



SECTION 33 (1) & SECTION 60AA(9)(b)

INCOME TAX ACT 1967

EFTB

v.

KETUA PENGARAH HASIL DALAM NEGERI

MOF.PKCP.700-7/1/1501

 SPECIAL COMMISSIONER OF INCOME TAX

 YA SHAZRILL BIN GHAZALI

 12th JULY 2024

The Taxpayer's principal activities are management of general takaful, family takaful and takaful investment-linked business.

The Taxpayer was of the opinion that profit payment on Tier 2 Subordinated Bond and Hibah paid from Shareholders' Fund to Annuity Fund incurred are allowable under section 33 Income Tax Act 1967 ("ITA 1967"). The said expenses were not claimed in the tax return for year of assessment ("YA") 2019 and subsequently, the Taxpayer filed an appeal to the Special Commissioners of Income Tax ("SCIT") upon submission of its return.

It was the Taxpayer's contention that the profit payment and Hibah incurred by the Taxpayer are allowable expenses under general provision of section 33(1) ITA 1967. Sections 60AA(9)(b) ITA 1967 does not preclude the application of section 33(1) ITA 1967 as section 33(1) ITA 1967 applies to all businesses and the profit payment and Hibah fulfilled the requirement under section 33(1)(a) ITA 1967. There is no prohibition of such deduction under section 39 ITA 1967 that forbids the deduction of the profit payment and Hibah incurred by the Taxpayer. The profit payment and Hibah were incurred in order to comply with the Bank Negara requirement and to strengthen the Taxpayer's financial position.

In contrast, the DGIR submitted that the profit payment and Hibah incurred by the Taxpayer are not deductible under section 33(1) ITA 1967 nor section 60AA(9)(b) ITA 1967. There is a specific provision of section 60AA ITA 1967 inserted vide Finance Act 2007 (Act 683) which has effect for the YA 2008 and subsequent years of assessment with the purpose to comply with Syariah requirement and to provide for a specific provision to determine the taxation of takaful business of the Taxpayer. Therefore, section 33 ITA 1967 is not applicable to the Taxpayer since there is specific provision which is section 60AA(9)(b) ITA 1967. Complying with the requirement set by the Bank Negara has no bearing in tax treatment. The principle of *generalia specialibus non derogant* or whether specific statutory provision should override general provision applies.

The DGIR also submitted that the same issue of profit payment was decided by the SCIT in Etiqa Family Takaful Berhad PKCP(R) 453/2016, PKCP(R) 276/2017, PKCP(R) 1026/2017, MOF.PKCP.700/7/331 & MOF.PKCP.700.7/1/687 (2020) for YA 2014 – YA 2018 on 2.9.2022 in which the SCIT had dismissed the appeal that the profit payments incurred on the Tier 2 capital subordinated bond cannot be allowed under section 33 nor section 60AA(9)(b) ITA 1967. 17. It was brought to appeal to the High Court vide WA-14-21-09/2022 and the decision of SCIT was affirmed by YA Dato' Ahmad Kamal bin Md Shahid on 8.2.2024.

The SCIT had on 12.7.2024 dismissed the appeal and held that that the Taxpayer is not entitled to claim the profit payment on Tier 2 Capital Subordinated Bond and Hibah paid from Shareholders' Fund to Annuity Fund under section 33(1) ITA 1967 because there is specific provision on takaful business. Both expenses are also not deductible because there are not listed under an allowable expense under section 60AA(9)(b) ITA 1967. As such, the Notice of for YA 2019 raised by the DGIR against the Taxpayer is justified and confirmed.

Editorial Notes

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