



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated July 7, 2021, which reads as follows:*

**“G.R. No. 248820 (City of Davao and Bella Linda N. Tanjili, in her official capacity as City Treasurer of Davao City v. Fernandez Holdings, Inc.).** – This Petition for Review on *Certiorari*<sup>1</sup> assails the Decision<sup>2</sup> dated January 15, 2019 and Resolution<sup>3</sup> dated July 11, 2019 of the Court of Tax Appeals, *En Banc* (CTA *En Banc*) in CTA *EB* No. 1708 which sustained the CTA First Division in granting Fernandez Holdings, Inc.’s (respondent) claim for refund or credit of *erroneously and illegally collected local business taxes*.

*The Antecedents*

Respondent is a registered owner of 18,341,390 preferred shares of stock in San Miguel Corporation (SMC). The dividends earned by respondent from the shares of stock were deposited in a trust account earning interest from money market placements. In 2010, respondent earned ₱139,221,650.65 by way of dividends and interests.<sup>4</sup>

For the first half of 2011, the City of Davao and Bella Linda N. Tanjili, in her official capacity as City Treasurer of Davao City (collectively, petitioners) demanded from respondent payment of local business taxes (LBT) on its dividends and interests in the aggregate amount of ₱382,859.55. The imposition was made pursuant to Section 69(f) of Davao City Ordinance No. 158-05, imposing 0.55% LBT on “banks and other financial institutions.” Respondent paid the amount

<sup>1</sup> *Rollo*, pp. 9-23.

<sup>2</sup> *Id.* at 25-40; penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justices Roman G. Del Rosario, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan concurring, and Associate Justice Juanito C. Castaneda, Jr. dissenting.

<sup>3</sup> *Id.* at 49-53; penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justices Roman G. Del Rosario, Erlinda P. Uy, Esperanza R. Fabon-Victorino, and Catherine T. Manahan concurring; Associates Justice Juanito C. Castaneda, Jr. and Ma. Belen M. Ringpis-Liban were on leave.

<sup>4</sup> *Id.* at 26-27.

under protest.<sup>5</sup>

On September 13, 2012, respondent filed an administrative claim for tax refund or credit of *erroneously and illegally collected LBT*. Owing to petitioners' alleged inaction on the claim, respondent filed with Branch 16, Regional Trial Court (RTC) of Davao City, a petition for tax refund or credit under Republic Act No. (RA) 7160, or the Local Government Code (LGC)<sup>6</sup> as amended.<sup>7</sup>

Respondent contended that it is not a bank or financial institution upon which LBT may be imposed by cities under Section 133(a) of the LGC.<sup>8</sup> Respondent underscored that its receipt of dividends and interests, as a consequence of its ownership of SMC preferred shares does not constitute "business activity" as may be subject to LBT.<sup>9</sup>

For their part, petitioners contended that respondent's act of owning shares of stock, as well as receiving dividends and interest income from money market placements constitutes "investing" or "doing business" as a non-bank financial intermediary (NBFI).<sup>10</sup>

#### *Ruling of the RTC*

In its Decision<sup>11</sup> dated June 22, 2015, the RTC denied respondent's claim for tax refund or credit.

The RTC was convinced that respondent is engaged in business as a financial intermediary, treating its dividends and interests earned from money market placements as principal sources of income in line with the primary purpose stated in its Amended Articles of Incorporation (AOI).<sup>12</sup> The RTC, thus, ruled that respondent's dividends and interests are subject to LBT under Section 143(f) of the LGC.<sup>13</sup>

Aggrieved, respondent filed a petition for review with the CTA Third Division.

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<sup>5</sup> *Id.* at 27.

<sup>6</sup> "An Act Providing for a Local Government Code of 1991." approved October 10, 1991.

<sup>7</sup> *Rollo*, p. 28.

<sup>8</sup> Section 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:

(a) Income tax, *except* when levied on *banks and other financial institutions*.[.] (Italics supplied).

<sup>9</sup> *Rollo*, p. 58.

<sup>10</sup> *Id.* at 59.

<sup>11</sup> *Id.* at 54-63; penned by Presiding Judge Emmanuel C. Carpio.

<sup>12</sup> *Id.* at 60-63.

<sup>13</sup> *Id.* at 63.

*CTA Rulings*

In its Decision<sup>14</sup> dated April 6, 2017, the CTA First Division reversed the ruling of the RTC and held that respondent is not an NBFIs subject to LBT. Failing to obtain reconsideration, petitioners filed a petition for review with the CTA *En Banc*.<sup>15</sup>

In the challenged Decision<sup>16</sup> dated January 15, 2019, the CTA *En Banc* affirmed the ruling of the CTA First Division, holding that respondent cannot be considered as an NBFIs, thus: *first*, respondent is not authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities; *second*, respondent's function, as stated in its AOI, does not relate to NBFIs activities; and *third*, there was no showing that the functions performed by respondent were on a regular and recurring basis, as opposed to being merely isolated.<sup>17</sup> Lastly, taking judicial notice of *Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines*,<sup>18</sup> the CTA *En Banc* ruled that the subject SMC shares held by respondent as a Coconut Industry Investment Fund (CIIF) holding company, as well as the dividends and any income derived therefrom, are owned by the government; hence, not subject to local taxation.<sup>19</sup>

Petitioners filed a Motion for Reconsideration but the CTA *En Banc* denied it in a Resolution<sup>20</sup> dated July 11, 2019.

Hence, the instant petition.

*Issue*

Whether respondent is an NBFIs subject to LBT under Section 143 (f) of the LGC.

*The Court's Ruling*

The petition is not meritorious.

Local government units have the power to impose LBT on the *privilege of doing business* within their territorial jurisdictions.<sup>21</sup> The term "doing business" contemplates some "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit."<sup>22</sup>

<sup>14</sup> Not attached in the *rollo*, but referenced in the CTA *En Banc* Decision dated January 15, 2019; see *id.* at 26.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 25-40.

<sup>17</sup> *Id.* at 35-36.

<sup>18</sup> 679 Phil. 508 (2012).

<sup>19</sup> *Rollo*, p. 38.

<sup>20</sup> *Id.* at 49-53.

<sup>21</sup> See *The City of Manila v. Coca-Cola Bottlers Philippines, Inc.*, 612 Phil. 609, 623-624 (2009).

<sup>22</sup> SECTION 131. *Definition of Terms.* — x x x x.

Here, the questioned tax assessment was imposed by petitioners on respondent based on Section 143(f), in relation to Section 131(e), of the LGC. The provisions read:

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. (Emphasis supplied)

Section 131. Definition of terms. —

(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[.] (Emphasis supplied)

Under Section 143(f), persons made liable to LBT are banks or other financial institutions by virtue of the nature of the business they are engaged in. LBT are imposed on their gross receipts 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.*” In order to be considered as an NBFIs under the LGC, in relation to the National Internal Revenue Code of 1997 and pertinent banking laws and regulations, the following requisites<sup>23</sup> must concur:

- 1) The person or entity is authorized by the BSP to perform quasi-banking functions;
- 2) 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
- 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 group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity

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(d) “Business” means trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit[.]

<sup>23</sup> See *City of Davao, et al. v. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 29, 2019.

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.<sup>24</sup>

Contrary to petitioners' proposition, respondent, in so owning SMC preferred shares of stock and earning dividends and interests therefrom, cannot be said to be "doing business" as a bank or other financial institution based on the above-mentioned parameters.

It bears underscoring that respondent is one of 14 CIIF holding companies established to own and hold SMC shares of stock, as declared by the Court in *COCOFED et. al., v. Rep. of the Philippines*<sup>25</sup> (*COCOFED*). In *COCOFED*, the Court ruled that the SMC preferred shares held by CIIF holding companies, as well as the derivative dividends or increments, are considered assets owned by the National Government,<sup>26</sup> which shall be used *only* for the benefit of the coconut farmers and for the development of the coconut industry.<sup>27</sup> Guided by this underlying purpose distinct to CIIF holding companies, the *management of dividends* from the SMC preferred shares of stock, including *placing them in a trust account yielding interest*, does not amount to doing business, either as a bank or other financial institution, *i.e.*, an NBF.<sup>28</sup>

In *City of Davao, et al. v. Randy Allied Ventures, Inc.*,<sup>29</sup> the Court distinguished a holding company from a financial intermediary for purposes of local business taxation, as follows:

[T]here is a stark distinction between a holding company and a financial intermediary as contemplated under the LGC, in relation to other laws. A "holding company" is 'organized' and is basically conducting its business by *investing substantially in the equity securities* of another company for the *purpose of*

<sup>24</sup> *Id.*

<sup>25</sup> 679 Phil. 508 (2012).

<sup>26</sup> "Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds – funds, which have been established to be public in character – it goes without saying that these acquired corporations and assets ought to be regarded and treated as government assets. Being government properties, they are accordingly owned by the Government, for the coconut industry pursuant to currently existing laws." See *id.* at 621.

<sup>27</sup> [T]he State's avowed policy or purpose in creating the coconut levy fund is for the development of the entire coconut industry, which is one of the major industries that promotes sustained economic stability, and not merely the livelihood of a significant segment of the population. Accordingly, We sustain the ruling of the Sandiganbayan in CC No. 0033-F that the CIIF companies and the CIIF block of SMC shares are public funds necessary owned by the Government. We, however, modify the same in the following wise: These shares shall belong to the Government, which shall be used only for the benefit of the coconut farmers and for the development of the coconut industry. See *id.* at 622.

<sup>28</sup> *The City of Manila v. Coca-Cola Bottlers Philippines, Inc.*, *supra* note 21.

<sup>29</sup> See *City of Davao, et al. v. Randy Allied Ventures, Inc.*, *supra* note 23.

*controlling their policies* (as opposed to directly engaging in operating activities) and ‘*holding*’ them in a conglomerate or umbrella structure along with other subsidiaries.” While holding companies may partake in investment activities, this does not *per se* qualify them as financial intermediaries that are actively dealing in the same. Financial intermediaries are regulated by the BSP because they deal with public funds when they offer quasi-banking functions. On the other hand, a holding company is not similarly regulated because *any investment activities it conducts are mere incidental operations, since its main purpose is to hold shares for policy-controlling purposes.*<sup>30</sup> (Italics supplied).

The primary test for the distinction is “regularity of function, not on an isolated basis, with the end in mind for self-profit.”<sup>31</sup> In the case, respondent’s placement of dividends from its SMC shares in a trust account incidentally earning interest, does not negate the corporation’s *restricted* underlying purpose as a CIIF holding company, *i.e.*, to manage the dividends of the SMC preferred shares on behalf of the government, as would convert it into an active investor or dealer in securities. Wanting the element of regularity or recurrence for the purpose of earning profit, respondent’s placement of funds cannot amount to “doing business” as an NBFI<sup>32</sup> as may be subject of local business taxation.

In fine, the City of Davao acted beyond its taxing authority in imposing the questioned LBT on respondent on the premise that it is a NBFI.

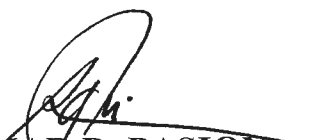
**WHEREFORE**, the petition is **DENIED**. The Decision dated January 15, 2019 and Resolution dated July 11, 2019 of the Court of Tax Appeals, *En Banc* in CTA *EB* No. 1708 are **AFFIRMED**.

**SO ORDERED.**” (ROSARIO, J., designated as Additional Member per Special Order No. 2833 dated June 29, 2021.)

By authority of the Court:

**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

By:

  
**RUMAR D. PASION**  
*Deputy Division Clerk of Court*  
GER  
4/21/22

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See *City of Davao, et al. v. AP Holdings, Inc.*, G.R. No. 245887, January 22, 2020.

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