REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

VALHALLA PROPERTIES LIMITED, INC., Petitioner,	CTA EB No. 1706 (CTA AC No. 154)
	Present:
- versus -	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR. UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, *JJ.*
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City, Respondents.	Promulgated: MAY 20 2019 10:25 AM

x- x

DECISION

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

This Petition for Review dated September 8, 2017, assails the Decision dated March 2, 2017 and Resolution dated August 1, 2017, both rendered by the Court in Division.

In the assailed Decision, the Court in Division denied the Petition for Review filed by petitioner Valhalla Properties Limited, Inc., ruling that it is a non-bank financial intermediary whose income from dividends on its San Miguel Corporation (SMC) Preferred Shares and interests on its money market placements, may be subjected to local business tax (LBT) under Section 143(f) of Republic Act (R.A.) No. 7160, as amended.

The ruling effectively affirmed the Regional Trial Court's (RTC's) denial of petitioner's judicial claim for refund of the 0.55% LBTs collected on the dividends earned from its SMC Preferred Shares and interests on its money market placements for the first and second quarters of the year 2011.

First, let us unfurl the facts of the instant case which remain undisputed to date:

Petitioner Valhalla Properties Limited, Inc. is a domestic corporation, with principal office located at Legaspi Oil Compound Km. 9.5, Sasa, Davao City. Per its Articles of Incorporation, it was organized with the primary purpose as follows:

> 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 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 therefore 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; and 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, 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.

On the other hand, respondent City of Davao (City) is a local government unit (LGU) created by law, while respondent Rodrigo S. Riola is its former City Treasurer, both may be served with summons and other court processes at the City Hall Building, San Pedro Street, Davao City.

Petitioner is the registered owner of 31,411,848 SMC preferred shares of stock from October of 2009, by virtue of the approval by the Supreme Court of the conversion of petitioner's 31,411,848 common shares of stocks in SMC to Preferred Shares. The dividends received by petitioner were deposited in a trust account which earned interest from money market placements.

In 2010, petitioner obtained the amount of P238,411,869.28 from dividends on its SMC Preferred Shares and interests on its money market placements, computed as follows:

NATURE OF INCOME	AMOUNT
Dividends	₱235,588,860.00
Interest	2,823,009.28
TOTAL	₱238,411,869.28

Respondents levied and collected from petitioner 0.55% LBTs for the first and second quarters of 2011, based on the gross receipts derived by petitioner from dividends and interests for the year 2010 in the amount of P655,632.50. Petitioner paid the said amount under protest on January 18, 2011 and April 25, 2011.

On September 13, 2012, petitioner filed with respondent City Treasurer a corresponding written claim for refund of the amount it paid under protest.

Since respondent City Treasurer failed to act on the said claim for refund, petitioner elevated the matter to the RTC of Davao City on January 17, 2013.

In the Decision dated June 22, 2015, the RTC denied petitioner's claim for refund in the following fashion:

> As such, being categorized as a Financial Intermediary, petitioner's principal income falls under the coverage of paragraph (f), Section 143 of RA No. 7160 of the Local Government Code of 1991, to wit:
>
> > *SECTION 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 for sale of property, insurance premium.*
>
> FOR REASONS STATED, the instant 'Petition for Tax Refund or Credit Under Section 156, R.A. 7160' filed by the Petitioner is hereby DENIED and/or DISMISSED.
>
> SO ORDERED.

Petitioner filed a Motion for Reconsideration[1] of the adverse Decision but the same was denied in the similarly impugned Order of September 11, 2015.

On November 9, 2015, petitioner appealed the foregoing Decision and Order via a Petition for Review before the Court in Division.

On March 2, 2017, the Court in Division promulgated the assailed Decision, the dispositive portion of which reads as follows:

---

[1] Filed on August 20, 2015.

> WHEREFORE, premises considered, the present Petition for Review is DENIED for lack of merit.
>
> SO ORDERED.

In denying the Petition, the Court in Division sustained the finding of the RTC that petitioner is a non-bank financial intermediary whose income from dividends on its SMC Preferred Shares and interests on its money market placements, is subject to LBT under Section 143(f) of Republic Act (R.A.) No. 7160, as amended.

In the Resolution dated August 1, 2017, the Court in Division denied petitioner's Motion for Reconsideration for lack of merit, hence, the present Petition for Review before the Court *En Banc*.

Petitioner points out that based on the dividend exclusion principle prevailing in this jurisdiction which was upheld by no less than the Supreme Court, its income from dividends on its SMC Preferred Shares and interests on its money market placements is not subject to LBT.

The said principle provides that intercompany dividends, having already been taxed in the hands of the issuing corporation in the form of annual tax on income, should not be taxed anew in the hands of the corporation receiving the said dividends.

Allegedly, the only exception to the dividend exclusion principle is when LBT is levied on banks and other financial institutions, pursuant to Section 143(f) of the Local Government Code (LGC) of 1991.

Petitioner however maintains that it is not a bank or other financial institution as defined under Section 131 of the LGC, hence, LBT should not be imposed on its income from dividends on its SMC Preferred Shares and interests on its money market placements.

Further, as provided in both Revenue Regulations (RR) No. 9-2004, and the Manual of Regulations for Non-Bank Financial Institutions issued by the BSP, petitioner cannot be deemed a bank or a financial institution or non-bank financial intermediary.

The said BSP Manual defines a bank or a financial institution or non-bank financial intermediary as a person or entity who is engaged in lending money, investing, reinvesting or trading securities and/or foreign exchange on a regular and recurring, and not on an isolated basis. There is no evidence on record showing that petitioner is engaged in the functions of a financial institution, on a regular and recurring basis. The Court in Division merely stated that petitioner's Articles of Incorporation is broad enough to include the functions of a financial institution, which petitioner is not.

Further, the fact that petitioner is the owner of the subject shares who received income therefrom does not constitute doing business as defined under Section 131 of the LGC. Petitioner acquired its SMC shares only once after its incorporation and has not bought any shares of stocks or invested in any other corporation other than in SMC. In other words, its investment is an isolated transaction, and does not fall under the definition of a bank or a financial institution or non-bank financial intermediary, which invests funds on a regular or recurring basis.

Also under Section 4 of R.A. No. 337, as amended by P.D. No. 1828, otherwise known as the General Banking Act, respondent is not a non-bank financial intermediary since it has not been declared as such by the Monetary Board, as required under the said law.

It is therefore erroneous and illegal for respondents to collect 0.55% LBT on the dividends and interest earned on its SMC shares as it is not a bank or a financial institution, upon which respondents may impose LBT pursuant to Section 143 of the LGC.

The argument that petitioner's Articles of Incorporation is broad to cover the principal functions of a financial intermediary and can lead to the conclusion that it is a non-bank financial intermediary, is fallacious. Without any other evidence to support such conclusion, the same is without basis in fact and in law. Significantly, petitioner's Articles of Incorporation expressly prohibits it from acting as an investment company or a securities broker and/or dealer which are deemed non-bank financial intermediaries.

Further, petitioner has been declared as a holding company by no less than the Supreme Court in the case of *COCOFED v. Republic*[2], thus, it is not subject to LBT. Petitioner likewise invokes the ruling in *Michigan Holdings, Inc. vs. The City Treasurer of Makati,*[3] where this Court held that a holding company is not among the entities enumerated in Section 131(e) of the LGC which are considered as banks and other financial institutions.

Finally, the subject income partakes the nature of public funds, pursuant to the ruling of the Final Arbiter in *COCOFED v. Republic*[4], thus, business tax cannot be imposed on it. Section 133(o) of the LGC expressly prohibits a local government unit such as respondent City from imposing "Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units." Since the said shares and income derived therefrom are owned by the government, they cannot be subject to LBT.

By way of comment, respondents argue that by virtue of its stock investments in SMC, and its money market placements, petitioner is deemed a non-bank financial intermediary. For respondents, petitioner is an entity that is expressly included in the definition of the term banks and other financial institution. Besides, the business purpose of petitioner as contained in its Articles of Incorporation is so broad that it includes all of the descriptive functions of a non-bank financial intermediary as provided under Section

---

[2] G.R. Nos.177857-58, January 24, 2012.
[3] CTA EB No. 1093 (CTA AC Case NO. 99), June 17, 2015.
[4] G.R. Nos.177857-58, January 24, 2012.

4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the BSP.

The proviso in petitioner's Articles of Incorporation stating that it shall not act as an investment company or securities broker or dealer, is of no moment and will not alter the fact that it is engaged in business as a non-bank financial intermediary.

Even assuming that petitioner's income partakes the nature of public funds following the Supreme Court's ruling in *Philippine Coconut Producers Federation, Inc. (COCOFED) vs. Republic of the Philippines* [5], it does not exempt petitioner from the payment of LBT tax on its dividends and interest income pursuant to Section 143(f) of the LGC. The COCOFED case merely declared the nature of such fund but did not delve on its taxability. Moreover, the alleged public funds are still in the hands of petitioner, a private corporation, therefore, Section 133(o) of the LGC of 1991 exempting the national government, its agencies and instrumentalities, and local government units from being subject to local taxes, will not apply.

Besides, tax exemptions are construed against the claimant, and absent an express provision of law exempting petitioner's dividends and interest income from LBT, the tax refund in this case should be rejected.

Petitioner's argument that it is a holding company thus, exempt from LBT is misplaced. There is nothing in the LGC which exempts holding companies from LBT. Even assuming that petitioner is indeed, a holding company, such is inconsequential, the issue being its actual business activity, i.e. investment in shares of stocks in SMC and money market placements, which categorizes it as a non-bank financial intermediary subject to LBT.

Likewise, the ground that petitioner was not authorized by the BSP or by the Monetary Board to act as a non-bank financial intermediary, does not necessarily mean that it is not acting as such and performing quasi-banking functions.

---

[5] G.R. Nos. 177857-58 and 178193, January 24, 2012.

For respondent, what is material is the fact that petitioner is engaged primarily and regularly in investment of shares of stock of SMC and money market placements, which makes it a non-bank financial intermediary.

Finally, petitioner is presumed to have been organized to engage in business through stock investments and money placements for the purpose of realizing profit, making it a non-bank financial intermediary subject to LBT on its gross receipts pursuant to Section 143(f) of the LGC.

The instant Petition for Review was submitted for decision on May 21, 2018.[6]

THE RULING OF THE COURT

The primordial issue in this case is whether petitioner may be legally held liable for LBT on its income from dividends on its SMC Preferred Shares and interests on its money market placements, pursuant to Section 143(f) of Republic Act (R.A.) No. 7160, as amended, in the amount of P655,632.50 for the first and second quarters of 2011.

Note that the power of local government units to impose taxes within its territorial jurisdiction is derived from the Constitution itself, which recognizes the power of the LGUs, such as respondent City, to create their own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy.[7]

However, while respondent City has the power to tax, such power is not absolute but subject to limitations. The Supreme Court already had occasion to rule on the nature of the power to tax of LGUs, as follows:

> The power to tax "is an attribute of sovereignty," and as such, inherent in the State. Such, however, is not true for provinces, cities, municipalities and barangays as they

---

[6] Resolution dated May 21, 2018, docket pp. 187-188.

[7] Section 5, Article X, 1987 Philippine Constitution.

are not the sovereign; rather, they are mere "territorial and political subdivisions of the Republic of the Philippines". x x x Therefore, the power of a province to tax is limited to the extent that such power is delegated to it either by the Constitution or by statute. Section 5, Article X of the 1987 Constitution is clear on this point:

> Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges <u>subject to such guidelines and limitations as the Congress may provide</u>, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. [Underscoring supplied]

Per Section 5, Article X of the 1987 Constitution, "the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges." Nevertheless, such authority is "subject to such guidelines and limitations as the Congress may provide".

In conformity with Section 3, Article X of the 1987 Constitution, Congress enacted Republic Act No. 7160, otherwise known as the Local Government Code of 1991.[8]

The foregoing tenet was impregnably echoed in a more recent case, as follows:

At the outset, it must be emphasized that although the power to tax is inherent in the State, the same is not true for LGUs because although the mandate to impose taxes granted to LGUs is categorical and long established in the 1987 Philippine Constitution, the same is not all encompassing as it is subject to limitations as explicitly stated in Section 5, Article X of the 1987 Constitution, *viz.*:

> SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes,

---

[8] *Pelizloy Realty Corporation, Represented herein by its President, Gregory K. Loy vs. The Province of Benguet*, G.R. No. 183137, April 10, 2013

> fees, and charges shall accrue exclusively to the local governments.[9]

Evidently, the power of respondent City to tax is subject to the limitations provided in the Constitution and such other laws as the Congress may provide, which in this particular case is R.A. No. 7160, otherwise known as the Local Government Code (LGC), as amended.

Thus, the exercise of the taxing power of LGUs is subject to the limitations enumerated in the LGC of 1991,[10] particularly under Section 133(o)[11] thereof which prohibits LGUs from imposing taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and LGUs.

The pronouncement of the Supreme Court that the SMC shares held by petitioner are owned by the government cannot also be ignored. It declared, *viz.*:

> **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.**
>
> 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 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

---

[9] *Batangas City, et al. vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 187631, July 8, 2015.

[10] *Philippine Fisheries Development Authority (PFDA) vs. Central Board of Assessment Appeals, et al.*, G.R. No. 178030, December 15, 2010.

[11] 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: xxx

(O) Taxes, Fees Or Charges Of Any Kind On The National Government, Its Agencies And Instrumentalities, And Local Government Units.

w/

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 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 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.** [12]

Since the subject shares are owned by the government, necessarily the dividends and any income derived therefrom are owned by the government as well, regardless of who is in possession thereof. The declaration by the Highest Court

[12] *Philippine Coconut Producers Federation, Inc. (COCOFED), Et Al. Vs. Republic Of The Philippines*, G.R. Nos. 177857-58 and 178193, January 24, 2012.

w/

of the Land is categorical and clear, and any interpretation is unnecessary.

That being the case, the subject shares and the dividends derived therefrom do not fall within the taxing power of respondent City pursuant to Section 133(o) of the LGC of 1991. *A fortiori*, the imposition of LBTs on the dividends arising from petitioner's SMC shares and interests on money market placements for the first and second quarters of 2011 is erroneous and illegal.

There is no question that under Section 143(f) of the LGC, LGUs are granted the power to impose taxes on "banks and other financial institutions," to wit:

> 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. *(Emphases supplied)*

Corollary thereto, Section 131(e) of the LGC defines the term "banks and other financial institutions", as used under Title One, Book Two of the LGC, as follows:

> SEC. 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**; *(Emphasis supplied)*

Clearly, respondent City can impose LBT only on banks and other financial institutions pursuant to Section 143(f) of the LGC of 1991, which includes non-bank financial intermediaries, based on Section 131(e) of the LGC.

However, there is nothing in the record that even suggests that petitioner is a financial intermediary or has engaged in the activities of a financial institution/intermediary.

While Section 131(e) of the LGC of 1991 includes "non-bank financial intermediaries" in the term "banks and other financial institutions, it does not define the term "non-bank financial intermediaries" but resort to other applicable laws, or rules and regulations for such definition.

In this regard, Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, as amended, defines the term "non-bank financial intermediary", 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.** *(Emphasis supplied)*

Significantly, Section 4 of R.A. No. 337,[13] as amended by P.D. No. 1828,[14] provides that the authority to determine whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation, is vested on the Monetary Board subject to judicial review, thus:

> Sec. 4. The determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation shall be decided by the Monetary Board subject to judicial review. For the purpose of resolving such issue; the Monetary Board may, through appropriate supervising

---

[13] Otherwise known as the General Banking Act, as amended.

[14] Presidential Decree No. 1828, "Amending Further Republic Act No. 337, As Amended, Otherwise Known As The "General Banking Act."

w/

> department of the Central Bank, examine, inspect or investigate the books and records of such person or entity. The department head and the examiners of said appropriate supervising department are hereby authorized to administer oaths to any such person or director, officer or employee of any such entity and to compel the presentation or production of all books, documents, papers or records necessary in their judgment to ascertain the facts relative to the true functions and operations of such person or entity. Failure or refusal to comply with the required presentation or production of such books, documents, papers or records shall subject the persons responsible therefor to the penal sanctions provided under Section 34 of R.A. No. 265, as amended. Persons or entities found by the Monetary Board to be performing banking or quasi-banking functions without the required prior authorization of the Monetary Board may, in addition to the proceedings provided under Section 34 of Republic Act No. 265, as amended, be subject to the imposition of fine of not in excess of P500 per day reckoned from the date the unauthorized banking or quasi-banking functions were performed and may be referred to the Securities and Exchange Commission for the revocation of its license to do business.

Applying the cited provision, there is no compelling evidence in the record indicating that petitioner was authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities as a non-bank financial intermediary pursuant to Section 22(W) of the NIRC of 1997, as amended.

The record is likewise void of any showing that petitioner is a non-banking financial intermediary as found by the Monetary Board pursuant to Section 4 of R.A. No. 337.

The alleged possibility that petitioner is doing business as a non-bank financial intermediary remains just that, a suspicion without any back-up. Respondents utterly failed to adduced credible proof that petitioner is conducting activities which fall under the term non-bank financial intermediary.

Further, Section 2(D)(c) of R.A. No. 337, otherwise known as the General Banking Act, as amended by

Presidential Decree (P.D.) No. 71, defines financial intermediaries as follows:

> Sec. 2-D. For purposes of Sections Two, Two-A, Two-B, and Two-C the following definition or terms shall apply:
>
> xxx xxx xxx
>
> (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 with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others;

Section 2.3 of Revenue Regulations (RR) No. 9-2004 issued by the Bureau of Internal Revenue (BIR) also defines "non-bank financial intermediaries" as follows:

> 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. *(Emphasis supplied)*

A similar yet more elaborate definition of the term financial intermediaries is found in Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas,* to wit:

> **§ 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 enumerated in Items *a* to *e* of this Subsection.** *(Emphasis supplied)*

In relation to the foregoing, the Supreme Court defined the term "financial intermediaries" as persons or entities whose principal functions include the lending, investing or placement of funds or evidence 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. [15]

On the other hand, "non-banking financial intermediaries" include a person or entity performing any of the functions of a financial intermediary, including, holding assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers. Furthermore, the person or entity must perform the afore-mentioned functions on a **regular and recurring basis**, and not on an isolated basis.

---

[15] *First Planters Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 174134, July 30, 2008.

Applying the foregoing definitions, there is no proof that petitioner is engaged in "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," in order to be within the ambit of the term "Financial intermediaries/non-bank financial intermediaries" as defined also in (i) Section 2(D)(c) of R.A. 337, or the General Banking Act, as amended, (ii) Section 2.3 of Revenue Regulations (RR) No. 9-2004, and (iii) Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas.*

Respondents likewise failed to establish that petitioner is engaged in investing on stocks and money placements on a regular and recurring basis, and not on an isolated basis. In fact, they failed to belie or rebut petitioner's categorical declaration that the investment was made but once and nothing followed thereafter, either with SMC or with any other company.

Moreover, petitioner's primary purpose as stated in its Articles of Incorporation is not sufficient to clinch conclusion that it is performing the functions of a financial intermediary. A finding to the contrary is certainly mere conjecture in the absence of concrete and solid proof. Elementary is the rule that judgments must be based on the evidence presented before the court.[16]

On the fact that petitioner earned income from the subject SMC shares, suffice it to say that the same is but an attribute of ownership. Petitioner, as the registered owner of the subject shares, has the right to possess and enjoy the fruits of such ownership.[17]

Anent petitioner's claim for refund of the amount of P655,632.50 it allegedly paid under protest on January 18, 2011 and on April 25, 2011, per the RTC record,

---

[16] *Robert F. Mallilin vs. Luz G. Jamesolamin and the Republic of the Philippines*, G.R. No. 192718, February 18, 2015.

[17] *Power Generation Employees Association-NPC, et al. v. National Power Corporation et al.*, G.R. No. 187420, August 9, 2017.

respondents admitted in their Answer[18] dated April 1, 2013 that petitioner indeed paid the amount of P655,632.50, to wit:

> 2. That public respondents admit the allegations in paragraph 2 of the petition, with the qualification that, as above stated, the collection of local business taxes from the petitioner was correct and levied in accordance with existing laws;[19]

Paragraph 2 of the referred to Petition[20] dated January 16, 2013 filed by petitioner with the RTC, reads as follows:

> 2. In 2011, Respondents erroneously and illegally collected from VPLI 0.55% local business taxes for the first and second quarters of 2011, based on the gross receipts derived by VPLI from dividends and interests for the taxable year 2010, in the aggregate amount of Six Hundred Fifty Five Thousand Six Hundred Thirty Two and 50/100 Pesos (P655,632.50, computed as follows:[21]

Period covered	Date of Payment	Official Receipt Nos.	Amount
January-March 2011	1/18/2011	5791201 A	P327,816.25
April-June 2011	4/25/2011	9884260 A	327,816.25
		TOTAL	**P655,632.50**

In the their Pre-Trial Brief[22] dated February 14, 2014 filed with the RTC, respondents likewise made a similar admission, thus:

IV-ADMITTED FACTS

Public respondents admitted the following facts of the case:

1. xxx

[18] RTC Record pp. 96-103.
[19] RTC Record p. 96.
[20] RTC Record pp. 3-18.
[21] RTC Record pp. 3-4.
[22] RTC Record pp. 134-140.

2. The authenticity and due execution of the official receipt as petitioner's proof of payment of the subject local business taxes in issue in this case.[23]

In the parties' Joint Stipulation of Facts and Issues[24] dated July 8, 2014 filed with the RTC, petitioner's payment of the amount of P655,632.50 was also admitted by respondents, as follows:

SUMMARY OF ADMITTED AND STIPULATED FACTS

x x x   x x x   x x x

20. In 2011, respondents collected from petitioners a 0.55% local business tax for the first and second quarters of 2011, based on the gross receipts derived by petitioners from dividends and interests for the taxable year 2010 in the aggregate amounts shown below and evidenced by Official Receipts reflected as follows: [Paragraph 2, Petition and Paragraph 2, Answer] (boldfacing ours)

PETITIONER	AMOUNT OF TAX PAID TO THE RESPONDENTS	OFFICIAL RECEIPT NO.	DATE
AVC	P456,230.24	5791190 A	18 January 2011
		9884247 A	25 April 2011
APHI	P723,531.50	5791192 A	18 January 2011
		9884248 A	25 April 2011
ARCI	P2,204,494.00	5791184 A	18 January 2011
		9884249 A	25 April 2011
ASCI	P3,493,455.50	5791189 A	18 January 2011
		9884250 A	25 April 2011
FHI	P382,859.55	5791186 A	18 January 2011
		9884251 A	25 April 2011
FMDI	P456,394.00	5791185 A	18 January 2011
		9884252 A	25 April 2011
RAVI	P503,346.00	5791187 A	18 January 2011
		9884253 A	25 April 2011
RSRI	P1,215,272.00	5791184 A	18 January 2011
		9884254 A	25 April 2011
RSI	P1,102,285.50	5791199 A	18 January 2011
		9884255 A	25 April 2011
SMOCI	P1,124,064.00	5791197 A	18 January 2011
		9884256 A	25 April 2011
SSI	P628,829.00	5791198 A	18 January 2011
		9884257 A	25 April 2011

[23] RTC Record p. 137.
[24] RTC Record pp. 264-288.

TDRI	P1,220,513.50	5791200 A	18 January 2011
		9884258 A	25 April 2011
THI	P1,562,636.00	5791191 A	18 January 2011
		9884259 A	25 April 2011
VPLI	**P655,632.50**	**5791201 A**	**18 January 2011**
		9884260 A	**25 April 2011**

Basic is the rule that a judicial admission binds the person who makes the same, and absent any showing that this was made through palpable mistake, no amount of rationalization can offset it.[25]

Likewise basic is the principle that an admission made in the course of the trial, either by verbal or written manifestations, or stipulations, cannot be controverted by the party making such admission; they become conclusive on him, and all proofs submitted by him contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not. This doctrine is embodied in Section 4, Rule 129 of the Rules of Court.[26]

Further, the admission made in a stipulation of facts at pre-trial by the parties as in the present case, must be treated as a judicial admission. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. The Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof.[27]

Considering that respondents categorically admitted having collected and received petitioner's payment under protest of the amount of P655,632.50 representing LBTs for the 1st and 2nd quarters of 2011, such erroneous payment must be refunded to petitioner.

---

[25] *Commissioner of Internal Revenue vs. Manila Electric Company (MERALCO)*, G.R. No. 181459, June 9, 2014.
[26] *Canada vs. All Commodities Marketing Corporation*, G.R. No. 146141, October 17, 2008.
[27] *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010.

WHEREFORE, the Petition for Review dated September 8, 2017 is hereby **GRANTED**. The Decision dated March 2, 2017 and Resolution dated August 1, 2017, both rendered by the Court in Division, are **REVERSED** and **SET ASIDE**.

Consequently, respondents are **ORDERED** to **REFUND** to petitioner the amount of P655,632.50 representing erroneously paid local business taxes for the 1st and 2nd quarters of 2011.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
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

VALHALLA PROPERTIES LIMITED, INC.,
Petitioners,

CTA EB No. 1706
(CTA AC No. 154)

Present:

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

- versus –

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

Promulgated:
MAY 20 2019 10:25am

x---x

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 granted, 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:

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.
>
> 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 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 (2^{nd}) and third (3^{rd}) elements of an NBFI, *i.e.*, investment and placement of funds and performance of the above-enumerated functions under the third (3^{rd}) 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's principal functions are solely to invest and make money market placements *vis-à-vis* its SMC shares

Petitioner 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 petitioner's business operations only revolve around its dividends and money market placements.

However, the subject decision did not consider the above-findings of the lower court. Meanwhile, it was sufficiently established that petitioner's income emanates only from dividends and money market placements, which activities fall within the purview of an NBFI. In other words, petitioner has no other activity or business that generates income, except for the dividends it regularly receives and for its money market placements. Therefore, petitioner's exclusive activities are NBFI activities which may properly be the subject of local business taxation.

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[1] may impose taxes **on the following businesses**:
>
> xxx xxx xxx

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

(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)*

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 petitioner is one of the Coconut Industry Investment Fund holding companies. Therefore, petitioner, including its SMC shares, are government-owned and excluded from respondent'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 petitioner 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 petitioner's privilege against whom the local business tax is levied upon.

At any rate, if petitioner and its SMC shares were truly owned by the government, the income that petitioner receives should redound to the benefit of the national government. The question however, is this: *Was there any evidence presented to the effect that respondent's profits were duly remitted to the national treasury?* There is none.

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 **DENY** the instant Petition for Review.

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