REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

FERNANDEZ HOLDINGS, INC.,
Petitioner,

- *versus* -

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

CTA AC NO. 162

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

Promulgated:
JUL 20 2017
1:22 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is respondents' Motion for Reconsideration filed by registered mail on May 30, 2017 with petitioner's Comment/Opposition To Respondent's Motion for Reconsideration (Re: Decision Rendered 06 April 2017) (the "Comment/Opposition") filed by registered mail on June 28, 2017.

On April 6, 2017, the Court promulgated a Decision (the "Assailed Decision")[1] granting the Petition for Review, reversing and setting aside the Decision[2] promulgated on June 22, 2015 (the "RTC Decision") and Order[3] dated September 11, 2015 (the "RTC Order") by Branch 16 of the Regional Trial Court of Davao City (the "RTC") in the case entitled *Fernandez Holdings, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his Official Capacity as the City Treasurer of Davao City*[4], and ordering the refund or credit in favor of petitioner the amount of Php382,859.55, representing the 0.55% local business tax ("LBT")

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[1] *Records, CTA AC No. 162, Decision,* pp. 241-257.
[2] *Records, Petition for Review, Annex "P-1," RTC Decision,* pp. 32-41; penned by Presiding Judge Emmanuel C. Carpio.
[3] *Id., Annex "P-2," RTC Order,* p. 42.
[4] Docketed as Civil Case No. 34,851-13.

petitioner paid under protest for the first and second quarters of 2011. The dispositive portion of the Assailed Decision reads:

> **WHEREFORE**, the Petition for Review is **GRANTED**. Accordingly, the Assailed Decision dated June 22, 2015 and the Assailed Order dated September 11, 2015 of Branch 16 of the Regional Trial Court of Davao City in Civil Case No. 34,851-13 are **REVERSED** and **SET ASIDE**. Respondents are **ORDERED TO REFUND OR CREDIT** in favor of petitioner the amount of **THREE HUNDRED EIGHTY-TWO THOUSAND EIGHT HUNDRED FIFTY-NINE PESOS AND 55/100 (PHP382,859.55)**, representing the 0.55% local business tax petitioner paid under protest for the first and second quarters of 2011.
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> **SO ORDERED.**

Respondents, in their Motion for Reconsideration, pray that the Assailed Decision be reconsidered and an order be issued or a decision rendered affirming the RTC Decision. In this regard, respondents raise the following arguments: (a) petitioner is not a "non-bank financial intermediary," which is a category of "bank and other financial institutions" as defined under the *Local Government Code of 1991, as amended (the "1991 LGC")*[5], *Revenue Regulations ("RR") No. 09-04*[6], and *Manual of Regulations for Non-Bank Financial Institutions ("MORNBFI")*; (b) the non-determination by the Monetary Board or non-issuance of license by the *Bangko Sentral ng Pilipinas ("BSP")* does not *ipso facto* exclude petitioner form the definition of a "non-bank financial intermediary," the real nature and substance of its business operation should be the primary consideration; (c) *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic*[7] is not squarely applicable to the present case, and petitioner is obliged to pay LBT as a "non-bank financial intermediary" in the absence of an express provision declaring petitioner's dividends and interest income exempt from the tax; (d) the fact that the fund is still in the hands of petitioner, a private corporation, and that the case was handled by a private law firm negates petitioner's claim that the fund belongs to the government; and (e) the Court should not have considered the argument that petitioner's assets partake of a public nature exempt from LBT as this was not raised by petitioner in the RTC.

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[5] An Act Providing for a Local Government Code of 1991, Republic Act No. 7160 (1991).
[6] June 21, 2004.
[7] G.R. Nos. 177857-58 & 178193, January 24, 2012, 663 SCRA 514.

Petitioner, on the other hand, counters in its Comment/Opposition the following: (a) there is no showing that petitioner is a non-bank financial intermediary; (b) in light of the ruling in the *COCOFED case* to the effect that petitioner's San Miguel Corporation ("SMC") shares are government property, respondent had no authority to impose LBT on the income thereof; and (c) petitioner's income is not subject to LBT considering it is a holding company.

After a careful review of the grounds raised in the Motion for Reconsideration as well as the counter-arguments raised in the Comment/Opposition, the Court finds respondents' Motion for Reconsideration devoid of merit. Respondents failed to raise a new or substantial matter, or a compelling reason to justify the reversal or modification of the Court's findings in the Assailed Decision. Nevertheless, the Court will expound on the arguments raised by respondents to reinforce the discussion in the Assailed Decision.

Section 133(a)[8] *of the 1991 LGC* clearly provides the rule insofar as a local government unit's ("LGU") power to subject entities within its jurisdiction to income tax is concerned, to wit: LGUs cannot impose income tax except on banks and other financial institutions.

In order for respondents to justify the imposition of LBT on petitioner, it is imperative that respondents prove that petitioner is a bank or other financial institution. However, it failed to do so. The records are bereft of any proof that petitioner is a bank or other financial institution as defined by law and administrative issuances.

The Court, in several cases, has summarized the requirements for an entity to be considered a non-bank financial intermediary based on prevailing law and administrative issuances, as follows:

1. The person or entity is authorized by the BSP to perform quasi-banking activities;

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[8] *Section 133(a) of the 1991 LGC* provides:

> Sec. 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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> (a) Income tax, except when levied on banks and other financial institutions.

2. The principal functions of the said person or entity include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others; and

3. The person or entity must perform any of the following functions on a regular and recurring, not on an isolated, basis, to wit:

> 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;
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> b. Use principally the funds received for acquiring various types of debt or equity securities;
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> c. Borrow against, or lend on, or buy or sell debt or equity securities;
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> d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;
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> 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.[9]

Applying the foregoing requisites to the present case, it is clear that petitioner did not meet any of the requirements. *First*, petitioner has not been granted by the BSP authority to perform quasi-banking activities. *Second*, petitioner's principal function as stated in its Articles of Incorporation is to act as a holding corporation. Engaging in business as an investment company or a securities broker and/or

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[9] *See Toda Holdings, Inc. v. City of Davao*, CTA AC No. 138, February 9, 2017; *ARC Investors, Inc. v. City of Davao*, CTA AC No. 153, January 16, 2017; *Roxas Shares, Inc. v. City of Davao*, CTA AC No. 140, December 15, 2016; *First Meridian Development, Inc. v. City of Davao*, CTA AC No. 132, August 26, 2016; *Arc Investors, Inc. v. City of Davao*, CTA AC No. 130, August 16, 2016.

dealer as well as a trust corporation was expressly excluded from petitioner's primary purpose. Any such activities will thus be *ultra vires*. *Third*, there is no showing that petitioner engaged in the qualifying activities on regular and recurring basis.

In several cases, the Court has already ruled on whether entities included in the *COCOFED case*, such as petitioner, are subject to LBT as a bank or other financial institution.[10] The Court consistently held that the LGU failed to prove that the relevant holding company qualified as a non-bank financial intermediary, and that the SMC shares held by said entities were owned by the government - thus exempt from LBT. Accordingly, the Court granted the claim for refund of LBT in said cases.

The present case is no different. The Court stands by its ruling that respondents failed to establish that petitioner is a non-bank financial intermediary which should be subjected to LBT. In addition, no other than the Supreme Court has ruled in the *COCOFED case* that the SMC shares of petitioner form part of government property. It is thus a necessary consequence that the fruits thereof in the form of dividend and interest income are outside the purview of the LGU's power to tax. The refund of petitioner's LBT for the first and second quarters of 2011 is therefore proper.

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

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[10] *See Rock Steel Resources, Inc. v. City of Davao*, CTA AC No. 158, March 16, 2017; *Soriano Shares, Inc. v. City of Davao*, CTA AC No. 151, March 13, 2017; *Valhalla Properties Limited, Inc. v. City of Davao*, CTA AC No. 137, March 13, 2017; *Toda Holdings, Inc. v. City of Davao*, CTA AC No. 138, February 9, 2017; *ARC Investors, Inc. v. City of Davao*, CTA AC No. 153, January 16, 2017; *Roxas Shares, Inc. v. City of Davao*, CTA AC No. 140, December 15, 2016; *San Miguel Officers Corps., Inc. v. City of Davao*, CTA AC No. 136, November 22, 2016; *San Miguel Officers Corps., Inc. v. City of Davao*, CTA AC No. 161, October 3, 2016; *First Meridian Development, Inc. v. City of Davao*, CTA AC No. 132, August 26, 2016; *Arc Investors, Inc. v. City of Davao*, CTA AC No. 130, August 16, 2016; *Randy Allied Ventures, Inc. v. City of Davao*, CTA AC No. 160, August 9, 2016; *Anglo Ventures Corporation v. City of Davao*, CTA AC No. 128, August 1, 2016; *Anglo Ventures Corporation v. City of Davao*, CTA AC No. 155, July 12, 2016.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice