REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAKATI CITY AND THE OFFICE OF THE CITY TREASURER, *Petitioners,*	**CTA EB NO. 2146** (CTA AC No. 195)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
ALLONS HOLDINGS, INC., *Respondent.*	Promulgated: MAY 17 2021 3:40 pm

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RESOLUTION

MANAHAN, J.:

This resolves petitioners' *Motion for Reconsideration* posted on November 6, 2020 and received by the Court on November 19, 2020, assailing the Court *En Banc*'s Decision dated September 1, 2020. Respondent's *Comment/Opposition (to the Motion for Reconsideration dated 06 November 2020)* was filed on December 3, 2020.

The assailed Decision dismissed petitioners' appeal thereby affirming that respondent, being a holding company, cannot be held liable for local business tax imposed under Section 143(f) of the Local Government Code (LGC), in relation to Section 3A.02(h) of the Revised Makati Revenue Code (RMRC).

Petitioners now argue that Section 187 of the LGC, unless repealed by Congress, remains to be the proper and exclusive procedure to question the constitutionality or legality of tax ordinances and revenue measures; that Section 3A.02(P) in relation to Sections 3A.02(g) and (h), of the RMRC, remain to be valid since these provisions were not questioned or attacked directly under Section 187 of the LGC; and, that the assailed Decision runs counter to law and jurisprudence, tantamount to grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioners further state that under Section 143(h) of the LGC, the local government unit (LGU) is empowered to impose tax on any business which it may deem proper to tax.

Respondent, in its *Comment/Opposition*, states that the matters raised by petitioners have already been raised in their previous pleadings and have already been passed upon by the Regional Trial Court (RTC) Branch 142 of Makati City and the Court of Tax Appeals (CTA) Special Third Division and *En Banc* in their respective decisions. Respondent also states that this is the first time that petitioners are raising the argument that Section 187 of the LGC is the proper and exclusive procedure to question the constitutionality or legality of Tax Ordinances and Revenue Measures; and, that petitioners should not be allowed to change their theory at this late stage of the case.

The *Motion for Reconsideration* is denied.

It is undisputed that petitioner sought to impose LBT on respondent on the basis of Section 143(f)[1] of the LGC, as a bank or other financial institution.

In *Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis*,[2] the CTA discussed as follows:

> Section 143 of the Local Government Code is the law on local business taxes. Subsection (f) thereof expressly allows local taxation on banks and other financial institutions on their income from dividends, based on gross receipts of the preceding calendar year. What Section 3A.02(h) of the Revised Makati Revenue Code was to expand the taxpayer base to encompass "owners or operators of banks and other financial institutions which include offshore banking, non-bank financial intermediaries, lending investors, finance and investment companies, investment houses, pawnshops, moneyshops, insurance companies,

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[1] Section 143. Tax on Business. – The municipality may impose taxes on the following business: (a) 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.

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

> stock markets, stock brokers, dealers in securities, including pre-need companies, foreign exchange." The Treasurer of Makati City, while invoking this Section 3A.02(h), made it applicable to holding companies, such as Michigan Holdings, by virtue of Section 3A.02(p), which provides that holding companies "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."

In *City of Davao v. Randy Allied Ventures, Inc.*,[3] the Supreme Court resolved that "the LBT imposed pursuant to Section 143(f) is premised on the fact that the persons made liable for such tax are banks or other financial institutions by virtue of their being engaged in the business as such." Thus, the Supreme Court differentiated between a holding company and a financial intermediary, as follows:

> Indeed, there is a start distinction between a holding company and a financial intermediary as contemplated under the LGC, in relation to other laws. A "'holding company' is 'organized' and is basically conducting its business by **investing substantially in the equity securities** of another company for the **purpose of controlling their policies** (as opposed to directly engaging in operating activities) and **'holding' them** in a conglomerate or umbrella structure along with other subsidiaries." While holding companies may partake in investment activities, this does not *per se* qualify them as financial intermediaries that are actively dealing in the same. Financial intermediaries are regulated by the BSP because they deal with public funds when they offer quasi-banking functions. On the other hand, a holding company is not similarly regulated because any investment activities it conducts are mere incidental operations, since its main purpose is to hold shares for policy-controlling purposes.
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> xxx xxx xxx
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> Moreover, while RAVI's stated primary purpose in its AOI is couched in broad terms as to allow some functions similar to an NBFI, this does not necessarily mean it is engaged in the same business. Verily, the "power to purchase and sell real and personal property, including shares," and "to receive dividends thereon," are common provisions to all corporations, including holding companies like RAVI which undertake investments. The mere fact that a holding company makes investments does not *ipso facto* convert it to an NBFI. Otherwise, there would be absolutely no distinction between a mere holding company and financial intermediaries. (*emphasis in the original)*

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[3] G.R. No. 241697, July 29, 2019, and reiterated in *City of Davao et al. v. AP Holdings, Inc.*, G.R. No. 245887, January 22, 2020.

In the instant case, there is no indication that respondent engaged in activities of a bank or other financial institution. Thus, respondent being a holding company, cannot be held liable for LBT imposed under Section 143(f) of the LGC and Section 3A.02(p), in relation to Section 3A.02(h) of the RMRC.

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

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice