REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VALHALLA PROPERTIES LIMITED, 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. 154

Members:

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

Promulgated:

AUG 01 2017 9:40 a.m.

x- -x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is petitioner's **Motion for Reconsideration (Re: Decision Rendered 2 March 2017)**, filed on March 17, 2017, with respondents' **Comment To Petitioner's Motion for Reconsideration,** filed through registered mail on April 10, 2017 and received by this Court on April 26, 2017.

Petitioner seeks reconsideration of the Court's Decision (assailed Decision)[1] promulgated on March 2, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the present Petition for Review is **DENIED**, for lack of merit.
>
> **SO ORDERED**."[2]

[1] Docket, pp. 216-235.
[2] Docket, p. 234.

In the assailed Decision, the Court found that petitioner was properly taxed as a "Non-Bank Financial Intermediary" thereby denying petitioner's claim for refund or credit of the 0.55% local business taxes in the amount of ₱655,632.50, collected for the first and second quarters of 2011 on the dividends received from its SMC preferred shares and interest on its money market placements for the taxable year 2010.

Petitioner prays for the reversal of the assailed Decision on the following grounds:

> 1. Petitioner is entitled to the credit or refund of local business taxes collected by respondents for the first and second quarters of 2011 because petitioner is not a non-bank financial intermediary, considering that:
>
> > a. Petitioner is not engaged in lending money, investing, reinvesting or trading securities on a regular and recurring basis.
> >
> > b. Merely owning or holding shares of stock of SMC does not *ipso facto* qualify petitioner as a non-bank financial intermediary.
> >
> > c. The main evidence of the purpose of the petitioner is its articles of incorporation, which expressly prohibits it from acting as a financial institution or intermediary.
> >
> > d. Petitioner has never been determined by the monetary board to be an entity engaged in financial intermediation, nor is it authorized by the BSP or any regulatory agency to perform quasi-banking functions.
>
> 2. The primary purpose of the petitioner as provided in its Amended Articles of Incorporation is to act as a mere holding company, which is not subject to local business tax on dividend and interest income.
>
> 3. Petitioner's income partake the nature of public funds, which is not subject of local business tax.

Respondents oppose petitioner's motion and argue 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 petitioner's business and its primary purpose as expressly stated in its Articles of Incorporation.

According to the respondents, it is clear that the business of petitioner falls within the purview of the definition of the terms "Banks and Other Financial Institutions" and "Non-bank Financial Intermediaries".

Petitioner's Motion for Reconsideration is bereft of merit.

The Court notes that petitioner's arguments are mere rehash of what have been said and reiterated in their previous pleadings, all of which have been considered and thoroughly threshed out by the Court in the assailed Decision dated March 2, 2017.

Petitioner argues that it is not engaged in lending money, investing, reinvesting or trading securities on a regular and recurring basis.

This Court reiterates its ruling in the assailed Decision that petitioner's primary purpose is extensive enough to cover most of the principal functions of a non-bank financial intermediary.

Moreover, petitioner claims that as a mere holding company, it is not subject to local business tax on dividend and interest income and that mere owning or holding of shares of stocks of SMC does not *ipso facto* qualify it as a non-bank financial intermediary. These arguments had also been resolved by this Court in the assailed Decision, to wit:

> "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.

To determine whether petitioner's business includes the principal function of a financial intermediary, it is necessary for the Court to look into petitioner's primary purpose as indicated in its Amended Articles of Incorporation. It states 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.

Likewise, petitioner's business consists of owning a substantial number of shares of stock and equity in SMC, from which it regularly receives dividends that it reinvests in money market placements to maximize its profit. Petitioner in its Petition for Review admits that the 'dividends received by VPLI from its SMC Preferred Shares were deposited in a trust account which earned interest from money market placements.' This 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 or evidence of indebtedness which is well within the definition of a financial intermediary.

Moreover, there is no merit in petitioner's averment that to be considered a financial intermediary, a person must perform any of the functions stated in the given definition on a regular and recurring, not on an isolated basis.

Petitioner is a stock corporation, thus, it is presumed to have been organized for profit. Petitioner's primary purpose as stated in its Amended Articles of Incorporation, coupled by the fact that it has a continuing huge investment in shares of stocks of SMC from which it regularly receives millions of pesos in dividends that it reinvests in its money market placements 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 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."[3]

Furthermore, the Court cannot give credence to petitioner's contention that the main evidence of its purpose is the articles of incorporation, which expressly prohibits it from acting as a financial institution or intermediary.

This 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 petitioner's business, which is mainly holding stocks and investing the interests therein in money market placements, as follows:

> "As to 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. The fact that petitioner is actually engaged in the business of stock investment and money market placements in SMC negates the said proviso. Petitioner therefore cannot hide under the said proviso as it is clearly under the category of non-bank financial intermediary."[4]

Although 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, this is negated by the real nature of the business of petitioner. The fact that petitioner invests in the shares of stocks of SMC and regularly receives millions of pesos in dividends that it reinvests in money placement to attain maximum profit shows that petitioner is within the definition of a non-bank financial intermediary.

Finally, it must be emphasized that tax refunds or tax credits - just like tax exemptions - are strictly construed against taxpayers, the

[3] Docket, pp. 230-232.
[4] Docket, p. 232.

latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.[5]

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision dated March 2, 2017.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Decision Rendered 2 March 2017)** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
(With due respect, I maintain my Dissenting Opinion dated March 2, 2017.)
CATHERINE T. MANAHAN
Associate Justice

---

[5] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016.