



SECTION 33(1) INCOME TAX ACT 1967

GCSB

V.

DIRECTOR GENERAL OF INLAND REVENUE

PKCP(R) 918/2017



SPECIAL COMMISSIONER OF INCOME TAX



PUAN FAJRUL SHIHAR BINTI ABU SAMAH



10 MAY 2024

The Revenue has raised a Notice of Additional Assessment for YA 2015 against the Taxpayer based on the tax audit findings that the Taxpayer had understated its income or failed to recognise the progress claim of the

development project in full. The Taxpayer also failed to prove that the subcontractor expenses claim can be allowed for deduction pursuant to Section 33(1) Income Tax Act 1967 (“ITA 1967”).

The Taxpayer only recognised RM48,633,077.81 as its sales/revenue in YA 2015. Whilst, it was discovered by the Revenue during the tax audit that the developer had recognised the progress claimed as cost paid to the Taxpayer amounting to RM52,267,996.90. This fact was not disputed or challenged by the Taxpayer. Hence, the amount difference of RM3,634,918.92 is the Taxpayer’s understatement of income.

With regard to the subcontractor expenses of RM5,067,434.04, the Revenue discovered that the expenses did not match to the progress claimed and variation orders No. 19 to 22 as provided by the subcontractor to the Revenue. The Taxpayer claimed that the subcontractor expenses should be allowed as the Taxpayer’s construction cost even the amount claimed is different.

The Taxpayer contended that the Revenue failed to consider the Settlement Agreements entered into by the Taxpayer’s previous management in order to settle unpaid bills for works done and good supplied. The Taxpayer also asserts that it had approached the Revenue for a settlement out of court and had amended the audited account and ledgers to reflect the purported expenses claimed and payments made to the Taxpayer former director amounting to RM8,000,000 and to the subcontractor for an amount of RM2,100,000 pursuant to the Settlement Agreements.

In response, the Revenue argued that the Taxpayer failed to justify the purported Settlement Agreements as mentioned above were connected to the tax audit finding issues raised by the Revenue. The Revenue further argued that the settlement out of court proposal to the Revenue did not take place and any forms of communication in respect of the settlement proposal was made strictly without prejudice basis. The purported expenses claimed by the Taxpayer in the amended audited account and ledgers were afterthought where the Taxpayer also failed to adduce evidence that the alleged expenses is an allowable deduction under section 33(1) ITA 1967.

The Revenue further argued that the Taxpayer had deliberately failed and/or refuse to declare the sales/revenue amount amounting to RM3,634,918.92 and over claimed the subcontractor expenses amounting to RM5,067,434.04. In consequent, the Taxpayer had failed to furnish correct return by understating its income for the YA 2015.

The Special Commissioner of Income Tax (“SCIT”) had on 10.05.2024 dismissed the Taxpayer’s appeal and held that the Taxpayer failed to prove its case as required under Paragraph 13 Schedule 5 ITA 1967. As such, the Notice of Additional Assessment for YA 2015 and the penalty imposed under Section 113(2) ITA 1967 raised by the Revenue against the Taxpayer is justified and confirmed.

Editorial Note:

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