

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HARBOR VIEW PROPERTIES CTA CASE NO. 11139
AND HOLDINGS, INC.,

Petitioner, Members:

- versus -

RINGPIS-LIBAN, *Chairperson*,
MODESTO-SAN PEDRO, and
FERRER-FLORES, JJ.

COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

Promulgated:

AUG 23 2023

x

RESOLUTION

Before this Court is petitioner's **Notice to Withdraw/Dismiss Petition for Review** filed on July 21, 2023, praying that the Court issue an order confirming the dismissal of its Petition for Review filed on April 25, 2023.

Petitioner avers that the respondent, on July 19, 2023, issued his Final Decision on Disputed Assessment (FDDA) partially granting its request for reinvestigation. The respondent reduced the deficiency tax assessments from Php34,008,328.79 to Php2,976,213.93, inclusive of interest, surcharge, and penalties, detailed as follows:

	Basic		Penalties		Total
Income Tax	Php	77,593.20	Php	40,484.52	Php 118,077.72
Value Added Tax		31,037.24		17,010.11	48,047.35
Final Withholding Tax		1,083,743.30		862,748.74	1,946,492.04
Final Withholding Tax on VAT		433,497.32		345,099.50	778,596.82
Compromise Penalty				85,000.00	85,000.00
Total		Php1,625,871.06		Php1,350,342.87	Php2,976,213.93

On July 20, 2023, petitioner allegedly paid the total deficiency tax assessments in the amount of Php2,976,213.93 through electronic and filing system of the Bureau of Internal Revenue and the corresponding copies of payments were attached to the present notice.

In view of this development, petitioner moves for the dismissal/withdrawal of the Petition for Review pursuant to Section 1, Rule 17 of the Rules of Court which provides:

**“RULE 17
DISMISSAL OF ACTIONS**

Section 1. *Dismissal upon notice by plaintiff.* - A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.”

The above provision ordains the dismissal of the complaint by the plaintiff as a matter of right *at any time* before service of the answer.¹ The plaintiff is accorded the right to dismiss the complaint without the necessity of alleging in the notice of dismissal any ground nor of making any reservation.²

Records show that the Petition for Review was filed by petitioner on April 25, 2023.

The Summons was issued on May 18, 2023 giving respondent thirty (30) days, after the service, to file with this Court and serve on the petitioner his Answer. The Summons was received by respondent on May 23, 2023; hence, respondent had until June 22, 2023 to file his Answer.

On June 20, 2023, respondent filed a **Motion for Extension of Time to File Answer With Entry of Appearance**. Respondent requested an additional period of thirty (30) days from June 22, 2023 or until July 21(sic), 2023 within which to file his Answer. In the minute resolution dated June 30, 2023, the Court granted respondent’s motion.

On July 21, 2023 at 11:51:00 AM, petitioner filed the instant Notice to Withdraw/Dismiss Petition for Review before this Court.

On the same day, July 21, 2023 at 4:05:00 PM, respondent filed his Answer attaching thereto as proof of service to petitioner the registry receipt which is also dated July 21, 2023.

¹ *O.B. Jovenir Construction and Development Corporation, et al. vs. Macamir Realty and Development Corporation, et al.*, G.R. No. 135803, March 28, 2006.

² *Ibid.*

As earlier stated, the filing of withdrawal of the petition for review is a matter of right *at any time* before service of the answer. In the instant case, the filing of petitioner of Notice to Withdraw/Dismiss Petition for Review and the service of respondent of Answer to petitioner were simultaneously done on July 21, 2023. Nevertheless, pursuant to Section 15, Rule 13 of the Amendments to the 1997 Rules of Civil Procedures,³ the service of the answer is only completed upon the actual receipt of the petitioner or five (5) calendar days from the date it received the first notice of the postmaster, whichever date is earlier. Evidently, when petitioner filed its notice of withdrawal of petition for review on July 21, 2023, the service of respondent's answer on petitioner has yet not been completed. Petitioner, thus, has the right to dismiss its petition by mere notice to the Court.

As the Supreme Court pronounced in the case of *Go vs. Cruz*,⁴ viz:

“The dismissal of civil actions is always addressed to the sound judgment and discretion of the court; this, whether the dismissal is sought after a trial has been completed or otherwise, or whether it is prayed for by a defending party or by a plaintiff or claimant. **There is one instance however where the dismissal of an action rests exclusively on the will of a plaintiff or claimant, to prevent which the defending party and even the court itself is powerless, requiring in fact no action whatever on the part of the court except the acceptance and recording of the causative document. This is dealt with in Section 1, Rule 17 of the Rules of Court, xxx**” (Citations omitted. Boldfacing supplied)

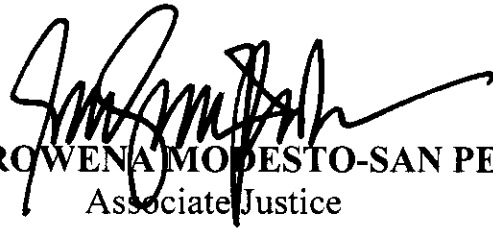
WHEREFORE, premises considered, petitioner's Notice to Withdraw/Dismiss Petition for Review filed on July 21, 2023 is **NOTED and GRANTED**. Accordingly, the instant Petition for Review filed on April 25, 2023 is **DISMISSED**, and this case is considered **CLOSED and TERMINATED**.

SO ORDERED.

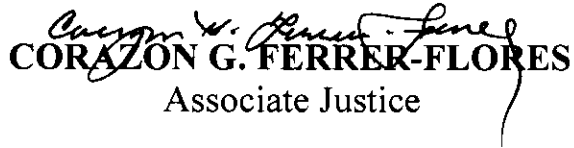
ON LEAVE
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

³ Section 15. *Completeness of service.* – Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) calendar days after mailing, unless the court otherwise provides. **Service by registered mail is complete upon actual receipt by the addressee, or after five (5) calendar days from the date he or she received the first notice of the postmaster, whichever date is earlier.** Service by accredited courier is complete upon actual receipt by the addressee, or after at least two (2) attempts to deliver by the courier service, or upon the expiration of five (5) calendar days after the first attempt to deliver, whichever is earlier. (Boldfacing supplied)

⁴ G.R. No. 58986, April 17, 1989.



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice