REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
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FIRST MERIDIAN DEVELOPMENT, 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 Case No. 132
(Civil Case No. 35,673-2014)

Members:

DEL ROSARIO, P.J.,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

DEC 20 2016 ; 1:18 p.m.

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RESOLUTION

UY, J.:

For resolution is respondents' **"MOTION FOR RECONSIDERATION"** filed on October 3, 2016, with petitioner's **"COMMENT/OPPOSITION To Respondent's Motion for Reconsideration (Re: Decision Promulgated 26 August 2016)"** filed November 2, 2016, praying for the reconsideration of this Court's Decision dated August 26, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. The assailed Orders dated October 15, 2014 and December 17, 2014, both issued by Branch 11 of the RTC, 11th Judicial Region, Davao City, are **REVERSED** and **SET ASIDE**. Accordingly, the local business tax assessed against petitioner for the third and fourth quarters of taxable year 2011 in the aggregate amount of ₱907,083.10 is **CANCELLED** and **SET ASIDE**.
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> **SO ORDERED.**"

Respondents' arguments:

In the instant Motion, respondents argue that this Court failed to see that the primary purpose of petitioner for its incorporation as embodied in its Amended Articles of Incorporation and the nature of its business vis-à-vis the definitions of non-bank financial intermediaries show that its business falls squarely within the purview of the term *"non-bank financial intermediaries"*.

According to respondents, the act of petitioner in subscribing, purchasing and holding the San Miguel Corporation (SMC) shares of stocks, and consequently, receiving regularly an annual dividends and making money placements to maximize profits, are not isolated transactions, but are in themselves the continuing act of investing and placement of funds being contemplated for *"non-bank financial intermediaries"*.

Furthermore, respondents point out that contrary to the findings of this Court, petitioner's continuing annual receipt of dividends and interest income on its equity securities and money placements, as revealed by the evidence submitted by petitioner, are factual evidence sufficient enough to establish that its investment in shares of stocks of SMC and money placements are a continuing and regular business endeavor.

Lastly, respondents emphasize that the non-issuance of license by the BSP does not *ipso facto* exclude the petitioner from the definition of a *"non-bank financial intermediary"* as provided under Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions; and that what should prevail is not the fact of whether an authority was given by the BSP, as the petitioner could deliberately evade the same by not filing an application therein, but rather the real nature and substance of petitioner's business operation, which consists primarily and regularly of investments in shares of stocks in SMC and money placements.

Petitioner's counter-arguments:

In its *Comment*, petitioner contends that this Court correctly held that it is not a non-bank financial intermediary.

Allegedly, it was observed by the Court in the assailed Decision that no evidence was shown that petitioner ever performed functions that would qualify it as a non-bank financial intermediary; that basic is the rule that mere allegation is not evidence and is not equivalent to proof; that assertions based on mere speculation therefore cannot be given credence; and that basic is the rule that he who alleges must prove his case.

Thus, petitioner submits that the Court rightfully concluded that petitioner does not fulfill any of the requirements of being a non-bank financial intermediary.

THE COURT'S RULING

The instant *Motion for Reconsideration* must be denied for lack of merit.

A careful perusal of the said *Motion for Reconsideration* shows that the arguments raised therein are matters which have already been considered, weighed, passed upon and exhaustively resolved by this Court in the assailed Decision.

To reiterate, the basic requirements for a person or entity to be considered as a *"non-bank financial intermediary"* are the following:

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

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"*;[2]

3) The person or entity must perform any of the following functions on a regular and recurring, not on an isolated, basis, to wit:

    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

[1] This is pursuant to Section 131(e) of the LGC of 1991, in relation to Section 22(W) of the NIRC of 1997 and Section 2-D(c) of RA No. 337, as amended by PD No. 71.

[2] This is pursuant to Section 2-D(c) of RA No. 337, as amended by PD No. 71; and Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions.

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.[3]

Indeed, as We have ruled in the assailed Decision, it was not shown that petitioner fulfilled the basic requirements for a person or entity to be considered as a *"non-bank financial intermediary"*.

In the instant *Motion for Reconsideration*, respondents again failed to convince Us that petitioner should be considered as a non-bank financial intermediary based on the above-stated requirements. Thus, the subject local tax assessment cannot be sustained.

It must be emphasized that the requirement that a person or entity must be *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"* in order that it can be considered as a *"non-bank financial intermediary"* is one established by law.

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

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

xxx xxx xxx

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[3] This is pursuant to Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions.

> (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**;" *(Emphases supplied)*

Clearly from the foregoing provision, the term *"non-bank financial intermediaries"* are those that are *"as defined under applicable laws, or rules and regulations thereunder"*.

There is no question that the said term was defined in Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions, and thus, may definitely be adopted in determining whether petitioner is indeed a *"non-bank financial intermediary"*. However, with equal force and effect, the same term was likewise defined by Section 22(W) of the National Internal Revenue Code (NIRC) of 1997 as one *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"*, to wit:

> "(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.**" *(Emphasis supplied)*

Correspondingly, this definition given by the NIRC of 1997 must also be considered and be given effect in determining which persons or entities fall under the said definition under, and pursuant to, Section 131(e) of the LGC of 1991.

Nevertheless, even when the definition of the term *"non-bank financial intermediary"* given by Section 22(W) of the NIRC of 1997 ought to be disregarded, and this Court is tasked only to consider the definition stated in the same Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions, Our finding will still be the same.

Plainly, the said Section 4101Q.1 is to the effect that the enumerated functions, which are indicative that a person or entity is a financial intermediary, must be *"on a regular and recurring, not on an isolated basis"*. As already emphasized in the assailed Decision, there is no showing that petitioner ever performed the said functions *"on a regular and recurring basis"*. In this connection, it must likewise be stressed that while the Amended Articles of Incorporation of petitioner enumerates the purposes for which it was incorporated, the same is not indicative of the actual transactions it entered into, and of the frequency thereof, throughout a particular year.

Be that as it may, even further granting that petitioner can indeed be considered outright as a *"non-bank financial intermediary"*, the taxing powers of respondent City of Davao do not extend to petitioner for being a property of the Government, in accordance with Section 133(o) of the LGC of 1991, which provides as follows, to wit:

> "SEC. 133. *Common Limitations on the Taxing Power 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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> xxx xxx xxx
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> (o) **Taxes, fees or charges of any kind on the National Government**, its agencies and instrumentalities, and local government units." *(Emphases supplied)*

In *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, etc.*,[4] the Supreme Court declared that the Coconut Industry Investment Fund (CIIF) holding companies, which includes petitioner,[5] are public funds/assets, in this wise:

> "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.**

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[4] G.R. Nos. 177857-58 and 178193, January 24, 2012.

[5] See Footnote no. 4 of *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, etseq.*, supra, to wit: *"Composed of Soriano shares, ASC Investors, ARC Investors, Roxas Shares, Toda Holdings, AP Holdings, Fernandez Holdings, SMC Officers Corps., Te Deum Resources, and Anglo Ventures, Randy Allied Ventures, Rock Steel Resources, Valhalla Properties Ltd., and* ***First Meridian Development****, all names ending with the suffix 'Corp.' or 'Inc.'" (Emphasis and underscoring supplied)*

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> **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.**
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> 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*,[6] 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, belong to the government as, at the very least, their beneficial and true owner.** *(Emphases and underscoring supplied)*

Thus, considering that petitioner is Government property, any tax imposed thereto is considered as a tax on the Government. Such being the case, under the aforequoted Section 133(o) of the LGC of 1991 in relation to the above-cited case of the Supreme Court, the dividend and interest income earned by petitioner may not be subjected to the local business tax imposed by respondent City of Davao.

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[6] G.R. Nos. 147062-64, December 14, 2001.

WHEREFORE, in light of the foregoing considerations, respondent's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice