



**PARAGRAPH 71 SCHEDULE 3
INCOME TAX ACT 1967**

COSB

V.

**DIRECTOR GENERAL OF INLAND REVENUE
PKCP (R) 890-891/2017**

 **SPECIAL COMMISSIONERS OF INCOME TAX**

 **PUAN FAJRUL SHIHAR BINTI ABU SAMAH**

 **10 FEBRUARY 2023**

The Taxpayer is involved in contract manufacturing of camera lenses and assembler of digital cameras (Digital Division). As part of the Appellant's Digital Division, the Taxpayer acquired several assets. The Taxpayer had

disposed the assets within two years from the date of acquisition. The DGIR had raised Notices of Additional Assessment for years of assessment ("YA") 2012 and 2013 in which the DGIR clawed back the capital allowance claimed by the Taxpayer for the assets acquired and disposed of within two years without permission by the DGIR pursuant to Paragraph 71 Schedule 3 Income Tax Act 1967 ("ITA 1967").

The Taxpayer contended that the DGIR had erred in disallowing the Taxpayer's claim for capital allowance for the disposal of assets within two years. The DGIR has the discretion to withdraw any allowance and impose a balancing charge on an asset that was owned by the Taxpayer for a period of less than two years subject to certain exceptions under Paragraph 71 Schedule 3 ITA 1967. The Taxpayer had also relied on Public Ruling No. 4/2013 and No. 7/2017. The Taxpayer had commercial justifications for the disposal of the assets, i.e. the assets were redundant due to the closing down of the Taxpayer's Digital Division and due to the specialized and bespoke nature of the assets, the Taxpayer was unable to utilize the said assets for another division within the company. It is further contended that there are no legal or factual basis for the DGIR to impose a penalty under Section 113(2) ITA 1967 and the DGIR had failed to exercise his discretion on the imposition of penalty.

In response, the DGIR asserts that Paragraph 71 Schedule 3 ITA 1967 is clear that the Taxpayer must seek permission from the DGIR first before disposing any assets acquired within two years for the capital allowance not to be clawed back. Ordinary meaning has to be given to Paragraph 71 Schedule 3 ITA 1967.

The decision to cease operation of the Digital Division was made by the Head Office and not by the Taxpayer. The Taxpayer had also still bought some assets in YA 2012 and 2013 even though the decision to close down the Digital Division was made since 2012 by the Head Office. Therefore, the commercial justifications given by the Taxpayer does not fall under the scope of appropriate reasons under Paragraph 71 Schedule 3 ITA 1967. The Taxpayer failed to dispute any facts put forward by DGIR's witness in his testimony regarding commercial justification. Both Public Rulings referred to by the Taxpayer are not applicable in this case. The DGIR had exercised its discretion on the imposition of penalty and the Taxpayer had also not disputed on the imposition of a penalty during the hearing.

The Special Commissioner of Income Tax had on 10.02.2023 dismissed the Taxpayer's appeal and held that the Notices of Additional Assessment raised against the Taxpayer are reasonable and justified. The DGIR had properly exercised his discretion under Paragraph 71 Schedule 3 ITA 1967 to disallow the Taxpayer's claim for capital allowance for disposal of assets within two years from the date of the assets acquired for the Taxpayer's Digital Division.

Editorial Note:

- *The Taxpayer has the right to file an appeal against the decision by the Special Commissioners of Income Tax within 21 days from the date of the decision.*