**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

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| **THE CITY OF MAKATI AND THE CITY TREASURER OF MAKATI CITY,** Petitioners, | **CTA EB No. 1530** (CTA AC No. 143) |
| | ***Present:*** |
| - versus - | **DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** JJ. |
| **METRO PACIFIC INVESTMENTS CORPORATION,** Respondent. | ***Promulgated:*** FEB 09 2018 2:50 p.m. |

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# DECISION

**UY, J.:**

The instant *"Petition for Review (En Banc)"*[1] filed on October 10, 2016 by the City of Makati and the City Treasurer of Makati City against Metro Pacific Investments Corporation, seeks the reversal and setting aside of the Decision dated July 20, 2016[2] and Resolution dated September 20, 2016[3], both promulgated by the Third Division of this Court (Court in Division) in CTA AC No. 143, entitled *"The City of Makati and Nelia A. Barlis, in her capacity as Incumbent City Treasurer of Makati City, Petitioners, vs. Metro Pacific Investments Corporation, Respondent,"* the dispositive portions of which

**Decision dated July 20, 2016:**

> "**WHEREFORE,** in view of the foregoing, the present Petition for Review is hereby **DENIED.** The assailed Decision dated March 31, 2015 and Order dated June 22, 2015 by the Regional Trial Court, Branch 146, Makati City, ordering petitioners to return the erroneously collected Local Business Tax in the amount of Four Million Four Hundred Ninety-nine Thousand Six Hundred Fifty-three and 19/100 Pesos (Php4,499,653.19) by way of cash refund to respondent Metro Pacific Investments Corporation, is hereby **AFFIRMED.**
>
> **SO ORDERED.**"

**Resolution dated September 20, 2016:**

> "**WHEREFORE,** petitioners' Motion for Reconsideration (of the Decision dated 20 July 2016) is hereby **DENIED**.
>
> **SO ORDERED.**"

## THE FACTS

Petitioner City of Makati is a duly created and existing local government unit empowered under the Local Government Code to assess and collect local business taxes through petitioner City Treasurer, who is impleaded in her official capacity.

Respondent Metro Pacific Investments Corporation is a corporation duly organized and existing under the laws of the Philippines, with principal business address at 10th Floor, MGO Building, Legaspi corner Dela Rosa Streets, Legaspi Village, Makati City.

In early 2011, respondent was issued a billing assessment for various taxes, fees and charges in the total amount of ₱4,513,818.19, inclusive of Local Business Tax (LBT) in the amount of ₱4,499,653.19, computed based on the income reported in respondent's financial statements for the year ending December 31, 2010.

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On January 31, 2011, respondent fully paid the amount of the assessment.

Subsequently, on January 25, 2013, respondent filed an administrative claim for refund with petitioner Treasurer of Makati City, maintaining that the aggregate interest, rental and dividend income and gain on sale of fixed assets for the year 2010 does not constitute gross receipts as defined in Section 131(h) of the Local Government Code (LGC), or Section 1B.01 (g) of the Revised Makati Revenue Code (RMRC), as amended.

On January 29, 2013, respondent filed with the Regional Trial (RTC), a *Complaint* for refund of erroneously paid LBT in the amount of ₱4,499,653.19. The case was entitled as *"Metro Pacific Investments Corporation, Plaintiff, versus City of Makati and Hon. Nelia A. Barlis, in her capacity as incumbent City Treasurer of the City of Makati, Defendants"*, docketed as Civil Case No. 13-084, and was assigned to Branch 137 on January 31, 2013.

The case, however, was re-raffled and received by RTC-Branch 146 on March 31, 2014, due to the parties' failure to amicably settle through the Judicial Dispute Resolution Conferences.

During the pre-trial, the following issues were delineated:

1. Whether the assessment of LBT against respondent is correct, specifically whether a holding company such as respondent may be taxed under Section 3A.02(p) of the RMRC, in relation to Section 3A.02(h), without reference to Section 3.A02(g) of the same Code;

2. Whether respondent's dividend income, aggregate interest income, and rental income constitute taxable gross receipts;

3. If respondent is a holding company, whether it is only liable to pay LBT on the basis of management fees for services rendered, if any;

4. Whether the case of *Orleyte Company (Philippine Branch) vs. The City of Makati,* is applicable to the case at bar; and

5. Whether, in the event that respondent will be granted its refund, it may only be granted in a form of tax credit, by express provision of law.

In its Decision, the RTC-Branch 146 found for respondent, the dispositive portion of the same reads as follows:

> "WHEREFORE, in view of all the foregoing, the court finds for the plaintiff. Defendant City of Makati and Hon. Nelia A. Barlis, in her capacity as incumbent City Treasurer of the City of Makati, are hereby ordered to return the erroneously collected tax in the amount of Four Million Four Hundred Ninety Nine Thousand Six Hundred Fifty Three Pesos and Nineteen Centavos (₱4,499,653.19), by way of tax refund to the plaintiff, Metro Pacific Investments Corporation.
>
> SO ORDERED."

On April 27, 2015, petitioners filed their *Motion for Reconsideration (of the Decision dated March 31, 2015).*

In its Order, the RTC-Branch 146 denied petitioner's *Motion for Reconsideration* of lack of merit.

On July 8, 2015, petitioners filed a *Petition for Review* before the Court in Division. The case was docketed as CTA Case No. 143. Respondent filed its *Comment* to the said *Petition* on August 6, 2015.

On August 24, 2015, the Court in Division required the parties to file their respective memoranda within a period of thirty (30) days from receipt thereof. Petitioners and respondent then filed their *Memoranda* on October 6, 2015 and October 14, 2015, respectively. Thereafter, the case was submitted for decision on October 21, 2015.

In the assailed Decision dated July 20, 2016, the Court in Division denied the *Petition for Review* and upheld the Decision dated March 31, 2015 and Order dated June 22, 2015 rendered by the RTC-Branch 146, ordering petitioners to return the erroneously collected Local Business Tax in the amount of ₱4,499,653.19 by way of cash refund to respondent.[4]

Aggrieved, petitioners filed a *Motion for Reconsideration (of the Decision dated 20 July 2016)* on August 15, 2016, to which respondent filed a *Motion to Admit with attached*

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[4] EB Docket, pp. 28 to 51.

*Comment/Opposition (To Motion for Reconsideration dated August 15, 2016)* on September 8, 2016. In the assailed Resolution dated September 20, 2016, the Court in Division granted respondent's *Motion to Admit*, while petitioner's *Motion for Reconsideration* was denied.[5]

Petitioners filed the instant *Petition for Review* on October 10, 2016.[6]

Without necessarily giving due course to the instant *Petition for Review*, respondent was ordered by the Court *En Banc* to file its comment thereon.[7] Pursuant thereto, respondent filed its *Comment* on January 26, 2017.[8]

Thereafter, the instant *Petition for Review* was submitted for decision on February 9, 2017.[9]

Hence, this Decision.

**ASSIGNMENT OF ERRORS**

Petitioners raise the following errors supposedly committed by the Court in Division and RTC-Branch 146, to wit:

"A. WHETHER OR NOT THE HONORABLE THIRD DIVISION OF THE COURT OF TAX APPEALS AND THE TRIAL COURT GRAVELY ERRED IN RULING THAT RESPONDENT IS ENTITLED TO A REFUND OF THE LOCAL TAXES IN THE AMOUNT OF P4,513,818.19 ALLEGEDLY BECAUSE THE IMPOSITION BY THE PETITIONERS OF THE TAX OF 20% OF 1% AS REFERRED TO IN SECTION 3A.02(H) OF THE REVISED MAKATI REVENUE CODE ON A HOLDING COMPANY SUCH AS THE RESPONDENT WAS NOT VALID?

B. WHETHER OR NOT THE HONORABLE THIRD

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[5] EB Docket, pp. 52 to 55.
[6] Docket, pp. 1 to 27.
[7] Resolution dated November 28, 2016, EB Docket, pp. 57 to 58.
[8] EB Docket, pp. 59 to 80.
[9] EB Docket, pp. 105 to 106.

DIVISION OF THE COURT OF TAX APPEALS AND THE TRIAL COURT GRAVELY ERRED IN USING THE DEFINITION OF "GROSS SALES OR RECEIPTS" UNDER SECTION 1B.01 OF THE REVISED MAKATI REVENUE CODE INSTEAD OF THE CLEAR AND DIRECT DEFINITION OF THE TERM "GROSS SALES OR RECEIPTS" UNDER SECTION 3A.02(H) OF THE REVISED MAKATI REVENUE CODE?

C. WHETHER OR NOT THE HONORABLE THIRD DIVISION OF THE COURT OF TAX APPEALS AND THE TRIAL COURT GRAVELY ERRED IN RULING THAT THE ALLEGED REFUNDABLE AMOUNT SHOULD BE MADE IN CASH AND NOT VIA A TAX CREDIT?

D. WHETHER OR NOT THE HONORABLE THIRD DIVISION OF THE COURT OF TAX APPEALS AND THE TRIAL COURT GRAVELY ERRED WHEN IT FAILED TO STATE IN ITS DECISION DATED 31 MARCH 2015 THAT RESPONDENT WAS NOT ABLE TO OVERCOME THE BURDEN OF PROVING THAT IT IS ENTITLED TO THE REFUND BEING PRAYED FOR."[10]

***Petitioners' arguments:***

Petitioners contend that respondent Metro Pacific Investment Corporation is a holding company clearly engaging in activities enumerated under Section 3A.02(h) of the RMRC.

In addition, petitioners assert that in the context of Section 3A.02(p), *"Gross Sales or Receipts"* refer to those earned from, among others, interest, commissions, discounts from lending activities, income from: (i) leasing, (ii) investments, (iii) dividends, and (iv) insurance premiums, profit from exchange or sale of property.

Petitioners likewise argue that the wordings of Section 7B.14 of the RMRC are clear that a claim for refund or credit shall not be refundable in cash.

[10] EB Docket, pp. 13 to 14.

Finally, petitioners point out that tax refunds partake the nature of tax exemptions and are construed *strictissimi juris* against the person or entity claiming the exemption.

***Respondent's counter-arguments:***

Respondent counters that it is a holding company engaged in business management services similar to business management services included in the enumeration under Section 3A.02 (G) of the RMRC.

Thus, respondent claims that Section 3A.02(P) of the RMRC clearly imposes LBT only on respondent's gross receipts. According to respondent, the reference to Sections 3A.02(G) or (H) of the RMRC in Section 3A.02(P) pertains only to the rates to be imposed and not what constitutes gross receipts.

Respondent also argues that Section 7B.14 of the RMRC clearly provides that the prohibition on recovery in the form of cash of any tax erroneously or illegally collected only applies to tax credits and not to tax refunds. In addition, respondent asserts that the RMRC is strictly construed against petitioner and liberally in favor of respondent.

Finally, respondent insists that it was able to sufficiently show that it is entitled to its claim for refund.

**THE COURT *EN BANC*'S RULING**

The instant *Petition for Review* lacks merit.

***Petitioners may not impose business taxes on dividends and interest income received by respondent as there is no showing that the latter is a bank or other financial institution.***

At this juncture, it must be stated that We agree with the observation of the Court in Division that respondent was taxed at the rate applicable to banks and financial institutions under Section

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3A.02(p) in relation to Section 3A.03(h), both of the Revised Makati Revenue Code or RMRC. We further agree that respondent should **not** be taxed as such.

Section 129, Book II, of Republic Act (RA) No. 7160, otherwise known as the LGC of 1991, empowers each local government unit to create its own sources of revenue, and to levy taxes, fees, and charges subject to the provisions of the code, consistent with the basic policy of local autonomy.

Without doubt, the power of petitioner City of Makati to impose business taxes finds basis under Section 143(e) and (f), in relation to Section 151, both of the LGC of 1991, to wit:

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

| With gross sales or receipts for the preceding calendar year in the amount of: | | Amount of Tax Per Annum |
|---|---|---|
| Less than 5,000.00 | | 27.50 |
| ₱5,000.00 or more but less than | 10,000.00 | 61.60 |
| 10,000.00 or more but less than | 15,000.00 | 104.50 |
| 15,000.00 or more but less than | 20,000.00 | 165.00 |
| 20,000.00 or more but less than | 30,000.00 | 275.00 |
| 30,000.00 or more but less than | 40,000.00 | 385.00 |
| 40,000.00 or more but less than | 50,000.00 | 550.00 |
| 50,000.00 or more but less than | 75,000.00 | 880.00 |
| 75,000.00 or more but less than | 100,000.00 | 1,320.00 |
| 100,000.00 or more but less than | 150,000.00 | 1,980.00 |
| 150,000.00 or more but less than | 200,000.00 | 2,640.00 |
| 200,000.00 or more but less than | 250,000.00 | 3,630.00 |
| 250,000.00 or more but less than | 300,000.00 | 4,620.00 |
| 300,000.00 or more but less than | 400,000.00 | 6,160.00 |
| 400,000.00 or more but less than | 500,000.00 | 8,250.00 |
| 500,000.00 or more but less than | 750,000.00 | 9,250.00 |
| 750,000.00 or more but less than | 1,000,000.00 | 10,250.00 |
| 1,000,000.00 or more but less than | 2,000,000.00 | 11,500.00 |
| 2,000,000.00 or more | at a rate not exceeding fifty percent (50%) of one percent (1%) | |

> 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 premiums." *(Emphases and underscoring supplied)*

"SEC.151. *Scope of Taxing Powers.* — Except as otherwise provided in this Code, **the city, may levy the taxes, fees, and charges which the province or municipality may impose**: xxx

**The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%)** except the rates of professional and amusement taxes." *(Emphases supplied)*

Pursuant to this taxing power, petitioner City of Makati adopted the RMRC, imposing local business taxes, the pertinent portions of which are quoted hereunder, to wit:

"**CHAPTER III - City Taxes**
ARTICLE A - Business Tax

SECTION 3A.01. *Definitions.* — When used in this Article: —

xxx xxx xxx

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

xxx xxx xxx

SECTION 3A.02. *Imposition of Tax.* — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

xxx xxx xxx

(g) On Contractors and other independent contractors defined in SEC. 3A-01 (t) of chapter III of this Code; and on owners or operators of business establishments rendering or offering services such as; advertising agencies; xxx business management services; collecting agencies; xxx

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

| Amount of | Tax per Annum |
|---|---|
| less than P50,000.00 | Exempt |
| P50,000.00 or more but less than 75,000.00 | 1,144.00 |
| 75,000.00 or more but less than 100,000.00 | 1,716.00 |
| 100,000.00 or more but less than 150,000.00 | 2,574.00 |
| 150,000.00 or more but less than 200,000.00 | 3,432.00 |
| 200,000.00 or more but less than 250,000.00 | 4,719.00 |
| 250,000.00 or more but less than 300,000.00 | 6,006.00 |
| 300,000.00 or more but less than 400,000.00 | 8,008.00 |
| 400,000.00 or more but less than 500,000.00 | 10,725.00 |
| 500,000.00 or more but less than 750,000.00 | 12,025.00 |
| 750,000.00 or more but less than 1,000,000.00 | 13,325.00 |
| 1,000,000.00 or more but less than 2,000,000.00 | 15,000.00 |
| 2,000,000.00 | P15,000.00 plus seventy five percent (75%) of one percent (1%) over 2 million. |

xxx xxx xxx

(h) **<u>On owners or operators of banks and other financial institutions</u> 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**

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> **the business tax at the rate prescribed under subsection (l) 1, as provided in this code.**
>
> xxx xxx xxx
>
> (p) On Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/or receipts during the preceding calendar year."

The point of contention in this case, however, lies on which provision respondent should be taxed. According to the petitioners, respondent is engaged in investment and financial activities, similar to banks and financial institutions, and should be taxed under Section 3A.02(h), in relation to 3A.02(p) of the RMRC.[11]

We are not convinced.

Section 131(e) of the LGC of 1991 states the scope of the term *"Banks and other financial institutions"*, to wit:

> "SEC. 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**;" *(Emphases supplied)*

<u>Respondent is *not* a non-bank financial intermediary.</u>

According to the foregoing provision, "*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 *"as defined under applicable laws,*

[11] Docket, p. 18.

*or rules and regulations thereunder"*.

The definition of the term *"non-bank financial intermediary"*, is found in Section 22(W) of the National Internal Revenue Code (NIRC) of 1997, which reads as follows:

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

Based on and in relation to this definition, reference to Section 2-D(c) of RA No. 337, as amended by Presidential Decree (PD) No. 71, is called for. Said Section 2-D (c) reads:

> "(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 with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others;"

The BSP, in turn, elaborated on the said definition. Section 4101Q.1 of the BSP's Manual of Regulations for Non-Bank Financial Institutions, reads as follows, viz.:

> "§ 4101Q.1 *Financial intermediaries. — Financial intermediaries* shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.
>
> <u>*Principal* shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.</u>
>
> <u>*Functions* shall mean actions, activities or operations of a person or entity by which his/its business or purpose is fulfilled or carried out</u>. 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." *(Underscoring supplied)*

Based on the foregoing provisions, the basic requirements for a person or entity to be considered as a *"non-bank financial intermediary"* are as follows:

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

    c) Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;

d) 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.

In the case of respondent, there is no indication that it fulfills the first requirement. This is so because there is no showing that respondent was *"authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities"*. Thus, upon this ground, respondent cannot already be treated as a non-bank financial intermediary.

The second requirement is not likewise met. According to respondent's Amended Articles of Incorporation,[12] the primary purpose of respondent is as follows:

"PRIMARY PURPOSE

To purchase, subscribe for, or otherwise acquire and own, hold, use, invest in, develop, sell, assign, transfer, lease, take options to, mortgage, pledge, exchange, and in all ways deal with, personal and real property of every kind and description, including shares of the capital stock of corporations, bonds, notes, evidence of indebtedness, and other securities, contracts or obligations of any corporation, domestic, or foreign, without however engaging in dealership in securities, in the stock brokerage business or in the business of an investment company."

Based on the foregoing, while it may be true that the functions of respondent, on the basis of its primary purpose as stated in its Amended Articles of Incorporation, may cover the supposed functions of a non-bank financial intermediary, it was not shown that said functions are *"principal"* in nature, *i.e.*, *"chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental."* The

[12] RTC Records (Vol. I), p. 20.

records of this case are wanting of any proof that the stated functions were principally done by respondent in 2010.

Furthermore, it was never established that the enumerated functions under the third requirement were performed by respondent *"on a regular and recurring, not on an isolated, basis."* In fact, no evidence was shown that respondent ever performed the said functions.

Respondent is *not* a lending investor.

Under Section 3(a) of RA No. 9474, otherwise known as the Lending Company Regulation Act of 2007, a lending company *"shall refer to a corporation engaged in granting loans from its own capital funds or from funds sourced from not more than nineteen (19) persons. It shall not be deemed to include banking institutions, investment houses, savings and loan associations, financing companies, pawnshops, insurance companies, cooperatives and other credit institutions already regulated by law.* ***The term shall be synonymous with lending investors****."*

Based on the foregoing definition, a lending investor is a corporation engaged in granting loans from its own capital funds or from funds sourced from not more than 19 persons. However, there is no showing in this case that respondent falls under the said definition.

Respondent is *not* a finance and investment company.

Neither is respondent considered a finance and investment company, since there is no showing that it falls under the definition as defined under Section 3 of RA No. 5980, as amended by RA No. 8556, otherwise known as the Financing Company Act, to wit:

> "Sec. 3. *Definition of Terms.* — As used in this Act, the term:
>
> (a) 'Financing companies' hereinafter called companies, are corporations, except banks, investments houses, savings and loan associations, insurance companies, cooperatives, and other financial institutions organized or operating under other special laws, **which are primarily organized for the purpose of extending**

> **credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by financial leasing of movable as well as immovable property**; x x x."

Respondent is *not* a pawnshop.

Respondent cannot also be considered as a pawnshop, as there is no proof that it is engaged in the business of lending money on personal property delivered as security for loans, as defined under Section 3 of PD No. 114, otherwise known as the Pawnshop Regulation Act.

Respondent is *not* a money shop.

Likewise, respondent does not fall within the purview of the definition of a money shop, which is *"an extension service unit of a banking institution usually operating in public markets with authority to accept money for deposit and extend short-term loans for specific purposes."*[13]

Respondent is *not* an insurance company.

Neither is there any showing that respondent is doing an insurance business or transacting an insurance business, as defined in accordance with Section 2 of the Insurance Code, as amended by RA No. 10607, to wit:

> "Section 2. Whenever used in this Code, the following terms shall have the respective meanings hereinafter set forth or indicated, unless the context otherwise requires:
>
> (a) A *contract of insurance* is an agreement whereby one undertakes for a consideration to indemnify another

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[13] Sec. 3 (d-2), Local Tax Code; *Cf.* Philippine Law Dictionary, 3rd Edition, Federico B. Moreno.

against loss, damage or liability arising from an unknown or contingent event.

A contract of suretyship shall be deemed to be an insurance contract, within the meaning of this Code, only if made by a surety who or which, as such, is doing an insurance business as hereinafter provided.

(b) **The term *doing an insurance business* or *transacting an insurance business*, within the meaning of this Code, shall include:**

**(1) Making or proposing to make, as insurer, any insurance contract;**

**(2) Making or proposing to make, as surety, any contract of suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the surety;**

**(3) Doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this Code;**

**(4) Doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Code.**

In the application of the provisions of this Code, the fact that no profit is derived from the making of insurance contracts, agreements or transactions or that no separate or direct consideration is received therefor, shall not be deemed conclusive to show that the making thereof does not constitute the doing or transacting of an insurance business." *(Emphasis supplied)*

Respondent is *not* a stock market.

This Court is not aware of any legal definition of the term "stock market". Nevertheless, it is not hard to discern that a stock market is one where shares of stocks in a corporation are bought and sold. There is no indication that respondent is engaged in the business of buying and selling shares of stocks in a corporation.

Respondent is *not* a stock broker.

Moreover, it has not been shown that respondent is a stock broker as defined under Section 3 of RA No. 8799, otherwise known as the Securities Regulation Code, to wit:

> "Section 3. *Definition of Terms.*
>
> x x x x
>
> 3.3. **'Broker' is a person engaged in the business of buying and selling securities for the account of others**." *(Emphasis supplied)*

Respondent is *not* a dealer in securities.

Furthermore, there is no clear indication that respondent falls within the definition of the term *"dealers in securities,"* as found in Section 22(U) of the NIRC of 1997, which reads as follows:

> "(U) The term **'dealer in securities'** means a merchant of stocks or securities, whether an individual, partnership or corporation, with an established place of business, regularly engaged in the purchase of securities and the resale thereof to customers; that is, one who, as a merchant, buys securities and re-sells them to customers with a view to the gains and profits that may be derived therefrom." *(Emphasis supplied)*

Respondent is *not* a foreign exchange.

Lastly, We do not find that respondent is a foreign exchange (forex), as defined in the BSP Manual of Regulations on Foreign Exchange Transactions, as follows:

> "**Forex Corporations, whether or not named as such, refer to entities whose business include buying and selling of foreign exchange.**"[14] *(Emphasis supplied)*

There is no indication that respondent's business include the buying and selling of foreign exchange.

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[14] *Glossary*, BSP Manual of Regulations of Foreign Exchange Transactions.

Correspondingly, the Court *En Banc* hereby holds that respondent cannot be considered as a bank or other financial institution, and thus, the interests and dividends it received in calendar year 2010 should not have been the subject of local business tax imposed by the petitioner City of Makati. Thus, respondent may claim the refund being sought.

With this ruling, the Court En Banc shall no longer address the matter pertaining to what tax base should be used in the imposition of the said tax raised by petitioners.

***Respondent was able to prove its entitlement to the refund being prayed for.***

Section 196 of the LGC of 1991 provides the requirements for taxpayer's claims for refund or tax credit, to wit:

> "SEC. 196. *Claim for Refund of Tax Credit.* – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit."

In this case, respondent sufficiently proved its compliance with the foregoing requirements, as it was able to present proof of its payment of the assessed taxes in the amount of ₱4,499,653.19, as evidenced by Official Receipt No. MKTCE 1194250 dated January 31, 2011.[15] Thereafter, respondent filed its *Claim for Tax Refund* on January 25, 2013,[16] and its *Complaint* before the RTC of Makati on January 29, 2013,[17] well within the two-year prescriptive period stated in Section 196 of the LGC of 1991. And in view of Our finding that respondent should not be taxed as a bank or a non-bank financial intermediary, respondent is entitled to the said amount.

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[15] RTC Docket (Vol. I), p. 166.
[16] RTC Docket (Vol. I), pp. 167 to 176.
[17] RTC Docket (Vol. I), pp. 1 to 18.

***The Court in Division did not err in upholding the decision of the RTC-Branch 146 to grant respondent's claim for refund in cash.***

Petitioners are of the view that the wordings of Section 7B.14 of the RMRC are clear that a claim for refund or credit shall not be refundable in cash.

We disagree. Petitioners misread, if not misunderstood, the said provision.

For easy reference, Section 7B.14 of the RMRC reads as follows:

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

A more careful reading of the foregoing provision would reveal that a taxpayer is allowed to file a written claim either of a refund *or* a tax credit. As a corollary, this is even permitted by the aforequoted Section 196 of the LGC of 1991. What is being prohibited instead of Section 7B.14 of the RMRC is **not** the granting of a refund in cash, but the conversion of a **tax credit already "granted"** into a cash refund.

Considering therefore petitioners' failure to refute, or validly argue against, the finding of the RTC-Branch 146, as affirmed by the Court in Division, in decreeing the grant of refund in favor of respondent, instead of a tax credit, We sustain the assailed finding.

**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit. The Decision dated July 20, 2016 and the Resolution dated September 20, 2016 rendered by the Court in Division in CTA AC No. 143 are **AFFIRMED**.

**SO ORDERED.**

**ERLINDA P. UY**
*Associate Justice*

WE CONCUR:

**ROMAN G. DEL ROSARIO**
*Presiding Justice*

**JUANITO C. CASTAÑEDA, JR.**
*Associate Justice*

**LOVELL R. BAUTISTA**
*Associate Justice*

**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*