



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 3, 2023 which reads as follows:

“G.R. No. 244137 (City of Davao and Mr. Erwin P. Alparaque, in his official capacity as Acting City Treasurer of the City of Davao v. Randy Allied Ventures, Inc.). — After a judicious study of the case, the Court resolves to **DENY** the instant Petition for Review on *Certiorari*¹ dated February 7, 2019, and **AFFIRM** the Decision² dated July 27, 2018 and the Resolution³ dated December 11, 2018 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1635 for failure of petitioners City of Davao and Erwin P. Alparaque in his official capacity as Acting City Treasurer (petitioners) to show any reversible error in the assailed decision or resolution.

Randy Allied Ventures, Inc. (RAVI) is not a non-bank financial intermediary. Hence, it cannot be subjected to local business taxes on its dividend and interest incomes on its investments and money placements in San Miguel Corporation (SMC).

The power of local government units (LGUs) to impose taxes is not inherent but is vested by Republic Act (RA) No. 7160⁴ or the Local Government Code (LGC) of 1991. Pertinently, Section 143 of said statute expressly authorizes cities and municipalities to impose a local business tax on banks and other financial institutions on interest and dividend incomes.

¹ *Rollo*, pp. 15-31.

² *Id.* at 32-50. Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan. Associate Justice Juanito C. Castañeda, Jr. dissented. Associate Justice Caesar A. Casanova joined the dissent of Associate Justice Castañeda. Presiding Justice Del Rosario wrote a separate concurring opinion.

³ *Id.* at 59-61. Penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan. Associate Justice Juanito C. Castañeda, Jr. reiterated his dissenting opinion. Presiding Justice Del Rosario reiterated his concurring opinion.

⁴ Entitled “AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991.” Approved: October 10, 1991.

The scope of the term “banks and other financial institutions” is also defined under Sec. 131(e) of the LGC, to wit:

(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;

Based on the foregoing, “non-bank financial intermediaries” are included in the term “banks and other financial institutions” and that the term “non-bank financial intermediaries are those that are “as defined under applicable laws, or rules and regulations thereunder.”

Relative thereto, the term “non-bank financial intermediary” is defined in Sec. 22(W) of RA No. 8424⁵ or the National Internal Revenue Code of 1997, which reads as follows:

(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.

In turn, Sec. 2-D(c) of RA No. 337,⁶ as amended by Presidential Decree No. 71,⁷ defines “financial intermediaries” in the following wise:

(c) ‘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;

Moreover, Sec. 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions⁸ (Manual) of the Bangko Sentral ng Pilipinas (BSP) elaborated on the above as follows:

§ 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.

⁵ Entitled “AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES,” otherwise known as “TAX REFORM ACT OF 1997.” Approved: December 11, 1997.

⁶ Entitled “AN ACT REGULATING BANKS AND BANKING INSTITUTIONS AND FOR OTHER PURPOSES,” otherwise known as “THE GENERAL BANKING ACT.” Approved: July 24, 1948.

⁷ Entitled “AMENDING REPUBLIC ACT NUMBERED THREE HUNDRED AND THIRTY-SEVEN, ENTITLED ‘THE GENERAL BANKING ACT.’” Signed: November 29, 1972.

⁸ September 30, 2017 Edition.

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[/hers]/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[/hers]/its application for registration of business filed with the appropriate government agency.

To be considered a financial intermediary, a person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:

- 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;
- c. Borrow against, or lend on, or buy or sell debt or equity securities;
- d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers;
- e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

Non-banking financial intermediaries shall include the following:

(1) A person or entity licensed and/or registered with any government regulatory body as a non-bank financial intermediary, such as investment house (IH), investment company, financing company, securities dealer/broker, lending investor (IH), pawnshop, money broker, fund manager, cooperative, insurance company, non-stock savings and loan association (NSSLA) and building and loan association.

(2) A person or entity which holds itself out as a non-banking financial intermediary, such as by the use of a business name, which includes the term *financing, finance, investment, lending* and/or any word/phrase of similar import which connotes financial intermediation, or an entity which advertises itself as a financial intermediary and is engaged in the function(s) where financial intermediation is implied.

(3) A person or entity performing any of the functions enumerated in Items "a" to "e" of this Subsection. (Emphasis and italics in the original, underscoring supplied)

In accordance with the foregoing applicable laws, rules, and regulations, the basic requirements for a person or entity to be considered as a non-bank financial intermediary are as follows:

1. The person or entity is authorized by the BSP to perform quasi-banking activities;
2. The principal functions of the 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 functions described in the BSP Manual on a regular and recurring, not on an isolated, basis.

In the present case, there is no indication that RAVI fulfills the first requirement as there is no evidence showing that it was authorized by the BSP to perform quasi-banking activities.

Even if the Court were to ignore the non-fulfillment of the said first requirement, for the sake of argument, the second requisite likewise remains unmet. While it may be true that RAVI's functions, on the basis of its primary purpose as stated in its Amended Articles of Incorporation, may cover the supposed functions of a non-bank financial intermediary, it was not shown that said functions are principal in nature. The records of this case are wanting of any proof that the stated functions were done by RAVI pursuant to its "chief, main, most considerable or important, of first importance, leading, primary, foremost, dominant or preponderant, as distinguished from secondary or incidental," purpose. In fact, no evidence was submitted to show that RAVI ever performed any of the said functions.

As a corollary, it was also never established that the enumerated functions under the BSP Manual were performed by RAVI on a regular and recurring basis. In fact, there is no evidence to suggest that RAVI ever engaged in any business activity. On the contrary, the records show that RAVI acquired SMC shares only once after its incorporation and has neither bought any other shares of stock nor invested in any corporation aside from SMC. Essentially, RAVI's investment in SMC shares happened only once, qualifying it as an isolated transaction.

Besides, there was absolutely no showing that RAVI held itself out as a non-bank financial intermediary.

Such being the case, the assailed Decision of the CTA *En Banc* properly upheld the finding that RAVI is not a non-bank financial

intermediary, and that the interests and dividends it received may not validly be the subject of local business tax imposed by the City of Davao.

Contrary to petitioners' insistence, Sec. 129 of the LGC empowers each LGU to create its own sources of revenue, and to levy taxes, fees, and charges, subject to the provisions of the LGC and consistent with the basic policy of local autonomy.

In particular, Sec. 143(f), in relation to Sec. 151, of the LGC grants the power to LGUs such as the City of Davao to impose taxes on banks and other financial institutions, to wit:

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.

x x x x

Section 151. **Scope of Taxing Powers.** – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however,* That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

However, the aforesaid taxing power granted to a city, like petitioner City of Davao, is not without limitation. Sec. 133(o) of the LGC specifies the restrictions on the taxing power of LGUs in the following manner:

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:

x x x x

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

Based on the quoted provisions, while the City of Davao is empowered to impose income tax on the gross receipts derived by banks and other financial institutions from dividends and interests, it still cannot tax the National Government.

In this case, RAVI received from the City Treasurer the Business Tax Order of Payment⁹ dated January 20, 2014, imposing local business tax on the former's dividends derived from SMC shares of stock and interest income from money market placements for the third and fourth quarters of 2011.

Significantly however, in *Philippine Coconut Producers Federation, Inc. v. Republic*,¹⁰ We held that RAVI and its SMC shares of stock were acquired using coconut levy funds, which have been established to be public in character.¹¹ Hence, RAVI and its SMC shares ought to be treated as assets belonging to the government.

Since RAVI and its SMC shares of stock are regarded as government property, any tax imposed thereon is effectively levied against the government. Consequently, the dividend and interest incomes earned by RAVI may not legally be subjected to local business tax by the City of Davao.

In sum, since RAVI is not a bank or other financial institution, *i.e.*, a non-bank financial intermediary, it cannot be held liable for local business tax under Sec. 143(f) of the LGC. However, this pronouncement 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.¹²

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated July 27, 2018 and the Resolution dated December 11, 2018 of the Court of Tax Appeals *En Banc* in CTA EB No. 1635 are **AFFIRMED**.

⁹ Not attached to the Petition, but see *rollo*, p. 34.

¹⁰ 679 Phil. 508 (2012).

¹¹ *Id.* at 639-640.



¹² *City of Davao v. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 29, 2019.

SO ORDERED.” *Gesmundo, C.J., on official leave.*

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:


MARIA TERESA B. SIBULO
Deputy Division Clerk of Court 

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