REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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

CTA EB NO. 1934
(CTA AC No. 179)

- versus -

Present:

Del Rosario, PJ,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

METRO PACIFIC HOLDINGS, INC.,
Respondent.

Promulgated:

NOV 03 2020
3:26 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution of the Court *En Banc* is petitioners' Motion for Reconsideration (Re: Decision dated 22 January 2020) filed on February 13, 2020, with respondent's Comment/Opposition (To: Motion for Reconsideration Re: Decision dated 22 January 2020) filed on August 24, 2020.

In their motion, petitioners raised the following grounds:

> "1. With due respect, the Honorable Court of Tax Appeals En Banc 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 can be validly made to apply to a holding company such as respondent

2. With due respect, the Honorable Court of Tax Appeals En Banc erred in not ruling that respondent has the option to either file a claim for refund or for the issuance of a tax credit certificate (TCC)"

The Court *En Banc* shall resolve the following issues (1): Whether respondent is a holding company subject to local business tax (LBT) under the city tax ordinance; and (2) Whether respondent has the option either to claim for refund or claim for the issuance of a TCC.

Petitioners cannot impose LBT against respondent because it is not a holding company under Section 3A.02 (p) in relation to Section 3A.02 (h) of the Revised Makati Revenue Code (RMRC)

Petitioners argue that respondent is a holding company as reflected in its Articles of Incorporation and Business Application Form. Thus, they assert that respondent is indeed a holding company.

On the other hand, respondent asserts that it is not subject to LBT under Section 3A.02 (p) in relation to Section 3A.02 (h) of the RMRC.

It is noteworthy that this issue has been comprehensively passed upon in the assailed Decision. Thus:

> "In the instant case, petitioner failed to present evidence that respondent's income principally emanated from its dividend and interest income for taxable year 2010. Stated otherwise, while the records reveal that respondent earned dividend and interest income, there was no showing that respondent had no other activity other than receiving these kinds of income. Furthermore, petitioner also failed to present evidence that respondent's business is to principally engage in investment activities. Thus, the exclusivity or confinement of respondent's economic activity to purely NBFI activities was not proven by respondent.
>
> In addition, in *City of Davao and Bella Linda N. Tanjili, in her official capacity as City Treasurer of Davao City v.*

Randy Allied Ventures, Inc., the Supreme Court distinguished a holding company from a financial intermediary as contemplated under the LGC, as follows:

> "Indeed, 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 the 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.' 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 BSP 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."[1]

Records show that respondent does not deny that it is a holding company. In fact, it admits that it is a holding company primarily engaged in the management of its subsidiaries. Being a holding company whose business activities fall within the scope of business management services under the enumeration in Section 3A.02(g) of the RMRC, it submits that it is liable under the said provision and not under Section 3A.02(h) of the RMRC, which imposes tax on holding companies operating as non-banking financial intermediaries (NBFI).

Considering that respondent does not perform the business activities of an NBFI, the Court *En Banc* sees no reason to deviate from its previous ruling.

Respondent has the option either to claim for refund or claim for the issuance of a TCC

Finally, petitioner asserts that respondent has no option to claim for refund. Instead, it only has the exclusive option to claim for the issuance of a tax credit.

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[1] Decision, Court *En Banc* Docket, p. 123.

Again, this issue was already resolved by the Court *En Banc*, as follows:

"In this regard, the Court in Division ruled as follows:

'Pursuant to Section 7B.14(d) of the RMRC, a taxpayer is given the option to recover the amount it erroneously paid, in this manner:

SECTION 7B.14. *Taxpayer's Remedies.* —

xxx xxx xxx

(d) *Claim for Refund or Tax Credit.* — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a **refund or credit**.

The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligations payable to the Local Government of the City of Makati City during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year.

The above provision implies that a taxpayer can recover any tax, fee or charge erroneously or illegally collected by making a written claim, either for a refund or credit. Meaning, **there are two options to choose from by the taxpayer for the recovery of erroneously paid amount: <u>refund or credit</u>**. However, once a tax credit is granted to the taxpayer, the same cannot be refunded in cash, but can only be applied to future taxes.

In the instant case, petitioner is claiming for the refund of LBT erroneously collected by and paid to respondents, as shown in the administrative claim for refund filed before

> respondent City Treasurer, in its *Complaint* before the RTC, and in the instant *Petition for Review* before this Court. In fine, there is no basis for respondents' argument that if petitioner's claim is found meritorious, it may be granted only in the form of tax credit.'

The Court *En Banc* agrees with the Court in Division. To reiterate, Section 7B.14(d) of the RMRC provides two (2) options for the taxpayer for the recovery of any tax, fee, or charge erroneously or illegally collected by respondent: to claim for refund or apply for a tax credit. Thus, there is no merit in petitioner's argument that respondent may only apply for tax credit."[2]

Hence, pursuant to its own ordinance, it is clear that respondent may either ask for refund or tax credit as a remedy. Thus, petitioner has no basis in arguing that respondent may only claim for tax credit.

Considering that petitioner failed to raise meritorious arguments, the denial of the instant motion is in order.

WHEREFORE, petitioners' Motion for Reconsideration (Re: Decision dated 22 January 2020) is **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
ERLINDA P. UY
Associate Justice

Ma. Belen SL
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

[2] See Note 1, pp. 124-125.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice