REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1540 (CTA CASE No. 8908)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
-versus-	
KEPPEL PHILIPPINES PROPERTIES, INC. (FOR ITSELF AND ON BEHALF OF KEPPEL LAND LIMITED), *Respondent.*	Promulgated: FEB 20 2018 10:27 a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision of this Court *En Banc* is a Petition for Review filed by petitioner Commissioner of Internal Revenue (CIR) under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*[1], *as amended*, seeking the reversal of the Decision dated 19 July

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[1] RULE 8, Sec 3. *Who may appeal; period to file petition.-*

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(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

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2016[2] and the Resolution dated 21 September 2016[3] rendered by the Third Division of this Court, the dispositive portions of which, respectively, read as follows:

Decision dated July 19, 2016:

"**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."

Resolution dated September 21, 2016:

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

SO ORDERED."

The following facts of the case as recited by the Court in Division in its Decision[4] and as established by evidence on record[5], read as follows:

"On June 10, 2003, KPPI's Articles of Incorporation was amended to increase its capital stock to One Hundred Thirty-Five Million Seven Hundred Thousand (135,700,000) preferred shares with a par value of One Peso (Php1.00) per share, which was approved by the Securities and Exchange Commission ("SEC") on October 17, 2003.

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[2] Penned by Associate Justice Lovell R. Bautista, concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban, En Banc Docket, pp.22-47.
[3] *Id.*, pp.48-51
[4] Supra note 2.
[5] Joint Stipulation of Facts and Issues, Division Docket, Volume II, pp. 723-732.

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KLL is a foreign company organized and existing under and by virtue of the laws of Singapore. It is not registered as a corporation or as a partnership in the Philippines.

In 2003, KLL subscribed and paid by way of conversion of advances to equity 73,074,100 preferred shares of KPPI amounting to Php730,741,000.00, which was recorded as preferred share issuance of Php73,074,100 at the par value of Php1.00 per share and capital paid in excess of par value of Php657,666,900.00 at Php9.00 per share, at the issue price of Php10.00 per share.

On December 30, 2010, KPPI and KLL entered into a Memorandum of Agreement whereby the former agreed to redeem 13,600,000 of its preferred shares from the latter at the redemption price of Php278,800,000.00.

On January 29, 2011, KPPI and KLL executed a Redemption Agreement whereby the former shall redeem KLL's preferred shares for and in consideration of the concurrence of two (2) conditions: (1) the payment of Php278,800,000.00; and (2) a favorable ruling or approved Tax Treaty Relief Application ("TTRA") from the International Tax Affairs Division ("ITAD") under BIR Revenue Memorandum Order ("RMO") No. 72-2010 that such redemption will not be subject to Philippine Capital Gains Tax (" CGT") under the Convention Between the Republic of the Philippines and the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income ("RP-Singapore Tax Treaty").

In November 28, 2011, KPPI received a letter from the ITAD dated November 2, 2011 (hereinafter referred to as the "ITAD Letter"), where the latter stated that it cannot process the requested ruling since the suspensive condition "of a favorable ruling on the TTRA renders the

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transaction a 'hypothetical situation' which falls within the ambit of a 'No-Ruling Area' under Sections 1 and 2(t) of Revenue Bulletin No. 1-2003. The ITAD Letter further informed KPPI's counsel that the TTRA may be refiled provided that the pertinent condition is excluded from the Redemption Agreement.

Accordingly, on February 2, 2012, KPPI and KLL executed an "Amendment to the Redemption Agreement" deleting the second condition and scheduling the redemption of the preferred shares seventy-five (75) working days after the execution of the amendment.

Subsequent thereto, KPPI refiled its TTRA with the ITAD on February 7, 2012.

In accordance with the Amendment to the Redemption Agreement, on September 28, 2012, in 2012, KPPI redeemed KLL' s preferred shares for and in consideration of Php20.50 per share or a total of Php278,800,000.00, total reduction in preferred stock is Php136,000,000.00 as a return of the issue price of the preferred shares; in additional paid-in capital ("APIC") is Php122,400,000.00; and retained earnings is Php142,800.00.

On October 10,2012, KPPI filed the Monthly Remittance Return of Final Withholding Taxes Withheld or BIR Form No. 1601-F; and paid to Land Bank of the Philippines - Shaw Boulevard Branch, as BIR's authorized agent bank, Php21,420,000.00 representing FWT on the redemption of the preferred shares based on the tax treaty rate of 15%.

To date, the ITAD has yet to act on the refiled TTRA.

Believing that it is entitled to the refund or the issuance of TCC for the amount of Php21,420,000.00, representing the 15% FWT

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which was allegedly erroneously and unduly received by the BIR, KPPI filed a Final Demand for Refund of Erroneously Paid FWT with the CIR on September 12, 2014, pursuant to Sections 204 and 229 of the National Internal Revenue Code of the Philippines, as amended ("1997 NIRC"). The administrative claim for refund or issuance of TCC remains pending with the CIR.

On October 10, 2014, KPPI filed with this Court the instant Petition for Review.

The CIR filed her Answer through registered mail on December 12, 2014, interposing the following Special and Affirmative Defenses:

> 'It is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim.
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> 4. As a matter of course, a claim for refund is subject to investigation as it involves removal of accrued revenue from the coffers of the Government. It has been held by the Supreme Court that a claim for refund is not ipso facto granted because the [CIR] still has to investigate and ascertain the veracity of the claim.
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> 5. [The CIR] submits that [KPPI] failed to demonstrate that the amount of [Php] 21,420,000.00 which is the subject of the case at bar was erroneously or illegally collected. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with provisions of law.

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6. [KPPI] failed to substantiate its claim for refund/ issuance of [TCC] in the amount of [Php]21,420,000.00 representing alleged erroneously paid [FWT] for the taxable year 2012.

7. In the case entitled Commissioner of Internal Revenue vs. Rosemarie Acosta, the Supreme Court had the occasion to say:

> 'xxx Noteworthy, the requirements under Section 230 (now Section 204) [of the 1997 NIRC] for refund claims are as follows:
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> 1. A written claim for refund or tax credit must be filed by the taxpayer with the [CIR];
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> 2. The claim for refund must be a categorical demand for reimbursement;
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> 3. The claim for refund or tax credit must be filed, or the suit or proceeding therefor must be commenced in court within two (2) years from date of payment of the tax or penalty regardless of any supervening cause.
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> In our view, the law is clear. A claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court.
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> This obviously is intended, first, to afford the CIR an opportunity to correct the action of subordinate officers; and second, to notify the government that such taxes have been questioned, and the notice

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should then be borne in mind in estimating the revenue available for expenditure xxx." xxx

8. Likewise, [KPPI] must prove that the administrative and judicial claims were filed within the period prescribed by law, as provided in Sections 204(c) and 229 of the 1997 NIRC on the prescriptive period for claiming tax refund/ credit, which provides:

'SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. The Commissioner may -

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(B)xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty; Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.

SEC. 229. Recovery of Tax Erroneously or Illegally Collected. - [N]o suit or proceeding shall be maintained in any court for the

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recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of supervening cause that may arise after payment; Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.'

9. [KPPI] alleged that it filed its initial administrative claim for refund on [September 12, 2014] amounting to Php21,420,000.00 representing erroneously paid [FWT] for tax[able] period 2012. It bears stressing that exactly twenty-eight (28) days after the filing of the aforesaid alleged administrative claim or on [October 10, 2014], it filed before the Honorable Court its Petition for Review.

10. [CIR] therefore, was not accorded the fullest opportunity to act appropriately on the matter. It would be highly improbable to grant or deny the claim for refund in a matter of twenty eight (28) days.

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11. In fact, [KPPI] was very much aware of the two (2) year prescriptive period embodied in Section 229 of the [1997 NIRC]. As found in Paragraph 24 of its Petition for Review, Section 229 of the [1997 NIRC], was even made the basis for the filing of the administrative claim for refund of the alleged excess [FWT]. Mindful of Section 229 [of the 1997 NIRC], [KPPI] should have at least filed its application for tax refund earlier so that respondent will be given ample time to review and evaluate its application for tax refund.

12. In cases such as this, before judicial inquiry into the issue of whether taxpayers, in general, are entitled to a refund/ tax credit under substantive law may be considered, they have an initial burden to discharge. They must prove that they complied with all the administrative requirements continuing up to judicial review. In other words, before ***trial de novo*** proceeds and disposes of the issue of refund entitlement under substantive law, it must be first be proved that there was procedural compliance in pursuing the administrative claim leading to the appellate proceedings. As stated by the Honorable Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*:

> 'Petitioner's contention that non-compliance with Revenue Regulations 3-88 could not have adversely affected its case in the CTA indicates a failure on its part to appreciate the nature of the proceedings in that court. First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful

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administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit. Second, cases filed in the CTA are litigated de novo. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.' xxx

13. As can be seen, proper substantiation begins in the administrative level. So if the denial (by inaction) of the administrative claims is because of non-compliance with legal procedural requirements, then true to its appellate nature, the Honorable Court must sustain the decision of the BIR since it suffers no infirmity.

14. The purpose of requiring the filing of the administrative claim for refund/ tax credit and submission of supporting documents relevant to a claim for tax refund/ credit is to give the administrative agency concerned the opportunity to

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ascertain the veracity and validity of the claim. This is the very essence, the very substance of the doctrine of exhaustion of administrative remedies. The doctrine rests upon the presumption that the administrative body, board, or officer, if given matter and decide it properly. Thus, non-compliance with a condition precedent renders the Petition for Review dismissible.

15. The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors of preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions entail the Court to examine the method in which the decision was arrived at, and finding no error, lets the administrative decision stand. This is precisely because there are matters peculiarly within the competence of the administrative agency.

16. The failure of [KPPI] to substantiate its claim for refund before the office of the [CIR] and the filing of the instant petition before this Honorable Court deprived respondent of the opportunity to fully exercise her function to decide claims for refund, correct or modify or affirm the findings of her subordinates. It must be remembered that in the case of *Jariol vs. Commission on Elections, the Supreme Court* reasoned that a party must not merely initiate the prescribed administrative procedure to obtain relief, the party concerned must pursue this relief until the appropriate conclusion takes place before seeking judicial intervention in order to give the administrative body an opportunity to decide the matter by itself

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> correctly and prevent unnecessary and premature resort to the court.
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> 17. Finally, claims for refund are constructed strictly against the claimant for the same partake of the nature of exemption from taxation and as such, they are looked upon with disfavor. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming the exemption. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.
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> 18. Based on the foregoing, [KPPI's] claim for refund has no basis in fact and in law. Thus, the instant petition should be denied for lack of merit.

KPPI and [the CIR] filed their respective Pre-trial Briefs on March 13, 2015, and March 6, 2015.

On March 26, 2015, the parties filed their Joint Stipulation of Facts and Issues ("JSFI"), and thus a Pre-Trial Order was issued on April15, 2015.

On June 5, 2015, KPPI filed its Formal Offer of Evidence ("FOE"), which was resolved by the Court in its Resolution dated July 6, 2015.

During the hearing held on July 6, 2015, the CIR manifested in open court that she has no evidence to present, hence, the parties were granted thirty (30) days or until August 5, 2015 to file their respective Memoranda. This was confirmed in the July 10, 2015 Resolution of the Court, which further provided that subsequent thereto, the case shall be deemed submitted for decision.

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In compliance to the Resolution, KPPI filed its Memorandum on August 5, 2105, while the CIR filed a Manifestation on August 4, 2015, stating that she is adopting her Answer to the Petition for Review as her Memorandum, which was noted by the Court on August 6, 2015.

On August 18, 2015, the Court promulgated a Resolution submitting the case for decision."

The Court in Division thereafter rendered the assailed Decision dated July 19, 2016, which ruled that Keppel Philippines Properties, Inc. (KPPI) is entitled to a refund in the amount of P21,240,000.00 representing erroneously withheld and remitted 15% Final Withholding Tax (FWT).

Subsequently, petitioner KPPI filed a Motion for Correction with the Court in Division asking that the last two paragraphs of the Decision be amended to reflect the correct amount of **P21,420,000.00**[6]. The amended Decision[7] reflecting the correct amount was issued in a Resolution dated August 15, 2016.

As to the CIR's Motion for Partial Reconsideration filed on August 11, 2016, this was denied thru the assailed Resolution, hence, this Petition for Review.

We rule to DENY the Petition for Review.

The issues raised herein by petitioner CIR have been exhaustively addressed. Nonetheless, the Court *En Banc* still deems it appropriate to pass upon the arguments.

Petitioner CIR insists that there was violation of the doctrine of exhaustion of administrative remedies. That by going to the Court in rapid haste barely 28 days after the administrative claim for refund was lodged with his office, he was effectively prevented from acting on the claim for refund within the period allowed by law.

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[6] Change underscored.
[7] Division Docket, Vol. 3, pp.1728.

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Petitioner's contention is misplaced. Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, state the requirements for the recovery of tax erroneously or illegally collected as follows:

> "SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - The ***Commissioner may*** - xxx xxx xxx
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> > (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. ***No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty***: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund." (Emphasis supplied)
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> xxx xxx xxx
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> "SEC. 229. Recovery of Tax Erroneously or Illegally Collected. - ***No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissione***r; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

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In any case, ***no such suit or proceeding shall be filed after the expiration for two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment***: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis supplied)

It is clear that the afore-quoted provisions govern all kinds of refund or credit of internal revenue taxes. Notably, the Supreme Court consistently held that these Sections pertain to refund of erroneously or illegally collected taxes. Section 204 (C) applies to an administrative claim, while Section 229 applies to a judicial claim. In both cases, the taxpayer's claim must be filed within 2 years from the date of payment of the tax[8].

In the case at bar, a perusal of the records will reveal that KPPI has duly complied with the two-year prescriptive period requirement to file a judicial claim for refund. To illustrate:

October 10, 2012	Date of Payment[9]
September 12, 2014	KPPI filed an administrative claim for refund or issuance of a Tax Credit Certificate with the BIR[10].
October 10, 2014	KPPI filed the Petition for Review with the CTA[11].

While it is true that the CIR had only 28 days to act on the administrative claim for refund, there is no violation of exhaustion of administrative remedies and no violation of the law since Sections 204(C) and 229 of the NIRC of 1997, as amended, provide no other requirements or further qualifications in connection with refund of taxes other than the ***existence of internal revenue taxes alleged to have***

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[8] CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. Nos. 193383-84, January 14, 2015.
[9] BIR Tax Payment Deposit Slip, Division Docket, Vol. 2, Exhibits "P-15-b" and "P-15-I", p. 701.
[10] *Ibid.*, p. 702.
[11] *Ibid.*, Vol. 1, pp.6-21.

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been erroneously or illegally assessed or collected and that a prior administrative claim be filed. (Emphasis supplied)

Further, given the circumstances, KPPI had no option but to seek judicial intervention in its claim for refund 28 days after filing its administrative claim so as not to forfeit its right to recover the taxes erroneously paid.

On these bases, clearly this Court cannot deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with the provisions of the NIRC.

We now proceed to discuss the issue on the tax treatment of the net capital gain realized by Keppel Land Limited (KLL) from the redemption of its preferred shares from KPPI. The Court in Division correctly held that these are not ordinary dividends under Article 10 (4) of the RP-Singapore Tax Treaty and Section 73 (A)(B) of the 1997 NIRC, as amended, thus, may not be subjected to 15% FWT.

The present petition is similar to the case of *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*[12] wherein the Supreme Court held that net capital gain cannot be treated as dividend subject to the 15% FWT, since an ordinary dividend is a distribution in the nature of a recurring return of stock, made in the ordinary course of business and with intent to maintain the corporation as a going concern.

In fine, the gain resulting from the redemption is not "dividend" as contemplated under the NIRC of 1997, as amended, but a capital gain subject to the 15% FWT under Section 28(B)(5)(b) of the NIRC of 1997 as amended, which states:

> "SEC. 28. Rates of Income Tax on Foreign Corporations. – xxx xxx xxx
>
> (5) Tax on Certain Incomes Received by a Nonresident Foreign Corporation. –

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[12] Commissioner of Internal Revenue vs. Goodyear Philippines, Inc., G.R. No. 216130, August 3, 2016.

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(b) Intercorporate Dividends. - A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57(A) of this Code, subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%), which represents the difference between the regular income tax of thirty-five percent (35%) and the fifteen percent (15%) tax on dividends as provided in this subparagraph: Provided, That effective January 1, 2009, the credit against the tax due shall be equivalent to fifteen percent (15%), which represents the difference between the regular income tax of thirty percent (30%) and the fifteen percent (15%) tax on dividends;

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In sum, cash and/or property dividends received from a domestic corporation by a foreign corporation, shall generally be subject to the FWT at the rate of 15%.

The Court in Division explained Section 73(A) of the 1997 NIRC, as amended, which provides for the definition of dividends for income tax purposes[13], to wit:

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Moreover, this Court noted that there is only one provision in the [1997] NIRC, which treats as dividends the gain derived from redemption or buy back of shares. ***Section 73(B) of the [1997] NIRC, refers to situations when stock dividends redeemed whether pursuant to***

[13] Supra note 1, p. 40.

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a partial or complete liquidation of corporations. Section 73(B) of the NIRC, as amended, is quoted hereunder:

'SEC. 73. Distribution of Dividends or Assets by Corporations.-

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(B) Stock Dividend. - A stock dividend representing the transfer of surplus to capital account shall not be subjected to tax. However, if a corporation cancels or redeems stock issued as a dividend at such time and in such manner, as to make the distribution and cancellation or redemption, in whole or in part, essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock shall be considered as taxable income to the extent that it represents a distribution of earnings or profits.' (Emphasis supplied)

Likewise, as discussed in the assailed decision, the definition and interpretation of what constitutes dividend income must be determined by the tax laws of the State of which the corporation making the distribution is a resident. The Court in Division ruled in this wise:

"Nonetheless, since KLL is a resident of Singapore, Article 10(4) of RP-Singapore Tax Treaty authorizes the definition and interpretation of the term "dividend income" to be determined by the taxation law of the State of which the corporation making the distribution is a resident. It states:

4. The term "dividends" as used in this Article means income from shares, "jouissance" shares or jouissance rights, mining shares, founder's shares or other rights, not being debt claims, participating in profits, as well as income assimilated to income from shares by the taxation law of the State of

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> which the company making the distribution is a resident."

Applying the afore-cited provisions in the instant case, KLL's gain does not represent a recurring return on the shares redeemed but as payment by KPPI to KLL for the redemption of the preferred shares. The mention of "dividends" in the payment of redemption price was only used to compute and determine the total redemption price to be paid to KPPI and was not meant as distribution of profits accumulated by petitioner. It is clear that the preferred shares redeemed by KPPI from KLL are not stock dividends but were subscribed and paid by way of conversion of shares by KLL[14].

Jurisprudence even clarified that the law did not intend to automatically characterize as taxable dividend every distribution of earnings arising from redemption of stock dividends as the taxability of said distribution as dividends will still have to be determined on a case to case basis[15].

Considering that KLL is a resident of Singapore, the provisions of the RP-Singapore Tax Treaty shall apply in determining the Philippine income taxation of the net capital gain that KLL derived from the redemption by KPPI. Article 13 of RP-Singapore Tax Treaty provides as follows:

> "Article 13 GAINS FROM THE ALIENATION OF PROPERTY
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> 3. ***Gains from the alienation of shares*** of a company, the ***property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State***. Gains from the alienation of an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

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[14] Supra note 2, p. 42.
[15] Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corporation, G.R. No. 108576, January 20, 1999.

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4. ***Gains from the alienation of any property, other than those mentioned in paragraphs 1, 2, and 3 shall be taxable only in the Contracting State of which the alienator is a resident.***"

Furthermore, paragraph 2 of Article 6 of the same Treaty provides as follows:

"Article 6 INCOME FROM IMMOVABLE PROPERTY

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2. For the purpose of this Convention, the ***term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated***. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property."

Therefore, any gain may be taxed in the Philippines pursuant to Articles 13(3) and 6(2) of the RP-Singapore Tax Treaty if the company's assets are principally immovable property located within the Philippines. Otherwise, any gain that may be derived by a resident of Singapore from the alienation of its properties, other than those mentioned above, shall be taxable only in Singapore.

Under Revenue Regulations (RR) No. 4-86 dated April 2, 1986, the term 'Real Property Interest' shall be understood to include real properties as understood under Philippine laws. 'Real Property Interest' means any properties enumerated in Section 3 of RR No. 4-86 which, are not, however, exclusive of others that are similarly situated. Moreover, the term 'Principally' means more than 50% of the entire assets in terms of value."

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A scrutiny of the line items in KPPI's 2011[16] and 2012 Audited Financial Statement, the Court in Division found out that its Current and Non-Current Assets do not consist principally of immovable property, summarized as follows:

	2011	2012
Property and Equipment	1,707,385.00	917,476.00
Total Assets	1,484,318,991.00	1,300,591,158.00
Percentage of Subtotal to Total Assets	0.12%	0.07%

Clearly, the entire values of the property and equipment for the years 2011 and 2012, comprise less than 50% of its total assets for said years, respectively. Hence, the Court in Division correctly ruled that the net capital gain derived by KLL in the redemption of its 136,000 preferred shares by KPPI is beyond the taxing jurisdiction of the Philippines, pursuant to Article 13(4) of the RP-Singapore Tax Treaty.

All told, while it is true that tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same,[17] the same strict construction of the law do not warrant application in this case because the defenses raised by the CIR were general and standard arguments to oppose any claim for refund. The CIR simply dwelled on the minor inconsistencies from KPPI's evidence.

In light of the factual circumstances, KPPI having complied with the requirements for refund provided for under the NIRC, and without the CIR showing contrary evidence other than the bare assertion that there was a violation of exhaustion of administrative remedies and that it was not given sufficient time to act on the claim, the burden of proof of establishing the propriety of the claim for refund has been sufficiently discharged. Hence, the grant of refund is proper.

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[16] Division Docket, Vol. III, Exhibit "P-5-j," p. 1486.
[17] Phil. Geothermal, Inc. vs. Commissioner of Internal Revenue, 503 Phil. 278, 286, 2005.

Moreover, this Court maintains that substantial justice, equity and fair play take precedence over technicalities and legalisms. To deny the claim for refund where an erroneous collection of taxes clearly exists would be tantamount to unjust enrichment on the part of the government.

In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness.

Under the premises, We find no cogent reason to deviate from the rulings of the Court in Division.

WHEREFORE, the petition is **DENIED**. The Decision of the Third Division of this Court in CTA Case. No. 8908 dated July 19, 2016 and its Resolution dated September 21, 2016, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito 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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice