REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

TOP RATE CONSTRUCTION AND GENERAL SERVICES, Petitioner,	**CTA CASE NO. 9368**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** ***and*** **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 04 2017 : 2:24 pm

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RESOLUTION

For this Court's resolution is petitioner's "***Motion to Withdraw Petition for Review (with URGENT MOTION TO SUSPEND COLLECTION OF TAXES)***" filed on June 22, 2017, with respondent's ***"COMMENT/MANIFESTATION"*** filed on July 12, 2017, praying that: a) the Petition for Review (with Urgent Motion to Suspend Collection of Taxes) be withdrawn; b) the scheduled hearing for the presentation of petitioner's witnesses on 8 August 2017 be cancelled; and c) that this case be declared as closed and terminated.

In support of its motion, petitioner avers that on June 5, 2017, it filed, with the BIR Regional Director of Revenue Region 8 and the Chief of the Collection Division of the same revenue region, an application for the Compromise Settlement of its VAT assessment covering taxable year 2005 on the ground of financial incapacity. Petitioner further alleges that on the same date, it paid the amount of Php271,802.31 as compromise payment representing 10% of the VAT assessment covering taxable year 2005. Hence, petitioner decided to withdraw the instant Petition for Review in order to give way to the compromise settlement of the deficiency VAT assessment for the taxable year 2005.

On July 12, 2017, respondent filed his ***"Comment/Manifestation"*** stating no objection to petitioner's "Motion to Withdraw the Petition For Review" and requesting for the permanent withdrawal of the BIR Records of the case.

THE COURT'S RULING

In the recent case of *Commissioner of Internal Revenue vs. Nippon Express (Phils.) Corporation*[1], the Supreme Court elucidated on the procedure for the withdrawal of pending appeals before the Court of Tax Appeals. The High Court held:

> "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 to Section 3, Rule 1 of the RRCTA, the Rules of Court shall suppletorily apply:
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> > **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 (now the 1997 Rules of Civil Procedure) – 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."

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

Relative thereto, it is noteworthy to mention the consequence of the withdrawal of an appeal. The Supreme Court has held that when an appeal is withdrawn, the assailed decision becomes final and executory.[2]

Based on the foregoing, the granting of a Motion to Withdraw Appeal at this stage is addressed to the sound discretion of the Court. Considering that the Petition for Review has not yet been submitted for decision and that respondent does not interpose any objection to the motion to withdraw petition for review, the Court resolves to grant petitioner's *Motion to Withdraw (with Urgent Motion To Suspend Collection Of Taxes).*

Furthermore, this is to remind petitioner the effect of its withdrawal of appeal. By withdrawing the instant Petition for Review, the Final Decision of the Commissioner of Internal Revenue dated April 14, 2016 affirming the Final Decision on Disputed Assessment (FDDA) now becomes final, executory and demandable.

WHEREFORE, in light of the foregoing considerations, petitioner's Motion to Withdraw (with Urgent Motion to Suspend Collection of Taxes) filed on June 22, 2017, is hereby **GRANTED**. Accordingly, the instant Petition for Review filed on May 27, 2016 is hereby **DISMISSED**, and the case is considered **CLOSED** and **TERMINATED**. The Final Decision of the Commissioner of Internal Revenue dated April 14, 2016, affirming the Final Decision on Disputed Assessment, is accordingly **DECLARED** final and executory. No further pleadings or motions shall be entertained herein.

Further, respondent's request for the permanent withdrawal of the BIR Records of the case in his Comment/Manifestation filed on July 12, 2017 is also **GRANTED**. The BIR Records of this case may be permanently withdrawn from the Judicial Records Division of this Court.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181371, March 2, 2011.

ERLINDA P. UY
Associate Justice

(ON LEAVE)
CIELITO N. MINDARO-GRULLA
Associate Justice