REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
****

MAKATI CITY TREASURER AND CITY OF MAKATI, as represented by the CITY MAYOR, Petitioners,	**CTA AC No. 193** (Civil Case No. 14-470)
	Members:
- versus -	**DEL ROSARIO,** *P.J.*, *Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
MERMAC, INC., Respondent.	***Promulgated:*** MAR 07 2019 ; 2:13 pm

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DECISION

UY, *J.*:

Before this Court is the *Petition for Review* filed by the Makati City Treasurer and City of Makati, as represented by the City Mayor, against Mermac, Inc., praying for the reversal and setting aside of the Decision dated August 3, 2017[1] and the Order dated November 8, 2017[2] of the Regional Trial Court - Branch 147, Makati City (RTC – Branch 147), in Civil Case No. 14-470, entitled ***"Mermac, Inc., Petitioner, versus Makati City Treasurer and Makati City, as represented by the City Mayor, Respondents"***, the dispositive portions of which respectively read as follows:

Decision dated August 3, 2017:

> "**WHEREFORE**, in view of the foregoing, the Petition for Review is hereby GRANTED. The Assessment which assessed petitioner for deficiency local business tax for the taxable year 2013, including surcharge and interest

[1] Docket, pp. 26 to 29.
[2] Docket, p. 25.

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thereon, is CANCELLED. The respondents are hereby ordered to grant a tax credit in favor of petitioner in the amount of Php 3,719,473.06.

SO ORDERED."

Order dated November 8, 2017:

"Wherefore, the subject Motion for Reconsideration is hereby ordered DENIED for lack of merit.

SO ORDERED."

THE FACTS

Petitioner City of Makati is a highly urbanized city by virtue of Republic Act No. 7854, and it is the principal of petitioner Makati City Treasurer.[3] The latter, in turn, is responsible for the collection of local taxes and fees imposed by petitioner City of Makati and for the custody of its funds.[4]

On the other hand, respondent Mermac, Inc. is a holding company whose primary purpose is to own and hold real and personal property, including shares of stock for the purpose of exercising the rights and privileges of ownership, including all voting powers on any stocks so owned without being a broker of securities or investment corporation.[5] Its principal office is located in Makati City.[6]

On January 19, 2014, respondent received the Assessment from petitioners assessing respondent of deficiency local business tax (LBT) for taxable year 2013 in the total amount of ₱3,719,473.06,[7] computed as follows:

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[3] Par. 3, respondent's *Petition for Review* vis-à-vis Par. 1, petitioners' *Comment*, RTC Docket – Vol. I, pp. 2 and 38, respectively.
[4] Par. 2, respondent's *Petition for Review* vis-à-vis Par. 1, petitioners' *Comment*, RTC Docket – Vol. I, pp. 2 and 38, respectively.
[5] Par. 10, respondent's *Petition for Review* vis-à-vis Par. 2, petitioners' *Comment*, RTC Docket – Vol. I, pp. 3 and 38, respectively.
[6] Par. 11, respondent's *Petition for Review* vis-à-vis Par. 2, petitioners' *Comment*, RTC Docket – Vol. I, pp. 3 and 38, respectively.
[7] Par. 15, respondent's *Petition for Review* vis-à-vis Par. 2, petitioners' *Comment*, RTC Docket – Vol. I, pp. 4 and 38, respectively.

Tax Base (Actual Gross per FS)	Tax Amount	Surcharge and Interest	Total
₱1,231,613,596.00	₱2,463,227.19	₱1,256,245.87	**₱3,719,473.06**

Respondent, through the letter dated January 30, 2014, [8] contested the validity and propriety of the deficiency assessment, arguing that the tax being imposed by the City Treasurer pursuant to Section 3A.02(p) of the Revised Makati Revenue Code (RMRC) is based on the gross amount of the dividends derived by respondent, and since dividends are passive income, the same cannot be subject to LBT under the Local Government Code (LGC).

On January 31, 2014, respondent paid the alleged deficiency tax under protest. [9] In the letter dated February 12, 2014, [10] respondent informed petitioners of its payment and reiterated its protest against the validity and propriety of petitioners' assessment.

On April 30, 2014, respondent filed with the Regional Trial Court, Makati City, a *Petition for Review* to cancel and annul the subject assessment and consequently order petitioners to refund the amount of ₱3,719,473.06, allegedly representing the 2013 LBT paid by respondent on its dividend income.[11] The case was docketed as Civil Case No. 14-470 and was raffled to Branch 143. Later, the case was re-raffled[12] to RTC – Branch 147 on February 13, 2017, due to the parties' failure to reach an amicable settlement through the judicial dispute resolution proceedings.

During pre-trial, the parties jointly manifested that they are waiving the presentation of their witnesses, and instead, they submitted three (3) supposed legal issues for resolution of the lower court. The parties also agreed that in lieu of presentation of witnesses, they will file their respective memoranda.[13]

On August 3, 2017, RTC – Branch 147 rendered the assailed Decision, and ruled as follows:

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[8] Exhibit "G", RTC Docket – Vol. I, pp. 231 to 233.
[9] Exhibit "H", RTC Docket – Vol. I, p. 234.
[10] Exhibit "I", RTC Docket – Vol. I, p. 235.
[11] Petition for Review, RTC Docket – Vol. I, pp. 1 to 14.
[12] Order dated February 2, 2017, RTC Docket – Vol. II, p. 289.
[13] Order dated May 11, 2017, RTC Docket – Vol. III, pp. 3 to 4.

"On the first issue, it should be noted that in ***Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia A. Barlis (CTA EB No. 1093, June 17, 2015)***, the CTA En Banc has recently ruled that dividend income is not subject to local business tax. In holding that Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code, violates the limit set by Section 133(a) of the Local Government Code, the CTA En Banc ratiocinated:

xxx xxx xxx

The decision of the CTA En Banc, being a highly specialized court dedicated exclusively to the study and resolution of tax cases and has accordingly developed an expertise on the subject, should be respected.

Considering the foregoing, the provisions of Section 3A.02(p) in relation to Section 3A.02(h) of the Revised Makati Revenue Code cannot be validly made to apply to a holding company such as petitioner in this case.

The Court need not further discuss the second issue on the applicability of the CTA case of Orleyte Company (Philippine Branch) vs. City of Makati (CTA Case No. 80, November 14, 2012) in this case since the more recent case of Michigan has already ruled on the effectivity of Section 3A.02(p) in relation to Section 3A.02(h) of the Revised Makati Revenue Code.

All told, the Court finds that the petitioner was able to establish its entitlement to refund the local business tax it paid to respondents. However, pursuant to the Revised Makati Revenue Code, petitioner may be granted refund in the form of tax credit.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby GRANTED. The assessment which assessed petitioner of deficiency local business tax for the taxable year 2013, including surcharge and interest thereon, is CANCELLED. The respondents are hereby ordered to grant a tax credit in favor of petitioner in the amount of Php 3,719,473.06.

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SO ORDERED."[14]

On August 25, 2017, petitioners filed a *Motion for Reconsideration (of the Decision dated 03 August 2017)*,[15] which the lower court denied in the assailed Order dated November 8, 2017.[16]

Petitioners then filed the instant *Petition for Review* on December 7, 2017.

In the Resolution dated December 21, 2017,[17] this Court directed: (1) respondent to file its *Comment*, within ten (10) days from receipt thereof; and (2) the Branch Clerk of Court of RTC – Branch 147, to elevate the records of Civil Case No. 14-470 of this Court, within ten (10) days from notice.

On January 15, 2018, respondent filed its *Comment (to Petition for Review dated 07 December 2017)*;[18] while on January 16, 2018, this Court received the said Branch Clerk of Court's Compliance, transmitting the records of Civil Case No. 14-470.[19]

Thereafter, the parties were directed to submit simultaneously their respective memoranda, within thirty (30) days from receipt thereof in the Resolution dated January 29, 2018.[20]

Petitioners filed their *Memorandum* on March 1, 2018;[21] while respondent filed its *Memorandum* on March 5, 2018.[22] In the Resolution dated March 21, 2018,[23] this Court considered the instant case as submitted for decision.

Hence, this Decision.

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[14] Docket, pp. 26 to 29; and RTC Docket – Vol. III, pp. 109 to 112.
[15] RTC Docket – Vol. III, pp. 113 to 122.
[16] Docket, p. 25; and RTC Docket – Vol. III, p. 150.
[17] Docket, p. 32.
[18] Docket, pp. 46 to 56.
[19] Docket, p. 44.
[20] Docket, p. 62.
[21] Docket, p. 63 to 79.
[22] Docket, pp. 81 to 108.
[23] Docket, p. 112.

THE ISSUES

Petitioners submitted the following issues for this Court's resolution:

> "1. WHETHER OR NOT THE PROVISIONS OF SECTION 3A.02(p) IN RELATION TO SECTION 3A.02(h) OF THE REVISED MAKATI REVENUE CODE CAN BE VALIDLY MADE TO APPLY TO A HOLDING COMPANY SUCH AS RESPONDENT?
>
> 2. WHETHER OR NOT THE CTA CASE of *ORLEYTE COMPANY (PHILIPPINE BRANCH) VS. THE CITY OF MAKATI* (CTA Case No. 80, November 14, 2012) IS APPLICABLE IN THE CASE AT BAR CONSIDERING THAT:
>
> 2.1 THE COURT OF TAX APPEALS ('CTA') DID NOT CLASSIFY PETITIONER IN THAT CASE, ORLEYTE COMPANY (PHILIPPINE BRANCH), AS A 'HOLDING COMPANY-MANAGEMENT SERVICE'
>
> 2.2 THE TAXABLE YEARS INVOLVED IN THAT ORLEYTE CASE WERE 2001-2002, 2002-2003 AND 2003-2004, AND THEREFORE, ARE COVERED UNDER THE OLD MAKATI REVENUE CODE
>
> 3. WHETHER OR NOT RESPONDENT WAS ABLE TO OVERCOME THE BURDEN OF PROVING THAT IT IS ENTITLED TO THE RELIEF BEING PRAYED FOR."[24]

Respondent, in addition to the foregoing issues, raised the following issue for the resolution of this Court, to wit:

> "(A) Whether or not the Petition for Review complied with the requirements under the Rules of Court on verification and certification against forum shopping;"[25]

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[24] *Petition for Review*, and petitioner's *Memorandum*, Docket, pp. 15 and 70 to 71, respectively.
[25] Respondent's *Memorandum*, Docket, p. 86.

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Petitioners' arguments:

Petitioners argue that as a holding company in Makati City, respondent was correctly taxed under Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC. According to petitioners, it is clear in these provisions that a holding company shall be taxed as a specific class of its own, without reference to it being a contractor or an owner or operator of banks or other financial institutions. In other words, it is petitioners' view that a holding company need not be a contractor nor an owner or operator of banks or other financial institutions, because once a taxpayer is classified as a holding company, then the tax rate of twenty percent (20%) of one percent (1%) shall be made to apply on its gross receipts, which, in this case, is the dividend income of respondent.

Moreover, petitioners contend that Section 3A.02(p), in relation to Sections 3A.02(g) and 3A.02(h), was never questioned in accordance with Section 7B.14 (Taxpayers' Remedies) paragraph (d) of the RMRC, and therefore, remains to be valid.

Allegedly, the *Orleyte* case is not applicable in the case at bar because Orleyte was not classified as a "Holding Company-Management Service", whereas in the case at bar, respondent admitted that it is a holding company. Petitioners also state that the taxable years involved in the *Orleyte* case were 2001-2002, 2002-2003, and 2003-2004, and therefore, are covered under the old Makati Revenue Code.

Assuming *arguendo* that respondent shall be granted its refund, without conceding to their legal position that respondent is entitled thereto, it may allegedly be granted only in the form of tax credit, by express provision of law.

Finally, respondent was not able to comply with the burden of proving that it is entitled to the refund being prayed for. According to petitioners, the wordings of Section 3A.02(p), in relation to Sections 3A.02(g) and 3A.02(h), are clear and unambiguous, and require no further interpretation.

Respondent's counter-arguments:

Respondent avers that the *Petition for Review* did not comply with the requirements provided for under the Rules of Court on verification and certification against forum shopping, as the *Petition for Review* was not verified by petitioner City of Makati, as represented by the City Mayor; and no certificate of non-forum shopping was validly executed.

Allegedly, Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC cannot be validly made to apply to respondent considering that it imposes LBT on the dividend income of a holding company, which is invalid for the following reasons: (1) it is tantamount to imposing income tax in violation of Section 133(A) of the LGC; (2) it constitutes double taxation as the activity sought to be taxed is already covered and taxed under Section 3A.02(h) of the RMRC; and (3) any dividend income that a holding company, that is neither a bank nor a financial institution, receives do not form part of gross receipts subject to LBT.

Allegedly, its reliance on the ***Orleyte*** decision of this Court is correct and relevant in the resolution of the instant case. Even assuming that the same is not applicable, this Court has held in *Michigan Holdings, Inc. vs. City Treasurer of Makati City*[26] that dividend income is not subject to LBT.

Lastly, according to respondent, contrary to the arguments of petitioners that respondent was not able to overcome the burden of proving that it is entitled to the refund being prayed for, it was petitioners who merely relied on the fact that Section 3A.02(p) of the RMRC remains to be valid since the same was never questioned before the Secretary of Justice, pursuant to the last paragraph of Section 7B.14 of the RMRC.

Relative thereto, respondent points out that while the last paragraph of Section 7B.14 of the RMRC indeed provides that any question on the constitutionality or legality of the RMRC may be raised on appeal within thirty (30) days from effectivity thereof to the Secretary of Justice, a taxpayer is not prohibited from availing of the other remedies provided for under the same RMRC, which in this case is Section 7B.14(b) thereof.

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[26] CTA EB No. 1093, June 17, 2015.

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THE COURT'S RULING

The instant* Petition for Review *must be dismissed for failure to comply with the rules on certification against forum shopping.

Respondent avers that petitioners failed to comply with the rules on verification and certification against forum shopping, as the *Petition for Review* was not verified by the City of Makati, as represented by the City Mayor, and the certification against forum shopping was not validly executed.

We partly agree with respondent.

Section 3, Rule 1, and Section 1, Rule 7, both of the Revised Rules of the Court of Tax Appeals (RRCTA), read as follows:

<u>RULE 1</u>:

> "SECTION. 3. *Applicability of the Rules of Court.* – **The Rules of Court in the Philippines shall <u>apply suppletorily to these Rules</u>.**" *(Emphasis and underscoring supplied)*

<u>RULE 7</u>:

> "SECTION. 1. *Applicability of the Rules of Court on procedure in the Court of Appeals, exception.* – **The procedure in the Court *en banc* or in Division in original and in appealed cases <u>shall be the same as those in petitions for review and appeals before the Court of Appeals</u> pursuant to the applicable provisions of <u>Rules 42, 43</u>**, 44 and 46 **of the Rules of Court**, except as otherwise provided for in these Rules." *(Emphases and underscoring supplied)*

Based on the foregoing provisions, it is clear that the Rules of Court, in general, suppletorily apply to the RRCTA, and the provisions of Rule 42, 43, 44 and 46 thereof, specifically apply to original and in appealed cases to this Court, whether in Division or *En Banc*.

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In this connection, Sections 2 and 3, Rule 42; Sections 6 and 7, Rule 43; and Sections 4 and 5, Rule 45, all of the Rules of Court, provide:

<u>RULE 42</u>:

"SEC. 2. *Form and contents.* — xxx.

The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

SEC. 3. *Effect of failure to comply with requirements.* — **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and **the documents which should accompany the petition <u>shall be sufficient ground for the dismissal thereof</u>.**"

<u>RULE 43</u>:

"SEC. 6. *Contents of the petition.* — The petition for review shall xxx contain **a sworn certification against forum shopping** as provided in the last paragraph of section 2, Rule 42. xxx.

SEC. 7. *Effect of failure to comply with requirements.* — **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and **the documents which should accompany the**

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> **petition <u>shall be sufficient ground for the dismissal thereof</u>.**"
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> **<u>RULE 45</u>:**
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> "SEC. 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall xxx contain **a sworn certification against forum shopping** as provided in the last paragraph of section 2, Rule 42.
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> SEC. 5. *Dismissal or denial of petition.* — **The failure of the petitioner to comply with any of the foregoing requirements regarding** the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and **the documents which should accompany the petition <u>shall be sufficient ground for the dismissal thereof</u>.**
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> xxx xxx xxx."

A reading of the foregoing provisions reveal that failure to accompany a petition for review with sworn certification against forum shopping, *inter alia*, is a ground for the dismissal thereof.

In *Shipside Incorporated vs. Court of Appeals, et al.*,[27] the Supreme Court stated certain rules regarding verification and certification against forum shopping, to wit:

> "The Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional (*Uy v. LandBank*, G.R. No. 136100, July 24, 2000). **Such requirement is simply a condition affecting the form of the pleading, <u>non-compliance with which does not necessarily render the pleading fatally defective</u>. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.** The court may order the correction of the pleading if verification is lacking or

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[27] G.R. No. 143377, February 20, 2001.

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act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.

On the other hand, the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition. **Section 5, Rule 45 of the 1997 Rules of Civil Procedure provides that the failure of the petitioner to submit the required documents that should accompany the petition, including the certification against forum shopping, shall be sufficient ground for the dismissal thereof. The same rules applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation.**" *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, non-compliance with the requirement of verification does not necessarily render the pleading fatally defective. However, as regards the submission of the certification against forum shopping, it is clear that in case such certification is not accompanied by proof that the signatory thereof is authorized to file the petition on behalf of the corporation, the same is considered as a ground for the dismissal of the same.

In this case, We see no defect in the verification part of the "VERIFICATION/CERTIFICATION"[28] attached to the instant *Petition for Review*, since there is no indication that the allegations made therein by Jesusa E. Cuneta, as petitioner City Treasurer, as such, are not based on her personal knowledge or on authentic records. However, We cannot say the same as regards the part pertaining to certification against forum shopping. This is so because such certification is not accompanied by proof that said petitioner City Treasurer is authorized to file the instant *Petition for Review* on behalf of petitioner City of Makati.

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[28] Docket, p. 24.

For easy reference, quoted herewith is the certification of non-forum shopping under the said "VERIFICATION/CERTIFICATION", viz:

> "4. The City of Makati has not commenced any action or filed any claim involving the same issues in the Supreme Court, Court of Appeals, or any division thereof, or in any court, tribunal or quasi-judicial agency, and to the best of my knowledge, no such other action or claim is pending therein.
>
> 5. If I should learn that another similar action or claim has been filed or is pending before any court, tribunal or quasi-judicial agency in the Philippines, I shall report that fact to this Honorable Court within five (5) days from notice.
>
> *(Signed)*
> JESUSA E. CUNETA
> Petitioner"

Without doubt, local government units, such as petitioner City of Makati, have the power to sue, pursuant to Section 22 of the LGC of 1991, to wit:

> "SEC. 22. *Corporate Powers.*
>
> (a) **Every local government unit, <u>as a corporation</u>, shall have the following powers**:
>
> xxx xxx xxx
>
> (2) **<u>To sue</u>** and be sued;" *(Emphases and underscoring supplied)*

However, Section 458(a)(1)(viii) of the LGC of 1991 provides as follows:

> "SEC. 458. *Powers, Duties, Functions and Compensation.*— (a) **The Sangguniang Panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions** and appropriate funds for the general welfare of the city and its inhabitants

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pursuant to section 16 of this Code and **in the proper exercise of the corporate powers of the city as provided under section 22 of this Code, and shall**:

(1) **Approve ordinances and pass resolutions necessary for an efficient and effective city government, and in this connection, shall**:

xxx xxx xxx

(vii) **Subject to the provisions of this Code and pertinent laws, determine the powers and duties of officials and employees of the city**;" *(Emphases and underscoring supplied)*

Based on the foregoing provision, the *Sangguniang Panlungsod* is mandated, *inter alia*, to approve ordinances and pass resolutions in the proper exercise of its power to sue. And in connection thereto, the said *Sanggunian* shall approve and pass resolutions, among others, determining the powers and duties of city officials, subject to the provisions of the LGC of 1991 and pertinent laws. In other words, except when the power to sue is explicitly granted or designated to a particular city official under the law, a prior ordinance or resolution from the *Sangguniang Panglungsod* is necessary for any city official to exercise such power.

While the LGC of 1991 grants certain powers and duties to the local treasurer, a careful examination of the said law would reveal that there is nothing therein, which authorizes the said official from filing an appeal in the appropriate court on behalf of the concerned local government unit. Furthermore, it is noteworthy that Republic Act No. 7854[29], the charter of petitioner City of Makati, does not grant such authority to the same official, as shown under Section 26 thereof, to wit:

"Sec. 26. *The City Treasurer.* — xxx

xxx xxx xxx

The city treasurer shall take charge of the city finance department and shall:

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[29] AN ACT CONVERTING THE MUNICIPALITY OF MAKATI INTO A HIGHLY URBANIZED CITY TO BE KNOWN AS THE CITY OF MAKATI.

> (a) Advise the city mayor, the sangguniang panlungsod, and other local government and national officials concerned regarding disposition of local government funds and on such other matters relative to public finance;
>
> (b) Take custody and exercise proper management of the funds of the City;
>
> (c) Take charge of the disbursement of all funds of the City and such other funds the custody of which may be entrusted to him by law or other competent authority;
>
> (d) Inspect private commercial and industrial establishments within the jurisdiction of the City in relation to the implementation of tax ordinances, pursuant to the provisions of the Local Government Code;
>
> (e) Maintain and update the tax information system of the City; and
>
> (f) Perform such other duties and functions and exercise such other powers as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991, **and those that are prescribed by law or ordinance.**" *(Emphasis supplied)*

Thus, for petitioner Makati City Treasurer to exercise the power of petitioner City of Makati to file the instant *Petition for Review* with this Court, a prior ordinance from the *Sangguniang Panlungsod* of petitioner City of Makati must be issued.

Considering that there is no showing that the *Sangguniang Panlungsod* of petitioner City of Makati issued an ordinance giving authority to petitioner Makati City Treasurer to initiate the filing of the instant *Petition for Review*, the same must be dismissed.

Nevertheless, even granting that petitioner Makati City Treasurer has been authorized by the *Sangguniang Panlungsod* of petitioner City of Makati, the instant *Petition for Review* still lacks merit.

LBT may not be imposed on dividend income of respondent as there is no showing that it is classified as, or performed the functions of, a bank or other financial institution.

Respondent was assessed of LBT as a holding company at the rate of twenty percent (20%) of one percent (1%) on its dividend income pursuant to Section 3A.02(p), in relation to subsection (h), of the RMRC.

Petitioners aver that a holding company, such as the respondent, need not be a service contractor, nor an owner or operator of banks and other financial institutions, in order that Section 3A.02(h) be made to apply. According to petitioners, once it is classified as a holding company, then the tax rate prescribed therein, 20% of 1%, shall be made to apply on its gross receipts (in this case, the dividend income of respondent. Moreover, petitioners also argue that Section 3A.02(p) was never questioned in accordance with Section 7B.14(d) of the RMRC, and therefore, remains to be valid.

The Court finds petitioners' contentions unmeritorious.

A review of the taxing powers of a city and the extent thereof, relative to the instant case, is warranted under the premises.

Section 151 of the LGC of 1991 states the power of a city to impose local taxes, to wit:

> "SEC.151. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, **the city, may levy the taxes, fees, and charges which the** province or **<u>municipality</u> may impose**: xxx
>
> **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." *(Emphases and underscoring supplied)*

Relative thereto, Section 143 of the LGC of 1991 states the power of municipalities to impose business taxes, to wit:

> "SEC.143. *Tax on Business.* — **The municipality may impose taxes on the following businesses**:
>
> xxx xxx xxx
>
> (e) **On contractors and other independent contractors**, in accordance with the following schedule:

With gross sales receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than P5,000.00		27.50
5,000.00 or more but less than	10,000.00	61.60
10,000.00 or more but less than	15,000.00	104.50
15,000.00 or more but less than	20,000.00	165.00
20,000.00 or more but less than	30,000.00	275.00
30,000.00 or more but less than	40,000.00	385.00
40,000.00 or more but less than	50,000.00	550.00
50,000.00 or more but less than	75,000.00	880.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,980.00
150,000.00 or more but less than	200,000.00	2,640.00
200,000.00 or more but less than	250,000.00	3,630.00
250,000.00 or more but less than	300,000.00	4,620.00
300,000.00 or more but less than	400,000.00	6,160.00
400,000.00 or more but less than	500,000.00	8,250.00
500,000.00 or more but less than	750,000.00	9,250.00
750,000.00 or more but less than	1,000,000.00	10,250.00
1,000,000.00 or more but less than	2,000,000.00	11,500.00
2,000,000.00 or more		at the rate not exceeding fifty percent (50%) of one percent (1%)

> (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, **<u>dividends</u>**, rentals on property and profit from exchange or sale of property, insurance premiums.
>
> xxx xxx xxx" *(Emphases supplied)*

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Based on the foregoing provisions, municipalities, cities, such as petitioner City of Makati, may impose business taxes. But cities may levy the said taxes exceeding the maximum rates allowed to municipalities by not more than fifty percent (50%), except the rates of professional and amusement taxes. Correspondingly, the limits on the tax rates set forth for municipalities under the aforequoted Section 143(e) for contractors and other independent contractors, and Section 143(f) on banks and other financial institutions, may be imposed by cities at the tax rates by more than fifty percent (50%).

Nevertheless, notwithstanding the power of cities to impose business taxes, the said power is subject to further limitations, one of which is indicated under Section 133(a) of the LGC of 1991, *viz*:

> "**SEC. 133.** ***Common Limitations on the Taxing Powers of Local Government Units***. — Unless otherwise provided herein, **the exercise of the taxing powers of** provinces, **cities**, municipalities, and barangays **shall not extend to the levy of the following:**
>
> (a) **Income tax**, **except when levied on banks and other financial institutions**;" *(Emphases supplied)*

Thus, as a corollary to Section 143(f) of the LGC of 1991, **in general, cities may <u>not</u> levy income tax** to certain businesses **except when the levy is on banks and other financial institutions** 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, and insurance.

As regards to dividends, the rule is well established that cash dividend, whether large or small, are regarded as "income".[30] And considering that dividends are regarded as income, cities cannot impose a business tax thereon, unless the imposition is made on a bank and other financial institution.

In this case, respondent City of Makati exercised its power to impose business taxes on holding companies, pursuant to Section 3A.02(p), in relation to subsections (g) and (h) of the same Section, all of the RMRC, which provide as follows:

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[30] *Fisher vs. Trinidad*, G.R. No. L-17518, October 30, 1922.

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

xxx xxx xxx

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

With gross sales or receipts for the preceding calendar year in the amount of:

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	Amount of Tax per Annum
less than P50,000.00	Exempt
P50,000.00 or more but less than 75,000.00	1,144.00
75,000.00 or more but less than 100,000.00	1,716.00
100,000.00 or more but less than 150,000.00	2,574.00
150,000.00 or more but less than 200,000.00	3,432.00
200,000.00 or more but less than 250,000.00	4,719.00
250,000.00 or more but less than 300,000.00	6,006.00
300,000.00 or more but less than 400,000.00	8,008.00
400,000.00 or more but less than 500,000.00	10,725.00
500,000.00 or more but less than 750,000.00	12,025.00
750,000.00 or more but less than 1,000,000.00	13,325.00
1,000,000.00 or more but less than 2,000,000.00	15,000.00

2,000,000.00 P15,000.00 plus seventy five percent (75%) of one percent (1%) over 2 million.

xxx xxx xxx

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

xxx xxx xxx

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

xxx xxx xxx." *(Emphases supplied)*

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Based on the aforequoted provisions of the RMRC, the imposition of LBT on a *"holding company"* shall either be **under subsection (g)** for owners or operators of business establishments rendering or offering, *inter alia*, *"business management services"*; **or under subsection (h)** for owners or operators of banks and other financial institutions; both of Section 3A.02 of the RMRC. **Under the said subsection (g)**, the graduated tax rates are based on the gross sales or receipts, depending on the amount thereof; **while under the said subsection (h)**, the tax rate is fixed at 20% of 1% gross receipts derived from dividends, among other income.

In this case, both parties agree that respondent is a holding company.[31] A *"holding company"* is defined under Section 3A.01(dd) of the RMRC, to wit:

> "SECTION 3A.01. *Definitions.* — When used in this Article: —
>
> xxx xxx xxx
>
> (dd) ***Holding Company*** **— a controlling company that has one or more subsidiaries and confines its activities primarily to their management.**" *(Emphasis supplied)*

On the basis of this definition, it is clear that a *"holding company"* is an entity which controls one or more subsidiaries and confines its activities *"primarily"* to their management. As such, while a holding company's *primary* activities are confined to the management of its subsidiaries, it does not preclude such entity from engaging in other activities, which may classify it as within the purview of the term *"Banks and other financial institutions"*, which is defined under Section 131(e) of the LGC of 1991 and Section 3A.01(e) of the RMRC, 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

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[31] Par. 10, respondent's *Petition for Review* vis-à-vis Par. 2, petitioners' *Comment*, RTC Docket – Vol. I, pp. 3 and 38, respectively

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;"

"SECTION 3A.01. *Definitions.* — When used in this Article: —

xxx xxx xxx

(e) ***Banks and other financial institutions*** — include banks, offshore banking, non-bank financial intermediaries, lending investors, finance and investment companies, investment houses, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange including pre-need companies, as defined under applicable law, or rules and regulations." *(Emphasis supplied)*

In this case, after a careful review of the evidence presented in the proceedings *a quo*, there is no showing that respondent falls under the category of, or can be considered as within the purview of, the term *"Banks and other financial institutions"* as defined under Section 131(e) of the LGC of 1991 and Section 3A.01(e) of the RMRC, so as to justify the collection of LBT by petitioners on the dividends which were earned by respondent in the year 2013. Such being the case, the subject amount being refunded by respondent must be granted.

The grant of refund is not limited to the issuance of a tax credit certificate.

Petitioners argue that assuming that respondent shall be granted its refund, it may only be granted in a form of tax credit, by express provision of law.

We do not agree.

Paragraph (d) Section 7B.14 of the RMRC provides:

"SECTION 7B.14. *Taxpayer's Remedies.* –

> "xxx xxx xxx
>
> (d) *Claim for Refund of Tax Credit.* – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected **until a written claim of refund or credit** has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.
>
> **The tax credit granted a taxpayer shall not be refundable in cash** but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall no other tax obligations payable to the Local Government of City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year. (*Emphases supplied*)

It is clear from the aforecited provision of the ordinance that **tax credits <u>already granted</u> to a taxpayer are not convertible to cash**. However, the taxpayer is not prohibited from claiming either a refund or tax credit for erroneously or illegally collected tax, fee or charge. Here, the refund is yet to be granted.

Moreover, even granting that the RMRC has a provision that limits the application of a refund to the issuance of a tax credit, Section 196 of the LGC of 1991 does not support the contention that only a tax credit is allowed, to wit:

> "Section 196. *Claim for Refund or Tax Credit.* - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or **from the date the taxpayer is entitled to a refund <u>or</u> credit.** (*Emphasis supplied*)

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The use of the disjunctive "or" connotes that there is an alternative or an option between at least two choices. "In its elementary sense, 'or' as used in a statute is a disjunctive article **indicating an alternative. It often connects a series of words or propositions indicating a choice of either**."[32] The aforecited law is clear. To remove the choice to be refunded in cash in favor of the taxpayer, contravenes the clear provision of Section 196 of the LGC of 1991.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DISMISSED**. The Decision dated August 3, 2017 and the Order dated November 8, 2017 issued by RTC – Branch 147 in Civil Case No. 14-470 are **AFFIRMED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
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
Chairperson, Special 1st Division

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32 *Centeno vs. Hon. Villalon-Pornillos*, G.R. No. 113092, September 1, 1994.