



**Reinvestment Allowance, Schedule 7A Income Tax Act 1967 – Investment Allowance, Schedule 7B Income Tax Act 1967 – Judicial Review, Order 53 Rule 2, Rules of Court 2012**

**DIRECTOR GENERAL OF INLAND REVENUE**

v.

**TENAGA NASIONAL BERHAD**

**[W-01(A)-84-02/2022]**

The Court of Appeal unanimously dismissed the appeal by the Director General of Inland Revenue (DGIR) which was made against the decision of the High Court in allowing the Taxpayer's judicial review application.



**COURT OF APPEAL**



**YA DATUK SERI KAMALUDIN BIN MD. SAID  
YA DATUK SEE MEE CHUN  
YA DATO' HASHIM BIN HAMZAH**



**16<sup>th</sup> MAY 2024**

The Taxpayer was assessed with the additional assessment for the Year of Assessment (YA) 2018 amounting to RM1,812,506,384.64. The critical issue for the Court to determine was whether the Taxpayer, a utility company whose principal activity involved in generation, transmission, distribution and sales of electricity was eligible to claim the Reinvestment Allowance (RA) under the Schedule 7A of the Income Tax Act 1967 (ITA). The DGIR's main argument was that the Taxpayer was not eligible to claim the RA under the Schedule 7A of the ITA but should have claimed an Investment Allowance under the Schedule 7B of the ITA which applied to the service sector including utility companies like the Taxpayer.

On 1.2.1996, the Government introduced a special incentive known as Investment Allowance under Schedule 7B of the ITA through the Finance Act 1996 (Act 544), that applied to the Taxpayer which was in a service sector as defined under the Schedule 7B of the ITA. On 1.3.1979, the Parliament passed the Income Tax (Amendment) Act 1979 (Act A451) to introduce the RA for manufacturing companies that invest in capital expenditure for expansion, modernization or automation of their existing business in respect of manufacturing of a product. Thus, Schedule 7A of the ITA would apply to a manufacturing company that manufactured products. The Taxpayer's claim for RA under Schedule 7A of the ITA was against the intention and objective of the Parliament when introducing Schedule 7A.

The DGIR argued that the High Court had acted in excess of its jurisdiction in allowing the JR application and it was an abuse of process of court and the application was premature. The Taxpayer failed to demonstrate exceptional circumstances and failed to prove that the DGIR's assessment was tainted with illegality, irrationality or unreasonableness. There are no flaws in the DGIR's decision making process.

The DGIR also argued that the provisions in Schedule 7A and Schedule 7B of the ITA were clear and unambiguous. The Taxpayer's business activity was not within the definition of 'manufacturing' under Paragraph 9 (inserted in 2009 via Act 693) and 'qualifying project' under Paragraph 8(a) of Schedule 7A of the ITA and thus making it ineligible for RA claim. The Taxpayer's business activity would fall as an approved service project under the Investment Allowance for Service Sector as defined by Paragraph 9 of Schedule 7B of the ITA. The ordinary meaning of what fell within the service sector encompassed the Taxpayer's activities of generation, transmission, distribution and sales of electricity and thus, making it a service utility that was governed under Schedule 7B of the ITA.

The DGIR further argued that the High Court had wrongly relied on the Federal Court decision in *Majlis Perbandaran Seberang Perai v Tenaga Nasional Bhd [2005] 1 MLJ 1* (MPSP) and *KPHDN v. Success Electronics & Transformer Manufacturer Sdn Bhd (2012) MSTC 30-039* (SETM) where the facts were distinguishable. The MPSP's case involved issues under the Local Government Act 1976 whereas this current case was under the ITA.

Decision: The DGIR's appeal was dismissed with no order as to cost. The Taxpayer was involved in the business of manufacturing and since the claim for RA commenced from YA 2004, the definition of manufacturing in Paragraph 9, Schedule 7A of the ITA was inapplicable. Thus, the Taxpayer's activity would fall as the qualifying project under Paragraph 8(a), Schedule 7A of the ITA.

**Editorial Note:** *The DGIR has the right to file for leave to appeal to the Federal Court within 30 days from the date of decision.*