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 The Officer-in-Charge City Treasurer's Office of Davao City,
Petitioners,

-versus-

AP HOLDINGS, INC.,
Respondent.

CTA EB NO. 1634
(CTA AC No. 129)

Present:
DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
AUG 17 2018 4:27p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(2), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2]

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) xxxxx.
(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and

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Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

dated September 2, 2016, rendered by the Third Division of this Court in CTA AC No. 129, and its Resolution[3] dated March 2, 2017. The Third Division of this Court reversed the orders of the Regional Trial Court and cancelled the assessment made by herein petitioners.

Petitioners assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated September 2, 2016:

*"**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. The Orders dated October 15, 2014 and December 17, 2014 of the Regional Trial Court, Branch 16 of the City of Davao in Civil Case No. 35,668-14 are hereby **REVERSED and SET ASIDE.** The Assessment dated January 20, 2014 is hereby **CANCELLED.***

SO ORDERED."

Resolution dated March 2, 2017:

*"**WHEREFORE**, finding no compelling reason to reverse the ruling of the Court in the assailed Decision, respondents' Motion for Reconsideration is hereby **DENIED** for lack of merit.*

SO ORDERED."

The pertinent facts as narrated by this Court's Division in its Decision are as follows:

"xxx AP Holdings, Inc.[4] (API) is a corporation duly organized in 1983 and existing under Philippine laws. It is registered with the Securities and Exchange Commission (SEC). On January 11, 2010, the SEC approved the transfer of API's principal office address from Makati City to Legaspi Oil Compound, Km. 9.5, Sasa, Davao City.

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[2] En Banc Docket, pp. 35-42.
[3] En Banc Docket, pp. 44-49.
[4] AP Holdings, Inc. was the petitioner before the Court in Division and thereafter the respondent before this Court En Banc.

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xxx City of Davao[5] *is a local government unit created by law, with principal office at City Hall, San Pedro Street, Davao City. Respondent Rodrigo S. Riola*[6] *is the City Treasurer of Davao City (respondent Treasurer).*

API was among the fourteen holding companies formed in 1983 for the purpose of owning and holding shares of stock of San Miguel Corporation (SMC). In 1986, the said holding companies, including API, were sequestered by the Philippine Commission on Good Government (PCGG). Subsequently, various cases were filed to resolve the ownership of the holding companies and the SMC shares of stock held by them.

API was a registered owner of SMC common shares, from which API occasionally received cash and stock dividends. In October 2009, API became the registered owner of 34,669,405 preferred shares of SMC, after the Supreme Court approved the conversion of an equal number of SMC common shares into preferred shares. The dividends received by API from the SMC preferred shares were deposited in a trust account, which earned interest from money market placements.

In 2010, API received ₱263,102,369.37 from its SMC preferred shares, consisting of ₱260,020,537.49 in dividends and ₱3,081,831.88 in interest income from money market placements.

In the meantime, the Supreme Court En Banc, in Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic of the Philippines, declared the fourteen holding companies and the SMC shares held by them to be owned by the government.

On January 20, 2014, API received from respondent Treasurer a Business Tax Order of Payment dated January 20, 2014 for ₱1,438,019.08. This amount corresponds to 0.55% local business tax on the dividends derived from its SMC shares and the interest on its money market placements for the third and fourth quarters of 2011, in accordance with Section 69(f) of the 2005 Revenue Code of the City of Davao.

On March 21, 2014, API filed a written administrative protest against the assessment. API's main contention is

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[5] City of Davao was the respondent before the Court in Division and thereafter the petitioner before this Court En Banc.
[6] Bella Linda N. Tanjili is the Officer-in-Charge City Treasurer's Office of Davao City is one of the petitioners in the petition before this Court En Banc.

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that the tax imposed on the dividends and its income was improper because it is not a bank or non-bank financial institution.

In a letter dated April 4, 2014, respondent Treasurer required API to submit proof of payment of the assessed business tax before its protest may be resolved, citing Section 423 of the 2005 Revenue Code of the City of Davao.

In its letter dated April 15, 2014, API argued that the City of Davao had no authority to impose additional requirements before a protest may be entertained, other than those required by the Local Government Code (LGC), which does not require payment under protest for business tax.

In a letter dated May 5, 2014, respondent Treasurer reiterated the requirement under the 2005 Revenue Code of the City of Davao. Respondent Treasurer pointed out that it is a valid ordinance, with which he shall abide. Not having made the requisite payment, respondent Treasurer did not act on API's protest.

On June 9, 2014, API filed a Petition for Review dated June 6, 2014 with the RTC of Davao City, pursuant to Section 195 of the LGC.

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In the Order dated October 15, 2014, the trial court dismissed the petition for review. The trial court found that API is a financial intermediary, and that the imposition by the City of Davao of the 0.55% local business tax on the dividends derived from its SMC shares and the interest on its money market placements for the third and fourth quarters of 2011 was proper. The dispositive portion reads:

> ***FOR REASONS STATED**, the instant "Petition for Review" filed by the petitioner under Section 195 of Republic Act No. 7160 is hereby **DENIED** and/or **DISMISSED**.*
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> ***SO ORDERED**.*

The trial court denied API's Motion for Reconsideration in the Order dated December 17, 2014, finding no cogent reason to alter, modify or set aside the Order dated October 15, 2014.

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Hence, the present, Petition for Review, which was filed on February 6, 2015.

On February 24, 2015, the Court ordered respondents to comment on the petition, within ten days from notice. Respondents received copies of the petition on May 11, 2015. They filed their Comment on May 21, 2015 via registered mail.

In a Resolution dated June 15, 2015, the Court ordered the parties to submit their respective memoranda. API filed its Memorandum on July 20, 2015; while respondents filed their Memorandum on August 7, 2015. Thus, the Court deemed the case submitted for resolution in a Resolution dated September 8, 2015.

This Court's Division reversed the orders of the Regional Trial Court Branch 16 of the City of Davao and cancelled the assessment for local business tax made by the City of Davao through its City Treasurer.

Hence, the City of Davao and its City Treasurer filed the present petition.

Petitioners raised the sole issue of whether respondent AP Holdings, Inc. is a "NON-BANK FINANCIAL INTERMEDIARY", FALLING UNDER THE CATEGORY OF A "BANK AND OTHER FINANCIAL INSTITUTIONS", SO AS TO BE SUBJECTED TO LOCAL BUSINESS TAX IMPOSITION, AS PROVIDED UNDER SECTION 143(f) OF R.A. 7160, OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991.

Petitioners argued that AP Holdings, Inc. is deemed a "bank and other financial institutions", specifically as a "non-bank financial intermediary" by virtue of its investment and money placements in San Miguel Corporation. The business purpose of AP Holdings, Inc. 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 Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas. Moreover, petitioners argued that the proviso which states that it shall not act as

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investment company or securities broker or dealer is just a ploy in order to evade compliance with existing regulations. Lastly, petitioners argued that even if petitioners' income partakes the nature of public funds, it does not exempt petitioner from the payment of local business tax on its dividends and interest income pursuant to Section 143(f) of R.A. 7160.

We resolve.

The issue raised by petitioner is not of first impression. This Court had the occasion to pass upon similar issue involving corporations of similar classification in the instant case, like the case of *Fernandez Holdings, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City*[7] (*Fernandez Holdings case*) and *City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. Randy Allied Ventures, Inc*[8]. (*Randy Allied Ventures Case*). In both cases this Court *En banc* ruled that both company are not "non-bank financial intermediary and that the San Miguel Corporation (SMC) shares they hold are owned by the government, the dividends and any income therefrom are also owned by the government.

In the *Fernandez Holdings Case*, the holding company was assessed for local business tax on the dividends derived from its SMC shares of stock and the interest on its money market placements. After protest, the appeal to the Regional Trial Court was denied based on the findings that said holding company is a "non-bank financial intermediary". The Court in Division affirmed the orders of the Regional Trial Court but this Court En Banc reversed the orders of the Regional Trial Court and cancelled the assessment of local business tax. On the other hand, in the *Randy Allied Ventures Case*, the holding company was assessed for local business tax on the dividends derived from its SMC shares of stock and the interest on its money market placements. The assessed local business tax was paid and thereafter a petition for refund before the Regional Trial Court was filed. The petition for refund was denied based on the findings that said company is a "non-bank financial intermediary".

[7] CTA EB NO. 1531 (CTA AC No. 133), December 5, 2017.
[8] CTA EB NO. 1591 (CTA AC No. 160), February 20, 2018.

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The Court in Division reversed the orders of the Regional Trial Court and ordered the refunds of the local business tax which was affirmed by the Court En Banc. While the two cases may differ in that in one case the recourse to this Court proceeded from denial of the claim for refund of local business tax and the other through the denial of protest on the assessment of local business tax, the following are the similarities:

1) Both corporations earned dividends derived from its SMC shares of stock and the interest on its money market placements;

2) Both controversies arose from the assessment for local business tax on the dividends derived from its SMC shares of stock and the interest on its money market placements;

3) The Regional Trial Court found both corporations as non-bank financial intermediaries;

4) There was absence of any credible and convincing proof that the corporations are a non-bank financial intermediaries or have even engaged in the activities of a financial institution/intermediary as defined;

5) Both corporations are included in the list of holding companies in the case of Philippine Coconut Producers Federation Inc., et. al. v. Republic of the Philippines *(COCOFED Case)*[9], whereby the Supreme Court ruled that the said holding companies and the San Miguel shares it held were owned by the government.

The Supreme Court, in its Resolution dated September 4, 2012 in the *COCOFED Case*, declared that the fourteen (14) holding companies, the SMC shares held by the 14 holding companies, including respondent AP Holdings Inc., are owned by the government, pertinent portion of the resolution reads as follows:

> *"As modified, the fallo of the January 24, 2012 Decision shall read, as follows:*

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[9] G.R. Nos. 177857-58 & 178193, January 24, 2012.

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The Partial Summary Judgment in Civil Case No. 0033-F dated May 7, 2004, is hereby ***MODIFIED****, and shall read as follows:*

WHEREFORE, the MOTION FOR EXECUTION OF PARTIAL SUMMARY JUDGMENT (RE: CIIF BLOCK OF SMC SHARES OF STOCK) *dated August 8, 2005 of the plaintiff is hereby denied for lack of merit. However, this Court orders the severance of this particular claim of Plaintiff. The Partial Summary Judgment dated May 7, 2004 is now considered a separate final and appealable judgment with respect to the said CIIF Block of SMC shares of stock.*

The Partial Summary Judgment rendered on May 7, 2004 is modified by deleting the last paragraph of the dispositive portion, which will now read, as follows:

WHEREFORE, in view of the foregoing, we hold that:

The Motion for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed, et al) filed by Plaintiff is hereby ***GRANTED. ACCORDINGLY, THE CIIF COMPANIES, NAMELY:***

1. *Southern Luzon Coconut Oil Mills (SOLCOM);*
2. *Cagayan de Oro Oil Co., Inc. (CAGOIL);*
3. *Iligan Coconut Industries, Inc. (ILICOCO);*
4. *San Pablo Manufacturing Corp. (SPMC);*
5. *Granexport Manufacturing Corp. (GRANEX); and*
6. *Legaspi Oil Co., Inc. (LEGOIL),*

AS WELL AS THE 14 HOLDING COMPANIES, NAMELY:

1. *Soriano Shares, Inc.;*
2. *ACS Investors, Inc.;*
3. *Roxas Shares, Inc.;*
4. *Arc Investors; Inc.;*
5. *Toda Holdings, Inc.;*
6. *AP Holdings, Inc.;*
7. *Fernandez Holdings, Inc.;*
8. *SMC Officers Corps, Inc.;*

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9. Te Deum Resources, Inc.;
10. Anglo Ventures, Inc.;
11. Randy Allied Ventures, Inc.;
12. Rock Steel Resources, Inc.;
13. Valhalla Properties Ltd., Inc.; and
14. First Meridian Development, Inc.

AND THE CONVERTED SMC SERIES 1 PREFERRED SHARES TOTALING 753,848,312 SHARES SUBJECT OF THE RESOLUTION OF THE COURT DATED SEPTEMBER 17, 2009 TOGETHER "WITH ALL DIVIDENDS DECLARED, PAID OR ISSUED THEREON AFTER THAT DATE, AS WELL AS ANY INCREMENTS THERETO ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT TO BE USED ONLY FOR THE BENEFIT OF ALL COCONUT FARMERS AND FOR THE DEVELOPMENT OF THE COCONUT INDUSTRY AND ORDERED RECONVEYED TO THE GOVERNMENT.

THE COURT AFFIRMS THE RESOLUTIONS ISSUED BY THE SANDIGANBAYAN ON JUNE 5, 2007 IN CIVIL CASE NO. 0033-A AND ON MAY 11, 2007 IN CIVIL CASE NO. 0033-F, THAT THERE IS NO MORE NECESSITY OF FURTHER TRIAL WITH RESPECT TO THE ISSUE OF OWNERSHIP OF (1) THE SEQUESTERED UCPB SHARES, (2) THE CHF BLOCK OF SMC SHARES AND (3) THE CIIF COMPANIES, AS THEY HAVE FINALLY BEEN ADJUDICATED IN THE AFOREMENTIONED PARTIAL SUMMARY JUDGMENTS DATED JULY 11, 2003 AND MAY 7, 2004.

SO ORDERED.

Costs against petitioners COCOFED, et al., in G.R. Nos. 177857-58 and Danilo S. Ursua in G.R. No. 178193.

No further pleadings shall be entertained. Let Entry of Judgment be made in due course.

SO ORDERED."

Evidently, respondent AP Holdings, Inc. is one of the holding companies declared owned by the government, the SMC shares, its dividends, and any income thereon.

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In the case at bar, the following facts are undisputed:

1. Respondent earned dividends derived from its SMC shares of stock and the interest on its money market placements.

2. The controversy arose from the assessment for local business tax on the dividends derived from its SMC shares of stock and the interest on its money market placements.

3. The Regional Trial Court, Branch 16 of Davao City found respondent as a non-bank financial intermediary.

4. Respondent was included in the list of holding companies in the COCOFED[10] case whereby the Supreme Court declared that respondent and the SMC shares it held are owned by the government.

Let us examine the pertinent provisions of Republic Act No. 7160, otherwise known as "Local Government Code of 1991", which read as follows:

> **Section 131.** *Definition of Terms.* - When used in this Title, the term:
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> (e) "Banks and other financial institutions" include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;
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> **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,

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[10] Ibid.

and barangays shall not extend to the levy of the following:

(a) Income tax, except when levied on banks and other financial institutions;

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Section 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:

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(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

Under the foregoing provision, as a general rule, the taxing powers of local government unit does not extend to income tax. The exception is if it is levied on banks and other financial institutions. Thus, the taxing powers of local government unit may extend to income tax as long as it is levied on banks and other financial institutions.

"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.

The definition of non-bank financial intermediaries or financial intermediaries set by Manual of Regulations for Non Bank Financial Institutions issued by the Banko Sentral ng Pilipinas (BSP) are controlling and applicable in this case. Section 4101Q.1 of the said manual provides as follows:

"§ 4101Q.1 Financial intermediaries

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

Principal shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.

Functions shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.

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

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

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

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

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

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

Non-banking financial intermediaries shall include the following:

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

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

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

Evidently, a financial intermediary's principal functions involve the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them. It must perform any of its functions on a regular and recurring, not on an isolated basis. Petitioner insists that respondent's act of investing and placing of funds in San Miguel Corporation's stock and on money placement market renders respondent as a non-financial intermediary. We disagree. The investing and placing of funds must be done on a regular and recurring manner. Likewise, the fact that respondent's income is only sourced from the dividends from San Miguel Corporation's share and income from money market placements does not *ipso facto* make respondent included in the definition of "other financial intermediary", "other financial institution" or "non-banking financial intermediary", in the absence of other evidence. On the contrary, it bolsters the fact that the investing and placing of funds was done not on a regular and recurring manner.

Moreover, the taxing power of provinces, cities, municipalities and barangays, is limited. They have no inherent power of taxation. If granted, the power is to be construed in *strictissimi juris*, any doubt or ambiguity arising out of the term used in granting that power must be resolved against the province, city or municipality. Thus, the Supreme Court consistently[11] ruled as follows:

> *"It is settled that a municipal corporation unlike a sovereign state is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality, cannot assume it. And the power when granted is to be construed in strictissimi juris. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions - all these - have no place in the interpretation of the taxing power of a municipal corporation."*

As a general rule the taxing powers of local government unit does not extend to income 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."

A holding company is not included by the Local Government Code, specifically Section 131(e) thereof in the definition of banks and other financial institutions. The enumeration is evidently exclusive of other entities. Had the legislature intended to include holding company among the exceptions, the same could have been expressly provided but it did not.

Likewise, a holding company is not included in the list of non-banking intermediaries in Section 4101Q.1 of Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP), to wit:

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[11] Icard v. City Council of Baguio, 83 Phil 870, 873 (1949) and City of Iloilo v. Villanueva, 105 Phil. 337 (1959), Pelizloy Realty Corporation v. Province of Benguet, G.R. No. 183137, April 10, 2013.

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Non-banking financial intermediaries shall include the following:

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

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The express mention of one person, thing, or consequence implies the exclusion of all others. *Expressio unius est exclusio alterius.* To elaborate[12] -

"Indeed, it is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim expressio unius est exclusio alterius. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned."

The rule of *expressio unius est exclusio alterius* is among the canons of restrictive interpretation.[13] It is based on the rules of logic and the natural workings of the human mind. It is predicated upon one's own voluntary act and not upon that of others. It proceeds from the premise that the legislature would not have made specified enumeration in a statute had the intention been not to restrict its meaning and confine its terms to those expressly mentioned.

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[12] Benjamin (Kokoy) Romualdez v. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, and Presidential Commission on Good Government, G.R. Nos. 165510-33, July 28, 2006, citing Centeno v. Villalon-Pornillos, G.R. No. 113092, September 1, 1994, 236 SCRA 197, 203.

[13] Sario Malinias v. The Commission on Elections, Teofilo Corpuz, Anacleto Tangilag and Victor Dominguez, G.R. No. 146943, October 4, 2002.

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Since the taxing power of provinces, cities, municipalities and barangays is to be construed in *strictissimi juris*, any doubt or ambiguity arising out of the term used in granting that power must be resolved against the City of Davao. Thus, a holding company is neither covered under the definition of "non-banking financial intermediaries" under Section 4101Q.1 of Manual of Regulations for Non Bank Financial Institutions issued by the Banko Sentral ng Pilipinas (BSP) nor in the definition of "banks and other financial institutions" as contemplated by Section 131(e)[14] of the LGC for purposes of exemption on the levy of income tax under Section 133 (a)[15] of the LGC.

Additionally, in the *COCOFED Case*[16], the Supreme Court *En Banc* declared respondent AP holdings, Inc. as one of the fourteen (14) holding companies funded by the coconut levy fund which were formed or organized solely for the purpose of holding the SMC shares. Likewise, respondent AP holdings, Inc., among others, and the San Miguel shares it held are owned by the government. As such, the dividends and any income therefrom are also owned by the government. It shall not be subject to local business tax pursuant to Section 113 (o) of the Local Government Code[17]. Thus, We find that the Court in Division correctly ruled as follows:

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[14] (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;

[15] **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;

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[16] Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines, G.R. Nos. 177857-58 & 178193, January 24, 2012.

[17] **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:

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(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

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"The ruling in COCOFED placed the subject SMC shares and its dividends, and any income therefrom, beyond the scope of the taxing power of the City of Davao. The exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code. Under paragraph (o) of this provision, local government units have no power to impose any tax, fee or charge on the National Government:

> *SECTION 133. Common Limitations on the Taxing Power 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:*

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(o) Taxes, fees or charges, of any kind on the National Government, its agencies and instrumentalities, and local government units.

Since the subject shares are owned by the government, it follows that the dividends and any income therefrom are also owned by the government. Thus, the same is not within the power of the City of Davao to tax.

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To reiterate, the Supreme Court held there that all SMC held by the holding companies, as of 1983, together with all dividends declared, paid and issued thereon as well as any increments thereto are owned by the government to be used only for the benefit of all coconut farmers and for the development of the coconut industry. It cannot be clearer that the income from subject shares is not subject to local business taxes."[18]

In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by jurisprudence and evidence on record.

WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Decision dated September 2, 2016 and Resolution dated March 2, 2017 by the Third Division of this Court in CTA AC No. 129 are **AFFIRMED**. No pronouncement as to costs.

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[18] En Banc Docket, pp. 35-42.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(with Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(I join Justice Juanito Castañeda's Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen M. Ringpis-Liban
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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 *En Banc*.

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 The Officer-in-Charge City Treasurer's Office of Davao City, Petitioners,	**CTA EB No. 1634** (CTA AC No. 129)
	Present:
	Del Rosario, P.J., Castañeda, Jr., Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan JJ.
- versus -	
AP HOLDINGS, INC., Respondent.	Promulgated:
	AUG 17 2018 4:27 p.m.

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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 petitioner is not a non-bank financial intermediary (NBFI).

The subject Decision pertinently states:

> "Evidently, a financial intermediary's principal functions involve the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them. It must perform any of its functions on a regular and recurring,

not on an isolated basis. Petitioner insists that respondent's act of investing and placing of funds in San Miguel Corporation's stock and on money placement market renders respondent as a non-financial intermediary. We disagree. The investing and placing of funds must be done on a regular and recurring manner. Likewise, the fact that respondent's income is only sourced from the dividends from San Miguel Corporation's shares and income from money placements market does not *ipso facto* make respondent included in the definition of 'other financial intermediary', 'other financial institution' or 'non-banking financial intermediary', in the absence of other evidence. On the contrary, it bolsters the fact that the investing and placing of funds was done not on a regular and recurring manner.

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Additionally, in the *COCOFED Case*, the Supreme Court En Banc declared respondent AP holdings, Inc. as one of the fourteen (14) holding companies funded by the coconut levy fund which were formed or organized solely for the purpose of holding the SMC shares. Likewise, respondent ASP holdings, Inc., among others, and the San Miguel shares it held are owned by the government. As such, the dividends and any income therefrom are also owned by the government. It shall not be subject to local business tax pursuant to Section 113 (o) of the Local Government Code."

Petitioner's consistent receipt of dividends and interest income from its equity securities and money market placements leads to no other conclusion that it engaged in NBFI activities

Based on the above-quoted discussion, the Decision recognizes that respondent's income solely emanates from dividends and money market placements, in relation to the subject SMC shares. Yet, it still found that respondent is not an NBFI due to "absence of other evidence", and that the same bolsters the fact that the investing and placing of funds were not pursued on a regular and recurring manner.

With due respect, I am of the view that the conclusion of the Decision failed to address the facts presented before the Court.

The factual antecedents of this case reveal that petitioner successfully proved that respondent had no other source of income aside from dividends and money market placements in relation to the subject SMC shares. On the other hand, respondent did not dispute this claim. This, in effect, reflects the primary and sole business operation of respondent – that of receiving income from dividends and money market placements.

Considering respondent's primary and sole business operation, the same should justify the conclusion that it is engaged in NBFI activities.

Meanwhile, it behooves upon this Court to answer this query: Aside from proof of the primary and sole business operation of respondent, what other evidence is necessary in order for petitioner to prove that respondent is engaged in NBFI activities? Unfortunately, the subject Decision failed to address this issue.

Furthermore, I respectfully disagree with the finding that respondent's investments to earn dividends and money market placements were not done on a regular and recurring manner. How can respondent solely earn from dividends and money market placements, and at the same time do not earn from it on a regular and recurring manner? Such inconsistency between the factual premise and conclusion should, therefore, be clearly addressed in the subject Decision.

The tax is levied upon the privilege of an entity to engage in NBFI activities and not upon the shares or sources of gross receipts which operate as tax bases

Section 143 of the LGC of 1991 pertinently states:

> "**Section 143. Tax on Business.** — The municipality[1] may impose taxes **on the following businesses**:
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> 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 gc

[1] The city, may levy the taxes, fees, and charges which the province or municipality may impose, in accordance with Sec. 151, LGC of 1991.

and profit from exchange or sale of property, insurance premium."*(Emphasis supplied)*

Section 143(f) of the LGC of 1991 imposes local business tax **on banks and other financial institutions**, *i.e.*, non-bank financial intermediaries. In other words, while the tax bases of Section 143(f) consist of interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, and insurance premium, the tax is imposed directly on the privilege enjoyed by banks and other financial institutions. It directly imposes business tax on the privilege being enjoyed by the entity and not on the sources of gross receipts.

In the instant case, while the San Miguel Shares had already been adjudged by the Supreme Court as belonging to the government, it is not directly the said shares, but the privilege enjoyed by respondent to engage in NBFI activities, that is subject to local business tax. Simply put, the dividends and interest income from these shares are mere tax bases under Section 143(f) of the LGC of 1991. Ultimately, however, it is respondent's privilege against whom the local business tax is levied upon.

Finally, the subject Decision's finding that respondent is a government property directly contradicts its primary conclusion that it is not an NBFI. If the government owns respondent by reason of primarily dealing with San Miguel Shares, then we can safely conclude that the lower court is correct when it found that respondent's income comes only from dividends and money market placement of its San Miguel Shares. Therefore, respondent clearly engaged in NBFI activities. At any rate, I respectfully submit that it is the San Miguel Shares and not the respondent corporation, which is considered as government property.

To end, 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 such 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.
Associate Justice