REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

DIAGEO PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 902
(CTA Case No. 8339)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, and
Ringpis-Liban, JJ.

Promulgated:

JUN 26 2013 ApolinarIo 9:05 a.m.

x- -x

RESOLUTION

COTANGCO-MANALASTAS, J.:

This resolves the *Motion to Withdraw Petition for Review*[1] filed by petitioner Diageo Philippines, Inc., through counsel, on March 6, 2013. Petitioner prays of this Court to confirm the withdrawal of the present Petition for Review and to declare the same closed and terminated.

In the subject *Motion*, petitioner narrates that on January 30, 2013 the board of directors approved the withdrawal of all of petitioner's claims for refund of input value-added tax ("VAT") pending with the Court of Tax Appeals ("CTA") and the Supreme Court, including the instant Petition for Review

[1] *Rollo*, pp. 68-72.

docketed as CTA EB No. 902 (CTA Case No. 8339). Attached as Annex "A" to the subject *Motion* is the secretary's certificate of the board resolution authorizing the withdrawal of petitioner's claims for refund of input VAT.

In a *Resolution* dated April 3, 2013, respondent Commissioner of Internal Revenue was ordered to comment on petitioner's *Motion*. On May 17, 2013, a report was issued by the Judicial Records Division stating that respondent failed to file her comment on petitioner's *Motion to Withdraw Petition for Review*. Hence, the instant *Motion* is deemed submitted for resolution.

The Rules of Court are supplementary to the Revised Rules of the CTA. Thus, in resolving the pending *Motion*, the Court takes its bearing from the provision of Section 3, Rule 50 of the 1997 Rules of Court which provides, *thus*:

> **"RULE 50**
>
> **DISMISSAL OF APPEAL**
>
> xxx
>
> SEC. 3. Withdrawal of appeal. — An appeal may be withdrawn as of right at anytime before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court."

While the procedure for the filing of "appellee's brief" referred to in the foregoing provision does not apply in the instant appeal, the above-quoted provision may be applied by analogy in this instance; and here, the Court is of the view that respondent's Comment[2] to the subject Petition for Review takes the place of an appellee's brief. Considering that respondent's Comment has already been filed in this case, the grant of the present *Motion to Withdraw Petition for Review* rests on the sound discretion of this Court pursuant to Section 3, Rule 50 of the 1997 Rules of Court.

Taking into consideration petitioner's disclosure that its board of directors approved the withdrawal of all of petitioner's claims for refund of input VAT pending with the CTA and the Supreme Court, including the instant Petition for Review, and there being no comment/opposition filed by the respondent on

[2] *Rollo*, pp. 46-48.

the subject *Motion* within the prescribed period, the Court is convinced that the granting of the instant *Motion to Withdraw Petition for Review* is in order.

WHEREFORE, premises considered, petitioner's *Motion to Withdraw Petition for Review* is hereby **GRANTED**.

Accordingly, the above-captioned Petition for Review entitled *"Diageo Philippines, Inc., vs. Commissioner of Internal Revenue"*, docketed as CTA EB No. 902, is deemed **WITHDRAWN**, and the case is hereby declared **CLOSED** and **TERMINATED**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice