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 City Treasurer of Davao City,
Petitioners,

-versus-

ASC INVESTORS, INC.
Respondent.

CTA EB NO. 1749
(CTA AC No. 157)

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

Promulgated: JAN 22 2019 3:28pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(2), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2] dated June 7, 2017, rendered by the Third Division of this

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) xxxxx.
(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] *En Banc* Docket, pp. 18-36.

Court in CTA AC No. 157, and its Resolution[3] dated October 13, 2017. The Third Division of this Court reversed the orders of the Regional Trial Court and ordered petitioners City of Davao and Bella Linda N. Tanjili to refund to respondent ASC Investors, Inc. the erroneously paid local business tax.

Petitioners assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated June 7, 2017:

> "***WHEREFORE***, *the Petition for Review dated November 3, 2015 filed ASC Investors, Inc. is* ***GRANTED***. *Accordingly, the assailed Decision dated June 22, 2015 and the Order dated September 11, 2015 rendered by the Regional Trial Court of Davao City in Civil Case No. 34,850-13 are* ***REVERSED and SET ASIDE.*** *Respondents are DIRECTED TO REFUND OR CREDIT in favor of petitioner the amount of P3,493,445.50, representing the erroneously paid 0.55% local business taxes for the first and second quarters of 2011.*
>
> ***SO ORDERED.***"

Resolution dated October 13, 2017:

> "***WHEREFORE***, *respondents' Motion for Reconsideration dated July 10, 2017 is* ***DENIED*** *for lack of merit.*
>
> ***SO ORDERED.***"

The pertinent facts as narrated by this Court's Division in its Decision are as follows:

> *"xxx ASC Investors, Inc.[4] is a domestic corporation incorporated on August 13, 1983, with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City. It is 100% owned by the Coconut Industry Investment Fund-Oil Mills Group (CIIF-OMG), which is*

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[3] *En Banc* docket, pp. 37-42.
[4] ASC Investors, Inc. was the petitioner before the Court in Division and thereafter the respondent before this Court *En Banc*.

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composed of six (6) companies owned by the Philippine Government. Its primary purpose is as follows:

> *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 other securities, contracts, or obligations, 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.*

On the other hand, respondent City of Davao[5] *is a local government unit (LGU), while respondent Rodrigo S. Riola*[6] *is impleaded in his official capacity as the incumbent City Treasurer of Davao City. Both have office address at City Hall Building, San Pedro Street, Davao City.*

Petitioner is the registered owner of 167,483,095 preferred shares of stock in San Miguel Corporation (SMC) since October 2009 after the Supreme Court En Banc approved the conversion of its 167,483,095 common shares of stock in SMC to preferred shares. The dividends received by petitioner from its SMC preferred shares were deposited in a trust account that earned interest from money market placements.

In 2010, petitioner received the amount of P1,270,343,831.37 from dividends on its SMC preferred

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[5] City of Davao and City Treasurer were the respondents before the Court in Division and thereafter the petitioners before this Court *En Banc*.
[6] Ibid.

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shares and interests on its money market placements, computed as follows:

NATURE	***AMOUNT***
Dividends	*P1,256,123,212.50*
Interest	*14,220,618.87*
TOTAL	***P1,270,343,831.37***

For the first half of the year 2011, respondent City of Davao, through respondent City Treasurer Riola, collected from petitioner 0.55% local business taxes on the dividends arising from its SMC preferred shares and interests on money market placements received by petitioner in the aggregate amount of P3,493,445.50, xxx:

On September 13, 2012, petitioner filed with respondent City Treasurer a written administrative claim for refund or credit of erroneously and illegally collected local business taxes. It however remained unresolved by respondent City Treasurer.

Consequently, petitioner, on January 17, 2013, filed with the RTC of Davao City a Petition for Refund or Credit under Section 156 of Republic Act (R.A.) No. 7160 or the Local Government Code (LGC) of 1991.

In the assailed Decision of June 22, 2015 and received by petitioner on July 20, 2015, the RTC denied/dismissed the Petition for Review, the dispositive portion of which reads:

> ***FOR REASONS STATED****, the instant "Petition for Tax Refund or Credit under Section 156, R.A. 7160" filed by the Petitioner is hereby* ***DENIED*** *and/or* ***DISMISSED****.*
>
> *SO ORDERED.*

The RTC of Davao City ruled that there is a substantial similarity between the definition of a financial intermediary under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions and petitioner's primary purpose of business leading to a conclusion that petitioner is a financial intermediary. Being a financial intermediary, whose income is derived solely from dividends from its SMC preferred shares and interest income from its money market placements, petitioner is thus subject to business taxes pursuant to Section 143 (f) of R.A. No. 7160 or the LGC of 1991. The said provision

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allows municipalities to impose business taxes on financial institutions with income from dividends, among others, such as petitioner.

The RTC further ruled that the proviso in petitioner's Articles of Incorporation saying 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 save the day for it since its activities clearly fall under the category of a financial intermediary subject to business taxes.

The RTC effectively affirmed its ruling when it denied petitioner's Motion for Reconsideration in the similarly assailed Order dated September 11, 2015.

Thus, the instant Petition for Review filed before this Court on November 9, 2015.

Petitioner maintains that it is entitled to a refund or credit of the 0.55% local business taxes erroneously collected for the first and second quarters of 2011 on the dividends from its SMC preferred shares and interests on its money market placements for taxable year 2010. Allegedly, under Section 133 (a) of the LGC, it is erroneous and illegal for respondents to collect a 0.55% local business tax on the dividends and interests earned by a taxpayer which is not a bank or a financial institution.

Contrary to the RTC's finding, it is not a bank or a financial institution or non-bank financial intermediary as defined under Section 131 of the LGC. That being the case, it cannot be assessed 0.55% local business tax on the dividends derived from its SMC shares of stock and interests on its money market placements. For being a mere owner of the subject shares or receiving income on account of such property does not constitute doing business as defined under Section 131 of the LGC. Since it is neither a bank nor financial institution, it is not subject to business tax under Section 143 of the LGC which allows a local government unit to impose business taxes only on banks and other financial institutions.

Finally, petitioner's income partakes the nature of public funds, per the ruling of the Supreme Court in the case of COCOFED v. Republic, thus, business tax cannot be imposed on the same. Section 133 (o) of the LGC expressly prohibits a local government unit, such as respondent City of Davao, from imposing "Taxes, fees or charges of any kind on the National Government, its

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agencies and instrumentalities, and local government units."

By way of comment, respondents contend that by virtue of its stock investments in SMC, and its money market placements, petitioner is deemed a non-bank financial intermediary. Respondents claim that petitioner is expressly included in the definition of the term banks and other financial institution. Besides, petitioner's business purpose as contained in its Articles of Incorporation is so broad as to include all of the descriptive functions of a non-bank financial intermediary as provided under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas. As a stock corporation, petitioner is presumed to have been organized to engage in business through its stock investments and money placements with the end view of realizing profit. Thus, as a non-bank financial intermediary, petitioner is subject to local business tax pursuant to Section 143 (f) of the LGC, on its gross receipts consisting of dividends and interest income.

Further, the non-inclusion of dividends and interest income under the term "Gross Sales or Receipts" in Section 131 (n) of the LGC will not negate their taxability pursuant to Section 143 (f) of the same Code which allows the imposition of taxes by respondent City on banks and financial institutions to which category petitioner belongs.

Also of little weight according to respondents, is the opinion of the Bureau of Local Government Finance (BLGF) that petitioner is exempt from local business tax for it is not a bank or other financial institution. Respondents emphasize that the BLGF is not an administrative agency whose findings on questions of facts and law are given weight and respect in the courts of justice.

Even assuming that petitioner's income partakes the nature of public funds pursuant to the ruling of the Supreme Court in Philippine Coconut Producers Federation, Inc. (COCOFED) vs. Republic of the Philippines, it does not exempt petitioner from the payment of local business tax on its dividends and interest income pursuant to Section 143 (f) of the LGC. The COCOFED case merely identified the nature of such fund but did not delve on its taxability. Further, what is being taxed in this case is not the fund itself but the dividends and interest income derived therefrom.

The instant Petition for Review was submitted for decision on June 8, 2016."

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This Court's Division reversed the orders of the Regional Trial Court Branch 16 of the City of Davao and ordered the refund of the amount of P3,493,445.50, representing the erroneously paid 0.55% local business taxes for the first and second quarters of 2011.

Hence, the City of Davao and its City Treasurer filed the present petition.

Petitioners City of Davao and its City Treasurer raised the sole issue of whether respondent ASC Investors, Inc. is a "NON-BANK FINANCIAL INTERMEDIARY", FALLING UNDER THE CATEGORY OF A "BANK AND OTHER FINANCIAL INSTITUTIONS", SO AS TO BE SUBECTED TO LOCAL BUSINESS TAX IMPOSITION, AS PROVIDED UNDER SECTION 143(f) OF R.A. 7160, OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991."

Petitioners argued that ASC Investors, Inc. is deemed a "bank and other financial institutions", specifically as a "non-bank financial intermediary" by virtue of its investment and money placements in San Miguel Corporation. The business purpose of ASC Investors, Inc. as contained in its amended articles of incorporation is wittingly and unwittingly broad enough to catch all the descriptive function of a "non-bank financial intermediary as provided under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas. Moreover, petitioners argued that the proviso which states that it shall not act as investment company or securities broker or dealer is just a ploy in order to evade compliance with existing regulations. Lastly, petitioners argued that even ASC Investors' income partakes the nature of public funds, it does not exempt ASC Investors from the payment of local business tax on its dividends and interest income pursuant to Section 143(f) of R.A. 7160.

We resolve.

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The issue raised by petitioner is not of first impression. In a litany of cases[7], this Court En Banc had passed upon similar issues involving corporations of similar classification, similarly situated respondent ASC Investors, Inc. in the instant case. This Court *En Banc*[8] ruled that companies therein are neither "financial intermediary" nor does it belong to the category as "bank and other financial institutions", and being a holding company, as declared by the Supreme Court in the case of COCOFED v. Republic[9], the companies therein, the shares of San Miguel Corporation (SMC) it held, and the dividends and any income therefrom are owned by the government.

In a series of cases docketed as EB No. 1531[10], EB No. 1590[11], EB No. 1556[12], EB No. 1568[13], EB No. 1567[14], EB No.

[7] Fernandez Holdings, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City, CTA EB NO. 1531 (CTA AC No. 133), December 5, 2017; City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. First Meridian Development, Inc., CTA EB NO. 1590 (CTA AC No. 132), December 18, 2017;City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. Randy Allied Ventures*, Inc.*, CTA EB NO. 1591 (CTA AC No. 160), February 20, 2018; City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. San Miguel Officers Corps, Inc., CTA EB NO. 1628 (CTA AC No. 161), April 10, 2018; Soriano Shares, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City, CTA EB NO. 1556 (CTA AC No. 141), April 18, 2018; Te Deum Resources, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, CTA EB NO. 1692 (CTA AC No. 150), May 8, 2018; ASC Investors, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, CTA EB NO. 1568 (CTA AC No. 134), May 17, 2018; Rock Steel Resources, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, CTA EB NO. 1567 (CTA AC No. 139), November 19, 2018; First Meridian Development, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, CTA EB NO. 1607 (CTA AC No. 159), June 20, 2018; City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. Valhalla Properties Limited, Inc., CTA EB NO. 1639 (CTA AC No. 137), August 14, 2018; AP Holdings, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, CTA EB NO. 1640 (CTA AC No. 156), August 20, 2018; City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. AP Holdings, Inc., CTA EB NO. 1634 (CTA AC No. 129), August 17, 2018; City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. Roxas Shares, Inc., CTA EB NO. 1654 (CTA AC No. 140), September 17, 2018.
[8] Ibid.
[9] G.R. Nos. 177857-58 & 178193, January 24, 2012.
[10] Fernandez Holdings, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City, promulgated on December 5, 2017.
[11] City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. First Meridian Development, Inc., promulgated on December 18, 2017.
[12] Soriano Shares, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City, promulgated on April 18, 2018.

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1639[15], EB No. 1634[16], and EB No. 1654[17], the holding companies therein were assessed for local business tax as a "financial intermediary" on the dividends derived from its SMC shares of stock and the interest on its money market placements. After protest, the appeal to the Regional Trial Court was denied base on the findings that said holding companies are "financial intermediaries". This Court En Banc ruled that the companies therein were not "financial intermediaries" subject to local business tax.

Likewise, in a series of cases docketed as EB No. 1591[18], EB No. 1628[19], EB No. 1692[20], EB No. 1607[21], and EB No. 1640[22] the holding companies were assessed for local business tax as a "financial intermediary" on the dividends derived from its SMC shares of stock and the interest on its money market placements. The assessed local business tax was paid and thereafter a petition for refund before the Regional Trial Court was filed which was denied based on the findings that said companies are "financial intermediaries". This Court En Banc ruled that the companies therein were not "financial intermediaries" and therefore, not subject to local business tax.

While the cases may differ in that in several cases the recourse to this Court proceeded from denial of the claim for

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[13] ASC Investors, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, promulgated on May 17, 2018.
[14] Rock Steel Resources, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, promulgated on November 19, 2018.
[15] City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. Valhalla Properties Limited, Inc., promulgated on August 14, 2018.
[16] City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. AP Holdings, Inc., promulgated August 17, 2018.
[17] City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. Roxas Shares, Inc., promulgated on September 17, 2018.
[18] City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. Randy Allied Ventures, Inc., promulgated on February 20, 2018.
[19] City of Davao and Bella Linda N. Tanjili in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City vs. San Miguel Officers Corps, Inc., promulgated on April 10, 2018;
[20] Te Deum Resources, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, promulgated on May 8, 2018.
[21] First Meridian Development, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, promulgated on June 20, 2018.
[22] AP Holdings, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, promulgated on August 20, 2018;

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refund of local business tax and the other cases through the denial of protest on the assessment of local business tax, the following are the similarities:

1) The companies earned dividends derived from their SMC shares of stock and the interest on their money market placements;

2) The companies therein principally earned their income only on the dividends derived from their SMC shares of stock and the interest on their money market placements;

3) The controversies arose from the assessment for local business tax on the dividends derived from their SMC shares of stock and the interest on their money market placements;

4) The Regional Trial Court found the companies therein as "financial intermediary" within the category as "bank and other financial institutions";

5) There was absence of any credible and convincing proof that the corporations are financial intermediaries or that they have even engaged in the activities of a financial institution/intermediary as defined; and

6) The companies therein are included in the list of holding companies in the case of Philippine Coconut Producers Federation Inc., et. al. v. Republic of the Philippines *(COCOFED Case)*[23], whereby the Supreme Court ruled that the said holding companies themselves and the San Miguel shares they held and the dividends and any income San Miguel shares they held were owned by the government.

The Supreme Court, in its Resolution dated September 4, 2012 in the *COCOFED Case*, declared that the fourteen (14) holding companies, the SMC shares held by the 14 holding companies, including the respondent ASC Investors, Inc., are owned by the government, pertinent portion of the resolution reads as follows:

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

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"As modified, the fallo of the January 24, 2012 Decision shall read, as follows:

xxx xxx xxx.

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.;*

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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.

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 BE CONVEYED 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 CHF 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.

Costs against petitioners COCOFED, et al., in G.R. Nos. 177857-58 and Danilo S. Ursua in G.R. No. 178193.

No further pleadings shall be entertained. Let Entry of Judgment be made in due course.

SO ORDERED."

Evidently, respondent ASC Investors, Inc. is one of the holding companies declared owned by the government,

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including the SMC shares it held, its dividends, and any income thereon.

Moreover, in a similar case involving the same parties, same subject matter, same controversies, and same issues albeit different taxing period, *as the case in ASC Investors, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, CTA EB NO. 1568 (CTA AC No. 134), May 17, 2018*, involves protest on the assessment of local business tax for dividend and interest earned in 3rd and 4th quarter of 2011 while the present case involves a claim for refund on the local business tax paid on dividend and interest earned in 1rd and 2th quarter of 2011. This Court En Banc ruled that "ASC Investors, Inc. is not a non-bank financial intermediary; hence, the interest and dividends it receives from the preceding calendar year may not be the subject of local business tax imposed by the City of Davao", and that "considering that ASC Investor, Inc. is considered as a government asset, any tax imposed upon it is, in effect, a tax on the government."

In the case at bar, the following facts are undisputed:

1. Respondent earned income only through dividends derived from its SMC shares of stock and the interest on its money market placements.

2. The controversy arose from the assessment for local business tax as a "financial Intermediary" against respondent on the dividends derived from its SMC shares of stock and the interest on its money market placements.

3. The Regional Trial Court, Branch 16 of Davao City found respondent as a "financial intermediary".

4. Respondent was included in the list of holding companies in the COCOFED[24] case whereby the Supreme Court declared that respondent and the SMC shares it held are owned by the government.

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[24] Ibid.

In concluding, that ASC Investors, Inc. is a financial intermediary, the Regional Trial Court ruled the dividends from San Miguel Corporation and its income from money placement markets are not considered incidental to its business quest but they are the principal income in the regular course of business in line with its primary purpose. We disagree.

Let us examine the pertinent provisions of Republic Act No. 7160, otherwise known as "Local Government Code of 1991", which read as follows:

> **Section 131.** *Definition of Terms.* - When used in this Title, the term:
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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;
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> xxx xxx xxx.
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> **Section 133.** *Common Limitations on the Taxing Powers 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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> (a) Income tax, except when levied on banks and other financial institutions;
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> xxx xxx xxx.
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> **Section 143.** *Tax on Business.* - The municipality may impose taxes on the following businesses:
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(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.

Under the foregoing provision, as a general rule the taxing power of a local government unit does not extend to income tax. The exception is if it is levied on banks and other financial institutions. Thus, the taxing power of a local government unit may extend to income tax as long as it is levied on banks and other financial institutions.

"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.

The definition of non-bank financial intermediaries or financial intermediaries set by Manual of Regulations for Non Bank Financial Institutions issued by the Banko Sentral ng Pilipinas (BSP) is controlling and applicable in this case. Section 4101Q.1 of the said manual provides 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.

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

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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.

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;

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;

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

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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."

Evidently, a financial intermediary's principal functions involve the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them. It must perform any of its functions on a regular and recurring, not on an isolated basis. Respondent's act of investing and placing of funds in San Miguel Corporation's stock and on money placement market must be done on a regular and recurring manner. The fact that respondent's income is only sourced from the dividends derived from San Miguel Corporations share and income from money placement markets does not *ipso facto* make respondent included in the definition of "other financial intermediary", "other financial institution" or "non-banking financial intermediary", in the absence of other evidence. On the contrary, it bolsters the fact that the investing and placing of funds was done not on a regular and recurring manner but an isolated one.

Moreover, the rule governing the taxing power of provinces, cities, municipalities and barangays, is limited. It has no inherent power of taxation. If granted, the power is to be construed in strictissimi juris, any doubt or ambiguity arising out of the term used in granting that power must be resolved against the province, city or municipality. Thus, the Supreme Court has consistently[25] ruled as follows:

"It is settled that a municipal corporation unlike a sovereign state is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality, cannot assume it. And the power when granted is to be construed in strictissimi juris. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions - all these - have no place in the interpretation of the taxing power of a municipal corporation. [Underscoring supplied]"

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[25] Icard v. City Council of Baguio, 83 Phil 870, 873 (1949) and City of Iloilo v. Villanueva, 105 Phil. 337 (1959), Pelizloy Realty Corporation vs Province of Benguet, G.R. No. 183137, April 10, 2013.

As a general rule, the taxing power of a local government unit does not extend to income tax. Section 133(a) of the Local Government Code expressly provides that the taxing power of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax, except when levied on banks and other financial institutions.

The exception is if it is levied on banks and other financial institutions. 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."

A holding company is not included by the Local Government Code, specifically Section 131(e) thereof in the definition of banks and other financial institutions. The enumeration is evidently exclusive of other entities. Had the legislature intended to include holding company among the exceptions, the same could have been expressly provided but it did not.

Likewise, a holding company is likewise not included in the list of non-banking intermediaries set by Section 4101Q.1 of the Manual of Regulations for Non Bank Financial Institutions issued by the Banko Sentral ng Pilipinas (BSP), to wit:

"xxx xxx xxx

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.

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The express mention of one person, thing, or consequence implies the exclusion of all others. *Expressio unius est exclusio alterius.* To elaborate[26] -

> *"Indeed, it is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim expressio unius est exclusio alterius. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned."*

The rule of expressio unius est exclusio alterius is among the canons of restrictive interpretation.[27] It is based on the rules of logic and the natural workings of the human mind. It is predicated upon one's own voluntary act and not upon that of others. It proceeds from the premise that the legislature would not have made specified enumeration in a statute had the intention been not to restrict its meaning and confine its terms to those expressly mentioned.[28]

Since the taxing power of provinces, cities, municipalities and barangays is to be construed in *strictissimi juris*, any doubt or ambiguity arising out of the term used in granting that power must be resolved against the City of Davao. Thus, a holding company is neither covered under the definition of "non-banking financial intermediaries" under Section 4101Q.1 of the Manual of Regulations for Non Bank Financial Institutions issued by the Banko Sentral ng Pilipinas (BSP) nor in the definition of "banks and other financial institutions" as contemplated by Section 131(e)[29] of the LGC for purposes of exemption on the levy of income tax under Section 133 (a)[30] of the LGC.

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[26] Benjamin (Kokoy) Romualdez vs. Hon. Simeon V. Marcelo, in his official capacity as the Ombudsman, and Presidential Commission on Good Government, G.R. Nos. 165510-33, July 28, 2006, citing Centeno v. Villalon-Pornillos, G.R. No. 113092, September 1, 1994, 236 SCRA 197, 203.
[27] Sario Malinias vs. The Commission on Elections, Teofilo Corpuz, Anacleto Tangilag and Victor Dominguez, G.R. No. 146943, October 4, 2002.
[28] Ibid.
[29] (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

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Additionally, in the *COCOFED Case*[31], the Supreme Court En Banc declared respondent ASC Investors, Inc. as one of the fourteen (14) holding companies funded by the coconut levy fund which were formed or organized solely for the purpose of holding the SMC shares. Likewise, respondent ASC Investors, Inc., among others, and the San Miguel shares it held are owned by the government. As such the dividends and any income therefrom are also owned by the government. It shall not be subject to local business tax pursuant to Section 133 (o) of the Local Government Code[32]. Thus, We find that the Court in Division correctly ruled as follows:

> *"Significantly, the Supreme Court, in no uncertain terms, already declared that the SMC shares held by petitioner are owned by the government, thus:*
>
> > ***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.***
> >
> > *In this case, the 6 CIIF Oil Mills were acquired by the UCPB using coconut levy funds. On the other hand, the 14 CIIF holding companies are wholly owned subsidiaries of the CIIF Oil Mills. Conversely,*

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securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;

[30] **Section 133.** Common Limitations on the Taxing Powers 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 other financial institutions;

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[31] Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines, G.R. Nos. 177857-58 & 178193, January 24, 2012.

[32] **Section 133.** Common Limitations on the Taxing Powers 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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(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

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these companies were acquired using or whose capitalization comes from the coconut levy funds. However, as in the case of UCPB, UCPB itself distributed a part of its investments in the CIIF oil mills to coconut farmers, and retained a part thereof as administrator. The portion distributed to the supposed coconut farmers followed the procedure outlined in PCA Resolution No. 033-78. And as the administrator of the CIIF holding companies, the UCPB authorized the acquisition of the SMC shares. In fact, these companies were formed or organized solely for the purpose of holding the SMC shares. As found by the Sandiganbayan, the 14 CIIF holding companies used borrowed funds from the UCPB to acquire the SMC shares in the aggregate amount of Pl.656 Billion.

Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds - 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. Being government properties, they are accordingly owned by the Government, for the coconut industry pursuant to currently existing laws.

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, 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,***

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> ***belong to the government as, at the very least, their beneficial and true owner.***[33]
>
> *Since the subject shares are owned by the government, it follows that the dividends and any income derived therefrom are owned by the government as well. That being the case, the subject shares and the dividends derived therefrom do not fall within the taxing power of respondent City of Davao pursuant to Section 133(o) of the LGC of 1991. A fortiori, the imposition of the 0.55% local business taxes on petitioner for the first and second quarters of 2011 on the dividends arising from its SMC preferred shares and interests on money market placements was erroneously and illegally collected from petitioner by respondents.*[34]

In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by jurisprudence and evidence on record.

WHEREFORE, the Petition for Review is **DENIED,** for lack of merit. Accordingly, the Decision dated June 7, 2017 and Resolution dated October 13, 2017 by the Third Division of this Court in CTA AC No. 157 are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[33] Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, G.R. Nos. 177857-58 and 178193, January 24, 2012.
[34] En banc docket, pp.18-36.

(With Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

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 City Treasurer of Davao City, Petitioners,	**CTA EB No. 1749** (CTA AC No. 157)
	Present:
	Del Rosario, <u>*P.J.*</u>, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan <u>*JJ.*</u>
- versus –	
ASC INVESTORS, INC., Respondent.	Promulgated: <u>JAN 2 2 2019</u> 3:20pm

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DISSENTING OPINION

CASTAÑEDA, JR., <u>J.</u>:

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 petitioner is not a non-bank financial intermediary (NBFI).

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

> "*SEC. 131. Definition of Terms.* — When used in this Title, the term:
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> xxx xxx xxx

> (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;"

On the other hand, under Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, as amended, an NBFI is as follows:

> "(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."

In relation thereto, Section 2(D)(c) of Republic Act (RA) No. 337, as amended by Presidential Decree (PD) No. 71, reads as follows:

> "(c) '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 to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others;"

Further, Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions, as follows, viz.:

> "**§ 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.
>
> 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.

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;

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;

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."

From the foregoing, the following are the elements of an NBFI:

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

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; and

3) The 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;

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;

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.

Meanwhile, emphasis must be given on the second (2nd) and third (3rd) elements of an NBFI, *i.e.*, investment and placement of funds and performance of the above-enumerated functions under the third (3rd) element on a regular and recurring, not on an isolated, basis. This is premised on the nature of business tax, which is imposed on the privilege of an entity to engage in business within a local government unit.

Petitioner failed to present proof regarding the authorization of respondent to act as an NBFI

A perusal of the records shows that there is no evidence showing that respondent was authorized by the BSP to engage in NBFI activities.

However, as discussed earlier, respondent's authorization or lack thereof, do not affect whether respondent may be the subject of local business taxation. What is controlling is respondent's principal activities, *i.e.*, whether it principally performs NBFI activities, in determining whether such privilege to engage in said activities is subject to local business tax. At any rate, whether respondent may engage in NBFI activities, with or without authority from the BSP, is an issue outside of this Court's jurisdiction and should be discussed in the proper forum.

Respondent's principal functions are solely to invest and make money market placements *vis-à-vis* its SMC shares

Respondent received dividends and made money market placements on a regular and recurring, and not on an isolated basis

Based on records, the lower court found that respondent's business operations only revolve around its dividends and money market placements.

However, the subject decision did not consider the above-findings of the lower court. Further scrutiny of the records shows that respondent did not question the foregoing findings of the lower court during the course of the trial. Evidently, these findings of fact by the lower court, without any opposition on the part of respondent, should be accorded respect.

Thus, it has been sufficiently established that respondent's income emanates only from dividends and money market placements, which activities fall within the purview of an NBFI. In other words, it was proven during the proceedings below that respondent has no other activity or business that generates income, except for the dividends it regularly receives and for its money market placements. Therefore, these exclusive activities of respondent are NBFI activities which may properly be subjected to local business tax.

The tax is levied upon the privilege of an entity to engage in NBFI activities and not upon the shares or sources of gross receipts which operate as tax bases

Section 143 of the LGC of 1991 pertinently states:

> "**Section 143. Tax on Business.** — The municipality[1] 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.*, NBFIs. 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 the privilege enjoyed by banks and other financial institutions. It directly imposes business tax on the privilege being enjoyed by the entity and not on the sources of gross receipts.

On this score, the subject Decision held that respondent is one of the Coconut Industry Investment Fund holding companies. Therefore, respondent, including its SMC shares, are government-owned and excluded from petitioner's taxing powers. *Jr*

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

However, in the instant case, while the SMC Shares had already been adjudged by the Supreme Court as belonging to the government, it is not directly the said shares, but the privilege enjoyed by respondent to engage in NBFI activities, that 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's privilege against whom the local business tax is levied upon.

Further, if the government owns respondent by reason of primarily dealing with San Miguel Shares, then this clearly supports the conclusion of the lower court that respondent's income comes only from dividends and money market placement *vis-à-vis* its SMC Shares. Thus, respondent's privilege to engage in NBFI activities should be subjected to local business tax.

To conclude, the crucial element to determine whether an entity is engaged in NBFI activities is its principal activity. To clarify, not all entities who engage in stock investments and money market placements can be categorized as NBFIs for purposes of local business taxation. If an entity is not primarily engaged in NBFI activities as it principally performs its core business operations, such entity is not an NBFI. However, when an entity solely receives income from its NBFI activities, or when there is a showing that it performs no other business activity other than NBFI activities, then said entity should be categorized as an NBFI for purposes of local business taxation.

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

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