REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

MAKATI CITY TREASURER AND MAKATI CITY, as represented by the **CITY MAYOR,** *Petitioners,*	**CTA EB NO. 1957** *(CTA AC No. 188)*
	Present:
- versus -	**DEL ROSARIO, *PJ,*** **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO, *JJ.***
CORULLON HOLDINGS, INC., *Respondent.*	**Promulgated:** JAN 02 2020 2:53 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *en banc* is a Petition for Review[1] filed by petitioners Makati City Treasurer and Makati City, as represented by the City Mayor (Makati Petitioners) against the respondent Corullon Holdings, Inc. (CHI) seeking the reversal of the Decision dated June 6, 2018[2] (assailed Decision) rendered by the First Division of this Court in CTA AC No. 188, as well as the Resolution dated September 18, 2018[3] (assailed Resolution) denying its motion for reconsideration, and praying that another one be rendered denying CHI's claim for refund.

[1] *Rollo*, pp. 1-18, with Annexes "A" and "B", pp. 19-43.
[2] *Id.*, pp. 21-40.
[3] *Id.*, pp. 41-43.

CHI originally came to this Court for relief against the Decision dated February 24, 2017[4] and the Order dated June 6, 2017[5] of the Makati City Regional Trial Court (RTC)-Branch 150 in Civil Case No. 14-471 entitled *"Corullon Holdings, Inc. vs. Makati City Treasurer and Makati City, as represented by the City Mayor"* which denied the refund claim of CHI for local business tax paid under protest and dismissed the Petition. In its Petition, CHI prayed that the Court in Division order the Makati Petitioners to cancel and annul the Assessment dated January 19, 2014 which found it liable for deficiency local business tax on dividend income for the year 2013, in the aggregate amount of ₱359,745.37; and declare Section 3A.02(p) of Makati City Ordinance No. 025-A-04 or the Revised Makati Revenue Code (RMRC) as invalid.

The assailed Decision partially granted CHI's Petition for Review, as follows:

> **"WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* **is PARTIALLY GRANTED.**
>
> The Decision dated February 24, 2017 and Order dated June 6, 2017, both rendered by the Court a *quo* are **AFFIRMED,** but only insofar as it sustained the validity Section 3A.02 (p) of the RMRC.
>
> However, the Billing Statement/Assessment dated January 19, 2014 issued by respondents against petitioner for deficiency local business tax for taxable year 2013 in the aggregate amount of 359,745.37, inclusive of surcharge and interest, is **CANCELLED** and **SET ASIDE.**
>
> Accordingly, respondents are **ORDERED** to refund petitioner the said aggregate amount of **THREE HUNDRED FIFTY-NINE THOUSAND SEVEN HUNDRED FORTY-FIVE PESOS** and **THIRTY-SEVEN CENTAVOS (P359,745.37).**
>
> **SO ORDERED."**[6]

The dispositive portion of the assailed Resolution, on the other hand, reads as follows:

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[4] *Docket*, pp. 39 to 44, CTA AC No. 188.
[5] *Id.*, pp. 37 to 38.
[6] *Id.* at Note 1, p. 39.

> "**WHEREFORE,** premises considered, respondents' *Motion for Reconsideration* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[7]

The Parties

Petitioner Makati City Treasurer is responsible for the collection of local taxes and fees imposed by petitioner Makati City and for the custody of its funds.[8] Petitioner Makati City, as represented by the City Mayor, is the principal of petitioner Treasurer.[9] The Makati Petitioners may be served with orders and processes of the Court at the City Treasurer's Office and Office of the City Mayor in Makati City Hall, Makati City.

On the other hand, respondent CHI is a domestic corporation duly organized and existing under Philippine Laws, with office address at 35th Floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue corner Paseo, Makati City.[10]

The Facts[11]

On January 19, 2014, CHI received the Billing Statement dated January 19, 2014 issued by Makati City and the Makati City Treasurer for deficiency local business tax for taxable year 2013 in the aggregate amount of ₱359,745.37, inclusive of surcharge and interest computed as follows:

Tax Base (Actual Gross Per FS)	Tax Amount	Surcharge and Interest	Total
119,120,983.00	238,241.97	121,503.40	359,745.37

The tax base was based on the amount of dividend income received by CHI as reflected in its 2012 Audited Financial Statements.[12]

On January 30, 2014, CHI filed a written protest thereof dated January 30, 2014 contesting the validity and propriety of the assessment.[13]

On January 31, 2014, CHI paid the deficiency local business tax for 2013

[7] *Id.*, p. 43.
[8] *Id.* at Note 4, p. 9.
[9] *Id.*
[10] RTC Records (Civil Case No. 14-471), p. 388.
[11] As found by the First Division and as culled from the records of the case.
[12] *Id.* at Note 4, p. 39; *id.* at Note 10, pp. 346 to 347, Exhibit L.
[13] *Id.* at Note 10, p. 388, Pre-Trial Order dated December 3, 2015, par. 4.

in the amount of ₱359,745.37.[14]

On February 14, 2014, CHI reiterated and maintained its protest against the assessment through a Letter dated February 12, 2014 addressed to the Treasurer.[15]

Despite the lapse of sixty-(60) days from the filing of the first protest, the Treasurer did not act on the protest and second protest.[16]

On April 30, 2014, CHI filed a *Petition for Review* before the RTC Makati City, docketed as Civil Case No. 14-471 and was raffled to Branch 132 of said Court on May 5, 2014.[17]

On June 18, 2014, the Makati Petitioners filed their *Answer*[18] therein and raised the affirmative and/or special defenses that CHI admitted that it applied as a holding company for its business permits and license in Makati and was classified as such; that as a holding company, CHI was taxed under Section 3A.02(p), in relation to Section 3A.02(h), of the RMRC; that Section 3A.02(p), in relation to Sections 3A.02(g) and 3A.02(h), remains valid as it was never questioned in accordance with the provision on Taxpayers' Remedies of the RMRC; that the CTA case of *Orleyte Company (Philippine Branch) vs. the City of Makati* (CTA Case No. 80, November 14, 2012) is inapplicable; that assuming that CHI is entitled to a refund, it may only be granted in a form of tax credit, by express provision of law; and that CHI did not meet the burden of proof required to be entitled to the refund.

On May 8, 2015, the RTC-Branch 132 issued an Order referring the case for mediation.[19] The mediation was unsuccessful considering that the parties preferred to go to trial as per the Mediator's Report.[20] Correspondingly, the Civil Case No. 14-471 was re-raffled to RTC - Branch 150.

During pre-trial of Civil Case No. 14-471, the parties stipulated to the following issues:

1. Whether [CHI's] dividend income is subject to local business tax;

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[14] *Id.*, p. 389, par. 5.
[15] *Id.*, p. 389, par. 6.
[16] *Id.*, p. 389, par. 7..
[17] *Id.* at Note 10, pp. 1 to 20.
[18] *Id.*, pp. 36 to 47.
[19] *Id.*, p. 367.
[20] *Id.*, p. 369.

2. Whether the Assessment has factual and legal bases;

3. Whether [CHI] is liable for local business tax for taxable year 2013 in the amount of ₱359,745.37;

4. Whether [CHI] is entitled to a refund of or tax credit in the amount of ₱359,745.37 representing local business tax for taxable year 2013 which [CHI] paid under protest;

5. Whether in the event that [CHI] shall be granted refund, it may only be granted in the form of tax credit, by express provision of law; and,

6. Whether [CHI] was able to overcome the burden of proving that it is entitled to the refund being prayed for.[21]

Trial ensued and both parties presented their respective testimonial and documentary evidence. CHI presented Vanessa M. Besas[22] as its witness; while the Makati Petitioners presented Stella Marie S. Pery[23] as their witness.[24] On July 12, 2016, CHI filed its Formal Offer of Documentary Evidence[25] marked as Exhibits "A" to "P" with submarkings which the RTC admitted in the Order dated August 3, 2016.[26] The Makati Petitioners, on other hand, filed their Formal Offer of Exhibits on October 13, 2016,[27] offering Exhibits "1", "2", "3", and "3-A", which were admitted in the Order dated December 6, 2016.[28]

On February 24, 2017, RTC - Branch 150 rendered its Decision[29] which denied the claim for refund or tax credit of CHI for local business tax it paid under protest. CHI then filed a Motion for Reconsideration to the same on March 27, 2017.[30]

On June 6, 2017, RTC - Branch 150 issued an Order, denying CHI's Motion for Reconsideration.[31]

CHI then filed a Petition for Review with the CTA on July 14, 2017.[32]

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[21] *Id.*, p. 391, Pre-Trial Order dated December 3, 2015.
[22] *Id.*, pp. 97 to 110, Judicial Affidavit of Vanessa M. Besas, Exhibit P.
[23] *Id.*, pp. 352 to 360, Judicial Affidavit of Ms. Stella Marie Sarasola Pery, Exhibit 3.
[24] *Id.* at Note 4, pp. 41 to 42; *id.* at Note 10, p. 479 to 480.
[25] *Id.* at Note 10, pp. 400 to 408.
[26] *Id.*, pp. 456.
[27] *Id.*, pp. 459 to 461.
[28] *Id.*, 476.
[29] *Id.* at Note 4, pp. 39 to 44; *id.* at Note 10, 477 to 482.
[30] *Id.* at Note 10, pp. 486 to 495.
[31] *Id.* at Note 4, pp. 37 to 38; *id.* at Note 10, pp. 523 to 524.
[32] *Id.* at Note 4, pp. 8 to 36.

Makati Petitioners filed their Comment (Re: Petition for Review dated 12 July 2017) thereto on August 18, 2017.[33]

Makati Petitioners filed their Memorandum (for the Respondents) on October 10, 2017,[34] while CHI posted its Memorandum on October 11, 2017.[35] The case was submitted for decision on November 16, 2017.[36]

On June 6, 2018, the Court in Division rendered the assailed Decision, partially granting CHI's Petition for Review. The Court in Division affirmed the RTC Decision and Order but only insofar as it sustained the validity of Section 3A.02(p) of the RMRC. However, the assessments against CHI for deficiency local business tax for TY 2013, inclusive of surcharge and interest, were cancelled and set aside, and the Makati Petitioners were ordered to refund CHI in the amount of ₱359,745.37.

The Makati Petitioners filed their Motion for Reconsideration (of the Decision dated 06 June 2018) which was denied by the Court in Division in the assailed Resolution.

On October 23, 2018, the Makati Petitioners timely filed their appeal via Petition for Review.[37]

On November 14, 2018, CHI was directed to file Comment thereto.[38]

On December 7, 2018, CHI filed its Comment.[39]

In a Resolution dated January 24, 2019, the Court *en banc* gave due course to the Petition and submitted the same for decision. [40]

The Assignments of Errors

The Makati Petitioners argue that the Court in Division erred in ruling that CHI is a holding company and that it does not fall within the purview of the term "Banks and Other Financial Institutions" to justify the collection of taxes on its dividend income for the year 2012. Moreover, the Court in Division also erred in ruling that refund can only be granted through a tax credit.

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[33] *Id.*, pp. 157 to 175.
[34] *Id.*, pp. 186 to 205.
[35] *Id.*, pp. 206 to 229.
[36] *Id.*, p. 235.
[37] *Id.* at Note 1.
[38] *Id.*, pp. 45-46.
[39] *Id.*, pp. 47-55.
[40] *Id.*, pp. 57-58.

The Arguments of the Parties

Makati Petitioners argue that under Sections 3A.02(p), in relation to 3A.02(h) of the RMRC, a holding company shall be taxed as a specific class of its own, without reference to it being a contractor or an owner or operator of banks or other financial institutions. Therefore, once CHI was classified as a holding company, the tax rate of 20% of 1% was correctly applied to the gross receipts of its dividend income.

Makati Petitioners further argue that assuming CHI is indeed entitled to a refund, it may only be granted a refund in the form of tax credit, by express provision of law, specifically, Section 7B.14(d) of the RMRC.

On the other hand, CHI argues that, as held in the *Michigan Holdings* case[41], dividend income of holding companies cannot be subject to local business taxes because such imposition runs counter to the limits set by the Local Government Code. As regards the manner in which the refund is given, CHI argues that Section 7B.14(d) of the RMRC gives the taxpayer the option to recover the amount it erroneously paid, either through a refund or credit.

The Ruling of the Court

We deny the Petition for lack of compelling ground to merit the reversal of the assailed Decision and Resolution.

The issue that is the crux of this case is not novel. In essence, the parties want clarification on whether or not the dividend income of a holding company can be made subject to LBT.

The simple answer is no, it cannot.

The City of Makati may not Impose Local Business Taxes on CHI's Dividend Income

It is axiomatic that the power to tax by the state is inherent.[42] That, in itself, is beyond question. However, in contrast to that, the power to tax of provinces, cities and municipalities is limited by the law that granted it, the 1991 LGC[43].

[41] Michigan Holdings, Inc. vs. City Treasurer of Makati, CTA EB No. 1093, June 17, 2015.
[42] *Pelizloy Realty Corporation v. The Province of Benguet*, G.R. No. 183137, April 10, 2013.
[43] Republic Act 7160.

Corollarily, the City of Makati's taxing power does not extend to the levy of income tax, [44] except when levied on banks and other financial institutions under Section 143(f) of the 1991 LGC.[45] The dividends[46] and interests[47] of CHI in this case, which are considered part of its passive income, are therefore not subject to the city's taxing power, unless it is a bank or other financial institution.

Section 131(e) of the 1991 LGC defines the term "banks and other financial institutions", as follows:

> "'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."

CHI has already judicially admitted that it is a holding company. In applying for its business permits and license in Makati City, CHI applied as a holding company and was classified as such by the Makati Petitioners. The Makati Petitioners then relied on Section 3A.02(p) of the RMRC in considering the taxability of CHI, to wit:

> "**SECTION 3A.02.** *Imposition of Tax.* - There is hereby levied an annual tax on the following businesses at rates prescribed therefore:
>
> *xxx*
>
> (p) On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year

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[44] Section 133(a) of the 1991 LGC provides:

SECTION 133. *Common Limitations on the Taxing Power 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 financial institutions[.]

[45] Section 143(f) of the 1991 LGC provides:

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

[46] Section 32(A)(7) of the NIRC of 1997, as amended.

[47] Section 32(A)(4) of the NIRC of 1997, as amended.

xxx"

In relation with the afore-quoted, Sections 3A.02(g) and 3A.02(h) provide the specific tax rate to be used on "holding companies", thus:

"**SECTION 3A.02.** *Imposition of Tax.* - *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; collecting agencies; escort services; feasibility studies, consultancy services; garages; garbage disposal contractors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professionals tax; medical and dental laboratories; mercantile agencies; messengerial services; operators of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; school for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic; white/blue printing, photocopying, typing and mimeographing services; car rental, rental of heavy equipment, rental of bicycles and/or tricycles; furniture, shoes, watches, household appliances, boats, typewriters, etc.; roasting of pigs, fowls, etc.; shipping agencies; shipyard for repairing ships for others; shops for hearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing school/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education (DepEd), day care centers; etc.

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 than200,000.00	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 than750,000.00	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.	

For purposes of this Section, all general engineering, general building, and specialty contractors with principal offices located outside Makati but with multi-year projects located in the City of Makati, shall secure the required city business permit and shall be subject to pay the city taxes, fees and charges based the total contract price payable in annual or quarterly installments within the project term.

Upon completion of the project, the taxes shall be recomputed on the basis of the gross sales/receipts for the preceding calendar years and the deficiency tax, if there be any, shall be collected as provided in this Code, and shall retire the city business permits secured upon full completion of the projects undertaken in the City of Makati.

(h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange **shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year** derived from interest, commissions, and discounts from lending activities, income from financial leasing, investments, dividends, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived

> from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (1) 1, as provided in this code." *(Emphasis supplied)*

The Makati Petitioners assessed CHI for deficiency LBT at the tax rate of 20% of 1% of its gross receipts in accordance with Section 3A.02(h) thereby categorizing CHI, as holding company, as an "owner or operator of banks and other financial institutions". The Makati Petitioners justify their assessment by arguing that CHI's dividend income constitutes taxable gross receipts which may be subjected to LBT.

However, the Makati Petitioners' assessment fails to pass the test of judicial scrutiny. For one, the RMRC does not and cannot exist in a vacuum. Although an LGU has autonomy to impose taxes on any other businesses not otherwise specified under the LGC of 1991, as amended, which the *sanggunian* concerned may deem proper to tax,[48] the power is not limitless. For certain, it must conform to the LGC of 1991, an existing statute that governs all local governments.

The rule is that a statute should be so construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system.[49] Every statute must be construed and harmonized with other statutes as to form a uniform system of jurisprudence[50]. *Interpretare et concordare legibus est optimus interpretandi.* A construction of a statute which creates an inconsistency should be avoided when a reasonable interpretation can be adopted which will not do violence to the plain words of the act and will carry out the intention of Congress.

We have previously tackled this very same issue in the CTA *En Banc* case of *Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia A. Barlis*[51]. In that case, *We* held that dividend income is excluded from gross receipts for purposes of imposition of LBT, *viz:*

> **"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.

[48] Section 143(h) of the LGC of 1991, as amended.
[49] *Valera v. Tuason*, 80 Phil. 823 (1948), *Corona v. Court of Appeals*, 214 SCRA 378 (1992), citing Agpalo, Statutory Construction, p. 210.
[50] *Id.*
[51] CTA EB Case No.1093 (CTA AC No. 99), June 17, 2015.

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 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 intercorporate 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.[52]'

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.

[52] *China Banking Corporation vs Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue*, G.R. No. 146749, June 10, 2003.

> Section 3A.02(p) of the Revised Makati Revenue Code is thus an *ultra vires* exercise of local taxing power, and cannot be given effect without violating the principle that an ordinance can neither amend nor repeal but must conform to a statute.[53]" *(Emphasis supplied)*

The above discussion corrects the Makati Petitioners' erroneous interpretation of Section 3A.02(p) in relation with 3A.02(g) and 3A.02(h) of the RMRC. The dictum is clear - dividend income is not subject to LBT.

A local government unit's mandate to deliver essential and basic services to its members is more effectively discharged by exercising its power to tax. However, adherence to the enabling law of the local legislative body, the Local Government Code, is necessary. As the maxim goes, *intentio inservire debet legibus, non leges intentioni.*[54]

The Grant of Tax Refund May Not Be Limited to the Issuance of a Tax Credit Certificate

The Makati Petitioners assert that, assuming without conceding that CHI is indeed entitled to a refund, it may only be granted in the form of a Tax Credit Certificate, as mandated by the RMRC.

This is likewise erroneous.

Paragraph (d) Section 78.14 of the RMRC provides:

> "SECTION 78.14. *Taxpayer's Remedies.* -
>
> xxx xxx xxx
>
> (d) *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 of refund or credit** has been filed with the City 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

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[53] See *Solicitor General, et al. vs Metropaliton Manila Authority and Municipality of Mandaluyong* (G.R. No. 102782, December 11, 1991, en banc.

[54] "Intentions ought to be subservient to the laws, not the laws to the intention".

> charge, or from the date the taxpayer is entitled to a refund or credit.
>
> **The tax credit granted a taxpayer shall not be refundable** in **cash** but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall no other tax obligations payable to the Local Government of City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year. *(Emphasis supplied)*

As observed by the Court in Division, the aforecited provision of the ordinance is clear that **<u>tax credits already granted to a taxpayer are not convertible to cash</u>.** This does not, by any means, prevent or prohibit the taxpayer from claiming either a refund or tax credit for erroneously or illegally collected tax, fee or charge.

Notwithstanding the aforecited provision in the RMRC, Section 196 of the LGC prescribes the modes for recovery of erroneously or illegally collected taxes which would either be a refund or tax credit, to wit:

> "Section 196. *Claim for Refund or 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 <u>or</u> credit.** *(Emphasis supplied)*

In construing the afore-cited provision, it is apparent that the use of the disjunctive "or" connotes that there is a choice to be made between two options. In the case of *Martin Centeno vs. Honorable Victoria Villalon-Pornillos, et al.*[55], a discourse on how the word "or" is to be used also obtains, to wit:

> "In its elementary sense, **"or" as used in a statute is a disjunctive article <u>indicating an alternative</u>.** It often connects a series of words or propositions indicating a choice of either. **When "or" is used, the various members of the enumeration are to be taken separately."** *(Emphasis supplied)*

[55] G.R. No. 113092, September 1, 1994.

Similarly, in *Aquilino Q. Pimentel, Jr. vs. COMELEC*[56], the word **"or"** is further defined as provided in statutory construction, thus:

> "A rule in statutory construction is that the word or is a disjunctive term signifying **dissociation and independence of one thing from other things enumerated** unless the context requires a different interpretation." *(Emphasis supplied)*

From the foregoing discourse, it may be gleaned that the Makati Petitioners' interpretation of Paragraph (d) Section 78.14 of the RMRC does not take into consideration other existing laws on the subject, such as its enabling law, the LGC. To uphold the RMRC provision would effectively remove the taxpayer's choice to be refunded in cash and would indirectly amend the LGC to which this Court cannot give its assent.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit. The Decision dated June 6, 2018 and the Resolution dated September 18, 2018 of the First Division in CTA AC No. 188 are **AFFIRMED *in toto.***

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

With Concurring Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

[56] G.R. No. 126394, April 24, 1998.

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MAKATI CITY TREASURER AND MAKATI CITY, as represented by the CITY MAYOR, *Petitioners,*	**CTA EB NO. 1957** (CTA AC No. 188)
	Present:
- *versus* -	Del Rosario, *P.J.*, Castañeda, Jr. Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, JJ.
CORULLON HOLDINGS, INC., *Respondent.*	Promulgated: JAN 02 2020 2:53 p.m.

x- -x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* in affirming *in toto* the Decision dated June 6, 2018 and Resolution dated September 18, 2018 of the Court in Division in CTA AC No. 188.

The *ponencia* made reference to the Court *En Banc's* decision in *Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia A. Barlis,*[1] where the Court *En Banc* declared that Section 3A.02 (p) in relation to Section 3A.02(h) of the Revised Makati Revenue Code (RMRC) violates the limit set by Section 133(a) of the LGC, that is - - that the taxing powers of local government units shall not extend to the levy of income tax, except on banks and other financial institutions.

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

To my mind, the ruling in *Michigan* should be confined to the facts and circumstances therein involved as, in truth, it did not declare as invalid the aforestated provision of the RMRC in its entirety.

Anent the present case, the judicious pronouncement of the Court in Division sustaining the validity of Section 3A.02 of the RMRC is enlightening, *viz.*:

> "Xxx, **petitioner is of the view that if a person or entity is classified as a holding company, it can never be taxed under subsection (p), in relation to subsection (h), Section 3A.02. This Court does not agree with petitioner — it is *non sequitur*.**
>
> xxx
>
> Xxx, a *'holding company'* is an entity which controls one or more subsidiaries and confines its activities *'primarily'* to their management. As such, while a holding company's *primary* activities are confined to the management of its subsidiaries, **it does not preclude such entity from engaging in other activities**, which may classify it as within the purview of the term '*Banks and other financial institutions*,' which is defined under Section 131 (e) of the LGC of 1991 and Section 3A.01 (e) of the RMRC, xxx." (Boldfacing supplied)

While Section 3A.02 of the RMRC is valid, the Court in Division aptly cancelled the assessment against respondent for deficiency local business tax and adjudged respondent's entitlement to refund, there being no showing that respondent conducted activities falling within the purview of the term *"Banks and other financial institutions"* as defined under Section 131(e) of the LGC and Section 3A.01(e) of the RMRC.

All told, *I CONCUR* in the result.

ROMAN G. DEL ROSARIO
Presiding Justice