[30] being referred to. Thus, since petitioner ARCI is considered as Government property, any tax imposed thereto is considered, in effect, as a tax on Government. Such being the case, under above-quoted Section 133(o), the dividend income earned by petitioner ARCI may not be subjected to the local business tax imposed respondent City of Davao.

No legal interests can be imposed on the refundable amount.

Since it was not shown that petitioner ARCI is a non-bank financial intermediary and considering that the subject SMC shares of stock are declared owned by the government, petitioner ARCI is entitled to the amount of refund being claimed. However, petitioner ARCI cannot be awarded with the legal interest it has prayed for on

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[30] See Footnote no. 4 of *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, etseq.*, supra, to wit: *"Composed of Soriano shares, ASC Investors, **ARC Investors**, Roxas Shares, Toda Holdings, AP Holdings, Fernandez Holdings, SMC Officers Corps., Te Deum Resources, and Anglo Ventures, Randy Allied Ventures, Rock Steel Resources, Valhalla Properties Ltd., and First Meridian Development, all names ending with the suffix 'Corp.' or 'Inc.'"* *(Emphasis and underscoring supplied)*

the refund, because the taxes were not shown to have been arbitrarily collected.[31]

Basic is the rule that interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness.[32]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**.

Accordingly, the assailed Decision dated June 22, 2015 and the Order dated September 11, 2015 of the RTC Branch 16 of Davao City in Civil Case No. 34,849-2013 are **REVERSED AND SET ASIDE**. Respondents are **ORDERED** to refund or issue a tax credit certificate in favor of petitioner ARCI in the aggregate amount of ₱2,204,494.00, representing the 0.55% local business taxes erroneously and illegally collected by respondents for the first and second quarters of 2011.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

[31] Refer to *Ormoc Sugar Company, Inc. vs. Treasurer of Ormoc City, et al.*, G.R. No. L-23794, February 17, 1968.
[32] *Atlas Fertilizer Corporation vs. Commissioner of Internal Revenue, et al., etc*, G.R. Nos. L-26686 & L-26698, October 30, 1980.

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
Chairperson
Presiding Justice