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

## FIRST DIVISION

*********

| | |
|---|---|
| **FIRST MERIDIAN DEVELOPMENT, INC.,** Petitioner, | **CTA AC No. 132** (Civil Case No. 35,673-2014) |
| | ***Members:*** |
| **- versus -** | **DEL ROSARIO,** *P.J.*, **UY,** and **MINDARO-GRULLA,** *JJ.* |
| **CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City,** Respondents. | ***Promulgated:*** AUG 26 2016 ; 3:50 p.m. |

x - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

# DECISION

**UY, *J.*:**

Before this Court is a Petition for Review filed on February 6, 2015 by First Meridian Development, Inc. (FMDI), praying that judgment be rendered ordering respondents to cancel the assessment against the former for 0.55% local business tax covering the third and fourth quarters of 2011 in the amount of ₱907,083.10, inclusive of surcharge and legal interest.

## THE FACTS

Petitioner FMDI is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines.[1] The principal office of petitioner is located at Legaspi Oil Compound Km. 9.5, Sasa, Davao City.[2] As stated in its Amended Articles of Incorporation, petitioner's primary purpose is as follows:

"To purchase, subscribe for, or otherwise acquire

---

[1] Petition for Review, Annexes "P-8" and "P-9", Docket, pp. 93 to 116; RTC Docket, pp. 45 to 68.

[2] Petition for Review, Annex "P-9", Docket, p. 111; RTC Docket, p. 63.

> and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination 'holding corporation', and especially to direct the operations of other corporations through the ownership of stock therein, 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."[3]

Respondent City of Davao is a local government unit duly created by law; while respondent Rodrigo S. Riola (respondent Riola) is the incumbent City Treasurer of Davao City and is being impleaded in his official capacity as the City Treasurer of Davao City. Both respondents are holding office at the City Hall Building, San Pedro Street, Davao City.[4]

On January 20, 2014, respondents assessed petitioner for alleged deficiency local business tax in the amount of ₱907,083.10 for the third and fourth quarters of 2011.[5] Petitioner then protested the subject deficiency local business tax assessment on March 21, 2014 via the letter dated March 17, 2014.[6]

Instead of resolving petitioner's protest, respondent Riola informed petitioner, through the letter dated April 4, 2014,[7] that no protest shall be entertained unless petitioner pays first the imposed tax, pursuant to Section 423 of the 2005 Revenue Code of the City of

---

[3] Petition for Review, Annex "P-9", Docket, pp. 107 to 108; RTC Docket, pp. 59 to 60.
[4] Petition for Review, Par. 11, Docket, p. 7.
[5] Petition for Review, Annex "P-3", Docket, p. 43; RTC Docket, p. 22.
[6] Petition for Review, Annex "P-4", Docket, pp. 47 to 54; RTC Docket, pp. 26 to 33.
[7] Petition for Review, Annex "P-10", Docket, p. 117; RTC Docket, p. 34.

Davao. In the same letter, respondent Riola then requested petitioner to show proof of payment of the subject business taxes for him to resolve the protest.

Petitioner replied, in the letter dated April 15, 2014,[8] stating that the City of Davao has no authority to impose the additional requirement of payment under protest of the assessed tax before the protest can be entertained; and requesting that the protest be acted upon despite the absence of payment under protest.

In the letter dated May 5, 2014,[9] respondent Riola reiterated his position that no protest would be entertained unless petitioner pays first the imposed business tax.

Due to the inaction of respondent Riola on the protest,[10] petitioner filed a Petition for Review before the Regional Trial Court (RTC) of Davao City on June 9, 2014, docketed as Civil Case No. 35,673-2014 entitled *"First Meridian Development, Inc., Petitioner, versus City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City, Respondents".*[11]

Eventually, the RTC issued its assailed Order dated October 15, 2014,[12] denying petitioner's Petition for Review in the following manner:

> "As such, being categorized as a **Financial Intermediary**, petitioner's principal income falls under the coverage of **paragraph (f), Section 143 of RA No. 7160 of** (sic) **the Local Government Code of 1991**, to wit:
>
> > *'SECTION 143. Tax on Business. – **The municipality may impose taxes on the following businesses**:*
> >
> > *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*

---

[8] Petition for Review, Annex "P- 11", Docket, pp. 118 to 123; RTC records, pp. 35 to 40.
[9] Petition for Review, Annex "P-12", Docket, p. 124; RTC Docket, p. 41.
[10] Petition for Review, Paragraphs 7, 8, 9 and 20, Annex "P-5", Docket, pp. 56 to 57, and 60; RTC Docket, pp. 4 to 5, and 8.
[11] Petition for Review, Annex "P-5", Docket, pp. 55 to 74; RTC Docket, pp. 3 to 21.
[12] Petition for Review, Annex "P-1", Docket, pp. 29 to 41; RTC Docket, pp. 123 to 135.

> *derived from interest, commissions and discounts from lending activities, income from financial leasing, **dividends**, rentals on property and profit from exchange for sale of property, insurance premium.*'
>
> **FOR REASONS STATED**, the instant 'Petition for Review' filed by the Petitioner under Section 195 of Republic Act No. 7160 is hereby **DENIED** and/or **DISMISSED**.
>
> **SO ORDERED**."

Subsequently, petitioner filed a Motion for Reconsideration of the said Order on November 20, 2014.[13]

On December 17, 2014, the RTC issued its second assailed Order[14] denying petitioner's Motion for Reconsideration, to wit:

> "After considering the arguments raised in the ***'Motion for Reconsideration'*** filed by petitioner through counsel on the Order of the Court dated October, 2014 ***(dismissing the instant tax appeal)***, this Court finds no cogent reason to alter, modify or set aside the assailed Order dated October 15, 2014.
>
> As such, the ***'Motion for Reconsideration'*** filed by petitioner through counsel is hereby **DENIED**.
>
> **SO ORDERED**."

As a consequence, on February 6, 2015, petitioner filed the instant Petition for Review,[15] assailing the two Orders rendered by the court *a quo*.

As directed by this Court in the Resolution dated April 28, 2015[16], respondents filed their Comment to the instant Petition for Review on May 21, 2015.[17] On June 23, 2015, this Court gave due course to the Petition for Review and required the parties to submit their respective Memorandum while the RTC was directed by this

[13] Annex P-6, Petition for Review, Docket, pp. 75 to 87; RTC Docket, pp. 136 to 150.
[14] Annex P-2, Petition for Review, Docket, p. 42; RTC Docket, p. 160.
[15] Docket, pp. 5 to 26.
[16] Docket, p. 206.
[17] Docket, pp. 217 to 230.

Court to elevate the original records of Civil Case No. 35,673-14.[18] In Compliance thereto, the entire original records of Civil Case No. 35,673-14 on July 30, 2015[19] were forwarded by the RTC to this Court.

After the filing of petitioner's Memorandum on July 20, 2015,[20] and of respondents' Memorandum on August 7, 2015[21], this case was submitted for decision on August 28, 2015,[22]

Hence, this Decision.

## THE ISSUES

Petitioner raises the following issues[23] to be resolved by this Court, to wit:

"A.

WHETHER OR NOT THE CITY OF DAVAO MAY REQUIRE (PETITIONER) FMDI TO PAY 0.55% LOCAL BUSINESS TAX FOR THE THIRD AND FOURTH QUARTERS OF 2011 ON THE DIVIDENDS ON ITS SMC SHARES OF STOCK AND INTEREST INCOME ON ITS MONEY MARKET PLACEMENTS FOR THE YEAR 2010

B.

WHETHER OR NOT DAVAO CITY'S REQUIREMENT THAT PETITIONER SHOULD PAY UNDER PROTEST THE ALLEGED DEFICIENCY LOCAL BUSINESS TAX BEFORE ACTING ON ITS PROTEST IS VALID".

***Petitioner's arguments:***

Petitioner argues that the assessment against it for 0.55% local business tax for the third and fourth quarters of 2011 on the dividends on its San Miguel Corporation (SMC) shares of stock and interest income on its money market placements for the year 2010 should be

[18] Resolution dated June 23, 2015, Docket, pp. 279 to 281.
[19] Docket, p. 320.
[20] Docket, pp. 282 to 313.
[21] Docket, pp. 326 to 345.
[22] Resolution dated August 28, 2015, Docket, p. 348.
[23] Petitioner's Memorandum, Docket, p. 288.

cancelled on the following grounds:

1. Under Section 133(a) of Republic Act (RA) No. 7160, it is erroneous and illegal for respondents to collect a 0.55% local business tax on the dividends and interest income of petitioner because it is not a bank or a financial institution;

2. Petitioner is not engaged in business that is subject to local business tax under Section 143 of RA No. 7160; and

3. Petitioner's income partake the nature of public funds; thus, business tax cannot be imposed on the same.

Furthermore, according to petitioner, Section 423 of the 2005 Revenue Code of the City of Davao requiring payment under protest before a protest on local business tax assessments may be acted upon is null and void, and has no basis in fact and law.

***Respondents' counter-arguments:***

Respondents contend that petitioner is deemed a "bank and other financial institution", specifically as a "non-bank financial intermediary or an investment company" by virtue of its investment and money placements in SMC. According to respondents, the business purpose of the petitioner as contained in its Amended Articles of Incorporation is wittingly and unwittingly broad enough to catch all the descriptive function of a non-bank financial intermediary, as provided under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the *Bangko Sentral ng Pilipinas*.

In addition, respondents aver that petitioner's Articles of Incorporation stating that it shall not act as investment company or securities broker or dealer is not a conclusive proof that it is not a "bank and other financial institution"; and that being a stock corporation, petitioner is presumed to have been organized to engage in business with the end in view of a profit, hence subject to local business taxes.

Moreover, respondents assert that the definition of gross sales/receipts under Section 131(n) of RA No. 7160, otherwise known as the "Local Government Code of 1991", that does not include dividends and interest income as component of sales or receipts is a general definition of such term, which cannot defeat a specific and clear provision of taxability or dividends and interest income, as provided under Section 143(f) of the same Code.

Respondents likewise emphasize that the opinion of the Bureau of Local Government Finance (BLGF), that petitioner is exempt from local business tax for not being a bank and other financial institution, is not binding upon the issue involved in this case, as it is not an administrative agency whose findings on questions of fact and law are given weight and respect in the courts.

Furthermore, according to petitioner, even if we assume that petitioner's income partakes the nature of public funds, pursuant to the ruling of the Supreme Court in *Cocofed vs. Republic* that since the CIIF Block of SMC Shares were acquired using the coconut levy funds, the same should be treated as government assets, nevertheless, it does not exempt the petitioner from the payment of local business tax on its dividends and interest income, pursuant to Section 143(f) of RA No. 7160.

Lastly, respondents stress that the court *a quo* and this Court had not acquired jurisdiction to hear this case, because the tax assessment subject of this case had already become conclusive and unappealable for failure of the petitioner to pay first the tax as assessed before filing the protest, as required under Section 423 of Ordinance No. 158-05, Series of 2005, otherwise known as the "2005 Revenue Code of Davao City".

## THE COURT'S RULING

Considering that the issue of jurisdiction of the court *a quo* and of this Court are raised herein, this Court shall primarily and jointly address the same together with the second issue, *i.e.*, whether or not petitioner should pay under protest the alleged deficiency local business tax before acting on its protest is valid.

***The court* a quo *and this Court are vested with jurisdiction over the case below and the instant case, respectively. Respondents may not require petitioner to first pay deficiency local business tax before acting on its protest.***

Section 195 of the LGC of 1991[24] reads as follows:

> "**SEC.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 partially meritorious, he shall issue a notice canceling 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 <u>the court of competent jurisdiction</u> otherwise the assessment become conclusive and unappealable.**" *(Emphases and underscoring supplied)*

Based on the foregoing provision, it is evident that the local treasurer is mandated to decide the protest within a period of sixty (60) days, without any qualification or condition; and in case of failure to do so, the same shall be considered an inaction on the part of the local treasurer, appealable to *"the court of competent jurisdiction"*.

Upon the other hand, Section 423 of City Ordinance No. 158-05, Series of 2005, otherwise known as the "2005 Revenue Code of Davao City", provides as follows:

> "**SECTION 423**. ***Payment Under Protest.*** — No protest shall be entertained unless the taxpayer first pay the tax. There shall be annotated on the tax receipts the words 'paid under protest.' The protest in writing must be filed within thirty (30) days from payment of the tax with the City Treasurer who shall decide the protest within sixty (60) days from receipt."

---

[24] Republic Act No. 7160.

The foregoing provision is plain that protests shall not be entertained unless the taxpayer first pay the tax. In other words, the said provision imposed a condition as to when the local treasurer can act on the protest. This is obviously a clear indication that the said Section 423 contravenes the earlier quoted Section 195 of the LGC of 1991, which does not qualify as to when said local treasurer can decide the same.

In this connection, it must be emphasized that one of the requisites for a municipal ordinance to be valid is that it *"must not contravene the Constitution or any statute"*[25]. Thus, Section 423 of City Ordinance No. 158-05 is not valid, and the provisions of Section 195 of the LGC must prevail over the same. Correspondingly, petitioner need not comply with the requirement under the said Ordinance of paying the assessed local business tax in order for its protest to be acted upon by respondent Riola, as City Treasurer.

As a corollary, when respondent Riola, as City Treasurer, failed to act within the 60-day period prescribed by Section 195 of the LGC of 1991, the right to appeal his inaction became available to petitioner within thirty (30) days from the lapse of the said period.

Therefore, the court *a quo* validly acquired jurisdiction to entertain the appeal filed by petitioner on June 9, 2014[26], as it was filed within the thirty (30) day reglementary period to file said appeal, counted from the lapse of the sixty-day period from the filing of petitioner' protest on March 21, 2014[27], pursuant to Section 195 of the LGC of 1991.

Such being the case, any decision, order, resolution or ruling of the court *a quo* is appealable to this Court within thirty (30) days from receipt thereof, in accordance with Sections 7(a)(3) and 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282, to wit:

> "SEC. 7. *Jurisdiction.*— The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx

---

[25] *Solicitor General, et al. vs. Metropolitan Manila Authority, et al.*, G.R. No. 102782, December 11, 1991.

[26] RTC Docket, p. 3.

[27] Annex P-4, Petition for Review, Docket, pp. 47 to 54; RTC Docket, pp. 26 to 33.

> (3) Decisions, **orders** or resolutions **of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their** original or **appellate jurisdiction**;
>
> xxx xxx xxx" *(Emphases supplied)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*— **Any party adversely affected by a decision, ruling** or inaction of xxx **the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> xxx xxx xxx." *(Emphases supplied)*

It appearing that the instant Petition for Review was filed on February 6, 2015[28] or within thirty (30) days from receipt of the Order of the Court *a quo* denying petitioner's Motion for Reconsideration on January 8, 2015,[29] this Court is vested with jurisdiction to take cognizance of the said Petition for Review.

***It was not established that petitioner is a non-bank financial intermediary. Thus, respondents may not impose business tax on the dividends and interest income received by petitioner.***

It is without question that a city is empowered to impose taxes on banks and other financial institutions. This is clear under Section 143(f), in relation to Section 151, both of the LGC of 1991, which state:

> "SEC.143. *Tax on Business.* — **The municipality may impose taxes on the following businesses**:
>
> 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

[28] Docket, p. 5.
[29] Refer to Par. 32, Petition for Review, Docket, p. 12.

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 and underscoring supplied)*

"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 not more than fifty percent (50%)** except the rates of professional and amusement taxes." *(Emphases supplied)*

Thus, on the basis of the foregoing provisions, respondent City of Davao may impose business tax on banks and other financial institutions on its gross receipts of the preceding calendar year from interest and dividends at the rate of 0.55%.

The crux of the controversy, however, is that petitioner effectively denies being a bank or other non-bank financial institution, specifically a non-bank financial intermediary, and argues that it cannot be considered as such.

We agree with petitioner.

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:

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**;" *(Emphases supplied)*

Based on the foregoing provision, *"non-bank financial intermediaries"*, *inter alia*, are included in *the term "Banks and other financial institutions";* and that the term *"non-bank financial intermediaries"* are those that are *"as defined under applicable laws, or rules and regulations thereunder".*

The definition of the term *"non-bank financial intermediary"*, is found in Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, which reads as follows:

> "(W) The term '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.**" *(Emphasis supplied)*

Based on and in relation to this definition, reference to Section 2-D(c) of Republic Act (RA) No. 337, as amended by Presidential Decree (PD) No. 71, is called for. Said Section 2-D(c) reads:

> "(c) '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 to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others;"

The BSP, in turn, elaborated on the said definition. Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions, read as follows, viz:

> "**§ 4101Q.1** ***Financial intermediaries.*** *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.
>
> <u>*Principal* shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.</u>

*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.

To be considered a financial intermediary, a person or entity must perform any of the following functions 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.

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 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." *(Underscoring supplied)*

Based on the said provisions, the basic requirements for a person or entity to be considered as a *"non-bank financial intermediary"* are as follows:

1) The person or entity is *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"*;[30]

2) The principal functions of the said person or entity *"include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others"*;[31]

3) The person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis, to wit:

    1. 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;

    2. Use principally the funds received for acquiring various types of debt or equity securities;

    3. Borrow against, or lend on, or buy or sell debt or equity securities;

---

[30] This is pursuant to Section 131(e) of the LGC of 1991, in relation to Section 22(W) of the NIRC of 1997 and Section 2-D(c) of RA No. 337, as amended by PD No. 71.

[31] This is pursuant to Section 2-D(c) of RA No. 337, as amended by PD No. 71; and Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions.

4. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;

5. 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.

In the case of petitioner, there is no indication that it fulfills the first requirement. This is so because there is no showing that petitioner was *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"*. Thus, upon this ground, petitioner cannot already be treated as a non-bank financial intermediary.

The second requirement is not likewise met. While it may be true that the functions of petitioner on the basis of its primary purpose as stated in its Amended Articles of Incorporation may cover the supposed functions of a non-bank financial intermediary, it was not shown that said functions are *"principal"* in nature, *i.e.*, *"chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental"*. The records of this case are wanting of any proof that the stated functions were principally done by petitioner in the year 2011.

Furthermore, it was never established that the enumerated functions under the third requirement were performed by petitioner *"on a regular and recurring, not on an isolated, basis"*. In fact, no evidence was shown that petitioner ever performed the said functions. From what this Court can gather in the records *a quo*, respondents merely imposed the local business tax on petitioner's gross sales (non-essential) as a "HOLDING FIRM" and nothing more.[32]

This Court also finds, from the records of this case, that petitioner had not held itself out, nor advertised itself, as non-banking financial intermediary.

---

[32] RTC Docket, p. 22.

Such being the case, this Court hereby holds that petitioner is not a non-bank financial intermediary, and the interests and dividends it received in calendar year 2010 may **not** be the subject of local business tax imposed by the respondent City of Davao in 2011.

**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. The assailed Orders dated October 15, 2014 and December 17, 2014, both issued by Branch 11 of the RTC, 11th Judicial Region, Davao City, are **REVERSED** and **SET ASIDE**. Accordingly, the local business tax assessed against petitioner for the third and fourth quarters of taxable year 2011 in the aggregate amount of ₱907,083.10 is **CANCELLED** and **SET ASIDE**.

**SO ORDERED.**

**ERLINDA P. UY**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Chairperson
Presiding Justice