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BY LEGAL DEPARTMENT

KUALA LUMPUR HIGH COURT

YA DATO' AMARJEET SINGH A/L SERJIT SINGH

11 DECEMBER 2023

SECTIONS 22(2)(b) & 4(a) INCOME TAX ACT 1967

GUPPYUNIP SDN BHD
V.
DIRECTOR GENERAL OF INLAND REVENUE
(WA-14-34-11/2022)

Guppyunip Sdn Bhd ("the Taxpayer") is a company incorporated in Malaysia in 09.12.2009 and its principal activities are in property development and inter alia, sale and rent of industrial properties. On 09.07.2010, the Taxpayer and Awan Megah Sdn Bhd ("AMSB") executed a Joint Venture Agreement ("JVA"). Accordingly, the Taxpayer paid an amount of RM2 million to AMSB in year 2012. On 03.05.2013, the JVA was rescinded via a Deed of Mutual Rescission ("DMR"). The joint-venture could not materialize as AMSB was unable to obtain the ownership of the lands which were the subject of the JVA ("the said lands") due to the rejection by the Selangor State Authority on AMSB's application to subdivide and issue separate titles for the said lands. Pursuant to the DMR, AMSB paid to the Taxpayer a sum of RM7 million which consists of RM2 million being refund of the amount paid by the Taxpayer to AMSB and RM5 million being compensation to the Appellant for rescinding the JVA.

The Taxpayer's tax agent vide letter dated 13.1.2014, explained the background facts relevant to the JVA and how the Taxpayer received the amount of RM5 million being the compensation received on mutual rescission of the JVA via the DMR. In the same letter, the Taxpayer's tax agent provided justification and stated that the said compensation received by the Taxpayer is capital in nature. In reply, the Director General of Inland Revenue ("DGIR") vide letter dated 16.06.2014, informed the Taxpayer that the compensation was for the loss of income due to the termination of contract and not a capital receipt. The DGIR was of the view that the compensation was taxable under Section 4(a) Income Tax Act 1967 ("ITA 1967").

It is the Taxpayer's contention that the RM5 million is a capital receipt. A forced sale cannot constitute a sale that the proceeds of which are subject to tax because the element of compulsion vitiates the intention to trade. The Taxpayer had been compelled to enter into the DMR and to terminate the JVA due to circumstances beyond its control. This was involuntary. On each of this basis, Section 22(2)(b) ITA 1967 could not apply.

In response, the DGIR argued that the compensation is a trading receipt which is subject to the imposition of income tax under Section 4(a) ITA 1967 due to the following reasons -

(a) The JVA was merely an ordinary commercial contract entered into by the Taxpayer in its ordinary course of business. It did not regulate the Taxpayer's activities in any way and did not restrict the Taxpayer from entering into other business activities with other parties;
(b) There was no evidence that the JVA related to the whole structure of the profitmaking apparatus of the Taxpayer. It was an ordinary contract entered into by the Taxpayer under which they were to provide certain services for the purposes of generating income;
(c) The compensation paid by AMSB due to the termination of the JVA was payment for services rendered under Section 24(1)(b) ITA 1967 or compensation for loss of income under Section 22(2)(b) ITA 1967 and was therefore subject to income tax under Section 4(a) ITA 1967; and
(d) The termination of the JVA did not adversely affect the structure of the Taxpayer's profitmaking apparatus and did not destroy the Taxpayer's ability to generate future income.

The SCIT decided in favour of the DGIR that the RM 5 million was compensation of loss of income which subject to Section 22(2)(b) ITA 1967 and hence taxable under Section 4(a) ITA 1967.

The High Court dismissed the Taxpayer's appeal with costs of RM8,000.00 and upheld the decision of the SCIT.

Editorial Note

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