REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF DAVAO and BELLA LINDA N. TANJILI in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City, *Petitioners,*	**CTA EB NO. 1683** (CTA AC No. 138) Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
-versus-	
TODA HOLDINGS, INC., *Respondent.*	Promulgated: OCT 19 2018 3:05 p.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Review, pursuant to Rule 8, Section 3(b)[1] of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking the reversal and setting aside of the Decision[2] and Resolution,[3] dated February 9, 2017 and June 13, 2017, respectively, of the Court's First Division (Court in Division). The assailed Decision granted respondent Toda Holdings, Inc.'s Petition for Review and cancelled the assessments against it for local business tax amounting to

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[1] Rule 8. Procedure in Civil Cases
Section 3. Who may appeal; period to file petition.
xxx xxx xxx
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[2] *Rollo*, pp. 19-38.

[3] *Rollo*, pp. 39-42.

Php3,105,739.00 for the 3rd and 4th quarters of taxable year 2011.

The Facts

Petitioner City of Davao, represented by the City Mayor, is a local government unit established and operating under the existing laws of the Republic of the Philippines, with its official address at City Hall, City Hall Drive, Davao City. While co-petitioner, City Treasurer of Davao City, is represented by Ms. Bella Tanjili, the newly designated Officer-In-Charge of the City Treasurer's Office after the retirement of Mr. Rodrigo S. Riola, likewise holds office at the same address as above stated.[4] Collectively, they are referred to as petitioners or *City of Davao, et al.*

Respondent Toda Holdings, Inc. (THI) 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.[5]

The Court in Division recited the relevant facts, as follows:

> On January 20, 2014, [*City of Davao, et al.*] issued a Business Tax Order of Payment, assessing [THI] for alleged deficiency local business tax for the third and fourth quarters of taxable year 2011 in the total amount of P3,105,739.00; which [THI] received on the same date.
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> On March 21, 2014, [THI] sent a protest letter dated March 17, 2014 to [petitioner City Treasurer] to dispute said assessment. Instead of resolving [THI]'s protest, [*City of Davao, et al.*] informed [THI] through the letter dated April 4, 2014 that no protest would be entertained unless [THI] pays first the imposed tax pursuant to Section 423 of the 2005 Revenue Code of Davao City.
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> In [THI]'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

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[4] *Rollo*, Petition for Review (PFR) p. 2.
[5] *Rollo*, Decision dated February 9, 2017, p. 19.

payment under protest before its protest may be entertained.

On May 25, 2014, [*City of Davao, et al.*] restated their position that no protest would be entertained unless [THI] would pay first the assessed tax.

Due to the inaction of [*City of Davao, et al.*] on [THI]'s protest, [THI] 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.

On November 10, 2014, RTC Branch 17 of Davao City rendered the assailed Decision, 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 [respondent], Toda Holdings, Inc. is hereby DISMISSED.
>
> Accordingly, [THI] is hereby directed to pay the [*City of Davao, et al.*] the amount of Three Million One Hundred Five Thousand Seven Hundred Thirty Nine (P3,105,739.00) 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, [THI] filed its Motion for Reconsideration, but the same was denied by the said trial court in the assailed Order dated April 20, 2015, 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 [THI], through counsel, is hereby DENIED.[6]

THI filed its appeal with the Court of Tax Appeals on June 8, 2015.[7]

On February 9, 2017, the Court in Division rendered the assailed Decision reversing the RTC and ruling in favor of THI. The dispositive portion states:

> **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 [THI] for local business tax in the amount of P3,105,739.00 is **SET ASIDE AND CANCELLED** for lack of factual and legal basis.
>
> **SO ORDERED.**[8]

City of Davao, et al.'s Motion for Reconsideration, filed on March 8, 2017, was denied in the Court in Division's Resolution[9] dated June 13, 2017.

On July 20, 2017, the Court received the subject Petition for Review,[10] filed by *City of Davao, et al.* through registered mail on July 10, 2017. In the Petition, *City of Davao, et al.* states that the City Treasurer imposed the local business tax (LBT) against THI's receipt of dividends and interest income on money placements from San Miguel Corporation, because the City Treasurer deems THI as a "bank and other financial institution."

THI filed its Comment (On Petition for Review dated 10 July 2017),[11] on September 25, 2017.

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[6] *Rollo*, Decision dated February 9, 2017, pp. 20-22.
[7] *Rollo*, Decision dated February 9, 2017, p. 22.
[8] *Rollo*, Decision dated February 9, 2017, p. 37.
[9] *Rollo*, pp. 39-42.
[10] *Rollo*, pp. 1-18.
[11] *Rollo*, pp. 47-79.

On October 5, 2017, the Court *En Banc* required the parties to file their respective memoranda.[12] Both parties filed their respective memoranda through registered mail. Thus, THI's Memorandum[13] was received on November 28, 2017, while *City of Davao, et al.*'s Memorandum[14] was received on December 11, 2017.

Considering the submission by both parties of their respective Memoranda, the case was deemed submitted for decision on January 10, 2018.[15]

Issue

> Whether or not respondent is a "non-bank financial intermediary," falling under the category of "bank and other financial institutions," so as to be subject to local business tax imposition, as provided under Section 143(f) of RA 7160, otherwise known as the "Local Government Code of 1991".[16]

Petitioners' Arguments

Petitioners argue that respondent is deemed a "bank and other financial institution", specifically as a "non-bank financial intermediary (NBFI) or an investment company" by virtue of its investment and money placements in San Miguel Corporation (SMC); that the business purpose of respondent as contained in its amended Articles of Incorporation (AOI) is wittingly or unwittingly broad enough to catch all the descriptive functions of an NBFI as provided under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the Bangko Sentral ng Pilipinas (BSP); that respondent's AOI stating that it shall not act as investment company or securities broker or dealer is simply an evasive proviso purposely written to evade compliance with existing regulations for NBFIs; that even if it is assumed that respondent's income partakes the nature of public funds, it does not exempt respondent from the payment of local business tax on its dividends and interest income; that the absence of a secondary license from the BSP or the Monetary Board does not *ipso facto* exclude respondent from being an

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[12] *Rollo*, Resolution dated October 5, 2017, pp. 81-82.
[13] *Rollo*, pp. 83-116.
[14] *Rollo*, pp. 119-135.
[15] *Rollo*, Resolution dated January 10, 2018, pp. 138-139.
[16] *Rollo*, PFR, p. 6.

NBFI; and, that being a stock corporation, respondent is presumed to have been organized to engage in business with the end in view of a profit, hence subject to LBT.

Respondent's Counter-Arguments

Respondent argues that the assessments for 0.55% LBT for the 3rd and 4th quarters of taxable year 2011 should be cancelled based on the following grounds: that pursuant to Section 133(a) of the Local Government Code of 1991 (LGC), it is illegal for petitioners to collect LBT on dividends and interest income of respondent because it is not a bank or a financial institution; that being a holding company, respondent's dividend and interest income are not subject to LBT; and, that respondent, including its SMC shares and income therefrom, are national government property exempt from LBT.

Ruling of the Court

The petition lacks merit.

The Petition for Review was timely filed.

The Court in Division issued the assailed Resolution denying the *City of Davao, et al.*'s Motion for Reconsideration on June 14, 2017, which was received by petitioners on June 23, 2017.

Pursuant to Rule 4, Section 2(a)(2)[17], in relation to Rule 8, Section 3(b) of the RRCTA, the *City of Davao et al.* had fifteen (15) days or until July 8, 2017 within which to file their petition for review. However, July 8, 2017 was a Saturday, hence, the filing of the same is extended until the next working day, or July 10, 2017.

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[17] Rule 4 Jurisdiction of the Court
Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
xxx xxx xxx
(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; xxx

On July 10, 2017, petitioners filed the instant petition through registered mail, which was received by this Court on July 20, 2017. Hence, the Petition for Review was timely filed.

There is no compelling reason to reverse or modify the Court in Division's Decision and Resolution.

The Court *En Banc* finds no reason to reverse the Court in Division's cancellation and setting aside of the assessment for 0.55% LBT against respondent THI involving the 3rd and 4th quarters of taxable year 2011.

Toda Holdings, Inc. is a holding company

The *City of Davao, et al.* taxed respondent's dividend and interest income on the ground that respondent is classified as a "bank and other financial institution", or specifically as an NBFI, citing Section 143(f) of the LGC,[18] which provides:

> 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 premium.

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[18] Read in relation to Article III on Cities, specifically Sec. 151 of the same Code, which provides:

> Section 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: *Provided, however*, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of the Code.
>
> 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.

Thus, it is relevant to define banks, other financial institutions, and NBFIs under the applicable laws and regulations.

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

> Section 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;

The term "non-bank financial intermediaries" is defined in Section 22(W) of the 1997 National Internal Revenue Code, as amended (NIRC), as follows:

> Sec. 22. Definitions. – When used in this Title:
>
> xxx xxx xxx
>
> (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.

Revenue Regulations No. (RR) 09-04[19] further defined an NBFI, as follows:

> Section 2. Definition of Terms. – For purposes of these Regulations, the terms enumerated hereunder shall have the following meaning:

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[19] Implementing Certain Provisions of Republic Act No. 9238, Re-Imposing the Gross Receipts Tax on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions and other Non-Bank Financial Intermediaries beginning January 1, 2004, June 21, 2004.

xxx xxx xxx

> 2.3 *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.

Finally, the BSP Manual of Regulations for Non-Bank Financial Institutions (BSP Manual) provides the following definition of a financial intermediary:

> Section 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.
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> 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 in Items a to e of this Subsection.

From the foregoing definitions, an NBFI must meet the following requirements:

1) The person or entity is authorized by the BSP to perform quasi-banking functions;[20]

2) The principal functions of 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;[21] 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:

   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,

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[20] Section 131(e) of the LGC, in relation to Section 22(W) of the NIRC.
[21] Section 4101Q.1 of the BSP Manual of Regulations for Non-Bank Financial Institutions.

> commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

In the instant case, petitioners failed to present any credible and convincing proof that respondent THI is an NBFI or has engaged in the activities of a financial institution or intermediary.

First, there is no indication that respondent was authorized by the BSP to perform quasi-banking activities as a non-bank financial intermediary.

Second, there is no indication that respondent is a financial intermediary or that it has actually engaged in the activities enumerated in the BSP Manual. Neither was it shown that respondent has held itself out nor advertised itself as an NBFI or as a lending, investing, or financing company.

Third, while respondent'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 respondent performed these activities as its principal function and on a regular and recurring basis.

Fourth, an examination of respondent's primary purpose in its Amended AOI shows that respondent fits the definition of a holding company, rather than an NBFI. Respondent's primary purpose states:

> To purchase, subscribe for, or otherwise acquire and own, hold, 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, bond 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 obligations, 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.[22]

Respondent's primary purpose reflects its function as a "holding company", in consonance with the definition by the Securities and Exchange Commission (SEC), 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 one that controls another as a subsidiary or affiliate by the power to elect its management. Affiliates are those concerns that are subject to common control and operated as part of a system.[23]

Finally, the Supreme Court *En Banc* declared respondent 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 case*),[24] which were formed or organized solely for the purpose of holding the San Miguel shares.

Respondent's status as a holding company having been established by the foregoing discussion, it is clear that respondent cannot be deemed included in "banks and other financial institutions" for the purpose of imposing the local business taxes thereon. This Court *En Banc* in *Michigan*

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[22] *Rollo*, Decision dated February 9, 2017, pp. 19-20.
[23] SEC – Office of the General Counsel (OGC) Opinion NO. 15-15 dated November 3, 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.
[24] G.R. Nos. 177857-58 & 178193, January 24, 2012.

Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis,[25] explained:

> 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. Nowhere in the entirety of Section 131 is a holding company mentioned.

As such, respondent cannot be made liable for local business tax imposed on "banks and other financial institutions" under Section 143(f) of the 1991 LGC. Thus, the local business tax assessment for the 3rd and 4th quarters of taxable year 2011 should be cancelled.

Toda Holdings, Inc. was funded by public funds/assets and is therefore owned by the government

It is also relevant that in the COCOFED case, the Supreme Court declared that respondent, among others, and the San Miguel shares it held are owned by the government. The Supreme Court explained as follows:

> **V**
> **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. (*Underscoring supplied)*

[25] CTA EB No. 1093, June 17, 2015.

In this case, the 6 CIIF Oil Mills were acquired by 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 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 P1.656 Billion.

<u>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, for the coconut industry pursuant to currently existing laws. (*Underscoring supplied*)

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 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

WHEREFORE, the petitions in G.R. Nos. 177857-58 and 178793 are hereby DENIED. xxx

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.
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> 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:
>>
>> xxx xxx xxx
>>
>> As well as the 14 Holding Companies, namely:
>>
>> xxx

4. Arc Investors, Inc.;
5. Toda Holdings, Inc.;
6. AP Holdings, Inc.

xxx (*Underscoring supplied)*

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 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.

xxx xxx xxx

SO ORDERED.

The exercise of the taxing power of the local government units is subject to the limitations enumerated in Section 133 of the LGC, which includes having no power to impose any tax, fee or charge on the National Government:

> 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:
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> xxx xxx xxx
>
> (o) Taxes, fees or charges, of any kind on the National Government, its agencies and instrumentalities, and local government units.

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

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO with concurring opinion
Presiding Justice

Juanito C. Castañeda, Jr.
(With Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen M. R. L.
MA. BELEN M. RINGPIS-LIBAN
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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CITY OF DAVAO AND BELLA LINDA N. TANJILI in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City, *Petitioners,*	**CTA EB NO. 1683** (CTA AC NO. 138)
	Present:
-versus-	**DEL ROSARIO,** ***P.J.,*** **CASTANEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN**, *JJ.*
TODA HOLDINGS, INC., *Respondent,*	Promulgated: OCT 19 2018 3:04 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my learned colleague, Honorable Associate Justice Catherine T. Manahan, in denying the Petition for Review, thereby affirming the assailed Decision and Resolution of the Court in Division.

As articulated in the *ponencia*, the City of Davao's power to impose local business tax (LBT) on banks and other financial institution, including non-bank financial intermediaries, emanates from Section 143(f) of the Local Government Code of 1991 (LGC)[1] in relation to Section 131(e) of the same Code. Section 131(e) of the LGC did not provide for a specific definition of the term "non-bank

[1] Republic Act No. 7160.

financial intermediary" as it states that it shall be defined under applicable laws, rules and regulations.

The term "non-bank financial intermediary" is defined in Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, as amended, Section 2.3 of Revenue Regulations (RR) No. 09-2004, Section 2-D(c) of the General Banking Act,[2] and Section 4.101Q.1 of the Bangko Sentral ng Pilipinas' (BSP) Manual of Regulations for Non-Bank Financial Institutions.

The foregoing laws and regulations specifically defined what constitutes "non-bank financial intermediary" as they provide for the specific requisites in order for an entity to be regarded as such. **While a person or entity must be "authorized by the BSP to perform quasi-banking activities", Section 4 of the General Banking Act, as amended, is categorical in stating that 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". Sorely, no such determination by the Monetary Board exists on record that may confirm, even remotely, that petitioner is a non-bank financial intermediary.**

The mere fact that petitioner has investments in San Miguel Corporation (SMC) and money market placements does not *per se* make it a non-bank financial intermediary. To insist otherwise would be absurd as any ordinary person who invests funds in money market or shares of stock will be considered non-bank financial intermediary.

Incidentally, my learned colleague, the Honorable Associate Justice Juanito C. Castañeda, Jr., in his Dissenting Opinion, makes the following analogy in concluding that petitioner is a non-bank financial intermediary, thus:

> "However, lack of authority by the BSP for petitioner to engage in NBFI [non-bank financial intermediary] activities, or lack of determination by the Monetary Board whether it is an NBFI, cannot be used as bases for concluding that petitioner is not an NBFI. To my mind, these requirements are designed merely to regulate NBFI activities.
>
> In fact, the present situation may be compared by analogy, to a person presently and smoothly driving a car without a driver's license. **To argue that this person is not presently driving a car because he or she has no driver's license is simply fallacious.**

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[2] Republic Act No. 337, as amended by Presidential Decree No. 71.

> **Basically, such argument would necessarily lead to a conclusion that the car is moving smoothly by itself. However, it wrongfully omits the fact that the smoothly moving car is being driven by a person without a driver's license**." (Boldfacing supplied)

With due respect, I submit that the analogy is inaccurate. Truth to tell, any driver who drives a motor vehicle is indeed a "driver" and no license is necessary to be called as such. **But when one is elevated to the category of a "professional driver", the term has to be taken within the context of the law that defines it.** A student driver or any person who actually drives without license cannot be considered as a "professional driver" unless he possesses a "professional driver's license" as defined and mandated by law. **In the same manner, a "non-bank financial intermediary" may not be considered as such in its legal sense unless it possesses all the requirements that qualify it to fall within its legal definition.**

The findings of the lower court that petitioner's income was derived solely from dividends and interest income on money market placements are not sufficient to justify the conclusion that petitioner is a non-bank financial intermediary. The imposition of LBT on non-bank financial intermediaries springs from Section 143(f) in relation to Section 131(e) of the LGC and it must be strictly exercised in accordance with its precepts. This is consistent with Article 1158 of the Civil Code of the Philippines which provides that "Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and **shall be regulated by the precepts of the law which establishes them**; xxx." In the absence of any evidence showing that petitioner has met all the requirements set forth by law to be regarded as a non-bank financial intermediary, I submit there is no basis to impose LBT on the dividends derived by petitioner from its investments in SMC shares of stock or on the interest income it derived from its money market placements.

All told, I concur with the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CITY OF DAVAO and BELLA LINDA N. TANJILI in her official capacity as The Officer-in-Charge City Treasurer's Office of Davao City,
Petitioners,

CTA EB No. 1683
(CTA AC No. 138)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan JJ.

- versus –

TODA HOLDINGS, INC.,
Respondent.

Promulgated:

OCT 19 2018
3:04 p.m.

x---x

DISSENTING OPINION

CASTAÑEDA, JR., J.:

With due respect, I dissent to the conclusion reached by the *ponencia* that the instant Petition for Review should be denied primarily on the ground that petitioner is not a non-bank financial intermediary (NBFI).

The subject Decision pertinently states:

> "In the instant case, petitioners failed to present any credible and convincing proof that respondent THI is an NBFI or has engaged in the activities of a financial institution or intermediary.

First, there is no indication that respondent was authorized by the BSP to perform quasi-banking activities as a non-bank financial intermediary.

Second, there is no indication that respondent is a financial intermediary or that it has actually engaged in the activities enumerated in the BSP Manual. Neither was it shown that respondent has held itself out nor advertised itself as an NBFI or as a lending, investing, or financing company.

Third, while respondent'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 respondent performed these activities as its principal function and on a regular and recurring basis.

Fourth, an examination of respondent's primary purpose in its Amended AOI shows that respondent fits the definition of a holding company, rather than an NBFI. xxx

xxx xxx xxx

Finally, the Supreme Court *En Banc* declared respondent 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 case), which were formed or organized solely for the purpose of holding the San Miguel shares.

xxx xxx xxx

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

The authorization by the BSP for an entity to perform NBFI activities, and the Monetary Board's determination whether an entity is performing banking or quasi-banking functions or other

types of financial intermediation, are mere regulatory measures

Respondent performed NBFI activities despite the limitations set in its Articles of Incorporation (AOI)

As cited earlier, the subject Decision concluded that since there is no authorization by the BSP for respondent to act as an NBFI, or a determination by the Monetary Board that it is performing banking or quasi-banking functions or other types of financial intermediation, respondent cannot be classified as an NBFI.

However, lack of authority by the BSP for respondent to engage in NBFI activities, or lack of determination by the Monetary Board whether it is an NBFI, cannot be used as bases for concluding that petitioner is not an NBFI. To my mind, these requirements are designed merely to regulate NBFI activities.

In fact, the present situation may be compared, by analogy, to a person presently and smoothly driving a car without driver's license. To argue that this person is not presently driving a car because he or she has no driver's license is simply fallacious. Basically, such argument would necessarily lead to a conclusion that the car is moving smoothly by itself. However, it wrongfully omits the fact that the smoothly moving car is being driven by a person without a driver's license.

In this case, respondent depicts the driver without license while the dividends and interest income from equity securities and money market placements depict the car. The car could not have smoothly moved, *i.e.*, *respondent could not have regularly earned dividends and interest income from equity securities and money market placements*, if no driver is maneuvering it, *i.e.*, *if respondent did not engage in NBFI activities*, albeit without driver's license, *i.e.*, *without authority or categorization as such by the BSP or Monetary Board, respectively.* Otherwise, respondent's consistent earnings from dividends and interest income emanating from an unknown activity, *i.e.*, if it did not engaged in NBFI activities, would border on the metaphysical, because it is as if such regular events had no cause.

The above-reasoning also applies to the fact that there can also be no guarantee that a holding company will not act as an NBFI despite the limitations provided in its AOI. As the saying goes – *action speaks louder than words*. As will be further discussed, respondent's acts are clearly indicative of being engaged in NBFI activities. As such, respondent's actions spoke louder than its AOI, such that it engaged in acts contrary to what was set forth therein.

Respondent's consistent receipt of dividends and interest income from its equity securities and money market placements leads to no other conclusion that it engaged in NBFI activities

Based on the above-quoted discussion, the Decision recognizes that respondent's operations involved one of the activities enumerated in the BSP Manual, *i.e.*, its income solely emanates from dividends and money market placements, in relation to the subject SMC shares. Yet, it still found that respondent is not an NBFI due to lack of proof that respondent performed these activities as its principal function and on a regular and recurring basis.

With due respect, I am of the view that the conclusion of the Decision failed to address the facts presented before the Court.

The factual antecedents of this case reveal that petitioner successfully proved that respondent had no other source of income aside from dividends and money market placements in relation to the subject SMC shares. On the other hand, respondent did not dispute this claim. This, in effect, reflects the primary and sole business operation of respondent – that of receiving income from dividends and money market placements.

This is confirmed by the findings of fact of the lower court, thus:

> "To stress, the income of the Petitioner Corporation comes only from two sources, *to wit*:
>
> 1. ***Dividends from THII's SMC Shares; and***
> 2. ***Interest Income from THI's Money Market Placements***
>
> In short, these ***dividends and interests*** are not considered incidental to its business quest, but are the **principal** xxx incomes of Petitioner's Corporation in the regular course of its business in line with the Primary Purpose of its Amended Articles of Incorporation."[1]

Again, the above findings of the lower court were not controverted during the proceedings in this Court. There was no evidence presented that

[1] Court in Division Docket, p. 41.

respondent undertakes a principal business other than the respondent's said activities. Without any evidence that petitioner undertakes a principal business other than the said activities, the subject conclusion of this court, *i.e.*, that there is no indication that respondent is a financial intermediary or that it has actually engaged in the activities enumerated in the BSP Manual as its principal function and on a regular and recurring basis, borders on mere speculation with no evidence to stand on.

The tax is levied upon the privilege of an entity to engage in NBFI activities and not upon the shares or sources of gross receipts which operate as tax bases

Section 143 of the LGC of 1991 pertinently states:

> "**Section 143. Tax on Business.** — The municipality[2] 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 premium."*(Emphasis supplied)*

Section 143(f) of the LGC of 1991 imposes local business tax **on banks and other financial institutions**, *i.e.*, non-bank financial intermediaries. In other words, while the tax bases of Section 143(f) consist of interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, and insurance premium, the tax is imposed directly on the privilege enjoyed by banks and other financial institutions. It directly imposes business tax on the privilege being enjoyed by the entity and not on the sources of gross receipts.

In the instant case, while the San Miguel Shares had already been adjudged by the Supreme Court as belonging to the government, it is not directly the said shares, but the privilege enjoyed by respondent to engage in NBFI activities, that is subject to local business tax. Simply put, the

[2] The city, may levy the taxes, fees, and charges which the province or municipality may impose, in accordance with Sec. 151, LGC of 1991.

dividends and interest income from these shares are mere tax bases under Section 143(f) of the LGC of 1991. Ultimately, however, it is respondent's privilege against whom the local business tax is levied upon.

Finally, the subject Decision's finding that respondent is a government property directly contradicts its primary conclusion that it is not an NBFI. If the government owns respondent by reason of primarily dealing with San Miguel Shares, then we can safely conclude that the lower court is correct when it found that respondent's income comes only from dividends and money market placement of its San Miguel Shares. Therefore, respondent clearly engaged in NBFI activities.

At any rate, if respondent and its SMC shares were truly owned by the government, the income that respondent receives should redound to the benefit of the national government. The question however, is this: *Was there any evidence presented to the effect that respondent's profits were duly remitted to the national treasury?* There is none.

To end, the crucial element to determine whether an entity is engaged in NBFI activities is its principal activity. To clarify, not all entities who engage in stock investments and money market placements can be categorized as NBFIs for purposes of local business taxation. If an entity is not primarily engaged in NBFI activities as it principally performs its core business operations, such entity is not an NBFI. However, when an entity solely receives income from its NBFI activities, or when there is a showing that it performs no other business activity other than NBFI activities, then such entity should be categorized as an NBFI for purposes of local business taxation.

Considering the foregoing, I **VOTE** to **GRANT** the instant Petition for Review.

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