REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

CITY OF MAKATI AND JESUSA E. CUNETA, in her capacity as the MAKATI CITY TREASURER
Petitioners,

CTA AC NO. 234

-versus-

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

DMCI HOLDINGS, INC.,
Respondent.

Promulgated:
FEB 10 2022
3:10 p.m.

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DECISION

RINGPIS-LIBAN, J.

THE CASE

Before this Court is an *Amended Petition for Review*,[1] praying for the reconsideration and setting aside of the Decision dated September 5, 2019[2] and the Order dated December 12, 2019,[3] both rendered by the Regional Trial Court of Makati City – Branch (RTC-Branch) 146, in Civil Case No. 15-684, entitled "*DMCI Holdings, Inc., Petitioner, versus Nelia A. Barlis, City Treasurer of Makati City and Andrea Pacita S. Guintu, OIC-City Treasurer of Makati City, Respondents*", the dispositive portions of which respectively read, as follows:

Decision dated September 5, 2019:

> "WHEREFORE, in view of all the foregoing, the court finds that the petitioner is entitled to the reliefs prayed for. The Assessment Notice dated March 18, 2015 and Final Assessment dated June 8, 2015 issued by the respondents should be nullified for erroneously assessing the deficiency taxes pertaining to the

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[1] Docket, pp. 39-50.
[2] Docket, pp. 20 to 30.
[3] Docket, p. 31.

management fees for 2010, and the investment income and revenues from the defined benefit plan of employees for 2010 to 2012. The taxable income should be imposed based on the tax rate specified in Section 32.02(p) in relation to Section 32.02(g) of the Revised Makati Revenue Code.

SO ORDERED."

Order dated December 12, 2019:

"WHEREFORE, the Motion for Reconsideration is denied for lack of merit.

SO ORDERED."

THE PARTIES

Petitioners are the City of Makati, and Ms. Jesusa E. Cuneta, in her capacity as the City Treasurer of the latter. Petitioner City of Makati is a local government unit existing under Republic Act (RA) No. 7854,[4] with address at Makati City Hall, J.P. Rizal Street, Makati City.

Respondent DMCI Holdings, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines with principal office address at the 3rd Floor, DACON Building, 2281 Don Chino Roces Avenue, Makati City 1231.[5] It is registered with petitioner City of Makati as a holding company. As such, respondent holds shares of stock in its affiliates and subsidiaries primarily for the purpose of controlling the latter, through the power to elect their board of directors and influence their management.[6]

THE FACTS

On March 30, 2015, respondent received the *Notice of Assessment* dated March 18, 2015 issued by then Makati City Treasurer, Nelia A. Barlis,[7] for alleged deficiency taxes, fees and charges in the amount of ₱65,730,711.30, for taxable years 2011 to 2013.

Respondent then filed its letter dated May 28, 2015 with the Office of the Makati City Treasurer on May 29, 2015,[8] requesting that the tax liabilities of

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[4] Also known as AN ACT CONVERTING THE MUNICIPALITY OF MAKATI INTO A HIGHLY URBANIZED CITY TO BE KNOWN AS THE CITY OF MAKATI.

[5] Par. 1, Admitted Facts, respondent's *Amended Pre-Trial Brief*, RTC Docket (Civil Case No. 15-684) – Vol. I, p. 236.

[6] Par. 2, Admitted Facts, Respondent's *Amended Pre-Trial Brief*, RTC Docket (Civil Case No. 15-684) – Vol. I, p. 236; Par. 1, Counter-Statement of Facts, respondent's *Comment*, Docket, p.69.

[7] Exhibit "A", RTC Docket (Civil Case No. 15-684) – Vol. I, pp. 600 to 601; Exhibits "1" and "1-A", RTC Docket (Civil Case No. 15-684) – Vol. 2, pp. 85 to 86.

[8] Exhibit "B", RTC Docket (Civil Case No. 15-684) – Vol. I, pp. 602 to 616.

respondent be re-assessed to exclude assessments on dividend income and local business taxes already paid by it.

On June 15, 2015, respondent received the letter dated June 8, 2015 issued by then OIC-Makati City Treasurer, Andrea Pacita S. Guintu,[9] denying respondent's request for the cancellation of the *Notice of Assessment* for lack of merit; and enjoining respondent to settle the deficient amount in local business taxes, fees and charges, within the period stipulated in the said *Notice* or file its protest in a court of competent jurisdiction.

Respondent herein then filed its *Petition* before the Regional Trial Court of Makati City on July 15, 2015,[10] praying for the immediate cancellation and permanent nullification of the *Notice* of *Assessment* dated March 18, 2015 and the *Final Assessment Notice* (or letter) dated June 8, 2015, in the aggregate amount of ₱65,730,711.30. The case was docketed as Civil Case No. 15-684, and was raffled to RTC-Branch 143.

On September 4, 2015, Ms. Nelia A. Barlis, as City Treasurer, and Ms. Andrea Pacita S. Guintu, as OIC-Makati City Treasurer, both of petitioner City of Makati, filed their *Answer (Re: Petition dated 13 July 2015)*,[11] alleging certain special and/or affirmative defenses, to wit: (1) for its business permits and license in Makati City, respondent applied as a holding company in and was classified as such by Makati City; (2) as a holding company, respondent was taxed under Section 3A.02(p) in relation to Section 3A.02(h) of the Revised Makati Revenue Code (RMRC); (3) Section 3A.02(p), in relation to Sections 3A.02(g) and 3A.02(h), was never questioned in accordance with Section 7B.14 (Taxpayers' Remedies) paragraph (d) of the RMRC and therefore, remains to be valid; (4) the City Treasurer of Makati argued correctly against the claims of respondent; and (5) the cited case of *DMCI-MPIC Water Co., Inc. vs. Makati City, et al.* (Civil Case No. 13-089, and now, CTA Case No. 146) and *Michigan Holdings, Inc. vs. The City Treasurer of Makati* are still pending in this Court, and thus, have not yet attained finality.

On September 21, 2015, respondent filed its *Reply (To Respondents' Answer dated September 4, 2015)*.[12]

Further proceedings then ensued.

For failure of the parties to amicably settle through Judicial Dispute Resolution Conference, Civil Case No. 15-684 was re-raffled to RTC-Branch 146.[13]

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[9] Exhibit "C", RTC Docket (Civil Case No. 15-684) – Vol. I, pp. 630 to 631; Exhibit "2", RTC Docket (Civil Case No. 15-684) – Vol. 2, pp. 87 to 88. This letter is referred to in the assailed Decision dated September 5, 2019 as the *"Final Assessment dated June 8, 2015"*.

[10] RTC Docket (Civil Case No. 15-684) – Vol. I, pp. 1 to 23.

[11] RTC Docket (Civil Case No. 15-684) – Vol. I, pp. 130 to 138.

[12] RTC Docket (Civil Case No. 15-684) – Vol. I, pp. 145 to 157.

On September 5, 2019, RTC-Branch 146 promulgated the assailed Decision.[14]

Petitioners then filed their *Motion for Reconsideration (Re: Decision dated September 5, 2019)* on October 2, 2019.[15] Respondent filed its *Comment (On respondents' Motion Reconsideration dated September 23, 2019)* on November 4, 2019.[16]

Subsequently, RTC-Branch 146 issued the assailed Order dated December 12, 2019.[17]

Petitioner filed its *Petition for Review (Re: Decision dated September 5, 2019)* on February 6, 2020.[18]

In the Resolution dated March 2, 2020,[19] the Court ordered petitioners to take appropriate actions relative to its observations and finding that the parties referred in the original petition are not properly labeled, within a period of ten (10) days from notice. Petitioners then filed a *Manifestation of Compliance* on September 4, 2020,[20] thereby submitting the present *Amended Petition for Review (Petition for Review filed February 6, 2020)*.[21]

Subsequently, in the Resolution dated September 17, 2020,[22] the Court ordered petitioners to submit a compliant *Amended Verification and Certification of Non-Forum Shopping* within ten (10) days from notice. In compliance thereto, petitioners submitted their *Compliance (Re: Resolution dated September 17, 2020)* on October 28, 2020, attaching therewith the *Amended Verification and Certification of Non-Forum Shopping*.[23]

In the Resolution dated November 11, 2020,[24] the Court ordered respondent to file its comment on the *Amended Petition for Review (Petition for Review filed February 6, 2020)*, within ten (10) days from notice. Thus, on February 3, 2021, respondent filed its *Comment [On the Amended Petition for Review dated March 2, 2022]*.[25]

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[13] Refer to the Order dated March 17, 2017, RTC Docket (Civil Case No. 15-684) – Vol. I, p. 231.
[14] RTC Docket (Civil Case No. 15-684) – Vol. 2, pp. 547 to 557; Refer also to Docket, pp. 20 to 30.
[15] RTC Docket (Civil Case No. 15-684) – Vol. 2, pp. 558 to 564.
[16] RTC Docket (Civil Case No. 15-684) – Vol. 2, pp. 569 to 577.
[17] RTC Docket (Civil Case No. 15-684) – Vol. 2, p. 589; Refer also to Docket, p. 31.
[18] Docket, pp. 4 to 14.
[19] Docket, pp. 33 to 34.
[20] Docket, pp. 35 to 37.
[21] Docket, pp. 39 to 50.
[22] Docket, pp. 57 to 58.
[23] Docket, pp. 59 to 65.
[24] Docket, pp. 67 to 68.
[25] Docket, pp. 69 to 95. N.B.: The *Amended Petition for Review (Petition for Review filed February 6, 2020)* is dated September 2, 2020.

The Court deemed the instant case submitted for decision on February 24, 2021.[26]

Thereafter, in the Resolution dated June 28, 2021,[27] the Court ordered the Branch Clerk of Court of RTC-Branch 146, Makati City to elevate the entire original records of Civil Case No. 15-684. In compliance thereto, the RTC-Branch 146 transmitted the entire records of the case, consisting of two (2) volumes, on November 25, 2021.

THE ISSUES

The following are the issues for this Court's resolution:

1) Whether the failure of respondent to pay the assessed local business tax renders its protest as invalid; and
2) Whether respondent should be taxed under Section 3A.02(h) of the RMRC.

Petitioners' arguments:

Petitioners argue that the respondent did not file a valid protest to the assessment, for failure to pay the tax assessed under protest; and that respondent should be taxed under 3A.02(h) of the RMRC.

Respondent's counter-arguments:

On the other hand, respondent claims that as a holding company, it is not liable for local business taxes on its income under Section 3A.02 (h) of the RMRC; that it is not a bank or other financial institution; that the non-payment of the alleged deficiency local business taxes did not invalidate respondent's protest; and that the petition is a mere rehash of the petitioners' *Memorandum* and *Motion for Reconsideration*, which the RTC-Branch 146 already evaluated and resolved.

THE COURT'S RULING

The non-payment of the assessed tax does not render the protest invalid.

[26] Resolution dated February 24, 2021, Docket, p. 97.
[27] Docket, p. 100.

According to petitioners, in order for the protest to be valid, the same should have been accompanied by payment of the tax assessed, pursuant to Section 7B.14(c) of the RMRC, to wit:

> "SECTION 7B.14. *Taxpayer's Remedies.* –
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> xxx xxx xxx
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> (c) *Payment under Protest.* – No protest, however, shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipt the words 'paid under protest'. A copy of the tax receipt shall be attached to the written protest contesting the assessment."

Petitioners are mistaken.

Section 195 of the Local Government Code (LGC) of 1991 provides as follows, to wit:

> "Section 195. *Protest of Assessment.* – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

A reading of the foregoing provision shows that there is no requirement that payment should have been made by the taxpayer in order to validly protest the assessed tax. Notably, it is only required that the protest be done within a period of sixty (60) day from receipt of the notice of assessment; otherwise, the assessment becomes conclusive and unappealable.

Interpreting Section 195 of the LGC of 1991, the Supreme Court held, in *City of Manila and Office of the Treasurer of Manila vs. Cosmos Bottling Corporation* ("*Cosmos Bottling* case"),[28] the following:

> "**Where an assessment is to be protested or disputed, the taxpayer may proceed *(a)* without payment, or *(b)* with payment[29] of the assessed tax**, fee or charge. **Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive.** Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer, **otherwise, the assessment becomes conclusive and unappealable.**
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> > (a) **Where no payment is made, the taxpayer's procedural remedy is governed strictly by Section 195.** That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment.
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> > (b) **Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (Section 195, LGC) and at the same time seeking a refund of the taxes.** In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer." *(Emphases and underscoring added)*

Moreover, consistent with the foregoing case, in *International Container Terminal Services, Inc. vs. The City of Manila, et al.* ("*International Container* case"),[30] the Supreme Court held as follows:

> "**If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the Local Government Code.** Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment

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[28] G.R. No. 196681, June 27, 2018.
[29] Whether payment was made before, on, or after the date of filing the formal protest.
[30] G.R. No. 185622, October 17, 2018.

> before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal.
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> **If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer.** In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. 'Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.'" *(Emphases and underscoring added)*

Based on the foregoing jurisprudential pronouncements, it is clear that the concerned taxpayer may opt either to pay or *not* to pay the assessed tax, when protesting the pertinent notice of assessment. In other words, where an assessment is to be protested or disputed, the taxpayer may proceed without payment, or with payment, of the assessed tax.

Judicial decisions of the Supreme Court, such as the *Cosmos Bottling* and *International Container* cases, assume the same authority as the statute itself.[31] Article 8 of the Civil Code of the Philippines decrees that judicial decisions applying or interpreting the laws or the Constitution form part of this jurisdiction's legal system. These decisions, although in themselves not laws, constitute evidence of what the laws mean. The application or interpretation placed by the Supreme Court upon a law is part of the law as of the date of the enactment of the said law since the Supreme Court's application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect.[32] Such being the case, the interpretation placed by the High Court in the said *Cosmos Bottling* and *International Container* cases on Section 195 of the LGC of 1991 became part thereof as of the date of its enactment.

Relative thereto, it must be pointed out that ordinances should not contravene existing statutes enacted by Congress,[33] such as the LGC of 1991.

Moreover, it must be recalled that local government units (LGUs) are able to legislate only by virtue of a valid delegation of legislative power from the national legislature: they are mere agents vested with what is called the power of subordinate legislation. Congress enacted the LGC as the implementing law for the delegation to the various LGUs of the State's great

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[31] *Caltex vs. Palomer*, 124 Phil. 763.
[32] Refer to *Floresca, et al. vs. Philex Mining Corporation, et al.*, G.R. No. L-30642, April 30, 1985.
[33] *Social Justice Society (SJS), et al. vs. Hon. Jose L. Atienza, Jr.*, G.R. No. 156052, February 13, 2008.

powers, namely: the police power, the power of eminent domain, and the power of taxation. The LGC was fashioned to delineate the specific parameters and limitations to be complied with by each LGU in the exercise of these delegated powers with the view of making LGU fully functioning subdivision of the State subject to the constitutional and statutory limitations.[34]

It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the State. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state law or repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law.[35]

We adhere to the hierarchy of legal rules – municipal ordinances are inferior in status and subordinate to the laws of the State. Thus, in case of conflict between an ordinance and a statute, the ordinance must be set aside. So must it be.[36]

In this case, it is worthy to note that Section 7B.14(c) of the RMRC (or Makati Ordinance No. 025-A-04, also known as *"AN ORDINANCE ADOPTING THE REVISED MAKATI REVENUE CODE"*) is in conflict, or at least, not consistent, with Section 195 of the LGC of 1991, as interpreted by the Supreme Court in the *Cosmos Bottling* and *International Container* cases. To recall, said Section 7B.14(c) requires the taxpayer to first pay the assessed tax; otherwise, the protest shall not be entertained. However, as shown, such requirement is not present under the said Section 195 for the protest to be given due course. Thus, Section 7B.14(c) of the RMRC must be set aside.

Correspondingly, even when respondent did pay the assessed taxes in the amount of ₱65,730,711.30, for taxable years 2011 to 2013, when it filed its protest letter dated May 28, 2015 with the Office of the Makati City Treasurer on May 29, 2015,[37] the same is of no consequence. In other words, the said protest was not rendered invalid by respondent's failure to pay the said amount of assessed taxes.

Petitioners may not impose business taxes on respondent under Section 3A.02(h) of the RMRC, since there is no showing that respondent is a bank or other financial institution.

[34] *Ferrer vs. City Mayor Herbert Bautista, et al.*, G.R. No. 210551, June 30, 2015.
[35] *Batangas CATV, Inc. vs. The Court of Appeals, et al.*, G.R. No. 138810, September 29, 2004.
[36] *Municipality of Tupi vs. Faustino*, G.R. No. 231896, August 20, 2019.
[37] Exhibit "B", RTC Docket (Civil Case No. 15-684) – Vol. I, pp. 602 to 616.

According to petitioners, a holding company, such as respondent, need not be a service contractor, nor an owner or operator of banks and other financial institutions, in order that Section 3A.02(h) of the RMRC be made to apply. Petitioners further argues that once it is classified as a holding company, the tax prescribed therein (20% of 1%) shall be applied.

This Court disagrees.

To be clear, unlike the national government, LGUs have no inherent power to tax. They merely derived the power from Article X, Section 5 of the 1987 Constitution. Consistent with this provision, the LGC was enacted to give each local government unit (LGU) the power to create its own source of revenue and to levy taxes, fees, and charges **subject to statutory guidelines and limitations.**[38]

In addition, it is clear that Section 129, Book II, of the LGC of 1991, empowers each LGU to create its own sources of revenue, and to levy taxes, fees, and charges, but **subject to the provisions of the said Code**, consistent with the basic policy of local autonomy.

Plainly stated, the power of an LGU to impose or levy taxes cannot go beyond the limitations set forth by the provisions of the LGC of 1991.

The power of a municipality and city to impose business taxes finds basis under Section 143 (e) and (f), in relation to Section 151, both of the LGC of 1991, to wit:

> "SEC. 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, in accordance with the following schedule:

With gross sales or receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than 5,000.00		27.50
P5,000.00 or more but less than	10,000.00	61.60
10,000.00 or more but less than	15,000.00	104.50
15,000.00 or more but less than	20,000.00	165.00
20,000.00 or more but less than	30,000.00	275.00

[38] *City of Cagayan De Oro vs. Cagayan Electric Power & Light Co., Inc. (CEPALCO)*, G.R. No. 224825, October 17, 2018.

30,000.00 or more but less than	40,000.00	385.00
40,000.00 or more but less than	50,000.00	550.00
50,000.00 or more but less than	75,000.00	880.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,980.00
150,000.00 or more but less than	200,000.00	2,640.00
200,000.00 or more but less than	250,000.00	3,630.00
250,000.00 or more but less than	300,000.00	4,620.00
300,000.00 or more but less than	400,000.00	6,160.00
400,000.00 or more but less than	500,000.00	8,250.00
500,000.00 or more but less than	750,000.00	9,250.00
750,000.00 or more but less than	1,000,000.00	10,250.00
1,000,000.00 or more but less than	2,000,000.00	11,500.00
2,000,000.00 or more	at a rate not exceeding fifty percent (50%) of one percent (1%)	

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 interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premiums." *(Emphases added)*

"SEC. 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**: xxx

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by <u>not more than fifty percent (50%)</u> except the rates of professional and amusement taxes." *(Emphases and underscoring added)*

Thus, a city, such as petitioner City of Makati, may tax: (1) contractors and other independent contractors pursuant to the graduated rates under Section 143(e); and (2) banks and other financial institutions, at a rate by not more than fifty percent (50%) of that allowed a municipality to impose, *i.e.*, fifty percent (50%) of one percent (1%) on the gross receipts, under Section 143(f).

Pursuant to this taxing power, petitioner City of Makati adopted the RMRC, imposing local business taxes, the pertinent portions of which are quoted hereunder, to wit:

"CHAPTER III — City Taxes
ARTICLE A — Business Tax

SECTION 3A.01. Definitions. — When used in this Article:

xxx xxx xxx

(dd) ***Holding Company* — a controlling company that has one or more subsidiaries and confines its activities primarily to their management.**

xxx xxx xxx

SECTION 3A.02. *Imposition of Tax.* — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

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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; xxx business management services; collecting agencies; xxx

With gross sales or receipts for the preceding calendar year in the amount of:

Amount of	Tax per Annum
Less than P50,000.00	Exempt
P50,000.00 or more but less than 75,000.00	1,144.00
75,000.00 or more but less than 100,000.00	1,716.00
100,000.00 or more but less than 150,000.00	2,574.00
150,000.00 or more but less than 200,000.00	3,432.00
200,000.00 or more but less than 250,000.00	4,719.00
250,000.00 or more but less than 300,000.00	6,006.00
300,000.00 or more but less than 400,000.00	8,008.00
400,000.00 or more but less than 500,000.00	10,725.00
500,000.00 or more but less than 750,000.00	12,025.00
750,000.00 or more but less than 1,000,000.00	13,325.00
1,000,000.00 or more but less than 2,000,000.00	15,000.00
2,000,000.00	P15,000.00 plus seventy five percent (75%) of one percent (1%) over 2 million.

xxx xxx xxx

(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,**

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> **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 premium 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 (I) 1, as provided in this code.**
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> 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.**" *(Emphases added)*

Contrary to the stance of petitioners, since the foregoing tax imposition on a holding company was made pursuant to the aforequoted Section 143(f), in relation to Section 151, both of the LGC of 1991, for such holding company to be taxable under Section 3A.02(p), in relation to Section 3A.02(h), of the RMRC, it must fall under the purview of "*banks and other financial institutions*". Otherwise, it is not taxable under the said provisions.

Relative thereto, Section 131(e) of the LGC of 1991 states the scope of the term "*banks and other financial institutions*", to wit:

> "SEC. 131. *Definition of Terms.* — When used in this Title, the term:
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> xxx xxx xxx
>
> (e) **'Banks and other financial institutions' 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;"

In this case, while it is not disputed that respondent is a holding company, there is no indication that it is a bank.

Neither can respondent be deemed as a financial intermediary. Notably, there is a stark distinction between a holding company and a financial intermediary as contemplated under the LGC, in relation to other laws. A holding company is organized and is basically conducting its business by investing substantially in equity securities of another company for the purpose of controlling their policies (as opposed to directly engaging in operating activities) and holding them in a conglomerate or umbrella structure along with other subsidiaries.[39] While holding companies may partake in investment activities, this does not *per se* qualify them as financial intermediaries that are actively dealing in the same. Financial intermediaries are regulated by the *Bangko Sentral ng Pilipinas* because they deal with public funds when they offer quasi-banking functions. On the other hand, a holding company is not similarly regulated because any investment activities it conducts are mere incidental operations, since its main purpose is to hold shares for policy-controlling purposes.[40]

There is also no showing that respondent is a lending investor. Under Section 3 (a) of RA No. 9474, otherwise known as the Lending Company Regulation Act of 2007, a lending company *"shall refer to a corporation engaged in granting loans from its own capital funds or from funds sourced from not more than nineteen (19) persons. It shall not be deemed to include banking institutions, investment houses, savings land loan associations, financing companies, pawnshops, insurance companies, cooperatives and other credit institutions already regulated by law.* ***The term shall be synonymous with lending investors."*** *(Emphasis added)*

Based on the foregoing definition, a lending investor is a corporation engaged in granting loans from its own capital funds or from funds sourced from not more than nineteen (19) persons.

Moreover, respondent may not be considered as a finance and investment company, since there is no showing that it falls under the definition as defined under Section 3 of RA No. 5980, as amended by RA No. 8556, otherwise known as the Financing Company Act, to wit:

> "Sec. 3. *Definition of Terms.* — As used in this Act, the term:
>
> (a) 'Financing companies' hereinafter called companies, are corporations, except banks, investments houses, savings and loan associations, insurance companies, cooperatives, and other financial institutions organized or operating under other special laws, **which are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by**

[39] *Maricalum Mining Corporation vs. Florentino*, G.R. No. 221813, July 23, 2018.
[40] *City of Davao, et al. vs. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 29, 2019.

financial leasing of movable as well as immovable property; xxx." *(Emphasis added)*

Furthermore, respondent cannot also be deemed as a pawnshop, as there is no proof that it is engaged in the business of lending money on personal property delivered as security for loans, as defined under Section 3 of Presidential Decree No. 114, otherwise known as the Pawnshop Regulation Act.

Likewise, respondent does not fall within the purview of the definition of a money shop, which is "*an extension service unit of a banking institution usually operating in public markets with authority to accept money for deposit and extend short-term loans for specific purposes.*"[41]

There is also no showing that respondent is doing or transacting an insurance business, as defined in accordance with Section 2 of the Insurance Code, as amended by RA No. 10607, to wit:

"Section 2. Whenever used in this Code, the following terms shall have the respective meanings hereinafter set forth or indicated, unless the context otherwise requires:

(a) A *contract of insurance* is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.

A contract of suretyship shall be deemed to be an insurance contract, within the meaning of this Code, only if made by a surety who or which, as such, is doing an insurance business as hereinafter provided.

(b) **The term *doing an insurance business or transacting an insurance business*, within the meaning of this Code, shall include:**

(1) Making or proposing to make, as insurer, any insurance contract;

(2) Making or proposing to make, as surety, any contract of suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the surety;

(3) Doing any kind of business, including a reinsurance business, specifically recognized as constituting

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[41] Section 3 (d-2), Local Tax Code (*cf:* Philippine Law Dictionary, 3rd Edition, Federico B. Moreno).

> **the doing of an insurance business within the meaning of this Code;**
>
> **(4) Doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Code.**
>
> In the application of the provisions of this Code, the fact that no profit is derived from the making of insurance contracts, agreements or transactions or that no separate or direct consideration is received therefor, shall not be deemed conclusive to show that the making thereof does not constitute the doing or transacting of an insurance business." *(Emphasis added)*

This Court is not aware of any legal definition of the term "stock market." However, it is not hard to discern that a stock market is one where shares of stocks in a corporation are bought and sold. Relative thereto, there is no indication that respondent is engaged in the business of buying and selling shares of stocks in a corporation.

Furthermore, it has not been shown that respondent is a stock broker as defined under Section 3 of RA No. 8799, otherwise known as the Securities Regulation Code, to wit:

> "Section 3. *Definition of Terms.* —
>
> xxx xxx xxx
>
> 3.3. **'Broker' is a person engaged in the business of buying and selling securities for the account of others.**" *(Emphasis added)*

In addition, there is likewise no indication that respondent falls within the definition of the term "dealers in securities", as found in Section 22 (U) of the NIRC of 1997, which reads as follows:

> "(U) The term **'dealer in securities'** means a merchant of stocks or securities, whether an individual, partnership or corporation, with an established place of business, regularly engaged in the purchase of securities and the resale thereof to customers; that is, one who, as a merchant, buys securities and re-sells them to customers with a view to the gains and profits that may be derived therefrom." *(Emphasis added)*

Lastly, this Court finds that respondent is a foreign exchange (forex), as defined in the BSP Manual of Regulations on Foreign Exchange Transactions, as follows:

> **"Forex Corporations, whether or not named as such, refer to entities whose business include buying and selling of foreign exchange."**[42] *(Emphasis added)*

Correspondingly, this Court finds that respondent cannot be considered as a bank or other financial institution, and thus, cannot be taxed under Section 3A.02(h) of the RMRC. Such being the case, the Decision dated September 5, 2019 and the Order dated December 12, 2019, both rendered by RTC-Branch 146, in Civil Case No. 15-684, must perforce be affirmed.

WHEREFORE, the present *Petition for Review* is **DENIED** for lack of merit.

Accordingly, the Decision dated September 5, 2019 and the Order dated December 12, 2019, both rendered by RTC-Branch 146, in Civil Case No. 15-684, are hereby **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[42] *Glossary*, BSP Manual of Regulations of Foreign Exchange Transaction.

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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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.

ROMAN G. DEL ROSARIO
Presiding Justice