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: NOV 25 2016 ; 11:05 a.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed on December 12, 2014 by petitioner Bahay Bonds 2 Special Purpose Trust, administered by the Land Bank of the Philippines, through its Trust Banking Group, praying for the refund or issuance of a tax credit certificate pursuant to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, of alleged erroneously collected Final Withholding Tax (FWT) covering the period from November 2012 to May 2014 in the total amount of **SEVEN MILLION FIVE HUNDRED SIXTY THOUSAND PESOS (Php7,560,000.00)**.

THE FACTS

Petitioner Bahay Bonds 2 Special Purpose Trust (SPT) is a special purpose trust formed under Philippine laws, with special purpose vehicle status under Republic Act No. 9627 (RA 9627) otherwise known as the Securitization Act of 2004, which is duly registered and qualified as such by the Bangko Sentral ng Pilipinas 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.[1] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 6-Manila, Revenue District Office (RDO) No. 33.[2]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia,* to act upon and approve claims for refund or tax credit.[3]

The National Home Mortgage Finance Corporation (NHMFC), a corporation duly created by virtue of Presidential Decree (PD) No. 1267 and operating under Philippine laws, was established with the primary purpose of developing and providing a secondary market for home mortgages granted by public and/or private home financing institutions.[4] In line with its objectives, NHMFC has provided financing for various low-cost housing projects and acquired various mortgage-loan accounts of buyers of houses and lots from their originators.[5]

The Board of Directors of NHMFC approved the securitization of up to Six Hundred Million Pesos (Php600,000,000.00) worth of receivables from long-term secured low cost and socialized housing loans to be undertaken pursuant RA 9627.[6]

In accordance with the approved Securitization Plan,[7] a select pool of long term secured residential loans which were required by NHMFC in accordance with its Unified Home Loan Program (UHLP), were transferred on a "true sale" basis, as defined in RA 9267, to petitioner as the SPT at book value, and on a "without recourse" basis.[8]

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[1] Petition for Review, *CTA Division Docket, Vol. I,* pp. 14-15.
[2] Par. 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), *CTA Division Docket, Vol. I,* p. 388.
[3] Par. 1, Admitted Facts, JSFI, *CTA Division Docket Vol. I,* pp. 387-388.
[4] Exhibit "P-6", *CTA Division Docket, Vol. II.,* pp. 700-788.
[5] Petition for Review, *CTA Division Docket, Vol. I,* p. 15.
[6] Exhibit "P-7", *CTA Division Docket, Vol. II,* p. 790.
[7] Exhibit "P-6", *id.*
[8] Petition for Review, *CTA Division Docket, Vol. I,* p. 15.

In order to fund the purchase of the residential loans, petitioner issued Asset-Backed Securities (ABS), consisting of the following:[9]

Classification	Amount	Target Investors
Class A Senior Notes	Up to Php300 Million	Retail
Class B Senior Notes	Up to Php120 Million	Primary Institutional Lenders
Class C Subordinated Notes	Up to Php180 Million	Originator/NHMFC

Collections from the residential loans held by petitioner are the main source of funds to meet its obligations to make payments on the Senior Subordinated Notes and to pay all its expenses.[10] Each residential loan account sold by NHMFC to petitioner under the Securitization Plan has a principal loan amount of not exceeding Four Hundred Thousand Pesos (Php400,000.00).[11]

In a Memorandum dated December 23, 2011, Housing and Urban Development Coordinating Council (HUDCC) Secretary General Cecilia S. Alba confirmed that the loan packages under the UHLP of NHMFC are within the Loan Ceiling/Packages and that the UHLP constitutes a loan portfolio of low-cost and socialized housing package.[12]

As stated in the Securitization Plan,[13] the Home Guaranty Corporation (HGC) issued a cash flow guarantee for each residential loan sold by NHMFC to the SPT, covering the full outstanding principal amount of all defaulted residential loans and up to eleven percent (11%) per annum of the interest amount due or the actual interest rate stipulated in the residential loan agreement, whichever is lower. The HGC guaranty may be invoked when the size of the subordinated notes has been reduced to zero due to absorption of losses from defaulted residential loans. The payment from HGC shall be in the form of an (a) Initial Cash Payment equivalent to up to twelve (12) monthly installments to cover the preceding unpaid fourteen (14) monthly amortizations by borrowers and unpaid monthly amortizations from the processing period required to receive the claims; and (b) HGC Amortizing Bonds for the remaining scheduled monthly installments covering the outstanding principal and guaranteed interest for each of the defaulted residential loans.[14]

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[9] Petition for Review, *id; Memorandum, CTA Division Docket, Vol I.*, p. 913; Exhibit "P-6", *CTA Division Docket, Vol. II*, pp. 737-738.
[10] Petition for Review, *CTA Division Docket, Vol I.*, pp. 15-16.
[11] Petition for Review, *CTA Division Docket, Vol. I*, pp. 15-16.
[12] Exhibit "P-1", *CTA Division Docket, Vol. I , p. 187.*
[13] Exhibit "P-6", *CTA Division Docket, Vol. II.*, pp. 700-788.
[14] Petition for Review, *CTA Division Docket, Vol. I*, p. 16.

On July 9, 2012, NHMFC filed a letter request [15] with the BIR seeking confirmation of its opinion that:

1) the interest earned by the holders of the Senior and Subordinated notes, including NHMFC, being income from a low cost and socialized housing-related ABS, is exempt from income and withholding tax under Section 33 of RA 9267, and;

2) all secondary trades and subsequent transfers of the Senior and Subordinated notes shall be exempt from documentary stamp tax (DST) and value-added tax (VAT), or any other taxes imposed in lieu thereof.

On August 3, 2012, the CIR issued BIR Ruling No. 516-2012[16] addressed to NHMFC opining that the subject ABS are deemed "deposit substitutes" as defined in Section 22 (Y) of the NIRC of 1997, as amended, and interest income derived therefrom shall be subject to the following:

a) 20% final withholding tax imposed under Section 24 (B)(1) and 25(A)(2) of the NIRC of 1997, if the bondholder is an individual citizen or a resident alien, respectively;

b) 25% tax imposed under Section 25(B) of the NIRC of 1997, as amended, if the bondholder is a non-resident alien individual not engaged in trade or business within the Philippines;

c) 20% final tax imposed under Section 27(D)(1) and 28 (A)(7)(a) of the NIRC of 1997, as amended, if the bondholders are domestic and resident foreign corporations, respectively;

d) 32% final withholding tax under Section 28(B)(1) of the NIRC of 1997, as amended, if the bondholder is a non-resident foreign corporation; and,

e) Such other rate that may be imposed under the appropriate tax treaty to which the Philippines is a signatory.[17]

On August 14, 2012, NHMFC filed a request [18] for reconsideration with the BIR arguing that: (i) the ABS are not deposit substitutes; and, (ii) the tax exemption privileges extended to ABS

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[15] Exhibit "P-7", *CTA Division Docket, Vol. II*, pp. 790-795.
[16] Exhibit "P-8", *CTA Division Docket, Vol. II*, pp. 796-799.
[17] Admitted Facts, JSFI, *CTA Division Docket, Vol. I, p. 388.*
[18] Exhibit "P-9", *CTA Division Docket, Vol. II*, pp. 800-805.

issued pursuant to the Securitization Act of 2004, as further guaranteed by the HGC, are applicable.[19]

Pending the ruling of the BIR on NHMFC's request for reconsideration, petitioner, through the Development Bank of the Philippines (DBP) as the appointed Trustee for the Bondholders, paid the BIR the mandated final withholding taxes quarterly starting from November 2012 to May 2014 amounting Php7,560,000.00.[20]

On November 25, 2013, NHMFC submitted to the BIR a complete list of the long term secured residential loans acquired by NHMFC.[21]

In a letter dated October 29, 2014, NHMFC requested for a refund of the final withholding taxes it paid in the amount of Php 7,560,000.00 and reiterated its stand that the Bahay Bonds were issued as ABS under RA 9267. At the time of filing of the claim for refund, the BIR has yet to rule on the previous request for reconsideration of NHMFC.[22]

On December 10, 2014, petitioner filed the instant Petition for Review. [23]

On March 13, 2015, respondent CIR filed an Answer,[24] raising the following special and affirmative defenses: a) taxes collected are presumed to be in accordance with laws and regulations; b) in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and its claim cannot be permitted under vague implications; c) since claims for refund are required to be done within certain time frames, petitioner must file its administrative and judicial claims for refund or issuance of tax credit certificate within two (2) years from the date of payment of the tax; d) the amount of Php7,560,000.00 being claimed by petitioner allegedly arising from final withholding taxes it paid starting December 31, 2012 is not properly documented; e) nowhere in the petition did petitioner aver that it complied with the required submission of supporting documents to justify its claim for refund; f) the Bahay Bonds of

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[19] Petition for Review, *CTA Division Docket, Vol. I,* p.20.
[20] Petition for Review, *Id.*
[21] Exhibit "P-10", *CTA Division Docket, Vol. II,* p. 806.
[22] Petition for Review, *CTA Division Docket, Vol. I,* p. 20.
[23] Petition for Review, *CTA Division Docket, Vol. I,* pp. 14-26.
[24] Answer, *CTA Division Docket, Vol. I,* pp. 80-85.

NHMFC are deemed to be "deposit substitutes" as defined in Section 22 (Y) of the NIRC of 1997, as amended; g) the financial assets (i.e. debt instruments and securities) in the hands of the investors represent a claim to future cash for which the borrowing entity, at maturity date, must have to pay; h) Section 27(D)(1) of the NIRC of 1997, as amended, imposes a final tax of 20% on such deposit substitutes; i) mere issuance of government debt instruments and securities is deemed falling within the coverage of "deposit substitutes" irrespective of the number of lenders at the time of origination, accordingly government debt instruments and securities are not exempt from tax; j) BIR's interpretation of tax laws is entitled to great weight because of its recognized expertise on matters falling within its exclusive administrative domain; k) executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon; and, l) claims for refund are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.

On May 25, 2015, "Respondent's Pre-Trial Brief"[25] was filed while the "Pre-Trial Brief for the Petitioner"[26] was filed on June 1, 2015. With the submission of the parties' "Joint Stipulation of Facts and Issues"[27] on July 9, 2015, the pre-trial was deemed terminated on August 12, 2015.[28] Accordingly, the Pre-Trial Order was issued on August 26, 2015.

During trial, only petitioner presented testimonial and documentary evidence [29] which were admitted in evidence in the Resolution promulgated on February 17, 2016.[30] Respondent on the other hand manifested through her counsel that she will no longer be presenting evidence since the BIR Records have not been forwarded to the Legal Division.[31]

With the posting of petitioner's "Memorandum" [32] on March 23, 2016 and the filing of respondent's "Memorandum" [33] on May 20,

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[25] Respondent's Pre-Trial Brief, *CTA Division Docket, Vol. I,* pp. 95-99.
[26] Pre-Trial Brief for the Petitioner, *CTA Division Docket, Vol. I,* pp. 101-107.
[27] JSFI, *CTA Division Docket, Vol. I,* pp. 387-393.
[28] Resolution, *CTA Division Docket, Vol. I,* p. 402.
[29] Formal Offer of Documentary Exhibits with Manifestation, *CTA Division Docket, Vol. II,* pp. 476-483.
[30] Resolution, *CTA Division Docket, Vol. II,* pp. 886-887.
[31] Resolution, *Id.*
[32] Memorandum, *CTA Division Docket, Vol. II.*, pp. 895-906.
[33] Memorandum (For Respondent), *CTA Division Docket, Vol. II.*, pp. 932-937.

2016, the case was deemed submitted for decision on May 26, 2016.[34]

THE ISSUES

The parties raised the following issues [35] for this Court's resolution:

1) Whether the alleged interest income on the ABS is exempt from income and withholding taxes; and,

2) Whether petitioner is entitled to a refund in the aggregate amount of Seven Million Five Hundred Sixty Thousand Pesos (Php7,560,000.00), allegedly representing final withholding taxes covering the period from November 2012 to May 2014.

Petitioner's Arguments

Petitioner contends that the income or yield of the investors from the ABS is exempt from income and withholding taxes pursuant to Section 33 of RA 9267 and Section 19 of Republic Act No. 8763 (RA 8763), otherwise known as the Home Guaranty Corporation Act of 2000.

Petitioner avers that while Section 31 of RA 9267 states that the yield from ABS is generally subject to 20% final withholding tax,[36] the income or yield from the ABS is exempt from tax if the income or yield of an investor is from any low-cost or socialized housing-related ABS pursuant to Section 33 of RA 9267.[37] In support of its position, petitioner cites HUDCC's Memoranda dated December 23, 2011 and

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[34] Resolution, *CTA Division Docket, Vol. II*, p. 942.
[35] Pre-Trial Order, *CTA Division Docket, Vol. I*, p. 407.
[36] "SECTION 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 for purposes of taxation, the yield for the ABS shall be subject to a twenty percent (20%) final withholding tax, except those held by tax-exempt investors."
[37] "SECTION 33. *Incentives for Securitization.* - In order to promote the 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), the yield or income of the investor from any low-cost or socialized housing-related ABS shall be exempt from income tax."

August 1, 2012 which confirms that the ABS are within the low-cost and socialized housing package.

Petitioner likewise posits that based on Sections 19[38] and 15 (a)[39] of RA 8763, the ABS issued by the SPT which are guaranteed by the HGC as evidenced by the Guaranty Agreement[40] dated August 1, 2012, executed among petitioner as the SPT (as administered by the LBP-TBG as Issuer), the NHMFC as Servicer, the Development Bank of the Philippines Trust Services Group as Trustee and the HGC as guarantor, are covered by the statutory tax exemption privilege granted therein.

Thus, petitioner maintains that since the income or yield derived by the investors from its low-cost or socialized housing-related ABS are exempt from income tax and consequently, from final withholding tax, it is entitled to the refund or issuance of a tax credit certificate in the amount of Php7,600,000.00 allegedly representing the final withholding taxes erroneously withheld from said income or yield for the period from November 2012 to May 2014.

Respondent's Counter-Arguments

Respondent, on the other hand, counter-argues that petitioner is not entitled to the refund or issuance of a tax credit certificate in the amount of Php7,560,000 as the income or yield derived by investors from the subject ABS are not exempt from income tax and consequently, from withholding taxes.

Respondent alleges that the ABS or Bahay Bonds of NHMFC are deemed "deposit substitutes" as defined in Section 22(Y) of the

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[38] **"Section 19.** *Tax Exemption.* – Interest 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 guaranties in favor of natural or judicial persons, in cash or in bonds, shall be exempt from all taxation to the same extent provided in Section (15) (a) hereof: *Provided*, however, That the Corporation shall have the authority to increase the limit of such exemption in such varying amounts shall be reflective of the social concern of the state: Provided further, That the exercise of said authority shall be subject to the approval of the President of the Philippines upon the recommendation of the Monetary Board of the Bangko Sentral ng Pilipinas: provided finally, That the Corporation shall not exercise such authority more often than once every five years."

[39] **"Section 15.** *Guaranty Coverage and Composition of Guaranteed Accounts.* –

(a) The Corporation shall guaranty payments of the balance outstanding and due on the guaranteed principal obligation, plus interest and yields thereon up to eleven percent (11%) per ten percent (10%) per annum for low-cost housing packages; 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; xxx"

[40] Exhibit "P-3", *CTA Division Docket, Vol. I*, pp. 189-221.

NIRC of 1997, as amended, and that the mere issuance of government debt instruments and securities is within the coverage of "deposit substitutes" irrespective of the number of lenders at the time of origination.

Since government debt instruments and securities are not exempt from taxes, interest income derived therefrom shall be subject to final withholding taxes, the rate of which shall depend on whether the bondholder or investor is an individual citizen or a resident alien, a non-resident alien individual not engaged in trade or business within the Philippines, a domestic or resident foreign corporation, or a non-resident foreign corporation.

Furthermore, respondent stresses that the BIR's interpretation of tax laws is entitled to great weight because of its recognized expertise on the subject matter at hand and that the petitioner has the burden of proof to show that it is entitled to the privilege of a tax exemption in accordance with the doctrine of *strictissimi juris* in interpreting the provisions of a tax law.

THE RULING OF THE COURT

The administrative and judicial claims were filed on time

Prefatorily, the Court will determine the timeliness of the claim for refund.

Sections 204 and 229 of the NIRC of 1997, as amended, pertain to the refund of erroneously or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax. Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the CIR.[41]

[41] CBK Power Company Limited v. Commissioner of Internal Revenue, Commissioner of Internal Revenue v. CBK Power Company Limited, G.R. Nos. 193383-84, G.R. No. 193407-08, January 14, 2015.

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The present claim covers the period from November 2012 to May 2014. Records show that petitioner's administrative claim was filed on time:

Taxable Period	Date of Payment of Tax	Last Day for Filing Administrative Claim	Date of Filing Administrative Claim
November 2012[42]	December 10,2012[43]	December 10, 2014	October 29, 2014
February 2013[44]	March 7, 2013[45]	March 7, 2015	
May 2013[46]	June 6, 2013[47]	June 6, 2015	
August 2013[48]	August 29, 2013[49]	August 29, 2015	
November 2013[50]	December 5, 2013[51]	December 5, 2015	
February 2014[52]	March 17, 2014[53]	March 17, 2016	
May 2014[54]	May 21, 2014[55]	May 21, 2016	

With respect to petitioner's judicial claim, petitioner filed its Petition for Review on December 10, 2014. Reckoning the two (2) – year period from December 10, 2012, the present petition was timely filed.

The ABS or Bahay Bonds are not deposit substitutes within the ambit of Section 22 (Y) of the NIRC of 1997, as amended

RA 9267 was enacted on March 19, 2004 with the declared policy of promoting the development of the capital market by supporting securitization, providing a legal and regulatory framework for securitization, and creating a favorable market environment for a range of asset-backed securities. And for such purpose, the State was mandated to rationalize the rules, regulations, and laws that impact upon the securitization process, particularly on matters of taxation and sale of real estate on installment. Furthermore, the State was tasked to pursue the development of a secondary market, particularly for residential mortgage-backed securities and other housing-related financial instruments, as essential to its goal of generating investment and accelerating the growth of the housing

[42] Exhibit "P-5", *CTA Division Docket, Vol. I*, p. 229.
[43] Exhibit "P-5-a", *CTA Division Docket, Vol. I*, p. 230.
[44] Exhibit "P-5-b", *CTA Division Docket, Vol. I*, p. 231.
[45] Exhibit "P-5-c", *CTA Division Docket, Vol. I*, p. 232.
[46] Exhibit "P-5-d", *CTA Division Docket, Vol. I*, p. 233.
[47] Exhibit "P-5-e", *CTA Division Docket, Vol. I*, p. 234.
[48] Exhibit "P-5-f", *CTA Division Docket, Vol. I*, p. 235.
[49] Exhibit "P-5-g", *CTA Division Docket, Vol. I*, p. 236.
[50] Exhibit "P-5-h", *CTA Division Docket, Vol. I*, p. 237.
[51] Exhibit "P-5-i", *CTA Division Docket, Vol. I*, p. 238.
[52] Exhibit "P-5-j", *CTA Division Docket, Vol. I*, p. 239.
[53] Exhibit "P-5-k", *CTA Division Docket, Vol. I*, p. 240.
[54] Exhibit "P-5-l", *CTA Division Docket, Vol. I*, p. 241.
[55] Exhibit "P-5-m", *CTA Division Docket, Vol. I*, p. 242.

finance sector, especially for socialized and low-income housing. The State was empowered to undertake the development of a secondary market for other types of ABS.[56] RA 9267's implementing rules and regulations were approved on May 25, 2005.

RA 9267 defines *"securitization"* as 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 securitization plan.[57] The securitization plan must be approved by the Securities and Exchange Commission (SEC).[58]

An SPE may be a Special Purpose Corporation (SPC) created in accordance with the Corporation Code solely for the purpose of securitization and to which the seller makes a true and absolute sale of assets or a Special Purpose Trust (SPT) administered by an entity duly licensed to perform trust functions under the General Banking Law, created solely for the purpose of securitization and to which the seller makes a true and absolute sale of assets.

Under RA 9267, *"ABS"* refer to certificates, whether written or electronic in character, issued by an SPE, the repayment of which shall be derived from the cash flow of assets in accordance with the Plan, duly approved by the SEC and/or the BSP. These "assets" refers to loans, receivables or other similar financial assets with an expected cash payment stream. The term "assets" includes, but not be limited to, receivables, mortgage loans and other debt instruments.

Pursuant to Section 27 of RA 9267, an SPE, particularly an SPT like petitioner, is generally subject to income tax in accordance with the Section 61, Chapter X of the NIRC of 1997, as amended.[59] To promote the securitization of the mortgage and housing-related receivables of the government housing agencies, however, **Section 33 of RA 9267 exempts from income tax the yield or income of**

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[56] Section 2, Article I, Republic Act No. 9627 (RA 9627); Rule 2, Article 1, Implementing Rules and Regulations of the Securitization Act of 2004 (IRR).
[57] Section 3(a), *Id.*; Rule 3(s), Article 1, IRR.
[58] Section 6, *Id.*
[59] Sec. 61. *Taxable Income.* – **Taxable income of the** estate or **trust shall be computed in the same manner and on the same basis as in the case of an individual**, except that: xxx (Boldfacing supplied)

the holders of ABS from any low-cost or socialized housing-related ABS.[60]

On the other hand, RA 8763[61] renamed the Home Insurance and Guaranty Corporation as Home Guaranty Corporation (HGC). Included in HGC's powers and functions is "to guaranty the payment in favor of any natural or juridical person, of any and all forms of mortgages, loans and other forms of credit facilities and receivables arising from financial contracts exclusively for residential purposes and the necessary support facilities thereto".[62] **Section 19 of RA 8763[63] expressly exempts from all taxation to a certain extent 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 HGC or covered by its guaranty in favor of natural or juridical person.**

In the present case, the Securitization Plan of NHMFC covering the issuance of the ABS was approved by the SEC on August 16, 2012. The Court notes that pending resolution by the CIR of the motion for reconsideration of BIR Ruling No. 516-2012, NHMFC subsequently revised its securitization plan to increase the offer size to Php603,744,442.46 from Php600,000,000.00.

Under the afore-mentioned SEC-approved Securitization Plan, the seller/originator of assets (*i.e.* residential loans under the UHLP) is NHMFC. Land Bank of the Philippines – Trust Banking Group (LBP-Trust) administers the SPT, petitioner herein, to whom the assets were sold, and who subsequently issued the ABS. Development Bank of the Philippines (DBP) is the trustee for the holders of the ABS.

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[60] SECTION 33. Incentives for Securitization. — In order to promote the 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), **the yield or income of the investor from any low-cost or socialized housing-related ABS shall be exempt from income tax.** (Boldfacing supplied)

[61] Enacted on March 7, 2000.

[62] Section 4, Chapter II, Republic Act No. 8673 (RA 8673).

[63] SECTION 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 exempt from all taxation to the same extent provided in Section 15 (a) hereof:** Provided, however, That the Corporation shall have the authority to increase the limit of such exemption in such varying amounts as shall be reflective of the social concerns of the State: Provided, further, That the exercise of said authority shall be subject to the approval of the President of the Philippines upon the recommendation of the Monetary Board of the Bangko Sentral ng Pilipinas: Provided, finally, That the Corporation shall not exercise such authority more often than once every five (5) years. (Boldfacing supplied)

In accordance with the provisions of the original Securitization Plan, petitioner will issue Senior Notes and Subordinated Notes amounting up to Php600,000,000.00, broken down as follows: Senior Notes (in two series: Class A Senior Notes and Class B Senior Notes) in an amount of up to Php420,000,000.00 and Subordinated Notes (in one series: Class C Subordinated Notes) in the amount of up to Php180,000,000.00 (hereinafter referred to collectively as "**Bahay Bonds**").[64] The issuance of the Bahay Bonds are backed up by the residential loans under the UHLP of NHMFC which have principal loan values not exceeding Php400,000.00. [65] The notes are also guaranteed by the HGC.[66]

The CIR opines that the ABS or Bahay Bonds are deposit substitutes within the ambit of Section 22 (Y) of the NIRC of 1997, as amended.

The Court finds such position erroneous.

RA 9267 expressly declares that ABS issued by an SPT pursuant to an SEC-approved securitization plan shall not be considered as deposit substitutes as defined under the NIRC of 1997, as amended, to wit:

> "SECTION 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.
>
> SECTION 31. Securities not 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 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." (Boldfacing supplied)

The express declaration in RA 9267 which is a more recent law than the NIRC of 1997, as amended, shows that Congress clearly

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[64] Exhibit "P-6", *CTA Division Docket, Vol. II*, p. 714.
[65] Exhibit "P-6", *CTA Division Docket, Vol. II*, pp. 714, 716, 718, 736.
[66] Exhibit "P-3", *CTA Division Docket, Vol. I*, pp. 189-221.

carved out an exception with respect to ABS, irrespective of the then existing definitions of "deposit substitutes" under the NIRC of 1997, as amended. Basic is the rule that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation.[67] There is only room for application.[68]

In addition, whenever there is a conflict between two laws, one special and particular and the other general, the special law must be taken as intended to constitute an exception to the general act.[69]

In this regard, the NIRC of 1997, as amended is the general law on internal revenue taxes[70] while RA 9267 is the special law on securitization. Thus, between the two laws, RA 9267 prevails.

Conspicuously, BIR Ruling No. 516-2012 dated August 3, 2012 did not squarely refute petitioner's invocation of the exempting provisions of RA 9627 and RA 8763 and confined the discussion to Sections 22(Y) and 27(D)(1) of the NIRC of 1997, as amended, in holding that the Bahay Bonds are deposit substitutes subject to tax.

While the interpretation of the CIR who is in charge of executing the NIRC of 1997, as amended, is an authoritative construction of great weight, the principle is not absolute and may be overcome by strong reasons to the contrary. If through a misapprehension of law an officer has issued an erroneous interpretation, the error must be corrected when the true construction is ascertained.[71]

Considering that petitioner is an SPT that issued the Bahay Bonds pursuant to an SEC-approved Securitization Plan, the Bahay Bonds shall not be considered as deposit substitutes consistent with Section 31 of RA 9267.

The income or yield derived by investors or bondholders from Bahay Bonds, which are low-cost or socialized housing-related ABS

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[67] Manuel G. Abello, et al., v. Commissioner of Internal Revenue and Court of Tax Appeals, G.R. No. 120721, February 23, 2005.
[68] Id.
[69] Quezon City and the City Treasurer of Quezon City v. ABS-CBN Broadcasting Corporation, G.R. No. 166408, October 6, 2008.
[70] Commissioner of Internal Revenue v. Philippine Airlines, Inc., G.R. No. 180066, July 7, 2009.
[71] Banco De Oro, et al., v. Republic of the Philippines, et al., G.R. No. 198756, January 13, 2015.

and guaranteed by HGC, are exempt from income tax and final withholding tax

It is undisputed that the Bahay Bonds issued under the SEC approved Securitization Plan by petitioner are backed by low-cost or socialized housing-related assets.

The HUDCC together with the National Economic and Development Authority (NEDA) is mandated by RA 8763 to jointly determine the ceilings for socialized, low-cost, medium-cost, and open housing.[72] In the Memorandum dated December 23, 2011[73] and August 1, 2012,[74] HUDCC confirmed that the underlying assets of the Bahay Bonds are low-cost or socialized housing-related assets.

The opinion of the HUDCC should be afforded with weight and merit. The Supreme Court reiterated in *Spouses Ricardo Hipolito, Jr. and Liza Hipolito vs. Teresita Cinco, Carlota Balde Cinco and Atty. Carlos Cinco*[75] that "findings of fact by administrative agencies are generally accorded great respect, if not finality, by the courts by reason of the special knowledge and expertise of said administrative agencies over matters falling under their jurisdiction." Thus, it can be clearly categorized that the assets of Bahay Bonds are low-cost or socialized housing-related assets.

Parenthetically, Section 33 of RA 9267 categorically provides:

> "SECTION 33. Incentives for Securitization. — In order to promote the 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), **the yield or income of the investor from any low-cost or socialized housing-related ABS shall be exempt from income tax.**" (Boldfacing supplied)

Pursuant to its authority under RA 9763, HUDCC issued Resolution No. 1 series of 2008 adjusting the price ceiling for socialized housing to Php400,000.00, to wit:

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[72] Section 15, RA 8763.
[73] Exhibit "P-1",*CTA Division Docket, Vol. I*, p. 187.
[74] Exhibit "P-2", *CTA Division Docket, Vol. I*,p. 188.
[75] G.R. No. 174143, November 28, 2011.

> "**WHEREAS,** based on the joint review and evaluation of the proposed adjustment, both the NEDA and the HUDCC agreed that the price ceiling for socialized housing be adjusted to P400,000 given that the 31.1% growth in housing and repairs of the Consumer Price Index (CPI) from December 2005 to July 2008 is almost the same as the proposed 33% increase in the socialized housing ceiling."

In the present case, records clearly show that the underlying assets of the ABS are backed by residential loans which have principal values not exceeding Php400,000.00, within the price ceiling for socialized housing set by HUDCC.

Furthermore, it is worthy to emphasize that under Section 19 of RA 8763, interest and yields derived by holders of ABS guaranteed by the HGC are exempt from taxation to the extent provided under Section 15(a) of RA 8763. Sections 15(a) and 19 of RA 8763 state:

> "SECTION 15. Guaranty Coverage and Composition of Guaranteed Accounts. — (a) The Corporation shall guarantee 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 socialized housing packages; ten percent (10%) per annum for low-cost housing packages; 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; xxx."

> SECTION 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 exempt from all taxation to the same extent provided in Section 15 (a) hereof:** Provided, however, That the Corporation shall have the authority to increase the limit of such exemption in such varying amounts as shall be reflective of the social concerns of the State: Provided, further, That the exercise of said authority shall be subject to the approval of the President of the Philippines upon the recommendation of the Monetary Board of the Bangko Sentral ng Pilipinas: Provided, finally, That the Corporation shall not exercise such authority more often than once every five (5) years."(Boldfacing supplied)

Relatedly, the implementing rules and regulations of RA 8763 reads:

"RULE IX
Tax Exemption

ARTICLE 43. Tax Exemption on Guaranteed Accounts. — **Interests and yields earned or accumulated on mortgage, debentures, bonds, notes, mortgage and asset-backed securities**, interest under a lease, and other credit instruments, covered by the guaranty of the Corporation in favor of natural or juridical person, in cash or in bonds, **shall be exempt from all taxation to the same extent provided in Section 15 (a) of the Act, as follows:**

Type of Housing Package	***Tax Exemption on Interest Income***
Socialized Housing	**Up to 11.0%**
Low-Cost Housing	**Up to 10.0%**
Minimum-Cost Housing	**Up to 9.5%**
Open Housing	**Up to 8.5%**

In case the rate of interest or yield charged on the guaranteed loan or credit instrument is lower than the applicable tax exempt rate, the tax exemption shall be to the extent of the interest or nominal yield as indicated in the credit instrument.

Yield, as used under this Article, shall refer to the nominal yield that is expressed as a percentage of par value of the credit instrument."(Boldfacing supplied)

Since the Bahay Bonds issued by petitioner are ABS guaranteed by HGC as evidenced by the Guaranty Agreement dated August 1, 2012,[76] the Bahay Bonds are therefore covered by the tax exemption privilege granted by RA 8763.

Verily, exemption from taxation is never presumed. For tax exemption to be recognized, the grant must be clear and express; it cannot be made to rest on doubtful implications.[77] Here, petitioner has sufficiently established its right to the refund claimed having pointed to specific provisions of law conferring in clear and plain terms income tax exemption on the income derived from the ABS.

Based on the foregoing disquisition, the Court finds that the income or yield derived by the investors or bondholders from Bahay Bonds, which are low-cost or socialized housing-related ABS and guaranteed by HGC, are exempt from income tax and consequently,

[76] Exhibit "P-3", *CTA Division Docket, Vol. I*, pp. 189-221.
[77] Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue, G. R. No. 166786, May 3, 2006.

from final withholding tax. Accordingly, the corresponding final withholding taxes withheld and remitted by petitioner to the BIR, through the DBP as trustee for the Bahay Bond holders, must be refunded.

Significantly, as the taxes subject of the claim for refund were withheld from the interest or yield derived by holders of Bahay Bonds who should have received the same, petitioner has the obligation to return what is recovered to the Bahay Bond holders as principal taxpayers lest petitioner unjustly enrich itself at their expense.[78]

Petitioner is entitled to the refund or issuance of a tax credit certificate in the total amount of Php7,560,000.00 representing erroneously paid final withholding taxes covering the period from November 2012 to December 2014

A careful perusal of the Monthly Remittance Returns of Income Taxes Withheld (BIR Form No. 1602) and BIR Tax Payment Deposit Slips offered in evidence by petitioner to prove the remittance to the BIR of the final withholding taxes withheld on the income or interest earned by the Bahay Bond holders reveals that petitioner has indeed remitted the total amount of Php7,560,000.00 for the period November 2012 to December 2014, *viz.*:

Docket page	Exhibit		Taxable Period	Date of Payment of Tax	Amount withheld and remitted
229-230	P-5	P-5-a	2012 November	12/10/12	₱ 1,080,000.00
231-232	P-5-b	P-5-c	2013 February	03/07/13	1,080,000.00
233-234	P-5-d	P-5-e	2013 May	06/06/13	1,080,000.00
235-236	P-5-f	P-5-g	2013 August	08/29/13	1,080,000.00
237-238	P-5-h	P-5-i	2013 November	12/05/13	1,080,000.00
239-240	P-5-j	P-5-k	2014 February	03/17/14	1,080,000.00
241-242	P-5-l	P-5-m	2014 May	05/21/14	1,080,000.00
					₱ 7,560,000.00

[78] Commissioner of Internal Revenue v. Smart Communications, Inc., G.R. No. 179045-46, August 25, 2010.

All told, the Court finds petitioner entitled to a refund or issuance of a tax credit certificate in the total amount of Php7,560,000.00 representing erroneously withheld and remitted final withholding tax covering the period from November 2012 to May 2014.

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.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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