REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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

-*versus*-

ALLONS HOLDINGS, INC.,
Respondent.

CTA EB NO. 2146
(CTA AC No. 195)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
SEP 01 2020 2:40pm

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DECISION

MANAHAN, J.:

This is a Petition for Review of the Decision dated May 15, 2019 and the Resolution dated September 12, 2019 rendered by the Court in Division which held that respondent Allons Holdings, Inc. cannot be taxed as a holding company, nor considered as a bank or a financial institution nor a non-bank financial intermediary.

FACTS

The facts as found by the Court in Division are as follows:

> Petitioner Makati City is a local government unit empowered under the Local Government Code (LGC) to assess and collect local business tax through co-petitioner City Treasurer. Both petitioners may be served with summons, notices and other court processes at Makati City Hall, J.P. Rizal Street, Makati City.

Respondent Allons Holdings, Inc., on the other hand, is a domestic corporation, with principal place of business at 5th Floor, ENZO Building, 399 Sen. Gil Puyat Avenue, Makati City. Per its Articles of Incorporation, its principal activity is to own, hold, purchase, subscribe for, or otherwise acquire and own, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock.

On September 17, 2014, respondent received from petitioner City Treasurer of Makati a Notice of Assessment dated September 16, 2014, for deficiency business taxes, fees and charges in the aggregate amount of P1,194,870.62, covering the taxable years (TYs) 2011, 2012, and 2013.

Respondent protested the said assessment in a letter dated September 23, 2014 on the grounds that it could not be taxed as a holding company, neither could it be taxed similar to banks and other financial institutions; that it was not engaged in business activity liable to Local Business Tax (LBT); and it had no taxable gross sales/receipts.

In her Letter dated October 7, 2014 received on October 9, 2014, petitioner City Treasurer denied respondent's protest holding that she deemed the latter a holding company, not a bank or a financial institution, which activity is taxed under the Revised Makati Revenue Code (RMRC).

Respondent moved for reconsideration but it was denied in a Letter dated October 15, 2014, it received on even date.

Respondent [sought] judicial relief with the RTC of Makati on November 10, 2014 *via* a Petition for Review, docketed as Civil Case No. 14-1183.

On September 14, 2017, the RTC rendered the assailed Decision granting respondent's Petition for Review and declaring the assessment issued by the City Treasurer of Makati cancelled and set aside. In finding for respondent, the court *a quo* ratiocinated that respondent could not be considered as a bank or a financial institution, neither a non-bank financial intermediary. Respondent did not hold itself out as a

> non-banking financial intermediary, hence, local business tax could not be imposed against the interest and dividends it received.
>
> Petitioners assailed the said ruling and moved for reconsideration which was denied in the equally assailed Order dated December 29, 2017.[1]

Petitioners appealed the RTC Decision and Order to the Court of Tax Appeals, which appeal was denied by the Special Third Division. In its Decision dated May 15, 2019, the Court in Division disposed of the case, as follows:

> **WHEREFORE**, the instant *Petition for Review* is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision dated September 14, 2017 and the Order dated December 29, 2017, rendered by the Regional Trial Court Branch 142, Makati City, in Civil Case No. 14-1183 entitled *"Allons Holdings, Inc. vs. City of Makati and the Office of the City Treasurer"*, are hereby **AFFIRMED**.
>
> **SO ORDERED**.[2]

Petitioners' Motion for Reconsideration (Re: Decision dated 15 May 2019) was likewise denied.[3]

On October 1, 2019, petitioners filed their *Petition for Review (En Banc)*[4] with the Court *En Banc*.

On October 30, 2019, respondent filed its *Comment/Opposition (to the Petition for Review dated 01 October 2019)*.

Without requiring the submission of memoranda, the case was deemed submitted for decision on November 20, 2019.[5]

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[1] *Rollo*, CTA EB No. 2146, Division Decision dated May 15, 2019, pp. 22-23.
[2] *Rollo*, Division Decision dated May 15, 2019, p. 38.
[3] *Rollo*, Division Resolution dated September 12, 2019, pp. 40-42.
[4] *Rollo*, pp. 1-17.
[5] *Rollo*, Resolution dated November 20, 2019, pp. 144-145.

ISSUES

Petitioners assign the following errors:

A. With due respect, respondent can be taxed under Section 3A.02(h) of the Revised Makati Revenue Code, including local business taxes on its dividend and interest income.

B. Section 3A.02(p), in relation to Sections 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.

Parties' arguments

Petitioners claim that respondent declared and classified itself as a holding company in its applications for business permits and licenses with the City of Makati. Petitioners state that respondent was taxed as a holding company under Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC; and, that Section 3A.02(p) was never questioned and therefore remains to be valid. Finally, petitioners state that tax assessments made by tax examiners are presumed correct and made in good faith.

On the other hand, respondent states that the present *Petition for Review* is a rehash of petitioners' Petition for Review dated January 2, 2018, Memorandum dated May 2, 2018, and Motion for Reconsideration dated May 27, 2019. Respondent argues that the RTC and the CTA Division correctly held that respondent should not be taxed as a holding company under the RMRC. Respondent further alleges that it is not engaged in any business activity to be liable to local business tax. Thus, respondent prays that the petition for review be denied.

RULING OF THE COURT

The petition for review lacks merit.

The Petition for Review was timely filed.

On September 19, 2019, petitioners received the Resolution dated September 12, 2019 denying their *Motion for Reconsideration (Re: Decision dated 15 may 2019)*.[6]

Pursuant to Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals (RRCTA), petitioners had fifteen (15) days from September 19, 2019, or until October 4, 2019, within which to file their petition for review with the Court *En Banc*.

On October 1, 2019, petitioners timely filed the subject *Petition for Review (En Banc)*.

There is no compelling reason to reverse nor modify the assailed Decision and Resolution of the Court in Division.

As found by the Court in Division in resolving petitioners' *Motion for Reconsideration (Re: Decision dated 15 May 2019)*, petitioners have not raised any new or substantial ground to justify a departure from the previous conclusion and findings of the Court. Indeed, petitioners merely submit verbatim arguments which have already been resolved and passed upon by both the RTC and the Court of Tax Appeals in Division.

Petitioners insist that respondent is a holding company and that it is being taxed under Section 3A.02(p) of the RMRC, in relation to Section 3A.02(h) of the same code.

Without going into whether respondent is indeed a holding company or not, it is sufficient to discuss that petitioners' imposition of local business tax on the dividend and interest income of a holding company violates the limits set by Section 133(a) of the LGC. This was discussed in *Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis*,[7] where it was held:

> **Dividend Income Not Subject To Local Business Tax**

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[6] Docket, CTA AC No. 195, p. 227.
[7] CTA EB No. 1093, June 17, 2015.

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, 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 houses, 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."

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.

xxx xxx xxx

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 Revenue 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 the 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. (*citations omitted*)

While local government units, such as petitioners, have the power to create their own sources of revenues and to levy taxes, fees and charges, such power is not absolute. Thus, in the instant case, the taxation of the dividend and interest income of a holding company is not within the powers granted to a local government unit.

WHEREFORE, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(See Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ROMAN G. DEL ROSARIO
Presiding Justice

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MAKATI CITY AND THE OFFICE OF THE CITY TREASURER, *Petitioners,*	**CTA EB NO. 2146** (CTA AC No. 195)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
ALLONS HOLDINGS, INC., *Respondent.*	**Promulgated:** SEP 01 2020 2:40pm

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CONCURRING OPINION

DEL ROSARIO, P.J.:

The issue involved in the present controversy, that is, on whether a holding company may be subjected to local business tax (LBT) on its dividends and interest income, is no longer novel.

In ***City of Davao and Bella Linda N. Tanjili, in her official capacity as City Treasurer of Davao City vs. Randy Allied Ventures, Inc.***,[1] the Supreme Court, through the eloquent *ponencia* of the Honorable Associate Justice Estela M. Perlas-Bernabe, declared in no uncertain terms that the LBT imposed under Section 143(f)[2] of the Local Government Code (LGC),[3] is premised on the

[1] G.R. No. 241697, July 29, 2019.
[2] Section 143. Tax on Business. — The municipality may impose taxes on the following businesses: (a) 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.
[3] Republic Act No. 7160.

fact that the persons made liable for such tax are banks or other financial institutions by virtue of their being engaged in such business. Randy Allied Ventures, Inc.'s management of the dividends from San Miguel Corporation (SMC) preferred shares, including placing the same in a trust account yielding interest, is not tantamount to doing business whether as a bank or other financial institutions; rather it was engaged in an activity that is essential to its nature as a holding company. Accordingly, the Supreme Court declared that Randy Allied Ventures, Inc. is not liable for the LBT imposed under Section 143 (f) of the LGC. It went further to hold that its pronouncement is without prejudice to Randy Allied Ventures, Inc.'s potential liability for other taxes, whether national or local, should it so engage in other profit-making activities aside from its management of the SMC preferred shares, and the dividends resulting therefrom.

Applying the foregoing to the case at bar, there being no evidence indicating that respondent engaged in activities of a bank or other financial institutions, respondent -- being a holding company -- cannot be held liable for the LBT imposed under Section 143(f) of the LGC and Sections 3A.02 (p), in relation to Section 3A.02 (h), of the Revised Makati Revenue Code.

All told, I VOTE to DENY the Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice