REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF MAKATI AND JESUSA E. CUNETA, in her capacity as the MAKATI CITY TREASURER,
Petitioners,

-versus-

DMCI HOLDINGS, INC.,
Respondent.

CTA *EB* NO. 2634
(CTA AC No. 234)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JAN 30 2024 2:15 PM

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RESOLUTION

CUI-DAVID, J.:

For resolution is petitioners' *Motion for Reconsideration (Re: Decision Promulgated on September 18, 2023)*,[1] with respondent's *Comment (on the Motion for Reconsideration dated October 9, 2023)*,[2] filed *via* registered mail on October 9, 2023, and October 31, 2023, respectively.

Petitioners pray for the reversal and setting aside of the Court *En Banc*'s Decision dated September 18, 2023 (assailed Decision), the *fallo* of which reads:

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[1] *En Banc (EB)* Docket, unpaged. Received by the Court on October 17, 2023.
[2] *Id.* Received by the Court on November 8, 2023.

> **WHEREFORE,** premises considered, the instant *Petition for Review* is **DENIED** for lack of merit. Accordingly, the Decision dated February 10, 2022 and the Resolution dated May 11, 2022 promulgated by the Court's Third Division in CTA AC No. 234 are **AFFIRMED**.
>
> **SO ORDERED.**

In their motion, petitioners argue that holding companies are taxed as a class of its own under the Revised Makati Revenue Code (RMRC) and that the Court erred in discerning that they were taxed because they were doing business as a "bank or non-bank financial institutions." Petitioners claim that it need only refer to the sources of income received by respondent regardless of the primary purpose or nature of its business.

Petitioners posit that respondent failed to submit sufficient proof to overturn the presumption of the validity of the provisions of the RMRC taxing a holding company. Petitioners insist that Sections 3A.02(p) of the RMRC, in relation to Sections 3A.02(g), (h), and 7b.14(c) thereof, remain to be valid since they were never questioned nor attacked directly under Section 187 of the Local Government Code (LGC).

Respondent counters that the motion is a mere rehash of past arguments that the Court already resolved. Respondent avers that it is not liable for the local business tax (LBT) assessment under Section 3A.02(h) of the RMRC since the same imposes a tax rate of 20% of 1% of gross receipts on banks and other financial institutions and not on holding companies.

Respondent further argues that this case is an exception to the general rule under Section 187 of the LGC, given that the issue raised in this case is a purely legal question and is within the competence and jurisdiction of the Court.

The motion is denied.

As discussed by the Court in the assailed Decision, holding companies are not liable for LBT pursuant to Section 143(f) [3] of the LGC as they are not considered banks or non-

[3] SEC. 143. *Tax on Business.* — The municipality may impose taxes on the following businesses:
... ...

bank financial intermediaries.[4] It follows that petitioners' assessment of respondent pursuant to Section 3A.02(h) of the RMRC, which imposes LBT at 20% of 1% of the gross receipts on banks and other financial institutions, has no legal basis.

Contrary to petitioners' assertion, the LBT under Section 143 is levied on an entity's gross receipts derived from the conduct of its *principal* trade or business.[5] As a holding company, respondent's dividend and interest income derived from investment in shares of stock and other money market placements cannot be subject to LBT because such income is not derived from the pursuit of its principal business activity.[6]

Lastly, Section 187 of the LGC, which is a mechanism of appeal to the Secretary of Justice in any question on the constitutionality or legality of a tax ordinance, is inapplicable as the issue of constitutionality or legality of the provisions of RMRC was not put in issue. Besides, this case constitutes an exception to the rule on exhaustion of administrative remedies, considering that the issue involved is purely legal.

For petitioners' failure to present any new and convincing argument, the Court finds no reason to depart from its findings.

WHEREFORE, premises considered, petitioners' *Motion for Reconsideration (Re: Decision Promulgated on September 18, 2023)*[7] is **DENIED** for lack of merit.

(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.
(g) On peddlers engaged in the sale of any merchandise or article of commerce, at a rate not exceeding Fifty pesos (P50.00) per peddler annually.
(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.

[4] *City of Davao v. First Meridian Development, Inc.*, G.R. No. 240078 (Notice), October 19, 2022, citing *City of Davao v. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 29, 2019; *City of Davao v. AP Holdings, Inc.*, G.R. No. 245887, January 22, 2020; *City of Davao v. Toda Holdings, Inc.*, G.R. No. 248167 (Notice), June 30, 2020; *City of Davao v. Fernandez Holdings, Inc.*, G.R. No. 248820 (Notice), July 7, 2021 and *City of Davao v. ARC Investors, Inc.*, G.R. No. 249668 (Resolution), July 13, 2022.
[5] *City of Davao v. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 29, 2019;
[6] *The City Treasurer of Makati City v. Michigan Holdings, Inc.*, G.R. No. 224322 (Notice), March 24, 2021.
[7] *EB* Docket, unpaged. Received by the Court on October 17, 2023.

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SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice