REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

CITY OF MAKATI AND JESUSA E. CUNETA, IN HER CAPACITY AS THE INCUMBENT MAKATI CITY TREASURER, *Petitioner,*	**CTA *EB* NO. 2328** *(CTA AC No. 208)*
	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.*
-versus-	
	Promulgated:
CASOP ATLAS CORPORATION, *Respondent.*	MAR 30 2022 3:41 p.m.

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<u>DECISION</u>

MODESTO-SAN PEDRO, J.:

<u>The Case</u>

Before the Court *En Banc* is a **PETITION FOR REVIEW ("Petition")**, filed on 7 September 2020,[1] with respondents' **COMMENT (Re: Petitioner's Petition for Review dated 1 September 2020) ("Comment")**, filed on 1 December 2020.[2]

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[1] EB Docket, pp. 1-50.
[2] *Id.*, pp. 65-77.

The Parties

Petitioner, **CITY OF MAKATI,** is a local government unit ("LGU") created by law. Petitioner, **JESUSA E. CUNETA,** is the duly appointed City Treasurer of Makati, empowered to perform the duties of said office. Petitioners are charged with the implementation of Makati City Ordinance No. 2004-A-025, dated 27 October 2005, otherwise known as ***The Revised Makati Revenue Code ("RMRC"),*** as well as the collection and assessment of local business taxes ("LBT") in the City of Makati.

Respondent, **CASOP ATLAS CORPORATION,** is a corporation duly organized and existing under the laws of the Republic of the Philippines. Its primary purpose as stated in its Amended Articles of Incorporation, to wit:

> "Primary Purpose
>
> The primary purpose for which such Corporation is formed is:
>
> To invest in, purchase, 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 but not limited to shares of stock, bonds, debentures, notes, evidences of indebtedness, and other securities or obligations of any corporation or association engaged in trade or business or organized for any lawful purpose in or outside of the Philippines; to pay for such in money or by exchanging therefor stocks, bonds, securities, contracts, obligations, or other evidences of indebtedness, of this or any other corporation; 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 ownerships, including all the voting powers of any stock so owned."

The Facts[3]

Pursuant to Letter of Authority LA-2013 No. 0191, City of Makati's revenue officer Maureen Macadaeg examined respondent's books of accounts and other accounting records for taxable years 2011 to 2012 in accordance with ***Section 171 of the Local Government Code of 1991 ("LGC").***

Respondent received a copy of the Notice of Assessment, dated 24 April 2013, demanding payment of Php6,597,600.25, representing deficiency LBT, fees, and charges for taxable period 2011 to 2012, inclusive of interest and penalties. The table attached to the assessment reveals that the City of Makati derived the "Gross Sales" figures of Php2,101,274,606.00 from respondent's Audited Financial Statements for the year ended 31 December 2011, which had been submitted by respondent to the City of Makati. The Php2,101,274,606.00 "Gross Sales" consisted of: (1) gain of

[3] Decision, dated 9 January 2020, Annex "A", Petition, EB Docket, pp. 17-22.

Php2,043,686,400.00 from respondent's sale of its shares of stock in Carmen Copper Corporation ("CCC") to Atlas Consolidated Mining and Development Corporation ("Atlas") on 29 July 2011; and (2) foreign exchange gain in the amount of Php57,505,226.00.[4]

On 28 June 2013, respondent filed with the City of Makati a written protest contesting the assessment and requesting its cancellation, in accordance with ***Section 195 of the LGC***. Respondent argued that (a) it is not a holding company as defined in the ***RMRC***; (b) that the ***LGC*** prohibits local governments from imposing income tax except when imposed on banks and other financial institutions; and (c) that it is neither a bank nor a financial institution.

On 20 September 2013, respondent filed with the Regional Trial Court ("RTC") of Makati a Petition to Annul Assessment, dated 13 September 2013, where it sought the cancellation of the assessment for deficiency LBT for taxable period 2011 to 2012 in the total amount of Php6,597,600.25. The case was docketed as Civil Case No. 13-1108.

On 26 February 2014, respondent received a copy of the City of Makati's Answer, dated 21 February 2014, which stated that the City of Makati had issued and served on respondent a letter on 11 July 2013, denying respondent's written protest, and that respondent had allegedly failed to appeal the same within thirty (30) days from receipt of the denial of the protest. The denial of the protest issued by petitioner on 11 July 2013 had been delivered on 14 July 2013 to the Salvador & Associates Law Offices at U-815-816 Tower One & Exchange Plaza, Ayala Ave., BAY, City of Makati and received by a certain "Cora Calumba", a legal secretary for the Law Office of Salvador & Associates.

After trial, the RTC Makati-Branch 132 rendered a Decision, dated 2 March 2018, granting respondent's petition as follows:

> "The Court will go [to] the first issue, whether or not CAC may be classified as [a] holding company. The answer is in the affirmative. Atty. Gerardo V. Francisco, Director, Treasurer and Corporate Secretary of CAC admitted that CAC is a holding company.
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> However, petitioner [Casop] averred that CAC is not a holding company under the provisions of the Revised Makati Revenue Code. The Revised Makati Revenue Code, particularly Section 3A.01 (dd), provides that a company, to be considered as a holding company, must satisfy the following two (2) conditions before it may be considered as a holding company, for local business tax purposes in the City of Makati: (a) it is a controlling company that has one or more subsidiaries; and (b) its activities

[4] Decision, dated 2 March 2018, Annex "1", Petition For Review (of the Decision dated 09 July 2018), Division Docket, p. 25.

are confined primarily to the management of its subsidiaries. Accordingly, CAC does not fall within the category of a holding company. The argument is tenable.

Section 3A.01 (dd) of the Revised Makati Revenue Code, provides that 'Holding Company — a controlling company that has one or more subsidiaries and confines its activities primarily to their management.'

The Notice of Assessment dated 24 April 2013 shows that CAC deficiency Taxes, Fees and Charges P6,597,600.25 (Covering Taxable Period: 2011-2012). On the other hand, CAC's General Information Sheet for the year 2011 shows that CAC has no subsidiary/affiliate. Furthermore, the General Information Sheet of CCC for the year 2011 filed with the SEC shows that the number of shares of stock of CAC with CCC was only 7.73%. Thus, CAC was merely a minority shareholder of, and did not control and manage CCC.

In Philippine Health Care Providers, Inc, v. Commissioner of Internal Revenue, the Supreme Court held that:

> 'In construing this provision, we should be guided by the principle that tax statutes are strictly construed against the taxing authority. This is because taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. Hence, tax laws may not be extended by implication beyond a clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.'

With this, the Court will no longer resolve the other issues.

WHEREFORE, premises considered, judgment is hereby rendered **GRANTING** the present Petition, and **ANNULING** the assessment for local business tax made by the City of Makati through its City Treasurer Nelia A. Barlis as contained in the Notice of Assessment dated 24 April 2013.

SO ORDERED."

The Motion for Reconsideration filed by petitioners, meanwhile, was denied by the RTC Makati-Branch 132 for lack of merit.

On 24 July 2018, petitioners filed a Petition for Review before the Court in Division. The case was docketed as CTA AC No. 208. Respondent then filed its Comment (Re: Petition for Review dated August 8, 2018) on 23 August 2018. Thereafter, the Court in Division directed the parties to submit their respective memoranda within thirty (30) days from notice.

Petitioners submitted their Memorandum on 3 October 2018, while respondent filed its Memorandum on 10 October 2018. Subsequently, the records of the case were transmitted by the RTC Makati-Branch 132 on 1 January 2019. On 22 January 2019, the case was deemed submitted for decision.

On 9 January 2020, the Court in Division rendered the assailed Decision[5], ruling as follows:

> "**WHEREFORE,** the instant Petition for Review is **DISMISSED.** The Decision dated March 2, 2018 and Order dated July 9, 2018 issued by RTC Makati — Branch 132 in Civil Case No. 13-1108 are **AFFIRMED.**
>
> **SO ORDERED.**"

Aggrieved, petitioners filed a Motion for Reconsideration (of the Decision dated 09 January 2020) with Motion to Admit Amended Petition for Review)[6] on 24 January 2020. Meanwhile, respondent filed an Opposition (Re: Petitioners' Motion for Reconsideration with Motion to Admit Amended Petition for Review dated January 23, 2020)[7] on 28 February 2020. The Court in Division then denied the Motion for Reconsideration for lack of merit in a Resolution, dated 8 June 2020.[8]

On 7 September 2020, petitioner filed the instant Petition, before the Court *En Banc*. The Court then directed respondent to file its Comment or Opposition to the Petition in a Resolution, dated 10 November 2020. Respondent filed its Comment on 1 December 2020.

In a Resolution, dated 12 January 2021, the Court *En Banc* noted respondent's Comment, gave due course to the instant Petition, and submitted this case for decision.

Hence, this Decision.

The Assigned Errors[9]

Petitioners raised the following issues for the resolution of the Court *En Banc*, to wit:

1. Whether or not the respondent is a holding company;

2. Whether or not as a holding company, respondent being taxed under ***Section 3A.02 (p) of the RMRC*** has legal basis;

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5 Division Docket (CTA AC No. 208), pp. 124 to 134; EB Docket, pp. 17 to 27.
6 Division Docket (CTA AC No. 208), pp. 135 to 142.
7 Division Docket (CTA AC No. 208), pp. 158 to 163.
8 EB Docket, pp. 28 to 33; Division Docket (CTA AC No. 208), pp. 167 to 172.
9 EB Docket, p. 3.

3. Whether or not respondent has complied with the period required by the ***RMRC*** to file a judicial action to annul an LBT assessment; and

4. Whether or not the incumbent Treasurer of the City of Makati is properly authorized to file the Petition and to sign the Certification of Non-Forum Shopping.

Arguments of the Parties

Petitioner argues as follows:[10]

According to petitioner, respondent classified itself as a holding company in its business permits and license from Makati City. Allegedly, as a holding company, respondent was properly taxed under ***Section 3A-02 (p) in relation to Section 3A.02 (h) of the RMRC***. Under the said provision, petitioner argues that a holding company shall be taxed as a specific class of its own, without reference to it being a contractor or an owner or operator of banks or other financial institutions. In other words, a holding company need not be a contractor or an owner or operator of banks or other financial institutions.

Likewise, petitioner argues that respondent has not complied with the period required by the ***RMRC*** to file a judicial action to annul LBT assessment.

Lastly, petitioner contends that the incumbent treasurer of City of Makati is properly authorized to file the Petition and sign the Certification of Non-Forum Shopping.

In his **Comment**, respondent counter-argues that petitioner failed to demonstrate any reversible error on the part of the Court in Division's Decision.[11]

Respondent asserts that the instant Petition does not conform with the requirements under the ***New Rules on Civil Procedure*** which took effect last 1 May 2020; that similar to the Petition for Review before the Court in Division, the instant Petition does not contain a valid and proper Verification and Certification of Non-Forum Shopping. Allegedly, the Petition for Review, dated 24 July 2018, before the Court in Division was properly dismissed for having been filed without a valid and proper Verification and Certification of Non-Forum Shopping.

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[10] EB Docket, pp. 4-8.
[11] *Id.*, pp. 66-75.

Moreover, respondent submits that it is not a holding company under the ***RMRC***. Respondent invokes the ruling of RTC Makati and claims that during the taxable period 2011 to 2012, covered by the 24 April 2013 Notice of Assessment issued by petitioners, City of Makati and City Treasurer of Makati, it did not satisfy the definition of a "holding company" provided under the ***RMRC*** because respondent had no subsidiary or affiliate and did not control or manage any subsidiary, precisely because it had no subsidiary to manage.

Respondent also maintains that its declaration in its application for business permit should not bind respondent since the ***RMRC***, which governs taxation of persons and businesses in the City of Makati, provides the criteria for whether a company is a holding company for LBT purposes. Since RTC Makati found that respondent did not meet the criteria of a holding company under the ***RMRC***, there is no reason for the City of Makati to consider respondent as such.

Further, respondent claims that it is neither a bank nor a financial institution and is, thus, not liable to LBT on holding companies; and that the City of Makati's deficiency LBT assessment for years 2011 to 2012 against respondent is contrary to law, specifically ***Section 133(a) of the LGC***, which specifies the Common Limitations on the Taxing Powers of LGUs.

Lastly, respondent submits that the judicial action for annulment of the subject assessment was timely filed before the RTC of Makati.

The Ruling of the Court En Banc

This Court resolves to **DENY** the **Petition** for lack of merit.

The City Treasurer of the City of Makati has the authority to file the suit before the Court in Division and the present Petition. She may sign the requisite Verification and Certification of Non-Forum Shopping.

Respondent posits that the City Treasurer of the City of Makati had no authority to file both the instant Petition and the Petition for Review, dated 24 July 2018, before the Court in Division and to sign the Verification and Certification of Non-Forum Shopping in each of said Petitions. Allegedly, this is because there is no prior ordinance or resolution from the City of Makati or even mere authorization from the City Mayor of the City of Makati.

This Court *En Banc* is not persuaded. A City Treasurer is duly empowered by the ***LGC*** to institute judicial actions for purposes of assessing and collecting local taxes without need of a prior ordinance or resolution or any authorization from the City Mayor authorizing him or her to pursue such suit.

The duties of a Local Treasurer are expressly delineated under ***Section 470 (d) of the LGC***, to wit:

> "**Section 470.** *Appointment, Qualifications, Powers, and Duties.*
>
> xxx xxx xxx
>
> (d) **The treasurer shall** take charge of the treasury office, **perform the duties provided for under Book II of this Code**, and shall:
>
> (1) Advise the governor or mayor, as the case may be, the sanggunian, and other local government and national officials concerned regarding disposition of local government funds, and on such other matters relative to public finance;
>
> (2) Take custody of and exercise proper management of the funds of the local government unit concerned;
>
> (3) Take charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority;
>
> (4) Inspect private commercial and industrial establishments within the jurisdiction of the local government unit concerned in relation to the implementation of tax ordinances, pursuant to the provisions under Book II of this Code;
>
> (5) Maintain and update the tax information system of the local government unit;
>
> (6) In the case of the provincial treasurer, exercise technical supervision over all treasury offices of component cities and municipalities; and
>
> (e) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance."
> (Emphasis and underscoring supplied.)

Book II of the LGC, in turn, refers to Local Taxation and Fiscal Matters. Particularly, under ***Section 170, Chapter III, Book II of the LGC***, a Local Treasurer is duty bound to collect all local taxes levied under the jurisdiction of the Local Government Unit ("LGU"):

> "**Section 170.** *Collection of Local Revenue by Treasurer.* - **All local taxes, fees, and charges shall be collected by the provincial, city, municipal, or barangay treasurer,** or their duly authorized deputies.

> The provincial, city or municipal treasurer may designate the barangay treasurer as his deputy to collect local taxes, fees, or charges. In case a bond is required for the purpose, the provincial, city or municipal government shall pay the premiums thereon in addition to the premiums of bond that may be required under this Code."
> (Emphasis and underscoring supplied.)

To collect local taxes, ***Section 174, Chapter IV, Book II of the LGC*** authorizes the use of civil remedies, which include the institution of judicial action, as follows:

> **"Section 174.** *Civil Remedies.* - The civil remedies for the collection of local taxes, fees, or charges, and related surcharges and interest resulting from delinquency shall be:
>
> (a) By administrative action thru distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property;
>
> **<u>(b) By judicial action.</u>**
>
> Either of these remedies or all may be pursued concurrently or simultaneously at the discretion of the local government unit concerned."
> (Emphasis and underscoring supplied.)

Construing these provisions together, a Local Treasurer has the requisite authority to institute judicial actions to perform his or her duty to collect local taxes. It is thus superfluous to require a prior ordinance, resolution, or other authorization from the LGU before a Local Treasurer can file suit with the Courts since the authority to institute such judicial action is already vested with the Local Treasurer by law. Accordingly, a Local Treasurer is similarly authorized to sign Verifications and Certifications of Non-Forum Shopping in relation to suits which he or she filed in accordance with his or her duty to collect local taxes.

Thus, the City Treasurer of Makati had authority to initiate the suit before the Court in Division and the present Petition. In relation to this, she likewise had the requisite authority to sign the Verification and Certifications of Non-Forum Shopping required in these pleadings.

<u>Respondent timely filed its judicial action before RTC Makati-Branch 132.</u>

Petitioners argue that respondent failed to timely file its judicial action before RTC Makati-Branch 132.

Petitioners are mistaken. Respondent timely filed its judicial action before the regular courts.

The relevant provision for the resolution of this issue is ***Section 195 of the LGC***, which provides:

> "Section 195. Protest of Assessment. - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. **<u>The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.</u>**"
> (Emphasis and underscoring supplied.)

Applying this provision, once a taxpayer files his or her Protest to a local tax assessment, he or she may file his or her judicial action before the Courts of competent jurisdiction within thirty (30) days after: (a) receiving an actual denial of his or her Protest; or (b) the lapse of the sixty (60) day period given to the Local Treasurer to decide on such Protest, whichever comes first.[12]

In the case at bar, RTC Makati-Branch 132 correctly found that respondent did not receive the Denial Letter of its Protest, dated 11 July 2013.[13] In its Order, dated 9 July 2018, RTC Makati-Branch 132 elucidated as follows:[14]

> "It appears from the record that on 28 June 2013, petitioner filed a written protest against the 24 April 2013 Notice of Assessment with Office of the Makati City Treasurer.
>
> On 11 July 2013, the Office of the Makati City Treasurer issued a Letter denying the protest of the petitioner. Said letter was received by a certain Cora Calumba.

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[12] City Treasurer of Manila v. Philippine Beverage Partners, Inc., substituted by Coca-Cola Bottlers Philippines, G.R. No. 233556, 11 September 2019.

[13] Annex "10", Petition For Review (of the Decision dated 09 July 2018), Division Docket, pp. 41-43.

[14] Order, dated 9 July 2018, Annex "4", Petition For Review (of the Decision dated 09 July 2018), Division Docket, pp. 34-35.

> The record further established that Cora Calumba (the person who received the denial protest) was the legal secretary for the Law Office of Salvador & Associates with address at U-815 to 816 Tower One & Exchange Plaza, Ayala Avenue, Makati City. However, petitioner's counsel, Atty. Gerardo V. Francisco, has his office at 23F OMM Citra Building, San Miguel Ave., Ortigas Center, Pasig City 1605. Accordingly, the denial protest was not validly served upon or received by CAC as the recipient of the alleged denial protest **had absolutely no legal relationship to CAC or to its legal counsel."**
> (Emphasis and underscoring supplied)

Due to petitioners' failure to properly serve the Denial Letter, dated 11 July 2013, to respondent or its authorized representative, respondent cannot be deemed to have received an actual denial of its Protest. Consequently, as respondent was not informed of the actual denial of its Protest, it properly considered its Protest as deemed denied on 27 August 2013, which is sixty (60) days from the time it filed its Protest (*i.e.*, 28 June 2013).

From this date, respondent had thirty (30) days, or until 26 September 2013, within which to file its judicial action before the Courts to question the validity of the assessment. Hence, when respondent filed its Petition to Annul Assessment on 20 September 2013 before the RTC Makati-Branch 132, it timely perfected its judicial action in accordance with ***Section 195 of the LGC.***

Respondent is not a "holding company" for purposes of the RMRC.

Petitioners claims that since respondent admitted under oath that it is a "holding company" when it sought its Business Permit and License from the City of Makati, it is bound to pay the LBT for a "holding company" due under ***Section 3A.02 (p) in relation to Section 3A.02 (h) of the RMRC***.

This argument is untenable. Respondent is not a "holding company" as contemplated under the ***RMRC***. The relevant provision on this issue is ***Section 3A.01 (dd) of the RMRC***, which defines a "holding company" as follows:

> "(dd) Holding Company a controlling company that has one or more subsidiaries and confines its activities primarily to their management."

Hence, before a company can be classified as a "holding company" under the ***RMRC***, two (2) requisites must first be complied with. First, the company should be a controlling company that has one or more subsidiaries. Second, the company should confine its activities primarily to the management of its subsidiaries.

As duly found by RTC Makati-Branch 132 based on the evidence presented and as verified by the Court *En Banc*, respondent is not a "holding company" as contemplated under ***Section 3A.01 (dd) of the RMRC.*** The Court *En Banc* agrees with the following dispositions made by RTC Makati-Branch 132:[15]

> "However, petitioner averred that CAC is not a holding company under the provisions of the Revised Makati Revenue Code. The Revised Makati Revenue Code, particularly Section 3A.01 (dd), provides that a company, to be considered as a holding company, must satisfy the following two (2) conditions before it may be considered as a holding company for local business tax purposes in the City of Makati: (a) it is a controlling company that has one or more subsidiaries; and (b) its activities are confined primarily to the management of its subsidiaries. Accordingly, CAC does not fall within the category of a holding company. The argument is tenable.
>
> Section 3A.01 (dd) of the Revised Makati Revenue Code, provides that: *'Holding Company – a controlling company that has one or more subsidiaries and confines its activities primarily to their management.'*
>
> The *Notice of Assessment* dated 24 April 2013 shows that CAC deficiency Taxes, Fees and Charges P6,597,600.25 (Covering Taxable Period: 2011-2012). On the other hand, CAC's *General Information Sheet* for the year 2011 shows that CAC has no subsidiary/affiliate. Furthermore, the *General Information Sheet* of CCC for the year 2011 filed with the SEC shows that the number of shares of stock of CAC with CCC was only 7.73%. Thus, CAC was merely a minority shareholder of, and did not control and manage CCC.
>
> In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue,* the Supreme Court held that:
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>> 'In construing this provision, we should be guided by the principle that tax statues are strictly construed against the taxing authority. This is because taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. Hence, tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.'"

Indeed, as respondent only owned 7.73% of the total outstanding shares of CCC prior to the same being sold to Atlas, the resulting capital gains of which is subject of the present LBT assessment, respondent is not a controlling company which manages a subsidiary. Respondent is a mere minority shareholder in CCC without sufficient power to manage and control the same. Thus, despite the admissions that respondent made in its application for Business Permit and License before the City of Makati that it is a holding company, respondent still does not qualify as a "holding company" as defined under the ***RMRC.***

[15] Decision, dated 2 March 2018, Annex "1", Petition For Review (of the Decision dated 09 July 2018), Division Docket, pp. 25-26.

By not qualifying under the definition of a "holding company" in the ***RMRC***, respondent cannot be held liable for local taxes which a "holding company" is subject to under the ***RMRC***.

An LBT is imposed only on the gross receipts derived from the pursuit of a taxpayer's principal business. Gains from the sale of shares of stock and foreign exchange gains were not derived from respondent's primary business activities as a "holding company." Hence, no LBT is due thereto.

Even assuming that respondent qualifies within the definition of a "holding company" under ***Section 3A.01 (dd) of the RMRC***, it still cannot be subjected to LBT on its capital gains from the sale of its shares of stock in CCC and on its foreign exchange gains. Such assessment is invalid.

LBT are taxes levied for the privilege of doing business within the territorial jurisdiction of an LGU. It can only be imposed on the gross receipts derived by a taxpayer from the pursuit of its primary business activity.[16]

In ***City of Davao v. Randy Allied Ventures, Inc.***,[17] the Supreme Court had the occasion to rule that the primary business activity of a "holding company" does not partake of a dealer in securities. Specifically, the High Court ruled as follows:

> "A 'holding company' is 'organized' and is basically conducting its business by investing substantially in the equity securities of another company for the purpose of controlling their policies (as opposed to directly engaging in operating activities) and 'holding' them in a conglomerate or umbrella structure along with other subsidiaries.' **<u>While holding companies may partake in investment activities, this does not per se qualify them as financial intermediaries that are actively dealing in the same.</u>** Financial intermediaries are regulated by the BSP because they deal with public funds when they offer quasi-banking functions. On the other hand, a holding company is not similarly regulated because any investment activities it conducts are mere incidental operations, since **<u>its main purpose is to hold shares for policy-controlling purposes.</u>**
>
> To be sure, RAVI's act of placing the dividends from the SMC preferred shares in a trust account, which incidentally earns interest, does not convert it into an active investor or dealer in securities. As above-stated, **<u>the primary test is regularity of function, not on an isolated basis, with the end in mind for self-profit</u>**. Being restricted to managing the dividends

[16] City of Davao v. Randy Allied Ventures, Inc., G R. No. 241697, 29 July 2019.
[17] G R. No. 241697, 29 July 2019.

> of the SMC preferred shares on behalf of the government, RAVI cannot be said to be 'doing business' as a bank or other financial institution, *i.e.*, an NBFI.
>
> Moreover, while RAVI's stated **primary purpose in its AOI is couched in broad terms as to allow some functions similar to an NBFI, this does not necessarily mean it is engaged in the same business.** Verily, the 'power to purchase and sell real and personal property, including shares,' and 'to receive dividends thereon,' are common provisions to all corporations, including holding companies like RAVI which undertake investments. The mere fact that a holding company makes investments does not ipso facto convert it to an NBFI. Otherwise, there would be absolutely no distinction between a mere holding company and financial intermediaries."
>
> (Emphasis and underscoring supplied.)

Given this, and assuming that respondent is indeed a "holding company", the capital gains it earned on the sale of its shares of stock in CCC and its foreign exchange gains are not subject to LBT since the same were not derived from respondent's principal business activity as a "holding company".

As a "holding company", respondent's main business is simply to hold shares to influence the policies of its subsidiaries. It is neither an active investor nor a dealer in securities. Any income or gain that it derives from the buying and selling of its securities are merely incidental to its main business. Consequently, it is not subject to LBT. Accordingly, the LBT assessment on the capital gains earned by respondent on the sale of its shares of stock in CCC and its foreign exchange gains is invalid.

Recently, in the case of ***The City Treasurer of Makati City v. Michigan Holdings, Inc.***,[18] the Supreme Court had the occasion to rule that the receipt of dividends and interest from investment are not subject to LBT, considering that these were not derived from therein respondent's principal business activity as a "holding company". The High Court explained, as follows:

> "Furthermore, it has been ruled that LBT are taxes levied on the privilege of doing business within the territorial jurisdiction of the concerned LGU. In turn, the phrase doing business is defined as some 'trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit.' Hence, the business entities enumerated under Section 143 are made liable for LBT by virtue of their being regularly engaged in their business as such within the city or municipality' s locality. This is why LBT under Section 143 is levied on the entity's gross receipts derived from the conduct of its principal trade or business.
>
> Proceeding from the foregoing, petitioner is correct that respondent may be subject to LBT for engaging in a regular trade or commercial activity within its territorial jurisdiction. Following Section 143, respondent's LBT liability is imposable on the gross receipts derived from its regular trade or business. Notably, as alleged in the Complaint,

[18] Resolution, G.R. No. 224322, 24 March 2021.

respondent has been regularly paying LBT to the City Government of Makati and has been able to regularly secure from the same local government a Mayor's Permit and Business Permit.

However, with respect to respondent's income not derived from the pursuit of its principal business activity - such as the dividend income subject of the assessment - the same is not subject to LBT.

The provisions of the LGC are clear as to the scope and limitations of a city or municipality's authority to impose tax on dividend income and interest earned from money market placements.

Section 133(a) of the LGC explicitly prohibits cities and municipalities from imposing income taxes, except when levied on banks and other financial institutions. This is because dividends and interest income form part of the gross receipts of banks and other financial institutions derived from the conduct of their principal trade or business.

xxx xxx xxx

Banks and other financial institutions referred to in the afore-quoted provision 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. In turn, the National Internal Revenue Code of 1997 and relevant rules define non-bank financial intermediaries as persons or entities authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking functions. These include '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.'

Further, Banking Laws and Regulations define non-bank financial intermediaries as persons and entities performing any of the following functions on a regular and recurring basis, not as an isolated transaction: (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; and (c) borrow against, or lend on, or buy or sell debt or equity securities.

Based on the foregoing, cities and municipalities are authorized by the law to impose LBT on dividends and interest income only when they pertain to the gross receipts of banks and other financial institutions. In this case, however, the parties admit that respondent is a holding company. Further, there is no showing that respondent is authorized by the BSP to perform quasi-banking activities or that respondent is actually engaged in the above-enumerated activities in a regular and recurring basis. In other words, based on the submissions of the parties, respondent cannot be considered a non-bank financial intermediary whose dividends and interest income are subject to LBT under Section 143(f) of the LGC. As such, petitioner cannot assess and collect from respondent LBT on its dividends. By doing so, petitioner is effectively imposing on respondent not a tax on the privilege to do business within its territorial jurisdiction, but a tax on the income itself, which Section 133(a) of the LGC explicitly prohibits.

Furthermore, in the case of City of Davao v. Randy Allied Ventures, Inc., the Court had the occasion to distinguish holding companies from non-bank financial intermediaries and ruled that investments made by holding companies do not ipso facto make them non-bank financial intermediaries, subject to LBT under Section 143(f) of the LGC.

> In this case, it is clear that RAVI is neither a bank nor other financial institution, i.e., an NBFI. x x x
>
> xxxx
>
> Indeed, there is a stark distinction between a holding company and a financial intermediary as contemplated under the LGC, in relation to other laws. A 'holding company' is 'organized' and is basically conducting its business by investing substantially in the equity securities of another company for the purpose of controlling their policies (as opposed to directly engaging in operating activities) and 'holding' them in a conglomerate or umbrella structure along with other subsidiaries.' While holding companies may partake in investment activities, this does not per se qualify them as financial intermediaries that are actively dealing in the same. Financial intermediaries are regulated by the BSP because they deal with public funds when they offer quasi-banking functions. On the other hand, a holding company is not similarly regulated because any investment activities it conducts are mere incidental operations, since its main purpose is to hold shares for policy-controlling purposes.
>
> To be sure, RAVI's act of placing the dividends from the SMC preferred shares in a trust account, which incidentally earns interest, does not convert it into an active investor or dealer in securities. As above-stated, the primary test is regularity of function, not on an isolated basis, with the end in mind for self-profit. Being restricted to managing the dividends of the SMC preferred shares on behalf of the government, RAVI cannot be said to be 'doing business' as a bank or other financial institution, i.e., an NBFI.
>
> Moreover, while RAVI's stated primary purpose in its AOI is couched in broad terms as to allow some functions similar to an NBFI, this does not necessarily mean it is engaged in the same business. Verily, the 'power to purchase and sell real and personal property, including shares,' and 'to receive dividends thereon,' are common provisions to all corporations, including holding companies like RAVI which undertake investments. The mere fact that a holding company makes investments does not ipso facto convert it to an NBFI. Otherwise, there would be absolutely no distinction between a mere holding company and financial intermediaries.

Applying the foregoing ruling to the present case, respondent - a holding company - does not become a non-bank financial intermediary by its mere receipt of dividends or interest income from investments. As discussed, there is no indication in this case that respondent is 'doing business' as a bank or other financial institution. Consequently, respondent

> cannot be treated as such and be assessed for LBT on its dividends and interest income derived from passive investments.
>
> In sum, while respondent may be subject to LBT on its gross receipts derived from the conduct of its principal trade or business, its dividend and interest income derived from investment on shares of stock and other money market placements are not subject to LBT because it is neither a bank nor a non-bank financial intermediary. Accordingly, the CTA was correct in cancelling the subject assessment, levying LBT on respondent's dividend income, for being ultra vires."

With the said Supreme Court ruling, there can be no denying that respondent is not liable for LBT.

Section 3A.02 (p) of the RMRC is an ultra vires act in as much as it imposes LBT on gross receipts not derived from the principal business activity of a "holding company".

Section 133 (a) of the LGC provides a limitation on an LGU's power to tax, as follows:

> "Section 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;**
>
> xxx xxx xxx"
> (Emphasis and underscoring supplied.)

The ***LGC*** prohibits LGUs from imposing local income tax on any form of income or gain, except when the same is levied on banks and other financial institutions.

What, then, are banks and other financial institutions? Banks and other financial institutions are defined under ***Section 131 (e) of the LGC***, to wit:

> "(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;"

This enumeration appears to be exclusive of other entities. "Holding Companies" are nowhere included in this definition of a bank and other financial institution. Hence, income tax shall not be levied by LGUs against a "holding company", although it may be subjected to other forms of local taxes.[19]

The rationale for the limitation of the LGU's power to impose income tax, except in the case of banks and other financial institutions, was explained by the Court *En Banc* in ***The City of Makati and the City Treasurer of Makati v. CEMCO Holdings, Inc.***,[20] which declared the following:

> "In particular, paragraph (a) thereof decrees that save for banks and other financial institutions, **<u>LGUs are explicitly proscribed from imposing taxes, fees or charges of any kind, on items of gain or yield which were levied income tax by the national government.</u> <u>The rule is animated by the doctrine of pre-emption, or the instance where the national government elects to tax a particular area, impliedly withholding from the local government the delegated power to tax the same field.</u>** *Ergo,* as diametrically opposed with petitioners' posture, Section 133(a) of the LGC does not allow, and in fact forbids the imposition of LBT on income realized by entities not classified as a bank or financial institution."
> (Emphasis and underscoring supplied.)

Imposing LBT on income or a gain not derived from the principal business activity of a "holding company" (*i.e.,* to hold shares to influence the policies of a subsidiary) is tantamount to imposing income tax, which is expressly prohibited by ***Section 133 (a) of the LGC***.[21]

To the point of being repetitive, an LBT is a tax on the privilege to do business within the territorial jurisdiction of an LGU. This is the reason LBT is levied on the gross receipts derived from the taxpayer's principal business activity and not those received from its mere incidental activities. Imposing LBT on the income or gain derived from a taxpayer's incidental activities is no longer a taxation on the privilege to do business but a tax on the income itself.

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[19] Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis, CTA EB No. 1093, CTA AC No. 99, 17 June 2015.
[20] CTA EB No. 1661, CTA AC No. 166, 12 December 2018.
[21] The City Treasurer of Makati City v. Michigan Holdings, Inc., Resolution, G.R. No. 224322, 24 March 2021.

Hence, when ***Section 3A.02 (p) of the RMRC,***[22] in relation to ***Section 3A.02 (h) of the RMRC,***[23] levied LBT on the gross receipts derived by a "holding company" from interests, commissions, and discounts from lending activities, income from financial leasing, investments, dividends, insurance premium, and profit from exchange or sale of property, the limitation on the LGU's power to impose income tax under ***Section 133 (a) of the LGC*** has been violated. This is because a "holding company" does not qualify as a bank or other financial institution as defined in ***Section 131 (e) of the LGC***.

Given this, ***Section 3A.02 (p) of the RMRC*** is an ultra vires act in as much as it imposes LBT on gross receipts not derived from the principal business activity of a "holding company".

From the foregoing discussions, respondent is not liable for LBT on the capital gains it earned on the sale of its shares of stock in CCC and its foreign exchange gains.

WHEREFORE, the instant Petition is hereby **DENIED** for lack of merit. The Court in Division's Decision, dated 9 January 2020, which dismissed the present case due to a defective Certification on Non-Forum Shopping, and Resolution, dated 8 June 2020, which affirmed such dismissal are **SET ASIDE**. Accordingly, no LBT is due on respondent's gain from its sale of shares of stock in CCC to Atlas, and its foreign exchange gain. The Decision, dated 2 March 2018, by RTC Makati-Branch 132 is hereby **AFFIRMED.**

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[22] "(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."

[23] "(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." (Emphasis and underscoring supplied.)

WE CONCUR:

(With due respect, see Dissenting Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I vote to affirm the Assailed Decision and join P.J.'s Dissenting Opinion.)
ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I join P.J.'s Dissenting Opinion.)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With due respect, I join P.J.'s Dissenting Opinion.)
LANEE S. CUI-DAVID
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 MAKATI AND JESUSA E. CUNETA, IN HER CAPACITY AS THE INCUMBENT MAKATI CITY TREASURER,	**CTA EB NO. 2328** *(CTA AC No. 208)*
Petitioners,	**PRESENT:**
-versus-	**DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, *and* **CUI-DAVID**, *JJ.*
CASOP ATLAS CORPORATION, *Respondent.*	**PROMULGATED:** MAR 30 2022 3:41 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I submit that the City Treasurer has no authority to file the Petition for Review in CTA AC No. 208 as well as the present Petition for Review.

Petitioners anchor the City Treasurer's authority on Section 183 of the Local Government Code (LGC), in relation to Section 470 of the same Code, which state:

> "Section 183. ***Collection of Delinquent Taxes, Fees, Charges or other Revenues through Judicial Action.*** - The local government unit concerned may enforce the **collection of delinquent taxes, fees, charges or other revenues by civil action in any court of competent jurisdiction. The civil action shall be**

> **filed by the local treasurer** within the period prescribed in Section 194 of this Code." *(Boldfacing and underscoring supplied)*
>
> xxx xxx xxx
>
> "Section 470. ***Appointment, Qualifications, Powers, and Duties.*** – xxx xxx xxx
>
> (d) **The treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall**:
>
> (1) Advise the governor or mayor, as the case may be, the sanggunian, and other local government and national officials concerned regarding disposition of local government funds, and on such other matters relative to public finance;
>
> (2) Take custody of and exercise proper management of the funds of the local government unit concerned;
>
> (3) Take charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority;
>
> (4) Inspect private commercial and industrial establishments within the jurisdiction of the local government unit concerned in relation to the implementation of tax ordinances, pursuant to the provisions under Book II of this Code;
>
> (5) Maintain and update the tax information system of the local government unit;
>
> (6) In the case of the provincial treasurer, exercise technical supervision over all treasury offices of component cities and municipalities; and,
>
> (e) **Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance**." *(Boldfacing supplied)*

Although Section 183 of the LGC authorizes the local treasurer to collect delinquent taxes, fees, charges or other revenues through judicial action, careful scrutiny of the relevant provision reveals that such authority applies specifically to a **<u>collection</u>** case. The discharge of any other powers may only be made by authority of law or by an ordinance.

A case involving collection of taxes is different from that of an assessment of taxes. In fact, the LGC even provides for separate procedures and remedies in the collection of local taxes as stated in

Section 174 of the LGC *vis-à-vis* assessment of taxes as laid down in Section 195 of the LGC.

Sections 174 and 195 of the LGC provide:

> "**Section 174.** *Civil Remedies.* - The civil remedies for the **collection** of local taxes, fees, or charges, and related surcharges and interest resulting from delinquency shall be:
>
> (a) By administrative action thru distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property;
>
> (b) By judicial action.
>
> Either of these remedies or all may be pursued concurrently or simultaneously at the discretion of the local government unit concerned." *(Boldfacing and underscoring supplied)*
>
> xxx xxx xxx
>
> "**Section 195.** *Protest of Assessment.* - When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

The local treasurer's statutory authority to file judicial action, ***sans* any authorization from the City Mayor or from the Sangguniang Panlungsod**, is limited to collection cases. It is well settled that when the language of the law is clear and explicit, there is no room for interpretation, only application.[1]

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[1] *Joselito R. Mendoza vs. Commission on Elections and Roberto M. Pagdanganan*, G.R. No. 191084, March 25, 2010.

The Petition for Review in CTA AC No. 208 and the present Petition for Review, however, do not involve collection cases filed by the City Treasurer. The Petition for Review in CTA AC No. 208 involves an appeal on the decision of the Regional Trial Court (RTC) which annulled the **assessment for local business tax** made by the City of Makati through its City Treasurer as contained in the Notice of Assessment dated April 24, 2013. On the other hand, the present Petition for Review involves an appeal on the decision of the Court in Division which dismissed the Petition for Review filed by petitioners.

While there is nothing in Section 470 of the LGC which gives authority to the City Treasurer to institute an action to question a decision of the court *a quo* which cancelled the notice of assessment issued against a taxpayer, Section 22(2) of the LGC explicitly states that a local government, as corporation, has the power to sue and be sued, *viz.*:

> "SECTION 22. Corporate Powers. – (a) Every local government unit, as a corporation, shall have the following powers:
>
> (1) To have continuous succession in its corporate name;
>
> (2) **To sue and be sued**; xxx." *(Boldfacing supplied)*

The exercise of the corporate powers of a local government unit is certainly not lodged in every local official as the same may be exercised only by those who have been vested with such authority under the law or pursuant to an authority given by the Sanggunian.

For the purpose of exercising the local government unit's power to sue, Section 455 of the LGC has given the authority to the City Mayor to act for and on its behalf, *viz.*:

> "SECTION 455. Chief Executive; Powers, Duties and Compensation. — (a) The **<u>city mayor</u>**, as chief executive of the city government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.
>
> xxx xxx xxx
>
> (viii) **Institute or cause to be instituted administrative or judicial proceedings for violation of ordinances in the collection of taxes, fees or charges, and for the recovery of funds and property; and cause the city to be defended <u>against all suits to ensure that its interests, resources and rights shall be</u>**

OM

> **adequately protected**; xxx." *(Boldfacing and underscoring supplied)*

From the foregoing, it is clear that it is the City Mayor, and NOT the City Treasurer, who has the authority to file suits "for the recovery of funds and property" on behalf of the city or to cause the city to be defended against all suits.

As the City Treasurer filed the Petitions in her official capacity, or as a representative of the local government unit, the filing thereof should be supported by a valid authorization from the Sangguniang Panlungsod; otherwise, there would be no basis for the Court to consider the case as an official act performed on behalf of the City of Makati and the Office of the City Treasurer of Makati.

In *Philippine Airlines, Inc., et al. vs. Flight Attendants and Steward Association of the Philippines (FASAP), et al.,*[2] which may be analogously applied to the present case, the Supreme Court declared:

> "Thus, **only individuals vested with authority** by a valid board resolution **may sign the certificate of non-forum shopping in behalf of a corporation**. In addition, **the Court has required that proof of said authority must be attached**. Failure to provide a certificate of non-forum shopping is sufficient ground to dismiss the petition. Likewise, the **petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority**." *(Boldfacing and underscoring supplied)*

Records show that there is no written proof of authority on the part of the City Treasurer to file the Petition for Review in CTA AC No. 208 and the present Petition for Review on behalf of Makati City and on behalf of the Office of the City Treasurer. Accordingly, the dismissal of the present Petition for Review is warranted.

All told, I VOTE to DISMISS the present Petition for Review and AFFIRM the assailed Decision and Resolution of the Court in Division.

ROMAN G. DEL ROSARIO
Presiding Justice

[2] G.R. No. 143088, January 24, 2006.