



SECTION 33(1) INCOME TAX ACT 1967

ATSB

V.

**DIRECTOR GENERAL OF INLAND REVENUE
PKCP (R) 573/2018**

 SPECIAL COMMISSIONER OF INCOME TAX

 PUAN NIK ASMA ANITA BINTI MAKHTAR

 12 JANUARY 2024

The Taxpayer is engaged principally as proprietors and operators of restaurants. A tax audit was conducted by the Director General of Inland Revenue (“DGIR”) and subsequently, the DGIR raised the issue of the high rental

payments paid to KSL Properties Sdn. Bhd. (“the Landlord”) for the Taxpayer’s restaurant branch at KSL City Mall. Upon review of the Taxpayer’s Financial Statement as at 30.06.2015, the DGIR discovered that the restaurant at KSL City Mall was not listed as one of the Taxpayer’s branches or outlets.

Among audit finding by the DGIR was that the rental expense incurred on unexpired lease due to the Taxpayer’s early termination of tenancy agreement on the restaurant at KSL City Mall incurred in year of assessment (“YA”) 2015 for amount of RM282,304.00 is not allowable for deduction under Section 33(1) Income Tax Act 1967 (“ITA 1967”).

The Taxpayer contended that they received consent from the Landlord to discontinue the Tenancy Agreement dated 6 September 2019 (“Tenancy Agreement”). The Taxpayer considers the payment of RM282,304.00 as part and parcel of its obligation to pay rental with respect to tenancy agreement signed between the Taxpayer and the Landlord. The amount of RM282,304.00 was unexpired tenancy rental which was part of the business operation expenses that has to be incurred by the Taxpayer so as to ensure the overall profit of the company would not be reduced by this outlet’s losses.

In response, the DGIR asserted that the Taxpayer via letter dated 21.10.2014 had informed the Landlord on its decision for early termination rental at KSL City Mall. In the same letter, the Taxpayer had also informed that the said rental Lot will be handed over to the Landlord on 15.11.2014 and requested for an advice on matters pertaining the procedure and rental.

The Landlord had highlighted in the letter dated 15.01.2015 that the Taxpayer had breached Clause 7.01 Tenancy Agreement due to the Taxpayer’s decision to terminate the tenancy of the said Lot before the tenancy expiry date. The total outstanding amount of RM280,700.00 for early termination was informed to the Taxpayer in the same letter.

The DGIR also contended that the payment made by the Taxpayer to the Landlord was for the early termination of the Tenancy Agreement and to release the Taxpayer from being subjected to legal action taken by the Landlord due to the breach of the said tenancy agreement and is not allowable for deductible under Section 33(1) ITA 1967 since the expenses were not money wholly and exclusively expended for the purpose of producing the Taxpayer’s gross income as the Taxpayer were no longer operating its business at the said premise.

On 12.01.2023, the Special Commissioner of Income Tax dismissed the Taxpayer’s appeal and held that the Taxpayer failed to prove its case as required under Paragraph 13 Schedule 5 ITA 1967. As such, the Notice of Additional Assessment for YA 2015 dated 12.10.2017 amounting to RM187,753.54 inclusive of penalty under Section 113(2) ITA 1967 raised by the DGIR was confirmed.

Editorial Note:

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