REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

KEPPEL PHILIPPINES PROPERTIES, INC. (FOR ITSELF AND ON BEHALF OF KEPPEL LAND LIMITED),	**CTA CASE NO. 8908**
	Members:
Petitioner,	***Bautista,*** *Chairperson*
	Fabon-Victorino, *and*
-versus-	***Ringpis-Liban,*** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	SEP 21 2016 2:53 p.m.

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RESOLUTION

BAUTISTA, J:

For resolution is respondent's Motion for Partial Reconsideration (Re: Decision Promulgated 19 July 2016) ("Motion for Partial Reconsideration") filed by registered mail on August 11, 2016; with petitioner's Opposition (To Respondent's Motion for Partial Reconsideration on the Decision Promulgated 19 July 2016) ("Opposition") filed on September 2, 2016.

On July 19, 2016, the Court promulgated a Decision, the last two paragraphs of which read as follows:

> Having proven that KPPI paid the subject 15% FWT in the amount of Php21,420,000.00 on October 10, 2012 through a Landbank of the Philippines BIR Tax Payment Deposit Slip and that the subject gain is beyond the taxing jurisdiction of the Philippines, the Court finds KPPI entitled to a refund or the issuance of a TCC in the amount of Php21,240,000.00 representing erroneously withheld and remitted 15% FWT to the BIR.

> **WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of Twenty-One Million Two Hundred Forty Thousand Pesos (Php21,240,000.00) to petitioner Keppel Philippines Properties, Inc., representing erroneously withheld and remitted Final Withholding Tax.
>
> **SO ORDERED**.

On August 8, 2016, petitioner filed a Motion for Correction (The Dispositive Portion of the Decision from the amount of Php21,240,000.00 to Php21,420,000.00), asking that the last two (2) paragraphs of the Decision be amended to reflect the correct amount of Php21,420,000.00. Hence, on August 15, 2016, the Decision was amended in the following manner:

> Having proven that KPPI paid the subject 15% FWT in the amount of Php21,420,000.00 on October 10, 2012 through a Landbank of the Philippines BIR Tax Payment Deposit Slip and that the subject gain is beyond the taxing jurisdiction of the Philippines, the Court finds KPPI entitled to a refund or the issuance of a TCC in the amount of <u>Php21,420,000.00</u> representing erroneously withheld and remitted 15% FWT to the BIR.
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> **WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in the amount of Twenty-One Million <u>Four</u> Hundred <u>Twenty</u> Thousand Pesos (Php21,<u>42</u>0,000.00) to petitioner Keppel Philippines Properties, Inc., representing erroneously withheld and remitted Final Withholding Tax.
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> **SO ORDERED**.[1]

In his Motion for Partial Reconsideration, respondent avers that the judicial claim for refund was prematurely filed due to non-exhaustion of administrative remedies; and that petitioner is not entitled to refund or credit.

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[1] Changes are underscored.

In its Opposition, petitioner counters that it has complied with the two (2)-year prescriptive period requirement under *Sections 204 and 229 of the 1997 National Internal Revenue Code ("NIRC")* to file a judicial claim for refund; and that that its redemption of the preferred shares did not result in dividends.

The Court will now rule on respondent's Motion for Partial Reconsideration.

As to prescription, respondent relied on the Supreme Court ("SC") case of *Atlas Consolidated Mining Corporation v. Commissioner of Internal Revenue ("Atlas")*[2]. However, this reliance is misplaced. It must be noted that the *Atlas* case deals with a claim for refund of Value-Added Tax while the one at bar relates to Final Withholding Tax ("FWT").

Moreover, the issue of prescription was already discussed by the Court in the Decision by citing the case of *Commissioner of Internal Revenue v. Victorias Milling, Co., Inc.*[3], in which the Supreme Court ruled that the taxpayer may file its judicial claim for refund if the two (2) year period is about to end, without waiting for the decision on its administrative claim.

With regard to the second argument of respondent, the reasons why the Court ruled that the net capital gain from the redemption of preferred shares is not a dividend was already extensively discussed by the Court in its Decision.

All told, the Court sees no justifiable reason to modify its Decision dated July 19, 2016.

WHEREFORE, respondent's Motion for Partial Reconsideration (Re: Decision Promulgated 19 July 2016) is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[2] G.R. Nos. 141104 & 148763, 8 June 2007, 524 SCRA 73.
[3] G.R. No. L-24108, January 3, 1968, 22 SCRA 12.

WE CONCUR:

ESPERANZA R. FABON-VICTORINO	**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice	Associate Justice