REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

CORULLON HOLDINGS, INC.,
Petitioner,

- versus -

MAKATI CITY TREASURER AND MAKATI CITY, as represented by the CITY MAYOR,
Respondents.

CTA AC No. 188

Members:

DEL ROSARIO, P.J., Chairperson,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

JUN 06 2018 ; 9:47am

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DECISION

UY, J.:

Before this Court is the *Petition for Review* filed on July 14, 2017 by Corullon Holdings, Inc. against Makati City Treasurer and Makati City, praying that judgment be rendered: (a) setting aside the Decision dated February 24, 2017[1] and the Order dated June 6, 2017[2] of the Makati City Regional Trial Court (RTC) – Branch 150 in Civil Case No. 14-471 entitled "*Corullon Holdings, Inc. vs. Makati City Treasurer and Makati City, as represented by the City Mayor*"; (b) ordering respondents to cancel and annul the Assessment dated January 19, 2014 which found petitioner liable for deficiency local business tax on dividend income for the year 2013, in the aggregate amount of ₱359,745.37; and (c) declaring as invalid Section 3A.02(p) of Makati City Ordinance No. 025-A-04 or the Revised Makati Revenue Code (RMRC).

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[1] CTA Docket, pp. 39 to 44.
[2] CTA Docket, pp. 37 to 38.

The dispositive portions of the said Decision and Order of the RTC – Branch 150 respectively state:

Decision dated February 24, 2017:

> "WHEREFORE, viewed in the light of the foregoing considerations, the refund or tax credit sought by the petitioner for the local business tax paid under protest is hereby DENIED.
>
> Accordingly, the present petition is hereby DISMISSED.
>
> SO ORDERED."

Order dated June 6, 2017:

> "WHEREFORE, viewed in the light of the foregoing considerations, the instant Motion for Reconsideration is hereby DENIED.
>
> SO ORDERED."

THE FACTS

Petitioner Corullon Holdings, Inc. is a domestic corporation duly organized and existing under Philippine Laws, with office address at 35^{th} Floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue corner Paseo, Makati City.[3]

Respondent Makati City Treasurer is responsible for the collection of local taxes and fees imposed by respondent Makati City and for the custody of its funds.[4] Respondent Makati City, as represented by the City Mayor, is the principal of respondent Treasurer.[5] Respondents Treasurer and Makati City may be served with orders and processes of the Court at the City Treasurer's Office and Office of the City Mayor in Makati City Hall, Makati City.

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[3] Par. 1, Pre-Trial Order dated December 3, 2015, RTC Records (Civil Case No. 14-471), p. 388.
[4] Par. 4, *Petition for Review*, CTA Docket, p. 9.
[5] Par. 5, Id.

On January 19, 2014, petitioner received the Billing Statement dated January 19, 2014 issued by Makati City and the Makati City Treasurer for deficiency local business tax for taxable year 2013 in the aggregate amount of ₱359,745.37, inclusive of surcharge and interest computed as follows:

Tax Base (Actual Gross Per FS)	*Tax Amount*	*Surcharge and Interest*	*Total*
119,120,983.00	238,241.97	121,503.40	359,745.37

The tax base was based on the amount of dividend income received by petitioner as reflected in its 2012 Audited Financial Statements.[6]

On January 30, 2014, petitioner filed with respondents a written protest dated January 30, 2014 contesting the validity and propriety of the assessment.[7]

On January 31, 2014, petitioner paid the deficiency local business tax for 2013 in the amount of ₱359,745.37.[8]

On February 14, 2014, petitioner reiterated and maintained its protest against the assessment through a Letter dated February 12, 2014 addressed to the Treasurer.[9]

Despite the lapse of sixty-(60) days from the filing of the first protest, the Treasurer has not acted on the protest and second protest.[10]

On April 30, 2014, petitioner filed a *Petition for Review* before the RTC Makati City, docketed as Civil Case No. 14-471 and was raffled to Branch 132 of said Court on May 5, 2014.[11]

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[6] Exhibit L, RTC Records (Civil Case No. 14-471), pp. 346 to 347; RTC Decision, CTA Docket, p. 39.
[7] Par. 4, Pre-Trial Order dated December 3, 2015, RTC Records (Civil Case No. 14-471), p. 388.
[8] Par. 5, Pre-Trial Order dated December 3, 2015, RTC Records (Civil Case No. 14-471), p. 389.
[9] Par. 6, Pre-Trial Order dated December 3, 2015, RTC Records (Civil Case No. 14-471), p. 389.
[10] Par. 7, Pre-Trial Order dated December 3, 2015, RTC Records (Civil Case No. 14-471), p. 389.
[11] RTC Records (Civil Case No. 14-471), pp. 1 to 20.

On June 18, 2014, respondents filed their *Answer*[12] therein and raised the following affirmative and/or special defenses:

A. As admitted by petitioner, anent its business permits and license in Makati City, petitioner applied as a holding company and was classified as such by Makati City.

B. As a holding company, petitioner was taxed under Section 3A.02(p), in relation to Section 3A.02(h), of the RMRC.

C. Section 3A.02(p), in relation to Sections 3A.02(g) and 3A.02(h), was never questioned in accordance with Section 7B.14 (Taxpayers' Remedies) paragraph (d) of the RMRC, and therefore, remains to be valid.

D. The CTA case of *Orleyte Company (Philippine Branch) vs. the City of Makati* (CTA Case No. 80, November 14, 2012) is not applicable in the case at bar.

D.1. The CTA did not classify petitioner in that case, Orleyte Company (Philippine Branch), as a "holding company-management service".

D.2. The taxable years involved in that *Orleyte Case* were 2001-2002, 2002-2003, and 2003-2004, and therefore are covered by the old Makati Revenue Code.

E. Assuming *arguendo*, without however conceding respondents' legal position that petitioner is not entitled to a refund, if petitioner shall be granted a refund (as prayed for in paragraph 3 of its "prayer"), it may only be granted in a form of tax credit, by express provision of law.

F. Petitioner was not able to overcome the burden of proving that it is entitled to the refund being prayed for.

On May 8, 2015, the RTC – Branch 132 issued an Order referring the case for mediation.[13] The mediation was unsuccessful

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[12] RTC Records (Civil Case No. 14-471), pp. 36 to 47.
[13] RTC Records (Civil Case No. 14-471), p. 367.

considering that the parties preferred to go to trial as per the Mediator's Report.[14] Correspondingly, the Civil Case No. 14-471 was re-raffled to RTC – Branch 150.

During pre-trial, the parties stipulated that the issues to be resolved in the course of the proceedings in Civil Case No. 14-471 are as follows:

1. Whether petitioner's dividend income is subject to local business tax;

2. Whether the Assessment has factual and legal bases;

3. Whether petitioner is liable for local business tax for taxable year 2013 in the amount of ₱359,745.37;

4. Whether petitioner is entitled to a refund of or tax credit in the amount of ₱359,745.37 representing local business tax for taxable year 2013 which petitioner paid under protest;

5. Whether in the event that petitioner shall be granted refund, it may only be granted in the form of tax credit, by express provision of law; and,

6. Whether petitioner was able to overcome the burden of proving that it is entitled to the refund being prayed for.[15]

During trial in Civil Case No. 14-471, both parties presented their respective testimonial and documentary evidence. Petitioner presented Vanessa M. Besas[16] as its witness; while respondents presented Stella Marie S. Pery[17] as their witness.[18] On July 12, 2016, petitioner filed its *Formal Offer of Documentary Evidence*[19] marked as Exhibits "A" to "P" with submarkings which the Court admitted in the Order dated August 3, 2016.[20] Respondents, on other hand, filed their

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[14] RTC Records (Civil Case No. 14-471), p. 369.
[15] Pre-Trial Order dated December 3, 2015, RTC Records (Civil Case No. 14-471), p. 391.
[16] Exhibit P, Judicial Affidavit of Vanessa M. Besas, RTC Records (Civil Case No. 14-471), pp. 97 to 110.
[17] Exhibit 3, Judicial Affidavit of Ms. Stella Marie Sarasola Pery, RTC Records (Civil Case No. 14-471), pp. 352 to 360.
[18] CTA Docket, pp. 41 to 42; RTC Decision (Civil Case No. 14-471), RTC Records p. 479 to 480.
[19] RTC Records (Civil Case No. 14-471), pp. 400 to 408.
[20] RTC Records (Civil Case No. 14-471), pp. 456.

Formal Offer of Exhibits on October 13, 2016,[21] offering Exhibits "1", "2", "3", and "3-A", which were admitted in the Order dated December 6, 2016.[22]

On February 24, 2017, RTC – Branch 150 rendered the assailed Decision.[23] Petitioner then filed a *Motion for Reconsideration* to the same on March 27, 2017.[24]

On June 6, 2017, RTC – Branch 150 issued the assailed Order, denying petitioner's *Motion for Reconsideration*.[25]

The present *Petition for Review* was filed on July 14, 2017.[26]

Respondents filed their *Comment (Re: Petition for Review dated 12 July 2017*) on August 18, 2017.[27]

Considering the filing of the *Memorandum (for the Respondents)* on October 10, 2017,[28] and the posting of petitioner's *Memorandum* on October 11, 2017,[29] this case was submitted for decision on November 16, 2017.[30]

Hence, this Decision.

ASSIGNMENT OF ERROR

Petitioner assigns the following error supposedly committed by RTC – Branch 150, to wit:

> **"THE HONORABLE RTC ERRED IN UPHOLDING THE LOCAL BUSINESS TAX ASSESSMENT AGAINST CORULLON ON ITS DIVIDEND INCOME BASED ON**

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[21] RTC Records (Civil Case No. 14-471), pp. 459 to 461.
[22] RTC Records (Civil Case No. 14-471), pp. 476.
[23] CTA Docket, pp. 39 to 44; RTC Records (Civil Case No. 14-471), 477 to 482.
[24] RTC Records (Civil Case No. 14-471), 486 to 495.
[25] CTA Docket, pp. 37 to 38; RTC Records (Civil Case No. 14-471), 523 to 524.
[26] CTA Docket, pp. 8 to 36.
[27] CTA Docket, pp. 157 to 175.
[28] CTA Docket, pp. 186 to 205.
[29] CTA Docket, pp. 206 to 229.
[30] CTA Docket, p. 235.

MERE PRESUMPTION OF VALIDITY OF SECTION 3A.02(P) OF THE REVISED MAKATI REVENUE CODE."

THE ISSUE

Gleaned from the foregoing assignment of error, the issue submitted for the resolution of this Court is as follows:

> **Whether or not petitioner is liable for local business tax on its dividend income imposed under, and arising from the presumption of validity of Section 3A.02(P) of the Revised Makati Revenue Code or RMRC?**

Petitioner's arguments:

Petitioner argues that the presumption of validity of Section 3A.02(p) of the RMRC remains to be disputable, and hence, in determining the validity of the assessment, RTC – Branch 150 has the jurisdiction to rule on the legality of the basis thereof, when petitioner's protest was elevated to the RTC – Branch 150, pursuant to Section 195 of the Local Government Code (LGC).

In insisting that its dividend income is not subject to local business tax, petitioner cites the CTA *En Banc* case of *Michigan Holdings, Inc. vs. The City of Treasurer of Makati City, Nelia A. Barlis*[31] (*Michigan case*), where the CTA *En Banc* ruled that Section 3A.02(p) in relation to Section 3A.02(h), both of the RMRC, violates the limit set by Section 133(a) of the LGC and Section 27(D)(4) of the National Internal Revenue Code (NIRC); and accordingly cancelled the local business tax assessment imposed on Michigan's dividend income.

Lastly, petitioner contends that the duty of the respondents to carry out Sections 3A.02(h) and (p) of the RMRC does not prohibit and is subject to the judicial review of RTC – Branch 150 and this Court.

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

Respondents' counter-arguments:

Respondents counter-argue that petitioner, for its business permits and license in Makati City, applied as a holding company; thus, Makati City classified it as such. As a holding company, petitioner was taxed under Section 3A.02 (p), in relation to Section 3A.02(h), of the RMRC. The tax rate of 20% of 1% was correctly applied on petitioner's gross receipts (which actually pertain to petitioner's dividend income).

Respondents also claim that Section 3A.02(p), in relation to Section 3A.02(g) and 3A.02(h), was never questioned in accordance with Section 7B.14 (Taxpayers' Remedies) paragraph (d) of the RMRC,[32] and therefor remains to be valid.

Anent the *Orleyte case*, respondent submits that it is not applicable to the present case. In the *Orleyte case*, the CTA never classified Orleyte as a holding company and the taxable years involved therein were 2001-2002, 2002-2003, and 2003-2004, and were covered by the old Makati Revenue Code.

Respondent insists that petitioner was not able to overcome the burden of proving that it is entitled to the refund being prayed for. And assuming *arguendo* that petitioner is entitled to a refund, it may only be granted in the form of a tax credit, by express provision of law.[33]

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[32] Any question on the constitutionality or legality of this Code may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided*, however, that such appeal shall not have the effect of suspending the effectivity of this Code and the accrual and payment of the tax, fee, or charge levied herein. Provided, finally, that within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

[33] Paragraph (d) Section 7B.14 of the Revised Makati Revenue Code states:

"xxx The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall no other tax obligations payable to the Local Government of City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year. xxx

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THE COURT'S RULING

The instant *Petition for Review* has merit.

Sections 3A.02(p) of the RMRC is valid. However, while petitioner is a holding company, there is no showing that it may be classified as a bank or other financial institution. Thus, petitioner is entitled to the local tax refund being claimed.

Indeed, it is a settled rule that an ordinance enjoys the presumption of validity.[34] In *Social Justice Society, et al. vs. Atienza, Jr.*,[35] the Supreme Court states the reason for the said presumption, to wit:

> "xxx. **Statutes and ordinances are presumed valid unless and until the courts declare the contrary in clear and unequivocal terms.** The mere fact that the ordinance is alleged to be unconstitutional or invalid will not entitle a party to have its enforcement enjoined. **The presumption is all in favor of validity. The reason for this is obvious:**
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> > **The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well being of the people** . . . The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation.
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> > X x x
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> > ...[Courts] accord the presumption of constitutionality to legislative enactments, not only because the

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[34] *Smart Communications, Inc. vs. Municipality of Malvar, Batangas*, G.R. No. 204429, February 18, 2014; and *Social Justice Society, et al. vs. Atienza, Jr.*, G.R. No. 156052, February 13, 2008.

[35] G.R. No. 156052, February 13, 2008.

> legislature is presumed to abide by the Constitution but also because the judiciary[,] in the determination of actual cases and controversies[,] must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government." *(Emphases supplied)*

In view of the said presumption, petitioner has the burden of proving that Section 3A.02(p) of the RMRC is indeed invalid. As will be shown momentarily, petitioner failed to discharge such burden.

To convince the Court *a quo* and this Court that Section 3A.02(p) of the RMRC is invalid, petitioner argues as follows:

1) The imposition of local business tax on dividend income of a holding company under Section 3A.02(p) of the RMRC is invalid as it is tantamount to imposing income tax in violation of Section 133(a) of the LGC;

2) As petitioner is a mere holding company and not a bank or financial institution, any dividend income it receives do not form part of gross receipts subject to local business tax; and

3) The activity sought to be taxed by Section 3A.02(p) of the RMRC is already covered and taxed under Section 3A.02(h) of the same Code.

Certainly, one of the substantive requirements for an ordinance to be valid is that it *"must not contravene the Constitution or any statute"*.[36] In other words, anent such requirement, ordinances shall only be valid when they are not contrary to the Constitution and to the laws.[37] As applied to this case and on the basis of petitioner's arguments, the supposed reason for the invalidity of Section 3A.02(p) of the RMRC is that it contravenes Section 133(a) of the LGC of 1991.

We disagree with petitioner.

A review of the taxing powers of a city is in order.

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[36] *City of Manila, et al. vs. Laguio, Jr.*, G.R. No. 118127, April 12, 2005.
[37] Supra.

Section 151 of the LGC of 1991 states the power of a city to impose local taxes, to wit:

> "SEC.151. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, **the city, may levy the taxes, fees, and charges which the** province or **<u>municipality</u> may impose**: xxx
>
> **The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%)** except the rates of professional and amusement taxes." *(Emphases and underscoring supplied)*

Relative thereto, quoted hereunder is Section 143 of the LGC of 1991, which states the power of municipalities to impose business taxes, to wit:

> "SEC.143. *Tax on Business.* — **The municipality may impose taxes on the following businesses**:
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> xxx xxx xxx
>
> (e) **On contractors and other independent contractors**, in accordance with the following schedule:

With gross receipts for the preceding calendar year in the amount of:		Amount of Tax Per Annum
Less than P5,000.00		27.50
5,000.00 or more but less than	10,000.00	61.60
10,000.00 or more but less than	15,000.00	104.50
15,000.00 or more but less than	20,000.00	165.00
20,000.00 or more but less than	30,000.00	275.00
30,000.00 or more but less than	40,000.00	385.00
40,000.00 or more but less than	50,000.00	550.00
50,000.00 or more but less than	75,000.00	880.00
75,000.00 or more but less than	100,000.00	1,320.00
100,000.00 or more but less than	150,000.00	1,980.00
150,000.00 or more but less than	200,000.00	2,640.00
200,000.00 or more but less than	250,000.00	3,630.00
250,000.00 or more but less than	300,000.00	4,620.00
300,000.00 or more but less than	400,000.00	6,160.00
400,000.00 or more but less than	500,000.00	8,250.00
500,000.00 or more but less than	750,000.00	9,250.00
750,000.00 or more but less than	1,000,000.00	10,250.00
1,000,000.00 or more but less than	2,000,000.00	11,500.00

2,000,000.00 or more	at a rate not exceeding fifty percent (50%) of one percent (1%)

(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, **<u>dividends</u>**, rentals on property and profit from exchange or sale of property, insurance premium.

xxx xxx xxx" *(Emphases supplied)*

Based on the foregoing provisions, like municipalities, cities, such as respondent Makati City, may impose business taxes; but cities may levy the said taxes exceeding the maximum rates allowed to municipalities by not more than fifty percent (50%), except the rates of professional and amusement taxes. Correspondingly, the limits on the tax rates set forth for municipalities under the aforequoted Section 143(e) for contractors and other independent contractors, and Section 143(f) on banks and other financial institutions, may be imposed by cities at the tax rates by more than fifty percent (50%).

Nevertheless, notwithstanding the power of municipalities and cities to impose business taxes, the said power is subject to further limitations, one of which is indicated under Section 133(a) of the LGC of 1991, *viz.*:

"**SEC. 133.** ***Common Limitations on the Taxing Powers of Local Government Units***. — Unless otherwise provided herein, **the exercise of the taxing powers of** provinces, **cities**, municipalities, and barangays **shall not extend to the levy of the following:**

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

Thus, as a corollary to Section 143(f) of the LGC of 1991, **in general, municipalities and cities may <u>not</u> levy income tax** to certain businesses; **however, by way of an exception, they may do so, when the levy is on banks and other financial institutions** 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, and insurance.

Apropos, income tax, it should be stressed, is imposed on an individual or entity as a form of excise tax or a tax on the privilege of earning income.[38] Income in tax law, in turn, is an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment. It means cash or its equivalent.[39] The rule is well established that cash dividend, whether large or small, are regarded as "income".[40]

Considering that dividends are regarded as income, cities cannot impose a tax thereon, unless the imposition is made on a bank and other financial institution.

Respondent Makati City exercises its power to impose business taxes on holding companies under, *inter alia*, Section 3A.02(p), in relation to (g) and (h) of the same Section, all of the RMRC, which provide as follows:

> "SECTION 3A.02. *Imposition of Tax.* — There is hereby levied an annual tax on the following businesses at rates prescribed therefor:
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> xxx xxx xxx
>
> (g) On Contractors and other independent contractors defined in SEC. 3A-01 (t) of chapter III of this Code; and on owners or operators of business establishments rendering or offering services such as; advertising agencies; rental of space of signs, signboards, billboard or advertisements; animal hospitals; assaying laboratories; belt and buckle shops; blacksmith shops; bookbinders; booking offices for film exchange; booking offices for transportation on commission basis; breeding of game cocks and other sporting animals belonging to

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[38] *Republic of the Philippines, represented by Energy Regulatory Board vs. Manila Electric Company, etseq.*, G.R. Nos. 141314 and 141369, November 15, 2002.
[39] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 108576, January 20, 1999.
[40] *Fisher vs. Trinidad*, G.R. No. L-17518, October 30, 1922.

others; **business management services**; collecting agencies; escort services; feasibility studies, consultancy services; garages; garbage disposal contractors; gold and silversmith shops; inspection services for incoming and outgoing cargoes; interior decorating services; janitorial services; job placements or recruitment agencies; landscaping contractors; lathe machine shops; management consultants not subject to professionals tax; medical and dental laboratories; mercantile agencies; messengerial services; operators of shoe shine stands; painting shops; perma press establishments; rent-a-plant services; polo players; school for and/or horse-back riding academy; real estate appraisers; real estate brokerages; photostatic; white/blue printing, photocopying, typing and mimeographing services; car rental, rental of heavy equipment, rental of bicycles and/or tricycles; furniture, shoes, watches, household appliances, boats, typewriters, etc.; roasting of pigs, fowls, etc.; shipping agencies; shipyard for repairing ships for others; shops for hearing animals; silkscreen or T-shirt printing shops; stables; travel agencies; vaciador shops; veterinary clinics; video rentals and/or coverage services; dancing school/speed reading/EDP; nursery, vocational and other schools not regulated by the Department of Education (DepEd), day care centers; etc.

With gross sales or receipts for the preceding calendar year in the amount of:

	Amount of Tax per Annum
less than P50,000.00	Exempt
P50,000.00 or more but less than 75,000.00	1,144.00
75,000.00 or more but less than 100,000.00	1,716.00
100,000.00 or more but less than 150,000.00	2,574.00
150,000.00 or more but less than 200,000.00	3,432.00
200,000.00 or more but less than 250,000.00	4,719.00
250,000.00 or more but less than 300,000.00	6,006.00
300,000.00 or more but less than 400,000.00	8,008.00
400,000.00 or more but less than 500,000.00	10,725.00
500,000.00 or more but less than 750,000.00	12,025.00
750,000.00 or more but less than 1,000,000.00	13,325.00
1,000,000.00 or more but less than 2,000,000.00	15,000.00

2,000,000.00 P15,000.00 plus seventy five percent (75%) of one percent (1%) over 2 million.

> xxx xxx xxx
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> (h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from interest, commissions, and discounts from lending activities, income from financial leasing, investments, **dividends**, insurance premium and profit from exchange or sale of property, provided, however, on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l)1, as provided in this code.
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> xxx xxx xxx
>
> (p) **On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year.**
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> xxx xxx xxx." *(Emphases supplied)*

In light of the foregoing provisions, the question now is this: Does Section 3A.02(p) of the RMRC contravene Section 133(a) of the LGC of 1991?

We answer in the negative.

Based on the aforequoted provisions of the RMRC, the imposition of local business tax on a *"holding company"* shall either be under subsection (g) for owners or operators of business establishments rendering or offering, *inter alia*, *"business management services"*; or under subsection (h) for owners or operators of banks and other financial institutions; both of Section 3A.02 of the RMRC. Under the said subsection (g), the graduated tax rates are based on the gross sales or receipts, depending on the amount thereof; while under the said subsection (h), the tax rate is fixed at 20% of 1% gross receipts derived from dividends, among other income.

In this case, it is undisputed that petitioner is a holding company for purposes of local taxation. [41] In this connection, petitioner contends that as its main and regular business is to hold shares of stock for purposes of control and not for investment, any dividend it receives is deemed not to be derived in ordinary course of trade or business, hence, is deemed a passive income that is not subject to local business tax. From what this Court can gather with this contention, petitioner is of the view that if a person or entity is classified as a holding company, it can never be taxed under subsection (p), in relation to subsection (h), Section 3A.02. This Court does not agree with petitioner—it is *non sequitur*.

Section 3A.01(dd) of the RMRC provides the definition of a *"holding company"*, *viz.*:

> "SECTION 3A.01. *Definitions.* — When used in this Article: —
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> xxx xxx xxx
>
> (dd) ***Holding Company* — a controlling company that has one or more subsidiaries and confines its activities primarily to their management.**" *(Emphasis supplied)*

On the basis of this definition, it is clear that a *"holding company"* is an entity which controls one or more subsidiaries and confines its activities *"primarily"* to their management. As such, while a holding company's *primary* activities are confined to the management of its subsidiaries, it does not preclude such entity from engaging in other activities, which may classify it as within the purview of the term *"Banks and other financial institutions"*, which is defined under Section 131(e) of the LGC of 1991 and Section 3A.01(e) of the RMRC, as follows:

> "SEC. 131. *Definition of Terms.* — When used in this Title, the term:

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[41] Par. 10, Statement of Facts and the Case, *Petition for Review*, RTC Records (Civil Case No. 14-471), p. 3, vis-à-vis Par. 1, Affirmative and/or Special Defenses, *Answer*, RTC Records (Civil Case No. 14-471), p. 37.

> 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;"
>
> "SECTION 3A.01. *Definitions.* — When used in this Article: —
>
> xxx xxx xxx
>
> (e) ***Banks and other financial institutions —*** include banks, offshore banking, non-bank financial intermediaries, lending investors, finance and investment companies, investment houses, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange including pre-need companies, as defined under applicable law, or rules and regulations." *(Emphasis supplied)*

Thus, We cannot hold that Section 3A.02(p) of the RMRC contravenes Section 133(a) of the LGC of 1991, and declare the same as invalid.

Nevertheless, it must be emphasized that the ascertainment of whether Section 3A.02(p) of the RMRC is valid is one thing, and the determination of whether the subject local tax assessment by respondents has factual basis is quite another.

In this case, after a careful review of the evidence presented in the proceedings *a quo*, there is no showing that petitioner falls within the purview of the term *"Banks and other financial institutions"* as defined under Section 131(e) of the LGC of 1991 and Section 3A.01(e) of the RMRC, so as to justify the collection of local business tax by respondents on the dividends it earned in the year 2012. Thus, the subject amount being refunded by petitioner must be granted.

Respondents may not limit the grant of refund to the issuance of a tax credit certificate.

Paragraph (d) Section 7B.14 of the RMRC provides:

> "SECTION 7B.14. *Taxpayer's Remedies.* –
>
> "xxx xxx xxx
>
> (d) *Claim for Refund of Tax Credit.* – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected **until a written claim of refund or credit** has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.
>
> **The tax credit granted a taxpayer shall not be refundable in cash** but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall no other tax obligations payable to the Local Government of City of Makati during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year. (*Boldfacing supplied*)

It is clear from the aforecited provision of the ordinance that **tax credits already granted to a taxpayer are not convertible to cash**. However, the taxpayer is not prohibited from claiming either a refund or tax credit for erroneously or illegally collected tax, fee or charge.

Moreover, even when the RMRC has a provision that limits the application of a refund to the issuance of a tax credit, Section 196 of the LGC, prohibits the local government unit from enacting the same to that effect:

> "Section 196. *Claim for Refund or Tax Credit.* - No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or

> illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or **from the date the taxpayer is entitled to a refund or credit.** (*Boldfacing supplied*)

The use of the disjunctive "or" connotes that there is an alternative or an option between at least two choices. "In its elementary sense, 'or' as used in a statute is a disjunctive article **indicating an alternative. It often connects a series of words or propositions indicating a choice of either**."[42] The aforecited law is clear. To remove the choice to be refunded in cash, indirectly amends the application of Section 196 of the LGC.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**.

The Decision dated February 24, 2017 and Order dated June 6, 2017, both rendered by the Court *a quo* are **AFFIRMED**, but only insofar as it sustained the validity Section 3A.02 (p) of the RMRC.

However, the Billing Statement/Assessment dated January 19, 2014 issued by respondents against petitioner for deficiency local business tax for taxable year 2013 in the aggregate amount of ₱359,745.37, inclusive of surcharge and interest, is **CANCELLED** and **SET ASIDE**.

Accordingly, respondents are **ORDERED** to refund petitioner the said aggregate amount of **THREE HUNDRED FIFTY-NINE THOUSAND SEVEN HUNDRED FORTY-FIVE PESOS** and **THIRTY-SEVEN CENTAVOS (₱359,745.37)**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[42] *Centeno vs. Hon. Villalon-Pornillos*, G.R. No. 113092, September 1, 1994.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division