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. 1654 (CTA AC No. 140)
	Present:
- versus -	DEL ROSARIO, *PJ* CASTAÑEDA, JR. UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, *JJ.*
ROXAS SHARES, INC., Respondent.	Promulgated: SEP 17 2018 3:42 p.m.

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DECISION

Fabon-Victorino, J.:

In this Petition for Review dated May 9, 2017, petitioners assail the Decision dated December 15, 2016 rendered by the Court in Division, which reversed and set aside the Decision dated November 10, 2014 of the Regional Trial Court (RTC) as well as its Order dated April 20, 2015. The decretal portion of the impugned Decision reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby GRANTED. Accordingly, the assailed Decision and Order of the Regional Trial Court Branch 17 of Davao City in Civil Case No. 35,676-14 are REVERSED AND SET ASIDE. The Business Tax Order of Payment dated January 20, 2014 issued by the City Treasurer of Davao City, assessing petitioner for local business tax in the

> amount of ₱2,190,792.70, is SET ASIDE AND CANCELLED for lack of factual and legal basis.

Equally assailed is the Resolution dated April 4, 2017 which denied petitioner's motion for reconsideration of the cited Decision, for lack of merit.

The following facts established during trial are undisputed.

Petitioner City of Davao is a local government unit created by law, while petitioner Bella Linda N. Tanjili is the Officer-in-Charge City Treasurer of Davao City and is sued in such capacity. Both holds office at the City Hall Building, San Pedro Street, Davao City.

Respondent Roxas Shares, Inc., on the other hand, is a domestic corporation with principal office address at Legaspi Oil Compound, Km. 9.5, Sasa, Davao City. Its Amended Articles of Incorporation states its primary purpose, 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 the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, of 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 thereofor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination 'holding corporation,' and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.

On January 20, 2014, petitioner City of Davao, through then City Treasurer Rodrigo S. Riola, issued a Business Tax Order of Payment, assessing respondent for alleged deficiency local business tax for the third and fourth quarters of the year 2011 in the amount of P2,190,792.70 on its dividends and interest income on money placements derived from San Miguel Corporation (SMC).

Respondent protested such assessment in a letter dated March 17, 2014 sent to then City Treasurer Riola on March 21, 2014. In a letter dated April 4, 2014, the latter informed respondent that its protest shall be entertained only after payment of the tax imposed pursuant to Section 423 of the 2005 Revenue Code of Davao City.

In its reply letter dated April 15, 2014, respondent stated that petitioner City of Davao had no authority to impose an additional requirement of payment before protest could be entertained.

On May 5, 2014, City Treasurer Riola reiterated that payment of the assessed tax must first be made before any protest would be entertained.

On June 9, 2014, respondent filed a Petition for Review before the RTC, Branch 17 of Davao City, docketed as Civil Case No. 35,676-14, alleging petitioners' inaction on its protest.

In the Decision dated November 10, 2014, the RTC dismissed the case in the following fashion, to wit:

> WHEREFORE, premises considered, for lack of merit, the Petition for Review under Section 195 of Republic Act No. 7160 filed by (respondent), Roxas Shares, Inc., is hereby DISMISSED.
>
> Accordingly, (respondent) is hereby directed to pay the (petitioners) the amount of Two Million One Hundred Ninety Thousand Seven Hundred Ninety Two and 70/100 (P2,190,792.70) Pesos, representing the 0.55% local business tax for the third and fourth quarters of 2011 on the dividends derived from its shares of stock and interest on its

> money market placements derived from San Miguel Corporation.
>
> SO ORDERED.

The RTC explained that by reason of its business involving dividends derived from its shares of stock and interest on its money market placements derived from SMC, respondent falls under the category of "non-bank financial intermediaries," as defined in Revenue Regulations No. 9-2004 issued by the Bureau of Internal Revenue (BIR) on June 21, 2004, and Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP). Respondent is thus subject to business taxes pursuant to Section 143(f) of Republic Act (R.A.) No.7160 or the Local Government Code (LGC) of 1991. The said provision allows municipalities to impose business taxes on financial institutions with income from dividends, among others, such as respondent.

Unconvinced, respondent filed a Motion for Reconsideration, which was however denied in the Order dated April 20, 2015, for lack of merit. Hence, respondent elevated its case before the Court in Division on June 8, 2015, via a Petition for Review.

In the Decision dated December 15, 2016, the Court in Division reversed and set aside the RTC Decision dated November 10, 2014 in favor of respondent. The assessment for local business tax issued by petitioners was cancelled and set aside for lack of factual and legal bases.

The Division ruled that petitioners may not impose business tax on dividends and interest income received by respondent from SMC because there is no showing that it is a non-bank financial intermediary as defined by the pertinent laws and regulations upon which local business tax may be imposed. Moreover, per existing jurisprudence, the subject SMC shares of stock, and any income that may accrue therefrom, cannot be subject to any local tax since said shares are owned by the government.

In the similarly assailed Resolution of April 4, 2017, the Court in Division denied petitioners' Motion for Reconsideration for lack of merit.

Hence, the instant Petition for Review was filed[1] on May 9, 2017 before the Court *En Banc.*

Petitioners basically retail its previous argument that respondent, by virtue of its stock investments in SMC, and its money market placements, is deemed a non-bank financial intermediary. They claim that respondent is an entity that is expressly included in the definition of the term banks and other financial institution. Its business purpose, as contained in its Articles of Incorporation, is so broad as to include all the descriptive functions of a non-bank financial intermediary as provided under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the BSP.

The proviso in respondent's Articles of Incorporation stating that it shall not act as an investment company or securities broker or dealer, or that respondent was not issued a secondary license by the Monetary Board to perform quasi-banking activities, are of no consequence and will not alter the fact that it is engaged in business as a non-bank financial intermediary.

Further, as a stock corporation, respondent is presumed to have been organized to engage in business through its stock investments and money placements veered towards realizing profit. Thus, as a non-bank financial intermediary, respondent is subject to local business tax pursuant to Section 143(f) of the LGC, on its gross receipts consisting of dividends and interest income.

Even granting that respondent's income partakes the nature of public funds in accordance with the ruling of the Supreme Court in *Philippine Coconut Producers Federation, Inc. (COCOFED) vs. Republic of the Philippines*[2], it does not exempt respondent from payment of local business tax on

[1] Through registered mail.
[2] G.R. Nos. 177857-58 And 178193, January 24, 2012.

its dividends and interest income pursuant to Section 143(f) of the LGC. The COCOFED case merely defined the nature of such fund but did not delve on its taxability. The alleged public funds are still in the hands of respondent, a private corporation, rendering inapplicable the provision of Section 133(o) of the LGC of 1991 exempting the national government, its agencies and instrumentalities, and local government units from being subject to local taxes.

Besides, alleged tax exemptions are construed against the claimant, and absent an express provision of law exempting respondent's dividends and interest income from local business tax, the subject tax assessment should be sustained.

For its part, respondent argues that under Section 133(a) of the LGC, it is erroneous and illegal for petitioners to collect 0.55% local business tax on the dividends and interests it earned on its SMC shares on account that it is neither a bank nor a financial institution nor a non-bank financial intermediary as defined under Section 131 of the LGC. Hence, it cannot be assessed 0.55% local business tax on the dividends derived from its SMC shares of stock and interests on its money market placements. For being a mere owner of the subject shares or receiving income on account of such property does not constitute doing business as defined under Section 131 of the LGC. Not being a bank or financial institution, it is not subject to business tax under Section 143 of the LGC which only allows a local government unit to impose business taxes on banks and other financial institutions.

Even the Manual of Regulations for Non-Bank Financial Institutions issued by the BSP is clear that respondent cannot be deemed a bank or a financial institution or non-bank financial intermediary.

Under the said BSP Manual, a bank or a financial institution or non-bank financial intermediary is a person or entity who is engaged in lending money, investing, reinvesting or trading securities and/or foreign exchange on a regular and recurring, and not on an isolated basis. Respondent acquired its SMC shares only once after its incorporation and has not bought any shares of stocks or invested in any other corporation other than in SMC. It then placed dividends derived from said shares in a trust account that earned interest from money market placements. In other words, its investment made in SMC occurred only once, thus, deemed an isolated transaction, and it does not fall under the definition of a bank or a financial institution or non-bank financial intermediary, which invests on a regular or recurring basis.

Even under Section 4 of R.A. No. 337, as amended by P.D. No. 1828, otherwise known as the General Banking Act, respondent is not a non-bank financial intermediary since it has not been declared as such by the Monetary Board, as required under said R.A. No. 337, as amended.

The argument that respondent's Amended Articles of Incorporation is so broad to cover the principal functions of a financial intermediary, is obviously an erroneous conclusion. Absent any further evidence to support this conclusion, such remains speculative and without basis in fact and in law. Considering that petitioners mainly derived their conclusion from the Amended Articles of Incorporation, which expressly prohibits respondent from acting as an investment company or a securities broker and/or dealer which are types of a non-bank financial intermediary, petitioner is clearly mistaken in its assumption.

Being a holding company, as declared by the Supreme Court in the case of *COCOFED v. Republic*[3], respondent is not subject to local business tax. For as held by this Court in the case *Michigan Holdings, Inc. vs. The City Treasurer of Makati,* [4] a holding company is not among the entities enumerated in Section 131(e) of the LGC which are considered as banks and other financial institutions.

Also as held in *COCOFED v. Republic*[5], respondent's income partakes the nature of public funds, thus, business tax cannot be imposed on it. Section 133(o) of the LGC expressly prohibits a local government unit such as

[3] G.R. Nos.177857-58, January 24, 2012.
[4] CTA EB No. 1093 (CTA AC Case NO. 99), June 17, 2015.
[5] G.R. Nos.177857-58, January 24, 2012.

respondent City of Davao from imposing "Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units."

Further, in view of this ruling, and contrary to petitioner's allegation, the mere fact that the subject SMC shares are in the hands of a private corporation such as respondent, does not negate the fact that said shares are deemed property of the government which cannot be subject to local business tax, as categorically stated in the quoted ruling.

THE RULING OF THE COURT

The crux of the controversy is the legality of the local business tax imposed by petitioners against respondent for the third and fourth quarters of year 2011 in the amount of P2,190,792.70.

The fundamental law of the land itself recognizes the power of local government units such as petitioner City of Davao to impose taxes within its territorial jurisdiction. Under the Constitution, petitioner, as a local government unit, has the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy.[6] Such power however is not absolute but subject to limitations. The Supreme Court already had occasion to rule on the nature of the power to tax of local government units (LGU), as follows:

> The power to tax "is an attribute of sovereignty," and as such, inherent in the State. Such, however, is not true for provinces, cities, municipalities and barangays as they are not the sovereign; rather, they are mere "territorial and political subdivisions of the Republic of the Philippines". x x x Therefore, the power of a province to tax is limited to the extent that such power is delegated to it either by the Constitution or by statute. Section 5, Article X of the 1987 Constitution is clear on this point:

[6] Section 5, Article X, 1987 Philippine Constitution.

> Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges <u>subject to such guidelines and limitations as the Congress may provide</u>, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. [Underscoring supplied]
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> Per Section 5, Article X of the 1987 Constitution, "the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges." Nevertheless, such authority is "subject to such guidelines and limitations as the Congress may provide".
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> In conformity with Section 3, Article X of the 1987 Constitution, Congress enacted Republic Act No. 7160, otherwise known as the Local Government Code of 1991.[7]

A similar pronouncement has been made in a more recent case, to wit:

> At the outset, it must be emphasized that although the power to tax is inherent in the State, the same is not true for LGUs because although the mandate to impose taxes granted to LGUs is categorical and long established in the 1987 Philippine Constitution, the same is not all encompassing as it is subject to limitations as explicitly stated in Section 5, Article X of the 1987 Constitution, *viz.*:
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> > SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.[8]

Clear from the foregoing tenets that the power of petitioner City of Davao to tax is subject to the limitations provided in the Constitution and such other laws as the Congress may provide, which in this particular case is R.A. No. 7160, or the Local Government Code (LGC), as amended.

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[7] Pelizloy Realty Corporation, represented herein by its President, Gregory K. Loy vs. The Province of Benguet, G.R. No. 183137, April 10, 2013.
[8] Batangas City, et al. vs. Pilipinas Shell Petroleum Corporation, G.R. No. 187631, July 8, 2015.

Section 133 of the LGC of 1991 expressly prohibits local government units from imposing taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

Significantly, the Supreme Court already declared that the SMC shares held by respondent are owned by the government, thus:

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

> companies and from UCPB loans. But there can be no gainsaying that the same advances and UCPB loans are public in character, constituting as they do assets of the 14 holding companies, which in turn are wholly-owned subsidiaries of the 6 CIIF Oil Mills. And these oil mills were organized, capitalized and/or financed using coconut levy funds. **In net effect, the CIIF block of SMC shares are simply the fruits of the coconut levy funds acquired at the expense of the coconut industry. In *Republic v. COCOFED*, the *en banc* Court, speaking through Justice (later Chief Justice) Artemio Panganiban, stated: 'Because the subject UCPB shares were acquired with government funds, the government becomes their prima facie beneficial and true owner.' By parity of reasoning, the adverted block of SMC shares, acquired as they were with government funds, belong to the government as, at the very least, their beneficial and true owner.** [9]

Since the subject shares are owned by the government, it follows that the dividends and any income derived therefrom are owned by the government as well, regardless of who has possession thereof. The cited jurisprudence was categorical and clear, and any interpretation is certainly unnecessary.

That being the case, the subject shares and the dividends derived therefrom do not fall within the taxing power of petitioner City of Davao pursuant to Section 133(o) of the LGC of 1991. *A fortiori*, the imposition of local business taxes on respondent for the third and fourth quarters of year 2011 on the dividends arising from its SMC shares and interests on money market placements was therefore erroneously and illegally made by petitioners.

Even assuming that respondent and its SMC shares are within the taxing power of petitioner City of Davao, respondent is still not liable for the alleged deficiency business tax for the third and fourth quarters of 2011 pursuant to Section 143(f) of the LGC, which grants to a city the power to impose taxes on "banks and other financial institutions," to wit:

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[9] Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, G.R. Nos. 177857-58 And 178193, January 24, 2012.

> SEC. 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. *(Emphases supplied)*

In relation thereto, Section 131(e) of the LGC defines the term "banks and other financial institutions", as used under Title One, Book Two of the LGC, as follows:

> SEC. 131. *Definition of Terms.* – When used in this Title, the term:
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> 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**; *(Emphasis supplied)*

From the foregoing definitions, a local government unit, such as respondent City of Davao, can impose business tax only on banks and other financial institutions pursuant to Section 143(f) of the LGC of 1991, which includes non-bank financial intermediaries, per Section 131(e) of the LGC.

In the instant case, respondent was assessed for local business tax on the premise that it is a non-bank financial intermediary. However, there is no indication in the record of the case which constitutes convincing proof that respondent is a financial intermediary or has even engaged in the activities of a financial institution/intermediary.

While Section 131(e) of the LGC of 1991 includes "non-bank financial intermediaries" in the term "banks and other financial institutions, it does not define the term "non-bank financial intermediaries" but insinuated that resort to other applicable laws, or rules and regulations for such definition is allowed.

Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, as amended, defines the term "non-bank financial intermediary", as follows:

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

In relation thereto, Section 4 of R.A. No. 337,[10] as amended by P.D. No. 1828,[11] states that the Monetary Board has the authority to determine whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation, subject only to judicial review, thus:

> Sec. 4. 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. For the purpose of resolving such issue; the Monetary Board may, through appropriate supervising department of the Central Bank, examine, inspect or investigate the books and records of such person or entity. The department head and the examiners of said appropriate supervising department are hereby authorized to administer oaths to any such person or director, officer or employee of any such entity and to compel the presentation or production of all books, documents, papers or records necessary in their judgment to ascertain the facts relative to the true functions and operations of such person or entity. Failure or refusal to comply with the required presentation or production of such books, documents, papers or records shall subject the persons

[10] Otherwise known as the General Banking Act, as amended.
[11] Presidential Decree No. 1828, "Amending Further Republic Act No. 337, As Amended, Otherwise Known As The "General Banking Act."

> responsible therefor to the penal sanctions provided under Section 34 of R.A. No. 265, as amended. Persons or entities found by the Monetary Board to be performing banking or quasi-banking functions without the required prior authorization of the Monetary Board may, in addition to the proceedings provided under Section 34 of Republic Act No. 265, as amended, be subject to the imposition of fine of not in excess of P500 per day reckoned from the date the unauthorized banking or quasi-banking functions were performed and may be referred to the Securities and Exchange Commission for the revocation of its license to do business.

As applied to this case, the record is barren of any indication that respondent was authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities as a non-bank financial intermediary pursuant to Section 22(W) of the NIRC of 1997, as amended.

The record also indicates that there is no sufficient evidence showing that respondent is a non-banking financial intermediary as found by the Monetary Board pursuant to Section 4 of R.A. No. 337.

Petitioner argues that the lack of determination by the Monetary Board that respondent performs quasi-banking activities will not negate the fact that it is doing business as a non-bank financial intermediary. Such argument does not sway the Court for as will be discussed hereafter, respondent is not conducting activities which fall under the term non-bank financial intermediary.

Section 2(D)(c) of R.A. No. 337, otherwise known as the General Banking Act, as amended by Presidential Decree (P.D.) No. 71, defines financial intermediaries as follows:

> Sec. 2-D. For purposes of Sections Two, Two-A, Two-B, and Two-C the following definition or terms shall apply:
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> xxx xxx xxx
>
> (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 with them, acquired by

> them, or otherwise coursed through them, either for their own account or for the account of others;

Further, Section 2.3 of Revenue Regulations (RR) No. 9-2004 issued by the BIR defines "non-bank financial intermediaries" as follows:

> 2.3. ***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. *(Emphasis supplied)*

A similar yet more elaborate definition of the term financial intermediaries is found in Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas* thus:

> **§ 4101Q.1** ***Financial intermediaries*** *Financial intermediaries* shall mean persons or entities whose **principal functions** include the **lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.**
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> *Principal* shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.

Functions shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. **The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.**

To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:

a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;

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

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

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

e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

> **Non-banking financial intermediaries shall include the following:**
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> (1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.
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> (2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term *financing, finance, investment, lending* and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.
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> (3) **A person or entity performing any of the functions enumerated in Items *a* to *e* of this Subsection.** *(Emphasis supplied)*

In relation to the foregoing, the Supreme Court defined the term "financial intermediaries" as 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. [12]

On the other hand, "non-banking financial intermediaries" include a person or entity performing any of the functions of a financial intermediary, including, holding assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers. Furthermore, the person or

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[12] First Planters Pawnshop, Inc. vs. Commissioner of Internal Revenue, G.R. No. 174134, July 30, 2008.

entity must perform the afore-mentioned functions on a regular and recurring basis, and not on an isolated basis.

Applying the foregoing definitions, there is nothing in the record showing that respondent is engaged in "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," in order to be within the ambit of the term "Financial intermediaries/non-bank financial intermediaries" as defined similarly in (i) Section 2(D)(c) of R.A. 337, or the General Banking Act, as amended, (ii) Section 2.3 of Revenue Regulations (RR) No. 9-2004, and (iii) Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas.* There is likewise no indication in the record that respondent is engaged in these functions "on a regular and recurring basis, and not on an isolated basis."

The Court is also not persuaded that respondent's primary purpose as stated in its Articles of Incorporation, standing alone, is sufficient to prove that respondent is performing the functions of a financial intermediary. Certainly, it cannot be assumed that respondent is engaged in activities as a non-bank financial institution or intermediary based its primary purpose as stated in its Articles of Incorporation.

That respondent earned income from the subject SMC shares, or that it is a private entity organized for profit, will likewise not automatically lead to a conclusion that it is a non-bank financial intermediary as alleged by petitioner. Most private corporations are aimed at earning profit, but are not "financial intermediaries" or "non-banking financial intermediaries" under the law. Without any convincing evidence to prove that respondent falls under this category of business, respondent cannot be taxed as such.

As held in cases more than one, he who alleges, not he who denies, must prove.[13] Since petitioners utterly failed to

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[13] Equitable Banking Corporation (now known as Equitable-PCI Bank) vs. Ricardo Sadac, G.R. No. 164772, June 08, 2006.

establish by convincing and credible evidence that respondent is a non-bank financial intermediary, or is engaged in such activities pursuant to the aforecited laws, and rules and regulations, respondent cannot be held liable for business taxes on the basis of Section 143(f) of the LGC, which grants to respondent City of Davao the power to impose taxes on "banks and other financial institutions."

WHEREFORE, the Petition for Review dated May 9, 2017 is hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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 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. 1654
(CTA AC No. 140)

Present:

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

- versus –

ROXAS SHARES, INC.,
Respondent.

Promulgated:

SEP 17 2018
3:42 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 respondent is not a non-bank financial intermediary (NBFI).

The subject Decision pertinently states:

> "Since the subject shares are owned by the government, it follows that the dividends and any income derived therefrom are owned by the government as well, regardless of who has

possession thereof. The cited jurisprudence was categorical and clear, and any interpretation is certainly unnecessary.

That being the case, the subject shares and the dividends derived therefrom do not fall within the taxing power of petitioner City of Davao pursuant to Section 133 (o) of the LGC of 1991. A *fortiori*, the imposition of local business taxes on respondent for the third and fourth quarters of year 2011 on the dividends arising from its SMC shares and interests on money market placements was therefore erroneously and illegally made by petitioners.

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As applied to this case, the record is barren of any indication that respondent was authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities as a non-bank financial intermediary pursuant to Section 22 (W) of the NRC of 1997, as amended.

The record also indicates that there is no sufficient evidence showing that respondent is a non-banking financial intermediary as found by the Monetary Board pursuant to Section 4 of R.A. No. 337.

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Applying the foregoing definitions, there is nothing in the record showing that respondent is engaged in '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,' in order to be within the ambit of the term 'financial intermediaries/non-bank financial intermediaries' as defined similarly in (i) Section 2 (D)(c) of R.A. 337, or the General Banking Act, as amended, (ii) Section 2.3 of Revenue Regulations (RR) No. 9-2004, and (iii) Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas*. There is likewise no indication in the record that respondent is engaged in these functions ' on a regular and recurring basis, and not on an isolated basis.'

The Court is also not persuaded that respondent's primary purpose as stated in its Articles of Incorporation, standing alone, is sufficient to prove that respondent is performing the functions of a financial intermediary. Certainly, it cannot be assumed that respondent is engaged in activities as a non-bank financial institution or intermediary based its primary purpose as stated in its Articles of Incorporation.

That respondent earned income from the subject SMC shares, or that it is a private entity organized for profit, will likewise not automatically lead to a conclusion that it is a non-bank financial intermediary as alleged by petitioner. Most private corporations are aimed at earning profit, but are not 'financial intermediaries' or 'non-banking financial intermediaries' under the law. Without any convincing evidence to prove that respondent falls under this category of business, respondent cannot be taxed as such."

The subject Decision categorizes respondent as government property to justify its exclusion from payment of local business tax, while maintaining that it is still a private entity organized for profit

There is no proof that respondent even remits its income earned to the National Treasury as proof that it is a government property and not a private corporation organized for profit

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

As quoted earlier, the subject Decision cites the case of *COCOFED v. Republic*, where the Supreme Court ruled that CIIF companies, including respondent, are regarded and treated as government assets. It reasons that since the subject shares are owned by the government, it follows that the dividends and any income derived therefrom are owned by the government as well, regardless of who has possession thereof.

Yet, it later maintained that respondent is still a private entity aimed at earning profit, without being a financial intermediary or non-bank financial intermediary. *gr*

These contradicting conclusions, therefore, will create an irreconcilable confusion within the minds of its readers. Thus, a questioning mind cannot help but ask: Is respondent a government or a private entity for purposes of local business taxation?

To my mind, similar to other CIIF companies, respondent acts as a private entity organized solely to earn profits for itself. Had it been true that respondent is a government property whose asset-generating income is likewise owned by the government, respondent may confidently present pieces of evidence, *i.e.*, proof of remittance of its earnings to the national treasury, to prove that it is, as well as its assets, are government properties. Evidently, no such proof is present in this case.

Simply put, if respondent does not remit its earnings to the national treasury and, instead, uses it in whatever manner for its own benefit, then it is clearly engaging in acts exclusive to private business entities whose aim is to earn profits.

After establishing that respondent is an income-oriented private entity that does not remit its earnings to the national treasury, it is now the duty of the court to determine whether its privilege to engage in private corporate acts is taxable under the Local Government Code (LGC).

Section 143 of the LGC of 1991 pertinently states:

> "**Section 143. Tax on Business.** — The municipality[1] may impose taxes **on the following businesses**:
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> (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.*, non-bank financial intermediaries. In other words, while the tax bases of Section 143(f) consist of interest, commissions and discounts from lending activities, income from

[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.

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.

In the instant case, while the San Miguel 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. In other words, 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.

Thus, it behooves upon this court to properly categorize whether an entity: (1) is a private or government property; and (2) is engaged in NBFI activities for purposes of local business taxation. To maintain that an entity, like respondent, is a government property that does not remit its earnings to the national treasury and maintains the same for itself, is an outright deprivation or violation of the fiscal local autonomy provisions of the LGC.

The BSP or Monetary Board's authorization for an entity to perform NBFI activities is a mere regulatory measure

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

As cited earlier, the subject Decision concluded that since there is no authorization by the BSP or the Monetary Board for respondent to act as an NBFI, it cannot be classified as an NBFI.

However, lack of authority by the BSP or the Monetary Board for respondent to engage in NBFI activities cannot be used as basis for concluding that it is not an NBFI. In fact, this requirement is designed merely to regulate NBFI activities.

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 cannot smoothly move, *i.e.*, *respondent could not have regularly earned dividends and interest income from equity securities and money market placements*, if no driver maneuvers it, *i.e.*, *if respondent did not engage in NBFI activities*, albeit without driver's license, *i.e.*, *without authority from the BSP*. Otherwise, respondent's consistent earnings from dividends and interest income emanating from an unknown activity, *i.e.*, if it did not engage 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 Amended 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 Amended AOI, such that it engaged in acts contrary to what was set forth therein.

Petitioner'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

Finally, the subject Decision found that respondent is not an NBFI due to absence of evidence. With due respect, I am of the view that the conclusion of the Decision failed to address the 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.

Considering respondent's primary and sole business operation, the same should justify the conclusion that it is engaged in NBFI activities.

Furthermore, I respectfully disagree with the finding that respondent's investments to earn dividends and money market placements were not done on a regular and recurring manner. How can respondent solely earn from dividends and money market placements, and at the same time do not earn from it on a regular and recurring manner? Such inconsistency between the factual premise and conclusion should, therefore, be clearly addressed in the subject Decision.

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.
Associate Justice