REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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ROXAS SHARES, INC., Petitioner,	**CTA AC No. 140** (Civil Case No. 35,676-14)
- versus -	***Members:*** **DEL ROSARIO,** *Chairperson*, **UY,** and **MINDARO-GRULLA,** *JJ.*
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City, Respondents.	***Promulgated:*** APR 04 2017 2:32 pm

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RESOLUTION

UY, *J.*:

For resolution is respondents' **"MOTION FOR RECONSIDERATION"** filed on January 25, 2017, with petitioner's **"COMMENT/OPPOSITION To Respondent's Motion for Reconsideration (Re: Decision Rendered 15 December 2016)"** filed on March 6, 2017, praying for reconsideration of this Court's Decision dated December 15, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assailed Decision and Order of the Regional Trial Court Branch 17 of Davao City in Civil Case No. 35,676-14 are **REVERSED AND SET ASIDE**. The Business Tax Order of Payment dated January 20, 2014 issued by the City Treasurer of Davao City, assessing petitioner for local business tax in the amount of ₱2,190,792.70, is **SET ASIDE AND CANCELLED** for lack of factual and legal basis.

SO ORDERED."

In support of their Motion, respondents cite the following ground, to wit:

> "THE HONORABLE COURT ERRED IN HOLDING THAT PETITIONER IS NOT A 'NON-BANK FINANCIAL INTERMEDIARY', A CATEGORY OF A 'BANK AND OTHER FINANCIAL INSTITUTIONS', AS DEFINED UNDER SECTION 131 (E) OF R.A. 7160, OTHERWISE KNOWN AS THE 'LOCAL GOVERNMENT CODE OF 1991', SECTION 2.3 OF REVENUE REGULATIONS (RR) NO. 9-2004, ISSUED BY THE BUREAU OF INTERNAL REVENUE, AND SECTION 4101Q.1 OF THE MANUAL OF REGULATIONS FOR NON-BANK FINANCIAL INSTITUTION."

Thus, respondents argue as follows:

1. By way of exception to Section 133 (a), limiting the taxing power of local government units to impose levy on income tax, respondents have the authority to impose taxes "on Banks and Other Financial Institutions" as provided for under Section 143(f) of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991", in relation to Section 131 (E) of the same Code, which were merely reiterated in Section 69 (f), and Section 5 (b3) of Davao City Ordinance No. 158-05;

2. Since the said Section 131 (E) failed to define exactly what constitutes a "bank and other financial institutions" reference should be made to other provisions of law or rules and regulations covering such matter, *i.e.*, Section 2.3 of Revenue Regulations No. 9-2004 issued on June 21, 2004 by the Bureau of Internal Revenue, and Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions;

3. This Court failed to appreciate that petitioner's primary purpose for its incorporation as embodied in its Amended Articles of Incorporation and the nature of its business vis-à-vis with the definitions of Non-bank Financial Intermediaries show that its business, indeed, falls squarely within the purview of the term "Non-bank Financial Intermediaries";

4. This Court failed to grasp that the act of petitioner in subscribing, purchasing and holding San Miguel Corporation (SMC)

shares of stocks, and consequently receiving regularly an annual dividends and making money placements to maximize profits, are not isolated transactions, but are in themselves the continuing act of investing and placement of funds being contemplated for "Non-bank Financial Intermediaries";

5. The non-issuance of license by the *Bangko Sentral ng Pilipinas* (BSP) does not *ipso facto* exclude petitioner from the definition of a "non-bank financial intermediary" as provided under the above-cited manual and regulations. What should prevail is not the fact of whether an authority was given by the BSP, as the petitioner could deliberately evade the same by not filing an application therein, but rather the real nature and substance of its business operation, which consists primarily and regularly of investments in shares of stocks in SMC and money placements; and

6. The ruling in *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines*,[1] does not delve on the taxability of the fund or on its income but solely on the public nature of the fund. The fact that this fund is still in the hands of a private petitioner clearly negates its claim that the fund belongs to the government.

In its Opposition/Comment, petitioner contends the following:

1. As correctly held by the Court, there is no showing that petitioner is a non-bank financial intermediary;

2. In light of the ruling of the Supreme Court that petitioner and its SMC shares are government property, the respondent City Treasurer has no authority to impose local business taxes on the income thereof; and

3. Assuming *arguendo* that petitioner and its SMC shares are not government property, the income of petitioner is still not subject to local business tax, considering that petitioner is a holding company.

THE COURT'S RULING

Respondents' *Motion for Reconsideration* lacks merit.

After a careful examination and consideration of respondents' *Motion for Reconsideration*, except for the argument that the non-

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[1] G.R. Nos. 177857-58 and 178193, January 24, 2012.

issuance of license by the BSP does not *ipso facto* exclude petitioner from the definition of a "non-bank financial intermediary", it is noted that the arguments raised therein are mere reiterations of matters which have already been considered, weighed and resolved by this Court in the assailed Decision. Thus, this Court shall not belabor, in this Resolution, to reiterate the disquisitions and rulings made therein.

We shall now address respondents' contention, which is to the effect that a BSP license is not necessary for an entity to be considered as a "non-bank financial intermediary".

For easy reference, quoted anew is Section 131(e) of the Local Government Code (LGC) of 1991, which states the scope of the term *"Banks and other financial institutions"*, to wit:

> "SEC. 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**;" *(Emphases supplied)*

Based on the foregoing provision, it is clear that *"non-bank financial intermediaries"*, *inter alia*, are included in *the term "Banks and other financial institutions";* and that the term *"non-bank financial intermediaries"*, in turn, are those that are *"as defined under applicable laws, or rules and regulations thereunder"*. These *"applicable laws"* undeniably include Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, which provides as follows:

> "(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.**" *(Emphasis supplied)*

This provision is likewise clear, the term "non-bank financial intermediary" refers to that intermediary - as defined in the General Banking Act and which is *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities."*

As a corollary, to disregard the above-quoted provision of Section 22(W) of the NIRC of 1997 referring to what is a "non-bank financial intermediary", would not be adherent to the earlier cited Section 131(e) of the LGC of 1991.

Correspondingly, for an entity to be considered as a "non-bank financial intermediary", the same must have been authorized by the BSP to perform quasi-banking activities. Thus, among other reasons stated in the assailed Decision, as there is no showing that petitioner was authorized by the BSP to perform quasi-banking activities, it cannot be considered as a "non-bank financial intermediary".

WHEREFORE, in light of the foregoing considerations, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice