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SPECIAL COMMISSIONERS OF INCOME TAX

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SECTION 132, SECTION 113(2) & SCHEDULE 7 INCOME TAX ACT 1967

EWSB
V.
DIRECTOR GENERAL OF INLAND REVENUE
MOF.PKCP.700-7/1/1479-1484

The Taxpayer provides human resources services in exploration and exploitation of petroleum in the Gulf of Thailand to CHOCSB. The Taxpayer claimed bilateral credit under Section 132 Income Tax Act 1967 ("ITA 1967") for Years of Assessment ("YAs") 2013 to 2018. A tax audit was conducted by the Director General of Inland Revenue ("DGIR") for the said years. It is the DGIR's finding that the Taxpayer failed to provide documents to support its claim for bilateral credit under Section 132 ITA 1967. The Taxpayer also failed to comply with the condition under paragraph 8 PR No. 11/2011 in submitting the documents to substantiate the foreign tax suffered by Taxpayer to compute bilateral credit in neither (a) notice of assessment from the foreign tax authority or receipt for the tax paid; nor (b) statement from the foreign tax authority setting out the particulars that would normally be recorded on a notice of assessment or receipt for payment.

Failing to comply, the Taxpayer is not eligible to claim bilateral credit since there is no foreign income received by the Taxpayer and no foreign tax is paid by the Taxpayer. The DGIR issued Notices of Assessment to the Taxpayer in respect of YAs 2013 to 2018 which are all dated 30.11.2020. Dissatisfied with the assessment, the Taxpayer filed an appeal to the Special Commissioners of Income Tax ("SCIT").

It was the Taxpayer's contention that the Taxpayer had been taxed on the same income in both, Malaysia and Thailand. The Taxpayer claimed that the withholding tax was made and remitted in general practice, as such CHOCSB as the payer will withhold certain amount from the Taxpayer's invoice as tax and then filed the same to the Thailand Revenue Authority ("TRA"). The Taxpayer also contended that it has provided all the necessary documents in proving the withholding taxes that has been paid to the TRA during the tax audit. The Taxpayer also refers to Public Ruling No. 11/2011.

The DGIR submitted that according to Section 132 ITA 1967, any Double Taxation Agreement signed by two Contracting States was intended to avoid territorial double taxation of the same income by two countries. Section 132 and Schedule 7 ITA 1967 must be construed using purposive approach. The DGIR asserted that the Taxpayer did not receive income from other countries, as invoices was issued by the Taxpayer to CHOCSB, and the Taxpayer's income was not taxed by the TRA. Thus, the Taxpayer has failed to comply with the condition of paragraph 8 PR No. 11/2011. The payment of withholding tax to TRA is not a cost to the Taxpayer but it is a cost to CHOCSB. The Taxpayer also failed to furnish sufficient document in proving that the Taxpayer is qualified to claim bilateral credit relief under Section 132 ITA 1967.

On 23.09.2024, 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 YAs 2013 to 2018.

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.*