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LHDN MALAYSIA
BY LEGAL DEPARTMENT

HIGH COURT OF KUALA LUMPUR

YA DATO' AMARJEET SINGH A/L SERJIT SINGH

9th DECEMBER 2024

PARAGRAPH 7(b) SCHEDULE 7A

INCOME TAX ACT 1967

PANASONIC AVC NETWORKS JOHOR (M) SDN BHD
V.
KETUA PENGARAH HASIL DALAM NEGERI
WA-14-26-10/2022

The Taxpayer is in a business of manufacturing and selling audio, video and electronic musical instrument products and has been granted Pioneer Status under the Promotion of Investment Act 1986 (PIA 1986) since Year of Assessment (YA) 1998 until YA 2003. Further in YA 2003, the Taxpayer has also enjoyed Investment Tax Allowance (ITA) for the Promoted Product under PIA 1986. The Taxpayer then claimed Reinvestment Allowance (RA) for the Non-Promoted Product under the expansion, modernization and automation of its business in manufacturing audio and video equipment pursuant to Schedule 7A Income Tax Act 1967 (ITA 1967) on the basis that they did not claim for RA on the Promoted Product. The Director General of Income Tax (DGIR) disallowed the Taxpayer's claim for RA on the Non-Promoted Product in YA 2003 as the Taxpayer still enjoying Pioneer Status in YA 2003. This exclusion was provided under Paragraph 7(b) Schedule 7A ITA 1967. The Special Commissioner of Income Tax (SCIT) dismissed the Taxpayer's appeal on 09.02.2018. Dissatisfied with the SCIT's decision, the Taxpayer filed an appeal to the High Court via Case Stated dated 19.11.2021 under Paragraph 34 Schedule 5 ITA 1967.

The Taxpayer argued that Paragraph 7(b) Schedule 7A ITA 1967 (Disputed Provision) only restricts a claim for RA in respect of Promoted Activity for which the Taxpayer has already been granted ITA under PIA 1986. The Taxpayer's main argument was rooted on the fact that the additional wording "in respect of a promoted activity or promoted product" was later added into the Disputed Provision which previously did not exist. There was no distinction between Promoted/Non-Promoted Product, hence proving the Taxpayer's argument that the Parliament intended for the Disputed Provision is only restricted for Promoted Activity or Promoted Product. The Taxpayer further argued that in the event of ambiguity in the interpretation of any tax provision, such ambiguity must be construed in favour of the Taxpayer. Thus, the Taxpayer contended that since they are only granted ITA for Promoted Product for YA 2003, they are also entitled to claim RA for the Capital Expenditure that they had incurred for Non-Promoted Product in YA 2003.

The DGIR submits that the literal meaning of the statute is clear and unambiguous and thus the principle of strict interpretation applies. The Learned SCIT was correct in its decision when they held that a purposive approach could not be applied as there is no ambiguity in the Disputed Provision. It was following the amendment of Section 2(1) PIA 1986 that the subsequent amendment was inserted to Paragraph 7 Schedule 7A ITA 1967 to include the added wording "in respect of promoted activity or promoted product". Consequently, the amendment does not in any way indicate any change of intention on the part of the legislature. It was merely to mirror the amendment made in PIA 1986. DGIR submits that as Paragraph 7(b) Schedule 7A ITA 1967 had expressly excluded a company currently enjoying ITA from claiming RA, the Taxpayer thus cannot avail itself to the benefit of RA irregardless for Promoted/Non-Promoted Product.

On 09.12.2024, the High Court allowed the Taxpayer's appeal with costs.

Editorial Note:

The DGIR has the right to file an appeal to the Court of Appeal within 30 days from the decision of the High Court.