



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 11, 2021 which reads as follows:

“G.R. No. 241796 (*The City of Makati and the City Treasurer of Makati City, petitioners v. Metro Pacific Investments Corporation, respondent*).

This is a petition for review on *certiorari* assailing the February 9, 2018 Decision¹ and June 13, 2018 Resolution² of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1530, that affirmed the July 20, 2016 Decision³ and September 20, 2016 Resolution⁴ of the CTA Third Division (CTA Division) in CTA AC No. 143.⁵ The CTA Division affirmed the March 31, 2015 Decision⁶ and June 22, 2015 Order⁷ of the Regional Trial Court, Makati City, Branch 146 (RTC) in Civil Case No. 13-084.⁸ The RTC ordered the refund of ₱4,499,653.19 in favor of Metro Pacific Investments Corporation (MPIC), representing erroneously paid or illegally collected local business tax (LBT) for the taxable year 2010.⁹

Antecedents

MPIC is a holding company duly organized under Philippine laws. In early 2011, the City of Makati issued a billing assessment for

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¹ *Rollo*, pp. 24-46; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario, and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan, concurring.

² *Id.* at 47-49.

³ CTA *En Banc* records, pp. 28-51.

⁴ *Id.* at 52-55.

⁵ *Rollo*, p. 27.

⁶ CTA Third Division records, pp. 114-122.

⁷ *Id.* at 136.

⁸ *Rollo*, p. 26.

⁹ *Id.* at 25-27.

various taxes, fees, and charges in the total amount of ₱4,513,818.19, inclusive of LBT in the amount of ₱4,499,653.19. The assessment was based on the income reported in MPIC's financial statements in 2010.¹⁰

On January 31, 2011, MPIC paid in full the amount of the assessment.¹¹

On January 25, 2013, MPIC filed an administrative claim for refund with the City Treasurer of Makati. It asserted that the aggregate interest, rental and dividend income, and gain on sale of fixed assets for the year 2010 do not constitute gross receipts as defined in Section 131(h) of the Local Government Code (*LGC*), or Sec. 1B.01(g) of the Revised Makati Revenue Code (*RMRC*), as amended.¹²

Subsequently, on January 29, 2013, MPIC filed with the RTC a complaint against the City of Makati and City Treasurer Nelia A. Barlis (*petitioners*), seeking the refund of LBT in the amount of ₱4,499,653.19, which it had allegedly erroneously paid in 2011.¹³

On March 31, 2015, the RTC rendered a Decision¹⁴ in favor of MPIC. Petitioners were ordered to refund the amount of ₱4,499,653.19, representing LBT which it erroneously collected from MPIC. Petitioners filed a motion for reconsideration which the RTC denied in its Order dated June 22, 2015.

On July 8, 2015, petitioners filed a petition for review before the CTA.

On July 20, 2016, the CTA Division rendered its Decision¹⁵ denying the petition for review and upholding the assailed decision and order of the RTC. After denial of their motion for reconsideration on September 20, 2016, petitioners elevated the case to the CTA *En Banc*.

In the assailed Decision,¹⁶ the CTA *En Banc* affirmed the CTA Division. It held that petitioners may not impose business taxes on dividends and interest income received by MPIC in 2010 as there is

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¹⁰ Id. at 25.

¹¹ Id. at 26.

¹² Id.

¹³ Id.

¹⁴ Supra note 6.

¹⁵ Supra note 3.

¹⁶ Supra note 1.

no showing that it is a bank or financial institution, or engaged in similar investment and financial activities. Furthermore, the RTC correctly granted the claim for the refund in cash, which is allowed under the LGC of 1991 and the RMRC.

Their motion for reconsideration having been denied, petitioners filed the present petition.

Issue

WHETHER MPIC IS LIABLE TO PAY LBT ON ITS DIVIDEND INCOME, AGGREGATE INTEREST INCOME, AND RENTAL INCOME.

Petitioners' Arguments

Petitioners argue that MPIC is clearly engaged in activities enumerated in Sec. 3A.02(h) of the RMRC. This can be gleaned from its Articles of Incorporation stating the holding company's primary purpose whereby it can: "purchase, subscribe for, or otherwise acquire and own, hold, use, invest in, develop, sell, assign, transfer, lease, take options to, mortgage, pledge, exchange, and in all ways deal with, personal and real property of every kind and description, including shares of the capital stock of corporations, bonds, notes, evidence of indebtedness, and other securities, contracts or obligations of any corporation, domestic or foreign, without however, engaging in dealership in securities, in the stock brokerage business or in the business of an investment company."¹⁷

As reflected in MPIC's statement of income for 2010, petitioners point out that said holding company earned interest income, dividend income, and rental income, which shows that it is clearly not engaged in "management of companies" activities but rather in investment or financial activities similar to banks and financial institutions. Moreover, the wordings of Sec. 3A.02 of the RMRC plainly indicate that a holding company shall be taxed at the rate prescribed under Sec. (h) on its gross sales and receipts during the preceding year, which include those derived from commissions, interest, leasing, and investments.¹⁸

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¹⁷ *Rollo*, pp. 9-12.

¹⁸ *Id.* at 12-15.

As to the RTC's grant of tax refund, petitioners assert that the wordings of Sec. 7B.14 of the RMRC are explicit in that a claim for refund or credit shall not be refundable in cash.¹⁹

Respondent's Arguments

MPIC argues that the imposition of LBT on MPIC should be consistent with the RMRC's definition of a holding company as a controlling company that has one or more subsidiaries and confines its activities primarily to their management; hence, its primary business is to render management services to its subsidiaries and to collect management fees as compensation in rendering such services. While Sec. 3A.01(p) provides that a 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," it does not state that a holding company shall be taxed as a financial institution and merely prescribes the rate to be used. Moreover, since a holding company's business has no rational connection with any of the business entities exclusively enumerated in Sec. 3A.02(h), which covers financial institutions and dealers in securities, MPIC, therefore, should have been taxed under Sec. 3A.02(g).²⁰

Stressing the limitations on the taxing and other revenue-raising powers of LGUs, MPIC contends that the imposition of LBT on passive income is allowed only with respect to banks and financial institutions. Thus, to impose LBT on holding companies such as MPIC is considered a tax on income considering that MPIC is not a financial institution. Sec. 3A.02(p) of the RMRC does not authorize petitioners to arbitrarily include rental, dividends, interest, and other items of passive income in the taxable gross receipts of holding companies such as MPIC. Notably, Sec. 3A.02(p) makes reference to Secs. 3A.02(g) or 3A.02(h) only for purposes of determining the applicable LBT rate on holding companies; it does not provide further guidelines on how to compute or what to include under gross sales and/or receipts upon which the LBT rate shall be applied.²¹

On the grant of its claim for refund, MPIC points out that under Sec. 196 of the LGC of 1991, as implemented by Article 286 of its Implementing Rules and Regulations (*IRR*), a taxpayer may be granted either a tax refund or a tax credit for taxes erroneously paid.

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¹⁹ Id. at 16-17.

²⁰ Id. at 54-57.

²¹ Id. at 58-59.

Sec. 7B.14(d) of the RMRC likewise implies that a taxpayer can recover any tax, fee or charge erroneously or illegally collected by making a written claim, either for a refund or credit. As a tax ordinance, the RMRC is strictly construed against petitioner City of Makati and liberally in favor of taxpayer MPIC.²²

The Court's Ruling

The petition is without merit.

Sec. 3A.02 of the RMRC provides:

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

(g) On Contractors and other independent contractors defined in SEC. 3A-01 (t) of chapter III of this Code, and on owners or operators business establishments rendering or offering services such as; advertising agencies; x x x **business management services**; collecting agencies; x x x

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

(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. (emphases supplied)

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²² Id. at 67-71.

Petitioners imposed LBT on MPIC under subsection (h) instead of subsection (g) on the basis of its conclusion that MPIC is engaged in activities similar to banks and financial institutions. They cited as evidence documents showing MPIC's receipt of dividend income, interest income and rental income, as well as the statement of primary purpose in its articles of incorporation.

In *City of Davao v. Randy Allied Ventures, Inc.*,²³ We explained that LGUs are authorized by Sec. 143(f)²⁴ of the LGC to impose LBT on banks and other financial institutions for the privilege of doing such business within their jurisdictions. Thus, LBT is imposed on their gross receipts from "interest, commissions and discounts from lending activities, income from financial leasing, dividends, rental on property and profit from exchange or sale of property, insurance premium."²⁵

However, to be considered a bank or financial institution, *i.e.*, a non-bank financial intermediary under the National Internal Revenue Code (*NIRC*), banking laws, and pertinent regulations, We laid down the following requisites that 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;

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²³ G.R. No. 241697, July 29, 2019, 911 SCRA 396.

²⁴ SECTION 143. *Tax on Business.* - 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.

²⁵ *City of Davao v. Randy Allied Ventures, Inc.*, supra note 23 at 402.

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.²⁶ (emphases supplied)

Moreover, in the same cited case, We pointed out the distinction between a holding company and a financial intermediary, and that a broad statement of primary purpose in the articles of incorporation is not controlling. Indeed, a holding company which is not a bank or financial institution is not liable for LBT.

Indeed, there 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 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.**

x x x x

Moreover, **while RAVI’s stated primary purpose in its AOI is couched in broad terms as to allow some functions similar to an NBFI, this does not necessarily mean it is engaged in the same business.** Verily, the “power to purchase and sell real and personal property, including shares,” and “to receive dividends thereon,” are common provisions to all corporations, including holding companies like RAVI which undertake investments. The mere fact that a holding company makes investments does not *ipso facto* convert it to an NBFI. Otherwise, there would be absolutely no distinction between a mere holding company and financial intermediaries.

In sum, **since RAVI is not a bank or other financial institution, i.e., an NBFI, it cannot be held liable for LBT under Section 143(f) of the LGC.** However, this pronouncement

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²⁶ Id. at 402-403.

is without prejudice to RAVI'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.²⁷ (additional underscoring supplied)

We sustain the CTA's finding that MPIC is not a non-bank financial intermediary, and that it does not fall within the classification of any of the financial institutions enumerated in Sec. 131 of the LGC of 1991 (*i.e.*, lending investors, finance and investment companies, stock markets, stock brokers, and dealers in securities and foreign exchange), and as defined under the regulations of the *Bangko Sentral ng Pilipinas (BSP)*. Aside from the stark fact that MPIC was not authorized by the BSP to engage in quasi-banking functions, the supposed functions of a non-bank financial intermediary covered by the statement of primary purpose in its Amended Articles of Incorporation have not been shown to be principal in nature, or performed by the holding company "on a regular and recurring, not on an isolated basis."

Petitioners have not shown that all the requirements set forth in the NIRC and other applicable laws and regulations, and summarized in *City of Davao v. Randy Allied Ventures, Inc.*, were satisfied. Consequently, there is no legal basis for their imposition of LBT on MPIC.

With the failure of petitioners to justify the imposition of LBT on MPIC's income on dividends and interests, the latter is clearly entitled to a refund of the ₱4,499,653.19 it erroneously paid, as ordered by the RTC. And, as correctly determined by the CTA, such tax refund shall be a cash refund, which is clearly allowed under Sec. 196 of the LGC of 1991 and Sec. 7B.14²⁸ of the RMRC. The taxpayer is given the option to either make a claim for a refund or credit of

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²⁷ *Id.* at 404-406.

²⁸ 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 of 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.

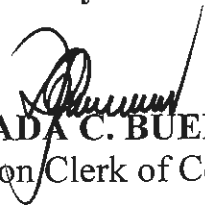
The tax credit granted a taxpayer shall not be refundable in cash but shall only be applied to future tax obligations of the same taxpayer for the same business. If a taxpayer has paid in full the tax due for the entire year and he shall have no other tax obligations payable to the Local Government of the City of Makati 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.

erroneously or illegally collected tax. MPIC had opted for a tax refund when it filed its administrative claim and had consistently prayed for a tax refund throughout the proceedings before the RTC and the CTA.

WHEREFORE, the petition is **DENIED** for lack of merit. The February 9, 2018 Decision and June 13, 2018 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 1530 are hereby **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
FFND

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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