Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SORIANO SHARES, INC., Petitioner,	**CTA AC No. 141** (RTC Civil Case No. 35,678-14)
-versus-	**Members:** CASTAÑEDA, JR., *Chairperson* CASANOVA, *and* COTANGCO-MANALASTAS, *J.J.*
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City, Respondents.	**Promulgated:** JUL 2 2 2016 3:50 p.m.

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DECISION

CASANOVA, *J.*:

Before Us is an appeal, by way of Petition for Review,[1] filed by petitioner-Soriano Shares, Inc., against respondents City of Davao and Rodrigo S. Riola on June 8, 2015, seeking to reverse and set aside the Decision[2] dated November 10, 2014 and Order[3] dated April 20, 2015, both rendered by the Regional Trial Court (RTC) Branch 17, Davao City in Civil Case No. 35, 678-14, entitled *"Soriano Shares, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City".*

The assailed Decision and Order sustained the legality of the assessments issued by respondent City Treasurer against petitioner demanding payment for local business tax for the third and fourth quarters of 2011, on its gross receipts derived from cash dividends and interest income on its money market placements for taxable year 2010 in the amount of One Million Two Hundred Forty Nine Thousand Seven Hundred Ninety Seven and 64/100 Pesos (P1,249,797.64).

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[1] Docket, pp. 8-36.
[2] Annex "P-1" to the Petition for Review, Ibid, pp. 38-48.
[3] Annex "P-2" to the Petition for Review, Id, pp. 49-50.

Petitioner-Soriano Shares, Inc. is a corporation duly organized and existing under Philippine laws with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City.[4] It may be served with notices and other processes through its counsel, Carag De Mesa Zaballero San Pablo & Abiera Law Offices, with office address at Suite 2602, 26th Floor, The Atlanta Centre, No. 31 Annapolis Street, Greenhills, San Juan City, Metro Manila.[5]

Respondent-City of Davao is a local government unit (LGU) duly created by law, while co-respondent Hon. Rodrigo S. Ariola is being sued in his official capacity as the City Treasurer of Davao City.

Respondents City of Davao and City Treasurer (Hereinafter shall be collectively referred to as "public respondents") may be served summons, notices and other Court processes at City Hall Building, San Pedro Street, Davao City.[6]

The facts of the case, as culled from the records, are as follow:

In 2010, petitioner obtained the amount of Two Hundred Twenty Eight Million Six Hundred Sixty Five Thousand One Hundred Fifty One and 18/100 Pesos (P228,665,151.18) derived from dividends received from its San Miguel Corporation (SMC) preferred shares and interest income on its money market placements[7], computed as follows:

Nature of Income	Amount
Dividends from petitioner's SMC Shares	P225,928,875.00
Interest Income from petitioner's Money Market Placements	2,736,276.18
	P228,665,151.18[8]

On January 20, 2014, respondent City Treasurer of Davao City issued a Business Tax Order of Payment[9] dated January 20, 2014, assessing petitioner the amount of One Million Two Hundred Forty Nine Thousand Seven Hundred Ninety Seven and 64/100 Pesos (P1,249,797.64) Pesos, representing 0.55% local business tax for the third and fourth quarters of 2011 on the dividends derived from its

[4] Par. 6, The Parties, Petition for Review, Id., p. 9.
[5] Par. 6.2, The Parties, Petition for Review, Id., p 10.
[6] Pars. 7, 7.1 and 7.2, The Parties, Petition for Review, Id.
[7] Par. vi, The Petitioner's Allegations, Decision, Annex "P-1" to the Petition for Review, Id., p. 39.
[8] Par. 16, Statement of Facts and Antecedent Proceedings, Petition for Review, Id., p. 12.
[9] Annex "P-6" to the Petition for Review, Id., p. 79.

SMC shares of stock and interests on its money market placements earned in 2010. The details[10] of which are as follows:

Year/Quarter	2010 Annual Gross Sales	Tax Due	Surcharge	Interest	Total Amount Due
Third Quarter 2011	P228,665,200.00	P314,414.50	P78,603.62	P243,671.20	P636,689.32
Fourth Quarter 2011	P228,665,200.00	P314,414.50	P78,603.62	P220,090.20	P613,108.32
				Total Tax Due	**P1,249,797.64**

Claiming that it is not a bank or a financial institution, petitioner protested[11] the said assessment on March 21, 2014.

In response, respondent City Treasurer, in a letter[12] dated April 4, 2014, required petitioner to forward proof of payment of its payment of business taxes, pursuant to Section 423 of Ordinance No. 158-05, series of 2005, series of 2005, otherwise known as the "2005 Revenue Code of Davao City" (Ordinance No. 158-05), before its protest may be acted upon.

Petitioner sent a letter-reply[13] to respondent City Treasurer on April 24, 2014, arguing that the requirement of payment under protest is invalid and unconstitutional for being inconsistent with Section 252 in relation to Section 195 of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991" (LGC).

In reply, respondent City Treasurer, in a letter[14] dated May 5, 2014, stated that Section 423 falls under General Administrative Powers, particularly under taxpayers' remedies, which does not distinguish between real property and business taxes. He also stated that the subject Ordinance is a valid law, hence, the Office of the City Treasurer is required to abide by the requirement laid down in the said provision.

Due to alleged inaction of the City Treasurer on its protest, petitioner filed a Petition for Review[15] before the Regional Trial Court of Davao City on June 9, 2014.

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[10] Annex "P-7" to the Petition for Review, Id., p. 83
[11] Annex "P-7" to the Petition for Review, Id., pp. 83-90.
[12] Annex "P-8" to the Petition for Review, Id., p. 91.
[13] Annex "P-9" to the Petition for Review, Id., pp. 92-97.
[14] Annex "P-10" to the Petition for Review, Id., p. 98
[15] Annex "P-11" to the Petition for Review, Id., pp. 99-114.

On November 10, 2014, the RTC of Davao, Branch 17, promulgated its Decision[16] dismissing petitioner's Petition for Review for lack of merit and ordering petitioner to pay respondents the assessed local business tax, to wit:

> "**WHEREFORE**, premises considered, for lack of merit, the Petition for Review under Section 195 of the Republic Act No. 7160 filed by petitioner, Soriano Shares, Inc. is hereby **DISMISSED**.
>
> Accordingly, petitioner is hereby directed to pay the respondents the amount of One Million Two Hundred Forty Nine Thousand Seven Hundred Ninety Seven and 64/100 (P1,249,797.64) Pesos, representing the 0.55% local business tax for the third and fourth quarters of 2011 on the dividends derived from its shares of stock and interest on its money market placements derived from San Miguel Corporation.
>
> **SO ORDERED.**"

Undeterred, petitioner filed a Motion for Reconsideration[17] on January 27, 2015, which was denied by the court *a quo* in a Order[18] dated April 20, 2015.

Aggrieved, petitioner filed its Petition for Review[19] before the Court of Tax Appeals on June 8, 2015.

Without necessarily giving due course to the Petition for Review, respondents were ordered[20] by the Court to file their comment, not a motion to dismiss, within ten (10) days from notice thereof. Within the extension of time granted[21] by the Court, respondents filed their Comment[22] on July 27, 2015.

Subsequently, in a Resolution[23] dated August 13, 2015, the Court gave the parties a period of thirty (30) days from notice

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[16] Supra note 2.
[17] Annex "P-14" to the Petition for Review, Ibid, pp. 150-167.
[18] Supra note 3.
[19] Supra note 1.
[20] Resolution dated June 19, 2015, Docket, p. 170.
[21] Resolution dated August 4, 2015, Ibid., p. 176.
[22] Id., pp. 180-200.
[23] Id., p. 203.

thereof to submit their simultaneous memoranda. Upon receipt of the same, the instant petition shall be considered submitted for decision.

The Court submitted the instant case for decision in a Resolution [24] dated October 15, 2015, after taking into consideration of petitioner's Memorandum[25] filed on September 14, 2015 and respondents' Memorandum[26] filed on September 24, 2015.

Hence, this Decision.

To support its claim, petitioner raised the following grounds for the consideration of this Court:

> "A.
> SSI IS NOT A BANK OR A FINANCIAL INSTITUTION.
> B.
> SSI IS NOT ENGAGED IN BUSINESS THAT IS SUBJECT TO LOCAL BUSINESS TAX UNDER SECTION 143 OF REP. ACT NO. 7160.
> C.
> SSI'S INCOME PARTAKE THE NATURE OF PUBLIC FUNDS; THUS, BUSINESS TAX CANNOT BE IMPOSED ON THE SAME.
> D.
> SSI'S INCOME PARTAKE THE NATURE OF PUBLIC FUNDS; THUS, BUSINESS TAX CANNOT BE IMPOSED ON THE SAME.
> E.
> THE REQUIREMENT OF PAYMENT UNDER PROTEST UNDER SECTION 423 OF THE 2005 REVENUE CODE OF THE CITY OF DAVAO IS VOID FOR BEING CONTRARY TO THE LOCAL GOVERNMENT CODE."

The foregoing issues may thus be framed as follows:

1. Whether or not the RTC of Davao, Branch 17 erred in upholding the requirement of prior payment under Section 423 of Ordinance No. 158-05 before a

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[24] Id., p. 259.
[25] Id., pp. 204-235.
[26] Id., pp. 238-257.

protest can be entertained by the City Treasurer of Davao;

2. Whether or not this Court has jurisdiction to entertain the instant Petition for Review; and

3. Whether petitioner is liable for deficiency business tax of 0.55% for the 3rd and 4th quarters of 2011, imposed on the dividends and interests it received from SMC preferred shares of stocks and money market placements, respectively, for taxable year 2010.

Whether or not the RTC erred in upholding the requirement of prior payment under Section 423 of Ordinance No. 158-05 before a protest can be entertained by the City Treasurer of Davao

Petitioner argues that Section 423 of Ordinance No. 158-05 cannot enjoy the presumption of validity because the said ordinance deviates from the limitations prescribed under Section 195 of the LGC by adding the onerous requirement for taxpayers to pay first the tax assessed before their protest may be entertained by the City Treasurer of Davao. Accordingly, such requirement is present only in cases of protest on real property tax assessment and not of the local business tax. By such reason, it is of the considered view that the said provision should be invalidated for imposing conditions other than those provided under the general law.

On the other hand, respondents argue that the court *a quo* and the Court of Tax Appeals have not acquired jurisdiction to hear this case on the ground that the tax assessment subject of this case had already become conclusive and unappealable for failure of petitioner to first pay the tax assessed before filing the protest, pursuant to Section 423 of Ordinance No. 158-05.

The relevant provisions on this issue are herein juxtaposed for ready reference:

Section 423 of the 2005 Revenue Code of Davao City	***Section 195 of the Local Government Code***
Section 423. Payment Under Protest - **No protest shall be entertained unless the taxpayers first pay the tax.** There shall be annotated on the tax receipts the words 'paid under protest.' The protest in writing must be filed within thirty (30) days from payment of the tax with the City Treasurer who shall decide the protest within sixty (60) days from receipt. (Emphases supplied)	SEC. 195. Protest of Assessment. — **When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory.** The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable. (Emphases supplied)

A closer look at the afore-quoted provisions reveals that there is a conflict between Section 423 of Ordinance No. 158-05 and Section 195 of the LGC as the former imposes an additional condition/requirement not found in the latter provision which it is supposed to implement, and that is the need to first pay the tax assessed before a taxpayer's protest can be entertained by the City Treasurer.

Further, even the provision of Section 285, Part XII of Administrative Order No. 270-Prescribing the Implementing Rules and Regulations of the LGC is silent on the requisite of prior payment of tax assessed, to wit:

"ARTICLE 285. Protest on Assessment. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge the amount of deficiency, the surcharges, interests, and penalties. Within sixty (60) days from receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. If the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer.

The taxpayer shall have thirty (30) days from receipt of the denial of the protest or from the lapse of the sixty-day period prescribed in this Article within which to appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable."

Also, it bears noting that the only provision under the Local Government Code that requires payment under protest is Section 252[27] of Title II of the said Code, which specifically pertains to Real Property Taxation. The same goes with the Rules and Regulations Implementing the Local Government Code of 1991, where payment under protest is only found under Article 343[28] of Rule XXXI which, likewise, speaks of Real Property Taxation.

Now, in determining which shall prevail between Section 423 of Ordinance No. 158-05 and Section 195 of the LGC, the case of *Hon. Jose*

[27] "**Section 252.** *Payment Under Protest.* -

(a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.
xxx xxx xxx" (Emphasis Ours)

[28] "**ARTICLE 343.** *Payment Under Protest.* — (a) **No protest shall be entertained unless the taxpayer first pays the tax**. There shall be annotated on the tax receipts the words paid under protest. The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial or city treasurer, or municipal treasurer, in the case of a municipality within MMA, who shall decide the protest within sixty (60) days from receipt.
xxx xxx xxx" (Emphasis Ours)

D. Lina, Jr., Sangguniang Panlalawigan of Laguna, and Hon. Calixto Cataquiz vs. Hon. Francisco Dizon Pano and Tony Calvento[29], is instructive:

> **"In our system of government, the power of local government units to legislate and enact ordinances and resolutions is merely a delegated power coming from Congress. As held in *Tatel vs. Virac*, ordinances should not contravene an existing statute enacted by Congress.** The reasons for this is obvious, as elucidated in *Magtajas v. Pryce Properties Corp.*
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>> **Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred upon them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statu**te.
>>
>> Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the state, and the corporation could not prevent it. We know of no limitation on the right so far as the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature *(citing Clinton vs. Ceder Rapids, etc. Railroad Co., 24 Iowa 455).*

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[29] G.R. No. 129093, August 30, 2001, as cited in Provincial Government of Cagayan, Rep. by Honorable Governor Alvaro T. Antonio and Emilia L. Iringan, in her capacity as Provincial Treasurer vs. Smart Communications, Inc. (Smart), CTA AC No. 92, July 25, 2013.

> Nothing in the present constitutional provision enhancing local autonomy dictates a different conclusion.
>
> > The basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax (citing Art. X, Sec. 5, Constitution), which cannot now be withdrawn by mere statute. By and large, however, **the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.**
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> Ours is still a unitary form of government, not a federal state. Being so, any form of autonomy granted to local governments will necessarily be limited and confined within the extent allowed by the central authority. Besides, the principle of local autonomy under the 1987 Constitution simply means 'decentralization'. It does not make local governments sovereign within the state or an "*imperium in imperio*". (Emphases supplied)

It is clear therefrom that while the local government units are allowed to legislate and enact ordinance to effect collection of business tax, such ordinance, however, should not contravene an existing statute enacted by the Congress like the Local Government Code. This is simply because "the spring cannot rise above its source". Thus, between the provision of Section 195 of the LGC and Section 423 of Ordinance No. 158-05, the former should prevail.

But notwithstanding such afore-mentioned conflict between Section 423 of Ordinance No. 158-05 and Section 195 of the LGC, which is the enabling law on this matter, the court *a quo* still ruled as follows:

"while Section 195 thereof [of the Local Government Code] is silent on the requirement of payment as a condition for filing a protest, xxx nowhere in the said Code, particularly in the provisions on the power to levy taxes by the local government unit, that prohibits it to devise ways and means to accomplish tax collection in the most effective manner. After all, it is trite but bears repeating that taxes are the lifeblood of the government."[30]

It is obvious that the court *a quo* engaged in interpretation when it extended by implication the clear provision of Section 195 of the LGC, which only requires the filing of a written protest with the local treasurer within 60 days from the receipt of the notice of assessment; otherwise, the assessment shall become final and executory. As the language of Section 195 is clear and categorical, the court a quo should have applied the same the way it is worded. This is inconformity with the doctrine laid down in *Rizal Commercial Banking Corporation vs. Intermediate Appellate Court and BF Homes, Inc.*,[31] where the Supreme Court held that where the law is clear and unambiguous, the court has no choice but to see to it that its mandate is obeyed, thus:

> **"It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application *(Cebu Portland Cement Co. vs. Municipality of Naga, 24 SCRA-708 [1968]).***
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> > **Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed** *(Chartered Bank Employees Association vs. Ople, 138 SCRA 273 [1985]; Luzon Surety Co., Inc. vs. De Garcia, 30 SCRA 111 [1969]; Quijano vs. Development Bank of the Philippines, 35 SCRA 270 [1970]).*

[30] Page 10 of Decision, Annex "P-1" to the Petition for Review, Docket, p. 47.
[31] G.R. No. 74851, December 9, 1999.

Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent. Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. A statute is ambiguous if it is admissible of two or more possible meanings, in which case, the Court is called upon to exercise one of its judicial functions, which is to interpret the law according to its true intent." (Emphases supplied)

Having established that the requirement of prior payment of tax assessed is not a condition *sine qua non* in filing a valid protest on local business tax assessment, the court a quo, therefore, erred in ruling that the tax assessment issued against petitioner has become final and executory on account of petitioner's failure to pay the assessed tax within the reglementary period of 60 days from the notice of assessment.

Whether or not this Court has jurisdiction to entertain the instant Petition for Review

We shall now resolve the issue on jurisdiction.

In this case, petitioner received the assailed Business Tax Order of Payment[32] from respondent City Treasurer on January 20, 2014. Petitioner protested[33] the same on March 21, 2014. Due to alleged inaction of respondent City Treasurer, petitioner filed a Petition for Review[34] before the Regional Trial Court of Davao City on June 9, 2014. The RTC-Branch 17 of Davao City issued the Assailed Decision on November 10, 2014, which was received[35] by petitioner on December 17, 2014. On January 5, 2015, petitioner filed a Motion for Reconsideration[36], which was denied in an Order[37] dated April 20, 2015, Since petitioner received[38] a copy of the said Order on May 8, 2015, it had thirty (30) days from May 8, 2015, or until June 8, 2015 within which to file its Petition for Review, pursuant to Rule 8, Section 3 (a) of the Revised Rules of the Court of Tax Appeals.[39]

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[32] Annex "P-6" to the Petition for Review, Docket, p. 79.
[33] Annex "P-7" to the Petition for Review, Ibid., pp. 83-90.
[34] Annex "P-11" to the Petition for Review, Id., pp. 99-114.
[35] Par. 2, Nature of Timeliness of the Petition, Petition for Review, Id., p. 2.
[36] Annex "P-14" to the Petition for Review, Id., pp. 150-167.
[37] Annex "P-2" to the Petition for Review, Id., pp. 49-50.
[38] Par. 4, Nature of Timeliness of the Petition, Petition for Review, Id. p. 9.
[39] "**Rule 8**

Considering that petitioner filed its Petition for Review on June 8, 2015, the instant Petition, therefore, falls squarely within the jurisdiction of this Court.

Whether petitioner is liable for deficiency business tax of 0.55% for the 3rd and 4th quarters of 2011, imposed on the dividends and interests it received from SMC preferred shares of stocks and money market placements, respectively, for taxable year 2010.

Section 133 (a) of the LGC is a specific provision that explicitly withholds from any Local Government Units, i.e., whether the province, city, municipality, or barangay, the power to levy tax on income, except when levied on banks and financial institutions.[40]

In this case, respondents postulate that petitioner is deemed a "Bank or other Financial Institution", specifically, a "Non-Bank Financial Intermediary or an Investment Company" by virtue of its investments in San Miguel Corporation. Thus, it was assessed for local business tax for the third and fourth quarters of taxable year 2011 on its gross receipts derived from cash dividends and interest income on its money market placements earned in taxable year 2010, pursuant to Section 69 (f) of Davao City Ordinance No. 158-05, which is mirrored from Section 143 (f)[41] of the LGC. Section 69 (f) of the said ordinance reads:

PROCEDURE IN CIVIL CASES

x x x

SEC. 3. *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes."

[40] **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:

(a) Income tax, except when levied on banks and other financial institutions;

[41] "SEC. 143. Tax on Business.— The municipality may impose taxes on the following businesses:

> "Section 69. **Imposition of Tax.**— There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts hereafter prescribed:
>
> (f) **On Banks and Other Financial Institutions**, at the rate of fifty-five percent (55%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property, and profit from exchange or sale of property, insurance premium. All other income and receipts not herein enumerated shall be excluded in the computation of the tax."

However, the "Definition of Terms" under Section 5(b3) of Ordinance No. 15-05[42] failed to provide a precise definition of what constitutes a "bank and other financial institutions". In fact, it merely describes such concept by enumerating those entities that may fall within such term, *i.e.*, **non-bank financial intermediaries**, lending investors, finance and investment companies, pawnshops, money shops, and insurance companies. As there is, likewise, no precise definition of the term "bank and other financial institutions" in the LGC, reference should, therefore, be made to other provisions of law or rules and regulations covering such matter.

(a) x x x x

x x x x

(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property, and profit from exchange or sale of property, insurance premium.

x x x x."

[42] SECTION 5. Definition of Terms. —

x x x x

(b3) 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 dealer in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder;

Section 2.3 of Revenue Regulations (RR) No. 9-2004, issued on June 21, 2004, by the Bureau of Internal Revenue, defines "non-bank financial intermediaries" in the following manner:

> "2.3. Non-bank Financial Intermediaries — shall refer to persons or entities **whose principal functions include** the lending, **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.** This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally." (Emphasis supplied)

Such concept was expounded in Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions in this wise:

> "§ 4101Q.1 **Financial Intermediaries**. Financial intermediaries shall mean persons or entities whose **principal functions** include the lending, **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.**
>
> **Principal** shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.
>
> **Functions** shall mean actions, activities or operations of a person or entity by which his/its business purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for

registration of business filed with the appropriate government agency.

To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:

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 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."

However, petitioner insists that its business does not fall within the foregoing definitions of "Non-bank Financial Intermediaries" on the ground that it is expressly prohibited by its Articles of Incorporation from acting as an investment company or a securities broker and/or dealer; that it is not engaged in lending money, investing, reinvesting or trading securities and/or foreign exchange either for its own account or for the account of others in a regular or recurring basis; and, that it was not required by the Securities and Exchange Commission to secure a secondary license.

Thus, to ascertain the truth or falsity in petitioner's claims, it is primordial that *We* look into the primary purpose for its incorporation as embodied in its Amended Articles of Incorporation, to wit:

"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."

A careful analysis of the nature of petitioner's business in line with the foregoing definitions of non-bank financial intermediaries shows that its business, indeed, falls within the purview of non-bank financial intermediaries.

For one, petitioner admitted in its own Petition for Review that since its incorporation, it "has not engaged in any business activity other than receiving dividends and interests from its San Miguel Corporation shares."[43] Thus, the continued receipt of the said dividends and interest income on its money market placements and equity securities cannot be considered as mere incidental to its business, but a direct consequence of its business engagements.

[43] Par,. 37.6 of Petition for Review, Docket, p. 13.

Second, while the primary purpose for which petitioner was incorporated appears to set a qualification that it "cannot 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 transaction undertaken by petitioner, which is mainly investing or placement of funds. Thus, petitioner cannot hide under the mantle of the foregoing provision as it is clearly under the category of non-bank financial intermediary.

Lastly, the foregoing qualification does not guarantee that petitioner will not engage in any of the said activities. Verily, by actually engaging in the business of stock investment and money market placements in SMC, the said proviso was negated and should, therefore, be disregarded.

Based therefrom, the Court is in unison with the RTC in its findings quoted below:

> "Coming to the merits of the case, the records show that petitioner's business operations consist solely of stock investments and money placements in San Miguel Corporation. Consequently, by holding a substantial number of shares of stock; and thus, receiving dividends as return of such investment and interest income from the petitioner's money market placements in San Miguel Corporation, the Court finds that the same clearly constitutes an act of investment or doing business which make them fall under the definition of a non-banking financial intermediary.
>
> While it may be true that petitioner's Amended Articles of Incorporation prohibits the corporation to act as an investment company, the Court finds that the records prove the contrary.
>
> The evidence submitted reveals that petitioner owns and invests in the shares of stock of San Miguel Corporation. It also has money placements in the said company as its principal and actual function or business operation. As raised by the respondents, based on the tax audit made by the latter, the petitioner has no other business operation and source of revenue apart from owning shares of stock of San Miguel Corporation and making money placements therein. This fact was not rebutted by the petitioner.

> Stemming therefrom, the Court finds that the respondents may validly assess the petitioner for 0.55% local business tax for the third and fourth quarters of 2011 on the dividends on its SMC shares of stock and interest income on its money market placements for the year 2010."[44]

Accordingly, based on the foregoing definition and petitioner's acts of investing in equity securities, holding of assets consisting of shares of stocks and placement of funds in SMC on a regular and recurring basis explicitly affirms the conclusion that petitioner is a non-bank financial intermediary whose income may, therefore, be subjected to business tax under Section 143 (f) of the LGC of 1991, as amended.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

[44] Page 8 of RTC Decision dated November 10, 2014, Docket, p. 45.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice