

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**CITY OF DAVAO and
MR. ERWIN ALPARAQUE, in his
official capacity as Acting City
Treasurer of the City of Davao,**
Petitioners,

G.R. No. 245887

Present:

- versus-

PERALTA, C.J., Chairperson,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

AP HOLDINGS, INC.,
Respondent.

Promulgated:

JAN 22 2020

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DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari* assails the Decision¹ dated August 20, 2018 and the Resolution² dated January 23, 2019 of the Court of Tax Appeals En Banc in CTA EB No. 1640 finding respondent AP Holdings,

¹ Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario, Associate Justices Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan but Associate Justice Juanito C. Castañeda, Jr. wrote his Dissenting Opinion; *Rollo*, pp. 35-54.

² *Id.* at 71-74.

Inc. (APHI) entitled to a refund or credit of the 0.55% local business taxes it paid to petitioner City of Davao for the dividends it earned from its San Miguel Corporation (SMC) preferred shares and interests from its money market placements for the taxable year 2010.

Antecedents

The Coconut Industry Investment Fund (CIIF) under Presidential Decree 582 (PD 582) is a fund from part of the levy imposed on the initial sale by coconut farmers of copra and other coconut products. Pursuant to PD 582's mandate, the CIIF was invested in six (6) oil mills, the CIIF Oil Mills Group (CIIF OMG).³

Sometime in 1983, CIIF OMG bought shares of stock from SMC. It also established fourteen (14) holding companies, one of which is APHI, for the sole purpose of owning and holding such shares, *viz*:

PRIMARY PURPOSE

The primary purpose for which such Corporation is formed is:

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 the 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 corporation," and especially to direct the operations of other corporations through the 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."⁴
(Underscore supplied)

Over time, APHI received cash and stock dividends from its SMC preferred shares. These dividends were deposited in a trust account which earned interest from money market placements.⁵

In 1986, APHI's SMC shares were sequestered by the Presidential Commission on Good Government. Subsequently, cases were filed before this Court questioning the ownership of the CIIF, CIIF OMG, the fourteen (14) holding companies and the SMC shares held by them. One of these cases was

³ Record, CTA En Banc, p. 11.

⁴ *Rollo*, pp. 48-49.

⁵ Record, CTA En Banc, p. 11.

G.R. Nos. 177857-58, entitled “Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines.”⁶

In 2011, petitioner City of Davao, through its City Treasurer, issued a Business Tax Order of Payment directing APHI to pay 0.55% local business tax in the amount of P723,531.50. Pursuant to Section 69(f) of the 2005 Revenue Code of the City of Davao, the tax was assessed on the dividends and interests APHI earned from its SMC preferred shares and money market placements, respectively. APHI paid the assessment under protest. Subsequently, it filed an administrative claim for refund or tax credit with the City Treasurer. Claiming that the City Treasurer failed to act on the protest, APHI filed a petition for review with the Regional Trial Court.⁷

Meanwhile, by Decision dated January 24, 2012, this Court in G.R. Nos. 177857-58 declared the CIIF companies, including APHI and the CIIF block of SMC shares, as public funds or property necessarily owned by the government.⁸

The Regional Trial Court’s Decision

By Decision⁹ dated June 22, 2015, the trial court ruled that APHI’s primary purpose in its Amended Articles of Incorporation resembles the definition of a financial intermediary under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions, and, hence, taxable under Section 69(f) of the 2005 Revenue Code of the City of Davao, *viz*:¹⁰

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:

x x x x

(f) *On Banks and Other Financial Institutions*, at a rate of fifty-five per cent (55%) of one per cent (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

⁶ *Id.*

⁷ Penned by Presiding Judge Emmanuel C. Carpio; *rollo*, pp. 36-37.

⁸ *Id.* at 50.

⁹ *Id.* at 38.

¹⁰ **Section 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.

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.

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.

APHI moved for reconsideration but was denied under Order dated September 11, 2015.¹¹

The Court of Tax Appeals (CTA) Division's Decision

By Decision¹² dated January 30, 2017, the CTA Division affirmed the trial court's decision.

Through Resolution¹³ dated April 17, 2017, it denied petitioners' motion for reconsideration.

The Court of Tax Appeals En Banc's Decision

By Decision¹⁴ dated August 20, 2018, the CTA En Banc reversed and declared APHI entitled to a tax refund or credit. It found that APHI was not a non-bank financial intermediary for the following reasons:

First, APHI did not fall under the definition of a non-bank financial intermediary under Section 131 (e) of the Local Government Code (LGC),¹⁵ Section 22 (W) of the National Internal Revenue Code (NIRC) of 1997¹⁶ and Section 4101Q.1 of the Bangko Sentral ng Pilipinas' (BSP) Manual of Regulations for Non-Bank Financial Institutions.¹⁷

Second, although APHI's functions, based on its Amended Articles of Incorporation, included supposed functions of a non-bank financial intermediary, it was not shown that these functions were its principal purpose.¹⁸

¹¹ *Rollo*, p. 38.

¹² Penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justice Juanito C. Castañeda, Jr. but Associate Justice Catherine T. Manahan wrote her Dissenting Opinion; record, CTA Division, pp. 266-278.

¹³ *Id.* at 297-302.

¹⁴ *Rollo*, pp. 35-54.

¹⁵ **Section 131.** x x x

x x x x

(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[.]

¹⁶ **Section 22.** x x x

x x x x

(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.

x x x

¹⁷ *Rollo*, pp. 44-46.

¹⁸ *Id.* at 48-49.

Third, it was not established that the functions performed by non-bank financial intermediaries were done by APHI on a regular and recurring basis.¹⁹

Fourth, there was no evidence showing that APHI held itself out as a non-bank intermediary.²⁰

Lastly, APHI belonged to the CIIF block of SMC shares, which were declared to be owned by the government, thus, any tax imposed upon it is a tax on the government.²¹ Under Section 133 (o) of the LGC, local government units cannot tax the National Government.

By Resolution dated January 23, 2019, the CTA En Banc denied petitioners' motion for reconsideration.²²

The Present Petition

Petitioners now seek to reverse the CTA En Banc's dispositions. They essentially assert:

- a) APHI is deemed a "bank and other financial institution," specifically as a "non-bank financial intermediary or an investment company" because it owned a substantial number of shares and received millions of pesos of dividends from its investments.
- b) Its business purpose as contained in the Amended Articles of Incorporation is broad enough to catch all the descriptive functions of a non-bank financial intermediary under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the BSP. Too, the statement in APHI's Articles of Incorporation that it shall not act as an investment company or securities broker is not conclusive proof that it is not a "bank or other financial institution." For based on the tax audit and its financial statements, APHI has no other business except its primary business of stock investment and money market placements with SMC.
- c) The Bureau of Local Government Finance's (BLGF's) opinion on the exemption from local business taxes is not binding upon the courts since BLGF is not among the quasi-judicial agencies whose technical findings on questions of fact and law are binding in the courts.

On the other hand, APHI counters in the main:

¹⁹ *Id.* at 49.

²⁰ *Id.*

²¹ *Id.* at 50-58.

²² *Id.* at 100.

- a) Pursuant to Section 143 (f) of the LGC,²³ petitioners can only collect business taxes on the dividends and interest income of banks and other financial institutions. Since it is not engaged in those businesses, its dividends and interest income cannot be subject to local business taxes.
- b) It is not a bank or non-bank financial intermediary considering that it is not engaged in lending money, investing, reinvesting or trading securities on a regular and recurring basis. More, it was not required by the Securities and Exchange Commission to secure secondary license nor was it regulated by the BSP or the Insurance Commission.
- c) Mere ownership of shares of stock of SMC does not *ipso facto* qualify it as a non-bank financial intermediary.
- d) It is a holding company. Its Articles of Incorporation²⁴ expressly prohibits it from acting as a financial intermediary.
- e) APHI, as well as its SMC shares and income derived therefrom are national government properties which are exempt from local business taxes as declared by the BLGF.

Issue

As a CIIF holding company, is APHI liable to pay local business taxes on its dividend earnings from its SMC preferred shares?

²³ **Section 143. Tax on Business.** - The municipality may impose taxes on the following businesses:

x x x x

(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.

²⁴

PRIMARY PURPOSE

The primary purpose for which such Corporation is formed is:

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 the 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 corporation," and especially to direct the operations of other corporations through the 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.**
(Underscore supplied)



Ruling

We rule in the negative.

In the recent case of *City of Davao, et al. v. Randy Allied Ventures, Inc. (RAVI)*,²⁵ the Court ordained that RAVI, a CIIF holding company like APHI, was exclusively established to own and hold SMC shares of stock. As such, it is not liable to pay local business taxes on the dividends earned from its SMC preferred shares as the same shares are government assets owned by the national government for the benefit of the coconut industry, thus:

In this case, it is clear that RAVI is neither a bank nor other financial institution, *i.e.*, an NBF. In order to be considered as an NBF under the National Internal Revenue Code, banking laws, and pertinent regulations, the following must concur:

- a. The person or entity is authorized by the BSP to perform quasi-banking functions;
- b. The principal functions of 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; and
- c. The person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis, to wit:
 1. 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;
 2. Use principally the funds received for acquiring various types of debt or equity securities;
 3. Borrow against, or lend on, or buy or sell debt or equity securities.

As observed in the COCOFED case, RAVI is a CIIF holding company. The SMC preferred shares held by it are considered government assets owned by the National Government for the coconut industry. As held in the same case, these SMC shares as well as any resulting dividends or increments from said shares are owned by the National Government and shall be used only for the benefit of the coconut farmers and for the development of the coconut industry. Thus, RAVI's management of the dividends from the 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 institution, *i.e.*, an NBF, but rather an activity that is essential to its nature as a CIIF holding company.

Verily, therefore, CIIF holding companies, including APHI itself and the entire CIIF block of SMC shares, are public assets owned by the Republic of the Philippines. Consequently, dividends and any income from these shares

²⁵ G.R. No. 241697, July 29, 2019; citations omitted.

are also owned by the Republic.²⁶ On this score, APhi cannot be considered as a non-bank financial intermediary since its investment and placement of funds are not done in a regular or recurring manner for the purpose of earning profit. Rather, its management of dividends from the SMC shares is only in furtherance of its purpose as a CIIF holding company for the benefit of the Republic.

All told, the City of Davao acted beyond its taxing authority when it imposed the questioned business tax on APhi.

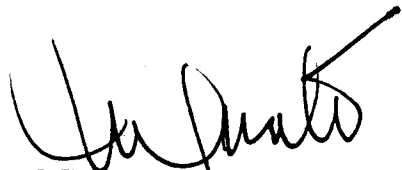
ACCORDINGLY, the petition is **DENIED**. The Decision dated August 20, 2018 and Resolution dated January 23, 2019 of the Court of Tax Appeals En Banc in CTA EB No. 1640 are **AFFIRMED**.

SO ORDERED.

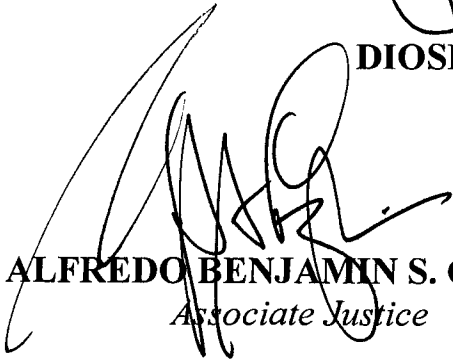

AMY C. LAZARO-JAVIER
Associate Justice

²⁶ Section 133 (o) of the LGC.

WE CONCUR:



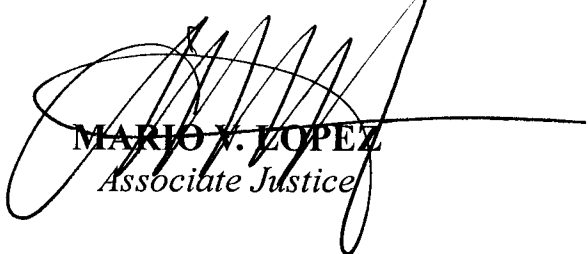
DIOSDADO M. PERALTA
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



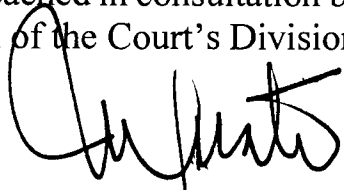
JOSE C. REYES, JR.
Associate Justice



MARIO N. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice