

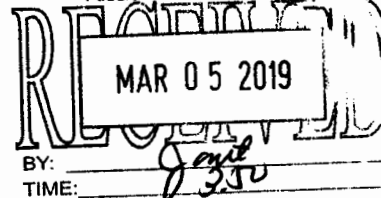


REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **04 February 2019** which reads as follows:

G.R. No. 240515 (Commissioner of Internal Revenue v. Bahay Bonds 2 Special Purpose Trust, administered by the Land Bank of the Philippines through its Trust Banking Group)

After a judicious study of the case, the Court resolves to **DENY** the instant petition¹ and **AFFIRM** the May 3, 2018 Decision² and the July 6, 2018 Resolution³ of the Court of Tax Appeals *En Banc* (CTA *EB*) in CTA *EB* No. 1630 for failure of petitioner Commissioner of Internal Revenue (CIR) to sufficiently show that the CTA *EB* committed any reversible error in upholding the conclusions of the CTA First Division which granted⁴ respondent Bahay Bonds 2 Special Purpose Trust, administered by the Land Bank of the Philippines through its Trust Banking Group's (respondent) claim for refund in the amount of ₱7,560,000.00, representing erroneously paid final withholding taxes.

As correctly ruled by the CTA *EB*, CIR cannot raise the issue on respondent's legal standing for the first time on appeal, when the same was not raised in its Answer⁵ before the CTA First Division.⁶ As a matter of fairness, the CIR must follow the same rules of procedure which bind private parties,⁷ including the inability to change its theory of the case on appeal.⁸ In any event, it has already been settled by jurisprudence that a withholding agent, such as respondent, may file a claim for refund of the erroneously withheld taxes on behalf of the statutory taxpayer.⁹ As to the finding that the Bahay Bonds are not deposit substitutes, the CTA *EB* was also correct in applying Sections 30¹⁰ and 31¹¹ of Republic Act No. (RA) 9267,¹² otherwise

¹ *Rollo*, pp. 14-44.

² *Id.* at 48-59. Penned by Associate Justice Catherine T. Manahan with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Ma. Belen Ringpis-Liban, concurring.

³ *Id.* at 60-66.

⁴ See Decision dated November 25, 2016 of the CTA First Division; *id.* at 85.

⁵ Dated March 12, 2015. *Id.* at 116-121.

⁶ See *id.* at 56-57.

⁷ *CIR v. Procter & Gamble Philippines Manufacturing Corporation*, G.R. No. 66838, December 2, 1991, 204 SCRA 377, 383.

⁸ *CIR v. Mirant Pagbilao Corporation*, 535 Phil. 481, 490 (2006).

⁹ See *CIR v. Smart Communication, Inc.*, 643 Phil. 550, 560-561 (2010).

¹⁰ 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.

¹¹ 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.

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known as “The Securitization Act of 2004.”¹³ It is axiomatic that a later law prevails over a prior statute.¹⁴ By expressly providing that Asset-Backed Securities (ABS), such as the Bahay Bonds, are not to be considered as deposit substitutes under RA 8424,¹⁵ 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 33¹⁶ of RA 9267 also expressly provides for income tax 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. It is settled that the CTA’s findings can only be disturbed on appeal if they are not supported by substantial evidence, or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, the Court must presume that the CTA rendered a decision which is valid in every respect.¹⁷

SO ORDERED.^{//} (HERNANDO, *J.*, designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018. REYES, *J., JR., J.*, on official leave.)

Very truly yours,

MARIA LOURDES C. PERFECTO
Division Clerk of Court

By:

TERESITA AQUINO TUAZON
Deputy Division Clerk of Court

¹² Entitled “AN ACT PROVIDING THE REGULATORY FRAMEWORK FOR SECURITIZATION AND GRANTING FOR THE PURPOSE EXEMPTIONS FROM THE OPERATION OF CERTAIN LAWS,” approved on March 19, 2004.

¹³ See *rollo*, pp. 57-58.

¹⁴ *Daud v. Collector of Customs of the Port of Zamboanga City*, 160-A Phil. 798, 802-803 (1975).

¹⁵ Entitled “AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES” (January 1, 1998).

¹⁶ 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.

¹⁷ See *CIR v. GJM Philippines Manufacturing, Inc.*, 781 Phil. 816, 825 (2016).

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GR240515. 02/04/19(149)URES *J/S*