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 City Treasurer of Davao City, Petitioners,	**CTA EB NO. 1749** (CTA AC No. 157)
-versus-	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
ASC INVESTORS, INC., Respondent.	Promulgated: **MAY 30 2019** 3:30 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves petitioners' "Motion for Reconsideration" of the Decision dated January 22, 2019 of this Court *En Banc*, the pertinent portion of which states:

> *"**WHEREFORE**, the Petition for Review is **DENIED**, for lack of merit. Accordingly, the Decision dated June 7, 2017 and Resolution dated October 13, 2017 by the Third Division of this Court in CTA AC No. 157 are **AFFIRMED**. No pronouncement as to costs.*
>
> ***SO ORDERED."***

In compliance with the Court's Resolution dated March 15, 2019, respondent filed its "Comment (to Petitioner's Motion for Reconsideration dated 22 February 2019)" on April 10, 2019.

Petitioners assail this Court's Decision on the following grounds:

1. The Honorable Court En Banc erred in concluding that respondent's business operation does not fall within the purview of a non-bank financial intermediary, thus, not subject to local business tax under Section 143 (f) of the Local Government Code of 1991.

2. The Honorable Court En Banc erred in not taking into account the factual findings of the lower court that respondent is a Non-bank Financial Intermediary by owning, investing and holding shares of stock of San Miguel Corporation.

3. The Honorable Court En Banc erred in concluding that respondent's assets, being declared owned by the government pursuant to COCOFED decision, is exempt from the imposition of local business tax.

Petitioners argue that respondent's primary purpose and the very act of owning, holding and investing in San Miguel Corporation's (SMC) stock and realizing regular income through interests is well within the purview of the nature and functions of a non-bank financial intermediary. Petitioners claim that a holding company is basically a non-bank financial intermediary. Moreover, petitioners insist that the Court failed to consider the findings of the lower court and that the ***COCOFED Case***[1] did not delve on the taxability of the fund or its income but solely on the nature of ownership of the said SMC shares of stocks.

We are not persuaded.

An examination of the records reveals that respondent's mere ownership of SMC shares, receiving dividend thereon and interest on money market placement without other evidence of business activity, does not qualify respondent as engaged in the business of a bank or other financial institution to be subject to local business tax under Section 143(f) of the Local Government Code (LGC).

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

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Records are bereft of evidence to show habitual business activity to consider respondent as a bank or other financial institution (Non-Bank Financial Intermediary).

True, the *COCOFED Case* did not delve on the taxability of the fund or its income but solely on the nature of ownership of the said SMC shares of stocks. Clearly, no less than the Supreme Court has declared that respondent is a holding company owned by the government. The SMC shares it held, the dividends and any income therefrom are also owned by the government. Considering that respondent is owned by the Republic of the Philippines, it is exempt from imposition of Local Business Tax under Section 133 (o) of the same LGC. To reiterate:

> *"The issue raised by petitioner is not of first impression. In a litany of cases, this Court En Banc had passed upon similar issues involving corporations of similar classification, similarly situated respondent ASC Investors, Inc. in the instant case. This Court En Banc ruled that companies therein are neither "financial intermediary" nor does it belong to the category as "bank and other financial institutions", and being a holding company, as declared by the Supreme Court in the case of COCOFED v. Republic[2], the companies therein, the shares of San Miguel Corporation (SMC) it held, and the dividends and any income therefrom are owned by the government.*
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> *In a series of cases docketed as EB No. 1531, EB No. 1590, EB No. 1556, EB No. 1568, EB No. 1567, EB No. 1639, EB No. 1634, and EB No. 1654, the holding companies therein were assessed for local business tax as a "financial intermediary" 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 companies are "financial intermediaries". This Court En Banc ruled that the companies therein were not "financial intermediaries" subject to local business tax.*
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> *Likewise, in a series of cases docketed as EB No. 1591, EB No. 1628, EB No. 1692, EB No. 1607, and EB No. 1640 the holding companies were assessed for local business tax as a "financial intermediary" 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*

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

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Regional Trial Court was filed which was denied based on the findings that said companies are "financial intermediaries". This Court En Banc ruled that the companies therein were not "financial intermediaries" and therefore, not subject to local business tax.

While the cases may differ in that in several cases the recourse to this Court proceeded from denial of the claim for refund of local business tax and the other cases through the denial of protest on the assessment of local business tax, the following are the similarities:

1) The companies earned dividends derived from their SMC shares of stock and the interest on their money market placements;

2) The companies therein principally earned their income only on the dividends derived from their SMC shares of stock and the interest on their money market placements;

3) The controversies arose from the assessment for local business tax on the dividends derived from their SMC shares of stock and the interest on their money market placements;

4) The Regional Trial Court found the companies therein as "financial intermediary" within the category as "bank and other financial institutions";

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

6) The companies therein 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), whereby the Supreme Court ruled that the said holding companies themselves and the San Miguel shares they held and the dividends and any income San Miguel shares they 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 the respondent ASC Investors, Inc., are owned by the government, xxx:

xxx xxx xxx.

Evidently, respondent ASC Investors, Inc. is one of the holding companies declared owned by the government, including the SMC shares it held, its dividends, and any income thereon.

Moreover, in a similar case involving the same parties, same subject matter, same controversies, and same issues albeit different taxing period, as the case in ASC Investors, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, CTA EB NO. 1568 (CTA AC No. 134), May 17, 2018, involves protest on the assessment of local business tax for dividend and interest earned in 3rd and 4th quarter of 2011 while the present case involves a claim for refund on the local business tax paid on dividend and interest earned in 1rd and 2th quarter of 2011. This Court En Banc ruled that "ASC Investors, Inc. is not a non-bank financial intermediary; hence, the interest and dividends it receives from the preceding calendar year may not be the subject of local business tax imposed by the City of Davao", and that "considering that ASC Investor, Inc. is considered as a government asset, any tax imposed upon it is, in effect, a tax on the government."

xxx xxx xxx.

Thus, We find that the Court in Division correctly ruled as follows:

"Significantly, the Supreme Court, in no uncertain terms, already declared that the SMC shares held by petitioner are owned by the government, thus:

> ***From the foregoing discussions, it is fairly established that the coconut levy funds are special public funds. Consequently, any property purchased by means of the coconut levy funds should likewise be treated as public funds or public property, subject to burdens and restrictions attached by law to such property.***
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> *In this case, the 6 CIIF Oil Mills were acquired by the UCPB using coconut levy funds. On the other hand, the 14 CIIF holding companies are wholly owned subsidiaries of the CIIF Oil Mills. Conversely, these companies were acquired using or whose capitalization comes from the coconut levy funds. However, as in the case of UCPB, UCPB itself*

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distributed a part of its investments in the CIIF oil mills to coconut farmers, and retained a part thereof as administrator. The portion distributed to the supposed coconut farmers followed the procedure outlined in PCA Resolution No. 033-78. And as the administrator of the CIIF holding companies, the UCPB authorized the acquisition of the SMC shares. In fact, these companies were formed or organized solely for the purpose of holding the SMC shares. As found by the Sandiganbayan, the 14 CIIF holding companies used borrowed funds from the UCPB to acquire the SMC shares in the aggregate amount of PI.656 Billion.

Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds - funds, which have been established to be public in character - it goes without saying that these acquired corporations and assets ought to be regarded and treated as government assets. Being government properties, they are accordingly owned by the Government, for the coconut industry pursuant to currently existing laws.

It may be conceded hypothetically, as COCOFED et al. urge, that the 14 CIIF holding companies acquired the SMC shares in question using advances from the CIIF companies and from UCPB loans. But there can be no gainsaying that the same advances and UCPB loans are public in character, constituting as they do assets of the 14 holding companies, which in turn are wholly-owned subsidiaries of the 6 CIIF Oil Mills. And these oil mills were organized, capitalized and/or financed using coconut levy funds. ***In net effect, the CIIF block of SMC shares are simply the fruits of the coconut levy funds acquired at the expense of the coconut industry. In Republic v. COCOFED, the en banc Court, speaking through Justice (later Chief Justice) Artemio Panganiban, stated: 'Because the subject UCPB shares were acquired with government funds, the government becomes their prima facie beneficial and true owner.' By parity of reasoning, the adverted block of SMC shares, acquired as they were with government funds, belong to the government as, at the very least, their beneficial and true owner.***

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> *Since the subject shares are owned by the government, it follows that the dividends and any income derived therefrom are owned by the government as well. That being the case, the subject shares and the dividends derived therefrom do not fall within the taxing power of respondent City of Davao pursuant to Section 133(o) of the LGC of 1991. A fortiori, the imposition of the 0.55% local business taxes on petitioner for the first and second quarters of 2011 on the dividends arising from its SMC preferred shares and interests on money market placements was erroneously and illegally collected from petitioner by respondents. (Citations Omitted)*

In sum, We found no substantial argument to merit reconsideration of our Decision promulgated on January 22, 2019.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
I reiterate my Dissenting Opinion
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice