REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CITY OF DAVAO and BELLA LINDA N. TANJILI in her official capacity as City Treasurer of Davao City,
Petitioners,

- versus -

ROCK STEEL RESOURCES, INC.,
Respondent.

CTA EB No. 1703
(CTA AC No. 158)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
DEC 19 2018 4:02 p.m.

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DECISION

DEL ROSARIO, PJ.:

This is a Petition for Review filed by the City of Davao and Bella Linda N. Tanjili in her official capacity as City Treasurer of Davao City, praying for the Court *En Banc* to reverse the Decision dated March 16, 2017 and the Resolution dated July 12, 2017 rendered by the CTA Third Division[1] (Court in Division) in CTA AC No. 158, entitled *Rock Steel Resources, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City.* The assailed Decision and Resolution granted respondent's Petition for Review, reversed and set aside the Decision dated June 22, 2015 and the Order dated September 11, 2015 of the Regional Trial Court, Branch 16 of Davao City in Civil Case No. 34,855-13 and ordered petitioners to refund or credit in favor of respondent the amount of ₱1,215,272.00, representing the 0.55%

[1] Composed of Associate Justice Lovell R. Bautista, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban.

local business tax it paid under protest for the first and second quarters of taxable year 2011. The dispositive portions of the assailed Decision and Resolution are as follows:

Decision dated March 16, 2017:

> "**WHEREFORE**, the Petition for Review dated November 3, 2015 filed by Rock Steel Resources, Inc. is **GRANTED**. Accordingly, the assailed Decision dated June 22, 2015 and the Order dated September 11, 2015 of the Regional Trial Court, Branch 16 of Davao City in Civil Case No. 34,855-13 are **REVERSED** and **SET ASIDE**. Respondents are **ORDERED TO REFUND OR CREDIT** in favor of petitioner the amount of ₱1,215,272.00, representing the 0.55% local business tax it paid under protest for the first and second quarters of 2011."
>
> **SO ORDERED.**"

Resolution dated July 12, 2017:

> "**WHEREFORE**, respondents' *Motion for Reconsideration* filed on April 17, 2017 is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**"

THE PARTIES

Petitioner City of Davao is a local government unit (LGU) duly created by law, while petitioner Bella Linda N. Tanjili is the officer-in-charge of the City Treasurer's Office of Davao City. Both have office address at City Hall Building, San Pedro Street, Davao City.[2]

Respondent Rock Steel Resources, 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.[3]

THE FACTS

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[2] Paragraphs 7, 7.1 and 7.2 of respondent's Petition dated January 16, 2013 which was admitted in par. 5 of petitioners' Answer dated April 1, 2013, RTC Records, pp. 5, and 99; and par. 1 of item II of Petition for Review dated August 11, 2017, p. 2.

[3] Par. 6 of respondent's Petition dated January 16, 2013 which was admitted in par. 5 of petitioners' Answer dated April 1, 2013, RTC Records, pp. 5, and 99.

Respondent is a domestic corporation incorporated in 1983 whose primary purpose, as stated in its Amended Articles of Incorporation, is as follows:

> "<u>PRIMARY PURPOSE</u>
>
> 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 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 obligations, 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."[4] (*Boldfacing supplied*)

Since its incorporation, respondent's principal office address was located at Makati City, Metro Manila. Subsequently, on 16 December 2009, the Board of Directors of respondent approved the transfer of its principal office address to Legaspi Oil Compound Km. 9.5, Sasa, Davao City and the consequent amendment of Article III of its Articles of Incorporation.[5]

Since October 2009, respondent is the registered owner of 58,237,403 preferred shares of stock in San Miguel Corporation

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[4] Par. 8 of respondent's Petition dated January 16, 2013 which was admitted in par. 5 of petitioners' Answer dated April 1, 2013, RTC Records, pp. 6, and 99.
[5] Par. 9 of respondent's Petition dated January 16, 2013 which was admitted in par. 5 of petitioners' Answer dated April 1, 2013, RTC Records, pp. 7, and 99.

(SMC Preferred Shares) after the Supreme Court *En Banc* approved the conversion of 58,237,403 common shares of stock in San Miguel Corporation to SMC Preferred Shares. The dividends received by respondent from its SMC Preferred Shares were deposited in a trust account which earned interest from money market placements.[6]

In 2010, respondent received dividends in the amount of ₱441,917,103.62 from its SMC Preferred Shares, and interests from its money market placements, computed as follows:[7]

NATURE	AMOUNT
Dividends	₱436,780,522.50
Interest	5,136,581.12
TOTAL	**₱441,917,103.62**

For the first half of the year 2011, petitioner City of Davao, through City Treasurer Riola, collected from respondent 0.55% local business taxes for the first and second quarters of taxable year 2011 on the dividends from respondent's SMC Preferred Shares and interests on money market placements in the aggregate amount of ₱1,215,272.00.[8]

On September 13, 2012, respondent filed with City Treasurer its written administrative claim for refund or credit of the amount it paid under protest on the ground that the same was erroneously and illegally collected.[9]

On January 17, 2013, respondent filed a Petition for Refund or Credit with the RTC of Davao City on the ground of inaction on the part of respondent City Treasurer to toll the running of the two-year prescriptive period mandated in Section 196 of RA No. 7160, otherwise known as the Local Government Code (LGC).[10]

On June 22, 2015, the RTC rendered the assailed Decision[11] denying respondent's Petition for Refund or Credit, as follows:

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[6] Par. 10 of respondent's Petition dated January 16, 2013 which was admitted in par. 5 of petitioners' Answer dated April 1, 2013, RTC Records, pp. 7, and 99.
[7] Par. 11 of respondent's Petition dated January 16, 2013 which was admitted in par. 5 of petitioners' Answer dated April 1, 2013, RTC Records, pp. 7, and 99.
[8] Par. 12 of respondent's Petition dated January 16, 2013 which was admitted in par. 5 of petitioners' Answer dated April 1, 2013, RTC Records, pp. 7, and 99.
[9] Par. 13 of respondent's Petition dated January 16, 2013 which was admitted in par. 5 of petitioners' Answer dated April 1, 2013, RTC Records, pp. 7, and 99.
[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. 31-41; RTC Records, pp. 337-346.

> "**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.**"

The RTC considered respondent as a financial intermediary pursuant to Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the *Bangko Sentral ng Pilipinas* (BSP), hence, the dividends derived from its SMC preferred shares and the interest on its money market placements are subject to local business tax under Section 143(f) of the LGC.[12]

Respondent filed its Motion for Reconsideration but the same was denied by the RTC in the Order dated September 11, 2015.[13]

On November 9, 2015, respondent herein elevated the denial of its Motion for Reconsideration through a Petition for Review[14] before the Court in Division.

On January 16, 2016, petitioners filed their Comment[15] to the Petition for Review.

On March 31, 2017, petitioners received[16] the assailed Decision[17] granting the Petition for Review filed by respondent, reversing and setting aside the assailed decision and assailed order of the RTC, and ordering the petitioners to refund or credit in favor of respondent the amount of ₱1,215,272.00. Undaunted, petitioners filed their Motion for Reconsideration on April 17, 2017.[18]

On July 27, 2017, petitioners received the assailed Resolution of the Court in Division dated July 12, 2017 denying their Motion for Reconsideration.[19]

Aggrieved, petitioners filed the present Petition for Review with the Court *En Banc* on August 11, 2017.[20]

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[12] Assailed Decision, *En Banc* Docket, p. 20.
[13] Annex "P-2", Petition for Review, docket, p. 42; RTC Records, p. 375.
[14] CTA Division Docket, pp. 8-30.
[15] CTA Division Docket, pp. 148-162.
[16] Motion for Reconsideration, CTA Division Docket, p. 238.
[17] CTA Division Docket, pp. 219-236.
[18] CTA Division Docket, pp. 238-252.
[19] CTA Division Docket, pp. 290-292.
[20] *En Banc* Docket, pp. 1-16.

On October 9, 2017, respondent filed its Comment (on Petition for Review dated 11 August 2017).[21]

On December 14, 2017, petitioners submitted their Memorandum;[22] while, respondent submitted its Memorandum[23] on December 29, 2017.

The Court *En Banc* submitted the present Petition for decision on January 29, 2018.[24]

THE PARTIES' ARGUMENTS

Petitioners' arguments

Petitioners claim that respondent is deemed a "bank and other financial institution", specifically as a "non-bank financial intermediary" by virtue of its investment in San Miguel Corporation and money market placements.

Petitioners argue that the business purpose of respondent as contained in its Amended Articles of Incorporation is wittingly and unwittingly broad enough to catch all the descriptive function 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 *BSP*.

Petitioners avow that respondent's Articles of Incorporation which states that it shall not act as an investment company or a securities broker or dealer is simply an evasive proviso purposely written in order to evade compliance with existing regulations for non-bank financial intermediaries. Even if it is assumed that respondent's income partakes the nature of public funds as declared by the Supreme Court in *CoCoFed vs. Republic*,[25] nevertheless, it does not exempt respondent from the payment of local business tax on its dividends and interest income pursuant to Section 143(F) of Republic

[21] *En Banc* Docket, pp. 42-75.
[22] *En Banc* Docket, pp. 81-96.
[23] *En Banc* Docket, pp. 98-132.
[24] *En Banc* Docket, pp. 136-137.
[25] G.R. No. 147062-64, December 14, 2001.

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Act (RA) No. 7160. According to petitioners, the non-issuance of secondary license by the *BSP* or the Monetary Board does not *ipso facto* exclude respondent from being a non-bank financial intermediary.

Lastly, petitioners argue that respondent, being a stock corporation, is presumed to be organized to engage in business with the end in view of deriving profit; hence, subject to local business tax.

Respondent's counter-arguments

In its Comment, respondent counter-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 taxable year 2011 based on the dividend and interest income derived in the year 2010 on the basis of the following: (a) pursuant to Section 133 (A) of the LGC, it is erroneous and illegal for petitioners to collect local business tax on the dividends and interest income of respondent because it is not a bank or a financial institution; (b) being a holding company, respondent's dividends and interest income are not subject to local business tax; and (c) respondent as well as its SMC shares and any income derived therefrom are national government properties which are exempt from local business tax.

ISSUE

Whether or not respondent is a non-bank financial intermediary, falling under the category of a "bank and other financial institutions", so as to be subject to local business tax imposition, as provided under Section 143 (f) of RA No. 7160, otherwise known as the "Local Government Code of 1991."

RULING OF THE COURT *EN BANC*

The Court *En Banc* finds the arguments raised by petitioners untenable.

Petition for Review with the Court En Banc is timely filed.

The Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> "Rule 8
> Procedure in Civil Cases
>
> SEC. 3. *Who may appeal; period to file petition.* –
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution.** Xxx" *(Boldfacing supplied)*

As afore-stated, petitioners received the assailed Resolution of the Court in Division on July 27, 2017. Petitioners had fifteen (15) days from July 27, 2017 or until August 11, 2017 within which to file their Petition for Review before the Court *En* Banc. On August 11, 2017, petitioners posted their Petition for Review through registered mail which was received by the Court *En Banc* on August 23, 2017.

As the present Petition was filed within the reglementary period, the Court *En Banc* is vested with jurisdiction to take cognizance of the same.

Dividends and interest income on money market placements are not subject to local business tax, unless levied on banks and other financial institutions

The LGC provides the common limitations on the taxing power of the LGUs. Section 133(a) of the LGC expressly prohibits provinces, cities, municipalities, and barangays from imposing income tax, unless the same is levied on banks and other financial institutions, *viz.*:

> "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." *(Boldfacing supplied)*

Section 143(f) of the LGC in relation to Section 151 of the same Code in turn provides that municipalities and cities may impose **local business tax on banks and other financial institutions on their income from dividends and interest**, based on gross receipts of the preceding year, *viz.*:

> "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.
>
> xxx xxx xxx." *(Boldfacing supplied)*
>
> "Section 151. Scope of Taxing Powers. — Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided*, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> **The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes**." *(Boldfacing supplied)*

Based on the foregoing, there is no denying that an LGU may impose LBT on dividends and interest income on money market placements if the person or entity involved is a bank or financial institution.

Consistent with the LGC, Section 69(f) of Davao City's Ordinance No. 158-05, Series of 2005, otherwise known as the 2005 Revenue Code of Davao City, explicitly imposes LBT on banks and financial institutions based on gross receipts derived from interest income and dividends, *viz.*:

> "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."

While petitioner City of Davao may indeed impose LBT on banks and other financial institutions on their gross receipts of the preceding calendar year from interest and dividends at the rate of 0.55%, the imposition must be made within the bounds of law, that is - - the person or entity must be correctly classified as a bank or other financial institution as defined by relevant laws and regulations.

In declaring that the imposition of LBT by petitioners is illegal since petitioners failed to present any credible and convincing proof that respondent is a financial intermediary or has even engaged in the activities of a financial institution/intermediary as enumerated or defined by the laws, and rules and regulations, the Court in Division reversed the RTC's conclusion that respondent *in esse* falls within the category of "financial intermediary", whose business is subject to LBT under Section 143(f) of the LGC.

The crux of the controversy therefore revolves around whether or not respondent is a non-bank financial intermediary or an investment company that is subject to LBT on interest income and dividends.

Respondent is not a non-bank financial intermediary or an investment company subject to local business tax.

To recapitulate, petitioners insist that respondent is a non-bank financial intermediary or an investment company that is subject to LBT under the afore-quoted Section 143(f) of the LGC on its dividends and interests from money market placements. On the other hand, respondent claims the opposite, asserting that it is not a non-bank financial intermediary or an investment company but a mere holding company.

The nature of a "non-bank financial intermediary" and an "investment company", which fall under the category of a "bank and other financial institution", are the subject of pertinent laws and regulation.

Section 131(e) of the LGC defines the term "banks and other financial institutions", as follows:

> "Section 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; xxx" *(Boldfacing supplied)*

Clearly, "non-bank financial intermediaries," *inter alia*, are included in the term "banks and other financial institutions"; and that the term "non-bank financial intermediaries" are those that are **"defined under applicable laws, or rules and regulations**."

In a number of laws and regulations, the term *"non-bank financial intermediaries"* has been unambiguously defined. They specifically defined what constitutes *"non-bank financial intermediaries"* as they provide for the specific requisites in order for a person or entity to be regarded as such.

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

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

Revenue Regulations No. 9-2004,[26] meanwhile, defines "non-bank financial intermediaries as:

> "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 likewise includes all other 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." *(Boldfacing supplied)*

In relation thereto, Section 2-D(c) of RA No. 337 (RA 337), as amended by Presidential Decree No. 71 (PD 71), defines "financial intermediaries" as follows:

> "(c) **'Financial Intermediaries'** shall mean persons or entities **whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others**;" *(Boldfacing supplied)*

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[26] Dated June 21, 2004. Subject: Implementing Certain Provisions of Republic Act No. 9238 Re-Imposing the Gross Receipts Tax on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions and Other Non-Bank Financial Intermediaries Beginning January 1, 2004.

Furthermore, the Manual of Regulations for Non-Bank Financial Institutions issued by the BSP, further elaborates the definition of "financial intermediaries". Section 4101Q.1 thereof reads:

> "**41 01 Q.1 *Financial intermediaries.*** *Financial intermediaries* shall mean persons or entities whose <u>principal functions</u> include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.
>
> *Principal* shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.
>
> *Functions* shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.
>
> To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:
>
> a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;
>
> b. Use principally the funds received for acquiring various types of debt or equity securities;
>
> c. Borrow against, or lend on, or buy or sell debt or equity securities;
>
> d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;
>
> e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.
>
> Non-banking financial intermediaries shall include the following:

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> (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."

Taken together, the foregoing laws and regulations reveal the following basic requirements for a person or entity to be considered as a *"non-bank financial intermediary"*, *viz.*:

1) The person or entity is *"authorized by the BSP to perform quasi-banking activities";*

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

3) The person or entity must perform any of the following functions on **a regular and recurring**, not on an isolated basis, to wit:

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

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> 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.

A non-bank financial intermediary may not be considered as such unless it possesses all the requirements that qualify it to fall within its legal definition. Here, there is nothing in the records which will show that respondent meets the foregoing requirements.

First, no proof was presented that respondent was *"authorized by the BSP to perform quasi-banking activities"*. Furthermore, the "determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation shall be decided by the Monetary Board, subject to judicial review. Since no such determination by the Monetary Board exists on record that may confirm, even remotely, that respondent is a non-bank financial intermediary, it was erroneous for petitioners to classify respondent as one.

Second, while respondent's Amended Articles of Incorporation may cover the supposed functions of a non-bank financial intermediary, it was not shown that said functions are *"principal"* *i.e., "chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental"* and performed on a regular or recurring basis. Rather, the primary purpose for which respondent was incorporated is to "direct the operations of other corporations through the ownership of stock therein", and "to do every act and thing covered generally by the denomination **'holding company'**",[27] to wit:

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[27] Annex D-1, RTC Records, pp. 74-85.

> "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 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 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."[28] *(Boldfacing supplied)*

While respondent's Amended Articles of Incorporation is categorical in proscribing petitioner from acting "as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation", its identification as a holding company is consistent with the definition of a holding company provided for in Securities and Exchange Commission, Office of the General Counsel (SEC-OGC) Opinion No. 11-15 dated February 10, 2011,[29] as follows:

> "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."

<u>Third</u>, it was never established that the enumerated functions under the third requirement were performed by respondent *"on a regular and recurring, not on an isolated basis."* In fact, there is no evidence on record which would establish that petitioner performed the foregoing functions.

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[28] Annex D-1, RTC Records, pp. 76-77.
[29] SEC-OGC Opinion No. 11-15, Applicability of Foreign Ownership Restriction; Holding Companies. See also SEC-OGC Opinion No. 15-15 dated November 3, 2015.

The Court *En Banc* also finds that there is no evidence to support the contention that respondent is an investment company as the term is defined by law. Section 4 of RA No. 2629,[30] provides the following definition of an "investment company", *viz.*:

> "SEC. 4. Definition of investment company. – (a) when used in this Act **"investment company" means any issuer[31] which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities**; xxx." *(Boldfacing supplied)*

The business of investing, reinvesting and trading securities are not among its listed purposes. Records of the case is also bereft of proof that respondent indeed engaged in investing, reinvesting or trading in securities. Needless to state, to consider a person or entity as an investment company just by acquisition and holding of a single company's shares of stock would make each and every purchaser of stocks in the stock market a taxable investment company. This is simply absurd.

It must be stressed that it is the corporation's purpose clause that confers, as well as limits, the powers which a corporation may exercise. The main evidence of the purpose of a corporation is its articles of incorporation considering that such information is required by statute to be stated in the incorporation document.[32]

Although the purpose clause in respondent's Amended Articles of Incorporation is broad and does allow for the acquisition of shares of stock of other corporations and "to receive, collect and dispose of the interest dividends and income arising from such property", it is clear from a reading of the same that its primary purpose is not to engage in business as a non-bank financial intermediary or an investment company. The receipt of dividend and interest income is patently incidental. As a holding company, respondent, and the other holding companies funded by the coconut levy fund, were created to hold SMC shares of stock,[33] and not to engage in the business of

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[30] Investment Company Act; approved June 18, 1960.
[31] "Issuer" means every person who issues or proposes to issue any security, or has outstanding any security which it has issued. (Section 3(q), RA No. 2629)
[32] *Jesus Sacred Heart College vs. Collector of Internal Revenue*, G.R. No. L-6807, May 24, 1954.
[33] *Philippine Coconut, Producers Federation, Inc. (COCOFED), et al., vs. Republic of the Philippines*, G.R. Nos. 177857-58, January 24, 2012.

lending or investing money or securities acquired by them or through them, on a regular basis.

Anent petitioners' claim that the proviso at the end of respondent's purpose clause, *i.e.* "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" -- is intended to conceal or mislead, or exempt petitioner from obtaining the necessary secondary license, such contention is not supported by evidence.[34] Basic is the rule that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.[35]

Finally, based on the records of this case, the Court *En Banc* also notes that respondent has not held itself out, nor advertised itself, as a non-bank financial intermediary or an investment company.

It is erroneous to say that just because respondent did not qualify as a "non-bank financial intermediary", it necessarily means that its dividends and interest income emanated from an "unknown activity". As extensively discussed, respondent's dividends and interest income were derived from its activities as a holding company, and there is nothing illegal or unusual about it. To reiterate, mere acquisition and holding of a single company's shares of stock would not make each and every purchaser of stocks in the stock market a non-bank financial intermediary or an investment company as the terms are legally defined.

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

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[34] *En Banc* Docket, p. 10.
[35] *Luxuria Homes Inc., vs. Court of Appeals*, G.R. No. 125986, January 28, 1999.

In view of the foregoing, the Court *En Banc* declares that respondent is a holding company and not a non-bank financial intermediary or an investment company. Thus, the dividends and interest income it received in 2010 may not be the subject of LBT imposed by petitioners for the first half of 2011.

In ***Michigan Holdings, Inc. vs. City Treasurer of Makati, Nelia A. Barlis,***[36] the Court *En Banc* unanimously held that dividend and interest income of holding companies are not subject to LBT, *viz.*:

> "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.**" *(Boldfacing supplied)*

In fine, it is clear that petitioners' collection of the disputed LBT is erroneous. As petitioners received the amount when in fact it is not legally due to the City of Davao, petitioners are duty-bound to credit or refund the same to respondent.

WHEREFORE, in light of the foregoing, the Petition for Review filed by petitioners **City of Davao and Bella Linda N. Tanjili in her official capacity as City Treasurer of Davao City** is **DENIED.** The assailed Decision dated March 16, 2017 and the assailed Resolution dated July 12, 2017 of the Court in Division are hereby **AFFIRMED.**

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

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

Please see Dissenting Opinion
Juanito C. Castañeda Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

CATHERINE T. MANAHAN
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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

CITY OF DAVAO and BELLA LINDA N. TANJILI in her official capacity as City Treasurer of Davao City,
Petitioners,

- *versus* –

ROCK STEEL RESOURCES, INC.,
Respondent.

CTA EB No. 1703
(CTA AC No. 158)

Present:

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

Promulgated:

DEC 19 2018 4:02 p.m.

x---x

DISSENTING OPINION

CASTAÑEDA, JR., *J.*:

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

The subject Decision pertinently states:

> "**A non-bank financial intermediary may not be considered as such unless it possesses all the requirements that qualify it to fall within its legal definition**. Here, there is nothing in the records which will show that respondent meets the foregoing requirements.

<u>First</u>, no proof was presented that respondent was *'authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities'*. Furthermore, the 'determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation shall be decided by the Monetary Board, subject to judicial review. Since no such determination by the Monerary Board exists on record that may confirm, even remotely, that respondent is a non-bank financial intermediary, it was erroneous for petitioners to classify respondent as one.

<u>Second</u>, while respondent's Amended Articles of Incorporation may cover the supposed functions of a non-bank financial intermediary, it was not shown that said functions are *'principal' i.e., 'chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental'* and performed on a regular or recurring basis. Rather, the primary purpose for which respondent was incorporated is to 'direct the operations of other corporations through the ownership of stock therein', and 'to do every act and thing covered generally by the denomination **'holding company'**, xxx

xxx xxx xxx

<u>Third</u>, it was never established that the enumerated functions under the third requirement were performed by respondent *'on a regular and recurring, not on an isolated basis'*. In fact, there is no evidence on record which would establish that petitioner performed the foregoing functions.

The Court En Banc also finds that there is no evidence to support the contention that respondent is an investment company as the term is defined by law. Xxx

The business of investing, reinvesting and trading securities are not among its listed purposes. Records of the case is also bereft of proof that respondent indeed engaged in investing, reinvesting or trading in securities. Needless to state, to consider a person or entity as an investment company just by acquisition and holding of a single company's shares of stock would make each and every purchaser of stock in the stock market a taxable investment company. This is simply absurd.

xxx xxx xxx

It is erroneous to say that just because respondent did not qualify as a 'non-bank financial intermediary', it necessarily means that its dividends and interest income emanated from an 'unknown activity'. As extensively discussed, respondent's dividends and interest income were derived from its activities as a holding company, and there is nothing illegal or unusual about it. To reiterate, mere acquisition and holding of a single company's shares of stock would not make each and every purchaser of stock in the stock market a non-bank financial intermediary or an investment company as the terms are legally defined.

xxx xxx xxx"

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

On this score, I agree that there is no evidence showing that respondent was authorized by the BSP to engage in NBFI activities.

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

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

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

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

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

1. ***Dividends from RSRI's SMC Shares; and***
2. ***Interest Income from RSRI's Money Market Placements***

In short, these ***dividends and interests*** are not considered incidental to its business quest, but are the **principal** xxx incomes of Petitioner's Corporation in the regular course of its business in line with the Primary Purpose of its Amended Articles of Incorporation."[1]

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

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

Consequently, the above facts clearly show that respondent's sole and exclusive business is to make investments vis-à-vis its SMC shares. These glaring facts also contradict the conclusion of the subject decision, *i.e.*, that it is a mere holding company of SMC shares. Respondent's money market placements are clear acts of investing or re-investing and not merely holding as found by the subject Decision.

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

[1] Court in Division Docket, p. 41.

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

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

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