REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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FERNANDEZ HOLDINGS, 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. 133
(Civil Case No. 35,672-14)

Members:

CASTAÑEDA, JR., *Chairperson, and*
CASANOVA, *JJ.*

Promulgated:

SEP 2 7 2016
9:50 a.m.

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RESOLUTION

CASANOVA, *J.*:

Submitted before this Court is petitioner's **Motion for Reconsideration**[1] filed on August 9, 2016, without respondent's comment as per Records Verification dated September 9, 2016.

On July 21, 2016, this Court promulgated its Decision[2] in the instant case which found petitioner as a non-bank financial intermediary. As such, the income it derived from investment in equity securities, holding of assets consisting of shares of stocks and placement of funds in San Miguel Corporation (SMC), was deemed subject to business tax under Section 143 (f) of the Local Government Code (LGC) of 1991, as amended. The dispositive portion of the Decision reads as follows, *viz*:

[1] Docket, pp. 303-317
[2] *Ibid.*, pp. 283-300

"**WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED."

In its Motion, petitioner prays that this Court take a second hard look of the facts and reconsider the foregoing Decision by ordering respondents to cancel the deficiency assessment issued against it for local business tax in the amount of ₱760,933.49, inclusive of surcharge and legal interest. Petitioner mainly claims that, contrary to the finding of the Court, it is a holding company and not a non-bank financial institution as evidenced by its Articles of Incorporation. It reiterates that before one is considered as a non-bank financial intermediary, the performance of "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" should be on a regular and recurring basis, and not an isolated transaction. To bolster its claim, petitioner cites the cases of *Jesus Sacred Heart College vs. Commissioner of Internal Revenue*[3] *("Jesus Sacred Heart College case")*, whereby the Supreme Court held that the main evidence of the purpose of a corporation should be its articles of incorporation and by-laws; *Orleyte Company (Philippines Branch) vs. The City of Makati, and Dulce P. Cruz, in her capacity as Treasurer of Makati*[4] *("Orleyte Company case")*, whereby it was held that a corporation which never conducted any business or commercial operation but merely invested in a company, is not subject to local business tax; and, finally, *Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia A. Barlis*[5] *("Michigan Holdings case")*, where the Court of Tax Appeals (CTA) *En Banc* held that the dividend income earned by a holding company is not subject to local business tax.

After due consideration, this Court finds that the arguments proffered by petitioner in the instant Motion are mere rehash of the same facts and issues which have already been analyzed and passed upon in the assailed Decision. Nonetheless, at the risk of being repetitive, this Court shall again address the issues raised by petitioner.

To recapitulate, petitioner's Amended Articles of Incorporation[6] reveals that the scope of petitioner's primary purpose is extensive

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[3] G.R. No. L-6807, May 24, 1954
[4] CTA AC No. 80, November 14, 2012
[5] CTA EB No. 1093 (CTA AC Case No, 99), June 17, 2015
[6] Annex "P-9", Petition for Review, pp. 104-116

enough to cover most of the principal functions of a financial intermediary. Bearing in mind that the nature of petitioner's business, which consists solely in owning a substantial number of shares of stock and equity in SMC, to which it regularly receives dividends in millions of pesos and, thereafter, reinvests it in money placements in the same company to maximize its profit, is clearly indicative that petitioner is engaged in the business of a financial intermediary[7].

Anent petitioner's allegation that to be considered a financial intermediary, a person must perform any of the given functions on a regular and recurring, not on an isolated basis, this Court reiterates that being organized as a stock corporation, petitioner is presumed to have been structured with the end view of earning a profit. By regularly receiving millions of pesos in dividends from its huge chunk of investment in its shares of stocks with SMC and then reinvesting it through money placement, shows petitioner's real intent to engage solely and primarily in the business of stock investment and money market placements. Therefore, any profit received by petitioner is a direct consequence of its business engagements and not just mere incidental thereto.

With regard to the cases relied by petitioner to strengthen its argument, they lack weight sufficient to sway this Court to reverse this Court's Decision.

As to the *Jesus Sacred Heart College case,* the factual antecedents therein are not on all fours with the present case. First, Jesus Sacred Heart College is a non-profit educational institution; second, the subject matter thereof involves income tax under the National Internal Revenue Code; and, third, reference to Jesus Sacred Heart College's purpose was necessary since it is claiming for a direct conditional exemption from taxation, and not merely as exclusion. Nevertheless, assuming arguendo that the doctrinal pronouncements in the *Jesus Sacred Heart College case* may be applied herein, this Court sees no conflict between the said case and the present case. In fact, this Court agrees with the statement made therein that, "At any rate, the main evidence of the purpose of a corporation should be its articles of incorporation and by-laws, for such purpose is required by statute to be stated in the articles of incorporation (Sec. 6, Act No. 1459), and the by-laws outline the administrative organization of the corporation (Sec. 20 and 21 of Act No. 1459, as amended), which, in turn, is supposed to insure or facilitate

[7] Section 4101Q.1 of BSP's Manual of Regulations for Non-Bank Financial Institutions

the accomplishment of said purpose. *x x x*". In the present case, reference to petitioner's amended articles of incorporation divulges that its primary purpose was far-reaching as to include the principal functions of a financial intermediary. The self-imposed prohibition in the last phrase of its primary purpose which "prohibits" it from acting as an investment company of securities broker and/or dealer, specifically, "*x x x* provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation", is a mere classic evasion to avoid the requirement of securing a secondary license for investment companies under the Bangko Sentral ng Pilipinas' Manual of Regulations for Non-Bank Financial Institutions. As correctly held by the Regional Trial Court - Branch 16 of Davao City, "even an obtuse legal mind can conclude that the scope of petitioner's primary business purpose in its Amended Articles of Incorporation is wittingly or unwittingly broad enough to **catch all** the descriptive functions of a Financial Intermediary."

More so, in the *Orleyte Company case,* petitioner, unfortunately, misappreciated the facts and ruling made therein. In the cited case, Orleyte Company, a foreign company, was assessed by the City of Makati for local business tax on its foreign exchange gains and dividend and interest income from bank deposits on the sole proposition that Orleyte Company was classified as a Holding Company–Management Service, instead of what it actually is - a contractor. The then CTA Third Division found the said assessment as having no legal and factual bases since Orleyte Company was deemed not to have engaged in any business or commercial operation by virtue of its affidavit of non-operation with the City of Makati which it had been consistently submitting with the City of Makati. The court ruled that by never conducting any business or commercial operation in the Philippines, Orleyte Company's foreign exchange gain and dividend and interest income from bank deposits should not be considered as part of its gross receipts that may be subjected to local business tax. While, in the present case, there is no misclassification whatsoever. Petitioner's income derived from its shares of stock and money market placements with SMC was subjected to local business tax under Section 143 (f)[8] of the Local Government

[8] "**Section 143. Tax on Business.** — The municipality may impose taxes on the following businesses:

x x x

(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.

Code (LGC) of 1991, as amended, for engaging in business similar to that of a financial intermediary.

With regard to the *Michigan Holdings case,* while it is true that the CTA *En Banc* held that dividend income earned is not subjected to local business tax, the said ruling, however, was premised on the fact that Michigan Holdings, Inc. was a holding company; such fact was never contested nor raised as an issue. The CTA *En Banc* granted Michigan Holdings, Inc.'s Petition for Review since the City Treasurer of Makati City erroneously expanded the coverage of its city's local business tax as to apply to income, which under the LGC of 1991, as amended, are ordinarily not subject to local business tax, specifically for that matter, dividend income. Conversely, such is not with the present case. By actually engaging in the business of stock investment and money market placements in SMC, it is glaringly evident that petitioner falls under the category of a financial intermediary. Petitioner cannot just hide under the cloak of the evasive proviso stated in its amended articles of incorporation; it has been held that "the primary purpose stated in the Articles of Incorporation of a corporation only serves to show what a corporation is empowered or authorized to do. It does not, and cannot, however, prove what the business of a corporation actually is."[9] It is for this reason that reference to a corporation's actual business activities and nature of the income earned is necessary.

Henceforth, based on the foregoing, this Court finds no cogent reason to deviate from the conclusions reached in the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I Concur:

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

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x x x."

[9] Orleyte Company (Philippines Branch) vs. The City of Makati, and Dulce P. Cruz, in her capacity as Treasurer of Makati CTA AC No. 80, November 14, 2012