REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2142** (CTA Case No. 9444)
- versus -	Present: Del Rosario, *PJ*, Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, *JJ.*
BAHAY BONDS 2 SPECIAL PURPOSE TRUST, administered by Land Bank of the Philippines Through its Trust Banking Group, Respondent.	Promulgated: DEC 07 2020 2:53 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review seeks to reverse and set aside the assailed Decision[1] and Resolution[2] dated June 11, 2019 and September 3, 2019, respectively, of the Special First Division.

For easy reference, the dispositive portion of the assailed Decision reads:

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[1] Penned by Ret. Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy concurring, Court *En Banc*, Docket, pp. 23-43.
[2] Court *En Banc*, Docket, pp. 44-46.

"**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the aggregate amount of **Eight Million Six Hundred Forty Thousand Pesos (₱8,640,000.00)**, representing petitioner's erroneous payment of final withholding taxes on the interest earned from the asset-backed securities covering the period from August 26, 2014 to May 25, 2016.

SO ORDERED."[3]

On the other hand, the dispositive portion of the assailed Resolution reads:

> "**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration (Re: Decision promulgated on 11 June 2019)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"[4]

THE FACTS

The following are the facts as found by the Court in Division:

> "Petitioner Bahay Bonds 2 Special Purpose Trust is a special purpose trust (SPT) formed under Philippine laws, with special purpose vehicle status under Republic Act (RA) No. 9267, 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 (LBP), 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. It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 6-Manila, Revenue District Office (RDO) No. 33.
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> 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*, 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.

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3 See Note 1, p. 42.
4 See Note 2, p. 46.

The National Home Mortgage Finance Corporation (NHMFC), is a body corporate created by virtue of Presidential Decree (PD) No. 1267, with the primary purpose of developing and providing for a secondary market for home mortgages granted by public and/or private home financing institutions. In line with its objective, the 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.

Petitioner claims that in a letter dated August 16, 2012 by the Securities and Exchange Commission (SEC), the SEC Commission En Banc resolved to confirm NHMFC's transfer to petitioner, on a true sale at book value and on a without recourse basis, a select pool of long-term secured residential loans in accordance with its Unified Home Loan Program (UHLP).

As such, in order to fund the purchase of the residential loans, petitioner issued Asset-Backed Securities (ABS), consisting of the following:

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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. Accordingly, 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 (₱400,000.00).

On December 23, 2011, Secretary General Cecilia S. Alba of the Housing and Urban Development Coordinating Council (HUDCC) issued a Memorandum, confirming that the NHMFC's UHLP loan portfolio packages are deemed within the loan ceiling/packages that constitutes a loan portfolio of low-cost and socialized housing package since the principal loans therein does not exceed ₱400,000.00.

Pursuant to the Securitization Plan, the Home Guaranty Corporation (HGC) issued a cash flow guarantee for each residential loan sold by NHMFC to the petitioner, 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.

On July 9, 2012, the NHMFC filed with the Bureau of Internal Revenue (BIR) a request for ruling on the tax consequence of the issuance, offer and sale of petitioner's ABS.

In response, the BIR issued a BIR Ruling No. 516-2012 dated August 3, 2012 stating that the subject ABS are deemed 'deposit substitutes' as defined in Section 22 (Y) of the National Internal Revenue Code (NIRC) of 1997, as amended, and interest income derived from said securities are not exempt from the following:

> 'a) 20% final withholding tax imposed under Sections 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;
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> 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.'

Undaunted by the above ruling, NHMFC filed a Request for Reconsideration on August 14, 2012, primarily arguing that ABS are not deposit substitutes and that tax exemption privileges to those ABS issued pursuant to *The Securitization Act of 2004*, as further guaranteed by HGC, are likewise applicable to the subject ABS.

While awaiting the ruling on NHMFC's request, petitioner paid, through the Development Bank of the Philippines (DBP), final withholding taxes were remitted to the BIR on the interest income derived from the ABS starting from November of 2012 in accordance with the assailed BIR Ruling No. 516-2012.

As such, from August 26, 2014 to May 25, 2016, the subject period of the present claim for refund, a total of Eight Million Six Hundred Forty Thousand Pesos (P8,640,000.00) have been duly remitted to the BIR, which is broken down as follows:

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On August 10, 2016, petitioner filed an administrative claim for refund with respondent.

Subsequently, on August 25, 2016, petitioner filed its judicial claim via the instant Petition for Review.

On September 30, 2016, respondent filed his Answer raising the following special and affirmative defenses:

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On October 7, 2016, a Notice of Pre-Trial Conference was issued by this Court, setting the pre-trial conference on January 26, 2017 at 9:00 a.m. Thereafter, respondent filed his Respondent's Pre-Trial Brief on October 20, 2016, while petitioner, on the other hand, filed its Petitioner's Pre-Trial Brief on January 20, 2017.

Then, on July 21, 2017, the parties filed their Joint Stipulation of Facts and Issue/s, which was approved by this Court in the Resolution dated August 4, 2017. Consequently, a Pre-Trial Order was issued on October 25, 2017 thereby deeming the pre-trial as terminated.

During the trial, petitioner offered as testimonial evidence the statements of LBP's Senior Vice President/Trust Officer Josephine G. Cervero, who testified by way of judicial affidavit dated January 19, 2017, and NHMFC's Head of Structuring and Packaging Department (formerly Securitization and liquidity Support Department) Maria Luisa Favila, who, likewise, testified by way of judicial affidavit dated January 12, 2017.

On February 14, 2018 petitioner filed its Formal Offer of Evidence xxx

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Thereafter, petitioner was deemed to have rested its case.

Meanwhile, in the Order dated May 22, 2018, this Court noted respondent counsel's manifestation that since no investigation report has been submitted, she will no longer be presenting any evidence. Thus, the parties were given a period of thirty (30) days within which to submit their respective memoranda.

In compliance with the said Order, the parties respectively submitted their Memorandum on June 21, 2018. Accordingly, with the filing of the parties' respective Memoranda, the case was deemed submitted for decision on July 5, 2018."[5]

On June 11, 2019 and September 3, 2019, the Court in Division issued the assailed Decision and Resolution, respectively.

On October 11, 2019, petitioner filed the instant Petition for Review.[6] On November 22, 2019, respondent filed its Comment to the Petition for Review.[7]

On December 12, 2019,[8] the Court *En Banc* issued a Resolution submitting the case for decision. Hence, this Decision.

THE ISSUE

The main issue to be resolved by the Court is whether respondent is entitled to its claim for refund.

THE RULING

Petitioner rehashed the following arguments in the instant Petition:

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[5] See Note 1, pp. 23-33.
[6] Court En Banc Docket, pp. 7-14.
[7] Court *En Banc* Docket, pp. 50-53.
[8] Resolution, Court *En Banc* Docket, pp. 56-57.

"It must be recalled that in BIR Ruling No. 516-2012 dated 3 August 2012, petitioner made a categorical pronouncement that the subject ABS are deemed 'deposit substitutes' as defined in Section 22(Y) of the National Internal Revenue Code (NIRC) of 1997, as amended. Hence, the mere issuance of government debt instruments and securities is deemed as falling within the coverage of 'deposit substitutes' irrespective of the number of lenders at the time of origination. Accordingly, since government debt instruments and securities are not exempt from taxes, interest income derived therefrom shall be subject to the following:

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Since the object of the issuance is to obtain the required government funding, the issuance and subsequent distribution (exchange and trading) of debt instruments and securities in the secondary market to other market participants, specifically, the investors, is intself a public borrowing of the government. 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."[9]

On the other hand, in ruling against petitioner, the CTA in Division succinctly discussed that:

"Generally, an SPE (SPC or SPT) is subject to income tax under Section 27 of RA No. 9267 in relation to Section 61 of the NIRC of 1997, as amended, to wit:

'**SECTION 27.** *Income Taxation of Special Purpose Entity.* — The SPE in the form of an SPC shall be subject to income tax under Section 27(a), Chapter IV of the National Internal Revenue Code of 1997. An SPE constituted as an SPT shall be subject to income tax in accordance with the provisions of Section 61, Chapter X of the same Code.'

'**SECTION 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, x x x.'

However, as earlier stated, since RA No. 9267 was enacted to promote the development of the capital market by

[9] Court *En Banc* Docket, pp. 10-11.

supporting securitization, Section 33 of the same law provides an exception to the general rule, viz.:

> '**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.'

Clearly, any income or yield generated by an SPE, such as herein petitioner, shall be exempt from income tax if the income or yield is earned by an investor from any low-cost or socialized housing-related ABS.

RA No. 8763 or 'Home Guaranty Act of 2000'

Ostensibly, RA No. 8763 was enacted in line with the State's policy to undertake, in cooperation with the private sector, a continuing nationwide housing program which will make available at affordable cost decent housing. As such a Home Guaranty Corporation was repackaged and established to, among others, 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.

To better achieve its purpose, Section 19 of RA No. 8763 expressly exempts, to a certain extent, from all taxation 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, thus:

> '**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 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: x x x.'

In relation thereto, Section 15 (a) of RA No. 8763 further provides that:

> '**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;'

Consequently, since petitioner's security notes carries with it the guaranty of HGC, the interests and yields of its ABS shall be exempt from all taxation."[10]

The Court *En Banc* agrees with the conclusion reached by the Court in Division. Clearly, the above-cited provisions of RA No. 9267 and RA No. 8763 clearly exempts income, interest and yields of respondent from taxation.

With respect to the issue raised by petitioner as to the Bahay Bonds being deposit substitutes, the Supreme Court had already clarified this matter in *Commissioner of Internal Revenue v. Bahay Bonds 2 Special Purpose Trust, administered by the Land Bank of the Philippines through its Trust Banking Group*,[11] as cited by the Court in Division in the assailed Resolution. Thus:

> "As to the finding that the Bahay Bonds are not deposit substitutes, the CTA *EB* was also correct in applying Sections 30 and 31 of Republic Act No. (RA) 9267, otherwise known as 'The Securitization Act of 2004.' It is axiomatic that a later law prevails over a prior statute. By expressly providing that Asset-Backed Securities (ABS), such as the Bahay Bonds, are not to be considered as deposit substitutes under RA 8424, otherwise known as the 'Tax Reform Act of 1997'or the 'National Internal Revenue Code of 1997,' Congress clearly intended to create an exception to the general rule. Considering that Section 33 of RA 9267 also expressly provides for income tax

[10] Court *En Banc* Docket, pp. 38-40.
[11] G.R. No. 240515, February 4, 2019.

> exemption for the income or yield from low-cost or socialized housing-related ABS, which, according to the findings of both the CTA First Division and the CTA EB, include the Bahay Bonds, there was no error in granting the refund xxx."

Hence, considering that petitioner failed to raise meritorious arguments, the denial of the instant Petition is in order.

WHEREFORE, the instant Petition for Review is **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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