REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SAN MIGUEL OFFICERS CORPS, INC., *Petitioner,*	CTA AC No. 161 (Civil Case No. 34, 856-13)
-versus-	*Present*: DEL ROSARIO, P.J., UY, and MINDARO-GRULLA, *JJ.*
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City, *Respondents.*	Promulgated: FEB 17 2017 2:27 pm

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RESOLUTION

MINDARO-GRULLA, J.:

Before this Court is a Motion for Reconsideration[1] filed by respondents seeking to set aside this Court's Decision promulgated on October 3, 2016, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assailed Decision and Order are hereby **REVERSED**, and the City of Davao is hereby **ORDERED** to **REFUND** or **CREDIT** the amount of **ONE MILLION ONE HUNDRED TWENTY FOUR THOUSAND AND SIXTY FOUR PESOS (₱1,124,064.00),** representing the erroneously or illegally paid local business tax in favor of San Miguel Officers Corps, Inc.
>
> **SO ORDERED.**"

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[1] Filed *via* registered mail on November 10, 2016.

In his motion, respondents reiterates that San Miguel Officers Corps, Inc. (SMOCI) is a "Non-bank Financial Intermediary" falling under the category of a "Bank and Other Financial Institutions", hence liable to pay business tax as provided under Section 143 (f) of R.A. 7160, otherwise known as "The Local Government Code."

On the other hand, in its Comment,[2] SMOCI claims that it is not a "Non-Bank Financial Intermediary" because there is no regularity in its transactions. SMOCI also asserts that its primary purpose, as embodied in its Articles of Incorporation, precludes it from being classified as a Non-Bank Financial Intermediary.

The motion is bereft of merit.

All the arguments presented by respondents readily reveal that they deal with the very same issue, which has been thoroughly passed upon and clearly discussed in the assailed Decision.

The Court is guided by the rulings in the Supreme Court case of *Coquilla v. Commission on Elections*,[3] to wit:

> "The mere reiteration in a motion for reconsideration of the issues raised by the parties and passed upon by the court does not make a motion *pro forma*; otherwise, the movants remedy would not be a reconsideration of the decision but a new trial or some other remedy. But, as we have held in another case:
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>> Among the ends to which a motion for reconsideration is addressed, <u>one is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence</u>; xxx" (Underlining Supplied.)

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[2] Filed on December 27, 2016.
[3] 434 Phil. 861 (2002), cited in the case of *Philippine National Bank vs. Pineda,* G.R. No. 149236, February 14, 2007.

Upon review of the Motion for Reconsideration, there is no provision of law contrary to such findings or conclusions made in the assailed Decision.

To reiterate, non-bank financial intermediaries are defined as "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."[4] The person or entity must perform the aforementioned functions on a regular and recurring basis, and not on an isolated basis.[5]

As discussed in the assailed Decision, there is nothing in SMOCI's Amended Articles of Incorporation that shows that such entity may perform the functions of a financial intermediary.[6] The primary purpose for which SMOCI was incorporated is to "direct the operations of other corporations through the ownership of stock therein", and "to do every act and thing covered generally by the denomination 'holding company'."[7] The receipt of dividend and interest income in this case is merely incidental.[8] As a holding company, SMOCI, and the other holding companies funded by the coconut levy fund, were created to hold San Miguel Corporation shares of stock,[9] and not to engage in the business of lending or investing money or securities acquired by them or through them, on a regular basis.[10]

Further, SMOCI is not required by the Securities and Exchange Commission to secure a secondary license from the Bangko Sentral ng Pilipinas. SMOCI is also not regulated by the Bangko Sentral ng Pilipinas or the Insurance Commission, which should be the case if SMOCI were to be considered a financial institution.

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[4] Section 41010.1 of the Manual of Regulations for Non-Bank Financial Institutions of the Bangko Sentral ng Pilipinas.
[5] *Anglo Ventures Corporation vs. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City*, CTA AC No. 155, Resolution, November 16, 2016.
[6] Ibid.
[7] Annex P-10, CTA Docket, pp. 102-103.
[8] *Anglo, Supra* note 5.
[9] *COCOFED vs. Republic*, G.R. Nos. 177857-58, January 24, 2012.
[10] *Anglo, Supra* note 5.

As a last note, respondents insists that for tax purposes, the non-determination of SMOCI as a non-bank financial intermediary by the Monetary Board does not *ipso facto* exclude it from the definition of a "non-bank financial intermediary."

The respondents should be guided by the principle that tax statutes are strictly construed against the taxing authority.[11] Hence, the prohibition to impose business tax on entities not considered as non-bank financial intermediary may not be extended by implication beyond the clear import of the tax law's language, nor its operation enlarged so as to embrace matters not specifically provided.[12]

In view of the abovementioned reasons, this Court maintains its position that SMOCI cannot be a "non-bank financial intermediary".

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

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[11] *Philippine Health Care Providers, Inc., vs. Commissioner of Internal Revenue,* G.R. No. 167330, September 18, 2009, Citing *Commissioner of Internal Revenue vs. Solidbank Corporation*, G.R. No. 148191, 25 November 2003, 416 SCRA 436, citing further *Miller vs. Illinois Cent. R Co., Ill.* So. 559, 28 February 1927.
[12] *Ibid.*, citing *Collector of Int. Rev. vs. La Tondea, Inc. and CTA*, 115 Phil. 841, 846 (1963).