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 Office-in-Charge City Treasurer's Office of Davao City, *Petitioners,*	**CTA *EB* NO. 1580** (CTA AC No. 155)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
ANGLO VENTURES CORP., *Respondent.*	Promulgated: JAN 04 2019 1:46 p.m.

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D E C I S I O N

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* is the instant Petition for Review[1] filed on January 6, 2017 via registered mail, seeking the reversal of the Decision dated July 12, 2016 and the Resolution dated November 16, 2016, promulgated by the First Division of this Court (Court in Division) in CTA AC No. 155 entitled, *Anglo Ventures Corp., Inc. vs. City of Davao and Hon.*

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[1] EB Docket, pp. 4-9.

Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City , the dispositive portions of which read as follows:

Decision dated July 12 , 2016

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED.** The Assailed Decision of the Regional Trial Court, Branch 16 of the City of Davao dated June 22, 2015 and its Assailed Order dated September 11, 2015 in Case No. 34,847-13 are **REVERSED** and **SET ASIDE.** Accordingly, respondents are **ORDERED** to refund or credit in favor of petitioner AVC the amount of Four Hundred Fifty-Six Thousand Two Hundred Thirty Pesos and Twenty Four Centavos (P456,230.24), representing the erroneously paid 0.55% local business taxes for the first and second quarters of 2011.
>
> **SO ORDERED."**

Resolution dated November 16, 2016

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**

THE FACTS

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

> " Since October 2009, petitioner AVC has been the registered owner of Twenty One Million Eight Hundred Sixty Five Thousand Two Hundred Fifty Four (21,865,254) preferred shares of stock in San Miguel Corporation ("SMC Preferred Shares"), after the Supreme Court *En Banc* approved the conversion of petitioner AVC's 21,865,254 common shares of stock to preferred shares of stock. The dividends received by petitioner AVC from its SMC Preferred Shares were deposited in a trust account which earned interest from money market placements.
>
> In 2010, petitioner AVC obtained the amount of One Hundred Sixty Five Million Nine Hundred One Thousand Nine Hundred Eight Pesos and Fifty-Five Centavos(P165,901,908.55) from

dividends on its SMC Preferred Shares and interests on money market placements, computed as follows:

xxx xxx xxx

In 2011, respondents required petitioner AVC to pay 0.55% local business taxes for the first and second quarters of 2011, based on the gross receipts derived by petitioner AVC from dividends and interests for taxable year 2010, in the aggregate amount of Four Hundred Fifty Six Thousand Two Hundred Thirty Pesos and Twenty Four Centavos (P456,230.24), to which petitioner AVC complied and paid the required amount under protest, detailed as follows:

xxx xxx xxx

On September 13, 2012, petitioner AVC filed with respondent City Treasurer a written claim for refund or credit pursuant to Section 196 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 ("RA 7160") claiming that respondents erroneously and illegally collected as business taxes the amount of P456,230.24. Petitioner AVC claimed that Section 133 (a) of RA 7160 expressly prohibited the imposition of income tax on domestic corporations, except those levied on banks and other financial institutions, and that Section 143 of RA 7160 authorizes municipalities and cities to impose local business taxes on the dividends and interest earned by banks and financial institutions only. Petitioner AVC asserts that the local business tax collected by respondents based on the tax rate imposed on banks and other financial institutions pursuant to Section 69 (f) of Davao City Ordinance No. 158-05 dated December 25, 2016 is erroneous and illegal since petitioner AVC is not a bank or a financial institution. Petitioner AVC cited Bureau of Local Government Finance ("BLGF") Opinion dated March 17, 2011, which ruled that any tax imposed on the interest or dividends of non-bank and non-financial institutions assume the nature of income tax, which local government units are expressly prohibited from levying under Section 133 (a) of RA 7160.

Receiving no reply from respondent on its claim for refund, petitioner AVC filed on January 17, 2013 a Petition with the Regional Trial Court of Davao City, Branch 16 ("Davao-RTC"), docketed as Civil Case No. 38,847-13, seeking a refund or credit of local business taxes collected by respondents.

On June 22, 2015, Davao-RTC promulgated the assailed Decision denying petitioner AVC's Petition for Refund or Credit after concluding that petitioner AVC is a financial intermediary, whose interest and dividend income are subject to local business tax. The dispositive portion of the assailed Decision reads:

> "**FOR REASONS STATED**, the instant "Petition for Tax Refund or Credit under Section 156, R.A. 7160" filed by Petitioner is hereby **DENIED** and/or **DISMISSED.**
>
> **SO ORDERED.**
>
> On August 4, 2015, petitioner AVC filed a Motion for Reconsideration, arguing that it is not engaged in the business of lending, investing, or trading securities, hence, cannot be considered a non-bank financial intermediary. Moreover, petitioner AVC argues that it is not engaged in business and therefore cannot be made subject to business tax.
>
> On September 11, 2015, however, Davao-RTC promulgated the assailed Order denying petitioner AVC's Motion for Reconsideration, a copy of which was received by petitioner on October 8, 2015.
>
> Hence, on November 9, 2015, petitioner AVC filed the instant Petition for Review, to which respondent filed its Comment on January 7, 2016.
>
> On February 1, 2016, the Court ordered both parties to submit their respective memoranda within thirty (30) days from receipt of notice.
>
> On March 3, 2016, petitioner AVC filed its Memorandum, while respondents filed their Memorandum on March 14, 2016.
>
> This case was submitted for decision on April 1, 2016, hence this decision."

In the assailed Decision[2] promulgated on July 12, 2016, the Court in Division granted the Petition for Review and reversed and set aside the decision of RTC Branch 16 of the City of Davao dated June 22, 2015 and consequently ordered the respondents therein to refund or credit in favor of petitioner the LBT claimed for the first and second quarters of 2011.

Aggrieved, herein petitioners filed on August 8, 2016, a Motion for Reconsideration, which was denied by the Court in Division in a Resolution dated November 16, 2016.

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[2] EB Docket, pp. 27-41.

On January 6, 2017, petitioners filed a Petition for Review with the Court *En Banc*.

On July 17, 2017, the Court issued a Resolution ordering respondent to file its Comment on the Petition for Review within ten (10) days from receipt thereof, after which the parties are directed to submit their respective memoranda.

On September 4, 2017, respondent filed its Comment[3] to the Petition for Review.

On September 22, 2017, the Court issued a Resolution requiring both parties to submit their respective Memoranda.

On November 10, 2017, respondent filed its Memorandum via registered mail while petitioners filed their Memorandum on November 27, 2018, likewise by registered mail.

The instant Petition for Review was submitted for decision on January 15, 2018.[4]

Hence this Decision.

THE ISSUE

The issue raised by petitioners for the resolution of the Court *En Banc* is as follows:

> "Whether or not Anglo Ventures Corporation, is a "non-bank financial intermediary" falling under the category of a "bank and other financial institutions", so as to be subject to local business tax imposition, as provided under Section 143 (f) of RA 7160, otherwise known as the 'Local Government Code of 1991".

The respondent counters with its own issue which is tied up to the resolution of the aforestated issue raised by petitioners, thus:

> "Whether or not respondent 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

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[3] EB Docket, pp.76-111.
[4] EB Docket, pp. 140-141.

and interest from money market placements for the taxable year 2010."

Petitioners' Arguments:

Petitioners base their imposition of LBT on Section143 (f) of RA 7160 or the Local Government Code of 1991 (LGC of 1991) asserting that petitioner falls under the category of a "bank and other financial institution" which includes in its definition, a "non-bank financial intermediary or a "finance and investment company". Petitioners stress that respondent's principal business and source of revenue is to invest and hold shares of stocks in San Miguel Corporation as provided in its Audited Financial Statements (AFS). Apart from the shares of stock, petitioners allege that respondent also has money placements in San Miguel Corporation making it fall under the definition of a "financial intermediary" as defined in Section 4101Q.1 of the Manual of Regulations" for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP), quoted below:

> "Financial intermediaries shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidence 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."

Even the business purpose of respondent as embodied in its Articles of Incorporation (AOI) was observed by petitioner as being descriptive of a non-bank financial intermediary pursuant to the afore-quoted provision of the Manual Regulations of the BSP.

Petitioners also submit the theory that even if the income of respondent partakes of the nature of public funds pursuant to the ruling of the Supreme Court in the case of *Cocofed vs. Republic* , it does not lead to an exemption from the payment of LBT in its dividends and interest income and should still be liable for LBT in accordance with Section 143 (f) of the LGC of 1991.

Lastly, petitioners invoke the well-established rule that tax exemptions are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic statute or law.

Respondent's Counter-Arguments

In response to petitioners' arguments relative to the taxability of its dividend and interest income, respondent cites as its main defense, Section 133 (a) in relation to Section 143 of the LGC of 1991 which prohibits provinces, cities and municipalities from imposing income tax, except when said tax is levied on banks and other financial institutions. Respondent firmly avers that its activities cannot be characterized as falling under the term "bank" nor a "financial institution" under applicable laws, rules and regulations. It finds its support in the assailed Decision which pointed out that "non-bank financial intermediaries" are defined as "persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with then, acquired by them, or otherwise coursed through them, either for their own account or for the account of others." From the foregoing, respondent lays down the basic requirements for an entity to be considered a "non-bank financial intermediary", to wit:

(a) The person or entity must be authorized by the BSP to perform quasi-banking activities;

(b) The principal functions of the said person or entity must include 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;

(c) The person or entity must perform any of the qualifying activities enumerated in paragraph 4, 410Q.1 of the BSP Manual on a regular and recurring, not on an isolated basis.

From the requirements enumerated above, respondent presents the following points/arguments:

(a) Respondent is not authorized by the BSP to perform quasi-banking functions;

(b) There is no evidence that respondent principally engaged in functions that would qualify a person or entity as a non-bank financial intermediary; and,

(c) It was never shown that respondent performed the activities enumerated in paragraph 4, 410Q.1 of the BSP Manual on a regular or recurring basis.

Respondent also submits that as a holding company, it is not engaged in lending money, investing, reinvesting or trading securities and/or foreign exchange either for its own account or for the account of others in a regular or recurring basis. Respondent then counters with its own theory that the fact that it derives interest income simply because it placed the dividends in a trust account and invested in money market placements, does not necessarily qualify it as a "non-bank financial intermediary."

RULING OF THE COURT *EN BANC*

The Petition for Review is bereft of merit.

The issues raised in the petition are the same ones considered and passed upon exhaustively by the First Division in the assailed Decision and Resolution dated July 12, 2016 and November 16, 2016, respectively. Nevertheless, the Court *En Banc* will address the arguments propounded by the petitioner in its Petition for Review in order to put to rest the issues raised therein.

Both parties hold contrary views as to what activities may be covered by the definition of "banks and other financial institutions" provided under the LGC of 1991 and other rules and regulations issued by the relevant government agencies.

Petitioners firmly assert that the business activities of the respondent are characteristic of a "bank and other financial institution covered by Section 133 (a) in relation to Section 131 (e) and Section 143 (f) of the LGC of 1991. Petitioners also find support in Section 69 (f) of the 2005 Revenue Code of Davao City which categorically imposes LBT on the dividends and interest income earned by banks and other financial institutions. Petitioners assert that the respondent is a "non-bank financial intermediary" which falls under the category of banks and financial institutions which is subject to the LBT under the aforequoted Section 143 (f) of the LGC of 1991.

On the other hand, the respondent holds the view that as a holding company, its activities cannot fall under the term "banks and other financial institutions" hence the imposition of the LBT on its dividend and interest income is without legal basis.

The issue confronting this Court is hinged on our determination of what activities may be construed as performing functions akin to a "bank and other financial institution" as defined by the applicable laws and relevant rules and regulations. We then quote the aforecited provisions hereinbelow:

Local Government Code

"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:

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)

xxx xxx xxx

Section 131. *Definition of Terms.* –

(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, rules and regulations thereunder; (emphasis supplied)
>
> xxx xxx xxx

2005 Revenue Code of Davao City

> "Section 69. *Imposition of Tax.* – There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts hereafter prescribed:
>
> xxx xxx xxx
>
> F. **On Banks and Other Financial Institutions,** at the rate of fifty-five percent (55%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property, and profit from exchange or sale of property, insurance premium. All other income and receipts not herein enumerated shall be excluded in the computation of the tax." (emphasis supplied)

The power of the local governments to impose tax is subject to certain limitations provided by the law and the Philippine Constitution. One of these limitations is the prohibition against imposing income tax except when imposed on banks and other financial institutions as set forth by the aforequoted Section 133 (a) of the LGC of 1991. Similarly, the 2005 Revenue Code of Davao City does not empower Davao City to impose income tax except when levied on banks and other financial institutions.

The term "banks and other financial institutions" as defined under the aforequoted Section 131 (e) of the LGC of 1991 also includes entities that are considered "non-bank financial intermediaries". However, the LGC of 1991 does not define "non-bank financial intermediaries" but is defined under Section 22 (W) of the 1997 National Internal Revenue Code (1997 NIRC) in this wise:

> "The term **"non-bank financial intermediary" means a financial intermediary,** as defined in Section 2 (D) (c) of RA

No. 337, as amended, otherwise known as the General Banking Act, authorized by the BSP to perform quasi-banking activities." (emphasis supplied)

RA No. 337 otherwise known as the General Banking Act mentioned in Section 22 (W) of the 1997 NIRC, specifically Section 2 (D) (c), defines "financial intermediary" as follows:

> "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 course through them, either for their own account or for the account of others."

In Section 2.3 of Revenue Regulations (RR) No. 09-2004, the BIR defined "non-bank financial intermediary" as follows:

> "*Non-Bank Financial Intermediaries* – shall refer to 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. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally."

We will now determine whether respondent performs activities akin or similar to that of a "non-bank financial intermediary" falling under the category of a "bank and other financial institution"

A review of respondent's primary purpose as embodied in its Articles of Incorporation (AOI) specifically provides as follows:

> "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 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 therefor for 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 o 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."

The Court in Division, in the assailed Decision, correctly pointed out that the there is nothing in respondent's AOI which even remotely suggests that it may perform the functions of a financial intermediary nor a non -bank financial intermediary and we quote, thus:

> "In sum, non-bank financial intermediaries re defined as "person 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." The person or entity must perform the aforementioned functions on a regular and recurring basis, and not on an isolated basis."
>
> Parenthetically, there is nothing in petitioner AVC's Amended Articles of Incorporation that suggests, even remotely, that such entity may perform functions of a financial intermediary as earlier enumerated. Rather, the primary purpose for which petitioner AVC was incorporated is to "direct the operations of other corporations through the ownership of stock therein", and "to do every act and thing covered generally by the denomination "holding company", xxx xxxx"

The records do not show that respondent is a financial intermediary or is engaged in activities defined under the aforequoted General Banking Act. The fact that respondent holds shares of stock in San Miguel Corporation and has money market placements, does not, in themselves make it a non-bank financial intermediary because there are other factors.

Based on the provisions of Section 22 (W) of the 1997 NIRC, the records do not show that the BSP authorized respondent to perform quasi-banking activities.

Further, respondent is classified and registered as a holding company and not as a non-bank financial intermediary.

This Court, in the case of *Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia A. Barlis,*[5] accurately ruled that a holding company is not among the entities enumerated as "banks and other financial institutions" as defined in Section 133 (c) of the LGC of 1991, thus :

> "Section 131 (e) of the LGC of 1991 defines "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 thereunder." This enumeration appears to be exclusive of other entities. **Nowhere in the entirety of Section 131 is a holding company mentioned."** (emphasis supplied")

Based on the foregoing, Davao City erred in imposing LBT on holding companies under the category of "banks and other financial institutions" under Section 69 (f) of the 2005 Revenue Code of the City of Davao.

WHEREFORE, in light of the foregoing considerations, we find no palpable reasons to disturb the findings and conclusions reached by the Court in Division in the assailed Decision dated July 12, 2016 as well as the assailed Resolution dated November 16, 2016. Accordingly, the Petition for Review filed with the Court *En Banc* is **DENIED** for lack of merit and the Decision dated July 12, 2016 is hereby **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[5] CTA EB No. 1093 (CTA AC Case No. 99) dated June 17, 2015.

WE CONCUR:

see Concurring Opinion

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS -LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

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. 1580** (CTA AC NO. 155)
	Present:
-versus-	**DEL ROSARIO,** ***P.J.,*** **CASTANEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN**, *JJ.*
ANGLO VENTURES CORP., *Respondent.*	Promulgated: JAN 04 2019 1:46 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, Honorable Associate Justice Catherine T. Manahan, in denying the Petition for Review, thereby affirming the assailed Decision and Resolution of the Court in Division.

As articulated in the *ponencia*, the City of Davao's power to impose local business tax (LBT) on banks and other financial institution, including non-bank financial intermediaries, emanates from Section 143(f) of the Local Government Code of 1991 (LGC)[1] in relation to Section 131(e) of the same Code. Section 131(e) of the LGC did not provide for a specific definition of the term "non-bank financial intermediary" as it states that it shall be defined under applicable laws, rules and regulations.

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[1] Republic Act No. 7160.

The term "non-bank financial intermediary" is defined in Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, as amended, Section 2.3 of Revenue Regulations (RR) No. 09-2004, Section 2-D(c) of the General Banking Act,[2] and Section 4.101Q.1 of the Bangko Sentral ng Pilipinas' (BSP) Manual of Regulations for Non-Bank Financial Institutions.

The foregoing laws and regulations specifically defined what constitutes "non-bank financial intermediary" as they provide for the specific requisites in order for an entity to be regarded as such. **While a person or entity must be "authorized by the BSP to perform quasi-banking activities", Section 4 of the General Banking Act, as amended, is categorical in stating that the "determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation shall be decided by the Monetary Board subject to judicial review". Sorely, no such determination by the Monetary Board exists on record that may confirm, even remotely, that petitioner is a non-bank financial intermediary.**

The mere fact that petitioner has investments in San Miguel Corporation (SMC) and money market placements does not *per se* make it a non-bank financial intermediary. To insist otherwise would be absurd as any ordinary person who invests funds in money market or shares of stock will be considered non-bank financial intermediary.

Incidentally, my learned colleague, the Honorable Associate Justice Juanito C. Castañeda, Jr., in his Dissenting Opinion, makes the following analogy in concluding that petitioner is a non-bank financial intermediary, thus:

> "However, lack of authority by the BSP for petitioner to engage in NBFI [non-bank financial intermediary] activities, or lack of determination by the Monetary Board whether it is an NBFI, cannot be used as bases for concluding that petitioner is not an NBFI. To my mind, these requirements are designed merely to regulate NBFI activities.
>
> In fact, the present situation may be compared by analogy, to a person presently and smoothly driving a car without a driver's license. **To argue that this person is not presently driving a car because he or she has no driver's license is simply fallacious. Basically, such argument would necessarily lead to a conclusion that the car is moving smoothly by itself. However, it wrongfully omits the fact that the smoothly moving car is**

[2] Republic Act No. 337, as amended by Presidential Decree No. 71.

being driven by a person without a driver's license." (Boldfacing supplied)

With due respect, I submit that the analogy is inaccurate. Truth to tell, any driver who drives a motor vehicle is indeed a "driver" and no license is necessary to be called as such. **But when one is elevated to the category of a "professional driver", the term has to be taken within the context of the law that defines it.** A student driver or any person who actually drives without license cannot be considered as a "professional driver" unless he possesses a "professional driver's license" as defined and mandated by law. **In the same manner, a "non-bank financial intermediary" may not be considered as such in its legal sense unless it possesses all the requirements that qualify it to fall within its legal definition.**

The findings of the lower court that petitioner's income was derived solely from dividends and interest income on money market placements are not sufficient to justify the conclusion that petitioner is a non-bank financial intermediary. The imposition of LBT on non-bank financial intermediaries springs from Section 143(f) in relation to Section 131(e) of the LGC and it must be strictly exercised in accordance with its precepts. This is consistent with Article 1158 of the Civil Code of the Philippines which provides that "Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and **shall be regulated by the precepts of the law which establishes them**; xxx." In the absence of any evidence showing that petitioner has met all the requirements set forth by law to be regarded as a non-bank financial intermediary, I submit there is no basis to impose LBT on the dividends derived by petitioner from its investments in SMC shares of stock or on the interest income it derived from its money market placements.

All told, I concur with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

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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 –

ANGLO-VENTURES CORP.,
Respondent.

CTA EB No. 1580
(CTA AC No. 155)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan *JJ.*

Promulgated:

JAN 04 2019
1:46 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).

The subject Decision pertinently states:

> "The Court in Division, in the assailed Decision, correctly pointed out that there is nothing in respondent's AOI which even remotely suggests that it may perform the functions of a financial intermediary nor a non-bank financial intermediary xxx

The records do not show that respondent is a financial intermediary or is engaged in activities defined under the aforequoted General Banking Act. The fact that respondent holds shares of stock of San Miguel Corporation and has money market placements, does not, in themselves make it a non-bank financial intermediary because there are other factors.

Based on the provisions og Section 22 (W) of the 1997 NIRC, the records do not show that the BSP authorized respondent to perform quasi-banking activities.

Further, respondent is classified and registered as a holding company and not a non-bank financial intermediary.

xxx xxx xxx"

The authorization by the BSP for an entity to perform NBFI activities, and the Monetary Board's determination whether an entity is performing banking or quasi-banking functions or other types of financial intermediation, are mere regulatory measures

Respondent performed NBFI activities despite the limitations set in its Articles of Incorporation (AOI)

As cited earlier, the subject Decision concluded that since there is no authorization by the BSP for respondent to act as an NBFI, or a determination by the Monetary Board that it is performing banking or quasi-banking functions or other types of financial intermediation, respondent cannot be classified as an NBFI.

However, lack of authority by the BSP for respondent to engage in NBFI activities, or lack of determination by the Monetary Board whether it is an NBFI, cannot be used as bases for concluding that petitioner is not an NBFI. To my mind, these requirements are designed merely to regulate NBFI activities.

In fact, the present situation may be compared, by analogy, to a person presently and smoothly driving a car without driver's license. To argue that this person is not presently driving a car because he or she has no driver's license is simply fallacious. Basically, such argument would necessarily lead to a conclusion that the car is moving smoothly by itself. However, it wrongfully omits the fact that the smoothly moving car is being driven by a person without a driver's license.

In this case, respondent depicts the driver without license while the dividends and interest income from equity securities and money market placements depict the car. The car could not have smoothly moved, *i.e.*, *respondent could not have regularly earned dividends and interest income from equity securities and money market placements*, if no driver is maneuvering it, *i.e.*, *if respondent did not engage in NBFI activities*, albeit without driver's license, *i.e.*, *without authority or categorization as such by the BSP or Monetary Board, respectively*. Otherwise, respondent's consistent earnings from dividends and interest income emanating from an unknown activity, *i.e.*, if it did not engaged in NBFI activities, would border on the metaphysical, because it is as if such regular events had no cause.

The above-reasoning also applies to the fact that there can also be no guarantee that a holding company will not act as an NBFI despite the limitations provided in its AOI. As the saying goes – *action speaks louder than words*. As will be further discussed, respondent's acts are clearly indicative of being engaged in NBFI activities. As such, respondent's actions spoke louder than its AOI, such that it engaged in acts contrary to what was set forth therein.

Respondent's consistent receipt of dividends and interest income from its equity securities and money market placements leads to no other conclusion that it engaged in NBFI activities

Based on the above-quoted discussion, the Decision recognizes that respondent holds shares of stock of San Miguel Corporation and has money market placements.

With due respect, however, I am of the view that the conclusion of the Decision failed to address the equally important facts presented before the Court.

The factual antecedents of this case reveal that petitioner successfully proved that respondent had no other source of income aside from dividends and money market placements in relation to the subject SMC shares. On the other hand, respondent did not dispute this claim. This, in effect, reflects the primary and sole business operation of respondent – that of receiving income from dividends and money market placements.

This is confirmed by the findings of fact of the lower court, thus:

> "To stress, the income of the Petitioner Corporation comes only from two sources, *to wit*:
>
> 1. ***Dividends from THII's SMC Shares; and***
> 2. ***Interest Income from THI's Money Market Placements***
>
> In short, these ***dividends and interests*** are not considered incidental to its business quest, but are the **principal** xxx incomes of Petitioner's Corporation in the regular course of its business in line with the Primary Purpose of its Amended Articles of Incorporation."[1]

Again, the above findings of the lower court were not controverted during the proceedings in this Court. There was no evidence presented that respondent undertakes a principal business other than the respondent's said activities. Without any evidence that petitioner undertakes a principal business other than the said activities, then it must be concluded that respondent's exclusive and principal business is to profit from its SMC shares.

To end, 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 such 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

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[1] Court in Division Docket, p. 41.