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 City Treasurer of Davao City,
Petitioners,

CTA EB No. 1705
(CTA AC No.153)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

\- versus -

ARC INVESTORS, INC.,
Respondent.

Promulgated:
MAY 21 2019 3:38 PM

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RESOLUTION

Fabon-Victorino, J:

On December 21, 2018, the Court *En Banc* rendered a Decision,[1] the decretal portion of which reads as follows:

> **WHEREFORE**, the Petition for Review dated August 23, 2017, filed by petitioners the City of Davao and Bella Linda N. Tanjili, in her official capacity as City Treasurer of Davao City is **DENIED**. The impugned Decision and Resolution dated January 16, 2017 and July 17, 2017, respectively rendered by the Court in Division are **AFFIRMED**.
>
> **SO ORDERED**.

[1] Ibid. at pp. 88-105.

On February 1, 2019, petitioners filed[2] a *Motion for Reconsideration*[3] of even date, arguing that:

1. The Court *En Banc* erred in concluding that respondent's business operation does not fall within the definition of a non-bank financial intermediary (NBFI);

2. The Court *En Banc* erred in concluding that since there is no evidence in the court *a quo* showing that respondent was authorized by the Monetary Board – Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities, respondent cannot be treated as a NBFI;

3. The Court *En Banc* erred in not taking into account the findings of the lower court that respondent is a NBFI by owning, investing and holding shares of stock of San Miguel Corporation;

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

Petitioners maintain that respondent's primary purpose per its Amended Articles of Incorporation (AOI), and its declaration that it received interest and dividends as a consequence of placing funds in securities and banks show that it is a Non-Bank Financial Intermediary (NBFI). As such, respondent is subject to local business tax (LBT) under Section 143(f) of the Local Government Code (LGC).

Further, an authority from the Monetary Board of the *Bangko Sentral ng Pilipinas* (MB-BSP) is inconsequential for respondent to be deemed as a NBFI since its act of regularly investing monies on San Miguel Corporation (SMC) Shares, as well as in banks reveals that its business activities are that of a NBFI.

Also, respondent's substantial outlay in the form of SMC Shares and money market placements which yielded dividends and interests negates any impression that it does not perform the business endeavours of a NBFI.

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[2] Petitioners' Motion for Reconsideration was filed through registered mail.
[3] *Rollo*, pp. 120-132.

Petitioners as well reject that Court's finding that they are bereft of authority to tax the SMC shares and its earned interests and dividends per Section 133(o) of the LGC since the San Miguel Corporation (SMC) shares held by respondent are owned by the government of the Republic of the Philippines.

Further, the declaration of the High Tribunal in the *COCOFED* case[4] that the subject SMC shares are of public character is of no moment given that it is not the shares, but the privilege of engaging in NBFI activities that is subject to LBT. Significantly, respondent is neither a part of the national government, nor a LGU, Section 133(o) of the LGC finds no application to the present controversy.

In refutation,[5] respondent counters that it is not a NBFI given that: a) it was not authorized by the BSP to perform quasi-banking functions; b) no proof was adduced by petitioners to show that it is engaged in placement of funds on a regular and recurring basis; c) it only acquired SMC shares once after its incorporation, for which reason it is not a business activity, but an isolated transaction; d) its mere owning/holding of shares does not automatically render it a NBFI; e) per its amended AOI, it may not engaged as an investment company or a securities broker/dealer; and f) it is a mere holding company, which is a class distinct from a bank or NBFI.[6] Since it is not a NBFI, it is not subject to LBT under Section 143, in relation to Section 133(a) of the LGC.

Finally, respondent states that since the Supreme Court *En Banc* declared in the *COCOFED*[7] case that the SMC shares it held are property of the national government, the subject shares, as well as yields therefrom, i.e., interest and dividend income, are not subject to LBT pursuant to Section 133(o) of the LGC.

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[4] *Philippine Coconut, Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, et al.*, G.R. Nos. 177857-58, January 24, 2012.
[5] Respondent's Comment/Opposition (To Petitioners' Motion for Reconsideration dated 01 February 2019), *rollo*, pp. 138-163.
[6] Respondent relies on *Michigan Holdings, Inc. vs. The City Treasurer of Makati*, CTA EB No. 1093, June 17, 2015 in support of its position.
[7] See Note 4.

THE RULING OF THE COURT

The Court digresses with petitioners' posture that respondent is a NBFI. For one, per its Amended AOI, respondent was primarily organized as a holding company, i.e., direct corporate operations by means of stock ownership and not a NBFI. There was also no formidable proof to demonstrate that its principal and habitual business activity is that of a NBFI pursuant to pertinent laws, rules and regulations promulgated by competent authority. Neither was it endowed by the MB-BSP with corresponding authority to perform quasi-banking functions as a NBFI. All the foregoing incidents veer towards the conclusion that respondent may not be categorized as a NBFI, for which reason its realized dividends and the interest earned from money market placements are exonerated from the imposition of LBT pursuant to Section 133(a) of the LGC.

Even granting *arguendo* that respondent is a NBFI as petitioners' insinuate, the subject SMC shares, along with the dividend and interest realized therefrom are owned by the Republic of the Philippines, hence, absolved from the imposition of LBT following Section 133(o) of the same Code.

It has been consistently ruled that the Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[8] Hence, the Court cannot decide on the matter in any other way.

In the *COCOFED* case, the Supreme Court *En Banc* declared that the subject SMC shares held by respondent belong to the Philippine government. Since respondent's SMC preferred shares are owned by the Philippine government, the fruits thereof, i.e. the dividends and interest earned from respondent's money placements are beyond the ambit of the petitioners' taxing power on the strength of Section 133(o) of the LGC.

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[8] *Commissioner of Internal Revenue vs. Michel J. Lhullier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003.

WHEREFORE, petitioners' Motion for Reconsideration dated February 1, 2019 is **DENIED**, for lack of merit. The Decision of December 21, 2018 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(I reiterate my 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

(On Leave)
CATHERINE T. MANAHAN
Associate Justice