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,

CTA *EB* NO. 1663
(CTA AC No. 163)

-*versus*-

Present:

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

ROXAS SHARES, INC.,
Respondent.

Promulgated:
JUN 03 2019 1:50 p.m.

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RESOLUTION

MANAHAN, J.:

This resolves the Motion for Reconsideration,[1] filed by petitioners through registered mail on January 23, 2019, and received by the Court on January 29, 2019. Petitioners seek reconsideration of the Decision[2] dated December 19, 2018, denying petitioners' appeal, as follows:

> **WHEREFORE**, the instant Petition for Review is **DISMISSED** for lack of merit.

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[1] *Rollo*, pp. 206-218.
[2] *Rollo*, pp. 173-190.

SO ORDERED.[3]

Due to the denial of petitioners' appeal, the Court in Division's Decision dated January 11, 2017, is affirmed, granting the refund of respondent's erroneously paid local business taxes for the first and second quarters of taxable year 2011. The Court in Division's Decision states:

> **WHEREFORE**, in view of the foregoing, the present Petition for Review is hereby **GRANTED**. The Decision dated June 22, 2015 and the Order dated September 11, 2015 by the Regional Trial court, Branch 16, Davao City, are hereby **REVERSED** and **SET ASIDE**. Accordingly, respondent Treasurer of the City of Davao is hereby **ORDERED TO REFUND** to petitioner, Roxas Shares, Inc., the total amount of **ONE MILLION ONE HUNDRED TWO THOUSAND TWO HUNDRED EIGHTY-FIVE AND 50/100 PESOS (PHP1,102,285.50)**, representing erroneously paid local business taxes for the first and second quarters of taxable year 2011.
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> **SO ORDERED.**[4]

Respondent Roxas Shares, Inc. (RSI) filed its Comment/Opposition (To Petitioners' Motion for Reconsideration dated 23 January 2019),[5] through registered mail on March 18, 2019. Said comment was received by the Court on March 26, 2019.

Petitioners seek reconsideration on the following grounds:

> 1. The Honorable Court En Banc erred in concluding that respondent is a holding company, thus, its business operation does not fall within the definition of a non-bank financial intermediary.
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> 2. The Honorable Court En Banc erred in concluding that since there is no evidence in the court a quo showing that respondent was authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-

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[3] *Rollo*, p. 189.
[4] *Rollo*, p. 29.
[5] *Rollo*, pp. 223-250.

> banking activities, respondent cannot be treated as non-bank financial intermediary.
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> 3. The Honorable Court En Banc erred in not taking 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 of San Miguel Corporation.
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> 4. The Honorable Court En Banc erred in concluding that respondent's assets, being declared as owned by the government pursuant to COCOFED decision, is exempt from the imposition of local business tax.[6]

Petitioners reiterate that respondent'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 respondent has no other sources of income except dividends and interest on money market placements, hence, respondent's 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, respondent is deemed an NBFI.

Petitioners also maintain that the non-issuance of a license by the Monetary Board does not *ipso facto* exclude respondent from the ambit of an NBFI. They state that the real nature and substance of respondent's business operation, which consists primarily, continuously and regularly of investments in shares of stock of SMC and money placements, should be the main consideration in determining that respondent is indeed an NBFI. The fact that respondent has no other business, except its investment in SMC, shows its real intent to engage solely and primarily in the business of stock investment and money market placements in the said company, thus, any profit it received is a direct consequence of its business engagements and not just merely incidental thereto.

Petitioners further state that the ruling in *Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines (COCOFED* case*)*,[7] merely segregated or identified the nature of said fund as government owned, rather than privately owned.

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[6] *Rollo*, p. 207.
[7] G.R. Nos. 177857-58 & 178193, January 24, 2012.

The Supreme Court ruling 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. Finally, petitioners argue that under Section 133(o) of the 1991 Local Government Code (LGC), only the national government, its agencies and instrumentalities, and local government units, are exempted from the taxing power of the City of Davao. Thus, respondent RSI, not being the national government, or an agency or instrumentality, or a local government unit, is not exempt from Section 143(f) of the LGC.

Respondent RSI counters that the various definitions under Section 143(f) of the LGC, Revenue Regulations No. 9-2004, and BSP Manual of Regulations for Non-Bank Financial Institutions, lead to the conclusion that respondent is not an NBFI. Respondent 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 by respondent in SMC shares happened only once and is an isolated transaction. Thus, respondent argues that its dividend income and interest income are beyond the taxing powers of petitioners. Respondent 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 fiscal manager would – is not a business activity that is subject to local business tax. Respondent also reiterates that it is a mere holding company.

Finally, respondent asserts that the subject SMC shares of stock and income derived therefrom are national government property exempt from local business tax.

The motion lacks merit. The arguments raised by petitioners are a mere rehash of issues which have already been discussed and resolved in the Decision dated December 19, 2018.

As discussed in the said Decision, respondent RSI is a holding company organized for the purpose of holding SMC shares. Further, respondent, 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 instant Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice