REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE CITY OF MAKATI AND THE CITY TREASURER OF MAKATI,
Petitioners,

-versus-

CEMCO HOLDINGS, INC.,
Respondent.

CTA EB No. 1661
(CTA AC No. 166)

Present:

DEL ROSARIO, *PJ*;
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ*.

Promulgated:

APR 22 2019 2:50 p.m.

x- x

RESOLUTION

Fabon-Victorino, J.:

Assailed in petitioners' *Motion for Reconsideration* dated December 20, 2018 is the Decision dated December 12, 2018,[1] which disposed the case in the following fashion:

> **WHEREFORE**, the Petition for Review dated May 29, 2017 filed by petitioners the City of Makati and the City Treasurer of Makati is **DENIED**. The challenged Decision and Resolution dated January 6, 2017 and May 11, 2017 respectively, both rendered by the Court in Division are **AFFIRMED**.
>
> **SO ORDERED**.

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[1] *Rollo*, pp. 136-147.

Petitioners insist that under Sections 3A.02(p) in relation to 3A.02(h) of the Revised Makati Revenue Code (RMRC), holding companies are taxed as a particular class without the need of being a contractor, bank, or financial institution. Since respondent admits that it is a holding company, it is therefore subject to LBT on its gross receipts emanating from its dividends and other passive income.

Moreover, given that respondent failed to impugn the validity of Sections 3A.02(p) in relation to 3A.02(h) of the RMRC before the Secretary of Justice, the provisions remain valid and enforceable against it.

Petitioners state that tax assessments made in good faith by tax examiners are presumed correct unless proven otherwise[2]. Since respondent failed to overcome the foregoing presumption, their Notice of Assessment dated October 8, 2013 against it must be sustained.

For its part,[3] respondent argues that petitioners failed to comply with basic requirements of a motion for reconsideration under Section 1, Rule 37 of the Rules of Court specifically their failure to point out portions of the assailed Decision that are contrary to law or are not supported by evidence, as well as to state their arguments in support thereto. On that account, the instant motion is merely dilatory justifying its denial.

THE RULING OF THE COURT

The instant Motion is bereft of merit.

A careful reading of petitioners' arguments reveals that they are practically lifted *verbatim* from their Petition for Review, all of which were squarely addressed and passed upon by the Court *En Banc* in the assailed Decision of December 20, 2018. To repeat, with the express admission by both petitioners and respondent that the latter is neither

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[2] *Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories Inc.,* G.R. No. 76281, September 30, 1991.
[3] Comment/Opposition dated February 1, 2019, *rollo,* pp. 177-179.

a bank, nor a financial institution as contemplated under Section 131(e) of the Local Government Code, no local business tax may be imposed on its dividend income by express prohibition of Section 133(a) of the same Code.

WHEREFORE, petitioners' Motion for Reconsideration dated December 20, 2018 is **DENIED,** for lack of merit. The assailed Decision dated December 12, 2018 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

(I maintain my Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice