**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**MAKATI CITY TREASURER AND CITY OF MAKATI,**
*Petitioners,*

**CTA *EB* NO. 2131**
(CTA AC No.193)

*-versus-*

Present:

**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**UY,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,** *and,*
**MODESTO-SAN PEDRO,** *JJ.*

**MERMAC, INC.,**
*Respondent.*

Promulgated:
SEP 02 2020 4:25 pm

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# DECISION

**MANAHAN, J.:**

Before the Court of Tax Appeals *En Banc* is the instant Petition for Review[1] filed on September 18, 2019, seeking the reversal of the Decision dated March 7, 2019 and the Resolution dated August 13, 2019, promulgated by the Special First Division of this Court (Court in Division) in CTA AC No. 193 entitled, *Makati City Treasurer and City of Makati, as*

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[1] EB Docket, pp. 1-20.

*represented by the City Mayor vs. Mermac, Inc.*, the dispositive portions of which read as follows:

**Decision dated March 7, 2019**

> "**WHEREFORE,** in light of the foregoing considerations, the present Petition for Review is **DISMISSED.** The Decision dated August 3, 2017 and the Order dated November 8, 2017 issued by RTC-Branch 147 in Civil Case No. 14-470 are **AFFIRMED.**
>
> **SO ORDERED."**

**Resolution dated August 13, 2019**

> "**WHEREFORE**, in light of the foregoing considerations, petitioner'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 City of Makati is a highly urbanized city by virtue of Republic Act No. 7854, and it is the principal place of petitioner Makati City Treasurer. The latter, in turn, is responsible for the collection of local taxes and fees imposed by petitioner City of Makati and for the custody of its funds.
>
> On the other hand, respondent Mermac, Inc., is a holding company whose primary purpose is to own and hold real and personal property including shares of stock and for the purpose of exercising the rights and privileges of ownership, including all voting powers on any stocks so owned without being a broker of securities or investment corporation. Its principal office is located in Makati City.
>
> On January 19, 2014, respondent received the Assessment from petitioners assessing respondent of deficiency local business tax (LBT) for taxable year 2013 in the total amount of P3,719,473.06, computed as follows:

| Tax Base (Actual Gross per FS) | Tax Amount | Surcharge and Interest | Total |
|---|---|---|---|
| P1,231,613,596.00 | P2,463,227.19 | P1,256,245.87 | P3,719,473.06 |

Respondent, through the letter dated January 30, 2014, contested the validity and propriety of the deficiency assessment arguing that the tax being imposed by the City Treasurer pursuant to Section 3A.02 (p) of the Revised Makati Revenue Code (RMRC) is based on the gross amount of the dividends derived by respondent, and since the dividends are passive income, the same cannot be subject to LBT under the Local Government Code (LGC).

On January 31, 2014, respondent paid the alleged deficiency tax under protest. In the letter dated February 12, 2014, respondent informed petitioners of its payment and reiterated its protest against the validity and propriety of petitioner's assessment.

On April 30, 2014, respondent filed with the Regional Trial Court, Makati City, a Petition for Review to cancel and annul the subject assessment and consequently order petitioners to refund the amount of P3,719,473.06, allegedly representing the 2013 LBT paid by respondent on its dividend income. The case was docketed as Civil Case No. 14-470 and was raffled to Branch 143. Later, the case was re-raffled to RTC-Branch 147 on February 13, 2017, due to the parties' failure to reach an amicable settlement through the judicial dispute resolution proceedings.

During pre-trial, the parties jointly manifested that they are waiving the presentation of their witnesses and instead, they submitted three (3) supposed legal issues for resolution of the lower court. The parties also agreed that in lieu of presentation of witnesses, they will file their respective memoranda.

On August 3, 2017, RTC-Branch 147 rendered the assailed Decision, and ruled as follows:

> "On the first issue, it should be noted that in Michigan Holdings, Inc., vs. The City Treasurer of Makati City, Nelia Barlis (CTA EB No. 1093, June 17, 2015), the CTA En Banc has recently ruled that dividend income is not subject to local business tax. In holding that Section 3A.02(p) in relation to Section 3A.02 (h), both the Revised

Makati Revenue Code, violates the limit set by Section 13 (a) of the Local Government Code, the CTA En Banc ratiocinated:

xxx xxx xxx

The decision of the CTA En Banc, being a highly specialized court dedicated exclusively to the study and resolution of tax cases and has accordingly developed an expertise on the subject, should be respected.

Considering the foregoing, the provisions of Section 3A.02 (p) in relation to Section 3A.02 (h) of the Revised Makati Revenue Code cannot be validly made to apply to a holding company such as petitioner in this case.

The Court need not further discuss the second issue on the applicability of the CTA case of Orleyte Company (Philippine Branch) vs. City of Makati (CTA Case No. 80, November 14, 2012) in this case since the more recent case of Michigan has already ruled on the effectivity of Section 3A.02 (p) in relation to Section 3A.02 (h) of the Revised Makati Revenue Code.

All told, the Court finds that the petitioner was able to establish its entitlement to refund the local business tax it paid to respondents. However, pursuant to the Revised Makati Revenue Code, petitioner may be granted refund in the form of tax credit.

**WHEREFORE,** in view of the foregoing, the Petition for Review is hereby GRANTED. The assessment which assessed petitioner of deficiency local business tax for the taxable year 2013, including surcharge and interest thereon, is CANCELLED. The respondents are hereby ordered to grant a tax credit in favor of petitioner in the amount of Php3,719,473.06.

**SO ORDERED."**

On August 25, 2017, petitioners filed a Motion for Reconsideration (of the Decision dated 03 August 2017), which the lower court denied in the assailed Order dated November 8, 2017.

In the Resolution dated December 21, 2017, this Court directed: (1) respondent to file its Comment within ten (10) days from receipt thereof; and (2) the branch Clerk of Court of RTC-Branch 147, to elevate the records of Civil Case No. 14-470 of this Court, within ten (10) days from notice.

> On January 15, 2018, respondent filed its Comment (to Petition for Review dated 07 December 2017), while on January 16, 2018, this Court received the said branch Clerk of Court's Compliance, transmitting the records of Civil Case No. 14-470.
>
> Thereafter, the parties were directed to submit simultaneously their respective memoranda, within thirty (30) days from receipt thereof in the Resolution dated January 29, 2018.
>
> Petitioners filed their Memorandum on March 1, 2018, while respondent filed its Memorandum on March 5, 2018. In the Resolution dated March 21, 2018, this Court considered the instant case as submitted for decision.
>
> Hence, this Decision."

In the assailed Decision[2] promulgated on March 7, 2019, the Court in Division dismissed the Petition for Review and affirmed the Decision and Order of RTC Branch 147 in Civil Case No. 14-470 dated August 3, 2017 and November 8, 2017, respectively.

Aggrieved, herein petitioners filed a Motion for Reconsideration of the Decision dated March 7, 2019, which was denied by the Court in Division in a Resolution dated August 13, 2019.

On September 18, 2019, petitioners filed a Petition for Review with the Court *En Banc.*

On October 3, 2019, the Court issued a Resolution ordering respondent Mermac Inc, to file its Comment on the Petition for Review within ten (10) days from receipt thereof, after which, the said Petition for Review shall be submitted for decision.

On October 18, 2019, respondent filed its Comment[3] to the Petition for Review.

On November 6, 2019, the Court issued a Resolution submitting the case for decision.[4]

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[2]EB Docket, pp. 25-48.
[3]EB Docket, pp.64-74.
[4]EB Docket, pp. 75-76.

## ASSIGNMENT OF ERRORS

The following Assignment of Errors allegedly committed by the Court in Division were raised by petitioners in their Petition for Review, and we quote:

> "I. WITH DUE RESPECT, THE HONORABLE COURT OF TAX APPEALS ERRED IN RULING THAT THE CITY TREASURER OF MAKATI HAS NO AUTHORITY TO REPRESENT THE CITY OF MAKATI, AND THAT THE CERTIFICATION AGAINST FORUM SHOPPING WAS NOT VALIDLY EXECUTED;
> II. WITH DUE RESPECT, THE HONORABLE COURT OF TAX APPEALS ERRED IN RULING THAT LOCAL BUSINESS TAX MAY NOT BE IMPOSED ON DIVIDEND INCOME OF RESPONDENT AS THERE IS NO SHOWING THAT IT IS CLASSIFIED AS, OR PERFORM THE FUNCTIONS OF A BANK OR OTHER FINANCIAL INSTITUTION IN ORDER TO IMPOSE THE LOCAL TAXES UNDER SECTION 3A.02 (p), IN RELATION TO SUBSECTION (h) OF THE REVISED MAKATI REVENUE CODE;
> III. WITH DUE RESPECT, THE HONORABLE COURT OF TAX APPEALS ERRED IN RULING THAT THE GRANT OF REFUND IS NOT LIMITED TO THE ISSUANCE OF A TAX CREDIT CERTIFICATE."

**Petitioners' arguments**

Petitioners assert that the Petition for Review was filed through their City Treasurer, Jesusa E. Cuneta, who has the requisite authority to represent the City of Makati in filing its appeal with the Court based on Section 183, Book II, Chapter 4 of the Local Government Code (LGC) of 1991 which authorizes the city treasurer to file civil actions against taxpayers for collection of delinquent local taxes, fees and charges. Further, petitioners maintain that the same LGC of 1991, Section 470, Title V enumerating the powers and duties of local officials, specifically states that the local treasurer shall perform the duties "provided under Book II of this Code" and that Book II of the LGC of 1991 refers to "Local Taxation and Fiscal Matters" under which the City Treasurer of Makati is authorized to file actions which includes the authority to represent the local government in connection with filing of appeals with the Court of Tax Appeals, hence, there is no need for Makati City to show proof of her authority to file the instant action in court.

With regard to the substantive issue of whether or not local business taxes (LBT) were rightfully imposed on respondent's dividend income, petitioners maintain that as a holding company, respondent was taxed in accordance with Section 3A.02 (p) in relation to Section 3A.02 (h) of the Revised Makati Revenue Code (RMRC). It is clear to petitioners that a holding company shall be taxed as a specific class of its own, without reference to it as being a contractor or an owner or operator of banks and other financial institutions. In short, petitioners posit the theory that a holding company need not be a contractor nor an owner or operator of banks or other financial institutions for the LBT liability to attach on its dividend income.

Petitioners also argue that even assuming, without conceding, that respondent is entitled to the refund of the LBT it paid, the same may be granted only in the form of a tax credit by express provision of law, specifically paragraph (d) of Section 7B.14 of the RMRC. Be that as it may, petitioners still allege that respondent was not able to overcome the burden of proving its entitlement to the instant claim for refund.

**Respondent's Counter-Arguments**

Respondent assents to the ruling of the Court in Division that the City Treasurer of Makati has no authority to represent the City of Makati in the filing of the Petition for Review with this Court and to execute the Certification Against Forum Shopping but maintains that this issue is subservient to the more important position of the Court, that as a holding company, it is not subject to LBT on its dividend income.

Respondent submits that it is one thing to state that holding companies are subject LBT but it is a totally different thing to state that holding companies are subject to LBT on their dividend income. It cites the decision of the Court *En Banc* in the case of *Michigan Holdings, Inc. vs. City Treasurer of Makati*[5] *(Michigan Holdings case),* where it was held that dividend income of holding companies cannot be subject to LBT because such imposition runs counter to the limit set by the LGC of 1991, particularly Section 133 (a) in relation to Section 143, 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

[5]CTA EB Case No. 1093, June 17, 2015.

"bank" nor a "financial institution" under applicable laws, rules and regulations.

Respondent, however distinguished that in the *Michigan* case, the Court *En Banc* invalidated Section 3A.02 (p) of the RMRC while in the instant case, the Court in Division focused particularly on its implementation in imposing LBT on holding companies in relation to its particular nature and function rather than altogether invalidating said section of the RMRC. Respondent also agrees with the Court in Division that instead of invalidating Section 3A.02 (p), it instead clarified its provisions and ruled that it has to be implemented in relation to Sections 3A.02 (g) and 3A.02 (h) of the RMRC.

Respondent also reiterates that it is entitled to a refund and not just a tax credit by express provision of Section 7B.14 of the RMRC and that this has been settled by the Court in the case of *Metro Pacific Holdings, Inc., vs. Makati City and Nelia A. Barlis in her capacity as incumbent City Treasurer of Makati*[6] where it was supposedly held that a taxpayer is given the option to recover the amount it erroneously paid either by way of refund or tax credit.

## <u>RULING OF THE COURT *EN BANC*</u>

This Court will first resolve the issue of lack of authority of the City Treasurer of Makati to represent the City of Makati in filing the Petition for Review with the Court and to execute the Certification Against Forum Shopping.

Petitioners contravene the ruling of the Court in Division when it concluded that the City Treasurer of Makati City has no authority to file the Petition for Review on behalf of the City of Makati, in the absence of a prior ordinance from its *Sangguniang Panlungsod.* They maintain that they filed the Petition for Review with the Court in Division through their City Treasurer who is specifically given such authority under Book II, Section 183 of the LGC of 1991, i.e., to file a civil action for the collection of delinquent taxes, fees and charges. In addition, Title V, Section 470 of the LGC of 1991, in describing the duties of the local treasurer, circuitously provides that such treasurer shall perform the duties provided under said Book II of the same Code such as filing civil actions to collect delinquency local taxes, fees and charges. They therefore maintain that given

[6]CTA A.C. No. 179, June 1, 2018.

these clear provisions of the LGC of 1991, there is no need for a Resolution from the *Sangguniang Panlungsod* of Makati City to confer authority on the City Treasurer to file the instant action with the Court. Given this clear authority, petitioners assert that they validly complied with the rules on Certification Against Forum Shopping.

Let us analyze.

The records show that petitioners filed a Petition for Review with the Court in Division on December 7, 2017 and was signed by their counsel, Atty. Anthony T. Zamora, of the Office of the City Attorney of Makati. The Petition was accompanied by a Verification/Certification signed by the then City Treasurer of Makati City, Ms. Jesusa E. Cuneta, the contents of which are quoted below:

"VERIFICATION/CERTIFICATION

I, Jesusa E. Cuneta, of legal age, Filipino, and with postal address at the Office of the City Treasurer, Makati City Hall, Makati City, after having been duly sworn, in accordance with law, depose and state that:

1. I am the incumbent Treasurer of the City of Makati, and one of the petitioners in the above-entitled case;
2. I have caused the preparation of the foregoing PETITION FOR REVIEW;
3. The allegations contained are true and correct to the best of my knowledge and on the basis of the documents in my possession;
4. The City of Makati has not commenced any action or filed any claim involving the same issues in the Supreme Court, Court of Appeals, or any division thereof, or in any court, tribunal or quasi-judicial agency, and to the best of my knowledge, no such other action or claim is pending therein;
5. If I should learn that another similar action or claim has been filed or is pending before any court, tribunal or quasi-judicial agency in the Philippines, I shall report that fact to this Honorable Court within five (5) days from notice.

(Signed)
JESUSA E. CUNETA
Petitioner"

xxx xxx xxx

In the assailed Decision, the Court in Division found no defect in the verification part of the aforequoted Verification/Certification attached to the Petition for Review, but had a different view on the portions thereof pertaining to the Certification Against Non-Forum Shopping found in paragraphs 4 and 5 of said Verification/Certification. We quote the assailed Decision of the Court in Division:

> "In this case, We see no defect in the verification part of the VERIFICATION/CERTIFICATION attached to the instant Petition for Review, since there is no indication that the allegations made therein by Jesusa E. Cuneta as petitioner City Treasurer, as such, are not based on her personal knowledge or on authentic records. However, we cannot say the same as regards the part pertaining to certification against forum shopping. **This is so because such certification is not accompanied by proof that said petitioner City Treasurer is authorized to file the instant Petition for Review on behalf of petitioner City of Makati."** (emphasis supplied)

Petitioners hold a contrary stance and maintain that the City Treasurer has the requisite authority to file the instant Petition for Review, hence, there is no need for the *Sangguniang Panlungsod* of Makati City to enact an ordinance, as earlier discussed.

We agree with the ruling of the Court in Division and find petitioners' arguments bereft of merit.

Section 5 of Rule 7 of the Revised Rules of Court provides as follows:

> **"Rule 7**
>
> Section 5. *Certification against Forum Shopping.* – **The plaintiff or principal party** shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein: (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter, learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> **Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided,**

> **upon motion and after hearing.** The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be a ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions." (emphasis supplied)

The above provision is complemented by Section 2, Rule 6 of the Revised Rules of the Court of Tax Appeals (RRCTA), and we quote:

> **Rule 6**
> **PLEADINGS FILED WITH THE COURT**
>
> SEC. 2. *Petition for review; contents.* – The petition for review shall contain allegations showing the jurisdiction of the Court, a concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. **The petition shall be verified and must contain a certification against forum shopping as provided in Section 3, Rule 46 of the Rules of Court.** A clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition. (emphasis supplied).

It is clear from Section 5 of Rule 7 of the Revised Rules of Court that the Certification Against Non-Forum Shopping must be executed by petitioner and not by counsel.[7] Further, the Supreme Court, in the case of *Altres, et.al., vs. Empleo*[8], encapsulated its pronouncements with regard to the proper execution of the Verification/Certification against Forum Shopping, and we quote:

> "For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:
>
> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with

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[7]*Far Eastern Shipping Co. vs. Court of Appeals, et.al.,* G.R. No. 130068, October 1, 1998; *Manila Pilots Association vs. Philippine Ports Authority and Far Eastern Shipping Co.,* G.R. No. 130150, October 1, 1998.
[8]G.R. No. 180986, December 10, 2008.

> the requirement on or submission of defective certification against forum shopping.
>
> 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
>
> 3) Verification is deemed *substantially complied* with when one has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
>
> 4) **As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**
>
> 5) The certification against forum shopping must be signed by <u>all</u> the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.
>
> 6) **Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.** (emphasis supplied)

Section 3 of Rule 46 of the Revised Rules of Court provides the effects of non-compliance with the afore-quoted Rules, thus:

> **"Rule 46**
> **ORIGINAL CASES**

> SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.
>
> xxx xxx xxx
>
> The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.
>
> xxx xxx xxx
>
> **The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition."**(emphasis supplied)

In the instant case, the Verification/Certification of Non-Forum Shopping was executed and signed by then City Treasurer of Makati, Jesusa E. Cuneta, but no alleged authority was submitted to support her authority to represent petitioners. As clearly enunciated by the Court in Division in the assailed Decision, the Makati City Treasurer must be authorized by an ordinance to file the Petition for Review. We quote portions of the said assailed Decision:

> "Without doubt, local government units, such as petitioner City of Makati, have the power to sue, pursuant to Section 22 of the LGC of 1991, to wit:
>
> "Sec. 22. Corporate Powers.
>
> (a) Every local government unit, as a corporation, shall have the following powers:
>
> xxx xxx xxx
>
> (2) To sue and be sued."
>
> However, Section 458 (a) (1) (viii) of the LGC of 1991 provides as follows:

> "Section 458. *Powers, Duties, Functions and Compensation.* – (a) The Sangguniang Panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, and in the proper exercise of the corporate powers of the city as provided under Section 22 of this Code, and shall:
>
> (1) Approve ordinances and pass resolutions necessary for the efficient and effective city government, and in this connection, shall:
>
> xxx xxx xxx
>
> (vii) Subject to the provisions of this Code and pertinent laws, determine the powers and duties of officials and employees of the city.

Based on the foregoing provision, the Sangguniang Panlungsod is mandated *inter alia,* to approve ordinance and pass resolutions in the proper exercise of tis power to sue. And in connection thereto, the said Sanggunian shall approve and pass resolutions, among others, determining the powers and duties of city officials, subject to the provisions of the LGC of 1991 and pertinent laws. In other words, except when the power to sue is explicitly granted or designated to a particular city official under the law, a prior ordinance or resolution from the Sangguniang Panlungsod is necessary for any city official to exercise such power.

While the LGC of 1991 grants certain powers and duties to the local treasurer, a careful examination of the said law would reveal that there is nothing therein which authorizes the said official from filing an appeal in the appropriate court on behalf of the concerned local government unit. Furthermore, it is noteworthy that Republic Act 7854, the charter of petitioner City of Makati, does not grant such authority to the same official as shown under Section 26 thereof, to wit:

Sec. 26. The City Treasurer. – xxx

xxx xxx xxx

The city treasurer shall take charge of the city finance department and shall:

(a) Advise the city mayor, the *Sangguniang Panlungsod* and other local government and national officials concerned regarding disposition of local government funds and on such other matters relative to public finance;
(b) Take custody and exercise proper management of the funds of the City;

> (c) Take charge of the disbursement of all funds the custody of which may be entrusted to him by law or other competent authority;
> (d) Inspect private commercial and industrial establishments within the jurisdiction of the City in relation to the implementation of tax ordinances, pursuant to the provisions of the Local Government Code;
> (e) Maintain and update the tax information system of the City; and
> (f) Perform such other duties and functions and exercise such other powers as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991, and those that are prescribed by law or ordinance.
>
> Thus, for petitioner Makati City Treasurer to exercise the power of petitioner City of Makati to file the instant Petition for Review with the Court, a prior ordinance from the Sangguniang Panlungsod of petitioner City of Makati must be issued.
>
> **Considering that there is no showing that the *Sangguniang Panlungsod* of petitioner City of Makati issued an ordinance giving authority to petitioner Makati City Treasurer to initiate the filing of the instant Petition for Review, the same must be dismissed."** (emphasis supplied)

As observed by the Court in Division, petitioners did not submit proof of the authority of City Treasurer, Ms. Jesusa E. Cuneta, thus, the Petition for Review was rightfully dismissed.

Notwithstanding the existence of a valid ground for the outright dismissal of the Petition for Review filed by petitioners based on the above disquisitions, this Court deems it proper to rule on the substantive merits of the decision of the Regional Trial Court (RTC) Branch 147, Makati City as regards the imposition of LBT on the dividend income of holding companies.

The issue is not novel and has been the subject of numerous decisions of the Court, foremost among which is the oft-cited case of *Michigan Holdings, Inc. vs. City Treasurer of Makati.*[9]

The decisions of the Court on a similar issue do not veer away from the ruling of the Court in the *Michigan Holdings* case as they tend to focus on the types of activities that may be construed as performing functions akin to a "bank and other financial institution" as defined by applicable laws and relevant

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[9]Supra.

rules and regulations because such activities may be covered under the limitations on the power to tax of local governments. We quote the relevant provisions of the LGC of 1991, thus:

**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;**

xxx xxx xxx

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 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)

It remains undisputed that respondent is a holding company and has been classified by the local government of Makati City as such.

The Court in Division, in the assailed Decision, correctly pointed out that there is no showing that respondent falls under the category of, or can be considered as within the purview of the term "Banks and other financial institutions" as defined under Section 131 (e) of the LGC of 1991 and Section 3A.01 (e) of the RMRC to justify the collection of LBT on its dividend income.

It may be recalled that the Court, in the *Michigan Holdings* case 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")

In a recent Supreme Court decision entitled *City of Davao vs. Randy Allied Ventures, Inc.,*[10] the exemption from local taxes of holding companies has been affirmed, to wit:

> **"Indeed there is a stark distinction between a holding company and a financial intermediary as contemplated under the LGC, in relation to other laws.** A "holding company" is "organized" and is basically conducting its business by investing substantially in the equity securities of another company for the purpose of controlling their policies (as opposed to directly engaging in operating activities) and "holding" them in a conglomerate or umbrella structure along with other subsidiaries. While holding companies may partake in investment activities, this does not *per se* qualify them as financial intermediaries that are actively dealing in the same." Financial intermediaries are regulated by the BSP because they deal with public funds when they offer quasi-banking functions. On the other hand, a holding company is not similarly regulated because any investment activities it conducts are mere incidental operations, since its main purpose is to hold shares for policy-controlling purposes."
>
> Xxx xxx xxx
>
> **In sum, since RAVI is not a bank or other financial institution, i.e., an NBFI, it cannot be held liable for LBT under Section 143 (f) of the LGC.** However, this pronouncement is without prejudice to RAVI's potential

[10] G.R. No. 241697, July 29, 2019.

> liability for other taxes, whether national or local, should it so engage in other profit-making activities aside from tis management of the SMC preferred shares, and the dividends resulting therefrom." (emphasis supplied)

Herein petitioners attempted to offer a new perspective on the issue in an effort to persuade the Court to adopt a different outlook by stating that an entity need not be classified as, or perform the functions of a bank or other financial institution in order to impose LBT under Section 3A.02 (p), in relation to subsection (h) of the RMRC.

We disagree with petitioners' contention.

An analysis of the provisions of Section 3A.02 (p), (g) and (h) of the RMRC would reveal that a holding company may be taxed either at the rates under subsection (g) for owners, operators of business establishments rendering "business management services" **or** under subsection (h) for owners and operators of "banks and other financial institutions". We quote the cited subsections of Section 3A.02 of te RMRC, thus:

xxx xxx xxx

> (g) On Contractors and other independent contractors defined in Sec. 3A-01 (t) of chapter III of this Code; and on **owners or operators of business establishments** rendering or offering services such as: advertising agencies; rental of space of signs, signboards, billboard or advertisements; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others: business management services; collecting agencies; escort services; feasibility studies; consultancy services; garages; garbage disposal contactors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops' management consultants not subject to professional tax; medical and dental laboratories; mercantile agencies; messengerial services; operators of shoe shine stands; painting shops; perma-press establishments; rent-a-plant services; polo players; school for an/or horse-back riding academy; real estate appraisers' real estate brokerages' photostatic' white/blue printing; photocopying, typing and mimeographing services; car rental; rental of heavy equipment; rental of bicycles; and/or tricycles; furniture, shoes, watches and household appliances, boats, typewriters, etc.; roasting of pigs, fowls, etc.; shipping agencies; shipyard for repairing ships for others; shops for hearing

animals; silkscreen or T-shirt printing shops; stables; travel agencies; *vaciador* shops; veterinary clinics; video rentals and/or coverage services; dancing school/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education (DepEd), day care centers, etc.:" (emphasis supplied)

xxx xxx xxx

(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 shop, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest commissions, and discounts from lending activities, income from financial leasing, investments, **dividends,** insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l), as provided in this code. (emphasis supplied)

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.**(emphasis supplied)

xxx xxx xxx

Under the afore-quoted subsection (g), the graduated tax rates are based on gross receipts depending on the amount thereof, while under said subsection (h), the tax rate is fixed at 20% of 1% of the gross receipts derived from various types of income, including income from dividends. There is a clear delineation of types of income and nature of business to be taxed in said subsections (g) and (h) of Section 3A.02 of the RMRC so it is erroneous for petitioners to assume that an entity need not be classified as, or perform the functions of a bank or other financial institution in order for petitioners to impose the LBT under Section 3A.02 (p), in relation to subsection (h) of the RMRC. Contrary to the position of petitioners, it is essential to determine whether an entity is performing functions or activities that may be classified as a "bank" or "other financial institution", as defined, in order to justify the imposition of LBT on its dividend income. In the instant case, respondent was conclusively found not to be performing activities akin to a "bank" or other "financial institution."

As regards, the last and final issue on the mode of granting a refund of alleged erroneously paid LBT by way of tax credit or refund in cash, Section 196 of the LGC of 1991 clearly recognizes two (2) modes of recovery of erroneously or illegally collected local taxes, and we quote:

> "Section 196. *Claim for Refund of Tax Credit.* – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim 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 of payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a **refund or credit.**" (emphasis supplied)

Having sided with respondent on this issue, it also behooves us to mention the reality that recovery of erroneously paid taxes by way of a *cash* refund may be quite difficult as the funds may not be readily available due to administrative and budgetary constraints which is why the alternative of a tax credit seems to be the more practical and expedient choice. But this reality notwithstanding, recovery by way of cash refund remains an option to taxpayers as clearly seen from the afore-quoted Section 196 of the LGC of 1991. It is well to remind the taxpayers that *he who holds the purse strings* may also control when the funds are to be released. The question is – is the taxpayer willing to wait?

**WHEREFORE**, in light of the foregoing considerations, we find no cogent reasons to disturb the findings and conclusions reached by the Court in Division in the assailed Decision as well as in the assailed Resolution.

Accordingly, the Petition for Review filed with the Court *En Banc* is **DENIED** for lack of merit and the Decision dated March 7, 2019 and the Resolution dated August 13, 2019, are hereby **AFFIRMED.**

**SO ORDERED.**

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

(with Concurring and Dissenting Opinion)
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

***EN BANC***

| | |
|---|---|
| **MAKATI CITY TREASURER AND CITY OF MAKATI,** Petitioners, | **CTA EB NO. 2131** (CTA AC No. 193) |
| - versus - | Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **MERMAC, INC.,** Respondent. | Promulgated: SEP 02 2020 4:25 PM |

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# CONCURRING & DISSENTING OPINION

**RINGPIS-LIBAN, *J.*:**

I concur in the *ponencia* in denying the instant Petition for Review for lack of merit. As recently held by the Supreme Court in *City of Davao and Bella Linda N. Tanjili, In Her Official Capacity as City Treasurer of Davao City v. Randy Allied Ventures, Inc.*[1], a holding company, *sans* any evidence indicating that it is engaged in the activities of a bank or other financial institution, cannot be held liable for local business tax ("LBT") imposed on dividend and interest income under Section 143(f) of the Local Government Code ("LGC") of 1991.

Yet I dissent on the finding that the City Treasurer of Makati has no authority to represent the City of Makati when it filed the Petition for Review with the court *a quo* on December 07, 2017, and to execute the attached Certification Against Forum Shopping thereon.

[1] G.R. No. 241697, July 29, 2019.

It is my humble view that the City Treasurer of Makati is explicitly granted the power to institute an action for Makati City in assessment and collection cases affecting or involving it, without the need for a prior ordinance or resolution from the Sangguniang Panlungsod of Makati.

The City Treasurer of Makati is the official mandated under the LGC of 1991 to collect taxes with the corresponding duty to ensure that all taxes and other revenues of the city are collected. Section 470 of the LGC of 1991 unequivocally states that "the treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code". Book 2 in the said provision refers to "Local Taxation and Fiscal Matters".

Moreover, Section 183 of the LGC of 1991 provides that a judicial action for collection of taxes may be filed by the local treasurer:

> "**Section 183.** *Collection of Delinquent Taxes, Fees, Charges or other Revenues through Judicial Action.* - The local government unit concerned **may enforce the collection of delinquent taxes, fees, charges or other revenues by civil action in any court of competent jurisdiction**. The civil action **shall be filed by the local treasurer** within the period prescribed in Section 194 of this Code."[2]

The certification against forum shopping must be executed by the party-pleader.[3] It is the reason why the City Treasurer of Makati is one of the Petitioners in CTA AC No. 193; it is he who instituted the Petition for Review with the court *a quo* and signed the Certificate Against Forum Shopping. It is the same reason why the City Treasurer of Makati was also the person who filed an appeal with this Court *En Banc* on September 18, 2019, and signed the Certificate Against Forum Shopping attached thereon.

All told, I vote for the **DENIAL** of the Petition for Review filed with the Court *En Banc* on September 18, 2019 for lack of merit.

Ma. Belen S.L.

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

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[2] *Emphasis supplied.*

[3] Lourdes C. Fernandez v. Norma Villegas and any person acting in her behalf including her family, G.R. No. 200191, August 20, 2014.