

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

FIRST DIVISION

**ICITE BUILDING
ADMINISTRATION, INC.,**
Petitioner,

CTA CASE NO. 9477

Members:

- versus -

**DEL ROSARIO, Chairperson,
UY, and
MINDARO-GRULLA, JJ.**

**COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

Promulgated:

MAR 09 2017, 3:02 p.m.

x ----- x

RESOLUTION

UY, J.:

This resolves petitioner's **Notice to Withdraw/Dismiss Petition**, filed on November 28, 2016, without respondent's comment despite due notice.

Petitioner alleges that due to the unavailability of pertinent documents at the time of filing of this Petition for Review and various circumstances that occurred subsequent thereto, petitioner resolved that the instant petition is not the best available legal remedy with regard to the issue at hand. Thus, petitioner is constrained to withdraw and ask for the dismissal, without prejudice, of the instant petition pursuant to Section 1, Rule 17 of the 1997 Rules of Civil Procedure, which reads as follows:

Section 1, Rule 17 of the Rules of Court provides:

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 an 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.

According to petitioner, there has been no service yet of an answer from the respondent. Thus, petitioner may withdraw or cause the dismissal of the instant petition as a matter of right pursuant to aforequoted provision.

Indubitably, the provision ordained the dismissal of the complaint by the plaintiff as a matter of right at any time before service of the answer.¹ The right of the plaintiff to cause the dismissal of the complaint by mere notice is lost not by the *filing* of the answer with the trial court, but upon the actual *service* to the plaintiff of the answer.²

Records however show that respondent filed his Answer³ in Court on November 22, 2016, a copy of which was served on petitioner through registered mail on even date. It is duly **NOTED** that petitioner claims that as of the filing of the Notice to Withdraw/Dismiss Petition, respondent's Answer has not yet been duly received by petitioner when the instant Notice to Withdraw/Dismiss Petition was filed in Court.

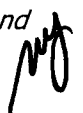
Notably, respondent chose not to refute petitioner's allegation by not filing his comment/opposition to the Notice to Withdraw/Dismiss Petition. Thus, the Court finds the dismissal sought by petitioner to be in order.

WHEREFORE, in light of the foregoing considerations, the Court **CONFIRMS** petitioner's **Notice to Withdraw/Dismiss Petition** pursuant to Section 1, Rule 17 of the 1997 Rules of Civil Procedure.

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.* citing *Go vs. Cruz, et al.*, G.R. No. 58986, April 17, 1989.

³ Docket, pp. 160-165.



Accordingly, the instant Petition for Review is **DISMISSED without prejudice.**

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


CIELITO N. MINDARO-GRULLA
Associate Justice