



SUBSECTION 13(2)(c) INCOME TAX ACT 1967

DIRECTOR GENERAL OF INLAND REVENUE

V.

SUDHAKARAN A/L KESAWAN

WA-14-8-04/2023

 **HIGH COURT OF KUALA LUMPUR**

 **YA PUAN ALICE LOKE YEE CHING**

 **30 OCTOBER 2025**

This was an appeal by the Director General of Inland Revenue (“DGIR”) against the decision of the Special Commissioners of Income Tax (“SCIT”) dated 7.10.2023 which allowed the Taxpayer’s appeal.

The issue before the SCIT was whether the income received by the Taxpayer from Maybank Papua New Guinea (“MPNG”) (and subsequently Kina Bank Ltd) in Papua New Guinea for the Years of Assessment (“YA”) 2009 to 2015 was deemed to be derived from Malaysia under Subsection 13(2)(c) of the Income Tax Act 1967 (“ITA 1967”). It was necessary to consider whether the Taxpayer’s employment as Head of Operations of MPNG (and subsequently Kina Bank Ltd) from 2009 to 2016 (“the MPNG Assignment”) was incidental to his previous employment with Malayan Banking Berhad (“MBB”) in Malaysia.

The Taxpayer relied on the Public Ruling No. 1/2011 (Taxation of Malaysian Employees Seconded Overseas) (“the Public Ruling”) and argued that the Public Ruling was binding on the DGIR pursuant to Subsection 138A(3) ITA 1967. The Taxpayer contended that the SCIT was justified in accepting the Taxpayer’s submission that MPNG and MBB are two (2) separate legal entities regulated by two (2) different laws. Therefore, verifying that the payment for the Taxpayer’s services was done by MPNG and not MBB. Although the Taxpayer’s payroll was managed in Malaysia and Papua New Guinea, it was done upon his request for ease of administration. The Taxpayer’s case bears close similarity to Case Studies No. 3 and 4 stated in the Public Ruling, in which the Taxpayer’s duties were found to not be incidental to the employment in Malaysia.

In response, the DGIR averred that there was misconception of law by the SCIT when the SCIT only considered Subsection 13(2)(c) ITA 1967 whereas the assessments were raised under Section 4(b) ITA 1967. Subsection 13(2) ITA 1967 provided that gross income derived from the source of employment may be deemed to arise from Malaysia if it fell under one of the circumstances specified in paragraphs (a) to (e) of Subsection 13(2) ITA 1967. The Taxpayer’s income should be taken as derived from Malaysia because he was an employee of MBB. The employment existed between the Taxpayer and MBB in which MBB was the one who appointed the Taxpayer as the Head of Operation of MPNG.

On 30.10.2025, the High Court dismissed the DGIR’s appeal with costs. The High Court judge further held that there was no need for the appellate court’s intervention on the findings of the SCIT as the findings were based on the evidence and testimonies of witnesses during the trial.

Editorial Notes:

- *DGIR has the right to file an appeal against the decision by the High Court within 30 days from the date of the decision.*