



SECTIONS 34A, 34B, 91(3) & 113(2)

INCOME TAX ACT 1967

HOVID BERHAD

&

KETUA PENGARAH HASIL DALAM NEGERI

WA-14-18-12/2021



KUALA LUMPUR HIGH COURT



Y.A DATO' WAN AHMAD FARID BIN WAN

SALLEH



30th JULY 2024

The Appellant's principal activity is manufacturing of pharmaceutical and herbal products. The Appellant had carried out research and development ("R&D") activities and has been claiming double deduction on research expenditure

incurred under Section 34A Income Tax Act 1967 ("ITA 1967"). The Appellant claimed for double deduction under Section 34A ITA 1967 for the operating expenses incurred in respect of its own R&D activities for the Years of Assessment ("YAs") 2006, 2007, 2008 and 2009. The Appellant also claimed for double deduction under Section 34B ITA 1967 for YA 2010 for service fees paid to Hovid Research Sdn Bhd ("HR") which was an approved research company by Ministry of International Trade and Industry ("MIDA") for the purposes of Section 34B ITA 1967. However, on 03.06.2011, MIDA had withdrawn HR's status as an approved R&D company. Upon audit, the Director General of Inland Revenue ("DGIR") took the view that the Appellant did not qualify for the double deductions made under Sections 34A and 34B ITA 1967 respectively. Hence, the DGIR raised the Notices of Additional Assessment together with penalty under Section 113(2) ITA 1967 all dated 31.12.2013 for the YAs 2006 to 2010. The Appellant appealed against the Notices of Additional Assessment to the Special Commissioner of Income Tax ("SCIT") and the appeal was dismissed on 24.06.2019. The Appellant then appealed to the High Court.

Section 34A ITA 1967 - The Appellant argued that, the Appellant is not required to obtain annual approval for all on-going R&D projects that have been approved in the commencement year until after the period of three years. As long as an approval on a R&D project has been obtained by the Appellant, the Appellant is eligible to claim the double deduction for up to three years. The Appellant also sought confirmation from the DGIR's officer ("Officer") who purportedly confirmed that no annual approval is required. The DGIR however, contended that based on the clear wordings as enshrined under Section 34A ITA 1967, the said approval must first be obtained by the Appellant from the DGIR before the Appellant can claim for double deductions on research expenditure. The statement purportedly made by the Officer is merely hearsay and should be inadmissible as during the trial stage the Officer was not called to testify before the SCIT.

Section 34B ITA 1967 - The Appellant argued that they had a legitimate expectation that HR had been granted the status of approved research company and argued that the withdrawal of the HR's status could not be interpreted to be effective *ab initio*. In response, the DGIR argued that the aforesaid withdrawal letter from MIDA has given the effect that HR has never been given the status of an approved R&D company. As such, the Appellant is not entitled to claim for double deduction.

On the application of Section 34A ITA 1967, the High Court held that the certificate of approval is only valid for a particular year of assessment. The legitimate expectation does not arise as the evidence to support this argument was merely hearsay because the Officer was not called during trial before the SCIT. Whereas on the application of Section 34B ITA 1967, the learned Judge held that if the Appellant is aggrieved with MIDA's decision to withdraw HR's status as R&D company, the remedy lies elsewhere. The inference that can be made on MIDA's withdrawal letter is that the R&D status should not have been granted in the first place. The High Court also affirmed the SCIT's finding that the Appellant had committed negligence in claiming double deduction for YA 2006 and the penalty imposed by the DGIR under Section 113(2) ITA 1967 is also justified. The High Court dismissed the Taxpayer's appeal with costs and upheld the Deciding Order of the SCIT.

Editorial Notes: The Appellant has a right to appeal to the Court of Appeal within 30 days from the date of the decision.