REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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

- versus -

METRO PACIFIC HOLDINGS, INC.,
Respondent.

CTA EB NO. 1934
(CTA AC No. 179)

Present:

Del Rosario, PJ,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

Promulgated:

JAN 2 2 2020
2:22 p.m.

x--x

DECISION

CASTAÑEDA, JR., J.:

This Petition for Review seeks to reverse and set aside the Decision[1] dated June 1, 2018 and the Resolution[2] dated September 4, 2018, respectively, of the CTA Third (3rd) Division.

For easy reference, the dispositive portion of the assailed Decision reads:

---

1 Penned by Associate Justice Esperanza R. Fabon-Victorino with Retired Associate Justice Lovell R. Bautista concurring and Associate Justice Ma. Belen M. Ringpis-Liban on leave, Court *En Banc* Docket, pp. 22-44.
2 Court *En Banc* Docket, pp.45-47.

> "**WHEREFORE**, the instant *Petition for Review* is hereby **GRANTED**. The assailed Decision dated July 25, 2016 and Resolution dated November 15, 2016 are **REVERSED** and **SET ASIDE**.
>
> Accordingly, respondents are **ORDERED** to refund or credit in favor of petitioner Metro Pacific Holdings, Inc. the amount of ₱758,159.90, representing its erroneously or illegally collected and paid local business tax for taxable year 2010.
>
> **SO ORDERED.**"[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

> "**WHEREFORE**, respondent's *Motion for Reconsideration* filed [by] on June 14, 2018 is hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**"[4]

THE FACTS

The following are the facts as found by the Court in Division:

> "Petitioner is a domestic corporation registered with the Securities and Exchange Commission (SEC) as an investment holding company with principal office at the 10th Floor Net One Center Building, 26th Street corner 3rd Avenue, Bonifacio Global City, Taguig City.
>
> Respondent Makati City, on the other hand, is a local government unit with the power to collect LBT through its co-respondent City Treasurer Nelia A. Barlis, who is impleaded in her official capacity. Respondents may be served with summons, notices and other processes at Makati City Hall, J.P. Rizal Street, Makati City.
>
> In 2011, when petitioner applied for the renewal of its business permit with the Makati City Business Permit and Licensing Office, it was issued Billing Assessment Form No. 0021641 dated January 21, 2011 assessing it for various fees in the total amount of Seven Hundred Seventy Thousand Eight Hundred Ninety-Nine Pesos and 90/100 (₱770,899.90), inclusive of LBT in the amount of Seven

---

3 See Note 1, pp. 42-43.
4 See Note 2, p. 47.

Hundred Fifty-Eight Thousand One Hundred Fifty-Nine Pesos and 90/100 (₱758,159.90). The LBT was computed based on the amount of interest and dividend income earned and reported in its financial statements for the year ending December 31, 2010.

On January 31, 2011, petitioner paid the assessed amount to respondent City Treasurer.

On January 25, 2013, petitioner filed an administrative claim for refund with respondent City Treasurer on the ground that the LBT on its dividend income was erroneously collected and/or paid as it is not a bank or other financial institution subject to tax under Section 3A.02(h) of the Revised Makati Revenue Code (RMRC).

Due to inaction on the part of respondent City Treasurer, petitioner elevated its claim for refund to the RTC via a *Complaint for Refund of Erroneously Paid LBT* on January 29, 2013, docketed as Civil Case No. 13-087.

On July 26, 2016, the RTC rendered the impugned Decision, the decretal portion of which reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered **DENYING** plaintiff's claim of refund and **DISMISSING** the instant complaint against the defendants.
>
> No costs.
>
> **SO ORDERED.**

In finding for the respondents, the RTC ratiocinated that as a holding company, petitioner is taxed under Section 3A.02(p) in relation to Section 3A.02(h) of the Revised Makati Revenue Code (RMRC) which provides that a 'holding company' shall be taxed as a specific class of its own, without reference to it being a contractor or an owner or operator of banks or other financial institutions. Once classified as a 'holding company', the tax rate prescribed in the RMRC shall apply on its gross receipts. Moreover, petitioner failed to question the legality or constitutionality of Section 3A.02(p) of the RMRC before the Secretary of Justice, as provided in paragraph (d) Section 7B.14 of the RMRC, hence, the said provision remains valid. ℘

Unconvinced, petitioner moved for reconsideration but it was denied in the equally assailed Resolution of November 15, 2016."[5]

On June 1, 2018 and September 4, 2018, the Court in Division issued the assailed Decision and Resolution, respectively.

On September 21, 2018, petitioners filed the instant Petition for Review.[6] On October 29, 2018, respondent filed its Comment/Opposition To Petition for Review (En Banc).[7]

On November 22, 2018, the Court *En Banc* issued a Resolution[8] requiring the parties to submit their memoranda. On January 7, 2019, petitioners filed their Memorandum for the Petitioners,[9] while on January 9, 2019, respondent filed its Memorandum for respondent.[10] On February 7, 2019,[11] the Court *En Banc* issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUE

After considering the issues presented by both parties, the same can be simplified to the sole issue of whether respondent is entitled to its claim for refund of its LBT for taxable year 2010.

THE RULING

The Court *En Banc* denies the instant Petition.

Respondent is not a non-bank financial intermediary taxable under Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC

Respondent was assessed for LBT as a holding or investment company, akin to a non-bank financial intermediary (NBFI) at the rate of twenty percent (20%) of one percent (1%) of its dividend income reported in the financial statements, pursuant to Section 3A.02(p) in relation to Section 3A.02(h) of the RMRC. It provides: ge

[5] See Note 1, pp. 22-24.
[6] Court En Banc Docket, pp. 1-17.
[7] Court *En Banc* Docket, pp. 51-65.
[8] Court *En Banc* Docket, pp. 69-70.
[9] Court *En Banc* Docket, pp. 71-80.
[10] Court *En Banc* Docket, pp. 83-106.
[11] Court *En Banc* Docket, pp. 112-113.

> "SECTION 3A.02.*Imposition of Tax.* — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:
>
> xxx xxx xxx
>
> (h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) 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, investments, dividends, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l) 1, as provided in this code.
>
> xxx xxx xxx
>
> (p) On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year."

Further, respondent asserts that as a holding company primarily engaged in the management of its subsidiaries, its business activities fall within the scope of business management services which is included in the enumeration under Section 3A.02(g) of the RMRC. Thus, it is taxable under Section 3A.02(g), and not under Section 3A.02(h), of the RMRC.

The Court *En Banc* agrees with respondent.

Section 131(e) of the LGC of 1991 states the scope of the term "Banks and other financial institutions", as follows:

> "*SEC. 131. Definition of Terms.* — When used in this Title, the term:
>
> 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;"

On the other hand, under Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, as amended, an NBFI is 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."

In relation thereto, Section 2(D)(c) of Republic Act (RA) No. 337, as amended by Presidential Decree (PD) No. 71, reads as follows:

"(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;"

Further, Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions, reads as follows, viz.:

"**§ 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, the following are the elements of an NBFI:

1) The person or entity is authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities;

2) The principal functions of the said person or entity include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others; and

3) The 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. *jr*

Meanwhile, emphasis must be given on the second (2nd) and third (3rd) elements of an NBFI, *i.e.*, investment and placement of funds and performance of the above-enumerated functions under the third (3rd) element on a regular and recurring, not on an isolated, basis. This is premised on the nature of business tax, which is imposed on the privilege of an entity to engage in business within a local government unit.

In the instant case, petitioner failed to present evidence that respondent's income principally emanated from its dividend and interest income for taxable year 2010. Stated otherwise, while the records reveal that respondent earned dividend and interest income, there was no showing that respondent had no other activity other than receiving these kinds of income. Furthermore, petitioner also failed to present evidence that respondent's business is to principally engage in investment activities. Thus, the exclusivity or confinement of respondent's economic activity to purely NBFI activities was not proven by respondent.

In addition, in *City of Davao and Bella Linda N. Tanjili, in her official capacity as City Treasurer of Davao City v. Randy Allied Ventures, Inc.*,[12] the Supreme Court distinguished a holding company from a financial intermediary as contemplated under the LGC, as follows:

> "Indeed, there is a stark distinction between a holding company and a financial intermediary as contemplated under the LGC, in relation to other laws. A ''holding company' is 'organized' and is basically conducting its business by investing substantially in the equity securities of another company for the purpose of controlling their policies (as opposed to directly engaging in operating activities) and 'holding' them in a conglomerate or umbrella structure along with other subsidiaries.' While holding companies may partake in investment activities, this does not *per se* qualify them as financial intermediaries that are actively dealing in the same. Financial intermediaries are regulated by the BSP because they deal with public funds when they offer quasi-banking functions. On the other hand, a holding company is not similarly regulated because any investment activities it conducts are mere incidental operations, since its main purpose is to hold shares for policy-controlling purposes."*(Citations omitted)*

Considering the foregoing, the Court *En Banc* rules that respondent is not liable under Section 3A.02(h) of the RMRC. Hence, it is entitled to its refund claim. gr

[12] G.R. No. 241697, July 29, 2019.

Respondent has the option to either file a claim for refund or for the issuance of a tax credit certificate (TCC)

In this regard, the Court in Division ruled as follows:

"Pursuant to Section 7B.14(d) of the RMRC, a taxpayer is given the option to recover the amount it erroneously paid, in this manner:

SECTION 7B.14. *Taxpayer's Remedies.* —

xxx xxx xxx

(d) *Claim for Refund or Tax Credit.* — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a **refund or credit**.

The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligations payable to the Local Government of the City of Makati City during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year.

The above provision implies that a taxpayer can recover any tax, fee or charge erroneously or illegally collected by making a written claim, either for a refund or credit. Meaning, **there are two options to choose from by the taxpayer for the recovery of erroneously paid amount: <u>refund or credit</u>**. However, once a tax credit is granted to the taxpayer, the same cannot be refunded in cash, but can only be applied to future taxes.

In the instant case, petitioner is claiming for the refund of LBT erroneously collected by and paid to respondents, as shown in the administrative claim for refund filed before

> respondent City Treasurer, in its *Complaint* before the RTC, and in the instant *Petition for Review* before this Court. In fine, there is no basis for respondents' argument that if petitioner's claim is found meritorious, it may be granted only in the form of tax credit."[13]

The Court *En Banc* agrees with the Court in Division. To reiterate, Section 7B.14(d) of the RMRC provides two (2) options for the taxpayer for the recovery of any tax, fee, or charge erroneously or illegally collected by respondent: to claim for refund or apply for a tax credit. Thus, there is no merit in petitioner's argument that respondent may only apply for tax credit.

To end, petitioners failed to present any valid reason to warrant the reversal of the assailed Decision or Resolution. Hence, the denial of the instant Petition is in order.

WHEREFORE, the instant Petition for Review is **DENIED**. Accordingly, the assailed Decision dated June 1, 2018 and the assailed Resolution dated September 4, 2018 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen S.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

---

[13] See Note 1, pp. 41-42.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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