



SECTIONS 4(a) & 113(2) INCOME TAX ACT 1967

BRSB

V.

DIRECTOR GENERAL OF INLAND REVENUE

MOF.PKCP.700-7/1/1787



SPECIAL COMMISSIONER OF INCOME TAX



YA PUAN NIK SERENE BINTI NIK HASHIM



06 NOVEMBER 2023

On 28.04.2003, the Taxpayer acquired a piece of agriculture land known as Lot 564, Block 11 Muara Tebas Land District for RM1,012,300 (“Lot 564”). On 20.04.2015, the Taxpayer executed a Power of Attorney (“POA”) to authorize LT Homes Development Sdn. Bhd.

(“LTH”) to develop Lot 564 and to apply for Planning Approval. The said approval was obtained on 23.07.2015. On 28.06.2016, the Taxpayer entered into a Sale and Purchase Agreement with LTH to dispose Lot 564 for RM15,918,000. The Director General of Income Tax (“DGIR”) issued a notice of additional assessment (“Form JA”) for the year of assessment (“YA”) 2017 against the Taxpayer under Section 4(a) Income Tax Act 1967 (“ITA 1967”) together with a penalty under Section 113(2) ITA 1967 amounting to RM4,213,071.72. Dissatisfied with the Form JA, the Taxpayer filed a notice of appeal (“Form Q”) to the Special Commissioners of Income Tax (“SCIT”).

The Taxpayer contended that the gains received from the disposal of Lot 564 was subject to the Real Property Gains Tax Act 1976 (“RPGTA 1976”). Lot 564 was acquired for a long-term investment purpose and not for trading. The Taxpayer consistently classified Lot 564 as a fixed asset in its Audited Account since its acquisition until its disposal to LTH. Therefore, the disposal of Lot 564 was for a realization of capital asset. At the time of its acquisition, there was no development surrounding Lot 564. The Taxpayer also contended that no development was made on Lot 564 when it was disposed as it remained as an agriculture land. POA granted to LTH was necessary to allow LTH to apply for Planning Approval. LTH would not purchase Lot 564 if the Planning Approval was not obtained. The Taxpayer also denied that its director has knowledge in real estate business.

In response, the DGIR asserted that the Taxpayer did not hold Lot 564 for a long-term investment purpose. The Taxpayer’s intention to trade can be seen from two perspectives; firstly, Lot 564 was left idle for almost 13 years and did not yield any income to the Taxpayer, and secondly, there was a discrepancy on the Memorandum of Association (“MOA”) as submitted by the Taxpayer during the audit compared to the MOA from *MyData* system of Companies Commission of Malaysia. The DGIR also contended that Lot 564 had commercial value since its acquisition by the Taxpayer as it was located nearby Kuching International Airport. It was evidenced in Sarawak Bulletin 2003 which was issued by the same valuer who prepared the Land Valuation Report dated 08.08.2016. There was some alteration and development made on Lot 564 as the Planning Approval was granted by the State Authority which improved the status of Lot 564 from a vacant agriculture land to a vacant agriculture land. This was confirmed in the Land Valuation Report. There was improvement on Lot 564 because the Taxpayer authorized it to be done by LTH by way of POA. Thus, it enhanced the value of the land and rendered it more saleable. The DGIR further argued that the imposition of a penalty under Section 113(2) ITA 1967 was just and correct as the Taxpayer had made incorrect return relating to the disposal of Lot 564.

On 06.11.2023, the SCIT dismissed the Taxpayer’s appeal and held that the Taxpayer failed to prove its case as required under Paragraph 13 Schedule 5 ITA 1967. The SCIT ruled that the DGIR was right to tax the gains of RM15,918,000 under Section 4(a) ITA 1967. As such, the Form JA for YA 2017 amounting to RM4,213,071.72 raised by the DGIR was confirmed.

Editorial Note:

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