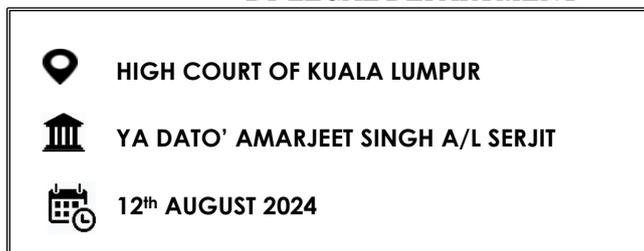


**SECTIONS 33(1) & 113(2) &
PARAGRAPH 28 SCHEDULE 6 &
PARAGRAPHS 5(3) & 5(6) SCHEDULE 7A
INCOME TAX ACT 1967**



CIMB GROUP SDN. BHD.

V.

**KETUA PENGARAH HASIL DALAM NEGERI
WA-14-5-04/2023, WA-14-6-04/2023 & WA-14-7-04/2023**

The Taxpayer obtained loans to finance the acquisition of shares in its local and Indonesia companies. The Taxpayer claimed deduction of the paid interest on the loans under section 33(1) Income Tax Act 1967 (“ITA 1967”).

The Director General of Inland Revenue (“the DGIR”) raised Notices of Assessment for Years of Assessment (“YAs”) 2008 to 2010 dated 17.03.2017 out of time and the DGIR disallowed interest expense claimed under section 33(1) ITA 1967. The Taxpayer appealed against the assessment by way of Form Q which was heard before the Special Commissioners of Income Tax (“the SCIT”). The Taxpayer’s appeal was dismissed. Aggrieved with the SCIT’s decision, the Taxpayer then appealed to the High Court.

The Taxpayer contended that there was no negligence on its part since the Taxpayer took external and independent professional advice from big and reputable tax agent. The Taxpayer’s tax returns were also filed on time and the Taxpayer had given full cooperation to the DGIR during the audit exercise. The Taxpayer strongly relied on the decided cases of Multi-Purpose Credit Sdn Bhd [2002] 1 MLJ 22, Kok Fai Yin (2014) MSTC 7 926 and Kompleks Tanjong Malim [Mahkamah Rayuan Sivil No. W-01(A)-366-10/2017] where the courts held that the DGIR does not have the power to apportion the Taxpayer’s interest expense into allowable and non-allowable portions and as such, the Taxpayer’s interest claim must be allowed in full under section 33(1) ITA 1967. The dividend income received from CIMB Niaga in Indonesia should be treated as one source of income, regardless of whether it is the Taxpayer’s local company or the Taxpayer’s company outside of Malaysia. The DGIR had also acted mechanically and failed to exercise his discretion on the imposition of penalty which is not justified in law and in facts.

In response, the DGIR asserted the Taxpayer had clearly acted negligently by claiming interest expense under section 33(1) ITA 1967 where it was clear that the dividend income received by the Taxpayer is exempted under paragraph 28 Schedule 6, paragraphs 5(3) and 5(6) Schedule 7 ITA 1967. The Taxpayer also failed to show that the purchase of the RM2 shares needs to be financed. The cases referred to by the Taxpayer especially Multi-Purpose (supra) can be easily distinguished with the present case since the facts are different. In order for any expense to be allowed, the Taxpayer must fulfill the requirements under section 33(1) ITA 1967. The interest expense could not be allowable because the foreign source exempt dividend which had been received from outside Malaysia is clearly exempted from tax under paragraph 28 Schedule 6 ITA 1967. Other dividend income is also exempted under paragraphs 5(3) and 5(6) Schedule 7A ITA 1967. The DGIR had also relied on the case of Federal Furniture (2016) MSTC 30-120 to support his argument.

On 12.8.2024, the High Court allowed the Taxpayer’s appeal with costs and reversed the decision of the SCIT.

Editorial Note

The DGIR has the right to file an appeal to the Court of Appeal within 30 days from the decision of the High Court.