REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BAC-MAN GEOTHERMAL INC., Petitioner,	**CTA CASE NO. 10457**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* and **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 12 2021 4:11 pm

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RESOLUTION

For resolution of the Court is petitioner's **Motion to Withdraw Petition for Review**, filed through registered mail on May 11, 2021 and received by this Court on May 31, 2021, with respondent's **Comment (Re: Motion to Withdraw Petition for Review dated 10 May 2021)**, filed on June 15, 2021.

Petitioner avers that it filed the instant Petition for Review on January 25, 2021 relative to its claim for the refund of the amount of ₱16,338,124.39, representing petitioner's excess and unutilized input value-added tax (VAT) for the 1st quarter of calendar year (CY) 2018 attributable to its zero-rated sales of power and fuel generated from renewable sources of energy, such as geothermal and solar energy sources. According to petitioner, upon further evaluation of the case, it has decided not to pursue the Petition for Review filed with the Court. It contends that considering there is no provision in the Revised Rules of the Court of Tax Appeals (RRCTA) which governs the withdrawal of an appeal, Section 3, Rule 50, Revised Rules of Court shall supplement the RRCTA,[1] and, hence, an appeal may be

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1 RULE 50
DISMISSAL OF APPEAL

withdrawn as a matter of right at any time prior to the filing of the appellee's brief. Thus, petitioner states that to save the time and resources of this Court, it moves for the withdrawal of its Petition for Review.

Respondent interposes no objection to the instant motion and submits the same to the sound discretion of this Court.

Section 3, Rule 50 of the 2019 Revised Rules of Civil Procedure provides:

> "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 *Withdrawal of appeal.* – An appeal may be withdrawn as of right at any time before the filing of the appellee's brief.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."

As may be gleaned from the foregoing, the withdrawal of an appeal may be either as of right or allowed in the discretion of the Court.

Further, the procedure for the withdrawal of pending appeals before this Court was elucidated by the Supreme Court in *Commissioner of Internal Revenue vs. Nippon Express (Phils.) Corporation*[2], to wit:

> "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.
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> Rule 50 of the Rules of Court - an adjunct rule to the appellate procedure in the CA under Rules 42, 43, 44,

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xxx xxx xxx

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.

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

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**. (Emphasis supplied)"

Based on the foregoing, the withdrawal of an appeal at this stage may be allowed in the discretion of the Court. In view thereof, and considering that respondent does not interpose any objection to the instant motion, the Court finds merit in petitioner's **Motion to Withdraw Petition for Review**.

WHEREFORE, petitioner's **Motion to Withdraw Petition for Review** is **GRANTED**. Accordingly, the Petition for Review is deemed **WITHDRAWN** and this case is considered **CLOSED** and **TERMINATED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice