REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ARC INVESTORS, INC., Petitioner,	**CTA AC No. 130** **(RTC Civil Case No.35,670-2014)**
	Members:
- versus -	**DEL ROSARIO,** *P.J.*, **UY,** and **MINDARO-GRULLA,** *JJ.*
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City, Respondents.	***Promulgated:*** DEC 20 2016 ; 1:13 p.m.

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RESOLUTION

UY, *J.*:

For resolution is respondents' **"MOTION FOR RECONSIDERATION"** filed on September 20, 2016, praying for the reconsideration of this Court's Decision dated August 16, 2016, with petitioner's **"COMMENT/OPPOSITION To Respondent's Motion for Reconsideration (Re: Decision Promulgated 16 August 2016)"** filed on October 20, 2016. The dispositive portion of said Decision reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. The assailed Orders dated October 15, 2014 and December 17, 2014, both issued by Branch 11 of the RTC, 11th Judicial Region, Davao City, are **REVERSED** and **SET ASIDE**. Accordingly, the local business tax assessed against petitioner for the third and fourth quarters of taxable year 2011 in the aggregate amount of ₱4,381,431.90 is **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED.**"

In the instant Motion, respondents argue that this Court failed to see that petitioner's primary purpose for its incorporation as embodied in its Amended Articles of Incorporation and the nature of its business vis-à-vis with the definitions of non-bank financial intermediaries show that its business falls squarely within the purview of the term *"non-bank financial intermediaries"*.

According to respondents, the act of petitioner in subscribing, purchasing and holding the San Miguel Corporation (SMC) shares of stocks, and consequently, receiving regularly annual dividends and making money placements to maximize profits, are not isolated transactions, but are in themselves the continuing act of investing and placement of funds being contemplated for *"non-bank financial intermediaries"*. Moreover, petitioner's allegation that the huge dividends it received from SMC and interest income from its money placements are merely incidental to its business operation is negated by its express admission on Section 41.6 of its Petition that *"since its incorporation, it has not engaged in any business activity"*.

Lastly, respondents emphasize that the non-issuance of license by the BSP does not *ipso facto* exclude the petitioner from the definition of a *"non-bank financial intermediary"* as provided under Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions; and that what should prevail is not the fact of whether an authority was given by the BSP, as the petitioner could deliberately evade the same by not filing an application therein, but rather the real nature and substance of petitioner's business operation, which consists primarily and regularly of investments in shares of stocks in SMC and money placements.

Upon the other hand, petitioner contends in its *Comment*, that this Court: (1) correctly held that it is not a non-bank financial intermediary; (2) aptly observed that the dividends and interest received by petitioner are merely non-essential income not a result of its principal function; and (3) rightly held that petitioner failed to establish that petitioner performs the functions of a non-bank financial intermediary on a regular and recurring basis.

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks of merit.

A careful perusal of the allegations in said *Motion for Reconsideration* shows that the arguments raised therein are mere rehash of matters which have already been considered, weighed, passed upon and exhaustively resolved by this Court in the assailed Decision.

To reiterate, the basic requirements for a person or entity to be considered as a *"non-bank financial intermediary"* are as follows:

1) The person or entity is *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"*;[1]

2) The principal functions of the said person or entity *"include the lending, 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"*;[2]

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

   1. 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;

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

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

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

   5. 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

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

[2] This is pursuant to Section 2-D(c) of RA No. 337, as amended by PD No. 71; and Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions.

between suppliers and users of funds.[3]

As We have ruled in the assailed Decision, it was not shown that petitioner fulfilled the basic requirements for a person or entity to be considered as a *"non-bank financial intermediary".*

As regards the arguments raised in the instant *Motion for Reconsideration,* respondents likewise failed to point to any evidence that would show petitioner's compliance therewith in order that it may be considered as a *"non-bank financial intermediary".* Thus, the subject local tax assessment must perforce fail.

It must be emphasized that 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.

Section 131(e) of the LGC of 1991 states the scope of the term *"Banks and other financial institutions"*, to wit:

> "SEC. 131. *Definition of Terms.* — When used in this Title, the term:
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> xxx xxx xxx
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> (e) *'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 exchange, **as defined under applicable laws, or rules and regulations thereunder**;" *(Emphases supplied)*

It is clear from the foregoing provision that the term *"non-bank financial intermediaries"* are those that are *"as defined under applicable laws, or rules and regulations thereunder".* Thus, the definition given by other laws on the said term ought to be considered.

Without doubt, the said term was defined in Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions. However, the same term was likewise defined by Section 22(W) of

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[3] This is pursuant to Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions.

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the National Internal Revenue Code (NIRC) of 1997 as one *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"*, to wit:

> "(W) 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.**" *(Emphasis supplied)*

Such being the case, this definition given by the NIRC of 1997 must likewise be considered and be given effect in determining which persons or entities fall under the said definition under, and pursuant to, Section 131(e) of the LGC of 1991. Needless to state, the law is clear. What it decrees must be followed; what it commands must be obeyed.[4]

In the same vein, even when the definition of the term *"non-bank financial intermediary"* given by Section 22(W) of the NIRC of 1997 can be disregarded, and this Court will consider **only** the definition stated in Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions, the conclusion will still be the same.

It must be emphasized that the said Section 4101Q.1 is to the effect that the enumerated functions which are indicative that a person or entity is a financial intermediary must be *"on a regular and recurring, not on an isolated basis"*. As already emphasized in the assailed Decision, there is no showing that petitioner ever performed the said functions *"on a regular and recurring basis"*. Relative thereto, it must be noted that while the Amended Articles of Incorporation of petitioner enumerates the purposes for which it was incorporated, the same is not indicative of the actual transactions it entered into, and of the frequency thereof, throughout a particular year.

And even granting that We can outrightly treat petitioner as a *"non-bank financial intermediary"*, *i.e.*, even without evidence to that effect, petitioner, being Government-owned, is beyond the reach of respondent City of Davao's taxing power, pursuant to Section 133(o) of the LGC of 1991, which provides as follows, to wit:

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[4] *Philippine National Bank vs. Bitulok Sawmill, Inc., et al.*, G.R. Nos. L-24177-85, June 29, 1968.

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> "SEC. 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**:
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> xxx xxx xxx
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> (o) **Taxes, fees or charges of any kind on the National Government**, its agencies and instrumentalities, and local government units." *(Emphases supplied)*

In *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines*,[5] the Supreme Court declared that the Coconut Industry Investment Fund (CIIF) holding companies, which includes petitioner,[6] are government-owned funds/assets, to wit:

> "From the foregoing discussions, **it is fairly established that the coconut levy funds are special public funds. Consequently, any property purchased by means of the coconut levy funds should likewise be treated as public funds or public property, subject to burdens and restrictions attached by law to such property.**
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> xxx xxx xxx
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> **Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds, which have been established to be public in character it goes without saying that these acquired corporations and assets ought to be regarded and treated as government assets. <u>Being government properties, they are accordingly owned by the Government</u>, for the coconut industry pursuant to currently existing laws.**

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[5] G.R. Nos. 177857-58 and 178193, January 24, 2012.

[6] See Footnote no. 4 of *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, etseq.*, supra, to wit: *"Composed of Soriano shares, ASC Investors, **<u>ARC Investors</u>**, Roxas Shares, Toda Holdings, AP Holdings, Fernandez Holdings, SMC Officers Corps., Te Deum Resources, and Anglo Ventures, Randy Allied Ventures, Rock Steel Resources, Valhalla Properties Ltd., and First Meridian Development, all names ending with the suffix 'Corp.' or 'Inc.'" (Emphasis and underscoring supplied)*

> It may be conceded hypothetically, as COCOFED *et al.* urge, that the 14 CIIF holding companies acquired the SMC shares in question using advances from the CIIF companies and from UCPB loans. But there can be no gainsaying that the same advances and UCPB loans are public in character, constituting as they do assets of the 14 holding companies, which in turn are wholly-owned subsidiaries of the 6 CIIF Oil Mills. And these oil mills were organized, capitalized and/or financed using coconut levy funds. In net effect, the CIIF block of SMC shares are simply the fruits of the coconut levy funds acquired at the expense of the coconut industry. In *Republic v. COCOFED*,[7] the *en banc* Court, speaking through Justice (later Chief Justice) Artemio Panganiban, stated: ***'Because the subject UCPB shares were acquired with government funds, the government becomes their prima facie beneficial and true owner.'*** **By parity of reasoning, the adverted block of SMC shares, acquired as they were with government funds, <u>belong to the government as, at the very least, their beneficial and true owner</u>.** *(Emphases and underscoring supplied)*

Thus, since on the basis of the foregoing jurisprudential pronouncements petitioner is considered as Government property, any tax imposed thereon is considered, in effect, as a tax on the Government. Such being the case, under the aforequoted Section 133(o) of the LGC of 1991, the dividend and interest income earned by petitioner may not be subjected to the local business tax imposed by respondent City of Davao.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[7] G.R. Nos. 147062-64, December 14, 2001.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice