REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

BAHAY BONDS 2 SPECIAL PURPOSE TRUST administered by Land Bank of the Philippines through its Trust Banking Group,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9444

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

SEP 03 2019 2:19pm

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RESOLUTION

MINDARO-GRULLA, ***J.***:

For resolution of the Court is respondent's **Motion for Reconsideration (Re: Decision promulgated on 11 June 2019)**, filed on July 2, 2019, with petitioner's **Comment To Respondent's Motion for Reconsideration**, filed on July 18, 2019.

Respondent seeks reconsideration of the Decision dated June 11, 2019 the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the aggregate amount of **Eight Million Six Hundred Forty Thousand Pesos (₱8,640,000.00),** representing

petitioner's erroneous payment of final withholding taxes on the interest earned from the asset-backed securities covering the period from August 26, 2014 to May 25, 2016.

SO ORDERED."

In the instant motion, respondent avers that the Court erred in ruling that petitioner is entitled to refund in the amount Eight Million Six Hundred Forty Thousand Pesos (₱8,640,000.00), representing erroneous payment of final withholding taxes on the interest earned from the asset-backed securities covering the period from August 26, 2014 to May 25, 2016.

Respondent claims that the subject asset-backed securities (ABS) are deemed "deposit substitutes" as pronounced in BIR Ruling No. 516-2012 dated August 3, 2012 and as defined in Section 22 (Y) of the NIRC of 1997, as amended. Allegedly, the mere issuance of government debt instruments and securities is deemed as falling within the coverage of "deposit substitutes" irrespective of the number of lenders at the time of origination. Accordingly, since government debt instruments and securities are not exempt from taxes, interest income derived therefrom shall be subject to final withholding taxes.

On the other hand, in its comment, petitioner contends that contrary to respondent's argument, Republic Act (RA) 9267 or the Securitization Act of 2004 expressly declared that an ABS issued by Special Purpose Trust (SPT) pursuant to a SEC-approved Securitization Plan shall not be considered as "deposit substitutes" as defined under the NIRC of 1997. Allegedly, being a more recent law than the NIRC, the said declaration contained in RA No. 9267 shows the intention of the Congress to exempt an ABS from the existing definition of "deposit substitutes" under the NIRC.

We rule for the petitioner.

The Court finds that the arguments posited by respondent in the instant motion are mere repetition of his previous contentions in his Answer to the petition which have been duly considered and adequately discussed in the assailed Decision.

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Further, the Supreme Court in a similar case involving the same parties[1] held that:

> "Xxx. As to the finding that the Bahay Bonds are not deposit substitutes, the CTA *EB* was also correct in applying Sections 30 and 31 of Republic Act No. (RA) 9267, otherwise known as "The Securitization Act of 2004." It is axiomatic that a later law prevails over a prior statute. By expressly providing that Asset-Backed Securities (ABS), such as the Bahay Bonds, are not to be considered as deposit substitutes under RA 8424, otherwise known as the "Tax Reform Act of 1997" or the "National Internal Revenue Code of 1997," Congress clearly intended to create an exception to the general rule. Considering that Section 33 of RA 9267 also expressly provides for income tax exemption for the income or yield from low-cost or socialized housing-related ABS, which, according to the findings of both the CTA First Division and the CTA EB, include the Bahay Bonds, there was no error in granting the refund xxx."

Based on the foregoing, this Court finds no compelling reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (Re: Decision promulgated on 11 June 2019)** is **DENIED** for lack of merit.

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

[1] *Commissioner of Internal Revenue v. Bahay Bonds 2 Special Purpose Trust, administered by the Land Bank of the Philippines through its Trust Banking Group,* G.R. No. 240515, February 4, 2019.