**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 The Officer-in-Charge City Treasurer's Office of Davao City,** *Petitioners,* | **CTA *EB* NO. 1663** (CTA AC No. 163) |
| | Present: |
| *-versus-* | **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.* |
| **ROXAS SHARES, INC.,** *Respondent.* | Promulgated: DEC 19 2018 3:55 p.m. |

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# DECISION

**MANAHAN, J.:**

Before the Court *En Banc* is a Petition for Review,[1] pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking the reversal and setting aside of the Decision[3] and Resolution,[4] dated January 11, 2017 and April 12, 2017, respectively, of the Court's Third Division (Court in Division). The assailed Decision granted respondent Roxas Shares, Inc.'s Petition for Review thereby ordering the

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[1] *Rollo*, CTA EB No. 1663, pp. 1-16.
[2] Rule 8. Procedure in Civil Cases
Section 3. Who may appeal; period to file petition.
xxx xxx xxx
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[3] *Rollo*, pp. 17-30.
[4] *Rollo*, pp. 31-34.

refund of Php1,102,285.50 representing erroneously paid local business tax for the 1st and 2nd quarters of taxable year 2011.

## The Facts

Petitioner City of Davao, represented by the City Mayor, is a local government unit established and operating under the existing laws of the Republic of the Philippines, with its official address at City Hall, City Hall Drive, Davao City. While co-petitioner, City Treasurer of Davao City, is represented by Ms. Bella Tanjili, the newly designated Officer-in-Charge of the City Treasurer's Office after the retirement of Mr. Rodrigo S. Riola, likewise holds office at the same address as above stated.[5] Collectively, they are referred to as petitioners or *City of Davao, et al.*

Respondent Roxas Shares, Inc. (RSI) is a corporation duly organized and licensed to do business in the Republic of the Philippines, with prinicipal office at Legaspi Oil Compound Km. 9.5, Sasa, Davao city as of October 14, 2009.[6]

The Court in Division recited the relevant facts, as follows:

> Since October 2009, [RSI] is the registered owner of 52,815,194 preferred shares of stock in San Miguel Corporation ("SMC") after the Supreme Court *En Banc* approved the conversion of its 52,815,104(*sic*) common shares in SMC to the said SMC preferred shares. The dividends received were deposited in a trust account, which earned interest from money market placements.
>
> In 2010, [RSI] obtained the amount of Php400,831,039.58 as dividends from its SMC preferred shares and interest on its money market placements, computed as follows:
>
> xxx xxx xxx
>
> For the first half of 2011, [petitioner] City of Davao, through its City Treasurer and co-[petitioner] Riola, collected from [RSI] LBT at the rate of 0.55% for the first and second quarters of 2011 on the dividends arising from the SMC preferred shares and interest on the money

[5] *Rollo*, Petition for Review, p. 2.
[6] *Rollo*, Decision dated January 11, 2017, p. 18.

> market placements received by [RSI], in the aggregate amount of Php1,102,285.50.
>
> On September 13, 2012, [RSI] filed with [petitioner] City Treasurer Riola its written administrative claim for refund or credit of erroneously and illegally collected LBT, which has not been acted upon and resolved by the latter.
>
> On January 17, 2013, [RSI] filed with the Regional Trial Court of Davao City ("RTC") a Petition for Refund or Credit Under *Section 156 of Republic Act ("RA") No. 7160.*
>
> On June 22, 2015, the RTC promulgated a Decision, the dispositive portion thereof reads:
>
>> FOR REASONS STATED, the instant "Petition for Tax refund or Credit under Section 156, R.A. [No.] 7160" filed by petitioner is hereby DENIED and or DISMISSED.
>>
>> xxx xxx xxx
>
> On August 4, 2015, [RSI] filed its Motion for Reconsideration via registered mail; which was denied by the RTC in an Order dated September 11, 2015.[7]

RSI filed its appeal with the Court of Tax Appeals on November 9, 2015.[8]

On January 11, 2017, the Court in Division rendered the assailed Decision reversing the RTC and ruling in favor of RSI. The dispositive portion states:

> **WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **GRANTED**. The Decision dated June 22, 2015 and the Order dated September 11, 2015 by the Regional Trial Court, Branch 16, Davao City, are hereby **REVERSED** and **SET ASIDE**. Accordingly, respondent Treasurer of the City of Davao is hereby **ORDERED TO REFUND** to petitioner, Roxas Shares, Inc., the total amount of **ONE MILLION ONE HUNDRED TWO THOUSAND TWO HUNDRED EIGHTY-FIVE AND 50/100 PESOS (PHP1,102,285.50)**, representing its

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[7] *Rollo*, Decision dated January 11, 2017, pp. 19-20.
[8] *Rollo*, Decision dated January 11, 2017, p. 20.

> erroneously paid local business taxes for the first and second quarters of taxable year 2011.
>
> **SO ORDERED.**[9]

*City of Davao, et al.*'s Motion for Reconsideration, filed by registered mail on February 15, 2017, was denied in the Court in Division's Resolution[10] dated April 12, 2017.

On June 6, 2017, the Court received the subject Petition for Review, filed by *City of Davao, et al.* through registered mail on May 24, 2017. *City of Davao, et al.* states that the City Treasurer imposed the local business tax against RSI's receipt of dividends and interest income on money placements from San Miguel Corporation because the City Treasurer deems RSI as a "bank and other financial institution."[11]

RSI filed its Comment (On Petition for Review dated 24 May 2017)[12] through registered mail on October 9, 2017, and which was received by the Court on October 18, 2017.

On November 16, 2017, the Court *En Banc* required the parties to file their respective memoranda.[13] Both parties filed their respective memoranda through registered mail. Thus, RSI's Memorandum[14] was received on January 19, 2018, while *City of Davao, et al.*'s Memorandum[15] was received on January 23, 2018.

Considering the submission by both parties of their respective Memoranda, the case was deemed submitted for decision on February 21, 2018.[16]

## Issue

> Whether or not respondent is a "non-bank financial intermediary", falling under the category of a "bank and other financial institutions", so as to be subject to local business tax imposition, as provided under

[9] *Rollo*, Decision dated January 11, 2017, p. 29.
[10] *Rollo*, pp. 31-34.
[11] *Rollo*, Petition for Review, p. 3.
[12] *Rollo*, pp. 78-110.
[13] *Rollo*, pp. 114-115.
[14] *Rollo*, pp. 116-151.
[15] *Rollo*, pp. 153-167.
[16] *Rollo*, Resolution dated February 21, 2018, pp. 170-171.

Section 143(f) of RA 7160, otherwise known as the "Local Government Code of 1991."[17]

**Petitioners' Arguments**

Petitioners argue that RSI is deemed a "bank and other other financial institution", specifically as a "non-bank financial intermediary" by virtue of its investment and money placements in San Miguel Corporation (SMC). Petitioners state that the business purpose of RSI as stated in its amended Articles of Incorporation (AOI) is wittingly and unwittingly broad enough to catch all the descriptive function of non-bank financial intermediaries (NBFI) as provided under the Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP), and that RSI's act of investing in equity securities or holding assets consisting of SMC shares of stocks, and the placement of funds in the same company on a regular and continuing basis are the very acts that characterize an NBFI. Petitioners also state that the clause that "it shall not act as investment company or securities broker or dealer" as contained in RSI's amended AOI is simply an evasive proviso purposely written in order to evade compliance with existing regulations for NBFIs.

Petitioners further argue that even assuming that RSI's funds partake the nature of public funds, the same does not exempt RSI from the payment of LBT on its dividends and interest income.

**Respondent's Counter-Arguments**

Respondent argues it is entitled to a refund or credit of the 0.55% LBT collected for the 1st and 2nd quarters of taxable year 2011. Respondent states that it is illegal for *City of Davao, et al.* to collect LBT on dividends and interest income earned by RSI considering that RSI is not a bank or a financial institution. RSI reiterates that as a holding company, its dividend and interest income are not subject to LBT. Finally, respondent argues that RSI, its SMC shares of stock, and income derived therefrom are national government property exempt from LBT.

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[17] *Rollo*, Petition for Review, p. 5.

## Ruling of the Court

The petition lacks merit.

**The Petition for Review was timely filed.**

The Court in Division issued the assailed Resolution denying the *City of Davao, et al.*'s Motion for Reconsideration on April 12, 2017, which was received by petitioners on May 9, 2017.

Pursuant to Rule 4, Section 2(a)(2)[18], in relation to Rule 8, Section 3(b) of the RRCTA, the *City of Davao et al.* had fifteen (15) days or until May 24, 2017 within which to file their petition for review.

On May 24, 2017, petitioners filed the instant petition through registered mail, which was received by this Court on June 6, 2017. Hence, the Petition for Review was timely filed.

**There is no compelling reason to reverse or modify the Court in Division's Decision and Resolution.**

The Court *En Banc* finds no reason to reverse the Court in Division's Decision ordering the refund of Php1,102,285.50 representing erroneously paid local business tax for the first and second quarters of taxable year 2011.

*Roxas Shares, Inc. is a holding company*

The *City of Davao, et al.* taxed respondent's dividend and interest income on the ground that respondent is classified as

[18] Rule 4 Jurisdiction of the Court
Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
xxx xxx xxx
(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; xxx

a "bank and other financial institution", or specifically as an NBFI, citing Section 143(f) of the LGC,[19] which provides:

> Sec. 143. Tax on Business. – The municipality may impose taxes on the following businesses:
>
> 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.

Thus, it is relevant to define banks, other financial institutions, and NBFIs under the applicable laws and regulations.

The term "banks and other financial institutions" is defined under Section 131(e) of the LGC, as follows:

> Section 131. Definition of Terms. – When used in this Title, the term:
>
> xxx xxx xxx
>
> (e) "Banks and other financial institutions" include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;

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[19] Read in relation to Article III on Cities, specifically Sec. 151 of the same Code, which provides:

Section 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 the 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.

The term "non-bank financial intermediaries" is defined in Section 22(W) of the 1997 National Internal Revenue Code, as amended (NIRC), as follows:

> Sec. 22. Definitions. – When used in this Title:
>
> xxx xxx xxx
>
> (W) The term 'non-bank financial intermediary' means a financial intermediary, as defined in Section 2(D)(c) of Republic Act No. 337, as amended, otherwise known as the General Banking Act, authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities.

Revenue Regulations No. (RR) 09-04[20] further defined an NBFI, as follows:

> Section 2. Definition of Terms. – For purposes of these Regulations, the terms enumerated hereunder shall have the following meaning:
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> xxx xxx xxx
>
> 2.3 *Non-bank Financial Intermediaries.* – shall refer to persons or entities whose *principal functions* include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally.

[20] Implementing Certain Provisions of Republic Act No. 9238, Re-Imposing the Gross Receipts Tax on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions and other Non-Bank Financial Intermediaries beginning January 1, 2004, June 21, 2004.

Finally, the BSP Manual of Regulations for Non-Bank Financial Institutions (BSP Manual) provides the following definition of a financial intermediary:

> Section 4101Q.1. Financial Intermediaries. – Financial intermediaries shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.
>
> Principal shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.
>
> Functions shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.
>
> To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:
>
> a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;
>
> b. Use principally the funds received for acquiring various types of debt or equity securities;
>
> c. Borrow against, or lend on, or buy or sell debt or equity securities;
>
> d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;

e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

Non-banking financial intermediaries shall include the following:

(1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.

(2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term financing, finance, investment, lending and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.

(3) A person or entity performing any of the functions in Items a to e of this Subsection.

From the foregoing definitions, an NBFI must meet the following requirements:

1) The person or entity is authorized by the BSP to perform quasi-banking functions;[21]

2) The principal functions of said person or entity include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others;[22] and

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[21] Section 131(e) of the LGC, in relation to Section 22(W) of the NIRC.
[22] Section 4101Q.1 of the BSP Manual of Regulations for Non-Bank Financial Institutions.

3) The person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis, to wit:

   a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;

   b. Use principally the funds received for acquiring various types of debt or equity securities;

   c. Borrow against, or lend on, or buy or sell debt or equity securities;

   d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers; and

   e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

In the instant case, petitioners failed to present any credible and convincing proof that respondent RSI is an NBFI or has engaged in the activities of a financial institution or intermediary.

First, there is no indication that respondent was authorized by the BSP to perform quasi-banking activities as a non-bank financial intermediary.

Second, there is no indication that respondent is a financial intermediary or that it has actually engaged in the activities enumerated in the BSP Manual. Neither was it shown that respondent has held itself out nor advertised itself as an NBFI or as a lending, investing, or financing company.

Third, while respondent's primary purpose, as stated in its Amended AOI, may involve one of the activities enumerated in the BSP Manual, there was no proof that respondent performed these activities as its principal function and on a regular and recurring basis.

Fourth, an examination of respondent's primary purpose in its Amended AOI shows that respondent fits the definition of a holding company, rather than an NBFI. As quoted by the Court in Division, respondent's primary purpose states:

> To purchase, subscribe for, or otherwise acquire and own, hold, 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, bond 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 obligations, 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; and <u>to do every act and thing covered generally by the denomination "holding corporation", and especially to direct the operations of other corporations through the ownership of stock therein</u>, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.[23]

Respondent's primary purpose reflects its function as a "holding company", in consonance with the definition by the Securities and Exchange Commission (SEC), as follows:

> 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." Its essential feature is that it holds stock.</u> The term "holding company" is equivalent to a parent corporation, <u>having such an</u>

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[23] Docket, CTA AC Case No. 163, RTC Decision dated June 22, 2015, p. 39.

> interest in another corporation, or power of control, that it may elect its directors and influence 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.[24]

Finally, the Supreme Court *En Banc* declared respondent as one of the fourteen holding companies funded by the coconut levy fund in *Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines* (*COCOFED case*),[25] which were formed or organized solely for the purpose of holding the San Miguel shares.

Respondent's status as a holding company having been established by the foregoing discussion, it is clear that respondent cannot be deemed included in "banks and other financial institutions" for the purpose of imposing the local business taxes thereon. This Court *En Banc* in *Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis,*[26] explained:

> Section 131(e) of the LGC defines "banks and other financial institutions" to include "non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder." This enumeration appears to be exclusive of other entities. Nowhere in the entirety of Section 131 is a holding company mentioned.

As such, respondent cannot be made liable for local business tax imposed on "banks and other financial institutions" under Section 143(f) of the 1991 LGC. Thus, the local business tax assessment for the 1st and 2nd quarters of taxable year 2011 should be cancelled, and respondent's claim for refund of the LBT paid under protest should be granted.

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[24] SEC – Office of the General Counsel (OGC) Opinion NO. 15-15 dated November 3, 2015, addressed to Waterfront Philippines, Inc., citing SEC-OGC Opinion No. 14-32 dated November 10, 2014 and SEC-OGC Opinion No. 11-15 dated February 10, 2011.
[25] G.R. Nos. 177857-58 & 178193, January 24, 2012.
[26] CTA EB No. 1093, June 17, 2015.

*Roxas Shares, Inc. was funded by public funds/assets and is therefore owned by the government*

The Court in Division also cited the COCOFED case,[27] wherein the Supreme Court declared that respondent, among others, and the San Miguel shares it held are owned by the government. The Supreme Court explained as follows:

> **V**
> **The CIIF Companies and the CIIF Block of SMC shares are public funds/assets**
>
> 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. (*Underscoring supplied)*
>
> In this case, the 6 CIIF Oil Mills were acquired by 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 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 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 P1.656 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

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

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. (*Underscoring supplied*)

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 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.

xxx xxx xxx

WHEREFORE, the petitions in G.R. Nos. 177857-58 and 178793 are hereby DENIED. xxx

xxx xxx xxx

The Partial Summary Judgment in Civil Case No. 0033-F dated May 7, 2004, is hereby MODIFIED, and shall read as follows:

> WHEREFORE, the Motion for Execution of Partial summary judgment (re: CIIF Block of SMC Shares of Stock) dated August 8, 2005 of the plaintiff is hereby denied for lack of merit. However, this Court orders the severance of this particular claim of Plaintiff. The Partial Summary Judgment dated May 7, 2004 is now considered a separate final and

appealable judgment with respect to the said CIIF Block of SMC shares of stock.

The Partial Summary Judgment rendered on May 7, 2004 is modified by deleting the last paragraph of the dispositive portion, which will now read, as follows:

> WHEREFORE, in view of the foregoing, we hold that:
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> The Motion for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed, et al) filed by Plaintiff is hereby GRANTED. Accordingly, the CIIF Companies, namely:
>
> xxx xxx xxx
>
> As well as the 14 Holding Companies, namely:
>
> 1. Soriano Shares, Inc.;
> 2. ACS Investors, Inc.;
> 3. Roxas Shares, Inc.
>
> xxx (*Underscoring supplied)*
>
> AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALING 33,133,266 SHARES AS OF 1983 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID AND ISSUED THEREON AS WELL AS ANY INCREMENTS THERETO ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT TO BE USED ONLY FOR THE BENEFIT OF ALL COCONUT FARMERS AND FOR THE DEVELOPMENT OF THE COCONUT INDUSTRY, AND ORDERED RECONVEYED TO THE GOVERNMENT.
>
> xxx xxx xxx

SO ORDERED.

The exercise of the taxing power of the local government units is subject to the limitations enumerated in Section 133 of the LGC, which includes having no power to impose any tax, fee or charge on the National Government:

> SECTION 133. *Common Limitations on the Taxing Power 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:
>
> xxx xxx xxx
>
> (o) Taxes, fees or charges, of any kind on the National Government, its agencies and instrumentalities, and local government units.

Since the subject San Miguel shares owned by respondent, and respondent itself, are owned by the government, it follows that the dividends and any income therefrom are also owned by the government. Stated otherwise, respondent's dividend and interest income from its SMC shares belong to the government, and is beyond the taxing power of the petitioners *City of Davao, et al.* Any local tax imposed on respondent is imposed on the national government. To insist taxing the respondent would clearly be in contravention of Section 133(o) of the LGC.

**WHEREFORE**, the instant Petition for Review is **DISMISSED** for lack of merit.

**SO ORDERED.**

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

(With Dissenting Opinion)
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

**ROMAN G. DEL ROSARIO**
Presiding Justice

**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 The Officer-in-Charge City Treasurer's Office of Davao City,**
Petitioners,

- *versus* –

**ROXAS SHARES, INC.,**
Respondent.

**CTA EB No. 1663**
(CTA AC No. 163)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan *JJ.*

Promulgated:

DEC 19 2018 3:55 p.m.

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# DISSENTING OPINION

**CASTAÑEDA, JR., *J.*:**

With due respect, I dissent to the conclusion reached by the *ponencia* that the instant Petition for Review should be denied primarily on the ground that petitioner is not a non-bank financial intermediary (NBFI).

Section 131(e) of the LGC of 1991 states the scope of the term "Banks and other financial institutions", as follows:

> "*SEC. 131. Definition of Terms.* — When used in this Title, the term:
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> xxx xxx xxx

> (e) '*Banks and other financial institutions*' include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;"

On the other hand, under Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, as amended, an NBFI is as follows:

> "(W) The term 'non-bank financial intermediary' means a financial intermediary, as defined in Section 2(D)(c) of Republic Act No. 337, as amended, otherwise known as the General Banking Act, authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities."

In relation thereto, Section 2(D)(c) of Republic Act (RA) No. 337, as amended by Presidential Decree (PD) No. 71, reads as follows:

> "(c) 'Financial Intermediaries' shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others;"

Further, Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions, as follows, viz.:

> "**§ 4101Q.1.** ***Financial intermediaries.*** — Financial intermediaries shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.
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> Principal shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.
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> Functions shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity

may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.

To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:

> a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;
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> b. Use principally the funds received for acquiring various types of debt or equity securities;
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> c. Borrow against, or lend on, or buy or sell debt or equity securities;
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> d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;
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> e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

Non-banking financial intermediaries shall include the following:

> (1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.
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> (2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term financing, finance, investment, lending and/or any word/phrase of similar import which connotes financial intermediation, or an entity

which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.

(3) A person or entity performing any of the functions enumerated in Items a to e of this Subsection."

From the foregoing, the following are the elements of an NBFI:

1) The person or entity is authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities;

2) The principal functions of the said person or entity include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others; and

3) The person or entity must perform any of the following functions on a regular and recurring, not on an isolated, basis:

a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;

b. Use principally the funds received for acquiring various types of debt or equity securities;

c. Borrow against, or lend on, or buy or sell debt or equity securities;

d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;

e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

Meanwhile, emphasis must be given on the second (2nd) and third (3rd) elements of an NBFI, *i.e.*, investment and placement of funds and performance of the above-enumerated functions under the third (3rd) element on a regular and recurring, not on an isolated, basis. This is premised on the nature of business tax, which is imposed on the privilege of an entity to engage in business within a local government unit.

**Petitioner failed to present proof regarding the authorization of respondent to act as an NBFI**

A perusal of the records shows that there is no evidence showing that respondent was authorized by the BSP to engage in NBFI activities.

However, as discussed earlier, respondent's authorization or lack thereof, do not affect whether respondent may be the subject of local business taxation. What is controlling is respondent's principal activities, *i.e.*, whether it principally performs NBFI activities, in determining whether such privilege to engage in said activities is subject to local business tax. At any rate, whether respondent may engage in NBFI activities, with or without authority from the BSP, is an issue outside of this Court's jurisdiction and should be discussed in the proper forum.

**Respondent's principal functions are solely to invest and make money market placements *vis-à-vis* its SMC shares**

**Respondent received dividends and made money market placements on a regular and recurring, and not on an isolated basis**

Based on records, the lower court found that respondent's business operations only revolve around its dividends and money market placements. Thus:

> "To stress, the income of the Petitioner Corporation comes only from two sources, to wit:
>
> 1. ***Dividends from RSI's SMC Shares; and***
> 2. ***Interest Income from RSI's Money Market Placements***

> In short, these ***dividends and interests*** are not considered incidental to its business quest, but are the **principal** xxx incomes of Petitioner's Corporation in the regular course of its business in line with the Primary Purpose of its Amended Articles of Incorporation."[1]

However, the subject decision did not consider the above-findings of the lower court. Further scrutiny of the records shows that respondent did not question the foregoing findings of the lower court during the course of the trial. Evidently, these findings of fact by the lower court, without any opposition on the part of respondent, should be accorded respect.

Thus, it has been sufficiently established that respondent's income emanates only from dividends and money market placements, which activities fall within the purview of an NBFI. In other words, it was proven during the proceedings below that respondent has no other activity or business that generates income, except for the dividends it regularly receives and for its money market placements. Therefore, these exclusive activities of respondent are NBFI activities which may properly be subjected to local business tax.

**The tax is levied upon the privilege of an entity to engage in NBFI activities and not upon the shares or sources of gross receipts which operate as tax bases**

Section 143 of the LGC of 1991 pertinently states:

> "**Section 143. Tax on Business.** — The municipality[2] may impose taxes **on the following businesses**:
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> (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."*(Emphasis supplied)*

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[1] Court in Division Docket, pp. 40-41.

[2] The city, may levy the taxes, fees, and charges which the province or municipality may impose, in accordance with Sec. 151, LGC of 1991.

Section 143(f) of the LGC of 1991 imposes local business tax **on banks and other financial institutions**, *i.e.*, NBFIs. In other words, while the tax bases of Section 143(f) consist of interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, and insurance premium, the tax is imposed directly on the privilege enjoyed by banks and other financial institutions. It directly imposes business tax on the privilege being enjoyed by the entity and not on the sources of gross receipts.

On this score, the subject Decision held that respondent is one of the Coconut Industry Investment Fund holding companies. Therefore, respondent, including its SMC shares, are government-owned and excluded from petitioner's taxing powers.

However, in the instant case, while the SMC Shares had already been adjudged by the Supreme Court as belonging to the government, it is not directly the said shares, but the privilege enjoyed by respondent to engage in NBFI activities, that is subject to local business tax. Simply put, the dividends and interest income from these shares are mere tax bases under Section 143(f) of the LGC of 1991. Ultimately, however, it is respondent's privilege against whom the local business tax is levied upon.

Further, if the government owns respondent by reason of primarily dealing with San Miguel Shares, then this clearly supports the conclusion of the lower court that respondent's income comes only from dividends and money market placement *vis-à-vis* its SMC Shares. Thus, respondent's privilege to engage in NBFI activities should be subjected to local business tax.

To conclude, the crucial element to determine whether an entity is engaged in NBFI activities is its principal activity. To clarify, not all entities who engage in stock investments and money market placements can be categorized as NBFIs for purposes of local business taxation. If an entity is not primarily engaged in NBFI activities as it principally performs its core business operations, such entity is not an NBFI. However, when an entity solely receives income from its NBFI activities, or when there is a showing that it performs no other business activity other than NBFI activities, then said entity should be categorized as an NBFI for purposes of local business taxation.

Considering the foregoing, I **VOTE** to **GRANT** the instant Petition for Review.

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