REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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ASC INVESTORS, INC.,
Petitioner,

CTA EB No. 1568
(CTA AC No. 134)

- versus -

Present:

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

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

Promulgated:
DEC 11 2018 1:58 p.m.

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RESOLUTION

UY, J.:

For resolution is respondents' **"MOTION FOR RECONSIDERATION"** filed on June 14, 2018,[1] with petitioner's **"COMMENT (On Respondents' Motion for Reconsideration dated 14 June 2018)"** filed on September 10, 2018,[2] praying for the reconsideration of this Court's Decision dated May 17, 2018, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* is hereby **GRANTED**.

[1] EB Docket, pp. 270 to 279.
[2] EB Docket, pp. 285 to 309.

> The assailed Decision dated July 14, 2016 and Amended Decision dated December 1, 2016 rendered by the Court in Division in CTA AC No. 134 are **REVERSED** and **SET ASIDE**. Correspondingly, the local business tax being assessed against petitioner for the third and fourth quarters of 2011 in the amount of ₱4,943,223.40 is **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**"

Respondents' arguments:

In support of their *Motion for Reconsideration*, respondents argue that the Court *En Banc* erred in concluding that there is no showing that petitioner is a non-bank financial intermediary. Respondents reiterate their position that the business operations of petitioner clearly fall within the definition of a non-bank financial intermediary as shown in its primary purpose contained in petitioner's amended Articles of Incorporation and by the very act itself of petitioner in owning, holding, and investing in San Miguel Corporation (SMC) shares of stocks and engaging in money market placement.

Respondents further maintain that the Court *En Banc* failed to consider the legal and factual findings of the lower court, which had been affirmed by the Court in Division, that the business operation of petitioner is within the definition of a non-bank financial intermediary.

Contrary to the conclusion of the Court, the non-issuance of license by the Monetary Board does not allegedly *ipso facto* exclude petitioner from the ambit of a non-bank financial intermediary.

Furthermore, respondents reiterate their position that the ruling of the Supreme Court in *Philippine Coconut Producers Federation, Inc. vs. Republic of the Philippines*[3] is not squarely applicable in the instant case. According to respondents, the said ruling did not delve on the taxability of the fund or its income, but merely segregated or identified the nature of the said fund as government owned. To conclude that such declaration exempts the petitioner from the payment of local business tax is allegedly too sweeping and without sufficient basis in fact and law.

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[3] G.R. Nos. 177857-58 & 178193, January 24, 2012.

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Finally, respondents contend that exemption from taxation are highly disfavored in law, and he who claims an exemption must be able to justify its claim.

Petitioner's arguments:

In its *Comment*, petitioner counters that since there is no showing that petitioner is a non-bank financial intermediary, the imposition of local business tax on dividends and interest income is erroneous. Petitioner maintains that it cannot be considered as a non-bank financial intermediary since it is not engaged in lending money, investing, reinvesting or trading securities and/or foreign exchange either for its own account or for the account of others on a regular and recurring basis.

Moreover, petitioner stresses that it is a holding company and therefore, its dividend and interest income are not subject to local business tax.

Allegedly, the SMC shares that petitioner held and the income derived therefrom are owned by the government and as such, the same cannot be subject to any local tax, fee or charge by the City of Davao, pursuant to Section 133(o) of the Local Government Code.

Lastly, the act of respondents in assessing petitioner for local business taxes for the third and fourth quarters of 2011 allegedly runs afoul to the basic principle that local government cannot tax the national government.

THE COURT *EN BANC'S* RULING

Respondents' *Motion for Reconsideration* lacks merit.

A careful perusal of the *Motion for Reconsideration* shows that the arguments raised therein are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

Finding no compelling reason to reconsider, modify or reverse Our Decision, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein.

WHEREFORE, in light of the foregoing considerations, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(I reiterate my Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice