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 City Treasurer of Davao City, *Petitioners,*	CTA EB No. 1708 (CTA AC No. 162) *Present*:
-versus-	DEL ROSARIO, P.J, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
FERNANDEZ HOLDINGS, INC., *Respondent.*	Promulgated: JUL 11 2019 3:28 p.m.

x---x

RESOLUTION

MINDARO-GRULLA, J.:

For this Court's resolution is the Motion for Reconsideration,[1] filed by petitioners through registered mail on February 7, 2019, and received by the Court on February 15, 2019. Petitioners seek reconsideration of the Court *En Banc*'s Decision[2] dated January 15, 2019, denying petitioners' Petition for Review, as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the assailed Decision and Order are hereby **AFFIRMED**, and the City of Davao is hereby

---

[1] *En Banc Docket,* pp. 174-185.
[2] *Ibid.,* pp. 144-166.

> **ORDERED** to **REFUND** or **CREDIT** the amount of **THREE HUNDRED EIGHTY-TWO THOUSAND EIGHT HUNDRED FIFTY-NINE PESOS AND 55/100 (PHP382,859.55),** representing the 0.55% local business tax Fernandez Holdings, Inc. paid under protest for the first and second quarters of 2011.
>
> **SO ORDERED.**"

Petitioners raise in their Motion that the Court erred in concluding that Fernandez Holdings, Inc. is a holding company, thus, its business operation does not fall within the definition of a non-bank financial intermediary. They reiterate that Fernandez Holdings, Inc.'s primary purpose contained in the Amended Articles of Incorporation is well within the purview of the nature and functions of a non-bank financial intermediary (NBFI); that it has no other sources of income except dividends and interest on money market placements, hence, its investment in San Miguel Corporation (SMC) shares is deemed its principal business; and, that being engaged principally and solely in the business of investing and holding SMC shares and money market placements, it is deemed an NBFI.

Petitioners also argue that the Court erred in concluding that since there is no evidence that Fernandez Holdings, Inc. was authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities, it cannot be treated as non-bank financial intermediary. They maintain that the non-issuance of a license by the Monetary Board does not *ipso facto* exclude it from the ambit of an NBFI. They state that the real nature and substance of Fernandez Holdings, Inc.'s business operation, which consists primarily, continuously and regularly of investments in shares of stock of SMC and money placements, should be the primary factor in establishing that it is an NBFI. With no business other than its investment in SMC, any profit it received is a direct consequence of its business engagements and not just merely incidental thereto.

Petitioners also call-out the attention of this Court to take into account the factual findings of the lower court that

ℒ

Fernandez Holdings, Inc. is an NBFI by owning, investing and holding shares of stock of SMC.

Lastly, petitioners argue that the Court erred in concluding that Fernandez Holdings, Inc.'s assets, being declared as owned by the government pursuant to the ruling in *Philippine Coconut Producers Federation, Inc. vs. Republic of the Philippines (COCOFED Case)*,[3] is exempt from the imposition of local business tax. Petitioners state that the *COCOFED Case* did not delve on the taxability of the fund or on its income but solely on the nature of ownership of the said SMC shares.

Respondent Fernandez Holdings, Inc. filed its Comment (Re: Motion for Reconsideration dated 07 February 2019),[4] through registered mail on May 14, 2019. Said comment was received by the Court on May 23, 2019. It counters that the definitions of NBFI under Section 143(f) of the LGC, Revenue Regulations No. 9-2004, and BSP Manual of Regulations, lead to the conclusion that it is not an NBFI. It also argues that it cannot be considered a bank or NBFI since it is not engaged in lending money, investing, reinvesting or trading securities and/or foreign exchange either for its own or for the account of others on a regular and recurring basis. It acquired 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. The investment made in SMC shares happened only once and is an isolated transaction, thus, its dividend income and interest income are beyond the taxing powers of petitioners.

Fernandez Holdings, Inc. further argues that merely owning or holding shares of stock does not *ipso facto* make it an NBFI. The mere ownership of shares and placement of extra funds in trust accounts- as any prudent administrator would - is not a business activity that is subject to local business tax and reiterates that it is a mere holding company. Lastly, it asserts that the subject SMC shares of stock and income derived therefrom are national government property exempt from local business tax.

---

[3] G.R. Nos. 177857-58 & 178193, January 24, 2012.
[4] *Supra*, note 1, pp. 190-218.

The motion lacks merit.

The arguments raised by petitioners are a mere rehash of issues which have already been discussed and resolved in the assailed Decision.

As discussed therein, Fernandez Holdings, Inc. is a holding company organized for the purpose of holding SMC shares. Petitioners failed to present any credible and convincing proof that Fernandez Holdings, Inc. is an NBFI or has engaged in the activities of a financial institution or intermediary. On the other hand, its primary purpose reflects its function as a holding company, in consonance with the definition by the Securities and Exchange Commission (SEC). Further, Fernandez Holdings, Inc., including the SMC shares held by it, are owned by the national government and thus, beyond the taxing power of local government units.

WHEREFORE, the Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice