



SECTION 33(1) INCOME TAX ACT 1967

CGSB
V.
DIRECTOR GENERAL OF INLAND REVENUE
PKCP(R) 505-507/2017

 **SPECIAL COMMISSIONERS OF INCOME TAX**

 **PUAN NIK SERENE NIK HASHIM**

 **24 MARCH 2023**

The Taxpayer obtained loans to finance the acquisition of shares in its subsidiary companies in Malaysia and Indonesia. The Taxpayer claimed deduction of the paid interest on the loans under section 33(1) Income Tax Act 1967 (“ITA 1967”).

The Director General of Inland Revenue (“The DGIR”) raised the Notices of Assessment for Years of Assessment (“YAs”) 2008 to 2010 dated 17.03.2017 (“Forms J”) and disallowed the interest expenses claimed under section 33(1) ITA 1967.

The Taxpayer contended that the Notices of Assessment raised by the DGIR were time barred. It was argued that there was no negligence on its part since the Taxpayer took external and independent professional advice from an established and reputable tax agent. The Taxpayer’s tax returns were also filed on time and the Taxpayer had given full cooperation to the DGIR during the audit exercise.

The Taxpayer further contended that the Taxpayer’s interest claim must be allowed in full under section 33(1) ITA 1967 as the DGIR does not have power to apportion the Taxpayer’s claim to deduct its interest expenses. The dividend income should be treated as one source of income, regardless whether it is the Taxpayer’s local company or outside Malaysia. The DGIR had also acted mechanically and failed to exercise his discretion on the imposition of penalty and it is not justified in law and on the facts.

In response, the DGIR asserted the Taxpayer had clearly acted negligently by claiming interest expenses under section 33(1) ITA 1967 where it was clear that the dividend income received by the Taxpayer is exempted under paragraph 28, Schedule 6 ITA 1967 and other dividend income is exempted under paragraph 5(3) and 5(6), Schedule 7A ITA 1967.

The DGIR also argued that in order for any expense to be allowed for deduction, the Taxpayer must fulfill the requirements under section 33(1) ITA 1967. The interest expenses could not be allowable because the foreign sourced exempt dividend which had been received from outside Malaysia is clearly exempted from tax under paragraph 28 Schedule 6 ITA 1967. While, other dividend income is exempted under paragraph 5(3) and 5(6) Schedule 7A ITA 1967.

The SCIT had on 24.3.2023 dismissed the Taxpayer’s appeal and held that the Taxpayer had failed to prove its case under paragraph 13 Schedule 5 ITA 1967 and the Forms J are rightfully raised by the DGIR and ought to be maintained.

Editorial Note

- *The Taxpayer has the right to file an appeal against the decision by the Special Commissioners of Income Tax within 21 days from the date of the decision*