REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ROCK STEEL RESOURCES, INC.,
Petitioner,

- versus -

CITY OF DAVAO and HON. RODRICO S. RIOLA, in his official capacity as the City Treasurer of Davao City,
Respondents.

C.T.A. AC NO. 139
(Civil Case No. 35,675-14)

Members:
CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
COTANGCO-MANALASTAS, ***JJ.***

Promulgated:

AUG 1 1 2016

9:15 a.m.

x - x

DECISION

CASANOVA, *J.*:

This is an appeal, by way of Petition for Review[1], filed by petitioner-Rock Steel Resources, Inc. ("RSRI"), from the Decision dated November 10, 2014 (the "Assailed Decision")[2], and the Order dated April 20, 2015 (the "Assailed Order")[3], both rendered by the Regional Trial Court (RTC), Branch 17 of the City of Davao in Civil Case No. 35,675-14 entitled "Rock Steel Resources, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City.

[1] CTA Docket, pp. 8-36.
[2] RTC Docket, pp. 137-146.
[3] Ibid, pp. 183-184.

In the instant Petition for Review, petitioner prays that judgment be rendered by this Court ordering respondents to cancel the assessment against petitioner for 0.55% local business tax for the third and fourth quarters of 2011 in the amount of ₱2,415,353.10, inclusive of surcharges and legal interest.

Petitioner is a corporation duly organized and existing under Philippine laws with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City.[4] It may be served with notices and other court processes through its counsel, Carag De Mesa Zaballero San Pablo & Abiera Law Offices, with office address at Suite 2602, 26th Floor, The Atlanta Centre, No. 31 Annapolis St., Greenhills, 1500 San Juan City, Metro Manila.[5]

Respondent City of Davao is a local government unit ("LGU") duly created by law whose address is located at City Hall Building, San Pedro Street, Davao City.[6]

Respondent Rodrigo S. Riola is the incumbent City Treasurer of Davao City and is being impleaded in his official capacity as it was his office which erroneously and illegally assessed RSRI a 0.55% local business tax on the dividends and interests received by RSRI.[7]

Respondents may be served with summons, notices and other processes at their office in City Hall Building, San Pedro Street, Davao City.

The facts of the case, as found by the RTC and narrated in the Assailed Decision, are as follows:

"**<u>The Petitioner's Allegations</u>**:

In its Petition and Memorandum, petitioner, in brief, alleges that:

i) On July 14, 1976, Presidential Decree ('P.D.') No. 961 established the Coconut Industry Investment Fund ('CIIF') from a portion of the levy imposed on the initial sale a

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[4] Par. 6, The Parties, Petition for Review, CTA Docket, p. 9.
[5] Par. 6.2, Ibid, p. 10.
[6] Par. 7, Id.
[7] Par. 7.1, Id.

by coconut farms of copra and coconut products; administered by the United Coconut Planters Bank; and pursuant to the mandate of P.D. 961, the CIIF invested in various oil mills also known as the CIIF OMG;

ii) sometime in 1983, the CIIF OMG incorporated fourteen (14) holding companies for the purpose of owning and holding shares of stock of San Miguel Corporation which were sold by the group of Mr. Andres Soriano; and petitioner is one of these fourteen (14) holding companies.

iii) in 1986, CIIF OMG and the said holding companies, including the petitioner, were sequestered by the PCGG;

iv) since 2012, petitioner became the registered owner of Fifty Eight Million Two Hundred Thirty Seven Thousand Four Hundred Three (58,237,403) preferred shares of stock in San Miguel Corporation ('SMC Preferred') after the Supreme Court approved the conversion of petitioner's Fifty Eight Million Two Hundred Thirty Seven Thousand Four Hundred Three (58,237,403) SMC common shares of stock into SMC Preferred shares; and the dividends received by the petitioner from said preferred shares were deposited in a trust account which earned interest from money market placements;

v) since incorporation, petitioner's principal office address was located in Makati City, Metro Manila; but on 22 December 2009, the Securities and Exchange Commission approved the transfer of its principal office address at Legaspi Oil Compound, Km. 9.5, Sasa, Davao City; and the consequent amendment of Article III of its Articles of Incorporation;

vi) in 2010, petitioner obtained the amount of Four Hundred Forty One Million Nine Hundred Seventeen Thousand One Hundred Three and 62/100 (P441, 917,103.62) Pesos which were derived from dividends the petitioner received from its SMC preferred shares and interests on its money market placements;

vii) in its Decision dated January 24, 2012 and Resolution dated September 4, 2012, the Supreme Court declared that the SMC shares held by the 14 holding companies, including the petitioner, are owned by the government;

viii) on January 20, 2014, respondent City of Davao, through respondent City Treasurer Riola, assessed petitioner the amount of Two Million Four Hundred Fifteen Thousand Three Hundred Fifty Three and 10/100 (P2,415,353.10) Pesos, supposedly as 0.55% local business tax on the dividends derived from its stock and interest on its money market placements for the third and fourth quarters of 2011;

ix) on March 21, 2014, petitioner filed with respondent City Treasurer its written administrative protest on the erroneously and illegally assessed local business tax; but respondent City Treasurer failed to act on the said protest within sixty (60) days;

x) respondent City Treasurer refused to act upon petitioner's protest because he is of the position that payment under protest of the local business tax is required before the petitioner's protest may be resolved under Section 423 of the 2005 Revised Revenue Code of the City of Davao; and rejected petitioner's argument that the requirement of payment under protest is invalid and unconstitutional, for being inconsistent with Section 252 in relation to Section 195 of Republic Act No. 7160; which provides that payment under protest is required only for protests on real property tax assessments and not on other local taxes;

xi) petitioner then made the following additional arguments:

a) under Section 133(A) of Republic Act No. 7160, it is erroneous and illegal for respondents to collect 0.55% local business tax on the dividends and interest income of petitioner, as the latter is not a bank or financial institution;

b) petitioner is not engaged in business that is subject to local business tax under Section 143 of Republic Act No. 7160;

c) the SMC shares held by petitioner and all income derived therefrom are owned by the government; thus, business tax cannot be imputed on the same; and

d) Section 423 of the 2005 Revenue Code of the City of Davao requiring payment under protest before a protest on local business tax assessments may be acted upon is null and void and has no basis in fact and law.

The Respondents' Allegations:

In their Memorandum, the respondents aver, in brief, that:

i) the City of Davao issued a Business Tax Order of Payment, dated January 20, 2014, assessing the petitioner the amount of Two Million Four Hundred Fifteen Thousand Three Hundred Fifty Three and 10/100 (P2,415,353.10) Pesos, representing the third and fourth quarter of 2011 local business tax, including surcharges and interest, at the rate of 55% of 1% of the petitioner's gross sales or receipts, consisting of dividends and interest on money placements derived from San Miguel Corporation for the year 2010; which was made pursuant to Section 143(f) of Republic Act No. 7160, otherwise known as the 'Local Government Code of 1991', and Section 69(f) of the City's enabling Ordinance No. 158-05, Series of 2005, otherwise known as the '2005 Revenue Code of Davao City';

ii) the City Treasurer imposed the above local graduated business tax against the petitioner's said gross receipts, because the City Treasurer deems the petitioner as falling within the purview of 'banks and other financial institution', pursuant to Section 131(e) of Republic Act No. 7160 and Section 5(b3) of the same Ordinance No. 0158-05, series of 2005;

iii) however, instead of paying the tax as assessed, the petitioner filed a protest with the City Treasurer, contesting the legality of the assessment, in accordance with Section 195 of the Local Government Code;

iv) the protest was not entertained or acted upon by the City Treasurer, because it failed to comply with the pre-requisite of paying first the entire tax as assessed before the filing of the protest, as required under Section 423 of Ordinance No. 00158-05, series of 2005, otherwise known as the '2005 Revenue Code of Davao City';

v) respondents then made the following arguments:

a) the Court has no jurisdiction to hear the instant Petition, because the tax assessment had become conclusive and unappealable for failure of the petitioner to pay first the tax as assessed before filing the protest, as aforestated;

b) petitioner is deemed a 'Bank and Other Financial Institution' specifically as a 'Non-Bank Financial Intermediary or an Investment Company' by virtue of its investment in San Miguel Corporation;

c) petitioner's Articles of Incorporation, stating that it shall not act as investment company or securities broker or dealer is not a conclusive proof that is not a 'Bank and other Financial Institution';

d) Section 27(D) of the National Internal Revenue Code (NIRC) which states that inter-corporate dividends shall not be subject to tax is not applicable in this case since the same involves local taxation;

e) the definition of gross sales/receipts under Section 131(N) of the Local Government Code of 1991 that does not include dividends and interest income as component of sales or receipts, is a general definition of such term, which cannot defeat a specific and clear provision of taxability of dividends and interest income as provided under Section 143(F) of the same Code; and

f) the opinion of the Bureau of Local Government Finance (BLGF), that petitioner is exempt from local business tax for not being a bank and other financial institution, is not binding upon the issue involved in this case, as it is not an administrative agency whose findings on questions of fact and law are given respect in the courts."

On November 10, 2014, the RTC, Branch 17, Davao City promulgated the Assailed Decision, the decretal portion of which reads, as follows:

> "**WHEREFORE**, premises considered, for lack of merit, the Petition for Review under Section 195 of Republic Act No. 7160 filed by petitioner, Rock Steel Resources, Inc., is hereby **DISMISSED**.
>
> Accordingly, petitioner is hereby directed to pay the respondents the amount of Two Million Four Hundred Fifteen Thousand Three Hundred Fifty Three and 10/100 (₱2,415,353.10) Pesos, representing the 0.55% local business tax for the third and fourth quarters of 2011 on the dividends derived from its shares of stock and interest on its money market placements derived from San Miguel Corporation.
>
> **SO ORDERED.**"

On January 15, 2015[8], petitioner filed its Motion for Reconsideration which was denied by the RTC-Branch 17, Davao City in the Assailed Order dated April 20, 2015.

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[8] RTC Docket, pp. 147-164.

Undaunted, petitioner filed the instant Petition for Review on June 8, 2015.

On June 22, 2015, this Court issued a Resolution[9] ordering respondents to file their comment to the Petition for Review, and petitioner may file its Reply thereto within five (5) days from receipt of respondents' comment.

On July 27, 2015, respondents filed, thru registered mail, a Motion To Admit Belated Comment[10], praying that their Comment be admitted and considered in resolving the case. Respondents' motion was granted and the Comment attached thereto was admitted per Resolution[11] dated August 12, 2015. In the same Resolution, the parties were given thirty (30) days from notice to file their simultaneous memoranda. Upon receipt of the memoranda of the parties or the expiry of the period granted, the Petition shall be considered submitted for decision. Likewise, the Court ordered the Branch Clerk of Court or the Officer-in-Charge of the Regional Trial Court, Branch 17, Davao City to elevate to this Court the entire original records of Civil Case No. 35,675-14 entitled "Rock Steel Resources, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City", within ten (10) days from notice.

Petitioner filed its Memorandum[12] via registered mail, on September 14, 2015 while respondents filed their Memorandum[13], also via registered mail, on September 24, 2015.

On October 15, 2015, the case was deemed submitted for decision per Resolution[14] promulgated on the same date.

Hence, this Decision.

The issues submitted to this Court for resolution, are:

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[9] CTA Docket, p. 172.
[10] Ibid, pp. 179-202.
[11] Id., p. 205.
[12] Id., pp. 206 -237.
[13] Id., pp-240-259.
[14] Id., p. 261.

1. Whether or not the City Treasurer of Davao may assess petitioner for 0.55% local business tax for the third and fourth quarters of 2011 on the dividends on its SMC shares of stock and interest income on its money market placements for the year 2010; and

2. Whether or not the Court acquired jurisdiction over this case, considering that the petitioner failed to comply with the pre-requisite of paying first the entire tax as assessed, before filing a protest of assessment with the City Treasurer's Office.

Petitioner contends that its Petition for Review should be granted and the assessment against it for 0.55% local business tax on the dividends earned on its San Miguel Corporation (SMC) shares of stock and interests on its money market placements for the third and fourth quarters of 2011 should be cancelled based on the following grounds, to wit:

"A. RSRI is not a bank or a financial institution.

B. RSRI is not engaged in business that is subject to local business tax under Section 143 of Republic Act No. 7160.

C. RSRI's income partake the nature of public funds; thus, business tax cannot be imposed on the same.

D. The requirement of payment under protest under Section 423 of the 2005 Revenue Code of the City of Davao is void for being contrary to the Local Government Code."[15]

Petitioner argues that it is not subject to the local business tax of 0.55% on dividends and interest income assessed by the herein respondents as it is not a bank within the definition/meaning under Section 131 of the LGC nor the definition/meaning under Revenue Regulations No. 9-2004 and Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions. It is petitioner's stand that the tax on the dividends on the SMC shares of stocks it holds are considered as income tax which respondents are not allowed to levy under Section 133(a) of the LGC.

[15] Petition for Review, CTA Docket, pp. 14-15.

Petitioner further points out that its Amended Articles of Incorporation indicate that it is a holding company and, as stated in its primary purpose, it is expressly prohibited from acting as an investment company or a securities broker and/or dealer, which are all types or classifications of a non-bank financial intermediary. Thus, it is a patent error for the respondents to qualify it as a non-bank financial intermediary.

Petitioner, likewise, contends that, contrary to respondents' assumption, its receipt of dividends and interest as a consequence of its ownership of SMC shares of stock and money market placements is not a business activity subject to local business tax under Section 143 of R.A. No. 7160; that the amount of ₱441,917,103.62, for the year 2010, which petitioner received as dividends from its SMC shares of stocks and interest on its money market placements is merely incidental to its ownership of the SMC shares of stocks and money market placements and not because it was engaged in trade or commercial activity as a means of livelihood, and, that its income partake the nature of public funds, thus, business tax cannot be imposed on the same consistent with the provision of Section 133 of Republic Act No. 7160, which states that local government units cannot impose taxes on the National Government, its agencies and instrumentalities.

Finally, petitioner posits that the requirement of payment under protest under Section 423 of the 2005 Revenue Code of the City of Davao is void for being contrary to the Local Government Code.

On the other hand, respondents, in their Comment, gave the following arguments, to wit:

> I. The imposition of local business tax against the petitioner's receipt of dividends and interest income from San Miguel Corporation, being a non-bank financial intermediary, is a valid exercise of the taxing power of the City and duly sanctioned under Section 143(f) of R.A. 7160, otherwise known as the "Local Government Code of 1991".
>
> II. The Court *a quo* was correct in dismissing the case as the same has not acquired jurisdiction, considering that petitioner failed to comply with the pre-requisite of paying

first the entire tax as assessed before filing a protest with the City Treasure's Office.

After a thorough evaluation of the arguments presented by the parties, We find no merit in the Petition for Review.

It is well established that, under the Constitution[16] and the Local Government Code of 1991 (RA No. 7160)[17], local government units (LGU's) are empowered to levy taxes, fees, and charges subject to the common limitations enumerated under Section 133(a) of the LGC of 1991. Section 133(a) states, thus:

> "SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> (a) Income tax, except when levied on banks and other financial institutions;
>
> xxx xxx xxx."

It is petitioner's contention that, under Section 143 of the LGC, respondents are expressly prohibited from imposing local business tax on interest income and dividends except when the same is levied on banks and other financial institutions. And, since petitioner does not fall under the exceptions, respondents' assessment of 0.55% local business tax on the dividends petitioner received on its San Miguel Corporation (SMC) shares of stocks and interest income on its money market placements for the year 2010 is erroneous and illegal.

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[16] Article X, Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

[17] Sec. 129. Power to Create Sources of Revenue. – Each local government unit shall exercise its power to create its own sources of revenue and 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.

The issue that must be first resolved, therefore, is, whether or not petitioner may be considered as a "bank/other financial institutions".

As defined under Section 131(e) of the LGC:

> "xxx xxx xxx
>
> (e) Banks and other financial institutions" include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shop, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;
>
> xxx xxx xxx"

The above definition was, in turn, adopted by the City of Davao in its 2005 Revenue Code of the City of Davao under Section 5(b3) thereof. The said definition, however, does not really define the term "banks and other financial institutions" but rather gives a list of businesses which are included or inclusions under the said term. The definition is further qualified by the phrase "as defined under applicable laws or rules and regulations. Thus, resort may be made to definitions under applicable laws or rules or regulations.

Since the term "banks and other financial institutions" include, by reference, non-bank financial intermediaries, a look on the definition of the same under other applicable laws, rules or regulations is in order.

Under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the Bangko Sentral ng Pilipinas, the term "financial intermediaries" is exhaustively defined, thus:

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

> Principal shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.
>
> Functions shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency. xxx xxx xxx" (Bold facing and underscoring supplied)

Section 2.3 of Revenue Regulations No. 9-2004 issued by the Bureau of Internal Revenue (BIR) on June 21, 2004, on the other hand, defines the same term in this wise:

> "2.3. Non-bank Financial Intermediaries – shall refer to persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally."

Under the above definitions, petitioner's business would, seemingly, fall under the category of a "financial intermediary". To determine unequivocally if petitioner's function includes the principal function of a financial intermediary, a review of its primary purpose, as appearing/indicated in its Amended Articles of Incorporation must necessarily be made.

As stated in petitioner's Amended Articles of Incorporation, viz:

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

Based on the above-quoted primary purpose of petitioner, it can be clearly gleaned that it is broad enough to cover most, if not all, of the principal functions of a financial intermediary.

Since petitioner's business consists solely of owning a substantial number of preferred shares of stocks of SMC, from which it regularly receives dividends and which dividends are in turn deposited in a trust account and earn interest from money market placements, petitioner is clearly deemed to be engaged in the business of investing or placement of funds or evidences of indebtedness which falls within the purview of a financial institution.

As correctly held by the court *a quo* in the Assailed Decision, We hereunder quote with approval, the pertinent portion thereof, viz:

> "Coming to the merits of the case, the records show that petitioner's business operations consist solely of stock investments and money placements in San Miguel Corporation. Consequently, by holding a substantial number of shares of stock; and thus, receiving dividends as return of such investment and interest income from the petitioner's money market placements in San Miguel Corporation, the Court finds that the same clearly constitutes an act of investment or doing business which make them fall under the definition of a non-banking financial intermediary."

Going now to petitioner's further contention that, it cannot be considered as a bank or financial institution since the primary purpose of its Amended Articles of Incorporation, expressly prohibits it from acting as an investment company or a securities broker and/or dealer, which are all types of a non-bank financial intermediary; and, that its Amended Articles of Incorporation indicates that it is a holding company.

Again, this contention must fail.

While it is true that petitioner's Amended Articles of Incorporation expressly states that "xxx the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation", the said prohibition, however, is not, in any way, an assurance that it will not undertake/engage in any of the said activities.

We agree with the respondent's observation that:

> "While it is true that the petitioner's Articles of Incorporation provides that it shall not act as investment company, or securities broker or dealer, nevertheless, such renunciation should not be taken due consideration,

> inasmuch as the same is deemed an evasive or self-serving provision, which was clearly negated by the very act itself of the petitioner in investing in the stocks of San Miguel Corporation in millions of pesos.
>
> In fact, based on the tax audit conducted by the co-defendant, City Treasurer, it was established that petitioner has no other business, except its investment in San Miguel Corporation. This only shows the real intent of the petitioner to engage solely and primarily in the business of stock investment and money market placements in San Miguel Corporation."[18] (Emphasis supplied)

Likewise, petitioner's argument that it is not engaged in business that is subject to local business tax under Section 143 of R.A. No. 7160, deserves no merit.

Petitioner argues that: contrary to the assumption of respondents, the receipt by petitioner of dividends and interests as a consequence of its ownership of SMC shares of stock and money market placements is not a business activity that is subject to local business tax under Section 143 of R.A. No. 7160; that, Section 131(d) of RA No. 7160 and Section 5(b26) of the 2005 Revenue Code of the City of Davao define the term "business" to mean "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit"; that the Supreme Court, in Commissioner of Internal Revenue vs. Court of Appeals, et al.[19] discussed therein the meaning/definition of the terms "business" and "doing business".

We are not persuaded.

While petitioner correctly quoted the definition/discussion on the expressions "engage in business", "carrying on business" or "doing business" in the aforementioned Supreme Court decision, it, however, conveniently omitted the remaining portion thereof to suit and bolster its argument that its receipt of the dividends on its SMC shares of stock and interest on its money market placements is a passive income and do not constitute doing business as used in the tax statutes.

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[18] Memorandum, Ibid, p. 251.
[19] G.R. No. 104151 and G.R. No. 105563, March 10, 1995.

We, therefore, quote the portion of the Supreme Court Decision in *Commissioner of Internal Revenue vs. Court of Appeals* as quoted by petitioner, together with the omitted relevant portion thereof, as follows:

> "'To engage' is to embark on a business or to employ oneself therein. The word 'engaged' connotes more than a single act or a single transaction; it involves some continuity of action. To engage in business is uniformly construed as signifying an employment or occupation which occupies one's time, attention, and labor for the purpose of a livelihood or profit. The expressions 'engage in business', 'carrying on business' or 'doing business' do not have different meanings, but separately or connectedly convey the idea of progression, continuity or sustained activity. 'Engaged in business' means occupied or employed in business; 'carrying on business' does not mean the performance of a single disconnected act, but means conducting prosecuting, and continuing business by performing progressively all the acts normally incident thereto; while 'doing business' conveys the idea of business being done, not from time to time, but all the time.
>
> The foregoing notwithstanding, it has likewise been ruled that one act may be sufficient to constitute carrying on a business according to the intent with which the act is done. A single sale of liquor by one who intends to continue selling is sufficient to render him liable for "engaging in or carrying on" the business of a liquor dealer.
>
> There may be a business without any sequence of acts, for if an isolated transaction, which if repeated would be a transaction in a business, is proved to have been undertaken with the intent that it should be the first of several transactions, that is, with the intent of carrying on a business, then it is a first transaction in an existing business.
>
> Thus, where the end sought is to make a profit, the act constitutes 'doing- business.' This is not without basis. The term 'business', as used in the law imposing a license tax on business, trades, and so forth, ordinarily means business in the trade or commercial sense only, carried on with a view to profit or livelihood; It is thus restricted to activities or

> affairs where profit is the purpose or livelihood is the motive. Since the term 'business' is being used without any qualification in our aforesaid tax code, it should therefore be therefore be construed in its plain and ordinary meaning, restricted to activities for profit or livelihood." (Underscoring supplied)

In the instant case, petitioner, as stated in the primary purpose of its Amended Articles of Incorporation, was formed to "purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned; xxx"

It cannot be gainsaid that petitioner is engaged in business since it was organized as a stock corporation to perform all the above-enumerated functions with the end in view of earning a profit. As succinctly stated by the court a quo in the Assailed Decision, viz:

> "Coming to the merits of the case, the records show that petitioner's business operations consist solely of stock investments and money placements in San Miguel Corporation. Consequently, by holding a substantial number of shares of stock; and thus, receiving dividends as return of such investment and interest income from the petitioner's money market placements in San Miguel Corporation, the Court finds that the same clearly constitutes an act of investment or doing business which make them fall under the definition of a non-banking financial intermediary.
>
> While it may be true that petitioner's Amended Articles of Incorporation prohibits the corporation to act as an investment company, the Court finds that the records prove the contrary.

> The evidence submitted reveals that petitioner owns and invests in the shares of stock of San Miguel Corporation. It also has money placements in the said company as its principal and actual function or business operation. As raised by the respondents, based on the tax audit made by the latter, the petitioner has no other business operation and source of revenue apart from owning shares of stock of San Miguel Corporation and making money placements therein. This fact was not rebutted by petitioner."

Thus, any profit received by petitioner from its business activities is a direct consequence thereof and not just mere incidental thereto.

Going now to petitioner's contention that the requirement of payment under protest under Section 423 of the 2005 Revenue Code of the City of Davao is void for being contrary to the Local Government Code. Respondent City Treasurer, on the other hand, maintains that payment under protest of the local business tax is required before petitioner's protest may be resolved under the aforementioned section.

The question that therefore arises is whether or not the tax assessment has become final and executory in view of petitioner's failure to pay the tax under protest.

The court a quo ruled on the said issue in this wise:

> "Anent the second issue, it is undisputed that petitioner did not pay the assessed tax when it filed a written protest before the City Treasurer of Davao.
>
> The petitioner then argues that payment under protest is required only when the taxpayer protests the assessment of real property; that Section 423 of the 2005 Revenue Code of the City of Davao is void for being inconsistent with the Local Government Code; that there is nowhere in Section 195 of the same Code or its Implementing Rules and Regulations that requires that payment under protest of the assessed local tax deficiency must be made before the protest may be acted upon for local business taxes, citing Villacorte vs. Bernardo (G.R. No. L-31249, August 19, 1986) and Solicitor General vs. Metropolitan Manila Authority and Municipality of Mandaluyong (G.R. No. 102782, December 11, 1991).

The Court, however, is not convinced.

Pertinently, Section 195 of the Local Government Code, provides:

'xxx xxx xxx.'

Corollarily, Section 423 of the 2005 Revenue Code of Davao City then provides, thus:

'xxx xxx xxx'

It is elementary that every law is presumed valid unless declared otherwise by a court of competent jurisdiction. Apropos is the ruling of the Supreme Court in Smart Communications, Inc. vs. Municipality of Malvar, Batangas, thus:

> 'Settled is the rule that every law, in this case an ordinance, is presumed valid. To strike down a law as unconstitutional, Smart has the burden to prove a clear and unequivocal breach of the Constitution, which Smart miserably failed to do. In Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management, the Court held, thus: To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because 'to invalidate (a law) based on xxx baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it'. This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.'" (Smart Communications, Inc. vs Municipality of Malvar, Batangas, G.R. No. 204429, February 18, 2014) (Underscoring ours)a

Also, in Dasmariñas Water District vs. Monterey Foods Corporation, the Supreme Court held that:

> 'We have ruled time and again that the constitutionality or validity of laws, orders or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.' (Dasmariñas Water District vs. Monterey Foods Corporation, G.R. No. 175550, September 17, 2008)(Underscoring ours)

In the instant case, a scrutiny of the Local Government Code reveals that while Section 195 thereof is silent on the requirement of payment as a condition for filing a protest, it must be noted that there is nowhere in the said Code particularly in the provisions on the power to levy taxes by the local government unit, that prohibits it to devise ways and means to accomplish tax collection in the most effective manner. After all, it is trite but bears repeating, that taxes are the lifeblood of the government.

The petitioner cannot, likewise, find solace in cited cases of Villacorta vs. Bernardo (Supra) and Solicitor General vs. Metropolitan Manila Authority and Municipality of Mandaluyong (Supra), for these cases simply do not involve a tax ordinance. Furthermore, the case of Villacorta vs. Bernardo was promulgated prior to the enactment of the Local Government Code on October 10, 1991.

Stemming from the foregoing, it is important to discuss whether the tax assessment has become final and executory.

The answer is positive.

The records show that on January 20, 2014, respondent City of Davao through respondent City Treasurer Riola, assessed petitioner the amount of Two Million Four Hundred Fifteen Thousand Three Hundred Fifty Three and 10/100 (₱2,415,353.10) Pesos, supposedly as 0.55% local business tax on the dividends derived from its shares of stock and interest on its money market placements for the third and fourth quarters of 2011. On March 21, 2014, petitioner filed

> with respondent City Treasurer its written administrative protest on the assessed local business tax. Clearly then, the sixty (60)-day reglementary period to pay the assessed tax under protest has lapsed. Withal, as clearly provided by law, the assessment had become final and executory. The Local Government Code is clear on this:
>
> xxx xxx xxx
>
> Consequently, for failure to perfect a protest as prescribed by the Revenue Code of Davao City, the assessment made by the respondents has become final and executory."

We disagree with the above-quoted ruling of the court a quo.

In the case at bench, "respondent City of Davao, through respondent City Treasurer Riola, assessed petitioner the amount of Two Million Four Hundred Fifteen Thousand Three Hundred Fifty Three and 10/100 (₱2,415,353.10) Pesos, supposedly as 0.55% derived from its stock and interest on its money market placements for the third and fourth quarters of 2011[20] through a Business Tax Order or Payment dated January 20, 2014.

On March 21, 2014, petitioner filed with the respondent City Treasurer its written administrative protest on the erroneously and illegally assessed local business tax. Respondent City Treasurer failed to act on the said protest within sixty (60) days for the reason that he is of the position that payment under protest of the local business tax is required before petitioner's protest may be resolved under Section 423 of the 2005 Revised Revenue Code of the City of Davao.

Petitioner, however, posits that the requirement of payment under protest under Section 423 of the 2005 Revenue Code of the City of Davao is void for being contrary to the Local Government Code; that, contrary to the presumption of the court a quo that, since Section 195 of the Local Government Code is silent on the requirement of payment as a condition for filing a protest, a local government unit may devise ways and means to accomplish tax collection in the most effective manner, said presumption is not absolute and may be rebutted by a clear and unequivocal breach of the Constitution; that, in a long line of cases, the

[20] RTC Decision, Petitioner's Allegations (viii), Docket, p. 39

Supreme Court has consistently ruled that for an ordinance to be valid, it must not contravene the Constitution or any statute; that, Section 423 of the 2005 Revenue Code of the City of Davao cannot enjoy the presumption of validity because the said ordinance clearly deviates from the limitations prescribed under Section 195 of the Local Government Code by adding the onerous requirement for taxpayers to pay first before their protest may be entertained by the City Treasurer of Davao; that the said requirement is void for being ultra vires, as it is contrary to the requirements provided under Section 195 of the Local Government Code, thus petitioner perfected its appeal by filing a protest before the City Treasurer of Davao within sixty (60) days after receipt of the notice of assessment pursuant to Section 195 of the Local Government Code.

Respondents, on the other hand, counter that the City Treasurer assessed the petitioner of the graduated business tax of 0.55% of 1% of the gross receipt of the preceding calendar for dividends and interest income from San Miguel Corporation because he deems the petitioner is a "bank and other financial institution" pursuant to Section 143(f) of the Local Government Code and Section 69(f) of the 2005 Revenue Code of Davao City, and, also, Section 131(e) of the Local Government Code and Section 5(b3) of the same 2005 Revenue Code of Davao City which both similarly define the term "banks and other financial institutions;" that the provision that "no protest shall be entertained unless the taxpayer first pays the tax" in Section 423 of the 2005 Revenue Code of Davao City does not in any manner contravene any national law provision governing the imposition of local business taxes; and, that as correctly held by the court a quo, "it is elementary that every law is presumed valid unless declared otherwise by a court of competent jurisdiction, thus, being a valid ordinance duly enacted by the Sangguniang Panglunsod of Davao, this provision, unless revoked or nullified by competent court, stands and applies to the assessment issued against petitioner."

We now resolve this issue.

As We have earlier stated, local government units are empowered to levy taxes, fees, and charges under the Constitution and the Local Government Code ("LGC") of 1991. This power, however, is subject to the common limitations enumerated under Section 133 of the LGC and to such guidelines and limitations as Congress may provide.[21]

Section 195 of the LGC of 1991, provides:

> "**Section 195. Protest of Assessment.** - When the local treasurer or his duly authorized representative finds that correct taxes, fees or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable." (Underscoring Ours)

Section 423 of the 2005 Revenue Code of the City of Davao (City Ordinance No. 158-05, Series of 2005), on ther hand, states thus:

> "**Section 423. Payment Under Protest.** - No protest shall be entertained unless the taxpayer first pay the tax. There shall be annotated on the tax receipts the words 'paid under protest'. The protest in writing must be filed within thirty (30) days from payment of the tax with the City Treasurer who shall decide the protest within sixty (60) days from receipt."

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[21] Section 5, Article X of the 1987 Constitution.

From the above-quoted Section 195 of the LGC of 1991, as amended, it can readily be seen that the only requirement imposed by law is for the protest to be filed within sixty (60) days from the receipt of the notice of assessment, otherwise, the assessment shall be conclusive and unappealable or, in other words, final and executory. There is nothing in the said section which requires a taxpayer to pay the tax assessed before the local treasurer may act on the said protest. Neither does Article 285 of Rule XXX of the Rules and Regulations Implementing the Local Government Code of 1991, require prior payment of the tax assessed before the local treasurer may act on the taxpayer's protest.

Article 285 of Rule XXX of the Rules and Regulations Implementing the Local Government Code of 1991, as amended is hereinbelow reproduced, viz:

> "ARTICLE 285. Protest on Assessment. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge the amount of deficiency, the surcharges, interests, and penalties. Within sixty (60) days from receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. If the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer.
>
> The taxpayer shall have thirty (30) days from receipt of the denial of the protest or from the lapse of the sixty-day period prescribed in this Article within which to appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable."

The only instance when payment under protest of a tax is required is under Section 252 of Title II of the said LGC which specifically pertains to Real Property Taxation. Section 252, Title II, is hereinbelow quoted as follows:

> "***SEC. 252.*** **Payment Under Protest.** -
>
> (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words 'paid under protest'. The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
>
> xxx xxx xxx"

Likewise, it is only in Article 343 of Rule XXXI of the Rules and Regulations Implementing the Local Government Code of 1991 which speaks of Real Property Taxation, where payment under protest is found. Article 343, Rules XXXI of the Rules and Regulations Implementing the Local Government Code of 1991, states:

> "**ARTICLE 343. Payment Under Protest.** — (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words paid under protest. The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial or city treasurer, or municipal treasurer, in the case of a municipality within MMA, who shall decide the protest within sixty (60) days from receipt."

Since the LGC of 1991, as amended, being the enabling law of the LGS's power to levy taxes, fees, and charges, all ordinances enacted in pursuance thereof should be in conformity with the provisions of the said Code. Prior payment not being a requirement imposed on protest against local business tax assessment under Section 195 of the LGC, respondents should not supply additional requirements onerous to the taxpayer concerned. To reiterate, it is only in real property taxation that the LGC of 1991, as amended, requires payment under protest (i.e. under Section 252 of Title II). In the instant case, the assessment against petitioner is for local business tax. Thus, Section 195, and not Section 252, of the LGC of 1991, as amended shall apply.

We, therefore, cannot sustain the court a quo's ruling that the assessment for local business tax against petitioner had already become final and executory for failure of petitioner to comply with the prior payment required under Section 423 of the 2005 Revised Revenue Code of the City of Davao.

Nonetheless, even if We find that the assessment against petitioner has not yet become final and executory and its protest on the said assessment can still be validly recognized, We still find petitioner liable for the local business tax of .55% local business tax for the 3rd and 4th quarters of 2011, assessed by respondents on the dividends earned on its San Miguel Corporation (SMC) shares of stock and interests on its money market placements as earlier discussed.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice