

SECTION 33(1) & SECTION 39(1)(b)

INCOME TAX ACT 1967



SDBB  
V.  
KETUA PENGARAH HASIL DALAM NEGERI  
MOF.PKCP.700-7/1/468

 SPECIAL COMMISSIONERS OF INCOME TAX

 TUAN SHAZRILL BIN GHAZALI

 22<sup>nd</sup> OCTOBER 2024

The Taxpayer is a public limited company with principle activity of providing finance for development projects. TRSB was appointed as a developer in Sandakan housing project and SDSB as the sub-contractor. TRSB obtained

banking facilities from the Taxpayer to enable it to undertake and to complete the project. On the other hand, SDSB obtained banking facilities from MBB. As a security for the banking facilities granted to SDSB, MBB required SDSB to give inter alia -

- i) An irrevocable Letter of Instruction from SDSB to TRSB to directly channel all payments due to SDSB to SDSB's account with MBB; and
- ii) An irrevocable Letter of Instruction from TRSB to the Taxpayer to channel all payments due to SDSB to SDSB's account with MBB.

On 16.08.1996, TRSB issued a Letter of Instruction to the Taxpayer authorizing the Taxpayer to remit all progress payments due to SDSB. Consequently, SDSB commenced a claim against TRSB and the Taxpayer. The High Court and the Court of Appeal dismissed SDSB's claims against the Taxpayer. However, on 01.08.2017, the Federal Court allowed SDSB's appeal and ordered the Taxpayer to pay SDSB a total sum of RM10,484,957.53 ('Disputed Sum'). On 23.08.2017, the Taxpayer paid the Disputed Sum to SDSB and charged the Disputed Sum as expenses in its account for the Financial Year Ended 31.12.2017.

The Taxpayer contended that the Disputed Sum satisfies the test of deductibility under Section 33(1) Income Tax Act 1967 (ITA 1967) as TRSB's Letter of Instruction was issued to the Taxpayer in the course of the Taxpayer's banking business and the provision of banking services to TRSB. When the Taxpayer paid the Disputed Sum to SDSB, it was paid in accordance with the Letter of Instruction. The Disputed Sum had therefore been incurred in the Taxpayer's production of income. The Taxpayer referred to among others, the case of *Herald & Weekly Times BC3200015* and *McKnight (HM Inspector of Taxes) v Sheppard (1996) MSTC 10,501* to further establish that payment arising in, and which is incidental to the course of the taxpayer's trade, is tax deductible.

It is the Director General of Income Tax's (DGIR) submission that payment of the Disputed Sum is not allowable expense as it is restricted by Section 39(1)(b) ITA 1967 as it falls under the category of '*any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of producing the gross income*'. SDSB is not a debtor to the Taxpayer and the Taxpayer did not receive any income from SDSB. Rather, SDSB is demanding payment that should have been paid by the Taxpayer and the Federal Court has decided that the money received by the Taxpayer is the 'trust money' that must be paid to SDSB. The DGIR referred to the principle laid out in the case of *CKB Ltd v KPHDN (1996) MSTC 2695* where the court decided that the Appellant did not implement the 'trust' that had been agreed upon between parties and ordered the Appellant to pay the 'trust money' to the Claimant.

On 22.10.2024, the Special Commissioners of Income Tax (SCIT) held that the Taxpayer had successfully proved its appeal as required under Paragraph 13 Schedule 5 ITA 1967 and allowed the appeal. The SCIT ruled that the Notice of Assessment for the Year of Assessment 2017 is to be set aside.

**Editorial Note**

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