



SECTION 4(a) INCOME TAX ACT 1967

SPBSP

V.

DIRECTOR GENERAL OF INLAND REVENUE
MOF. PKCP. 700-7/1/1241-1242

 SPECIAL COMMISSIONER OF INCOME TAX

 PUAN FAJRUL SHIHAR BT ABU SAMAH

 6 OCTOBER 2023

The Taxpayer is an investment holding company. On 17.10.2001, the Taxpayer acquired a piece of land (“the said Land”) from Pengurusan Danaharta Nasional Berhad and disposed the said Land to Desa Wibawa Sdn Bhd on

12.12.2014. The Taxpayer claimed that the gains of RM8,170,876.00 from the disposal of the said Land should be taxed under the Real Property Gains Tax Act 1976 (‘RPGTA 1976’) and not under the Income Tax Act 1967 (‘ITA 1967’). The Director General of Inland Revenue (‘the DGIR’) raised Notices of Additional Assessment (‘Forms JA’) for Years of Assessment (‘YAs’) 2015 and 2017 amounting to RM2,854,890.44 and RM15,407.42 respectively under Section 4(a) ITA 1967. Dissatisfied with the assessments raised, the Taxpayer appealed to Special Commissioners of Income Tax (‘the SCIT’).

The Taxpayer contended that the DGIR had erred in raising the assessments under ITA 1967 as the gains of the said Land should be subjected to the RPGTA 1976. The Taxpayer also contended that there were no badges of trade elements existed in this appeal. The said Land was intended to be a long-term investment and the Taxpayer’s activity had consistently been investment holding. Therefore, the disposal of the said Land should be subjected to the RPGTA 1976. The DGIR also failed to exercise his discretion on the imposition of penalty.

In response, the DGIR asserted that the gains of RM8,170,876.00 was to be taxed under Section 4(a) ITA 1967 as a business income. Although there was no alteration made to the said Land, it did not mean that there was no trading. More than one element of badges of trade existed in this appeal. The DGIR further argued that if the said Land was truly acquired for investment purposes as claimed, the Taxpayer would have taken steps to develop it instead of selling it after keeping for thirteen years with minimum income from rental and oil palm plantation. It showed that that the Taxpayer was not retaining the said Land for a long-term investment purpose, but rather to wait for the value of the said Land to escalate.

The DGIR further argued that the Taxpayer had to borrow money from Maybank to finance the purchase of the said Land. This fact showed that the Taxpayer was incapable of operating as an investment holding company. The fact that the Taxpayer enjoyed gains from 8 disposals and acquired other 3 other lots of land after the disposal of the said Land proved that the Taxpayer traded in land in multiple transactions. Based on the elements of badges of trade existed in this case, the gains of RM8,170,876.00 received by the Taxpayer from the disposal of the said Land was rightfully taxed under Section 4(a) ITA 1967. Therefore, the DGIR had exercised his discretion to impose a penalty at the rate of 60%.

On 06.10.2023, the SCIT allowed the Taxpayer’s appeal and held that the Taxpayer had successfully proven its case under Paragraph 13 Schedule 5 ITA 1967. The SCIT ruled that the gains of RM8,170,876.00 are to be taxed under RPGTA 1976. As such, the Forms JA for YAs 2015 and 2017 raised by the DGIR were to be set aside.

Editorial Note:

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