REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

ROXAS SHARES, INC., Petitioner,	**CTA AC No. 140** (Civil Case No. 35,676-14)
- versus -	***Members:*** **DEL ROSARIO,** Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City, Respondents.	***Promulgated:*** DEC 15 2016 ; 3:00 p.m.

x - x

DECISION

UY, J.:

This is a Petition for Review filed on June 8, 2015 by Roxas Shares, Inc. against the City of Davao and its City Treasurer, praying that judgment be rendered ordering the respondents to cancel the assessment against the former for 0.55% local business tax for the third and fourth quarters of 2011 in the amount of ₱2,190,792.70, inclusive of surcharge and legal interest.

THE FACTS

Petitioner Roxas Shares, Inc. is a domestic corporation duly organized under and by virtue of Philippine laws, with principal office address at Legaspi Oil Compound, Km. 9.5, Sasa, Davao City. As stated in its Amended Articles of Incorporation, petitioner's primary purpose 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 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."[1]

Respondent City of Davao (or respondent City) is a local government unit duly created by law; while respondent Rodrigo S. Riola (or respondent Riola) is the incumbent City Treasurer of Davao City and is being sued in his official capacity as the City Treasurer of Davao City. Both respondents are holding office at the City Hall Building, San Pedro Street, Davao City.[2]

On January 20, 2014, respondents issued a Business Tax Order of Payment, assessing petitioner for alleged deficiency local business tax for the third and fourth quarters of taxable year 2011 in the total amount of ₱2,190,792.70.[3]

On March 21, 2014, petitioner sent a protest letter dated March 17, 2014 to respondent Riola to dispute the said assessment.[4]

Respondent Riola, however, informed petitioner via the letter dated April 4, 2014 that no protest would be entertained unless petitioner pays first the imposed tax pursuant to Section 423 of the 2005 Revenue Code of Davao City.[5]

---

[1] RTC Docket (Civil Case No. 35,676-14), pp. 43 to 68.
[2] Pars. 7, 7.1, and 7.2, Petition for Review, Docket, p. 10.
[3] RTC Docket (Civil Case No. 35,676-14), p. 20.
[4] RTC Docket (Civil Case No. 35,676-14), pp. 24 to 31.
[5] RTC Docket (Civil Case No. 35,676-14), pp. 32.

In the letter dated April 15, 2014, petitioner replied to respondent Riola, stating, among others, that the City of Davao has no authority to impose an additional requirement of payment under protest before its protest may be entertained.[6]

On May 5, 2014, respondent Riola reiterated his position that no protest would be entertained unless petitioner would pay first the assessed tax.[7]

Due to the inaction of respondent Riola on petitioner's protest, petitioner filed a *Petition for Review* before Branch 17 of the Regional Trial Court (RTC) of Davao City on June 9, 2014 which was docketed as Civil Case No. 35,676-14.[8]

On November 10, 2014, RTC Branch 17 of Davao City rendered the assailed Decision,[9] the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, for lack of merit, the Petition for Review under Section 195 of Republic Act No. 7160 filed by petitioner, Roxas Shares, Inc., is hereby **DISMISSED**.
>
> Accordingly, petitioner is hereby directed to pay the respondents the amount of Two Million One Hundred Ninety Thousand Seven Hundred Ninety Two and 70/100 (₱2,190,792.70) 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**."

On January 15, 2015, petitioner filed its *Motion for Reconsideration*,[10] but the same was denied by the said trial court in its assailed Order dated April 20, 2015,[11] the dispositive portion of which reads:

---

6 RTC Docket (Civil Case No. 35,676-14), pp. 33 to 38.
7 RTC Docket (Civil Case No. 35,676-14), pp. 39.
8 RTC Docket (Civil Case No. 35,676-14), pp. 1 to 19.
9 RTC Docket (Civil Case No. 35,676-14), pp. 138 to 148. This Decision was rendered by Hon. Evalyn M. Arellano-Morales, Presiding Judge, RTC Branch 17, Davao City.
10 RTC Docket (Civil Case No. 35,676-14), pp. 149 to 165.
11 RTC Docket (Civil Case No. 35,676-14), pp. 180 to 181.

> "**WHEREFORE**, for lack of merit, the 'Motion for Reconsideration' of the Decision of this Court, dated November 10, 2014, filed by petitioner, through counsel, is hereby **DENIED**.
>
> **SO ORDERED**."

Consequently, petitioner filed the instant *Petition for Review* before this Court on June 8, 2015.[12]

In the Resolution dated June 25, 2015, respondents were ordered to file their Comment, not a motion to dismiss, within ten (10) days from notice.[13] On September 15, 2015, this Court took note of respondents' *Motion to Admit Belated Comment* and admitted the attached *Comment*.[14]

Subsequently, in the Resolution dated September 24, 2015, the instant Petition for Review was given due course and the parties were directed to submit their respective memoranda.[15]

Thereafter, the instant case was considered submitted for decision in the Resolution dated December 18, 2015[16] taking into consideration the filing of petitioner's *Memorandum*[17] and respondents' *Memorandum*[18] received by the Court on October 21, 2015 and on November 6, 2015, respectively. However, this Court recalled and set aside said Resolution on October 13, 2016[19] as it required the Court *a quo* to elevate the entire original records of Civil Case No. 35,676-14. Upon transmittal thereof, the instant case was submitted anew for decision in the Resolution dated November 16, 2016.[20]

Hence, this Decision.

---

[12] Docket, pp. 8 to 35.
[13] Docket, p. 174.
[14] Resolution dated September 15, 2015; Docket, p. 207.
[15] Docket, p. 210.
[16] Resolution dated December 18, 2015, Docket, p. 268.
[17] Docket, pp. 211 to 241.
[18] Docket, pp. 245 to 264.
[19] Resolution dated October 13, 2016, Docket, p. 269.
[20] Docket, p. 271.

THE ISSUES

Petitioner raises the following issues[21] for this Court's resolution, to wit:

"A.
WHETHER OR NOT THE CITY OF DAVAO MAY REQUIRE (PETITIONER) RSI TO PAY 0.55% LOCAL BUSINESS TAX FOR THE THIRD AND FOURTH QUARTERS OF 2011 ON THE DIVIDENDS FOR ITS SMC SHARES OF STOCK AND INTEREST INCOME ON ITS MONEY MARKET PLACEMENTS FOR THE YEAR 2010

B.
WHETHER OR NOT DAVAO CITY'S REQUIREMENT THAT PETITIONER SHOULD FIRST PAY UNDER PROTEST THE ALLEGED DEFICIENCY LOCAL BUSINESS TAX BEFORE ITS PROTEST IS ACTED UPON IS VALID".

Petitioner's arguments:

Petitioner argues that the assessment against it for 0.55% local business tax for the third and fourth quarters of 2011 on the dividends from its San Miguel Corporation (SMC) shares of stock and interest income on its money market placements for the year 2010 should be cancelled on the following grounds:

1. It is erroneous and illegal for respondents to collect a 0.55% local business tax on the dividends and interest income of petitioner because it is not a bank or a financial institution;
2. Petitioner is not engaged in business that is subject to local business tax under Section 143 of Republic Act (RA) No. 7160; and
3. Petitioner's income partake the nature of public funds; thus, business tax cannot be imposed on the same.

Furthermore, according to petitioner, Section 423 of the 2005 Revenue Code of the City of Davao requiring prior payment under protest before a protest on local business tax assessments may be acted upon is null and void, and has no basis in fact and law.

---

[21] Docket, p. 217.

Respondent's counter-arguments:

Respondents contend that petitioner is deemed a "bank and other financial institution", specifically as a "non-bank financial intermediary or an investment company" by virtue of its investment and money placements in SMC. They stress that the business purpose of petitioner as contained in its Amended Articles of Incorporation is wittingly and unwittingly broad enough to catch all the descriptive function 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*.

Moreover, respondents aver that petitioner's Articles of Incorporation stating that it shall not act as investment company or securities broker or dealer is not a conclusive proof that it is not a "bank and other financial institution"; and that being a stock corporation, petitioner is presumed to have been organized to engage in business with the end in view of a profit, hence subject to local business taxes.

According to respondent, the definition of gross sales/receipts under Section 131(N) of RA No. 7160, otherwise known as the "Local Government Code of 1991" that does not include dividends and interest income as component of sales or receipts is a general definition of such term, which cannot defeat a specific and clear provision of taxability of dividends and interest income, as provided under Section 143(f) of the same Code.

Allegedly, the opinion of the Bureau of Local Government Finance (BLGF) that petitioner is exempt from local business tax for not being a bank and other financial institution, is not binding upon the issue involved in this case, as it is not an administrative agency whose findings on questions of fact and law are given weight and respect by the courts.

Furthermore, respondents argue that even if it is assumed that petitioner's income is in the nature of public funds, pursuant to the ruling of the Supreme Court in *Cocofed vs. Republic* (that since the CIIF Block of SMC Shares were acquired using the coconut levy funds, the same should be treated as government assets), nevertheless, it does not exempt petitioner from the payment of local business tax on its dividends and interest income, pursuant to Section 143(f) of RA No. 7160.

Lastly, respondents stress that the court *a quo* and this Court had not acquired jurisdiction to hear this case, because the tax assessment subject of this case had already become conclusive and unappealable for failure of the petitioner to pay first the tax as assessed before filing the protest, as required under Section 423 of Ordinance No. 158-05, Series of 2005, otherwise known as the "2005 Revenue Code of Davao City".

THE COURT'S RULING

Considering that the issue of jurisdictions of the court *a quo* and of this Court was raised by respondents, the Court shall primarily and jointly address this jurisdictional issue with the second issue, *i.e.*, whether or not respondents' requirement that petitioner should first pay under protest the alleged deficiency local business tax before acting on its protest is valid.

The court a quo and this Court have jurisdiction to take cognizance of this case. Petitioner should not be required to first pay deficiency local business tax before its protest can be acted upon.

One of the requisites for a municipal ordinance to be valid is that it *"must not contravene the Constitution or any statute"*[22]. As a corollary, Section 5, Article X of the 1987 Constitution provides that the power of each local government unit to levy taxes is *"subject to such guidelines and limitations as the Congress may provide."*

In this case, a cursory reading of Section 423 of City Ordinance No. 158-05, Series of 2005, otherwise known as the "2005 Revenue Code of Davao City" shows that said provision contravenes Section 195 of the LGC of 1991[23].

Section 423 of the 2005 Revenue Code of Davao City provides as follows:

> "SECTION 423. *Payment Under Protest.* — No protest shall be entertained unless the taxpayer first pay

---

[22] *Solicitor General, et al. vs. Metropolitan Manila Authority, et al.*, G.R. No. 102782, December 11, 1991.

[23] Republic Act No. 7160.

000000288

> 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."

The foregoing provision is clear that protests shall not be entertained unless the taxpayer first pay the assailed tax. It further provides that the protest must be filed within thirty (30) days from payment of the said assailed tax.

In contrast, Section 195 of the LGC of 1991,[24] provides as follows:

> "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 <u>the court of competent jurisdiction</u> otherwise the assessment become conclusive and unappealable.**" *(Emphases and underscoring supplied)*

Based on the foregoing provision, a taxpayer who wishes to contest a tax assessment issued by the local treasurer, must file a protest against said assessment within sixty (60) days from receipt of the notice of assessment, without mention of any requirement for the taxpayer to first pay the tax assessed. On the part of the local treasurer, it is evident that said officer is mandated to decide the

---

[24] Republic Act No. 7160.

.00000264

protest within a period of sixty (60) days, without any qualification or condition; and in case of failure to do so, the same shall be considered an inaction on the part of the local treasurer, appealable to *"the court of competent jurisdiction"*.

Clearly, there is an irreconcilable inconsistency between Section 423 of City Ordinance No. 158-05 and Section 195 of the LGC of 1991. Under the ordinance, protest must be filed within thirty (30) days from payment of the assailed tax, while under the LGC, the protest must be filed within sixty (60) days from receipt of the notice of assessment. Furthermore and more glaringly, the ordinance mandates *payment under protest* of the assailed tax as a pre-requisite for the local treasurer to entertain the protest, without qualification though as to when said local treasurer must decide the same. On the other hand, the LGC does not require *payment under protest* of the assailed tax prior to the filing a protest to assail an assessment, but it mandates the local treasurer to decide the protest within a period of sixty (60) days.

It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid.[25]

Thus, Section 423 of City Ordinance No. 158-05 is not valid and the provision of Section 195 of the LGC prevails. Consequently, petitioner need not make prior payment of the subject assessed local business tax before filing its protest.

Considering that respondent Riola, as City Treasurer, failed to act within the 60-day period prescribed by Section 195 of the LGC of 1991, the right to appeal his inaction to *"the court of competent jurisdiction"*, which is the court *a quo*, became available to petitioner within thirty (30) days from the lapse of the said 60-day period.

Relative thereto, petitioner's administrative protest was filed with respondent City Treasurer on March 21, 2014[26], and the latter was mandated to act on said protest within a period of sixty (60) days or until May 20, 2014. Due to the inaction of respondent City Treasurer, petitioner had thirty (30) days or until June 19, 2014 within which to appeal the inaction of said respondent before a court of competent jurisdiction.

---

[25] *Batangas CATV, Inc. vs. Court of Appeals, et al.*, 482 Phil. 544 (2004).
[26] RTC Docket (Civil Case No. 35,676-14), p. 24.

Thus, considering that the appeal filed by petitioner on June 9, 2014[27] was filed within the aforesaid thirty (30) day reglementary period; and considering further that the assessed amount is ₱2,190,792.70,[28] which is within the jurisdictional amount conferred upon Regional Trial Courts to take cognizance of, the Court *a quo* validly acquired jurisdiction to entertain the said appeal.

As regards the instant Petition for Review filed before this Court, any decision, order, resolution or ruling then of the court *a quo* is appealable to this Court within thirty (30) days from receipt thereof, pursuant to Sections 7(a)(3) and 11 of RA No. 1125, as amended by RA No. 9282, to wit:

> "SEC. 7. *Jurisdiction.*— The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> xxx xxx xxx
>
> (3) Decisions, **orders** or resolutions **of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their** original or **appellate jurisdiction**;
>
> xxx xxx xxx" *(Emphases supplied)*
>
> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.*— **Any party adversely affected by a decision, ruling** or inaction of xxx **the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> xxx xxx xxx." *(Emphases supplied)*

In this case, it is undisputed that the date of receipt of the trial court's Order dated April 20, 2015, denying petitioner's Motion for Reconsideration of the assailed Decision dated November 10, 2014 was on May 8, 2015.[29] Although, the instant Petition for Review was

[27] RTC Docket (Civil Case No. 35,676-14), p. 1.
[28] RTC Docket (Civil Case No. 35,676-14), p. 20.
[29] Par. 4, Petition for Review, Docket, p. 9.

filed only on June 8, 2015 or thirty one (31) days after said date of receipt, it appears that the 30th day fell on a Sunday, hence the instant Petition for Review was filed on time.

Section 1[30] of Rule 22 of the 1997 Rules of Civil Procedure provides that where the last day of the period for doing any act required by law falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.[31]

Thus, in light of the foregoing considerations, both the Court *a quo* and this Court are clothed with appropriate jurisdiction to take cognizance of the case filed before said Courts.

The taxing power of respondent City of Davao and its limitations, under the law.

The power of the City of Davao to impose the assailed local business tax on banks and other financial institutions finds basis under Section 143(f), in relation to Section 151, both of the LGC of 1991, to wit:

> "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 premiums." *(Emphases and underscoring supplied)*

---

[30] "Section 1. *How to compute time*. In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day."

[31] *Montajes vs. People of the Philippines*, G.R. No. 183449, March 12, 2012.

> "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." *(Emphases supplied)*

However, said taxing power is subject to the parameters prescribed under Section 133 of the same law, which provides as follows:

> "SEC. 133. *Common Limitations on the Taxing Power of Local Government Units.* — Unless otherwise provided herein, **the exercise of the taxing powers of** provinces, **cities**, municipalities, and barangays **shall not extend to the levy of the following**:
>
> xxx xxx xxx
>
> (o) **Taxes, fees or charges of any kind on the National Government**, its agencies and instrumentalities, and local government units." *(Emphases supplied)*

Based on the foregoing provisions, the respondent City of Davao is empowered to impose business tax on banks and other financial institutions on its gross receipts of the preceding calendar year from interest and dividends at the rate of 0.55%, subject only to the limitations laid down by law.

Respondents may not impose business tax on dividends and interest income received by petitioner since there is no showing that petitioner is a non-bank financial intermediary.

Respondents insist that petitioner is a bank or other non-bank financial institution, specifically a non-bank financial intermediary, and therefore subject to local business tax.

We disagree.

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

> "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**;" *(Emphases supplied)*

According to the foregoing provision, *"non-bank financial intermediaries"*, *inter alia*, are included in *the term "Banks and other financial institutions";* and that the term *"non-bank financial intermediaries"* are those that are *"as defined under applicable laws, or rules and regulations thereunder"*.

The term *"non-bank financial intermediary"*, in turn, has been defined by Section 22(W) of the National Internal Revenue Code (NIRC) of 1997 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.**" *(Emphasis supplied)*

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 to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others;"

ml

Furthermore, Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions, provide 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." *(Underscoring supplied)*

On the basis of the foregoing provisions taken together, the following are the basic requirements for a person or entity to be considered as a *"non-bank financial intermediary"*, to wit:

1) The person or entity is *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"*;[32]

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"*;[33] and

3) The person or entity must perform any of the following functions on a regular and recurring, not on an isolated, basis, to wit:

---

[32] This is pursuant to Section 131(e) of the LGC of 1991, in relation to Section 22(W) of the NIRC of 1997 and Section 2-D(c) of RA No. 337, as amended by PD No. 71.

[33] This is pursuant to Section 2-D(c) of RA No. 337, as amended by PD No. 71; and Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions.

1. 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;
2. Use principally the funds received for acquiring various types of debt or equity securities;
3. Borrow against, or lend on, or buy or sell debt or equity securities;
4. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;
5. 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.

Applying the foregoing, there is no indication that petitioner was able to satisfy these requirements.

The *first requirement* has not been met as it was not proven that petitioner is *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities".* Thus, on this basis alone, petitioner cannot be treated as a non-bank financial intermediary.

The *second requirement* is likewise not satisfied. While it may be true that the functions of petitioner on the basis of its primary purpose as stated in its Amended Articles of Incorporation may cover the functions of a non-bank financial intermediary, it was not shown that said functions are *"principal"* in nature, *i.e.*, *"chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental".* No evidence was presented to show that the stated functions were principally done by petitioner in the year 2011 (neither in the year before that, *i.e.*, 2010).

Moreover, it was never established that the enumerated functions under the *third requirement* were performed by petitioner *"on a regular and recurring, not on an isolated, basis".* In fact, there is no showing that petitioner ever performed the said functions. Based on the records *a quo*, respondents merely imposed the local business tax on petitioner's gross sales (non-essential) as a "HOLDING FIRM" and nothing more.[34]

We are also not convinced, based on the records of this case, that petitioner held itself out, nor advertised itself, as a non-banking financial intermediary.

Needless to state, the determination of this Court must rest on all the evidence introduced and its ultimate determination must find support in credible evidence; and in order to stand judicial scrutiny, the assessment must be based on facts.[35]

Such being the case, the Court finds that petitioner is not a non-bank financial intermediary. Accordingly, the interests and dividends it received from the preceding calendar year may **not** be the subject of local business tax imposed by the respondent City of Davao.

As petitioner belongs to the CIIF block of SMC shares, which were declared to be owned by the Government, any tax imposed upon petitioner is in effect, a tax on the Government

As a brief background on the antecedents of the instant case, on July 14, 1976, Presidential Decree (PD) No. 961 established the Coconut Industry Investment Fund ("CIIF") from a portion of the levy imposed on the initial sale by coconut farmers of copra and coconut products; administered by the United Coconut Planters Bank; and pursuant to the mandate of PD No. 961, the CIIF was invested in various oil mills also known as the CIIF Oil Milla Group (OMG).

Sometime in 1983, the CIIF OMG incorporated fourteen (14) holding companies for the purpose of owning and holding shares of stock of San Miguel Corporation which were sold by the group of Mr. Andres Soriano; and petitioner is one of these fourteen (14) holding companies.

In 1986, CIIF OMG and the said holding companies, including the petitioner, were sequestered by the PCGG.

---

[34] RTC Docket (Civil Case No. 35,676-14), p. 20.

[35] *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005.

Since 2012, petitioner became the registered owner of Fifty Two Million Eight Hundred Fifteen Thousand One Hundred Ninety Four (52,815,194) preferred shares of stock in San Miguel Corporation ("SMC Preferred") after the Supreme Court approved the conversion of petitioner's Fifty Two Million Eight Hundred Fifteen Thousand One Hundred Ninety Four (52,815,194) SMC common shares of stock into SMC Preferred shares; and the dividends received by the petitioner from said preferred shares were deposited in a trust account which earned interest from money market placements.

In 2010, petitioner obtained the amount of ₱400,831,039.58, which were derived from dividends the petitioner received from its SMC preferred shares and interests on its money market placements.

In its Decision dated January 24, 2012 and Resolution dated September 4, 2012, the Supreme Court declared that the SMC shares held by the 14 holding companies, including the petitioner, are owned by the government. Thus, in *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines*,[36] the Supreme Court ruled:

> **"The CIIF Companies and the CIIF Block of SMC shares are public funds/assets**
>
> 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.
>
> 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

[36] G.R. Nos. 177857-58 and 178193, January 24, 2012.

> 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.
>
> **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 acquired corporations and assets ought to be regarded and treated as government assets. <u>Being government properties, they are accordingly owned by the Government</u>, for the coconut industry pursuant to currently existing laws.** *(Underscoring and emphases supplied)*

In light of the foregoing pronouncement of the Supreme Court, We are in agreement with petitioner's contention that since the SMC shares of stock are owned by the government, the SMC shares of stock and any income that may accrue therefrom, cannot be subject to any local tax, fee or charge, pursuant to Section 133(o) of RA No. 7160.

In the said case, it is clearly shown that petitioner is one of the *"CIIF companies"*[37] being referred to. Thus, since petitioner is considered as Government property, any tax imposed thereto is considered, in effect, as a tax on Government. Such being the case, under Section 133(o) of the LGC of 1991, the dividend income earned by petitioner may not be subjected to the business tax imposed under Section 131(e) of the same law.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **GRANTED**. Accordingly, the assailed Decision and Order of the Regional Trial Court Branch 17 of Davao City in Civil Case No. 35,676-14 are **REVERSED AND SET ASIDE**. The Business Tax Order of Payment dated January 20, 2014

---

[37] See Footnote no. 4 of *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, etseq.*, supra, to wit: *"Composed of Soriano shares, ASC Investors, ARC Investors, **<u>Roxas Shares</u>**, Toda Holdings, AP Holdings, Fernandez Holdings, SMC Officers Corps., Te Deum Resources, and Anglo Ventures, Randy Allied Ventures, Rock Steel Resources, Valhalla Properties Ltd., and First Meridian Development, all names ending with the suffix 'Corp.' or 'Inc.'" (Emphasis and underscoring supplied)*

issued by the City Treasurer of Davao City, assessing petitioner for local business tax in the amount of ₱2,190,792.70, is **SET ASIDE AND CANCELLED** for lack of factual and legal basis.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
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 before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice