

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

FIRST DIVISION

**BEVERAGE
WORLDWIDE
INC.,**

**PARTNERS
(PHILIPPINES),**

CTA Case No. 9052

Petitioner,

Members:

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

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Promulgated:

Respondent.

APR 05 2018 : 1:35 pm

X - - - - - X

RESOLUTION

For resolution is petitioner's "**OMNIBUS MOTION TO WITHDRAW PETITION FOR REVIEW AND TO CANCEL HEARING**" filed on January 26, 2018, without respondent's comment despite due notice, as per Records Verification dated March 9, 2018. Hence, said Motion was submitted for resolution on March 22, 2018.

In the said motion, petitioner avers that in the course of trial, it determined that the costs of pursuing this case will most likely exceed the benefits which will be received in the event that the refund is favorably acted upon. Hence, in order to refrain from incurring additional legal and related expenses, petitioner resolves to desist from further litigating the case. Thus, petitioner prays that the Petition for Review filed on May 18, 2015 be considered withdrawn, and that the hearing set on January 30, 2018 be cancelled.

Anent petitioner's prayer to cancel the hearing on January 30, 2018, the same was noted without action in the Resolution dated

February 2, 2018, considering that as per court records, there was no previous setting for the case on the said date.

THE COURT'S RULING

Petitioner's Motion to Withdraw Petition for Review has merit.

Although the Revised Rules of the Court of Tax Appeals, as amended (the applicable rules 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 Revised Rules of the Court of Tax Appeals). Hence, we shall refer to the provisions of the 1997 Rules of Civil Procedure, as amended.

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

"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 *Withdrawal of appeal.* – An appeal may be withdrawn as of right at any time before the filing of the appellee's brief.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."

Based on the foregoing legal provision, an appeal may be withdrawn as a matter of right before the filing of the appellee's brief. In the instant case, respondent already filed his Answer on August 18, 2015. Thus, petitioner can no longer withdraw the instant appeal as a matter of right, and the same is now subject to the sound discretion of this Court.

Considering the manifestation of petitioner in the instant Motion to Withdraw that it is no longer inclined to pursue its claim, it resolves to desist from further litigating the case, and there being no opposition thereto filed by the respondent, this Court is inclined to grant petitioner's subject Motion.

It bears stressing however that the voluntary withdrawal of the subject Petition for Review filed before this Court resultantly leaves the parties in exactly the same position as though no action had been commenced at all.¹

¹ *Landcenter Construction and Development Corporation vs. V.C. Ponce, Co., Inc.*, G.R. No. 160409, October 2, 2009, citing *Olympia International, Inc. vs. Court of Appeals*, G.R. L-43236, December 20, 1989.

To reiterate, a dismissal or discontinuance of an action operates to annul orders, rulings or judgments previously made in the case. It also annuls all proceedings had in connection therewith and renders all pleadings ineffective. *A dismissal or nonsuit leaves the situation as though no suit had ever been brought.* Further proceedings in the action are arrested and what has been done therein is also annulled, so that the action is as if it had never been. It carries down with it previous proceedings and orders in the action, and all pleadings of both parties, and all issues with respect to the plaintiffs claim.²

WHEREFORE, in view of the foregoing considerations, petitioner's *OMNIBUS MOTION TO WITHDRAW PETITION FOR REVIEW* filed on January 26, 2018 is hereby **GRANTED**. Accordingly, the instant Petition for Review filed on May 18, 2015 is hereby **DISMISSED**, and the case is hereby considered **CLOSED** and **TERMINATED**.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

² *Landcenter Construction and Development Corporation vs. V.C. Ponce, Co., Inc.*, G.R. No. 160409, October 2, 2009, citing *Servicewide Specialists, Inc. vs. Court of Appeals*, 327 Phil. 431.