REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF DAVAO and BELLA LINDA N. TANJILI, in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City, *Petitioners,*	**CTA *EB* NO. 1589** (CTA AC No. 130)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
ARC INVESTORS, INC., *Respondent.*	Promulgated: JAN 29 2019 3:56 p.m.

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DECISION

MANAHAN, J.:

Before the Court of Tax Appeals *En Banc* is the instant Petition for Review[1] filed on February 9, 2017 via registered mail, seeking the reversal of the Decision dated August 16, 2016 and the Resolution dated December 20, 2016, promulgated by the First Division of this Court (Court in Division) in CTA AC No. 130 entitled, *ARC Investors, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as*

[1] EB Docket, pp. 9-23.

the City Treasurer of Davao City , the dispositive portions of which read as follows:

Decision dated August 16, 2016

> **"WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is **GRANTED.** The assailed Orders dated October 15, 2014 and December 17, 2014, both issued by Branch 11 of the RTC, 11th Judicial Region, Davao City, are **REVERSED** and **SET ASIDE**. Accordingly, the local business tax assessed against petitioner for the third and fourth quarters of taxable year 2011 in the aggregate amount of P4,381,431.90 is **CANCELLED** and **SET ASIDE.**
>
> **SO ORDERED."**

Resolution dated December 20, 2016

> **"WHEREFORE**, premises considered, the respondent's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED."**

THE FACTS

The facts, as found by the Court in Division, are as follows:

> " Petitioner Arc Investors, Inc., is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. Pursuant to its Amended Articles of Incorporation, its primary purpose is as follows:
>
> > "To purchase, subscribe for , or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real or personal property of every kind and description, including shares of stock, voting trust certificates for shares of 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 by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, 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 ."

On the other hand, respondent City of Davao ("respondent City") is a local government unit duly created by law; while respondent Rodrigo S. Riola is the incumbent City treasurer of respondent City and is being impleaded in his official capacity as it was his office which assessed petitioner a 0.55% local business tax on the dividends and interests received by petitioner.

On January 20, 2014, respondents assessed petitioner for local business tax for the third and fourth quarters of taxable year 2011 in the aggregate amount of P4,381,431.90. As a consequence, petitioner protested the aforesaid assessment on March 21, 2014.

In the letter dated April 4, 2014, respondent Riola required petitioner to present proof of payment of business taxes for them to resolve petitioner's protest. He anchored the said requirement on Section 423 of the 2005 Revenue Code of the City of Davao, that no protest shall be entertained, unless the latter pays first the assessed tax.

However, in the letter dated April 15, 2014 addressed to the respondent Riola, petitioner pointed out that the City of Davao has no authority to impose additional requirements before a protest be entertained other than those imposed under the Local Government Code (LGC). Thus, petitioner requested that the protest against said assessment be acted upon despite the absence of payment under protest.

Nevertheless, respondent Riola replied through the letter dated May 5, 2014, maintaining his position regarding the requirement of payment of the tax before any protest can be entertained, still on the basis of the said Section 423 of the 2005 Revenue Code of the City of Davao.

Petitioner then filed a Petition for Review before Branch 11 of the Regional Trial Court (RTC), 11th Judicial Region, Davao City, on June 9, 2014. The case was docketed as Civil Case No. 35, 670-2014.

Subsequently, the RTC denied the Petition for Review in its Order dated October 15, 2014, pertinent portions of which reads *(sic)* as follows:

'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 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 for sale of property, insurance premium.'

FOR REASONS STATED, the instant Petition for Review filed by the Petitioner under Section 195 of Republic Act No. 7160 is hereby **DENIED** and/or **DISMISSED.**

SO ORDERED."

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Petitioner filed the instant Petition for Review on February 6, 2015, questioning the Orders of the RTC.

As ordered by this Court in the Resolution dated March 16, 2015, respondents filed their Comment to the Petition for Review on May 21, 2015.

On July 30, 2015, this Court received the entire original records of Civil Case No. 35,670-2014 from the court a quo.

The instant case was submitted for decision on August 20, 2015, considering petitioner's Memorandum filed on July 29, 2015, and respondent's Memorandum filed on August 5, 2015.

Hence this Decision.

In the assailed Decision promulgated on August 16, 2016, the Court in Division granted the Petition for Review and reversed and set aside the decision of the RTC Branch 11 of the RTC, 11th Judicial Region, Davao City dated October 15, 2014 and consequently cancelled and set aside the local business tax (LBT) assessment for the third and fourth quarters of taxable year 2011 in the aggregate amount of P4,381,431.90.

Aggrieved, herein petitioners filed on September 20, 2016, a Motion for Reconsideration praying for the reversal of the assailed Decision promulgated on August 16, 2016. The Court denied the Motion for Reconsideration in a Resolution dated December 20, 2016.

On February 9, 2017, petitioners filed a Petition for Review with the Court *En Banc*.

On March 29, 2017, the Court *En Banc* issued a Resolution ordering petitioners to submit clear and legible duplicate originals or certified true copies of the assailed Decision and Resolution in the requisite number of copies within ten (10) days from receipt of the aforesaid Resolution.

Upon compliance with the directive of the Court *En Banc* as regards the submission of the documents, respondent was then ordered to file its Comment within ten (10) days from receipt thereof in a Resolution dated January 16, 2018.

On February 5, 2018, respondent filed its Comment[2] to the Petition for Review.

Upon submission of respondent's Comment, the Court *En Banc* gave due course to the Petition for Review and deemed the case submitted for decision on March 20, 2018.

Hence, this Decision.

THE ISSUE

The issue raised by petitioners for the resolution of the Court *En Banc* is as follows:

> "Whether or not ARC Investors, Inc. is a "non-bank financial intermediary" falling under the category of a "bank and other financial institutions", so as to be subject to local business tax imposition, as provided

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[2] EB Docket, pp.108-138.

under Section 143 (f) of RA 7160, otherwise known as the 'Local Government Code of 1991.'

Petitioners' Arguments:

The assessment for LBT issued by petitioners against the respondent is anchored on Section143 (f) of Republic Act (RA) 7160 or the Local Government Code of 1991 (LGC of 1991) based on their theory that petitioner falls under the category of a "bank and other financial institution" which includes in its definition, a "non-bank financial intermediary or a "finance and investment company". Petitioners stress that respondent does not only own and invest in the shares of stock of San Miguel Corporation but it likewise has money placements therein as revealed by its financial statements. Such sources of revenue make the respondent fall within the definition of a "financial intermediary" as defined in Section 4101Q.1 of the Manual of Regulations" for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP), quoted below:

> "Financial intermediaries shall mean 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."

Even the business purpose of respondent as embodied in its Articles of Incorporation (AOI) was observed by petitioner as "wittingly and unwittingly broad enough to catch all the descriptive function of a non-bank financial intermediary" as provided in the aforementioned Section 4101Q.1 of the Manual Regulations for Non-Bank Financial Institutions issued by the BSP.

Petitioners do not place too much importance on the statement in the Articles of Incorporation (AOI) of respondent prohibiting the latter from acting as an investment company or securities broker or dealer because such is not conclusive proof that it is not a "bank and other financial institution."

Petitioners also submit the theory that even if the income of respondent partakes of the nature of public funds pursuant to the ruling of the Supreme Court in the case of *Cocofed vs. Republic* , it does not lead to an exemption from the payment of LBT in its dividends and interest income and should still be liable for LBT in accordance with Section 143 (f) of the LGC of 1991. Even the non-issuance of a secondary license by the BSP does not have the effect of excluding the respondent from being a "non-bank financial intermediary" contrary to the ruling of the Court in Division.

Lastly, petitioners invoke the well-established rule that tax exemptions are highly disfavored in law and the person who claims exemption must be able to justify the claim by the clearest grant of organic statute or law.

Respondent's Counter-Arguments

In its Comment to the Petition for Review, respondent counters that the imposition of a 0.55% LBT for the third and fourth quarters of 2011 is without legal basis on the following grounds:

1. Pursuant to Section 133 (A) of the LGC of 1991, it is erroneous and illegal to assess LBT on the dividends and interest income of respondent because it is not a bank nor a financial institution.
2. Being a holding company, respondent's dividend and interest income are not subject to LBT.
3. Respondent as well as its shares in San Miguel Corporation and income derived therefrom are national government property, hence, exempt from LBT.

Respondent cites as its main defense, Section 133 (a) in relation to Section 143 of the LGC of 1991 which prohibits provinces, cities and municipalities from imposing income tax, except when said tax is levied on banks and other financial institutions. Respondent firmly avers that its activities cannot be characterized as falling under the term "bank" nor a "financial institution" under applicable laws, rules and regulations. Further, respondent cites Section 27 (D) (4) of the 1997 National Internal Revenue Code (NIRC) which exempts inter-company dividends from tax, and it quotes:

> "Section 27. *Rates of Income Tax on Domestic Corporations.-*
>
> (D) *Rate of Tax On Certain Passive Income.*

> (4). Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax."

While respondent admits that the above exemption does not apply to banks and other financial institutions, this should be read in relation to Section 143 of the LGC of 1991 which authorizes municipalities and cities to impose LBT on dividends and interest income but only if received by banks and other financial institutions.

Respondent lays down the following circumstances that would specifically point out that it is not a bank nor can it be categorized as "other financial institutions", thus:

1. Its amended AOI indicates that it is a holding company.
2. As stated in its primary purpose, it is prohibited 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.
3. It is not engaged in lending money, investing, reinvesting or trading securities and/or foreign exchange either for its own account or for the account of others in a regular or recurring basis.
4. It was not required by the Securities and Exchange Commission (SEC) to secure a secondary license. Neither is it regulated by the BSP or the Insurance Commission.
5. It was organized solely to hold SMC shares.

Respondent also submits that as a holding company, it is not engaged in lending money, investing, reinvesting or trading securities and/or foreign exchange either for its own account or for the account of others in a regular or recurring basis.

RULING OF THE COURT *EN BANC*

The Petition for Review is bereft of merit.

An analysis of the arguments of both parties disclose that the term "banks and other financial institutions" provided under Section 131 (e) of the LGC of 1991 invoke different, nay contrary definitions resulting to the instant controversy.

Petitioners firmly assert that the business activities of the respondent are characteristic of a "bank and other financial institutions" covered by Section 133 (a) in relation to Section 131 (e) and Section 143 (f) of the LGC of 1991. Petitioners maintain that respondent is a "non-bank financial intermediary" which falls under the category of "banks and financial institutions" which is subject to the LBT under the aforequoted Section 143 (f) of the LGC of 1991, primarily due to its investment and money placements in San Miguel Corporation.

On the other hand, respondent holds the view that as a holding company, its activities cannot fall under the term "banks and other financial institutions" hence the imposition of the LBT on its dividend and interest income is without legal basis.

The issue confronting this Court is hinged on our determination of what activities may be construed as performing functions akin to a "bank and other financial institution" as defined by the applicable laws and relevant rules and regulations. We then quote the aforecited provisions hereinbelow:

Local Government Code

> "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;
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> xxx xxx xxx
>
> Section 143. *Tax on Business.* – The municipality may impose taxes on the following businesses:
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> 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." (emphasis supplied)

xxx xxx xxx

Section 131. *Definition of Terms.* –

(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, rules and regulations thereunder; (emphasis supplied)

xxx xxx xxx

2005 Revenue Code of Davao City

"Section 69. *Imposition of Tax.* – There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts hereafter prescribed:

xxx xxx xxx

F. **On Banks and Other Financial Institutions,** at the rate of fifty-five percent (55%) 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, dividends, rentals on property, and profit from exchange or sale of property, insurance premium. All other income and receipts not herein enumerated shall be excluded in the computation of the tax." (emphasis supplied)

The power of the local governments to impose tax is subject to certain limitations provided by the law and the Philippine Constitution. One of these limitations is the prohibition against imposing income tax except when imposed on banks and other financial institutions as set forth by the aforequoted Section 133 (a) of the LGC of 1991.

The term "banks and other financial institutions" as defined under the aforequoted Section 131 (e) of the LGC of 1991 also includes entities that are considered "non-bank financial intermediaries". However, the LGC of 1991 does not define "non-bank financial intermediaries" but is defined under Section 22 (W) of the 1997 National Internal Revenue Code (1997 NIRC) in this wise:

> "The term **"non-bank financial intermediary" means a financial intermediary,** as defined in Section 2 (D) (c) of RA No. 337, as amended, otherwise known as the General Banking Act, authorized by the BSP to perform quasi-banking activities." (emphasis supplied)

RA No. 337 otherwise known as the General Banking Act mentioned in Section 22 (W) of the 1997 NIRC, specifically Section 2 (D) (c), defines "financial intermediary" as follows:

> "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 course through them, either for their own account or for the account of others."

In Section 2.3 of Revenue Regulations (RR) No. 09-2004, the Bureau of Internal Revenue (BIR) defined "non-bank financial intermediary" in this wise:

> "*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."

A review of respondent's primary purpose as embodied in its Amended Articles of Incorporation (AOI) [3] specifically provides as follows:

> "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 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

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[3] Exhibit "P-9", Court Docket, pp.. 107-115.

therefor in whole or in part in cash or by exchanging therefor for stocks, bonds, or other evidences of indebtedness or securities, contracts or obligation 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."

From a careful perusal of the respondent's primary purpose, nothing in the statements even remotely suggest that it is authorized to perform the functions of a financial intermediary nor a non-bank financial intermediary.

Thus, we find that the Court in Division correctly ruled that the nature of respondent's business cannot be categorized as a non-bank financial intermediary. The Court in Division even outlined the basic requirements to be considered as a "non-bank financial intermediary" and we quote:

"Based on the foregoing provisions, the basic requirements for a person or entity to be considered as a "non-bank financial intermediary" are as follows:

1) The person or entity is "authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities",
2) The principal functions of the said person or entity, "include the lending, investing or placement of funds, or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through the, either for their own account or for the account of others",
3) The person or entity must perform any of the following functions on a regular and recurring, not on isolated, basis, to wit:

    1) 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;
    2) Use principally the funds received for acquiring various types of debt or equity securities;
    3) Borrow against, or lend on, or buy and sell debt or equity securities;

4) Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds and commercial papers;
5) 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 debtor equity securities or by being an internediary between suppliers and users of funds.

In this case, there is no indication that petitioner fulfills the first requirement, since there is no showing that it was "authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities." Thus, on this score alone, petitioner cannot be treated as non-bank financial intermediary.

Nevertheless, the second requirement is not likewise met. While it may be true that the functions of petitioner on the basis of the primary purpose as stated in the Amended Articles of Incorporation may cover the functions of a non-bank financial intermediary, it was not shown that said functions are "principal" in nature, i.e., "chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental." No evidence was presented to show that the stated functions were principally done by petitioner in the year 2011.

Moreover, it was never established that the enumerated functions under the third requirement were performed by petitioner "on a regular and recurring, not on an isolated, basis". In fact, no evidence was shown that petitioner ever performed the said functions. From what this Court can gather in the records *a quo,* respondents merely imposed the local business tax on petitioner's gross sales (non-essential) as a "HOLDING FIRM" and nothing more.

We also do not find that petitioner held itself out, nor advertised itself, as (sic) non-banking financial intermediary."

Such being the case, it is the finding of this Court that petitioner is not a non-bank financial intermediary and the interests and dividends it receives from the preceding calendar year may not be the subject of local business tax imposed by the respondent City of Davao."

The guideposts are clear on what activities may be considered as performing the functions of a financial intermediary or a non-bank financial intermediary and respondent neither falls under any of these categories. Contrary to the contention of petitioner, the non-issuance of a secondary license by the BSP is an important factor in determining whether or not the respondent falls within the category of a "non-bank financial intermediary".

Notwithstanding our above conclusion, we would also like to point out that the particular notation in the AOI "that it shall not act as investment company or securities broker or dealer" cannot be used as a defense by respondent nor can it be challenged by petitioners because it is an established policy by the SEC to require registrants of holding companies to insert this particular statement in their AOI as a requirement for registration.

Lastly, we would like to emphasize that this Court, in the case of *Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia A. Barlis,*[4] accurately ruled that a holding company is not among the entities enumerated as "banks and other financial institutions" as defined in Section 133 (c) of the LGC of 1991, thus :

> "Section 131 (e) of the LGC of 1991 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 thereunder." This enumeration appears to be exclusive of other entities. **Nowhere in the entirety of Section 131 is a holding company mentioned."** (emphasis supplied")

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated August 16, 2016 as well as the assailed Resolution dated December 20, 2016, both rendered by the Court in Division in CTA AC No. 130 are **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

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[4] CTA EB No. 1093 (CTA AC Case No. 99) dated June 17, 2015.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(with Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS -LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF DAVAO and BELLA LINDA N. TANJILI, in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City,
Petitioners,

- *versus* –

ARC INVESTORS, INC.,
Respondent.

CTA EB No. 1589
(CTA AC No. 130)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan *JJ.*

Promulgated:

JAN 29 2019
3:56 p.m.

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DISSENTING OPINION

CASTAÑEDA, JR., *J.*:

With due respect, I dissent to the conclusion reached by the *ponencia* that the instant Petition for Review should be denied primarily on the ground that petitioner is not a non-bank financial intermediary (NBFI).

Section 131(e) of the LGC of 1991 states the scope of the term "Banks and other financial institutions", as follows:

> "*SEC. 131. Definition of Terms.* — When used in this Title, the term:
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> 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;"

On the other hand, under Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, as amended, an NBFI is 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."

In relation thereto, Section 2(D)(c) of Republic Act (RA) No. 337, as amended by Presidential Decree (PD) No. 71, reads as follows:

> "(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 to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others;"

Further, Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions, as follows, viz.:

> "**§ 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."

From the foregoing, the following are the elements of an NBFI:

1) The person or entity is authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities;

2) The principal functions of the said person or entity include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others; and

3) The 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.

Meanwhile, emphasis must be given on the second (2nd) and third (3rd) elements of an NBFI, *i.e.*, investment and placement of funds and performance of the above-enumerated functions under the third (3rd) element on a regular and recurring, not on an isolated, basis. This is premised on the nature of business tax, which is imposed on the privilege of an entity to engage in business within a local government unit.

Petitioner failed to present proof regarding the authorization of respondent to act as an NBFI

A perusal of the records shows that there is no evidence showing that respondent was authorized by the BSP to engage in NBFI activities.

However, as discussed earlier, respondent's authorization or lack thereof, do not affect whether respondent may be the subject of local business taxation. What is controlling is respondent's principal activities, *i.e.*, whether it principally performs NBFI activities, in determining whether such privilege to engage in said activities is subject to local business tax. At any rate, whether respondent may engage in NBFI activities, with or without authority from the BSP, is an issue outside of this Court's jurisdiction and should be discussed in the proper forum.

Respondent's principal functions are solely to invest and make money market placements *vis-à-vis* its SMC shares

Respondent received dividends and made money market placements on a regular and recurring, and not on an isolated basis

Based on records, the lower court found that respondent's business operations only revolve around its dividends and money market placements.

However, the subject decision did not consider the above-findings of the lower court. Further scrutiny of the records shows that respondent did not question the foregoing findings of the lower court during the course of the trial. Evidently, these findings of fact by the lower court, without any opposition on the part of respondent, should be accorded respect.

Thus, it has been sufficiently established that respondent's income emanates only from dividends and money market placements, which activities fall within the purview of an NBFI. In other words, it was proven during the proceedings below that respondent has no other activity or business that generates income, except for the dividends it regularly receives and for its money market placements. Therefore, these exclusive activities of respondent are NBFI activities which may properly be subjected to local business tax.

The tax is levied upon the privilege of an entity to engage in NBFI activities and not upon the shares or sources of gross receipts which operate as tax bases

Section 143 of the LGC of 1991 pertinently states:

> "**Section 143. Tax on Business.** — The municipality[1] 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."*(Emphasis supplied)*

Section 143(f) of the LGC of 1991 imposes local business tax **on banks and other financial institutions**, *i.e.*, NBFIs. In other words, while the tax bases of Section 143(f) consist of interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, and insurance premium, the tax is imposed directly on the privilege enjoyed by banks and other financial institutions. It directly imposes business tax on the privilege being enjoyed by the entity and not on the sources of gross receipts.

On this score, the subject Decision held that respondent is one of the Coconut Industry Investment Fund holding companies. Therefore, respondent, including its SMC shares, are government-owned and excluded from petitioner's taxing powers.

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[1] The city, may levy the taxes, fees, and charges which the province or municipality may impose, in accordance with Sec. 151, LGC of 1991.

However, in the instant case, while the SMC Shares had already been adjudged by the Supreme Court as belonging to the government, it is not directly the said shares, but the privilege enjoyed by respondent to engage in NBFI activities, that is subject to local business tax. Simply put, the dividends and interest income from these shares are mere tax bases under Section 143(f) of the LGC of 1991. Ultimately, however, it is respondent's privilege against whom the local business tax is levied upon.

Further, if the government owns respondent by reason of primarily dealing with San Miguel Shares, then this clearly supports the conclusion of the lower court that respondent's income comes only from dividends and money market placement *vis-à-vis* its SMC Shares. Thus, respondent's privilege to engage in NBFI activities should be subjected to local business tax.

To conclude, the crucial element to determine whether an entity is engaged in NBFI activities is its principal activity. To clarify, not all entities who engage in stock investments and money market placements can be categorized as NBFIs for purposes of local business taxation. If an entity is not primarily engaged in NBFI activities as it principally performs its core business operations, such entity is not an NBFI. However, when an entity solely receives income from its NBFI activities, or when there is a showing that it performs no other business activity other than NBFI activities, then said entity should be categorized as an NBFI for purposes of local business taxation.

Considering the foregoing, I **VOTE** to **GRANT** the instant Petition for Review.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice