



SECTION 131 INCOME TAX ACT 1967

DIRECTOR GENERAL OF INLAND REVENUE

V.

PROFOUND RELIANCE SDN. BHD.

WA-14-12-05-2022



HIGH COURT KUALA LUMPUR



YA DATUK HAYATUL AKMAL BINTI ABDUL AZIZ



3RD JULY 2025

This was an appeal to the High Court against the Deciding Order of the Special Commissioners of Income Tax (SCIT) in respect of the Taxpayer's relief applications under Section

131 of the Income Tax Act 1967 (ITA 1967) for the year of assessment (YA) 2009 and YA 2010. By the Deciding Order, the SCIT ruled that the Director General of Inland Revenue's (DGIR) decision was not justified and had no legal basis in rejecting the relief applications filed by the Taxpayer under Section 131(1) ITA 1967. The SCIT had also ruled that there were no elements of badges of trade in respect of the disposal of 11 pieces of land located in Bandar Kuala Lumpur by the Taxpayer through the Development Agreement dated 24.03.2008 (DA).

In this appeal, the Taxpayer entered into the DA with NAZA TTDI Sdn. Bhd. to jointly develop 11 pieces of land owned by the Taxpayer. In return for contribution of the land, the Taxpayer received a sum amounting to RM82,870,000 (fixed entitlement) as well as 15.7% of the net sale proceed (percentage entitlement). In 2013, the Taxpayer filed the relief applications under Section 131(1) ITA 1967 asserting that it has committed an error or mistake by submitting its gains pursuant to the DA as business income under Section 4(a) of the ITA 1967 while it actually should be subjected under the Real Property Gains Tax Act 1976 (RPGTA 1976).

The DGIR rejected the Taxpayer's relief application based on the grounds that there was no error or mistake committed by the Taxpayer in submitting its tax returns for YA 2009 to YA 2011 and in any event where the Taxpayer was dissatisfied with the assessment raised against it, the appropriate cause of action was to file an appeal under Section 99 ITA 1967. Furthermore, the gains received from the disposal of land was in fact a result from the series of activities carried out by the Taxpayer for realization of its business income. Thus, the Taxpayer had acted correctly in submitting its tax returns for the respective YAs under Section 4(a) ITA 1967.

The High Court on 03.07.2025 in allowing the DGIR's appeal held that the SCIT had misdirected itself in ruling that the DGIR had no legal basis to reject the Taxpayer's relief applications under Section 131 ITA 1967 for YA 2009 and YA 2010. . The High Court agreed that the impugned DA was not an outright sale agreement as argued by the Taxpayer and the SCIT had misdirected itself in deciding that the gains derived from the disposal of 11 pieces of land were a realization of investment where there was no evidence to prove that the Taxpayer had the means and long-term capacity to invest in the impugned land.

Editorial Note:

- *The Taxpayer has the right to file an appeal to the Court of Appeal within 30 days from the decision of the High Court.*