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SPECIAL COMMISSIONER OF INCOME TAX

PUAN FAJRUL SHIHAR BINTI ABU SAMAH

22 SEPTEMBER 2023

SCHEDULE 3 INCOME TAX ACT 1967

SCPASB
V.
DIRECTOR GENERAL OF INLAND REVENUE
PKCP(R) 21/2019

The Taxpayer is involved in a business as car park operator and owns eight (8) multistory car parks located in Selangor and Kuala Lumpur which were acquired by the Taxpayer in 2013 until 2016. From the date of acquisition in year 2013, the Taxpayer had rented out seven (7) of the multi-storey car parks to a third party and had reported its rental income under Section 4(d) Income Tax Act 1967 ("ITA 1967"). Effective from 2016 and upon the expiry of the rental agreements, the Taxpayer commenced its business as a car park operator.

The Taxpayer had, in two (2) occasions, wrote to the Director General of Inland Revenue ("the DGIR") with the objective to obtain verification on its eligibility to claim capital allowance on all multi-storey car parks owned. The DGIR then informed the Taxpayer that the said multi-storey car parks are not "plant" for the purpose of capital allowance under Schedule 3 ITA 1967 but serves as permanent building structure which were used as premise for the Taxpayer to conduct its business and thus, do not qualify for capital allowance.

Disagreed with the DGIR, the Taxpayer submitted its tax returns for the year of assessment ("YA") 2017 and subsequently filed a notice of appeal pursuant to Section 99(4) ITA 1967. The issue to be determined by the Special Commissioner of Income Tax ("the SCIT") was whether the expenditure incurred by the Taxpayer in relation to the multi-storey car parks qualifies for capital allowance under Schedule 3 ITA 1967.

The Taxpayer submitted that the appeal was filed due to the DGIR's failure to recognise the legal principle set out by the Court of Appeal in *Ketua Pengarah Hasil Dalam Negeri v. Tropiland Sdn. Bhd. (2013) MSTC 30,054 ("Tropiland").* In *Tropiland*, the court held that the multi-storey car parks fell within the meaning of "plant" and thus, the capital expenditure incurred was eligible for capital allowance. Similar to the present appeal, the Taxpayer engaged in a similar business as *Tropiland*, where the Taxpayer's revenue is derived from the provision of parking bays to the users and occupiers where the multi-storey car parks were situated. All the multi-storey car parks were permanently used for the business and were not the Taxpayer's stock in trade. The Taxpayer heavily relied on *Tropiland* and argued that even large structures are capable of being considered a plant as opposed to a setting or a premise. As emphasised by the Taxpayer, the crucial point is the specific functions and characteristics of each asset in question as well as the Taxpayer's trade or business operation. Without the multi-storey car parks, the Taxpayer could not have operated its business and therefore could not generated any income.

The DGIR argued that the multi-storey car parks function as premises in which the Taxpayer's business is carried on. The multi-storey car parks are not "plant" but merely served as a place of business, where the Taxpayer derived its revenue from, which is the parking fees. The DGIR submitted that the fact that each of the multi-storey car park by its construction well suited to the business, or was specially built for that business, does not make it a plant and it remains as the place in which the Taxpayer's business is carried on. The DGIR further submitted that even the multi-storey car parks pass the business use test, the fact that they are also served as premises upon the business is conducted and only provides facility to occupiers of the parking bays, does not save the multi-storey car parks from disqualification as plant. As to the reliance of the Taxpayer on *Tropiland*, the DGIR argued that the Court of Appeal in *Tropiland* had failed to look into the true intention of the Parliament in legislating Schedule 3 ITA 1967. The DGIR submitted that a building structure is never meant to fall under the meaning of "plant" and hence the introduction of industrial building allowance under Schedule 3 ITA 1967 to cover capital expenditure on building structures. The facts found in the current appeal should also be distinguished from the case of *Tropiland* and caution must be exercised in applying precedents as tax cases depends so much on its peculiar facts.

The SCIT had on 22.09.2023 allowed the Taxpayer's appeal and held that the Taxpayer had successfully proven its case as required under Paragraph 13, Schedule 5 ITA 1967. The SCIT ruled that the multi-storey car parks are "plant" and therefore they were qualified for capital allowance under Schedule 3 ITA 1967. As such, the Notice of Assessment for YA 2017 raised by the DGIR is to be set aside.

Editorial Note

- *The DGIR has the right to file an appeal against the decision by the SCIT within 21 days from the date of the decision.*