Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SORIANO SHARES, INC.,
Petitioner,

-versus-

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

CTA AC No. 141

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

Promulgated:

NOV 0 7 2016
8:50 a.m.

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RESOLUTION

CASANOVA, *J.*:

This resolves petitioner's Motion for Reconsideration[1] filed, *via* private courier, on August 9, 2016, with respondents' Comment to Petitioner's Motion for Reconsideration filed, *via* registered mail, on September 9, 2016.

In its Motion, petitioner prays for this Court to reconsider and reverse its Decision[2] dated July 22, 2016 (Assailed Decision) and, instead, render a judgment ordering respondents to cancel the assessment against petitioner for 0.55% local business tax for the third and fourth quarters of 2011 in the amount of One Million Two Hundred Forty-Nine Thousand Seven Hundred Ninety-Seven and 64/100 Pesos (P1,249,797.64), inclusive of surcharge and legal interest.

The dispositive portion of the Assailed Decision reads:

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[1] Docket, pp. 284-299.
[2] Ibid, pp. 262-281.

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

Petitioner argues that it cannot be considered a bank or other non-bank financial institution, more specifically, a non-bank financial intermediary, since 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 in a regular or recurring basis. Accordingly, the investments made by petitioner in SMC shares happened only once and was an isolated transaction.

It further argues that the provisions of the Amended Articles of Incorporation cannot be selectively disregarded so as to justify classifying petitioner as a non-bank financial intermediary following the ruling in *Jesus Sacred Heart College vs. Collector of Internal Revenue*[3], which provides that "the main evidence of the purpose of a corporation should be its articles of incorporation and by-laws."

Also, citing the cases of *Orleyte Company (Philippine Branch) vs. The City of Makati, and Dulce P. Cruz, in her capacity as Treasurer of Makati*[4] *(Orleyte Case)* and *Michigan Holdings, Inc. vs. The City Treasurer of Makati, Nelia A. Barlis*[5] *(Michigan Case)*, petitioner avers that a corporation which never conducted any business, but merely invested in a company, should not be subjected to a local business tax.

The Court is not impressed with petitioner's Motion.

Anent petitioner's first argument that it cannot be considered a bank or other non-bank financial institution, the same has been sufficiently passed upon and exhaustively discussed in the Assailed Decision.

As we have underscored in the Assailed Decision, petitioner's nature of business falls within the category of "non-bank financial intermediaries" since it "has not engaged in any business activity other than receiving dividends and interests from its San Miguel Corporation shares. Thus, the continued receipt of the said dividends and interest

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[3] G.R. No. L-6807, May 24, 1954.
[4] CTA AC No. 80, November 14, 2012.
[5] CTA EB Case No. 1093 (CTA AC Case No. 99), June 17, 2015.

income on its money market placements and equity securities cannot be considered as mere incidental to its business, but a direct consequence of its business engagements." It is deemed a continuing and regular transaction since it is not the only time that petitioner would be receiving such a huge amount of dividends from its SMC shares. Consequently, petitioner's acts of investing in equity securities, holding of assets consisting of shares of stock and placement of funds in San Miguel Corporation on a regular or recurring basis explicitly affirms the conclusion that it is a non-bank financial intermediary whose income may, therefore, be subjected to business tax under Section 143 (f) of the Local Government Code of 1991, as amended.

We also find the case of *Jesus Sacred Heart College vs. Commissioner of Internal Revenue*[6] inapplicable to the instant case. The former case dealt with educational institution whose net income would be exempted from income tax under the National Internal Revenue Code if it would be proven that it is organized and operated exclusively for educational purposes and no part of the net income of which inures to the benefit of any private stockholder or individual. On the other hand, the present case pertained to a corporation holding a substantial number of shares of stock and money market placement, whose gross receipts may be subjected to local business tax if it would be proven that it is engaged in investing, reinvesting or holding of an assets and placement of funds on a regular or recurring basis like that of a non-bank financial intermediary.

The Orleyte Case is, likewise, not on all fours with the instant case. The facts obtaining therein are different from those of the present case. First, the taxpayer involved in the former case was a foreign corporation, who is licensed to establish a branch office in the Philippines, while the taxpayer in the case at bench is a domestic corporation duly organized and existing under Philippine laws. Second, the taxpayer in Orleyte Case questions the classification given by the City of Makati that it a "Holding Company-Management Service", while the taxpayer in case at bench, questions the classification given to it as a non-bank financial intermediary. Third, in proving that Orleyte should not be held liable for local business tax as a "Holding Company-Management Service", Orleyte presented its affidavit of non-operation and financial statement. On the other hand, in proving that it is not a non-bank financial intermediary, petitioner relied on the primary purpose stated in its Amended Articles of Incorporation which states that it "shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation". It

[6] See Footnote No. 3.

further argued that it was not required by the Securities and Exchange Commission to secure a secondary license from the Securities and Exchange Commission and that it was not regulated by the Bangko Sentral ng Pilipinas or by the Insurance Commission. Lastly, in Orleyte Case, the Court of Tax Appeals, in ruling that the lower court misclassified Orleyte as a Holding Company-Management Service, gave credence to the financial statements and affidavit of non-operation of Orleyte, while in the present case, the Court of Tax Appeals looked into the real nature and actual operation of petitioner's business when it ruled that petitioner's business falls within the purview of non-bank financial intermediary.

Nonetheless, *We* agree with the ruling in Orleyte Case that "the primary purpose stated in the Articles of Incorporation of a corporation only serves to show what a corporation is empowered or authorized to do. It does not, and cannot, however, prove what the business of a corporation actually is. By such reason, We quoted in verbatim the primary purpose stated in its Amended Articles of Incorporation and analyzed the same vis-à-vis the real nature and actual operation of petitioner's business, and came up with the conclusion that "while the primary purpose for which petitioner was incorporated appears to set a qualification that it 'cannot act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation', the same cannot prevail over the real nature of transaction undertaken by petitioner, which is mainly investing or placement of funds. Thus, petitioner cannot hide under the mantle of the foregoing provision as it is clearly under the category of non-bank financial intermediary."

In addition, respondent correctly points out that, "while it is true that petitioner's Articles of Incorporation provides that it shall not act as investment company, or securities broker or dealer, nevertheless, such renunciation should not be taken into consideration, inasmuch as the same is deemed an evasive or self-serving provision, which was clearly negated by the very act itself of the petitioner in investing in the stocks of San Miguel Corporation in million of pesos."[7]

The case of Michigan is also not apropos. The ruling of the Court of Tax Appeals in Michigan Case that the dividend income it earned should not be subjected to business tax was predicated on the fact that Michigan Holdings, Inc. was a holding company, and such classification was not disputed by any of the parties therein. This scenario is not present in the instant case. Here, petitioner claims that its Amended

[7] Page 12 of Respondent's Comment, Id., p. 191.

Articles of Incorporation indicates that it is a holding company, while respondents insist that petitioner is deemed a non-bank financial intermediary "since it does not only own and invest in the shares of stock of San Miguel Corporation, but has, likewise, money placements in the said company, as petitioner's principal and actual function or business operation, to which this Court fully agree.

In view thereof, this Court finds no reversible error in Assailed Decision to warrant reconsideration thereof.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

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