REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

METRO PACIFIC ASSETS HOLDINGS, INC.,

Petitioner,

-versus-

MAKATI CITY AND THE INCUMBENT CITY TREASURER OF MAKATI CITY,

Respondents.

CTA AC No. 184
(Civil Case No. 13-088)

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
SEP 04 2018

10:50 a.m.

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RESOLUTION

MANAHAN, J.:

For resolution is respondents' *Motion for Reconsideration* filed on July 20, 2018 with petitioner's *Comment (Re: Motion for Reconsideration dated July 19, 2018)* filed on August 16, 2018.

Respondent seeks reconsideration of the Court's Decision promulgated on July 2, 2018, the dispositive portion of which reads:

> "**WHEREFORE,** the Petition for Review filed by Metro Pacific Assets Holdings, Inc. is hereby **GRANTED.**
>
> Accordingly, the assailed Decision dated November 4, 2016 and the Order dated March 14, 2017 rendered by the Regional Trial Court of Makati City in Civil Case No. 13-088 are **REVERSED** and **SET ASIDE**. The respondents are **ORDERED** to refund to petitioner the amount of Six Million Eight Hundred Forty One Thousand Five Hundred Ninety Six and Sixty Centavos (Php6,841,596.60)."

Respondents' motion to reconsider the aforequoted Decision is based on the following assignment of error:

> "The Honorable Court erred when it ruled that since petitioner is a Holding Company and there is no showing that it falls within the purview of the term "Banks and Other Financial Institution", herein respondents cannot justify the collection of taxes on its dividend income for the year 2011."

Respondents argue that petitioner was correctly taxed under Section 3A.02 (p) in relation to Section 3A.02 (h) of the Revised Makati Revenue Code (RMRC) because these provisions specify that a Holding Company shall be taxed as a specific class of its own, without reference to it being a contractor or an owner or operator of banks or other financial institutions.

Respondents maintain that a Holding Company need not be a contractor nor an owner or operator of banks or other financial institutions in order to be subject to the local business tax (LBT) at the rates prescribed under Section 3A.02 (g) **or** (h) on its gross sales and/or receipts during the preceding year. They therefore insist that they correctly imposed the taxable rate of 20% of 1% on the dividend income of petitioner because the term "gross receipts" certainly covers dividend income.

On the other hand, petitioner declares that the imposition of the rate of 20% of 1% on its dividend income is without legal basis. Being a Holding Company, petitioner shall be taxed at the rate prescribed either under subsection (g) or (h) of the RMRC, on its gross sales and/or receipts during the preceding calendar year and shall not be taxed on its passive income. Petitioner cites Section 133 (a) of the 1991 Local Government Code (LGC of 1991) which clearly provides that a local government unit cannot impose and collect income tax, except when levied on banks and other financial institutions.

Not being a bank nor a financial institution, petitioner claims that the respondents "erroneously overstretched its interpretation of the RMRC" which resulted in an erroneous Billing Assessment for taxable year 2011.

After a careful review of the arguments raised by respondents, the Court finds the instant motion bereft of merit.

The Court finds that the resolution of the issues raised in this case is hinged on the nature of petitioner's business as a Holding Company. Local business tax or LBT, as the term implies, is imposed on the type of business one is engaged in using the rates of taxes provided under the 1991 LGC or an ordinance passed by a local government unit.

There is no dispute that the petitioner is classified as a Holding Company, however, respondent imposed the rate of 20% of 1 % on its gross receipts and included petitioner's dividend income within the coverage of its gross receipts. The legal basis of respondent is found in Section 3A.02 (p) in relation to Section 3A.02 (h) of the RMRC quoted below:

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

It is quite clear from the afore-quoted provisions that a Holding Company has a separate category[1] which is distinct from that of a bank or other financial institutions[2], thus it follows that if such "holding company" is operating "not as a bank or other financial institutions" then the rate imposed under Section 3A.02 (h) does not apply to them. Further, the

[1] Section 3A.02 (p).
[2] Section 3A.02 (h)

prohibition found in Section 133 (a) of the 1991 LGC equally applies to Makati City which reads:

> 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 following:
>
> (a) **Income Tax, except when levied on banks and other financial institutions.** (emphasis supplied)

The imposition of LBT on the dividend (passive) income of petitioner falls within the purview of the afore-quoted provision which prohibits the levy of income tax on businesses not functioning as banks or other financial institutions.

The argument of respondents that a Holding Company shall be taxed as a specific class of its own, without reference to it being an owner or operator of banks and other financial institutions, is without legal basis in the light of the clear and categorical provisions of the RMRC.

The pronouncements of this Court in the case of *Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia Barlis*[3] still hold true when it ruled that dividend income is excluded from gross receipts that are to be subject to LBT, and we again quote, thus:

> **"Dividend Income Not Subject to Local Business Tax**
>
> Section 133(a) of the Local Government Code expressly provides that the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax, except when levied on banks and other financial institutions.
>
> Section 131(e) of the LGC defines "banks and other financial institutions" to include "non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder." This enumeration appears to be exclusive of other entities. Nowhere in the entirety of Section 131 is a holding company mentioned. However, this, by itself, does not place holding companies beyond the reach of local taxation, except on their income.

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

Section 143 of the Local Government Code is the law on local business taxes. Subsection (f) thereof expressly allows local taxation on banks and other financial institutions on their income from dividends, based on gross receipts of the preceding calendar year. What Section 3A.02(h) of the Revised Makati Revenue Code did was to expand the taxpayer base to encompass "owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, moneyshops, insurance companies, stock markets, stock brokers, dealers in securities, including pre-need companies, foreign exchange." The Treasurer of Makati City, while invoking this Section 3A.02(h), made it applicable to holding companies, such as Michigan Holdings, by virtue of Section 3A.02(p), which provides that holding companies "shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/ or receipts during the preceding calendar year."

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

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

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

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

In view of the foregoing, this Court finds no reason to disturb the ruling in the assailed Decision dated July 2, 2018.

WHEREFORE, premises considered, respondents' *Motion for Reconsideration (of the Decision dated 02 July 2018)*, is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I maintain my Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice