






**SECTIONS 33(1), 60FA (3)(a)(i), 110 &  
PARAGRAPH 12B SCHEDULE 6  
INCOME TAX ACT 1967**

**DIRECTOR GENERAL OF INLAND REVENUE  
V.  
CIMB GROUP HOLDINGS BERHAD  
RAYUAN NO. WA-14-43-08/2020**

 **HIGH COURT KUALA LUMPUR**  
 **YA DATO' AMARJEET SINGH A/L SERJIT SINGH**  
 **15 AUGUST 2023**

The Director General of Inland Revenue (“the DGIR”) appealed against the Deciding Order by the Special Commissioners of Income Tax (“the SCIT”) dated 08.07.2020 in respect of the Notices of Assessment for the Years of Assessment

2009, 2010, 2011 and 2012 dated 08.02.2017 (“the Assessments”) raised against the CIMB Group Holdings Berhad (“the Taxpayer”).

The issues for determination before the High Court are whether the SCIT was right in law and in facts in deciding that -

1. the redeemable preference shares (“RPS”) in CIMB Bank Berhad and SBB Berhad owned by the Taxpayer fall within the definition of ‘ordinary shareholding’ under section 40 Finance Act 2007 (“FA 2007”);
2. the tax deducted from franked dividends paid by CIMB Bank Berhad and SBB Berhad to the Taxpayer in respect of those RPS qualifies for set-off under section 110 Income Tax Act 1967 (“ITA 1967”) read together with section 51 FA 2007;
3. the interest expenses incurred in acquiring the shares of the Taxpayer’s subsidiaries are deductible under section 33(1) ITA 1967;
4. the common expenses incurred by the Taxpayer are deductible under section 33(1) ITA 1967;
5. the DGIR is not empowered to further apportion the common expenses to exempt dividends to disallow under the same under Malaysian law;
6. the Assessments are time barred; and
7. the DGIR’s imposition of penalties on the Taxpayer under section 113(2) ITA 1967 is incorrect in law.

The DGIR submitted that RPS clearly does not fall under the definition of ‘ordinary shareholding’ under section 40 FA 2007 and therefore does not qualify for set-off under section 110 ITA 1967 and read together with section 51 FA 2007. Interest expenses incurred by the Taxpayer in acquiring the shares of the Taxpayer’s subsidiaries and common expenses are not deductible under section 33(1) ITA 1967, section 60FA (3)(a)(i) ITA 1967 and paragraph 12B Schedule 6 ITA 1967. It was further argued that the DGIR has the power under the ITA 1967 to further apportion the common expenses to exempt dividends and to disallow the same. The DGIR contended that the Taxpayer was negligent in their conduct thus, subject to section 91(3) ITA 1967, the Assessments are valid and good in law and not deemed as being time barred. The imposition of penalty at the rate of 45% upon the Taxpayer under section 113(2) ITA 1967 is justified in law and on the facts.

In response, the Taxpayer asserts that RPS clearly fall within the definition of “ordinary shareholding” under section 40 FA 1967. It follows that tax deducted from franked dividends paid by CIMB Bank Berhad and SBB Berhad to the Taxpayer in respect of those RPS qualifies for set-off under section 110 ITA 1967 reads together with section 51 FA 2007. The interest expenses and common expense incurred by the Taxpayer in acquiring the shares is deductible under section 33(1) ITA 1967. The DGIR has no power under the ITA 1967 to further apportion the common expenses to exempt dividends to disallow the same. The Taxpayer further argued that the Assessments are time-barred and there was no negligence on their part. The imposition of penalties on the Taxpayer under section 113(2) ITA 1967 is not justified in law and on the facts.

On 15.08.2023, the High Court has dismissed the DGIR’s appeal with no costs and upheld the decision of the SCIT.

***Editorial Notes***

*The DGIR has a right to appeal to the Court of Appeal within 30 days from the date of the decision.*