

MALS & JAPG
V.
DIRECTOR GENERAL OF INLAND REVENUE
PKCP(R) 552-555/2017 & PKCP(R) 262-265/2017

 **SPECIAL COMMISSIONERS OF INCOME TAX**

 **PUAN FAJRUL SHIHAR BINTI ABU SAMAH**

 **19 JANUARY 2024**

The First Taxpayer is a leader in an insurance agency, AAA under a well-known insurance company, TMLI Bhd (“TMLI”) whereas the Second Taxpayer, who is the wife of the First Taxpayer, is an

insurance agent of AA owned by the First Taxpayer. The Director General of Inland Revenue (“DGIR”) conducted an audit on the Taxpayers based on their Income Tax Return Forms for Years of Assessment (“YAs”) 2010 until 2013 filed by both Taxpayers. The DGIR raised additional assessments through Notices of Additional Assessment (“Forms JA”) dated 31.03.2016 for YA 2010 until 2013 based on the findings that expenses on Agency Assistant Allowance and Moderator/Speaker Allowance are not allowable under Section 33(1) Income Tax Act 1967 (“ITA 1967”). The First Taxpayer had also under-declared his income from TMLI amounting to RM21,740.00 for YA 2012. Dissatisfied with the additional assessments raised, the Taxpayers appealed to the Special Commissioners of Income Tax (“SCIT”).

The Taxpayers contended that the operational expenses from Moderator/Speaker Allowance and Agency Assistant Allowance should be allowed as deduction under Section 33(1) ITA 1967 as it were incurred in the production of gross income. The Taxpayers called their moderators/speakers and agents who worked for the Taxpayers in the said YAs to give testimony that the payment was made to them by the Taxpayers as moderator/speakers and agent assistants. The Taxpayers had provided acknowledgment letters dated 12.08.2016 of receipts of the allowances by the moderators/speakers and agent assistants. These letters were submitted together with Forms Q to support the Taxpayers’ claims. The Taxpayers claimed that the list of receivers of the allowances furnished by their accountant during the audit was wrong and submitted that new list together with Forms Q as the correct one. The Taxpayers also submitted that there was no under-declared income as the claims for operational expenses were deductible under Section 33(1) ITA 1967. No penalty should be imposed on a technical matter and there was no intention on the Taxpayers’ part to evade tax.

In response, the DGIR asserted that the claim of Agency Assistant Allowance and Moderator/Speaker Allowance for YA 2010 - 2013 was disallowed as these expenses were not wholly and exclusively incurred in the production of the Taxpayers’ gross income and the supporting documents provided by the Taxpayers could not sustain their claims. There is no proof of services rendered by the receivers and no proof that the receivers had worked for the Taxpayers. The Appellants failed to prove that the purpose of the payment made to the alleged receivers and the DGIR had referred to the principle in the case of Director-General of Inland Revenue v. L.T.S [1974] 1 MLJ 187. Further, the documents enclosed with Forms Q which were submitted to the DGIR were considered as an afterthought action. The documents were not provided during the audit. During the trial, the Taxpayers’ witnesses testified before the SCIT that there were payment vouchers at the time they received the payments, however, none of them were able to furnish the documents during the hearing before the SCIT. The statements made by the Taxpayers and their witnesses were just a bare statement without any weight of evidence. The imposition of penalty under Section 113(2) ITA 1967 by the DGIR was made upon discovery from the audit conducted.

On 19.01.2024, the SCIT had dismissed the Taxpayers’ appeals and held that the Taxpayers had failed to prove their case as required under Paragraph 13 Schedule 5 ITA 1967. The SCIT ruled that the DGIR was right to impose penalties on both Taxpayers. As such, the Forms JA for YAs 2010 - 2013 issued by the DGIR are confirmed.

Editorial Note:

- *The Taxpayers have the right to file an appeal against the decision by the SCIT within 21 days from the date of the decision.*