REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAKATI CITY AND THE INCUMBENT CITY TREASURER OF MAKATI CITY,
Petitioners,

-versus-

METRO PACIFIC ASSETS HOLDINGS, INC.,
Respondent.

CTA EB NO. 1944
(CTA AC NO. 184)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, *and*
Modesto-San Pedro, *JJ*

Promulgated:

FEB 12 2020 3:50 p.m.

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DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioners[1] Makati City and the incumbent City Treasurer of Makati City seeking nullification of the Decision[2] dated July 2, 2018 (Assailed Decision), the dispositive portion thereof reads:

> "**WHEREFORE**, the Petition for Review filed by petitioner Metro Pacific Assets Holdings, Inc. is hereby **GRANTED**.
>
> Accordingly, the assailed Decision dated November 4, 2016 and the Order dated March 14, 2017 rendered by the Regional

[1] Respondent in CTA AC NO. 184.
[2] Rollo, CTA EB No. 1944, pp. 22-37.

Trial Court of Makati City in Civil Case No. 13-088 are **REVERSED** and **SET ASIDE**. The respondents are **ORDERED** to refund to petitioner the amount of Six Million Eight Hundred Forty One Thousand Five Hundred Ninety Six and Sixty Centavos (Php6,841,596.60) representing erroneously collected local business taxes for taxable year 2011.

SO ORDERED."

and the Resolution[3] dated September 4, 2018 of the Second Division of the Court (Court in Division) denying the Motion for Reconsideration filed by the Makati City and the incumbent City Treasurer of MakatiCity, the dispositive portion thereof reads:

"**WHEREFORE**, premises considered, respondents' *Motion for Reconsideration (of the Decision dated 02 July 2018)*, is **DENIED** for lack of merit.

SO ORDERED."

PARTIES

Petitioner Makati City is a duly created and organized local government unit while the 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). Their office address is at the Makati City Hall, J.P. Rizal Street, Makati City.

Respondent Metro Pacific Assets Holdings, Inc., is a domestic corporation duly organized an existing under the laws of the Philippines, with principal address at 10F Net One Center, 26th St. Corner 3rd Avenue, Bonifacio Global City, Taguig City.[4]

FACTS

The relevant antecedents stated in the assailed Decision[5] are as follows:

"In the course of renewing its business permit in Makati City for the year 2011, petitioner received Billing Assessment Form No. 0021643 dated January 21, 2011 assessing it for LBT in

[3] Rollo, pp. 40-45.
[4] As stated in the Amended Articles of Incorporation of respondent.
[5] Pages 2-4, citations omitted.

the amount of Php6,841,596.60. The LBT was imposed on the dividends petitioner allegedly earned in 2010 and reported in its audited financial statements (AFS) for the year ended December 31, 2010.

On January 31, 2011, petitioner fully paid the amount of Php6,854,336.60 as evidenced by Official Receipt No. 1197251 issued by Makati City representing the assessed LBT and other fees for the year 2011.

On January 25, 2013, petitioner filed an administrative claim for refund in the amount of Php6,841,596.60 with the Office of the City Treasurer of Makati.

Due to the apparent inaction of the City Treasurer of Makati City on the claim for refund, petitioner elevated a Complaint with the RTC Branch 58 of Makati City based on the express provisions of Section 196 of the Local Government Code (LGC). The Complaint was actually a claim for refund of allegedly erroneously paid LBT and docketed as Civil Case No. 13-088.

On November 4, 2016, the RTC rendered a Decision in favor of respondents dismissing the Complaint with the dispositive portion quoted as follows:

> "**WHEREFORE**, premises considered for failure of plaintiff to prove by preponderance of evidence the instant complaint, the Court renders **JUDGMENT** by **DISMISSING** the instant complaint for lack of merit.
>
> **SO ORDERED**."

On December 27, 2016, petitioner filed a Motion for Reconsideration (Re: Decision dated 4 November 2016) praying that the aforequoted Decision be reversed and that respondents herein be directed to cancel the assessment and refund the LBT paid by petitioner in the amount of Php6,841,596.60.

On March 14, 2017, RTC Branch 58 issued an Order denying the Motion for Reconsideration on the ground that the issues raised by petitioner in its Motion for Reconsideration have already been passed upon and resolved in the Decision rendered on November 4, 2016. This assailed Order of RTC Branch 58 was received by the petitioner on March 31, 2017.

Aggrieved with the Decision and Order of the RTC Makati, petitioner filed a Petition for Review with this Court on April 27, 2017.

In a Resolution dated May 11, 2017, this Court directed respondents to file their Comment within ten (10) days from receipt thereof.

Respondents then filed their Comment (Re: Petition for Review) on April 25, 2017.

On June 15, 2017, petitioner filed its Reply to the Comment filed by respondents.

In a letter dated April 2, 2018, the Branch Clerk of Court of RTC Branch 58, Atty. Romeo Alfonso B. Ras, Jr., transmitted the entire records of Civil Case No. 13-088 in accordance with the Court's Resolution dated June 20, 2017.

In a Resolution dated April 12, 2018, the Court took note of the transmittal made by the Branch Clerk of Court of RTC Branch 58.

On July 25, 2017, respondents submitted their Memorandum while petitioner submitted its Memorandum on July 28, 2017.

In a Resolution dated August 3, 2017, the Court deemed the instant case submitted for decision."

The Court in Division rendered the assailed Decision on July 2, 2018, while the assailed Resolution on Makati City's Motion for Reconsideration was issued on September 4, 2018.

Aggrieved, petitioners City of Makati and the incumbent City Treasurer of Makati City filed this Petition for Review[6] before the Court *En Banc* on September 28, 2018.

In the Resolution[7] dated October 22, 2018, respondent Metro Pacific Assets Holdings, Inc. was directed by the Court *En Banc* to file its comment in this case.

[6] Rollo, CTA EB No. 1944, pp. 1-20, with Annexes.
[7] Ibid., pp. 47-48.

On November 29, 2018, respondent filed its "Comment/Opposition to Petition for Review (En Banc)"[8]

In the Resolution[9] dated December 14, 2018, the Court gave due course to the Petition for Review and ordered the parties to file their respective Memoranda.

On January 23, 2019, respondent filed its Memorandum.[10]

On January 29, 2019, petitioners filed their Memorandum.[11]

In the Resolution dated February 28, 2019, the Court *En Banc* deemed the instant case submitted for decision.[12]

ASSIGNMENT OF ERRORS

Petitioners submit the following errors to be resolved by the Court *En Banc*:

1. Whether or not the Honorable Second Division of the Court of Tax Appeals erred in not ruling that the provisions of Section 3A.02 (p) in relation to Section 3A.02 (h) of the Revised Makati Revenue Code (RMRC) can be validly made to apply to a holding company such as respondent.

2. Whether or not respondent was able to overcome the burden of proving that it is entitled to the refund being prayed for.

RULING OF THE COURT

Timeliness of the Petition for Review

On July 5, 2018, petitioners received a copy of the assailed Decision. On July 20, 2018, the petitioners filed a Motion for Reconsideration of the said Decision. On September 4, 2018, the Court in Division issued the assailed Resolution denying the petitioners' motion. Said Resolution was received by the petitioners on September 18, 2018.

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[8] Ibid., pp. 49-62.
[9] Ibid., pp. 64-65.
[10] Ibid., pp. 66-88.
[11] Ibid., pp. 99.
[12] Ibid., pp. 101-102.

From receipt of the said Resolution, the petitioners have until October 3, 2018 within which to file the Petition for Review. On September 28, 2018, the petitioners filed the instant Petition for Review. Hence, this Petition for Review was timely filed.

The Court shall now proceed to determine the merits of the Petition for Review.

After a careful review of the parties' respective arguments and the records of the case, the Court *En Banc* finds no reason to reverse the assailed Decision and Resolution. The records of the case show that the Court in Division had fully and exhaustively resolved the issues presented in the Petition for Review. The Court *En Banc* notes that the arguments presented herein are basically the same arguments offered by the petitioners in their Motion for Reconsideration before the Court in Division. Nonetheless, the Court *En Banc* shall discuss the issues raised by the parties to stress the salient points in the assailed Decision and Resolution.

The imposition of local business tax on dividends and interest income received by respondent is erroneous since there is no showing that it is a non-bank financial intermediary.

Petitioners assert that they are correct in issuing Billing Assessment Form No. 0021643 dated January 21, 2011. The LBT was assessed on the basis of the amount of dividend income earned by respondent and reported in its financial statements for the year ending December 31, 2010.

Respondent was taxed under Section 3A.02 (p) in relation to Section 3A.02 (h) of the RMRC, which read as follows:

> "Section 3A.02. *Imposition of Tax.* – There is hereby levied an annual tax 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."

After consideration, the Court *En Banc* finds the instant Petition for Review without merit. Respondent is a holding company, not a bank or financial institution. Thus, it should not be taxed under Section 3A.02 (h) of the RMRC.

Unlike the power to tax by the state which is inherent,[13] the power to tax by provinces, cities and municipalities is limited by the law that granted it, the 1991 Local Government Code (LGC).

Following this, the taxing powers of petitioners do not extend to the levy of income tax,[14] except when levied on banks and other financial institutions under Section 143(f) of the 1991 LGC.[15] The dividends[16] and interests[17] in this case are therefore not subject to the city's taxing power, unless respondent is a bank or other financial institution.

The term "banks and other financial institutions" is defined under Section 131(e) of the 1991 LGC, as follows:

"'Banks and other financial institutions' **include non-bank financial intermediaries,** lending investors, finance and

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13 Pelizloy Realty Corporation v. The Province of Benguet, G.R. No. 183137, April 10, 2013.

14 Section 133(a) of the 1991 LGC provides:

SECTION 133. *Common Limitations on the Taxing Power 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 financial institutions[.]

15 Section 143(f) of the 1991 LGC provides:

SECTION 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:

(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.

16 Section 32(A)(7) of the NIRC of 1997, as amended.

17 Section 32(A)(4) of the NIRC of 1997, as amended.

> investment 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."[18]

While said provision includes "non-bank financial intermediaries" in the term "banks and other financial institutions," it does not define the term "non-bank financial intermediaries". Hence, resort to applicable laws, rules and regulations is proper.

The National Internal Revenue Code (NIRC) of 1997, as amended, defines the term "non-bank financial intermediary" in Section 22(W), *viz*:

> "The term *'non-bank financial intermediary'* means a financial intermediary, as defined in Section 2(D)(c) of Republic Act No. 337, as amended, otherwise known as the General Banking Act, **authorized by the *Bangko Sentral ng Pilipinas* (BSP) to perform quasi-banking activities**."[19]

The Bureau of Internal Revenue, in turn, elaborated on the said definition. Section 2.3 of Revenue Regulations No. 09-2004 reads to wit:

> "*Non-bank Financial Intermediaries* — shall refer to persons or entities whose *principal functions* include the 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. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally."

The General Banking Act,[20] on the other hand, defines "financial intermediaries" in Section 2-D(c), thus:

> "'Financial intermediaries' shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity

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[18] *Emphasis supplied.*
[19] *Emphasis supplied.*
[20] Republic Act No. 337, as amended by Presidential Decree No. 71.

deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others."

Additionally, the BSP Manual defines "financial intermediaries" in Section 4.101Q.1, as follows:

"§ **4101Q.1** ***Financial intermediaries.*** – *Financial intermediaries* shall mean persons or entities whose principal functions include the 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.

Principal shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.

Functions shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.

To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:

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;

b. Use principally the funds received for acquiring various types of debt or equity securities;

c. Borrow against, or lend on, or buy or sell debt or equity securities;

d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;

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.

Non-banking financial intermediaries shall include the following:

(1) A person or entity licensed and/ or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.

(2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term *financing, finance, investment, lending* and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.

(3) A person or entity performing any of the functions enumerated in Items *a* to *e* of this Subsection."

From the foregoing definitions, for an entity to be considered a "non-bank financial intermediary", the following requirements must be met:

1) The person or entity is <u>authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities;</u>[21]

2) The principal functions of the said person or entity <u>include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by</u>

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[21] Section 131 (e) of the LGC of 1991, in relation to Section 22(W) of the NIRC of 1997, as amended and Section 2-D(c) of RA No. 337, as amended by PD No. 71.

them, or otherwise coursed through them, either for their own account or for the account of others; and[22]

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;

   b. Use principally the funds received for acquiring various types of debt or equity securities;

   c. Borrow against, or lend on, or buy or sell debt or equity securities;

   d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers; and

   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.

In this case, there is no proof that respondent is a non-bank financial intermediary or has even engaged in the activities of a financial institution/intermediary as defined and enumerated in the above-quoted laws, and rules and regulations.

The primary purpose of respondent as stated in its Amended Articles of Incorporation[23] is as follows:

[22] Section 2-D(c) of RA No. 337, as amended by PD No. 71; and Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions.

[23] Docket, CTA AC No. 184, p. 134.

> "To purchase, subscribe for or otherwise acquire and own, hold, use, manage, sell, assign, transfer, mortage, pledge, exchange or otherwise dispose of real and personal property of every kind and description, and to pay therefor in whole or in part, in cash, or by engaging therefor, stocks, bonds and other evidences of indebtedness or securities of this or any other corporation, while the owner or holder of any such real or person al property, 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 stock owned, without however engaging as an investment company under the Investment Company Act or a finance company or as a dealer in securities or stocks or as a real estate broker or a real estate development company but hold the foregoing assets for purely investment purposes; to aid either by loans or by guaranty of securities or in any other manner, any corporation, domestic or foreign, any share of stock or any debentures, evidences of indebtedness or other security whereof are held by this corporation or in which it shall have interest and to do any act designed to protect, preserve, improve or enhance the value of any property at any time held or controlled by this corporation in which it at that time may be interested."

The secondary purposes of respondent, as stated in its Amended Articles of Incorporation[24] are as follows:

> "(a) To borrow or raise money for the primary purpose of the Corporation, and to secure any of its obligations or contracts by creating any mortgage, pledge and/or other security interest in all or any part of the property or assets at any time held or owned by the Corporation on such terms and conditions as the Board of Directors or duly authorized officers or agents shall determine and as may be permitted by law.
>
> (b) To assume or undertake or guarantee or secure, whether as solidary obligor, surety or guarantor or in any other capacity and either on its general credit or on the mortage or pledge of any its property, the whole or any part of the liabilities and obligations of any of its subsidiaries or affiliates.
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> (c) To place any all excess or idle funds or assets of the Corporation in short term marketable securities and investments.

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[24] Ibid., pp. 134-135.

> (d) To do and perform all acts and things necessary, suitable or proper for the accomplishment of any of the purposes herein enumerated, including the exercise of the powers, authorities and attributes conferred upon corporations organized under the laws of the Republic of the Philippines in general and upon domestic corporations of like nature in particular."

As shown in the Amended Articles of Incorporation, respondent is not an investment company, a bank or a financial intermediary, instead, **respondent is a holding company.**

A "holding company" is defined by the Securities and Exchange Commission as follows:

> "A holding company has been defined by the Commission in several opinions. **A holding company has been aptly defined as 'a corporation organized to hold the stock of another or other corporations.'** Its essential feature is that it holds stock. The term 'holding company' is equivalent to a parent corporation, having such an interest in another corporation, or power of control, that it may elect its directors and influence management. **A parent or holding company is <u>one that controls another</u> as a subsidiary or affiliate by the power to elect its management.** Affiliates are those concerns that are subject to common control and operated as part of a system." [25]

A holding company is not among the entities enumerated as "banks and other financial institutions" in Section 133(e) of the 1991 LGC. This was ruled upon by this Court *En Banc* in the case of *Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis,*[26] thus:

> "Section 131 (e) of the LGC defines "banks and other financial institutions" to include "non-bank financial intermediaries, lending investors, finance and investment 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. <u>Nowhere in the entirety of Section 131 is a holding company mentioned.</u>**"[27]

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[25] Securities and Exchange Commission (SEC) – Office of the General Counsel (OGC) Opinion No. 15-15 dated November 03, 2015 addressed to Waterfront Philippines Inc. *citing* SEC-OGC Opinion No. 14-32 dated November 10, 2014 and SEC-OGC Opinion No. 11-15 dated February 10, 2011; *Emphasis and underscoring supplied.*

[26] C.T.A. EB CASE NO. 1093, June 17, 2015.

[27] *Emphasis and underscoring supplied.*

Being a holding company, respondent cannot be made liable for local business tax imposed on "banks and other financial institutions" under Section 143(f) of the 1991 LGC and Sections 3A.02 (p) in relation to Section 3A.02 (h) of the RMRC. The imposition of LBT on the dividend (passive) income of petitioner falls within the purview of Section 133 (a) of the 1991 LGC which prohibits the levy of income tax on businesses not functioning as banks or other financial institutions. In view hereof, the Court *En Banc* rules that respondent is entitled to its refund claim.

Considering the foregoing discussions, the Court *En Banc* finds no reversible error to disturb the assailed Decision and Resolution of the Court in Division.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The assailed Decision dated July 2, 2018 and the assailed Resolution dated September 4, 2018 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

with concurring opinion

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAKATI CITY AND THE INCUMBENT CITY TREASURER OF MAKATI CITY, *Petitioner,*	**CTA EB NO. 1944** (CTA AC No. 184)
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **CASTANEDA, JR.**, **UY**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, and **MODESTO-SAN PEDRO**, *JJ.*
METRO PACIFIC ASSETS HOLDINGS, INC., *Respondent.*	**Promulgated:** ____________________

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CONCURRING OPINION

DEL ROSARIO, P.J.:

The issue involved in the present controversy, that is, on whether a holding company may be subjected to local business tax (LBT) on its dividends and interest income, is no longer novel.

In ***City of Davao and Bella Linda N. Tanjili, in her official capacity as City Treasurer of Davao City vs. Randy Allied Ventures, Inc.***,[1] the Supreme Court, through the eloquent *ponencia* of the Honorable Associate Justice Estela M. Perlas-Bernabe, declared in no uncertain terms that the LBT imposed under Section

[1] G.R. No. 241697, July 29, 2019.

143(f)[2] of the Local Government Code (LGC),[3] is premised on the fact that the persons made liable for such tax are banks or other financial institutions by virtue of their being engaged in such business. Randy Allied Ventures, Inc.'s management of the dividends from San Miguel Corporation (SMC) preferred shares, including placing the same in a trust account yielding interest, is not tantamount to doing business whether as a bank or other financial institutions; rather it was engaged in an activity that is essential to its nature as a holding company. Accordingly, the Supreme Court declared that Randy Allied Ventures, Inc. is not liable for the LBT imposed under Section 143 (f)[4] of the LGC. It went further to hold that its pronouncement is without prejudice to Randy Allied Ventures, Inc.'s potential liability for other taxes, whether national or local, should it so engage in other profit-making activities aside from its management of the SMC preferred shares, and the dividends resulting therefrom.

Applying the foregoing to the case at bar, in the absence of proof that respondent engaged in activities of a bank or other financial institutions, respondent, being a holding company, cannot be held liable for the LBT imposed under Section 143(f) of the LGC and Sections 3A.02 (p), in relation to Section 3A.02 (h), of the Revised Makati Revenue Code.

All told, I VOTE to DENY the Petition for Review and AFFIRM the assailed Decision and Resolution of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] Section 143. Tax on Business. — The municipality may impose taxes on the following businesses: (a) 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.
[3] Republic Act No. 7160;
[4] Section 143. Tax on Business. — The municipality may impose taxes on the following businesses: (a) 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.