

FIRST DIVISION

[G.R. No. 245887, January 22, 2020]

CITY OF DAVAO AND MR. ERWIN ALPARAQUE, IN HIS OFFICIAL CAPACITY AS ACTING CITY TREASURER OF THE CITY OF DAVAO, PETITIONERS, VS. AP HOLDINGS, INC., RESPONDENT.

DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari* assails the Decision^[1] dated August 20, 2018 and the Resolution^[2] dated January 23, 2019 of the Court of Tax Appeals En Banc in CTA EB No. 1640 finding respondent AP Holdings, Inc. (APHI) entitled to a refund or credit of the 0.55% local business taxes it paid to petitioner City of Davao for the dividends it earned from its San Miguel Corporation (SMC) preferred shares and interests from its money market placements for the taxable year 2010.

Antecedents

The Coconut Industry Investment Fund (CIIF) under Presidential Decree 582 (PD 582) is a fund from part of the levy imposed on the initial sale by coconut farmers of copra and other coconut products. Pursuant to PD 582's mandate, the CIIF was invested in six (6) oil mills, the CIIF Oil Mills Group (CIIF OMG).^[3]

Sometime in 1983, CIIF OMG bought shares of stock from SMC. It also established fourteen (14) holding companies, one of which is APhi, for the sole purpose of owning and holding such shares, viz:

PRIMARY PURPOSE

The primary purpose for which such Corporation is formed is:

To purchase, subscribe for, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real and personal property of every kind and description, including shares of stock, voting trust certificates for shares of the capital stock, bonds, debentures, notes, evidences of indebtedness, and other securities, contracts, or obligations of any corporation or corporations, association or associations, domestic or foreign, and to pay therefor in whole or in part in cash or by exchanging therefor stocks, bonds, or other evidences of indebtedness or securities, contracts, or obligation, to receive, collect, and dispose of the interest, dividends and income arising from such property, and to possess and exercise in respect thereof, all the rights, powers and privileges of ownership, including all voting powers on any

stocks so owned; and to do every act and thing covered generally by the denomination "holding corporation," and especially to direct the operations of other corporations through the ownership of stock therein, provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation."^[4] (Underscore supplied)

Over time, APHI received cash and stock dividends from its SMC preferred shares. These dividends were deposited in a trust account which earned interest from money market placements.^[5]

In 1986, APHI's SMC shares were sequestered by the Presidential Commission on Good Government. Subsequently, cases were filed before this Court questioning the ownership of the CIIF, CIIF OMG, the fourteen (14) holding companies and the SMC shares held by them. One of these cases was G.R. Nos. 177857-58, entitled "Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines."^[6]

In 2011, petitioner City of Davao, through its City Treasurer, issued a Business Tax Order of Payment directing APID to pay 0.55% local business tax in the amount of P723,531.50. Pursuant to Section 69(f) of the 2005 Revenue Code of the City of Davao, the tax was assessed on the dividends and interests APID earned from its SMC preferred shares and money market placements, respectively. APHI paid the assessment under protest. Subsequently, it filed an administrative claim for refund or tax credit with the City Treasurer. Claiming that the City Treasurer failed to act on the protest, APHI filed a petition for review with the Regional Trial Court.^[7]

Meanwhile, by Decision dated January 24, 2012, this Court in G.R. Nos. 177857-58 declared the CIIF companies, including APHI and the CIIF block of SMC shares, as public funds or property necessarily owned by the government.^[8]

The Regional Trial Court's Decision

By Decision^[9] dated June 22, 2015, the trial court ruled that APHI's primary purpose in its Amended Articles of Incorporation resembles the definition of a financial intermediary under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions, and, hence, taxable under Section 69(f) of the 2005 Revenue Code of the City of Davao, *viz.*^[10]

SECTION 69. Imposition of Tax. - There is hereby imposed on the following persons who establish, operate, conduct or maintain their respective business within the City a graduated business tax in the amounts hereafter prescribed:

x x x x

(f) *On Banks and Other Financial Institutions*, at a rate of fifty-five per cent (55%) of one per cent (1%) of 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. All other income and receipts not herein enumerated shall be excluded in the computation of the tax.

APHI moved for reconsideration but was denied under Order dated September 11, 2015.^[11]

The Court of Tax Appeals (CTA) Division's Decision

By Decision^[12] dated January 30, 2017, the CTA Division affirmed the trial court's decision.

Through Resolution^[13] dated April 17, 2017, it denied petitioners' motion for reconsideration.

The Court of Tax Appeals En Banc's Decision

By Decision^[14] dated August 20, 2018, the CTA En Banc reversed and declared APHI entitled to a tax refund or credit. It found that APHI was not a non-bank financial intermediary for the following reasons:

First, APHI did not fall under the definition of a non-bank financial intermediary under Section 131 (e) of the Local Government Code (LGC),^[15] Section 22 (W) of the National Internal Revenue Code (NIRC) of 1997^[16] and Section 4101Q.1 of the Bangko Sentral ng Pilipinas' (BSP) Manual of Regulations for Non-Bank Financial Institutions.^[17]

Second, although APHI's functions, based on its Amended Articles of Incorporation, included supposed functions of a non-bank financial intermediary, it was not shown that these functions were its principal purpose.^[18]

Third, it was not established that the functions performed by non-bank financial intermediaries were done by APHI on a regular and recurring basis.^[19]

Fourth, there was no evidence showing that APHI held itself out as a non-bank intermediary.^[20]

Lastly, APHI belonged to the CIIF block of SMC shares, which were declared to be owned by the government, thus, any tax imposed upon it is a tax on the government.^[21] Under Section 133 (o) of the LGC, local government units cannot tax the National Government.

By Resolution dated January 23, 2019, the CTA En Banc denied petitioners' motion for reconsideration.^[22]

The Present Petition

Petitioners now seek to reverse the CTA En Banc's dispositions. They essentially assert:

a) APHI is deemed a "bank and other financial institution," specifically as a

"non-bank financial intermediary or an investment company" because it owned a substantial number of shares and received millions of pesos of dividends from its investments.

- b) Its business purpose as contained in the Amended Articles of Incorporation is broad enough to catch all the descriptive functions of a non-bank financial intermediary under Section 4101Q.1 of the Manual of Regulations for Non-Bank Financial Institutions of the BSP. Too, the statement in APHI's Articles of Incorporation that it shall not act as an investment company or securities broker is not conclusive proof that it is not a "bank or other financial institution." For based on the tax audit and its financial statements, APHI has no other business except its primary business of stock investment and money market placements with SMC.
- c) The Bureau of Local Government Finance's (BLGF's) opinion on the exemption from local business taxes is not binding upon the courts since BLGF is not among the quasi-judicial agencies whose technical findings on questions of fact and law are binding in the courts.

On the other hand, APHI counters in the main:

- a) Pursuant to Section 143 (f) of the LGC,^[23] petitioners can only collect business taxes on the dividends and interest income of banks and other financial institutions. Since it is not engaged in those businesses, its dividends and interest income cannot be subject to local business taxes.
- b) It is not a bank or non-bank financial intermediary considering that it is not engaged in lending money, investing, reinvesting or trading securities on a regular and recurring basis. More, it was not required by the Securities and Exchange Commission to secure secondary license nor was it regulated by the BSP or the Insurance Commission.
- c) Mere ownership of shares of stock of SMC does not *ipso facto* qualify it as a non-bank financial intermediary.
- d) It is a holding company. Its Articles of Incorporation^[24] expressly prohibits it from acting as a financial intermediary.
- e) APHI, as well as its SMC shares and income derived therefrom are national government properties which are exempt from local business taxes as declared by the BLGF.

Issue

As a CIIF holding company, is APHI liable to pay local business taxes on its dividend earnings from its SMC preferred shares?

Ruling

We rule in the negative.

In the recent case of ***City of Davao, et al. v. Randy Allied Ventures, Inc.***