Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

CITY OF DAVAO and BELLA LINDA N. TANJILI in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City,
Petitioners,

-versus-

SORIANO SHARES, INC.
Respondent.

CTA EB NO. 1673
(CTA AC No. 151)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
JAN 30 2019 2:33 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(2), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2] dated March 13, 2017, rendered by the Third Division of this

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[1] 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 Division in the exercise of its exclusive appellate jurisdiction over:

(1) xxxxx.
(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and

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Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En banc docket, pp. 18-32.

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Court in CTA AC No. 151, and its Resolution[3] dated May 25, 2017. The Third Division of this Court reversed the orders of the Regional Trial Court and cancelled the assessment made by herein petitioners. The Third Division of this Court likewise ordered petitioners to refund to respondent the erroneously paid local business tax.

Petitioners assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated March 13, 2017:

*"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. The Decision dated June 22, 2015 and the Order dated September 11, 2015 of the Regional Trial Court, Branch 16 of the City of Davao in Civil Case No. 34,857-13 are hereby **REVERSED and SET ASIDE.** Accordingly, respondent Treasurer of the City of Davao is hereby **ORDERED TO REFUND** to petitioner Soriano Shares Inc. the total amount of **SIX HUNDRED TWENTY EIGHT THOUSAND EIGHT HUNDRED TWENTY NINE PESOS** (₱628,829.00) representing its erroneously paid local business taxes for the first and second quarters of taxable year 2011.*

SO ORDERED."

Resolution dated May 25, 2017:

*"**WHEREFORE**, premises considered, Respondents' Motion for Reconsideration is hereby **DENIED** for lack of merit.*

SO ORDERED."

The pertinent facts as narrated by this Court's Division in its Decision read as follows:

"xxx Soriano Shares, Inc.[4] (SSI) is a corporation duly organized in 1983 and existing under Philippine laws. It is registered with the Securities and Exchange Commission (SEC). On December 16, 2009, the SEC approved the

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[3] En banc docket, pp. 33-35.
[4] Soriano Shares, Inc. was the petitioner before the Court in Division and thereafter the respondent before this Court en banc.

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amended Articles of Incorporation which transferred SSI's principal office address from Makati City to Legaspi Oil Compound, Km. 9.5, Sasa, Davao City.

SSI is 100% owned by the Coconut Industry Investment Fund Oil Mills Group (CIIF-OMG). The corporations comprising the CIIF-OMG are, in turn, owned by the Philippine Government. SSI was among the fourteen holding companies formed in 1983 for the purpose of owning and holding shares of stock of San Miguel Corporation (SMC). In 1986, the said holding companies, including SSI, 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.

xxx City of Davao[5] *is a local government unit created by law, with principal office at City Hall, San Pedro Street, Davao City. Respondent Rodrigo S. Riola*[6] *is the City Treasurer of Davao City (respondent Treasurer).*

SSI was a registered owner of SMC common shares, from which SSI occasionally received cash and stock dividends. In October 2009, SSI became the registered owner of 30,123,850 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 SSI from the SMC preferred shares were deposited in a trust account which earned interest from money market placements.

In 2010, SSI received P228,665,151.18 from its SMC preferred shares, consisting of P225,928,875.00 in dividends and P2,736,276.18 in interest income from money market placements.

For the first half of the year 2011, the City of Davao, through respondent Treasurer, demanded payment of the 0.55% local business taxes on the dividends received by SSI from its SMC preferred shares and interests on money market placements in the aggregate amount of P628,829.00. SSI paid the same under protest on the following dates:

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[5] City of Davao was the respondent before the Court in Division and thereafter the petitioner before this Court en banc.
[6] BELLA LINDA N. TANJILI in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City was one of the petitioner in the petition before this Court en banc.

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Period Covered	***Date of Payment***	***Amount***
January to March 2011	*January 18, 2011*	*₱314,414.50*
April to June 2011	*April 25, 2011*	*314,414.50*
TOTAL		*₱628,829.00*

In the meantime, on January 24, 2012, the Supreme Court En Banc, in Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic of the Philippines, declared the fourteen holding companies and the SMC shares held by them to be owned by the government.

SSI filed its written administrative claim for refund or credit on September 13, 2012. Having received no communication from respondent Treasurer, SSI filed the corresponding judicial claim via a Petition with the RTC of Davao City on January 17, 2013.

SSI claimed that it was entitled to the refund or credit claimed because: (1) it was erroneous and illegal for respondents to collect the 0.55% local business tax on SSI's income on dividends and interest since it is not a bank or financial institution; and (2) SSI is not engaged in business that is subject to local business tax under Section 143 of the Local Government Code (LGC).

xxx xxx xxx.

On June 22, 2015, the trial court dismissed SSI's petition, finding that it is a non-bank financial intermediary and is therefore subject to local business tax. The dispositive portion of the Decision reads:

> ***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.*
>
> ***SO ORDERED.***

The trial court denied SSI's Motion for Reconsideration in the Order dated September 11, 2015, finding no cogent reason to alter, modify or set aside the assailed Decision dated June 22, 2015.

Hence, the present Petition for Review, which was filed on November 9, 2015. SSI claims that: (1) under Section 133(A) of the LGC, it is erroneous and illegal for respondents to assess a 0.55% local business tax on the dividends and interest income of a taxpayer who is not a bank or financial institution; and (2) SSI is not a bank or non-bank financial institution and is not engaged in

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business that is subject to local business tax under Section 143 of the LGC.

On December 4, 2015, the Court ordered respondents to comment on the petition, within ten days from notice. They filed their Comment on January 4, 2016 via registered mail.

Respondents argue, inter alia, that: (1) SSI is deemed a non-bank financial intermediary or an investment company by virtue of its investment and money placements in San Miguel Corporation; (2) SSI's business purpose as contained in its Articles of Incorporation is broad enough to qualify it as a non-bank financial intermediary under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas; (3) SSI's Articles of Incorporation stating that it shall not act as investment company or securities broker or dealer is not conclusive proof that it is not acting as a nonbank financial institution; and (4) even assuming that SSI's income partake the nature of public funds pursuant to the ruling of the Supreme Court in COCOFED, it does not exempt SSI from the payment of local business tax on its dividends and interest income.

In a Resolution dated January 25, 2016, the Court ordered the parties to submit their respective memoranda.

SSI filed its Memorandum on March 3, 2016, arguing that its income partake the nature of public funds on which business tax cannot be imposed, in addition to reiterating the arguments presented in its Petition for Review.

Respondents, in their Memorandum filed on March 18, 2016, reiterated the arguments presented in their Comment.

The Court deemed the case submitted for resolution in a Resolution dated April 8, 2016."

This Court's Division reversed the orders of the Regional Trial Court Branch 16 of the City of Davao and ordered the refund of the erroneously paid local business tax for the first and second quarters of taxable year 2011.

Hence, the City of Davao and its City Treasurer filed the present petition.

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Petitioners raised the sole issue of whether respondent Soriano Shares, Inc. is a "NON-BANK FINANCIAL INTERMEDIARY", FALLING UNDER THE CATEGORY OF A "BANK AND OTHER FINANCIAL INSTITUTIONS", SO AS TO BE SUBECTED TO LOCAL BUSINESS TAX IMPOSITION, AS PROVIDED UNDER SECTION 143(f) OF R.A. 7160, OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991."

Petitioners argued that Soriano Shares, Inc. is deemed a "bank and other financial institutions", specifically as a "non-bank financial intermediary" by virtue of its investment and money placements in San Miguel Corporation. The business purpose of Soriano Shares, Inc. as contained in its amended articles of incorporation is wittingly and unwittingly broad enough to catch all the descriptive function 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 Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas. Moreover, petitioners argued that the proviso which states that it shall not act as investment company or securities broker or dealer is just a ploy in order to evade compliance with existing regulations. Lastly, petitioners argued that even petitioners' income partakes the nature of public funds, it does not exempt petitioner from the payment of local business tax on its dividends and interest income pursuant to Section 143(f) of R.A. 7160.

We resolve.

The issue raised by petitioners is not of first impression. This Court had the occasion to pass upon similar issue involving corporations of similar classification in the instant case, like the case of *Fernandez Holdings, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City*[7] (*Fernandez Holdings case*) and the case of *City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. Randy Allied Ventures, Inc*[8]. (*Randy Allied Ventures Case*). In both cases this Court *En Banc*

[7] CTA EB NO. 1531 (CTA AC No. 133), December 5, 2017.
[8] CTA EB NO. 1591 (CTA AC No. 160), February 20, 2018.

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ruled that both company are not "non-bank financial intermediary" and that the San Miguel Corporation (SMC) shares it held are owned by the government, the dividends and any income therefrom are also owned by the government.

In the *Fernandez Holdings Case*, the holding company was assessed for local business tax on the dividends derived from its SMC shares of stock and the interest on its money market placements. After protest, the appeal to the Regional Trial Court was denied based on the findings that said holding company is a "non-bank financial intermediary. This Court in Division affirmed the orders of the Regional Trial Court but this Court en banc reversed the orders of the Regional Trial Court and cancelled the assessment of local business tax. On the other hand, in the *Randy Allied Ventures Case*, the holding company was assessed for local business tax on the dividends derived from its SMC shares of stock and the interest on its money market placements. The assessed local business tax was paid and thereafter a petition for refund before the Regional Trial Court was filed. The petitioner for refund was denied based on the findings that said company is a "non-bank financial intermediary. This Court in Division reversed the orders of the Regional Trial Court and ordered the refunds of the local business tax which was affirmed by the Court en banc. While the two cases may differ in that in one case the recourse to this Court proceeded from denial of the claim for refund of local business tax and the other through the denial of protest on the assessment of local business tax, the following are the similarities:

1) Both corporations earned dividends derived from their SMC shares of stock and the interest on their money market placements;

2) Both controversies arose from the assessment for local business tax on the dividends derived from their SMC shares of stock and the interest on their money market placements;

3) The Regional Trial Court found both corporations to qualify as a non-bank financial intermediary;

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4) There was absence of any credible and convincing proof that the corporations qualify as a non-bank financial intermediary or that they have even engaged in the activities of a financial institution/intermediary as defined;

5) Both corporations are included in the list of holding companies in the case of Philippine Coconut Producers Federation Inc., et. al. v. Republic of the Philippines *(COCOFED Case)*[9], whereby the Supreme Court ruled that the said holding companies and the San Miguel shares they held were owned by the government.

The Supreme Court, in its Resolution dated September 4, 2012 in the *COCOFED Case*, declared that the fourteen (14) holding companies, the SMC shares held by the 14 holding companies, including the respondent AP Holdings Inc., are owned by the government, pertinent portion of the resolution reads as follows:

> *"As modified, the fallo of the January 24, 2012 Decision shall read, as follows:*
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> *xxx xxx xxx.*
>
> *The Partial Summary Judgment in Civil Case No. 0033-F dated May 7, 2004, is hereby **MODIFIED**, and shall read as follows:*
>
> ***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.*
>
> *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:*
>
> ***WHEREFORE, in view of the foregoing, we hold that:***

[9] G.R. Nos. 177857-58 & 178193, January 24, 2012.

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*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 BE CONVEYED 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

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> ***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 CHF 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.***
>
> *Costs against petitioners COCOFED, et al., in G.R. Nos. 177857-58 and Danilo S. Ursua in G.R. No. 178193.*
>
> *No further pleadings shall be entertained. Let Entry of Judgment be made in due course.*
>
> *SO ORDERED."*

Evidently, respondent Soriano Shares, Inc. is one of the holding companies declared owned by the government, the SMC shares, its dividends, and any income thereon.

In the case at bar, the following facts are undisputed:

1. Respondent earned dividends derived from its SMC shares of stock and the interest on its money market placements.

2. The controversy arose from the assessment for local business tax on the dividends derived from its SMC shares of stock and the interest on its money market placements.

3. The Regional Trial Court, Branch 16 of Davao City finds respondent as a non-bank financial intermediary.

4. Respondent was included in the list of holding companies in the COCOFED[10] case whereby the Supreme Court declared that respondent and the SMC shares it held are owned by the government.

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[10] Ibid.

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Let us examine the pertinent provisions of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991", which read as follows:

> **Section 131.** *Definition of Terms.* - When used in this Title, the term:
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> xxxx
>
> (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;
>
> **Section 133.** *Common Limitations on the Taxing Powers 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:
>
> (a) Income tax, except when levied on banks and other financial institutions;
>
> xxx xxx xxx
>
> **Section 143.** *Tax on Business.* - The municipality may impose taxes on the following businesses:
>
> xxxx.
>
> (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.

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Under the foregoing provision, as a general rule the taxing power of a local government unit does not extend to income tax. The exception is if it is levied on banks and other financial institutions. Thus, the taxing power of a local government unit may extend to income tax as long as it is levied on banks and other financial institutions.

"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.

The definition of non-bank financial intermediaries or financial intermediaries set by Manual of Regulations for Non Bank Financial Institutions issued by the Banko Sentral ng Pilipinas (BSP) are controlling and applicable in this case. Section 4101Q.1 of the said manual provides as follows:

> *"§ 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.*
>
> *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:*

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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."

Evidently, financial intermediary's principal functions involve the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them. It must perform any of its functions on a regular and recurring, not on an isolated basis. Respondent's act of investing and placing of funds in San Miguel Corporation's stock and on money placement market must be done on a regular and recurring manner. The fact that respondent's income is only sourced from the dividends from San Miguel Corporation's share and income from moneys placement markets does not *ipso facto* make respondent included in the definition of "other financial intermediary", "other financial institution" or "non-banking financial intermediary", in the absence of other evidence. On the contrary, it bolsters the fact that the investing and placing of funds was done not on a regular and recurring manner.

Moreover, the rule governing the taxing power of provinces, cities, municipalities and barangays, is limited. It has no inherent power of taxation. If granted, the power is to be construed in *strictissimi juris*, any doubt or ambiguity arising out of the term used in granting that power must be resolved against the province, city or municipality. Thus, the Supreme Court has consistently[11] ruled as follows:

> *"It is settled that a municipal corporation unlike a sovereign state is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality, cannot assume it. And the power when granted is to be construed in strictissimi juris. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions – all these – have no place in the interpretation of the taxing power of a municipal corporation. [Underscoring supplied]"*

As a general rule the taxing power of a local government unit does not extend to income tax. Section 133(a) of the Local Government Code expressly provides that the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax, except when levied on banks and other financial institutions.

The exception is if it is levied on banks and other financial institutions. Section 131(e) of the LGC defines

[11] Icard v. City Council of Baguio, 83 Phil 870, 873 (1949) and City of Iloilo v. Villanueva, 105 Phil. 337 (1959), Pelitfqy Realty Corporation vs Province of Benguet, G.R. No. 183137, April 10, 2013.

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"banks and other financial institutions" to include "non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder."

A holding company is not included by the Local Government Code, specifically Section 131(e) thereof in the definition of banks and other financial institutions. The enumeration is evidently exclusive of other entities. Had the legislature intended to include a holding company as among the exceptions, the same could have been expressly provided but it did not.

Likewise, a holding company is not included in the list of non-banking intermediaries set by Section 4101Q.1 of Manual of Regulations for Non Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP), to wit:

> *"xxx xxx xxx*
>
> *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.*
>
> *xxx xxx xxx* "

The express mention of one person, thing, or consequence implies the exclusion of all others. *Expressio unius est exclusio alterius.* To elaborate[12] -

> *"Indeed, it is an elementary rule of statutory construction that the express mention of one person,*

[12] Benjamin (Kokoy) Romualdez vs. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, and Presidential Commission on Good Government, G.R. Nos. 165510-33, July 28, 2006, citing Centeno v. Villalon-Pornillos, G.R. No. 113092, September 1, 1994, 236 SCRA 197, 203.

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> *thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim expressio unius est exclusio alterius. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned."*

The rule of *expressio unius est exclusio alterius* is among the canons of restrictive interpretation.[13] It is based on the rules of logic and the natural workings of the human mind. It is predicated upon one's own voluntary act and not upon that of others. It proceeds from the premise that the legislature would not have made specified enumeration in a statute had the intention been not to restrict its meaning and confine its terms to those expressly mentioned.[14]

Since the taxing power of provinces, cities, municipalities and barangays is to be construed in *strictissimi juris*, any doubt or ambiguity arising out of the term used in granting that power must be resolved against the City of Davao. Thus, a holding company is neither covered under the definition of "non-banking financial intermediaries" under Section 4101Q.1 of Manual of Regulations for Non Bank Financial Institutions issued by the Banko Sentral ng Pilipinas (BSP) nor in the definition of "banks and other financial institutions" as contemplated by Section 131(e)[15] of the LGC for purposes of exemption on the levy of income tax under Section 133 (a)[16] of the LGC.

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[13] Sario Malinias vs. The Commission on Elections, Teofilo Corpuz, Anacleto Tangilag and Victor Dominguez, G.R. No. 146943, October 4, 2002.
[14] Ibid.
[15] (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;
[16] **Section 133.** Common Limitations on the Taxing Powers 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:

(a) Income tax, except when levied on banks and other financial institutions;

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Additionally, in the *COCOFED Case*[17], the Supreme Court En Banc declared respondent Soriano Shares, Inc. as one of the fourteen (14) holding companies funded by the coconut levy fund which were formed or organized solely for the purpose of holding the SMC shares. Likewise, respondent Soriano Shares, Inc., among others, and the San Miguel shares it held are owned by the government. As such the dividends and any income therefrom are also owned by the government. It shall not be subject to local business tax pursuant to Section 113 (0) of the Local Government Code[18]. Thus, We find that the Court in Division correctly ruled as follows:

> *"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. xxx.*
>
> *xxx xxx xxx.*
>
> *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.*
>
> *Respondents argue that COCOFED may not be applied in the instant case since the Supreme Court merely identified the nature of SSI'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 SSI, which is a private company. Hence, according to respondents, Section 133(o) of the LGC is not applicable in this case.*
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> *It is of no moment that prior to COCOFED, SSI had been operating as a private corporation. COCOFED had*

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

[18] **Section 133.** Common Limitations on the Taxing Powers 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.

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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 SSI 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 SSI 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.

The Supreme Court held that all SMC shares 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.

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. Any earnings of the SMC shares belong to the government. Any local tax imposed on SSI, is imposed on the national government. This is clearly in contravention of Section 133(o) of the LGC. Hence, the erroneously paid local business tax must be refunded."[19]

In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by jurisprudence and evidence on record.

WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Decision dated March 13, 2017 and Resolution dated May 25, 2017 by the Third Division of this Court in CTA AC No. 151 are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[19] En banc docket, pp. 18-32

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(With Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF DAVAO and BELLA LINDA N. TANJILI in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City, Petitioners,	**CTA EB No. 1673** (CTA AC No. 151)
	Present: Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan *JJ.*
- versus –	
SORIANO SHARES, INC., Respondent.	Promulgated: JAN 3 0 2019 2:33 p.m.

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DISSENTING OPINION

CASTAÑEDA, JR., *J.*:

With due respect, I dissent to the conclusion reached by the *ponencia* that the instant Petition for Review should be denied primarily on the ground that petitioner is not a non-bank financial intermediary (NBFI).

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, 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.
>
> 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.

Petitioner failed to present proof regarding the authorization of respondent to act as an NBFI

A perusal of the records shows that there is no evidence showing that respondent was authorized by the BSP to engage in NBFI activities.

However, as discussed earlier, respondent's authorization or lack thereof, do not affect whether respondent may be the subject of local business taxation. What is controlling is respondent's principal activities, *i.e.*, whether it principally performs NBFI activities, in determining whether such privilege to engage in said activities is subject to local business tax. At any rate, whether respondent may engage in NBFI activities, with or without authority from the BSP, is an issue outside of this Court's jurisdiction and should be discussed in the proper forum.

Respondent's principal functions are solely to invest and make money market placements *vis-à-vis* its SMC shares

Respondent received dividends and made money market placements on a regular and recurring, and not on an isolated basis

Based on records, the lower court found that respondent's business operations only revolve around its dividends and money market placements.

However, the subject decision did not consider the above-findings of the lower court. Further scrutiny of the records shows that respondent did not question the foregoing findings of the lower court during the course of the trial. Evidently, these findings of fact by the lower court, without any opposition on the part of respondent, should be accorded respect.

Thus, it has been sufficiently established that respondent's income emanates only from dividends and money market placements, which activities fall within the purview of an NBFI. In other words, it was proven during the proceedings below that respondent has no other activity or business that generates income, except for the dividends it regularly receives and for its money market placements. Therefore, these exclusive activities of respondent are NBFI activities which may properly be subjected to local business tax.

The tax is levied upon the privilege of an entity to engage in NBFI activities and not upon the shares or sources of gross receipts which operate as tax bases

Section 143 of the LGC of 1991 pertinently states:

> "**Section 143. Tax on Business.** — The municipality[1] 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 property and profit from exchange or sale of property, insurance premium."*(Emphasis supplied)*

Section 143(f) of the LGC of 1991 imposes local business tax **on banks and other financial institutions**, *i.e.*, NBFIs. In other words, while the tax bases of Section 143(f) consist of interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, and insurance premium, the tax is imposed directly on the privilege enjoyed by banks and other financial institutions. It directly imposes business tax on the privilege being enjoyed by the entity and not on the sources of gross receipts.

On this score, the subject Decision held that respondent is one of the Coconut Industry Investment Fund holding companies. Therefore, respondent, including its SMC shares, are government-owned and excluded from petitioner's taxing powers.

[1] The city, may levy the taxes, fees, and charges which the province or municipality may impose, in accordance with Sec. 151, LGC of 1991.

However, in the instant case, while the SMC Shares had already been adjudged by the Supreme Court as belonging to the government, it is not directly the said shares, but the privilege enjoyed by respondent to engage in NBFI activities, that is subject to local business tax. Simply put, the dividends and interest income from these shares are mere tax bases under Section 143(f) of the LGC of 1991. Ultimately, however, it is respondent's privilege against whom the local business tax is levied upon.

Further, if the government owns respondent by reason of primarily dealing with San Miguel Shares, then this clearly supports the conclusion of the lower court that respondent's income comes only from dividends and money market placement *vis-à-vis* its SMC Shares. Thus, respondent's privilege to engage in NBFI activities should be subjected to local business tax.

To conclude, the crucial element to determine whether an entity is engaged in NBFI activities is its principal activity. To clarify, not all entities who engage in stock investments and money market placements can be categorized as NBFIs for purposes of local business taxation. If an entity is not primarily engaged in NBFI activities as it principally performs its core business operations, such entity is not an NBFI. However, when an entity solely receives income from its NBFI activities, or when there is a showing that it performs no other business activity other than NBFI activities, then said entity should be categorized as an NBFI for purposes of local business taxation.

Considering the foregoing, I **VOTE** to **GRANT** the instant Petition for Review.

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