



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 17, 2023** which reads as follows:

“G.R. No. 243068 (City of Davao and Villa V. Dureza, in her official capacity as Officer-in-Charge of the City Treasurer’s Office, Davao City v. Te Deum Resources, Inc.). – In this Petition for Review on *Certiorari*¹ (Petition), petitioners City of Davao and Villa V. Dureza, in her official capacity as Officer-in-Charge of the City Treasurer’s Office, Davao City (collectively, petitioners) assail the Decision² dated 08 May 2018 and the Resolution³ dated 09 October 2018 of the Court of Tax Appeals (CTA) En Banc in CTA EB No. 1692. The CTA granted respondent Te Deum Resources, Inc.’s (respondent) Petition for Review thereby cancelling and withdrawing the assessment for local business tax for the first and second quarters of taxable year 2011 issued against respondent.

Antecedents

Respondent is one of the Coconut Industry Investment Fund (CIIF) holding companies established to own and hold the shares of stock of San Miguel Corporation (SMC).⁴ Since October 2009, it has been the registered owner of 58,487,823 preferred shares of stock in SMC. The dividends received by respondent from said SMC preferred shares were deposited in a trust account, which earned interest from money market placements.⁵

¹ *Rollo*, pp. 10-30.

² *Id.* at 31-51; penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan. Associate Justice Juanito C. Castañeda, Jr. penned a Dissenting Opinion and was joined by and Associate Caesar A. Casanova.

³ *Id.* at 59-62; penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justices Erlinda P. Uy and Esperanza R. Fabon-Victorino. Associate Justice Juanito C. Castañeda, Jr., penned a Dissenting Opinion.

⁴ *Philippine Coconut Producers Federation, Inc. v. Republic*, 679 Phil. 508, 526 (2012).

⁵ *Rollo*, p. 33.

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In 2010, respondent received dividends and interests on its SMC preferred shares amounting to ₱443,823,123.35, computed as follows:

Dividends	₱ 438,658,672.50
Interests	<u>5,164,450.85</u>
Total	₱ 443,823,123.35 ⁶

Petitioners demanded and collected from respondent the payment of 0.55% local business tax on the above dividends and interests amounting to ₱1,220,513.50. Respondent disagreed with the assessment and paid the same under protest.⁷

On 13 September 2012, respondent filed with the City Treasurer its written administrative claim for refund or credit of erroneously and illegally collected local business tax. However, the claim remained unresolved despite the lapse of four months prompting respondent to file a Petition for Refund or Credit under Section 196 of the Local Government Code of 19918 (LGC) before the Regional Trial Court of Davao City (RTC).⁹

The RTC, through its Decision dated 22 June 2015, dismissed the Petition filed by respondent. Respondent's Motion for Reconsideration was also dismissed through the Order dated 11 September 2015 issued by the trial court.¹⁰

Unperturbed, respondent elevated the case before the CTA Division, which dismissed his Petition for Review on 10 February 2017. His Motion for Reconsideration was likewise denied prompting respondent to appeal before the CTA *En Banc*.¹¹

Decision of the CTA *En Banc*

On 08 May 2018, the CTA *En Banc* promulgated the assailed Decision granting respondent's Petition for Review, hence:

WHEREFORE, premises considered, the Petition for Review filed by petitioner **Te Deum Resources, Inc.** is **GRANTED**. The assailed February 10, 2017 Decision and July 19, 2017 Resolution of the Court in Division are hereby **REVERSED** and **SET ASIDE**. The assessment for

⁶ Id.

⁷ Id.

⁸ Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991." Approved 10 October 1991.

⁹ Id. at 33-34.

¹⁰ Id. at 34.

¹¹ Id. at 34-35.

local business tax for the first and second quarters of taxable year 2011 issued against petitioner are **CANCELLED** and **WITHDRAWN**.

Accordingly, respondents are **ORDERED** to refund or issue a tax credit certificate to petitioner in the amount of One Million Two Hundred Twenty Thousand Five Hundred Thirteen and 50/100 Pesos (P1,220,513.50) representing the erroneously paid 0.55% local business tax for the first and second quarters of taxable year 2011.

SO ORDERED.¹²

According to the CTA *En Banc*, dividends and interest income on money market placements are not subject to local business tax unless levied on banks and other financial institutions. Respondent was neither a non-bank financial intermediary nor an investment company falling under the category of banks or other financial institutions. Instead, the CA held that respondent is a holding company whose dividend and interest income are not subject to local business tax. There was also no proof that respondent was authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities. Respondent's Amended Articles of Incorporation further show that the principal function of the company was to act as a holding company. It does not perform the functions of a non-bank financial intermediary on a regular and recurring basis. Hence, respondent is entitled to a tax credit or refund of the erroneously collected tax.¹³

Petitioners filed a Motion for Reconsideration of the above decision but the same was denied by the CTA *En Banc* in its Resolution¹⁴ dated 09 October 2018.

Issue

The issue for the Court's consideration is whether or not the collection by petitioners of the 0.55% local business tax on the dividends and interests of SMC preferred shares held by respondent is proper.

Ruling of the Court

The Petition lacks merit.

In *City of Davao v. Randy Allied Ventures, Inc. (RAVI)*,¹⁵ the Court ruled that therein respondent RAVI is a CIIF holding company exclusively

¹² Id. at 50.

¹³ Id. at 37-50.

¹⁴ Id. at 59-62.

¹⁵ G.R. No. 241697, 29 July 2019.

established to own and hold SMC shares of stock, which are considered government assets owned by the National Government for the coconut industry. Since the management and placement of the SMC preferred shares is not tantamount to doing business as a bank or other financial institution, it is not liable to pay local business tax. The pertinent discussion on the matter reads:

"Banks and other financial institutions" are defined under the same Code as to "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."

Essentially, LBT are taxes imposed by local government units on the **privilege of doing business within their jurisdictions**. To be sure, the phrase "doing business" means some "trade or commercial activity **regularly engaged in** as a **means of livelihood** or **with a view to profit**." Particularly, the LBT imposed pursuant to Section 143 (f) is premised on the fact that the persons made liable for such tax are banks or other financial institutions by virtue of their being engaged in the business as such. This is why the 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 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;

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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 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.

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.

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.¹⁶

The same ruling was reached by the Court in *City of Davao v. AP Holdings, Inc. (APHI)*,¹⁷ where the exemption of APHI from local business tax was upheld after a finding that it holds SMC preferred shares as one of the CIIF holding companies.

Like *RAVI* and *APHI*, herein respondent's management and placement of funds are not done in a regular or recurring manner for the purpose of earning profit. Rather, the management of the SMC preferred shares is made in furtherance of its purpose as a CIIF holding company. Verily, the Court finds no reason to disturb the findings of the CTA *En Banc*, which is in accordance with the law and jurisprudence.


¹⁶ Id.

¹⁷ G.R. No. 245887, 22 January 2020.

WHEREFORE, the petition is hereby **DENIED**. The Decision dated 8 May 2018 and Resolution dated 9 October 2018 rendered by the Court of Tax Appeals *En Banc* in CTA EB No. 1692 are **AFFIRMED**.

SO ORDERED.”

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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FEB 08 2023

Atty. Oscar P. Mata
Counsel for Petitioners
Office of the City Legal Officer
City Hall, 8000 Davao City

Court of Tax Appeals
National Government Center
Diliman, 1101 Quezon City
(CTA EB No. 1692)
(CTA AC No. 150)

CARAG ZABALLERO LLAMADO & ABIERA
Counsel for Respondent
Suite 2606, 26/F, The Atlanta Center
31 Annapolis Street, Greenhills
1502 San Juan City

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