



**Tax Appeal – Value Added Income Section 21C PIA 1986 –  
Time-Bar Section 91(3) ITA 1967 – Penalty Section 113(2) ITA**

**MERIMEN ONLINE SDN BHD**

**v.**

**KETUA PENGARAH HASIL DALAM NEGERI  
[W-01(A)-53-02/2023]**



**COURT OF APPEAL, PUTRAJAYA**



**YA DATUK RAVINTHRAN A/L N. PARAMAGURU  
YA DATO' COLLIN LAWRENCE SEQUERAH  
YA DATO' AHMAD KAMAL BIN MD SHAHID**



**29 NOVEMBER 2024**

This was an appeal by the Taxpayer against the decision of the High Court on 12.01.2023 and the Deciding Order of the Special Commissioners of Income Tax (“SCIT”) made on 4.7.2018 dismissing the Taxpayer’s appeal on the assessments for the Years of Assessment (“YA”) 2009-2016 amounting to total tax inclusive penalties of RM3,290,411.47. The Court of Appeal unanimously allowed the Taxpayer’s appeal with cost of RM10,000 payable by the Revenue.

The Taxpayer company was granted MSC status effective from 31.7.2008. It was issued with a MSC Status Certificate, signed by the Minister of International Trade Industry (“MITI”) and the Minister of Finance (“MOF”). The MSC status entitled the Taxpayer to a 100% tax exemption should it be granted with pioneer status i.e., the MOF Exemption. The Taxpayer also received Pioneer Status under Section 6(1AB) of the Promotion of Investments Act 1986 (“PIA”) effective from 31.7.2008 until 30.7.2013, which was later extended to 30.7.2018. On 29.10.2012, the Taxpayer notified the Revenue of its stance and seeking the Revenue’s ruling on it. Pending the Revenue’s confirmation, the Taxpayer filed its tax returns for YA 2009-2013 pursuant to its interpretation of Section 21C PIA and the MOF Exemption, on the basis that 100% of its statutory income was not taxable. On 11.3.2014 (17 months later), the Revenue replied that only the value-added income of the Taxpayer was exempted based on proviso of Section 21C of PIA. The Taxpayer disagreed with the Revenue’s stand and filed appeal on 3 main issues:

- (a) Whether the Taxpayer’s income (within the ambit of the pioneer status) during the pioneer period for YA 2009 to 2016 is value-added income pursuant to the PIA?
- (b) Whether the notices of additional assessment for the YA 2009 and 2010 are time-barred?
- (c) Whether the Respondent is correct in imposing penalty under Section 113(2) of the Income Tax Act 1967 (“ITA”) for YA 2009 to 2013?

#### **Value-added income**

The Taxpayer argued that inflation-adjusted base income was not the Taxpayer’s income and hence, not taxable. The Taxpayer argued that it was entitled to the 100% tax exemption pursuant to Section 21C of PIA since the Taxpayer fulfilled the criteria in its proviso that the exemption applies to a company “that is already operating in Malaysia”. Nothing in the entire PIA or ITA suggested that “inflation-adjusted base income” constituted a taxable income.

The Revenue submitted that tax had to be paid on the inflation-adjusted base income, as Section 21C of PIA provided that only the value-added income would be exempted. Section 21C of PIA clearly provided that the value-added income would be exempted from income tax during the pioneer period.

Section 21C(2A) of PIA defined the words “value-added income” and “inflation-adjusted base income” for the purpose of the section. According to Paragraph 21C(2A)(a) of PIA, value-added income means the statutory income for the basis period for the year of assessment less the inflation-adjusted base income while Paragraph 21C(2A)(b) of PIA provided the formula to determine the inflation-adjusted base income. Section 21C(2) of PIA and Section 21C(2A) of PIA provided a clear guide in ascertaining the Taxpayers’ income that would be exempt from income tax under ITA. The proviso provided further clarification that there should not be any dispute in reaching a correct amount of exempted income under the PIA.

The grounds of the SCIT and the High Court clearly held that there was no ambiguity to the proviso of Subsection 21C(2) of PIA.

#### **Time-Bar**

The Revenue submitted that it was proven from the facts of the case that the Taxpayer had been negligent in submitting and preparing its tax returns for YA 2009 and 2010. The Taxpayer submitted its tax return for YA 2009 out of prescribed period. The Taxpayer had also been negligent in wrongly declaring its income for YA 2009 under PIA.

#### **Penalty**

The Taxpayer had clearly submitted “incorrect returns” for YA 2009 to 2013 resulted in the imposition of penalty under Section 113(2) of ITA. The imposition of penalty for YA 2009 to 2013 are justified and correct after taking into consideration of all relevant facts and circumstances on the issues relating to the case.

The Court of Appeal unanimously agreed with the Taxpayer’s submission and ruled that the appeal be allowed with cost of RM10,000 payable by the Revenue to the Taxpayer, setting aside the High Court’s decision and the SCIT’s Deciding Order and findings.