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. 1639** (CTA AC CASE NO.137)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
-versus-	
VALHALLA PROPERTIES LIMITED, INC., *Respondent.*	Promulgated: AUG 14 2018 2:03 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

Submitted for decision of this Court *En Banc* is a Petition for Review filed by the City of Davao and Bella Linda N. Tanjili, in her official capacity as the Officer-in-Charge City Treasurer of Davao City, under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*[1], *as amended*, seeking the reversal of the Decision dated September 15, 2016 [2] and the Resolution dated March 13,

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[1] RULE 8, Sec 3. *Who may appeal; period to file petition.-*

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> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

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[2] Penned by Associate Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino, En Banc Docket, pp. 19-31.

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2017[3] rendered by the Third Division of this Court in the case entitled *"Valhalla Properties Limited, Inc., vs. City of Davao and Rodrigo S. Riola, in his official capacity as City Treasurer of Davao City"* docketed as CTA AC Case No. 137, the dispositive portions of which, respectively, read as follows:

<u>Decision dated September 15, 2016:</u>

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. The Decision dated November 10, 2014 and the Order dated April 20, 2015 of the Regional Trial Court, Branch 17 of the City of Davao in Civil Case No. 35681-14 are hereby **REVERSED** and **SET ASIDE**. The Assessment dated January 20, 2014 is hereby **CANCELLED**.
>
> **SO ORDERED.**"

<u>Resolution dated March 13, 2017:</u>

> "**WHEREFORE**, finding no compelling reason to reverse the ruling of the Court in the assailed Decision, respondents' Motion for Reconsideration is hereby **DENIED**.
>
> **SO ORDERED**."

The following facts of the case as recited by the Court in Division in its Decision[4] and as established by evidence on record, read as follows:

> "Petitioner Valhalla Properties Limited, Inc., (VLPI, now herein respondent) is a corporation duly organized in 1983 and existing under Philippine laws. It is registered with the Securities and Exchange Commission (SEC). On December 22, 2009, the SEC approved the transfer of VPLI's principal office address from Makati City to Legaspi Oil Compound, Km. 9.5, Sasa, Davao City.

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[3] *Id.*, pp.34-37.
[4] Supra note 2.

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Respondent City of Davao is a local government unit created by law, with principal office at the City Hall, San Pedro Street, davao City. Respondent Rodrigo S. Riola is the City Treasurer of Davao City. (respondent Treasurer, now herein petitioners)

VPLI was among the fourteen holding companies formed in 1983 for the purpose of owning and holding shares of stock of San Miguel Corporation (SMC). In 1986, the said holding companies, including VPLI, were sequestered by the Philippine Commission on Good Government (PCGG). Subsequently, various cases were filed to resolve the ownership of the holding companies and the SMC shares of stock held by them.

VPLI was a registered owner of SMC common shares, from which VPLI occassionally received cash and stock dividends. In October 2009, VPLI became the registered owner of 31,411,848 preferred shares of SMC, after the Supreme Court approved the conversion of an equal number of SMC common shares into prefered shares. The cash dividends received by VLPI from the SMC preferred shares were invested by it in Treasury Bills or other government securities from which it earned additional interest.

In 2010, VPLI received P238,411,869.28 from its SMC preferred shares, consisting of P235,588,860.00 in dividends and P2,823,009.28 in interest income from money market placements.

In the meantime, the Supreme Court En Banc, in Philippine Coconut *Producer's Federation, Inc. (COCOFED) v.* Republic of the Philippines, declared the fourteen holding companies and the SMC shares held by them to be owned by the government.

On January 20, 2014, VPLI received from respondent Treasurer a Business Tax Order of Payment dated January 3, 2014 for P1,303,069.42.

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This amount corresponds to 0.55% local business tax on the dividends derived from its SMC shares and the interest on its money market placements for the third and fourth quarters of 2011, in accordance with Section 69(f) of the Revenue Code of the City of Davao.

On March 21, 2014, VLPI filed a written administrative protest against the assessment. VPLI's main contention is that the tax imposed on the dividends and its income was improper because it is not a bank or a non-bank financial institution.

In a letter dated April 4, 2014, respondent Treasurer required VPLI to submit proof of payment of the assessed business tax before its protest may be resolved, citing Section 423 of the Revenue Code of the City of Davao.

In its letter dated April 15, 2014, respondent Treasurer reiterated the requirement under the 2005 Revenue Code of the City of Davao. Respondent Treasurer pointed out that it is a valid ordinance, with which he shall abide. Not having made the requisite payment, respondent Treasurer did not act on VPLI's protest.

On June 9, 2014, VPLI filed a Petition for Review dated June 6, 2014.

'The Rulings of the Trial Court

> In the Decision dated November 10, 2014, the trial court dismissed the petition for review. The trial court found out that VPLI is a financial intermediary, and that the imposition by the City of Davao of the 0.55% local business tax on dividends derived from its money market placements for the third and fourth quarters of 2011 was proper. Consequently, for petitioner's failure to perfect its protest as prescribed by the Revenue Code of the City of Davao, the assessments made by respondents became

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final and executory. The dispositive portion reads:

> WHEREFORE, premises considered, for lack of merit, the Petition for Review under Section 195 of Republic Act No. 7160 filed by petitioner, Valhalla Properties Limited, Inc., is hereby **DISMISSED**.
>
> Accordingly, petitioner is hereby directed to pay lthe respondents the amount of One Million Three Hundred Three Thousand Sixty Nine and 42/100 (P1,303,069.42) Pesos, representing the 0.55% local business tax for the third and fourth quarters of 2011 on dividends derived from its shares of stock and interest on its money market placements derived from San Miguel Corporation.
>
> SO ORDERED.

The trial court denied VPLI's Motion for Reconsideration in the Order dated April 20, 2015, finding no cogent/imperative reason to disturb or modify its findings in the Decision dated November 10, 2014.'

Hence, a Petition for Review was filed on June 8, 2015. On July 15, the Court in Division ordered respondents to comment on the petition, within ten days from notice. They filed their Comment on July 27, 2015 via registered mail"

After trial on the merits, the Court ordered the parties to file their respective Memoranda in a Resolution dated August 24, 2015. VPLI flied its Memorandum on October 1, 2015; while respondents filed their Memorandum on October 23, 2015. Thereafter, the Court deemed the case submitted for decision in a Resolution dated November 11, 2015.

On September 15, 2016, the Court in Division granted the Petition for Review and cancelled the assessment against

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VPLI on the ground that the imposition of the 0.55% local business tax on the dividends and interests on its money market placements from the SMC shares was beyond the taxing power of the City of Davao. Aggrieved, respondent City Treasurer filed a Motion for Reconsideration, but the same was denied in a Resolution dated March 13, 2017. Hence, this Petition for Review was filed.

In the instant case, VPLI was assessed for 0.55% local business tax for the 3rd and 4th quarters of 2011 on the dividends it received from its San Miguel Corporation (SMC) shares of stock and interest income on its money market placements. Petitioners insist that VPLI is a non-bank financial intermediary, and that as its pieces of evidence would prove, VPLI engaged in activities which would qualify it to be subject to local business tax.

This Court is not convinced.

In a line of cases already decided by this Court, the power of local government units to levy taxes, fees and charges emanates from Sec. 5, Article X of the 1987 Constitution, subject to the guidelines and limitations as Congress may provide. Sec. 5, Article X of the 1987 Constitution reads, thus:

> "Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the local governments."

Notably, Section 129 of the Local Government Code (LGC) of 1991 vests local government units, such as the petitioner in this case, with the authority to create their own sources of revenue, to wit:

> "SECTION 129. Power to Create Sources of Revenue. -

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> Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units."

Corollarily, Section 143[5] in relation to Section 151[6] of the LGC categorically enumerates which business may be subject to local tax. To implement the aforementioned provision, Section 69 of the 2005 Revenue Code of the City of Davao provides as follows:

> "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 tax."

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[5] "SEC.143. Tax on Business. - **The municipality may impose taxes on the following businesses:**

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(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 premiums."(Emphases and underscoring supplied)

[6] "SEC.151. Scope of Taxing Powers. - Except as otherwise provided in this Code, **the city, may levy the taxes, fees, and charges which the province or municipality may impose: xxx The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%)** except the rates of professional and amusement taxes." (Emphases supplied)

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While Section 143(f) in relation to Section 151 both of the LGC of 1991, empowered local government units to levy taxes, fees and charges on banks and other financial institutions, it nonetheless, expressly subjected such power to some common limitations, such as those enumerated under Section 133 of the LGC of 1991, the pertinent provisions which read as follows:

> "SEC. 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
>
> (o) **Taxes, fees or charges of any kind on the National Government**, its agencies and instrumentalities, and local government units." *(Emphases supplied)*

In the case of *Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines,*[7] the Supreme Court ruled that the said SMC shares of stock are owned by the government. The Supreme Court ruled in this wise:

> **"The CIIF Companies and the CIIF Block of SMC shares are public funds/assets**
>
> From the foregoing discussions, it is fairly established that the coconut levy funds are special public funds. Consequently, any property purchased by means of the coconut levy funds should likewise be treated as public funds or public property, subject to burdens and restrictions attached by law to such property.

[7] Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines, G.R. Nos. 177857-58 & 178193, January 24, 2012.

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Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds, which have been established to be public in character it goes without saying that these acquired corporations and assets ought to be regarded and treated as government assets. **Being government properties, they are accordingly owned by the Government, for the coconut industry pursuant to currently existing laws**.

It may be conceded hypothetically, as COCOFED *et* al. urge, that the 14 CIIF holding companies acquired the SMC shares in question using advances from the CIIF companies and from UCPB loans. But there can be no gainsaying that the same advances and UCPB loans are public in character, constituting as they do assets of the 14 holding companies, which in turn are wholly-owned subsidiaries of the 6 CIIF Oil Mills. And these oil mills were organized, capitalized and/or financed using coconut levy funds. In net effect, the CIIF block of SMC shares are simply the fruits of the coconut levy funds acquired at the expense of the coconut industry. In *Republic v. COCOFED,* the *en banc* Court, speaking through Justice (later Chief Justice) Artemio Panganiban, stated: *'Because the subject UCPB shares were acquired with government funds, the government becomes their prima facie beneficial and true owner.'* **By parity of reasoning, the adverted block of SMC shares, acquired as they were with government funds, belong to the government as, at the very least, their beneficial and true owner**.

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Accordingly, We sustain the ruling of the Sandiganbayan in CC No. 0033-F that the **CIIF companies and the CIIF block of SMC shares**

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> **are public funds necessarily owned by the Government**." (emphases supplied)

Applying the foregoing in the instant case, VPLI, being a *"CIIF company"*, is deemed owned by the Government, thus, any tax imposed upon VPLI is considered, in effect, as a tax on Government. Considering that the subject shares are owned by the government, it follows that the dividends and any income therefrom are also owned by the government. Thus, the same is not within the power of the City of Davao to tax.

In any event, VPLI is not a bank or other financial institution, on which the subject local business tax may be imposed. Section 131 (e) of the LGC of 1991 states the scope of the term *"Banks and other financial institutions"*, provides as follows:

> "SEC. 131. *Definition of Terms.* -When used in this Title, the term:
>
> xxx xxx xxx
>
> (e) *Banks and other financial institutions'* **include non-bank financial intermediaries,** lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, **as defined under applicable laws, or rules and regulations thereunder;"** *(Emphases supplied)*

While Section 131(e)[8] of the LGC defines the term banks and other financial institutions, it did not define what is a non-bank financial intermediary. Thus, this Court finds it necessary to resort to other applicable laws which may enlighten us in its definition.

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[8] Section 131 (e) of the Local Government Code of 1991.

Section 131. Definition of Terms. - When used in this Title, the term:

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(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;

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

> "The term *a 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.

Accordingly, Section 2-D(c) of the General Banking Act defines "financial intermediaries" 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 coursed through them, either for their own account or for the account of others."

Section 4.101 Q.1 of the Manual of Regulations for Non-Bank Financial Institutions (Manual) defines ***"financial intermediaries" to be 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***. (Emphasis supplied)

The same section further clarifies the definition by elaborating the terms "Principal and Functions", to wit:

> "*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."

Relevant thereto, in order to be considered a financial intermediary, any of the following functions must be performed 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.

On the other hand, *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.

In sum, the following are the basic requirements for a person or entity to be considered as a *"non-bank financial intermediary",* to wit:

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, to wit:

   a. Receive funds from one (1) group of persons, irrespective of number, through

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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;

In comparison with Section 4101Q.1 of the Manual, "the scope of VPLI's primary business purpose in its Amended Articles of Incorporation is not broad enough to catch all the descriptive functions of a Financial Intermediary". There is nothing on record that shows that VPLI can be categorized as a financial intermediary, or that it has engaged in the activities defined and enumerated in the General Banking Act and in the Manual.

First, there is no indication that VPLI fulfills the first requirement, as there is no evidence found by the Court a *quo* showing that it was *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities".* Thus, on this basis alone, VPLI cannot be treated as non-bank financial intermediary.

Second, the Court *En Banc* is also not convinced that the stated primary purpose of VPLI in the Amended Articles of Incorporation is broad enough to catch all the descriptive functions of a 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".* Therefore, it is not proper to just assume that VPLI is engaged as a non-bank financial institution or intermediary based on the said primary purpose.

Likewise, it was also not established that the enumerated functions performed by VPLI are *"on a regular* *and recurring, not on an isolated, basis".* In fact, it was not shown that petitioner ever performed the said functions.

Also, a careful perusal of the records would reveal that there is also no evidence to show that VPLI held itself out, or advertised itself, as a non-banking financial intermediary.

Lastly, it must be emphasized that the determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation is vested in the Monetary Board subject to judicial review. The mere fact that petitioner has investments in SMC and money market placements does not *per se* make it a non-bank financial intermediary. To insist otherwise would be absurd as any ordinary person who invests funds in money market or shares of stock will be considered as a non-bank financial intermediary.

In *Commission* (sic) *of Internal Revenue vs. Hantex Trading* Co., *Inc.*[9], the Supreme Court ruled that an assessment must be based on actual facts. Accordingly, the local business tax assessment should be based on actual facts, and since there is no proof that VPLI can be considered as a non-bank financial institution or intermediary or is engaged in such activities, the local business tax assessment has no factual basis. Such a conclusion is based on an assumption, with no support in evidence.

Such being the case, this Court thus finds that VPLI is not a non-bank financial intermediary, and the interests and dividends it received for the third and fourth quarters of the taxable year of 2011 may not be the subject of local business tax imposed by herein petitioners.

In this regard, Moreover, it must therefore be emphasized that the local business tax assessment by herein petitioners against VPLI should be cancelled and set aside for being void.

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[9] Commission of Internal Revenue vs. Hantex Trading Co., Inc, G.R. No. 136975, March 31, 2005, citing Collector of Internal Revenue vs. Benipayo, 4 SCRA 182 (1962).

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To reiterate, the ruling in *COCOFED*[10] placed the subject SMC shares and its dividends, and any income therefrom, beyond the scope of the taxing power of Davao City pursuant to Section 133 of the 1991 LGC.

Under the premises, We find no cogent reason to deviate from the rulings of the Court in Division.

WHEREFORE, the petition is **DENIED**. The Decision of the Third Division of this Court in CTA AC Case. No. 137 dated September 15, 2016, and its Resolution dated March 13, 2017, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

(took no part)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(I join Justice Castañeda's Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

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[10] Supra Note 8.

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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 En Banc.

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, *Petitioner,*	**CTA EB NO. 1639** (CTA AC No. 137)
	Present:
- versus -	Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
VALHALLA PROPERTIES LIMITED, INC., *Respondent.*	Promulgated: AUG 14 2018 2:03 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Cielito N. Mindaro-Grulla, which denies the Petition for Review filed by the City of Davao and Bella Linda N. Tanjili, in her official capacity as the Officer-in-Charge, City Treasurer's Office of Davao City, against Valhalla Properties Limited, Inc., thereby affirming the Decision dated September 15, 2016 and the Resolution dated March 13, 2017 of the Court in Division, and thus, cancelling the Assessment dated January 20, 2014.

As articulated in the *ponencia*, the City of Davao's power to impose local business tax (LBT) on banks and other financial institution, including non-bank financial intermediaries, emanates from

Section 143(f) of the Local Government Code of 1991 (LGC)[1] in relation to Section 131(e) of the same Code. Section 131(e) of the LGC did not provide for a specific definition of the term "non-bank financial intermediary" as it states that it shall be defined under applicable laws, rules and regulations.

The term "non-bank financial intermediary" is defined in Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, as amended, Section 2.3 of Revenue Regulations (RR) No. 09-2004, Section 2-D(c) of the General Banking Act,[2] and Section 4.101Q.1 of the Bangko Sentral ng Pilipinas' (BSP) Manual of Regulations for Non-Bank Financial Institutions.

The foregoing laws and regulations specifically defined what constitutes "non-bank financial intermediary" as they provide for the specific requisites in order for an entity to be regarded as such. **While a person or entity must be "authorized by the BSP to perform quasi-banking activities", Section 4 of the General Banking Act, as amended, is categorical in stating that the "determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation shall be decided by the Monetary Board subject to judicial review". Sorely, no such determination by the Monetary Board exists on record that may confirm, even remotely, that petitioner is a non-bank financial intermediary.**

The mere fact that respondent has investments in San Miguel Corporation (SMC) and money market placements does not *per se* make it a non-bank financial intermediary. To insist otherwise would be absurd as any ordinary person who invests funds in money market or shares of stock will be considered non-bank financial intermediary.

Incidentally, in his Dissenting Opinion, my learned colleague, the Honorable Associate Justice Juanito C. Castañeda, Jr., makes the following analogy in concluding that petitioner is a non-bank financial intermediary, thus:

> "However, lack of authority by the BSP or the Monetary Board for respondent to engage in NBFI activities cannot be used as basis for concluding that it is not an NBFI. To my mind, this requirement is designed merely to regulate NBFI activities.

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[1] Republic Act No. 7160.
[2] Republic Act No. 337, as amended by Presidential Decree No. 71.

> In fact, the present situation may be compared, by analogy, to a person presently and smoothly driving a car without driver's license. To argue that this person is not presently driving a car because he or she has no driver's license is simply fallacious. Basically, such argument would necessarily lead to a conclusion that the car is moving smoothly by itself. However, it wrongfully omits the fact that the smoothly moving car is being driven by a person without a driver's license."

With due respect, I submit that the analogy is inaccurate. Truth to tell, any driver who drives a motor vehicle is indeed a "driver" and no license is necessary to be called as such. But when one is elevated to the category of a "professional driver", the term has to be taken within the context of the law that defines it. A student driver or any person who actually drives without license cannot be considered as a "professional driver" unless he possesses a "professional driver's license" as defined and mandated by law. **In the same manner, a "non-bank financial intermediary" may not be considered as such in its legal sense unless it possesses all the requirements that qualify it to fall within its legal definition.**

The findings of the lower court that petitioner's income were derived solely from dividends and interest income on money market placements are not sufficient to justify the conclusion that petitioner is a non-bank financial intermediary. The imposition of LBT on non-bank financial intermediaries springs from Section 143(f) in relation to Section 131(e) of the LGC and it must be strictly exercised in accordance with its precepts. This is consistent with Article 1158 of the Civil Code of the Philippines which provides that "Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and **shall be regulated by the precepts of the law which establishes them**; xxx." In the absence of any evidence showing that petitioner has met all the requirements set forth by law to be regarded as a non-bank financial intermediary, I submit there is no basis to impose LBT on the dividends derived by petitioner from its investments in SMC shares of stock or on the interest income it derived from its money market placements.

All told, I CONCUR with the *ponente.*

ROMAN G. DEL ROSARIO
Presiding Justice

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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. 1639** (CTA AC No. 137)
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	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan *JJ.*
- versus -	
VALHALLA PROPERTIES LIMITED, INC., Respondent.	Promulgated: AUG 14 2018 2:03 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 respondent is not a non-bank financial intermediary (NBFI).

In concluding that respondent is an NBFI, the lower court found that:

> "Coming to the merits of the case, the records show that **petitioner's business operations consist solely of stock investments and money placements in San Miguel**

> **Corporation**. Consequently, by holding a substantial number of shares of stock; and thus, receiving dividends as return of such investment and interest income from the petitioner's money market placements in San Muguel Corporation, the Court finds that the same clearly constitutes an act of investment or doing business which make them fall under the definition of a non-bank financial intermediary.
>
> While it may be true that petitioner's Amended Articles of Incorporation prohibits the corporation to act as an investment company, the Court finds that the records prove the contrary.
>
> The evidence submitted reveals that petitioner owns and invests in the shares of stock of San Miguel Corporation. It also has money placements in the said company as its principal and actual function or business operation. As raised by the respondents, based on the tax audit made by the latter, **the petitioner has no other business operation and source of revenue apart from owning shares of stock of San Miguel Corporation and making money placements therein. This fact was not rebutted by petitioner**."[1] *(Emphasis is mine)*

Based on the factual findings of the lower court, respondent's business operations consist solely of stock investments and money placements in San Miguel Corporation. Petitioner has no other business operation and source of revenue apart from owning shares of stock of San Miguel Corporation and making money placements therein.

However, these findings of fact by the lower court were disregarded in the subject Decision, as follows:

> "Applying the foregoing in the instant case, VPLI, being a '*CIIF company*', is considered a Government property, thus, any tax imposed upon VPLI is considered, in effect, as a tax on Government. Considering that the subject shares are owned by the government, it follows that the dividends and any income therefrom are also owned by the government. Thus, the same is not within the power of the City of Davao to tax.
>
> In any event, VPLI is not a bank or other financial institution, on which the subject local business tax may be imposed. Section 131 (e) of the LGC of 1991 states the scope of the term '*Banks and other financial institutions*', provides as follows:

[1] Division Docket, p. 45.

xxx xxx xxx

First, there is no indication that VPLI fulfills the first requirement, as there is no evidence found by the Court *a quo* showing that it was '*authorized by the Bangko Sentral ng Plilipinas (BSP) to perform quasi-banking activities*'. Thus, on this basis alone, VPLI cannot be treated as non-bank financial intermediary.

Second, the Court *En Banc* is also not convinced that the stated primary purpose of VPLI in the Amended Articles of Incorporation is broad enough to catch all the descriptive functions of a 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*'. Therefore, it is not proper to just assume that VPLI is engaged as a non-bank financial institution or intermediary based on the said primary purpose.

Likewise, it was also not established that the enumerated functions performed by VPLI are '*on a regular and recurring, not on an isolated, basis*'. In fact, it was not shown that petitioner ever performed the said functions.

Also, a careful perusal of the records would reveal that there is also no evidence to show that VPLI held itself out, or advertised itself, as a non-banking financial intermediary.

Lastly, it must be emphasized that the determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation is vested in the Monetary Board subject to judicial review. The mere fact that petitioner has investments in SMC and money market placements does not *per se* make it a non-bank financial intermediary. To insist otherwise would be absurd as any ordinary person who invests funds in money market or shares of stock will be considered as a non-bank financial intermediary."

The authorization by the BSP for an entity to perform NBFI activities is a mere regulatory measure

Respondent performed NBFI activities despite the limitations set

in its Amended Articles of Incorporation (AOI)

As cited earlier, the subject Decision concluded that since there is no authorization by the BSP or the Monetary Board for respondent to act as an NBFI, it cannot be classified as an NBFI.

However, lack of authority by the BSP or the Monetary Board for respondent to engage in NBFI activities cannot be used as basis for concluding that it is not an NBFI. To my mind, this requirement is designed merely to regulate NBFI activities.

In fact, the present situation may be compared, by analogy, to a person presently and smoothly driving a car without driver's license. To argue that this person is not presently driving a car because he or she has no driver's license is simply fallacious. Basically, such argument would necessarily lead to a conclusion that the car is moving smoothly by itself. However, it wrongfully omits the fact that the smoothly moving car is being driven by a person without a driver's license.

In this case, respondent depicts the driver without license while the dividends and interest income from equity securities and money market placements depict the car. The car could not have smoothly moved, *i.e.*, *respondent could not have regularly earned dividends and interest income from equity securities and money market placements*, if no driver is maneuvering it, *i.e.*, *if respondent did not engage in NBFI activities*, albeit without driver's license, *i.e.*, *without authority from the BSP*. Otherwise, respondent's consistent earnings from dividends and interest income emanating from an unknown activity, *i.e.*, if it did not engage in NBFI activities, would border on the metaphysical, because it is as if such regular events had no cause.

The above-reasoning also applies to the fact that there can also be no guarantee that a holding company will not act as an NBFI despite the limitations provided in its Amended AOI. As the saying goes – *action speaks louder than words*. As will be further discussed, respondent's acts are clearly indicative of being engaged in NBFI activities. As such, respondent's actions spoke louder than its Amended AOI, such that it engaged in acts contrary to what was set forth therein.

Respondent's business operations consist solely of stock investments and money placements in San Miguel Corporation. Thus, it leads to no other conclusion that

petitioner is engaged in NBFI activities

As earlier discussed, the lower court found that respondent's income emanated solely from dividends and money market placements. Despite these categorical findings, the subject Decision seems to have overlooked the same and proceeded to conclude that "it was not shown that petitioner ever performed the said functions". These glaring discrepancies between the factual findings of the lower court and this Court, without this Court laying the bases for its contrary findings, exposes the subject Decision to more questions rather than answers.

To reiterate, the lower court found that respondent's business operations consist solely of stock investments and money placements in San Miguel Corporation, as supported by petitioner's tax audit which was not rebutted by petitioner. Therefore, it was clearly established in the proceedings below that respondent is engaged in NBFI activities. However, without laying the factual bases to validly overturn the lower court's factual findings, the subject Decision found that respondent did not perform such acts. What was the basis for rejecting the lower court's factual findings, then?

In addition, said findings of the lower court clearly support the conclusion that respondent engaged in NBFI activities on a regular and recurring basis. Assuming that the subject Decision is correct when it found that respondent's acts were merely isolated, what then are the pieces of evidence which led the subject decision to conclude that respondent's business revolved around other principal activities other than what was found by the lower court? Stated otherwise, what are the principal activities of respondent which led the Court to believe that the subject transactions were merely isolated and were not conducted on a regular or recurring basis?

Upon careful review of the records of this case, no such evidence of respondent's principal activities can be found.

Furthermore, it cannot be said that any ordinary person who invests funds in money market or shares of stock can be considered as an NBFI. Again, there are parameters that should be satisfied before an entity may be considered as an NBFI. If such entity is primarily engaged in its principal activities, *i.e.*, manufacturing, realty, etc., while it is also engaged in stock investing or trading to augment or complement its principal business, said entity cannot be considered as an NBFI because obviously, its business operations revolve around its principal activities.

In this case, there is no evidence presented other than that which proves that respondent earned through stock investments and money placements on a regular and recurring basis. No other business activity can be attributed to respondent because there is no such proof of its principal activity. Therefore, respondent must be considered as an NBFI.

Thus, without proper factual basis to take a contrary position *vis-à-vis* the conclusion based on factual findings of the lower court, it would be more prudent for this Court to sustain the conclusion of the lower court.

The tax is levied upon the entity 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[2] 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)*

Section 143(f) of the LGC of 1991 imposes local business tax **on banks and other financial institutions**, *i.e.*, non-bank financial intermediaries. 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.

In the instant case, while the San Miguel 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

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

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.

Finally, the subject Decision's finding that respondent is a government property directly contradicts its primary conclusion that respondent is not an NBFI. If the government owns respondent by reason of primarily dealing with San Miguel Shares, then we can safely conclude that the lower court is correct when it found that respondent's income comes only from dividends and money market placement of its San Miguel Shares. Therefore, respondent clearly engaged in NBFI activities. At any rate, I respectfully submit that it is the San Miguel Shares and not the respondent corporation, which is considered as government property.

To end, 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 such 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