REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SOUTH CHINA RESOURCES INC. (now known as "SOCResources, Inc."),
Petitioner,

-versus-

OFFICE OF THE CITY TREASURER AND/OR MAKATI CITY,
Respondents.

CTA AC NO. 197
(Civil Case No. 14-165)
(Civil Case No. M-7835)

Members:

CASTAÑEDA, JR.,
Chairperson
MANAHAN, *JJ.*

Promulgated:

APR 30 2019
4:30 p.m.

x- x

DECISION

Manahan, J.:

The Petition for Review[1] filed by South China Resources (SOCResources, Inc.) seeks to reverse and set aside the Decision of the Regional Trial Court (RTC), Branch 66 of Makati City in Civil Case Nos. 14-165 and M-7835[2] entitled *South China Resources, Inc. vs. Office of the City Treasurer and/or Makati City* and *SocResources, Inc. vs. Office of the City Treasurer and/or City of Makati* dated October 11, 2017 and the Order[3] dated January 8, 2018 denying petitioner's Motion for Reconsideration against said Decision.

Petitioner SocResources, Inc. is a domestic corporation duly organized and existing under Philippine

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[1] Court Docket, pp. 8-34.
[2] Court Docket, pp. 38-44.
[3] Court Docket, page 45.

laws with Certificate of Incorporation No. ASO92-06441 issued by the Securities and Exchange Commission (SEC). It has its principal office address at the 4th Floor A & L Building, Dela Rosa corner Esteban Streets, Legaspi Village, Makati City.

Its Amended Articles of Incorporation[4] (AOI) provides its Primary Purpose as follows:

> "To invest in, purchase, 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, in particular shares of stocks, voting trust certificates, bonds, debentures, notes, evidences of indebtedness of associations and corporations, domestic or foreign, including those of the Government of the Republic of the Philippines, or any of its instrumentalities, without being a stockbroker or dealer, and to issue in exchange therefor shares of the capital stock, bonds, notes, or other obligations and/or assets of the Corporation and while the owner thereof, to exercise all the rights, powers and privileges of ownership, including the right to vote any shares of stock or voting trust certificates so owned, and to do every act and thing that may generally be performed by entities known as "holding companies".

On the other hand, respondent Makati City is a duly created and organized local government unit (LGU) while respondent City Treasurer of Makati City is the duly appointed city official empowered to assess and collect local business taxes (LBT) under the Revised Makati Revenue Code (RMRC). Both have their office address at the Makati City Hall, Barangay Poblacion, Makati City.

THE FACTS

By virtue of Letter of Authority No. 2013-0502, the revenue officers of the City Treasurer's Office of Makati City (City Treasurer) investigated and examined petitioner's financial documents. As a consequence of such investigation, respondent issued a Notice of Assessment dated November 12, 2013 classifying petitioner as a "Manufacturer" with deficiency local business taxes (LBT)

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[4] Court Docket, pp.59-69.

in the total amount of Php4,872,182.45 for taxable years 2009, 2010 and 2011.

Petitioner filed a protest letter against the assessment dated December 21, 2013 and received by Makati City on December 26, 2013 and which was denied by respondent City Treasurer in a letter dated January 8, 2014. In the letter denying the protest, respondent re-classified petitioner's business as a "holding company' and assessed petitioner for deficiency business taxes pursuant to Section 3A.02 (p) in relation to Section 3A.02 (h) of the RMRC. Petitioner then filed an appeal with RTC Makati on February 12, 2014 assailing respondent's denial of its protest.

We quote relevant portions of the factual narration of the assailed Decision of RTC Branch 66, thus:

> "On July 25, 2014, respondents filed their Answer/Reply-Memorandum dated July 21, 2014. On August 26, 2014, petitioner filed a Motion to Admit Rejoinder dated August 22, 2014 with attached Rejoinder dated August 22, 2014, which was admitted on November 4, 2014.
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> Petitioner filed a Manifestation dated February 11, 2015, informing the court of petitioner's change of corporate name to "SOCResources, Inc." which was noted on February 17, 2015. On March 11, 2015, petitioner filed its Pre-Trial Brief and the Judicial Affidavit of its lone witness, Ronna C. de Leon, all dated March 11, 2015.
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> On June 18, 2015, respondents filed their Pre-Trial Brief dated May 29, 2015 and the Judicial Affidavit dated June 18, 2015 of its lone witness, revenue examiner Sulpicio Belchez. The case was then set for pre-trial conference on June 29, 2015. During the pre-trial conference held on June 29, 2015, the case was set for mediation pursuant to Section 2 (a) of Rule 18 of the 1997 Rules of Civil Procedure and the Second Revised Guidelines for the implementation of mediation proceedings approved by the Supreme Court on October 16, 2001. Upon failure of the mediation proceedings, the case was set for Judicial Dispute Resolution ("JDR") pursuant to the circular of the Supreme Court A.M. No. 04-1-12-SC. JDR likewise failed and the instant case was forwarded to the OCC for re-raffle. The same was re-raffled to this court.

> At the pre-trial conference on February 22, 2016, the parties stipulated the following facts as contained in the Pre-Trial Order dated February 22, 2016: (a) petitioner is a holding company; (b) petitioner's primary purpose as stated in its Amended Articles of Incorporation; (c) respondent City Treasurer's officers are authorized to investigate and examine petitioner's financial documents under Letter of Authority No. 2013-0502; (d) petitioner conferred with respondent City Treasurer's revenue officer to whom petitioner presented and submitted its Amended Articles of Incorporation; (e) respondent City Treasurer issued the subject Notice of Assessment which petitioner received on November 14, 2013; (f) petitioner filed on December 26, 2013 its Protest dated December 21, 2013, assailing the subject Notice of Assessment; and (g) petitioner received the assailed Letter of Denial dated January 8, 2014 and January 13, 2014. On even date pre-trial was closed and terminated.
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> xxx xxx xxx
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> FACTS FOR CIVIL CASE NO. M-7835
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> On June 11, 2015, another Petition was filed by petitioner praying this time for the annulment of the Billing Assessment issued by the Business Permits Office of the City of Makati for the amount of Php981,478.00. Said assessment was received last January 13, 2015 and included deficiency taxes with increment for the taxable periods of 2013 and 2014. On February 2, 2015, petitioner submitted its request for re-computation. The request was denied on February 10, 2015. On February 25, 2015, petitioner filed a protest despite paying the assessed amount on February 13, 2015. Said protest argued that the alleged deficiency business taxes for taxable year 2013 and its classification as "Manufacturer-OMF NO" are the subject matter of Civil Case No. 14-165 and maintains that it is a holding company. However up to the present time petitioner has yet to receive from respondent Treasurer a decision on the protested assessment. Hence the instant petition."

RTC Branch 66 of Makati City eventually dismissed the petitions filed by petitioner in the assailed Decision dated October 11, 2017 and ruled in favor of respondents and we quote relevant portions, *viz:*

> "It is therefore clear under the above-quoted provision of the Revised Makati Revenue Code, that a "holding company" shall be taxed as a specific class of its own, without reference to it being a contractor or an owner or

> operator of banks or other financial institutions. Meaning, a "holding company" need not be a contractor nor an owner or operator of banks and other financial institutions. The wordings of Section 3A.02 (p) are plain and simple: a "holding company" shall be taxed at the rate prescribed under either subsection (g) or (h) on its gross sales and/or receipts during the preceding year.
>
> xxx xxx xxx
>
> **WHEREFORE**, premises considered, judgment is hereby rendered upholding the validity of the Notice of Assessment No. 13-80381 dated November 12, 2013 as well as Billing Assessment No. 019511 dated January 13, 2015. Accordingly, both Civil Case No. 14-165 and M-7835 are hereby **DISMISSED**.
>
> **SO ORDERED."**

On November 10, 2017, petitioner filed a *Motion for Reconsideration* praying that the afore-quoted Decision be reversed and that respondents cancel the assessments for LBT.

On January 8, 2018, RTC Branch 66 issued an Order denying the *Motion for Reconsideration* on the ground that the issues raised by the petitioner in its Motion for Reconsideration have already been passed upon and resolved in the Decision rendered on October 11, 2017.

Aggrieved with the Decision and Order of the RTC Branch 66 of Makati City, petitioner filed a Petition for Review with this Court on February 9, 2018 via registered mail.

In a Resolution[5] dated March 1, 2018, this Court directed respondents to file their Comment within ten (10) days from receipt thereof.

Respondents then filed their *Comment (to the Petition for Review)* on March 21, 2018.[6]

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[5] Court Docket, Volume V, page 1782.
[6] Court Docket, Volume V, pp.1783-1795.

On March 28, 2018, petitioner filed its *Reply (To Respondents' Comment (to the Petition for Review) dated 19 March 2018).*

In a letter dated April 27, 2018, the Branch Clerk of Court of RTC Branch 66 Makati City, Atty. John Ivan B. Tablizo, transmitted the entire original records of Civil Case No. 14-165 in accordance with the Court's Resolution dated April 6, 2018.[7]

In a Resolution dated May 8, 2018, the Court took note of the transmittal made by the Branch Clerk of Court of RTC Branch 66 Makati City.

On May 15, 2018 petitioner submitted its Memorandum[8] while respondents failed to submit their Memorandum within the time prescribed by the Court.

In a Resolution dated June 7, 2018, the Court deemed the instant case submitted for decision.

In its Petition for Review, petitioner raised the following Assignment of Error for this Court's resolution, to wit:

1. The Court *a quo* gravely erred in affirming respondents' assessment for deficiency business taxes against petitioner for taxable years 2009 to 2011 considering that:

   A. Petitioner's investments and interests do not constitute gross sales or receipts subject to deficiency business taxes, and
   B. Respondent's imposition of local business taxes and fees on petitioner is an *ultra vires* act. Thus, the subject notice of assessment is null and void

ISSUE

As gathered from the pleadings submitted by both parties, the sole issue is as follows:

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[7] Court Docket, Volume V, page 1807.
[8] Court Docket, Volume V, pp. 1818-1870.

> "Whether RTC Branch 66 of Makati City correctly affirmed respondents' assessment of deficiency local business taxes (LBT) against petitioner for the taxable years 2009 to 2011."

Petitioner's Arguments

Petitioner asseverates that it is a holding company as evidenced by its Amended AOI and not a "manufacturer" as classified by the respondents. Petitioner further asserts that as a holding company, its investments and interest income are not subject to LBT as erroneously assessed by the respondent. It stresses that its status as a holding company is undisputed, hence, it does not have gross sales and/or receipts which may be assessed under Sections 3A.02 (g) and (h) of the RMRC or the Local Government Code of 1991 (LGC of 1991).

Petitioner claims that respondents merely speculated that it accepted monies from its stockholders or from third party investors to invest on their behalf. Petitioner denies this and avers that there is no evidence on record to substantiate this speculative assertion of respondents and in fact could not even identify a single third-party investor that they purportedly served.

Petitioner reiterates that as a holding company, it merely "held" its investments in other companies and passively waited for said companies to declare dividends. In this manner petitioner submits that it cannot be seen as rendering any service to companies. It theorizes that "service" is an essential element for a taxpayer to be held liable under Section 1B.01 of the RMRC.

Secondly, petitioner assails respondent's act of imposing LBT as an *ultra vires* act hence must be declared null and void. Petitioner cites the constitutional limitation on the local government's power to tax under Article X, Section 5 of the 1987 Philippine Constitution (1987 Constitution) which provides as follows:

"Article X

> 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." (emphasis supplied)

Among the limitations (as provided in the 1986 Constitution) cited by petitioner is found in Section 133 (a) of the LGC of 1991 which prohibits the local government units (LGUs) from imposing income tax except when this is levied on banks and other financial institutions.

Petitioner then emphasizes that Makati City may not impose LBT on petitioner's dividends, interest income and profit from the exchange or sale of property because this will partake the nature of imposing income tax on a holding company which is prohibited under the aforesaid Section 133 (a) of the LGC of 1991. It is thus an *ultra vires* exercise of the local taxing power and must be struck down as invalid and ineffective.

Respondents' Counter-Arguments

In their Comment to the Petition for Review, respondents counter that the RTC Branch 66 of Makati City did not err in dismissing the petition filed by the petitioner and maintain that as a holding company it shall be taxed as a specific class of its own without reference to it being a contractor or an owner or operator of banks and other financial institutions. They cite section 3A.02 (p) in relation to section 3A.02 (h) of the RMRC as legal bases of the imposition of LBT. The wordings thereof are clear and simple - that a holding company shall be taxed at the rate prescribed under either subsection (g) or (h) on its gross sales and/or receipts during the preceding year.

Respondents want to make it clear that once an entity is classified as a holding company, then the tax rate prescribed shall be 20% of 1% of its gross receipts, which in this case refers to petitioner's investment, interest and dividend income. Contrary to petitioner's arguments, respondents assert that it was not assessed as a bank or a financial institution but as a holding company at a rate similar to a bank or financial institution under Section 3A.02 (p) of the RMRC.

As to the assertion of petitioner that Makati City has no authority to assess LBT on its dividends and interest income, respondents aver that is well within their powers under the law as effected by Section 3A.02 (p) of the RMRC, to impose business taxes on holding companies based on their gross receipts/sales. Dividends and interest income, therefore, are the gross receipts/sales of a holding company such as petitioner. The respondents therefore maintain that Notice of Assessment No. 13-00381 issued by Makati City dated November 12, 2013 is correct and remains valid.

RULING OF THE COURT

The Court shall first resolve whether this Court has jurisdiction to take cognizance of this case.

Section 7 (a) (3) of Republic Act (RA) 9282 provides as follows: :

> "Section 7. *Jurisdiction.* – The CTA 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 Court in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"** (emphasis supplied)

The above provision is implemented by Section 3 (a) (3), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

> Section 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(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**." (emphasis supplied)

With regard to the filing of an appeal with the CTA, Section 3(a), Rule 8 of the RRCTA, in part, provides:

> Sec. 3. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessment or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, **or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling**, or the expiration of the period fixed by law or the Commissioner of Internal Revenue to act on the disputed assessments. xxx" (emphasis supplied)

The records and pleadings show that petitioner received the Decision of RTC Branch 66 Makati City in Civil Case Nos. 14-165 and M-7835 on October 26, 2017 and subsequently filed a Motion for Reconsideration with said court on November 10, 2017.[9]

An Order was issued by RTC Makati on January 8, 2018[10] denying the Motion for Reconsideration which was received by petitioner on January 12, 2018.

On February 9, 2018, petitioner filed a Petition for Review with this Court via registered mail or within thirty (30) days from receipt of the Order denying its Motion for Reconsideration.

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[9] Annex "P-3" of Petitioner's Petition for Review, Court Docket, pp.46-57.
[10] Annex "P-2" of Petitioner's Petition for Review, Court Docket, page 45.

Clearly, petitioner timely filed its appeal, hence giving this Court the requisite jurisdiction to rule on the issues raised in this case.

Now, we proceed to the merits of the case.

The local treasurer of Makati City assessed petitioner for LBT on the ground that the latter is considered a "holding company" subject to the provisions of Section 3A.02 (p) in relation to Section 3A.02 (h) of the RMRC, thus:

> Section 3A.02. *Imposition of Tax.*- There is hereby levied an annual tax on the following businesses at rates prescribed therefore:
>
> (h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities, including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) 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 investments, dividends, insurance premiums and profit from exchange or sale of property, provided however on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l) 1, as provided in this code.
>
> xxx xxx xxx
>
> (p) On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h) of the gross sales and/or receipts during the preceding calendar year."

The local treasurer then based the computation of the LBT on petitioner's dividend income and applied the rate of 20% of 1% in accordance with the afore-quoted section.

As the arguments of both parties suggest, petitioner posits that as a holding company, it is not liable for LBT on its investment and interest income because the LGC of 1991 proscribes the LGUs from imposing income taxes. Respondent on the other hand, affirms its authority to impose LBT on the gross receipts/sales of holding companies as clearly specified in the afore-quoted Section 3A.02 (h) and (p) of the RMRC. Respondents further aver that petitioner need not be classified as a service contractor, nor an owner or operator of banks and other financial institutions in order that Section 3A.02 (h) to apply. Respondents maintain that once an entity is classified as a holding company then LBT shall be imposed based on the relevant provisions of the RMRC and this was echoed in the assailed decision of RTC Branch 66 of Makati City.

We find for the petitioner.

Section 151 of the LGC of 1991 provides for the power of a city to impose local taxes, and we quote thus:

> "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 component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> 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." (emphasis supplied)

Corollarily, Section 143 of the LGC of 1991 provides for the authority of municipalities to impose business taxes and its coverage, thus:

> "Section 143. *Tax on Business.* – The municipality may impose taxes on the following businesses:
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> xxx xxx xxx
>
> (e) On contractors and other independent contractors, xxx xxx
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> 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 interests, commissions, 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 151 of the LGC of 1991 likewise authorizes cities to impose taxes which the province and municipality may impose and we quote, thus:

> "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 component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> 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."

The foregoing provisions are clear. Municipalities and *cities* have the authority to impose business taxes with the latter having a limitation to levy said taxes not exceeding the maximum rates allowed to the former by not more than 50% except the rates of professional and amusement taxes. However, such authority to impose taxes by each of the LGUs is subject to limitations as provided under the aforementioned Section 5 of Article X of the 1986 Constitution and brought to life by Section 133 of the LGC of 1991 specifically subsection (a) thereof, and we quote:

> "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."** (emphasis supplied)

An analysis of the provisions of Sections 143 (f) and 133 (a) suggests that cities are prohibited from imposing income tax *except* when this is levied on banks and other financial institutions. This is made explicit when the word "dividend" is applied only to banks and other financial institutions. The imposition of LBT on dividends on other entities other than banks is outside the ambit of authority of cities, such as Makati City.

As to the argument of respondents that petitioner need not be classified as a bank or other financial institutions or a contractor for LBT to apply, we find this an erroneous conclusion.

An analysis of Section 3A.02 (p) of the RMRC states that holding companies shall be taxed either at the rates under subsection (g) or (h) of its gross sales and/or receipts.

We quote Section 3A.02 (g) of the RMRC, thus:

> xxx xxx xxx
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> (g) On Contractors and other independent contractors defined in Sec. 3A-01 (t) of chapter III of this Code; and on **owners or operators of business establishments** rendering or offering services such as: advertising agencies; rental of space of signs, signboards, billboard or advertisements; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others: business management services; collecting agencies; escort services; feasibility studies; consultancy services; garages; garbage disposal contactors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops' management consultants not subject to professional tax; medical and dental laboratories; mercantile agencies; messengerial services; operators of shoe shine stands; painting shops; perma-press establishments; rent-a-plant services; polo players; school for an/or horse-back riding academy; real estate appraisers' real estate brokerages' photostatic' white/blue printing; photocopying, typing and mimeographing services; car rental; rental of heavy equipment; rental of bicycles; and/or tricycles; furniture, shoes, watches and household appliances, boats, typewriters, etc.; roasting of pigs, fowls, etc.; shipping agencies; shipyard for repairing ships for others; shops for hearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing school/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education (DepEd), day care centers, etc.:" (emphasis supplied)

xxx xxx xxx

Based on the relevant provisions of Section 3A.02 of the RMRC, the imposition of LBT on a holding company shall either be under *subsection (g)* for owners and operators of business establishments conducting "business management services" or under *subsection (h)* for banks and other financial institutions. It is not a remote possibility that a holding company may conduct or transact other businesses such as the ones described in subsections (g) or (h) of Section 3A.02 of the RMRC, so it is not unlikely that petitioner may engage in businesses that may be classified under said subsections, however evidence on record do not show that petitioner falls under either descriptions to justify the imposition of the LBT.

It must be noted that respondents already acknowledged that petitioner is a holding company as seen from the Letter Denial (of petitioner's protest) dated January 14, 2019 issued by respondent city treasurer of Makati City where the latter re-classified petitioner's business to that of a "holding company" from the earlier classification of "manufacturer".[11]

We are persuaded by the decisions of this Court on a similar issue, foremost among which is the case of *Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia A. Barlis*[12] which clearly held that dividend income is excluded from gross receipts that are to be subject to the LBT and we quote:

> **"Dividend Income Not Subject to Local Business Tax**
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> Section 133(a) of the Local Government Code expressly provides that the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax, except when levied on banks and other financial institutions.
>
> Section 131(e) of the LGC defines "banks and other financial institutions" to include "non-bank financial intermediaries, lending investors, finance and investment

[11] Decision of RTC Makati, pp. 38-39 and attached as Annex "P-1" of Petitioner's Petition for Review, Court Docket, pp.38-44.
[12] CTA EB No. 1093 (CTA AC No. 99), June 17, 2015.

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." This enumeration appears to be exclusive of other entities. Nowhere in the entirety of Section 131 is a holding company mentioned. However, this, by itself, does not place holding companies beyond the reach of local taxation, except on their income.

Section 143 of the Local Government Code is the law on local business taxes. Subsection (f) thereof expressly allows local taxation on banks and other financial institutions on their income from dividends, based on gross receipts of the preceding calendar year. What Section 3A.02(h) of the Revised Makati Revenue Code did was to expand the taxpayer base to encompass "owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, moneyshops, insurance companies, stock markets, stock brokers, dealers in securities, including pre-need companies, foreign exchange." The Treasurer of Makati City, while invoking this Section 3A.02(h), made it applicable to holding companies, such as Michigan Holdings, by virtue of Section 3A.02(p), which provides that holding companies "shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/ or receipts during the preceding calendar year."

Section 3A.02(h) of the Revised Makati Revenue Code, which took effect on January 1, 2006, imposes a local business tax on the dividend income of certain taxable entities. Section 3A.02(p) makes holding companies liable for this business tax.

"Section 3A.02(p). On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h) of the gross sales and/ or receipts during the preceding calendar year."

Thus, Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code, violates the limit set by Section 133(a) of the Local Government Code.

Indeed, if the business of a holding company is in the same class as that of a bank or other financial institutions, the Makati City tax ordinance could simply have included holding companies in its Section 3A.02(h), instead of placing them all by themselves in Section 3A.02(p) and then making the tax rates in either Section 3A.02(h) or (g) applicable to

> them. That holding companies, exclusively, were placed in a separate section, shows that they comprise a category distinct from the class of "banks and other financial institutions" as defined by Section 131(e) of the LGC. **That holding companies were subjected to a tax on dividend income which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions**, shows a deliberate intent to circumvent the prohibition laid down by Section 133(a) that the taxing powers of LGUs shall not extend to the levy of income tax, except on banks and other financial institutions." (emphasis suppled)

In the aforequoted *Michigan Holdings case,* the Court ruled that dividend income is not subject to LBT except when levied on banks and other financial institutions and it is clear that petitioner as a holding company cannot be classified as a "bank or other financial institution".

In the case of *ASC Investors Inc. vs. City of Davao City*[13], the Court clarified the nature of businesses covered within the definition of "financial intermediaries/non-bank financial intermediaries", thus:

> "....There is nothing in the record that indicated or even hints that petitioner 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 lntermediaries/non-bank financial intermediaries" as defined similarly in (i) Section 2 (D) (c) of RA No. 337, or the General Banking Act, as amended; (ii) Section 2.3 of RR No. 9-2004; and (iii) Section 4101Q.1 of the Manual Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas."*

Finally, in the case of *Metro Pacific Resources, Inc. vs. Makati City and Nelia A. Barlis, in Her Capacity as Incumbert City Treasurer of Makati City*[14], this Court had the occasion to similarly observe that petitioner can neither be classified as a bank or other financial intermediary, and we quote:

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[13] CTA AC No. 157, June 7, 2017.
[14] CTA AC No. 174, November 21, 2017.

> "xxx xxx A careful look into the evidence on record would show that petitioner is not an investment company, nor a bank, or other financial intermediary , as defined above. For one, petitioner is not an entity authorized by the Bangko Sentral ng Piipinas ("BSP') to perform quasi-banking functions. There is also no showing that petitioner advertised itself as a lending, investing or financing company. Further, even if petitioner's primary purpose, as stated in its Articles of Incorporation, may involve one of the activities enumerated in the BSP Manual, such primary purpose, standing alone, is inadequate to justify the conclusion that petitioner is performing functions of a financial intermediary." xxx xxx

The records of this case do not show that petitioner is engaged in activities that may be classified as performing functions similar to a bank or other financial institution as defined by pertinent regulations. Its primary purpose as shown in the Articles of Incorporation neither shows that none of its activities are covered by the BSP Manual akin to functions pertaining to a financial institution. Neither can petitioner be classified as an operator of business establishments offering, *inter alia,* "business management services".

WHEREFORE, premises considered the Petition for Review filed by petitioner South China Resources, Inc. (now known as "SocResources, Inc.") is hereby **GRANTED**.

Accordingly, the assailed Decision dated October 11, 2017 and the Order dated January 8, 2018 rendered by the Regional Trial Court of Makati City in Civil Case Nos. 14-165 and M-7835 are **REVERSED** and **SET ASI E**. Respondents are hereby **DIRECTED** to **CANCEL** and **WITHDRAW** Notice of Assessment No. 13-80381 dated November 12, 2013 as well as Billing Assessment No. 019511 dated January 13, 2015.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

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

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.

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

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice