REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

ANGLO VENTURES CORPORATION,
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. 155

Members:

DEL ROSARIO, *Chairpersom,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JUL 12 2016 ; 3:40 p.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Anglo Ventures Corporation ("AVC"), seeking the reversal and setting aside of the Decision dated June 22, 2015 and Order dated September 11, 2015 of the Regional Trial Court, Branch 16 of the City of Davao, in Civil Case No. 34,847-13 entitled "*Anglo Ventures Corporation vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City*". The assailed Decision dismissed AVC's Petition for Review seeking the refund or credit of local business taxes collected by respondents, in the amount of Four Hundred Fifty-Six Thousand Two Hundred Thirty Pesos and Twenty- Four Centavos (₱456,230.24). The assailed Order denied AVC's Motion for Reconsideration of said Decision.

PARTIES

Petitioner Anglo Ventures Corporation ("AVC") is a corporation duly organized and existing under Philippine laws with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City.[1]

On the other hand, respondent City of Davao is a local government unit ("LGU") duly created by law whose address is located at City Hall Building, San Pedro Street, Davao City. Respondent Hon. Rodrigo S. Riola is the incumbent City Treasurer of Davao and is being impleaded in his official capacity.[2]

FACTS

Since October 2009, petitioner AVC has been the registered owner of Twenty-One Million Eight Hundred Sixty-Five Thousand Two Hundred Fifty-Four (21,865,254) preferred shares of stock in San Miguel Corporation ("SMC Preferred Shares"), after the Supreme Court *En Banc* approved the conversion of petitioner AVC's 21,865,254 common shares of stock to preferred shares of stock. The dividends received by petitioner AVC from its SMC Preferred Shares were deposited in a trust account which earned interest from money market placements.[3]

In 2010, petitioner AVC obtained the amount of One Hundred Sixty-Five Million Nine Hundred One Thousand Nine Hundred Eight Pesos and Fifty-Five Centavos (₱165,901,908.55) from dividends on its SMC Preferred Shares and interests on its money market placements,[4] computed as follows:

Nature	**AVC**
Dividends	₱163,989,405.00
Interest	₱1,912,503.55
Total	**₱165,901,908.55**

[1] Petition for Review, CTA Docket, p. 11.
[2] Petition for Review, CTA Docket, p. 11.
[3] Petition for Review, CTA Docket, p. 13.
[4] Petition for Review, CTA Docket, p. 13.

In 2011, respondents required petitioner AVC to pay 0.55% local business taxes for the first and second quarters of 2011, based on the gross receipts derived by petitioner AVC from dividends and interests for taxable year 2010, in the aggregate amount of Four Hundred Fifty-Six Thousand Two Hundred Thirty Pesos and Twenty-Four Centavos (₱456,230.24), to which petitioner AVC complied and paid the required amount under protest,[5] detailed as follows:

Period Covered	**Date of Payment**	**Official Receipt Nos.**	**Amount**
January – March 2011	1/18/2011	5791190 A	₱228,115.12
April – June 2011	4/25/2011	9884247 A	₱228,115.12
		TOTAL	**₱456,230.24**

On September 13, 2012, petitioner AVC filed with respondent City Treasurer a written claim for refund or credit pursuant to Section 196 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 ("RA 7160"), claiming that respondents erroneously and illegally collected as business taxes the amount of ₱456,230.24.[6] Petitioner AVC claimed that Section 133 (a) of RA 7160 expressly prohibited the imposition of income tax on domestic corporations, except those levied on banks and other financial institutions, and that Section 143 of RA 7160 authorizes municipalities and cities to impose local business taxes on the dividends and interest earned by banks and financial institutions only. Petitioner AVC asserts that the local business tax collected by respondents based on the tax rate imposed on banks and other financial institutions pursuant to Section 69 (f) of Davao City Ordinance No. 158-05 dated December 25, 2016 is erroneous and illegal since petitioner AVC is not a bank or a financial institution. Petitioner AVC cited Bureau of Local Government Finance ("BLGF") Opinion dated March 17, 2011, which ruled that any tax imposed on the interest or dividends of non-bank and non-financial institutions assume the nature of income tax, which local government units are expressly prohibited from levying under Section 133 (a) of RA 7160.

Receiving no reply from respondent on its claim for refund, petitioner AVC filed on January 17, 2013 a Petition[7] with the Regional

[5] Petition for Review, CTA Docket, pp. 9, 13-14; and "Annex P-3 and P-4", Petition for Review, CTA Docket, pp. 43-44.
[6] Petition for Review, CTA Docket, p. 10.
[7] Petition, CTA Docket, p. 55.

Trial Court of Davao City, Branch 16 ("Davao-RTC"), docketed as Civil Case No. 38,847-13,[8] seeking a refund or credit of local business taxes collected by respondents.

On June 22, 2015, Davao-RTC promulgated the assailed Decision denying petitioner AVC's Petition for Refund or Credit after concluding that petitioner AVC is a financial intermediary, whose interest and dividend income are subject to local business tax. The dispositive portion of the assailed Decision 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.**"[9]

On August 4, 2015, petitioner AVC filed a Motion for Reconsideration,[10] arguing that it is not engaged in the business of lending, investing, or trading securities, hence, cannot be considered a non-bank financial intermediary. Moreover, petitioner AVC argues that it is not engaged in business and therefore cannot be made subject to business tax.

On September 11, 2015, however, Davao-RTC promulgated the assailed Order denying petitioner AVC's Motion for Reconsideration,[11] a copy of which was received by petitioner on October 8, 2015.

Hence, on November 9, 2015, petitioner AVC filed the instant Petition for Review,[12] to which respondent filed its Comment on January 7, 2016.[13]

On February 1, 2016, the Court ordered both parties to submit their respective memoranda within thirty (30) days from receipt of notice.[14]

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[8] "Annex P-6", Petition for Review, CTA Docket, pp. 55-70.
[9] CTA Docket, pp. 32-41.
[10] "Annex P-7", Petition for Review, CTA Docket, pp. 71-84.
[11] "Annex P-2", Petition for Review, CTA Docket, p. 42.
[12] Petition for Review, CTA Docket, pp. 8-31.
[13] Comment, CTA Docket, pp. 157-171.
[14] CTA Docket, pp. 174-175.

On March 3, 2016, petitioner AVC filed its Memorandum,[15] while respondents filed their Memorandum on March 14, 2016.[16]

This case was submitted for decision on April 1, 2016, [17] hence this decision.

ISSUE

The sole issue submitted for resolution of this Court is whether petitioner AVC is entitled to a refund or credit of the 0.55% local business taxes collected for the first and second quarters of 2011 on dividends from its SMC Preferred Shares and interest on its money market placements for taxable year 2010.

PARTIES' ARGUMENTS

Petitioner AVC advances the following arguments:

1. Under Section 133 (A) of RA 7160, 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.

2. AVC is not a bank or non-bank financial institution and is not engaged in business that is subject to local business tax under Section 143 of RA 7160.

3. AVC's income partake the nature of public funds; thus, business tax cannot be imposed on the same.

On the other hand, respondents argue that:

1. Petitioner AVC is deemed a "bank and other financial institution", specifically as a "non-bank financial intermediary or an investment company" by virtue of its investment and money placements in San Miguel Corporation.

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[15] CTA Docket, pp. 176-202.
[16] CTA Docket, pp. 204-220.
[17] CTA Docket, p. 223.

2. The business purpose of petitioner 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 *Bangko Sentral ng Pilipinas*.

3. Petitioner's Amended Articles of Incorporation stating that it shall not act as an investment company or securities broker or dealer is not conclusive proof that it is not a "bank and other financial institution".

4. Being a stock corporation, petitioner is presumed to have been organized to engage in business with the end in view of a profit, hence subject to local business tax.

5. The definition of gross sales/receipts under Section 131 (N) of RA 7160 that does not include dividends and interest income as component of sales or receipts is a general definition of such term, which cannot defeat a specific and clear provision of taxability of dividends and interest income, as provided under Section 143 (F) of the same Code.

6. The Opinion of the BLGF that petitioner is exempt from local business tax for not being a bank and other financial institution, is not binding upon the issue involved in this case, as it is not an administrative agency whose findings on questions of fact and law are given weight and respect in the courts.

7. Even assuming that petitioner's income partakes the nature of public funds pursuant to the ruling of the Court in *COCOFED vs. Republic*, since the Coconut Industry Investment Fund ("CIIF") block of SMC Shares were acquired using coconut levy funds, and thus should be treated as government assets; nevertheless, it does not exempt petitioner from the payment of local business tax on its dividends and interest income pursuant to Section 143 (F) of RA 7160.

THE COURT'S RULING

Dividend Income and Interest Income on money market placements are not subject to local business tax, unless levied on banks and other financial institutions

The law is clear on the matter.

RA 7160 provides the common limitations on the taxing powers of the LGUs. Section 133 (a) of said law expressly prohibits provinces, cities, municipalities, and barangays from imposing income tax, unless the same is levied on banks and other financial institutions, to wit:

> "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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> xxx"

Section 143 (f) of RA 7160 in relation to Section 151 of the same Code[18] in turn provides that municipalities and cities may impose local business tax on **banks and other financial institutions** on their income from dividends and interest, based on gross receipts of the preceding year, to wit:

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[18] "Section 151. Scope of Taxing Powers. - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes." (Emphasis supplied)

> "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.
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> xxx"

Consistent with the Local Government Code, Section 69 (f) of Davao City's Ordinance No. 158-05, Series of 2005, otherwise known as the 2005 Revenue Code of Davao City,[19] is also explicit in imposing business tax on banks and financial institutions based on gross receipts derived from interest and dividends, *viz.*:

> "Section 69. Imposition of Tax. - There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts hereafter prescribed:
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> F. **On Banks and Other Financial Institutions,** at the rate of fifty-five percent (55%) of one percent (1%) of the gross receipts of the preceding calendar year derived from <u>interest,</u> commissions and discounts from lending activities, income from financial leasing, <u>dividends</u>, rentals on property, and profit from exchange or sale of property, insurance premium. All other income and receipts not herein enumerated shall be excluded in the computation of the tax." (Emphasis supplied)

Based on the aforecited legislation, there is no denying that local business taxes may only be imposed on the dividend income and interest income on money market placements if the entity involved is a bank or financial institution.

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[19] Decision dated June 22, 2015 by the Regional Trial Court, Branch 16 of the City of Davao, CTA Docket, p. 33.

Petitioner AVC is a holding company, and not a non-bank financial intermediary

In upholding the imposition of local business tax by respondents on petitioner AVC, the court *a quo* concluded in *esse* that petitioner AVC falls within the category of "financial intermediary", whose income falls under the coverage of paragraph (f) of Section 143 of RA 7160. Said the RTC:

> "With the foregoing comparison, even an obtuse legal mind cannot miss to conclude that the **scope** of petitioner's primary business purpose in its Amended Articles of Incorporation wittingly or unwittingly broad enough to **catch all** the descriptive functions of a Financial Intermediary.
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> xxx xxx xxx
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> 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.
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> As such, being categorized as a **Financial Intermediary**, petitioner's principal income falls under the coverage of **paragraph (f), Section 143 of RA No. 7160 of the Local Government Code of 1991,** xxx"[20] (Emphases supplied)

The nature of a "non-bank financial intermediary", which falls under the category of a "bank and other financial institution", is the subject of pertinent law and regulation.

Section 131 (e) of RA 7160, defines "banks and other financial institution", as follows:

> "Section 131. Definition of Terms. - When used in this Title, the term:

[20] "Annex P-1", Petition for Review, CTA Docket, pp. 32-41, 40 & 41.

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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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In relation thereto, Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the *Bangko Sentral ng Pilipinas* defines "financial intermediaries", 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 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

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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 (IH), investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, nonstock savings and loan association (NSSLA) 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."** (Emphases supplied)

In sum, non-bank financial intermediaries are defined as "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." The person or entity must perform the aforementioned functions on a regular and recurring basis, and not on an isolated basis.

Parenthetically, there is nothing in petitioner AVC's Amended Articles of Incorporation that suggests, even remotely, that such entity may perform the functions of a financial intermediary as earlier enumerated. Rather, the primary purpose for which petitioner AVC was incorporated is to "direct the operations of other corporations through the ownership of stock therein", and "to do every act and thing covered generally by the denomination **'holding company'**", [21] to wit:

> "PRIMARY PURPOSE
>
> The primary purpose for which such Corporation is formed is:
>
> 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 securities, contracts, or obligation, 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**

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[21] "Annex P-10", Petition for Review, CTA Docket, pp. 109-120, 111-112.

> **other corporations through the ownership of stock therein, <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>.**" (Emphasis provided)

Moreover, while the Articles of Incorporation is categorical in proscribing petitioner AVC from acting "as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation", its identification as a holding company is consistent with the definition of a holding company provided for in Securities and Exchange Commission, Office of the General Counsel (SEC-OGC) Opinion No. 11-15 dated February 10, 2011,[22] as follows:

> "A holding company has been defined by the Commission in several opinions. A holding company has been aptly defined as "a corporation organized to hold the stock of another or other corporations. Its essential feature is that it holds stock. The term "holding company" is equivalent to a parent corporation, having such an interest in another corporation, or power of control, that it may elect its directors and influence its management. A parent or holding company is one that controls another as a subsidiary or affiliate by the power to elect its management. Affiliates are those concerns that are subject to common control and operated as part of a system."

Elsewise stated, a "holding company" is one that "controls another as a subsidiary or affiliate by the power to elect its management...a holding company is one which holds stocks in other companies for purposes of control, rather than mere investment."[23]

It must be stressed that it is the corporation's purpose clause that confers, as well as limits, the powers which a corporation may exercise. The main evidence of the purpose of a corporation is its articles of incorporation considering that such information is required by statute to be stated in the incorporation document.[24]

Although the purpose clause in petitioner AVC's Amended Articles of Incorporation is broad and does allow for the acquisition of

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[22] SEC-OGC Opinion No. 11-15, Applicability of Foreign Ownership Restriction; Holding Companies.
[23] SEC Opinion, 30 September 1986, XX SEC Quarterly Bulletin (Nos. 3 & 4, Sept. & Dec., 1986), p. 308, quoting from Ballantine Law on Corporations.
[24] Jesus Sacred Heart College vs. Collector of Internal Revenue, G.R. No. L-6807, May 24, 1954.

shares of stock of other corporations and "to receive, collect and dispose of the interest dividends and income arising from such property", it is clear from a reading of the same that its primary purpose is not to engage in business as a non-bank financial intermediary. The receipt of dividend and interest income is patently incidental. As a holding company, petitioner AVC, and the other holding companies funded by the coconut levy fund, were created to hold San Miguel Corporation shares of stock,[25] and not to engage in the business of lending or investing money or securities acquired by them or through them, on a regular basis.

Anent respondents' claim that the proviso at end of petitioner AVC's purpose clause, *i.e.* "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" -- is intended to conceal or mislead, or exempt petitioner AVC from obtaining the necessary secondary license, such contention is not supported by evidence. Basic is the rule that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.[26]

As correctly pointed out by petitioner AVC, it was not required by the Securities and Exchange Commission to secure a secondary license from the *Bangko Sentral ng Pilipinas* in the first place. Petitioner AVC is also not regulated by the *Bangko Sentral ng Pilipinas* or the Insurance Commission, which should be the case if petitioner AVC were to be considered a financial institution.

Given all the reasons stated above, petitioner AVC is properly classified as a "holding company" and not a "non-bank financial intermediary". In *Michigan Holdings, Inc. vs. City Treasurer of Makati, Nelia A. Barlis,* [27] this Court ruled that indeed, dividend and interest income of holding companies are not subject to local business tax, *viz.*:

> "Indeed, if the business of a holding company is in the same class as that of a bank or other financial institutions, the Makati City tax ordinance could simply have included holding companies in its Section 3A.02(h), instead of placing them all by themselves in Section 3A.02(p) and then making the tax rates in either Section 3A.02(h) or (g) applicable to them. That holding companies, exclusively, were placed in a separate

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[25] COCOFED vs. Republic, G.R. Nos. 177857-58, January 24, 2012.
[26] Luxuria Homes Inc., vs. Court of Appeals, G.R. No. 125986, January 28, 1999.
[27] CTA EB Case No. 1093 (CTA AC Case No. 99), June 17, 2015.

> section, shows that they comprise a category distinct from the class of "banks and other financial institutions" as defined by Section 131(e) of the LGC. **That holding companies were subjected to a tax on dividend income which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions, shows a deliberate intent to circumvent the prohibition laid down by Section 133(a) that the taxing powers of LGUs shall not extend to the levy of income tax, except on banks and other financial institutions**." (Emphasis supplied)

In fine, it is clear that respondents' collection of the disputed business tax is erroneous. As respondents received the amount when in fact it is not legally due to the City of Davao, respondents are duty-bound to credit or to refund the same to petitioner AVC.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. The Assailed Decision of the Regional Trial Court, Branch 16 of the City of Davao, dated June 22, 2015 and its Assailed Order dated September 11, 2015 in Case No. 34,847-13 are **REVERSED** and **SET ASIDE**. Accordingly, respondents are **ORDERED** to refund or credit in favor of petitioner AVC the amount of Four Hundred Fifty-Six Thousand Two Hundred Thirty Pesos and Twenty-Four Centavos (₱456,230.24), representing the erroneously paid 0.55% local business taxes for the first and second quarters of 2011.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

(on judicial leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice