



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **30 June 2021** which reads as follows:*

“G.R. No. 251065 (*Makati City and The City Treasurer of Makati City v. Metro Pacific Resources, Inc. [Formerly: Cypress Harbour Properties, Inc.]*). — This Petition for Review on *certiorari*¹ assails the August 13, 2019 Decision² and December 5, 2019 Resolution³ of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1814, that affirmed the November 21, 2017 Decision and February 19, 2018 Resolution of the CTA Third Division (CTA Division) in CTA AC No. 174,⁴ ordering the refund of ₱6,896,385.34 in favor of Metro Pacific Resources, Inc. (MPRI), representing erroneously paid or illegally collected local business tax (LBT) for the taxable year 2010.

ANTECEDENTS

MPRI is a holding company duly organized under Philippine laws. On January 21, 2011, the City of Makati issued Billing Assessment Form, assessing MPRI for LBT in the amount of ₱6,896,385.34. The assessment was computed based on the dividend and the interest income reported in MPRI’s financial statements (FS) in 2010. MPRI paid the total assessed amount on January 31, 2011.

¹ *Rollo*, pp. 3-18.

² *Id.* at 20-32. Penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Presiding Justice Roman G. Del Rosario, and Associate Justices Erlinda P. Uy, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, and Maria Rowena Modesto-San Pedro.

³ *Id.* at 33-36.

⁴ *Id.* at 20.

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Subsequently, on January 25, 2013, MPRI filed an administrative claim before the City Treasurer of Makati City, for the refund of allegedly erroneously collected LBT. MPRI argued that the dividend and interest income reported in the FS do not constitute 'gross receipts,' as defined in Section 131 (n) of the Local Government Code (LGC) and Section IB.01 (g) of the Revised Makati Revenue Code. On January 29, 2013, MPRI filed a complaint before the Regional Trial Court (RTC) requesting the refund of the amount of ₱6,896,385.34.⁵

After trial, the RTC rendered a Decision on March 18, 2016, denying MPRI's claim. The RTC ruled that MPRI is a holding company taxed as a specific class of its own under Section 3A.02 (p) of the Makati Revenue Code.⁶ MPRI filed a motion for reconsideration but was denied on August 5, 2016. MPRI appealed to the CTA.⁷

On November 21, 2017, the CTA Division reversed the RTC Decision and ordered the City of Makati to refund MPRI the ₱6,896,385.34 erroneously collected LBT. The CTA Division ruled that MPRI is not a non-bank financial institution taxable under Section 3A.02 (p) in relation to subsection (h) of the Makati Revenue Code. Further, MPRI had the option to ask for a cash refund, or the issuance of a tax credit certificate of erroneously or illegally collected tax. MPRI opted for the refund. Thus:

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED**. The March 18, 2016 Decision and the August 5, 2016 Order, both of the Regional Trial Court Branch 57 of Makati City, denying [MPRI]'s claim for refund of local business tax for taxable year 2010 are hereby **REVERSED** and **SET ASIDE**. Accordingly, respondents [City of Makati] are **ORDERED** to refund to [MPRI] the amount of **Six Million Eight Hundred Ninety-Six Thousand Three Hundred Eighty-Five Pesos and Thirty-Four Centavos (Php6,896,385.34)**, representing erroneously collected local business tax for taxable year 2010.

SO ORDERED.⁸ (Emphases in the original.)

The City of Makati's motion for reconsideration was denied on February 19, 2018.⁹ Thus, it elevated the matter to the CTA *En Banc*.

⁵ Id. at 21-23.

⁶ Id. at 23.

⁷ Id.

⁸ Id. at 21.

⁹ Id. at 21. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, respondent's Motion for Reconsideration (of the Decision dated 21 November 2017) filed on December 19, 2017 is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated November 21, 2017 is hereby **AFFIRMED** and **UPHELD**.

SO ORDERED. (Emphases in the original.)

In the assailed Decision,¹⁰ the CTA *En Banc* affirmed the CTA Division and held that MPRI could not be considered a non-bank financial institution because it is not primarily engaged in investment activities; it does not source its revenue exclusively from dividend and interest income. Furthermore, the Makati Revenue Code gave taxpayers the option to claim a refund, or apply for a tax credit to recover erroneously or illegally collected tax.

Unsuccessful at reconsideration,¹¹ the City of Makati filed the instant petition.¹²

RULING

We do not find merit in the petition. The City of Makati's contentions are a mere rehash of its arguments before the CTA and were already raised and considered by the tax court in the assailed issuances. We find no compelling reason to review said findings, much more to overturn them.

There is no doubt, MPRI is a holding company subject to LBT under Section 3A.02 (p) of the Makati Revenue Code. The City of Makati insists, however, that MPRI should be taxed like a non-bank financial institution under subsection (h), to wit:

SECTION 3A.02. *Imposition of Tax.* — There is hereby levied an annual tax on the following businesses at rates prescribed therefore:

[x x x x]

(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 interest, commissions, and discounts from lending activities, income from financial leasing, investments, dividends, insurance premium 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.

[x x x x]

¹⁰ Id. at 20-32. The dispositive portion of the Decision reads:

WHEREFORE, the instant Petition for Review is **DENIED**. Accordingly, the assailed Decision dated November 21, 2017 and the assailed Resolution dated February 19, 2018 are **AFFIRMED**.

SO ORDERED. (Id. at 30-31, emphases in the original.)

¹¹ Id. at 33-36.

¹² Id. at 3-18.

(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.¹³ (Emphases supplied.)

We do not agree.

In *City of Davao v. Randy Allied Ventures, Inc.*,¹⁴ the Court declared that to be considered as a non-bank financial institution or intermediary, it is required that: (1) the Bangko Sentral ng Pilipinas (BSP) authorized the person or entity to perform quasi-banking functions; (2) the principal functions of the 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, namely: (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; and (c) borrow against, or lend on, or buy or sell debt or equity securities.

The CTA found that MPRI is not an entity authorized by the BSP to perform quasi-banking functions. MPRI did not advertise itself as lending, investing, or financing company. To be exact, there is no proof that MPRI is principally engaged in investment activities. We agree with the CTA that although MPRI's Articles of Incorporation may involve one of the activities enumerated in the BSP Manual of Regulations for Non-Bank Financial Institutions, the primary purpose, standing alone, is inadequate to justify the conclusion that MPRI is performing functions of a financial intermediary.¹⁵ The CTA did not find evidence that MPRI's income principally emanated from its dividend and interest income. On the contrary, MPRI is a holding company whose primary business is to render management services to its subsidiaries and collect management fees as compensation in rendering the services.

Since MPRI is not an investment company, a bank, or other financial intermediary, it is not liable for LBT at the rate imposed under Section 3A.02 (h) of the Makati Revenue Code. Therefore, the ₱6,896,385.34 LBT paid to the City of Makati is an erroneous or illegally collected tax that may be refunded.

¹³ Id. at 25.

¹⁴ G.R. No. 241697, July 29, 2019.

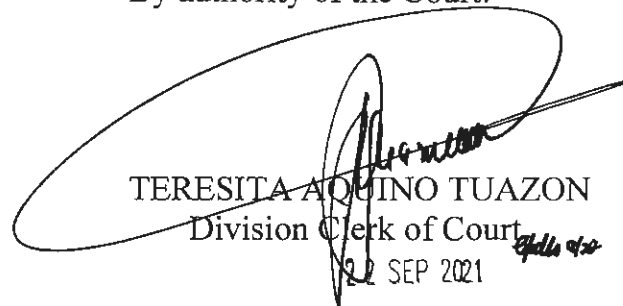
¹⁵ See id.

Lastly, Section 7B.14 (d)¹⁶ of the Makati Revenue Code allows taxpayers to either claim for a refund or credit of erroneously or illegally collected tax. The option is upon the taxpayer. And, if the taxpayer opted for a tax credit, the amount may not be recovered in the form of cash. Here, MPRI had consistently applied for the refund of erroneously paid LBT when it filed the claim with the City Treasurer of Makati City, the complaint with the RTC, and thereafter, with the CTA. There is no basis for the City of Makati's argument that MPRI's claim may only be granted in the form of a tax credit.

FOR THESE REASONS, the petition is **DENIED**.

SO ORDERED. (Lopez, J. Y., J., designated additional member *per* Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court
 22 SEP 2021

¹⁶ SEC. 7B.14. *Taxpayer's Remedies.* —

[x x x x]

(d) *Claim for Refund of Tax Credit.* — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for **refund or credit** has been filed with the City Treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligations payable to the Local Government of the City of Makati City during the year, his tax credit, if any, shall be applied in full during the first quarter of the next calendar year or the tax due from him for the same business of said calendar year. (*Rollo*, pp. 29-30; emphasis and underscoring supplied.)

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