REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

METRO PACIFIC HOLDINGS, INC., Petitioner,	CTA AC No. 179
	Members:
- versus -	BAUTISTA, *Chairperson* FABON-VICTORINO, and RINGPIS-LIBAN, *JJ.*
MAKATI CITY and NELIA A. BARLIS, in her capacity as incumbent CITY TREASURER OF CITY OF MAKATI, Respondent.	Promulgated: JUN 01 2018 3:26 p.m.

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DECISION

***Fabon-Victorino, J.*:**

In this *Petition for Review*[1], Metro Pacific Holdings, Inc. challenges the Decision[2] dated July 25, 2016 and the Resolution[3] dated November 15, 2016 both rendered by the Regional Trial Court (RTC) Branch 59 of Makati City in Civil Case No. 13-087, denying petitioner's claim for refund of local business taxes (LBT) for taxable year (TY) 2010 in the aggregate amount of Seven Hundred Fifty-Eight Thousand One Hundred Fifty-Nine Pesos and 90/100 (₱758,159.90).

First, the facts.

Petitioner is a domestic corporation registered[4] with the Securities and Exchange Commission (SEC) as an investment holding company with principal office at the 10th Floor Net One

[1] CTA docket, pp. 8-35.
[2] RTC *rollo*, vol. II, pp. 807-814.
[3] RTC *rollo*, vol. II, pp. 937-938.
[4] Exhibit A, RTC *rollo*, pp. 648-658.

Center Building, 26th Street corner 3rd Avenue, Bonifacio Global City, Taguig City.

Respondent Makati City, on the other hand, is a local government unit with the power to collect LBT through its co-respondent City Treasurer Nelia A. Barlis, who is impleaded in in her official capacity. Respondents may be served with summons, notices and other processes at Makati City Hall, J.P. Rizal Street, Makati City.

In 2011, when petitioner applied for the renewal of its business permit with the Makati City Business Permit and Licensing Office, it was issued Billing Assessment Form No. 0021641[5] dated January 21, 2011 assessing it for various fees in the total amount of Seven Hundred Seventy Thousand Eight Hundred Ninety-Nine Pesos and 90/100 (₱770,899.90), inclusive of LBT in the amount of Seven Hundred Fifty-Eight Thousand One Hundred Fifty-Nine Pesos and 90/100 (₱758,159.90). The LBT was computed[6] based on the amount of interest and dividend income earned and reported in its financial statements for the year ending December 31, 2010.

On January 31, 2011, petitioner paid the assessed amount to respondent City Treasurer.[7]

On January 25, 2013, petitioner filed an administrative claim for refund with respondent City Treasurer on the ground that the LBT on its dividend income was erroneously collected and/or paid as it is not a bank or other financial institution subject to tax under Section 3A.02(h) of the Revised Makati Revenue Code[8] (RMRC).

Due to inaction on the part of respondent City Treasurer, petitioner elevated its claim for refund to the RTC via a *Complaint for Refund of Erroneously Paid LBT* on January 29, 2013, docketed as Civil Case No. 13-087.

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[5] Exhibit B, RTC *rollo*, p. 659.
[6] Exhibit C, RTC *rollo*, p. 660.
[7] Exhibit D, RTC *rollo*, p. 661.
[8] City Ordinance No. 2004-A-025, effective January 1, 2006.

On July 26, 2016, the RTC rendered the impugned Decision, the decretal portion of which reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered **DENYING** plaintiff's claim of refund and **DISMISSING** the instant complaint against the defendants.
>
> No costs.
>
> **SO ORDERED**.

In finding for the respondents, the RTC ratiocinated that as a holding company, petitioner is taxed under Section 3A.02(p) in relation to Section 3A.02(h) of the Revised Makati Revenue Code (RMRC) which provides that a "holding company" shall be taxed as a specific class of its own, without reference to it being a contractor or an owner or operator of banks or other financial institutions. Once classified as a "holding company", the tax rate prescribed in the RMRC shall apply on its gross receipts. Moreover, petitioner failed to question the legality or constitutionality of Section 3A.02(p) of the RMRC before the Secretary of Justice, as provided in paragraph (d) Section 7B.14 of the RMRC, hence, the said provision remains valid.

Unconvinced, petitioner moved for reconsideration but it was denied in the equally assailed Resolution of November 15, 2016.

Hence, the instant Petition for Review raising the following issues for the determination of the Court, to wit:

I. WHETHER OR NOT THE LEGALITY OR CONSTITUTIONALITY OF SECTION 3A.02(p) IS AN ISSUE OF THIS CASE.

II. WHETHER OR NOT PETITIONER SHOULD BE TAXED SIMILAR TO BANKS AND OTHER FINANCIAL INSTITUTIONS UNDER SECTION

3A.02(h) OF THE REVISED MAKATI REVENUE CODE.

III. WHETHER OR NOT TAXABLE GROSS RECEIPTS OF HOLDING COMPANIES UNDER THE RMRC INCLUDES DIVIDENDS, INTEREST AND OTHER ITEMS OF PASSIVE INCOME.

Petitioner admits that it did not question the legality or constitutionality of Section 3A.02(p) of the RMRC. It is however contesting the interpretation and application of the said provision in relation to respondents' imposition of LBT on its dividends and interest income not as a bank or financial institution, but as a holding company. Petitioner argues that there is nothing in the 1991 Local Government Code (LGC) or its Implementing Rules and Regulations (IRR) that requires a taxpayer to first question the legality or constitutionality of the law or ordinance before it can file a claim for refund of erroneously collected and paid LBT under Section 196 of the 1991 LGC. To add another requirement where none is intended is contrary to the explicit provision of the law and the palpable intent of the lawmaking body.

Petitioner also faults the RTC in holding that it should be taxed similar to banks and other financial institutions under Section 3A.02(h) of the RMRC. Allegedly, the RTC relied heavily on its admission that it is a holding company and readily concluded that as such it is liable for LBT. According to petitioner, the simplistic interpretation of the RMRC reveals that the RTC failed to appreciate and understand the legal issues involved in its case, and what a holding company is.

Petitioner points out that its admission that it is a holding company does not justify the application of Section 3A.02(p) vis-à-vis subsection (h), to the exclusion of subsection (g) and other equally applicable provisions of the RMRC. Section 3A.02(p) of the RMRC provides that a holding company is taxed at either the rate prescribed for ordinary contractors under Section 3A.02(g), **OR** at the rate for banks and other financial institutions under Section 3A.02(h), based on gross sales and/or receipts during the preceding year. Comparing 3A.02 (g) and (h), one could easily identify a holding company as similar to a contractor providing services under Section 3A.02(g), rather than under Section 3A.02(h) similar to banks or financial institutions collecting income through lending and investments.

As a holding company primarily engaged in the management of its subsidiaries, petitioner submits that its business activities fall squarely within the scope of "business management services", which is among the enumerated services rendered by ordinary contractors under Section 3A.02(g) of the RMRC. And while respondents correctly classified petitioner as a "holding company", the lower court erroneously based the computation of LBT entirely on its dividend and interest income and at the rate of 20% of 1% similar to banks and other financial institutions under Section 3A.02(h) of the RMRC.

Further, Section 3A.02(p) of the RMRC does not authorize respondents to arbitrarily include dividends, interest and other items of passive income in the taxable gross receipts of holding companies like petitioner. Besides, Section 3A.02(p) refers to Sections 3A.02(g) or 3A.02(h) only for purposes of determining the applicable LBT rate on holding companies, but it does not provide guidelines on how to compute or what to include under gross sales and/or receipts upon which the LBT rate shall be applied. To interpret otherwise is tantamount to imposing a tax on income proscribed under the 1991 LGC. Thus, citing Section 133(a) of the 1991 LGC and Article 221 of its IRR, petitioner believes that dividend and interest income, being passive income, are subject to LBT if earned by banks or financial institutions only. Otherwise, the imposition of LBT thereon is considered income tax which is prohibited under the LGC and its IRR.

Petitioner also reiterates that as a non-bank or non-financial institution, it is subject to LBT solely on amounts received for services performed by it, as enunciated in the case of *Orleyte Company (Philippine Branch) v. The City of Makati*[9] (*Orleyte* case). Petitioner further cites the case of *Michigan Holdings, Inc. v. The City Treasurer of Makati City,*

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[9] CTA AC No. 80, November 14, 2012.

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Nelia A. Barlis[10] *(Michigan case)*, wherein the Court of Tax Appeals (CTA) *En Banc* ruled that dividend income is not subject to LBT except when levied on banks and other financial institutions and that the act of imposing LBT on dividend income of a holding company is *ultra vires*.

By way of *Comment*,[11] respondents maintain that a holding company, such as petitioner, need not be a service contractor nor an owner or operator of banks and other financial institutions for purposes of applying Section 3A.02(h). Once classified as a holding company, the tax rate prescribed under Section 3A.02(h) shall apply on its gross receipts.

Further, Section 3A.02(p) of the RMRC, in relation to subsections (g) and (h), was never questioned by petitioner pursuant to Section 7B.14(d) of the law, thus, it remains valid.

Respondents also state that the *Orleyte* case is not applicable to the case at bar since in the said case: (1) it was ruled *Orleyte* was erroneously classified as a holding company-management service, as opposed to the present case where petitioner was correctly classified as a holding company; and (2) the Old Makati Revenue Code was applied in Orleyte case as it pertained to TYs 2001-2002, 2002-2003, and 2003-2004, while it is the RMRC that is applicable in the present case.

Lastly, assuming that petitioner is entitled to a refund, it may be granted only in the form of a tax credit pursuant to Section 7B.14(d) of the RMRC. In any event, petitioner was not able to overcome the burden of proving that it is entitled to the refund sought, say respondents.

In its *Reply*[12], petitioner asserts that: (1) It is a holding company engaged in the business management services similar to the business management services included in the

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[10] CTA EB No. 1093, June 17, 2015.
[11] CTA docket, pp. 235-253.
[12] CTA docket, pp. 259-278.

enumeration under Section 3A.02(g) of the RMRC; (2) Section 3A.02(p) of the RMRC clearly imposes LBT on its gross receipts. The reference to Sections 3A.02 (g) or (h) of the RMRC in Section 3A.02(p) pertains only to the rates to be imposed and not what constitutes gross receipts; (3) The legality or constitutionality of Section 3A.02(p) is not an issue in this case; (4) The case of Orleyte is squarely applicable to this case and is consistent with recent rulings of the CTA; (5) Section 7B.14 of the RMRC provides that the prohibition on recovery in the form of cash of any tax erroneously or illegally collected only applies upon election of tax credit; and (6) contrary to respondents claim, it was able to sufficiently show that it is entitled to its claim for refund.

With the filing of the parties' respective memoranda, the petition was deemed submitted for decision on June 29, 2017.[13]

THE RULING OF THE COURT

First, the Court must determine whether petitioner was able to perfect its appeal in the manner and within the reglementary period provided by law, which is not only mandatory, but also jurisdictional.[14]

Section 196 of the 1991 LGC pertinently provides as follows:

> SEC. 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

[13] Resolution, CTA docket, pp. 375-376.
[14] *Wilson T. Go vs. BPI Finance Corporation*, G.R. No. 199354, June 26, 2013.

> the date the taxpayer is entitled to a refund or credit.

Thus, to be entitled to a refund/tax credit, the following procedural requirements must be satisfied: (1) the taxpayer must file a written claim for refund/tax credit with the local treasurer; and (2) the case or proceeding for refund must be filed within two (2) years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.[15]

The instant case stemmed from an assessment issued by respondents against petitioner for LBT for TY 2010 in the total amount of ₱758,159.90. After paying the assessed amount on January 31, 2011, petitioner filed an administrative claim for refund with respondent City Treasurer Barlis on January 5, 2013. On January 29, 2013, due to the latter's alleged failure to act on the claim, petitioner filed a Complaint for the refund of the alleged erroneously paid LBT with the RTC.

Irrefragably, petitioner timely filed both its administrative and judicial claims for refund of erroneously or illegally collected LBT. The relevant dates are summarized, as follows:

Date of Payment of Tax	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim	Last Day to File Both Claims
January 31, 2011	January 5, 2013	January 29, 2013	January 31, 2013

As to the period for filing an appeal with the CTA, Section 3(a), Rule 8 of the Revised Rules of the Court of Tax Appeals provides, thus:

> SEC. 3. *Who may appeal; period to file petition*. — (a) <u>A party adversely affected</u> by a decision, ruling or the inaction of the Commissioner of Internal Revenue on

[15] *Metro Manila Shopping Mecca Corp., et al. vs. Ms. Liberty Toledo, in her Official Capacity as the City Treasurer of Manila, and the City of Manila*, G.R. No. 190818, June 5, 2013.

> disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. (*Underscoring supplied*)

Thus, an appeal from a decision or orders of the RTC in local tax cases decided or resolved in the exercise of its original jurisdiction may be filed with the CTA via a Petition for Review within thirty (30) days from receipt of a copy of the adverse decision or ruling.

In the instant case, the record shows that petitioner received the assailed Resolution of the RTC on December 7, 2016. Counting thirty (30) days therefrom, petitioner had until January 6, 2017, within which to file its appeal with the CTA. Hence, petitioner also seasonably filed its appeal before the Court on January 5, 2017.

The Court will now determine the propriety of the assessment issued against petitioner and whether a refund is warranted.

Petitioner should not be taxed similar to banks or other financial institution under Section 3A.02(h) of the RMRC.

In the instant case, petitioner was assessed LBT as a holding company at the rate of twenty percent (20%) of one percent (1%) of its dividend and interest income pursuant to

Section 3A.02(p), in relation to subsection (h) of the RMRC, to wit:

> SEC. 3A.02. *Imposition of Tax.* – There is hereby levied an annual tax on the following businesses at rates prescribed therefore:
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> xxx xxx xxx
>
> (h) **On owners or operators of banks and other financial institutions** which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions, and discounts from lending activities, income from financial leasing, investments, dividends, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (I) 1, as provided in this code.
>
> xxx xxx xxx
>
> (p) On **Holding Company** shall be **taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year**." *(Emphasis supplied)*

Petitioner maintains that it is not an investment company, nor a bank and/or other financial institution, rather it is a holding company primarily engaged in the management of its subsidiaries. Its business activities fall squarely within the scope of "business management services", which is among the enumerated services rendered by ordinary contractors under Section 3A.02(g) of the RMRC.

The Court finds petitioner's contention meritorious.

There is no question that local government units (LGUs) has the power to create its own sources of revenues and to levy taxes, fees and charges.[16] This power is however not absolute. Section 133(a) of the Local Government Code of 1991 (LGC) provides for its limitations as follows:

> 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) <u>Income tax, except when levied on banks and other financial institutions</u>; xxx

Clearly, a city such as respondent Makati City is **prohibited from levying income tax** on any person, **<u>except for banks and other financial institutions</u>**.

Sections 143 and 151 of the LGC state that municipalities and cities may impose LBT on banks and other financial institutions on their income from dividends and interest, based on gross receipts of the preceding year, *viz*:

> Article II
> MUNICIPALITIES
>
> xxx xxx xxx
>
> SEC. 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:

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[16] Section 5, Article X of the 1987 Constitution; Section 129, Local Government Code of 1991.

xxx xxx xxx

(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.

xxx xxx xxx

Article III
CITIES

SEC. 151. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however,* That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

To implement the forgoing provisions, the City of Makati enacted the RMRC which, among others, provides for the imposition of business taxes, as follows:

Chapter III. City Taxes
Article A. Business Tax

SEC. 3A.02. *Imposition of Tax.* – There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

xxx xxx xxx

(g) **On Contractors and other independent contractors** defined in SEC. 3A-01 (t) of chapter III of this Code; **and on owners or operators of business establishments rendering or offering services** such as; advertising agencies; rental of space of signs, signboards, billboard or advertisements; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to others; business management services; collecting agencies; escort services; feasibility studies, consultancy services; garages; garbage disposal contractors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professionals tax; medical and dental laboratories; mercantile agencies; messengerial services; operators of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; school for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic; white/blue printing, photocopying, typing and mimeographing services; car rental, rental of heavy equipment, rental of bicycles and/or tricycles; furniture, shoes, watches, household appliances, boats, typewriters, etc; roasting of pigs, fowls, etc; shipping agencies; shipyard for repairing ships for others; shops for hearing animals;

silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing school/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education (DepEd), day care centers; etc.

xxx xxx xxx

(h) **On owners or operators of banks and other financial institutions** which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions, and discounts from lending activities, income from financial leasing, investments, dividends, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (I) 1, as provided in this code.

xxx xxx xxx

(p) On **Holding Company** shall be **taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year**." *(Emphasis supplied)*

A scrutiny of Section 3A.02 reveals that **holding companies are classified separately from banks and**

other financial institutions. In fact, the RMRC defined "banks and other financial institutions", as follows:

> SEC. 3A.01. *Definitions.* – When used in this Article:
>
> xxx xxx xxx
>
> (e) *Banks and other financial institutions* – include banks, offshore banking, non-bank financial intermediaries, lending investors, finance and investment companies, investment houses, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange including pre-need companies, as defined under applicable law, or rules and regulations.

In the eloquent discussion of the CTA *En Banc* in the *Michigan case*, is enlightening, thus:

> Indeed, if the business of a holding company is in the same class as that of a bank or other financial institutions, the Makati City tax ordinance could simply have included holding companies in its Section 3A.02 (h), instead of placing them all by themselves in Section 3A.02 (p) and then making the tax rates in either Section 3A.02 (h) or (g) applicable to them. **That holding companies, exclusively, were placed in a separate section, shows that they comprise a category distinct from the class of 'banks and other financial institutions'** as defined by Section 131 (e) of the LGC. **That holding companies were subjected to a tax on dividend income which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions, shows a deliberate intent to circumvent the prohibition laid down by Section 133 (a)**

> **that the taxing powers of LGUs** shall not extend to the levy of income tax, except on banks and other financial institutions. *(Emphasis supplied)*

In the present case, there is nothing in petitioner's Amended Articles of Incorporation[17] that even suggests that it may perform the functions of a bank or a financial institution as defined under Section 3A.01(e) of the RMRC. As stated in its Amended Articles of Incorporation, petitioner's purposes are:

> **PRIMARY PURPOSE**
>
> To acquire by subscription, purchase or otherwise, to hold for investment or for resale, to sell, pledge, hypothecate, and in all ways deal with stocks of corporations (without engaging in stock brokerage); to collect the dividends on its holdings and the face value thereof if and when due; to do all things suitable and proper for the protection, conservation or enhancement of the value of stocks or other properties held by it, including the exercise of the right to vote thereon. (As amended on April 18, 1988)
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> **SECONDARY PURPOSES**
>
> The Corporation shall have the following secondary purposes:
>
> (a) To borrow or raise money for the primary purpose of the Corporation, and to secure any of its obligations or contracts by creating any mortgage, pledge and/or other security interest in all or any part of the property or assets at any time held or owned by the Corporation on such terms and conditions as the Board of Directors or duly authorized officers or agents shall determine and as may be permitted by law.

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[17] Exhibit A, RTC *rollo*, pp. 648-658.

> (b) To assume or undertake or guarantee or secure, whether as solidary obligor, surety or guarantor or in any other capacity and either on its general credit or on the mortgage or pledge of any of its property, the whole or any part of the liabilities and obligations of any of its subsidiaries or affiliates.
>
> (c) To place any or all excess or idle funds or assets of the Corporation in short-term marketable securities and investments.
>
> (d) To do and perform all acts and things necessary, suitable or proper for the accomplishment of any of the purposes herein enumerated, including the exercise of the powers, authorities and attributes conferred upon corporations organized under the laws of the Republic of the Philippines in general and upon domestic corporations of like nature in particular.

Plain from the above-quoted purposes for which petitioner was created that it is not engaged in any business activity as a bank or other financial intermediary, and that the receipt of dividend and interest income is merely incidental.

It is also significant to note that petitioner's classification as a holding company is consistent with the definition of a holding company indicated in the Office of the General Counsel (SEC-OGC) Opinion No. 11-15, dated February 10, 2011,[18] of the SEC, to wit:

> A holding company has been defined by the Commission in several opinions. <u>A holding company has been aptly defined as 'a corporation organized to hold the stock of another or other corporations.</u> <u>**Its essential feature is that it holds stock**.</u> <u>The term 'holding company' is equivalent to a parent corporation, having such an interest</u>

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[18] SEC-OGC Opinion No. 11-15, Applicability of Foreign Ownership Restriction; Holding Companies.

> in another corporation, or power of control, that it may elect its directors and influence its management. A parent or holding company is one that controls another as a subsidiary or affiliate by the power to elect its management. Affiliates are those concerns that are subject to common control and operated as part of a system. *(Citations omitted; emphases supplied)*

Accordingly, the Court holds that petitioner cannot be considered as an investment company, nor as a bank or other financial institution. Besides, other than the mere admission of petitioner that it is a holding company, respondents failed to establish that as such holding company, petitioner's business is akin to that of an investment company, or a bank or other financial institution.

The legality or constitutionality of Section 3A.02(p) is not an issue in this case.

As petitioner correctly pointed out, the issue that confronts the Court is the applicability of Section 3A.02(h) of the RMRC, in relation to Section 3A.02(p), and not the constitutionality of any provisions in the said Code. In fact, petitioner itself confessed that it is not questioning the constitutionality or legality of the provision but only its interpretation and applicability to the imposition made against it.

Petitioner is not liable for LBT on its dividend and interest income.

The taxability of dividend and interest income for purposes of determining the total LBT liability of a holding company has long been settled in this jurisdiction. In the *Michigan case* and as reiterated in the case of *The City of Makati and The City Treasurer of Makati v. CEMCO Holdings,* *Inc.*,[19] the First Division of this Court has ruled that Section 3A.02(p) in relation to Section 3A.02(h), both of the RMRC, imposing LBT on dividend income of holding companies violates the limit set by Section 133(a) of the 1991 LGC.

Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC also violates Section 27(D)(4) of the National Internal Revenue Code of 1997, as explained by the Court *En Banc* in the *Michigan case*, thus:

> Section 27 (D) of the National Internal Revenue Code deals with rates of tax on certain passive incomes. Subsection (4) thereof, covering intercorporate dividends, states that
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> "Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax" — meaning corporate income tax. Dividends are instead subject, under Section 27(D)(1), to "a final tax at the rate of twenty percent (20%)."
>
> > "Under Section 27(D)(4) of the Tax Code, dividends received by a domestic corporation from another corporation are not subject to the corporate income tax. Such intracorporate dividends are some of the passive incomes that are subject to the 20% final tax, just like interest on bank deposits. Intracorporate dividends, being already subject to the final tax on income, no longer form part of the bank's gross income under Section 32 of the Tax Code for purposes of the corporate income tax."
>
> Thus, Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code, likewise violates Section

[19] CTA Ac No. 166, January 6, 2017.

> 27(D)(4) of the National Internal Revenue Code.
>
> Section 3A.02(p) of the Revised Makati Revenue Code is thus an ultra vires exercise of local taxing power, and cannot be given effect without violating the principle that an ordinance can neither amend nor repeal but must conform to a statute.

Clearly, it is erroneous on the part of respondents to impose LBT on petitioner's dividend and interest income, considering that the basis for the imposition thereof is Section 3A.02(p) in relation to subsection (h) of the RMRC, which violates the limit set under Section 133(a) of the 1991 LGC. Note that an ordinance, or any part thereof, which contravenes any statute is ultra vires and void.

Petitioner is entitled to the refund of LBT in the form of cash, and not tax credit.

Respondents claim that assuming petitioner is entitled to a refund, it may be granted only in the form of a tax credit.

The Court is not persuaded.

Pursuant to Section 7B.14(d) of the RMRC, a taxpayer is given the option to recover the amount it erroneously paid, in this manner:

> Section 7B.14. *Taxpayer's Remedies.* - xxx
>
> (d) *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 of **refund or credit** has been filed with the City 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 the taxpayer is entitled to a **refund or credit**.
>
> The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligations payable to the Local Government of the City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business if said calendar year.

The above provision implies that a taxpayer can recover any tax, fee or charge erroneously or illegally collected by making a written claim, either for a refund or credit. Meaning, **there are two options to choose from by the taxpayer for the recovery of erroneously paid amount**: **<u>refund or credit</u>**. However, once a tax credit is granted to the taxpayer, the same cannot be refunded in cash, but can only be applied to future taxes.

In the instant case, petitioner is claiming for the refund of LBT erroneously collected by and paid to respondents, as shown in the administrative claim for refund filed before respondent City Treasurer, in its *Complaint* before the RTC, and in the instant *Petition for Review* before this Court. In fine, there is no basis for respondents' argument that if petitioner's claim is found meritorious, it may be granted only in the form of tax credit.

Thus, having complied with all the requirements under Section 196 of the LGC, petitioner is entitled to the refund of its erroneously collected and paid LBT.

WHEREFORE, the instant *Petition for Review* is hereby **GRANTED**. The assailed Decision dated July 25, 2016 and

Resolution dated November 15, 2016 are **REVERSED** and **SET ASIDE**.

Accordingly, respondents are **ORDERED** to refund or credit in favor of petitioner Metro Pacific Holdings, Inc. the amount of ₱758,159.90, representing its erroneously or illegally collected and paid local business tax for taxable year 2010.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

LOVELL R. BAUTISTA
Associate Justice

ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice