Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

RANDY ALLIED VENTURES, INC.,
Petitioner,

-versus-

CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City,
Respondents.

CTA AC No. 160
(Civil Case No. 34,853-2013)

Members:

DEL ROSARIO, *Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:
AUG 09 2016 10:45 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 3 (a)(3), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2]

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[1] Sec. 3. *Cases within the jurisdiction of the Court in Division.*- The Court in Division c shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

xxxxx.

(3) Decisions or resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction;
xxxxx.

Sec. 4. *Where to appeal; mode of appeal.*-

(a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade &

dated June 22, 2015, Regional Trial Court, Branch 16 of Davao City docketed as Civil Case No. 34,853-2013, and its Resolution[3] dated September 11, 2015.

Petitioner assailed both the Decision and Resolution, which denied its "Petition for Refund or Credit under Section 156 of Republic Act No. 7160". Petitioner seeks to declare a holding company as not within the definition of non-bank financial intermediaries.

The antecedent facts are as follows:

On January 17, 2013, petitioner filed a petition [4] docketed as Civil Case No. 34,853-2013 before the Court a quo claiming refund or credit of local business taxes erroneously and illegally collected by respondents for the taxable year 2010.

Petitioner claims respondent erroneously and illegally collected business tax in the amount of P503,346.00 from petitioner's dividends from San Miguel Corporation (SMC) preferred share and interest on its money markets placement on the ground that it is not a bank or financial institutions

In their Answer, [5] respondents claim that petitioner is not entitled to the relief demanded on the ground that the assessment and collection of local business tax was made in accordance with existing law and ordinance; that they took into consideration the nature of petitioner's business operation and deemed petitioner as "other financial institutions"; that petitioner is a holding company, owning shares of stock, receiving dividends and interest income

Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[2] Docket, pp. 32-41.

[3] Docket, p. 42.

[4] Regional Trial Court Docket, pp. 3-85.

[5] Ibid. pp. 98-107

from its money placement market, which constitute an act of investing or doing business within the definition of "non-bank financial intermediaries".

On January 21, 2014, petitioner filed its Pre-Trial Brief. Respondents, on the other hand, filed their Pre-Trial Brief on February 14, 2014. Thereafter, in an Order[6] dated February 18, 2015, the Court noted the Joint Stipulation of Facts and Issues (JSFI) filed by the parties and directed them to submit their respective memoranda.

On March 20, 2015, respondents submitted their Memorandum, while petitioner submitted its Memorandum on April 7, 2015.

On June 22, 2015 the Court a quo promulgated its Decision[7], the pertinent portions of which read as follows:

> *"In short, these **dividends and interest** are not considered incidental to its business quest, but are the **principal** (defined above as: **Principal** shall mean, chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental) incomes of Petitioner's Corporation in the regular course of business in line with the Primary Purpose of its Amended Articles of Incorporation.*
>
> *As such, being categorized as a **Financial Intermediary**, petitioner's principal income falls under the coverage of **paragraph (f), Section 143 of RA No. 7160 of the Local Government Code of 1991**, to wit:*
>
> > *"SECTION 143. Tax on Business.- **The municipality may impose taxes on the following businesses**:*
> >
> > *xxx*
> >
> > *(f) On banks and other **financial institutions**, at a rate not exceeding fifty*

[6] Ibid., pp. 296-297.
[7] Ibid., pp. 333-342.

> *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 for sale of property, insurance premium."*

> ***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.***"

Petitioner filed a Motion for Reconsideration. Said motion was denied for lack of merit in a Resolution[8] dated September 11, 2015; hence, the present petition was filed.

Petitioner argued that it is entitled to a refund or credit of the local business taxes collected on the dividends on its SMC preferred shares and interests on its money market placements for the taxable year 2010 on the following grounds:

> a. Under Section 133(A) of Republic Act No. 7160, it is erroneous and illegal for respondents to collect a business tax on the dividends and interest earned by a taxpayer which is not a bank or a financial institution.

> b. Petitioner is not a bank or non-bank financial institution and is not engaged in business that is subject to local business tax under Section 143 of Republic Act No. 7160.

Petitioner claims that to be considered financial intermediary the person or entity must perform the functions on a regular and recurring, not on an isolated basis. Furthermore, petitioner claims that as a holding company its

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[8] Ibid. p. 357.

articles of incorporation expressly prohibit it from acting as an investment company or a securities broker and /or dealer which are all types or classifications of a non-bank financial intermediary.

In their Comment,[9] respondents insist that petitioner is a "non-bank financial intermediary or an investment company by virtue of its investment and money placements in San Miguel Corporation. Likewise, respondents claim that the business purpose of petitioner in its amended articles of incorporation is within the descriptive functions of a non-bank financial intermediary.

The issue is whether petitioner is entitled to the refund or credit of local business taxes erroneously and illegally collected by respondents from petitioner for the first half of the year 2011, computed based on the dividends and interests derived by petitioner for the taxable year 2010.

The crux or the main issue is whether dividends and interests earned by petitioner is subject to local business tax or stated differently, the issue is whether petitioner is a non-bank financial intermediary.

We resolve.

The applicable provisions of Republic Act No. 7160, otherwise known as "Local Government Code of 1991", read as follows:

> **Section 131.** *Definition of Terms.* - When used in this Title, the term:
>
> xxxx
>
> (e) "Banks and other financial institutions" include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets,

[9] En Banc Docket, pp. 151-165.

stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;

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;

xxx xxx xxx

Section 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:

xxxx.

(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.

Under the foregoing provision, as a general rule, the taxing powers of a local government unit does not extend to income tax. The exception is if it is levied on banks and other financial institutions. Thus, the taxing powers of a local government unit may extend to income tax as long as it is levied on banks and other financial institutions.

"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.

The definition of non-bank financial intermediaries or financial intermediaries set by Manual of Regulations for Non Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP) are controlling and applicable in this case. Section 4101Q.1 of the said manual provides as follows:

> *"Section 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."

Evidently, financial intermediaries' principal functions involve the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them. It must perform any of its functions on a regular and recurring, not on an isolated basis.

In a corporation, the business or purpose may be determined from the purpose clause in its articles of incorporation/partnership. Under the Corporation Code, a corporation has only such powers as are expressly granted to it by law and by its articles of incorporation, those which may be incidental to such conferred powers, those reasonably necessary to accomplish its purposes and those which may be incident to its existence.[10] The best proof of the purpose of a corporation is its articles of incorporation and by-laws. The articles of incorporation must state the primary and secondary purposes of the corporation, while the by-laws outline the administrative organization of the corporation, which, in turn, is supposed to insure or facilitate the accomplishment of said purpose.[11]

In this case, the petitioner's purpose as stated in the Amended Articles of Incorporation[12] reads as follows:

> *"PRIMARY PURPOSE*
>
> *The primary purpose for which such corporation is formed is:*
>
> *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, bond 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 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*

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[10] PILIPINAS LOAN COMPANY, INC., *petitioner, vs.* HON. SECURITES AND EXCHANGE COMMISSION AND FILIPINAS PAWNSHOP, INC.,[1] *respondents.* [G.R. No. 104720. April 4, 2001]

[11] ALICIA E. GALA, GUIA G. DOMINGO and RITA G. BENSON, *petitioners, vs.* ELLICE AGRO-INDUSTRIAL CORPORATION, MARGO MANAGEMENT AND DEVELOPMENT CORPORATION, RAUL E. GALA, VITALIANO N. AGUIRRE II, ADNAN V. ALONTO, ELIAS N. CRESENCIO, MOISES S. MANIEGO, RODOLFO B. REYNO, RENATO S. GONZALES, VICENTE C. NOLAN, NESTOR N. BATICULON, [G.R. No. 156819. December 11, 2003]

[12] Exhibit A-1, RTC Docket, pp.180-191.

Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation."[13]

SECONDARY PURPOSES

1. To engage generally in the business of taking charge of management, administration, and supervision of, or rendering services in the form of consultation, investigation, valuation; or estimates for (i) the operations of any agricultural, commercial or industrial enterprises or business, (ii) the construction, erection, installation, maintenance, improvement, repair, or alteration of any industrial or chemical works, project, plant, machinery, facilities, appliances or equipment or (iii) the promotion, development, establishment or installation of systems, techniques, methods, processes or controls in connection with the production, manufacture, sale, supply, distribution or other operation of agricultural, commercial or industrial products, machinery, facilities, appliances xxxxx.

2. To engage in, operate, conduct and maintain the business of manufacturing, buying and selling, importing, bartering and otherwise dealing in all goods, merchandise and wares which are the lawful objects of commerce and to act as manufacturers' representatives, agents, commission merchants, indentors, merchandise brokers, factors, or in any other representative capacity;

3. To buy, sell, mortgage, exchange, lease, let, develop, hold for investment or otherwise, use and operate natural resources projects, and any right or interest therein; and

4. To carry on a general advertising, including radio and television advertising, public relations, sales promotion and publicity business both as principal and agents, to acquire and operate franchises or privileges incident thereto.

NECESSARY AND INCIDENTAL PURPOSES

In furtherance of the foregoing ordinary and secondary purposes, the Corporation shall have the powers:

1. To buy, sell, hold and own and otherwise deal in open accounts, conditional sale contracts,

[13] En banc, Docket p. 12.

> *commercial papers, bills of lading, warehouse receipts, bonds and securities, including personal property, leases, contracts, mortgages and choses in action of any and every kind, nature and distribution; provided that the funds to be devoted for such business shall not be derived from the public through receipts of deposits or, sale of bonds, securities or obligations of any kind;*
>
> *2. To apply for, register, purchase or otherwise, acquire, use, protect and renew any patents, patent rights, licenses, concessions, trademarks, tradenames, inventions, formulae and processes used or capable of being used in connection with any of the business of the Corporation or in acquisition of which may directly or indirectly benefit the Corporation and to use, exercise, develop, sell, assign, or otherwise dispose of, or grant licenses in respect of, the property, rights, trademarks, or other information so acquired, and to spend money in experimenting upon and testing and improving, any patents, inventions or rights which the Corporation may acquire or propose to acquire;*
>
> *3. To borrow or raise money necessary to meet the financial requirements of its business by the issuance of bonds, promissory notes and other evidences of indebtedness, and to secure the repayment thereof by mortgage, pledge, deed of trust or lien upon the properties of the Corporation, or to lease, pursuant to law, shares of its capital stock, debentures and other evidences of indebtedness in pay (sic) for properties acquired xxx;"*

From the foregoing, petitioner is a domestic corporation primarily engage in the business of owning and holding real and personal property including shares of stock, voting trust certificates for shares of the capital stock, bond debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation. Likewise, petitioner's primary purpose is to act as a "holding corporation" but shall not act as investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.

The court a quo concludes that the scope of petitioner's primary business purpose in its Amended Articles of Incorporation is wittingly or unwittingly broad enough to catch all the descriptive functions of a financial intermediary. Likewise, the Court a quo found that the income of petitioner comes only from dividends and interest which were considered principal income of petitioner. Thus, petitioner was considered a financial intermediary.

We disagree. The main issue is answered affirmatively.

The rule governing the taxing power of provinces, cities, muncipalities and barangays, is limited. It has no inherent power of taxation. If granted, the power is to be construed in strictissimi juris, any doubt or ambiguity arising out of the term used in granting that power must be resolved against the province, city or municipality. Thus, the Supreme Court consistently[14] ruled as follows:

> *"It is settled that a municipal corporation unlike a sovereign state is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality, cannot assume it. And the power when granted is to be construed in strictissimi juris. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions – all these – have no place in the interpretation of the taxing power of a municipal corporation. [Underscoring supplied]"*

As a general rule, the taxing powers of a local government unit does not extend to income 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.

[14] Icard vs. City Council of Baguio, 83 Phil 870, 873 (1949) and City of Iloilo v. Villanueva, 105 Phil. 337 (1959), Pelizloy Realty Corporation vs. the Province of Benguet, G.R. No. 183137, April 10, 2013.

The exception is if it is 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."

A holding company is not included by the Local government Code, specifically section 131(e) thereof in the definition of banks and other financial institutions. The enumeration is evidently exclusive of other entities. Had the legislature intended to include holding company among the exceptions, the same could have been expressly provided but it did not.

Moreover, a holding company is likewise not included in the list of non-banking intermediaries set by Section 4101Q.1 of Manual of Regulations for Non Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP), to wit:

> *"xxx xxx xxx*
>
> *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.*
>
> *xxx xxx xxx"*

The express mention of one person, thing, or consequence, implies the exclusion of all others. *Expressio unius est exclusio alterius.* To elaborate[15] -

> *"Indeed, it is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim expressio unius est exclusio alterius. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned."*

The rule of *expressio unius est exclusio alterius* is among the canons of restrictive interpretation.[16] It is based on the rules of logic and the natural workings of the human mind. It is predicated upon one's own voluntary act and not upon that of others. It proceeds from the premise that the legislature would not have made specified enumeration in a statute had the intention been not to restrict its meaning and confine its terms to those expressly mentioned.[17]

Since the taxing power of provinces, cities, muncipalities and barangays is to be construed in *strictissimi juris*, any doubt or ambiguity arising out of the term used in granting that power must be resolved against the City of Davao. Thus, a holding company is neither covered under the definition of "non-banking financial intermediaries" under

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[15] Benjamin (Kokoy) Romualdez vs. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, and Presidential Commission on Good Government, G.R. Nos. 165510-33, July 28, 2006, citing Centeno v. Villalon-Pornillos, G.R. No. 113092, September 1, 1994, 236 SCRA 197, 203.

[16] SARIO MALINIAS vs. THE COMMISSION ON ELECTIONS, TEOFILO CORPUZ, ANACLETO TANGILAG and VICTOR DOMINGUEZ , G.R. No. 146943, October 4, 2002, citing Ruben E. Agpalo, Statutory Construction, (1990), pp. 160-161, [citing the cases of Canlas vs. Republic, 103 Phil. 712 (1958); Lao Oh Kim vs. Reyes, 103 Phil. 1139 (1958); People vs. Aquino, 83 Phil. 614 (1949); Escribano vs. Avila, 85 SCRA 245 (1978); People vs. Lantin, 30 SCRA 81 (1969); Manila Lodge No. 761 vs. Court of Appeals, 73 SCRA 162 (1976); Santos vs. Court of Appeals, 96 SCRA 448 (1980); Lerum vs. Cruz, 87 Phil. 652 (1950); Velasco vs. Blas, 115 SCRA 540 (1982).]
[17] Ibid.

Section 4101Q.1 of Manual of Regulations for Non Bank Financial Institutions issued by the Banko Sentral ng Pilipinas (BSP) nor in the definition of "banks and other financial institutions" as contemplated by Section 131(e) of the LGC for purposes of exemption on the levy of income tax under Section 133 of the LGC.

Further, this Court en banc, in the case of *Michigan Holdings, Inc. vs. the City Treasurer of Makati, Nelia A. Barlis,*[18] had occasion to rule[19] that a dividend income is not subject to local business tax, to wit:

> *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.*
>
> *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*

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[18] CTA EB No.1093 (CTA AC No. 99) JUNE 17, 2015.
[19] Penned by Associate Justice Ma. Belen M. Ringpis-Liban.

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.

> *There is more.*
>
> *Section 27 (D) of the National Internal Revenue Code deals with rates of tax on certain passive incomes. Subsection (4) thereof, covering intracorporate dividends, states that "Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax" - meaning corporate income tax. Dividends are instead subject, under Section 27(D)(1), to "a final tax at the rate of twenty percent (20%).*
>
>> *"Under Section 27(D)(4) of the Tax Code, dividends received by a domestic corporation from another corporation are not subject to the corporate income tax. Such intracorporate dividends are some of the passive incomes that are subject to the 20% final tax, just like interest on bank deposits. Intracorporate dividends, being already subject to the final tax on income, no longer form part of the bank's gross income under Section 32 of the Tax Code for purposes of the corporate income tax."*
>
> *Thus, Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code, likewise violates Section 27(D)(4) of the National Internal Revenue Code.*

Concomitantly, mere owning or holding of shares of stock of a corporation does not *ipso facto* make the person or an institution to be included in the definition of "other financial intermediary", "other financial institution" or "non-banking financial intermediary", in the absence of other evidence.

It is undisputed before the Court a quo that petitioner paid the amount of ₱503,346.00 of business tax computed on the dividends and interest earned by petitioner on the basis that petitioner is a financial intermediary.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. The Decision of the Regional Trial Court, Branch 16 of Davao City docketed as Civil Case No. 34,853-13, dated June 22, 2015, and its Resolution dated September 11, 2015, are **REVERSED and SET**

ASIDE. Respondent City of Davao is **DIRECTED** to refund or credit to petitioner the amount of ₱503,346.00 representing the erroneous payment of local business tax for the first and second quarter of 2011. No pronouncement as to costs.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
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
Chairperson, 1st Division