

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.

DECISION

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 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 P503,346.00, 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]

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 NBFIs 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 considered an NBFIs 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 NBFIs by the Bangko Sentral ng Pilipinas (BSP); its principal function does not relate to NBFIs 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 NBFIs 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:

(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 NBF. In order to be considered as an NBF under the National Internal Revenue Code, banking laws, and pertinent regulations, the following must concur:^[20]

- 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;