REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

LEISURE AND ALLIED INDUSTRIES PHILS., INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8208

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAR 29 2011
PBFernando 9:12 a.m.

x---x

RESOLUTION

This resolves petitioner's "Motion to Withdraw Petition for Review" filed on February 23, 2011, with respondent's "Comment (on Petitioner's Motion to Withdraw Petition for Review)" filed on March 7, 2011.

In its "Motion to Withdraw Petition for Review," petitioner, through counsel, states as follows:

1) The instant case involves a Petition for Review filed by [p]etitioner seeking for the cancellation of the alleged deficiency Income Tax (IT) and Expanded Withholding Tax (EWT) issued against the company for calendar year (CY) ended December 31, 1999, in the total amount of ₱2,439,402.81, inclusive of 20% interest;

2) On February 15, 2011, [p]etitioner received an Order from this Honorable Court granting the [r]espondent's Motion to [F]ile Answer until February 20, 2011. This Honorable Court likewise ordered the [r]espondent to elevate the entire BIR records of the case upon the filing of the Answer;

3) While preparing for the next incident of the case, the key officer of [p]etitioner informed us that the company is no longer interested in

pursuing the case at the judicial level and instead would avail of the other remedies and options as provided in the Tax Code, as amended; as well as the implementing rules and regulations issued by the Bureau of Internal Revenue (BIR); and

4) With this development, the undersigned counsel has no recourse but to move for the withdrawal of the instant Petition for Review without prejudice to [p]etitioner's right to avail of whatever remedies and options provided under the Tax Code, as amended, as well as the implementing rules and regulations issued by the BIR.

On the other hand, respondent avers the following in his "Comment (on Petitioner's Motion to Withdraw Petition for Review)," *viz*:

xxx xxx xxx

3) While following-up [r]espondent's request for the transmittal of [p]etitioner's tax docket from RDO 43-B West Pasig, we were informed that to secure the cancellation of their deficiency tax assessments, [p]etitioner applied for a compromise settlement of their Income Tax and Expanded Withholding Tax liabilities;

4) Where the basic tax involved exceeds One million pesos (₱1,000,000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the National Evaluation Board;

5) To date, [r]espondent has not been informed yet whether or not [p]etitioner's compromise settlement was approved by the National Evaluation Board; and

6) Pending approval of [p]etitioner's application for compromise settlement by the National Evaluation Board, [p]etitioner's Motion to Withdraw Petition for Review cannot be granted by this Honorable Court at this time.

With the foregoing, Section 2 of Rule 17 of the Revised Rules of Court provides as follows:

Rule 17
DISMISSAL OF ACTIONS

xxx xxx xxx

> SEC. 2. *Dismissal upon motion of plaintiff.* - Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court.

Based on the above-quoted provision, the approval of a dismissal of an action is discretionary upon the Court.

In the case at bench, considering that petitioner has manifested in writing that it is no longer interested in pursuing its case and instead would avail of the other remedies as provided under the National Internal Revenue Code, as well as the implementing rules and regulations issued by the Bureau of Internal Revenue, and further, that respondent did not set up any counterclaim, the Court finds for the petitioner.

WHEREFORE, petitioner's "Motion to Withdraw Petition for Review" is hereby **GRANTED**. The Petition for Review is hereby considered **CLOSED AND TERMINATED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice