REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SAN MIGUEL OFFICERS CORPS, 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 NO. 136 Members: BAUTISTA, *Chairperson* FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.* Promulgated: NOV 22 2016 4:00 p.m.

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DECISION

***Fabon-Victorino, J.*:**

This Petition for Review dated June 4, 2015 filed by San Miguel Officers Corps, Inc. seeks to reverse the Decision dated November 10, 2014 and the Order dated April 20, 2015, of the Regional Trial Court (RTC), Branch 17 of Davao City in Civil Case No. 35,677-14, entitled "San Miguel Officers Corps, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City.

Petitioner San Miguel Officers Corps, Inc. is a domestic corporation, with principal office at Legaspi Oil Compound Km. 9.5, Sasa, Davao City.[1] Its primary purpose per its Articles of Incorporation is as follows:

> "To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal

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[1] Par. 6, The Parties, Petition for Review, docket, p. 9; Annexes "P-4" and "P-5", Petition for Review, docket, pp. 54-66 and 67-76; Annexes "F" and "F-1", Petition for Review, RTC Records, pp. 44-56 and 57-67.

> 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 of this or any other corporation, and while the owner or holder of any such real or personal property, stocks, bonds, debentures, notes, evidences of indebtedness or other securities, contracts, or obligations, 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."

On the other hand, respondent City of Davao is a local government unit (LGU) created by law, while respondent Rodrigo S. Riola is impleaded in his official capacity as the incumbent City Treasurer of Davao City. Both have office address at City Hall Building, San Pedro Street, Davao City.[2]

Petitioner was one of the fourteen (14) holding companies formed in 1983 by the Coconut Industry Investment Fund (CIIF) for the purpose of owning and holding shares of stock of San Miguel Corporation (SMC). In 1986, the said 14 holding companies were sequestered by the Philippine Commission on Good Government (PCGG). Subsequently, various cases were filed to determine the ownership of the 14 holding companies and the SMC shares of stock held by them.

In October 2009, the 53,863,035 common shares of SMC held by petitioner were converted into 53,863,035 preferred shares. Since then, petitioner received only cash dividends from SMC.

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[2] Pars. 7 and 7.1, The Parties, Petition for Review, docket, p. 10.

In 2010, petitioner received the amount of P408,750,632.97 as dividends of its SMC preferred shares of stock, and interest from its money market placements, computed as follows:

Nature of Income	**Amount**
Dividends from SMC Shares	P 403,972,762.50
Interest Income from Money Market Placements	4,777,870.47
	P 408,750,632.97[3]

In 2012, the Supreme Court *En Banc* declared the government as the owner of the 14 holding companies and the SMC shares they held.

On January 20, 2014, respondent City of Davao, through respondent City Treasurer Riola, issued a Business Tax Order of Payment, assessing petitioner the amount of P2,234,077.20 for alleged 0.55% local business tax on the dividends derived from its shares of stock and the interest on its money market placements for the third and fourth quarters of taxable year 2011.[4]

On March 21, 2014, petitioner filed an administrative protest against the said assessment with respondent City Treasurer Riola.[5]

In a letter dated April 4, 2014, respondent City Treasurer Riola required petitioner to show proof of payment of the assailed assessment, lest the protest shall not be entertained invoking Section 423 of the Revenue Code of the City of Davao which requires payment of the assessed tax before any protest is filed.[6]

In its letter-reply[7] sent on April 24, 2014, petitioner argued that payment before protest is required only in real property tax assessments and not for other local taxes

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[3] Par. 16, Statement of Facts and Antecedent Proceedings, Petition for Review, docket, p. 12.
[4] Annex "P-6", Petition for Review, docket, pp. 77-81; Annex "A", Petition for Review, RTC Records, pp. 20-24.
[5] Annex "P-7", Petition for Review, docket, pp. 82-89; Annex "B", Petition for Review, RTC Records, pp. 25-32.
[6] Annex "P-8", Petition for Review, docket, p. 90; Annex "C", Petition for Review, RTC Records, p. 33.
[7] Annex "P-9", Petition for Review, docket, pp. 91-96; Annex "D", Petition for Review, RTC Records, pp. 34-39.

under Section 252 of R.A. No. 7160 or the Local Government Code (LGC).

In his letter[8] dated May 5, 2014, respondent City Treasurer Riola claimed that there was no distinction between real property tax and business tax under Section 423 of the 2005 Revenue Code of Davao City, which must remain valid until declared otherwise.

On June 9, 2014, petitioner filed a Petition for Review[9] with the RTC of Davao City citing respondents' inaction to its protest.[10]

In the Decision[11] dated November 10, 2014, received by petitioner on December 17, 2014,[12] the RTC dismissed the Petition for Review, in this wise:

> **WHEREFORE**, premises considered, for lack of merit, the Petition for Review under Section 195 of Republic Act No. 7160 filed by petitioner, San Miguel Officers Corps, Inc., is hereby **DISMISSED**.
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> Accordingly, petitioner is hereby directed to pay the respondents the amount of Two Million Two Hundred Thirty Four Thousand Seventy Seven and 20/100 (P2,234,077.20) 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.
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> **SO ORDERED**."

The RTC found petitioner as a non-bank financial intermediary defined under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the *Bangko Sentral ng Pilipinas* (BSP). Moreover, petitioner's failure to perfect its protest rendered the local business tax assessment final and executory.

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[8] Annex "P-10", Petition for Review, docket, p. 97; Annex "D-1", Petition for Review, RTC Records, p. 40.
[9] Annex "P-11", Petition for Review, docket, pp. 98-115; RTC Records, pp. 1-19.
[10] Annex "P-11", Petition for Review, docket, pp. 98-115; RTC Records, pp. 1-19.
[11] Annex "P-1", Petition for Review, docket, pp. 38-48; RTC Records, pp. 166-177.
[12] Annex "P-1", Petition for Review, docket, p. 38.

In its Order[13] dated April 20, 2015, the RTC denied petitioner's Motion for Reconsideration[14] filed on January 5, 2015, for lack of merit.

Hence, the instant Petition for Review[15] filed before the Court on June 8, 2015.[16]

Petitioner contends that contrary to the RTC's finding, it is not a bank or a financial institution as defined under Section 131 of the LGC, hence, the assessment issued by respondents for 0.55% local business tax on the dividends derived from its SMC shares of stock and interests on its money market placements for the third and fourth quarters of 2011 should be cancelled. Since it is not a bank or financial institution, it is not subject to business tax under Section 143 of the LGC. Further, to allow such assessment against petitioner is to impose income tax, which local government units, such as respondent City, are prohibited to do under Section 133 of the LGC.

Besides, receipt of dividends and interest as a consequence of petitioner's ownership of SMC shares and money market placements is not a business activity subject to local business tax under Section 143 of R.A. No. 7160. For being a mere owner of the subject shares or receiving income on account of such property does not constitute doing business as defined under Section 131 of the LGC.

Further, the income derived solely from such ownership of SMC shares and money market placements partakes the nature of public funds, hence, not subject to business tax. According to petitioner, the Supreme Court, in one case has declared that since the subject SMC shares were acquired using coconut levy funds, they are deemed as government assets. As such, the income derived from them, are likewise government owned, not subject to the taxing power of local government units pursuant to Section 133 of the LGC. Petitioner also states that the proceeds from the SMC shares it held have been reconveyed to the Philippine Government, portions of which were in deposit with the Bureau of Treasury, and with United Coconut Planters Bank (UCPB).

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[13] Annex "P-2", Petition for Review, docket, pp. 49-50; RTC Records, pp. 214-215.
[14] Annex "P-14", Petition for Review, docket, pp. 152-168; RTC Records, pp. 178-194.
[15] Docket, pp. 8-33.
[16] Docket, p. 8.

Finally, Section 423 of the 2005 Revenue Code of Davao City, requiring payment under protest is void for it is contrary to the provisions of the LGC, upon which all local government units based their taxing authority. The pertinent law on the filing of protests is Section 195 of the LGC, which does not require payment before protest. Since local government units such as respondent City derive their taxing authority only from the LGC, it cannot impose the additional requirement of payment prior to a protest.

On the other hand, respondents contend that petitioner, by virtue of its stock investments and money placements in SMC, is deemed a non-bank financial intermediary. For respondents, petitioner is an entity that is expressly included in the definition of the term banks and other financial institution. Besides, the business purpose of petitioner as contained in its Articles of Incorporation is so broad to include all of the descriptive functions of a non-bank financial intermediary as provided under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the *Bangko Sentral ng Pilipinas*. As a stock corporation, petitioner is presumed to have been organized to engage in business through its stock investments and money placements with the end view of realizing profit. Thus, as a non-bank financial intermediary, petitioner is subject to local business tax pursuant to Section 143(f) of the LGC, on its gross receipts consisting of dividends and interest income.

Assuming that the SMC shares of petitioner are deemed government property, the income from such property is not covered by the prohibition on taxing government property under Section 133 of the LGC.

Finally, respondents also argue that the Court has no jurisdiction to hear this case because the assailed local tax assessment had already become final and no longer appealable for petitioner's failure to first pay the entire assessed tax before protest pursuant to Section 423 of the 2005 Revenue Code of Davao City. Thus, petitioner was deemed not to have filed any protest at all rendering the assailed assessment final.

In the Resolution dated November 27, 2015, the instant case was submitted for decision.

The issues raised by the parties may be summarized into two, to wit:

1. Whether the Court has jurisdiction over the instant case given that the tax assessment had allegedly become final and conclusive for petitioner's failure to pay the assessed tax prior to protest pursuant to Section 423 of Ordinance No. 158-05, Series of 2005, otherwise known as the 2005 Revenue Code of Davao City; and

2. Whether petitioner is liable for deficiency business tax of 0.55% for the third and fourth quarters of 2011 on the dividends received from its SMC preferred shares of stock and interest income on its money market placements.

THE RULING OF THE COURT

Jurisdiction of the court over the subject matter of an action is conferred only by the Constitution or by statute.[17] It is determined by the allegations in the complaint or in the petition irrespective of whether plaintiff is entitled to all or some of the claims or relief asserted. [18] Thus, the jurisdiction of a court over the nature of the action and the subject matter thereof cannot be made to depend upon the defenses set up in court or upon a motion to dismiss, for otherwise, the question of jurisdiction would depend almost entirely on the defendant. Once it is vested, jurisdiction is retained up to the end of the litigation.[19]

Petitioner was assessed for deficiency local business tax on the dividends it derived from its shares of stock and the interest on its money market placements for the third and

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[17] Duty Free Philippines vs. Bureau of Internal Revenue, represented by Hon. Anselmo G. Adriano, Acting Regional Director, Revenue Region No. 8, Makati City, G.R. No. 197228, October 8, 2014

[18] Philippine Amusement and Gaming Corporation (PAGCOR), Represented By Atty. Carlos R. Bautista, Jr., vs. Fontana Development Corporation, G.R. No. 187972, June 29, 2010

[19] Municipality of Pateros vs. The Honorable Court of Appeals, The Municipality of Makati, The Director of Lands, and The Department of Environment and Natural Resources, G.R. No. 157714, June 16, 2009

fourth quarters of taxable year 2011,[20] pursuant to Section 143(f)[21] of the Local Government Code (LGC) of 1991, and Section 69(f)[22] of the 2005 Revenue Code of Davao City, as amended.

Section 195 of the LGC pertinent to contesting an assessment imposed by a local government unit, such as respondent City, provides:

> 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 canceling 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 the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

Therefore, the aggrieved taxpayer has sixty (60) days from receipt of an assessment to file an administrative protest with the local treasurer, who in turn has sixty (60) days from receipt, to act on the protest.

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[20] Annex "P-6", Petition for Review, docket, pp. 77-81; Annex "A", Petition for Review, RTC Records, pp. 20-24.

[21] SEC. 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:

xxx xxx xxx

(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.

[22] 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:

xxx xxx xxx

(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.

The inaction or denial of the protest by the local treasurer gives the taxpayer the right to appeal the same to the court of competent jurisdiction within thirty (30) days reckoned from the taxpayer's receipt of the denial of the protest or the lapse of the 60-day period within which the local treasurer is required to act on the protest.[23]

Applying the provision to this case, petitioner received the subject assessment on January 20, 2014.[24] Thus, petitioner had 60 days or until March 21, 2014, within which to file a written protest with respondent City Treasurer Riola to contest the assessment. Thus, petitioner's written administrative protest[25] was timely filed on March 21, 2014, the last day of the allowable period.

From the filing of the protest on March 21, 2014, respondent City Treasurer Riola had 60 days or until May 20, 2014, to resolve the protest. For failure of respondent City Treasurer to either grant or deny the protest, petitioner seasonably elevated the matter to the RTC on June 9, 2014, which was within the 30 day-period to appeal of until June 19, 2014.

On December 17, 2014, petitioner received the adverse RTC Decision of November 10, 2014. On May 8, 2015, petitioner received the similarly assailed RTC Order of April 20, 2015, which denied its bid for reconsideration.

Under Section 3(a), Rule 8[26] of the Revised Rules of the Court of Tax Appeals, petitioner had 30 days to appeal to this Court the adverse decision or ruling of the RTC. Thus, from receipt of the Order dated April 20, 2015 on May 8, 2015, petitioner had until June 7, 2015 to file an appeal to this Court. But since the last day of the said 30-day period

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[23] *Team Pacific Corporation vs. Josephine Daza*, G.R. No. 167732, July 11, 2012.

[24] Annex "P-6", Petition for Review, docket, p. 77; Annex "A", Petition for Review, RTC Records, p. 20.

[25] Annex "P-7", Petition for Review, docket, pp. 82-89; Annex "B", Petition for Review, RTC Records, pp. 25-32.

[26] 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. xxx.

fell on a Sunday, the filing of the instant Petition for Review on the next working day - June 8, 2015 - was still timely.

The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional.[27] Since the right to appeal is a statutory right, it must be exercised in the manner prescribed by law.[28] Thus, the one who seeks to avail of said right must comply with the applicable statute or rules thereon.[29]

Evidently, petitioner has complied with the procedure laid down in Section 195 of the LGC in the filing of its protest and the subsequent judicial recourse, including the lodging of the instant Petition for Review in accordance with Section 3(a) of Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals. Consequently, jurisdiction over the instant case was acquired by the Court.

Anent respondents' theory that petitioner' failure to pay the assessed amount prior to protest required under Section 423[30] of the 2005 Revenue Code of Davao City is fatal, the following disquisition of the Supreme Court on the nature of the power to tax of local government units (LGU), such as respondent City, is instructive:

> The power to tax "is an attribute of sovereignty," and as such, inherent in the State. Such, however, is not true for provinces, cities, municipalities and barangays as they are not the sovereign; rather, they are mere "territorial and political subdivisions of the Republic of the Philippines". x x x Therefore, the power of a province to tax is limited to the extent that such power is delegated to it either by the Constitution or by statute. Section 5, Article X of the 1987 Constitution is clear on this point:
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>> Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges <u>subject to such guidelines and limitations as the Congress may provide</u>, consistent with the basic policy of local

[27] Wilson T. Go vs. BPI Finance Corporation, G.R. No. 199354, June 26, 2013

[28] Francisco A.G. De Liano, Alberto O. Villa-Abrille, Jr., and San Miguel Corporation vs. Hon. Court of Appeals and Benjamin A. Tango, G.R. No. 142316, November 22, 2001

[29] MP Acebedo Optical Shops/ Acebedo Optical Co., Inc. vs. National Labor Relations Commission and Rodrigo C. Santiago , G.R. No. 165284, April 16, 2008

[30] SECTION 423. *Payment Under Protest.* - No protest shall be entertained unless the taxpayer 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.

> autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. [Underscoring supplied]
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> Per Section 5, Article X of the 1987 Constitution, "the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges." Nevertheless, such authority is "subject to such guidelines and limitations as the Congress may provide".
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> In conformity with Section 3, Article X of the 1987 Constitution, Congress enacted Republic Act No. 7160, otherwise known as the Local Government Code of 1991.[31]

The foregoing tenet was echoed in a more recent case, as follows:

> At the outset, it must be emphasized that although the power to tax is inherent in the State, the same is not true for LGUs because although the mandate to impose taxes granted to LGUs is categorical and long established in the 1987 Philippine Constitution, the same is not all encompassing as it is subject to limitations as explicitly stated in Section 5, Article X of the 1987 Constitution, *viz.*:
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>> SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.[32]

Clear from the foregoing that the power of respondent City to tax is subject to the limitations provided in the Constitution and such other laws as the Congress may provide, which in this particular case is R.A. No. 7160 or the Local Government Code (LGC), as amended. Therefore, the 2005 Revenue Code of Davao City, being a mere delegated authority, must be in accord and compliant with the limitations under the Constitution and the LGC on the matter. It cannot exceed the parameters set by the LGC,

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[31] Pelizloy Realty Corporation, Represented herein by its President, Gregory K. Loy vs. The Province of Benguet, G.R. No. 183137, April 10, 2013

[32] Batangas City, et al. vs. Pilipinas Shell Petroleum Corporation, G.R. No. 187631, July 8, 2015.

specifically Section 195 thereof. In other words, Section 195 of the LGC of 1991, as amended, which requires the filing of the protest within sixty (60) days from the receipt of the questioned assessment must prevail over Section 423 of the 2005 Revenue Code of Davao City, which requires the filing of a written protest within thirty (30) from payment of the assessed tax with City Treasurer who shall decide the same within sixty days from receipt.

Evidently, Section 423 of the Revenue Code of Davao City which is merely a delegated power contravenes Section 195 of the LGC not only because it included an additional requirement of payment under protest but also altered the reglemenatary period for filing a protest from 60 days from receipt of the assessment to thirty (30) days from the payment of the assessed tax. Note that it is only under Section 252 of the LGC that payment under protest is required and that is when the assessment involved is real property tax. In the present case, the subject of assessment is business tax, hence, payment under protest is not required.

Settled is the rule that a municipal corporation unlike a sovereign state is not clothed with inherent power of taxation. The charter or statute must plainly show the intent to confer such power, the municipality cannot assume it. And the power when granted is to be construed in *strictissimi juris*. Any doubt or ambiguity in that power must be resolved against the municipality. Inferences, implications, deductions have no place in the interpretation of the taxing power of a municipal corporation. [33]

Now on the merits of respondents' imposition of business tax on the dividends from petitioner's SMC preferred shares and interest income it received on its money market placements, the Constitution itself recognizes the power of the local government units, such as respondent City, to create their own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy.[34]

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[33] Icard vs. The City Council of Baguio, et al., G.R. No. L-1281, May 31, 1949.
[34] Section 5, Article X, 1987 Philippine Constitution.

However, the exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the LGC of 1991,[35] particularly Section 133(o)[36] thereof which prohibits local government units from imposing taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

Significantly, the Supreme Court already declared that SMC shares held by petitioner are owned by the government, thus:

> **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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> In this case, the 6 CIIF Oil Mills were acquired by the UCPB using coconut levy funds. On the other hand, the 14 CIIF holding companies are wholly owned subsidiaries of the CIIF Oil Mills. Conversely, these companies were acquired using or whose capitalization comes from the coconut levy funds. However, as in the case of UCPB, UCPB itself distributed a part of its investments in the CIIF oil mills to coconut farmers, and retained a part thereof as administrator. The portion distributed to the supposed coconut farmers followed the procedure outlined in PCA Resolution No. 033-78. And as the administrator of the CIIF holding companies, the UCPB authorized the acquisition of the SMC shares. In fact, these companies were formed or organized solely for the purpose of holding the SMC shares. As found by the Sandiganbayan, the 14 CIIF holding companies used borrowed funds from the UCPB to acquire the SMC shares in the aggregate amount of P1.656 Billion.
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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**

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[35] *Philippine Fisheries Development Authority (PFDA) vs. Central Board of Assessment Appeals, et al.*, G.R. No. 178030, December 15, 2010.

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

> **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.**
>
> 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*, 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.** [37]

Since the subject shares are owned by the government, it follows that the dividends and any income derived therefrom are owned by the government as well. That being the case, the subject shares and the dividends derived therefrom do not fall within the taxing power of the City of Davao pursuant to Section 133(o) of the LGC of 1991. *A fortiori*, the assessment on the subject shares for business tax is void and should be cancelled.

Even assuming that petitioner and its SMC shares fall within the taxing power of the City of Davao, petitioner is still not liable to pay deficiency business tax of 0.55% for the third and fourth quarters of 2011 imposed by respondents by virtue of Section 143(f), in relation to Section 151, of the LGC, which grants to a city the power to impose taxes on "banks and other financial institutions," to wit:

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[37] Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, G.R. Nos. 177857-58 and 178193, January 24, 2012.

> SEC. 143. *Tax on Business.* – The municipality may impose taxes on the following businesses:
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> xxx xxx xxx
>
> (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."
>
> "SEC. 151. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: xxx
>
> The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

Further, Section 131(e) of the LGC defines the term "banks and other financial institutions", as used under Title One, Book Two of the LGC, as follows:

> SEC. 131. *Definition of Terms.* – When used in this Title, the term:
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> xxx xxx xxx
>
> (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;

While Section 131(e) of the LGC of 1991 includes "non-bank financial intermediaries" in the term "banks and other financial institutions, it does not define the term "non-bank financial intermediaries" but insinuated that resort to other applicable laws, or rules and regulations for such definition is allowed.

Section 22(W) of the NIRC of 1997, as amended, defines the term "non-bank financial intermediary" as follows:

> (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.

On the other hand, Section 2(D)(c) of R.A. No. 337, otherwise known as the General Banking Act, as amended by Presidential Decree (P.D.) No. 71, defines financial intermediaries as follows:

> Sec. 2-D. For purposes of Sections Two, Two-A, Two-B, and Two-C the following definition or terms shall apply:
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> xxx xxx xxx
>
> (c) 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;

A more elaborate definition of the term financial intermediaries is found in Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions, thus:

> § 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 or 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.

Non-banking financial intermediaries shall include the following:

(1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.

(2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term *financing, finance, investment, lending* and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.

> (3) A person or entity performing any of the functions enumerated in Items *a* to *e* of this Subsection."

From the foregoing definitions, a local government unit such as respondent City, can impose business tax only on banks and other financial institutions pursuant to Section 143(f) of the LGC of 1991, which includes non-bank financial intermediaries, based on Section 131(e) of the LGC.

In the instant case, petitioner was assessed for local business tax on the premise that it is a non-bank financial intermediary. However, respondents failed to present any convincing proof that petitioner is a financial intermediary or has even engaged in the activities of a financial institution/intermediary as enumerated or defined in the above-quoted laws, and rules and regulations.

In fact, there is no indication that petitioner was authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities as a non-bank financial intermediary pursuant to Section 22(W) of the NIRC of 1997, as amended, and Section 2(D)(c) of R.A. 337, or the General Banking Act, as amended.

In this regard, Section 4 of R.A. No. 337, as amended by P.D. No. 1828, states that the authority to determine whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation, is vested on the Monetary Board subject to judicial review, thus:

> Sec. 4. The determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation shall be decided by the Monetary Board subject to judicial review. For the purpose of resolving such issue; the Monetary Board may, through appropriate supervising department of the Central Bank, examine, inspect or investigate the books and records of such person or entity. The department head and the examiners of said appropriate supervising department are hereby authorized to administer oaths to any such person or director, officer or employee of any such entity and to compel the presentation or production of all books, documents, papers or records necessary in their judgment to ascertain the facts relative to the true functions and

> operations of such person or entity. Failure or refusal to comply with the required presentation or production of such books, documents, papers or records shall subject the persons responsible therefor to the penal sanctions provided under Section 34 of R.A. No. 265, as amended. Persons or entities found by the Monetary Board to be performing banking or quasi-banking functions without the required prior authorization of the Monetary Board may, in addition to the proceedings provided under Section 34 of Republic Act No. 265, as amended, be subject to the imposition of fine of not in excess of P500 per day reckoned from the date the unauthorized banking or quasi-banking functions were performed and may be referred to the Securities and Exchange Commission for the revocation of its license to do business.

There is however nothing in the record of the case showing that petitioner is a non-banking financial intermediary as found by the Monetary Board.

The Court is also not persuaded that petitioner's primary purpose as stated in its Articles of Incorporation, standing alone, is sufficient to prove that petitioner is performing the functions of a financial intermediary. Certainly it cannot be assumed that petitioner is engaged in activities as a non-bank financial institution or intermediary on the mere fact that it is indicated as its primary purpose in its Articles of Incorporation.

As held in cases more than one, an assessment must be based on actual facts[38] and that he who alleges, not he who denies, must prove.[39] Since respondents utterly failed to establish by convincing and credible evidence that petitioner is a non-bank financial institution/intermediary, or is engaged in such activities, the subject assessment for local business tax is void, hence, must be cancelled.

WHEREFORE, the Petition for Review dated June 4, 2015 filed by San Miguel Officers Corps, Inc. is **GRANTED**. Accordingly, the Decision dated November 10, 2014 and the Order dated April 20, 2015 of the Regional Trial Court Branch 17 of Davao City in Civil Case No. 35,677-14 are **REVERSED** and **SET ASIDE**. The Business Tax Order of

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[38] Commission of Internal Revenue vs. Hantex Trading Co., Inc., G.R. No. 136975, March 31, 2005, citing *Collector of Internal Revenue vs. Benipayo*, 4 SCRA 182 (1962).
[39] Equitable Banking Corporation (Now Known As Equitable-PCI Bank) vs. Ricardo Sadac, G.R. No. 164772, June 08, 2006.

Payment dated January 20, 2014, assessing petitioner for local business tax in the amount of P2,234,077.20, is hereby **CANCELLED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice