REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
****

MAKATI CITY TREASURER AND CITY OF MAKATI, as represented by the CITY MAYOR, Petitioner,	**CTA AC No. 193** (Civil Case No. 14-470)
	Members:
- versus -	**DEL ROSARIO,** P.J., *Chairperson,* **UY,** and **MINDARO-GRULLA,** JJ.
MERMAC, INC., Respondent.	***Promulgated:*** AUG 13 2019 : 9:58 a.

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RESOLUTION

UY, J.:

For resolution is petitioners' **"MOTION FOR RECONSIDERATION *(of the Decision dated 07 March 2019)*"** filed on April 1, 2019, with respondent's **"COMMENT (to Motion for Reconsideration dated 29 March 2019)"** filed on May 14, 2019, praying for the reconsideration and setting aside of this Court's Decision dated March 7, 2019, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is **DISMISSED**. The Decision dated August 3, 2017 and the Order dated November 8, 2017 issued by RTC – Branch 147 in Civil Case No. 14-470 are **AFFIRMED**.
>
> **SO ORDERED**."

In the *Motion for Reconsideration*, petitioners aver that this Court erred in ruling that petitioner Makati City Treasurer has no authority to represent petitioner City of Makati, and that the certification against forum shopping was not validly executed.

Furthermore, in their *Motion for Reconsideration*, petitioners contend that respondent need not be classified as, or perform the functions of, a bank or other financial institution in order to impose the local taxes under Section 3A.02(p), in relation to Subsection (h), of the Revised Makati Revenue Code (RMRC). As admitted by respondent, it is a holding company in, and was classified as such by, petitioner City of Makati. As a holding company, it was taxed under the said provisions; that Section 3A.02(p), in relation to Sections 3A.02(g) and 2A.02(h), was never questioned in accordance with Section 7B.14 (Taxpayers' Remedies) paragraph (d) of the RMRC, and therefore, remains to be valid. Assuming *arguendo*, without however conceding petitioner's legal position that respondent is not entitled to a refund being prayed for, it may only be granted in a form of tax credit, by express provision of law. Furthermore, respondent allegedly was not able to overcome the burden of proving that it is entitled to the refund being prayed for.

In its *Comment*, respondent states that the *Motion for Reconsideration* does not raise any argument that has not yet been passed upon by the Court and merely repeats most of the arguments in petitioners' *Memorandum* filed on March 1, 2018. Hence, it should be denied outright; and that as the said *Motion* is a mere repetition of [petitioners'] arguments already passed upon by the Court and by the Regional Trial Court (RTC) of Makati, Branch 14, respondent repleads and reiterates the *Memorandum* filed with this Court on March 5, 2018.

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit.

A careful perusal of the said *Motion for Reconsideration* shows that the argument that the subject grant of refund may be given only in the form of tax credit, is a mere reiteration of a matter which has already been considered, weighed and resolved in the assailed Decision. Thus, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein concerning the same.

Petitioners have not shown that petitioner City Treasurer has authority to represent petitioner City of Makati.

In arguing that this Court erred in ruling that petitioner Makati City Treasurer has no authority to represent petitioner City of Makati, petitioners point to Section 183, in relation to Section 194, both of the Local Government Code (LGC) of 1991. Furthermore, petitioners invoke Section 470 of the same Code as it states that the treasurer shall *"perform the duties provided for under Book II of this Code"*.

We are not convinced.

For easy reference, Sections 183, 194, and 470 of the LGC of 1991 provide as follows:

> "SEC. 183. *Collection of Delinquent Taxes, Fees, Charges, or other Revenues through Judicial Action.* – **The local government unit concerned may enforce the collection of <u>delinquent taxes</u>**, fees, charges or other revenues **<u>by civil action</u> in any court of competent jurisdiction. <u>The civil action shall be filed by the local treasurer</u> within the period prescribe in Section 194 of this Code.**" *(Emphases and underscoring supplied)*
>
> xxx xxx xxx
>
> "SEC. 194. *Periods of Assessment and Collection.* – (a) Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. **No action for <u>the collection of such taxes</u>, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period:** xxx
>
> xxx xxx xxx
>
> (c) **<u>Local taxes</u>, fees, or charges <u>may be collected</u> within five (5) years from the date of assessment by administrative or judicial action.** No such action shall be instituted after the expiration of said period: xxx.

xxx xxx xxx." *(Emphases and underscoring supplied)*

"SEC. 470. *Appointment, Qualifications, Powers, and Duties.* – (a) The treasurer shall be appointed by the Secretary of Finance from a list of at least three (3) ranking, eligible recommendees of the governor or mayor, as the case may be, subject to civil service law, rules and regulations.

xxx xxx xxx

(d) The treasurer shall take charge of the treasury office, **perform the duties provided for under Book II of this Code,** and shall:

(1) Advise the governor or mayor, as the case may be, the sanggunian, and other local government and national officials concerned regarding disposition of local government funds, and on such other matters relative to public finance;

(2) Take custody of and exercise proper management of the funds of the local government unit concerned;

(3) Take charge of the disbursement of all government funds and such other funds the custody of which may be entrusted to him by law or other competent authority;

(4) Inspect private commercial and industrial establishments within the jurisdiction of the local government unit concerned in relation to the implementation of tax ordinances, pursuant to the provisions under Book II of this Code;

(5) Maintain and update the tax information system of the local government unit;

(6) In the case of the provincial treasurer, exercise technical supervision over all treasury offices of component cities and municipalities; and

> (e) **Exercise such other powers and perform such other duties and functions <u>as may be prescribed by law or ordinance</u>.**" *(Emphases and underscoring supplied)*

There is nothing in the foregoing provisions which can be used as legal basis to conclude that petitioner Makati City Treasurer has authority to represent petitioner City of Makati in this case. A plain reading of the above-quoted Sections 183 and 194 would reveal that the only power given to the local treasurer is the filing of a civil action for the collection of delinquent local taxes.

In the present case, what is involved is an appeal filed by petitioner Makati City Treasurer over an adverse decision rendered by the RTC of Makati, Branch 14, and not a civil action for the collection of delinquent local taxes. In fact, in the instant case, no delinquent local taxes are being collected, as the subject local tax has already been paid by respondent on January 31, 2014, albeit under protest.[1] Thus, Sections 183 and 194 of the LGC of 1991 may not be invoked by petitioner Makati City Treasurer as the basis of her authority to file the instant appeal or to represent petitioner City of Makati.

Neither is Section 470 of the LGC of 1991, particularly subparagraph (d) thereof which states that the local treasurer shall *"perform the duties provided for under Book II of this Code"*, may be deemed as the source of petitioner Makati City Treasurer's authority to file the instant appeal or to represent petitioner City of Makati. A careful examination of the provisions under Book II of the LGC of 1991 would reveal that the local treasurer's powers, duties, and functions stated therein do not include the said authority. In the absence of, and there being no ordinance giving, such authority, We reiterate Our ruling in the assailed Decision that the instant *Petition for Review* must be dismissed for failure to comply with the rules on certification against forum shopping.

Respondent must be classified as a bank or other financial institution before it could be taxed under Section 3A.02(p), in relation to Section 3A.02(h), of the RMRC.

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[1] Exhibit "H", RTC Docket – Vol. I, p. 234.

Petitioners argue that respondent need not be classified as, or perform the functions of, a bank or other financial institution in order to impose the local taxes under Section 3A.02(p), in relation to Subsection (h), of the RMRC.

We disagree.

Section 3A.02(p), in relation to Section 3A.02(g) and Section 3A.02(h), all of the RMRC, provide as follows:

> "SECTION 3A.02. *Imposition of Tax.* — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:
>
> xxx xxx xxx
>
> (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; rental of space of signs, signboards, billboard or advertisements; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others; **business management services**; 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 15,000.00
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**, xxx.

xxx xxx xxx

(p) **On Holding Company shall be taxed at the rate prescribed <u>either under subsection (g) or (h)</u>, of the gross sales and/or receipts during the preceding calendar year.**

xxx xxx xxx." *(Emphases and underscoring supplied)*

In turn, a *"holding company"* is defined under Section 3A.01(dd) of the RMRC as follows, to wit:

"SECTION 3A.01. *Definitions.* — When used in this Article: —

xxx xxx xxx

(dd) ***Holding Company* — a controlling company that has one or more subsidiaries and confines its activities primarily to their management.**" *(Emphasis supplied)*

Based on the aforequoted Section 3A.02(p) of the RMRC, a holding company, which is defined as *"a controlling company that has* *one or more subsidiaries and confines its activities primarily to their management"* under Section 3A.01(dd) of the same Code, may be taxed under **__either__ Section 3A.02(g) __or__ Section 3A.02(h)**, of the said Code. Said Section 3A.02(g) and Section 3A.02(h) clearly delineate and respectively identify their coverage as to the taxable persons or entities, and the corresponding imposition of the local business tax.

Considering that the persons or entities and the tax rates stated in Section 3A.02(g) greatly differ from that stated in Section 3A.02(h), and with the broad definition of a *"holding company"*, which may encompass those respectively stated in the said provisions, a determination or classification as to which the concerned holding company would be taxed must perforce be made. In other words, it does not follow that when a person or entity is classified as a holding company, such person or entity should already be taxed under Section 3A.02(h) of the RMRC. A contrary ruling would run counter to Section 3A.02(p) of the RMRC.

Correspondingly, there being no evidence to show that respondent, being a holding company, is an owner or operator of a bank and other financial institution, etc. taxable under Section 3A.02(h) of the RMRC, the payment of the subject local business tax, plus increments, by respondent has no factual and legal basis, and thus, it is entitled to the refund being claimed.

There is no question that Section 3A.02(p), in relation to Sections 3A.02(g) and 3A.02(h), all of the RMRC, are valid provisions.

Petitioners contend that Section 3A.02(p), in relation to Sections 3A.02(g) and 2A.02(h), was never questioned in accordance with Section 7B.14 (Taxpayers' Remedies) paragraph (d) of the RMRC, and therefore, remain to be valid. With this contention, it is being implied that this Court has declared the said provisions invalid.

We disagree.

To be sure, this Court did not declare that the said provisions are invalid. In fact, in the assailed Decision, this Court states how a *"holding company"* may be taxed on the basis of Section 3A.02(p), in relation to Sections 3A.02(g) and 2A.02(h), of the RMRC, to wit:

> "Based on the aforequoted provisions of the RMRC, the imposition of LBT on a *'holding company'* shall either be **under subsection (g)** for owners or operators of business establishments rendering or offering, *inter alia*, *'business management services'*; **or under subsection (h)** for owners or operators of banks and other financial institutions; both of Section 3A.02 of the RMRC. **Under the said subsection (g)**, the graduated tax rates are based on the gross sales or receipts, depending on the amount thereof; **while under the said subsection (h)**, the tax rate is fixed at 20% of 1% gross receipts derived from dividends, among other income."

With the foregoing interpretation and as earlier shown in this Resolution, where this Court intimates which of the taxing provision may be applied to a *"holding company"*, the validity of Section 3A.02(p), in relation to Sections 3A.02(g) and 2A.02(h), all of the RMRC, has been recognized. Thus, there is no point to argue that the said provisions remain to be valid, since this Court presumes that they are so. It is a settled rule that an ordinance enjoys the presumption of validity.[2]

With the foregoing disquisitions, there can be no merit on petitioners' contention that respondent was not able to overcome the burden of proving that it is entitled to the refund being prayed for.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[2] *Smart Communications, Inc. vs. Municipality of Malvar, Batangas*, G.R. No. 204429, February 18, 2014; and *Social Justice Society, et al. vs. Atienza, Jr.*, G.R. No. 156052, February 13, 2008.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice