REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SM INVESTMENTS CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8798

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 16 2015
12:56 p.m.

X---X

RESOLUTION

On October 8, 2015, petitioner filed a "Motion to Dismiss" citing as grounds thereof the amicable settlement of the present controversy between the parties and praying that the case be dismissed; that the services of Mr. Marcos T. Lim, the Court-commissioned Independent Certified Public Accountant (ICPA) be dispensed with; and that the hearing set on November 3, 2015 for the presentation of the testimony of Mr. Lim on his report be cancelled.

Petitioner manifested that the Bureau of Internal Revenue (BIR) issued in their favor fifteen (15) Tax Credit Certificates (TCCs) with TCC Nos. TCC200600004729 to TCC200600004743 and ITS TCC Transaction Nos. 125-15-00012 to 00026, each with an issue date of October 5, 2015, and each in the amount of Fifty Million Pesos (₱50,000,000) for a total tax credit in the amount of Seven Hundred Fifty Million Pesos (₱750,000,000.00) and, hence, no longer wishes to pursue the instant case.

In a Resolution dated October 14, 2015, the Court ordered respondent to file Comment on petitioner's motion.

On October 26, 2015, respondent filed her Comment stating that she has no objection to the Motion to Dismiss filed by petitioner.

Under the Rules of Court, Motions to Dismiss are governed by Rule 16. Section 1 thereof states:

> "SECTION 1. *Grounds.* - **Within the time for but before filing the answer to the complaint or pleading asserting a claim**, a motion to dismiss may be made on any of the following grounds:
>
> (a) That the court has no jurisdiction over the person of the defending party;
> (b) That the court has no jurisdiction over the subject matter of the claim;
> (c) That venue is improperly laid;
> (d) That the plaintiff has no legal capacity to sue;
> (e) That there is another action pending between the same parties for the same cause;
> (f) That the cause of action is barred by a prior judgment or by the statute of limitations;
> (g) That the pleading asserting the claim states no cause of action;
> (h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
> (i) That the claim on which the action is founded in unenforceable under the provisions on the statute of frauds; and
> (j) That a condition precedent for filing the claim has not been complied with." *(Emphasis supplied)*

As the time to file a Motion to Dismiss, as provided for by the Rules of Court, has already lapsed, the Court shall instead consider the motion as a "Motion to Declare Case Close and Terminated".

Considering that the parties have amicably settled the issues and controversies between them that precipitated the filing of this case, and seeing that respondent has no objection to dismissing the case, petitioner's motion is **GRANTED.**

SM Investments Corporation v. Commissioner of Internal Revenue docketed as CTA Case No. 8798 is hereby declared **CLOSED** and **TERMINATED**.

Mr. Marcos T. Lim, the Court-commissioned ICPA is hereby **EXCUSED** with the gratitude of the Court, and the submission of his ICPA Report **DISPENSED WITH.** All further settings for hearing this case are hereby **CANCELLED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice