REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

VALHALLA PROPERTIES LIMITED, INC.,
Petitioner,

- versus -

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

CTA AC NO. 137

Members:

BAUTISTA, *Chairperson*
FABON- VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAR 13 2017
9:46 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution is respondents' Motion for Reconsideration filed on October 10, 2016, with petitioner's Comment/Opposition To Respondent's Motion for Reconsideration (Re: Decision Promulgated 15 September 2016) posted on November 21, 2016.

Respondents seek reconsideration of the Decision[1] promulgated on September 15, 2016 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. The Decision dated November 10, 2014 and the Order dated April 20, 2015 of the Regional Trial Court, Branch 17 of the City of Davao in Civil Case No. 35,681-14

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[1] Docket, pp. 264-276.

> are hereby **REVERSED and SET ASIDE**. The Assessment dated January 20, 2014 is hereby **CANCELLED**.[2]

In their Motion for Reconsideration, respondents pray that the assailed Decision be reconsidered and that an order be issued or a decision be rendered affirming the appealed decision of the lower court. Respondents maintain its previous argument that the Supreme Court's decision in *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic of the Philippines*,[3] does not operate in the instant case to avoid the Assessment dated January 14, 2014.

On the other hand, petitioner seeks the denial of respondents' Motion for Reconsideration for lack of merit. Petitioner argues that it and the San Miguel Corporation (SMC) shares it holds are not subject to local business tax under paragraphs (o) and (a) of Section 133 of the Local Government Code (LGC).[4]

After due consideration of the parties' arguments, the Court finds respondents' Motion for Reconsideration bereft of merit.

The issue presented by respondents in their Motion for Reconsideration has been thoroughly considered and threshed out in the assailed Decision. We reiterate our ruling that respondent is without authority by to assess petitioner local business tax by virtue of the limitation laid out in Section 133(o) of the LGC. We held that –

> x x x [T]he Supreme Court held that all SMC shares of stock held by the holding companies, as of 1983, together with all dividends declared, paid and issued thereon as well as any increments thereto are owned by the government to be used only for the benefit of all coconut farmers and for the development of the coconut industry. It cannot be clearer that the income from subject shares is not subject to local business taxes.
>
> x x x [T]he Supreme Court's ruling in *COCOFED* has already taken [petitioner] and its assets outside the scope of the City of Davao's taxing power.[5]

Moreover, petitioner is not a bank or other financial institution; hence, the subject business tax may not be imposed on it.

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2 Id. at pp. 275-276.
3 *Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines*, G.R. Nos. 177857-58 & 178193, January 24, 2012.
4 Republic Act No. 7160.
5 Docket, p. 275.

The city's taxing power does not extend to the levy of income tax, except when levied on banks and other financial institutions.[6] The dividends[7] and interests[8] in this case are therefore not subject to the city's taxing power, unless petitioner is a bank or other financial institution.

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

> "Banks and other financial institutions" include non-bank financial intermediaries, lending investors, finance and investment companies, pawnshops, money shops, insurance companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder.

The LGC does not define the term "non-bank financial intermediary"; hence, resort to applicable laws, rules and regulations is proper.

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

> 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.

The General Banking Act,[9] on the other hand, defines "financial intermediaries" in Section 2-D(c), thus:

> "Financial intermediaries" shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others.

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[6] Section 133(a) of the LGC provides:
SECTION 133. *Common Limitations on the Taxing Power of Local Government Units.* – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
(a) Income tax, except when levied on banks and financial institutions; x x x

[7] Section 32(A)(7) of the NIRC of 1997, as amended.

[8] Section 32(A)(4) of the NIRC of 1997, as amended.

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

The Manual of Regulations for Non-Bank Financial Institutions (Manual) defines "financial intermediaries" in Section 4.101Q.1, thus:

> § **4101Q.1** ***Financial intermediaries.*** – *Financial intermediaries* shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.
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> *Principal* shall mean chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental.
>
> *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:
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> (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.

There is nothing in the record that shows that petitioner is a financial intermediary or that it has engaged in the activities defined and enumerated in the General Banking Act and in the Manual.

The General Banking Act provides that it is the Monetary Board that has the authority to determine whether a person or entity is performing banking or quasi-banking functions or engaged in other types of financial intermediation.[10] There is nothing on record showing that the Monetary Board determined petitioner to be a non-banking financial intermediary. There is also nothing on

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[10] Section 4 of R.A. No. 337, as amended by P.D. No. 1828 states:
Section 4. **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.** For the purpose of resolving such issue, the Monetary Board may, through appropriate supervising department of the Central Bank, examine, inspect or investigate the books and records of such person or entity. The department head and the examiners of said appropriate supervising department are hereby authorized to administer oaths to any such person or director, officer or employee of any such entity and to compel the presentation or production of all books, documents, papers or records necessary in their judgment to ascertain the facts relative to the true functions and operations of such person or entity. Failure or refusal to comply with the required presentation or production of such books, documents, papers or records shall subject the persons responsible therefor to the penal sanctions provided under Section 34 of R.A. No. 265, as amended. Persons or entities found by the Monetary Board to be performing banking or quasi-banking functions without the required prior authorization of the Monetary Board may, in addition to the proceedings provided under Section 34 of Republic Act No. 265, as amended, be subject to the imposition of fine of not in excess of P500 per day reckoned from the date the unauthorized banking or quasi-banking functions were performed and may be referred to the Securities and Exchange Commission for the revocation of its license to do business.

record showing that the Bangko Sentral ng Pilipinas authorized petitioner to perform quasi-banking activities as a non-bank financial intermediary.[11]

Hence, even assuming that petitioner and the SMC shares it holds are within the taxing power of the City of Davao despite the limitation under Section 133(o) of the LGC, it is still beyond the scope of the City of Davao's taxing power by virtue of the limitation under Section 133(a) of the LGC.

WHEREFORE, finding no compelling reason to reverse the ruling of the Court in the assailed Decision, respondents' Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[11] See Section 22(W) of the 1997 NIRC, as amended, and Section 2(D)(c) of the General Banking Act, quoted above.