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BY LEGAL DEPARTMENT

SPECIAL COMMISSIONERS OF INCOME TAX

PUAN FAJRUL SHIHAR BINTI ABU SAMAH

11th OCTOBER 2024

PARAGRAPH 9(bb) & 9(cc), SCHEDULE 7A
INCOME TAX ACT 1967

HPSB
V.
DIRECTOR GENERAL OF INLAND REVENUE
PKCP(R) 97/2014, 321/2015 & 304-307/2016,
MOF.PKCP.700-7/1/2603

The Taxpayer's principal activity is oil palm plantation. The Taxpayer claims that it is entitled for Reinvestment Allowance (RA) for the cultivation of oil palm for Year of Assessments (YAs) 2008, 2009, 2010, 2011, 2012, 2013 and 2016. The Director General of Inland Revenue (DGIR) had issued Notifications of Non-Chargeability ("NONC") for YA 2008 (06.11.2013), YA 2009 (09.02.2015), YAs 2010, 2011, 2012 and 2013 (02.02.2016) and YA 2016 (15.12.2022), cited that the Taxpayer is not entitled to claim RA for the cultivation of oil palm. It is the DGIR's stance that oil palm does not fall within the ambit of "cultivation of fruits" under Paragraph 9(cc), Schedule 7A Income Tax Act 1967 (ITA 1967). The Taxpayer, aggrieved by the DGIR's decision, filed an appeal to the Special Commissioners of Income Tax (the SCIT) through Forms Q dated 25.11.2013 (YA 2008), 25.02.2015 (YA 2009), 24.02.2016 (YAs 2010, 2011, 2012 & 2013) and 09.01.2023 (YA 2022).

The Taxpayer contended that the cultivation of oil palm falls within the definition of "cultivation of fruits" as stated in Paragraph 9(cc), Schedule 7A ITA 1967. As such, it is the Taxpayer 's stance that the Taxpayer is entitled to claim RA for the cultivation of oil palm fruits. Notwithstanding their original stance, the Taxpayer also contended that the cultivation of oil palm falls within the ambit of "cultivation of vegetables" under Paragraph 9(bb), Schedule 7A ITA 1967.

In response, the DGIR maintains his position that oil palm does not fall within the ambit of "cultivation of fruits" under Paragraph 9(cc), Schedule 7A ITA 1967 as oil palm being considered a fruit per se is not 'fruit' in the ordinary meaning as understood in common parlance. The DGIR cited that the Agreed Facts and the Agreed Issues To Be Tried under this appeal are similar to the facts and issues that have been decided in favour of the DGIR by the High Court in *Ketua Pengarah Hasil Dalam Negeri v. Bintulu Lumber Development Sdn Bhd [2014] 1 LNS 1914* and upheld by the Court of Appeal [Q-01-240-07/2014]. As such, the SCIT is bound by the decision of the High Court and the Court of Appeal under the doctrine of *stare decisis*. As for the issue of "cultivation of vegetables", the word 'vegetables' should not be construed in any technical sense nor from the botanical point of view but to be understood in common parlance. As such, the Taxpayer's claim should fail in this regard.

The SCIT had on 11.10.2024 dismissed the Taxpayer's appeal and upheld the NONCs issued against the Taxpayer for the YAs 2008, 2009, 2010, 2011, 2012, 2013 and 2016. The Taxpayer had failed to discharge the burden of proof under Paragraph 13, Schedule 5 ITA 1967.

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