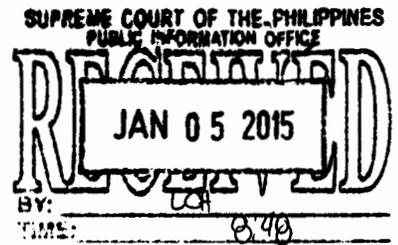




REPUBLIC OF THE PHILIPPINES
 SUPREME COURT
 Manila
 SECOND DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **12 November 2014** which reads as follows:*

G.R. No. 198079: KEPCO ILIJAN CORPORATION v. COURT OF TAX APPEALS EN BANC AND COMMISSIONER OF INTERNAL REVENUE

x-----x

This petition docketed as G.R. No. 198079 questions the Court of Tax Appeals' denial of its motion to withdraw case in G.R. No. 199418.

Petitioner Kepco Ilijan Corporation (KEILCO) filed a special civil action for certiorari¹ praying that "the 29 March 2011 and 13 June 2011 Resolutions of the Court of Tax Appeals *En Banc* be reversed, and a resolution be issued GRANTING Petitioner's Motion to Withdraw Case and the CTA Special First Division's Amended Decision dated 11 March 2010 be affirmed."²

On April 21, 2010, KEILCO appealed the March 11, 2010 Court of Tax Appeals (CTA) Special First Division's amended decision in G.R. No. 199418 that partially denied KEILCO's refund claim for ₱100,304,560.10, and partially granted the amount of ₱237,974,498.55.³

KEILCO alleged that it never appealed the partial grant. After the CTA *En Banc* had submitted the case for decision, KEILCO filed a motion to withdraw the case on December 23, 2010, raising its lack of interest to pursue the disallowed amount.⁴

On March 29, 2011, the CTA *En Banc* denied the motion since the case had been submitted for decision.⁵

Acting upon petitioner's Motion to Withdraw Case filed on December 23, 2010, the Court **DENIES** the same considering that the case was deemed submitted for Decision as of September 29, 2010.

SO ORDERED.⁶

¹ *Rollo* (G.R. No. 198079), pp. 3-45. The petition is filed pursuant to Rule 65 of the Rules of Court.

² *Id.* at 43.

³ *Id.* at 13.

⁴ *Id.* at 14.

⁵ *Id.* at 57-58.

⁶ *Id.* at 57.

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KEILCO filed for reconsideration.⁷ It also filed a supplement to its motion for reconsideration, raising that the Supreme Court Second Division April 11, 2011 resolution⁸ in *KEPHILCO v. CIR* docketed as G.R. No. 173939 granted KEPHILCO's motion to withdraw for lack of interest to pursue the case and considered the case closed and terminated.⁹ KEILCO argued that the CTA En Banc should adopt this Supreme Court resolution to its case.¹⁰

On June 13, 2011, the CTA En Banc denied both motion for reconsideration and its supplement.¹¹

The CTA En Banc explained that “[w]ithdrawal of appeal is discretionary once the case is submitted for decision.”¹² It discussed that “[a] motion to withdraw case must be supported by a compromise agreement validly executed and signed by the parties.”¹³ *KEPHILCO v. CIR* docketed as G.R. No. 173939 is also inapplicable since the case “depends on the correct interpretation of capital goods and services”¹⁴ while the instant case involves jurisdiction with the issue of “whether or not the refund claim has prescribed, and if the refund claim is premature.”¹⁵

The CTA En Banc issued its decision¹⁶ on the same day, reversing the CTA division by denying the entire refund claim of KEILCO.¹⁷ It likewise denied reconsideration.¹⁸

Thus, KEILCO filed the instant petition for certiorari questioning the denial of its motion to withdraw case.

Petitioner argues that the motion to withdraw was “a clear voluntary renunciation of its right to pursue the partial disallowance,”¹⁹ and this “lack of interest to pursue the case is sufficient reason to grant the withdrawal”²⁰ as in *KEPHILCO v. CIR*.

⁷ Id. at 14.

⁸ Id. at 155.

⁹ Id. at 15.

¹⁰ Id.

¹¹ Id. at 60–65.

¹² Id. at 61.

¹³ Id. at 63.

¹⁴ Id. at 64.

¹⁵ Id.

¹⁶ Id. at 161–182.

¹⁷ Id. at 16.

¹⁸ *Rollo* (G.R. No. 199418), pp.64–69.

¹⁹ *Rollo* (G.R. No. 198079), p. 19.

²⁰ Id. at 23.

Petitioner submits that the CTA En Banc gravely abused its discretion when it required the execution of a compromise agreement since Section 204 of the Tax Code authorizes respondent Commissioner of Internal Revenue (CIR) to compromise the payment of tax liabilities and not the refund of taxes already paid.²¹

Lastly, petitioner argues that the unappealed portion of the CTA amended decision had long become final and executory.²²

Respondent counters that certiorari is legally unavailing as there is an available plain, speedy, and adequate remedy of appeal in Rule 45.²³ Respondent argues that the CTA had no jurisdiction over the petition assailing respondent's alleged inaction of petitioner's administrative claim as the judicial claim was prematurely filed only eight days after the administrative claim.²⁴ Respondent also cites Rule 50, Section 3 of the Rules of Civil Procedure in that after the filing of appellee's brief, "withdrawal may be allowed in the discretion of the court."²⁵ Petitioner filed the motion to withdraw almost three months after the CTA En Banc had considered the case submitted for decision.²⁶

The sole issue is whether respondent CTA En Banc committed grave abuse of discretion amounting to lack of jurisdiction in denying petitioner KEILCO's motion to withdraw.

This court finds no grave abuse of discretion by respondent CTA in denying the motion to withdraw.

The phrase *grave abuse of discretion* refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty imposed by law or to act in contemplation of law or where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."²⁷

Rule 50, Section 3 of the Rules of Civil Procedure supports respondent CTA's position that a withdrawal of appeal becomes *discretionary* once the case is submitted for decision:

²¹ Id. at 27-29.

²² Id. at 32.

²³ Id. at 366.

²⁴ Id. at 372.

²⁵ Id. at 377.

²⁶ Id.

²⁷ *Agfha Incorporated v. Court of Tax Appeals*, 555 Phil. 430, 440 (2007) [Per J. Carpio Morales, Second Division].

SEC. 3. *Withdrawal of appeal.* – An appeal may be withdrawn as of right at any time before the filing of the appellee’s brief. Thereafter, the withdrawal may be allowed in the discretion of the court.

The CTA En Banc did not commit grave abuse of discretion when it denied the motion to withdraw case, considering that the petition docketed as G.R. No. 199418 involved the issue of jurisdiction — “whether or not the refund claim has prescribed, and if the refund claim is premature.”²⁸

This court has held that “[j]udgment rendered without jurisdiction is null and void, and void judgment cannot be the source of any right whatsoever.”²⁹

Thus, this affects even the unappealed partial grant of refund by the CTA division that petitioner argues to have attained finality.

As discussed by respondent, the law clearly provides for the CTA’s jurisdiction – exclusive appellate jurisdiction (a) to review CIR decisions, and (b) to review CIR inaction³⁰ “if the NIRC provides a specific period within which to act and the Commissioner of Internal Revenue fails to do so within such period.”³¹

KEILCO filed its judicial claim only eight days after its administrative claim with respondent CIR. There was no decision yet by respondent, and the 120+30-day mandatory period for respondent to act on KEILCO’s administrative claim had not yet lapsed. Thus, KEILCO’s judicial claim with the CTA was premature, warranting outright dismissal for lack of jurisdiction.

WHEREFORE, finding no grave abuse of discretion by the Court of Tax Appeals En Banc in denying Kepco Ilijan Corporation’s motion to withdraw case, this court resolves to **DISMISS** the corporation’s petition for certiorari for lack of merit.

SO ORDERED.

Very truly yours,


MA. LOURDES C. PERFECTO
Division Clerk of Court *4/17/15*

²⁸ *Rollo* (G.R. No. 198079), p. 64.

²⁹ *El Greco Ship Manning and Management Corporation v. Commissioner of Customs*, 593 Phil 476, 492 (2008) [Per J. Chico-Nazario, Third Division] citing *Vda. de Lopez v. Court of Appeals*, 506 Phil. 497, 505 (2005) [Per J. Garcia, Third Division].

³⁰ *Rollo* (G.R. No. 198079), p. 368.

³¹ *Id.* at 370.

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GR198079. 11/12/14 (107, 175 & 218[d])SR

11/12/14