

SECTION 4(a) OF THE INCOME TAX ACT 1967



MEDAN PRESTASI SDN BHD V. DIRECTOR GENERAL OF INLAND REVENUE WA-14-5-03/2021

 HIGH COURT KUALA LUMPUR

 YA DATO' WAN AHMAD FARID BIN WAN SALLEH

 16 MARCH 2023

The Taxpayer was in the business of property development and property investment and had disposed 12 parcels of land (“**Land Parcels**”). On 18.5.2006, the Taxpayer submitted the Real Property Gains Tax (“**RPGT**”) returns.

The Director General of Inland Revenue (“**DGIR**”) raised Notices of Additional Assessment for Years of Assessment (“**YAs**”) 2002, 2003 and 2004 under the Income Tax Act 1967 (“**ITA 1967**”) for the disposal of the Land Parcels on the basis that the gains from the disposal were business income of the Taxpayer.

The Taxpayer contended that the dominant intention in acquiring the Land Parcels was for investment, where the only direct evidence led by parties was on the issue of intention is through the AW1’s (who is the Director of the Company) evidence. AW1 testified that the other director/co-founder and himself intended for the Land Parcels to be the company’s investment. The Land Parcels were meant for the construction of office buildings and showrooms for rental after the surrounding areas have been developed.

The Taxpayer further contended that the SCIT had failed to give any weight to the Taxpayer’s accounting treatment of the Land Parcels as investment assets. The mere possibility that the Land Parcels could be sold is a neutral matter of no probative value, as all real property can be bought and sold. The SCIT also erred in its interpretation and conclusion drawn from the Privatization Agreement dated 21.04.1995 where it was concluded that the Taxpayer had been trading because the Land Parcels were to be alienated to the Taxpayer for its “own development” and “into pre-approved commercial and industrial use or such other use as may be requested”.

In response, the DGIR asserted that the SCIT’s finding in the Case Stated clearly shows that there was no rental activity nor any preliminary development activity carried out on the said Land Parcels. The Taxpayer’s reference to the office buildings and showrooms to generate rental income were disputed during trial. The authenticity of the building plan tendered by the Taxpayer’s counsel during trial was disputed and the said documents were not supported and/or corroborated by any other evidence.

The DGIR further argued that the Taxpayer’s contention in which it was facing financial difficulties is clearly untenable. There was no evidence produced before the SCIT which corroborated the Appellant’s allegation, and the statement therefore became mere assertions by the Appellant without any merits.

The High Court had on 16.03.2023 dismissed Taxpayer’s appeal with costs and upheld the decision of the SCIT. The High Court agreed with the DGIR’s submission that the Taxpayer failed to prove its financial position. It was also held that the Taxpayer’s intention to develop the said land, therefore it could generate rental income was not supported by any corroborative evidence, and that the Taxpayer failed to show that it had taken any steps to develop the said Land Parcels.

Further, the High Court also held that the Architect’s drawing on the proposed office building and showroom was an afterthought on the Taxpayer’s part. It was never produced during the tax audit exercise and was only tendered during the trial before the SCIT. Further, the drawing was unsigned by a certified architect to prove its authenticity.

Editorial Note:

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