REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

METRO PACIFIC ASSETS HOLDINGS, INC., *Petitioner,*	**CTA AC NO. 184** (Civil Case No. 13-088)
-versus-	Members:
MAKATI CITY AND THE INCUMBENT CITY TREASURER OF MAKATI CITY, *Respondents.*	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MANAHAN,** *JJ.*
	Promulgated: JUL 02 2018 4:15 p.m.

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DECISION

MANAHAN, *J.*:

The Petition for Review[1] filed by Metro Pacific Assets Holdings, Inc. seeks to reverse and set aside the Decision of the Regional Trial Court (RTC), Branch 58, in Civil Case No. 13-088[2] entitled *Metro Pacific Assets Holdings, Inc. vs. Makati City and Hon. Nelia A. Barlis, in her capacity as City Treasurer of Makati City* dated November 4, 2016 and the Order[3] dated December 27, 2016 denying petitioner's Motion for Reconsideration against said Decision.

Petitioner Metro Pacific Assets Holdings, Inc. is a domestic corporation with Certificate of Incorporation No. A199715662 issued by the Securities and Exchange

[1] Docket, pp. 8-33.
[2] Docket, pp. 102-109
[3] Docket, page 131.

Commission (SEC). It has its principal office address at the 18th floor Liberty Floor Center, 104 H.V. de la Costa St., Salcedo Village, Makati City. Its Amended Articles of Incorporation[4] provides its Primary Purpose as follows:

> "To purchase, subscribe for or otherwise acquire and own, hold, use, manage, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of real and personal property of every kind and description, and to pay therefore in whole or in part, in cash or by exchanging therefor, stocks, bonds and other evidences of indebtedness or securities of this or any other corporation, while the owner or holder of any such real or personal property, 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 stock owned, without however engaging as dealer in securities or stocks or as a real estate broker or a real estate development company but hold the foregoing assets for purely investment purposes; to aid either by loans or by guaranty of securities or in any other manner, any corporation, domestic or foreign, any share of stock or any debentures, evidences of indebtedness or other security whereof are held by this corporation or in which it shall have interest and to do any act designed to protect, preserve or improve or enhance the value of any property at any time held or controlled by this corporation in which it at that time may be interested."

On the other hand, respondent Makati City is a duly created and organized local government unit while respondent City Treasurer of Makati City is the duly appointed city official empowered to assess and collect local business taxes (LBT) under the Revised Makati Revenue Code (RMRC). Both have their office address at the Makati City Hall, Bgy. Poblacion, Makati City.

THE FACTS

In the course of renewing its business permit in Makati City for the year 2011, petitioner received Billing Assessment Form No. 0021643 dated January 21, 2011[5] assessing it for LBT in the amount of Php6,841,596.60. The LBT was imposed on the dividends petitioner allegedly

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[4] Docket, pp.134-139.
[5] Docket, pp.40.

earned in 2010 and reported in its audited financial statements (AFS) for the year ended December 31, 2010.

On January 31, 2011, petitioner fully paid the amount of Php6,854,336.60 as evidenced by Official Receipt No. 1197251[6] issued by Makati City representing the assessed LBT and other fees for the year 2011.

On January 25, 2013, petitioner filed an administrative claim for refund in the amount of Php6,841,596.60 with the Office of the City Treasurer of Makati.[7]

Due to the apparent inaction of the City Treasurer of Makati City on the claim for refund, petitioner elevated a Complaint with the RTC Branch 58 of Makati City based on the express provisions of Section 196 of the Local Government Code (LGC). The Complaint was actually a claim for refund of alleged erroneously paid LBT and docketed as Civil Case No. 13-088.

On November 4, 2016, the RTC rendered a Decision in favor of respondents dismissing the Complaint with the dispositive portion quoted as follows:

> "**WHEREFORE,** premises considered for failure of plaintiff to prove by preponderance of evidence the instant complaint, the Court renders **JUDGMENT** by **DISMISSING** the instant complaint for lack of merit.
>
> **SO ORDERED."**

On December 27, 2016, petitioner filed a Motion for Reconsideration (Re: Decision dated 4 November 2016) praying that the aforequoted Decision be reversed and that respondents herein be directed to cancel the assessment and refund the LBT paid by petitioner in the amount of Php6,841,596.60.

On March 14, 2017, RTC Branch 58 issued an Order denying the Motion for Reconsideration on the ground that the issues raised by the petitioner in its Motion for Reconsideration have already been passed upon and

[6] Docket, page 42.
[7] Docket, pp. 43-52.

resolved in the Decision rendered on November 4, 2016. This assailed Order of RTC Branch 58 was received by the petitioner on March 31, 2017.[8]

Aggrieved with the Decision and Order of the RTC Makati, petitioner filed a Petition for Review with this Court on April 27, 2017.

In a Resolution[9] dated May 11, 2017, this Court directed respondents to file their Comment within then (10) days from receipt thereof.

Respondents then filed their Comment (Re: Petition for Review) on April 25, 2017.

On June 15, 2017, petitioner filed its Reply to the Comment filed by respondents.

In a letter dated April 2, 2018, the Branch Clerk of Court of RTC Branch 58, Atty. Romeo Alfonso B. Ras, Jr., transmitted the entire records of Civil Case No. 13-088 in accordance with the Court's Resolution dated June 20, 2017.[10]

In a Resolution dated April 12, 2018, the Court took note of the transmittal made by the Branch Clerk of Court of RTC Branch 58.

On July 25, 2017, respondents submitted their Memorandum[11] while petitioner submitted its Memorandum[12] on July 28, 2017.

In a Resolution dated August 3, 2017, the Court deemed the instant case submitted for decision.

In its Petition for Review, petitioner raised the following Assignment of Errors[13] for this Court's resolution, to wit:

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[8] Docket, page 131.
[9] Docket, page 144.
[10] Docket, page 190.
[11] Docket, pp. 191-211.
[12] Docket, pp. 213-236.
[13] Docket, pp12-13.

1. The RTC erred in ruling that petitioner should be taxed similar to banks or financial institutions under Section 3A.02(h) of the Revised Makati Revenue Code (RMRC);
2. The RTC erred in arbitrarily ruling that Section 3A.02(p) include dividends, interest and other items of passive income in the taxable gross receipts of holding companies such as petitioner;
3. The RTC erred in denying petitioner's claim for refund based on "failure of plaintiff to prove by preponderance of evidence the instant complaint";
4. The RTC failed take into consideration prior decisions of the Honorable Court of Tax Appeals, as well as other co-equal branches of the Makati Regional Trial Court, that have categorically ruled that passive income received by holding companies is not subject to LBT.

THE ISSUES

As gathered from the pleadings submitted by both parties, the issues raised may be summarized as follows:

1. Whether petitioner may be classified as a bank or financial institution whose interest and dividend income are taxable under Section 3A.02 (h) of the RMRC; and

2. Whether or not petitioner is entitled to a refund of the LBT alleged to have been erroneously collected by respondents in the amount of Php6,841,596.60 for taxable year 2011.

Petitioner's Arguments

Petitioner stresses the argument that it is a holding company and not an investment company nor a bank and/or other financial institution as can be plainly perused from its Articles of Incorporation. It further asserts that the clear distinction between a holding company and a bank/financial institution clearly makes the nature of its business fall outside the provisions of Section 3A.02 (h) of the RMRC, hence, not subject to LBT on its dividend and interest income. Petitioner however admits that as a holding company, it is liable to pay LBT under Section 3A.01 (p) of the RMRC which provides as follows:

> "Section 3A.01 (p)
>
> (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."

Petitioner points out the glaring error of the decision of the RTC when it concluded that its classification as a holding company makes it liable for LBT on its dividend and interest income.

Petitioner makes an analysis of the pertinent provisions of the RMRC and theorizes that the reference made to subsections (g) and (h) of Section 3A.02 thereof merely pertains to the rate of LBT that may be imposed on a holding company's gross sales and/or receipts which does not extend to the holding company's *passive* income. Petitioner firmly believes that the imposition of the LBT on dividend and interest income is applicable only to banks and financial institutions. It concludes that the imposition of such type of income tax is prohibited by the LGC of 1991.

In its Memorandum, petitioner additionally contests the authority of the respondents to choose the applicable rates for holding companies. Petitioner maintains that respondents are not given a *carte blanche* authority under Section 3A.02 (p) to arbitrarily include dividend income among other forms of passive income, in its taxable gross receipts subject to LBT.

The classification that petitioner finds applicable to the nature of its business is found in Section 3A.02 (g) on "contractors" which provides services rather than Section 3A.02 (h) which refers to banks and financial institutions that collect income through lending and investments.

To further buttress its stance against the assessment, petitioner cites the decision of the Court in the case of *Orleyte Company (Philippine Branch) vs. The City of Makati*[14]

[14] CTA AC No. 80, November 14, 2012.

where the Court *En Banc* confirmed that a non-bank or a non-bank financial institution is subject to LBT only on amounts received for services performed and not on passive income such as dividends and interest income.

As to the portion of the decision of the RTC that stated that the denial of the claim for refund was due to the "failure of plaintiff to prove by preponderance of evidence the instant complaint", petitioner emphasizes that the case involve a pure question of law and that there are no contentious factual issues, hence, it is quite strange to dismiss said complaint on this basis because there was no need to present evidence to prove the facts since they have all been admitted by the parties in interest.

Respondents' Arguments

In their Comment to the Petition for Review, respondents counter that petitioner's admission that it is a holding company and the fact that it applied for a business permit and license in Makati as a holding company makes it liable for LBT under Section 3A.02 (p) in relation to Section 3A.02 (h) of the RMRC. As such, a holding company (as respondents asseverate), 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. Hence, respondents aver that a holding company shall be taxed at the rate of 20% of 1% on its gross sales and/or receipts as prescribed under Section 3A.02 (h).

As to the *Orleyte* case cited by petitioner, respondents argue that this is not applicable because in that case the Court ruled that Makati City erred in classifying Orleyte as a holding company-management service, while in the present case, petitioner is correctly classified as a holding company. Further, the taxable years involved in the *Orleyte* case pertained to 2001-2002, 2002-2003 and 2003-2004 where the old Makati Revenue Code was still the applicable law, while in this case, the RMRC (which took effect on January 1, 2006) is already the basis of the imposition of LBT.

Respondents also echo the ruling of the RTC when it pronounced that petitioner was not able to overcome the burden of proving its entitlement to the claim for refund of LBT.

In sum, respondents maintain that a holding company need not be a contractor nor an owner of banks or other financial institutions to be subject to LBT on its dividend and interest income, therefore the Billing Assessment issued by Makati City dated January 21, 2011 is correct and remains valid.

THE RULING OF THE COURT

The Court shall first resolve whether petitioner was able to file its appeal with this Court in the manner and within the period prescribed by the relevant laws, which is determinative of our jurisdiction to take cognizance of this case.

Section 196 of the LGC provides as follows:

> "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 or credit."

Based on the above provision of the LGC, the following requisites must be complied with to entitle a taxpayer to a refund or credit of LBT:

1. The taxpayer must file a written claim for refund/credit with the local treasurer; and
2. The taxpayer must elevate a case or proceeding in court within two (2) years from date of payment of the tax, fee or charge.

The records of the case disclose that petitioner paid the amount of Php6,841,596.60 to the Office of the

Treasurer, Makati City on January 31, 2011 as shown by Official Receipt No. MKTCF197251[15]. The payment was made pursuant to Billing Assessment Form No. 0021643 dated January 21, 2011 issued by the Business Permits Office, Lungsod ng Makati.[16] Thereafter, petitioner filed a written claim for refund (dated January 23, 2013) for the said LBT payments with the respondent City Treasurer on January 25, 2013.[17]

Petitioner then filed a Complaint for Refund of Erroneously Paid LBT before the RTC on January 29, 2013 alleging that it filed the said complaint on the basis of the inaction of the City Treasurer of Makati City on its claim for refund.

Based on the foregoing periods, petitioner's appeal to the RTC on January 29, 2013, pursuant to Section 196 of the LGC, was made within two (2) years from date of payment of the LBT on January 31, 2011. In sum, petitioner was able to comply with the requisite two-year period for its claim for refund.

As to the Court's jurisdiction to take cognizance of this instant petition, we quote Section 7 (a) (3) of Republic Act (RA) 9282, to wit:

> "Section 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (3) Decisions, orders or resolutions of the Regional Trial Court in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"

The above provision is implemented by Section 3 (a) (3), Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

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[15] Annex "C:" of Petitioner's Petition for Review, Docket, page 42.
[16] Annex "B" of Petitioner's Petition for Review, Docket, page 40.
[17] Annex "D" of Petitioner's Petition for Review, Docket, pp. 43-52.

> Section 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original or appellate jurisdiction to review by appeal the following:
>
> xxx xxx xxx
>
> (3) Decisions, resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction."

With regard to the filing of an appeal with the CTA, Section 3(a), Rule 8 of the RRCTA, in part, provides:

> Sec. 3. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessment or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or the expiration of the period fixed by law or the Commissioner of Internal Revenue to act on the disputed assessments. xxx"

Again, the records show that petitioner received the Decision of RTC Makati in Civil Case No. 13-088 on December 12, 2016[18] and subsequently filed a Motion for Reconsideration with said court on December 27, 2016.

An Order was issued by RTC Makati on March 14, 2017 denying the Motion for Reconsideration which was received by petitioner on March 31, 2017. [19]

On April 27, 2017, petitioner filed a Petition for Review with this Court.

Clearly, petitioner timely filed its appeal, hence giving this Court the requisite jurisdiction to rule on the issues raised in this case.

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[18] Annex "F" of Petitioner's Petition for Review, Docket, pp. 102 – 109.

[19] Annex "H" of Petitioner's Petition for Review, Docket, page 131.

Now, we proceed to the merits of the case.

The local treasurer of Makati City assessed petitioner for LBT on the ground that the latter applied for a permit as a "holding company" thus was made subject to the provisions of Section 3A.02 (p) in relation to Section 3A.02 (h), thus:

> Section 3A.02. *Imposition of Tax.*- There is hereby levied an annual tax on the following businesses at rates prescribed therefore:
>
> (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 premiums 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 (l) 1, as provided in this code.
>
> xxx xxx 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."

The local treasurer then based the computation of the LBT on petitioner's dividend income and applied the rate of 20% of 1% in accordance with the aforequoted sections of the RMRC.

We find the Petition for Review meritorious.

The issue presented in this case has been well settled in several cases decided by this Court, foremost among which is the case of *Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia A. Barlis*[20] which clearly held

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

that dividend income is excluded from gross receipts that are to be subject to the LBT and we quote:

> **"Dividend Income Not Subject to Local Business Tax**
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> 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.
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> 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."
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> 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." (emphasis suppled)

In the aforequoted *Michigan Holdings case,* the Court ruled that dividend income is not subject to LBT except when levied on banks and other financial institutions and it is clear that petitioner as a holding company cannot be classified as a "bank or other financial institution".

In the case of *ASC Investors Inc. vs. City of Davao City*[21] , the Court clarified the nature of businesses covered within the definition of "financial intermediaries/non-bank financial intermediaries", thus:

> "....There is nothing in the record that indicated or even hints that petitioner is engaged in "lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others," in order to be within the ambit of the term "Financial Intermediaries/non-bank financial intermediaries" as defined similarly in (i) Section 2 (D) (c)

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[21] CTA AC No. 157, June 7, 2017.

> of RA No. 337, or the General Banking Act, as amended; (ii) Section 2.3 of RR No. 9-2004; and (iii) Section 4101Q.1 of the Manual Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas."*

Finally, in the case of *Metro Pacific Resources, Inc. vs. Makati City and Nelia A. Barlis, in Her Capacity as Incumbert City Treasurer of Makati City*[22], this Court had the occasion to similarly observe that petitioner can neither be classified as a bank or other financial intermediary, and we quote:

> "xxx xxx A careful look into the evidence on record would show that petitioner is not an investment company, nor a bank, or other financial intermediary , as defined above. For one, petitioner is not an entity authorized by the Bangko Sentral ng Piipinas ("BSP') to perform quasi-banking functions. There is also no showing that petitioner advertised itself as a lending, investing or financing company. Further, even if petitioner's primary purpose, as stated in its Articles of Incorporation, may involve one of the activities enumerated in the BSP Manual, such primary purpose, standing alone, is inadequate to justify the conclusion that petitioner is performing functions of a financial intermediary." xxx xxx

The records of this case do not show that petitioner is an investment company, a bank or other financial intermediary as defined by pertinent regulations. Its primary purpose as shown in the Articles of Incorporation neither shows that any of its activities are covered by the BSP Manual akin to functions pertaining to a financial intermediary.

Based on the foregoing, we so hold that petitioner cannot be considered an investment company, nor a bank or other financial institution, hence not subject to the rate of tax imposed in Section 3A.02 (h) of the RMRC.

WHEREFORE, the Petition for Review filed by petitioner Metro Pacific Assets Holdings, Inc. is hereby **GRANTED**.

[22] CTA AC No. 174, November 21, 2017.

Accordingly, the assailed Decision dated November 4, 2016 and the Order dated March 14, 2017 rendered by the Regional Trial Court of Makati City in Civil Case No. 13-088 are **REVERSED** and **SET ASIDE**. The respondents are **ORDERED** to refund to petitioner the amount of Six Million Eight Hundred Forty One Thousand Five Hundred Ninety-Six and Sixty Centavos (Php6,841,596.60) representing erroneously collected local business taxes for taxable year 2011.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

METRO PACIFIC ASSETS HOLDINGS, INC., Petitioner,	**CTA AC NO. 184** (Civil Case No. 13-088)
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **MANAHAN**, *JJ.*
MAKATI CITY AND THE INCUMBENT CITY TREASURER OF MAKATI CITY, Respondent.	Promulgated: JUL 02 2018 4:15 p.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.*:

I agree with the conclusion reached by the *ponencia* that petitioner is entitled to its claim for refund. In this regard, an examination of the records reveals that there is no evidence showing that petitioner performed acts exclusively available to banks or other financial institutions. Thus, the grant of petitioner's claim for refund is in order.

With due respect, however, I have reservations regarding the premise of the said conclusion, *i.e.*, a holding company cannot be classified as a "bank or other financial institution". Thus, the subject decision pertinently states:

> "In the aforequoted *Michigan Holdings* case, the Court ruled that dividend income is not subject to LBT except when levied on banks and other financial institutions and it is clear that petitioner as a holding company cannot be classified as a 'bank or other financial institution'.
>
> xxx xxx xxx
>
> The records of this case do not show that petitioner is an investment company, a bank or other financial intermediary as defined by pertinent regulations. Its primary purpose as shown in the Articles of Incorporation neither shows that any of its activities are covered by the BSP Manual akin to functions pertaining to a financial intermediary."

In this regard, the Court cannot hastily arrive at a generalization that a holding company cannot be classified as a bank or other financial institution, without examining the pieces of evidence involved in the case. In other words, the determination whether an entity performs acts of a bank or a financial institution should be purely based on evidence of such acts. It should not be dependent on the category or industry to which an entity belongs.

Neither should such determination be based solely on an entity's Articles of Incorporation. To reiterate, the determination whether an entity performs acts of a bank or a financial institution should be purely based on evidence of such acts, and not on evidence, *i.e.*, Articles of Incorporation, available before the happening of an event. Simply put, a company's Articles of Incorporation cannot absolutely warrant a faithful observance of the same. Such scenario belongs to an ideal world where there exists an absolute morality in dealing with written contracts. Thus, we cannot pass a judgment based on speculation that since the Articles of Incorporation show that a corporation can only do certain acts, it cannot, with absolute certainty, do acts outside the scope of its authority.

Considering the foregoing, I vote to **GRANT** the instant Petition, but for reasons stated above.

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