



SECTION 34(2) INCOME TAX ACT 1967

NSB (MR) & NSB (MK)

v.

**DIRECTOR GENERAL OF INLAND REVENUE
PKCP(R) 165-166/2017 & PKCP(R) 425/2017**



SPECIAL COMMISSIONER OF INCOME



PUAN HABIBAH BINTI HARON



5TH JANUARY 2024

The Taxpayers are in the general trading activities, mainly in managing several departmental stores. The Taxpayer had written-off several debts as bad debts and claimed deductions from its gross income for Year of Assessment (“YA”) 2011. The debts were in existence since year 2008.

The Director General of Inland Revenue (“DGIR”) disallowed the Appellants’ bad-debt claim pursuant to Section 34(2) Income Tax Act 1967 (“ITA 1967”) in relation to the bad debt written-off and then raised the Notices of Additional Assessment (“Forms JA”) for YA 2011 for both Taxpayers.

The Taxpayers referred to Section 34(2) ITA 1967 and the DGIR’s Public Ruling No. 1/2002, which provides guidance of how a debt can be “reasonably estimated” as “irrecoverable”. It was argued that the debts ought to be written off as bad, and therefore should be allowed as deduction on the relevant YA as (i) three reminders were sent to the debtors between year 2008 to 2009; (ii) three of the debtors had ceased to carry on business since year 2011. Therefore, any legal action taken before the claims become statute-barred is not cost-effective; (iii) a Letter of Demand (“LOD”) was eventually sent to each debtor, where the LOD were issued three years after the debt occurred; and (iv) the amounts owed by the debtors were relatively small and any further action to pursue the debt is not cost-effective.

The DGIR on the other hand contended that the Taxpayers do not qualify for a deduction from the gross income written off as bad debt. The debts do not constitute bad debt envisioned under Section 34(2) ITA 1967 as the Taxpayers took no effort to recover the said debts and neither was any legal action taken by the Taxpayers to recover the said debts. Further, it was not a genuine and reasonable commercial consideration by merely issuing LODs to the debtors demanding for a full payment within seven days after the debt had been accumulated since 2008. The LODs were issued on 29.12.2011 and the debts were written-off on 31.12.2011 (two days after), which were prior to the expiry date stated of the said LODs. Moreover, there was no evidence to show that the Taxpayers had made any effort to recover the debt, in the absence of any documented evidence of reminder notices coupled with the absence of any substantive arbitration or negotiation proceeding of the disputed debts against the debtors. Under these circumstances, the DGIR argued that the Taxpayers had not taken all the reasonable steps available to recover the debts. Additionally, the Taxpayers failed to provide a satisfactory detailed explanation as to the nature and particulars of the debts. The measure taken by the Taxpayers to recover the debts (by merely issuing the LODs three years after the debts had accumulated) is not a commercially feasible or prudent decision.

The Special Commissioner of Income Tax (“SCIT”) dismissed the Taxpayers’ appeal and upheld the Form JAs for YA 2011 raised against the Taxpayers and further held that the DGIR was correct in law and facts to impose penalty under Section 113(2) ITA 1967.

Editorial Note

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