REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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MINDANAO I GEOTHERMAL PARTNERSHIP, Petitioner,	**CTA EB No. 1075** (CTA Case No.8250)
	Present:
- versus -	**DEL ROSARIO,** *PJ*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JAN 13 2015 3:20 p.m.

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RESOLUTION

UY, *J.*:

This resolves petitioner's **"Manifestation and Motion to Withdraw Petition"**[1] filed on October 16, 2014, without respondent's Comment despite due notice.[2] In the said motion, petitioner prays of this Court that its Petition for Review in the above-captioned case be considered withdrawn and the case be considered closed and terminated.

In support of its motion, petitioner states as follows:

1. On September 3, 2014, the present case (CTA Case No. 1075) was deemed submitted for decision.

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[1] Docket, pp. 393 to 417.

[2] As per Records Verification dated December 2, 2014, Docket, p. 421.

2. On May 31, 2013, petitioner was assessed by the Bureau of Internal Revenue (BIR) for deficiency income tax, expanded withholding tax and value-added tax for the year 2009. Petitioner filed its protest for the said assessment.

3. On February 14, 2014, petitioner opted to pay the assessed amounts representing deficiency value-added tax, income tax and expanded withholding tax for the year 2009 as evidenced by the BIR Tax payment Deposit Slips and Payment Form (BIR Form No. 0605) all dated February 14, 2014 in the amounts of ₱2,252,276.86, ₱1,678,836.99, ₱682,221.31, copies of which are hereto attached and made integral parts hereof as Annexes "A", "A-1", "B", "B-1" and "C", "C-1". The payment was made prior to the actual receipt of the Final Decision on Disputed Assessment (FDDA) on March 11, 2014. A copy of the FDDA is hereto attached and made an integral part hereof as Annex "D".

4. It appears from the FDDA that the amount of ₱19,968,719.00 which the BIR recognized as the Creditable Income Tax Refund includes the amount of ₱16,343,159.00, subject matter of CTA Case No. 8093 and ₱3,625,560.75, subject matter of CTA Case No. 8250.

5. In view of the foregoing development rendering moot and academic the present petition, petitioner respectfully prays that it be allowed to withdraw its petition in the above-captioned case.

THE COURT *EN BANC'S* RULING

We grant the instant Motion.

While the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, the applicable rule in the instant case, does not mention any rule pertaining to the dismissal of an appeal, Section 3, Rule 1 thereof provides that "The Rules of Court in the Philippines shall apply suppletorily to these Rules" (referring to the RRCTA).

Relevantly, Section 3, Rule 50 of the 1997 Rules of Civil Procedure, states as follows:

"**RULE 50**

DISMISSAL OF APPEAL

> 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."

Applying the foregoing legal provision by analogy, an appeal before this Court may be withdrawn, as a matter of right, at any time before the filing of a Comment on the Petition for Review. In this case, respondent filed her Comment (Re: Petitioner's Petition for Review) on March 13, 2014[3] and her Memorandum on July 22, 2014[4] and the case was considered submitted for decision on September 3, 2014[5]. Thus, petitioner can no longer withdraw its appeal as a matter of right and the grant of the instant Motion now rests on the sound discretion of this Court.

Taking into consideration petitioner's manifestation that the present claim for refund of unutilized creditable withholding tax for CYs 2008 and 2009 in the amount of ₱3,625,560.76 has been recognized by the BIR as Creditable Income Tax Refund in the FDDA issued against petitioner on March 11, 2014, and there being no opposition filed by respondent on the subject Motion within the prescribed period, the Court *En Banc* is inclined to grant petitioner's *Motion to Withdraw Petition.*

WHEREFORE, in view of the foregoing considerations, petitioner's **"Motion to Withdraw Petition"** filed on October 16, 2014 is hereby **GRANTED**.

Accordingly, the Petition for Review filed on November 6, 2013, docketed as CTA EB No. 1075 is deemed **WITHDRAWN**, and the case is hereby declared **CLOSED** and **TERMINATED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[3] Docket, pp. 331 to 342.
[4] Docket, pp. 372 to 387.
[5] Resolution dated, Docket, pp. 391 to 392.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice