Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

CITY OF DAVAO and BELLA LINDA N. TANJILI in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City, Petitioners,	**CTA EB NO. 1634** (CTA AC No. 129)
	Present: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
-versus-	
AP HOLDINGS, INC., Respondent.	Promulgated: DEC 04 2018 3:19 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves petitioner's "Motion for Reconsideration" of the Decision dated August 17, 2018 of this Court *En Banc*, the pertinent portion of which states:

> "***WHEREFORE***, *the Petition for Review is* ***DENIED,*** *for lack of merit. Accordingly, the Decision dated September 2, 2016 and Resolution dated March 2, 2017 by the Third Division of this Court in CTA AC No. 129 are* ***AFFIRMED***. *No pronouncement as to costs.*
>
> ***SO* ORDERED.**"

Petitioner assails this Court's Decision on the following grounds:

1. The Honorable Court En banc erred in concluding that respondent's business operation does not fall within the definition of a non-bank financial intermediary.

2. The Honorable Court En Banc erred in holding that respondent is merely a holding company, rather than a non-bank financial intermediary.

3. The Honorable Court En Banc erred in not taking into account the factual findings of the lower court that respondent is a Non-bank financial Intermediary by owning, investing and holding share of stock of San Miguel Corporation.

4. The Honorable Court En Banc erred in concluding that respondent's assets, being declared owned by the government pursuant to COCOFED decision, is exempt from the imposition of local business tax."

Petitioners argue that respondent's primary purpose and the very act of owning, holding and investing in San Miguel Corporation's (SMC) stock and realizing regular income through interests is well within the purview of the nature and functions of a non-bank financial intermediary. Petitioners claim that a holding company is basically a non-bank financial intermediary. Moreover, petitioners insist that the Court failed to consider the findings of the lower court and that the ***COCOFED Case***[1] did not delve on the taxability of the fund or its income but solely on the nature of ownership of the said SMC shares of stocks.

We are not persuaded.

An examination of the records reveals that respondent's mere ownership of SMC shares, receiving dividend thereon and interest on money placement market without other evidence of business activity, does not qualify respondent as engaged in the business of a bank or other financial institution to be subject to local business tax under Section 143(f) of the Local Government Code (LGC). Records are bereft of evidence to show habitual business activity to consider respondent as a bank or other financial institution (Non-Bank Financial Intermediary).

[1] Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines, G.R. Nos. 177857-58 & 178193, January 24, 2012.

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True, the *COCOFED Case* did not delve on the taxability of the fund or its income but solely on the nature of ownership of the said SMC shares of stocks. As clear as it can get. No less than the Supreme Court have declared that respondent is a holding company owned by the government. The SMC shares it held, the dividends and any income therefrom are also owned by the government. Considering that respondent is owned by the Republic of the Philippines, it is exempt from imposition of Local Business Tax under Section 133 (o) of the same LGC. To reiterate:

> *"xxx, [I]n the COCOFED Case, the Supreme Court En Banc declared respondent AP holdings, Inc. as one of the fourteen (14) holding companies funded by the coconut levy fund which were formed or organized solely for the purpose of holding the SMC shares. Likewise, respondent AP holdings, Inc., among others, and the San Miguel shares it held are owned by the government. As such, the dividends and any income therefrom are also owned by the government. It shall not be subject to local business tax pursuant to Section 113 (o) of the Local Government Code[2]. Thus, We find that the Court in Division correctly ruled as follows:*
>
> > *"The ruling in COCOFED placed the subject SMC shares and its dividends, and any income therefrom, beyond the scope of the taxing power of the City of Davao. The exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code. Under paragraph (o) of this provision, local government units have no power to impose any tax, fee or charge on the National Government:*
> >
> > *SECTION 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*

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[2] **Section 133.** Common Limitations on the Taxing Powers 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:

xxx xxx xxx.

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

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> *barangays shall not extend to the levy of the following:*
>
> *xxx*
>
> *(o) Taxes, fees or charges, of any kind on the National Government, its agencies and instrumentalities, and local government units.*
>
> *Since the subject shares are owned by the government, it follows that the dividends and any income therefrom are also owned by the government. Thus, the same is not within the power of the City of Davao to tax.*
>
> *xxx xxx xxx.*
>
> *To reiterate, the Supreme Court held there that all SMC held by the holding companies, as of 1983, together with all dividends declared, paid and issued thereon as well as any increments thereto are owned by the government to be used only for the benefit of all coconut farmers and for the development of the coconut industry. It cannot be clearer that the income from subject shares is not subject to local business taxes."*[3]
>
> *In sum, there is no compelling reason to disturb the findings and conclusion of the Court in Division as it is supported by jurisprudence and evidence on record.*

In sum, We found no substantial argument to merit reconsideration of our Decision promulgated on August 17, 2018.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[3] En Banc Docket, pp. 35-42.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
I reiterate my Dissenting Opinion.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice