



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 24, 2021** which reads as follows:*

“G.R. No. 224322 — THE CITY TREASURER OF MAKATI CITY, petitioner, versus MICHIGAN HOLDINGS, INC., respondent.

This Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court filed by petitioner the City Treasurer of Makati City (petitioner) seeks the reversal and setting aside of the Decision² dated June 17, 2015 and Resolution³ dated April 13, 2016 of the Court of Tax Appeals *en banc* (CTA EB) in CTA EB No. 1093. The CTA EB cancelled the assessment levying local business tax (LBT) on dividend income of respondent Michigan Holdings, Inc., (respondent) including the surcharges and penalties.

The Facts

The facts, as summarized by the CTA EB are as follows:

On January 24, 2008, [respondent] received a Billing Assessment from [petitioner], assessing it for Mayor's Permit Fee, City License Fee, and Local Business Tax (LBT) for CY 2006, in the total amount of ₱1,277,418.53. The LBT accounted for ₱660,521.40, inclusive of surcharge and interest.

On January 29, 2008, [respondent] filed a protest letter contesting the deficiency LBT assessment, pointing out that the

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¹ *Rollo*, pp. 11-33.

² *Id.* at 34-67. Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas concurring.

³ *Id.* at 68-79.

revenues being subjected to LBT were generated from passive investments/income, consisting of the following:

Dividend Income	₱171,677,633.00
Gain on sale of shares sold thru the stock exchange	9,798,817.00
Interest income from money market placements	4,823,854.00
Collection of utilities from lessor	1,458,295.00
TOTAL	₱187,758,629.00

On February 6, 2008, [petitioner], by letter, partially granted the protest by excluding revenues from the gain on sale of shares sold thru the stock exchange and interest income from money market placements, which were already subjected to final income taxes. The protest on dividend income was denied by [petitioner], who invoked Section 3A.02 (p) of the Revised Makati Revenue Code.

On March 14, 2008, [respondent] moved for reconsideration of the remaining denial of its protest. This request, however, was not acted upon by [petitioner]. Thus, before the expiration of the sixty (60)-day period from its receipt of the Billing Assessment, [respondent] filed a [Complaint] before the [Regional Trial Court (RTC)] of Makati City for the cancellation and withdrawal of the remaining LBT assessment on dividend income. The [Complaint] was raffled to RTC Branch 134 and docketed as Civil Case No. 08-225. Thereat, the litigants agreed on a sole issue: whether or not [petitioner] may levy LBT on dividend income. [Respondent] posited that under Section 133 (a) of the Local Government Code of 1991, dividend income is subject to income tax, which the local government unit is prohibited from imposing except on banks and other financial institutions.⁴

[During the Pre-trial on March 20, 2009, the parties agreed that the sole legal issue for determination is whether or not the City Treasurer's Office of Makati City may levy business tax on the dividend income of [respondent]. Likewise, they both agreed that since the issue is purely legal, they would no longer present testimonial evidence and they would merely submit their respective Memorandum. In compliance with the said undertaking, Memoranda were filed and the case was deemed submitted for decision.]⁵

On September 21, 2011, the RTC dismissed [respondent's] appeal on the ground that it was directed not at the tax assessment but rather at the validity of Section 3A.02 (p) of the Revised Makati Revenue Code. The RTC held that it had no jurisdiction to rule on the validity of the said provision.⁶

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⁴ Id. at 35-36.

⁵ Id. at 81.

⁶ *See rollo*, pp. 80-83. Decision dated September 21, 2011 of Branch 134, Regional Trial Court of Makati City, penned by Presiding Judge Perpetua Atal-Paño.

On October 4, 2012, the RTC denied [respondent's] motion for reconsideration. It pointed out that the proper remedy would be to question the validity of the provision under Section 187 of the Local Government Code.

On November 19, 2012, [respondent] filed its petition for review, which was docketed as CTA AC No. 99 and heard by [the CTA's] Third Division. Subsequently, in the ensuing reorganization of [the CTA's], the case was transferred to the Second Division.⁷

In its Decision⁸ dated September 19, 2013, the CTA Second Division dismissed respondent's petition for lack of merit. The CTA Division ruled that the authority to decide the legality of Section 3A.02(p) of the Revised Makati Revenue Code (RMRC) is lodged with the Secretary of Justice pursuant to Republic Act No. 7160 or the Local Government Code of 1991 (LGC) and its implementing rules and regulations.⁹

Respondent moved for reconsideration but was denied by the CTA Second Division in its Resolution dated November 19, 2013.¹⁰

Aggrieved, respondent elevated the case to the CTA EB.¹¹

CTA EB Ruling

In the assailed Decision¹², the CTA EB granted respondent's petition and cancelled the assessment levying LBT on respondent's dividend income, including surcharges and penalties thereon.¹³ According to the CTA EB, the RTC had jurisdiction to rule on respondent's Complaint because the same was properly filed in accordance with Section 195 of the LGC on protesting a local tax assessment. The CTA EB explained that a close reading of respondent's Complaint shows that all respondent sought was the nullification of the assessment of LBT on its dividend income and not the nullification or declaration of nullity of any tax ordinance or any provision thereof.¹⁴ Further, the CTA EB ruled that Section 195 of the

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⁷ Id. at 36.

⁸ Id. at 84-94. Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr. and Amelia R. Cotangco-Manalastas concurring.

⁹ Id. at 37.

¹⁰ Id.

¹¹ Id.

¹² Supra note 2.

¹³ Id. at 66.

¹⁴ Id. at 45.

LGC is separate, distinct and independent from Section 187 of the same Code.¹⁵ A local tax assessment may be contested pursuant to Section 195 for lack of legal basis or for invalidity of its alleged legal basis.¹⁶

In addition, the CTA EB held that the validity of the subject local tax assessment may be determined even without invalidating the local tax ordinance upon which it is based, because the sole issue to be resolved in this case, as agreed upon by the parties during trial, was whether petitioner may levy LBT on the dividend income of respondent.¹⁷ Accordingly, in ruling on the invalidity of the subject assessment, the CTA EB held that local governments are not authorized and are in fact prohibited from levying income taxes except on banks and other financial institutions. Thus, the dividend income of respondent, a holding company, cannot be subject to LBT.¹⁸ In this regard, the CTA EB found it unnecessary to remand the case to the RTC.¹⁹

Petitioner filed a Motion for Reconsideration but the same was denied by the CTA EB in its Resolution dated April 13, 2016.²⁰

Hence, this Petition.²¹

The Issues

Based on the submissions of the parties, the following issues are for the Court's resolution:

- (1) Whether the RTC has jurisdiction over respondent's Complaint; and
- (2) Whether the assessment issued by petitioner levying LBT on respondent's dividend income is valid.

The Court's Ruling

The Petition lacks merit.

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¹⁵ Id. at 48.

¹⁶ Id.

¹⁷ Id. at 61-63.

¹⁸ Id. at 53-54.

¹⁹ Id. at 66.

²⁰ Supra note 3.

²¹ Supra note 1.

The Complaint filed with the RTC falls within the ambit of Section 195 and not Section 187 of the LGC. Thus, the RTC erred in dismissing the complaint for lack of jurisdiction.

Petitioner asserts that the RTC was correct in dismissing respondent's Complaint for lack of jurisdiction because it essentially assails the validity or constitutionality of Section 3A.02(p) of the RMRC. According to petitioner, questions on the legality of an ordinance or any provision thereof must follow the procedure under Section 187 of the LGC by filing first an appeal with the Secretary of Justice. In this regard, petitioner claims that respondent's Complaint constitutes a collateral attack on the validity of said provision of the RMRC.²²

The Court disagrees.

Case law holds that the nature of an action and the subject matter thereof, as well as which court has jurisdiction over the same, are determined by the material allegations in the complaint in relation to the law involved and the character of the relief prayed for.²³

Section 187 of the LGC provides the procedure for questioning the constitutionality or legality of tax ordinances or revenue measures, viz.:

SECTION 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.* — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further*, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however*, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally*, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the

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²² *Rollo*, pp. 19-28.

²³ *Bank of the Philippine Islands v. Hong*, 682 Phil. 66, 72 (2012).

Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

Section 195, on the other hand, grants the taxpayer a remedy to contest an LBT assessment. It states:

SECTION 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

A perusal of respondent's Compliant with the RTC reveals that the same was filed in accordance with Section 195 and not Section 187 of the LGC. The Complaint, docketed as Civil Case No. 08-225, reads as follows:

COMPLAINT

COMES NOW Plaintiff Michigan Holdings, Inc., through the undersigned counsel, and to this Honorable Court respectfully avers that

x x x x

3. Plaintiff has been regularly paying business taxes to the City Government of Makati and it has been able to regularly secure from the same local government a Mayor's Permit and a Business Permit.

4. On January 24, 2008, Plaintiff received a Billing Assessment from the Defendant bearing the same date, wherein Plaintiff was being assessed a deficiency tax for 2006 based on its financial statements for the fiscal year 2006, in the amount of P660,521.40, including surcharge and interest.

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X X X X

5. On January 29, 2008, Plaintiff filed a tax protest with the Defendant through its letter dated January 28, 2008, on the ground that income being subjected to deficiency business tax by the Defendant, i.e., the Dividend Income, Gain on sale of shares sold through the stock exchange, and interest income from money market placements, as reported in its 2006 annual income tax return, are not subject to business tax as these are income generated from Plaintiff's passive investments.

X X X X

6. On February 13, 2008, Plaintiff received a letter from the Defendant dated February 06, 2008, wherein Plaintiff request for the reversal of the assessment of deficiency taxes, fees and charges was partially denied insofar as dividend income was concerned but approved insofar as gain on sale of shares and interest income were concerned, pursuant to Section 3A.02(p) of the Makati Revised Revenue Code.

X X X X

7. On March 14, 2008, Plaintiff requested for reconsideration of the partial denial of its tax protest through its letter to Defendant dated March 12, 2008, contending, among others, that these three kinds of income, i.e. interest income, capital gain on sale of shares, and dividends are all classified as passive incomes pursuant to Sec. 27(D)(1)(2)(4), respectively, of the National Internal Revenue Code of 1997 (NIRC), and one cannot be differentiated from the other for local business tax purposes.

X X X X

8. The imposition of local business tax by the Defendant on the dividend income of the Plaintiff constitutes a breach of the limitation of the taxing powers of the local government under Section 133(a) of the Local Government Code and will cause grave and irreparable injury and damage to Plaintiff, if its enforcement is not enjoined by the Honorable Court.

9. The Defendant has not acted on Plaintiff's request for reconsideration to date, hence, Plaintiff was constrained to file the present action this date which is within a period of sixty days from the time Plaintiff received Defendant's billing assessment on January 24, 2007 to protect its interest.

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of the Honorable Court that, after due notice and hearing, **the deficiency tax assessment for 2006 issued by Defendant against the Plaintiff be permanently cancelled and set aside for utter lack of merit.**

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Other reliefs as may be just and equitable under the premises are likewise prayed for.²⁴

It is quite apparent therefore that the RTC erred when it relied on Section 187 of the LGC and dismissed the Complaint for lack of jurisdiction because the Complaint does not even allege that Section 3A.02(p) of the RMRC is illegal or unconstitutional. Neither does the Complaint pray for the RTC to rule on the legality or constitutionality of said provision. What the Complaint solely seeks is the cancellation of the assessment issued by petitioner levying and collecting LBT on respondent's dividend income for taxable year 2006. Notably, during Pre-trial, the parties expressly agreed that the only issue for the RTC's resolution is whether or not petitioner may levy LBT on the dividend income of respondent,²⁵ and since this issue is purely legal, both parties moved that they would no longer present any testimonial evidence and would merely submit their respective memorandum.²⁶

Thus, there is no gainsaying that Civil Case No. 08-225 is an appeal of a protested assessment under Section 195 of the LGC. The application of Section 195 of the LGC in the present case was triggered by petitioner's issuance of the subject assessment, which respondent properly protested and appealed to the RTC. Section 187 of the LGC clearly does not apply in this case.

The Court likewise finds unmeritorious petitioner's claim that respondent's Complaint is a collateral attack on the constitutionality of the provisions of the RMRC. To stress anew, the only issue for the court's resolution is the validity of petitioner's assessment of LBT on respondent's dividend income, which respondent assails on the ground that it was issued in clear contravention of LGC. Respondent never questioned the legality or constitutionality of the RMRC itself or any provision thereof. As such, the resolution of the issue on the validity of the subject assessment will not trigger a collateral attack on the RMRC.²⁷

Petitioner, nonetheless, alleges that even assuming that the RTC has jurisdiction over respondent's Complaint, a remand of the case is necessary for the RTC to rule on the merits of the case.²⁸

Again, it bears noting that the parties had agreed during Pre-Trial that this case involves a purely legal issue — *i.e.*, whether or not

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²⁴ Records, pp. 1-4.

²⁵ Order dated March 20, 2009, records, pp. 90-91.

²⁶ Id. at 91.

²⁷ See *Province of Bulacan v. Court of Appeals*, 359 Phil. 779 (1998).

²⁸ *Rollo*, pp. 26-28.

petitioner may levy business tax on the dividend income of respondent. Therefore, a remand of the case to the RTC is not necessary because the Court is in the position to resolve such legal issue based on the records before it.²⁹ In fact, remanding the case to the RTC will serve no useful purpose and will only cause delay in the proceedings. Thus, for the expeditious administration of justice, this Court shall now resolve and settle the issue on the validity the subject assessment.

The subject assessment issued against respondent levying business tax on dividend income is ultra vires.

To recall, respondent is being assessed for LBT on dividends received in 2006. Petitioner claims that respondent — a holding company doing business in Makati City — is covered by the local government's taxing authority because the LGC does not expressly prohibit the imposition of LBT on holdings companies. In support thereof, petitioner cites Section 143(h) of the LGC, which reads:

SECTION 143. Tax on Business. — The municipality may impose taxes on the following businesses:

x x x x

(h) On any business, not otherwise specified in the preceding paragraphs, which the sanggunian concerned may deem proper to tax: *Provided*, That on any business subject to the excise, value-added or percentage tax under the National Internal Revenue Code, as amended, the rate of tax shall not exceed two percent (2%) of gross sales or receipts of the preceding calendar year.

Petitioner is not entirely correct. Section 143(h) should not be read in isolation. Indeed, it should be read with the other relevant provisions of the LGC which define **and limit** the taxing power of a local government unit (LGU).

The power of a city or municipality to impose LBT is derived from Section 143 in relation to Section 151 of the LGC. Section 143 specifically enumerates several types of business on which municipalities and cities may impose taxes. These businesses include manufacturers, wholesalers, distributors, dealers of any article of

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²⁹ *Golangco v. Court of Appeals*, G.R. No. 124724, December 22, 1997, 283 SCRA 493, 501.

commerce of whatever nature; those engaged in the export or commerce of essential commodities; retailers; contractors and other independent contractors; banks and financial institutions; and peddlers engaged in the sale of any merchandise or article of commerce.³⁰ This enumeration is also not exclusive as paragraph (h) thereof authorizes cities and municipalities to impose taxes on any other business not otherwise specified in Section 143.³¹

Furthermore, it has been ruled that LBT are taxes levied on the privilege of doing business within the territorial jurisdiction of the concerned LGU.³² In turn, the phrase doing business is defined as some “trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit.”³³ Hence, the business entities enumerated under Section 143 are made liable for LBT by virtue of their being regularly engaged in their business as such within the city or municipality’s locality. This is why LBT under Section 143 is levied on the entity’s gross receipts derived from the conduct of its principal trade or business.³⁴

Proceeding from the foregoing, petitioner is correct that respondent may be subject to LBT for engaging in a regular trade or commercial activity within its territorial jurisdiction. Following Section 143, respondent’s LBT liability is imposable on the gross receipts derived from its regular trade or business. Notably, as alleged in the Complaint, respondent has been regularly paying LBT to the City Government of Makati and has been able to regularly secure from the same local government a Mayor’s Permit and Business Permit.³⁵

However, with respect to respondent’s income not derived from the pursuit of its principal business activity — such as the dividend income subject of the assessment — the same is not subject to LBT.

The provisions of the LGC are clear as to the scope and limitations of a city or municipality’s authority to impose tax on dividend income and interest earned from money market placements.

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³⁰ See LOCAL GOVERNMENT CODE (1991), Sec. 143; See also *Yamane v. BA Lepanto Condominium Corp.*, 474 SCRA 258, 272.

³¹ Id.

³² *City of Davao v. Randy Allied Ventures, Inc.*, G.R. No. 241697, July 29, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65488>>.

³³ Id., citing LOCAL GOVERNMENT CODE (1991), Sec. 131(d).

³⁴ See *City of Davao v. Randy Allied Ventures, Inc.*, supra note 32, and LOCAL GOVERNMENT CODE (1991), Section 131(n), in relation to Sec. 143; *City of Manila v. Fortune Enterprises, Inc.*, 108 Phil. 1058, 1060 (1960).

³⁵ See Paragraph 3 of the Complaint, records, p. 2.

Section 133(a) of the LGC explicitly prohibits cities and municipalities from imposing income taxes, except when levied on banks and other financial institutions. This is because dividends and interest income form part of the gross receipts of banks and other financial institutions derived from the conduct of their principal trade or business.

Verily, Section 143(f) of the LGC provides:

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 and underscoring supplied)

Banks and other financial institutions referred to in the aforementioned provision 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.³⁶ In turn, the National Internal Revenue Code of 1997 and relevant rules define non-bank financial intermediaries as persons or entities authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking functions.³⁷ These include “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.”³⁸

Further, Banking Laws and Regulations define non-bank financial intermediaries as persons and entities performing any of the following functions on a **regular and recurring basis, not as an**

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³⁶ LOCAL GOVERNMENT CODE, Sec. 131(e).

³⁷ NATIONAL INTERNAL REVENUE CODE (1997), as amended, Sec. 22(W).

³⁸ See *City of Davao v. Randy Allied Ventures, Inc.*, supra note 22, citing BIR Revenue Regulations No. 09-04, Sec. 2(2.3); and BSP Manual of Regulations for Non-Bank Financial Institutions, Sec. 4101Q.1. Emphasis and underscoring supplied.

isolated transaction: (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.³⁹

Based on the foregoing, cities and municipalities are authorized by the law to impose LBT on dividends and interest income **only when** they pertain to the gross receipts of banks and other financial institutions. In this case, however, the parties admit that respondent is a holding company. Further, there is no showing that respondent is authorized by the BSP to perform quasi-banking activities or that respondent is actually engaged in the above-enumerated activities in a regular and recurring basis. In other words, based on the submissions of the parties, respondent cannot be considered a non-bank financial intermediary whose dividends and interest income are subject to LBT under Section 143(f) of the LGC. As such, petitioner cannot assess and collect from respondent LBT on its dividends. By doing so, petitioner is effectively imposing on respondent not a tax on the privilege to do business within its territorial jurisdiction, but a tax on the income itself, which Section 133(a) of the LGC explicitly prohibits.

Furthermore, in the case of *City of Davao v. Randy Allied Ventures, Inc.*,⁴⁰ the Court had the occasion to distinguish holding companies from non-bank financial intermediaries and ruled that investments made by holding companies do not *ipso facto* make them non-bank financial intermediaries, subject to LBT under Section 143(f) of the LGC.

In this case, it is clear that RAVI is neither a bank nor other financial institution, *i.e.*, an NBF. x x x

x x x x

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

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³⁹ *City of Davao v. Randy Allied Ventures, Inc.*, supra note 22, citing BSP Manual of Regulations for Non-Bank Financial Institutions, Section 4101Q.1 Emphasis supplied.

⁴⁰ G.R. No. 241697, July 29, 2019, supra note 32.

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.

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.⁴¹ (Emphasis in the original)

Applying the foregoing ruling to the present case, respondent — a holding company — does not become a non-bank financial intermediary by its mere receipt of dividends or interest income from investments. As discussed, there is no indication in this case that respondent is “doing business” as a bank or other financial institution. Consequently, respondent cannot be treated as such and be assessed for LBT on its dividends and interest income derived from passive investments.

In sum, while respondent may be subject to LBT on its gross receipts derived from the conduct of its principal trade or business, its dividend and interest income derived from investment on shares of stock and other money market placements are not subject to LBT because it is neither a bank nor a non-bank financial intermediary.

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⁴¹ Id. Emphasis in the original.



Accordingly, the CTA was correct in cancelling the subject assessment, levying LBT on respondent's dividend income, for being *ultra vires*.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Decision dated June 17, 2015 and Resolution dated April 13, 2016 of the Court of Tax Appeals *en banc* in CTA EB No. 1093 are hereby **AFFIRMED**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court, 715

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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