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:** NOV 2 8 2016 11:N a.m.

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RESOLUTION

CASANOVA, *J.*:

Before Us for resolution is petitioner's Motion for Reconsideration, filed on August 25, 2016, with respondents' Comment to Petitioner's Motion for Reconsideration, filed through registered mail on October 3, 2016.

Petitioner seeks reconsideration of this Court's Decision dated August 11, 2016, denying its Petition for Review for lack of merit and prays that judgment be rendered ordering respondents to cancel the assessment against it for 0.55% local business tax for the third and fourth quarter of 2011 in the amount of ₱2,415,353.10, inclusive of surcharge and legal interest.

Petitioner gives the following grounds to support its Motion, viz:

A. The Honorable Court erred in ruling that petitioner is a non-bank financial intermediary since it is not engaged in lending money, investing, reinvesting or trading securities on a regular and recurring basis.

B. The business or purpose of petitioner as determined in its purpose clause shows that petitioner is a mere holding company which is not subject to local business tax on dividend income and interest income.

C. The mere owning or holding of shares of stock of petitioner does not *ipso facto* qualify petitioner as being engaged in the business as a non-bank financial intermediary.

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

After taking a second hard look at the arguments proffered by petitioner in its Motion, we find the same are mere rehash of the arguments in its Petition for Review and Memorandum, both filed with this Court, all of which had already been exhaustively discussed and passed upon in the Assailed Decision. Thus, we find no merit in petitioner's Motion for Reconsideration.

We maintain and reiterate our ruling in the Assailed Decision that, based on the primary purpose in its Amended Articles of Incorporation, the same is broad enough to cover most, if not all, of the principal functions of a financial intermediary. As we have stated in the Assailed Decision, viz:

> "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." a

Anent petitioner's claim that, being a mere holding company, as clearly stated/determined in the purpose clause of its Amended Articles of Incorporation, it is not subject to local business tax on dividend and interest income; and, that the mere owning or holding of shares of stock of petitioner does not ipso facto qualify it as being engaged in the business as a non-bank financial intermediary, both had, likewise, been resolved by this Court in the Assailed Decision in this wise:

> 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.
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> Again, this contention must fail.
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> 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.
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> We agree with the respondent's observation that:
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> "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*.
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> 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."[1] (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, to wit:

"xxx xxx xxx

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. xxx xxx xxx

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

Foregoing considered, and finding no reversible error in the Assailed Decision which may warrant its reversal, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

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[1] Memorandum, Docket, p. 251.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

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