REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FERNANDEZ 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 EB NO. 1531
(CTA AC No. 133)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

DEC 05 2017 11:53 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] dated July 21, 2016 (assailed Decision) and Resolution[2] dated September 27, 2016 (assailed Resolution) of the Court of Tax Appeals Second Division (Second Division), affirming the Orders dated October 15, 2014 and December 17, 2014 of the Regional Trial Court, Branch 16 of Davao City in Civil Case No. 35,672-14, which upheld the local business tax assessment issued

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[1] Penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas concurring; Docket, pp. 283-300.

[2] Penned by Associate Justice Caesar A. Casanova, with Associate Justice Juanito C. Castañeda, Jr. concurring; *Id.*, pp. 343-347.

against Petitioner for the 3rd and 4th quarters of 2011 amounting to a total of Php760,933.49.

The Parties

Petitioner Fernandez Holdings, Inc. ("Petitioner") is a corporation duly organized and existing under Philippine laws with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City. It may be served with notices and other Court processes through its counsel, Carag Zaballero Llamado & Abiera Law Offices, with office address at Suite 2602, 26th Floor, The Atlanta Centre, No. 31 Annapolis Street, Greenhills, San Juan City, Metro Manila.[3]

Respondent City of Davao is a local government unit duly created by law whose address is located at City Hall Building, San Pedro Street, Davao City.[4]

Respondent Hon. Rodrigo S. Riola ("Respondent City Treasurer") is the incumbent City Treasurer of Davao City and is being impleaded in his official capacity as it was he who issued the 0.55% local business tax assessment on the dividends and interests received by Petitioner for the 3rd and 4th quarters of 2011.[5]

Respondent City of Davao and Respondent City Treasurer (Hereinafter shall be collectively referred to as "Public Respondents") may be served summons, notices and other Court processes at their respective offices at the City Hall Building, San Pedro Street, Davao City.[6]

The Facts

The facts as found by the Second Division are as follows:

> "In 2010, Petitioner received the amount of One Hundred Thirty Nine [sic] Million Two Hundred Twenty One Thousand Six Hundred Fifty and 65/100 Pesos ([Php]139,221,650.65), as dividends from its San Miguel Corporation (SMC) Preferred shares of stock and interest from its money market placements, computed as follows:

Nature of Income	Amount
Dividends from [Petitioner]'s SMC Shares	[Php] 137,560,425.00
Interest Income from [Petitioner]'s Money Market Placements	1,661,225.65
	[Php] 139,221,650.65

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3 Rollo, p. 10.
4 Docket, p. 284.
5 *Id.*
6 *Id.*

On January 20, 2014, Respondent City of Davao, through Respondent City Treasurer, issued a Business Tax Order of Payment, assessing Petitioner for its tax obligation of 0.55% local business tax on the dividends derived from its SMC shares of stock and the interest on its money market placements for the third and fourth quarters of 2011, in the amount of Seven Hundred Sixty Thousand Nine Hundred Thirty Three [sic] and 49/100 Pesos ([Php]760,933.49).

On March 21, 2014, Petitioner filed with Respondent City Treasurer its written administrative protest on the said local business tax assessment.

In a letter dated April 4, 2014, Respondent City Treasurer responded by requiring Petitioner to forward the proof of its payment of local business taxes before the protest may be resolved.

On April 24, 2014, Respondent City Treasurer received a letter-reply dated April 15, 2014, wherein Petitioner argues that the requirement of payment under protest is invalid and unconstitutional for being inconsistent with Section 252 in relation to Section 195 of Republic Act (RA) No. 7160, as amended, which provides that payment under protest is required only for protests on real property tax assessments and not on other local taxes.

In response, Respondent City Treasurer wrote a letter dated May 5, 2014, citing Section 423 of City Ordinance No. 158-05, Series of 2005, otherwise known as the "2005 Revenue Code of the City of Davao", wherein it states that no protest shall be entertained unless the taxpayer first pays the tax. He further asserts that the said Section does not distinguish between real property and business taxes.

Thereafter, claiming inaction by Respondent City Treasurer, Petitioner then filed on June 9, 2014, a Petition for Review with the RTC-Branch 16 of the City of Davao.

During trial, pertinent facts of the case were admitted, leaving only questions of law to be resolved by the RTC-Branch 16 of the City of Davao.

Accordingly, on October 15, 2014, the RTC-Branch 16 of the City of Davao rendered an Order, dismissing the Petition for Review based on the ground that Petitioner is considered as a non-bank financial intermediary, since its primary purpose in its amended Articles of Incorporation resembles the definition of a financial intermediary as defined under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP). The *fallo* of said Order reads:

> '**FOR REASONS STATED**, the instant 'Petition for Review' filed by the [P]etitioner under Section 195 of Republic Act No. 7160 is hereby **DENIED** and/or **DISMISSED**.
>
> **SO ORDERED**.'

On November 20, 2014, Petitioner filed a Motion for Reconsideration praying that the above Order be reversed and set aside, insisting that it is not engaged in the business of lending, investing, or trading securities either for its own account or for the account of others.

On December 17, 2014, the RTC-Branch 16 of the City of Davao issued an Order denying Petitioner's Motion for Reconsideration for lack of merit.

Aggrieved, Petitioner elevated the matter on February 6, 2015, to the Court of Tax Appeals (CTA), *via* [a] Petition for Review."[7]

<u>The Ruling of the Second Division</u>

On July 21, 2016, the Second Division promulgated the assailed Decision denying the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit."[8]

Aggrieved, Petitioner filed a Motion for Reconsideration on August 09, 2016, which the Second Division denied in the assailed Resolution, thus:

> "**WHEREFORE**, premises considered, [P]etitioner's Motion for Reconsideration is **DENIED** for lack of merit."[9]

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[7] *Id.*, pp. 284-286.
[8] *Id.*, p. 300.
[9] *Id.*, p. 347.

On September 13, 2016, Petitioner filed a Motion for Extension of Time to File Petition for Review,[10] which the Court granted in a Resolution dated October 17, 2016.[11]

On November 04, 2016, Petitioner filed the instant Petition for Review.[12]

On December 07, 2016, the Court issued a Resolution[13] which ordered Public Respondents to comment on the Petition for Review. On January 20, 2017, Public Respondents filed their Comment *via* registered mail.[14]

On February 22, 2017, the Court resolved to give due course to the Petition for Review.[15] Petitioner and Public Respondents filed their respective Memorandum on April 10, 2017[16] and April 19, 2017[17], respectively.

On May 22, 2017, the Court issued a Resolution[18] submitting the case for decision.

The Issue

The lone issue submitted by Petitioner in this case is whether or not Respondent City of Davao may require it to pay 0.55% local business tax, for the 3rd and 4th quarters of 2011, on the dividends on its San Miguel Corporation ("San Miguel") preferred shares of stock and interest income on its money market placements for the year 2010.[19]

The Ruling of the Court

Petitioner submits that it was erroneous and illegal for Public Respondents to assess and collect from Petitioner local business tax on its dividends and interest income because for one, it is not a financial institution, specifically a non-bank financial intermediary. Secondly, its income partakes the nature of public funds on which local business tax may not be imposed.[20]

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10 Rollo, pp. 1-6.
11 *Id.*, p. 7.
12 *Id.*, pp. 8-42.
13 *Id.*, pp. 83-84.
14 *Id.*, pp. 85-104.
15 *Id.*, pp. 106-107.
16 *Id.*, pp. 85-104.
17 *Id.*, pp. 85-104.
18 *Id.*, pp. 162-163.
19 *Id.*, p. 16.
20 *Id.*, pp. 16-17.

On the other hand, Public Respondents insist that Petitioner is a non-bank financial intermediary, and as a result thereof, it is subject to the local business tax imposition under Section 143 of the Local Government Code of 1991[21] ("1991 LGC"). In support of its claim, Public Respondents list down the following reasons in their Comment:

1) Petitioner's business operation, which consists solely of stock investments and money placement in San Miguel is well within the purview of definition of banks and other financial institutions under Section 131(e) of the 1991 LGC. In fact, Petitioner's revenue comes only from the two (2) stated sources as revealed by its Financial Statements;

2) Petitioner's business purpose in its Amended Articles of Incorporation ("Amended AOI") is wittingly and unwittingly broad enough to catch all the descriptive function of a non-bank financial intermediary under the Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas ("BSP Manual");

3) Petitioner's Amended AOI which states 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

4) Being a stock corporation, Petitioner is presumed to have been organized with the end in view of a profit and hence cannot deny that it is engaged in business;

The instant petition is impressed with merit.

The imposition of local business tax on dividends and interest income received by Petitioner is erroneous since there is no showing that it is a non-bank financial intermediary.

Unlike the power to tax by the state which is inherent,[22] the power to tax by provinces, cities and municipalities is limited by the law that granted it, the 1991 LGC.

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21 Republic Act 7160.

22 Pelizloy Realty Corporation v. The Province of Benguet, G.R. No. 183137, April 10, 2013.

Following this, the taxing power of Respondent City of Davao does not extend to the levy of income tax,[23] except when levied on banks and other financial institutions under Section 143(f) of the 1991 LGC.[24] The dividends[25] and interests[26] in this case are therefore not subject to the city's taxing power, unless Petitioner is a bank or other financial institution.

The term "banks and other financial institutions" is defined under Section 131(e) of the 1991 LGC, as follows:

> "'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."[27]

While said provision includes "nonbank financial intermediaries" in the term "banks and other financial institutions," it does not define the term "non-bank financial intermediaries". Hence, resort to applicable laws, rules and regulations is proper.

The National Internal Revenue Code (NIRC) of 1997, as amended, defines the term "non-bank financial intermediary" in Section 22(W), *viz*:

> "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**."[28]

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23 Section 133(a) of the 1991 LGC provides:

SECTION 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 financial institutions[.]

24 Section 143(f) of the 1991 LGC provides:

SECTION 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:
(f) On banks and other financial institutions, at a rate not exceeding fifty percent (50%) of one percent (1%) on the gross receipts of the preceding calendar year derived from interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium.

25 Section 32(A)(7) of the NIRC of 1997, as amended.

26 Section 32(A)(4) of the NIRC of 1997, as amended.

27 *Emphasis supplied.*

28 *Emphasis supplied.*

The Bureau of Internal Revenue, in turn, elaborated on the said definition. Section 2.3 of Revenue Regulations No. 09-2004 reads to wit:

> "*Non-bank Financial Intermediaries* — shall refer to 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. This includes all entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally."

The General Banking Act,[29] on the other hand, defines "financial intermediaries" in Section 2-D(c), thus:

> "'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."

Additionally, the BSP Manual defines "financial intermediaries" in Section 4.101Q.1, as follows:

> "§ **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.
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> *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

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29 Republic Act No. 337, as amended by Presidential Decree No. 71.

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.

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

From the foregoing definitions, for an entity to be considered a "non-bank financial intermediary", the following requirements must be met:

1) The person or entity is authorized by the Bangko Sentral ng 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; and[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:

    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; and

    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

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

31 Section 2-D(c) of RA No. 337, as amended by PD No. 71; and Section 4101Q.l of the BSP's Manual of Regulations for Non-Bank Financial Institutions.

> by being an intermediary between suppliers and users of funds.

In the instant case, Public Respondents failed to present any credible and convincing proof that Petitioner is a non-bank financial intermediary or has even engaged in the activities of a financial institution/intermediary as defined and enumerated in the above-quoted laws, and rules and regulations.

First, there is no indication that Petitioner was authorized by the Bangko Sentral ng Pilipinas to perform quasi-banking activities as a non-bank financial intermediary. This requisite is one established by law[32] and thus cannot be disregarded.

In this regard, the General Banking Act provides that the authority to determine whether a person or entity is performing banking or quasi-banking functions or engaged in other types of financial intermediation is vested in the Monetary Board.[33] The record is however bereft of any indication or finding by the Monetary Board that Petitioner is a non-bank financial intermediary.

Second, there is also no indication which shows that Petitioner is a financial intermediary or that it has actually engaged in the activities enumerated in the General Banking Act and in the BSP Manual. Nor was it shown that Petitioner has held itself out nor advertised itself as a non-banking financial intermediary. On the contrary, Petitioner's name itself shows that it is a holding company, not a lending, investing, or financing company.

Third, while Petitioner's primary purpose, as stated in its Amended AOI, may involve one of the activities enumerated in the BSP Manual, there was no proof that Petitioner performed these activities as its principal function and on a regular and recurring basis. The Court is not convinced that Petitioner's primary

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[32] Section 22(W) of National Internal Revenue Code (NIRC) of 1997.

[33] Section 4 of R.A. No. 337, as amended by P.D. No. 1828 states:

Section 4. **The determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation shall be decided by the Monetary Board subject to judicial review.** For the purpose of resolving such issue, the Monetary Board may, through appropriate supervising department of the Central Bank, examine, inspect or investigate the books and records of such person or entity. The department head and the examiners of said appropriate supervising department are hereby authorized to administer oaths to any such person or director, officer or employee of any such entity and to compel the presentation or production of all books, documents, papers or records necessary in their judgment to ascertain the facts relative to the true functions and operations of such person or entity. Failure or refusal to comply with the required presentation or production of such books, documents, papers or records shall subject the persons responsible therefor to the penal sanctions provided under Section 34 of R.A. No. 265, as amended. Persons or entities found by the Monetary Board to be performing banking or quasi-banking functions without the required prior authorization of the Monetary Board may, in addition to the proceedings provided under Section 34 of Republic Act No. 265, as amended, be subject to the imposition of fine of not in excess of P500 per day reckoned from the date the unauthorized banking or quasi-banking functions were performed and may be referred to the Securities and Exchange Commission for the revocation of its license to do business.

purpose as stated in its Amended AOI is adequate to justify the conclusion that it is performing the functions of a non-bank financial intermediary. Such a conclusion would be based on mere conjecture, with no support in evidence.

Fourth, an examination of Petitioner's primary purpose in its Amended AOI shows that Petitioner fits the definition of a holding company, rather than a non-bank financial intermediary. As found by the Second Division, the primary purpose for which Petitioner was formed is to direct the operations of other corporations through the ownership of stock therein, *viz*:

> "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 '<u>holding corporation</u>', and especially to <u>direct</u> <u>the</u> <u>operations</u> <u>of</u> <u>other</u> <u>corporations</u> <u>through</u> <u>the</u> <u>ownership</u> <u>of</u> <u>stock</u> <u>therein</u>**, 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."[34]

Clearly, Petitioner's primary purpose in its Amended AOI reflects the function of a "holding company", which is defined by the Securities and Exchange Commission as follows:

> "A holding company has been defined by the Commission in several opinions. **A holding company has been aptly defined as 'a corporation organized to hold the stock of another or other corporations.'** Its essential feature is that it holds stock. The term 'holding company' is equivalent to a parent corporation, having such an interest in another corporation, or power of control, that it may elect its directors and influence management. **A parent or holding company is <u>one</u> <u>that</u> <u>controls</u> <u>another</u> as a subsidiary or affiliate by the power to elect its management.**

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[34] Docket, p. 297; *Emphasis and underscoring supplied.*

> Affiliates are those concerns that are subject to common control and operated as part of a system." [35]

Finally, the Supreme Court *En Banc* declared Petitioner as one of the fourteen holding companies funded by the coconut levy fund in *Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines ("COCOFED")*[36], which were formed or organized solely for the purpose of holding the San Miguel shares.

A holding company is not among the entities enumerated as "banks and other financial institutions" in Section 133(e) of the 1991 LGC. This was ruled upon by this Court *En Banc* in the case of *Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis*,[37] thus:

> "Section 131 (e) of the LGC defines "banks and other financial institutions" to 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." **This enumeration appears to be exclusive of other entities. <u>Nowhere in the entirety of Section 131 is a holding company mentioned.</u>**"[38]

Being a holding company, Petitioner cannot be made liable for local business tax clearly imposed on "banks and other financial institutions" under Section 143(f) of the 1991 LGC and Section 69(F) of the Revenue Code of the City of Davao[39].

From all of the foregoing, Public Respondents utterly failed to establish by convincing and credible evidence that Petitioner is a non-bank financial intermediary, or is engaged in such activities. Hence, it cannot be taxed as such by Respondent City of Davao.

As Petitioner, as well as the San Miguel shares it held, were declared to be owned by the Government,

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35 Securities and Exchange Commission (SEC) – Office of the General Counsel (OGC) Opinion No. 15-15 dated November 03, 2015 addressed to Waterfront Philippines Inc. *citing* SEC-OGC Opinion No. 14-32 dated November 10, 2014 and SEC-OGC Opinion No. 11-15 dated February 10, 2011; *Emphasis and underscoring supplied.*

36 G.R. Nos. 177857-58 & 178193, January 24, 2012.

37 C.T.A. EB CASE NO. 1093. June 17, 2015.

38 *Emphasis and underscoring supplied.*

39 Davao City Ordinance No. 158-05, November 16, 2005.

they are national government property exempt from local tax.

Aside from the fact that Petitioner is a holding company which cannot be made liable for local business tax imposed on "banks and other financial institutions" under Section 143(f) of the 1991 LGC, the local business tax assessment by Respondent City of Davao against Petitioner for the 3rd and 4th quarters of 2011 should be cancelled and set aside for being a tax on government property.

In *COCOFED*, the Supreme Court categorically declared that Petitioner and the San Miguel shares it held are owned by the government. Moreover, as public property, all burdens and restrictions attached by law to such property such as its non-taxability shall apply, *viz*:

> **"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**. *(Emphasis and underscoring supplied)*
>
> In this case, the 6 CIIF Oil Mills were acquired by the UCPB using coconut levy funds. On the other hand, the 14 CIIF holding companies are wholly owned subsidiaries of the CIIF Oil Mills. Conversely, these companies were acquired using or whose capitalization comes from the coconut levy funds. However, as in the case of UCPB, UCPB itself distributed a part of its investments in the CIIF oil mills to coconut farmers, and retained a part thereof as administrator. The portion distributed to the supposed coconut farmers followed the procedure outlined in PCA Resolution No. 033-78. And as the administrator of the CIIF holding companies, the UCPB authorized the acquisition of the SMC shares. In fact, these companies were formed or organized solely for the purpose of holding the SMC shares. As found by the Sandiganbayan, the 14 CIIF holding companies used borrowed funds from the UCPB to acquire the SMC shares in the aggregate amount of [Php]1.656 Billion.
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> **Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy 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. Being government properties, they are accordingly owned by the Government, for the coconut industry pursuant to currently existing laws. *(Emphasis supplied)*

It may be conceded hypothetically, as COCOFED et al. urge, that the CIIF holding companies acquired the SMC shares in question using advances from the CIIF companies and from UCPB loans. But there can be no gainsaying that the same advances and UCPB loans are public in character, constituting as they do assets of the 14 holding companies, which in turn are wholly-owned subsidiaries of the 6 CIIF Oil Mills. And these oil mills were organized, capitalized and/or financed using coconut levy funds. In net effect, the CIIF block of SMC shares are simply the fruits of the coconut levy funds acquired at the expense of the coconut industry. In *Republic v. COCOFED*, the *en banc* Court, speaking through Justice (later Chief Justice) Artemio Panganiban, stated: *Because the subject UCPB shares were acquired with government funds, the government becomes their prima facie beneficial and true owner.* By parity of reasoning, the adverted block of SMC shares, acquired as they were with government funds, belong to the government as, at the very least, their beneficial and true owner.

xxx xxx xxx

The Partial Summary Judgment in Civil Case No. 0033-F dated May 7, 2004, is hereby **MODIFIED**, and shall read as follows:

WHEREFORE, the MOTION FOR EXECUTION OF PARTIAL SUMMARY JUDGMENT (RE: CIIF BLOCK OF SMC SHARES OF STOCK) dated August 8, 2005 of the plaintiff is hereby denied for lack of merit. However, this Court orders the severance of this particular claim of Plaintiff. The Partial Summary Judgment dated May 7, 2004 is now considered a separate final and appealable judgment with respect to the said CIIF Block of SMC shares of stock.

The Partial Summary Judgment rendered on May 7, 2004 is modified by deleting the last paragraph of the dispositive portion, which will now read, as follows:

WHEREFORE, in view of the foregoing, we hold that:

The Motion for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed, et al) filed by Plaintiff is hereby **GRANTED. ACCORDINGLY, THE CIIF COMPANIES, NAMELY:**

1. Southern Luzon Coconut Oil Mills (SOLCOM);
2. Cagayan de Oro Oil Co., Inc. (CAGOIL);
3. Iligan Coconut Industries, Inc. (ILICOCO);
4. San Pablo Manufacturing Corp. (SPMC);
5. Granexport Manufacturing Corp. (GRANEX); and
6. Legaspi Oil Co., Inc. (LEGOIL),

AS WELL AS THE 14 HOLDING COMPANIES, NAMELY:

1. Soriano Shares, Inc.;
2. ACS Investors, Inc.;
3. Roxas Shares, Inc.;
4. Arc Investors; Inc.;
5. Toda Holdings, Inc.;
6. AP Holdings, Inc.;
7. **<u>Fernandez</u> <u>Holdings</u>, <u>Inc</u>.;** *(Emphasis and underscoring supplied)*
8. SMC Officers Corps, Inc.;
9. Te Deum Resources, Inc.;
10. Anglo Ventures, Inc.;
11. Randy Allied Ventures, Inc.;
12. Rock Steel Resources, Inc.;
13. Valhalla Properties Ltd., Inc.; and
14. First Meridian Development, Inc.

<u>AND THE CONVERTED SMC SERIES 1 PREFERRED SHARES TOTALING 753,848,312 SHARES SUBJECT OF THE RESOLUTION OF THE COURT DATED SEPTEMBER 17, 2009 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID OR ISSUED THEREON AFTER THAT DATE, AS WELL AS ANY</u> INCREMENTS THERETO ARISING FROM, BUT NOT

> **LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT TO BE USED ONLY FOR THE BENEFIT OF ALL COCONUT FARMERS AND FOR THE DEVELOPMENT OF THE COCONUT INDUSTRY, AND ORDERED RECONVEYED TO THE GOVERNMENT.**
>
> **THE COURT AFFIRMS THE RESOLUTIONS ISSUED BY THE SANDIGANBAYAN ON JUNE 5, 2007 IN CIVIL CASE NO. 0033-A AND ON MAY 11, 2007 IN CIVIL CASE NO. 0033-F, THAT THERE IS NO MORE NECESSITY OF FURTHER TRIAL WITH RESPECT TO THE ISSUE OF OWNERSHIP OF (1) THE SEQUESTERED UCPB SHARES, (2) THE CIIF BLOCK OF SMC SHARES, AND (3) THE CIIF COMPANIES. AS THEY HAVE FINALLY BEEN ADJUDICATED IN THE AFOREMENTIONED PARTIAL SUMMARY JUDGMENTS DATED JULY 11, 2003 AND MAY 7, 2004.**
>
> **SO ORDERED.**"[40]

The exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the 1991 LGC. Under paragraph (o) of this provision, local government units have no power to impose any tax, fee or charge on the National Government, to wit:

> "SECTION 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

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[40] As modified by Supreme Court in its Resolution dated September 4, 2012 clarifying the Decision dated January 24, 2012 in the same case. The underscored portion originally read: "**AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALING 33,133,266 SHARES AS OF 1983 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID AND ISSUED THEREON AS WELL AS ANY**". The Resolution dated September 4, 2012 also DENIED with FINALITY the Motion for Reconsideration filed by Petitioners therein.

(o) **Taxes, fees or charges, of any kind on the National Government**, its agencies and instrumentalities, and local government units."[41]

Since the subject San Miguel shares of Petitioner are owned by the government, it follows that the dividends and any income therefrom are also owned by the government. Stated otherwise, Petitioner's dividend and interest income from its San Miguel shares belong to the government, and is beyond the scope of the taxing power of Respondent City of Davao. Any local tax imposed on Petitioner is imposed on the national government. To insist taxing Petitioner would clearly be in contravention of Section 133(o) of the 1991 LGC.

Respondent City of Davao, through Respondent City Treasurer, issued a Business Tax Order of Payment assessing Petitioner for alleged deficiency local business tax in the amount of Php760,933.49 on January 20, 2014[42]. The case of *COCOFED*[43] was promulgated on January 24, 2012. At the time the subject assessment was issued, Petitioner and the San Miguel shares it holds were already declared owned by government. Hence, Public Respondents no longer had any authority to issue the said Business Tax Order of Payment based on Section 143 of the 1991 LGC.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review filed with the Court *En Banc* on November 04, 2016 is **GRANTED**. The assailed Orders dated October 15, 2014 and December 17, 2014, both issued by RTC-Branch 16 of the City of Davao, are **REVERSED** and **SET ASIDE**. Accordingly, the local business tax assessed against Petitioner for the 3rd and 4th quarters of taxable year 2011 in the aggregate amount of Php760,933.49 is **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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41 *Emphasis supplied.*
42 Docket, p. 285.
43 G.R. Nos. 177857-58 & 178193, January 24, 2012.

(I vote to affirm the Assailed Decision)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(I maintain my position in the Assailed Decision)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
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