

SECTION 110, SECTION 111 & SECTION 91(3)  
INCOME TAX ACT 1967



RADIMAX GROUP SDN BHD  
V.  
DIRECTOR GENERAL OF INLAND REVENUE  
BA-14-5-11/2022

 HIGH COURT SHAH ALAM  
 YA DR. SHANAZ BINTI SULAIMAN  
 4<sup>th</sup> JUNE 2024

The Taxpayer is principally involved in investment holding and had furnished its Return Form for Year of Assessment (“YA”) 1996 to YA 2000 (“the Return Forms”) on 29.1.2007. The submission for YA 1996 was made 11 years after the time allotted for the said Return Forms to be furnished, which was during the period of Self-Assessment

System. The tax computation for YA 1996 was enclosed together with the Return Forms. There was a tax refund claimed by the Taxpayer amounting to RM859,942.80. The Director General of Inland Revenue (“DGIR”) issued a Notification Form CP-63 (*Notis Bayaran Balik*) to the Taxpayer and stated that the Taxpayer had credit under Section 110 Income Tax Act 1967 (“ITA 1967”) amounting to RM842,331.36. The Taxpayer then requested the DGIR to process its tax refund for Year of Assessment (“YA”) YA 1996 and YA 2000. Upon reviewing the Taxpayer’s application, the claim for tax refund for YA 1997 and YA 2000 were not allowed under Section 111 ITA 1967 as they were made and submitted after more than six years. The DGIR then issued a Notice of Assessment (Form J) for YA 1996 dated 27.2.2015 to make good the loss of tax for the aforesaid Year of Assessment amounting to RM842,331.36 which had been wrongly refunded to the Taxpayer.

The Taxpayer contended that there is a clear distinction between Section 110 and Section 111 ITA 1967. Section 110 ITA 1967 relates to set-off for tax deducted while Section 111 ITA 1967 relates to tax refund for overpayment of tax. Section 111(1) ITA 1967 is plain and clear that if a taxpayer had overpaid its tax, either by deduction or otherwise, one is entitled to claim the excess provided that it is proved to the satisfaction of the DGIR. It was argued that once the DGIR had issued a Notice of Computation of Repayment dated 24.3.2008 and upon receiving the notice, the Taxpayer immediately claimed the tax credit by offsetting it with, amongst other, the tax payable for YA 1996 and other YAs.

In response, the DGIR asserted that the Taxpayer’s tax computation which was enclosed in the Return Form consists, *inter alia*, interest on long term loan and a set-off under Section 110 ITA 1967. These claims were applied in a formula and computed in order to determine the net tax payable or tax refunded. The Taxpayer had claimed a set-off under Section 110 ITA 1967 amounting to RM948,000.00 which resulted in the tax refund amounting to RM859,942.80. The set-off under section 110 ITA 1967 is also known as tax credit amount, where the said amount of tax credit applied under tax computation would give reference to the amount of tax payable before considering the tax set-off as provided under Section 111(1B) ITA 1967. The “set-off under section 110 ITA 1967 was integral to the Appellant’s tax computation as provided in Section 111(1B) ITA 1967.

Further, the “claim” mentioned under Section 111(2) of the ITA is the amount inserted in the formula of tax computation, which will give effect to tax payable or tax refund. The DGIR argued that set-off under Section 110 ITA 1967 and Section 111 ITA 1967 are inter-related and were integral to the Appellant’s tax computation in the Return Form for YA 1996, which will affect the amount of tax to be paid or the amount of repayment of tax receivable by the Appellant. Without inserting Section 110 ITA 1967 tax credit into the tax computation, the tax refund will not be applicable.

On the issue of whether the Taxpayer was negligent for the late submission of Return Form for YA 1996, the Taxpayer's new tax agent had testified and admitted during trial that the act of late filing of the Return Forms was an act of negligence and confirmed that the previous tax agent was negligent in its action of late filing of the Return Forms, 11 years after the due date. Further, the Taxpayer failed to provide any explanation on the long delay and the 'claims' made in the tax computation enclosed together with the Return Form, and failed to call their previous tax agent, who prepared the Return Forms and the tax computation for YA 1996 nor its own Director to explain the Taxpayer's claim in its tax computation and the delay. Therefore, the DGIR had successfully discharged his burden of proving that there was negligence on the part of the Taxpayer pursuant to Section 91(3) ITA 1967 and because of the Taxpayer's negligent, the DGIR had mistakenly made repayment or refund to the Taxpayer in contravention of Section 111(2) of the same Act.

The High Court on 4.6.2024 had dismissed the Taxpayer's appeal and upheld the decision of the SCIT. The High Court held that the SCIT had not erred in its finding of facts and the DGIR was right to claim back the amount of RM842, 331.36. The Taxpayer is negligence and the Notice of Assessment is correctly raised under Section 91(3) ITA 1967.

**Editorial Note**

*The Taxpayer has a right to appeal to the Court of Appeal within 30 days from the date of the decision.*