REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF DAVAO and BELLA LINDA N. TANJILI in her official capacity as the Officer-in-Charge City Treasurer's Office of Davao City,
Petitioners,

-*versus*-

ARC INVESTORS, INC.,
Respondent.

CTA *EB* NO. 1589
(CTA AC No. 130)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 11 2019

11:45 a.m.

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RESOLUTION

MANAHAN, J.:

For resolution is petitioners' *Motion for Reconsideration* posted on March 7, 2019, with respondent's *Comment (Re: Motion for Reconsideration dated 07 March 2019)* posted on June 17, 2019.

Petitioners seek reconsideration of the Decision (assailed Decision) of the Court *En Banc* promulgated on January 29, 2019 , the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated August 16, 2016 as well as the assailed Resolution dated December 20, 2016, both rendered by the Court in Division in CTA AC No. 130 are **AFFIRMED.**
>
> **SO ORDERED."**

In their motion for reconsideration, petitioners submit the following errors allegedly committed by the Court *En Banc* in the assailed Decision, to wit:

1. That respondent's business operations do not fall within the definition of a non-bank financial intermediary, thus not subject to local business tax (LBT) under Section 143 (f) of the Local Government Code of 1991 (LGC of 1991);

2. That since there is no evidence showing that respondent was authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities, respondent cannot be treated as non-bank financial intermediary;

3. That the Court *En Banc* did not take into account the factual findings of the lower court that respondent is a non-bank financial intermediary by owning, investing and holding shares of stock in San Miguel Corporation.

Petitioners opine that the Court *En Banc* failed to recognize and appreciate the clear wordings found in the primary purpose embodied in the Articles of Incorporation (AOI) of respondent which clearly points out the nature of its business as a non-bank financial intermediary pursuant to the Manual Regulations for Non-Bank Financial Institutions issued by the BSP. Petitioners plainly suggest that the fact that respondent is engaged principally in owning, holding and investing in the shares of stock of San Miguel Corporation

(SMC) and engaging in money market placements categorizes such as a non-bank financial intermediary. Petitioners further argue that the non-issuance of a license by the BSP is not determinative of whether it transacts business as a non-bank financial intermediary and should not serve as a basis for making such a conclusion. They cited the Dissenting Opinion of Justice Castañeda in the above-captioned case where he opined that respondent may engage in quasi-banking activities as a non-bank financial intermediary, with or without authority from the BSP.

Petitioners also assail the Court *En Banc's* failure to consider the legal and factual finding of the lower court which clearly established that the business operation of respondent is within the definition of a "non-bank financial intermediary" pursuant to Section 131 (e) of the Local Government Code (LGC) of 1991, Section 22 (W) of the 1997 National Internal Revenue Code (NIRC) and Sections 2.3 of Revenue Regulations (RR) No. 09-2004 and the BSP Manual.

In its *Comment*, respondent reiterates its arguments against the Petition for Review filed by petitioners with the Court *En Banc*, beginning with the observation that the issues raised in petitioner's *Motion for Reconsideration* are mere rehash of the contentions raised in the Petition for Review which have already been passed upon by the Court in Division and again by the Court *En Banc* and on this ground alone, said motion should be denied.

On the substantive issues raised by petitioners, the respondent puts forth the following counter-arguments:

1. The imposition of LBT on dividends and interest income received by respondent is erroneous since there is no showing that it is a non-bank financial intermediary;

2. Being a holding company, its dividend and interest income are not subject to LBT;

3. That its business as well as the shares held in SMC and the income derived therefrom are properties of the National Government, hence exempt from LBT.

Respondent cites the case *of Michigan Holdings vs. The City Treasurer of Makati,*[1] where this Court allegedly declared that a holding company is not among the entities enumerated in Section 131 (e) of the LGC of 1991 as falling under the definition of "banks and other financial institutions".

Overall, respondent wholly agrees with the Court *En Banc* in its Decision dated January 29, 2019 which cancelled the LBT assessments issued by the petitioners against respondent for the third and fourth quarters of 2011.

RULING OF THE COURT EN BANC

After taking a second look at the arguments raised by petitioners in their motion for reconsideration, we find no compelling reason to reverse or modify our original stance embodied in the assailed Decision which ruled in favor of respondent.

We reiterate the relevant provisions of the assailed Decision:

> "From a careful perusal of the respondent's primary purpose, nothing in the statements even remotely suggest that it is authorized to perform the functions of a financial intermediary nor a non-bank financial intermediary.
>
> Thus, we find that the Court in Division correctly ruled that the nature of respondent's business cannot be categorized as a non-bank financial intermediary. The Court in Division even outlined the basic requirements to be considered as a "non-bank financial intermediary" and we quote:
>
> "Based on the foregoing provisions, the basic requirements for a person or entity to be considered as a "non-bank financial intermediary" are as follows:
>
> 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 the, either for their own account or for the account of others",

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[1] CTA EB No. 1093 (CTA AC Case No. 99), June 17, 2015.

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

1) 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;
2) Use principally the funds received for acquiring various types of debt or equity securities;
3) Borrow against, or lend on, or buy and sell debt or equity securities;
4) Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds and commercial papers;
5) 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 debtor equity securities or by being an internediary between suppliers and users of funds.

In this case, there is no indication that petitioner fulfills the first requirement, since there is no showing that it was "authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities." Thus, on this score alone, petitioner cannot be treated as non-bank financial intermediary.

Nevertheless, the second requirement is not likewise met. While it may be true that the functions of petitioner on the basis of the primary purpose as stated in the Amended Articles of Incorporation may cover the functions of a non-bank financial intermediary, it was not shown that said functions are "principal" in nature, i.e., "chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental." No evidence was presented to show that the stated functions were principally done by petitioner in the year 2011.

Moreover, it was never established that the enumerated functions under the third requirement were performed by petitioner "on a regular and recurring, not on an isolated, basis". In fact, no evidence was shown that petitioner ever performed the said functions. From what this Court can gather in the records *a quo*, respondents merely imposed the local business tax on petitioner's gross sales (non-essential) as a "HOLDING FIRM" and nothing more.

We also do not find that petitioner held itself out, nor advertised itself, as (sic) non-banking financial intermediary."

Such being the case, it is the finding of this Court that petitioner is not a non-bank financial intermediary and the interests and dividends it receives from the preceding calendar year may not be the subject of local business tax imposed by the respondent City of Davao."

> The guideposts are clear on what activities may be considered as performing the functions of a financial intermediary or a non-bank financial intermediary and respondent neither falls under any of these categories. Contrary to the contention of petitioners, the non-issuance of a secondary license by the BSP is an important factor in determining whether or not the respondent falls within the category of a "non-bank financial intermediary".

In closing, this Court would like to emphasize that the local government's power to tax is subject to certain limitations provided under the law and the Philippine Constitution, one of which is the prohibition against imposing income tax except when imposed on banks and other financial institutions pursuant to Section 133 (a) of the LGC of 1991. Since dividends and interest income partake the nature of "income", the local government units are prohibited from imposing LBT on such, particularly on respondent as it is not considered a bank nor a financial institution as comprehensively discussed in the assailed Decision.

WHEREFORE, premises considered, petitioners' *Motion for Reconsideration* posted on March 7, 2019, is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(I reiterate my Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice