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SECOND DIVISION

[G.R. No. 241697. July 29, 2019]

CITY OF DAVAO AND BELLA LINDA N. TANJILI, in her official capacity as city treasurer of Davao City, *petitioners, vs.* **RANDY ALLIED VENTURES, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL BUSINESS TAXES; IMPOSED BY LOCAL GOVERNMENT UNITS ON THE PRIVILEGE OF DOING BUSINESS WITHIN THEIR JURISDICTION AND THE IMPOSITION IS PREMISED ON THE FACT THAT THE PERSONS MADE LIABLE FOR SUCH TAX ARE BANKS OR OTHER FINANCIAL INSTITUTIONS.— Petitioners argue that RAVI's liability for LBT finds basis under Section 143 (f) of the LGC x x x. Essentially, LBT are taxes imposed by local overnment 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 NBFI. x x x 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. x x x [T]he 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. x x x [S]ince

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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 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.

2. **ID.; ID.; ID.; ID.; ID.; BANKS AND OTHER FINANCIAL INSTITUTIONS, DEFINED.—** "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."

3. **ID.; ID.; ID.; ID.; ID.; NON-BANK FINANCIAL INTERMEDIARY; REQUISITES.—** In order to be considered as an NBFI 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; 3. Borrow against, or lend on, or buy or sell debt or equity securities.

4. **ID.; ID.; ID.; ID.; ID.; FINANCIAL INTERMEDIARY AND HOLDING COMPANY, DISTINGUISHED.—** 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**

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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.

5. ID.; ID.; ID.; ID.; NON-BANK FINANCIAL INTERMEDIARY; THE MERE FACT THAT A HOLDING COMPANY MAKES INVESTMENTS DOES NOT *IPSO FACTO* CONVERT IT TO A NON-BANK FINANCIAL INTERMEDIARY.— 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.

APPEARANCES OF COUNSEL

Office of the City Legal Officer for petitioners.
Carag Zaballero Llamado & Abiera for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 20, 2018 and the Resolution[3] dated

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[1] *Rollo*, pp. 17-35.

[2] *Id*. at 39-57. Penned by Associate Justice Catherine T. Manahan, with Presiding Justice Roman G. Del Rosario and Associate Justices Lovell R.

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July 25, 2018 of the Court of Tax Appeals *En Banc* (CTA *EB*), which upheld the CTA First Division in granting respondent Randy Allied Ventures, Inc. (RAVI)'s claim for refund or credit of erroneously and illegally collected local business taxes (LBT) for the taxable year 2010.

The Facts

RAVI 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). On January 24, 2012, the Supreme Court rendered its decision in *Philippine Coconut Producers Federation, Inc. v. Republic (COCOFED)*, docketed as G.R. Nos. 177857-58 and 178793, declaring the CIIF companies, including RAVI, and the CIIF block of SMC shares as "public funds necessarily owned by the Government."[4] On January 17, 2013, RAVI filed with the Regional Trial Court (RTC), a **claim for refund or credit of erroneously and illegally collected LBT for the taxable year 2010**. RAVI claimed that petitioners erroneously and illegally collected LBT in the amount of ₱503,346.00, corresponding to its dividends from its SMC preferred shares, on the mistaken assumption that it is a non-bank financial intermediary (NBFI).[5]

For their part, petitioners maintained that RAVI's activities in owning shares and receiving dividends and interest income constitute investing or doing business as an NBFI.[6] Also, the clause in RAVI's Amended Articles of Incorporation (AOI), which prohibits it from acting as an investment company, is not conclusive proof that it has not actually done so.[7]

Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Ma. Belen M. Ringpis-Liban, concurring. Associate Justice Juanito C. Castañeda, Jr. issued a Dissenting Opinion (see *id*. at 58-61), joined by Associate Justice Caesar A. Casanova.

[3] *Id*. at 62-65.

[4] See *id*. at 52-55.

[5] *Id*. at 40.

[6] See *id*. at 40-41.

[7] *Id*. at 43.

The RTC Ruling

In a Decision[8] dated June 22, 2015, the RTC **denied the claim for refund or credit**. It held that RAVI's dividends and interests are not merely incidental to its business but are its principal sources of income, in line with the primary purpose stated in its Amended AOI. Being a financial intermediary, RAVI's income from dividends and interests is subject to LBT under Section 143 (f) of Republic Act (RA) No. 7160, or the Local Government Code of 1991 (LGC).[9]

Unsatisfied, RAVI filed a Petition for Review with the CTA First Division.[10]

CTA First Division Ruling

In a Decision[11] dated August 9, 2016, the CTA First Division **granted the petition**. It held that RAVI is a holding company and not an NBFI subject to LBT.[12]

Petitioners filed a Motion for Reconsideration, but was denied in a Resolution[13] dated December 15, 2016. Petitioners then filed a Petition for Review with the CTA *EB*.

CTA *EB* Ruling

In a Decision[14] dated February 20, 2018, the CTA *EB* **denied the petition for lack of merit**. It held that RAVI cannot be

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[8] Not found in the *rollo* but referenced in the CTA *EB* Decision; see *id*. at 41-42.

[9] See *id*.

[10] See *id*. at 42.

[11] Not found in the *rollo* but referenced in the CTA *EB* Decision; see *id*. at 42.

[12] See *id*. at 45, 50-51.

[13] Not found in the *rollo* but referenced in the CTA *EB* Decision; see *id*. at 42.

[14] *Id*. at 39-57. Associate Justice Juanito C. Castañeda dissented in full. He opined that the required authorization by the BSP to perform NBFI activities, and the Monetary Board's determination of whether such entities

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considered an NBFI for failing to meet the requisites provided under the General Banking Law, Manual of Regulations for Non-Bank Financial Institutions, and the National Internal Revenue Code, *i.e.*, it is not authorized to act as an NBFI by the Bangko Sentral ng Pilipinas (BSP); its principal function does not relate to NBFI activities; and that while its primary purpose may involve one of the activities enumerated in the BSP Manual, there was no proof that it performed such activities as its principal function and on a regular and recurring basis. It also held that the *COCOFED* case already settled that RAVI, as a CIIF company, and the SMC shares it holds are government properties, hence, beyond the City of Davao's power to tax.

Petitioners filed its Motion for Reconsideration, which was denied in a Resolution[15] dated July 25, 2018. Hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CTA EB erred in finding that RAVI is not an NBFI subject to LBT under Section 143 (f) of the LGC.

The Court's Ruling

The petition is without merit.

This case involves a refund of erroneously paid LBT.

Petitioners argue that RAVI's liability for LBT finds basis under Section 143 (f) of the LGC, to wit:

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

x x x x x x x x x

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are actually performing financial intermediary activities, are mere regulatory measures. Moreover, RAVI performed NBFI activities despite the limitations in its AOL. RAVI's consistent receipt of dividends and interest income leads to the conclusion that it engaged in NBFI activities. Lastly, although the SMC shares have been adjudged to belong to the government, it is not the shares but respondent, as an NBFI, who is subject to LBT (see *id*. at 58-61).

[15] *Id*. at 62-65.

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(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 supplied)

"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."[16]

Essentially, LBT are taxes imposed by local government units on the **privilege of doing business within their jurisdictions**.[17] 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.**"[18] 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."[19]

In this case, it is clear that RAVI is neither a bank nor other financial institution, *i.e.*, an NBFI. In order to be considered as an NBFI under the National Internal Revenue Code, banking laws, and pertinent regulations, the following must concur:[20]

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[16] See Section 131 (e) of the LGC; emphasis supplied.

[17] See *The City of Manila v. Coca-Cola Bottlers Philippines, Inc.,* 612 Phil. 609, 623-624 (2009).

[18] See Section 131 (d) of the LGC; emphasis supplied.

[19] Emphasis supplied.

[20] *Rollo*, pp. 49-50.

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a. The person or entity is authorized by the BSP to perform quasi-banking functions;[21]

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;[22] 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:[23]

    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;

    3. Borrow against, or lend on, or buy or sell debt or equity securities.

As observed in the *COCOFED* case,[24] 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.[25] As held in the same case, these SMC shares

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[21] See Section 131 (e), LGC; and Section 22(W) of the National Internal Revenue Code.

[22] See Section 2 (2.3), BIR Revenue Regulations No. 09-04; and Section 4101Q.1, BSP Manual of Regulations for Non-Bank Financial Institutions.

[23] See Section 4101Q.1 of the BSP Manual of Regulations for Non-Bank Financial Institutions.

[24] 679 Phil. 508 (2012).

[25] "Since the CIIF companies and the CIIF block of SMC shares were acquired using coconut levy funds — funds, which have been established to be public in character — it goes without saying that these acquired corporations and assets ought to be regarded and treated as government

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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.[26] 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."[27] 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

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assets. Being government properties, they are accordingly owned by the Government, for the coconut industry pursuant to currently existing laws." (See *id*. at 621)

[26] "We thus affirm the decision of the Sandiganbayan on this point. But as We have earlier discussed, reiterating our holding in *Republic v. COCOFED*, the State's avowed policy or purpose in creating the coconut levy fund is for the development of the entire coconut industry, which is one of the major industries that promotes sustained economic stability, and not merely the livelihood of a significant segment of the population. Accordingly, We sustain the ruling of the Sandiganbayan in CC No. 0033-F that the CIIF companies and the CIIF block of SMC shares are public funds necessary owned by the Government. We, however, modify the same in the following wise: These shares shall belong to the Government, which shall be used only for the benefit of the coconut farmers and for the development of the coconut industry." (See *id*. at 622)

[27] *Maricalum Mining Corporation v. Florentino,* G.R. No. 221813, July 23, 2018.

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quasi-banking functions.[28] 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.[29]

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,[30] including

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[28] Presidential Decree No. 71 (Amending R.A. No. 337 (General Banking Act):

Section 2-D. For purposes of Sections Two, Two-A, Two-B, and Two-C the following definition or terms shall apply:

x x x x x x x x x

(b) "Quasi-Banking Functions" shall mean borrowing funds, for the borrower's own account, through the issuance, endorsement or acceptance of debt instruments of any kind other than deposits, or through the issuance of participations, certificates of assignment, or similar instruments with recourse, trust certificates, or of repurchase agreements, from twenty or more lenders at any one time, for purposes of relending or purchasing of receivables and other obligations: *Provided, however*, That commercial, industrial, and other non-financial companies, which borrow funds through any of these means for the limited purpose of financing their own needs or the needs of their agents or dealers, shall not be considered as performing quasi-banking functions;

[29] See *Maricalum Mining Corporation v. Florentino*, *supra* note 27.

[30] See Section 36 of *Batas Pambansa Blg. 68*, as amended, otherwise known as the "Corporation Code of the Philippines."

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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 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.

WHEREFORE, the petition is **DENIED**. The Decision dated February 20, 2018 and the Resolution dated July 25, 2018 of the Court of Tax Appeals *En Banc* in CTA *EB* No. 1591 are **AFFIRMED.**

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa, Reyes, J., Jr.,* and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 241946. July 29, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELEVER JAEN *y* MORANTE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS.— Murder is defined and penalized under Article 248 of the RPC, as amended by Republic Act No. 7659, x x x Based on the foregoing, the