REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

SOUTH CHINA RESOURCES, INC. (NOW KNOWN AS "SOCRESOURCES, INC."), Petitioner,	**CTA AC NO. 196**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
OFFICE OF THE CITY TREASURER AND/OR MAKATI CITY, Respondents.	Promulgated: OCT 17 2018 : 10:01 am

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review[1] filed by South China Resources, Inc. (now known as "SOCResources, Inc.") praying that the Court render judgment reversing and setting aside the Decision dated October 11, 2017[2] and Order dated January 8, 2018,[3] issued by the Regional Trial Court (RTC), Branch 66, Makati City, in **SP. Proc. No. M-7835** entitled "*SOCResources, Inc. vs. Office of the City Treasurer and/or City of Makati*".

In the assailed Decision, the RTC dismissed **SP. Proc. No. M-7835** and upheld the validity of **Billing Assessment No. 019511 dated January 13, 2015** issued by the Business Permits Office of

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[1] Filed on February 12, 2018; CTA Docket, Vol. I pp. 8-34.
[2] SP. Proc. No. M-7835, RTC Docket, Vol. 3, pp. 911-917; Annex "P-1", CTA Docket, Vol. I, pp. 38-44.
[3] SP. Proc. No. M-7835, RTC Docket, Vol. 3, p. 951.

Makati City (BPOM) against petitioner. The assailed Order denied petitioner's Motion for Reconsideration for lack of merit.

THE PARTIES

Petitioner is a domestic corporation, duly organized and existing under Philippine laws, with principal office address at the 4th Floor Enzo Building, 399 Senator Gil Puyat Avenue, Makati City, Philippines.[4] In its Amended Articles of Incorporation,[5] petitioner's primary purpose is to engage in activities generally performed by "holding companies", *viz.*:

> "PRIMARY PURPOSE
>
> To invest in, purchase, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, in particular shares of stocks, voting trust certificates, bonds, debentures, notes, evidences of indebtedness of associations and corporations, domestic or foreign, including those of the Government of the Republic of the Philippines, or any of its instrumentalities, without being a stockholder or dealer, and to issue in exchange therefore shares of capital stock, bonds, notes, or other obligations and/or assets of the Corporation and while the owner thereof, to exercise all the rights, powers and privileges of ownership, including the right to vote any shares of stock or voting trust certificates so owned, and to do every act and thing that may be generally performed by entities known as 'holding companies.'"

Respondent Office of the City Treasurer of Makati City is an office of the City Government of Makati City, which is tasked to verify, assess, and collect taxes, fees, and charges. It may be served with notices, resolutions, and other papers at the Office of the Treasurer, Business Tax Division, Makati City Hall, J.P. Rizal St., Brgy. Poblacion, Makati City.

On the other hand, respondent City Government of Makati is a local government unit (LGU) established under Republic Act ("RA") No. 7854. It may be served with notices, resolutions, and other papers at the New Makati City Hall, J.P. Rizal St., Makati City.

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[4] Annex "P-5", Petition, CTA Docket, Vol. I, pp. 84-93.
[5] *Id.*

THE FACTS

On October 10, 2013, pursuant to Letter of Authority No. 2013-0502[6], respondents investigated and examined petitioner's financial documents. As a consequence thereof, respondent issued Notice of Assessment No. 13-00381 dated November 12, 2013, stating that petitioner was: (a) classified as a Manufacturer; (b) found to have gross sales amounting to ₱1,181,628.00, ₱51,498,529.00 and ₱34,267,356.00 for the years **2009, 2010 and 2011**, respectively;[7] and, (c) assessed for deficiency taxes, fees and charges purportedly amounting to ₱4,872,182.45.[8]

Petitioner assailed the Notice of Assessment in its Protest Letter dated December 21, 2013,[9] which was denied by respondent Treasurer in a Letter dated January 8, 2014.[10]

Thus, petitioner filed a Petition dated February 11, 2014[11] with the RTC, **Branch 66**, Makati City which was docketed as **Civil Case No. 14-165**.

During the pendency of Civil Case No. 14-165 in RTC Branch 66, petitioner received Billing Assessment Nos. 019510,[12] 019511,[13] and 019512[14] dated January 13, 2015 (collectively referred to hereafter as *"Billing Assessments"*). Under these Billing Assessments, petitioner was classified as a "Manufacturer OMF-NO", and it was assessed in the total amount of ₱981,478.90, consisting of Mayor's permit, city license, and other fees for **taxable years 2014 and 2015** and deficiency business taxes with increments for **taxable years 2013 and 2014**, broken down as follows:[15]

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[6] Annex "P-6", Petition for Review, CTA Docket, Vol. I, p. 96.
[7] Annex "P-7", Petition for Review, CTA Docket, Vol. I, p. 97.
[8] *Id.*
[9] Annex "P-8", Petition for Review, CTA Docket, Vol. I, pp. 98-104.
[10] Annex "P-9", Petition for Review, CTA Docket, Vol. I, pp. 105-106.
[11] Annex "P-10", Petition for Review, CTA Docket, Vol. 1, pp. 107-129.
[12] Exhibit "C", SP. Proc. No. M-7835, RTC Docket, Vol. 2, p. 174.
[13] Exhibit "C", SP. Proc. No. M-7835, RTC Docket, Vol. 2, p. 175.
[14] Exhibit "C", SP. Proc. No. M-7835, RTC Docket, Vol. 2, p. 176.
[15] Annex "B", Petition, SP. Proc. No. 7835, RTC Docket, Vol. 1, pp. 55-57; Par. 11, Petition, CTA Docket, Vol. I, p. 12.

Kind of Fee/Tax	Tax Base in PHP	Tax Amount in PHP	Surcharge/ Interest in PHP	Total in PHP
A. BILLING ASSESSMENT NO. 019510				
Tax for 2014				
Mayor's Permit				
Financial/Lending I		5,000.00	2,550.00	7,550.00
Manufacturer OMF-NO		6,000.00	3,060.00	9,060.00
Subtotal		**11,000.00**	**5,610.00**	**16,610.00**
City License				
Financial/Lending I	46,743,117.06	93,486.23	47,677.98	141,164.21
Manufacturer OMF-NO	0.00	0.00	0.00	0.00
Subtotal		**93,486.23**	**47,677.98**	**141,164.21**
Sanitary Fee		90.00	45.90	135.90
Garbage Fee		1,200.00	612.00	1,812.00
Signboard Fee		200.00	102.00	302.00
Engineering Fee		0.00	0.00	0.00
Individual MP Fee		300.00	0.00	300.00
Individual HC Fee		300.00	0.00	300.00
FSI Fee		1,229.00	0.00	1,229.00
Meat Inspection		0.00	0.00	0.00
Total		**107,805.23**	**54,047.88**	**161,853.11**
B. BILLING ASSESSMENT NO. 019511				
Tax for 2015				
Mayor's Permit				
Financial/Lending I		5,000.00	0.00	5,000.00
Manufacturer OMF-NO		6,000.00	0.00	6,000.00
Subtotal		**11,000.00**	**5,610.00**	**16,610.00**
City License				
Financial/Lending I	5,720,449.00	11,440.90	0.00	11,440.90
Manufacturer OMF-NO	0.00	0.00	0.00	0.00
Subtotal		**11,440.90**	**0.00**	**11,440.90**
Sanitary Fee		90.00	0.00	90.00
Garbage Fee		1,200.00	0.00	1,200.00
Signboard Fee		200.00	0.00	200.00
Engineering Fee		0.00	0.00	0.00
Individual MP Fee		300.00	0.00	300.00
Individual HC Fee		300.00	0.00	300.00
FSI Fee		1,229.00	0.00	1,229.00
Meat Inspection		0.00	0.00	0.00
C. BILLING ASSESSMENT NO. 019512				
Tax Deficit for 2013/1				
Actual Gross per F.S.	215,845,970.00	431,691.94		
Declared Gross	0.00	0.00		
Subtotal		**431,691.94**	**323,768.96**	**755,460.90**
Tax Deficit for 2014/1				
Actual Gross per F.S.	59,460,002.00	118,920.00		
Declared Gross	46,743,117.06	93,486.23		
Subtotal		**25,433.77**	**12,971.22**	**38,404.99**
Total		**482,885.61**	**336,740.18**	**819,625.79**
GRAND TOTAL		**590,690.84**	**390,788.06**	**981,478.90**

In a Letter dated February 2, 2015, petitioner requested for a recomputation of business taxes, asserting that: (i) its alleged deficiency business taxes for the **taxable year 2013** and its classification as "Manufacturer OMF-NO" are the **subject matter of another case, Civil Case No. 14-165**, and thus, **should not be included in the Billing Assessments**; and, (ii) its interest income and income from sale of investments are not income arising from services performed or to be performed for third persons, and thus, are not subject to local business tax.[16]

Respondent Treasurer, through City Administrator and Officer-in-Charge, Head of the BPOM Eleno M. Mendoza, Jr. **denied** petitioner's Letter Request in its Letter dated February 8, 2015.[17]

On February 13, 2015, petitioner paid under protest the deficiency fees and taxes assessed under the Billing Assessments in the total amount of ₱981,478.90.[18]

On March 13, 2015, petitioner filed its Protest Letter dated February 25, 2015, assailing the Billing Assessments and arguing that:

(i) it is a holding company and not a manufacturer;

(ii) as a holding company, petitioner's investments and interest income are not subject to local business tax as they are not in the nature of a "contract price, compensation or service fee" for "services performed or to be performed for another person" as defined under Section 1 B.01(g) of the Revised Makati Revenue Code (RMRC); and,

(iii) as a holding company, petitioner is not subject to the taxes imposed upon holding companies under Section 3A.02(p) of the RMRC, as it does not earn income for services performed similar to that of a contractor and is neither a bank nor a financial institution.[19]

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[16] Annex "D", Petition, SP. Proc. No. M-7835, RTC Docket, vol. 1, pp. 67-73; Par. 12, Petition, CTA Docket, Vol. I, p. 12.
[17] Annex "E", Petition, SP. Proc. No. M-7835, RTC Docket, vol. 1, pp. 114-115; Par. 13, Petition, CTA Docket, Vol. I, p. 12.
[18] Annex "F", Petition, SP. Proc. No. M-7835, RTC Docket, vol. 1, p. 116; Par. 14, Petition, CTA Docket, Vol. I, p. 12.
[19] Exhibit "G", SP. Proc. No. M-7835, RTC Docket, vol. 2, p. 229; Annex "C", Petition, SP. Proc. No. M-7835, RTC Docket, pp. 59-66; Par. 15, Petition, CTA Docket, Vol. I, pp. 12-13.

On June 11, 2015, petitioner filed its Petition dated June 10, 2015 before the RTC, Makati City, assailing the Billing Assessments issued by the BPOM assessing petitioner in the amount of ₱981,478.00[20] for failure of respondent Treasurer to resolve petitioner's protest letter dated February 25, 2015. The case was initially raffled to **RTC Branch 147**, Makati City, and docketed **as SP. Proc. No. M-7835**.[21]

In view of respondents' failure to file their Answer in **SP. Proc. No. M-7835** within fifteen (15) days from receipt of the summons issued by RTC Branch 147, petitioner filed a Motion to Declare Respondents in Default on January 6, 2016,[22] which was granted in an Order dated March 21, 2016.[23] Hence, respondents were declared in default and RTC Branch 147 allowed petitioner to present its evidence *ex parte.*[24]

On May 11, 2016, respondents filed their Motion for Reconsideration (to Set Aside Order of Default and to Admit Attached Answer).[25] The RTC Branch 147 granted the same in its Order dated June 30, 2016,[26] and admitted respondents' Answer dated May 11, 2016 in SP. Proc. No. M-7835.

During the pre-trial of SP. Proc. No. M-7835 on October 18, 2016, upon joint motion of the parties and considering that there was a possibility that the civil aspect of the case could be amicably settled, the case was sent to the Philippine Mediation Center for mediation on October 28, 2016. RTC Branch 147 also scheduled the case for Judicial Dispute Resolution (JDR) on December 7, 2016, in case the parties are unable to come up with a settlement. [27] Considering, however, that both the mediation[28] and JDR proceedings failed, the case was forwarded to the Office of the Clerk of Court for re-raffle.[29] **SP. Proc. No. M-7835 was subsequently re-**

[20] Billing Assessment reflects ₱981,478.90 and petitioner paid ₱981,478.90, but the Petition for Review and RTC Decision state ₱981,478.00.
[21] SP. Proc. No. M-7835, RTC Docket, vol. 1, pp. 1- 30.
[22] SP. Proc. No. M-7835, RTC Docket, vol.1, pp. 233-236.
[23] SP. Proc. No. M-7835, RTC Docket, vol. 1, p. 258
[24] *Id.*
[25] SP. Proc. No. M-7835, RTC Docket, vol. 1, pp. 260-271.
[26] SP. Proc. No. M-7835, RTC Docket, vol. 1, pp. 287-288.
[27] Order dated October 18, 2016, SP. Proc. No. M-7835, RTC Docket, p. 335.
[28] Mediator's Report, SP. Proc. No. M-7835, RTC Docket, vol. 1, p. 337.
[29] SP. Proc. No. M-7835, RTC Docket, vol. 2, p. 351.

raffled to RTC Branch 66, Makati City, where Civil Case No. 14-165 was pending.

At the pre-trial conference of **SP. Proc. No. M-7835** on March 20, 2017, the following stipulations and admissions of facts were incorporated in a corresponding Pre-Trial Order:[30]

"II. STIPULATIONS/ADMISSIONS OF FACTS:

1. That the petitioner is a holding company;

2. That petitioner's Articles of Incorporation, as amended, states that it[s] primary purpose:

   Is to invest in, purchase, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge and exchange, or otherwise dispose of real and personal property of every kind and description, in particular shares of stocks, voting trust certificates, bonds, debentures, notes, evidences of indebtedness of associations and corporations, domestic or foreign, including those of Government of the Republic of the Philippines, or any of its instrumentalities, without being a stockbroker or dealer, and to issue in exchange therefore shares of capital stock, bonds, notes or other obligations and/or assets of the Corporation and while the owner thereof, to exercise all the rights, powers and privileges of ownership, including the right to vote any shares of stock or voting trust certificates so owned, and to do every act and thing that may be generally be performed by entities known as "holding companies;" Admitted as long as it is stated in their Exhibits A and A-1;

3. That based on the Billing Assessment issued by the Business Permits Office (BPOM) on January 13, 2015, petition[er] was found to be liable for deficiency local business taxes and fees for the year 2013 and 2014;

4. That the Billing Permits Office issued the assailed Billing Assessment, which petitioner received on January 13, 2015;

5. That in said Billing Assessment, petitioner was classified as a "Manufacturer OMF-NO;" and assessed for deficiency local business taxes, fees and charges purportedly amounting to P981,478.00. This was partially admitted by the respondents considering that they were also billed based on another classification as an investment company, not just a manufacturer OMF-NO considering that there was a re-assessment of a business liability of SOCResources;

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[30] SP. Proc. No. M-7835, RTC Docket, vol. 2, pp. 364-367.

6. That in a letter dated February 2, 2015, addressed to the Business Permits Office, petitioner requested for a recomputation, assailing the Billing Assessment;

7. That on February 10, 2015, petitioner received a letter dated February 8, 2015 from the Business Permits Office which denied petitioner's request for recomputation;

8. That petitioner paid under protest the entire assessed amount on February 13, 2015;

9. That petitioner filed its Protest dated February 25, 2015, assailing the Billing Assessment;

10. That there is pending case docketed as Civil Case No. 14-165 before Branch 66, Regional Trial Court, Makati City, entitled South China Resources, Incorporation vs. Office of the City Treasurer and/or Makati City, covering respondents' classification of petitioner as "Manufacturer-OMF NO" and its alleged liability for deficiency business taxes for the taxable years 2010 and 2012. This was partially admitted by the respondents that there is a pending case but as to their classification as Manufacturer-OMF NO which the respondents did not admit considering that they assessed them as an investment company;

11. That the petitioner admitted as to the existence but not to the validity of the petition that Section 3A.02 (p) of the Revised Makati Revenue Code states: "Section 3A. 02 Imposition of Tax – There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

    x x x

    (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; and,

12. That the petitioner admitted as to the existence but not to the validity of the petition that Section 3A.02 (h) of the Revised Makati Revenue Code states:

    (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, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of 20% of 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 (1) 1, as provided in this code."

During trial, petitioner presented its Chief Accountant, Ms. Ronna C. De Leon, who testified, among others, that: (a) petitioner is a holding company engaged in the business of investing in transactions which earn passive income; (b) petitioner's sources of revenue, which generate passive income, are from gains on sale of investments, such as stocks, interest income from deposits, dividend income and foreign exchange gains; (c) petitioner does not earn revenues from services rendered to third persons; (d) respondent assessed petitioner for deficiency business taxes and charges for 2013 and 2014, amounting to ₱755,460.00 and ₱38,404.99, respectively; and, (e) petitioner filed a protest to the said assessment but the same was denied.[31]

On May 19, 2017,[32] petitioner filed its Offer of Documentary Evidence, which the Court admitted in its Order dated June 6, 2017.[33]

On the other hand, respondents presented their lone witness, Mr. Ronald Mallari, Administrative Assistant II of the Makati City Business Permit and Licensing Office, who testified, among others that: (a) Billing Assessment No. 019512 covered the taxable years 2013, 2014 and 2015; (b) petitioner itself applied as a holding company as stated in their Business Permit Application Forms and was classified as such; (c) petitioner was taxed under Section 3A.02 (p) in relation to 31.02 (h) of the RMRC; and, (d) said sections are valid up to the present time.[34]

On September 4, 2017,[35] respondents formally offered Exhibits "1" to "7", inclusive of sub-markings, which the RTC admitted in its Order dated September 18, 2017.[36] In the same Order, the parties

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[31] Exhibit "N", SP. Proc. No. M-7835, RTC Docket, vol. 2, pp. 5-21; SP. Proc. No. M-7835, TSN, May 9, 2017, pp. 7-27.
[32] SP. Proc. No. M-7835, RTC Docket, vol. 3, pp. 370-378; Decision, SP. Proc. No. M-7835, RTC Docket, vol. 3, p. 914.
[33] SP. Proc. No. M-7835, RTC Docket, vol. 3, p. 826.
[34] Exhibit "7", SP. Proc. No. M-7835, RTC Docket, vol. 3, pp. 841-848; SP. Proc. No. M-7835, TSN, June 6, 2017, pp. 8-23; Decision, SP. Proc. No. M-7835, RTC Docket, vol. 3, p. 914; Annex "P-1", CTA Docket, p. 41.
[35] SP. Proc. No. M-7835, RTC Docket, vol. 3, pp. 829-833.
[36] SP. Proc. No. M-7835, RTC Docket, vol. 3, p. 859.

were directed to submit their respective memoranda within fifteen (15) days from receipt of the Order.

Accordingly, the Memorandum (for the Respondents) was filed on October 3, 2017,[37] while petitioner's Memorandum was filed on October 4, 2017.[38]

The case was submitted for decision on October 5, 2017.[39] In a Decision dated October 11, 2017, the Court resolved **Civil Case No. 14-165** and **SP. Proc. No. M-7835**, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, judgment is hereby rendered **upholding the validity** of the Notice of Assessment No. 13-80381 dated November 12, 2013 as well as the **Billing Assessment No. 019511 dated January 13, 2015**. Accordingly, both Civil Case No. *[sic]* 14-165 and **M-7835** are hereby **DISMISSED**.
>
> **SO ORDERED."** *(Additional boldfacing supplied)*

Aggrieved, petitioner filed its Motion for Reconsideration on November 10, 2017[40] assailing the Decision dated October 11, 2017 in so far as it pertains to **SP. Proc. No. M-7835**, which motion, however, was denied in an Order dated January 8, 2018.[41]

Thus, petitioner filed the instant Petition for Review praying for the reversal of the Decision dated October 11, 2017 and Order dated January 8, 2018, specifically in so far as they pertain to the subject matter of **SP. Proc. No. M-7835**. Petitioner prays for the: (i) annulment of the Billing Assessments; (ii) issuance of a new assessment only for taxable year 2015 as a holding company, without assessing petitioner for business taxes on gains on sales of investments and interest income; and, (iii) crediting of petitioner's overpayments to its future business tax obligations.

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[37] SP. Proc. No. M-7835, RTC Docket, vol. 3, pp. 860-878.
[38] SP. Proc. No. M-7835, RTC Docket, vol. 3, pp. 879-908.
[39] Order dated October 5, 2017, SP. Proc. No. M-7835, RTC Docket, vol. 3, p. 910.
[40] SP. Proc. No. M-7835, RTC Docket, vol. 3, pp. 918-929; Annex "P-3", CTA Docket, Vol. I, pp. 46-58.
[41] *Supra*, note 3.

THE PARTIES' ARGUMENTS

Petitioner's Arguments

Petitioner claims that the RTC gravely erred in affirming respondents' assessment for deficiency business taxes against petitioner considering that its investments and interest income do not constitute gross sales or receipts subject to deficiency business taxes. It further contends that respondents' imposition of local business taxes and fees on petitioner is an *ultra vires* act, which makes the notice of assessment null and void.

Petitioner also argues that respondent erred in assessing it with regulatory fee (Mayor's Permit) imposed on Financial/Lending/Investment (FLI) in the amount of ₱5,000.00 and regulatory fee (Mayor's Permit) imposed on Manufacturer OMF-NO in the amount of ₱6,000.00.

Respondents' Arguments

In their Comment (to the Petition For Review),[42] respondents maintain that petitioner belongs to a specific class of its own, without reference to it being a contractor or an owner or operator of banks and other financial institutions. **As a holding company, petitioner was taxed under Section 3A.02 (p) in relation to Section 3A.02 (h) of the RMRC**.

Moreover, respondents aver that the BPOM was not barred from enforcing the collection of deficiency business tax for years 2013 and 2014. Section 194 (c) of Republic Act No. 7160, otherwise known as the Local Government Code ("LGC") of 1991, provides that local taxes, fees or charges may be collected within five (5) years from the date of assessment. Hence, the collection of deficiency business taxes for years 2013 and 2014 made in 2015 was valid.

Respondents further assert that petitioner was not taxed as a manufacturing company and financial or lending institution.

Allegedly, for purposes of imposing regulatory fees, petitioner was classified as Financial/Lending/Investment (FLI) and assessed

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[42] CTA Docket, Vol. III, pp. 1629-1640.

with Regulatory Fee (Mayor's Permit) in the amount of ₱5,000.00 because the computer system used by BPOM classifies holding company, financial company and investment company under one code, that is, under Investment. On the other hand, petitioner was assessed the amount of ₱6,000.00 as a Regulatory Fee (Mayor's Permit) under the classification of Manufacturer OMF-NO simply because upon review of the financial statements of petitioner, the business examiner concluded that petitioner was also engaged in manufacturing activities. Finally, respondents claim that petitioner is subject to local business tax, the basis of which is indicated in the Billing Assessments.

THE ISSUE

Considering that the instant Petition seeks to annul Billing Assessment Nos. 019510, 019511 and 019512 dated January 13, 2015, albeit the *dispositive portion* of the assailed Decision inadvertently referred only to Billing Assessment No. 019511, the Court deems it appropriate to restate the issue submitted for the Court's resolution, as follows:

> Whether or not respondents' assessments under Billing Assessment Nos. 019510, 019511 and 019512 dated January 13, 2015 against petitioner, which are the subject matter of SP. Proc. No. M-7835, are lawful and valid.

THE COURT'S RULING

The Court finds merit on the Petition for Review.

Petition for Review with the CTA is timely filed.

Section 195 of the LGC of 1991 provides the procedure in protesting assessments of local business taxes, to wit:

> "Section 195. *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. **Within sixty (60) days from the receipt of the notice of**

> **assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory.** The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction** otherwise the assessment becomes conclusive and unappealable." *(Boldfacing supplied)*

Records show that on January 13, 2015, petitioner received the Billing Assessments assessing it the amount of ₱981,478.90, for **Mayor's permit, city license and other fees for taxable years 2014 and 2015**, and **deficiency business taxes with increments for taxable years 2013 and 2014.**[43] Consistent with the foregoing provision, petitioner had sixty (60) days from January 13, 2015 or until March 14, 2015 within which to file a written protest with the local treasurer. Considering that petitioner filed its protest letter on March 13, 2015 with the local treasurer,[44] the same was filed within the reglementary period.

The local treasurer in turn had sixty (60) days from the time of the filing of the protest on March 13, 2015 or <u>until May 12, 2015</u> to decide, and petitioner had thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period within which to appeal with the RTC. Considering respondent Office of the City Treasurer's failure to resolve petitioner's protest on or before May 12, 2015, petitioner had thirty (30) days from May 12, 2015, 2015 or until June 11, 2015 within which to file its Petition before the RTC. Hence, the Petition filed on June 11, 2015 before the RTC[45] was likewise timely filed.

Anent the timeliness of petitioner's judicial appeal, Section 11 of RA No. 1125, as amended, provides that any party adversely affected by a decision, orders or resolutions of the RTC may file an appeal with the CTA within thirty (30) days from receipt thereof.

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[43] *Supra,* note 12.
[44] *Supra,* note 16.
[45] *Supra,* note 18.

As aforestated, on October 11, 2017, the RTC promulgated its decision dismissing SP. Proc. No. M-7835. Petitioner filed a Motion for Reconsideration thereof, which was denied by the RTC in its Order dated January 8, 2018. Petitioner received said Order on January 26, 2018, and thus, had thirty (30) days from January 26, 2018, or until February 25, 2018 within which to file its Petition for Review before this Court.

Since petitioner filed the instant Petition for Review on February 12, 2018, the same was timely filed.

Petitioner is not liable for regulatory fees imposed on Manufacturer OMF-NO

In Billing Assessment Nos. 019510 and 019511, dated January 13, 2015,[46] petitioner was assessed for the years 2014 and 2015 with the following:

(i) Regulatory Fee (Mayor's Permit) imposed on **Financial/Lending/Investment (FLI)** in the amount of ₱5,000.00; and,

(ii) Regulatory Fee (Mayor's Permit) imposed on **Manufacturer OMF-NO** in the amount of ₱6,000.00.

As oft-repeated, respondents insist that for purposes of imposing regulatory fees, petitioner was classified as FLI simply because the computer system used by BPOM classifies holding, financial and investment companies under one code, that is, under Investment.

While respondents were correct in assessing petitioner for regulatory fee imposed on FLI in the amount of ₱5,000.00 (a holding company being classified under the same code as financial and investment companies for regulatory fee purposes), the Court finds merit on petitioner's contention that it should not be assessed with regulatory fees in the amount of ₱6,000.00 under Manufacturer-OMF.

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[46] Exhibits "C" and "D", SP. Proc. No. M-7835, RTC Docket, vol. 3, pp. 531-532.

In classifying petitioner as Manufacturer-OMF, respondents relied on petitioner's financial statements which allegedly state that petitioner is engaged in manufacturing activities.[47]

The Court scrutinized petitioner's Audited Financial Statements for the years 2012 to 2014[48] (since the basis of the assessment for the taxable years 2014 and 2015 are the gross receipts of petitioner for the years immediately preceding them). There is nothing in petitioner's Audited Financial Statements for the years 2012 to 2014 that would indicate that petitioner is engaged in any manufacturing activity. Truth to tell, in the Letter dated January 8, 2014 signed by City Treasurer Nelia A. Barlis, respondents reclassified the business activity reflected in petitioner's records from that of a manufacturer to a holding company, *viz.*:

> "xxx xxx xxx
>
> Please be advised that South China Resources, Inc. (SCRI), formerly South China Petroleum and Exploration, Inc., applied for a business permit as a manufacturer with the City of Makati. Since then, it was classified as such. However, as you pointed out, it changed its business activity to that of a 'HOLDING COMPANY' sometime 2004 without going through the required process for a change in the business activity that it now engages in. This omission of process caused the company (SCRI), to be locally taxed as a 'MANUFACTURER' instead of as a 'HOLDING COMPANY', which taxability fall under SEC. 3A.02 (p) of the Makati Revised Revenue Code, better known as City Ordinance No. 2004-A-025.
>
> Be *[sic]* as it may, with the issuance of the Letter of Authority and the findings thereof, **we are re-classifying the business activity reflected in your records from that of a 'MANUFACTURER' to a 'HOLDING COMPANY'**, to correct the actual business activity that the company is engaged in so that correct local business tax rates may be imposed for years under examination onwards.[49]
>
> xxx xxx xxx." *(Boldfacing supplied)*

Considering that petitioner is not engaged in any manufacturing activities for the years 2012 to 2014, the assessment of regulatory fees as a Manufacturer OMF-NO issued against

[47] Memorandum (for the Respondents), CTA Docket, Vol. II, p. 1602; SP. Proc. No. M-7835, RTC Docket, vol. 3, pp. 860-878.
[48] Exhibit "B", SP. Proc. No. M-7835, RTC Docket, vol. 3, pp. 421-482; Exhibit "B-1", SP. Proc. No. M-7835, RTC Docket, vol. 3, pp. 483-530.
[49] Exhibit "P", SP. Proc. No. M-7835, RTC Docket, vol. 3, pp. 772-773.

petitioner for the years 2014 and 2015 (using as basis petitioner's Audited Financial Statements for the years 2013 and 2014) was improper.

Accordingly, Billing Assessment Nos. 019510 and 019511, dated January 13, 2015,[50] in so far as they assess petitioner for regulatory fee (Mayor's Permit) imposed on **Manufacturer OMF-NO in the amount of ₱6,000.00 each for years 2014 and 2015** should perforce be cancelled.

Petitioner is not liable for local business tax imposed on its gross receipts, consisting of dividends, interest income and income from investments

Respondents submit that petitioner, as a holding company, was taxed under Section 3A.02 (p) in relation to Section 3A.02 (h) of the RMRC. Respondents posit that petitioner need not be a "service contractor" nor a "bank and other financial institution" in order that it may be taxed on its gross receipts. Respondents aver that once a taxpayer is classified as a holding company, the tax rate of 20% of 1%, prescribed under Section 3A.02 (h) of the RMRC, shall be made to apply on its gross receipts, which in the case of petitioner consist of dividends, investment and interest income.[51]

Petitioner, on the other hand, alleges that its dividends as well its investment and interest income do not constitute gross sales or receipts subject to local business taxes. It contends that respondents' imposition of local business taxes on petitioner is an *ultra vires* act, as it is in violation of Section 133 (a) of the LGC. As such, the Billing Assessments issued against petitioner, assessing it for local business tax on its gross receipts, are null and void.

The LGC of 1991 defines and limits the taxing powers of the LGUs. Section 151 thereof states the power of a city to impose local taxes, to wit:

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[50] Exhibits "C" and "D", SP. Proc. No. M-7835, RTC Docket, vol. 3, pp. 531-532.
[51] Comment (to the Petition for Review), CTA Docket, pp. 1630-1634.

> "**Section 151**. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, **the <u>city</u> may levy the taxes, fees and charges which the province or municipality may impose**: xxx
>
> **The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%)** except the rates of professional and amusement taxes." *(Boldfacing and underscoring supplied)*

On the other hand, Section 143 (f) of the LGC of 1991 provides that municipalities and cities may impose local business tax on gross receipts (which include interest income and dividends) of **banks and other financial institutions**, to wit:

> "**Section 143**. *Tax on Business.* -The municipality may impose taxes on the following businesses:
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> xxx
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> (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.
>
> xxx xxx xxx. *(Boldfacing supplied)*"

Undeniably, cities, such as respondent Makati City, may impose business taxes at rates that **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.

The power of cities to impose business taxes is, however, subject to further limitations, such as that indicated in Section 133 (a) of LGC of 1991 which **expressly prohibits provinces, cities, municipalities, and barangays from imposing <u>income tax</u>, unless the same is levied on banks and other financial institutions**, to wit:

> "**Section 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**;" *(Boldfacing supplied)*

In general, municipalities and cities may not levy income tax on certain businesses. By way of exception, however, they may do so when the levy is on banks and other financial institutions based 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, and insurance premium.

Income tax is imposed on an individual or entity as a form of excise tax or a tax on the privilege of earning income.[52] For tax purposes, income refers to the amount of money coming to a person within a specified time, whether as payment for services, interest or profit from investment.[53]

Indubitably, an LGU may impose local business tax on dividends and interest income on money market placements **but only if the person or entity involved is a bank or financial institution.**

Respondent Makati City imposes business taxes on holding companies under Section 3A.02(p) of RMRC, in relation to (g) and (h) of thereof, to wit:

"CHAPTER III -City Taxes
ARTICLE A- Business Tax

XXX XXX XXX

SECTION 3A.02. *Imposition of Tax.* - There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

XXX XXX XXX

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[52] Republic of the Philippines, represented by Energy Regulatory Board vs. Manila Electric Company, etseq., G.R. Nos. 141314 and 141369, November 15, 2002.
[53] Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 108576, January 20, 1999.

(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; advertising agencies; xxx business management services; collecting agencies; xxx

With gross sales or receipts for the preceding calendar year in the amount of:

Amount of	Tax per Annum
less than P50,000.00	Exempt
P50,000.00 or more but less than 75,000.00	1,144.00
75,000.00 or more but less than 100,000.00	1,716.00
100,000.00 or more but less than 150,000.00	2,574.00
150,000.00 or more but less than 200,000.00	3,432.00
200,000.00 or more but less than 250,000.00	4,719.00
250,000.00 or more but less than 300,000.00	6,006.00
300,000.00 or more but less than 400,000.00	8,008.00
400,000.00 or more but less than 500,000.00	10,725.00
500,000.00 or more but less than 750,000.00	12,025.00
750,000.00 or more but less than 1,000,000.00	13,325.00
1 ,000,000.00 or more but less than 2,000,000.00	P15,000.00
2,000,000.00	P15,000.00 plus seventy five percent (75%) of one percent (1 %) over 2 million.

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, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, 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."** *(Boldfacing supplied)*

Under subsection (p) of Section 3A.02 (p), a "holding company" shall be taxed based on its gross receipts and at the rates indicated either under:

a) Subsection (g) of Section 3A.02; or,

b) Subsection (h) of Section 3A.02.

In the present case, respondents imposed local business tax on petitioner as a holding company at the rates prescribed under subsection (h), based on gross receipts derived by petitioner which consist of dividends, investment and interest income.

It is undisputed that petitioner is a holding company.[54] While a holding company is defined under Section 3A.01 (dd) of the RMRC as referring to **a controlling company that has one or more subsidiaries and confines its activities primarily to their management**, such definition does not preclude a holding company from engaging in other activities that may classify it within the category of "banks and other financial institutions" as the term is defined under Section 131(e) of the LGC of 1991 and Section 3A.01(e) of the RMRC, *viz.*:

> "*SEC. 131. Definition of Terms.* – When used in this Title, the term:
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> 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;"
>
> "**SECTION 3A.01**. *Definitions.* - When used in this Article:-

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[54] Pre-Trial Order, SP. M-7835, RTC Docket, vol. 2, p. 364.

xxx xxx xxx

> (e) *Banks and other financial institutions* - include banks, offshore banking, non-bank financial intermediaries, lending investors, finance and investment companies, investment houses, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange including pre-need companies, as defined under applicable law, or rules and regulations."

The crux of the controversy, therefore, revolves on whether petitioner, as a holding company, is engaged in activities which may classify it within the term bank and other financial institution thereby making it liable for local business tax on its gross receipts at the rates provided under subsection (h) of Section 3A.02 of the RMRC.

After a careful review of the evidence presented in the proceedings *a quo*, the Court finds that petitioner's gross receipts were not derived from activities that may classify it as a "bank and other financial institutions". In truth, petitioner merely invested in companies for its own benefit as authorized under its Amended Articles of Incorporation. Petitioner's 2009 to 2014 Audited Financial Statements reveal that its revenues or gross receipts were limited to gains from sale of its foreign and domestic stocks, interest income from deposits, dividend income, foreign exchange gains and gain on sale of investments. There is nothing therein which would show that petitioner generated revenues from services rendered or commissions from investments made on behalf of third parties. As a holding company, petitioner merely invested in other companies and earned dividends therefrom.

In ***Michigan Holdings, Inc. vs. City Treasurer of Makati, Nelia A. Barlis,***[55] the Court *En Banc* unanimously held that dividend and interest income of holding companies are not subject to local business tax, *viz.*:

> "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

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

> 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**." *(Boldfacing supplied)*

In the absence of evidence showing that petitioner engaged in activities which brought it within the ambit of a bank or other financial institution, and considering that respondents had no authority to impose local business taxes upon holding companies' dividend, interest income and profit from the exchange or sale of property, petitioner may not be held liable for local business tax on its gross receipts derived from sale of its foreign and domestic stocks, interest income, dividend income, foreign exchange gains and gain on sale of investments.

In fine, Billing Assessment Nos. 019510, 019511 and 019512, all dated January 13, 2015 were issued by respondents in violation of Section 133 of the LGC. Hence, said Billing Assessments are void and must accordingly be cancelled.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The assailed Decision dated October 11, 2017 and Order dated January 8, 2018,[56] issued by the Regional Trial Court, Branch 66, Makati City in SP. Proc. No. M-7835 is **REVERSED** and **SET ASIDE**. Billing Assessment Nos. 019510, 019511 and 019512, all dated January 13, 2015, are **CANCELLED**.

Respondent is **ORDERED** to credit petitioner's payment in the amount of ₱981,478.90 to its future business tax and regulatory fee obligations, including petitioner's regulatory fee as a holding company **for taxable years 2014 and 2015**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[56] *Supra*, note 3.

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice