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)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
KEPPEL PHILIPPINES PROPERTIES, INC. (FOR ITSELF AND ON BEHALF OF KEPPEL LAND LIMITED), *Respondent.*	Promulgated: SEP 19 2018 2:57 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution is a Motion for Reconsideration (Re: Decision dated February 20, 2018) filed by petitioner Commissioner of Internal Revenue with respondent's Comment and Opposition (To Petitioner's Motion for Reconsideration on the Decision Promulgated 20 February 2018) filed on June 7, 2018.

Petitioner prays that this Court reconsider, reverse and set aside the Decision which denied the Petition for Review for lack of merit, the dispositive portion of which reads as follows:

Decision dated February 20, 2018:

"**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."

Petitioner insists that 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.

The Court En Banc finds the motion bereft of merit. There is no compelling reason to reverse or modify the assailed Decision. The issues raised herein have already been exhaustively addressed. Nonetheless, the Court still deems it appropriate to pass upon the arguments.

In the assailed Decision, it has already been settled that respondent's judicial claim for refund was timely filed in accordance with Sections 204(C)[1] and 229[2] of the NIRC.

Petitioner's reliance on the Supreme Court case of *Atlas Consolidated Mining Corporation vs. Commissioner of Internal Revenue*[3] is misplaced. Let petitioner be reminded that the Atlas case deals with a claim for refund of Value Added Tax (VAT) while the one at bar relates to Final Withholding Tax (FWT). Petitioner confuses the applicable provisions of the NIRC of 1997, as amended, affecting the manner of refunding these taxes. In the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[4], the Supreme ruled extensively discussed the

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[1] SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. – The ***Commissioner may*** – xxx xxx 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." (Emphasis supplied)

[2] 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.

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)

[3] G.R. Nos. 141104 & 148763, 8 June 2007.

[4] G.R. No. 187485, February 12, 2013.

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between an "excess input VAT" and an "excessively collected tax", and ruled in this wise:

"II. ***'Excess' Input VAT and 'Excessively' Collected Tax***

The input VAT is **not** 'excessively' collected as understood under Section 229 because **at the time the input VAT is collected the amount paid is correct and proper.** The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services.

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In a claim for refund or credit of 'excess' input VAT under Section 110(8) and Section 112(A), the input VAT is not 'excessively' collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is 'excessively' collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an 'excess' input VAT.

The term 'excess' input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as 'excessively' collected under Section 229.

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Under Section 110(B) and Section 112(A), the prescriptive period for filing a judicial claim for 'excess' input VAT is two years from the close of the taxable quarter when the sale was made by the person legally liable to pay the *output VAT.* This prescriptive period has no relation to the date of payment of the 'excess' *input VAT.* The 'excess' input VAT may have been paid for more than two years but this does not bar the filing of a judicial claim for 'excess' VAT under Section 112(A), which has a different reckoning period from Section 229. Moreover, the person claiming the refund or credit of the input VAT is not the person who legally paid the input VAT. Such person seeking the VAT refund or credit does not claim that the input VAT was 'excessively' collected from him, or that he paid an input VAT that is more than what is legally due. He is not the taxpayer who legally paid the input VAT.

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From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is 'erroneously, xxx illegally, xxx excessively or in any manner wrongfully collected.' In short, there must be a wrongful payment because what is paid, or part of it, not legally due. As the Court held in *Mirant,* Section 229 should **'apply only to instances of erroneous payment or illegal collection of internal revenue taxes.'** Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due.** Under the VAT System, there is no claim or issue that the 'excess' input VAT is 'excessively or in any manner wrongfully collected.' In fact, if the 'excess' input VAT is an 'excessively' collected tax under Section 229, then the taxpayer claiming to apply such 'excessively' collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such 'excessively' collected tax, and thus there will no longer be any 'excess' input VAT. xxx"

Thus, for refund of excessively collected tax, Section 229 of the NIRC of 1997, as amended, requires that there must be an administrative claim prior to the filing of a judicial claim; and that **<u>both</u>** administrative and judicial claims should be filed within the two-year prescriptive period.

In this regard, respondent was able to show its compliance with the exhaustion of administrative remedies when it filed an administrative claim prior to the filing of a judicial claim.

The law on refund of excessively collected taxes is clear on the procedure for filing claims on the administrative and judicial levels. There is nothing under the 1997 NIRC, as amended, that categorically states to wait for the CIR's decision before a taxpayer may seek judicial intervention especially when there is possibility that the right to recover taxes erroneously paid may be forfeited due to prescription.

Notably, in the early case of *Gibbs vs. Collector*,[5] the Supreme Court held that if, however, the Collector (now Commissioner) takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the CTA before the end of the two (2)-year period without awaiting the decision of the Commissioner.

Likewise, in the case of *Commissioner of Customs and Commissioner of Internal Revenue vs. The Honorable Court of Tax Appeals and Planters Products, Inc.*,[6] the Supreme Court held that the taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect. It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector (now Commissioner) of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the Commissioner, would have, at his personal convenience, given his go signal.

We reiterate our ruling and emphasize the pertinent portions thereof, to wit:

> "In the case at bar, a perusal of the records will reveal that KPPI has duly complied with the

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[5] L-13453, February 29, 1960.
[6] G.R. No. 82618, March 16, 1989 citing the case of Paracale-Gamaus vs. Biaquera (CTA Case No. 211, Resolution of August 22, 1956).

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two-year prescriptive period requirement to file a judicial claim for refund. To illustrate:

October 10, 2012	Date of Payment[7]
September 12, 2014	KPPI filed an administrative claim for refund or issuance of a Tax Credit Certificate with the BIR[8].
October 10, 2014	KPPI filed the Petition for Review with the CTA[9].

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 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."

Anent the petitioner's contention that the redemption of shares is a way to circumvent payment of tax on respondent's distribution of dividends, such is a clear manifestation for disregard of the Supreme Court's ruling in *Commissioner of Internal Revenue vs. Goodyear Philippines,*

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[7] BIR Tax Payment Deposit Slip, Division Docket, Vol. 2, Exhibits "P-15-b" and "P-15-I", p. 701.
[8] *Ibid.*, p. 702.
[9] *Ibid.*, Vol. 1, pp.6-21.

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Inc.[10] wherein it held that what constitutes dividend income must be determined by the tax laws of the State of which the corporation making the distribution is a resident. Considering that Keppel Land Limited (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 Keppel Philippines Properties, Inc., (KPPI).

Further, as discussed in the assailed Decision, 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[11]. To reiterate, the 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.

Unlike in the case at bar, 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.

All told, this Court finds no cogent reason to disturb the assailed Decision. We maintain that the grant of refund is proper. 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 case of *Filinvest Development Corporation vs. Commissioner of Internal Revenue*[12], the Supreme Court held:

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[10] Commissioner of Internal Revenue vs. Goodyear Philippines, Inc., G.R. No. 216130, August 3, 2016.
[11] Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corporation, G.R. No. 108576, January 20, 1999.
[12] Filinvest Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 146941, August 9, 2007.

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"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."

WHEREFORE, premises considered, the Commissioner of Internal Revenue's Motion for Reconsideration (Re: Decision dated February 20, 2018) is hereby **DENIED** for lack of merit.

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice