REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
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AP HOLDINGS, INC., Petitioner,	**CTA AC NO. 156** (Civil Case No. 34,848-13)
- versus -	**Members:**
CITY OF DAVAO AND HON. RODRIGO S. RIOLA, in his official capacity as the City Treasurer of Davao City, Respondents.	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
	Promulgated: APR 17 2017 8:45 a.m.

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RESOLUTION

CASANOVA, *J.*:

Before this Court is petitioner's **Motion for Reconsideration (Re: Decision promulgated 30 January 2017)**, filed on February 15, 2017, with respondents' **Comment to Petitioner's Motion for Reconsideration**, filed, through registered mail, on March 13, 2017.

On January 30, 2017, this Court promulgated its Decision[1] in the instant case which found petitioner as a non-bank financial intermediary. As such, the income it derived from investment in equity securities, holding of assets consisting of shares of stocks and placement of funds in San Miguel Corporation (SMC), was deemed subject to business tax under Section 143 (f) of the Local Government Code (LGC) of 1991, as amended. The dispositive portion of the Decision reads as follows, *viz:*

[1] With *Dissenting Opinion* of Justice Catherine T. Manahan

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

SO ORDERED."

In its Motion, petitioner prays that this Court reconsider the foregoing Decision by ordering respondents to refund or credit petitioner's claim in the amount of ₱723,531.50, plus legal interest. Petitioner mainly claims that, contrary to the finding of the Court, it is a holding company and not a non-bank financial institution as evidenced by its Amended Articles of Incorporation. It reiterates that before one is considered as a non-bank financial intermediary, the performance of "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" should be on a regular and recurring basis, and not an isolated transaction. To bolster its claim, petitioner cites the cases of *Hospital De San Juan De Dios, Inc. vs. Commissioner of Internal Revenue*[2] *("San Juan De Dios case")*, where it claims that the Supreme Court held that, the carrying on of a "trade or business" must be on a regular and recurring basis, connoting a continuity of action; *Jesus Sacred Heart College vs. Collector of Internal Revenue*[3] *("Jesus Sacred Heart College case")*, whereby it was also held that the main evidence of the purpose of a corporation should be its articles of incorporation and by-laws; and, finally, *Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia A. Barlis*[4] *("Michigan Holdings case")*, where the Court of Tax Appeals (CTA) *En Banc* held that the dividend income earned by a holding company is not subject to local business tax.

After due consideration, this Court finds that the arguments proffered by petitioner in the instant Motion are mere rehash of the same facts and issues which have already been analyzed and passed upon in the assailed Decision. Nonetheless, this Court shall expound the discussion of the issues reiterated herein for clarity and petitioner's better understanding.

To recapitulate, petitioner's Amended Articles of Incorporation[5] reveals that the scope of petitioner's primary purpose is extensive enough to cover most of the principal functions of a financial

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[2] G.R. No. L-31305, May 10, 1990
[3] G.R. No. L-6807, May 24, 1954
[4] CTA EB Case No. 1093 (CTA AC No. 99), June 17, 2015
[5] Annex "P-10", Petition for Review, Docket, pp. 100-111

intermediary. Bearing in mind that the nature of petitioner's business, which consists solely in owning a substantial number of shares of stock and equity in SMC, to which it regularly receives dividends in millions of pesos and, thereafter, reinvests it in money placements in the same company to maximize its profit, is clearly indicative that petitioner is engaged in the business of a financial intermediary[6].

Anent petitioner's allegation that to be considered a financial intermediary, a person must perform any of the given functions on a regular and recurring, not on an isolated basis, this Court reiterates that being organized as a stock corporation, petitioner is presumed to have been structured with the end view of earning a profit. By regularly receiving millions of pesos in dividends from its huge chunk of investment in its shares of stocks with SMC and then reinvesting it through money placement, shows petitioner's real intent to engage solely and primarily in the business of stock investment and money market placements. Therefore, any profit received by petitioner is a direct consequence of its business engagements and not just mere incidental thereto.

With regard to the cases relied by petitioner to strengthen its argument, they lack weight sufficient to sway this Court to reverse its Decision.

Anent the *San Juan De Dios case,* petitioner, unfortunately, misappreciated the facts and ruling made therein. In that case, petitioner Hospital De San Juan De Dios is engaged in both taxable and non-taxable operations from which it derives income. The controversy arose when in the computation of its taxable income for the years 1952 to 1955, petitioner Hospital De San Juan De Dios allowed **all** its taxable income to share in the allocation of its business expenses. Thus, the Commissioner of Internal Revenue (CIR) disallowed the allocation of its non-taxable operation, such as rentals, interests and dividends, as business expense on the ground that the expenses incurred in their administration or management are not incurred in "carrying on any trade or business." The CTA affirmed the CIR's disallowance reasoning that, the interests and dividends received by the petitioner Hospital De San Juan De Dios were merely incidental income to its main activity, which is the operation of its hospital and nursing schools. And, as the principle of allocating expenses is grounded on the premise that the taxable income is derived from carrying on a trade or business, as

[6] Section 4101Q.1 of BSP's Manual of Regulations for Non-Bank Financial Institutions

distinguished from mere receipt of interests and dividends from one's investments, the said income should not share in the allocation of business expenses. However, such is not the case here. There are no incidental or other incomes to speak of, there is only one income from one activity.

As to the *Jesus Sacred Heart College case,* the factual antecedents therein are not on all fours with the present case. First, Jesus Sacred Heart College is a non-profit educational institution; second, the subject matter thereof involves income tax under the National Internal Revenue Code; and, third, reference to Jesus Sacred Heart College's purpose was necessary since it is claiming for a direct conditional exemption from taxation, and not merely as exclusion. Nevertheless, assuming arguendo that the doctrinal pronouncements in the *Jesus Sacred Heart College case* may be applied herein, this Court sees no conflict between the said case and the present case. In fact, this Court agrees with the statement made therein that, "At any rate, the main evidence of the purpose of a corporation should be its articles of incorporation and by-laws, for such purpose is required by statute to be stated in the articles of incorporation (Sec. 6, Act No. 1459), and the by-laws outline the administrative organization of the corporation (Sec. 20 and 21 of Act No. 1459, as amended), which, in turn, is supposed to insure or facilitate the accomplishment of said purpose. *x x x*". In the present case, reference to petitioner's amended articles of incorporation divulges that its primary purpose was far-reaching as to include the principal functions of a financial intermediary. The self-imposed prohibition in the last phrase of its primary purpose which "prohibits" it from acting as an investment company or securities broker and/or dealer, specifically, "*x x x* 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", is a mere classic evasion to avoid the requirement of securing a secondary license for investment companies under the Bangko Sentral ng Pilipinas' Manual of Regulations for Non-Bank Financial Institutions. As correctly held by the Regional Trial Court - Branch 16 of Davao City, "even an obtuse legal mind can conclude that the scope of petitioner's primary business purpose in its Amended Articles of Incorporation is wittingly or unwittingly broad enough to **catch all** the descriptive functions of a Financial Intermediary."

Finally, as to the *Michigan Holdings case,* while it is true that the CTA *En Banc* held that dividend income earned is not subjected to local business tax, the said ruling, however, was premised on the fact that

Michigan Holdings, Inc. was a holding company and such fact was never contested nor raised as an issue. The CTA *En Banc* granted Michigan Holdings, Inc.'s Petition for Review since the City Treasurer of Makati City erroneously expanded the coverage of its city's local business tax as to apply to income, which under the LGC of 1991, as amended, are ordinarily not subject to local business tax, specifically for that matter, dividend income. Conversely, such is not with the present case. By actually engaging in the business of stock investment and money market placements in SMC, it is glaringly evident that petitioner falls under the category of a financial intermediary. Petitioner cannot just hide under the cloak of the evasive proviso stated in its amended articles of incorporation; it has been held that "the primary purpose stated in the Articles of Incorporation of a corporation only serves to show what a corporation is empowered or authorized to do. It does not, and cannot, however, prove what the business of a corporation actually is."[7] It is for this reason that reference to a corporation's actual business activities and nature of the income earned is necessary.

Henceforth, based on the foregoing, this Court finds no cogent reason to deviate from the conclusions reached in the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I Maintain my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

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[7] Orleyte Company (Philippines Branch) vs. The City of Makati, and Dulce P. Cruz, in her capacity as Treasurer of Makati CTA AC No. 80, November 14, 2012