REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

ROXAS SHARES, INC.,
Petitioner,

-*versus*-

CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City,
Respondents.

CTA AC NO. 163
(RTC Civil Case No. 34,854-13)

Members:

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, *JJ.*

Promulgated:

JAN 1 1 2017
4:20 p.m.

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DECISION

BAUTISTA, J:

The Case[1]

This is a Petition for Review filed on November 9, 2015, pursuant to *Section 7(a)(3)*[2] *of Republic Act ("RA") No. 1125*[3], as amended by *RA No. 9282*[4] and *RA No. 9503*[5], and *Section 3(a)(3)*[6], *Rule IV of the Revised*

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[1] *Records, CTA AC No. 163, Petition for Review*, pp. 8, 26.

[2] "Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.

xxx xxx xxx

(3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"

[3] An Act Creating the Court of Tax Appeals.

[4] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CT A), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court Of Tax Appeals, and for Other Purposes.

[5] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CT A), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court Of Tax Appeals, and for Other Purposes.

[6] "SECTION 3. *Cases Within the Jurisdiction of the Court in Divisions.* - The Court in Divisions shall exercise:

Rules of the Court of Tax Appeals ("RRCTA"), seeking for the Court to render judgment ordering respondents to refund or credit petitioner the total amount of One Million One Hundred Two Thousand Two Hundred Eighty-Five and 50/100 Pesos (Php1,102,285.50), plus legal interest, representing 0.55% local business taxes ("LBT") for the first and second quarters of 2011, which were erroneously and illegally collected from petitioner by respondents on January 18, 2011 and April 25, 2011, respectively.

The Parties

Petitioner Roxas Shares, Inc. is a corporation duly organized and licensed to do business in the Republic of the Philippines,[7] with principal office at Legaspi Oil Compound Km. 9.5, Sasa, Davao City as of October 14, 2009[8]. Its primary purposes are "[t]o 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, 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 stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation[s], 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 or exercise the functions of a trust corporation."[9]

Respondent City of Davao is empowered to levy business taxes, within the parameters set by law.

(a) Exclusive original or appellate jurisdiction to review by appeal the following:
xxx xxx xxx
(3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;"

[7] *RTC Records, Exhibit "A," SEC Certificate of Registration*, p. 167.
[8] *Id., Exhibit "A-1," Amended Articles of Incorporation*, p. 187.
[9] *Id.* at 183-184.

The Facts

Since October 2009, petitioner is the registered owner of 52,815,194 preferred shares of stock in San Miguel Corporation ("SMC") after the Supreme Court *En Banc* approved the conversion of its 52,815,104 common shares in SMC to the said SMC preferred shares.[10] The dividends received were deposited in a trust account, which earned interest from money market placements.[11]

In 2010, petitioner obtained the amount of Php400,831,039.58 as dividends from its SMC preferred shares and interest on its money market placements,[12] computed as follows:

NATURE		**AMOUNT**
Dividends	Php	396,113,955.00
Interest		4,717,084.58
TOTAL	**PHP**	**400,831,039.58**[13]

For the first half of 2011, respondent City of Davao, through its City Treasurer and co-respondent Riola, collected from petitioner LBT at the rate of 0.55% for the first and second quarters of 2011 on the dividends arising from the SMC preferred shares and interest on money market placements received by petitioner, in the aggregate amount of Php1,102,285.50.[14]

On September 13, 2012, petitioner filed with respondent City Treasurer Riola its written administrative claim for refund or credit of erroneously and illegally collected LBT, which has not been acted upon and resolved by the latter.[15]

On January 17, 2013, petitioner filed with the Regional Trial Court of Davao City ("RTC") a Petition for Refund or Credit Under *Section 156 of Republic Act ("RA") No. 7160*.[16]

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[10] *RTC Records, RTC Decision*, pp. 337-346.
[11] *Id.* at 337.
[12] *Id.*
[13] *Id.*
[14] *Id.* at 337-338.
[15] *Id.* at 338.
[16] *RTC Records, RTC Petition*, pp. 3-87, with annexes.

On June 22, 2015, the RTC promulgated a Decision[17], the dispositive portion thereof reads:

> **FOR REASONS STATED,** the instant "Petition for Tax refund or Credit under Section 156, R.A. [No.] 7160" filed by [p]etitioner is hereby **DENIED** and or **DISMISSED.**
>
> **SO ORDERED.**[18]

In the assailed Decision, the RTC explained that there is a striking resemblance between the definition of a financial intermediary under *Section 4101Q1 of the Manual of Regulations for Non-Bank Financial Institutions* and the primary business of petitioner; that petitioner cannot hide under the cloak of its evasive *proviso* that it shall "not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation" since it is glaringly and clearly under the category of a financial intermediary; that petitioner's income comes only from the dividends arising from the SMC preferred shares and interest on money market placements, hence, these are not considered as incidental to its business quest, but are the principal income of petitioner in the regular course of its business and in line with its primary purpose; and that being categorized as a financial intermediary, petitioner's income falls under the coverage of *Section 143(f) of the 1991 Local Government Code ("LGC").*

On August 4, 2015, petitioner filed its Motion for Reconsideration[19] *via* registered mail; which was denied by the RTC in an Order[20] dated September 11, 2015.

On November 9, 2015, petitioner filed the present Petition for Review[21]; to which respondents filed their Comment[22] on January 7, 2016 by registered mail.

On January 27 2016, the Court issued a Resolution[23] ordering the parties to file their respective Memoranda within thirty (30) days from notice.

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[17] *RTC Records, RTC Decision,* pp. 337-346.
[18] Emphases retained.
[19] *RTC Records, Motion for Reconsideration,* pp. 347-360, with annexes.
[20] *Id., RTC Order,* p. 375.
[21] *Records, Petition for Review,* pp. 8-142, with annexes.
[22] *Id., Comment,* pp. 148-165.
[23] *Records,* p. 167.

On March 3, 2016 and March 18, 2016, petitioner and respondents filed their respective Memoranda[24] *via* registered mail.

On April 8, 2016, the Court promulgated a Resolution[25] submitting the case for decision; hence, this Decision.

The Issue[26]

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OR CREDIT OF THE 0.55% LBT COLLECTED FOR THE FIRST AND SECOND QUARTERS OF 2011 ON THE DIVIDENDS FROM ITS SMC PREFERRED SHARES AND INTEREST ON ITS MONEY MARKET PLACEMENTS FOR TAXABLE YEAR 2010.

Petitioner's Arguments[27]

Petitioner avers that under *Section 133(a) of the 1991 LGC,* it is erroneous and illegal for respondents to assess a 0.55% LBT on the dividends and interest income of a taxpayer which is not a bank or a financial institution; and that its income partake the nature of public funds, thus, business tax cannot be imposed thereon.

Respondents' Counter-Arguments[28]

Respondents argues that petitioner is deemed a bank and other financial institution, specifically as a non-bank financial intermediary or an investment company by virtue of its investment and money market placements in SMC; that the business purpose contained in its Articles of Incorporation is broad enough to catch all the distinctive functions of a non-bank financial intermediary, as provided in *Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions* issued by the Bangko Sentral ng Pilipinas ("BSP"); that the mere statement in the Articles of Incorporation stating that petitioner shall not act as an investment company, securities broker or dealer is not a

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[24] *Records, Petitioner's Memorandum,* pp. 168-195, with annex; *Records, Respondent's Memorandum,* pp. 196-213, with annex.
[25] *Records,* p. 216.
[26] *Id., Petition for Review,* p. 15.
[27] *Id., Petitioner's Memorandum,* pp. 174-190.
[28] *Id., Respondents' Memorandum,* pp. 201-209.

conclusive proof that it is not a bank or other financial institution; that being a stock corporation, petitioner is presumed to have been organized to engage in business for profit, hence, subject to LBT; that the definition of Gross Sales/Receipts under *Section 131(n) of the 1991 LGC,* that does not include dividends and interest income as component of sales or receipts, is a general definition which cannot defeat a specific and clear provision of taxability of dividends and interest income provided under *Section 143(f) of the 1991 LGC;* and that under the assumption that the income partake the nature of public funds, pursuant to the ruling in *COCOFED v. Republic,* it does not exempt petitioner from the payment of LBT.

The Ruling of the Court

The Court finds merit in the Petition for Review.

Petitioner and its CIIF Block of SMC shares are Government-owned, hence, are not subject to LBT.

Petitioner avers that under *Section 133 of the 1991 LGC,* local governments units ("LGU") cannot impose taxes on the National Government, and its agencies and instrumentalities; that in the Supreme Court case of *COCOFED v. Republic*[29], it was declared that since the CIIF block of SMC shares were acquired using coco levy funds, the same should be treated as government assets; and that the balance, if any, of the coco levy funds, being a special fund, must be transferred to the general funds of the government in accordance with *Section 29(3), Article VI of the 1987 Philippine Constitution.*[30] Therefore, it follows that since the CIIF block of SMC shares are considered as government assets, the income derived therefrom should also be considered Government-owned and of public character, and the LGU of Davao cannot impose LBT thereon.[31]

Respondents counter that the *COCOFED v. Republic* case is not squarely applicable to the case at bar, considering that the said ruling merely segregated or identified the nature of said fund as Government

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[29] G.R. Nos. 177857-58, January 24, 2012, 612 SCRA 255.
[30] *Records, Petitioner's Memorandum,* pp. 188-190.
[31] *Id.*

assets and does not delve into the taxability of the fund.[32] Respondents explained that as a matter of fact, the tax being imposed by the LGU is not on the fund itself but only on the dividends and interest income accruing therefrom; that the fact that the fund is still in the hands of petitioner, a private corporation, negates the claim that the fund belongs to the government.[33] Therefore, they conclude that *Section 133(o) of the 1991 LGC* is inapplicable to the present case.[34]

The Court agrees with petitioner.

The relevant provisions of the law are *Sections 143(f) and 151 of the 1991 LGC, viz.*:

> **ARTICLE II**
> *Municipalities*
>
> 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.
>
> xxx xxx xxx
>
> **ARTICLE III**
> *Cities*
>
> xxx xxx xxx
>
> SECTION 151. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however,* That the taxes, fees and charges levied and collected by highly urbanized and independent

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[32] *Records, Respondents' Memorandum,* p. 209.
[33] *Id.*
[34] *Id.*

> component cities shall accrue to them and distributed in accordance with the provisions of this Code.
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> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.[35]

Pursuant to the above-stated provisions of the *1991 LGC*, the City of Davao enacted *Ordinance No. 158-05*, otherwise known as the *"2005 Revenue Code of Davao City," Section 69(f)* of which provides the following:

> 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 amount 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.[36]

Considering that petitioner earned the amount of Php400,831,039.58, composed of Php396,113,955.00 as dividends from its SMC preferred shares and Php4,717,084.58 as interest on its money market placements in 2010, respondents demanded payment of Php1,102,285.50[37] in two (2) equal installments of Php551,142.68 for the first half of 2011.

For the first and second quarters of 2011, the Office of the City Treasurer of Davao issued the following Official Receipts[38] ("OR"):

DATE	PERIOD	OR NO.	NATURE OF COLLECTION	AMOUNT

[35] Underscoring ours.
[36] *Id.*
[37] (Php400,831,039.58*0.55%=Php2,204,570.72)/2= Php1,102,285.36.
[38] *RTC Records, Exhibits "H" and "H-1," Official Receipts*, pp. 238-239.

January 18, 2011	Jan. to Mar.	5791199A	**400,831,039.58**	**551,142.75**
			ELECTRICAL FEE	550.00
			GARBAGE FEE	2,000.00
			HEALTH CERT. FEE	50.00
			LABORATORY FEE	100.00
			MECHANICAL FEE	330.00
			MAYOR'S PERMIT	5,000.00
			RENEWAL STICKER	5.00
			SANITARY PERMIT FE[E]	200.00
			SANITARY INSPECTIO[N]	300.00
			TAX CLEARANCE	50.00
			ZONING FEE	300.00
			TOTAL	560,027.75
April 25, 2011	Apr. to Jun.	9884255A	FIN 006(D) Holding Firm NE: 400,831,039.58 = 2nd Qtr. 2011 =	551,142.75
			TOTAL	**551,142.75**

By way of background, since its incorporation in 1983, petitioner's main activity has been the holding of shares of stock of SMC.[39] Petitioner is one of the 14 Coconut Industry Investment Fund ("CIIF") holding companies, owning an aggregate interest of 753,848,312 SMC shares, with 52,815,194 shares owned by petitioner.[40]

The 753,848,312 SMC shares were sequestered by the Presidential Commission on Good Governance ("PCGG") in May 1986; with the 14 CIIF holding companies under common management and their Board of Directors ("BODs") composed of nominees from the PCGG.[41]

It is undisputed that the Supreme Court in *COCOFED v. Republic*[42] declared the CIIF holding companies[43], including petitioner; and the CIIF Block of SMC shares as Government-owned, to wit:

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The CIIF Companies and the CIIF Block of SMC shares are public funds/assets

From the foregoing discussions, it is fairly established that the coconut levy funds are special public

[39] *RTC Records, Exhibit "G," Notes to the Financial Statements, Note 1,* p. 209.
[40] *Id., Note 6,* p. 222.
[41] *Id.*
[42] G.R. Nos. 177857-58, January 24, 2012, 612 SCRA 255.
[43] Composed of Soriano Shares, ASC Investors, ARC Investors, Roxas Shares, Toda Holdings, AP Holdings, Fernandez Holdings, SMC Officers Corps., Te Deum Resources, and Anglo Ventures, Randy Allied Ventures, Rock Steel Resources, Valhalla Properties Ltd., and First Meridian Development, all names ending with the suffix Corp. or Inc.

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.

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

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> were with government funds, belong to the government as, at the very least, their beneficial and true owner.
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> We thus affirm the decision of the Sandiganbayan on this point. But as We have earlier discussed, reiterating our holding in *Republic v. COCOFED*, the States avowed policy or purpose in creating the coconut levy fund is for the development of the entire coconut industry, which is one of the major industries that promotes sustained economic stability, and not merely the livelihood of a significant segment of the population. Accordingly, We sustain the ruling of the Sandiganbayan in CC No. 0033-F that the CIIF companies and the CIIF block of SMC shares are public funds necessary owned by the Government. We, however, modify the same in the following wise: These shares shall belong to the Government, which shall be used only for the benefit of the coconut farmers and for the development of the coconut industry.[44]

Considering that the 14 CIIF holding companies as well as their shares in SMC are Government-owned, these are beyond the taxing jurisdiction of respondent City, pursuant to *Section 133(o) of the 1991 LGC*, to wit:

> 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:
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> xxx xxx xxx
>
> (o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.[45]

Lastly, respondents cannot claim that the assessment should be upheld since the tax being imposed is not on the fund itself but only on the dividends and interest income accruing therefrom. It must be noted that since petitioner is Government-owned, by virtue of the right of accession, whatever income it earns accrues to the Government, pursuant to *Articles 440 to 442 of the Civil Code of the Philippines, viz.*:

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[44] Underscoring ours.
[45] *Id.*

CHAPTER 2

Right of Accession

GENERAL PROVISIONS

ARTICLE 440. The ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially.

SECTION 1

Right of Accession with Respect to What is Produced by Property

ARTICLE 441. To the owner belongs:

(1) The natural fruits;

(2) The industrial fruits;

(3) The civil fruits.

ARTICLE 442. Natural fruits are the spontaneous products of the soil, and the young and other products of animals.

Industrial fruits are those produced by lands of any kind through cultivation or labor.

Civil fruits are the rents of buildings, the price of leases of lands and other property and the amount of perpetual or life annuities or other similar income.[46]

Petitioner is entitled to the refund sought.

As to petitioner's claim for refund before the Court, *Section 196 of the 1991 LGC* requires that a written claim for refund should be filed with the local treasurer, and that the judicial claim should be filed with the Court within two (2) years from the payment of the tax or from the date the taxpayer is entitled to said refund, to wit:

[46] Underscoring ours.

> SECTION 196. *Claim for Refund of Tax Credit.* — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

In the case at bar, the claim for refund for the LBT paid for the first half of 2011 was filed with the Office of the City Treasurer on September 13, 2012.[47] Since payments were made on January 18, 2011 and April 25, 2011,[48] petitioner had until January 18, 2013 and April 25, 2013 to file its judicial claims for refund. Records reveal that the claim for refund with the RTC was timely filed on January 17, 2013.[49]

Having complied with the requirements for refund of LBT under *Section 196 of the 1991 LGC,* petitioner is entitled to the refund sought.

On account of the foregoing, the Court finds it unnecessary to delve into the other issues and arguments raised by the parties.

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **GRANTED**. The Decision dated June 22, 2015 and the Order dated September 11, 2015 by the Regional Trial Court, Branch 16, Davao City, are hereby **REVERSED** and **SET ASIDE**. Accordingly, respondent Treasurer of the City of Davao is hereby **ORDERED TO REFUND** to petitioner, Roxas Shares, Inc., the total amount of **ONE MILLION ONE HUNDRED TWO THOUSAND TWO HUNDRED EIGHTY-FIVE AND 50/100 PESOS (PHP1,102,285.50)** representing its erroneously paid local business taxes for the first and second quarters of taxable year 2011.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[47] *RTC Records, Exhibit "I," Administrative Claim for Refund,* pp. 240-249.
[48] *Id., Exhibits "H" and "H-1," Official Receipts,* pp. 238-239.
[49] *Id., Petition for Review,* pp. 3-87, with annexes.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution,* and the Division Chairperson's Attestation, 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