



SECTION 4(d) & SCHEDULE 3

INCOME TAX ACT 1967

JSL

V.

**KETUA PENGARAH HASIL DALAM NEGERI
MOF.PKCP.700-7/1/1277-1279**

 SPECIAL COMMISSIONERS OF INCOME TAX

 YA PUAN HABIBAH BINTI HARON

 22 JANUARY 2024

The Taxpayer is a company with the principle business activity as a dealer and wholesaler in stationaries and other goods. The Taxpayer owns six (6) shop houses which were

rented to hoteliers. Despite recognizing the rental income as income under Section 4(d) Income Tax Act 1967 (“ITA 1967”), the Taxpayer had claimed for Industrial Building Allowance (“IBA”) for the years of assessment (“YAs”) 2015, 2016 and 2017 under Paragraph 60 Schedule 3 ITA 1967 on the shop houses being used as industrial building under Paragraph 37F Schedule 3 ITA 1967. The Taxpayer also applied the tax treatment under Paragraph 75 Schedule 3 ITA 1967 by carrying forward the unabsorbed IBA in the relevant YAs. The Director General of Inland Revenue (“DGIR”) disallowed the claim for IBA unabsorbed balance to be carried forward and raised additional assessments for YAs 2015, 2016 and 2017 respectively. Dissatisfied with the assessments, the Taxpayer filed an appeal to the Special Commissioners of Income Tax (“SCIT”).

It was the Taxpayer’s contention that although the rental income received was declared as non-business source under Section 4(d) ITA 1967, the Taxpayer was still entitled to claim for the balance of unabsorbed IBA to be carried forward for YAs 2015, 2016 and 2017 as the Public Ruling No. 12/2018 (Income from Letting of Real Property) was silent on such treatment. The Taxpayer argued that as the DGIR had allowed the IBA for the relevant YAs, hence the unabsorbed IBA should be allowed to be carried forward by virtue of Paragraph 75 of Schedule 3 ITA 1967.

In contrast, the DGIR submitted that under Schedule 3 ITA 1967, IBA is given to a taxpayer who is in the pursuit of business and has incurred qualifying capital expenditure on industrial building. The DGIR had only allowed the current year IBA claimed by the Taxpayer but disallowed the unabsorbed IBA to be carried forward by virtue of Paragraph 60 Schedule 3 ITA 1967 as the shop houses rented out by the Taxpayer was being used as industrial building under Paragraph 37F Schedule 3 ITA 1967. Further, in accordance with Paragraph 75 Schedule 3 ITA 1967, the unabsorbed IBA can only be carried forward if it is income under business source under Section 4(a) ITA 1967 which the Taxpayer had failed to fulfill as the rental income received was a non-business source of income taxable under Section 4(d) ITA 1967. Having allowed only the current year IBA, the DGIR had acted accordingly by not allowing the Taxpayer’s claim to carry forward the unabsorbed IBA for YAs 2015, 2016 and 2017 in computing its statutory income.

On 22.01.2024, the SCIT held that the Taxpayer failed to prove its appeal as required under Paragraph 13 Schedule 5 ITA 1967 and dismissed the appeal. The SCIT ruled that the DGIR was correct in law in raising the additional assessments for YAs 2015, 2016 and 2017.

Editorial Note:

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