REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

BAHAY BONDS 2 SPECIAL PURPOSE TRUST, administered by Land Bank of the Philippines through its Trust Banking Group, **Petitioner,**	**CTA CASE NO. 8944** *Members*: **DEL ROSARIO,** *Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, **Respondent.**	Promulgated: MAR 2 3 2017 · 4:20 p.m.

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RESOLUTION

DEL ROSARIO, P.J.:

For resolution is respondent Commissioner of Internal Revenue's ("CIR") **Motion for Reconsideration (Re: Decision Promulgated November 25, 2016)** filed on December 13, 2016, without comment by petitioner Bahay Bonds 2 Special Purpose Trust ("SPT") despite notice, as per Records Verification dated February 17, 2017.

Respondent's Motion for Reconsideration prays that the Court's Decision promulgated on November 25, 2016 be reconsidered and that an order be issued denying the claim for refund in its entirety. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, petitioner's Petition for Review is hereby **GRANTED**. Respondent is **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** to petitioner Bahay Bonds 2 Special Purpose Trust, administered by Land Bank

> of the Philippines through its Trust Banking Group, in the aggregate amount of Php7,560,000.00 representing erroneously paid final withholding tax covering the period from November 2012 to December 2014. Petitioner is **ORDERED** to **REMIT** to the holders of Bahay Bonds the final withholding taxes respectively due them.
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> **SO ORDERED**."

In his Motion, respondent claims the following:

1. Petitioner has no legal personality to claim for a refund;

2. Assuming arguendo that petitioner has legal personality to claim for a refund, petitioner still failed to prove that it is entitled to a claim for refund in the judicial proceedings;

3. The opinion of the HUDCC is not conclusive; and

4. Claims for refund are construed strictly against the taxpayer and in favor of the government.

We resolve to deny respondent's Motion for Reconsideration.

Petitioner has legal personality to file a claim for refund

Respondent claims that petitioner has no legal personality to file a claim for a refund. He argues that the proper party to claim a refund is the statutory taxpayer, the "investors" of the Bahay Bonds, and not the petitioner who is merely a withholding agent.

To begin with, it is noted that respondent raised for the first time, in the subject Motion for Reconsideration, the argument that petitioner has no legal personality to file the said claim for refund. Respondent never assailed petitioner's legal personality to file said claim in its Answer. It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have

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been raised in previous pleadings.[1] Defenses and objections not pleaded in the Answer are deemed waived.[2]

Even assuming arguendo that the Court can consider petitioner's argument, despite being newly raised, the same has no merit.

In *Commissioner of Internal Revenue vs. Smart Communication, Inc. (Smart)*,[3] the Supreme Court categorically ruled that a withholding agent may file a claim for refund on behalf of the taxpayer, *viz.*:

> "xxx[T]he person entitled to claim a tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim.
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> In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*, 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:
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>> The term taxpayer is defined in our NIRC as referring to any person subject to tax imposed by the Title [on Tax on Income]. It 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 the tax withheld be finally found to be less than the amount that should have been withheld under law.**
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>> 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**

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[1] Toshiba Information Equipment (Phils.) Inc. vs. Commissioner of Internal Revenue, G.R. No. 157594, March 9, 2010.
[2] Section 1, Rule 9, Rules of Court.
[3] G.R. Nos. 179045-46, August 25, 2010.

> **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.**
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> 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:
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> > 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.
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> 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-

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> 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.
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> 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 the 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*, he is considered a taxpayer under the NIRC 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 law. *Second,* as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim."** (Emphases supplied)

In this case, petitioner, as the withholding agent of investors, may file a claim for refund on their behalf.

Moreover, respondent's reliance on the case of *Silkair (Singapore) PTE LTD., vs. Commissioner of Internal Revenue*,[4] is misplaced. The doctrine laid out by the Supreme Court in said case is inapplicable since *Silkair* involved excise tax, while the case at bar deals with final withholding tax. The Supreme Court pointed out in the *Smart* case, *viz.*:

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[4] G.R. No. 166482, January 25, 2012.

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> "As to *Silkair (Singapore) Pfe, Ltd. v. Commissioner of Internal Revenue* cited by the petitioner, **we find the same inapplicable as it involves excise taxes, not withholding taxes**. In that case, it was ruled that the proper party to question, or seek a refund of, an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another." (Boldfacing supplied)

In sum, respondent's contention that petitioner has no legal personality to file a claim for refund has no leg to stand on.

With regard to the remaining arguments of respondent, the same have been thoroughly discussed in the assailed Decision dated November 25, 2016, particularly on pages 15-18.

WHEREFORE, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice