REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TE DEUM RESOURCES, INC.,
Petitioner,

- versus -

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

CTA AC NO. 150

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 19 2017

1:40 p.m.

x - x

RESOLUTION

CASTAÑEDA, JR., J.:

For the Court's resolution is petitioner's **Motion for Reconsideration (Re: Decision Rendered 10 February 2017)**, filed on March 1, 2017, with respondent's **Comment to Petitioner's Motion for Reconsideration**, filed through registered mail on March 30, 2017 and received by the Court on April 20, 2017.

Petitioner moves for the reconsideration of the Decision[1] promulgated on February 10, 2017, which ruled that petitioner is a non-bank financial intermediary whose income may therefore, be subjected to local business tax under Section 143(f) of Republic Act (RA) No. 7160, as amended. The dispositive portion of the assailed Decision reads:

---

[1] Docket, pp. 234-252.

"**WHEREFORE**, premises considered, the instant Petition for Review is **DISMISSED** for lack of merit.

SO ORDERED."

Petitioner's Motion for Reconsideration has no merit.

Petitioner basically argues that it is entitled to the credit or refund of local business taxes collected by respondents for the first and second quarters of 2011 because it is not a non-bank financial intermediary and is not engaged in lending money, investing, reinvesting or trading securities on a regular and recurring basis. Allegedly, the mere owning or holding shares of stock of San Miguel Corporation (SMC) does not *ipso facto* qualify it as a non-bank financial intermediary. Also, petitioner's articles of incorporation states that it is a mere holding company and expressly prohibits it from acting as a financial institution or intermediary.

Respondents, on the other hand, claims that the Court did not err in holding that petitioner is engaged in the business of a non-bank financial intermediaries based on the nature of its business and its primary purpose as expressly stated in its Articles of Incorporation.

After due consideration, the Court finds that the arguments presented are a mere rehash of what have been said and reiterated in their previous pleadings, all of which have been considered and exhaustively discussed in the assailed Decision dated February 10, 2017. Be that as it may, it bears reiterating the findings of the Court in this case.

Petitioner contends that it is not engaged in lending money, investing, reinvesting or trading securities on a regular and recurring basis. It argues that mere owning or holding shares of stock of SMC does not automatically make it as a non-bank financial intermediary.

It must be stressed that petitioner's Amended Articles of Incorporation reveals that the scope of petitioner's primary purpose is comprehensive enough to cover most of the principal functions of a non-bank financial intermediary. Moreover, the nature of petitioner's business, which consists solely in owning a substantial number of shares of stock and equity in SMC, to which it regularly receives dividends in millions of pesos and, thereafter, reinvests it in money placements in the same company to maximize its profit, is clearly indicative that petitioner is engaged in the business of a non-bank financial intermediary. The Court settled these issues in the assailed Decision, as follows:

> "Based on the foregoing, financial intermediaries are those whose principal functions include 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. Moreover, 'non-banking financial intermediaries' include a person or entity performing any of the functions of a financial intermediary, including, holding assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers.
>
> In determining whether petitioner's business includes the principal function of a financial intermediary, reference to petitioner's primary purpose as indicated in its Amended Articles of Incorporation is necessary. It reads as follows:
>
> '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 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.' *(Emphasis supplied)*

A reading of petitioner's Amended Articles of Incorporation shows that the scope of its primary purpose is extensive enough to cover most of the principal functions of a financial intermediary.

Moreover, petitioner's business consists of owning a substantial number of shares of stock and equity in SMC. The Notes to Financial Statements confirmed that petitioner's main activity has been the holding of shares of stock of SMC. Also, based on petitioner's Statement of Cash Flows, the dividends and interest income were considered income from both **operating** and **investing** activities. **The continued receipt of dividends and interest income from its equity securities and money market placements is a direct consequence of its business engagements and not merely incidental to its business. Thus, petitioner is deemed engaged in the business of investing or placement of funds which is well within the definition of a financial intermediary.**

The fact that petitioner has a continuing huge investment in shares of stocks of SMC to which it regularly receives millions of pesos in dividends which it reinvests in money placement to attain maximum profit negates petitioner's argument that it does not perform the principal functions of a financial intermediary on a regular and recurring basis. Likewise, the fact that petitioner has no other business, except its investment in gc

> SMC, shows its real intent to engage solely and primarily in the business of stock investment and money market placements in the said company; thus, any profit it received is a direct consequence of its business engagements and not just mere incidental thereto."

Petitioner's nature of business falls within the category of non-bank financial intermediary since it has not engaged in any business activity other than receiving dividends and interests from its SMC shares. Its continued receipt of dividends and interest income from its equity securities and money market placements is a direct consequence of its business engagements and not merely incidental to its business. These are the very substantive acts that characterize 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.

Petitioner further asserts that the main evidence of its purpose is its articles of incorporation, which expressly prohibits it from acting as a financial institution or intermediary. Its primary purpose is to act as a mere holding company, which is not subject to local business tax on dividend and interest income.

The Court had already ruled that the prohibition in petitioner's Amended Articles of Incorporation 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 prevail over the real nature of its business, which is mainly holding stocks and investing the interests therein in money market placements, as follows:

> "As regards the last phrase of petitioner's primary purpose, that it 'shall not 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 petitioner's business, which is mainly holding stocks and investing the interests therein in money market placements. Petitioner therefore cannot hide under the said proviso as it is clearly under the category of non-bank financial intermediary.
>
> Thus, this Court finds no cogent reason to set aside the following findings and conclusions of the RTC, to wit:

'While the primary purpose of Petitioner appears to set a qualification or condition that: '***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***.', said proviso in the Court's mind is a classic evasion by Petitioner from the requirement to secure a secondary license for investment company under the regulation of the Bangko Sentral ng Pilipinas for non-banking financial intermediaries, per second paragraph of **Section 4101Q1 of MANUAL OF REGULATIONS FOR NON-BANK FINANCIAL INSTITUTIONS**, to wit:

> *'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.*** *(underscoring supplied)*. xxxx'

Petitioner cannot hide under the cloak of its evasive *proviso*, because Petitioner is glaringly and clearly under the category of a Financial Intermediary.

To stress, the income of the Petitioner Corporation comes only from two sources, to wit: gr

1. ***Dividends from TDRI's SMC Shares; and***
2. ***Interest Income from TDRI's Money Market Placements*** (Par. 11, Petition)

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."

While it is true that petitioner's Amended Articles of Incorporation provides that it shall not act as investment company or a securities broker and/ or dealer nor exercise the functions of a trust corporation, the same is, however, negated by the real nature of the business of petitioner. Petitioner's very act of investing in the shares of stocks of SMC to which it regularly receives millions of pesos in dividends which it reinvests in money placement to attain maximum profit clearly falls within the definition of a non-bank financial intermediary.

Well settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.-The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[2]

Petitioner's Motion for Reconsideration obviously lacked merit, because it merely rehashed grounds that had already been passed upon in the assailed Decision. Hence, the motion should indeed be denied.[3]

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Decision Rendered 10 February 2017)**, is **DENIED** for lack of merit.

---

[2] *Commissioner of Internal Revenue vs. Mindanao II Geothermal Partnership*, G.R. No. 189440, June 18, 2014.
[3] *Remulla vs. Manlongat*, G.R. No. 148189, November 11, 2004.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

(With due respect, I maintain my Dissenting Opinion dated February 10, 2017.)
CATHERINE T. MANAHAN
Associate Justice