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*-

TODA HOLDINGS, INC.,
Respondent.

CTA EB NO. 1683
(CTA AC No. 138)

Present:

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

Promulgated:
APR 22 2019 2:55 p.m.

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RESOLUTION

MANAHAN, J.:

This resolves petitioners' Motion for Reconsideration,[1] filed through registered mail on November 20, 2018, and received by the Court on December 4, 2018. Petitioners seek reconsideration of the Decision[2] promulgated on October 19, 2018, denying petitioners' appeal, as follows:

> **WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.[3]

Due to the denial of petitioners' appeal, the Court in Division's Decision dated February 9, 2017 was affirmed which cancels the assessments against Toda Holdings, Inc. (THI) for local business tax for the 3rd and 4th quarters of

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[1] *Rollo*, pp. 176-189.
[2] *Rollo*, pp. 141-159.
[3] *Rollo*, p. 158.

taxable year 2011, in the amount of Php3,105,739.00. The Court in Division's Decision states:

> **WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assailed Decision and Order of the Regional Trial Court Branch 17 of Davao City in Civil Case No. 35,680-14 are **REVERSED AND SET ASIDE**. The Business Tax Order of Payment dated January 20, 2014 issued by the City Treasurer of Davao City, assessing [THI] for local business tax in the amount of P3,105,739.00 is **SET ASIDE AND CANCELLED** for lack of factual and legal basis.
>
> **SO ORDERED**.

Respondent THI filed its Comment (On Petitioner's Motion for Reconsideration dated 20 November 2018),[4] through registered mail on January 21, 2019, and received by the Court on January 29, 2019.

Petitioners seek reconsideration on the following grounds:

> 1) The Honorable Court *En Banc* erred in concluding that respondent's 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-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] *Rollo*, pp. 194-219.

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.

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); and, that being engaged principally and solely in the business of investing and holding San Miguel Corporation (SMC) shares and money market placements, THI is deemed an NBFI.

Petitioners also state that the non-issuance of license by the Monetary Board does not *ipso facto* exclude THI from the ambit of an NBFI. They state that the real nature and substance of THI'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 THI is indeed an NBFI. The fact that THI 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*),[5] merely segregated or identified the nature of said fund as government owned, rather than privately owned; and, that the said ruling does not delve on the taxability of the fund or on its income but solely on the nature of ownership of the said SMC shares of stock. Finally, petitioners argue that in the absence of an express provision declaring that THI's dividends and interest income are exempt from local business tax, respondent is obliged to pay the tax assessed pursuant to Section 143(f) of the Local Government Code of 1991(LGC).

In its Comment, THI states 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 THI is not an NBFI. THI argues that it cannot be considered a bank or NBFI since

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

it is not engaged in lending money, investing, reinvesting or trading securities and/or foreign exchange either for its own account 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, the dividend and interest income of THI are beyond the taxing powers of petitioners. THI further argues that merely owning or holding of 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 administrator would – is not a business activity that is subject to local business tax. THI further reiterates that it is a mere holding company.

Respondent THI also asserts that the subject SMC shares of stock and the income derived therefrom are national government property exempt from local business tax.

After careful examination of the motion and comment thereto, the Court *En Banc* finds that the arguments raised by petitioners are a mere rehash of issues which have already been evaluated and resolved in the Decision dated October 19, 2018.

As discussed in the said Decision, (1) respondent THI is a holding company organized for the purpose of holding SMC shares; and (2) respondent, including its held SMC shares, are owned by the national government and thus, beyond the taxing power of local government units.

Petitioners present no compelling reason for the Court to reconsider, modify or reverse the said Decision.

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice