

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**CITY OF DAVAO and BELLA
LINDA N. TANJILI, in her
official capacity as the Officer-
in-Charge City Treasurer's
Office of Davao City,**

Petitioners,

-versus-

TE DEUM RESOURCES, INC.,

Respondent.

**CTA EB No. 1636
(CTA AC NO.142)**

Present:

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

Promulgated:

MAY 30 2019

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 3:46 p.m.

RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution is a Motion for Reconsideration filed *via* registered mail on December 20, 2018 by petitioners City of Davao and Bella Linda N. Tanjili, in her official capacity as the Officer-in-Charge City Treasurer's Office of Davao City with respondent's Comment (On Petitioners' Motion for Reconsideration dated 20 December 2018) filed *via* registered mail on February 11, 2019¹.

Petitioners pray that this Court reconsider, reverse and set aside the Decision² promulgated on November 20, 2018 which denied petitioners' Petition for Review, the dispositive portion of which reads as follows:

¹Received on January 30, 2019 the Court's Resolution dated January 24, 2019 directing respondent to comment within ten (10) days or until February 9, 2019. February 9 falls on a Saturday, respondent has until February 11, 2019, which is the next working day within which to file its Comment pursuant to Section 1, Rule 22 of the Rules of Court.

² En Banc Docket, pp. 187-204.

non-bank financial intermediary. Thus, this Court finds it necessary to resort to other applicable laws which may enlighten us in its definition.

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

"The term *a '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."

Accordingly, Section 2.3 of Revenue Regulations No. 09-2004 further elaborated said definition which reads as follows:

"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

Section 131. Definition of Terms. - When used in this Title, the term:

xxx	xxx	xxx
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(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;

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public is done on a regular basis or only occasionally."

Likewise, Section 2-D(c) of the General Banking Act defines "financial intermediaries" as follows:

"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."

Section 4.101 Q.1 of the Manual of Regulations for Non-Bank Financial Institutions (Manual) defines ***"financial intermediaries" to be 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.*** (Emphasis supplied)

The same section further clarifies the definition by elaborating the terms "Principal and Functions", to wit:

"*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."

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Relevantly thereto, in order to be considered a financial intermediary, any of the following functions must be performed 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.

On the other hand, 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

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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.

The above definitions show that non-bank financial intermediaries are persons or entities primarily engaged in *"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."* More importantly, to be considered a non-bank financial intermediary, the entity must perform any of the functions stated therein on a regular and recurring basis and not on an isolated basis.

Indeed, respondent cannot be considered a bank or other non-bank financial institution, more specifically, 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. It appears from the records that respondent acquired SMC shares only once after its incorporation and has not bought any shares of stocks or invested in any other corporation other than in SMC. Hence, it is properly classified as an isolated transaction.

As already discussed in the assailed Decision, there is nothing on record that shows that respondent can be categorized as a financial intermediary or that it has engaged in the activities defined and enumerated in the General Banking Act and in the Manual.

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The Court is not convinced that the stated primary purpose of respondent in the Amended Articles of Incorporation is broad enough to catch all the descriptive functions of a financial intermediary. It is not proper to just assume that respondent is engaged as a non-bank financial institution or intermediary based on the said primary purpose.

Furthermore, it must be emphasized that the determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation is vested in the Monetary Board subject to judicial review.

We reiterate the ruling in *Commission of Internal Revenue vs. Hantex Trading Co., Inc.*⁵ wherein the Supreme Court ruled that an assessment must be based on actual facts. Accordingly, the local business tax assessment should be based on actual facts.

Under the premises, considering that there is no proof that respondent can be considered as a non-bank financial institution or intermediary engaged in such activities, the local business tax assessment has no factual basis. Such a conclusion is based on an assumption, with no support in evidence.

In view of the foregoing, this Court finds no cogent reason to disturb the assailed Decision.

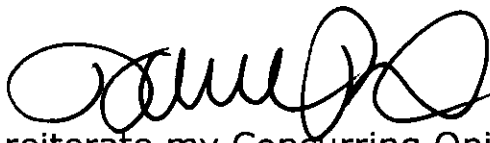
WHEREFORE, premises considered, petitioners' Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

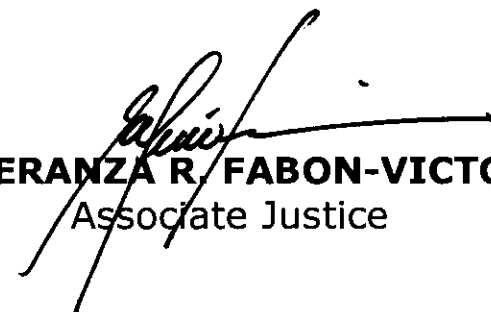
⁵ *Commission of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, citing *Collector of Internal Revenue vs. Benipayo*, 4 SCRA 182 (1962).

WE CONCUR:


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


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


ERLINDA P. UY
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice