REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SORIANO SHARES, INC.
Petitioner,

- versus -

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

CTA EB No. 1556
(CTA AC No.141)

Present:

DEL ROSARIO, *PJ*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

SEP 19 2018
1:16 p.m.

x- x

RESOLUTION

Fabon-Victorino, J:

For Court action is respondents' *Motion for Reconsideration* [1] dated May 30, 2018, challenging the Decision of April 18, 2018, which disposed the case as follows:

> **WHEREFORE**, the Petition for Review filed by petitioner Soriano Shares, Inc. on December 16, 2016, is hereby **GRANTED**. The assailed Decision of July 22, 2016 and the Resolution of November 7, 2016, are **REVERSED** and **SET ASIDE**. Accordingly, the local business tax assessed against petitioner in the amount of One Million Two Hundred Forty-Nine Thousand Seven Hundred Ninety-Seven and 64/100 pesos (P1,249,797.64), representing

[1] *Rollo*, pp. 142-152.

0.55% local business tax for the third and fourth quarters of 2011 on the dividends derived from its SMC shares of stock and interests on its money market placements earned in 2010 is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Respondents insists that petitioner is a non-bank financial intermediary (NBFI), therefore, subject to LBT under Section 143(f) in relation to Section 133(a) of the LGC. That being the case, it is liable to pay local business tax on the dividends it derived from its SMC shares of stock and interest earned on its money market placements during the year 2010 pursuant to Section 143(f) of the Local Government Code (LGC). Allegedly, a corresponding authority from the Monetary Board of the *Bangko Sentral ng Pilipinas* (MB-BSP) is inconsequential for petitioner to be regarded as one. Petitioner's primary purpose in its Amended Articles of Incorporation (AOI) and its own declaration that it is placing funds in banks and securities prove that it is a NBFI.

It is also erroneous for the Court to rule that respondents are bereft of any authority to tax the dividends received by petitioner on its SMC shares and the interest it earned on money placements as the SMC shares held by petitioner are actually owned by the government of the Republic of the Philippines based on ruling in the *COCOFED* case[2] which in the first place is allegedly not applicable to the present case. For them, the declaration that the subject SMC shares are of public character only means that they are not privately owned by petitioner. Neither is the said case law pregnant with categorical declarations on the taxability or non-taxability of the said shares. As such, the same may not constitute as a binding precedent insofar as the present controversy is concerned.

In refutation,[3] petitioner points out that it is not authorized by the MB-BSP to perform quasi-banking activities. Further, clear from its Amended AOI that it is

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[2] *Philippine Coconut, Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, et al.*, G.R. Nos. 177857-58, January 24, 2012.
[3] Comment (On Respondents' Motion for Reconsideration dated 30 May 2018), *rollo,* pp. 157-182.

tasked solely to hold the SMC shares. Also, its acquisition of the SMC shares is an isolated transaction. Significantly, it was categorized as a holding company by no less than the Supreme Court in the *COCOFED* case. Moreover, it is not engaged in the regular activity of investment or placement of funds and/or equities as defined in the pertinent laws, BIR regulations, as well as the BSP Manual. All these indicate that it is not a non-bank financial intermediary, hence, not subject to LBT under Section 143(f) in relation to Section 133(a) of the LGC.

Respondents do not also have the authority to assess LBT on the dividend and interest income it realized from the SMC shares. The Supreme Court *En Banc* declared in the *COCOFED*[4] case that the SMC shares petitioner held are property of the national government, thus the subject shares, as well as the interest and dividend income, are not subject to LBT pursuant to Section 133(o) of the LGC.

Finally, the Court may not turn a blind eye on the *COCOFED* case since the decisions of the Supreme Court are subject to mandatory judicial notice under Section 4, Rule 129 of the Rules of Court.

THE RULING OF THE COURT

Respondents' Motion for Reconsideration has no leg to stand on, hence, must be denied.

Evident from petitioner's Amended AOI that it was organized as a holding company, i.e., direct corporate operations by means of stock ownership. There is also nothing in the record that demonstrates its habitual business activity as a NBFI. Besides, it was not endowed with corresponding authority to perform quasi-banking functions as a NBFI by the MB-BSP. Summing up the obtaining circumstances, respondents failed to establish that petitioner is a NBFI. In fine, the nullification of the LBT imposed under Section 143(f) of the LGC on petitioner's dividends, and interest yield on money market placements is in order.

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[4] See Note 2.

Even granting *arguendo* that it is a NBFI as respondents insinuate, the subject SMC shares, along with the dividend and interest realized therefrom are owned by the Republic of the Philippines, therefore, exempt from imposition of LBT under Section 133(o) of the same Code.

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[5] Hence, this Court cannot decide on the matter in any other way.

Thus, the pronouncement of the Supreme Court in the *COCOFED* case that the SMC shares held by petitioner, having been bought using public monies, clearly belong to the government cannot simply be ignored. To reiterate, the dividends, along with the interest from money market placements are owned by the Republic of the Philippines, on account thereof, respondents are proscribed from subjecting the same to LBT under Section 133(o) of the LGC.[6]

WHEREFORE, respondents' Motion for Reconsideration dated May 30, 2018 is **DENIED**, for lack of merit. The challenged Decision of April 18, 2018 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] *Commissioner of Internal Revenue vs. Michel J. Lhullier Pawnshop, Inc.,* G.R. No. 150947, July 15, 2003.
[6] Pages 17 to 19 of the challenged Decision.

Juanito C. Castañeda, Jr.
(With due respect, I reiterate my Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice