REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND 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. 9916

Members:

Castañeda, Jr., *Chairperson,*
and
Bacorro-Villena, ***JJ.***

Promulgated:
NOV 09 2020

x---x

DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

The instant *Petition for Review* filed on August 30, 2018 prays for the refund in the amount of ₱6,426,000.00, allegedly representing petitioner's final withholding taxes (FWTs) on the interest income from the asset-backed securities (ABS) for the period of August 31, 2016 to June 11, 2018.[1]

THE PARTIES

Allegedly, petitioner Bahay Bonds 2 Special Purpose Trust is a special purpose trust formed under Philippine laws, with special

[1] Summary of the Case, Pre-Trial Order dated July 31, 2019, Docket, p. 255.

purpose vehicle status under Republic Act (RA) No. 9267, otherwise known as "The Securitization Law of 2004", duly registered and qualified as such by the *Bangko Sentral ng Pilipinas* (BSP) under the General Banking Law and administered by the Land Bank of the Philippines, a government-owned and controlled financial institution duly authorized to engage in trust business through its Trust Banking Group, with address at 21/F Landbank Plaza, 1598 M.H. Del Pilar corner Dr. J. Quintos Sts., Malate, Manila.

Respondent is the duly appointed Commissioner of Internal Revenue vested under appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia,* the power to issue rulings, memorandum circulars, and other tax laws, rules and regulations, and is empowered to act upon and approve claims for refund or tax credit.[2]

ANTECENDENTS (ADMINISTRATIVE LEVEL)

On July 9, 2012, the National Home Mortgage Finance Corporation (NHMFC) filed a request for ruling with the BIR on the tax consequence of petitioner's ABS.[3] Thus, the NHMFC received from respondent, BIR Ruling No. 516-12 dated August 3, 2012, stating that the subject ABS is deemed falling within the coverage of "deposit substitutes" and that, said securities are not exempt from taxes.[4]

On August 14, 2012, the NHMFC, nonetheless, filed a request for reconsideration of the above-stated ruling.[5]

From August 31, 2016 to June 11, 2018, a total of ₱6,426,000.00 of FWTs was remitted by petitioner to the BIR. The breakdown of the said amount is as follows:

Taxable Period	Date of Payment	Amount
August 2016[6]	August 31, 2016[7]	₱1,080,000.00
November 2016[8]	November 23, 2016[9]	1,080,000.00

---

[2] Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issue/s* (JSFI), Docket, p. 238.
[3] Par. 2, Admitted Facts, JSFI, Docket, p. 238.
[4] Par. 3, Admitted Facts, JSFI, Docket, p. 238.
[5] Exhibit "P-7", Docket, pp. 359 to 360.
[6] Exhibit "P-5", Docket p. 330.
[7] Exhibit "P-5-A", Docket p. 334.
[8] Exhibit "P-5-B", Docket p. 335.

February 2017[10]	March 2, 2017[11]	1,080,000.00
May 2017[12]	May 31, 2017[13]	1,080,000.00
August 2017[14]	August 29, 2017[15]	1,080,000.00
November 2017[16]	December 4, 2017[17]	360,000.00
February 2018[18]	March 2, 2018[19]	342,000.00
June 2018[20]	June 11, 2018[21]	324,000.00
	TOTAL	**₱6,426,000.00**

On August 2, 2018, petitioner filed its administrative claim for refund.[22]

PROCEEDINGS BEFORE THIS COURT

Thereafter, on August 25, 2016, the instant *Petition for Review* was filed.[23]

On December 10, 2018, respondents filed their *Answer*,[24] interposing certain special and affirmative defenses, to wit: (1) petitioner is not entitled to refund as it has no legal personality to claim the same; (2) assuming that petitioner has legal personality to claim for a refund, petitioner failed to prove that it is entitled thereto; and (3) the Bahay Bonds are deposit substitutes within the ambit of Section 22(Y) of the National Internal Revenue Code (NIRC) of 1997, as amended.

The Pre-Trial Conference was initially set on January 31, 2019.[25] In the meantime, *Respondent's Pre-Trial Brief* was filed on

---

[9] Exhibit "P-5-C", Docket p. 338.
[10] Exhibit "P-5-D", Docket p. 339.
[11] Exhibit "P-5-E", Docket p. 343.
[12] Exhibit "P-5-F", Docket p. 344.
[13] Exhibit "P-5-G", Docket p. 346.
[14] Exhibit "P-5-H", Docket p. 347.
[15] Exhibit "P-5-I", Docket p. 349.
[16] Exhibit "P-5-J", Docket p. 350.
[17] Exhibit "P-5-K", Docket p. 352.
[18] Exhibit "P-5-L", Docket p. 353.
[19] Exhibit "P-5-M", Docket p. 354.
[20] Exhibit "P-5-N", Docket p. 355.
[21] Exhibit "P-5-O", Docket p. 356.
[22] Exhibit "P-4", Docket, pp. 328 to 329.
[23] Docket, pp. 10 to 24.
[24] Docket, pp. 111 to 119.
[25] *Notice of Pre-Trial Conference* dated December 18, 2018, Docket, pp. 121 to 122.

January 17, 2019,[26] while *Petitioner's Pre-Trial Brief* was submitted on January 25, 2019.[27]

At the scheduled date of the Pre-Trial Conference, *i.e.*, on January 31, 2019, the Court granted the parties a period of thirty (30) days, within which to file their respective memorandum on the issue of jurisdiction, considering that both parties are government entities.[28] Thus, on March 4, 2019, petitioner filed its *Memorandum.*[29] Respondent, however, failed to file his memorandum.[30]

In the Resolution dated May 31, 2019,[31] the Court ruled that it has jurisdiction to hear the instant case, and set anew the Pre-Trial Conference on July 4, 2019.[32] Said Pre-Trial Conference was held on such date.[33]

On July 18, 2019, the parties filed their *Joint Stipulation of Facts and Issue/s*,[34] which was approved and adopted by the Court, in the Pre-Trial Order dated July 31, 2019,[35] thereby also deeming the termination of the pre-trial.

Meanwhile, respondent submitted the *BIR Records* of the case on July 30, 2019.[36]

The trial of the case then ensued.

During trial, petitioner presented its documentary and testimonial evidence. Petitioner's witnesses were the following: (1) Mr. Camilo G. Sanchez,[37] Assistant Vice President and Officer in Charge of the Land Bank of the Philippines – Trust Banking Group; *jc*

---

[26] Docket, pp. 123 to 125.
[27] Docket, pp. 127 to 132.
[28] Minutes of the Hearing held on, and Order dated January 31, 2019, Docket, pp. 184 and 185.
[29] Docket, pp. 186 to 199.
[30] Records Verification dated March 27, 2019 issued by the Judicial Records Division of this Court, Docket, p. 218.
[31] Docket, pp. 222 to 231.
[32] Refer also to *Notice of Pre-Trial Conference* dated June 10, 2019, Docket, pp. 232 to 233.
[33] Minutes of the hearing held on, and Order dated, July 4, 2019, Docket, pp. 234 to 237.
[34] Docket, pp. 238 to 242.
[35] Docket, pp. 255 to 259.
[36] *Compliance* dated July 30, 2019, Docket, pp. 247 to 249.
[37] Exhibit "P-10", Docket, pp. 135 to 142; Minutes of the hearing held on, and Order dated, August 14, 2019, Docket, pp. 265 to 266.

and (2) Ms. Maria Luisa Favila,[38] an NHMFC's Head of Marketing Department and previously, the Head of the Structuring and Packaging Department of the same corporation.

On August 20, 2019, petitioner filed its *Formal Offer of Evidence*.[39] Respondent failed to file his comment thereto.[40] In the Resolution dated September 17, 2019,[41] the Court admitted petitioner's Exhibits, *except* for Exhibit "P-6", for failure to present the original document for comparison.

At the hearing held on January 20, 2020, respondent's counsel manifested that he will not present evidence, and upon motion, the parties were granted a period of thirty (30) days within which to file their respective memorandum.[42]

The parties filed their separate *Memoranda* on February 19, 2020.[43]

The instant case was submitted for decision on February 26, 2020.[44]

THE ISSUE RAISED BY THE PARTIES

The lone issue submitted by the parties for this Court's resolution is:

> "Whether or not the Petitioner is entitled to refund in the amount of Php 6,426,000.00 representing final withholding taxes remitted from 31 August 2016 to 11 June 2018."[45]

Petitioner's arguments: ge

---

[38] Exhibit "P-11", Docket, pp. 169 to 173; Minutes of the hearing held on, and Order dated, August 14, 2019, Docket, pp. 265 to 266.
[39] Docket, pp. 267 to 272.
[40] Records Verification dated September 5, 2019 issued by the Judicial Records Division of this Court, Docket, p. 366.
[41] Docket, pp. 367 to 369.
[42] Docket, p. 382.
[43] Docket, pp. 384 to 394, and 396 to 408, respectively.
[44] Resolution dated February 26, 2020, Docket, p. 441.
[45] Issue, JSFI, Docket, p. 239.

Petitioner argues that the interest earned by the holders of the senior and subordinated notes, including NHMFC, being income from low cost and socialized housing-related ABS, is exempt from income and withholding tax under Section 33 of RA No, 9267; that as the Bahay Bonds 2 carries with it the guaranty of the Home Guaranty Corporation (HGC), the interests and yields of ABS guaranteed by HGC, shall be exempt from all taxation to the extent provided in Section 15(a) thereof; and that petitioner is entitled to a refund.

Respondent's counter-arguments:

Respondent counter-argues that petitioner is not entitled to refund as it has no legal personality to claim the same; that assuming that petitioner has legal personality to claim for a refund, petitioner failed to prove that it is entitled thereto; and (3) the Bahay Bonds are deposit substitutes within the ambit of Section 22(Y) of the NIRC of 1997, as amended.

THE COURT'S RULING

The instant *Petition for Review* has no merit.

Before delving into the merits of the case, this Court shall first address respondent's contention to the effect that petitioner has no legal personality to claim the subject refund, since it is a mere withholding agent.

Petitioner, as withholding agent, has the legal personality to file the instant claim for refund.

The question of the legal personality of a withholding agent in filing a claim for refund is no longer novel.

In *Commissioner of Internal Revenue vs. Smart Communication, Inc.*,[46] the Supreme Court said: ✓

[46] G.R. Nos. 179045-46, August 25, 2010.

"...the person entitled to claim a tax refund is the taxpayer. However, in case the taxpayer does not file a claim of refund, the withholding agent may file the claim.

In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*,[47] a withholding agent was considered a proper party to file a claim for refund of the withheld taxes of its foreign parent company. Pertinent portions of the Decision read:

> The term 'taxpayer' is defined in our NIRC as referring to 'any person subject to tax imposed by Title [on Tax on Income].' It is thus becomes important to note that under Section 53(c) of the NIRC, the withholding agent who is 'required to deduct and withhold any tax' is made 'personally liable for such tax' and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of tax withheld be finally found to be less than the amount that should have been withheld under the law.
>
> A 'person liable for tax' has been held to be a 'person subject to tax' and properly considered a 'taxpayer.' The terms 'liable for tax' and 'subject to tax' both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made 'liable for tax' as not 'subject to tax.' By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him. *ye*

---

[47] G.R. No. 66838, December 2, 1991.

In *Philippine Guaranty Company, Inc. v. Commissioner of Internal Revenue,* this Court pointed out that a withholding agent is in fact the agent both of the government and of the taxpayer, and that the withholding agent is not an ordinary government agent:

> 'The law sets no condition for the personal liability of the withholding agent to attach. The reason is to compel the withholding agent to withhold the tax under all circumstances. In effect, the responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction. Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. In regard to the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer. The withholding agent, therefore, is no ordinary government agent especially because under Section 53 (c) he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law.'

If, as pointed out in *Philippine Guaranty,* **the withholding agent is also an agent of the beneficial owner of the dividends with respect to the filing of the necessary income tax return and with respect to actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such claim.** This implied authority is especially warranted where, as in the instant case, the withholding agent is the wholly owned subsidiary of the parent-stockholder and therefore, at all times, under the effective control of such parent-stockholder. In the circumstances of this case, it seems

> particularly unreal to deny the implied authority of P&G-Phil. to claim a refund and to commence an action for such refund.
>
> x x x x
>
> We believe and so hold that, under the circumstances of this case, P&G-Phil. is properly regarded as a 'taxpayer' within the meaning of Section 309, NIRC, and as impliedly authorized to file the claim for refund and the suit to recover such claim. (Emphasis supplied.)

Petitioner, however, submits that this ruling applies only when the withholding agent and the taxpayer are related parties, *i.e.*, where the withholding agent is a wholly owned subsidiary of the taxpayer.

We do not agree.

Although such relation between the taxpayer and withholding agent is a factor that increases the latter's legal interest to file a claim for refund, there is nothing in the decision to suggest that such relationship is required or that the lack of such relation deprives the withholding agent of the right to file a claim for refund. Rather, what is clear in the decision is that **a withholding agent has a legal right to file a claim for refund for two reasons. *First*, <u>he considered a 'taxpayer' under the NIRC</u> as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under the law. *Second*, <u>as an agent of the taxpayer, his authority to file</u> the necessary income tax return and to remit the tax withheld to the government impliedly <u>includes the authority to file a claim for refund and to bring an action for recovery of such claim</u>.**

In this connection, it is however significant to add that **while the withholding agent has the right to recover the taxes erroneously or illegally collected, he nevertheless has the obligation to remit the** ᵍᶻ

> **same to the principal taxpayer.** As an agent of the taxpayer, it is his duty to return what he has recovered; otherwise, he would be unjustly enriching himself at the expense of the principal taxpayer from whom the taxes were withheld, and from whom he derives his legal right to file a claim for refund." *(Emphases and underscoring added)*

Based on the foregoing doctrinal pronouncements, a withholding agent has a legal right to file a claim for refund, subject to the qualification that the said right comes with the responsibility to return the same to the principal taxpayer.

Thus, petitioner, as a withholding agent, has the personality to file the instant claim for refund, as it being alleged that it involves taxes that it withheld from certain income payments. However, it is imperative that should the refund be granted, petitioner is under obligation to return or remit the same to the pertinent principal taxpayer or taxpayers. Nevertheless, it must already be stated, at this juncture, that no refund for the instant case is forthcoming, as will be shown momentarily.

Governing provisions for claims for refund.

Claims for refund are governed primarily of Sections 204(C) and 229 of the NIRC of 1997, which read:

> "SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit**

ge

> **or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis added)*
>
> "SEC. 229. ***Recovery of Tax Erroneously or Illegally Collected.*** — No suit or proceeding shall be maintained in any court for the recovery of any national **internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases added)*

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[48]

[48] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

Furthermore, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[49]

Thus, petitioner must not only establish that it has timely filed its refund claim, it must also prove that the same involves an "erroneous or illegal tax", as above defined.

Petitioner timely filed its administrative and judicial claims.

In the present case, evidence show the following pertinent dates relative to the filing of the subject administrative claim, to wit:

Taxable Period	Date of Payment of Tax	Last Day to File Claim for Refund	Date the Administrative Claim was filed	Date the Judicial Claim was filed
August 2016	August 31, 2016[50]	August 31, 2018	August 2, 2018[51]	August 30, 2018[52]
October 2016[53]	November 23, 2016[54]	November 23, 2018		
February 2017	March 2, 2017[55]	March 2, 2019		
May 2017	May 31, 2017[56]	May 31, 2019		
August 2017	August 29, 2017[57]	August 29, 2019		
November 2017	December 4, 2017[58]	December 4, 2019		
February 2018	March 2, 2018[59]	March 2, 2020		
June 2018	June 11, 2018[60]	June 11, 2020		

---

[49] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[50] Exhibit "P-5-A", Docket, p. 334.
[51] Exhibit "P-4", Docket, p. 328.
[52] Petition for Review, Docket, p. 10.
[53] For the month of **November** per *Monthly Remittance Return of Final Income Taxes Withheld* (BIR Form No. 1602) and Tax Return Receipt Confirmation, Exhibit "P-5-B", Docket, pp. 335 to 337.
[54] Exhibit "P-5-C", Docket, p. 338.
[55] Exhibit "P-5-E", Docket, p. 343.
[56] Exhibit "P-5-G", Docket, p. 346.
[57] Exhibit "P-5-I", Docket, p. 349.
[58] Exhibit "P-5-K", Docket, p. 352.
[59] Exhibit "P-5-M", Docket, p. 354.
[60] Exhibit "P-5-O", Docket, p. 356.

Thus, it is clear from the above table that petitioner's administrative and judicial claims for refund were seasonably filed within the two-year prescriptive period as provided for by law.

Petitioner failed to prove its entitlement to tax exemption.

Sections 30, 31 and 33 of RA No. 9267,[61] otherwise known as *"The Securitization Act of 2004"*, provide:

> "SEC. 30. *Non-Classification of SPE as a Bank, Quasi-Bank or Financial Intermediary.* – The SPE, created pursuant to a Plan, shall not be classified as a bank, quasi-bank or financial intermediary under the provisions of the New Central Bank Act, the General Banking law and the National Internal Revenue Code of 1997, and shall not be subject to the gross receipts tax (GRT) or any other tax imposed in lieu thereof."
>
> "SEC. 31. *Securities not to be Categorized as Deposit Substitutes.* – **The ABS issued by an SPE pursuant to the Plan approved by the Commission shall not be considered as deposit substitutes under the laws mentioned in Section 30 hereof: *Provided, however,* That <u>for purposes of taxation, the yield from the ABS shall be subject to a twenty percent (20%) final withholding tax, except those held by tax-exempt investors</u>.**" *(Emphasis added)*
>
> "SEC. 33. *Incentives for Securitization.* – **In order to promote securitization of the mortgage and housing-related receivables of the government housing agencies as may be determined by the Housing and Urban Development Coordinating Council (HUDCC) and the Department of Finance (DOF), <u>the yield or income of the investor from any low-cost or socialized housing-related ABS shall be exempt from income tax</u>.**" *(Emphasis and underscoring added)* gc

[61] AN ACT PROVIDING THE REGULATORY FRAMEWORK FOR SECURITIZATION AND GRANTING FOR THE PURPOSE EXEMPTIONS FROM THE OPERATION OF CERTAIN LAWS.

For a better understanding of the foregoing provisions, the following terminologies under Section 3 of RA No. 9267 must be noted, to wit:

> "SEC. 3. *Definition of Terms.* – For purposes of this Act, the term:
>
> (a) 'Securitization' means the process by which assets are sold on a without recourse basis by the Seller to a Special Purpose Entity (SPE) and the issuance of asset-backed securities (ABS) by the SPE which depend, for their payment, on the cash flow from the assets so sold and in accordance with the Plan.
>
> (b) 'Asset-backed securities (ABS)' refer to the certificates issued by an SPE, the repayment of which shall be derived from the cash flow of the assets in accordance with the Plan.
>
> (c) 'Assets', whether used alone or in the term 'Asset-backed securities,' refer to loans or receivables or other similar financial assets with an expected case payment stream. The term 'Assets' shall include, but shall not be limited to, receivables, mortgage loans and other debt instruments: *Provided*, That receivables that are to arise in the future and other receivables of similar nature shall be subject to approval by the Securities and Exchange Commission (SEC) or the Bangko Sentral ng Pilipinas (BSP), as the case may be: *Provided, further*, That the term 'Assets' shall exclude receivables from future expectation of revenues by government, national or local, arising from royalties, fees or imposts.
>
> (d) 'Asset Pool' means the group identified, homogeneous assets underlying the ABS.
>
> (e) 'Commission' refers to the Securities and Exchange Commission (SEC).
>
> xxx xxx xxx
>
> (g) 'Originator' means the person or entity which was the original obligee of the Assets, such as a financial institution that grants a loan or a corporation in the books

of which the Assets were created in accordance with the Plan.

(h) 'Plan' means the plan for securitization as approved by the Commission.

xxx xxx xxx

(j) 'Seller' means the person or entity which conveys to the SPE the Assets forming the Asset Pool in accordance with the Plan. In most instances, the Seller may itself be the Originator.

xxx xxx xxx

(l) 'Special Purpose Entity (SPE)' means either a Special Purpose Corporation (SPC) or a Special Purpose Trust (SPT).

(m) 'Special Purpose Corporation (SPC)' refers to a juridical person created in accordance with the Corporation Code of the Philippines solely for the purpose of securitization and to which the Seller makes a true and absolute sale of assets.

(n) 'Special Purpose Trust (SPT)' means a trust administered by an entity duly licensed to perform trust functions under the General Banking Law, and created solely for the purpose of securitization and to which the Seller makes a true and absolute sale of assets."

Under above-quoted Section 31, it is clear that the ABS issued by an SPE (which may either be an SPC or SPT), pursuant to plan of securitization as approved by the Securities and Exchange Commission (SEC), shall *not* be considered as deposit substitutes under, *inter alia*, the NIRC of 1997. Correspondingly, any interest, yield, or other monetary benefit derived from the said ABS is not subject to the tax imposition or tax exemption related to deposit substitutes, under the following provisions of the NIRC of 1997, to wit:

"SEC. 24. *Income Tax Rates.* – ℛ

(A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* –

xxx xxx xxx

(B) *Rate of Tax on Certain Passive Income:* –

(1) *Interests, Royalties, Prizes, and Other Winnings.* – **A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of** interest from any currency bank deposit and **yield or any other monetary benefit from deposit substitutes** and from trust funds and similar arrangements; xxx: *Provided, further,* **That interest income from long-term deposit or investment in the form of** xxx **deposit substitutes** xxx **shall be exempt from tax** imposed under this Subsection: xxx."[62] *(Emphases added)*

"SEC. 27. *Rates of Income Tax on Domestic Corporations.* –

(A) *In General.* – xxx

xxx xxx xxx

(D) *Rate of Tax on Certain Passive Incomes.* –

(1) *Interests from Deposits and Yield or any other Monetary Benefit from Deposit Substitutes and from Trust Funds and Similar Arrangements, and Royalties.* – **A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of** interest from any currency bank deposit and **yield or any other monetary benefit from deposit substitutes** and from trust funds and similar arrangements received by domestic corporations, xxx."[63] *(Emphases added)*

However, it must be emphasized that, on the basis of the same Section 31 of RA No. 9267, *"for purposes of taxation, the yield from the ABS shall be subject to a twenty percent (20%) final withholding tax,* ***except those held by tax-exempt investors.***" In other

[62] Retained under RA No. 10963 [otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)], which took effect on January 1, 2018.

[63] Retained both under RA No. 9337 (which took effect on July 1, 2005), and RA No. 10963.

words, *any yield* from the ABS issued by the said SPE, pursuant to a plan of securitization as approved by the SEC, is still subject to final withholding tax of 20%, *except* when the said ABS are held by tax-exempt investors.

In any event, pursuant to Section 33 of RA No. 9267, it is clear that the yield or income of the investor from any low-cost or socialized housing-related ABS shall be exempt from income tax. The reason for the income tax exemption is to promote securitization of the mortgage and housing-related receivables of the government housing agencies, as may be determined by the Housing and Urban Development Coordinating Council (HUDCC) and the Department of Finance (DOF). Furthermore, relative to low-cost and socialized housing packages, Section 19, in relation to Section 15(a), both of RA No. 8763,[64] otherwise known as the "Home Guaranty Corporation Act of 2000", state:

> "SEC. 19. *Tax Exemption.* – **Interests and yields earned or accumulated on mortgage, debentures, bonds, notes, mortgage and asset-backed securities, interest under a lease, and other credit instruments, whether issued by the Corporation or covered by its guaranty in favor of natural or juridical person, in cash or in bonds, shall be <u>exempt from all taxation to the same extent provided in Section 15(a) hereof</u>**: xxx." *(Emphasis and underscoring added)*
>
> "SEC. 15. *Guaranty Coverage and Composition of Guaranteed Accounts.* – (a) **The Corporation shall guaranty payment of the balance outstanding and due on the guaranteed principal obligation, plus interest and yields thereon up to eleven percent (11%) *per annum* for <u>socialized housing packages;</u> ten percent (10%) *per annum* for <u>low-cost housing packages;</u>** nine and one-half percent (9.5%) *per annum* for medium-cost housing packages; and eight and one-half percent (8.5%) *per annum* for open housing packages;" *(Emphasis and underscoring added)*

---

[64] AN ACT CONSOLIDATING AND AMENDING REPUBLIC ACT NOS. 580, 1557, 5488, AND 7835 AND EXECUTIVE ORDER NOS. 535 AND 90, AS THEY APPLY TO THE HOME INSURANCE AND GUARANTY CORPORATION WHICH SHALL BE RENAMED AS HOME GUARANTY CORPORATION, AND FOR OTHER PURPOSES.

Such being the case, apart from the income tax exemption given under Section 33 of RA No. 9267, interests and yields earned or accumulated on mortgage, debentures, bonds, notes, mortgage and ABS, interest under lease, and other credit instruments, which are issued by the Home Guaranty Corporation (HGC) or covered by its guaranty, in cash or in bonds, are exempt from all taxation to the same extent provided in the above-quoted Section 15(a) of RA No. 8763.

Thus, for the instant claim for refund to prosper, it must be shown that the same involves an "erroneous or illegal tax". Specifically, petitioner must prove that: (1) the investor or investors for the ABS issued by the concerned SPE, pursuant to a plan of securitization as approved by the SEC, are tax-exempt, for them to be exempted from the 20% final withholding tax imposed to the yield on the said ABS, pursuant to the above-quoted Section 31 of RA No. 9267; (2) the yield or income of the investor is from any low-cost or socialized housing-related ABS, on the basis of Section 33 of the same law; and/or (3) the interests and yields were earned or accumulated on mortgage, debentures, bonds, notes, mortgage and ABS, interest under a lease, and other credit instruments, are either issued by the HGC or covered by its guaranty, in cash or in bonds, in accordance with Section 19 of RA No. 8763.

As a corollary, it must be emphasized that in cases filed before this Court, which are litigated de novo, party-litigants must prove <u>every minute aspect</u> of their case.[65] Thus, it behooves petitioner to show that its case fall under the exemptions provided under Section 31 or Section 33, both of RA No. 9267, or Section 19 of RA No. 8763.

A careful examination of petitioner's evidence, however, reveals that petitioner miserably failed to prove that the subject remittances of FWTs are covered by the tax exemptions granted under the said provisions.

---

[65] *Edison (Bataan) Cogeneration Corporation vs. Commissioner of Internal Revenue, etseq.,* G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue vs. Philippine National Bank,* G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014; *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

Relative to the tax exemption being invoked vis-à-vis petitioner's evidence, the following facts were clearly established, to wit:

1) Pursuant to the Memoranda dated December 23, 2011 and August 1, 2012 of the HUDCC,[66] the latter confirmed that the Unified Home Loan Program (UHLP) of the NHMFC are within the Loan Ceiling/Packages and that it constitutes a loan portfolio (with range from ₱400,000.00 and below) of low-cost and socialized housing packages;

2) Pursuant to the DOF's letter dated December 4, 2012:[67]
   a) The DOF interposed no objection to the securitization by the NHMFC of the latter's portfolio of socialized or low-cost housing loans of in accordance with its UHLP, including the issuance by petitioner (administered by the Land of the Philippines) of ABS, known as the Bahay Bonds;
   b) the said ABS, *i.e.*, the Bahay Bonds, were issued on August 17, 2012 pursuant to RA No. 9267, and certified HUDCC to be socialized or low-cost housing-related ABS; and

3) Based on the Certificate of Renewal of Guaranty dated December 23, 2016 issued by the HGC,[68] the latter issued in favor of petitioner (Trust Account No. 45756 TA01) a guaranty coverage, as specified therein, of the mortgages/contract receivables listed in Annex "A" of the said Certificate with an aggregate value of ₱149,319,329.01, plus interest thereon. This Certificate is further to the effect that the said guaranty coverage is subject to the Contract of Guaranty dated August 1, 2012 renewed for the 5th year covering the period August 17, 2016 to August 16, 2017.

However, no proof establishes that the subject ABS was issued pursuant to a plan of securitization as approved by the SEC. In fact, the supposed plan of securitization was never presented in court. Neither is there any indication that a securitization took place, *i.e.*, that a process was observed by which assets are sold on without recourse basis by the concerned seller to the Land Bank of the Philippines, as supposed SPE, and that the issuance of the same ABS

---

[66] Exhibits "P-1" and "P-2", Docket, pp. 325 to 326.
[67] Exhibit "P-8", Docket, p. 361.
[68] Exhibits "P-1" and "P-2", Docket, pp. 325 to 326.

depends, for their payment, on the cash flow from the assets so sold and in accordance with the said plan of securitization. Moreover, there is likewise no evidence to show that petitioner was *"created solely for the purpose of securitization and to which the Seller makes a true and absolute sale of assets"*, for it to fall under the definition of an SPT under Section of Section 3(n) RA No. 9267.

Such being the case, this Court cannot treat the subject ABS as not falling under the term "deposit substitutes", pursuant to Section 31 of RA No. 9267. Moreover, even assuming that the said ABS should not be considered as deposit substitutes under the same provision, there is likewise no indication that the yield/s from the same ABS is/are held by tax-exempt investors. Thus, the exemption from the 20% final withholding tax cannot be applied. Simply put, petitioner failed to convince this Court that the supposed yield/s from the said ABS is entitled to the income tax exemption granted under Section 31 of RA No. 9267.

In the same vein, petitioner failed to show its entitlement to the tax exemption given under Section 33 of RA No. 9267 and Section 19 of RA No. 8763.

As already observed, the subject ABS, *i.e.*, the Bahay Bonds, were issued on August 17, 2012 pursuant to RA No. 9267, and certified HUDCC and recognized by the DOF to be socialized or low-cost housing-related ABS. However, the yield or income of the supposed investor/s on this ABS may still not fall under the income tax exemption granted under Section 33 of RA No. 9267 because, again, it was not shown that securitization took place and the plan therefor was approved by the SEC. More importantly, there is no indication that what were remitted via the *Monthly Remittance Returns of Final Income Taxes Withheld*,[69] as presented by petitioner, pertained to taxes withheld from the yield or income of the said investor/s on the said ABS. In other words, there is no evidence to show that the amounts indicated in the said *Returns* represent yield/s or income/s of investor/s from low-cost or socialized housing-related ABS, to which withholding taxes were imposed.

For the same reason, this Court cannot rely solely on the Certificate of Renewal of Guaranty dated December 23, 2016 issued

---

[69] Exhibits "P-5", "P-5-B", "P-5-D", "P-5-F", "P-5-H", "P-5-J", "P-5-L", and "P-5-N", Docket pp. 330, 335, 339, 344, 347, 350, 353, and 355, respectively.

by the HGC. Pertinently, there is likewise no indication that the amounts of income reflected in the same *Monthly Remittance Returns* are actually amounts of interests and yields on the mortgages/contract receivables included in the guaranty coverage by the said Corporation. To stress, to be entitled to the tax exemption granted under Section 19 of RA No. 8763, it must be shown that the interests and yields earned or accumulated on the ABS, among others, was issued by the HGC or covered by its guaranty.

It must be emphasized that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. **The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit**. Since taxes are the lifeblood of the government, **tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed**. [70]

In sum, petitioner failed to establish that the subject claim for refund covers erroneous or illegal tax. Thus, the said claim must perforce be denied.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

[70] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice