



**PARAGRAPH 9(bb) & 9(cc) SCHEDULE 7A**

**INCOME TAX ACT 1967**

**GSB**

**V.**

**DIRECTOR GENERAL OF INLAND REVENUE**

**PKCP(R) 618-619/2016**



**SPECIAL COMMISSIONER OF INCOME TAX**



**PUAN FAJRUL SHIHAR BINTI ABU SAMAH**



**15 DISEMBER 2023**

The Taxpayer's principal activity is oil palm plantation. The Taxpayer claimed that it is entitled for reinvestment allowance ("RA") for cultivation of oil palm for years of assessment ("YA") 2010 and 2011.

The Director General of Inland Revenue ("DGIR") had on 16.12.2015 raised an assessment ("Form J") for YA 2010 and additional assessment ("Form JA") for YA 2011, citing that the Taxpayer is not entitled to claim RA for the cultivation of oil palm. It is the DGIR's stance that oil palm does not fall within the ambit of "cultivation of fruits" under paragraph 9(cc) Schedule 7A Income Tax Act 1967 ("ITA 1967"). The Taxpayer, being aggrieved, filed notices of appeal by way of Forms Q against the Forms J and JA.

The Taxpayer contended that the cultivation of oil palm falls within the definition of "cultivation of fruits" as stated in paragraph 9(cc) Schedule 7A ITA 1967. As such, it is the Taxpayer's stance that it is entitled to claim RA for the cultivation of oil palm fruits. Notwithstanding to their original stance, the Taxpayer also contended that the cultivation of oil palm falls within the ambit of "cultivation of vegetables" under paragraph 9(bb), Schedule 7A ITA 1967.

In response, the DGIR maintains his position that oil palm does not fall within the ambit of "cultivation of fruits" under paragraph 9(cc) Schedule 7A ITA 1967 as oil palm being a fruit per se is not 'fruit' in the ordinary meaning as understood in common parlance. The DGIR cited that the agreed issues to be tried under this appeal are similar to the facts and issues that have been decided by the High Court in *Ketua Pengarah Hasil Dalam Negeri v. Bintulu Lumber Development Sdn Bhd [2014] 1 LNS 1914* and upheld by the Court of Appeal [Q-01-240-07/2014]. As such, the Special Commissioner of Income Tax ("SCIT") is bound by the decision of the High Court and the Court of Appeal under the doctrine of stare decisis. As for the issue of "cultivation of vegetables", the word 'vegetables' should not be construed in any technical sense nor from the botanical point of view but as understood in common parlance. As such, the Appellant's claim should fail in this regard.

The SCIT had on 15.12.2023 dismissed the Taxpayer's appeal and upheld the Forms J and JA raised against the Taxpayer. Furthermore, the DGIR has basis in fact and law to impose penalty under Section 113(2) ITA 1967.

*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.*