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

***EN BANC***

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|---|---|
| **CITY OF DAVAO and BELLA LINDA N. TANJILI in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City,** | **CTA *EB* NO. 1591** (CTA AC No. 160) |
| *Petitioners,* | Present: |
| *-versus-* | **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.* |
| **RANDY ALLIED VENTURES, INC.,** | Promulgated: |
| *Respondent.* | FEB 20 2018 10:43a.m. |

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## D E C I S I O N

**MANAHAN, J.:**

Before the Court *En Banc* is a Petition for Review, pursuant to Rule 8, Section 3(b)[1] of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking the reversal and setting aside of the Decision and Resolution, dated August 9, 2016 and December 15, 2016, respectively, of the Court's First Division (Court in Division). The assailed Decision granted respondent Randy Allied Ventures, Inc.'s claim for refund of

[1] Rule 8. Procedure in Civil Cases
Section 3. Who may appeal; period to file petition.
xxx xxx xxx
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

erroneously paid local business taxes on dividends and interests for the 1st and 2nd quarters of taxable year 2011, and later affirmed in the assailed Resolution.

## The Facts

Petitioner City of Davao, represented by the City Mayor, is a local government unit established and operating under the existing laws of the Republic of the Philippines, with its official address at City Hall, City Hall Drive, Davao City. While co-petitioner, City Treasurer of Davao City is represented by Ms. Bella Tanjili, the newly designated Officer-in-Charge of the City Treasurer's Office after the retirement of Mr. Rodrigo S. Riola, with the same address as above stated.[2] Collectively, they are referred to as petitioners or *City of Davao, et al.*

Respondent Randy Allied Ventures, Inc. (RAVI) is an entity duly organized and existing under Philippine laws with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City.[3]

The relevant antecedents[4] as found by the Court in Division are as follows:

> On January 17, 2013, [RAVI] filed a petition docketed as Civil Case No. 34,853-2013 before the [Regional Trial Court] claiming refund or credit of local business taxes erroneously and illegally collected by [petitioners] for the taxable year 2010 (*sic*).
>
> [RAVI] claims [petitioners] erroneously and illegally collected business tax in the amount of P503,346.00 from [RAVI]'s dividends from San Miguel Corporation (SMC) preferred shares and interest on its money market placement on the ground that it is not a bank or financial institutions (*sic)*
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> In their Answer, [*City of Davao, et al.*] claim that [RAVI] is not entitled to the relief demanded on the ground that the assessment and collection of local business tax was made in accordance with existing law and ordinance; that they took into consideration the nature of [RAVI]'s business operation and deemed

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[2] *Rollo*, CTA EB No. 1591, Petition for Review (PFR), p. 10.
[3] *Rollo*, PFR, pp. 10-11.
[4] *Rollo*, Decision dated August 9, 2016, pp. 28-30.

[RAVI] as "other financial institutions"; that [RAVI] is a holding company, owning shares of stock, receiving dividends and interest income from its money placement market, which constitute an act of investing or doing business within the definition of "non-bank financial intermediaries".

On January 21, 2014, [RAVI] filed its Pre-Trial Brief. [*City of Davao, et al.*], on the other hand, filed their Pre-Trial Brief on February 14, 2014. Thereafter, in an Order dated February 18, 2015, the Court noted the Joint Stipulation of Facts and Issues (JSFI) filed by the parties and directed them to submit their respective memoranda.

On March 20, 2015, [*City of Davao, et al.*] submitted their Memorandum, while [RAVI] submitted its Memorandum on April 7, 2015.

On June 22, 2015, the Court *a quo* promulgated its Decision, the pertinent portions of which read as follows:

> In short, these **dividends and interest** are not considered incidental to its business quest, but are the **principal** (defined above as: **Principal** shall mean, chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental) incomes of [respondent]'s Corporation in the regular course of business in line with the Primary Purpose of its Amended Articles of Incorporation.
>
> As such, being categorized as a **Financial Intermediary**, [RAVI]'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*:
>
> xxx xxx xxx
>
> **FOR REASONS STATED**, the instant "Petition for Tax Refund or Credit under Section 156, R.A. 7160" filed by [RAVI] is

> hereby **DENIED** and/or **DISMISSED**. (*Emphasis and underscoring in the original*)
>
> [RAVI] filed a Motion for Reconsideration. Said motion was denied for lack of merit in a Resolution dated September 11, 2015; hence, the present petition was filed.

RAVI's petition for review, appealing the Regional Trial Court (RTC)'s Decision, was filed before the Court in Division on November 9, 2015 and docketed as CTA AC No. 160. After submission of the *City of Davao, et al.*'s Comment, the Court in Division rendered the assailed Decision dated August 9, 2016, which reversed the RTC Decision, as follows:

> WHEREFORE, premises considered, the Petition for Review is hereby GRANTED. The Decision of the Regional Trial Court, Branch 16 of Davao City docketed as Civil Case No. 34,853-13, dated June 22, 2015, and its Resolution dated September 11, 2015, are REVERSED and SET ASIDE. [Petitioner] City of Davao is DIRECTED to refund or credit to [respondent] the amount of P503,346.00 representing the erroneous payment of local business tax for the first and second quarter of 2011. No pronouncement as to costs.[5]

*City of Davao, et al.*'s Motion for Reconsideration was denied in the Court in Division's Resolution dated December 15, 2016.

On February 23, 2017, the Court received the subject Petition for Review[6] filed through registered mail on February 9, 2017. Respondent RAVI filed its Comment (On Petitioners' Petition for Review dated 9 February 2017) on April 6, 2017.[7]

On May 4, 2017, the Court *En Banc* required the parties to submit their respective memoranda.[8] On July 4, 2017 and July 5, 2017, the Court received petitioners' Memorandum,[9] cm

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[5] *Rollo*, Decision dated August 9, 2016, pp. 43-44.
[6] *Rollo*, pp. 9-25.
[7] *Rollo*, pp. 77-105.
[8] *Rollo*, pp. 108-109.
[9] *Rollo*, pp. 110-127.

and respondent's Memorandum,[10] respectively, with both pleadings filed through registered mail.

Thus, on July 24, 2017, the instant case was deemed submitted for decision.[11]

### Issue

Petitioners raise the sole issue of:

> Whether or not Randy Allied Ventures, Inc. is a "non-bank financial intermediary", falling under the category of "bank and other financial institutions", so as to be subject to local business tax (LBT) imposition, as provided under Section 143(f) of RA 7160, otherwise known as the "Local Government Code of 1991".[12]

### Petitioners' Arguments[13]

Petitioners argue that respondent is deemed a "bank and other financial institution", specifically as a "non-bank financial intermediary (NBFI) or an investment company" by virtue of its investment and money placements in San Miguel Corporation (SMC); that the business purpose of respondent as contained in its amended Articles of Incorporation (AOI) is wittingly or unwittingly broad enough to catch all the descriptive function of an NBFI as provided under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP); that respondent's AOI stating that it shall not act as investment company or securities broker or dealer is not conclusive proof that it is not a "bank and other financial institution"; that being a stock corporation, respondent is presumed to have been organized to engage in business with the end in view of a profit, hence subject to LBT; and, that it is erroneous to classify respondent as a "holding company" simply based on the case of *Michigan Holdings, Inc. v. City Treasurer of Makati, Nelia A. Barlis* (CTA EB Case No. 1093).

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[10] *Rollo*, pp. 129-159.
[11] *Rollo*, pp. 163-164.
[12] *Rollo*, PFR, p. 14.
[13] *Rollo*, PFR, pp. 14-21.

## Respondent's Counter-Arguments[14]

Respondent argues that it is entitled to a refund or credit of the 0.55% LBT collected for the 1st and 2nd quarters of taxable year 2011 based on the dividend and interest income for the year 2010. Respondent states that pursuant to Section 133(a) of the Local Government Code of 1991 (LGC), it is illegal for petitioners to collect LBT on dividends and interest income of respondent because it is not a bank or a financial institution; that being a holding company, respondent's dividend and interest income are not subject to LBT; and, that respondent, including its SMC shares and income therefrom, are national government property exempt from LBT.

## Ruling of the Court

The petition lacks merit.

### The Court *En Banc* has jurisdiction over the present petition.

The Court in Division issued the assailed Resolution denying the *City of Davao, et al.*'s Motion for Reconsideration on December 15, 2016, which was received by petitioners on January 10, 2017.

Pursuant to Rule 4, Section 2(a)(2)[15], in relation to Rule 8, Section 3(b) of the RRCTA, the *City of Davao et al.* had fifteen (15) days or until January 25, 2017 within which to file their petition for review.

On January 25, 2017, the *City of Davao et al.* filed a motion for extension of time to file petition for review, praying for an additional fifteen (15) days from said date, or until February 9, 2017. [16] The Court *En Banc* granted the

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[14] *Rollo*, Comment (On Petitioner's Petition for Review dated 9 February 2017), pp. 80-102.

[15] Rule 4 Jurisdiction of the Court

Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; xxx

[16] *Rollo*, pp. 1-6.

extension,[17] and on February 9, 2017, petitioners filed the instant petition through registered mail, which was received by this Court on February 23, 2017. Hence, the Court *En Banc* has jurisdiction.

**There is no compelling reason to reverse or modify the Court in Division's Decision and Resolution.**

The Court *En* Banc finds that the arguments raised by petitioners have been evaluated and resolved by the Court in Division in the assailed Decision and Resolution. Further, the same issues have already been resolved by the Court *En Banc* in the recent case of *Fernandez Holdings, Inc. v City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City*, which involved the same class of corporations as in the instant case.[18]

*Randy Allied Ventures, Inc. is a holding company*

The *City of Davao, et al.* taxed respondent's dividend and interest income on the ground that respondent is classified as a "bank and other financial institution", or specifically as an NBFI, citing Section 143(f) of the LGC,[19] which provides:

> 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

[17] *Rollo*, p. 8.
[18] CTA EB No. 1531, December 5, 2017.
[19] Read in relation to Article III on Cities, specifically Sec. 151 of the same Code, which provides:

> Section 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: *Provided, however*, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of the Code.
>
> 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.

(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.

Thus, it is relevant to define banks, other financial institutions, and NBFIs under the applicable laws and regulations.

The term "banks and other financial institutions" is defined under Section 131(e) of the LGC, as follows:

> Section 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;

The term "non-bank financial intermediaries" is defined in Section 22(W) of the 1997 National Internal Revenue Code, as amended (NIRC), as follows:

> Sec. 22. Definitions. – When used in this Title:
>
> xxx xxx xxx
>
> (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.

Revenue Regulations No. (RR) 09-04[20] further defined an NBFI, as follows:

> Section 2. Definition of Terms. – For purposes of these Regulations, the terms enumerated hereunder shall have the following meaning:
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> xxx xxx xxx
>
> 2.3 *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.

Finally, the BSP Manual of Regulations for Non-Bank Financial Institutions (BSP Manual) provides the following definition of a financial intermediary:

> 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.
>
> Principal shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental. *cmv*

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[20] Implementing Certain Provisions of Republic Act No. 9238, Re-Imposing the Gross Receipts Tax on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions and other Non-Bank Financial Intermediaries beginning January 1, 2004, June 21, 2004.

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 in Items a to e of this Subsection.

From the foregoing definitions, an NBFI must meet the following requirements:

1) The person or entity is authorized by the BSP to perform quasi-banking functions;[21]

2) The principal functions of 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;[22] and

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

   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;

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[21] Section 131(e) of the LGC, in relation to Section 22(W) of the NIRC.
[22] Section 4101Q.1 of the BSP Manual of Regulations for Non-Bank Financial Institutions.

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

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.

In the instant case, petitioners failed to present any credible and convincing proof that respondent RAVI is an NBFI or has engaged in the activities of a financial institution or intermediary.

First, there is no indication that respondent was authorized by the BSP to perform quasi-banking activities as a non-bank financial intermediary.

Second, there is no indication that respondent is a financial intermediary or that it has actually engaged in the activities enumerated in the BSP Manual. Neither was it shown that respondent has held itself out nor advertised itself as an NBFI or as a lending, investing, or financing company.

Third, while respondent's primary purpose, as stated in its Amended AOI, may involve one of the activities enumerated in the BSP Manual, there was no proof that respondent performed these activities as its principal function and on a regular and recurring basis.

Fourth, an examination of respondent's primary purpose in its Amended AOI shows that respondent fits the definition of a holding company, rather than an NBFI. As quoted by the Court in Division, respondent's primary purpose states:

> To purchase, subscribe for, or otherwise acquire and own, hold, sell, assign, transfer, mortgage, pledge, cmv

> 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, bond 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 obligations, 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 <u>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</u>, 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.[23]

Respondent's primary purpose reflects its function as a "holding company", in consonance with the definition by the Securities and Exchange Commission (SEC), as follows:

> A holding company has been defined by the Commission in several opinions. <u>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.</u> The term "holding company" is equivalent to a parent corporation, <u>having such an interest in another corporation, or power of control, that it may elect its directors and influence management</u>. 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.[24]

Finally, the Supreme Court *En Banc* declared respondent as one of the fourteen holding companies funded by the coconut levy fund in *Philippine Coconut Producers Federation,*

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[23] *Rollo*, Decision dated August 9, 2016, pp. 35-36.
[24] SEC – Office of the General Counsel (OGC) Opinion NO. 15-15 dated November 3, 2015, addressed to Waterfront Philippines, Inc., citing SEC-OGC Opinion No. 14-32 dated November 10, 2014 and SEC-OGC Opinion No. 11-15 dated February 10, 2011.

*Inc. v. Republic of the Philippines* (*COCOFED case*),[25] which were formed or organized solely for the purpose of holding the San Miguel shares.

Respondent's status as a holding company having been established by the foregoing discussion, it is clear that respondent cannot be deemed included in "banks and other financial institutions" for the purpose of imposing the local business taxes thereon. This Court *En Banc* in *Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis,*[26] explained:

> 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.

As such, respondent cannot be made liable for local business tax imposed on "banks and other financial institutions" under Section 143(f) of the 1991 LGC. Thus, the local business tax assessment for the 1st and 2nd quarters of taxable year 2011 should be cancelled, and respondent's claim for refund of the LBT paid under protest should be granted.

*Randy Allied Ventures, Inc. was funded by public funds/assets and is therefore owned by the government*

It is also relevant that in the COCOFED case, the Supreme Court declared that respondent, among others, and the San Miguel shares it held are owned by the government. The Supreme Court explained as follows:

[25] G.R. Nos. 177857-58 & 178193, January 24, 2012.
[26] CTA EB No. 1093, June 17, 2015.

**V**
**The CIIF Companies and the CIIF Block of SMC shares are public funds/assets**

From the foregoing discussions, it is fairly established that the coconut levy funds are special public funds. Consequently, any property purchased by means of the coconut levy funds should likewise be treated as public funds or public property, subject to burdens and restrictions attached by law to such property. (*Underscoring supplied)*

In this case, the 6 CIIF Oil Mills were acquired by UCPB using coconut levy funds. On the other hand, the 14 CIIF holding companies are wholly owned subsidiaries of the CIIF Oil Mills. Conversely, these companies were acquired using or whose capitalization comes from the coconut levy funds. However, as in the case of UCPB, UCPB itself distributed a part of its investments in the CIIF oil mills to coconut farmers, and retained a part thereof as administrator. The portion distributed to the supposed coconut farmers followed the procedure outlined in PCA Resolution No. 033-78. And as administrator of the CIIF holding companies, the UCPB authorized the acquisition of the SMC shares. In fact, these companies were formed or organized solely for the purpose of holding the SMC shares. As found by the Sandiganbayan, the 14 CIIF holding companies used borrowed funds from the UCPB to acquire the SMC shares in the aggregate amount of P1.656 Billion.

Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds – funds, which have been established to be public in character – it goes without saying that these acquired corporations and assets ought to be regarded and treated as government assets. Being government properties, they are accordingly owned by the Government, for the coconut industry pursuant to currently existing laws. (*Underscoring supplied*)

It may be conceded hypothetically, as COCOFED *et al.* urge, that the 14 CIIF holding companies acquired the SMC shares in question using advances from the CIIF companies and from UCPB loans. But there can be no gainsaying that the same advances and UCPB loans are public in character, constituting as they do assets of the 14 holding companies, which in turn are wholly-owned subsidiaries of the 6 CIIF Oil Mills. And these oil mills were organized, capitalized and/or financed using coconut levy funds. In net effect, the CIIF block of SMC shares are simply fruits of the coconut levy funds acquired at the expense of the coconut industry. In *Republic v. COCOFED* the *en banc* Court, speaking through Justice (later Chief Justice) Artemio Panganiban, stated: "*Because the subject UCPB shares were acquired with government funds, the government becomes their prima facie beneficial and true owner.*" By parity of reasoning, the adverted block of SMC shares, acquired as they were with government funds, belong to the government as, at the very least, their beneficial and true owner.

xxx xxx xxx

WHEREFORE, the petitions in G.R. Nos. 177857-58 and 178793 are hereby DENIED. xxx

xxx xxx xxx

The Partial Summary Judgment in Civil Case No. 0033-F dated May 7, 2004, is hereby MODIFIED, and shall read as follows:

> WHEREFORE, the Motion for Execution of Partial summary judgment (re: CIIF Block of SMC Shares of Stock) dated August 8, 2005 of the plaintiff is hereby denied for lack of merit. However, this Court orders the severance of this particular claim of Plaintiff. The Partial Summary Judgment dated May 7, 2004 is now considered a separate final and appealable judgment with respect to the said CIIF Block of SMC shares of stock.
>
> The Partial Summary Judgment rendered on May 7, 2004 is modified by deleting the last paragraph of the dispositive portion, which will now read, as follows:
>
> > WHEREFORE, in view of the foregoing, we hold that: *[initials]*

> 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:
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> xxx xxx xxx
>
> As well as the 14 Holding Companies, namely:
>
> xxx
> 10. Anglo Ventures, Inc.;
> 11. Randy Allied Ventures, Inc.;
> 12. Rock Steel Resources, Inc.
> xxx (*Underscoring supplied)*
>
> AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALING 33,133,266 SHARES AS OF 1983 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID AND ISSUED THEREON AS WELL AS ANY INCREMENTS THERETO ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT TO BE USED ONLY FOR THE BENEFIT OF ALL COCONUT FARMERS AND FOR THE DEVELOPMENT OF THE COCONUT INDUSTRY, AND ORDERED RECONVEYED TO THE GOVERNMENT.
>
> xxx xxx xxx
>
> SO ORDERED.

The exercise of the taxing power of the local government units is subject to the limitations enumerated in Section 133 of the LGC, which includes having no power to impose any tax, fee or charge on the National Government: cmv

> SECTION 133. *Common Limitations on the Taxing Power 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.

Since the subject San Miguel shares of respondent, and respondent itself, are owned by the government, it follows that the dividends and any income therefrom are also owned by the government. Stated otherwise, respondent's dividend and interest income from its SMC shares belong to the government, and is beyond the taxing power of the petitioners *City of Davao, et al.* Any local tax imposed on respondent is imposed on the national government. To insist taxing the respondent would clearly be in contravention of Section 133(o) of the LGC.

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

**SO ORDERED.**

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

Juanito C. Castañeda, Jr.
(With Dissenting Opinion)
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

(I join Justice Castañeda's Dissenting Opinion)
**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
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

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

***EN BANC***

**CITY OF DAVAO ET AL.,**
Petitioners,

**CTA EB No. 1591**
(CTA AC No. 160)

Present:

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

*- versus –*

**RANDY ALLIED VENTURES, INC.,**
Respondent.

Promulgated:

FEB 20 2018 10:43 a.m.

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## 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 denied primarily on the ground that respondent is not a non-bank financial intermediary.

In concluding that respondent is a non-bank financial intermediary, the lower court found that:

> "To stress, the income of the Petitioner Corporation comes only from two sources, to wit:

> 1. ***Dividends from RAVI's SMC Shares; and***
> 2. ***Interest Income from RAVI's Money Market Placements***
>
> In short, these ***dividends and interests*** are not considered incidental to its business quest, but are the **principal** xxx incomes of Petitioner's Corporation in the regular course of its business in line with the Primary Purpose of its Amended Articles of Incorporation."[1]

However, the subject Decision did not take into account the said findings of the lower court. It states:

> "In the instant case, petitioners failed to present any credible and convincing proof that respondent RAVI is a NBFI or has engaged in the activities of a financial institution or intermediary.
>
> First, there is no indication that respondent was authorized by the BSP to perform quasi-banking activities as a non-bank financial intermediary.
>
> Second, there is no indication that respondent is a financial intermediary or that it has actually engaged in the activities enumerated in the BSP Manual. Neither was it shown that respondent has held itself out nor advertised itself as a NBFI or as a lending, investing, or financing company.
>
> Third, while respondent's primary purpose, as stated in its Amended AOI, may involve one of the activities enumerated in the BSP Manual, there was no proof that respondent performed these activities as its principal function and on a regular and recurring basis.
>
> Fourth, an examination of respondent's primary purpose in its Amended AOI shows that respondent fits the definition of a holding company, rather than a NBFI. xxx"

The subject Decision provides that there is no indication that respondent is a financial intermediary or that it has actually engaged in the activities enumerated in the BSP Manual. Yet, there is also nothing in the subject Decision that overturned the findings of fact of the lower court, *i.e.*, that respondent's income emanated only from dividends and interest income from money market placements. Precisely, these findings of fact are on record and are proof that respondent acts as a non-bank financial

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[1] Lower Court Docket, pp. 40-41.

intermediary. Considering that there is no contrary finding by the Court *En Banc*, the findings of fact of the lower court must be considered in arriving at the subject Decision.

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. Thus, a holding company may not have been included among the entities enumerated as banks and other financial institutions under Section 133(e) of the 1991 LGC, but it cannot be an assurance that a holding company will not engage in acts outside of its authority.

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

> "**Section 143. Tax on Business.** — The municipality[2] 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

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

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 **GRANT** the instant Petition for Review.

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