REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

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

CTA *EB* NO. 1630
(CTA Case No. 8944)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

JUL 06 2018 2:01 p.m.

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RESOLUTION

MANAHAN, J.:

To be resolved before this Court is petitioner's **Motion for Reconsideration**[1] filed on May 22, 2018, praying for the reversal and setting aside of this Court's decision dated May 3, 2018 and the issuance of a new one denying respondent's entire claim for refund. The dispositive portion of said assailed decision is quoted below:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The November 25, 2016 *Decision* and March 23, 2017 *Resolution* of the CTA First Division in CTA Case No. 8944, are hereby **AFFIRMED**.
>
> **SO ORDERED.**

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[1] *Rollo*, CTA EB No. 1630, pp. 115-125.

Petitioner argues that respondent has no legal standing to pursue the present petition since it is not a real party in interest.

Petitioner also insists that even as early as he filed his Answer in the Court in Division, he already emphasized that respondent failed to present and submit clear and convincing evidence to prove its claim.

Petitioner further argues that the Bahay Bonds are deemed to be "deposit substitutes" as defined in Section 22(Y) of the National Internal Revenue Code (NIRC) of 1997, as amended.

We deny the Motion for Reconsideration.

After a close and thorough scrutiny of petitioner's arguments, the motion lacks merit. The arguments of petitioner are a mere rehash of those adequately discussed and ably passed upon already by the Court *En Banc*, to wit:

> A close scrutiny of the Answer filed by the herein petitioner as respondent under CTA Case No. 8944 reveals that the petitioner never questioned the legal personality of the herein respondent in its claim for refund of said erroneously paid FWT. Below are the special and affirmative defenses raised by herein petitioner in the said pleading, to wit:
>
> > 7. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue....
> >
> > xxx xxx
> >
> > 10. ... 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.
> >
> > 11. The amount of Seven Million Five Hundred Sixty Thousand pesos (Php7,560,000.00) being claimed by petitioner allegedly arising from final withholding tax it paid starting December 31, 2012 is not properly documented.
> >
> > 12. In the foregoing case, it should be noted that nowhere in the petition did petitioner aver that it complied with the required

submission of supporting documents to justify its claim for refund.

13. Moreover, the Bahay Bonds of NHMFC are deemed to be "deposit substitutes" as defined in Section 22(Y) of the Tax Code of 1997, ...

14. Since the object of the issuance is to obtain the required government funding, the issuance and subsequent distribution (exchange and trading) of debts instruments and securities in the secondary market to other market participants, specifically, the investors, is in itself a public borrowing of the government. The financial assets (i.e. debt instruments and securities) in the hands of the investors represent claim to future cash for which the borrowing entity, at maturity date, must have to pay.

xxx xxx

16. Thus, 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 ....

xxx xxx

20. In sum, petitioner must present clear and convincing evidence to merit a tax refund. The taxpayer bears the burden of establishing the factual and legal basis of its claim for refund.

The foregoing arguments were substantially reiterated in the Memorandum submitted by the herein petitioner after the latter rested its case and submitted the case for decision.

Nowhere in the said pleadings did herein petitioner raise the issue of the incomplete list and details of the long-term secured residential loans subject of the Bahay Bonds as well as the collaterals on loans not exceeding four hundred thousand pesos (Php400,000.00).

It is only after the decision of the Court in Division which was adverse to herein petitioner did he change his theory of the case as well as his arguments. *an*

Petitioner should be aware that he is not allowed to change his theory of the case on appeal. In the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*, the Supreme Court ruled that a party may not change his theory of the case as stated in his Answer, to wit:

> It is already well-settled in this jurisdiction that a party may not change his theory of the case on appeal. Such a rule has been expressly adopted in Rule 44, Section 15 of the 1997 Rules of Civil Procedure, which provides -
>
> > SEC. 15. Questions that may be raised on appeal. - Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.
>
> Thus, in *Carantes v. Court of Appeals*, this Court emphasized that -
>
> > The settled rule is that **defenses not pleaded in the answer may not be raised for the first time on appeal.** A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.
>
> In the more recent case of *Mon v. Court of Appeals*, this Court again pronounced that, in this jurisdiction, the settled rule is that a party cannot change his theory of the case or his cause of action on appeal. It affirms that "courts of justice have no jurisdiction or power to decide a question not in issue." Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. The rule rests on the fundamental tenets of fair play. (*Emphasis supplied*)

Thus, this Court has no jurisdiction to take cognizance of this newly raised argument which directly attacks the legal personality of the respondent.

The alleged non-submission by the respondent of the supporting documents will not preclude this Court from taking cognizance of said petition. It is presumed that when the taxpayer filed its administrative claim for refund, the supporting documents are all submitted. In the case of *CBK Power Company Limited v. Commissioner of Internal Revenue*,[2] the Supreme Court ruled that:

> Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, **it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application**, absent any evidence to the contrary. (*Emphasis supplied*)

If petitioner is really convinced that respondent failed to adduce enough evidence to its claim for refund then he should have decided against such claim. However, based on the records of this case, petitioner did not act on respondent's claim for refund.

As to petitioner's insistence that Bahay Bonds are deemed deposit substitutes, we reiterate our ruling, to wit:

> As to petitioner's argument that the Bahay Bonds are deemed deposit substitutes in the parlance of Section 22(Y) of the 1997 NIRC, as amended, the assailed Decision thoroughly discussed and explained it already that they are not deposit substitutes.
>
> To recapitulate the findings of the Court in Division, the respondent is a special purpose trust (SPT) or a special purpose entity (SPE) that issued the Bahay Bonds pursuant to Securities and Exchange Commission (SEC)-approved Securitization Plan, hence, not to be considered as deposit substitutes consistent with Sections 30 and 31 of Republic Act No. 9267 otherwise known as The Securitization Act of 2004 which provide that:
>
>> 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.

[2] G.R. Nos. 198729-30, January 15, 2014.

> 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 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. (*Emphasis supplied*)

There being no new issues or matters raised by petitioner in the instant motion, this Court finds no compelling reason to reverse the ruling in the assailed decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit. Consequently, the May 3, 2018 *En Banc's* Decision as well as the November 25, 2016 *Decision* and March 23, 2017 *Resolution* of the CTA First Division in CTA Case No. 8944 are hereby **UPHELD** and **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

J.C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice