REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VALHALLA PROPERTIES LIMITED, INC.,
Petitioner,

- versus –

CITY OF DAVAO AND HON. RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City,
Respondents.

CTA AC No. 154

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

MAR 02 2017
1:25 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is an appeal by way of a Petition for Review pursuant to Section 7(a)(3) of Republic Act (RA) No. 1125, as amended by RA No. 9282, filed by Valhalla Properties Limited, Inc. on November 9, 2015, seeking to reverse and set aside the Decision dated June 22, 2015 and the Order dated September 11, 2015, both issued by the Regional Trial Court, Branch 16, Davao City ("RTC of Davao City" for brevity) in Civil Case No. 34,860-13 entitled "Valhalla Properties

Limited, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City".

THE FACTS

Petitioner Valhalla Properties Limited, Inc. is a corporation duly organized and existing under Philippine laws, with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City.[1] As provided in its Amended Articles of Incorporation[2], petitioner's primary purpose is as follows:

> "The primary purpose for which such Corporation is formed is:
>
> To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefore stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination 'holding corporation', and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation."

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[1] Par. 11, The Parties, Petition for Review, docket, p. 11; Annex "P-9", docket, p. 89; Exhibit "A", RTC Records, p. 165.

[2] Annex "P-10", Petition for Review, docket, pp. 104-105; Exhibit "A-1", RTC Records, pp. 180-181.

Respondent City of Davao is a local government unit (LGU) duly created by law, whose address is located at City Hall Building, San Pedro Street, Davao City.[3] On the other hand, respondent Rodrigo S. Riola is the incumbent City Treasurer of Davao City and is being impleaded in his official capacity as it was his office which collected from petitioner 0.55% local business tax (LBT) on dividends and interest received by petitioner.[4]

Since October 2009, petitioner is the registered owner of 31,411,848 preferred shares of stock in San Miguel Corporation (hereafter referred to as "SMC Preferred Shares") after the Supreme Court *En Banc* approved the conversion of petitioner's 31,411,848 common shares of stocks in San Miguel Corporation to SMC Preferred Shares. The dividends received by petitioner were deposited in a trust account which earned interest from money market placements.[5]

In 2010, petitioner obtained the amount of ₱238,411,869.28 from dividends on its SMC Preferred Shares and interests on its money market placements, computed as follows:[6]

NATURE OF INCOME	AMOUNT
Dividends	₱ 235,588,860.00
Interest	2,823,009.28
TOTAL	**₱ 238,411,869.28**

Respondents collected from petitioner a 0.55% local business tax for the first and second quarters of 2011, based on the gross receipts derived by petitioner from dividends and interests for taxable year 2010 in the amount of ₱655,632.50.[7] Petitioner paid the same under protest on January 18, 2011 and on April 25, 2011.[8]

On September 13, 2012, petitioner filed with respondent City Treasurer a written claim for refund or credit of the 0.55% local business taxes collected in the first and second quarters of 2011.[9] *Jz*

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[3] Par. 12, The Parties, Petition for Review, docket, p. 11.
[4] Par. 12.1, The Parties, Petition for Review, docket, p. 11.
[5] Par. 15, Statement of Facts, Petition for Review, docket, p. 13.
[6] Par. 16, Statement of Facts, Petition for Review, docket, p. 13.
[7] Par. 17, Statement of Facts, Petition for Review, docket, pp. 13-14.
[8] Annexes "P-3" and "P-4", Petition for Review, docket, pp. 43-44; Exhibits "H" and "H-1", RTC Records, pp. 233-234.
[9] Annex "P-5", Petition for Review, docket, pp. 45-54; Exhibit "I", RTC Records, pp. 235-244.

Due to the inaction of respondent City Treasurer on its protest, petitioner filed before the RTC of Davao City a judicial claim for refund or credit of local business taxes on January 17, 2013.[10]

However, the RTC denied the Petition for Review in the Decision[11] dated June 22, 2015, a copy which was received by petitioner on July 20, 2015. The pertinent portion of the Decision reads:

> "As such, being categorized as a **Financial Intermediary**, petitioner's principal income falls under the coverage of **paragraph (f), Section 143 of RA No. 7160 of the Local Government Code of 1991**, to wit:
>
> > *'SECTION 143. Tax on Business. – **The municipality may impose taxes on the following businesses**:*
> >
> > *xxx xxx xxx*
> >
> > *(f) On banks and other **financial institutions**, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, **dividends**, rentals on property and profit from exchange for sale of property, insurance premium.'*
>
> **FOR REASONS STATED**, the instant 'Petition for Tax Refund or Credit Under Section 156, R.A. 7160' filed by the Petitioner is hereby **DENIED** and/or **DISMISSED**.
>
> **SO ORDERED**."

Petitioner filed a Motion for Reconsideration[12] on August 20, 2015, arguing that the RTC of Davao City erroneously held that

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[10] Annex "P-6", Petition for Review, docket, pp. 55-71; RTC Records, pp. 3-19.
[11] Annex "P-1", Petition for Review, docket, pp. 32-41; RTC Records, pp. 332-341.
[12] Annex "P-7", Petition for Review, docket, pp. 72-85; RTC Records, pp. 342-353.

petitioner is subject to local business tax as a non-bank financial intermediary. This was denied by the RTC in the Order[13] dated September 11, 2015, which was received by petitioner on October 8, 2015. The dispositive portion of the Order states:

> "As such, the '***Motion for Reconsideration***' filed by the Petitioner through counsel is hereby **DENIED.**
>
> **SO ORDERED.**"

On November 9, 2015, petitioner filed the present Petition for Review[14] before this Court.

In the Resolution[15] dated November 25, 2015, the Court ordered respondents to file their comment, not a motion to dismiss, within ten (10) days from notice. This was complied with by the filing of respondents' Comment[16] through registered mail on January 4, 2016, which was received by the Court on January 13, 2016.

Subsequently, in the Resolution[17] dated January 18, 2016, the Court ordered the Branch Clerk of Court or the Officer-In-Charge of the RTC of Davao City to elevate the entire original records of Civil Case No. 34,860-13 to this Court.

Petitioner filed its Memorandum[18] on March 2, 2016.

Meanwhile, the Court received the entire original records of Civil Case No. 34,860-13 from the Clerk of Court of the RTC of Davao City on March 17, 2016.[19] The transmittal was noted by the Court in the Resolution[20] dated March 22, 2016.

Respondents filed their Memorandum[21] on March 14, 2016.

[13] Annex "P-2", Petition for Review, docket, p. 42; RTC Records, p. 370.
[14] Docket, pp. 8-30.
[15] Docket, p. 143.
[16] Docket, pp. 144-158.
[17] Docket, p. 161.
[18] Docket, pp. 162-187.
[19] Docket, pp. 190-192.
[20] Docket, p. 194.
[21] Docket, pp. 195-212.

In the Resolution dated March 31, 2016, the case was declared submitted for decision.[22]

THE ISSUE

Petitioner presented the following issue for the Court's resolution:

> "Whether or not VLPI (petitioner) is entitled to a refund or credit of the 0.55% local business taxes collected for the first and second quarters of 2011 on the dividends received from its SMC preferred shares and interest on its money market placements for the taxable year 2010."[23]

THE PARTIES' ARGUMENTS

Petitioner argues that it is entitled to a refund or credit of the 0.55% local business taxes collected for the first and second quarters of 2011 on the dividends on its SMC preferred shares and interests on its money market placements for taxable year 2010. It contends that under Section 133(A) of RA No. 7160, it is erroneous and illegal for respondents to collect a 0.55% local business tax on the dividends and interests earned by a taxpayer which is not a bank or a financial institution. Moreover, petitioner asserts that it is not a bank or non-bank financial institution and is not engaged in business that is subject to local business tax under Section 143 of RA No. 7160. It likewise avers that its income partakes the nature of public funds; thus, business tax cannot be imposed on the same.

Respondents, on the other hand, argue that petitioner is deemed "a bank and other financial institution", specifically, a "non-bank financial intermediary or an investment company", by virtue of its investment and money placements in San Miguel Corporation. They contend that the business purpose of petitioner as contained in its Amended Articles of Incorporation is broad enough to catch all the descriptive functions of a non-bank financial intermediary as provided under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the *Bangko Sentral ng Pilipinas* (BSP).

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[22] Docket, p. 213.
[23] Issue, Petition for Review, docket, p. 15.

Respondents assert that petitioner's Articles of Incorporation which states that it shall not act as an investment company or securities broker or dealer is not a conclusive proof that it is not a bank or other financial institution. They claim that being a stock corporation, petitioner is presumed to have been organized to engage in business with the end view of a profit. Respondents likewise contend that the definition of gross sales/receipts under Section 131(n) of RA No. 7160 does not include dividends and interest income as component of sales or receipts. Furthermore, they claim that the opinion of the Bureau of Local Government Finance that petitioner is exempt from local business tax for not being a bank and other financial institution is not binding upon the issue involved in this case, as it is not an administrative agency whose findings on question of facts and law are given weight and respects in the courts. Finally, respondents argue that even if petitioner's income partakes the nature of public funds pursuant to the ruling of the Supreme Court in *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines*[24], it nevertheless does not exempt petitioner from the payment of local business tax on its dividends and interest income as the ruling did not delve on the taxability of the fund or income, but solely on the public nature of the fund.

THE COURT'S RULING

Before resolving the present case on the merits, the Court shall determine first whether it has jurisdiction over the present petition, inasmuch as it is the duty of the courts to consider the question of jurisdiction before they look into other matters involved in the case, even though such question is not raised by any of the parties. Courts are bound to take notice of the limits of their authority and, even if such question is neither raised by the pleadings nor suggested by counsel, they may recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.[25]

The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[26] Section 7(a)(3) of RA No. 1125, as amended by RA No. 9282, provides: Jr

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[24] G.R. Nos. 177857-58, January 24, 2012.

[25] *Bureau of Customs vs. The Honorable Agnes VST Devanadera, et al.,* G.R. No. 193253, September 8, 2015.

[26] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.),* G.R. No. 169778, March 12, 2014.

"SEC. 7. *Jurisdiction*. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx xxx

(3) Decisions, order or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;"

In relation thereto, Section 3(a)(3) of Rule 4 and Section 3(a) of Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, state:

"RULE 4
Jurisdiction of the Court

xxx xxx xxx

SEC. 3. *Cases within the jurisdiction of the Court in Division*. – The Court in Division shall exercise:

(a) Exclusive original over 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;"

"RULE 8
Procedure in Civil Cases

xxx xxx xxx

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 assessments 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 <u>petition for review filed within thirty days after receipt of a copy of such decision or ruling</u>**, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes." *(Emphasis supplied)*

Based on the foregoing, it is clear that an appeal from the resolutions or orders of the Regional Trial Courts in local tax cases decided or resolved by them in the exercise of their original jurisdiction may be done by filing a Petition for Review before the Court of Tax Appeals within thirty (30) days from notice of the decision or the ruling denying petitioner's motion for reconsideration.

Petitioner received the Order denying its Motion for Reconsideration on October 8, 2015. It had thirty days therefrom or until November 7, 2015 within which to file its Petition for Review. However, November 7, 2015 fell on a Saturday, hence, petitioner had until November 9, 2015 within which to file its Petition for Review.

Petitioner filed the present Petition for Review on November 9, 2015.[27] Thus, the Court has jurisdiction to entertain the present case. *Jr*

[27] Docket, p. 8.

This Court, however, finds the Petition for Review bereft of merit.

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.[28] The guidelines and limitations as provided by Congress are in main contained in the Local Government Code (LGC) of 1991 which provides for comprehensive instances when and how local government units may impose taxes. The significant limitations are enumerated primarily in Section 133 of the Code, which include among others, a prohibition on the imposition of income taxes except when levied on banks and other financial institutions.[29]

Section 133(a) of the LGC of 1991 provides:

> "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;"

Based on the foregoing, the imposition of income taxes by local government units is prohibited, except when levied on banks and other financial institutions.

In the present case, respondents assessed petitioner for 0.55% local business tax for the first and second quarters of 2011, based on the gross receipts derived by petitioner from dividends it received from its SMC Preferred Shares and interest income on its money market placements earned in taxable year 2010, pursuant to Section 69(f) of Davao City Ordinance No. 158-05 dated December 25, 2005, to wit: *gr*

[28] Section 5, Article X, 1987 Constitution.
[29] *Yamane vs. BA Lepanto Condominium Corporation*, G.R. No. 154993, October 25, 2005.

> "Section 69. *Imposition of Tax.* – There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts hereafter prescribed:
>
> xxx xxx xxx
>
> (f) *On Banks and Other Financial Institutions*, at the rate of fifty-five percent (55%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property, and profit from exchange or sale of property, insurance premium. All other income and receipts not herein enumerated shall be excluded in the computation of the tax."

In relation to this, Section 143(f) of the LGC of 1991 provides that a municipality is authorized to impose business taxes on banks and other financial institutions, to wit:

> "SEC. 143. *Tax on Business.* – The municipality may impose taxes on the following business:
>
> 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."

In the RTC Decision[30] dated June 22, 2015, petitioner was categorized as a financial intermediary and that its principal income falls under the coverage of Section 143(f) of the LGC of 1991. Petitioner, however, contends that it is not a bank or a financial *gc*

[30] Annex "P-1", Petition for Review, docket, pp. 32-41.

institution, hence, local business tax cannot be imposed on its income.

The Court is now left with the question of whether or not petitioner may be considered a financial institution, specifically a non-banking financial intermediary.

Banks and other financial institutions are defined under Section 131(e) of the LGC of 1991, 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**;" (*Emphasis supplied*)

Incidentally, the above definition was adopted in Section 5(b)(3) of the 2005 Revenue Code of the City of Davao. In defining the term "banks and other financial institutions", Section 131(e) gives no precise definition but merely describes the concept by enumerating the entities that may fall within such term. However, in including the phrase "as defined under applicable laws, or rules and regulations thereunder", reference to other definitions of the same term under applicable laws, or rules and regulations may be resorted.

Under Section 2.3 of Revenue Regulations (RR) No. 9-2004, the Bureau of Internal Revenue defines "non-bank financial intermediaries" in the following manner:

> "2.3. ***Non-bank Financial Intermediaries*** – shall refer to persons or entities whose ***principal functions*** **include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or** ✓

> **otherwise coursed through them, either for their own account or for the account of others**. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally." (*Emphasis supplied*)

Also, Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas* defines financial intermediaries as follows:

> "**§ 4101Q.1** ***Financial intermediaries*** Financial intermediaries shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.
>
> *Principal* shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.
>
> *Functions* shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.
>
> To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis: *ga*

a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;

b. Use principally the funds received for acquiring various types of debt or equity securities;

c. Borrow against, or lend on, or buy or sell debt or equity securities;

d. **Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;**

e. **Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.**

Non-banking financial intermediaries shall include the following:

(1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.

(2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term *financing, finance, investment, lending* and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.

(3) **A person or entity performing any of the functions enumerated in Items *a* to *e* of this Subsection.**" (*Emphasis supplied*)

Based on the foregoing, financial intermediaries are those whose principal functions include 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. Moreover, "non-banking financial intermediaries" include a person or entity performing any of the functions of a financial intermediary, including, holding assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers.

To determine whether petitioner's business includes the principal function of a financial intermediary, it is necessary for the Court to look into petitioner's primary purpose as indicated in its Amended Articles of Incorporation. It states as follows:[31]

"PRIMARY PURPOSE

The primary purpose for which such Corporation is formed is:

To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal *Jr*

[31] Annex "P-10", Petition for Review, docket, pp. 104-105; Exhibit "A-1", RTC Records, pp. 180-181.

> **property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership**, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination 'holding corporation', and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation." *(Emphasis supplied)*

A reading of petitioner's Amended Articles of Incorporation shows that the scope of its primary purpose is extensive enough to cover most of the principal functions of a financial intermediary.

Likewise, petitioner's business consists of owning a substantial number of shares of stock and equity in SMC, from which it regularly receives dividends that it reinvests in money market placements to maximize its profit. Petitioner in its Petition for Review admits that the "dividends received by VPLI from its SMC Preferred Shares were deposited in a trust account which earned interest from money market placements." This continued receipt of dividends and interest income from its equity securities and money market placements is a direct consequence of its business engagements and not merely incidental to its business. Thus, petitioner is deemed engaged in the business of investing or placement of funds or evidence of indebtedness which is well within the definition of a financial intermediary. *gr*

Moreover, there is no merit in petitioner's averment that to be considered a financial intermediary, a person must perform any of the functions stated in the given definition on a regular and recurring, not on an isolated basis.

Petitioner is a stock corporation, thus, it is presumed to have been organized for profit. Petitioner's primary purpose as stated in its Amended Articles of Incorporation, coupled by the fact that it has a continuing huge investment in shares of stocks of SMC from which it regularly receives millions of pesos in dividends that it reinvests in its money market placements to attain maximum profit, negates petitioner's argument that it does not perform the principal functions of a financial intermediary on a regular and recurring basis. Likewise, the fact that petitioner has no other business except its investment in SMC shows its real intent to engage solely and primarily in the business of stock investment and money market placements in the said company; thus, any profit it received is a direct consequence of its business engagements and not just mere incidental thereto.

As to the last phrase of petitioner's primary purpose, that it "shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation", the same cannot prevail over the real nature of petitioner's business, which is mainly holding stocks and investing the interests therein in money market placements. The fact that petitioner is actually engaged in the business of stock investment and money market placements in SMC negates the said proviso. Petitioner therefore cannot hide under the said proviso as it is clearly under the category of non-bank financial intermediary.

Thus, this Court finds no justification to set aside the following findings and conclusions of the RTC of Davao City, to wit:

> "While the primary purpose of Petitioner appears to set a qualification or condition that: '***provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation***.', said ***proviso*** in the Court's mind is a classic evasion by Petitioner from the requirement to secure a secondary license for investment company under the regulation of the Bangko Sentral ng Pilipinas for non-banking financial intermediaries, per second paragraph of **Section**

4101Q1 of MANUAL OF REGULATIONS FOR NON-BANK FINANCIAL INSTITUTIONS, to wit:

> *'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.** (underscoring supplied).*
>
> *xxxx.'*

Petitioner cannot hide under the cloak of its evasive *proviso*, because Petitioner is glaringly and clearly under the category of a Financial Intermediary.

To stress, the income of the Petitioner Corporation comes only from two sources, to wit:

> 1. ***Dividends from VPLI's SMC Shares; and***
> 2. ***Interest Income from VPLI's Money Market Placements*** *(Par. 11, Petition)*

In short, these ***dividends and interests*** are not considered incidental to its business quest, but are the **principal** *(defined above as: **Principal** shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental)* incomes of Petitioner's Corporation in the regular course of its business in line with the Primary Purpose of its Amended Articles of Incorporation."

In view of the foregoing, petitioner is a non-bank financial intermediary whose income may be subjected to local business tax under Section 143(f) of RA No. 7160, as amended.

WHEREFORE, premises considered, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
(With Dissenting Opinion)
CATHERINE T. MANAHAN
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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VALHALLA PROPERTIES LIMITED, INC., *Petitioner,*	**CTA AC No. 154**
-*versus*-	Members: **CASTAÑEDA, JR.**, *Chairperson* **CASANOVA**, *and* **MANAHAN**, *JJ.*
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City, *Respondents.*	Promulgated: MAR 02 2017 1:25 p.m.

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DISSENTING OPINION

MANAHAN, *J.:*

With due respect to the *ponencia*, I register my dissent to the conclusions of the Court.

The *ponencia* found that Valhalla Properties Limited, Inc. (VPLI) was properly taxed by the City of Davao as a non-bank financial intermediary (NBFI) thereby denying VPLI's claim for refund/credit of paid business taxes for the 1st and 2nd quarters of 2011 in the total amount of Php655,632.50. The *ponencia* affirmed the classification of VPLI as a NBFI.

However, I disagree with the classification of VPLI as a NBFI.

The pertinent provisions relied upon for the assessment of VPLI as a NBFI are quoted below:

Local Government Code (LGC)[1]

[1] Republic Act No. 7160, October 10, 1992.

cm

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;[2]

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Section. 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 premium.

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Bangko Sentral ng Pilipinas (BSP)'s Manual of Regulations for Non-Bank Financial Institutions (BSP Manual)

Section 4101Q.1. Financial Intermediaries. – Financial intermediaries shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.

Principal shall mean chief, main, most considerable or important, of first importance, leading, primary,

[2] Underscoring supplied.

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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 <u>business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation</u>/ partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.

To be considered a financial intermediary, a person or entity must perform <u>any</u> of the following functions <u>on a regular and recurring, not on an isolated basis</u>:

a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;

b. Use principally the funds received for acquiring various types of debt or equity securities;

c. Borrow against, or lend on, or buy or sell debt or equity securities;

d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;

e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

Non-banking financial intermediaries shall include the following:

(1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money

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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 in Items a to e of this Subsection.[3]

Based on the foregoing provisions, interests and dividends may only be taxed by a local government unit (LGU) when it is earned by a bank or other financial institution.

In the instant case, VPLI was made to pay local business tax on the ground that it is a NBFI, which VPLI vigorously protests on the ground that it is a holding company. Thus, it must be determined whether VPLI was correctly classified as a NBFI.

I find that there is insufficient ground to classify VPLI as a financial institution, specifically as a NBFI. I agree with the reasoning of the Presiding Justice Roman G. Del Rosario and Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino in Anglo Ventures, Inc. v. City of Davao et al.[4], Toda Holdings, Inc. v. City of Davao et al.[5], and San Miguel Officers Corps, Inc. v. City of Davao et al.[6], respectively, and other similar cases, in concluding that the involved companies should not be classified as NBFI.

First, VPLI is not an entity authorized by the BSP to perform quasi-banking functions, nor was it shown that VPLI has a registration with any government regulatory body as a NBFI.

Second, there was no showing that VPLI has held itself out nor advertised itself as a NBFI. It is noteworthy that VPLI's name

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[3] Underscoring supplied.
[4] CTA AC No. 155, July 12, 2016.
[5] CTA AC No. 138, February 9, 2017.
[6] CTA AC No. 136, November 22, 2016.

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itself does not use "lending", "investing", or "financing" company.

Third, while VPLI's primary purpose, as stated in its AOI, may involve one of the activities enumerated in the BSP Manual, it was not shown that VPLI conducted these activities as its principal function and on a regular and recurring basis. In fact, an examination of VPLI's primary purpose shows that VPLI fits the definition of a holding company, rather than a NBFI. The Securities and Exchange Commission (SEC) defines a holding company as:

> A holding company has been defined by the Commission in several opinions. A holding company has been aptly defined as "a corporation organized to hold the stock of another or other corporations." Its essential feature is that it holds stock. The term "holding company" is equivalent to a parent corporation, having such an interest in another corporation, or power of control, that it may elect its directors and influence management. A parent or holding company is one that controls another as a subsidiary or affiliate by the power to elect its management. Affiliates are those concerns that are subject to common control and operated as part of a system.[7]

Like the BSP Manual, the SEC Opinion relies on the AOI for classifying a corporation. Thus, the "primary purpose of the corporation determines its classification."[8] It is the corporation's purpose clause that confers, as well as limits, the powers that a corporation may exercise.[9] A portion of VPLI's primary purpose is quoted below:

> ...and to do every act and thing covered generally by the denomination 'holding corporation, and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.[10]

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[7] SEC-OGC Opinion NO. 15-15, November 3, 2015 (underscoring supplied, citations omitted).
[8] *Id.*
[9] *Id.*
[10] Docket, CTA AC Case No. 154. Petition for Review, p.12.

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From the foregoing, VPLI is rightfully classified as a holding company, and not an NBFI.

Finally, the Supreme Court's statement that VPLI was merely one of many companies formed or organized solely for the purpose of holding SMC shares,[11] underlines VPLI's function as a holding company.

Therefore, finding that VPLI cannot be classified as a NBFI pursuant to the requirements in the BSP Manual, it cannot be taxed as such by the City of Davao. Accordingly, the amounts paid by VPLI as local business tax amounting to Php655,632.50 for the 1st and 2nd quarters of 2011 were erroneously collected and paid and must be refunded to VPLI.

In view of the foregoing, I vote to grant VPLI's Petition for Review.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[11] COCOFED v. Republic, G.R. Nos. 177857 and 177858, January 24, 2012, 663 SCRA 514.