

**PARAGRAPH 1, 9(bb) & 9(cc), SCHEDULE 7A  
INCOME TAX ACT 1967**

**WSSB  
V.  
DIRECTOR GENERAL OF INLAND REVENUE  
PKCP(R) 565-567/2016, 118-119/2016, 13/2016**

The Taxpayer's principal activity is oil palm plantation. The Taxpayer claims that it is entitled for Reinvestment Allowance (RA) for the cultivation of oil palm for Year of Assessments (YAs) 2008 until 2013.

The Director General of Inland Revenue (DGIR) had issued a Notification of Non-Chargeability ("NONCs") for YA 2008, Notice of Reduced Assessment ("JR") for YA 2009, Notice of Assessment ("J") for YA 2010 and Notices of Additional Assessments ("JA") for YAs 2010, 2011, 2012 and 2013, cited that the Taxpayer is not entitled to claim RA for the cultivation of oil palm. It is the DGIR's stance that oil palm does not fall within the ambit of "cultivation of fruits" under Paragraph 9(cc), Schedule 7A Income Tax Act 1967 (ITA 1967). The Taxpayer, aggrieved by the DGIR's decision, assessment and additional assessment, filed an appeal to the Special Commissioners of Income Tax (the SCIT) through Forms Q for all of the YAs involved.

The Taxpayer contended that the cultivation of oil palm falls within the definition of "cultivation of fruits" as stated in Paragraph 9(cc), Schedule 7A ITA 1967. As such, it is the Taxpayer's stance that the Taxpayer is entitled to claim RA for the cultivation of oil palm fruits. Notwithstanding their original stance, the Taxpayer also contended that the cultivation of oil palm falls within the ambit of "cultivation of vegetables" under Paragraph 9(bb), Schedule 7A ITA 1967. Furthermore, the Taxpayer also contended that the DGIR has no basis to disallow the Taxpayer's claim for RA in respect of capital expenditure incurred on Staff Quarters for the Taxpayer's Palm Oil Mill pursuant to Paragraph 1, Schedule 7A of the ITA.

In response, the DGIR maintains his position that oil palm does not fall within the ambit of "cultivation of fruits" under Paragraph 9(cc), Schedule 7A ITA 1967 as oil palm being considered a fruit per se is not 'fruit' in the ordinary meaning as understood in common parlance. The DGIR cited that the Agreed Facts and the Agreed Issues To Be Tried under this appeal are similar to the facts and issues that have been decided in favour of the DGIR by the High Court in *Ketua Pengarah Hasil Dalam Negeri v. Bintulu Lumber Development Sdn Bhd [2014] 1 LNS 1914* and upheld by the Court of Appeal [Q-01-240-07/2014]. As such, the SCIT is bound by the decision of the High Court and the Court of Appeal under the doctrine of *stare decisis*. As for the issue of "cultivation of vegetables", the word 'vegetables' should not be construed in any technical sense nor from the botanical point of view to be understood in common parlance. As such, the Taxpayer's claim should fail in this regard. On the issue of capital expenditure incurred on Staff Quarters for the Taxpayer's Palm Oil Mill, the DGIR submitted that the Taxpayer's claim was not allowed due to the fact that the Staff Quarters does not meet the definition of "factory" provided in Paragraph 9, Schedule 7A ITA 1967.

The SCIT had on 11.10.2024 dismissed the Taxpayer's appeal and upheld all of the notices (NONC, JR, J and JA) issued against the Taxpayer for YAs 2008 until 2013. The Taxpayer had failed to discharge the burden of proof under Paragraph 13, Schedule 5 ITA 1967.

*Editorial Note:*

*The Taxpayer has the right to file an appeal against the decision of the SCIT within 21 days from the date of the decision.*



 SPECIAL COMMISSIONERS OF INCOME TAX

 PUAN FAJRUL SHIHAR BINTI ABU SAMAH

 11<sup>th</sup> OCTOBER 2024