REPUBLIC OF THE PHILIPPINES

# *Court of Tax Appeals*

QUEZON CITY

## *Third Division*

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| **THE CITY OF MAKATI and NELIA A. BARLIS, in her capacity as Incumbent City Treasurer of Makati City,** *Petitioner,* | **CTA AC NO. 143** *(RTC Civil Case No. 13-084)* |
| | Members: |
| *-versus-* | ***Bautista,*** *Chairperson* ***Fabon-Victorino,*** *and* ***Ringpis-Liban,*** *JJ.* |
| **METRO PACIFIC INVESTMENTS CORPORATION,** *Respondent.* | Promulgated: JUL 20 2016 10:40 a.m. |

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# *DECISION*

***BAUTISTA, J:***

### *The Case*[1]

This is a Petition for Review filed on July 8, 2015, pursuant to *Section 7(a)(3)*[2] of *Republic Act* ("RA") *No. 1125*[3], *as amended by RA No. 9282*[4] and *RA No. 9503*[5], and *Section 3(a)(3)*[6], *Rule IV of the Revised Rules*

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[1] *Records, CTA AC No. 143,* Petition for Review, pp. 1, 22.

[2] Sec. 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise:

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

xxx xxx xxx

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

[3] *An Act Creating the Court of Tax Appeals.*

[4] *An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.*

[5] *An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.*

[6] SECTION 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

xxx xxx xxx

*of the Court of Tax Appeals* ("RRCTA"), seeking for the Court to render a judgment reversing and setting aside the Regional Trial Court, Branch 146, Makati City ("RTC")'s Decision dated March 31, 2015 and Order dated June 22, 2015, and finding respondent not entitled to the refund claimed.

## *The Parties*

Petitioner City of Makati is empowered to levy business taxes, within the parameters set by law.

Respondent Metro Pacific Investments Corporation is a holding company, as defined in *Section 3A.01(dd) of the Revised Makati Revenue Code ("MRC").*[7]

## *The Facts*[8]

In early 2011, respondent was issued a billing assessment for various taxes, fees and charges in the total amount of Php4,513,818.19, inclusive of Local Business Tax ("LBT") in the amount of Php4,499,653.19, computed based on the income reported in respondent's financial statements for the year ending December 31, 2010.[9]

On January 31, 2011, respondent fully paid the amount of the assessment.[10]

On January 25, 2013, respondent filed an administrative claim for refund with petitioner Treasurer of Makati City, maintaining that the aggregate interest, rental and dividend income and gain on sale of fixed assets for the year 2010 does not constitute gross receipts as defined in *Section 131(h) of the Local Government Code ("LGC")*, or *Section 1B.01(g) of the MRC*, as amended.[11]

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(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;

[7] *RTC Records, Civil Case No. 13-084,* Vol. 1, March 31, 2015 Decision, p. 400.

[8] Considering that the facts are undisputed, the Court adopts most of the facts in the Assailed Decision.

[9] *RTC Records,* Vol. 1, March 31, 2015 Decision, p. 398.

[10] *Id.*

[11] *Id.*

On January 29, 2013, respondent filed with RTC a Complaint for refund of erroneously paid LBT in the amount of Php4,499,653.19, the case was assigned to Branch 137 on January 31, 2013.[12]

On March 31, 2014, the case was re-raffled and received by RTC Branch 146 due to the parties' failure to amicably settle through the Judicial Dispute Resolution Conferences.[13]

During the pre-trial, the following issues were delineated:[14]

1. Whether the assessment of LBT against respondent is correct, specifically whether a holding company such as respondent may be taxed under *Section 3A.02(p) of the MRC,* in relation to *Section 3A.02(h),* without reference to *Section 3.A02(g)* of the same Code;

2. Whether respondent's dividend income, aggregate interest income, and rental income constitute taxable gross receipts;

3. If respondent is a holding company, whether is it only liable to pay LBT on the basis of management fees for services rendered, if any;

4. Whether the case of *Orleyte Company (Philippine Branch) v. The City of Makati,* is applicable to the case at bar; and

5. Whether, in the event that respondent will be granted its refund, it may only be granted in a form of tax credit, by express provision of law.

In the Assailed Decision, the RTC found for respondent, the dispositive portion of the same reads as follows:

> WHEREFORE, in view of all the foregoing, the court finds for the plaintiff. Defendant City of Makati and Hon. Nelia A. Barlis, in her capacity as incumbent City Treasurer of the City of Makati, are hereby ordered to return the erroneously collected tax in the amount of Four Million Four Hundred

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[12] *RTC Records,* Vol. 1, Complaint, pp. 1-176, with annexes.
[13] *Id.,* Vol. 1, Order, p. 247.
[14] *Id.,* Vol. 1, March 31, 2015 Decision, p. 400.

> Ninety Nine Thousand Six Hundred Fifty Three Pesos and Nineteen Centavos ([Php]4,499,653.19) by way of tax refund to the plaintiff, Metro Pacific Investments Corporation.
>
> SO ORDERED.
>
> Makati City, March 31, 2015.

On April 27, 2015, petitioners filed their Motion for Reconsideration (of the Decision dated March 31, 2015).[15]

In the Assailed Order, the RTC denied petitioner's Motion for Reconsideration in the following manner:

> WHEREFORE, the Motion for Reconsideration is denied for lack of merit.
>
> SO ORDERED.
>
> June 22, 2015, Makati City

On July 8, 2015, petitioners appealed to the Court *via* the present Petition for Review.[16]

On August 6, 2015, respondent filed its Comment.[17]

On August 24, 2015, the Court required the parties to file their respective memoranda within a period of thirty (30) days from receipt thereof,[18] petitioners and respondent then filed their Memoranda on October 6, 2016[19], and October 14, 2015[20], respectively.

On October 21, 2015, the Court promulgated a Resolution[21] submitting the case for Decision, hence, this Decision.

## *The Issues*[22]

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[15] *RTC Records*, Vol. 1, Motion for Reconsideration, pp. 407-419.
[16] *Records*, Petition for Review, pp. 1-136, with annexes.
[17] *Id.*, Comment, pp. 139-155.
[18] *Id.*, Resolution, pp. 158-159.
[19] *Id.*, Memorandum for Petitioners, pp. 165-180.
[20] *Id.*, Memorandum for Respondent, pp. 189-205.
[21] *Id.*, Resolution, p. 207.
[22] *Id.*, Petition for Review, pp. 11-12.

Petitioners submit the following assignment of errors to be resolved:

WHETHER THE RTC GRAVELY ERRED IN RULING THAT RESPONDENT IS ENTITLED TO A REFUND OF LBT IN THE AMOUNT OF PHP4,499,653.19 ALLEGEDLY DUE TO THE INVALID IMPOSITION BY PETITIONERS OF THE TAX RATE OF 20% of 1% UNDER *SECTION 3A.02(H) OF THE MRC* ON A HOLDING COMPANY SUCH AS RESPONDENT;

WHETHER THE RTC GRAVELY ERRED IN USING THE DEFINITION OF "GROSS SALES OR RECEIPTS" UNDER *SECTION 1B.01 OF THE MRC* INSTEAD OF THE CLEAR AND DISTINCT DEFINITION UNDER *SECTION 3A.02(H) OF THE SAME CODE;*

WHETHER THE RTC GRAVELY ERRED IN RULING THAT THE ALLEGED REFUNDABLE AMOUNT SHOULD BE MADE IN CASH AND NOT *VIA* TAX CREDIT; AND

WHETHER THE RTC GRAVELY ERRED WHEN IT FAILED TO STATE IN ITS DECISION THAT RESPONDENT WAS NOT ABLE TO OVERCOME THE BURDEN OF PROVING ENTITLEMENT TO A REFUND.

***Petitioner's Arguments***[23]

Petitioners aver that respondent is a holding company engaged in activities enumerated under *Section 3A.02(h) of the MRC;* that its very name suggests that it is an investment company under *Section 3A.02(h) of the MRC* and not under *Section 3A.2(g);* that petitioners correctly taxed respondent under *Section 3A.2(p)* in relation to *Section 3A.02(h) of the MRC;* that the local tax rate is determined by the activity the holding company is engaged in; that the activities of respondent can be found in its Financial Statements; that respondent's primary purpose provides that it is engaged in activities which would qualify it to be taxed under *Section 3A.02(h) of the MRC;* that its Statement of Income shows that it earned interest, rental, dividend and other income from various sources in 2010; that it is clearly not engaging in

[23] *Records,* Memorandum for Petitioners, pp. 168-177.

management of companies but in investment/financial activities similar to bank and financial institutions; that the management and miscellaneous income are only inherent to its main investment activities; that it was incorporated under *Section 3A.02(h) of the MRC;* and that its rental income is a separate activity requiring a separate permit and license tax and a different tax rate.

They further claim that in the context of *Section 3A.02(p) of the MRC,* "gross sales or receipts" refer to those earned from interest, commissions, discounts from lending activities, income from leasing, investments, dividends, insurance premiums, and profit from exchange or sale of property, among others; that the RTC erred when it applied *Section 1B.01 of the MRC* instead; that *Section 3A.02(p) of the MRC* clearly state that a holding company shall be taxed as provided by *Section (h)* thereof at the rate of 20% of 1%, which should apply to the gross receipts of the holding company from the preceding year derived from the above-stated income; that the definition of gross receipts in *Section 3A.02(h) of the MRC* is similar to *Section 143(f) of the LGC;* that *Section 133 of the LGC* does not prohibit an LGU like Makati from imposing taxes on holding companies which are similar to banks and other financial institutions [*Section 133(A)*]; and that *Section 7B.14 of the MRC* is clear that a claim for refund or credit shall not be refundable in cash.

Petitioners ended with the statements that tax refunds partake the nature of tax exemptions and are construed *strictissimi juris* against the person claiming the same; and that having failed to overcome the burden of proof of its entitlement to refund, respondent's claim must fail.

***Respondent's Counter-Arguments*[24]**

Respondent counters that that *Section 3A.02(p) of the MRC* clearly imposes LBT on respondent's gross receipts; that *Sections 3A.02 (g) or (h)* in relation to *Section 3A.2(p)* pertains only to the rates to be imposed and not to what constitutes gross receipts; that it is a holding company, hence, not subject to LBT imposed on banks and other financial institutions under *Section 3A.02(h) of the MRC;* that a "holding company" is defined under *Section 3A.01(dd) of the MRC* as a controlling company that has one or more subsidiaries and confines its activities primarily to its management; that holding companies are

[24] *Records,* Memorandum for Respondent, pp. 191-203.

taxed under *Section 3A.01(p) of the MRC,* which provides the rates in *subsection (g) or (h),* of the gross sales and/or receipts of the preceding calendar year; that nowhere was it stated that a holding company shall be taxed as a financial institution; and that the reference to *subsections (g) or (h) of Section 3A.02* merely pertains to the tax rate and not to the gross sales and/or receipts.

Respondent likewise alleges that the imposition of LBT on passive income is only allowed with respect to banks and financial institutions; that to impose the said tax on holding companies is considered a tax on income proscribed by *Section 133(a) of the LGC,* as implemented in *Article 221(a) of the Implementing Rules and Regulations ("IRR") of the LGC;* that respondent's rental, dividend and interest income are considered passive income in the active pursuit and performance of its business; that being passive income, the same is only subject to LBT if earned by banks and financial institutions under *Section 233(f) of the IRR,* otherwise, the imposition of LBT thereon is considered income tax prohibited by the LGC and its IRR; that in a *Bureau of Local Government Finance ("BLGF") Opinion dated February 22, 2011,* it was held that the tax imposed on interest, dividends and gains from sales of shares "assume the nature of income tax" unless imposed on banks and other financial institutions; that in the case of *Orleyte Company v. City of Makati,* the CTA confirmed that a non-bank, non-financial institution is subject to LBT only on amounts received for services performed; that in *Michigan Holdings, Inc. v. City treasurer of Makati, Nelia A. Barlis,* the CTA *En Banc* ruled that dividend income is not subject to LBT except when levied on banks and other financial institutions, and that the act of imposing LBT on dividend income of a holding company is *ultra vires;* that the RTC did not err in ruling that the term "gross receipts" pertain only to fees for services rendered and does not include respondent's rental, dividend and interest income; and that the express provision of *Section 133 of the LGC* disallowing the levy of income taxes by LGUs except upon a select and exclusive group of taxpayers, coupled with the express mention of the items of gross income which may be taxed against banks and other financial institutions under *Section 3A.02(h) of the MRC,* implies that the enumerated items are in fact considered income which, if earned by non-bank and non-financial institutions, are outside the taxing power of LGUs like Makati City.

Lastly, respondent states that the *MRC* is strictly construed against petitioner and liberally in favor of respondent under *Section 5(b) of the LGC;* that the rule that exemption from taxes is construed strictly upon the one claiming it applies only when it has been shown that a particular tax is applicable, otherwise, the rule does not apply and the tax statute shall be construed strictly against the government as provided in the cases of *Philippine Health Care Providers, Inc. v. CIR, CIR v. CA, CTA and Ateneo de Manila University* and *CIR v. PAL;* and that petitioners have not shown that respondent's passive income is subject to LBT. It is also averred that respondent was able to sufficiently show entitlement to refund.

## *The Ruling of the Court*

In granting the tax refund in the Assailed Decision, the RTC explained, as follows:[25]

> There is no dispute the plaintiff is a holding company as defined in Section 3A.01(dd) of the [MRC] and the local government is empowered to levy taxes on its income as such holding company. Also not disputed is the assessment and payment of [LBT] in the amount of [Php]4,499,653.19. What is put in issue is the propriety of the assessment made and whether a refund is warranted. Essential to the resolution of this case is the determination of what constitutes taxable income of a holding company and which tax rate is applicable.
>
> According to the express provision of the [MRC], a holding company is taxed as follows:
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>> Section 3A.02 Imposition of Tax. There is hereby levied an annual tax on the following businesses at the rates prescribed therefore:
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>> xxx
>>
>> (p) On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year.
>
> A reading of both of the cited paragraphs would show that paragraph (g) is a graduated tax rate, while paragraph (h) shows a rate at 20% of 1% of the taxable amount. Thus, the question is which between these two rates should be applied to

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[25] *RTC Records,* Vol. 1, March 31, 2015 Decision, pp. 400-405; emphases retained.

the plaintiff. However, the [MRC] is silent on how the determination should be made.

Basic is the rule in statutory construction that where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction as will render the provision thereof operative and effective and harmonious with each other. Following the principle of *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated. This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter.

Applying the above principles, a determination should be made on which type of business the plaintiff, as a holding company is most related to, that is, a comparison should be made on the kinds of businesses that the rates in paragraphs (g) and (h) of Section 3A.02 are made to apply.

The businesses being taxed in Section 3A.02 paragraph (g) [of] the [MRC] are:

> "(g) On Contractors and other independent contractors defined in SEC. 3A-01 (t) of chapter III of this Code; and on owners or operators of business establishments rendering or offering services such as; advertising agencies; rental of space of signs, signboards, billboard or advertisements; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others; **business management services**; collecting agencies; escort services; feasibility studies, consultancy services; garages; garbage disposal contractors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professionals tax; medical and dental laboratories; mercantile agencies; messengerial services;

> operators of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; school for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic; white/blue printing, photocopying, typing and mimeographing services; car rental, rental of heavy equipment, rental of bicycles and/or tricycles; furniture, shoes, watches, household appliances, boats, typewriters, etc.; roasting of pigs, fowls, etc.; shipping agencies; shipyard for repairing ships for others; shops for hearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing school/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education (DepEd), day care centers; etc."

In contrast, the businesses being taxed under Section 3A.02 paragraph (h) the [MRC] are:

> "(h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange"

By definition of the [MRC], a holding company confines its activities primarily to the management of its subsidiaries. On the other hand, a reading of the Articles of Incorporation of the plaintiff will show that its primary purpose is:

> "To purchase, subscribe for, or otherwise acquire and own, hold, use, invest in, develop, sell, assign, transfer lease take options to, mortgage, pledge, exchange, and in all ways, deal with, personal and real property of every kind and description, including shares of the capital stock of corporations, bonds, notes, evidence of indebtedness and other securities, contracts or obligations of any corporation domestic, or foreign, without however, engaging in dealership in securities, in the stock brokerage business or in the business of an investment company."

In other words, plaintiff holds stocks and properties of its subsidiaries. Comparing the plaintiff on the classifications in paragraphs (g) and (h), it can be inferred that plaintiff is more analogous to the businesses in paragraph (g), that is, to owners or operators of business establishments rendering or offering its services, particularly to "business management services", which is identical to plaintiff's management of its subsidiaries. It cannot be considered to be similar to "other financial institutions" under paragraph (h) that are "finance and investment companies" considering that the primary purpose of the plaintiff specifically mentions that it is *"without however, engaging in dealership in securities, in the stock brokerage business or in the business of an investment company"*. From the foregoing, plaintiff should be taxed on the rate referred to in paragraph (g), that is, the graduated rate. Hence, the imposition of 20% of 1% as referred in paragraph (h) by the defendants is erroneous.

On the question of what constitutes taxable income of a holding company, Section 3A.02 (p) of the [MRC] provides that it shall be taxed on the gross sales and/or receipts during the preceding calendar year. Section 1B.01 of [MRC] outlines what constitute gross receipts in this manner:

> Sec. 1B.01. Words Defined in this Code - When used in the Code:-
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> xx
>
> (g) Gross Sales or Receipts include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually or constructively received during the taxable year for the services performed or to be performed for another person excluding discounts if determinable [at] the time of sales, sales return, excise tax, and value-added tax (VAT) paid by the taxpayer.

The above provision is clear, and no interpretation is needed on what items are included in gross receipts. Simply put, gross receipts are the amount or fee for the services rendered. Nowhere does the provision state that it includes dividend income, interest income, rental income or gain from the sale of fixed assets.

A perusal of the Financial Statement of the plaintiff reveals that it derives its revenues from dividend income, interest income, rental, **management fees**, and other income. The Statement of Income for the year ending 2010 shows that plaintiff earned income from dividends and interest, gain on disposal of investments, foreign exchange gain and other income. The Statement of Income does not show that the plaintiff earned any management fees for 2010. While plaintiff should be taxed only on its earnings from services rendered, and considering that plaintiff did not report any management fees earned, plaintiff should not have been imposed with [LBT] on its other income, since these items are not taxable under the [MRC].

Moreover, under the National Internal Revenue Code [("NIRC")], the general definition of a gross income enumerates the different kinds of income, which includes compensation, income from the conduct of trade, business or profession, gains derived from dealings in property, interests, rents, and dividends, among others. It is observed that the disputed income in this case, that is, interests, rents, dividends and income from sale of properties are under a category of their own, and not included in the income from the conduct of business. Also, separate provisions were provided for certain passive income that includes interests, capital gains tax for the sale of real property, and dividends. From the general definition of the term, these kinds of income are excluded in the computation of the gross income, or gross sales or receipts, of a taxpayer.

Similarly, the same definition in the NIRC should be applied to the income in this case, and should be excluded in the computation of gross receipts of a holding company. The plaintiff should be taxed only on its earnings from management fees, or the fees for services it performed to its subsidiaries. The defendants erroneously imposed taxes on plaintiff's income which are not covered by the law, hence, the [LBT] paid should be returned to the plaintiff. This leads to the question in what form should the tax paid be returned. Plaintiff prays that it be refunded the whole amount erroneously paid, while defendants submit that only tax credit is allowed by law.

Looking into the provision of a Taxpayers Remedies in the [MRC], a taxpayer is given the option to recover the amount it erroneously paid, in this manner:

> "Section 7B.14. Taxpayer's Remedies. -
>
> (d) Claim for Refund of Tax Credit. - No case or proceeding shall be maintained in any court for the

> recovery of any tax, fee, or charge erroneously or illegally collected until a written **claim of refund or credit** has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.
>
> The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligations payable to the Local Government of the City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business if said calendar year.
>
> xxx"

The above provision implies that a taxpayer can recover any tax, fee or charge erroneously or illegally collected by making a written claim, either for a refund or credit. Meaning, there are two options to choose from by the taxpayer for the recovery of erroneously paid amount: refund or credit. However, once a tax credit is granted to the taxpayer, the same cannot be refunded in cash, but can only be applied to future taxes. It is erroneous for the defendants to say that plaintiff cannot claim for tax refund in this case, and that it is only allowed tax credit when Section 7B.14 itself provides otherwise. For which reason, the written claim of the plaintiff to the defendants in January 23, 2013, was a claim for a refund.

The court need not go into the merit of the applicability of the ruling of the Honorable Court of Appeals in the Oleyte case to the instant complaint, since there is no dispute that plaintiff is a holding company, and the tax provision prevailing during the said case was the old [MRC].

In light of all the foregoing, the court is of the view that the defendants misconstrued the provisions of the MRC in imposing [LBT] on the interest, rental and dividend income and gain on sale of fixed assets for the year 2010, considering that these income does not constitute gross receipts of a holding company. Hence, the erroneously paid taxes should be returned by the defendant City of Makati to the plaintiff, by way of the option taken by the taxpayer, by tax refund.

The Court finds no merit in the Petition for Review.

**The RTC did not err in ruling that respondent is entitled to a refund, but for different reasons.**

From the outset, we first look into the pertinent provisions of the *1991 LGC*. The legislature, through the LGC, granted LGUs the power to impose the business taxes, within the parameters set by law, as follows:[26]

> SECTION 129. Power to Create Sources of Revenue. — Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units.
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> xxx xxx xxx
>
> ARTICLE II
> Municipalities
>
> SECTION 143. Tax on Business. — The municipality may impose taxes on the following businesses:
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> xxx xxx xxx
>
> (h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: Provided, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.
>
> The sanggunian concerned may prescribe a schedule of graduated tax rates but in no case to exceed the rates prescribed herein.

[26] Underscoring ours.

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ARTICLE III
Cities

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.

Pursuant to the LGC, petitioner City of Makati adopted the MRC imposing LBT, as follows:[27]

CHAPTER III
City Taxes

ARTICLE A
Business Tax

SECTION 3A.02 Imposition of Tax. — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

xxx xxx xxx

(g) On Contractors and other independent contractors defined in SEC. 3A-01(t) of chapter III of this Code; and on owners or operators of business establishments rendering or offering services such as; advertising agencies; rental of space of signs, signboards, billboard or advertisements; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others; business management services; collecting agencies; escort services; feasibility studies, consultancy services; garages; garbage disposal contractors; gold and

[27] Underscoring ours.

silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professionals tax; medical and dental laboratories; mercantile agencies; messengerial services; operators of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; school for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic; white/blue printing, photocopying, typing and mimeographing services; car rental, rental of heavy equipment, rental of bicycles and/or tricycles; furniture, shoes, watches, household appliances, boats, typewriters, etc.; roasting of pigs, fowls, etc.; shipping agencies; shipyard for repairing ships for others; shops for hearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing school/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education (DepEd), day care centers; etc.

xxx xxx xxx

(h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions, and discounts from lending activities, income from financial leasing, investments, dividends, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l) 1, as provided in this code.

xxx xxx xxx

(l) Real Estate Lessors and Real Estate Dealers shall pay the annual tax in accordance with the following schedule:

1. On lessors or sub-lessors of real estate including accessoria, appartelle, pension inns, lodging houses, apartments, condominiums, houses for lease, rooms and spaces for rent, and similar places shall pay the tax in

accordance with the schedule shown here under. With gross sales or receipts for the preceding calendar year in the amount of: xxx

xxx xxx xxx

(p) On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year.

Records reveal that respondent received Billing Assessment Form No. 0021644 dated January 21, 2011 assessing it for various items including LBT as a holding company in the amount of Php4,499,653.19 based on the gross amount of Php2,249,826,598.71 at the rate of 20% of 1% (Php4,499,653.19/Php2,249,826,598.71) under *3A.02(h)* in relation to *Section 3A.02(p) of the MRC.*[28]

The Php2,249,826,598.71 used as basis for the tax rate was taken from the Unaudited Financial Statement of respondent, which was attached to its application for the renewal of business permit for 2011,[29] to wit:[30]

| **Income Type** | **Amount** |
|---|---|
| Interest Income - financial (bank/CN) | 3,474,036.81 |
| Interest Income - placement | 92,050,085.16 |
| Interest Income - other | 134,073,236.30 |
| Interest Income - ABHC | 4,521,504.50 |
| Interest Income - Landco | 50,286,542.18 |
| Other Income - (mgmt fee/misc) | 5,311,679.26 |
| Rental Income | 130,800.00 |
| Dividend Income | 1,959,978,709.29 |
| **Total** | **2,249,826,593.50** |

Included in the computation are income from management fees and rental, to which different rates are applicable under the *MRC*. Nonetheless, petitioners still covered these under a blanket rate of 20% of 1%, making the assessment thereon incorrect.

As to the assessment on interest and dividends, which appears to fall under *Section 3A.02(h) of the MRC* to which the rate is 20% of 1%, the recent similar case of *Michigan Holdings, Inc. v. The City Treasurer of*

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[28] *RTC Records*, Vol. 2, *Exhibit* "B," Billing Assessment, p. 20.
[29] *Id.*, Vol. 2, JA, A34 p. 7.
[30] *Id.*, Vol. 2, *Exhibit* "C," Statement of Income, p. 21; with a difference of Php5.21.

*Makati City, Nelia A. Barlis, CTA EB No. 1093 (CTA AC No. 99)*[31] will shed light on this, to wit:[32]

**Dividend Income Not Subject to Local Business Tax**

Section 133(a) of the Local Government Code expressly provides that the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax, except when levied on banks and other financial institutions.

Section 131(e) of the LGC defines "banks and other financial institutions" to include "non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder." This enumeration appears to be exclusive of other entities. Nowhere in the entirety of Section 131 is a holding company mentioned. However, this, by itself, does not place holding companies beyond the reach of local taxation, except on their income.

Section 143 of the Local Government Code is the law on local business taxes. Subsection (f) thereof expressly allows local taxation on banks and other financial institutions on their income from dividends, based on gross receipts of the preceding calendar year. What Section 3A.02(h) of the Revised Makati Revenue Code did was to expand the taxpayer base to encompass "owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, moneyshops, insurance companies, stock markets, stock brokers, dealers in securities, including pre-need companies, foreign exchange." The Treasurer of Makati City, while invoking this Section 3A.02(h), made it applicable to holding companies, such as Michigan Holdings, by virtue of Section 3A.02(p), which provides that holding companies "shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/ or receipts during the preceding calendar year."

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[31] June 17, 2015.
[32] Underscoring ours.

Section 3A.02(h) of the Revised Makati Revenue Code, which took effect on January 1, 2006, imposes a local business tax on the dividend income of certain taxable entities. Section 3A.02(p) makes holding companies liable for this business tax.

> "Section 3A.02(p). On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h) of the gross sales and/ or receipts during the preceding calendar year."

Thus, Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code, violates the limit set by Section 133(a) of the Local Government Code.

Indeed, if the business of a holding company is in the same class as that of a bank or other financial institutions, the Makati City tax ordinance could simply have included holding companies in its Section 3A.02(h), instead of placing them all by themselves in Section 3A.02(p) and then making the tax rates in either Section 3A.02(h) or (g) applicable to them. That holding companies, exclusively, were placed in a separate section, shows that they comprise a category distinct from the class of "banks and other financial institutions" as defined by Section 131(e) of the LGC. That holding companies were subjected to a tax on dividend income which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions, shows a deliberate intent to circumvent the prohibition laid down by Section 133(a) that the taxing powers of LGUs shall not extend to the levy of income tax, except on banks and other financial institutions.

There is more.

Section 27 (D) of the National Internal Revenue Code deals with rates of tax on certain passive incomes. Subsection (4) thereof, covering intercorporate dividends, states that "Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax" - meaning corporate income tax. Dividends are instead subject, under Section 27(D)(1), to "a final tax at the rate of twenty percent (20%)."

> "Under Section 27(D)(4) of the Tax Code, dividends received by a domestic corporation from another corporation are not subject to the corporate income tax. Such intracorporate dividends are some of the passive incomes that are

> subject to the 20% final tax, just like interest on bank deposits. Intracorporate dividends, being already subject to the final tax on income, no longer form part of the bank's gross income under Section 32 of the Tax Code for purposes of the corporate income tax."

> Thus, Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code, likewise violates Section 27(D)(4) of the National Internal Revenue Code.

> Section 3A.02(p) of the Revised Makati Revenue Code is thus an ultra vires exercise of local taxing power, and cannot be given effect without violating the principle that an ordinance can neither amend nor repeal but must conform to a statute.

> xxx xxx xxx

> Apropos to the instant case is Section 5(b) of the Local Government Code: "In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer."

In the above-stated case, the Court *En Banc* held that *Section 3A.02(p)* in relation to *Section 3A.02(h)*, which imposes LBT on the income of certain taxable entities violates the limit set by *Section 133(a) of the LGC*. Hence, Makati City's act in imposing LBT on therein taxpayer's dividend income on which the National Government already imposes an income tax, was made in excess of its powers, making *Section 3A.02(p) of the MRC* invalid.

It must be emphasized that an ordinance (or part thereof) that contravenes any statute is *ultra vires* and void.[33]

Just like dividend, interest income is likewise a passive income on which the *1997 NIRC* imposes income tax. *Section 32 of the 1997 NIRC* covers the definition of Gross Income for the purpose of the imposition of the said income tax, *viz.*:

CHAPTER VI
Computation of Gross Income

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[33] *Allied Banking Corporation as Trustee for the Trust Fund of CAP v. The Quezon City Government, et. al.*, G.R. No. 154126, October 11, 2005, 472 SCRA 303.

SECTION 32. Gross Income. –

(A) General Definition. – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

xxx xxx xxx

(4) Interests; xxx

Moreover, *Section 27 of the 1997 NIRC* imposes final income tax on interest income:

CHAPTER IV
Tax on Corporations

SECTION 27. Rates of Income Tax on Domestic Corporations. –

xxx xxx xxx

(D) Rates of Tax on Certain Passive Incomes. –

(1) Interest from Deposits and Yield or Any Other Monetary Benefit from Deposit Substitutes and from Trust Funds and Similar Arrangements, and Royalties. – A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest on currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements received by domestic corporations, and royalties, derived from sources within the Philippines: Provided, however, That interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system shall be subject to a final income tax at the rate of seven and one-half percent (7 1/2%) of such interest income.

Following the ruling in the *Michigan* case and applying the same to the dividend and interest income of respondent falling under *Section 3A.02(h)* in relation to *Section 3A.02(p)*, the City of Makati's assessment of the above-stated LBT using the rate applicable to banks and financial institutions is, therefore, *ultra vires* and void.

Having discussed the foregoing, the Court finds it frivolous to delve on the other errors raised by petitioners.

**The RTC did not err in granting respondent's claim for refund in the form of cash.**

The Court agrees with the RTC that *Section 7B.14 of the MRC* clearly provides that the prohibition on the recovery in the form of cash of any tax erroneously or illegally collected only applies to tax credits and not to tax refunds, for reference:

> SECTION 7B.14. Taxpayer's Remedies. —
>
> xxx xxx xxx
>
> (d) Claim for Refund of Tax Credit. — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim of refund or credit has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.
>
> The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligations payable to the Local Government of the City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year.
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> xxx xxx xxx

On top of this and despite petitioners' contention otherwise, respondent was able to prove payment of LBT in the amount of Php4,499,653.19 on January 31, 2011 for an assessment imposing tax on its income at the rate applicable to banks and financial institutions on which refund is being claimed, through its presentation of Official Receipt No. MKTCF1194250.[34]

[34] *RTC Records*, Vol. 1, *Exhibit* "B," Official Receipt, p. 166.

**WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **DENIED**. The assailed Decision dated March 31, 2015 and Order dated June 22, 2015 by the Regional Trial Court, Branch 146, Makati City, ordering petitioners to return the erroneously collected Local Business Tax in the amount of Four Million Four Hundred Ninety-nine Thousand Six Hundred Fifty-three and 19/100 Pesos (Php4,499,653.19) by way of cash refund to respondent Metro Pacific Investments Corporation, is hereby **AFFIRMED**.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

**WE CONCUR:**

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Ma. Belen

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

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson

## CERTIFICATION

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

**ROMAN G. DEL ROSARIO**
Presiding Justice