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 -

SAN MIGUEL OFFICERS CORPS, INC.,
Respondent.

CTA EB NO. 1628
(CTA AC No. 161)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

APR 10 2018 3:25 p.m.

X---X

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated October 3, 2016 (assailed Decision) and Resolution[2] dated February 17, 2017 (assailed Resolution) of the Court of Tax Appeals First Division (First Division), reversing the Decision dated June 22, 2015[3] and the Order dated September 11, 2015[4] of the Regional Trial Court, Branch 16 of Davao City in Civil Case No. 34, 856-13, which upheld the local business tax assessment amounting to a total of ₱1,124,064.00 for the first and second quarters of taxable year 2011 issued by petitioner against respondent San Miguel Officers Corps. Inc. (SMOCI).

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[1] Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy concurring. *Rollo*, pp. 18-28.
[2] *Id.*, pp. 29-32.
[3] *Docket*, pp. 32-41.
[4] *Id.*, p. 42.

The Parties

Petitioner City of Davao (Davao City), represented by the City Mayor, is a local government unit duly created by law; while petitioner Bella Linda N. Tanjili is being impleaded in her official capacity as the newly designated Officer-In-Charge of the City Treasurer's Office of Davao City, after the retirement of Mr. Rodrigo S. Riola, the previous City Treasurer. Both petitioners are holding office at the City Hall Building, City Hall Drive, Davao City.[5]

SMOCI is a domestic corporation existing under and by virtue of Philippine laws, with principal office address at Legaspi Oil Compound, Km. 9.5, Sasa, Davao City.[6]

The Facts[7]

Since October 2009, SMOCI has been the registered owner of fifty three million eight hundred sixty three thousand thirty five (53,863,035) preferred shares of stock in San Miguel Corporation (SMC) after the Supreme Court approved the conversion of SMOCI's fifty three million eight hundred sixty three thousand thirty five (53,863,035) SMC common shares of stock into SMC Preferred shares; and the dividends received by SMOCI from said preferred shares were deposited in a trust account which earned interest from money market placements.

On January 20, 2014, petitioners issued a Business Tax Order of Payment assessing SMOCI the total amount of ₱1,124,064.00 for local business tax for the first and second quarters of 2011 on the dividends it received from its SMC preferred shares and interests on money market placements. The said assessment was made pursuant to Section 143(f) of R.A. No. 7160, otherwise known as the Local Government Code of 1991 (1991 LGC), and Sections 5(b)(3) and 69(f) of Ordinance No. 158-05, Series of 2005, in relation to Section 131(e) of R.A. No. 7160.

Section 143(f) of the 1991 LGC states:

> "Section 143. *Tax on Business.* - The municipality may impose taxes on the following businesses: x x x

[5] *Id.*, p. 2.
[6] *Id.*, p. 101, Annex P-10.
[7] As found by the First Division and as culled from the records of the case.

> (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". *(Emphasis supplied)*

Section 131(e) of the 1991 LGC, on the other hand, states:

> ***"Banks and other financial institutions*** - include **non-bank financial intermediaries,** lending investors, **finance and investment companies**, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealer in securities and foreign exchange, as defined under applicable laws, or rules and regulations there under."

Petitioners deemed SMOCI a "bank" or "other financial institution" on which local business tax may validly be imposed.

SMOCI paid the assessment.[8] However, on September 13, 2012, SMOCI filed with Riola its written administrative claim for refund or credit of erroneously and illegally collected local business tax. Despite the lapse of four (4) months, SMOCI's written claim for refund or credit had not been acted upon and resolved by Riola.

Due to the inaction of Riola on SMOCI's claim, the latter filed a Petition for Review[9] on January 17, 2013 before the RTC Branch 16 of Davao City.

The RTC denied the Petition for Review in a Decision[10] promulgated on June 22, 2015, on the ground that SMOCI falls within the category of "non-bank financial intermediary" and is therefore subject to local business tax on its dividends and interest income.

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

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[8] Annexes "A" and "A-1," RTC Records.
[9] *Id.* at Note 3, pp. 55-70.
[10] *Id.* at Note 3.

account of others."[11] The person or entity must perform the aforementioned functions on a regular and recurring basis, and not on an isolated basis.

In its Order[12] dated September 11, 2015, the RTC denied SMOCI's Motion for Reconsideration.[13]

SMOCI appealed the denial by way of Petition for Review[14] with the Court of Tax Appeals (CTA).

Comment[15] was filed by petitioners [respondents therein] on January 4, 2016 through registered mail. The respective Memoranda[16] for SMOCI and petitioners were received by the Court in Division on March 17, 2016 and March 23, 2016, respectively.

The Ruling of the First Division

On October 3, 2016, the First Division promulgated the assailed Decision granting the Petition for Review, 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 (P1,124,064.00),** representing the erroneously or illegally paid local business tax in favor of San Miguel Officers Corps, Inc.
>
> **SO ORDERED.**"[17]

In the assailed Decision, the Court in Division found that SMOCI cannot be categorized as a non-bank financial intermediary. It held that there was no sufficient evidence to prove that SMOCI was a financial intermediary or has even engaged in the activities of a financial institution/intermediary.

[11] BIR Revenue Regulations No. 12-2003.
[12] *Id.* at Note 4.
[13] *Id.* at Note 3, pp. 72-80.
[14] *Id.*, pp. 8-28.
[15] *Id.*, pp. 151-164.
[16] *Id.*, pp. 170-195; 200-216.
[17] *Id.* at Note 1, p. 28.

It also held that the stated primary purpose of SMOCI in the Amended Articles of Incorporation was not broad enough to catch all the descriptive functions of a financial intermediary, and that it was improper to just assume that SMOCI was engaged as a non-bank financial intermediary based on the said primary purpose.

Aggrieved, petitioners filed a Motion for Reconsideration *via* registered mail which the Court in Division received on November 10, 2016, which the First Division denied in the assailed Resolution, thus:

> "**WHEREFORE**, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit."[18]

On March 20, 2017, petitioners filed the present Petition for Review *via* registered mail which was received by the Court on March 30, 2017.[19]

On April 19, 2017, the Court issued a Resolution[20] which ordered SMOCI to comment on the Petition for Review. On May 22, 2017, SMOCI filed its Comment.[21]

On June 5, 2017, the Court issued a Resolution[22] submitting the case for decision.

The Issue

The principal issue in this case is whether or not SMOCI is a "Non-Bank Financial Intermediary", falling under the category of a "bank and other financial institutions", so as to be subject to local business tax imposition, as provided under Section 143(f) of RA 7160, otherwise known as the "Local Government Code of 1991".[23]

The Ruling of the Court

We deny the petition.

[18] *Id.*, p. 30.
[19] *Id.*, pp. 1-17.
[20] *Id.*, pp. 47-48.
[21] *Id.*, pp. 49-85.
[22] *Id.*, pp. 86-87.
[23] *Id.*, p. 6.

The issues raised in the petition are mere reiterations of the same issues which had already been duly considered, passed upon and extensively discussed by the First Division in the assailed Decision and assailed Resolution. Nevertheless, for emphasis, we will discuss at length, once again, the demerits of petitioners' arguments which may serve as a guidepost in deciding issues of similar nature in the future.

SMOCI is not a non-bank financial intermediary on which local business taxes may be imposed

Unlike the power to tax by the state which is inherent,[24] the power to tax of provinces, cities and municipalities is limited by the law that granted it, the 1991 LGC[25].

Following this, Davao City's taxing power does not extend to the levy of income tax,[26] except when levied on banks and other financial institutions under Section 143(f) of the 1991 LGC.[27] The dividends[28] and interests[29] in this case are therefore not subject to the city's taxing power, unless SMOCI is a bank or other financial institution.

Section 131(e) of the 1991 LGC defines the term "banks and other financial institutions", as follows:

> "'Banks and other financial institutions' include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign

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24 *Pelizloy Realty Corporation v. The Province of Benguet*, G.R. No. 183137, April 10, 2013.

25 Republic Act 7160.

26 Section 133(a) of the 1991 LGC provides:

SECTION 133. *Common Limitations on the Taxing Power 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 financial institutions[.]

27 Section 143(f) of the 1991 LGC provides:

SECTION 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:
(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.

28 Section 32(A)(7) of the NIRC of 1997, as amended.

29 Section 32(A)(4) of the NIRC of 1997, as amended.

> exchange, as defined under applicable laws, or rules and regulations thereunder."

The 1991 LGC does not define the term "non-bank financial intermediary"; hence, resort to applicable laws, rules and regulations is proper.

The National Internal Revenue Code (NIRC) of 1997, as amended, defines the term "non-bank financial intermediary" in Section 22(W), thus:

> "The term *'non-bank financial intermediary'* means a financial intermediary, as defined in Section 2(D)(c) of Republic Act No. 337, as amended, otherwise known as the General Banking Act, authorized by the *Bangko Sentral ng Pilipinas* (BSP) to perform quasi-banking activities."

The Bureau of Internal Revenue, in turn, elaborated on the said definition. Section 2.3 of Revenue Regulations No. 09-2004 reads as follows, *viz*:

> "*Non-bank Financial Intermediaries* — shall refer to 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. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally."

The General Banking Act,[30] on the other hand, defines "financial intermediaries" in Section 2-D(c), thus:

> "'Financial intermediaries' shall mean 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."

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[30] Republic Act No. 337, as amended by Presidential Decree No. 71.

Additionally, the Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas ("BSP") ("BSP Manual") defines "financial intermediaries" in Section 4.101Q.1, as follows:

> "§ **4101Q.1** ***Financial intermediaries.*** **–** *Financial intermediaries* shall mean 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.
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> *Principal* shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.
>
> *Functions* shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.
>
> a. To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:a. 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;
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> b. Use principally the funds received for acquiring various types of debt or equity securities;
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> c. Borrow against, or lend on, or buy or sell debt or equity securities;
>
> d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;

e. 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 debt or equity securities or by being an intermediary between suppliers and users of funds.

Non-banking financial intermediaries shall include the following:

1) A person or entity licensed and/ or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.

(2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term *financing, finance, investment, lending* and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.

(3) A person or entity performing any of the functions enumerated in Items *a* to *e* of this Subsection."

According to petitioners, SMOCI is a "non-bank financial intermediary" falling under the category of a "bank and other financial institutions" on which local business tax under Section 143(f) of the 1991 LGC may be imposed. To bolster its argument, petitioners listed down the following reasons to support their conclusion.

First, petitioners submit that SMOCI's sole and principal business operation, which is to own (1) substantial number of shares of stock in SMC, and receive dividends in return of such investment, and (2) money market placements in SMC, and receive interest income from them, is within the purview of the definition of "banks and other financial institutions" under Section 131(e) of the 1991 LGC. In fact, SMOCI's revenue comes only from the two stated sources as revealed by its financial statements.

Second, petitioners allege that in comparison with Section 4101Q.1 of the BSP Manual, the scope of SMOCI's primary business purpose in its Amended AOI is wittingly or unwittingly broad enough to catch all the descriptive functions of a Financial Intermediary.

Third, petitioners propose that SMOCI's Amended AOI which states that it shall not act as investment company or securities broker or dealer is not a conclusive proof that it is not a "bank and other financial institution".

Fourth, petitioners argue that the non-issuance of a secondary license by the BSP does not *ipso facto* exclude SMOCI from being a "non-bank financial intermediary".

Lastly, petitioners emphasize that being a stock corporation, SMOCI is presumed to have been organized to engage in business with the end in view of a profit; and hence, subject to local business taxes.

We disagree.

The following are the basic requirements for an entity to be considered a "non-bank financial intermediary":

1) The person or entity is <u>authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities;</u>[31]

2) The principal functions of the said person or entity include the lending, <u>investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others;</u>[32]

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

    a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity

[31] Section 131 (e) of the LGC of 1991, in relation to Section 22(W) of the NIRC of 1997, as amended and Section 2-D(c) of RA No. 337, as amended by PD No. 71.

[32] Section 2-D(c) of RA No. 337, as amended by PD No. 71; and Section 4101Q.I of the BSP's Manual of Regulations for Non-Bank Financial Institutions.

securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;

b. Use principally the funds received for acquiring various types of debt or equity securities;

c. Borrow against, or lend on, or buy or sell debt or equity securities;

d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers; and

e. 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 debt or equity securities or by being an intermediary between suppliers and users of funds.

Applying the above, SMOCI does not fulfill any of the requirements of being a non-bank financial intermediary.

There is also nothing on record showing that the BSP authorized SMOCI to perform quasi-banking activities as a non-bank financial intermediary. As pointed out by the assailed Resolution, "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." The requirement that a person or entity must be '*authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities*' in order that it can be considered as a '*non-bank financial intermediary*' is one established by law. This cannot be overlooked.

There is also nothing in the record that shows that SMOCI is a financial intermediary or that it has actually engaged in the activities defined and enumerated in the General Banking Act and in the BSP Manual. Nor is there proof that it performed the activities enumerated in the BSP Manual on a regular and recurring basis. Furthermore, from the records of this case, SMOCI had not held itself out, nor advertised itself, as non-banking financial intermediary. It is certainly not enough that a finding that SMOCI acts as a financial intermediary be based on the primary business purpose stated in its Amended AOI. Such a conclusion is based on an assumption, with no support in evidence.

Another circumstance points to the inescapable conclusion that SMOCI is not a non-bank financial intermediary. As found by the First Division, SMOCI's Amended AOI indicate that it is a holding company, to wit:

> "To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination **'holding corporation'**, and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation."[33]

In fact, the Supreme Court *En Banc* was given the opportunity in *Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines (COCOFED)*,[34] to declare SMOCI as one of the fourteen holding companies funded by the coconut levy fund, which were formed or organized solely for the purpose of holding the San Miguel shares. A holding company is one that is organized to hold the stock of another or other corporations.[35]

[33] *Id.* at Note 1, p. 25; *Emphasis and underscoring supplied.*
[34] G.R. Nos. 177857-58 & 178193, January 24, 2012.
[35] Securities and Exchange Commission (SEC) – Office of the General Counsel (OGC) Opinion No. 15-15 dated November 03, 2015 addressed to Waterfront Philippines Inc. *citing* SEC-OGC Opinion No. 14-32 dated November 10, 2014 and SEC-OGC Opinion No. 11-15 dated February 10, 2011.

In the case of *Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis*,[36] this Court *En Banc* had ruled that a holding company is not among the entities enumerated as "banks and other financial institutions" in Section 133(e) of the 1991 LGC –

> "Section 131 (e) of the LGC defines "banks and other financial institutions" to include "non-bank financial intermediaries, lending 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." **This enumeration appears to be exclusive of other entities. <u>Nowhere in the entirety of Section 131 is a holding company mentioned.</u>**"[37]

Thus, Davao City cannot make holding companies liable for local business tax clearly imposed on "banks and other financial institutions" under Section 143(f) of the 1991 LGC and Section 69(F) of the Revenue Code of the City of Davao[38].

Davao City's Assessment is Ultra Vires

Moreover, it must be emphasized that the local business tax assessment by Davao City against SMOCI for the first and second quarters of taxable year 2011 should be cancelled and set aside for being void.

Davao City issued a Business Tax Order of Payment assessing SMOCI for alleged deficiency local business tax in the amount of ₱1,124,064.00 on January 20, 2014[39]. *COCOFED* was promulgated on January 24, 2012. At the time the subject assessment was issued, SMOCI and the San Miguel shares it held were already declared owned by government. Hence, Davao City no longer had any authority to issue the said Business Tax Order of Payment based on Section 143 of the 1991 LGC.

In *COCOFED*, the Supreme Court held:

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[36] C.T.A. EB CASE NO. 1093. June 17, 2015.
[37] *Emphasis and underscoring supplied.*
[38] Davao City Ordinance No. 158-05, November 16, 2005.
[39] *Rollo,* p.3

"The Partial Summary Judgment in Civil Case No. 0033-F dated May 7, 2004, is hereby **MODIFIED**, and shall read as follows:

WHEREFORE, the MOTION FOR EXECUTION OF PARTIAL SUMMARY JUDGMENT (RE: CIIF BLOCK OF SMC SHARES OF STOCK) dated August 8, 2005 of the plaintiff is hereby denied for lack of merit. However, this Court orders the severance of this particular claim of Plaintiff. The Partial Summary Judgment dated May 7, 2004 is now considered a separate final and appealable judgment with respect to the said CIIF Block of SMC shares of stock.

The Partial Summary Judgment rendered on May 7, 2004 is modified by deleting the last paragraph of the dispositive portion, which will now read, as follows:

WHEREFORE, in view of the foregoing, we hold that:

The Motion for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed, et al) filed by Plaintiff is hereby **GRANTED. ACCORDINGLY, THE CIIF COMPANIES, NAMELY:**

1. Southern Luzon Coconut Oil Mills (SOLCOM);
2. Cagayan de Oro Oil Co., Inc. (CAGOIL);
3. Iligan Coconut Industries, Inc. (ILICOCO);
4. San Pablo Manufacturing Corp. (SPMC);
5. Granexport Manufacturing Corp. (GRANEX); and
6. Legaspi Oil Co., Inc. (LEGOIL),

AS WELL AS THE 14 HOLDING COMPANIES, NAMELY:

1. Soriano Shares, Inc.;
2. ACS Investors, Inc.;
3. Roxas Shares, Inc.;

4. Arc Investors; Inc.;
5. Toda Holdings, Inc.;
6. AP Holdings, Inc.;
7. Fernandez Holdings, Inc.;
8. **SMC Officers Corps, Inc.**;
9. Te Deum Resources, Inc.;
10. Anglo Ventures, Inc.;
11. Randy Allied Ventures, Inc.;
12. Rock Steel Resources, Inc.;
13. Valhalla Properties Ltd., Inc.; and
14. First Meridian Development, Inc. *(Emphasis and underscoring supplied)*

AND THE CONVERTED SMC SERIES 1 PREFERRED SHARES TOTALING 753,848,312 SHARES SUBJECT OF THE RESOLUTION OF THE COURT DATED SEPTEMBER 17, 2009 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID OR ISSUED THEREON AFTER THAT DATE, AS WELL AS ANY INCREMENTS THERETO ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT TO BE USED ONLY FOR THE BENEFIT OF ALL COCONUT FARMERS AND FOR THE DEVELOPMENT OF THE COCONUT INDUSTRY, AND ORDERED RECONVEYED TO THE GOVERNMENT.

THE COURT AFFIRMS THE RESOLUTIONS ISSUED BY THE SANDIGANBAYAN ON JUNE 5, 2007 IN CIVIL CASE NO. 0033-A AND ON MAY 11, 2007 IN CIVIL CASE NO. 0033-F, THAT THERE IS NO MORE NECESSITY OF FURTHER TRIAL WITH RESPECT TO THE ISSUE OF OWNERSHIP OF (1) THE SEQUESTERED UCPB SHARES, (2) THE CIIF BLOCK OF SMC SHARES, AND (3) THE CIIF COMPANIES. AS THEY HAVE FINALLY BEEN ADJUDICATED IN THE AFOREMENTIONED PARTIAL SUMMARY

JUDGMENTS DATED JULY 11, 2003 AND MAY 7, 2004.

SO ORDERED."[40]

The ruling in *COCOFED* placed the subject San Miguel shares and its dividends, and any income therefrom, beyond the scope of the taxing power of Davao City. The exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the 1991 LGC. Under paragraph (o) of this provision, local government units have no power to impose any tax, fee or charge on the National Government:

> "SECTION 133. *Common Limitations on the Taxing Power 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:
>
> xxx xxx xxx
>
> (o) **Taxes, fees or charges, of any kind on the National Government**, its agencies and instrumentalities, and local government units."[41]

Since the subject shares are owned by the government, it follows that the dividends and any income therefrom are also owned by the government. Thus, the same is not within the power of the Davao City to tax. Any earnings of the San Miguel shares belong to the government. Any local tax imposed on SMOCI, is imposed on the national government. This is clearly in contravention of Section 133(o) of the 1991 LGC.

Although the dividends were declared and income therefrom accrued in 2011, and *COCOFED* was promulgated in 2012, Davao City still cannot impose the subject tax. In *Philippine Fisheries Development Authority (PFDA) v. Central Board of Assessment Appeals, et al.*,[42] a prior ruling, that declared the PFDA a government instrumentality, promulgated after the issuance of the assessment, was cause for the cancellation of the assessment therein, being without the power of the local

[40] As modified by Supreme Court in its Resolution dated September 4, 2012 clarifying the Decision dated January 24, 2012 in the same case. The underscored portion originally read: "**AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALING 33,133,266 SHARES AS OF 1983 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID AND ISSUED THEREON AS WELL AS ANY**". The Resolution dated September 4, 2012 also DENIED with FINALITY the Motion for Reconsideration filed by Petitioners therein.

[41] *Emphasis supplied.*

[42] G.R. No. 178030, December 15, 2010.

government unit concerned. Here, the Supreme Court declared SMOCI and the San Miguel shares and all income therefrom as owned by the government in 2012, **before** the assessment was issued in 2014. With more reason should the assessment in this case be cancelled.

A government instrumentality is defined as an agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter.[43] SMOCI does not fit that definition to a tee. However, to our mind, it is akin to one, in light of the character of the assets it owns and manages.

To reiterate, the Supreme Court held there that all San Miguel held by the holding companies, together with all dividends declared, paid and issued thereon as well as any increments thereto are owned by the government, having been acquired using coconut levy funds, to be used only for the benefit of all coconut farmers and for the development of the coconut industry. It cannot be clearer that SMOCI and the San Miguel shares it holds are beyond the scope of the Davao City's taxing power.

WHEREFORE, finding no cogent reason to disturb the findings and conclusions reached by the First Division in the assailed Decision dated October 3, 2016 as well as in the assailed Resolution dated February 17, 2017, the same are **AFFIRMED**. Accordingly, the Petition for Review filed with the Court *En Banc* on March 20, 2017 *via* registered mail is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[43] Philippine Fisheries Development Authority v. Court of Appeals, G.R. No. 169836, July 31, 2007.

With due respect, please see Dissenting Opinion
JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

With due respect, I join Justice Castañeda, Jr.'s stand.
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

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 –

SAN MIGUEL OFFICERS CORPS, INC.,
Respondent.

CTA EB No. 1628
(CTA AC No. 161)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan JJ.

Promulgated:

APR 10 2018 3:25p.m.

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DISSENTING OPINION

CASTAÑEDA, JR., J.:

With due respect, I dissent to the conclusion reached by the *ponencia* that the instant Petition for Review should be denied primarily on the ground that respondent is not a non-bank financial intermediary.

In concluding that respondent is a non-bank financial intermediary, the lower court found that:

> "To stress, the income of the Petitioner Corporation comes only from two sources, to wit:

> 1. ***Dividends from SMOCI's SMC Shares; and***
> 2. ***Interest Income from SMOCI's Money Market Placements***
>
> In short, these ***dividends and interests*** are not considered incidental to its business quest, but are the **principal** xxx incomes of Petitioner's Corporation in the regular course of its business in line with the Primary Purpose of its Amended Articles of Incorporation."[1]

However, the subject Decision did not take into account the said findings of the lower court. It states:

> "There is also nothing in the record that shows that SMOCI is a financial intermediary or that it has actually engaged in the activities defined and enumerated in the General Banking Act and in the BSP Manual. Nor is there proof that it performed the activities enumerated in the BSP Manual on a regular and recurring basis. Furthermore, from the records of this case, SMOCI had not held itself out, nor advertised itself, as non-banking financial intermediary. It is certainly not enough that a finding that SMOCI acts as a financial intermediary be based on the primary business purpose stated in its Amended AOI. Such a conclusion is based on an assumption, with no support in evidence."

The subject Decision provides that there is no indication that respondent is a financial intermediary or that it has actually engaged in the activities enumerated in the BSP Manual. Yet, there is also nothing in the subject Decision that overturned the findings of fact of the lower court, *i.e.*, that respondent's income emanated only from dividends and interest income from money market placements. Precisely, these findings of fact are on record and are proof that respondent acts as a non-bank financial intermediary. Considering that there is no contrary finding by the Court *En Banc*, the findings of fact of the lower court must be considered in arriving at the subject Decision.

Furthermore, not being authorized by the BSP to act as a non-bank financial intermediary should not be a basis for concluding that respondent is not a non-bank financial intermediary. To my mind, this requirement is a mere regulatory measure by the BSP rather than a criterion for determining what entity is considered as a non-bank financial intermediary. Whether respondent is a non-bank financial intermediary cannot be based on a finding that it is not authorized by the BSP to act as such. It is clear in this case that respondent's income emanates only from dividends and interest income

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[1] Lower Court Docket, pp. 40-41.

from money market placements, which it could not have earned if it does not act as a non-bank financial intermediary without, however, authority from the BSP.

In connection to the above discussion, there is also no guarantee that a holding company will not act as a non-bank financial intermediary despite the limitations provided in its Articles of Incorporation. Thus, a holding company may not have been included among the entities enumerated as banks and other financial institutions under Section 133(e) of the 1991 LGC, but it cannot be an assurance that a holding company will not engage in acts outside of its authority.

Finally, Section 143 of the LGC of 1991 pertinently states:

> "**Section 143. Tax on Business.** — The municipality[2] may impose taxes **on the following businesses**:
>
> xxx 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."*(Emphasis supplied)*

Section 143(f) of the LGC of 1991 imposes local business tax **on banks and other financial institutions**, *i.e.*, non-bank financial intermediaries. In other words, while the tax bases of Section 143(f) consist of 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 premium, the tax is imposed directly on banks and other financial institutions. It directly imposes business tax on the entity and not on the sources of gross receipts.

In the instant case, while San Miguel Shares had already been adjudged by the Supreme Court as belonging to the government, it is not directly the said shares, but respondent as a non-bank financial intermediary, who is subject to local business tax. Simply put, the dividends and interest income from these shares are mere tax bases under Section 143(f) of the LGC of 1991. Ultimately, however, it is respondent against whom the local business tax is levied upon.

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[2] The city, may levy the taxes, fees, and charges which the province or municipality may impose, in accordance with Sec. 151, LGC of 1991

Considering the foregoing, I **VOTE** to **GRANT** the instant Petition for Review.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice