REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

ASC INVESTORS, INC., Petitioner,	CTA AC NO. 157
-versus-	Members: BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City, Respondents.	Promulgated: JUN 07 2017 3:40 p.m.

x- -x

DECISION

***Fabon-Victorino, J.*:**

This Petition for Review dated November 3, 2015 filed by ASC Investors, Inc. seeks to reverse and set aside the Decision dated June 22, 2015 and the Order dated September 11, 2015, both rendered by the Regional Trial Court (RTC), Branch 16, Davao City in Civil Case No. 34,850-13 entitled *ASC Investors, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City*.

Petitioner ASC Investors, Inc. is a domestic corporation incorporated on August 13, 1983, with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City. [1] It is 100% owned by the Coconut Industry Investment Fund-Oil Mills Group (CIIF-OMG), which is

---

[1] Par. 11, The Parties, Petition for Review, Docket, p. 11; Annexes "P-9" and "P-10", Docket, pp. 89-100 and 101-112; Annexes "D" and "D-1", Petition, RTC Records, pp. 60-71 and pp. 72-83.

composed of six (6) companies owned by the Philippine Government.[2] Its primary purpose is as follows:[3]

> To purchase, subscribe for, 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, including shares of stock, voting trust certificates for shares of the capital stock, bonds, 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 other 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 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, 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.[4]

On the other hand, respondent City of Davao is a local government unit (LGU), while respondent Rodrigo S. Riola is impleaded in his official capacity as the incumbent City Treasurer of Davao City. Both have office address at City Hall Building, San Pedro Street, Davao City.[5]

---

[2] Par. 13.1 and 13.2, Statement of Facts, Petition for Review, Docket, pp. 12-13.
[3] Par. 13, Statement of Facts, Petition for Review, Docket, p. 12.
[4] Annex "P-10", Petition for Review, Docket, pp. 101-112; Annex "D-1", RTC Records, pp. 72-83.
[5] Par. 12 and 12.1, The Parties, Petition for Review, Docket, p. 11.

Petitioner is the registered owner of 167,483,095 preferred shares of stock in San Miguel Corporation (SMC) since October 2009 after the Supreme Court *En Banc* approved the conversion of its 167,483,095 common shares of stock in SMC to preferred shares. The dividends received by petitioner from its SMC preferred shares were deposited in a trust account that earned interest from money market placements.[6]

In 2010, petitioner received the amount of P1,270,343,831.37 from dividends on its SMC preferred shares and interests on its money market placements, computed as follows:[7]

NATURE	AMOUNT
Dividends	P 1,256,123,212.50
Interest	14,220,618.87
TOTAL	**P 1,270,343,831.37**

For the first half of the year 2011, respondent City of Davao, through respondent City Treasurer Riola, collected from petitioner 0.55% local business taxes on the dividends arising from its SMC preferred shares and interests on money market placements received by petitioner in the aggregate amount of P3,493,445.50, broken down as follows:

PERIOD COVERED	DATE OF PAYMENT	OFFICIAL RECEIPT NOS.	AMOUNT
January - March 2011	January 18, 2011	5791189[8]	P 1,746,722.75
April - June 2011	April 25, 2011	9884250[9]	1,746,722.75
TOTAL			**P3,493,445.50**

---

[6] Par. 15, Statement of Facts, Petition for Review, Docket, p. 13.
[7] Par. 16, Statement of Facts, Petition for Review, Docket, p. 13.
[8] Annex "P-3", Petition for Review, Docket, p. 43; Annex "A", RTC Records, p. 20.
[9] Annex "P-4", Petition for Review, Docket, p. 44; Annex "A-1", RTC Records, p. 21.

On September 13, 2012, petitioner filed with respondent City Treasurer a written administrative claim for refund or credit of erroneously and illegally collected local business taxes. [10] It however remained unresolved by respondent City Treasurer.

Consequently, petitioner, on January 17, 2013, filed with the RTC of Davao City a Petition for Refund or Credit under Section 156 of Republic Act (R.A.) No. 7160 or the Local Government Code (LGC) of 1991.[11]

In the assailed Decision [12] of June 22, 2015 and received by petitioner on July 20, 2015, the RTC denied/dismissed the Petition for Review, the dispositive portion of which reads:

> **FOR REASONS STATED**, the instant "Petition for Tax Refund or Credit Under Section 156, R.A. 7160" filed by the Petitioner is hereby **DENIED** and/or **DISMISSED**.
>
> **SO ORDERED.**

The RTC of Davao City ruled that there is a substantial similarity between the definition of a financial intermediary under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions and petitioner's primary purpose of business leading to a conclusion that petitioner is a financial intermediary. Being a financial intermediary, whose income is derived solely from dividends from its SMC preferred shares and interest income from its money market placements, petitioner is thus subject to business taxes pursuant to Section 143(f) of R.A. No. 7160 or the LGC of 1991. The said provision allows municipalities to impose business taxes on financial institutions with income from dividends, among others, such as petitioner.

---

[10] Annex "P-5", Petition for Review, Docket, pp. 45-54; Annex "B", RTC Records, pp. 48-57.
[11] Annex "P-6", Petition for Review, Docket, pp. 55-71; RTC Records, pp. 3-19.
[12] Annex "P-1", Petition for Review, Docket, pp. 32-41; RTC Records, pp. 335-345.

The RTC further ruled that the *proviso* in petitiioner's Articles of Incorporation saying that it shall "not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation" cannot save the day for it since its activities clearly fall under the category of a financial intermediary subject to business taxes.

The RTC effectively affirmed its ruling when it denied petitioner's Motion for Reconsideration [13] in the similarly assailed Order[14] dated September 11, 2015.

Thus, the instant Petition for Review[15] filed before this Court on November 9, 2015.

Petitioner maintains that it is entitled to a refund or credit of the 0.55% local business taxes erroneously collected for the first and second quarters of 2011 on the dividends from its SMC preferred shares and interests on its money market placements for taxable year 2010. Allegedly, under Section 133(a) of the LGC, it is erroneous and illegal for respondents to collect a 0.55% local business tax on the dividends and interests earned by a taxpayer which is not a bank or a financial institution.

Contrary to the RTC's finding, it is not a bank or a financial institution or non-bank financial intermediary as defined under Section 131 of the LGC. That being the case, it cannot be assessed 0.55% local business tax on the dividends derived from its SMC shares of stock and interests on its money market placements. For being a mere owner of the subject shares or receiving income on account of such property does not constitute doing business as defined under Section 131 of the LGC. Since it is neither a bank nor financial institution, it is not subject to business tax under Section 143 of the LGC which allows a local government unit to impose business taxes only on banks and other financial institutions.

---

[13] Annex "P-7", Petition for Review, Docket, pp. 72-84; RTC Records, pp. 346-358.
[14] Annex "P-2", Petition for Review, Docket, p. 42; RTC Records, p. 374.
[15] Docket, pp. 8-30.

Finally, petitioner's income partakes the nature of public funds, per the ruling of the Supreme Court in the case of *COCOFED v. Republic*[16], thus, business tax cannot be imposed on the same. Section 133(o) of the LGC expressly prohibits a local government unit, such as respondent City of Davao, from imposing "Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units."

By way of comment,[17] respondents contend that by virtue of its stock investments in SMC, and its money market placements, petitioner is deemed a non-bank financial intermediary. Respondents claim that petitioner is expressly included in the definition of the term banks and other financial institution. Besides, petitioner's business purpose as contained in its Articles of Incorporation is so broad as to include all of the descriptive functions of a non-bank financial intermediary as provided under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the *Bangko Sentral ng Pilipinas*. As a stock corporation, petitioner is presumed to have been organized to engage in business through its stock investments and money placements with the end view of realizing profit. Thus, as a non-bank financial intermediary, petitioner is subject to local business tax pursuant to Section 143(f) of the LGC, on its gross receipts consisting of dividends and interest income.

Further, the non-inclusion of dividends and interest income under the term "Gross Sales or Receipts" in Section 131(n) of the LGC will not negate their taxability pursuant to Section 143(f) of the same Code which allows the impostion of taxes by respondent City on banks and financial institutions to which category petitioner belongs.

Also of little weight according to respondents, is the opinion of the Bureau of Local Government Finance (BLGF) that petitioner is exempt from local business tax for it is not a bank or other financial institution. Respondents

---

[16] G.R. Nos. 177857-58, January 24, 2012.
[17] Comment posted on January 7, 2016, received by the Court on January 20, 2016, Docket, pp. 148-162.

emphasize that the BLGF is not an administrative agency whose findings on questions of facts and law are given weight and respect in the courts of justice.

Even assuming that petitioner's income partakes the nature of public funds pursuant to the ruling of the Supreme Court in *Philippine Coconut Producers Federation, Inc. (COCOFED) vs. Republic of the Philippines*[18], it does not exempt petitioner from the payment of local business tax on its dividends and interest income pursuant to Section 143(f) of the LGC. The COCOFED case merely identified the nature of such fund but did not delve on its taxability. Further, what is being taxed in this case is not the fund itself but the dividends and interest income derived therefrom.

The instant Petition for Review was submitted for decision on June 8, 2016.[19]

THE ISSUE

The issues raised by the parties may be summarized as follows:

> Whether petitioner is entitled to a refund or credit of the 0.55% local business taxes collected for the first and second quarters of 2011 on the dividends from its SMC preferred shares and interest on its money market placements for taxable year 2010.

THE RULING OF THE COURT

First, the Court must determine whether petitioner was able to perfect its appeal in the manner and within the period permitted by law, which is not only mandatory, but also jurisdictional.[20]

---

[18] G.R. Nos. 177857-58 and 178193, January 24, 2012.
[19] Resolution dated June 8, 2016, Docket, p. 215.
[20] Wilson T. Go vs. BPI Finance Corporation, G.R. No. 199354, June 26, 2013.

ω/

Section 196 of the LGC pertinently provides as follows:

> SEC. 196. *Claim for Refund of Tax Credit.* - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

Thus, in order to be entitled to a refund/credit, the following procedural requirements must concur: *first*, the taxpayer concerned must file a written claim for refund/credit with the local treasurer; and *second*, the case or proceeding for refund has to be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.[21]

The record reveals that petitioner made payments for local business taxes pertaining to the first and second quarters of 2011 on January 18, 2011[22] and on April 25, 2011, respectively.[23] Thereafter, or on September 13, 2012, it filed a claim for refund of the said payments with respondent City Treasurer.[24]

As regards petitioner's appeal to the RTC, pursuant to Section 196 of the LGC, petitioner had two (2) years from the dates of the payment of the tax or until January 18, 2013 and April 25, 2013, respectively, within which to file its judicial claim for refund. Clearly, petitioner's recourse to the RTC was seasonably filed on January 17, 2013.[25] In other words, petitioner was able to comply with the requisite 2-year period for its claim for refund.

---

[21] Metro Manila Shopping Mecca Corp., et al. vs. Ms. Liberty Toledo, in her Official Capacity as the City Treasurer of Manila, and the City of Manila, G.R. No. 190818, June 5, 2013.
[22] Annex "P-3", Petition for Review, Docket, p. 43; Annex "A", RTC Records, p. 20.
[23] Annex "P-4", Petition for Review, Docket, p. 44; Annex "A-1", RTC Records, p. 21.
[24] Annex "P-5", Petition for Review, Docket, pp. 45-54; Annex "B", RTC Records, pp. 48-57.
[25] Annex "P-6", Petition for Review, Docket, pp. 55-71; RTC Records, pp. 3-19.

On the validity of the imposition and collection of business tax on the dividends from petitioner's SMC preferred shares and interest income received on its money market placements upon which petitioner's entitlement to the refund sought is based, it must be noted that the power of local government units to impose taxes within its territorial jurisdiction is derived from the Constitution itself. Under the Constitution, local government units, such as respondent City of Davao has the authority to create their own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy.[26]

Such power however is not absolute but subject to limitations. The following ruling of the Supreme Court on the nature of the power to tax of local government units (LGU), such as respondent City of Davao, is instructive, thus:

> The power to tax "is an attribute of sovereignty," and as such, inherent in the State. Such, however, is not true for provinces, cities, municipalities and barangays as they are not the sovereign; rather, they are mere "territorial and political subdivisions of the Republic of the Philippines". x x x Therefore, the power of a province to tax is limited to the extent that such power is delegated to it either by the Constitution or by statute. Section 5, Article X of the 1987 Constitution is clear on this point:
>
>> Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges <u>subject to such guidelines and limitations as the Congress may provide</u>, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. [Underscoring supplied]
>
> Per Section 5, Article X of the 1987 Constitution, "the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges." Nevertheless, such

---

[26] Section 5, Article X, 1987 Philippine Constitution.

> authority is "subject to such guidelines and limitations as the Congress may provide".
>
> In conformity with Section 3, Article X of the 1987 Constitution, Congress enacted Republic Act No. 7160, otherwise known as the Local Government Code of 1991.[27]

The foregoing tenet was echoed in a more recent case, as follows:

> At the outset, it must be emphasized that although the power to tax is inherent in the State, the same is not true for LGUs because although the mandate to impose taxes granted to LGUs is categorical and long established in the 1987 Philippine Constitution, the same is not all encompassing as it is subject to limitations as explicitly stated in Section 5, Article X of the 1987 Constitution, *viz.*:
>
>> SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.[28]

As ruled above, the power of respondent City of Davao to tax is subject to the limitations provided in the Constitution and such other laws as the Congress may provide, which in this particular case is R.A. No. 7160 or the LGC, as amended, specifically Section 133 (o) thereof,[29] which prohibits local government units from imposing taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

Significantly, the Supreme Court, in no uncertain terms, already declared that the SMC shares held by petitioner are owned by the government, thus:

---

[27] Pelizloy Realty Corporation, Represented herein by its President, Gregory K. Loy vs. The Province of Benguet, G.R. No. 183137, April 10, 2013.

[28] Batangas City, et al. vs. Pilipinas Shell Petroleum Corporation, G.R. No. 187631, July 8, 2015.

[29] Philippine Fisheries Development Authority (PFDA) vs. Central Board Of Assessment Appeals, et al., G.R. No. 178030, December 15, 2010.

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.

In this case, the 6 CIIF Oil Mills were acquired by the 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 the 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.

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 the fruits of the coconut levy funds acquired at the expense of the coconut industry. In *Republic v. COCOFED*, the *en banc* Court, speaking through**

w/

> **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.** [30]

Since the subject shares are owned by the government, it follows that the dividends and any income derived therefrom are owned by the government as well. That being the case, the subject shares and the dividends derived therefrom do not fall within the taxing power of respondent City of Davao pursuant to Section 133(o) of the LGC of 1991. *A fortiori*, the imposition of the 0.55% local business taxes on petitioner for the first and second quarters of 2011 on the dividends arising from its SMC preferred shares and interests on money market placements was erroneously and illegally collected from petitioner by respondents.

Even assuming that petitioner and its SMC shares are within the taxing power of the City of Davao, petitioner is still not liable for deficiency business tax of 0.55% for the first and second quarters of 2011 imposed by respondents by virtue of Section 143(f), in relation to Section 151, of the LGC, which grants to a city the power to impose taxes on "banks and other financial institutions," to wit:

> 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 (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.

---

[30] Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, G.R. Nos. 177857-58 and 178193, January 24, 2012.

fu

> SEC. 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**: 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. *(Emphases supplied)*

In relation thereto, Section 131(e) of the LGC defines the term "banks and other financial institutions", as used under Title One, Book Two of the LGC, as follows:

> 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**; *(Emphasis supplied)*

From the foregoing definitions, a local government unit such as respondent City of Davao, can impose business tax only on banks and other financial institutions pursuant to Section 143(f) of the LGC of 1991, which includes non-bank financial intermediaries, per Section 131(e) of the LGC.

In the instant case, petitioner was assessed for local business tax on the premise that it is a non-bank financial intermediary. Respondents however failed to present any convincing proof that petitioner is a financial intermediary or has even engaged in the activities of a financial institution/intermediary.

While Section 131(e) of the LGC of 1991 includes "non-bank financial intermediaries" in the term "banks and other financial institutions, it does not define the term "non-bank financial intermediaries" but insinuated that resort to other applicable laws, or rules and regulations for such definition is allowed.

Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, as amended, defines the term "non-bank financial intermediary", 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)*

In relation thereto, Section 4 of R.A. No. 337,[31] as amended by Presidential Decree No. 1828,[32] states that the authority to determine whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation, is vested on the Monetary Board subject to judicial review, thus:

> Sec. 4. The determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation shall be decided by the Monetary Board subject to judicial review. For the purpose of resolving such issue; the Monetary Board may, through appropriate supervising department of the Central Bank, examine, inspect or investigate the books and records of such person or entity. The department head and the examiners of said appropriate supervising department are hereby authorized to administer oaths to any such person or director, officer or employee of any such entity and to compel the presentation or production of all books, documents, papers or records necessary in their judgment to ascertain the facts relative to the true functions and operations of such person or entity. Failure or refusal to

---

[31] Otherwise known as the General Banking Act, as amended.
[32] Presidential Decree No. 1828, "Amending Further Republic Act No. 337, as amended, otherwise known as The "General Banking Act."

> comply with the required presentation or production of such books, documents, papers or records shall subject the persons responsible therefor to the penal sanctions provided under Section 34 of R.A. No. 265, as amended. Persons or entities found by the Monetary Board to be performing banking or quasi-banking functions without the required prior authorization of the Monetary Board may, in addition to the proceedings provided under Section 34 of Republic Act No. 265, as amended, be subject to the imposition of fine of not in excess of P500 per day reckoned from the date the unauthorized banking or quasi-banking functions were performed and may be referred to the Securities and Exchange Commission for the revocation of its license to do business.

Applying the cited provision to the present case, there is no evidence on record that petitioner was authorized by the *Bangko Sentral ng Pilipinas* (BSP) to perform quasi-banking activities as a non-bank financial intermediary pursuant to Section 22(W) of the NIRC of 1997, as amended.

There is likewise no sufficient evidence showing that petitioner is a non-banking financial intermediary as found by the Monetary Board pursuant to Section 4 of R.A. No. 337

Further, Section 2(D)(c) of R.A. No. 337, otherwise known as the General Banking Act, as amended by P.D. No. 71, defines financial intermediaries as follows:

> Sec. 2-D. For purposes of Sections Two, Two-A, Two-B, and Two-C the following definition or terms shall apply:
>
> xxx xxx xxx
>
> (c) "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;

w/

Further, Section 2.3 of Revenue Regulations (RR) No. 9-2004 issued by the BIR defines "non-bank financial intermediaries" as follows:

> 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. *(Emphasis supplied)*

A similar yet more elaborate definition of the term financial intermediaries is found in Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas,* thus:

> **§ 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.
>
> *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 enumerated in Items *a* to *e* of this Subsection.** *(Emphasis supplied)*

In a case, the Supreme Court defined the term "financial intermediaries" as persons or entities whose principal functions include the lending, investing or placement of funds or evidence 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. [33]

On the other hand, "non-banking financial intermediaries" include a person or entity performing any of the functions of a financial intermediary, including, holding assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers. Furthermore, the person or entity must perform the afore-mentioned functions on a regular and recurring basis, and not on an isolated basis.

Applying the said definitions, there is nothing in the record that indicates or even hints that petitioner is engaged in "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," in order to be within the ambit of the term "Financial intermediaries/non-bank financial intermediaries" as defined similarly in (i) Section 2(D)(c) of R.A. 337, or the General Banking Act, as amended, (ii) Section 2.3 of RR No. 9-2004, and (iii) Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas.*

---

[33] First Planters Pawnshop, Inc. vs. Commissioner of Internal Revenue, G.R. No. 174134, July 30, 2008.

The Court is also not persuaded that petitioner's primary purpose as stated in its Articles of Incorporation, standing alone, is sufficient to prove that it is performing the functions of a financial intermediary. Certainly it cannot be assumed that petitioner is engaged in activities as a non-bank financial institution or intermediary based on the mere statement of its primary purpose in its Articles of Incorporation.

As held in cases more than one, he who alleges, not he who denies, must prove.[34] Since respondents utterly failed to establish by convincing and credible evidence that petitioner is a non-bank financial intermediary, or is engaged in such activities pursuant to the aforecited laws, and rules and regulations, petitioner cannot be held liable for business taxes on the basis of Section 143(f) of the LGC, which grants to respondent City the power to impose taxes on "banks and other financial institutions."

Finally, considering that petitioner complied with the requirements for refund of local business taxes under Section 196 of the LGC, and given that it is not a non-bank financial intermediary and that the subject SMC shares of stock have been declared owned by the Government, therefore not subject to local business tax, petitioner is entitled to the refund of the 0.55% local business taxes erroneously collected from it for the first and second quarters of 2011 on the dividends arising from its SMC preferred shares and interests on its money market placements.

WHEREFORE, the Petition for Review dated November 3, 2015 filed by ASC Investors, Inc. is **GRANTED**. Accordingly, the assailed Decision dated June 22, 2015 and the Order dated September 11, 2015 rendered by the Regional Trial Court of Davao City in Civil Case No. 34,850-13 are **REVERSED** and **SET ASIDE**. Respondents are **DIRECTED TO REFUND OR CREDIT** in favor of petitioner the amount of P3,493,445.50, representing the erroneously

---

[34] Equitable Banking Corporation (now known as Equitable-PCI Bank) vs. Ricardo Sadac, G.R. No. 164772, June 08, 2006.

paid 0.55% local business taxes for the first and second quarters of 2011.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice