REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

OFFICE OF THE CITY TREASURER AND/OR MAKATI CITY,
Petitioner,

-versus-

SOUTH CHINA RESOURCES, INC. (NOW KNOWN AS "SOCRESOURCES, INC."),
Respondent.

CTA EB NO. 2154
(CTA AC NO. 197)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, *and*
Modesto-San Pedro, *JJ.*

Promulgated:

NOV 11 2020
2:05 p.m.

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DECISION

RINGPIS-LIBAN, J.

Before the Court *En Banc* is a Petition for Review[1] seeking nullification of the Decision dated April 30, 2019[2] (assailed Decision) and the Resolution dated August 30, 2019[3] (assailed Resolution), all promulgated by the Second Division of this Court (Court in Division) in CTA AC No. 197 entitled *"South China Resources Inc. (now known as "SOCResources, Inc.") vs. Office of the City Treasurer and/or Makati City"* which granted the Petition for Review of South China Resources Inc. (now known as "SOCResources, Inc.") and denied for lack of merit the Office of the City Treasurer and/or Makati City's Motion for Reconsideration.

[1] Rollo, CTA EB No. 2154, pp. 1-14, with annexes.
[2] Ibid., pp.15-33.
[3] Ibid. 34-39.

The dispositive portions of the assailed Decision and Resolution read as follows:

Decision:

> "**WHEREFORE**, premises considered the Petition for Review filed by petitioner South China Resources, Inc. (now known as "SocResources, Inc.") is hereby **GRANTED**.
>
> Accordingly, the assailed Decision dated October 11, 2017 and the Order dated January 8, 2018 rendered by the Regional Trial Court of Makati City in Civil Case Nos. 14-165 and M-7835 are **REVERSED** and **SET ASIDE**. Respondents are hereby **DIRECTED** to **CANCEL** and **WITHDRAW** Notice of Assessment No. 13-80381 dated November 12, 2013 as well as Billing Assessment No. 019511 dated January 13, 2015.
>
> **SO ORDERED**."

Resolution:

> "**WHEREFORE**, premises considered, respondents' Motion for Reconsideration posted on May 21, 2019 is **DENIED** for lack of merit. Accordingly, the Decision dated April 30, 2019 is **AFFIRMED**.
>
> **SO ORDERED**."

THE PARTIES

Petitioner City Treasurer of Makati is the duly appointed city official empowered to assess and collect local business tax under the Revised Makati Revenue Code (RMRC), while the City of Makati is the duly created and organized local government unit (LGU). Both have their address at Makati City Hall, JP Rizal Street, Brgy. Poblacion, Makati City.[4]

Respondent SocResources, Inc., is a domestic corporation duly organized and existing under Philippine laws with Certificate of Incorporation No. ASO92-06441 issued by the Securities and Exchange Commission (SEC).[5] It is engaged in the passive investment business. In its Amended Articles of Incorporation, respondent's "primary purpose" is to engage in activities generally performed by "holding companies." Its principal office address is at

[4] Decision, p. 2.
[5] Decision, pp. 1-2.

the 4th Floor Enzo Building, 399 Senator Gil Puyat Avenue, Makati City, Philippines.[6]

THE FACTS

The relevant antecedents stated in the assailed Decision[7] are as follows:

> "By virtue of Letter of Authority No. 2013-0502, the revenue officers of the City Treasurer's Office of Makati City (City Treasurer) investigated and examined petitioner's financial documents. As a consequence of such investigation, respondent issued a Notice of Assessment dated November 12, 2013 classifying petitioner as a "Manufacturer" with deficiency local business taxes (LBT) in the total amount of Php4,872,182.45 for taxable years 2009, 2010 and 2011.
>
> Petitioner filed a protest letter against the assessment dated December 21, 2013 and received by Makati City on December 26, 2013 and which was denied by respondent City Treasurer in a letter dated January 8, 2014. In the letter denying the protest, respondent re-classified petitioner's business as a "holding company" and assessed petitioner for deficiency business taxes pursuant to Section 3A.02 (p) in relation to Section 3A.02 (h) of the RMRC. Petitioner then filed an appeal with RTC Makati on February 12, 2014 assailing respondent's denial of its protest.
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> xxx xxx xxx
>
> RTC Branch 66 of Makati City eventually dismissed the petitions filed by petitioner in the assailed Decision dated October 11, 2017 and ruled in favor of respondents and we quote relevant portions, *viz*:
>
>> "It is therefore clear under the above-quoted provision of the Revised Makati Revenue Code, that a "holding company" shall be taxed as a specific class of its own, without reference to it being a contractor or an owner or operator of banks or other financial institutions. Meaning, a "holding company" need not be a contractor nor an owner or operator of banks and other financial institutions. The wordings of Section 3A.02 (p) are plain and simple: a "holding company" shall be taxed at the rate prescribed

[6] Respondent's Comment, p. 1.
[7] Citations omitted.

> under either subsection (g) or (h) on its gross sales and/or receipts during the preceding year.
>
> xxx xxx xxx
>
> **WHEREFORE**, premises considered, judgment is hereby rendered upholding the validity of the Notice of Assessment No. 13-80381 dated November 12, 2013 as well as Billing Assessment No. 019511 dated January 13, 2015. Accordingly, both Civil Case No. 14-165 and M-7835 are hereby **DISMISSED**.
>
> **SO ORDERED**."

On November 10, 2017, petitioner filed a *Motion for Reconsideration* praying that the afore-quoted Decision be reversed and that respondents cancel the assessments for LBT.

On January 8, 2018, RTC Branch 66 issued an Order denying the *Motion for Reconsideration* on the ground that the issues raised by the petitioner in its Motion for Reconsideration have already been passed upon and resolved in the Decision rendered on October 11, 2017.

Aggrieved with the Decision and Order of the RTC Branch 66 of Makati City, petitioner filed a Petition for Review with this Court on February 9, 2018 via registered mail.

In a Resolution dated March 1, 2018, this Court directed respondents to file their Comment within ten (10) days from receipt thereof.

Respondents then filed their *Comment (to the Petition for Review)* on March 21, 2018.

On March 28, 2018, petitioner filed its *Reply (To Respondents' Comment (to the Petition for Review) dated 19 March 2018)*.

In a letter dated April 27, 2018, the Branch Clerk of Court of RTC Branch 66 Makati City, Atty. John Ivan B. Tablizo, transmitted the entire original records of Civil Case No. 14-165 in accordance with the Court's Resolution dated April 6, 2018.

In a Resolution dated May 8, 2018, the Court took note of the transmittal made by the Branch Clerk of Court of RTC Branch 66 Makati City.

On May 15, 2018, petitioner submitted its Memorandum while respondents failed to submit their Memorandum within the time prescribed by the Court.

In a Resolution dated June 7, 2018, the Court deemed the instant case submitted for decision."

The Court in Division rendered the assailed Decision on April 30, 2019, while the assailed Resolution on August 30, 2019.

Aggrieved, the petitioner filed through registered mail this Petition for Review before the Court *En Banc* on September 18, 2018. The Petition for Review was received by the Court *En Banc* on October 4, 2018.

In the Resolution[8] dated November 5, 2019, respondent was directed by the Court *En Banc* to file its comment in this case.

On December 2, 2019, respondent filed its "Comment [On Petitioners' "Petition for Review" dated 18 September 2019]."[9]

In the Resolution[10] dated December 26, 2019, the Court *En Banc* deemed the instant case submitted for decision.

THE ISSUE

The issue in this case is whether or not the Court in Division erred in granting the Petition for Review which resulted in the cancellation of Notice of Assessment No. 13-80381 dated November 12, 2013, as well as Billing Assessment No. 019511 dated January 13, 2015.

THE ARGUMENTS OF THE PARTIES

Petitioner submits that there is grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the Court in Division when the

[8] Rollo, CTA EB No. 2154, pp. 42-43.
[9] Ibid., pp. 45-66.
[10] Ibid., pp. 68-69.

latter granted the Petition for Review of respondent, and summarily dismissed the Motion for Reconsideration of petitioner, wherein the decision held therein are in effect an intrusion to the local autonomy of the City of Makati, contrary to Section 143 of the Local Government Code (LGC), and deemed a collateral attack on the RMRC.

On the other hand, respondent counter argues that it is not required to comply with the procedure under Section 187 of the LGC before it may seek recourse before the RTC Makati and the court a quo; that the petitioner's imposition of local business taxes and fees on respondent is an *ultra vires* act; and that despite admitting that respondent is a holding company, petitioner acted beyond the scope of its taxing power when it assessed respondent for deficiency business taxes by treating respondent's gains on sale of investments and interest income as "gross receipts/sales."

THE RULING OF THE COURT *EN BANC*

The Petition for Review lacks merit.

Timeliness of the Petition for Review

On May 6, 2019, petitioner received a copy of the assailed Decision. On May 21, 2019, petitioner filed a "Motion for Reconsideration."[11] On August 30, 2019, the Court in Division issued the assailed Resolution denying petitioner's motion. Said Resolution was received by petitioner on September 3, 2019.

From receipt of the said Resolution, petitioner had until September 18, 2019 within which to file the Petition for Review before the Court *En Banc*. On September 18, 2019, petitioner filed through registered mail the instant Petition for Review. Hence, this Petition for Review was timely filed.

No compelling reason to reverse or modify the assailed Decision and Resolution of the Court in Division

After a careful review of the parties' respective arguments and the records of the case, the Court *En Banc* finds no reason to reverse the assailed Decision and Resolution. The records of the case show that the Court in Division had fully and exhaustively resolved the issues presented in the Petition for Review. The Court *En Banc* notes that the arguments presented herein are basically the same arguments offered by the petitioner in its Motion for Reconsideration before the Court in Division. Nonetheless, the Court *En Banc*

[11] Motion for Reconsideration, Docket, CTA AC No. 197, pp. 1897-1906.

shall discuss the issues raised by the parties to stress the salient points in the assailed Decision and Resolution.

Respondent's gains on sale of investments and interest income are not subject to Local Business Tax

Petitioner avers that under Section 143(h) of the 1991 Local Government Code (1991 LGC), the LGU is empowered to impose tax on any business which the *sanggunian* concerned may deem proper to tax. Thus, it is correct in issuing Notice of Assessment No. 13-80381 dated November 12, 2013 as well as the Billing Assessment No. 019511 dated January 13, 2015.

Petitioner classified respondent as a "holding company" in its letter dated February 8, 2015.[12] It then taxed respondent under Section 3A.02 (p) in relation to Sections 3A.02 (g) and (h) of the RMRC, which read as follows:

> "Section 3A.02. *Imposition of Tax*. – There is hereby levied an annual tax the following businesses at rates prescribed therefore:
>
> (g) On contractors and other independent contractors defined in Section 3A-01(t) of chapter III of this Code; and on owners or operators of business establishments rendering or offering services such as xxxx"
>
> With gross sales or receipts for the preceding calendar year in the amount of : xxx
>
> 2,000,000- P15,000 plus seventy five percent (75%) of one percent (1%) over 2 million.
>
> xxx xxx xxx
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> (h) On owners or operators of banks and other financial institutions which include offshore banking, non-bank, financial intermediaries, lending investors, finance and investment companies, investment house, pawnshops, money shops, insurance companies, stock markets, stock brokers, dealers in securities, including pre-need companies, foreign exchange shall be taxed at the rate of twenty percent (20%) of one percent (1%) of the gross receipts of the preceding calendar year derived from

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12 Docket, CTA AC No. 197, pp. 772-773.

interest, commissions and discounts from lending activities, income from financial leasing investments, dividends, insurance premiums and profit from exchange or sale of property, provided however on gross sales/receipts derived from rental of property during the preceding calendar year shall be subject to the business tax at the rate prescribed under subsection (l) 1, as provided in this code.

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."

After consideration, the Court *En Banc* finds that the Court in Division did not err in granting the Petition for Review filed by respondent.

Unlike the power to tax by the State which is inherent,[13] the power to tax by provinces, cities and municipalities is limited by the law that granted it, *i.e.*, the 1991 LGC.

The 1991 LGC expressly provides that **the taxing power of local governments do not extend to the levy of income tax,[14] except when levied on banks and other financial institutions under Section 143(f) of the 1991 LGC.**[15]

Without going into whether respondent is indeed a holding company or not, it is sufficient to discuss that petitioner's imposition of local business tax on the dividend and interest income of a holding company violates the limits set by Section 133(a) of the LGC. This was discussed in *Michigan Holdings, Inc. v. The City Treasurer of Makati City, Nelia A. Barlis,*[16] where it was held:

Dividend Income Not Subject To Local Business Tax

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[13] *Pelizloy Realty Corporation v. The Province of Benguet*, G.R. No. 183137, April 10, 2013.

[14] Section 133(a) of the 1991 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[.]

[15] Section 143(f) of the 1991 LGC provides:

SECTION 143. *Tax on Business.* - The municipality may impose taxes on the following businesses:

(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.

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

Section 133(a) of the Local Government Code expressly provides that the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax, except when levied on banks and other financial institutions.

Section 131(e) of the LGC defines "banks and other financial institutions" include "non-bank financial intermediaries, lending investors, finance and investment companies, stock markets, stock brokers and dealers in securities and foreign exchange, as defined under applicable laws, or rules and regulations thereunder." This enumeration appears to be exclusive of other entities. Nowhere in the entirety of Section 131 is a holding company mentioned. However, this, by itself, does not place holding companies beyond the reach of local taxation, except on their income.

Section 143 of the local Government Code is the law on local business taxes. Subsection (f) thereof expressly allows local taxation on banks and other financial institutions on their income from dividends, based on gross receipts of the preceding calendar year. What Section 3A.02(h) of the Revised Makati Revenue Code did was to expand the taxpayer base to encompass "owners or operators of banks and other financial institutions which include offshore banking, non-bank financial intermediaries, lending investors, finance and investment companies, investment houses, pawnshops, moneyshops, insurance companies, stock markets, stock brokers, dealers, dealers in securities, including pre-need companies, foreign exchanges." The Treasurer of Makati City, while working this Section 3A.02(h), made it applicable to holding companies, such as Michigan Holdings, by virtue of Section 3A.02(p), which provides that holding companies 'shall be taxes at the rate prescribed either under section (g) or (h), of the gross sales and/or receipts during the preceding calendar year."

Section 3A.02(h) of the Revised Makati Revenue Code, which took effect on January 1, 2006, imposes a local business tax on the dividend income of certain taxable entities. Section 3A.02(p) makes holding companies liable for this business tax.

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Thus, Section 3A.02(p) in relation to Section 3A.02(h), both of the revised Makati Revenue Code, violates the limit set by Section 133(a) of the Local Revenue Code.

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 is Section 3A.02(h), instead of placing them 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 13 (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 the LGUs shall not extend to the levy of income tax, except on banks and other financial institutions.

There is more.

Section 27(D) of the National Internal Revenue Code deals with rates of tax on certain passive incomes. Subsection (4) thereof, covering intercorporate dividends, states that "Dividends received by a domestic corporation from another domestic corporation shall not be subject to tax" – meaning corporate income tax. Dividends are instead subject, under Section 27(D)(1), to "a final tax at the rate of twenty percent (20%)."

"Under Section 27(D)(4) of the Tax Code, dividends received by a domestic corporation from another corporation are not subject to the corporate income tax. Such intracorporate dividends are some of the passive incomes that are subject to the 20% final tax, just like interest on bank deposits. Intracorporate dividends, being already subject to the final tax on income, no longer form part of the bank's gross income under Section 32 of the Tax Code for purposes of the corporate income tax."

Thus, Section 3A.02(p) in relation to Section 3A.02(h), both of the Revised Makati Revenue Code , likewise violates Section 27(D)(4) of the national Internal Revenue Code.

Section 3A.02(p) of the Revised Makati Revenue Code is thus an *ultra vires* exercise of local taxing power, and cannot be given effect without violating the principle that an ordinance can neither amend nor repeal but must conform to a statute. *(citations omitted)*

Although local government units have the power to create their own sources of revenues and to levy taxes, fees and charges, such power is not absolute. The taxation of the dividend and interest income of holding company is not within the powers granted to a local government unit. Accordingly, the imposition of LBT on respondent's gains on sale of investments and interest income falls within the purview of Section 133(a) of the 1991 LGC which prohibits the levy of income tax on businesses not functioning as bank or other financial institutions. In view of the foregoing, the Court *En Banc* finds that respondent is entitled to its refund claim.

In *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation),*[17] the Supreme Court ruled that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. Accordingly, the assailed Decision dated April 30, 2019 and the assailed Resolution dated August 30, 2019 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[17] G. R. No. 188016, January 14, 2015, citing Sea-Land Service, Inc. vs. Court of Appeals, G.R. No. 122605, April 30, 2001.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision have been reached in consultation with the members of the Court *En Banc* 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

OFFICE OF THE CITY TREASURER AND/OR MAKATI CITY, *Petitioners,*	**CTA EB NO. 2154** (CTA AC No. 197)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
SOUTH CHINA RESOURCES, INC. (NOW KNOWN AS "SOCRESOURCES, INC."), *Respondent.*	**Promulgated:** NOV 11 2020 2:05 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review for lack of merit, thereby affirming the assailed Decision and Resolution of the Court in Division.

In ***City of Davao and Bella Linda N. Tanjili, in her official capacity as City Treasurer of Davao City vs. Randy Allied Ventures, Inc.***,[1] the Supreme Court, through the eloquent *ponencia* of the Honorable Associate Justice Estela M. Perlas-Bernabe, declared in no uncertain terms that the LBT imposed under Section 143(f)[2] of

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[1] G.R. No. 241697, July 29, 2019.

[2] Section 143. Tax on Business. — The municipality may impose taxes on the following businesses:
(a) 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.

the Local Government Code (LGC),[3] is premised on the fact that the persons made liable for such tax are banks or other financial institutions by virtue of their being engaged in such business. Randy Allied Ventures, Inc.'s management of the dividends from San Miguel Corporation (SMC) preferred shares, including placing the same in a trust account yielding interest, is not tantamount to doing business whether as a bank or other financial institutions; rather it was engaged in an activity that is essential to its nature as a holding company. Accordingly, the Supreme Court declared that Randy Allied Ventures, Inc. is not liable for the LBT imposed under Section 143 (f) of the LGC. It went further to hold that its pronouncement is without prejudice to Randy Allied Ventures, Inc.'s potential liability for other taxes, whether national or local, should it so engage in other profit-making activities aside from its management of the SMC preferred shares, and the dividends resulting therefrom.

Applying the foregoing to the case at bar, there being no evidence indicating that respondent engaged in activities of a bank or other financial institutions, respondent -- being a holding company -- cannot be held liable for the LBT imposed under Section 143(f) of the LGC and Sections 3A.02 (p), in relation to Section 3A.02 (h), of the Revised Makati Revenue Code.

All told, I VOTE to DENY the Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] Republic Act No. 7160.