REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MAKATI CITY AND NELIA A. BARLIS, in her capacity as Incumbent City Treasurer of Makati City, Petitioners,	**C.T.A. AC NO. 146** (Civil Case No. 13-089 RTC-Branch 65, Makati City)
- versus -	Members: **CASTAÑEDA, JR.,** *Chairperson, and* **CASANOVA,** *JJ.*
MAYNILAD WATER HOLDING COMPANY (formerly DMCI-MPIC WATER COMPANY, INC.), Respondent.	Promulgated: OCT 25 2016 3:40 p.m

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DECISION

CASANOVA, *J.*:

Before Us is an appeal, by way of Petition for Review, filed by petitioners-Makati City and Nelia A. Barlis (in her capacity as incumbent City Treasurer of Makati City), from the Decision dated March 23, 2015 (the "Assailed Decision")[1] and Order dated August 3, 2015 (the "Assailed Order")[2], both rendered by Branch 65, Regional Trial Court, Makati City in Civil Case No. 13-089 entitled Maynilad Water Holding Company (formerly DMCI-MPIC Water Company) vs. Makati City and Nelia A. Barlis, in her capacity as incumbent City Treasurer of Makati City.

The Admitted Facts of the case, as stipulated by the parties in their Joint Stipulation of Facts and Issues[3], are as follows:

> "1. Plaintiff is a corporation organized under the laws of the Republic of the Philippines as a holding company, with Securities and Exchange Commission ('SEC') Registration No. CS200618052, approved by the SEC on November 16, 2006, with principal office

[1] RTC Docket, pp. 561-571
[2] Ibid, pp. 672-674
[3] Id., pp. 362-365

at the 3/F Dacon Building, 2281 Don Chino Roces Avenue, San Lorenzo Village, Makati City.

2. Plaintiff is authorized to 'acquire by purchase, negotiation or otherwise and to hold for investment or mortgage, pledge or otherwise deal with or dispose of stocks or bonds of Maynilad Water Services, Inc. ('Maynilad'); to aid any manner Maynilad, whose stocks, bonds or other obligations are held by the corporation; to do any other acts or things for the preservation, protection, improvement, or enhancement of the value of the stocks, bonds or other obligations of Maynilad and to exercise all rights, powers and privileges of ownership of every kind and description including the right to vote thereon, with the power to designate some entity or entities for that purpose from time to time to the same extent as natural persons might or could; provided it shall not engage as a stock broker or dealer of securities', as stated in the Articles of Incorporation.

3. Defendant City of Makati is a municipal corporation created by virtue of Republic Act No. 7854, 'An Act Converting the Municipality of Makati into a Highly Urbanized City to be Known as the City of Makati'.

4. Defendant Hon. Nelia A. Barlis ('Defendant City Treasurer') is the Incumbent City Treasurer of Makati City and holds office at the City Treasurer's Office, Makati City Hall, J.P. Rizal St., Brgy. Poblacion, Makati City, Metro Manila.

5. That the Revised Makati Revenue Code took effect on January 1, 2006.

6. That in 2011, Plaintiff applied for a renewal of its business permit as a holding company and was issued Billing Assessment Form No. 0021911 dated January 22, 2011 by the Makati City Business Permits Office.

7. The LBT was assessed on the basis of the amount of dividend income earned by Plaintiff and reported in its financial statements for the year ending December 31, 2010.

8. On January 31, 2011, Plaintiff fully paid the amount assessed against it to Defendant City Treasurer, as shown by MKTCF No. 1197244.

9. On January 25, 2013, Plaintiff filed an administrative request for refund before the Defendant City Treasurer.

10. That Plaintiff elevated the matter to the Regional Trial Court of Makati on January 29, 2013, before the lapse of the two-year period granted by Section 196 of the LGC on January 30, 2013.

11. That Section 3A.02(p), in relation to Section 3A.02(g) and 3A.02(h), was never questioned in accordance with Section 7B.14 (Taxpayers Remedies) paragraph (d) of the Revised Makati Revenue Code, and therefore, remains to be valid.

12. That the case of Orleyte Company (Philippine Branch) v. The City of Makati, CTA Case No. 80, November 14, 2012, was decided on the basis of the old Makati Revenue Code and involved the taxable years 2001-2002, 2002-2003 and 2003-2004, which years occurred prior to the effectivity of the Revised Makati Revenue Code."

On March 23, 2015, the RTC, Branch 65 of Makati City, rendered the Assailed Decision directing herein petitioner to refund to respondent the amount of ₱1,112,374.80 representing local business taxes erroneously paid on January 31, 2011.

On June 19, 2015, petitioners filed their Motion for Reconsideration (of the Decision dated 23 March 2015), which was subsequently denied by the RTC, Branch 65, Makati City in the Assailed Order dated August 3, 2015.

Undaunted, petitioners filed the instant Petition for Review[4] on August 18, 2015 praying that the Assailed Decision dated March 23, 2015 and Assailed Order dated August 3, 2015, be reversed and set aside. Also, that petitioner's Petition for Review be granted and declare respondent not entitled to the refund being sought for.

On September 18, 2015, respondent filed its Comment (To Petitioners' Petition for Review)[5]. Subsequently, in compliance with this Court's Resolution dated October 19, 2015, requiring the parties to submit their simultaneous memoranda, petitioners filed their Memorandum[6] on November 23, 2015, while respondent filed its Memorandum[7] on November 24, 2015.

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[4] CTA Docket, pp. 8-32
[5] Ibid, pp.124-138
[6] Id., pp. 142-158
[7] Id., pp. 159-176

The case was deemed submitted for decision per Resolution[8] promulgated on December 2, 2015.

Hence, this Decision.

In its Petition for Review, petitioner submitted the following assignments of errors, to wit:

> A. Whether or not the Honorable Trial Court gravely erred in ruling that respondent is entitled to a refund of the local taxes in the amount of ₱1,112,374.80 allegedly because the imposition by the petitioners of the tax of 20% of 1% as referred to in Section 3A.02(h) of the Revised Makati Revenue Code on a holding company such as the respondent was not valid?
>
> B. Whether or not the Honorable Trial Court gravely erred in using the definition of "gross sales or receipts" under Section 1B.01 of the Revised Makati Revenue Code <u>instead</u> of the clear and direct definition of the term "gross sales or receipts" under Section 3A.02(h) of the Revised Makati Revenue Code?
>
> C. Whether or not the Honorable Trial Court gravely erred in ruling that the Court of Tax Appeals ("CTA") case of Orleyte Company (Philippine Branch) vs. The City of Makati (CTA Case No. 80, November 14, 2012) is applicable in the case at bar, because
>
> C.1 The Court of Tax Appeals ("CTA") did not classify petitioner in that case, Orleyte Company (Philippine Branch), as a "holding company, management service".
>
> C.2 The taxable years involved in that Orleyte case were 2001-2002, 2002-2003 and 2003-2004, and therefore, are covered under the Old Makati Revenue Code.
>
> D. Whether or not the Honorable Trial Court gravely erred when it failed to state in its Decision dated 23 March 2015 that respondent was not able to overcome the burden of proving that it is entitled to the refund being prayed for.

Respondent, in its Comment, counter-argues that:

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[8] Id., p. 196

"5.1. Section 3A.02(p) of the MRC clearly imposes LBT on respondent's gross receipts. The reference to Sections 3A.02(g) or (h) of the MRC in Section 3A.02(p) pertains only to the rates to be imposed and not to what constitutes gross receipts.

5.2. The imposition of LBT on passive income is allowed only with respect to banks and financial institutions. To impose the same on holding companies such as Respondent is considered a tax on income proscribed by the Local Government Code of 1991 ('LGC').

5.3. The MRC is strictly construed against Petitioners and liberally in favor of Respondent; and

5.4. Respondent was able to sufficiently show that it is entitled to its claim for refund.

As We have so often stated in a number of cases, the power of local government units to levy taxes, fees and charges emanates from Sec. 5, Article X of the 1987 Constitution, subject to the guidelines and limitations as Congress may provide. Sec. 5, Article X of the 1987 Constitution reads, thus:

"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."

Thus, Republic Act No. 7160 or the "Local Government Code" (LGC) of 1991 was enacted by Congress which empowered local government units to levy taxes, fees and charges subject to the common limitations enumerated under Section 133(a) of the LGC of 1991, which reads as follows:

"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:

(a) Income tax, except when levied on banks and other financial institutions;

xxx xxx xxx."

In the instant case, petitioner assessed respondent for local business tax based on the amount of dividend income earned by respondent as reported in its financial statements for the year ending December 31, 2010.

On January 31, 2011, respondent fully paid the amount assessed as evidenced by Official Receipt No. MKTCF 1197244[9] and, thereafter, filed an administrative claim for refund of the amount paid to the petitioner.

As correctly observed by the RTC, Makati City, Branch 65, the instant case is, basically, a claim for refund of the alleged erroneously paid local business tax on the dividend income of respondent for the year ending December 31, 2010.

The pertinent provisions applicable in resolving the issue on whether or not respondent is entitled to the claim for refund of its alleged erroneously paid local business tax are Sections 196 of the LGC of 1991 and Section 7 B.14(d) of the Revised Makati Revenue Code which are herein below, respectively, quoted, to wit:

> "SECTION 196. **Claim for Refund of 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 local 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."
>
> "SEC. 7B.14. **Taxpayer's Remedies**. -
>
> xxx xxx xxx
>
> (d) **Claim for Refund of 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. <u>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</u>. (Underscoring supplied)
>
> xxx xxx xxx."

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[9] Exhibit "5"

Going by the above-quoted provisions, and, as clearly stipulated by the parties in the Admitted Facts in their Joint Stipulation of Fact and Issues:

> "On January 31, 2011, Plaintiff fully paid the amount assessed against it to Defendant City Treasurer, as shown by MKTCF No. 1197244.
>
> On January 25, 2013, Plaintiff filed an administrative request for refund before the Defendant City Treasurer.
>
> That Plaintiff elevated the matter to the Regional Trial Court of Makati on January 29, 2013 before the lapse of the two-year period granted by Section 196 of the LGC on January 30, 2013."

Clearly, respondent's claim for refund of its erroneously paid local business tax was timely filed.

We now resolve the issue on whether or not respondent is entitled to its claim for refund of its erroneously paid local business tax on dividend income for the year ending December 31, 2010.

Petitioners argue that, as its very name suggests, respondent is a holding company clearly engaging in activities under Section 3A.02(h) of the Revised Makati Revenue Code and not under Section 3A.02(g); that, as its pieces of evidence would prove, Maynilad Water Holding Company engaged in activities which would qualify it to be taxed under Section 3A.02(h) of the Revised Makati Revenue Code.

Petitioners further argue that in the context of Section 3A.02(p), "Gross sales or receipts" refer to those earned from among other, interest, commissions, discounts from lending activities, income from (i) leasing (ii) investments (iii) dividends (iv) insurance premiums, profit from exchange of sale of property; that the Honorable RTC-Makati City, Branch 65 erred when it isolated the meaning of "gross sales or receipts" to Section 1B.01 of the Revised Makati Revenue Code as the term "gross receipts is clearly defined in Section 3A.02(h) of the Revised Makati Revenue Code which definition is similar to Section 143(f) of the Local Government Code of 1991.

Petitioners, likewise, contend that Section 133 of the Local Government Code does not prohibit a local government unit like Makati City from imposing taxes on holding companies which are similar to banks and other financial institutions; that the case of Orleyte Company is not applicable to the instant case as the CTA did not classify petitioner in the said case as a "holding company-management service" while in the case at bar, as admitted by respondent, it is a holding company and, thus, is correctly classified as such by petitioner; that respondent's present arguments cannot apply to the Orleyte case as the old Makati Revenue Code did not have similar provisions as that of the present Revised Makati Revenue Code on Holding Companies, i.e. Section 3A.02(p).

Finally, petitioners posit that tax refunds partake the nature of tax exemptions and are thus construed *strictissimi juris* against the person or entity claiming the exemption.

Respondent, on the other hand, contends that it is a holding company, hence, not subject to local business tax (LBT) imposed on banks and other financial institutions under Section 3A.02(h) of the Makati Revenue Code (MRC); that, holding companies, under the MRC, are taxed under Section 3A.02(p) thereof and nowhere in the said section is it stated that a holding company shall be taxed as a financial institution; that the reference to subsection (g) and (h) of Section 3A.02 merely pertains to the rate imposed on a holding company's gross sales and/or receipts. It does not, as in fact it cannot authorize, the imposition of LBT on a holding company's passive income as to do so would be tantamount to imposing a tax on income which is proscribed by the LGC.

A close scrutiny of Section 3A.02(p), in relation to Section 3A.02(g) and (h), of the Revised Makati Revenue Code, shows that respondent's argument is well-placed.

We reproduce herein below the provisions of Section 3A.02(p), (g) and (h) of the Revised Makati Revenue Code for ready reference, to wit:

> "SEC. 3A.02. Imposition of Taxes. – There is hereby levied an annual tax on the following business at rates prescribed therefore:
>
> xxx xxx xxx.
>
> (g) On Contractors and other independent contractors defined in SEC. 3A-01(t) of Chapter III of this Code; and on owners or operators of business establishments rendering or offering services such as; xxx xxx xxx
>
> (h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial

intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, investment house, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions, and discounts from lending activities, income from financial leasing, investments, dividends, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l)1, as provided in this code.

xxx xxx xxx

(p) On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year."

Clearly, respondent does not fall under the category enumerated in Section 3A.02(h), which was made the basis for the petitioner's assessment of local business tax on respondent's dividend income.

As shown in respondent's Amended Articles of Incorporation, its primary purposes are:

"A. To acquire by purchase, negotiation or otherwise and to hold for investment or mortgage pledge or otherwise deal with or dispose of stocks or bonds of Maynilad Water Services, Inc. ('Maynilad'); to aid in any manner Maynilad whose stocks, bonds or other obligations are held by the corporation, to do any other acts or things for the preservation, protection, improvement, or enhancement of the value of the stocks, bonds or other obligations of Maynilad and to exercise all the rights, powers and privileges of ownership, of every kind and description including the right to vote thereon, with the power to designate some entity or entities for that purpose from time to time to the same extent as natural persons might or could, provided it shall not engage as a stock broker or dealer of securities.

B. That the corporation shall have all the express powers of a corporation as provided for under Section 36 of the Corporation Code of the Philippines."

Nowhere in the above-quoted primary purposes of respondent can we see that it is a bank or financial institution which would justify petitioners' imposition of the local business tax on respondent's dividend income.

Moreover, in the following testimony of respondent's witness, Ms. Belma C. Fontanilla, it was categorically stated that respondent is a holding company and not an investment company or a financial lending institution (FLI), as claimed by petitioner, viz:

> "COURT:
> May I just interrupt, Atty. Zamora.
>
> Q. In that application for business renewal, how did you classify your company, Madam Witness, if you know? Is it a holding company or investment company?
>
> A. Holding company, Your Honor.
>
> Q. You classify it as a holding company?
>
> WITNESS:
> A. Yes, Your Honor.
>
> COURT:
> Q. And you know that for a fact?
>
> A. Yes, Your Honor."[10]

In fact, Ms. Stella Marie Sarasola Perry, petitioner's own witness, testified on cross examination, that, indeed, respondent is a holding corporation and not a bank nor a financial institution, viz:

> "Q. Subsection (h) provides that there should be levies and annual tax on owners and operators of banks, other financial institution, offshore banking, non-bank, financial intermediaries and the like; in this case Ms. Witness, would you classify DMWCI as an investment company?
>
> A. The DMCI-MPIC Water Corporation applied with the city government of Makati as a holding

[10] TSN, June 26, 2014 hearing, p. 14, RTC Docket, p. 535

company with their named activity as investment.

Q. So, in this case, my question is; would you say that DMCI-MPCI is a bank?

A. No.

Q. Would you say that it is a financial institution?

A. No.

Q. In fact, you said that it is a holding company.

A. Yes.

Q. Do you know the definition of a holding company?

A. Yes, ma'am.

Q. Could you state, under the Makati Revenue Code, do you know the definition, more or less?

A. It is a company which has its subsidiaries."[11]

The question now is whether or not petitioner's assessment of respondent for LBT under Section 3A.02(h) of the Makati Revenue Code has factual and legal bases?

The answer is in the negative.

Going by respondent's primary purpose as appearing in its Amended Articles of Incorporation and the testimonies of both petitioner and respondent's witnesses, it was clearly established that, indeed, respondent is a holding company and not a bank or financial lending institution, as erroneously categorized by petitioner. Thus, there was no factual nor legal basis in assessing respondent for LBT based on the dividend income it received as stated in its Financial Statement for 2010.

In the case of *Michigan Holdings, Inc. vs. The City Treasurer of Makati, Nelia A. Barlis*[12], We had already ruled that dividend income is not subject to

[11] TSN, October 1, 2014, pp. 11-12, RTC Docket, p. 620

local business tax except when levied on banks and other financial institutions.

We, thus, uphold our ruling therein and quote hereunder the relevant portion thereof, viz:

> **Dividend Income Not Subject to Local Business Tax**
>
> Section 133(a) of the Local Government Code expressly provides that the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax, except when levied on banks and other financial institutions.
>
> Section 131(e) of the LGC defines 'banks and other financial institutions' 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.' This enumeration appears to be exclusive of other entities. Nowhere in the entirety of Section 131 is a holding company mentioned. However, this, by itself, does not place holding companies beyond the reach of local taxation, except on their income.
>
> Section 143 of the Local Government Code is the law on local business taxes. Subsection (f) thereof expressly allows local taxation on banks and other financial institutions on their income from dividends, based on gross receipts of the preceding calendar year. What Section 3A.02(h) of the Revised Makati Revenue Code did was to expand the taxpayer base to encompass 'owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, moneyshops, insurance companies, stock markets, stock brokers, dealers in securities, including pre-need companies, foreign exchange.' The Treasurer of Makati City, while invoking this Section 3A.02(h), made it applicable to holding companies, such as Michigan Holdings, by virtue of Section 3A.02(p), which provides that holding companies 'shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/ or receipts during the preceding calendar year.'

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[12] CTA EB No. 1093 (CTA AC No. 99), June 17, 2015

Section 3A.02(h) of the Revised Makati Revenue Code, which took effect on January 1, 2006, imposes a local business tax on the dividend income of certain taxable entities. Section 3A.02(p) makes holding companies liable for this business tax.

'Section 3A.02(p). On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h) of the gross sales and/ or receipts during the preceding calendar year.'

Thus, Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code, violates the limit set by Section 133(a) of the Local Government Code.

Indeed, if the business of a holding company is in the same class as that of a bank or other financial institutions, the Makati City tax ordinance could simply have included holding companies in its Section 3A.02(h), instead of placing them all by themselves in Section 3A.02(p) and then making the tax rates in either Section 3A.02(h) or (g) applicable to them. That holding companies, exclusively, were placed in a separate section, shows that they comprise a category distinct from the class of 'banks and other financial institutions' as defined by Section 131(e) of the LGC. That holding companies were subjected to a tax on dividend income which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions, shows a deliberate intent to circumvent the prohibition laid down by Section 133(a) that the taxing powers of LGUs shall not extend to the levy of income tax, except on banks and other financial institutions.

There is more.

Section 27 (D) of the National Internal Revenue Code deals with rates of tax on certain passive incomes. Subsection (4) thereof, covering intercorporate dividends, states that 'Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax' - meaning corporate income tax. Dividends are instead subject, under Section 27(D)(1), to "a final tax at the rate of twenty percent (20%).

> 'Under Section 27(D)(4) of the Tax Code, dividends received by a domestic corporation from another corporation are not subject to the corporate income tax. Such intracorporate dividends are some

of the passive incomes that are subject to the 20% final tax, just like interest on bank deposits. Intracorporate dividends, being already subject to the final tax on income, no longer form part of the bank's gross income under Section 32 of the Tax Code for purposes of the corporate income tax.'

Thus, Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code, likewise violates Section 27(D)(4) of the National Internal Revenue Code.

Section 3A.02(p) of the Revised Makati Revenue Code is thus an ultra vires exercise of local taxing power, and cannot be given effect without violating the principle that an ordinance can neither amend nor repeal but must conform to a statute."

WHEREFORE, premises considered, the Petition for Review is **DENIED**. The Assailed Decision dated March 23, 2015 and Assailed Order dated August 3, 2015, both rendered by Branch 65, Regional Trial Court of Makati City in Civil Case No. 13-089 entitled Maynila Water Holding Company (formerly DMCI-MPIC Water Company) vs. Makati City and Nelia Barlis, in her capacity as incumbent City Treasurer of Makati City, are both hereby **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

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

ATTESTATION

I attest 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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ROMAN G. DEL ROSARIO
Presiding Justice