REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SORIANO SHARES, INC., Petitioner,	CTA EB No. 1556 (CTA AC No. 141)
	Present:
-versus-	
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his capacity as City Treasurer of Davao City, Respondents.	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
	Promulgated:
	APR 18 2018 1:05 p.m.

x---x

DECISION

FABON-VICTORINO, J.:

In this Petition for Review[1] filed on December 16, 2016, petitioner Soriano Shares, Inc., assails the Decision[2] dated July 22, 2016, and the Resolution[3] dated November 7, 2016, which denied its Petition for Review, and its Motion for Reconsideration of the adverse Decision, both promulgated by the Court in Division in CTA AC No. 141.

---

[1] *En Banc* docket, pp. 8-39.
[2] *En Banc* docket, pp. 41-60.
[3] *En Banc* docket, pp. 62-66.

THE PARTIES

Petitioner Soriano Shares, Inc., is a domestic corporation with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City.

Respondent City of Davao is a public corporation created by law, while co-respondent Rodrigo S. Riola, is impleaded in his official capacity as the City Treasurer of Davao City. Both respondents hold office at the City Hall Building, San Pedro Street, Davao City.

THE FACTS AND THE PROCEEDINGS

Sometime in 2010, petitioner received dividends from its San Miguel Corporation's (SMC) preferred shares and interest income on its money market placements in the aggregate amount of Two Hundred Twenty-Eight Million Six Hundred Sixty-Five Thousand One Hundred Fifty-One and 18/100 Pesos (P228,665,151.18), computed as follows:

Nature of Income	Amount
Dividends from petitioner's SMC Shares	P225,928,875.00
Interest Income from petitioner's Money Market Placements	2,736,276.18
Total	**P228,665,151.18**

On January 20, 2014, respondent City Treasurer of Davao, via Business Tax Order of Payment dated January 20, 2014, assessed petitioner the amount of One Million Two Hundred Forty-Nine Thousand Seven Hundred Ninety-Seven and 64/100 Pesos (P1,249,797.64), representing 0.55% local business tax for the 3rd and 4th quarters of 2011 on the dividends derived from its SMC shares of stock and interests on its money market placements earned in 2010. The details of which are as follows:

Year/Quarter	2010 Annual Gross Sales	Tax Due	Surcharge	Interest	Total Amount Due
Third Quarter 2011	P228,665,200.00	P314,414.50	P78,603.62	P243,671.20	P636,689.32
Fourth Quarter 2011	P228,665,200.00	P314,414.50	P78,603.62	P220,090.20	P613,108.32
				Total Tax Due	**P1,249,797.64**

On March 21, 2014, petitioner protested the said assessment on the ground that it is not a bank or a financial institution.

In his Letter dated April 4, 2014, respondent City Treasurer required petitioner proof of its payment of the assessed business taxes before its protest could be acted upon pursuant to Section 423 of Ordinance No. 158-05, series of 2005, otherwise known as the 2005 Revenue Code of Davao City (Ordinance No. 158-05).

In its Letter-Reply sent to respondent City Treasurer on April 24, 2014, petitioner argued that the requirement to pay before protest is inconsistent with Section 252, in relation to Section 195 of Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code of 1991 (LGC of 1991), hence, invalid and unconstitutional.

In his Letter dated May 5, 2014, respondent City Treasurer retorted that Section 423 of City Ordinance No. 158-05 falls under General Administrative Powers, which does not distinguish between real property and business taxes. Likewise, he claimed that the subject Ordinance is a valid law, hence, must be complied with.

On June 9, 2014, petitioner filed a Petition for Review before the Regional Trial Court (RTC) of Davao City citing inaction on the part of respondent City Treasurer on its protest. The case was raffled to Branch 17 of RTC Davao City and docketed as Civil Case No. 35,678-14.

During the trial, petitioner denied liability to pay the assessed local business tax on the dividends received from its SMC shares of stock, and on the interests on its money market placements for taxable year 2010 as it is not a bank or financial institution as defined under Section 131(e) of R.A. No. 7160. Further, it is not engaged in business that is subject to local business tax under Section 143 of R.A. No. 7160 and that its income partakes the nature of public funds which cannot be subject to business tax.

In their Memorandum filed with the RTC, respondents maintained the validity of the subject assessment as petitioner is within the purview of "banks and other financial institution", pursuant to Section 131 (e) of R.A. No. 7160 and Section 5(b3) of Ordinance No. 0158-05, series of 2005. That being the case, its dividends and interest income are taxable under Section 143(f) of the LGC of 1991. Respondents admitted that they did not act on petitioner's protest as the latter failed to comply with the requirement to pay the assessed amount first before filing its protest.

On November 10, 2014[4], the RTC dismissed the Petition for Review filed by petitioner for lack of merit. The RTC ordered petitioner to pay respondents the amount of One Million Two Hundred Forty-Nine Thousand Seven Hundred Ninety-Seven and 64/100 (P1,249,797.64) Pesos, representing the 0.55% local business tax for the 3rd and 4th quarters of 2011 on the dividends derived from its San Miguel Corporation's preferred shares of stock and interest on its money market placements.

In the Order dated April 20, 2015[5], the RTC denied petitioner's Motion for Reconsideration for lack of merit.

On June 8, 2015, petitioner filed a Petition for Review before the Court in Division docketed as AC No. 141.

In the Resolution dated August 13, 2015, the Court in Division granted the parties thirty (30) days from notice within which to file their respective memoranda and ordered the Branch Clerk of Court or the Officer-In-Charge of RTC Branch 17 of Davao City to elevate to the Court the entire original record of Civil Case No. 35,678-14, within ten (10) days from notice.

After the parties filed the required pleading, the Petition for Review was deemed submitted for decision on October 15, 2015.

---

[4] *En Banc* docket, pp. 38-48.
[5] *En Banc* docket, pp. 49-50.

On July 22, 2016[6], the Court in Division denied the Petition for Review filed by petitioner upholding the RTC's finding that petitioner is a non-bank financial intermediary whose income may be subjected to business tax under Section 143(f) of the LGC of 1991, as amended.

The foregoing Decision was effectively affirmed when the Court in Division denied petitioner's Motion for Reconsideration for lack of merit in the Resolution dated November 7, 2016[7].

Hence, this appeal filed on December 16, 2016[8], or within the extended period granted by the Court *En Banc* on November 25, 2016[9], with the lone issue as follows:

> WHETHER THE CITY OF DAVAO MAY REQUIRE SSI TO PAY 0.55% LOCAL BUSINESS TAX FOR THE THIRD AND FOURTH QUARTERS OF 2011 ON THE DIVIDENDS DERIVED FROM ITS SMC SHARES OF STOCK AND INTEREST INCOME ON ITS MONEY MARKET PLACEMENTS FOR THE YEAR 2010.

In denying any liability to pay the assailed assessment issued against it by respondents representing the 0.55% local business tax for the 3rd and 4th quarters of 2011 on the dividends it derived from its SMC preferred shares of stock and interest income on its money market placements for the year 2010, petitioner reasons that it is neither a financial intermediary nor a non-bank financial intermediary but merely a holding company, justifying the cancellation of the same. Citing the ruling of the Supreme Court in the case of *Michigan Holdings, Inc. v. The City Treasurer of Makati*[10], petitioner submits that a holding company is not among the entities enumerated in Section 113(e) of R.A. No. 7160 considered as banks and other financial institutions.

---

[6] *Supra,* Note 1.
[7] *Supra,* Note 2.
[8] *En Banc* docket, pp. 8-39.
[9] *En Banc* docket, p. 7.
[10] CTA EB Case No. 1093 (CTA AC No. 99), June 17, 2015.

According to petitioner, clear in its Amended Articles of Incorporation that it is a holding company and is prohibited from engaging in the business of investing or lending money or securities as a non-bank financial intermediary. Hence, its dividend and interest income on money market placements cannot be legally subject to local business tax. This is consistent with the dividend exclusion principle which provides that in general, intercompany dividends, having been taxed in the hands of the issuing corporation, should not be taxed anew by the stockholder corporation. The same principle is embodied in Section 27(D) of National Internal Revenue Code (NIRC) of 1997, as amended. Local government units are also explicitly prohibited from imposing income tax under the LGC of 1991, unless it is levied on banks and other financial institutions which petitioner is not.

Further, respondent did not adduce any proof evidencing that it is engaged in the business of a financial intermediary. Thus, the conclusion that its Amended Articles of Incorporation is so broad to cover the principal functions of a financial intermediary is without factual and legal bases. In other words, they were merely based on presumption and conjectures.

More importantly, its income partakes the nature of public funds, thus, business tax cannot be imposed on it as pronounced by the Supreme Court in the case of *Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines*[11]. Petitioner points out that it is one of the fourteen (14) holding companies funded by the coconut levy fund, which were created to hold SMC shares of stock, therefore, the SMC shares of stock are owned by the government and any income that may accrue therefrom cannot be subject to any local tax, fee or charge pursuant to Section 133 of R.A. No. 7160.

Respondents disagree insisting that petitioner falls under the category of bank and other financial institution, specifically a non-bank financial intermediary or an investment company by virtue of its investment and money placements in SMC. According to respondent, investing and

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

holding shares of stock of SMC and making money placements are the sole and principal business operation and source of revenue of petitioner as shown in its financial statements.

Moreover, petitioner's business purpose as contained in its Amended Articles of Incorporation is a catch-all provision as to include all descriptive function of a non-bank financial intermediary as provided under Section 4101Q.1[12] of the Manual of Regulations for Non-bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP). Based on said provision, petitioner's acts of investing in equity securities or holding assets consisting of SMC stocks and placement of funds in the same company on a regular and continuing basis are the very acts that characterize a Non-bank Financial Intermediary.

While respondents admit that under its Amended Articles of Incorporation, petitioner is barred from acting as investment company or securities broker or dealer, the same is not a conclusive proof that it does not fall under the category of bank and other financial institution since petitioner has no other business but its investments with SMC. Respondents suspect that the provision is intended to conceal or mislead or exempt petitioner from obtaining the necessary secondary license as other financial institution.

Further, since petitioner is a stock corporation, it is presumed to have been organized to engage in business for profit. This presumption, according to respondents, is reinforced by petitioner's receipt of dividends and interest income in huge amounts from its investments.

Even granting that petitioner's income partakes the nature of public funds, such fact does not exempt it from payment of local business tax on dividends and interest income received pursuant to Section 143(F) of R.A. No.

---

[12] Section 4101Q.1 of the Manual of Regulations for Non-bank Financial Institutions states:

"Financial intermediaries shall mean persons or entities whose principal functions include the lending investment 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. xxxx"

7160 since the amount received is still in the hands of petitioner, which is a private corporation. Allegedly, in the absence of an express legal provision declaring that petitioner's dividends and interest income are exempt from local business tax, petitioner, as a non-bank financial intermediary, is obliged to pay the tax assessed by respondents.

Finally, petitioner's reliance on the case of *Michigan Holdings, Inc. v. City Treasurer of Makati, Nelia A. Barlis*, to back-up its claim that it is a holding company and not a non-bank financial intermediary, is misplaced as the cited case has a different factual milieu. Besides, the fact that petitioner is a holding company will not negate the taxability of the amount received nor exempt it from payment of local business tax for what is controlling is its actual business consistent with its primary purpose.

On April 19, 2017, the instant Petition for Review was submitted for decision[13].

RULING OF THE COURT *EN BANC*

Under the established facts, is petitioner liable to pay the assessed 0.55% local business tax for the 3rd and 4th quarters of 2011 on the dividends derived from its SMC preferred shares of stock and interest income on its money market placements for the year 2010?

To exact answer from foregoing question, the Court must first determine whether respondents possess the authority to impose the local business tax on petitioner. The discussion of the Supreme Court on the nature of the power to tax of local government units in the case of *Pelizloy Realty Corporation, represented by its President, Gregory K. Loy v. The Province of Benguet,*[14] is instructive, thus:

> The power to tax "is an attribute of sovereignty," and as such, inherent in the State. Such, however, is not true for provinces, cities,

[13] *En Banc* docket, pp. 108-109.
[14] G.R. No. 183137, April 10, 2013.

> municipalities and barangays as they are not the sovereign; rather, they are mere "territorial and political subdivisions of the Republic of the Philippines". . . . Therefore, **the power of a province to tax is limited to the extent that such power is delegated to it either by the Constitution or by statute.** Section 5, Article X of the 1987 Constitution is clear on this point:
>
>> Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.
>
> Per Section 5, Article X of the 1987 Constitution, "the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges." Nevertheless, such authority is "subject to such guidelines and limitations as the Congress may provide".
>
> In conformity with Section 3, Article X of the 1987 Constitution, Congress enacted RA No. 7160, otherwise known as the Local Government Code of 1991. (emphasis supplied).

From the foregoing tenet, the power to tax of respondent Davao City is not absolute for it is subject to limitations provided in the Constitution and in such other guidelines and limitations in R.A. No. 7160 or the LGC.

Simply put, respondent Davao City's enactment of Ordinance No. 158-05, series of 2005 imposing local business tax, being a mere delegated authority, must be compliant with the limitations mandated in the Constitution and in the LGC.

Undeniably, under Section 143 (f) of LGC of 1991, local government units such as municipalities or cities may impose business taxes 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 premium.

Corollarily, Section 131(e) of the LGC of 1991 LGC defines the term banks and other financial institutions as to 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.

Further, Section 22(W) of the NIRC, as amended, defines the term non-bank financial intermediary as 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 BSP to perform quasi-banking activities.

On the same point, Section 2.3 of Revenue Regulations (RR) No. 09-2004 issued by the BIR states, thus:

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

The General Banking Act[15] also defines financial intermediaries in Section 2-D(c) thereof as persons or entities whose principal functions include the lending, investing or placement of funds or evidence 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.

Relative to the foregoing, the BSP Manual defines financial intermediaries in Section 4.101Q.1 thereof as follows:

> Section 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.
>
> xxx xxx xxx
>
> 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;

---

[15] Republic Act No. 337, as amended by Presidential Decree No. 71.

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.

A fortiori, to be considered as a non-bank financial intermediary, the following requisites must concur, to wit:

1) The person or entity is authorized by the BSP to perform quasi-banking activities;[16]

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;[17] and

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

   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; and

---

[16] Section 131 (e) of the LGC of 1991, in relation to Section 22(W) of the NIRC of 1997, as amended and Section 2-D(c) of RA No. 337, as amended by PD No. 71.
[17] Section 2-D(c) of RA No. 337, as amended by PD No. 71; and Section 4101Q.I of the BSP's Manual of Regulations for Non-Bank Financial Institutions.

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.

With all the foregoing definitions and principles, it is evident that petitioner is a not a non-bank financial intermediary as categorized by respondents.

A judicious examination of petitioner's Amended Articles of Incorporation, particularly its primary purpose, also reveals that petitioner fits into the definition of a holding company. In fact, the primary purpose for which petitioner was created or organized is to direct the operations of other corporations through the ownership of stock therein.

Plainly, petitioner's primary purpose falls within the definition of a holding company, which is defined by the Securities and Exchange Commission, in this wise:

> A holding company has been defined by the Commission in several opinions. A holding company has been aptly defined as 'a corporation organized to hold the stock of another or other corporations.' Its essential feature is that it holds stock. The term 'holding company' is equivalent to a parent corporation, having such an interest in another corporation, or power of control, that it may elect its directors and influence management. A parent or holding company is one that controls another as a subsidiary or affiliate by the power to elect its management. Affiliates are those concerns that are subject to common control and operated as part of a system.[18]

[18] Securities and Exchange Commission (SFC) -Office of the General Counsel (OGC) Opinion No. 15-15 dated November 03, 2015 addressed to Waterfront Philippines,

Moreover, a scrutiny of Section 131 (e) of the LGC of 1991, which defines the terms under Title One, Book of the LGC, reveals that a holding company is not among the entities or establishments enumerated as "banks and other financial institutions", to wit:

> Sec. 131. Definition of Terms. – When used in this Title, the term:
>
> (e) "Banks and other financial institutions" include non-bank financial intermediaries, lending investors, finance and investments 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;

Precisely, the Court *En Banc* in the case of *Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis*[19] ruled, thus:

> Section 131 (e) of the LGC defines "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." This enumeration appears to be exclusive of other entities. Nowhere in the entirety of Section 131 is a holding company mentioned.

The above ruling contemplates a rule in statutory construction, *viz.*, - *expressio unius est exclusio alterius* or the express mention of one person, thing, act, or consequence excludes all others. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its

---

Inc. citing SEC-OGC Opinion No. 14-32 dated November 10, !2014 and SEC-OGC Opinion No. 11-15 dated February 10, 2011;

[19] *Supra,* Note 10.

w

terms to those expressly mentioned.[20] This principle in statutory construction was also enunciated in the case of Malinias v. COMELEC *et al.*,[21] wherein the Supreme Court declared, thus:

> The rule of *expressio unius est exclusio alterius* is formulated in a number of ways. One variation of the rule is the principle that what is expressed puts an end to that which is implied. *Expressioum facit cessare tacitum.* Thus, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters

The record also betrays respondents' failure to present clear and credible evidence, let alone discussion, that petitioner falls within the definition of a non-bank financial intermediary or an investment company. And this was also apparent during the proceedings in the RTC, despite sufficient opportunity.

The record is likewise bereft of any indication that petitioner was authorized by the BSP to perform quasi-banking activities as a non-banking financial intermediary. Neither is there any hint or finding by the Monetary Board that petitioner is a non-bank financial intermediary. Under the General Banking Act, the authority to determine whether a person or entity is performing banking or quasi-banking functions or engaged in other type of financial intermediation is vested in the Monetary Board.[22]

---

[20] Agpalo, Statutory Construction, 2nd Ed., 1990 pp. 160-161.
[21] 390 SCRA 480, October 4, 2002.
[22] Section 4 of R.A. No. 337, as amended by P.D. No. 1828 states:

> Section 4. 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 shall be decided by the Monetary Board subject to judicial review. For the purpose of resolving such issue, the Monetary Board may, through appropriate supervising department of the Central Bank, examine, inspect or investigate the books and records of such person or entity. The department head and the examiners of said appropriate supervising department are hereby authorized to administer oaths to any such person or director, officer or employee of any sue entity and to compel the presentation or production of all books, documents, papers or records necessary in their judgment to ascertain the facts relative to the true functions and operations of such person or entity. Failure or refusal to comply with the required presentation 1 or production of such books, documents, papers or records shall subject the persons responsible therefor to the penal sanctions provided under Section 34 of R.A. No. 265, as amended. Persons or entities found by the Monetary Board to be performing banking or quasi-banking functions without the required prior authorization of the Monetary Board may, in addition to the

Significantly, there is no showing that petitioner has actually engaged in the activities enumerated in the General Banking Act and in the BSP Manual. Not even an allegation that petitioner has held itself out or advertised or promoted itself as a non-bank financial intermediary can be found in any of the pleadings filed by respondents. Petitioner's name itself shows that it is a holding company, not a lending, investing, or financing company.

Finally, petitioner is one of the fourteen holding companies funded by the coconut levy fund which were formed or organized solely for the purpose of holding the SMC shares of stock. As public property, all burdens, impositions and restrictions attached by law to such property such as its non-taxability shall apply. Since the said SMC shares of petitioner are owned by the government, it follows that the dividends and any income therefrom are also owned by the government. Consequently, petitioner's dividend and interest income from its SMC shares are beyond the scope of the taxing power of respondents, for any local tax imposed on petitioner is imposed on the national government. To insist taxing petitioner would clearly be in contravention of Section 133(o) of the LGC of 1991[23]. This was the essence of the ruling of the Supreme Court in the case of *Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines*[24], thus:

> Just as in CC No. 0033-A, the Sandiganbayan also conducted a hearing in CC No. 0033-F to determine facts that appeared without substantial controversy as culled from the records and, by Order of February 23, 2004, outlined those facts.

---

proceedings provided under Section 34 of Republic Act No. 265, as amended, be subject to the imposition of fine of not in excess of P500 per day reckoned from the date the unauthorized banking or quasi-banking functions were performed and may be referred to the Securities and Exchange Commission for the revocation of its license to do business.

[23] SEC. 133. Common Limitations on the Taxing Powers of Local Government Units. - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

xxx xxx xxx

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

[24] *Supra,* Note 11.

On May 7, 2004, the Sandiganbayan, in light of its ruling in CC No. 0033-A and disposing of the issue on ownership of the CIIF oil and holding companies and their entire block of subject SMC shares, issued the assailed PSJ-F also finding for the Republic, the *fallo* of which pertinently reading:

> **WHEREFORE**, in view of the foregoing, we hold that:
>
> The **Motion for Partial Summary Judgment (**Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed et al.) filed by Plaintiff is hereby GRANTED. ACCORDINGLY, THE CIIF COMPANIES, namely:
>
> 1. Southern Luzon Coconut Oil Mills (SOLCOM);
> 2. Cagayan de Oro Oil Co., Inc. (CAGOIL);
> 3. Iligan Coconut Industries, Inc. (ILICOCO);
> 4. San Pablo Manufacturing Corp. (SPMC);
> 5. Granexport Manufacturing Corp. (GRANEX); and
> 6. Legaspi Oil Co., Inc. (LEGOIL),
>
> **AS WELL AS THE 14 HOLDING COMPANIES, NAMELY**:
>
> 1. **Soriano Shares, Inc**.;
> 2. ACS Investors, Inc.;
> 3. Roxas Shares, Inc.;
> 4. Arc Investors, Inc.;
> 5. Toda Holdings, Inc.;
> 6. AP Holdings, Inc.;
> 7. Fernandez Holdings, Inc.;
> 8. SMC Officers Corps, Inc.;
> 9. Te Deum Resources, Inc.;
> 10. Anglo Ventures, Inc.;
> 11. Randy Allied Ventures, Inc.;

12. Rock Steel Resources, Inc.;
13. Valhalla Properties Ltd., Inc.; and
14. First Meridian Development, Inc.

> **AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALLING 33,133,266 SHARES AS OF 1983 ARE DECLARED OWNED BY THE GOVERNMENT IN TRUST** FOR ALL THE COCONUT FARMERS GOVERNMENT AND ORDERDED RECONVEYED TO THE GOVERNMENT. (emphasis supplied)

All said, petitioner is not a non-bank financial intermediary but a holding company, which cannot be legally made liable for local business tax imposed on "banks and other financial institutions" under Section 143(f) of the LGC of 1991 LGC and Section 423 of Ordinance No. 158-05, series of 2005, of Davao City.

WHEREFORE, the Petition for Review filed by petitioner Soriano Shares, Inc. on December 16, 2016, is hereby **GRANTED**. The assailed Decision of July 22, 2016 and the Resolution of November 7, 2016, are **REVERSED** and **SET ASIDE**. Accordingly, the local business tax assessed against petitioner in the amount of One Million Two Hundred Forty-Nine Thousand Seven Hundred Ninety-Seven and 64/100 Pesos (P1,249,797.64), representing 0.55% local business tax for the third and fourth quarters of 2011 on the dividends derived from its SMC shares of stock and interests on its money market placements earned in 2010 is **CANCELLED and SET ASIDE**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(With due respect, please see D.O.)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

ON LEAVE
CAESAR A. CASANOVA
Associate Justice

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

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that conclusions in the above Decision were reached in consultation among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SORIANO SHARES, INC.,
Petitioner,

CTA EB No. 1556
(CTA AC No. 141)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan JJ.

- versus –

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

Promulgated:

APR 18 2018 1:05 p.m.

x---x

DISSENTING OPINION

CASTAÑEDA, JR., J.:

With due respect, I dissent to the conclusion reached by the *ponencia* that the instant Petition for Review should be granted, primarily on the ground that respondent is not a non-bank financial intermediary.

In concluding that respondent is a non-bank financial intermediary, the subject Decision states that:

> "The record also betrays respondents' failure to present clear and credible evidence, let alone discussion, that petitioner

> falls within the definition of a non-bank financial intermediary or an investment company. And this was also apparent during the proceedings in the RTC, despite sufficient opportunity.
>
> The record is likewise bereft of any indication that petitioner was authorized by the BSP to perform quasi-banking activities as a non-banking financial intermediary. Neither is there any hint or finding by the Monetary Board that petitioner is a non-bank financial intermediary. Under the General Banking Act, the authority to determine whether a person or entity is performing banking or quasi-banking functions or engaged in other type of financial intermediation is vested in the Monetary Board."

However, I am more inclined to agree with the conclusion reached by the Court in Division, as follows:

> "Based therefrom, the Court is in unison with the RTC in its findings quoted below:
>
> > 'Coming to the merits of the case, the records show that petitioner's business operations consist solely of stock investments and money placements in San Miguel Corporation. Consequently, by holding a substantial number of shares of stock; and thus, receiving dividends as return of such investment and interest income from the petitioner's money market placements in San Miguel Corporation, the Court finds that the same clearly constitutes an act of investment or doing business which make them fall under the definition of a non-banking financial intermediary.
> >
> > While it may be true that petitioner's Amended Articles of Incorporation prohibits the corporation to act as an investment company, the Court finds that the records prove the contrary.
> >
> > The evidence submitted reveals that petitioner owns and invests in the shares of stock of San Miguel Corporation. It also has money placements in the said company as its principal and actual function or business operation. As raised by the respondents, based on the tax audit made by the latter, the petitioner has no other business operation and source of revenue apart from owning shares of stock of San Miguel Corporation and

> making money placements therein. This fact was not rebutted by the petitioner.
>
> Stemming therefrom, the Court finds that the respondents may validly assess the petitioner for 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.'
>
> Accordingly, based on the foregoing definition and petitioner's acts of investing in equity securities, holding of assets consisting of shares of stocks and placement of funds in SMC on a regular and recurring basis explicitly affirms the conclusion that petitioner is a non-bank financial intermediary whose income may, therefore, be subjected to business tax under Section 143 (f) of the LGC of 1991, as amended."

Considering that petitioner performed acts of a non-bank financial intermediary, *i.e.*, investment in equity securities and money market placements, I do not see any reason why it should not be considered as a non-bank financial intermediary.

Furthermore, not being authorized by the BSP to act as a non-bank financial intermediary should not be a basis for concluding that respondent is not a non-bank financial intermediary. To my mind, this requirement is a mere regulatory measure by the BSP rather than a criterion for determining what entity is considered as a non-bank financial intermediary. Whether respondent is a non-bank financial intermediary cannot be based on a finding that it is not authorized by the BSP to act as such. It is clear in this case that respondent's income emanates only from dividends and interest income from money market placements, which it could not have earned if it does not act as a non-bank financial intermediary without, however, authority from the BSP.

In connection to the above discussion, there is also no guarantee that a holding company will not act as a non-bank financial intermediary despite the limitations provided in its Articles of Incorporation (AOI). As the saying goes – *action speaks louder than words*. As discussed earlier, petitioner's acts clearly constitute acts of a non-bank financial intermediary. Obviously, petitioner's actions spoke louder than its AOI, such that it engaged in acts contrary to what was set forth therein.

Finally, Section 143 of the LGC of 1991 pertinently states:

> "**Section 143. Tax on Business.** — The municipality[1] 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 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 premium." *(Emphasis supplied)*

Section 143(f) of the LGC of 1991 imposes local business tax **on banks and other financial institutions**, *i.e.*, non-bank financial intermediaries. In other words, while the tax bases of Section 143(f) consist of interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, and insurance premium, the tax is imposed directly on banks and other financial institutions. It directly imposes business tax on the entity and not on the sources of gross receipts.

In the instant case, while San Miguel Shares had already been adjudged by the Supreme Court as belonging to the government, it is not directly the said shares, but respondent as a non-bank financial intermediary, who is subject to local business tax. Simply put, the dividends and interest income from these shares are mere tax bases under Section 143(f) of the LGC of 1991. Ultimately, however, it is respondent against whom the local business tax is levied upon.

Considering the foregoing, I **VOTE** to **DENY** the instant Petition for Review.

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

---

[1] The city, may levy the taxes, fees, and charges which the province or municipality may impose, in accordance with Sec. 151, LGC of 1991.