



SECTION 77 A(1) INCOME TAX ACT 1967

ACSB

V.

**KETUA PENGARAH HASIL DALAM NEGERI
MOF.PKCP.700-7/1/859-860**

The Taxpayer is a general contractor involved in various construction projects in Malaysia. A tax audit was conducted by the Director General of Inland Revenue

(“DGIR”) following the Taxpayer’s failure to submit its income tax return (“Form C”) for Year of Assessments (“YAs”) 2016 and 2017. After various reminder were sent to the Taxpayer to submit documents for the purpose of tax audit, the DGIR finally received incomplete documents from the Taxpayer. The DGIR made a third party’s verification in regards to the Taxpayer’s income for YAs 2015, 2016 and 2017. As the documents submitted by the Taxpayer was incomplete, the DGIR used the Gross Profit Margin (“GPM”) Method for YA 2015 and Net Profit Margin (“NPM”) Method for YA 2016 to determine the Taxpayer’s income for both YAs. Dissatisfied with the assessments, the Taxpayer filed appeal to the Special Commissioners of Income Tax (“SCIT”).

It was the Taxpayer’s contention that the DGIR’s assessment was merely on the assumption that the Taxpayer had completed the projects in YA 2016. Further, the assessments were made by apportioning the value of the projects between YAs 2015 and 2016. The Taxpayer alleged that the DGIR ought to have raise the assessment by referring to the calculation provided in paragraph 5.7 Public Ruling 2/2009 as the formula adopted by the Taxpayer was on the percentage completion based on cost of the contract.

The DGIR submitted that as a result of the Taxpayer’s failure to report the actual income for YA 2015 coupled with the failure to submit all documents requested by the DGIR, the tax computation for YA 2015 is based on the GPM at a rate of 19% while YA 2016 is based on the NPM at a rate of 10%. This is in line with the GPM rate reported in the Taxpayer’s Financial Statement For Year Ending 30 June 2014 at the rate of 19%. Furthermore, the DGIR was not made aware on the extension of time and the completion date of the project since no supporting documents was provided by the Taxpayer before the assessments were raised. As such, the Taxpayer’s allegation that the formula in Public Ruling 2/2009 ought to be used by DGIR is irrelevant. The DGIR contended that the additional assessment for YA 2015 and the assessment for YA 2016 raised against the Taxpayer under Sections 90(3) and 91(1) ITA 1967 are correct and in order.

On 05.02.2024, the SCIT held that the Taxpayer failed to prove its appeal as required under Paragraph 13 Schedule 5 ITA 1967 and dismissed the appeal. The SCIT ruled that the DGIR is correct in law in raising the additional assessments for YA 2015 and 2016.

Editorial Note:

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