REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAKATI CITY AND THE CITY TREASURER OF MAKATI CITY,
Petitioners,

- versus -

METRO PACIFIC RESOURCES, INC. *(formerly: Cypress Harbour Properties, Inc.)*,
Respondent.

CTA EB NO. 1814
(CTA AC No. 174)

Present:

Del Rosario, PJ,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

Promulgated:

AUG 13 2019
3:40 p.m.

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DECISION

CASTAÑEDA, JR., J.:

This Petition for Review seeks to reverse and set aside the Decision[1] dated November 21, 2017 and the Resolution[2] dated February 19, 2018, respectively, of the CTA Third (3^{rd}) Division.

For easy reference, the dispositive portion of the assailed Decision reads:

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1 Penned by Retired Associate Justice Lovell R. Bautista, with Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Esperanza R. Fabon-Victorino concurring, Court in Division Docket, pp. 219-243.
2 Court in Division Docket, pp. 284-289.

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. The March 18, 2016 Decision and the August 5, 2016 Order, both of the Regional Trial Court Branch 57 of Makati City, denying petitioner's claim for refund of local business tax for taxable year 2010 are hereby **REVERSED** and **SET ASIDE**. Accordingly, respondents are **ORDERED** to refund to petitioner the amount of **Six Million Eight Hundred Ninety-Six Thousand Three Hundred Eighty-Five Pesos and Thirty-Four Centavos (Php6,896,385.34)**, representing erroneously collected local business tax for taxable year 2010.
>
> **SO ORDERED.**"[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration (of the Decision dated 21 November 2017) filed on December 19, 2017 is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated November 21, 2017 is hereby **AFFIRMED** and **UPHELD**.
>
> **SO ORDERED.**"[4]

THE FACTS

The following are the facts as found by the Court in Division:

> "Petitioner Metro Pacific Resources, Inc. (Formerly: Cypress Harbour Properties, Inc.) [now respondent] is a corporation duly organized under the laws of the Philippines, with Securities Exchange Commission ('SEC') Registration No. A1997-00469. Its primary purpose is '[t]o purchase, subscribe for or otherwise acquire and own, hold, use, manage, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of real and personal property of every kind and description, including but not limited to shares of stock, debentures, notes, evidence of indebtedness and other securities, contracts or obligations of any corporation or corporations, association or associations, domestic or foreign, engaged in, but not limited to, the business of real estate, manufacturing, trading and agribusiness and to pay therefore in whole or in part, in cash or by exchanging therefor, stocks, bonds and other evidences of indebtedness or securities of this

3 See Note 1, p. 242.
4 See Note 2, p. 289.

or any other corporation, while the owner or holder of any of any (sic) such real or personal property, stocks bonds, debentures, notes, evidence of indebtedness or other securities, contracts or obligations, to receive, collect and dispose of the interests, 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 stock so owned, without however engaging as an investment company under the Investment Company Act or a finance company or as a dealer in securities or stocks or as a real estate broker or a real estate development company but only holds the foregoing assets for purely investment purposes; to aid either by loans or by guaranty of securities or in any other manner, any corporation, domestic or foreign, any share of stock of any debentures, evidences of indebtedness or other security whereof are held by this corporation or in which it shall have interest and to do any act designed to protect, preserve, improve or enhance the value of any property at any time held or controlled by this corporation in which it at all time may be interested.'

Respondent City of Makati [now petitioner] is a local government unit ('LGU') under the *1991 Local Government Code ('1991 LGC')*. Respondent Nelia A. Barlis ('Ms. Barlis') is impleaded in her official capacity as the incumbent City Treasurer of Makati City.

Petitioner was issued Billing Assessment Form No. 0021642 dated January 21, 2011 by the Business Permits Office of Makati City, assessing it for various fees in the total amount of Php6,909,125.34, inclusive of LBT in the amount of Php6,896,385.34. The LBT was assessed on the basis of the amount of dividend and interest income earned by petitioner and reported in its financial statements for the year ending December 31, 2010.

On January 31, 2011, petitioner settled the total assessed amount of Php6,909,125.34 with the Office of the Treasurer, City of Makati.

Thereafter, on January 25, 2013, petitioner filed an administrative claim for refund before respondent Ms. Barlis, alleging erroneous collection of LBT in the amount of Php6,896,385.34. In its application for refund, petitioner argued that the interest and dividend income reported in its financial statements do not constitute 'gross receipts' as the term is defined in *Section 131(n) of the 1991 LGC*, or in *Section IB.01(g) of the Revised Makati Revenue Code ('RMRC')*.

On January 29, 2013, petitioner filed a Complaint with the RTC, docketed as Civil Case No. 13-086, requesting for the refund of the Php6,896,385.34 amount.

After trial, the RTC rendered a Decision 20 dated March 18, 2016, denying petitioner's claim for refund based on the following grounds: (1) petitioner is a holding company taxable under *Section 3A.02(p) of the RMRC*, hence, shall be taxed as a specific class of its own; and (2) the documents presented by petitioner do not constitute substantial evidence to prove that it should not be taxed as a holding company under said *Section 3A.02(p) of the RMRC*. The dispositive portion reads, *viz.*:

> **WHEREFORE**, the [petitioner]'s claim for refund is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

On August 5, 2016, the RTC issued the assailed Order, denying petitioner's Motion for Reconsideration filed on June 24, 2016, which was received by petitioner on August 22, 2016, as follows:

> Acting on the [petitioner]'s 'MOTION FOR RECONSIDERATION' dated June 23, 2016, together with the [respondents'] "COMMENT . . .' dated August 1, 2016, and well considering the arguments advanced therein by the parties, the Court finds to *(sic)* cogent reason to disturb the Decision, subject of the instant motion.
>
> **WHEREFORE**, the aforesaid motion is **DENIED** for lack of merit.
>
> **SO ORDERED.**

On September 20, 2016, petitioner filed the instant Petition for Review with the Court, to which respondents filed their Comment (Re: Petition for Review dated 20 September 2016) ('Comment') on December 8, 2016.

On December 14, 2016, the Court gave due course to the Petition for Review, and ordered the parties to submit their respective memoranda within thirty (30) days from notice.

On December 22, 2016, petitioner filed its Memorandum for the Petitioner; while respondents filed their Memorandum (for the Respondents) on January 11, 2017.

On February 20, 2017, the Court promulgated a Resolution submitting the case for decision; hence, this Decision."[5]

On November 21, 2017 and February 19, 2018, the Court in Division issued the assailed Decision and Resolution, respectively.

On March 16, 2018, petitioners filed the instant Petition for Review.[6] On May 2, 2018, respondent filed its Comment (Re: Petition for Review dated March 15, 2018).[7]

On May 28, 2018, the Court *En Banc* issued a Resolution[8] requiring the parties to submit their memoranda. On July 24, 2018, respondent filed its Memorandum for Respondent,[9] while on August 16, 2018, petitioners filed their Memorandum *(for the petitioners)*.[10] On September 7, 2018,[11] the Court *En Banc* issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUE

After considering the issues presented by both parties, the same can be simplified to the sole issue of whether respondent is entitled to its claim for refund of its LBT for taxable year 2010.

THE RULING

The Court *En Banc* denies the instant Petition.

Petitioner is not a non-bank financial intermediary taxable under Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC

Respondent was assessed for LBT as a holding or investment company, akin to a non-bank financial intermediary (NBFI) at the rate of

[5] See Note 1, pp. 221-223.
[6] Court En Banc Docket, pp. 1-25.
[7] Court *En Banc* Docket, pp. 64-89.
[8] Court *En Banc* Docket, pp. 92-93.
[9] Court *En Banc* Docket, pp. 94-118.
[10] Court *En Banc* Docket, pp. 121-136.
[11] Court *En Banc* Docket, pp. 140-141.

twenty percent (20%) of one percent (1%) of its dividend income reported in the financial statements, pursuant to Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC. It provides:

> "SECTION 3A.02. *Imposition of Tax.* — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:
>
> xxx xxx xxx
>
> (h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions, and discounts from lending activities, income from financial leasing, investments, dividends, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l) 1, as provided in this code.
>
> xxx xxx xxx
>
> (p) On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year."

On the other hand, respondent asserts that it falls under the definition of a holding company under Section 3A.01(dd) of the RMRC, which provides that a holding company is a controlling company that has one or more subsidiaries and confines its activities primarily to their management. A holding company's primary business is to render management services to its subsidiaries and collect management fees as compensation in rendering such services. Thus, it is taxable under Section 3A.02(g), and not under Section 3A.02(h), of the RMRC.

The Court *En Banc* agrees with respondent.

Section 131(e) of the LGC of 1991 states the scope of the term "Banks and other financial institutions", as follows:

> "*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, as defined under applicable laws, or rules and regulations thereunder;"

On the other hand, under Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, as amended, an NBFI is 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."

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;"

Further, Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions, reads 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.
>
> Principal shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental. *gr*

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.

(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."

From the foregoing, the following are the elements of an NBFI:

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

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; and

3) The 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.

Meanwhile, emphasis must be given on the second (2nd) and third (3rd) elements of an NBFI, *i.e.*, investment and placement of funds and performance of the above-enumerated functions under the third (3rd) element on a regular and recurring, not on an isolated, basis. This is premised on the nature of business tax, which is imposed on the privilege of an entity to engage in business within a local government unit.

In the instant case, petitioner failed to present evidence that respondent's income principally emanated from its dividend and interest income for taxable year 2010. Stated otherwise, while the records reveal that respondent earned dividend and interest income, there was no showing that respondent had no other activity other than receiving these kinds of income. Furthermore, petitioner also failed to present evidence that respondent's business is to principally engage in investment activities. Thus, the exclusivity or confinement of respondent's economic activity to purely NBFI activities was not proven by respondent. Hence, respondent is not liable under Section 3A.02(h) of the RMRC.'

Respondent has the option to either file a claim for refund or for the issuance of a tax credit certificate (TCC)

In this regard, the Court in Division ruled as follows:

"Section 7B.14(d) of the RMRC provides as follows:

> SECTION 7B.14. *Taxpayer's Remedies.* —
>
> xxx xxx xxx
>
> (d) *Claim for Refund or Tax Credit.* — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit. gr

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

A reading of the foregoing shows that taxpayers have an option to either file a claim for refund or the issuance of TCC in case of tax erroneously or illegally collected. However, if the taxpayer opted for a tax credit, the same may not be recovered in the form of cash, but may only be applied to future tax obligations of the taxpayer.

In the instant case, petitioner is claiming for the refund of LBT erroneously collected by respondents, as shown in the administrative claim for refund filed before respondent Ms. Barlis, in its Complaint before the RTC, and in the instant Petition for Review. Accordingly, the Court finds no basis for which respondents would manifest that if petitioner's claim is meritorious, same may be granted only in the form of a tax credit. To do so is a clear disregard of the mandate of the above *Section 7B.14(d) of the RMRC*."[12]

The Court *En Banc* agrees with the Court in Division. To reiterate, Section 7B.14(d) of the RMRC provides two (2) options for the taxpayer for the recovery of any tax, fee, or charge erroneously or illegally collected by respondent: to claim for refund or apply for a tax credit. Thus, there is no merit in petitioner's argument that respondent may only apply for tax credit.

To end, petitioner failed to present any valid reason to warrant the reversal of the assailed Decision or Resolution. Hence, the denial of the instant Petition is in order.

WHEREFORE, the instant Petition for Review is **DENIED**. Accordingly, the assailed Decision dated November 21, 2017 and the assailed Resolution dated February 19, 2018 are **AFFIRMED**.

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[12] See Note 1, pp. 241-242.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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

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