REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

EMILIO R. CU,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 11061

Members:
DEL ROSARIO, *P.J., Chairperson*,
BACORRO-VILLENA, and
CUI-DAVID, *JJ.*

Promulgated:
NOV 17 2023; 1:40PM

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RESOLUTION

The Mediator's Report dated November 6, 2023, stating that the mediation between the parties was unsuccessful, is **NOTED**.

On November 7, 2023, petitioner filed a **Motion to Withdraw Petition for Review**, praying for the withdrawal of the Petition for Review filed on January 4, 2023. Petitioner manifests that he is under discussion with the Bureau of Internal Revenue (BIR) regarding his offer of compromise settlement. However, while the case is undergoing mediation, his counsel on record disengaged their legal services. He states that he no longer intends to hire the services of new counsel as it would entail additional expenses on his part. He claims that he is unable to furnish the bond required for the suspension of collection of tax. Petitioner expresses his desire to pursue a compromise directly with the BIR rather than continue with the litigation of this case.

In *Commissioner of Internal Revenue vs. Nippon Express (Phils.) Corporation*,[1] the Supreme Court outlined the procedure for the withdrawal of appeals before this Court, *viz.*:

> "A perusal of the Revised Rules of the Court of Tax Appeals (RRCTA) reveals the lack of provisions governing the procedure for the withdrawal of pending appeals before the CTA. Hence, pursuant

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[1] G.R. No. 212920, September 16, 2015.

to Section 3, Rule 1 of the RRCTA, the Rules of Court shall suppletorily apply:

> Sec. 3. *Applicability of the Rules of Court.* - The Rules of Court in the Philippines shall apply suppletorily to these Rules.

Rule 50 of the Rules of Court - an adjunct rule to the appellate procedure in the CA under Rules 42, 43, 44, and 46 of the Rules of Court which are equally adopted in the RRCTA - states that when the case is deemed submitted for resolution, withdrawal of appeals made after the filing of the appellee's brief may still be allowed in the discretion of the court:

> RULE 50
> DISMISSAL OF APPEAL
>
> x x x x
>
> Section 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 *Withdrawal of appeal.* — An appeal may be withdrawn as of right at any time before the filing of the appellee's brief.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**." (*Boldfacing supplied*)

Relatedly, Section 2, Rule 17 of the Rules of Court provides:

> "Section 2. *Dismissal upon motion of plaintiff.* — Except as provided in the preceding section, **a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper**. If a counterclaim has been pleaded by a defendant prior to the service upon him or her of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his or her counterclaim in a separate action unless within fifteen (15) calendar days from notice of the motion he or she manifests his or her preference to have his or her counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court." (*Boldfacing supplied*)

Evidently, the withdrawal of a Petition for Review after an Appellee's Brief (or Answer) has been filed is a matter of judicial discretion.

In the present case, an Answer has already been filed by respondent. However, considering that this case has not been submitted for decision, and with the stated reasons for the withdrawal of the Petition proffered by petitioner in the present Motion, the Court finds no cogent reason to deny the same.

WHEREFORE, premises considered, petitioner's **Motion to Withdraw Petition for Review** is **GRANTED**. Accordingly, the Petition for Review is hereby **DEEMED WITHDRAWN**, and the case is now considered **CLOSED and TERMINATED**. The Formal Letter of Demand No. 39033 dated November 5, 2021, and the Warrant of Garnishment issued against petitioner subject of the Petition for Review are accordingly declared **FINAL and EXECUTORY.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice