REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LAMCO INTERNATIONAL TRADING CO., INC., Petitioner,	**CTA CASE NO. 11120** Members:
- versus -	**RINGPIS-LIBAN,** *Chairperson,* **MODESTO-SAN PEDRO,** and **FERRER-FLORES,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 10 2023 10:25 a.m.

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RESOLUTION

For this Court's resolution is petitioner's **Motion to Withdraw Petition** filed on May 4, 2023, with respondent's **Comment (Re: Motion to Withdraw Petition dated on May 4, 2023)** filed on June 6, 2023, praying that the instant petition for review be dismissed and withdrawn and the case be declared closed and terminated.

In its motion, petitioner avers that its Board of Directors resolved to withdraw the case. It attached the notarized Secretary's Certificate dated May 4, 2023, the pertinent portions of which read:

> "3. That during the duly constituted special meeting of the Board of Directors on 27 April 2023, wherein a quorum was present, the following Board Resolution, on motion made an seconded, was unanimously approved:
>
> > **"RESOLVED,** that the Board of Directors of **LAMCO INTERNATIONAL TRADING CO., INC.** (the "**Corporation**") authorizes, as it is hereby authorizes, the Corporation to withdraw the Petition for Review that it has caused to file on 04 April 2023, in relation to the case docketed as **LAMCO INTERNATIONAL TRADING CO., INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 11120.**

"**RESOLVED, FURTHER,** that **WEIGAND AND PARTNERS,** the Corporation's legal counsel in the said case, be instructed to file or cause the filing of a Motion to Withdraw Petition for Review with the Court of Tax Appeals.

"**RESOLVED, FINALLY,** That the foregoing resolution shall remain valid and subsisting unless otherwise revoked or amended in writing by the Corporation."

4. The foregoing resolution has not been amended rescinded and is still inforce and effect and in accordance with the records of the Corporation presently in my custody.

xxx xxx xxx

(signed)
Zebedee U. Chua
Corporate Secretary"

In *Commissioner of Internal Revenue vs. Nippon Express (Phils.) Corporation,*[1] the Supreme Court elucidated on the procedure for the withdrawal of pending appeals before the Court of Tax Appeals. The Supreme Court held:

"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:

SEC. 3. *Applicability of the Rules of Court.* - The Rules of Court in the Philippines shall apply suppletorily to these rules.

Rule 50 of the Rules of Court (now the 1997 Rules of Civil Procedure) - an adjunct rule to the appellate procedure in the CA under Rules 42, 43, 44 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:

x x x x

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."

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

Based on the foregoing, the granting of a withdrawal of appeal before the filling of appellee's brief is *"as (a matter) of right"*. In other cases, after the filing of the appellee's brief, the withdrawal may be allowed *"in the discretion of the court"*.

Records show that the Petition for Review was filed by petitioner on April 4, 2023.

The case was originally raffled to the Court of Tax Appeals (CTA) Third Division.

The Summons was issued on April 19, 2023 giving respondent thirty (30) days, after the service, to file his Answer. The Summons was received by respondent on May 12, 2023; thus, respondent had until June 11, 2023 to file his Answer.

On May 4, 2023, petitioner filed the instant Motion to Withdraw Petition for Review.

In a minute resolution dated May 22, 2023, respondent was ordered to comment on petitioner's motion to withdraw petition for review within five (5) days from notice.

On June 6, 2023, respondent filed his Comment (Re: Motion to Withdraw Petition for Review dated on May 4, 2023) and interposed no objection to the petitioner's Motion to Withdraw Petition.

Meanwhile, on June 9, 2023, respondent filed a **Motion for Extension of Time to File Answer**. Respondent requested an additional period of thirty (30) days from June 11, 2023 or until July 11, 2023 within which to file his Answer.

In a Resolution dated June 9, 2023, this case was transferred to the CTA Second Division pursuant to the Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated May 23, 2023.

Considering that respondent has not yet filed his Answer to the present Petition for Review and did not interpose any objection to petitioner's motion to withdraw petition, petitioner's withdrawal of the present petition is a matter of right, pursuant to Section 3 of Rule 50 of the 1997 Rules of Civil Procedure.

WHEREFORE, premises considered, petitioner's Motion to Withdraw Petition for Review filed on May 4, 2023 is **GRANTED**. Accordingly, the instant Petition for Review filed on April 4, 2023 is **DISMISSED**, and this case is considered **CLOSED and TERMINATED**.

With regard to the respondent's Motion for Extension of Time to File Answer, the same is considered **MOOT**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice