

**TEE LEE HENG & ORS****V.****DIRECTOR GENERAL OF INLAND REVENUE****WA-14-27-10/2022** **HIGH COURT KUALA LUMPUR** **YA HAKIM DATO' WAN AHMAD FARID BIN WAN SALLEH** **28 NOVEMBER 2023**

This is an appeal by the Taxpayers against the decision of the Special Commissioners of Income Tax (“SCIT”) on 27.09.2022 by way of Notice of Appeal dated 17.10.2022 against the Notices of Assessment for the years of assessment (“YAs”) 2011, 2012, 2013 and 2015 raised by the Director General of Inland Revenue (“DGIR”) under Section 4(a) Income Tax Act 1967 (“ITA 1967”).

The Taxpayers were the owner of a piece of agricultural land held under GM 430 Lot 584, Mukim Lebak, Paia Tratai Place, Temerloh Area, Pahang (“the Land”) which was acquired in stages. On 28.10.2009, the Taxpayers entered a Joint Venture Agreement (“JVA”) with Nova Megah Development Sdn Bhd (“Developer”) to develop the Land into residential. Pursuant to the JVA, the Taxpayers shall be entitled to 15.5% (equivalent to 13 housing units) of the value of the project whereas the remaining 84.5% shall belong to the Developer. The housing project is divided into three stages. After construction of the housing units, the Taxpayers sold 12 units out of the 13 units. The gains received by the Taxpayer from the disposal of the residential area was subjected to Section 4(a) ITA 1967 by the DGIR. The SCIT held that the disposal of the residential house was an adventure in the nature of trade and dismissed the Taxpayer’s appeal. Dissatisfied with the Special Commissioners of Income Tax (SCIT) decision, the Taxpayers appealed to the High Court.

The Taxpayers contended that there were no badges of trade existed in this appeal and the dominant intention in acquiring the Land was to help the original landowner to pay off debts owing to Cempaka Finance Bhd. The fact that the Taxpayers have kept the Land for more than 20 years indicated that the Taxpayers were holding the Land for investment. The Land was kept as a permanent investment by the Taxpayers due to its unique feature such as no access road, unsuitable to be used for agricultural purpose because of its uneven surface which causes water retention on the surface of the Land. It is erroneous for the SCIT to hold that the said Land is trading stock because it did not generate any income. The Taxpayers further contended that the SCIT had erroneously concluded that the Taxpayers’ intention had changed to conduct trading activities when entering JVA with the Developer. The Taxpayers and the Developer were different entities and should not be treated as one. Therefore, the disposal of the Land should be subjected to the Real Property Gains Tax Act 1976. DGIR also failed to exercise his discretion on the imposition of penalty.

In response, the DGIR submitted that the evidence whether documentary or oral, tendered before the SCIT support that the elements of badges of trade existed. The actual or the dominant intention of the Taxpayers at the time of purchase of the Land is to resale it at a higher value. The Taxpayers signed the JVA and the Power of Attorney with the Developer to develop the Land for commercial purposes. The action of the Taxpayers negated their original intention to buy the Land for helping a friend as alleged, instead it was bought to resell it for a multiplied profit. The period of ownership was short from the time the units was selected on the launching until the houses were sold, which only took two to three years. The fact that the Land has been altered and enhanced for it to be saleable and the involvement of the Taxpayers who had knowledge in real property business showed the intention of the Taxpayers to trade in the Land.

The High Court had on 28.11.2023 allowed the Taxpayers’ appeal and no order as to costs.

Editorial Note:

- *The DGIR has the right to file an appeal against the decision by the High Court within 30 days from the date of the decision.*