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)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
SORIANO SHARES, INC. Respondent.	Promulgated: APR 10 2019 4:16 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves petitioner's "Motion for Reconsideration" of the Decision dated January 30, 2019 of this Court *En Banc*, the pertinent portion of which states:

> *"**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."***

Petitioner assails this Court's Decision on the following grounds:

1. The Honorable Court En Banc erred in concluding that respondent's business operation does not fall within the purview of a non-bank financial intermediary, thus, not subject to local

business tax under Section 143 (f) of the Local Government Code of 1991.

2. The Honorable Court En Banc erred in concluding that there is no evidence in the Court *a quo* showing that respondent was authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities *(sic)* respondent cannot be treated as non-bank financial intermediary.

3. The Honorable Court En Banc erred in not taking into account the factual findings of the lower court that respondent is a Non-bank financial Intermediary by owning, investing and holding share of stock of San Miguel Corporation.

4. The Honorable Court En Banc erred in concluding that respondent's assets, being declared owned by the government pursuant to COCOFED decision, is exempt from the imposition of local business tax.

Petitioners argue that respondent's primary purpose and the very act of owning, holding and investing in San Miguel Corporation's (SMC) stock and realizing regular income through interests is well within the purview of the nature and functions of a non-bank financial intermediary. Petitioners claim that a holding company is basically a non-bank financial intermediary. Moreover, petitioners insist that the Court failed to consider the findings of the lower court and that the ***COCOFED Case***[1] did not delve on the taxability of the fund or its income but solely on the nature of ownership of the said SMC shares of stocks.

We are not persuaded.

An examination of the records reveals that respondent's mere ownership of SMC shares, receiving dividend thereon and interest on money market placement

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

without other evidence of business activity, does not qualify respondent as engaged in the business of a bank or other financial institution to be subject to local business tax under Section 143(f) of the Local Government Code (LGC). Records are bereft of evidence to show habitual business activity to consider respondent as a bank or other financial institution (Non-Bank Financial Intermediary).

True, the *COCOFED Case* did not delve on the taxability of the fund or its income but solely on the nature of ownership of the said SMC shares of stocks. As clear as it can get. No less than the Supreme Court has declared that respondent is a holding company owned by the government. The SMC shares it held, the dividends and any income therefrom are also owned by the government. Considering that respondent is owned by the Republic of the Philippines, it is exempt from imposition of Local Business Tax under Section 133 (o) of the same LGC. To reiterate:

> *"xxx, 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 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.'"*

In sum, We found no substantial argument to merit reconsideration of our Decision promulgated on January 30, 2019.

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

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

I reiterate my 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