



Compensation for Loss of Income – Compensation for Loss of Rights – Revenue vs Capital Receipt – Taxability under Section 4(a) ITA 1967 – Application of Section 22(2)(b) ITA 1967

GUPPYUNIP SDN BHD

v.

DIRECTOR GENERAL OF INLAND REVENUE

[W-01(A)-678-12/2023]

 **COURT OF APPEAL**

 **YA AZIZAH BINTI NAWAWI, HMR**
YA AZIMAH BINTI OMAR, HMR
YA WAN AHMAD FARID BIN WAN SALLEH, HMR

 **10 MARCH 2025**

The Taxpayer appealed against the High Court’s decision, which affirmed the Special Commissioners of Income Tax (“SCIT”)’s ruling dismissing the Taxpayer’s appeal against the tax assessment for the Year of Assessment (“YA”) 2013.

The Taxpayer filed an appeal via Form Q under Section 99 of the Income Tax Act 1967 (“ITA 1967”), which was dismissed by the SCIT on 9.2.2018. The Taxpayer then further appealed to the High Court which on 11.12.2023 upheld the SCIT’s decision. Subsequently, on 15.12.2023, the Taxpayer appealed to the Court of Appeal leading to the present proceedings.

The Taxpayer entered into a Joint Venture Agreement (“JVA”) with Awan Megah Sdn Bhd (“AMSB”) in 2010 for a property development project. However, the project was discontinued as AMSB failed to obtain the necessary approvals for land subdivision. As a result, both parties mutually rescinded the JVA through a Deed of Mutual Rescission (“DMR”) in 2013 under which AMSB paid the Taxpayer an amount of RM7 million, comprising a refund of RM2 million and an additional RM5 million as a compensation. The Director General of Inland Revenue (“DGIR”) computed the RM5 million compensation received by the Taxpayer as gross income pursuant to Section 22(2)(b) of ITA 1967 and taxable as business income under Section 4(a) of ITA 1967.

The Taxpayer argued that the receipt of the amount of RM5 million under the DMR was a capital receipt and thus, not taxable under Section 4(a) of ITA 1967. The Taxpayer contended that the JVA with AMSB was, in substance, a sale and purchase agreement (“SPA”) for land rather than a joint venture. Since AMSB was to receive a fixed sum for the land, and not share in the development or profits, the Taxpayer asserted that the RM5 million was compensation for relinquishing contractual rights rather than loss of income. The SCIT and the High Court ruled that the sum was taxable under Section 22(2)(b) of ITA 1967 as compensation for loss of income but the Taxpayer disputed this, emphasizing that it had no entitlement to income under the JVA and that the sum was not a replacement for business profits. Additionally, the Taxpayer argued that Section 24(1)(b) of ITA 1967 was not applicable, as no services were rendered to AMSB. As such, the Taxpayer maintained that the compensation was for the loss of rights which constituted a capital receipt and should not be taxed as income.

The DGIR argued that the compensation received by the Taxpayer under the DMR was a taxable trading receipt under Section 4(a) of ITA 1967 and not a capital receipt. JVA was an ordinary commercial transaction in the Taxpayer’s property development business, and its termination did not affect the entire structure of its profit-making apparatus. The compensation was paid for the loss of future profits, making it taxable under Section 22(2)(b) of ITA 1967 as income replacement. The DGIR rejected the Taxpayer’s claim that the payment was for the loss of rights, emphasizing that the JVA ensured profit entitlement rather than mere contractual rights. Furthermore, the Taxpayer still continued with its business operations after the termination of the JVA, engaged in other contracts, and entered into a new SPA before the DMR was executed, proving that the JVA was not its sole business activity. The Taxpayer’s contention that, in substance, the JVA was SPA, was misconceived. The terms of the JVA clearly indicated that it was a commercial arrangement for property development rather than a mere land sale. Unlike SPA, where ownership would be transferred in exchange for a fixed consideration, the JVA expressly provided for the Taxpayer to undertake development activities and derive profits from the sale of the units. The Taxpayer’s entitlement to the proceeds from the sale of the units, rather than a fixed purchase price for the land, aligned with the nature of a joint venture rather than a sale transaction. The DGIR also argued that the SCIT’s findings of facts were unassailable, and the burden of proof was on the Taxpayer to show that the assessment was excessive or erroneous, which it failed to do.

The Court of Appeal, by a unanimous decision, dismissed the Taxpayer’s appeal with cost of RM15,000.00 payable to the DGIR.