



**JUDICIAL REVIEW - ORDER 53 RULES OF
COURT 2012 - SECTION 44A(9) ITA 1967**

MUhibbah Engineering (M) Bhd

v.

**DIRECTOR GENERAL OF INLAND REVENUE
(WA-25-71-01/2020)**



HIGH COURT, KUALA LUMPUR



YA DATO' AMARJEET SINGH



01 APRIL 2024

COUNSELS FOR THE DGIR:

- 1. MOHD HARRIS HANAPI**
- 2. MOHAMAD ASYRAF ZAKARIA**

The taxpayer filed a Judicial Review (JR) Application under Order 53 of the Rules of Court 2012 seeking an order for certiorari to quash the decision of the Director General of Inland Revenue (DGIR) that was made through the notices of assessment dated 17.01.2021 for the years of assessment (YA) 2015 and 2016 and notice of non-chargeability for YA 2017.

One of the audit findings that was discovered by the DGIR was the taxpayer's claim for a deduction on "project accrued expenses", whereby the claim had resulted in a current-year loss for the taxpayer. The taxpayer then surrendered the loss to one of the company in the group i.e. Muhibbah Marine Engineering Sdn Bhd under Section 44A Income Tax Act 1967 (ITA 1967). However, based on the audit finding, the "project accrued expenses" is only a provision. As such, the DGIR did not allow the claim for deduction resulted in a taxable position for the taxpayer. Pursuant to this, the DGIR issued the notices of assessment for YA 2015 and 2016 and imposed a penalty under Paragraph 44A(9)(b) ITA 1967 on the taxpayer. The DGIR further adjusted the loss that had been previously surrendered by the taxpayer to Muhibbah Marine Engineering Sdn Bhd. Consequently, the DGIR raised the assessment on Muhibbah Marine Engineering Sdn Bhd under Paragraph 44A(9)(a) ITA 1967 following the disallowance of the claim for the loss.

The taxpayer submitted that the "project accrued expenses" would be deductible under Section 33(1) ITA 1967 as it was indeed incurred by the taxpayer and not merely provisional in nature. The taxpayer also raised the issue of the use of the word "or" under Section 44A(9) ITA 1967. The taxpayer contended that there was no dispute of facts in this case and only pertained to the issue of application of the word "or". Due to the use of the word "or", the taxpayer submitted that the DGIR should be restricted to either raising an additional assessment against Muhibbah Marine Engineering Sdn Bhd or penalize the taxpayer.

In response, the DGIR submitted that the issue of whether or not the taxpayer would be eligible to claim the expenses under Section 33(1) ITA 1967 on "project accrued expenses" must be ventilated first before the Special Commissioners of Income Tax (SCIT) as it involved question of facts and not for the court to decide on the facts. The SCIT being the judges of facts had also the jurisdiction to decide on mixed question of facts and law. Further, the provisions of paragraphs 44A(9)(a) and (b) ITA 1967 were mutually exclusive and applied to the claimant company and the surrendering company respectively. It applied to both the taxpayer (being the surrendering company) and Muhibbah Marine Engineering Sdn Bhd (being the claimant company) based on two different scenarios in line with the clear intention of the Parliament as stated in the Hansard.

In delivering the judgment, the High Court had dismissed the taxpayer's application with cost of RM5,000.00. The High Court Judge held that such issue fell within the purview of the SCIT and not through a judicial review application.

Nota Editor: *Pembayar Cukai berhak untuk memfailkan rayuan terhadap keputusan Mahkamah Tinggi ini dalam tempoh 30 hari dari tarikh keputusan diberikan.*