Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

FIRST MERIDIAN DEVELOPMENT, INC.,
Petitioner,

-versus-

CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City,
Respondents.

CTA AC No. 159
(RTC Civil Case No. 34,852-13)

Members:
CASTAÑEDA, JR., *Chairperson*, *and*
CASANOVA *JJ.*

Promulgated:
FEB 2 3 2017
9:00 a.m.

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RESOLUTION

CASANOVA, *J.*:

For resolution of this Court is petitioner's Motion for Reconsideration filed on December 14, 2016, with respondent's Comment to Petitioner's Motion for Reconsideration filed on January 20, 2017.

In its Motion, petitioner prays for this Court to reconsider its Decision dated November 29, 2016 and, instead, render judgment ordering respondents to refund or credit petitioner the amount of Four Hundred Fifty Six Thousand Three Hundred Ninety Four Pesos (P456,394.00), plus legal interest, representing the 0.55% local business taxes for the first and second quarters of 2011 which, accordingly, were allegedly erroneously and illegally collected from petitioner on January 18, 2011 and April 25, 2011, respectively.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In the instant Motion, petitioner raised the following issues for the consideration of the Court: that the Court erred in ruling that petitioner is a non-bank financial intermediary since it is not engaged in lending money, investing, reinvesting or trading securities on a regular and recurring basis; that the business of petitioner in its purpose clause shows that it is a mere holding company which is not subject to local business tax on dividend income and interest income; that the mere owning or holding of shares of stock of petitioner does not *ipso facto* qualify petitioner as being engaged in the business as a non-bank financial intermediary; and, that petitioner's income partakes the nature of public funds, thus, business tax cannot be imposed on the same.

Respondents, on the other hand, argue that the Court did not err in holding that petitioner is engaged in the business of a "non-bank financial intermediaries" on the following grounds: that the act of petitioner in investing in equity securities or holding an assets consisting of stocks of San Miguel Corporation, and placement of funds in the same company on a regular and continuing basis are the very substantive acts that characterize a non-bank financial intermediary; that the self-imposed prohibition in petitioner's Amended Articles of Incorporation that "it shall not act as an investment company or securities broker and/or dealer nor exercise the functions of a trust corporation" is clearly a proviso that is intended to conceal or mislead, or exempt the petitioner from obtaining the necessary secondary license as other financial institution; and, that petitioner's investment in SMC shares should be regarded as a continuing and regular transaction, as evidenced by petitioner's receipt of huge sum of money every year in the form of dividend income from its money placements.

The Court is not impressed with petitioner's Motion.

A cursory reading of the arguments presented by petitioner readily shows that no new matters or issues have been raised and that they deal with the very same issues which have been thoroughly passed upon at length in our Decision dated November 29, 2016.

This Court reiterates its ruling in the assailed Decision that petitioner's primary purpose is extensive enough to cover most of the principal functions of a non-bank financial intermediary.

As regards petitioner's claim that, being a mere holding company, it is not subject to local business tax on dividend income and interest income; and, that mere owning or holding of shares of stock of petitioner does not ipso facto qualify petitioner as being engaged in the business as a non-bank financial intermediary, the same had also been resolved by this Court in the assailed Decision in this wise:

> " x x x the self-imposed prohibition in the last phrase of petitioner's primary purpose in its Articles of Incorporation which states that 'it shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation' cannot prevail over the real nature of transaction undertaken by petitioner, which is mainly investing or placement of funds. It cannot also guarantee that petitioner will not undertake/engage in any of the said activities. Verily, by actually engaging in the business of stock investment and money market placements in SMC, the said proviso was negated and should, therefore, be disregarded. Thus, this Court finds no cogent reason to set aside the following findings and conclusions of the court a quo, to which We fully agree, to wit:
>
> > 'While the primary purpose of Petitioner appears to set a qualification or condition that: <u>**'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,'**</u> said **proviso** in the Court's mind is a classic evasion by Petitioner from the requirement to secure a secondary license for investment company under the regulation of the Bangko Sentral nf (sic) Pilipinas for non-banking financial intermediaries, per second paragraph of **Section 4101Q1 of MANUAL OF REGULATIONS FOR NON-BANK FINANCIAL INSTITUTIONS**, to wit:
> >
> > > 'Non-banking financial intermediaries shall include the following:
> > >
> > > (1) <u>**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,**</u>

securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association. (underscoring supplied).

x x x x'

Petitioner cannot hide under the cloak of its evasive proviso, because Petitioner is glaringly and clearly under the category of a Financial Intermediary.

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

1. **Dividends from FMDI's SMC Shares; and**
2. **Interest Income from FMDI's Money Market Placements** (Par. 11, Petition)

In short, these **dividends and interests** are not considered incidental to its business quest, but are the **principal** (defined above as: **Principal** shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental) incomes of Petitioner's Corporation in the regular course of its business in line with the Primary Purpose of its Amended Articles of Incorporation.'

Lastly, petitioner, being a stock corporation, is reasonably expected to perform all the above-enumerated functions in its Amended Articles of Incorporation with the end view of earning profits. Thus, any profits which it receives whether in the form of dividends or interest income, cannot be considered as mere incidental to its business, but a direct consequence of its business engagements as a non-bank financial intermediary."

Based therefrom, We find no cogent reason to deviate from the conclusions reached in the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice