REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAKATI CITY TREASURER AND CITY OF MAKATI, *Petitioners,*	**CTA *EB* No. 2131** (CTA AC No.193)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
MERMAC, INC., *Respondent.*	Promulgated: JUN 15 2021 4:13 p.m.

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RESOLUTION

MANAHAN, J.:

For this Court's resolution is petitioner's *Motion for Reconsideration (Re: Decision Promulgated on September 2, 2020 on the Petition for Review filed by Petitioner on September 18, 2019)* filed on November 19, 2020 without respondent's comment.[1]

Petitioner seeks the reconsideration of the Decision of the Court promulgated on December 7, 2020, the dispositive portion of which reads:

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[1] Records Verification Report dated February 24, 2021 indicating that No Return Card was received by the Judicial Records Division of the Court on the Resolution dated December 17, 2021, directing respondent to file a Comment.

> "**WHEREFORE,** in light of the foregoing considerations, we find no cogent reasons to disturb the findings and conclusions reached by the Court in Division in the assailed Decision as well as in the assailed Resolution.
>
> Accordingly, the Petition for Review filed with the Court *En Banc* is **DENIED** for lack of merit and the Decision dated March 7, 2019 and the Resolution dated August 13 2019, are hereby **AFFIRMED.**
>
> **SO ORDERED."**

We quote the following grounds raised by Petitioner in his Motion for Reconsideration, to wit:

> "I. With due respect, the City Treasurer of Makati has the authority to represent the City of Makati, and that the certification against forum shopping was validly executed;
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> II. With due respect, petitioner is correct in imposing local business taxes on the dividend income of the respondent being a Holding Company pursuant to Section 3A.02 (p), in relation to subsection (h) of the Revised Makati Revenue Code.
>
> III. With due respect, should the respondent be granted its "refund", the same may only be in the form of a tax credit by express provision of law."

Petitioners uphold their position that the Certificate of Non- Forum Shopping was validly executed by then City Treasurer, Jesusa E. Cuneta, pursuant to the authority given to her to represent Makati City as part of her mandated duties under Republic Act No 7160 otherwise known as the Local Government Code of 1991 (LGC of 1991). Petitioners however, laud the Court for deciding the case on the merits in spite of this alleged technical infirmity but wishes to clear the issue and settle the controversy by requesting the Court to reconsider its position and declare that there is no such infirmity or defect in the Certificate of Non-Forum Shopping.

To bolster their argument, petitioners submitted a photocopy of Makati City Resolution No. 2016-A-031dated November 2, 2016, which allegedly contains an authority given to various heads of the departments/offices of the City Government of Makati, including the City Treasurer, to prosecute cases on behalf of the city government of Makati.

As to the substantive merits of their motion, petitioners assert that the imposition of local business tax (LBT) on the dividend income of respondent as a holding company is proper and finds its legal basis in Section 3A.02 (p) in relation to subsection (h) of the Revised Makati Revenue Code (RMRC). According to petitioners, the Court erred in comparing a holding company to a business management service or even a banking and financial institution and wrongfully used the latter entities as a parameter to determine whether or not it is liable for LBT on its dividend income.

Petitioners submit that a holding company is *sui generis*, or classified as a class all its own, and as such taxed accordingly under the relevant provisions of the RMRC. Petitioners opine that a holding company need not be compared to a bank or other financial institutions to determine its liability for LBT. Petitioners allege that the Court 'over analyzed" the provisions of the RMRC and suggest that the Court take the said provisions on its face to gain a better perspective of their meaning without any ambiguity. In short, petitioners assert that a holding company need not be a contractor nor an owner or operator of banks or other financial institutions for the LBT liability to attach on its dividend income.

Petitioners also alluded to the fact that the taxpayer never challenged the constitutionality or legality of the aforesaid provisions through the remedies provided under the RMRC and the LGC of 1991 by filing an appeal with the Secretary of Justice. Petitioners contend that without the same being declared invalid by the Secretary of Justice or court of competent jurisdiction, such provisions of the RMRC remain effective and must be followed.

Lastly, petitioners argue that even if respondent will be declared by the Court to be entitled to the refund, the same may be granted by Makati City in the form of a tax credit and not in cash as provided in paragraph (d) Section 7B.14 of the RMRC.

RULING OF THE COURT

We find petitioners' arguments bereft of merit.

In affirming the ruling of the Court in Division relative to the defect in petitioners' Certification Against Non-Forum Shopping, the Court *En Banc* clarified that such document was executed by then City Treasurer, Jesusa E. Cuneta, with no accompanying authority submitted to support her position to represent herein petitioners. In the assailed Decision, we affirmed the Court in Division's position that the Makati City Treasurer must be authorized by an ordinance to file the Petition for Review on behalf of Makati City. Quoting the decision of the Court in Division, the assailed *En Banc* Decision ruled against the arguments of petitioner in this manner, to wit:

> xxx We quote portions of the assailed Decision:
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> "Without doubt, local government units, such as petitioner City of Makati, have the power to sue, pursuant to Section 22 of the LGC of 1991, to wit:
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> "Sec. 22. Corporate Powers.
>
> (a) Every local government unit, as a corporation, shall have the following powers:
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> xxx xxx xxx
>
> (2) To sue and be sued."
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> However, Section 458 (a) (1) (viii) of the LGC of 1991 provides as follows:
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> "Section 458. *Powers, Duties, Functions and Compensation.* – (a) The Sangguniang Panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, and in the proper exercise of the corporate powers of the city as provided under Section 22 of this Code, and shall:
>
> (1) Approve ordinances and pass resolutions necessary for the efficient and effective city government, and in this connection, shall:
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> xxx xxx xxx
>
> (vii) Subject to the provisions of this Code and pertinent laws, determine the powers and duties of officials and employees of the city.
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> Based on the foregoing provision, the Sangguniang Panlungsod is mandated *inter alia,* to approve ordinance and pass resolutions in the proper exercise of tis power to sue. **And in connection thereto, the said Sanggunian shall approve and pass resolutions, among others, determining the powers and duties of city officials, subject to the provisions of the LGC of 1991 and pertinent laws. In other words, except when the**

power to sue is explicitly granted or designated to a particular city official under the law, a prior ordinance or resolution from the Sangguniang Panlungsod is necessary for any city official to exercise such power.

While the LGC of 1991 grants certain powers and duties to the local treasurer, a careful examination of the said law would reveal that there is nothing therein which authorizes the said official from filing an appeal in the appropriate court on behalf of the concerned local government unit. Furthermore, it is noteworthy that Republic Act 7854, the charter of petitioner City of Makati, does not grant such authority to the same official as shown under Section 26 thereof, to wit:

Sec. 26. The City Treasurer. – xxx

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The city treasurer shall take charge of the city finance department and shall:

(a) Advise the city mayor, the *Sangguniang Panlungsod* and other local government and national officials concerned regarding disposition of local government funds and on such other matters relative to public finance;
(b) Take custody and exercise proper management of the funds of the City;
(c) Take charge of the disbursement of all funds the custody of which may be entrusted to him by law or other competent authority;
(d) Inspect private commercial and industrial establishments within the jurisdiction of the City in relation to the implementation of tax ordinances, pursuant to the provisions of the Local Government Code;
(e) Maintain and update the tax information system of the City; and
(f) Perform such other duties and functions and exercise such other powers as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991, and those that are prescribed by law or ordinance.

Thus, for petitioner Makati City Treasurer to exercise the power of petitioner City of Makati to file the instant Petition for Review with the Court, a prior ordinance from the Sangguniang Panlungsod of petitioner City of Makati must be issued.

Considering that there is no showing that the *Sangguniang Panlungsod* of petitioner City of Makati issued an ordinance giving authority to petitioner Makati City Treasurer to initiate the filing of the instant Petition for Review, the same must be dismissed." (emphases supplied)

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Notwithstanding the infirmities of petitioners' Certification Against Non-Forum Shopping , the Court *En* Banc decided to rule on the substantive merits of the decision of the Regional Trial Court (RTC) as regards the imposition of LBT on the dividend income of holding companies and upheld its decision that the dividend income of respondent is not subject to LBT because it is violative of Section 133 (a) of the LGC of 1991 which prohibits local government units (LGUs) from imposing income tax, except when levied on banks and other financial institutions.

Petitioners suggest that the Court treat holding companies as a class separate from business management companies, banks and other financial institutions as they are distinct and taxed separately under the RMRC.

In holding this position, petitioners ignore the legal issue behind the controversy, i.e., whether or not taxing the dividend income is violative of Section 133 (a) of the LGC of 1991, which provides, to wit:

> 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 following:
>
> (a) Income tax, **except when levied on banks and other financial institutions.;** (emphasis supplied)
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> xxx xxx xxx

Clearly, the imposition of LBT on the dividend *income* of respondent is equivalent to a city imposing income tax on a particular entity, hence the Court should determine whether a holding company such as respondent performs or conducts activities *akin* to a bank or other financial institutions to fall under the afore-quoted exception. The Supreme Court in two (2) recently decided cases, used the same parameters in resolving an identical issue. We quote

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portions of the Supreme Court decision in the case of *City of Davao vs. Randy Allied Ventures, Inc.*,[2] to wit:

> "Indeed, there is a stark distinction between a holding company and a financial intermediary as contemplated under the LGC, in relation to other laws. A "holding company" is "organized" and is basically conducting its business by investing substantially in the equity securities of another company for the purpose of controlling their policies (as opposed to directly engaging in operating activities) and "holding them in a conglomerate or umbrella structure along with other subsidiaries." While holding companies may partake in investment activities, this does not *per se* qualify them as financial intermediaries that are actively dealing in the same. Financial intermediaries are regulated by the BSP because they deal with public funds when they offer quasi-banking functions. **On the other hand, a holding company is not similarly regulated because any investment activities it conducts are mere incidental operations, since its main purpose is to hold shares for policy controlling purposes."** (emphasis supplied)

Based on the above analysis, the Supreme Court in the *Randy Allied* case, categorically held that a holding company cannot be held liable under Section 142 (f) of the LGC of 1991, and we quote:

> **"In sum, since RAVI is not a bank or other financial institution, i.e., an NBFI, it cannot be held liable for LBT under Section 143 (f) of the LGC.** However, this pronouncement is without prejudice to RAVI's potential liability for other taxes, whether national or local, should it so engage in other profit-making activities aside from its management of the SMC preferred shares, and the dividends resulting therefrom." (emphasis supplied)

The second most recent case also tackles a similar issue of a holding company being subjected to LBT on its dividend income.[3] The Supreme Court, in this case, reiterated its ruling in the *Randy Allied* case by stating thus:

> "On this score, APHI cannot be considered as a non-bank financial intermediary since its investment and placement of funds are not done in a regular or recurring manner for the purpose of earning profit."

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[2] G.R. No. 241696, July 29, 2019.
[3] *City of Davao and Mr. Erwin P. Alparaque vs. AP Holdings, Inc.*, G.R. No. 245887, January 22, 2020.

On the issue of whether or not respondent is entitled to a refund in cash or in the form of a tax credit, we reiterate our ruling in the assailed Decision that Section 196 of the LGC of 1991 clearly recognizes two (2) modes of recovery of erroneously or illegally collected local taxes, and we quote:

> "Section 196. *Claim for Refund of Tax Credit.* – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee or charge, or from the date of payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a **refund or credit.**" (emphasis supplied)

In ruling thus, we likewise maintain our reservations in expecting a speedy recovery of erroneously paid taxes by way of cash refund, and we quote:

> "Having sided with respondent on this issue, it also behooves us to mention the reality that recovery of erroneously paid taxes by way of a cash refund may be quite difficult as the funds may not be readily available due to administrative and budgetary constraints which is why the alternative of a tax credit seems to be the more practical and expedient choice. But this reality notwithstanding, recovery by way of cash refund remains an option to taxpayers as clearly seen from the afore-quoted Section 196 of the LGC of 1991. It is well to remind the taxpayers that he who holds the purse strings may also control when the funds are to be released."

Based on the foregoing, the Court finds that the issues raised in petitioners Motion for Reconsideration have already been resolved comprehensively by the Court and we find no compelling reason to modify or reverse the rulings enunciated in the assailed Decision dated September 2, 2020.

WHEREFORE, the instant *Motion for Reconsideration (Re: Decision Promulgated on September 2, 2020 on the Petition for Review filed by Petitioner on September 18, 2019)* is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

(with due respect, I reiterate my Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice