



SECTION 33(1) INCOME TAX ACT 1967

TTSB
V.
DIRECTOR GENERAL OF INLAND REVENUE
PKCP(R) 367/2015

 SPECIAL COMMISSIONER OF INCOME TAX
 YA PUAN NIK ASMA ANITA BINTI MAKHTAR
 13 OKTOBER 2023

The Taxpayer is a logging contractor and by entering into the designated forest areas, the Taxpayer has encroached on the natives' occupation areas, which caused the natives of the longhouses to feel aggrieved. The Taxpayer had employed the "Tuai Rumah", "Pengkulu" and assistants ("Committee

Members") of the affected longhouses to assist in their negotiation with the natives. The Taxpayer contended that they have paid allowances to the Committee Members amounting to RM87,210.00 in Year of Assessment ("YA") 2009 for their services. The Director General of Inland Revenue ("the DGIR") disallowed the disputed expenditure claimed as it was a form of compensation and subsequently raised an additional assessment with penalty against the Taxpayer. Dissatisfied with the additional assessment raised, the Taxpayer appealed to the Special Commissioners of Income Tax ("the SCIT").

The Taxpayer argued that the disputed expenditure claimed was an allowable expense under Section 33(1) Income Tax Act 1967 ("ITA 1967"). While entering the designated forest areas to carry out its logging activities, the Taxpayer had encountered natives' dispute, which had caused disruption and hindrance by way of road blockage and preventing the Taxpayer from carrying on its logging activities. The disputed expenditure incurred was not only out of business necessity but with the sole intent of an immediate or direct benefit of commercial expediency in order to facilitate the Taxpayer in carrying out the logging operation. Further, the predominant purpose of the payment made was to seek the assistance and service of the Committee Members of the longhouses concerned to negotiate, solve and settle the dispute that had caused disruption to the Taxpayer's business operation to generate its income.

The DGIR on the other hand contended that the payment made to the Committee Members was for compensation and that the actual nature and purpose of the payment was to avoid the disturbances from the natives, i.e. "wang perlindungan". It was argued that the Taxpayer's general ledger had classified the payment as 'compensation to native', and evidence had shown that several requests were made from the Committee Members for "wang saguhati". Further, there were many inconsistencies on the amount paid and received as stated in the agreements between the Committee Members and the Taxpayer and no evidence was adduced to show that the Committee Members had genuinely offered their services to resolve the dispute between the Taxpayer and the natives. The DGIR also challenged the legality of the appointment of the Committee Members. Thus, based on the circumstances presented, the compensation payment made by the Taxpayer was not a payment wholly and exclusively incurred in the production of income as envisaged under Section 33(1) ITA 1967, but rather the payment of 'protection money'.

The SCIT held that the appeal was allowed and the Appellant has successfully discharged the onus of proving that the additional assessment raised by the DGIR was excessive or erroneous under paragraph 13 Schedule 5 ITA 1967.

Editorial Notes

The DGIR has right to appeal against the decision of the SCIT within twenty-one (21) days from the date of the decision of the SCIT.