

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:

“G.R. No. 243848 - CITY OF DAVAO AND MR. ERWIN P. ALPARAQUE IN HIS OFFICIAL CAPACITY AS ACTING CITY TREASURER OF THE CITY OF DAVAO, petitioners, versus AP HOLDINGS, INC., respondent.

After reviewing the petition¹ and its annexes, inclusive of the Court of Tax Appeals *en banc* (CTA EB) Decision² dated August 17, 2018 and Resolution³ dated December 4, 2018, the Court resolves to **DENY** the same for lack of merit.

In the very recent case of *City of Davao and Bella Linda N. Tanjili, in her capacity as City Treasurer of Davao City v. Randy Allied Ventures Inc.*⁴ (*RAVI*), the Court was confronted with the issue of whether *RAVI*, a Coconut Industry Investment Fund (CIIF) holding company established to own and hold San Miguel Corporation (SMC) shares of stock, is subject to local business tax (LBT) under Section 143(f)⁵ of the Local Government Code (LGC). The Court, relying

¹ *Rollo*, pp. 15-31.

² *Id.* at 32-49. Penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Roman G. Del Rosario and Associate Justices Erlinda P. Uy, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan, concurring. Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova dissented.

³ *Id.* at 55-59. Penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Roman G. Del Rosario and Associate Justices Erlinda P. Uy, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan, concurring. Associate Justice Juanito C. Castañeda, Jr. dissented.

⁴ G.R. No. 241697, July 29, 2019, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65488>.

⁵ SEC. 143. *Tax on Business*. — The municipality may impose taxes on the following businesses:

x x x x

upon its previous pronouncement in *COCOFED v. Rep. of the Phils.*,⁶ (*COCOFED*), held:

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

(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.

⁶ 679 Phil. 508 (2012).

interest, is not tantamount to doing business whether as a bank or other financial institution, *i.e.*, an NBFI, but rather an activity that is essential to its nature as a CIIF holding company.

x x x x

To be sure, RAVI's act of placing the dividends from the SMC preferred shares in a trust account, which incidentally earns interest, does not convert it into an active investor or dealer in securities. As above stated, the primary test is regularity of function, not on an isolated basis, with the end in mind for self-profit. Being restricted to managing the dividends of the SMC preferred shares on behalf of the government, RAVI cannot be said to be "doing business" as a bank or other financial institution, *i.e.*, an NBFI.⁷ (Italics and underscoring supplied)

Similar to *RAVI*, respondent AP Holdings, Inc. (APHI) is one of the fourteen (14) CIIF holding companies formed or organized **solely for the purpose of holding the SMC shares**. Thus, as correctly pointed out by the CTA EB, APHI cannot be considered as a non-bank financial institution because its investment and placement of funds are not done in the regular or recurring manner for the purpose of earning profit. Rather, APHI's management of dividends from SMC shares is in furtherance of its purpose as a CIIF holding company.

More importantly, this Court had already settled in the *COCOFED* case that CIIF holding companies, including APHI and CIIF block of SMC shares are public assets necessarily owned by the Government. As such, the dividends and any income therefrom are also owned by the Government. Hence, the same is beyond the scope of petitioner City of Davao's taxing power pursuant to Section 133(o)⁸ of the LGC.

Verily, the Court finds no compelling reason to disturb the findings and conclusions of the CTA EB as it is supported by prevailing jurisprudence. The assailed Decision and Resolution are hereby **AFFIRMED**.

⁷ *City of Davao and Bella Linda N. Tanjili, in her capacity as City Treasurer of Davao City v. Randy Allied Ventures Inc.*, supra note 4.

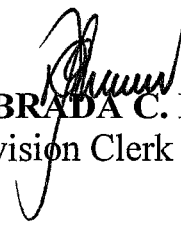
⁸ SEC. 133. *Common Limitations on the Taxing Powers of Local Government Units*. — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

x x x x

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

SO ORDERED.” *Inting, J., was designated additional member per Special Order No. 2726 dated October 25, 2019.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

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