REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

TE DEUM RESOURCES, INC., *Petitioner,*	**CTA EB No. 1692** (CTA AC No. 150)
	Present:
-versus-	Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City, *Respondents.*	Promulgated: MAY 08 2018 11:00 am

x -- x

DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by **Te Deum Resources, Inc.** on August 24, 2017 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals praying for the Court *En Banc* to reverse and set aside the February 10, 2017 Decision[1] (*assailed Decision*) and July 19, 2017 Resolution[2] *(assailed Resolution)* rendered by the Court in Division in CTA AC No. 150, entitled *"Te Deum Resources, Inc. vs. City of Davao and Hon. Rodrigo S. Riola in his capacity as the City Treasurer of Davao City."*

---

[1] Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justice Caesar A. Casanova concurring and Associate Justice Catherine T. Manahan dissenting.
[2] Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justice Caesar A. Casanova concurring and Associate Justice Catherine T. Manahan dissenting.

The assailed Decision and the assailed Resolution dismissed petitioner's claim for refund and affirmed the June 22, 2015 Decision and September 11, 2015 Order of the Regional Trial Court, Branch 16 of Davao in Civil Case No. 34,858-13 which denied petitioner's claim for refund and sustained the imposition of local business tax (LBT) amounting to One Million Two Hundred Twenty Thousand Five Hundred Thirteen Pesos and Fifty Centavos (₱1,220,513.50) computed based on its dividends from preferred shares of stock of San Miguel Corporation and interests on money market placements.

The dispositive portions of the Court in Division's assailed Decision and assailed Resolution state:

February 10, 2017 Decision

> "**WHEREFORE**, premises considered, the instant Petition for Review is **DISMISSED** for lack of merit.
>
> **SO ORDERED.**"[3]

July 19, 2017 Resolution

> "**WHEREFORE,** premises considered, petitioner's **Motion for Reconsideration (Re: Decision Rendered 10 February 2017),** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[4]

THE PARTIES

Petitioner Te Deum Resources, Inc. is a corporation duly organized and existing under Philippine laws with principal office address at Legaspi Oil Compound Km. 9.5, Sasa, Davao City.[5]

Respondent City of Davao is a local government unit (LGU) duly created by law, which has its address at the City Hall Building, San Pedro Street, Davao City.[6]

Respondent Hon. Rodrigo S. Riola is the former City Treasurer of Davao City and is being impleaded in his official capacity.[7]

---

[3] Division Docket, p. 251.
[4] Division Docket, p. 339.
[5] Paragraph 7, Petition for Review (PFR), *En Banc* Docket, p. 10.
[6] Paragraph 8, PFR, *En Banc* Docket, p. 11.
[7] Paragraph 9, PFR, *En Banc* Docket, p. 11.

THE FACTS

Since October 2009, petitioner has been the registered owner of Fifty-Eight Million Four Hundred Eighty-Seven Thousand Eight Hundred Twenty-Three (58,487,823) preferred shares of stock in SMC (SMC Preferred Shares) after the Supreme Court *En Banc* approved the conversion of petitioner's common shares of stock in SMC to SMC Preferred Shares. The dividends received by petitioner from its SMC Preferred Shares were deposited in a trust account which earned interest from money market placements. [8]

In 2010, petitioner received the amount of Four Hundred Forty-Three Million Eight Hundred Twenty-Three Thousand One Hundred Twenty-Three Pesos and Thirty-Five Centavos (₱443,823,123.35) from dividends on its SMC Preferred Shares and interests on its money market placements, computed as follows:[9]

Dividends	₱ 438,658,672.50
Interests	5,164,450.85
Total	₱ 443,823,123.35

For the first and second quarters of 2011, respondent City of Davao, through respondent City Treasurer, demanded and collected from petitioner the payment of 0.55% local business tax (LBT) on the dividends and interest in the amount of One Million Two Hundred Twenty Thousand Five Hundred Thirteen Pesos and Fifty Centavos (₱1,220,513.50). While petitioner disagreed with the assessment, it was compelled to pay the same under protest, as follows:[10]

Period Covered	Date of Payment	Official Receipt Nos.	Amount
January-March 2011	January 18, 2011	5791200 A	₱ 610,256.75
April – June 2011	April 20, 2011	9884258 A	₱ 610,256.75
		Total	**₱ 1,220,513.50**

On September 13, 2012, petitioner filed with respondent City Treasurer its written administrative claim for refund or credit of erroneously and illegally collected LBT. Despite the lapse of four (4) months, petitioner's written claim for refund or credit was not acted upon and resolved by respondent City Treasurer.[11]

---

[8] Paragraph 14, PFR, *En Banc* Docket, p.12; Paragraph 26, Summary of Admitted and Stipulated Facts, Joint Stipulation of Facts and Issues (JSFI), RTC Docket, p. 297.
[9] Paragraph 15, PFR, *En Banc* Docket, p. 12; Paragraph 27, JSFI, RTC Docket, pp. 297-298.
[10] Paragraph 16, PFR, *En Banc* Docket, p. 12; Paragraph 20, JSFI, RTC Docket, p. 295.
[11] Paragraph 18, PFR, *En Banc* Docket, p. 13; Paragraph 25 and 29, JSFI, RTC Docket, pp. 296-298.

On January 17, 2013, petitioner filed a Petition[12] for Refund or Credit under Section 196 of the Local Government Code of 1991 (LGC) with the Regional Trial Court of Davao City which was docketed as Civil Case No. 34,858-2013.[13]

On July 20, 2015, petitioner received the June 22, 2015 Decision of the Regional Trial Court of Davao City dismissing its petition, *viz.*:[14]

> "**FOR REASONS STATED**, the instant 'Petition for Tax refund or Credit under Section 156, R.A. 7160' filed by the Petitioner is hereby **DENIED** and/or **DISMISSED**.
>
> **SO ORDERED**."[15]

On August 4, 2015, petitioner posted a Motion for Reconsideration[16] of the June 22, 2015 Decision.[17] On October 8, 2015, petitioner received the September 11, 2015 Order[18] of the Regional Trial Court of Davao City, denying its Motion for Reconsideration, to wit:

> "As such, the ***'Motion for Reconsideration'*** filed by Petitioner through counsel is hereby **DENIED**.
>
> SO ORDERED."

On November 9, 2015, petitioner elevated the matter to the Court in Division *via* a Petition for Review.[19]

On February 14, 2017, petitioner received the February 10, 2017 Decision of the Court in Division dismissing its petition.[20] On March 1, 2017, petitioner filed its Motion for Reconsideration (Re: Decision Rendered 10 February 2017).[21]

---

[12] RTC Docket, pp. 1-85.
[13] Paragraph 19, PFR, *En Banc* Docket, p. 13.
[14] Paragraph 24, PFR, *En Banc* Docket, p. 13; RTC Docket, p. 355.
[15] RTC Docket, p. 355.
[16] RTC Docket, pp. 356-369.
[17] Paragraph 25, PFR, *En Banc* Docket, p. 25.
[18] RTC Docket, p. 384.
[19] Paragraph 27, PFR, *En Banc* Docket, p. 14.
[20] Paragraph 30, PFR, *En Banc* Docket, p. 14.
[21] Paragraph 33, PFR, *En Banc* Docket, p.16; Division Docket, pp. 259-315.

On July 25, 2017, petitioner received the assailed Resolution of the Court in Division denying its Motion for Reconsideration.[22]

Unsatisfied with the assailed Decision and Resolution of the Court in Division, petitioner filed the present Petition for Review with the Court *En Banc* on August 24, 2017, which is within the extended period granted by the Court *En Banc* per its Minute Resolution dated August 7, 2017.[23]

On December 4, 2017, the Court *En Banc* submitted the present Petition for decision.[24]

THE PARTIES' ARGUMENTS

Petitioner's arguments

Petitioner argues that it is entitled to a refund or credit of the LBT collected by respondents for the first and second quarters of 2011 on its dividend and interest income for taxable year (TY) 2010. It claims that pursuant to Section 133 (A) of the LGC, it is erroneous and illegal for respondents to collect LBT on the dividend and interest income of petitioner as it is not engaged in business subject to LBT. Petitioner insists that it is a holding company and not a bank or a non-bank financial intermediary as it is not engaged in lending money, investing, reinvesting or trading securities on a regular and recurring basis. It contends that mere owning or holding shares of stock of SMC does not *ipso facto* qualify petitioner as a non-bank financial intermediary. The main evidence of petitioner's primary purpose is its Articles of Incorporation which expressly prohibits it from acting as a financial institution or intermediary. Being a holding company, petitioner's interest income and dividends are not subject to LBT. It claims further that petitioner as well as the SMC shares it previously held and income derived therefrom are national government property exempt from LBT.

Respondents' counter-arguments

Respondents, on the other hand, counter that petitioner is deemed a "non-bank financial intermediary or an investment company" by virtue of its investment and money placements in SMC.

[22] Paragraph 6.3, PFR, *En Banc* Docket, p. 10; Division Docket, pp. 333-340.
[23] *En Banc* Docket, p. 7-7A.
[24] Resolution, *En Banc* Docket, pp. 120-121.

The business purpose of petitioner as contained in its amended Articles of Incorporation is wittingly and unwittingly broad enough to catch all the descriptive function of a non-bank financial intermediary as provided under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the *Bangko Sentral ng Pilipinas*. Further, petitioner's Articles of Incorporation stating that it shall not act as an investment company or securities broker or dealer is not a conclusive proof that it is not a "bank and other financial institution".

Even if it is assumed that petitioner's income partakes the nature of public funds pursuant to the ruling of the Supreme Court in *COCOFED vs. Republic*[25] that the fund is in the nature of government assets, nevertheless, it does not exempt petitioner from the payment of LBT on its dividend and interest income pursuant to Section 143(f) of the LGC.

Respondents insist that petitioner's contention that it is a "holding company" rather than a non-bank financial intermediary", based on the case of *Michigan Holdings, Inc. vs. The City Treasurer of Makati, Nelia A. Barlis*,[26] is misplaced.

Also, the fact that there was no showing that petitioner was authorized by the *Bangko Sentral ng Pilipinas* or Monetary Board to perform quasi-banking activities does not *ipso facto* exclude petitioner from being a "non-bank financial intermediary". Being a stock corporation, petitioner is presumed to have been organized to engage in business with the end in view of a profit, hence, it cannot deny that it is not engaged in business.

THE ISSUES

The parties raise the following issues:

1. Whether petitioner is entitled to a refund or credit of the 0.55% local business taxes collected for the first and second quarters of 2011 on the dividends on its SMC Preferred Shares and interests from money market placements for TY 2010;[27] and,

2. Whether petitioner is considered as a non-bank financial intermediary, falling under the category of a bank and other financial

---

[25] G.R. Nos. 177857-58 and 178193, January 24, 2012.
[26] CTA EB Case No. 1093 (CTA AC No. 99), June 17, 2015.
[27] PFR, *En Banc* Docket, pp. 17-18.

institutions so as to be subject to LBT imposition as provided under Section 143 (f) of the LGC.[28]

THE COURT *EN BANC*'S RULING

The Court *En Banc* finds sufficient basis to grant the Petition for Review.

Petition for Review with the Court En Banc is timely filed.

The Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> Rule 8
> Procedure in Civil Cases
>
> SEC. 3. *Who may appeal; period to file petition.* –
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution.** Xxx *(Boldfacing supplied)*

As afore-stated, petitioner received the assailed Resolution on July 25, 2017. Within fifteen (15) days from receipt of the assailed Resolution or on August 2, 2017, petitioner filed a Motion for Extension to File Petition for Review[29] praying that it be given an extension of fifteen (15) days from August 9, 2017 or until August 24, 2017 within which to file its appeal by way of a Petition for Review. Its motion for extension was granted in the August 7, 2017 Minute Resolution of the Court *En Banc*.[30] On August 24, 2017, petitioner filed its Petition for Review with the Court *En Banc*.

As the present Petition was filed within the extended period, the Court *En Banc* is vested with jurisdiction to take cognizance of the same.

---

[28] Comment, *En Banc* Docket, p. 105.
[29] *En Banc* Docket, pp. 1-6.
[30] *En Banc* Docket, pp. 7-7A.

Dividends and interest income on money market placements are not subject to local business tax, unless levied on banks and other financial institutions

The LGC provides the common limitations on the taxing power of the LGUs. Section 133 (a) of the LGC expressly prohibits provinces, cities, municipalities, and barangays from imposing income tax, unless the same is levied on banks and other financial institutions, *viz.*:

> "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." *(Boldfacing supplied)*

Section 143 (f) of the LGC in relation to Section 151 of the same Code in turn provides that municipalities and cities may impose **local business tax on banks and other financial institutions on their income from dividends and interest**, based on gross receipts of the preceding year, *viz.*:

> "Section 143. Tax on Business. — The municipality may impose taxes on the following businesses:
>
> xxx xxx xxx
>
> (f) **On banks and other financial institutions**, at a rate not exceeding fifty percent (50%) of one percent (1%) on the **gross receipts of the preceding calendar year derived from interest**, commissions and discounts from lending activities, income from financial leasing, **dividends**, rentals on property and profit from exchange or sale of property, insurance premium.
>
> xxx xxx xxx." *(Boldfacing supplied)*
>
> "Section 151. Scope of Taxing Powers. — Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided*, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities

> shall accrue to them and distributed in accordance with the provisions of this Code.
>
> **The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes**." *(Boldfacing supplied)*

Based on the foregoing, there is no denying that an LGU may impose LBT on dividends and interest income on money market placements if the person or entity involved is a bank or financial institution.

Consistent with the LGC, Section 69 (f) of Davao City's Ordinance No. 158-05, Series of 2005, otherwise known as the 2005 Revenue Code of Davao City, explicitly imposes LBT on banks and financial institutions based on gross receipts derived from interest income and dividends, *viz.*:

> "Section 69. Imposition of Tax. — There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts hereafter prescribed:
>
> xxx xxx xxx
>
> F. On Banks and Other Financial Institutions, at the rate of fifty-five percent (55%) 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, dividends, rentals on property, and profit from exchange or sale of property, insurance premium. All other income and receipts not herein enumerated shall be excluded in the computation of the tax."

While respondent City of Davao may indeed impose LBT on banks and other financial institutions on their gross receipts of the preceding calendar year from interest and dividends at the rate of 0.55%, the imposition must be made within the bounds of law, that is - - the person or entity must be correctly classified as a bank or other financial institution as defined by relevant laws and regulations.

In upholding the imposition of LBT by respondents, the Court in Division agreed with the Regional Trial Court's conclusion that petitioner in *esse* falls within the category of "financial intermediary", whose business is subject to LBT under Section 143(f) of the LGC.

The crux of the controversy revolves around whether or not petitioner is a non-bank financial intermediary or an investment company that is subject to LBT on interest income and dividends.

Petitioner is not a non-bank financial intermediary or an investment company subject to local business tax.

To recount, petitioner claims that it is not a non-bank financial intermediary or an investment company but a holding company not subject to LBT. On the other hand, respondents insist the opposite, asserting that petitioner is a non-bank financial intermediary or an investment company by virtue of its shareholdings in SMC and money market placements and consequently subject to LBT under the afore-quoted Section 143(f) of the LGC.

The nature of a "non-bank financial intermediary" and an "investment company", which fall under the category of a "bank and other financial institution", are the subject of pertinent laws and regulation.

Section 131(e) of the LGC defines the term "banks and other financial institutions", as follows:

> "Section 131. Definition of Terms. - When used in this Title, the term:
>
> 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; xxx" *(Boldfacing supplied)*

Clearly, "non-bank financial intermediaries," *inter alia*, are included in the term "banks and other financial institutions"; and that the term "non-bank financial intermediaries" are those that are **"defined under applicable laws, or rules and regulations**."

In a number of laws and regulations, the term *"non-bank financial intermediaries"* has been unambiguously defined. They specifically defined what constitutes *"non-bank financial* *intermediaries"* as they provide for the specific requisites in order for a person or entity to be regarded as such.

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

> (W) The term **'non-bank financial intermediary'** means a financial intermediary, **as defined in Section 2(D)(c) of Republic Act No. 337, as amended, otherwise known as the be General Banking Act, authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities.**" *(Boldfacing supplied)*

Revenue Regulations No. 9-2004,[31] meanwhile, defines "non-bank financial intermediaries as:

> "2.3 **Non-bank Financial Intermediaries** – shall refer to persons or entities whose **principal functions** include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them or otherwise coursed through them, either for their own account or for the account of others. This likewise includes all other entities **regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public** through the issuance, endorsement or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally." *(Boldfacing supplied)*

In relation thereto, Section 2-D(c) of Republic Act No. 337 (RA 337), as amended by Presidential Decree No. 71 (PD 71), defines "financial intermediaries" as follows:

> "(c) **'Financial Intermediaries'** shall mean persons or entities **whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others**;" *(Boldfacing supplied)*

---

[31] Dated June 21, 2004. Subject: Implementing Certain Provisions of Republic Act No. 9238 Re-Imposing the Gross Receipts Tax on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions and Other Non-Bank Financial Intermediaries Beginning January 1, 2004.

Furthermore, the Manual of Regulations for Non-Bank Financial Institutions issued by the BSP, further elaborates the definition of "financial intermediaries". Section 4101Q.1 thereof reads:

> **"41 01 Q.1 *Financial intermediaries.*** *Financial intermediaries* shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.
>
> *Principal* shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.
>
> *Functions* shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out. The business or purpose of a person or entity may be determined from the purpose clause in its articles of incorporation/partnership, and from the nature of the business indicated in his/its application for registration of business filed with the appropriate government agency.
>
> To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:
>
> a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;
>
> b. Use principally the funds received for acquiring various types of debt or equity securities;
>
> c. Borrow against, or lend on, or buy or sell debt or equity securities;
>
> d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;
>
> e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.
>
> Non-banking financial intermediaries shall include the following:

(1) A person or entity licensed and/ or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.

(2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term financing, finance, investment, lending and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.

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

Taken together, the foregoing laws and regulations reveal the following basic requirements for a person or entity to be considered as a *"non-bank financial intermediary"*, *viz.*:

1) The person or entity is *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities";*

2) The principal functions of the said person or entity *"include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others";*

3) The person or entity must perform any of the following functions on **a regular and recurring**, not on an isolated basis, to wit:

a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;

b. Use principally the funds received for acquiring various types of debt or equity securities;

c. Borrow against, or lend on, or buy or sell debt or equity securities;

> d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;
>
> e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

A non-bank financial intermediary may not be considered as such unless it possesses all the requirements that qualify it to fall within its legal definition. Here, there is nothing in the records which will show that petitioner meets the foregoing requirements.

<u>First</u>, no proof was presented that petitioner was *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"*. Petitioner in fact, pointed out that, it was not required by the Securities and Exchange Commission to secure a secondary license.[32] Furthermore, the "determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation shall be decided by the Monetary Board, subject to judicial review. Since no such determination by the Monetary Board exists on record that may confirm, even remotely, that petitioner is a non-bank financial intermediary, it was erroneous for respondent City of Davao to classify petitioner as one.

<u>Second</u>, while petitioner's Amended Articles of Incorporation may cover the supposed functions of a non-bank financial intermediary, it was not shown that said functions are "*principal*" *i.e., "chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental"* and performed on a regular or recurring basis. Rather, the primary purpose for which petitioner was incorporated is to "direct the operations of other corporations through the ownership of stock therein", and "to do every act and thing covered generally by the denomination **'holding company'**",[33] to wit:

---

[32] Paragraph 58.4, PFR, *En Banc* Docket, pp. 29-30.
[33] Exhibit A-1, RTC Docket, pp.190-201.

> "To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect and dispose of the interest, dividends and income arising from such property, **and to possess and exercise in respect thereof, all rights, powers and privileges of ownership, including all voting powers on any stocks so owned; and to do every act and thing covered generally by the denomination "holding company", and especially to direct the operations of other corporations through ownership of stock therein**, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation."[34] *(Boldfacing supplied)*

While petitioner's Amended Articles of Incorporation is categorical in proscribing petitioner from acting "as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation", its identification as a holding company is consistent with the definition of a holding company provided for in Securities and Exchange Commission, Office of the General Counsel (SEC-OGC) Opinion No. 11-15 dated February 10, 2011,[35] as follows:

> "A holding company has been defined by the Commission in several opinions. A holding company has been aptly defined as "a corporation organized to hold the stock of another or other corporations. Its essential feature is that it holds stock."

<u>**Third**</u>, it was never established that the enumerated functions under the third requirement were performed by petitioner *"on a regular and recurring, not on an isolated basis."* In fact, there is no evidence on record which would establish that petitioner performed the foregoing functions.

---

[34] Exhibit A-1, RTC Docket, pp. 192-193; JSFI, RTC Docket, p. 291.
[35] SEC-OGC Opinion No. 11-15, Applicability of Foreign Ownership Restriction; Holding Companies. See also SEC-OGC Opinion No. 15-15 dated November 3, 2015.

The Court *En Banc* also finds that there is no evidence to support the contention that petitioner is an investment company as the term is defined by law. Section 4 of Republic Act No. 2629 (RA 2629),[36] provides the following definition of an "investment company", *viz.*:

> "SEC. 4. Definition of investment company. – (a) when used in this Act **"investment company" means any issuer[37] which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities**; xxx." *(Boldfacing supplied)*

The business of investing, reinvesting and trading securities are not among its listed purposes. Records of the case is also bereft of proof that petitioner indeed engaged in investing, reinvesting or trading in securities. Needless to state, to consider a person or entity as an investment company just by acquisition and holding of a single company's shares of stock would make each and every purchaser of stocks in the stock market a taxable investment company. This is simply absurd.

It must be stressed that it is the corporation's purpose clause that confers, as well as limits, the powers which a corporation may exercise. The main evidence of the purpose of a corporation is its articles of incorporation considering that such information is required by statute to be stated in the incorporation document.[38]

Although the purpose clause in petitioner's Amended Articles of Incorporation is broad and does allow for the acquisition of shares of stock of other corporations and "to receive, collect and dispose of the interest dividends and income arising from such property", it is clear from a reading of the same that its primary purpose is not to engage in business as a non-bank financial intermediary or an investment company. The receipt of dividend and interest income is patently incidental. As a holding company, petitioner, and the other holding companies funded by the coconut levy fund, were created to hold SMC shares of stock,[39] and not to engage in the business of lending or investing money or securities acquired by them or through them, on a regular basis.

---

[36] Investment Company Act; approved June 18, 1960.
[37] "Issuer" means every person who issues or proposes to issue any security, or has outstanding any security which it has issued. (Section 3(q), RA 2629)
[38] *Jesus Sacred Heart College vs. Collector of Internal Revenue*, G.R. No. L-6807, May 24, 1954.
[39] *Philippine Coconut, Producers Federation, Inc. (COCOFED), et al., vs. Republic of the Philipines*, G.R. Nos. 177857-58, January 24, 2012.

Anent respondents' claim that the proviso at end of petitioner's purpose clause, *i.e.* "provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation" -- is intended to conceal or mislead, or exempt petitioner from obtaining the necessary secondary license, such contention is not supported by evidence.[40] Basic is the rule that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.[41]

In truth, the assessment of LBT on petitioner's dividends and interest income is based on respondent's conclusion that petitioner's business operation which consists solely of stock investments in SMC and money market placements, fall within the purview of the definition of "banks and other financial institutions" provided in Section 131(e) of the LGC and Revenue Regulations No. 12-2003. Respondents argue that petitioner's *"owning a substantial number of shares of stock and receiving dividends by millions of pesos as a return of such investment and interest income from [petitioner's] money market placements in SMC"* constitute an act of investment or doing business. Allegedly, the Audited Financial Statements[42] (AFS) of petitioner reveals that investing and holding the shares of SMC and making money placements are the sole and principal business operation and source of revenue of petitioner.

There is nothing in the AFS, however, that would show that petitioner engaged in the business of an investment company or non-bank financial intermediary. There is also no mention of money market placements in SMC made by petitioner apart from the SMC preferred shares it holds. The AFS merely confirms that petitioner's dividends are from its SMC preferred shares and its interest income is from its short-term deposits, savings deposits and other non-current assets.[43]

Finally, based on the records of this case, the Court *En Banc* also notes that petitioner has not held itself out, nor advertised itself, as a non-bank financial intermediary or an investment company.

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

---

[40] Comment, *En Banc* Docket, p. 110.
[41] *Luxuria Homes Inc., vs. Court of Appeals*, G.R. No. 125986, January 28, 1999.
[42] Exhibit E, RTC Docket, pp. 210 -245.
[43] Notes 4, 7 and 9, Exhibit E, RTC Docket, pp. 229, 235-240.

> "In fact, the present situation may be compared, by analogy, to a person presently driving a car without driver's license. To argue that this person is not presently driving a car because he or she has no driver's license is simply fallacious. Basically, such argument would necessarily lead to a conclusion that the car is moving smoothly by itself. However, it wrongfully omits the fact that the smoothly moving car is being driven by a person without a driver's license.
>
> In this case, petitioner depicts the driver without license while the dividends and interest income from equity securities and money market placements depict the car. The car could not have smoothly moved, *i.e., petitioner could not have regularly earned dividends and interest income from equity securities and money market placements*, if the driver did not drive it, i.*e., if petitioner did not engage in NBFI activities,* albeit without driver's license, *i.e., without authority or categorization as such by the BSP or Monetary Board, respectively.* Otherwise, petitioner's consistent earnings from dividends and interest income emanating from an unknown activity, i.e., if it did not engaged in NBFI activities, would border on the metaphysical, because it is as if such regular events had no cause.
>
> The above-reasoning also applied to the fact that there can also be no guarantee that a holding company will not act as NBFI despite the limitations provided in its AOI. As the saying goes – *action speaks louder than words*. As will be further discussed, petitioner's acts are clearly indicative of being engaged in NBFI activities. As such, petitioner's actions spoke louder than its AOI, such that it engaged in acts contrary to what was set forth therein."

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

It is erroneous to say that just because petitioner did not qualify as a "non-bank financial intermediary", it necessarily means that its dividends and interest income emanated from an "unknown activity". As extensively discussed, petitioner's dividends and interest income were derived from its activities as a holding company, and there is nothing illegal or unusual about it. To reiterate, mere acquisition and holding of a single company's shares of stock would not make each and every purchaser of stocks in the stock market a non-bank financial intermediary or an investment company as the terms are legally defined.

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

In view of the foregoing, the Court *En Banc* declares that petitioner is a holding company and not a non-bank financial intermediary or an investment company. Thus, the dividends and interests it received in 2010 may not be the subject of LBT imposed by respondents in 2011.

In ***Michigan Holdings, Inc. vs. City Treasurer of Makati, Nelia A. Barlis,***[44] the Court *En Banc* unanimously held that dividend and interest income of holding companies are not subject to LBT, *viz.*:

> "Indeed, if the business of a holding company is in the same class as that of a bank or other financial institutions, the Makati City tax ordinance could simply have included holding companies in its Section 3A.02(h), instead of placing them all by themselves in Section 3A.02(p) and then making the tax rates in either Section 3A.02(h) or (g) applicable to them. That holding companies, exclusively, were placed in a separate section, shows that they comprise a category distinct from the class of "banks and other financial institutions" as defined by Section 131(e) of the LGC. **That holding companies were subjected to a tax on dividend income which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions, shows a deliberate intent to circumvent the prohibition laid down by Section 133(a) that the taxing powers of LGUs shall not extend to the levy of income tax,**

[44] CTA EB Case No. 1093 (CTA AC Case No. 99), June 17, 2015.

> **except on banks and other financial institutions**." *(Boldfacing supplied)*

In fine, it is clear that respondents' collection of the disputed LBT is erroneous. As respondents received the amount when in fact it is not legally due to the City of Davao, respondents are duty-bound to credit or refund the same to petitioner.

WHEREFORE, premises considered, the Petition for Review filed by petitioner **Te Deum Resources, Inc.** is **GRANTED.** The assailed February 10, 2017 Decision and July 19, 2017 Resolution of the Court in Division are hereby **REVERSED** and **SET ASIDE.** The assessment for local business tax for the first and second quarters of taxable year 2011 issued against petitioner are **CANCELLED** and **WITHDRAWN**.

Accordingly, respondents are **ORDERED** to refund or issue a tax credit certificate to petitioner in the amount of One Million Two Hundred Twenty Thousand Five Hundred Thirteen and 50/100 Pesos (₱1,220,513.50) representing the erroneously paid 0.55% local business tax for the first and second quarters of taxable year 2011.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(I join Justice Castañeda Jr.'s Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TE DEUM RESOURCES, INC.,
Petitioner,

CTA EB No. 1692
(CTA AC No. 150)

Present:

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

- versus –

CITY OF DAVAO and HON. RODRIGO S. RIOLA, in his capacity as the City Treasurer of Davao City,
Respondents.

Promulgated:
MAY 08 2018 11:00am

x--x

DISSENTING OPINION

CASTAÑEDA, JR., *J.*:

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

In concluding that petitioner is not an NBFI, the subject Decision pertinently found that:

> **"A non-bank financial intermediary may not be considered as such unless it possesses all the requirements**

that qualify it to fall within its legal definition. Here, there is nothing in the records which will show that petitioner meets the foregoing requirements.

<u>First</u>, no proof was presented that petitioner was '*authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities*'. Petitioner in fact, pointed out that, it was not required by the Securities and Exchange Commission to secure a secondary license. Furthermore, the 'determination of whether a person or an entity is (a) performing banking or quasi-banking functions, or (b) engaged in other types of financial intermediation shall be decided by the Monetary Board, subject to judicial review. Since no such determination by the Monetary Board exists on record that may confirm, even remotely, that petitioner is a non-bank financial intermediary, it was erroneous for respondent City of Davao to classify petitioner as one.

<u>Second</u>, while petitioner's Amended Articles of Incorporation may cover the supposed functions of a non-bank financial intermediary, it was not shown that said functions are '*principal*', *i.e.*, '*chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental'* and performed on a regular or recurring basis. Rather, the primary purpose for which petitioner was incorporated is to 'direct the operations of other corporations through the ownership of stock therein', and 'to do every act and thing covered generally by the denomination **'holding company'**, to wit:

xxx xxx xxx

<u>Third</u>, it was never established that the enumerated functions under the third requirement were performed by petitioner '*on a regular and recurring, not on an isolated basis*.' In fact, there is no evidence on record which would establish that petitioner performed the foregoing functions.

xxx xxx xxx

In truth, the assessment of LBT on petitioner's dividends and interest income is based on respondent's conclusion that petitioner's business operation which consists solely of stock investments in SMC and money market placements, fall within the purview of the definition of 'banks and other financial institutions' provided in Section 131(e) of the LGC and Revenue Regulations No. 12-2003. Respondents argue that petitioner's '*owning a substantial number of shares of stock and receiving dividends by millions of pesos as a return of such investment and interest income from [petitioner's] money market placements in SMC*' constitute an act of investment or doing business. Allegedly, the Audited Financial Statements of petitioner reveals that investing and holding the shares of SMC and making money placements are the sole and principal business operation and source of revenue of petitioner.

There is nothing in the AFS, however, that would show that petitioner engaged in the business of an investment company or non-bank financial intermediary. There is also no mention of money market placements in SMC made by petitioner apart from the SMC preferred shares it holds. The AFS merely confirms that petitioner's dividends are from its SMC preferred shares and its interest income are from its short-term deposits, savings deposits and other non-current assets."

However, the subject Decision failed to consider the following:

(1) The authorization by the BSP for an entity to perform NBFI activities, and the Monetary Board's determination whether an entity is performing banking or quasi-banking functions or other types of financial intermediation, are mere regulatory measures;

(2) Petitioner performed NBFI activities despite the limitations set in its Articles of Incorporation (AOI); and

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

The authorization by the BSP for an entity to perform NBFI activities, and the Monetary Board's determination whether an entity is performing banking or quasi-banking functions or other types of financial intermediation, are mere regulatory measures

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

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

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

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

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

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

Petitioner's consistent receipt of dividends and interest income from its equity securities and money market placements leads to no

other conclusion that it engaged in NBFI activities

Contrary to the findings in the subject Decision that there is no evidence on record which would establish that petitioner performed the NBFI functions, the lower court found that:

> "While the primary purpose of Petitioner appears to set a qualification or condition that: '***provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation.***', said ***proviso*** in the Court's mind is a classic evasion by Petitioner from the requirement to secure a secondary license for investment company under the regulation of the Bangko Sentral ng Pilipinas for non-banking financial intermediaries, per second paragraph of **Section 4101Q1 of MANUAL OF REGULATIONS FOR NON-BANK FINANCIAL INSTITUTIONS**, to wit:
>
> '*Non-banking financial intermediaries shall include the following*:
>
> ***(1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house, investment company, financing company, securities dealer/broker, lending investor, pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association and building and loan association.***
> xxxx'
>
> Petitioner cannot hide under the cloak of its evasive *proviso*, because Petitioner is glaringly and clearly under the category of a Financial Intermediary.
>
> To stress, the income of the Petitioner Corporation comes only from two sources, to wit:
>
> 1. ***Dividends from TDRI's SMC Shares; and***
> 2. ***Interest Income from TDRI's Money Market Placements*** (Par. 11, Petition)
>
> In short, these ***dividends and interests*** are not considered incidental to its business quest, but are the **principal** *(defined*

> *above as:* ***Principal*** *shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental)* incomes of Petitioner's Corporation in the regular course of its business in line with the Primary Purpose of its Amended Articles of Incorporation."

Upon review, the Court in Division found that petitioner, indeed, engaged in NBFI activities, as follows:

> "Moreover, petitioner's business consists of owning a substantial number of shares of stock and equity in SMC. The Notes to Financial Statements confirmed that petitioner's main activity has been the holding of shares of stock of SMC. Also, based on petitioner's Statement of Cash Flows, the dividends and interest income were considered income from both **operating** and **investing** activities. **The continued receipt of dividends and interest income from its equity securities and money market placements is a direct consequence of its business engagements and not merely incidental to its business. Thus, petitioner is deemed engaged in the business of investing or placement of funds which is well within the definition of a financial intermediary.**
>
> The fact that petitioner has a continuing huge investment in shares of stocks of SMC to which it regularly receives millions of pesos in dividends which it reinvests in money placement to attain maximum profit negates petitioner's argument that it does not perform the principal functions of a financial intermediary on a regular and recurring basis. Likewise, the fact that petitioner has no other business, except its investment in SMC, shows its real intent to engage solely and primarily in the business of stock investment and money market placements in the said company; thus, any profit it received is a direct consequence of its business engagements and not just mere incidental thereto."

In light of the foregoing findings both of the lower court and the Court in Division and based on the evidence presented, it cannot be doubted that petitioner is engaged in NBFI activities. Again, the fact that petitioner earned dividends and interest income is not a metaphysical phenomenon that arose out of nothing. Surely, petitioner has been engaged in NBFI activities in order to generate such income, as shown by petitioner's Financial Statements and Cash Flows.

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

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