REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

TODA HOLDINGS, 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. 138
(Civil Case No. 35,680-14)

Members:

DEL ROSARIO, *Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

FEB 09 2017 3:30 p.m.

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DECISION

UY, *J.*:

This is a Petition for Review filed on June 8, 2015 by Toda Holdings, Inc., petitioner, against the City of Davao and its City Treasurer, respondents, praying that judgment be rendered ordering latter 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 ₱3,105,739.00, inclusive of surcharge and legal interest.

THE FACTS

Petitioner Toda Holdings, 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 ₱3,105,739.00; which petitioner received on the same date.[3]

On March 21, 2014, petitioner sent a protest letter dated March 17, 2014 to respondent Riola to dispute said assessment.[4] Instead of resolving petitioner's protest, respondents informed petitioner through 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]

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[1] RTC Docket (Civil Case No. 35,680-14), pp. 43 to 68.
[2] Pars. 7, 7.1, and 7.2, Petition for Review, Docket, p. 10.
[3] RTC Docket (Civil Case No. 35,680-14), p. 20.
[4] RTC Docket (Civil Case No. 35,680-14), pp. 24 to 31.
[5] RTC Docket (Civil Case No. 35,680-14), pp. 32.

In petitioner's letter reply dated April 15, 2014, it is stated, *inter alia*, 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, respondents restated their position that no protest would be entertained unless petitioner would pay first the assessed tax.[7]

Due to the inaction of respondents on petitioner's protest, petitioner was prompted to file a Petition for Review before Branch 17 of the Regional Trial Court (RTC) of Davao City on June 9, 2014, docketed as Civil Case No. 35,680-14.[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, Toda Holdings, Inc. is hereby **DISMISSED**.
>
> Accordingly, petitioner is hereby directed to pay the respondents the amount of Three Million One Hundred Five Thousand Seven Hundred Thirty Nine (₱3,105,739.00) 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

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[6] RTC Docket (Civil Case No. 35,680-14), pp. 33 to 38.
[7] RTC Docket (Civil Case No. 35,680-14), pp. 39.
[8] RTC Docket (Civil Case No. 35,680-14), pp. 1 to 19.
[9] RTC Docket (Civil Case No. 35,680-14), pp. 127 to 137. This Decision was rendered by Hon. Evalyn M. Arellano-Morales, Presiding Judge, RTC Branch 17, Davao City.
[10] RTC Docket (Civil Case No. 35,680-14), pp. 138 to 154.

the assailed Order dated April 20, 2015,[11] the dispositive portion of which reads:

> "**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 9, 2015, this Court granted respondents' *Motion to Admit Belated Comment* and admitted the attached *Comment* as part of the records of this case.[14]

Thereafter, the instant case was considered submitted for decision in the Resolution dated November 23, 2015[15], taking into consideration the filing of petitioner's *Memorandum*[16] and respondents' *Memorandum*[17] posted on October 21, 2015 and on October 23, 2015, respectively. However, the Resolution dated November 23, 2015 was recalled and set aside in view of this Court's directive to the Court *a quo* to elevate the entire original records of Civil Case No. 35,680-14.[18] Upon transmittal of thereof, the instant case was submitted for decision on November 16, 2016.[19]

Hence, this Decision.

THE ISSUES

In its Memorandum, petitioner raises the following issues to be

[11] RTC Docket (Civil Case No. 35,680-14), pp. 169 to 170.
[12] Docket, pp. 8 to 35.
[13] Docket, p. 173.
[14] Resolution dated September 9, 2015; Docket, p. 204.
[15] Resolution dated November 23, 2015, Docket, p. 261.
[16] Docket, pp. 205 to 235.
[17] Docket, pp. 239 to 257.
[18] Resolution dated October 13, 2016, Docket, p. 262.
[19] Resolution dated November 16, 2016, Docket, p. 264.

resolved by this Court[20], to wit:

"A.

WHETHER OR NOT THE CITY OF DAVAO MAY REQUIRE (PETITIONER) THI 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 on 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.

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[20] Docket, p. 211.

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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 point out 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 are of the view 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 tax.

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", wherein dividends and interest income as component of sales or receipts are not included, is a general definition of such term, but it cannot defeat a specific and clear provision of taxability of dividends and interest income, as provided under Section 143(f) of the same Code.

Respondents emphasize that 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 allegedly 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 in the courts.

Even if it is assumed that petitioner's income is in the nature of public funds pursuant to the ruling of the 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 allegedly 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, respondent stresses that the court *a quo* and this Court has not acquired jurisdiction to hear this case, because the tax assessment subject of this case has 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 respondents raised the issue of jurisdiction of the court *a quo* and of this Court, We shall primarily and jointly address this issue on jurisdiction with the second issue, *i.e.*, "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".

The court* a quo *and this Court has jurisdiction over this case as petitioner may not be required under the law, to first pay deficiency local business tax before its protest may be acted upon.

Section 423 of City Ordinance No. 158-05, Series of 2005, otherwise known as 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 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 in the 2005 Revenue Code of Davao City is clear that protests shall not be entertained unless the taxpayer first pay the tax. However, said provision is inconsistent with Section 195 of the Local Government Code (LGC) of 1991,[21] which reads:

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[21] Republic Act No. 7160.

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> "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 partially 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 become conclusive and unappealable.**" *(Emphases and underscoring supplied)*

Based on the aforequoted provision of the Local Government Code of 1991, it is evident that the local treasurer is mandated to decide the protest within a period of sixty (60) days, without any qualification or condition (regarding the necessity to first pay the assailed tax, fees or charges, under protest); 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"*.

It must be emphasized that the requisite for a municipal ordinance to be valid is that it *"must not contravene the Constitution or any statute"*[22]. Clearly, Section 423 of City Ordinance No. 158-05, Series of 2005, which requires the payment of the assessed local business tax in order that the local treasurer may act on petitioner's protest, contravenes the above-quoted statute, Section 195 of the LGC of 1991. Thus, said Section 423 of City Ordinance No. 158-05 is invalid as it contravenes the provisions of Section 195 of the LGC. Therefore, petitioner cannot be compelled to pay of the assessed local business tax before filing its protest with the City of Davao.

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

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Correspondingly, when 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"* became available to petitioner within thirty (30) days from the lapse of the said period.

Considering that the appeal was filed by petitioner on June 9, 2014,[23] or within the thirty (30) day reglementary period to file said appeal, counted from the lapse of the sixty-day period from the filing of petitioner' protest on March 21, 2014,[24] and it appearing that the assessed amount of ₱3,105,739.00[25] is within the jurisdiction of the Regional Trial Courts as conferred by law, the Court *a quo* validly acquired jurisdiction to entertain the said appeal.

Subsequently, any decision, order, resolution or ruling 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[26].

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.[27] Although the instant Petition for Review was filed only on June 8, 2015 or thirty one (31) days after the said date of receipt, nevertheless, the said Petition for Review was filed on time because the 30th day from date of receipt fell on a Sunday. Based on Section 1, Rule 22 of the 1997 Rules of Civil Procedure, [28] as

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[23] RTC Docket (Civil Case No. 35,680-14), p. 1.
[24] RTC Docket (Civil Case No. 35,680-14), pp. 24 to 31.
[25] RTC Docket (Civil Case No. 35,680-14), p. 20.
[26] "SEC. 7. *Jurisdiction.*— The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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(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)*

[27] Par. 4, Petition for Review, Docket, p. 9.
[28] "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

amended, 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.[29]

Correspondingly, the instant Petition for Review was timely filed and thus, this Court possesses jurisdiction to take cognizance thereof.

The taxing power of respondent City of Davao is subject to limitations provided under the Local Government Code.

Section 143(f), in relation to Section 151, both of the LGC of 1991, grants the power to the city to impose taxes on banks and other financial institutions, to wit:

> "SEC.143. *Tax on Business.* — **The municipality may impose taxes on the following businesses**:
> xxx xxx xxx
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> (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)*
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> "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
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> **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%)**

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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."

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

except the rates of professional and amusement taxes." *(Emphases supplied)*

It must be noted, however, that the said taxing power is not without limitations. Section 133 of the same law states the common limitations on the taxing power of Local Government Units, and subsection (o), the pertinent provision in this case 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**:

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

(b) Documentary stamp tax;

(c) Taxes on estates, inheritance, gifts, legacies and other acquisitions mortis causa, except as otherwise provided herein;

(d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;

(e) Taxes, fees and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees or charges in any form whatsoever upon such goods or merchandise; (f) Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen; (g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;

(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;

(i) Percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on goods or services except as otherwise provided herein; (j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;

(k) Taxes on premiums paid by way of reinsurance or retrocession;

(l) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles;

(m) Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided herein;

(n) Taxes, fees, or charges, on Countryside and Barangay Business Enterprises and cooperatives duly registered under R.A. No. 6810 and Republic Act Numbered Sixty-nine hundred thirty-eight (R.A. No. 6938) otherwise known as the "Cooperatives Code of the Philippines" respectively; and

(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 aforequoted Section 133 (a), respondent City of Davao is empowered to impose income tax on banks and other financial institutions, in the instant case, on its gross receipts of the preceding calendar year from interest and dividends at the rate of 0.55%, subject to the limitation under section (o) of the same section that, taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

There is no showing that petitioner is a non-bank financial intermediary. Thus, respondents may not impose business tax on the dividends and interest income received by petitioner.

In this case, petitioner effectively denies being a bank or other non-bank financial institution, specifically a non-bank financial intermediary, and argues that it cannot be considered as such.

We find merit in petitioner's contentions.

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:
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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**;" *(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;"

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

Taking all the foregoing provisions 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*

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Pilipinas (BSP) to perform quasi-banking activities";[30]

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";*[31]

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

In this case, there is no indication that petitioner fulfills the first requirement, as there is no evidence in the court *a quo* showing that it was *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities".* Thus, on this basis alone, petitioner cannot be treated as non-bank financial intermediary.

Additionally, the second requirement is not likewise met. 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.

It was also not 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, it was not shown 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.[32] Likewise, We find no evidence to show that petitioner held itself out, or advertised itself, as a non-banking financial intermediary.

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[30] 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.

[31] 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.

[32] RTC Docket (Civil Case No. 35,680-14), p. 20.

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.[33]

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

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

In the instant case, petitioner was assessed for 0.55% local business tax for the third and fourth quarters of 2011 on the dividends it received from its San Miguel Corporation (SMC) shares of stock and interest income on its money market placements for the year 2010:

In *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines, etc.*,[34] the Supreme Court ruled that the said SMC shares of stock are owned by the government, and We quote:

> **"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.
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> xxx xxx xxx
>
> **Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds**

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

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

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.

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,*[35] 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, <u>belong to the government as, at the very least, their beneficial and true owner</u>.**

We thus affirm the decision of the Sandiganbayan on this point. But as We have earlier discussed, reiterating our holding in *Republic v. COCOFED,* the States avowed policy or purpose in creating the coconut levy fund is for the development of the entire coconut industry, which is one of the major industries that promotes sustained economic stability, and not merely the livelihood of a significant segment of the population. **Accordingly, We sustain the ruling of the Sandiganbayan in CC No. 0033-F that the CIIF companies and the CIIF block of SMC shares are public funds necessarily owned by the Government.** We, however, modify the same in the following wise: These shares shall belong to the Government, which shall be used only for the benefit of the coconut farmers and for

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[35] G.R. Nos. 147062-64, December 14, 2001.

the development of the coconut industry." *(Emphases supplied)*

In the said case, petitioner is one of the *"CIIF companies"* [36] being referred to. Thus, since petitioner is considered as Government property, any tax imposed upon petitioner is considered, in effect, as a tax on Government. Such being the case, the dividend income earned by petitioner may not be subjected to business tax under Section 131(e) of the LGC of 1991 by respondent City of Davao, pursuant to Section 133(o) 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. 35,680-14 are **REVERSED AND SET ASIDE**. The Business Tax Order of Payment dated January 20, 2014 issued by the City Treasurer of Davao City, assessing petitioner for local business tax in the amount of ₱3,105,739.00, 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

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[36] 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, Roxas Shares, **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)*

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
Chairperson
Presiding Justice