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BY LEGAL DEPARTMENT

KUALA LUMPUR HIGH COURT

YA DATO' AMARJEET SINGH A/L SERJIT SINGH

3 APRIL 2023

SECTION 112(3) INCOME TAX ACT 1967

DIRECTOR GENERAL OF INLAND REVENUE
V.
SAP MALAYSIA SDN. BHD.
WA-14-14-06/2022

The Taxpayers filed in its income tax returns for the Years of Assessment (YAs) 2010 and 2011 ("the initial tax returns") based on the draft financial statements.

Subsequently, the Taxpayer filed in its revised tax returns based on the final audited financial statements. The Director General of Inland Revenue ("DGIR") raised the Notices of Assessment (Forms J) against the Taxpayer for YAs 2010 and 2011 and imposed penalties under Section 112(3) Income Tax Act 1967 ("ITA 1967").

The DGIR's contention is that the purported initial tax returns submitted by the Taxpayer were not deemed as Assessments under Section 90(1) ITA 1967 as the Taxpayer failed to furnish its tax returns in accordance with Section 77A(1) ITA 1967. Thus, the DGIR raised the Forms J for YAs 2010 and 2011 under Section 90(3) ITA 1967. The DGIR further argued that the Learned Special Commissioner of Income Tax ("SCIT") has committed an error of law when the SCIT concluded that the said Forms J are time-barred pursuant to Section 91(1) ITA 1967.

The DGIR also contended that the tax return must be filed using the prescribed form i.e. the income tax return (Form C) pursuant to Section 152 ITA 1967. Therefore, the Taxpayer is statutorily obliged to provide information as required under the Form C that the tax computation must be prepared based on the audited account. The introduction of Section 77A (4) ITA 1967 in YA 2014 has indeed confirmed the DGIR's stand that a company is required to furnish tax return based on the audited account.

In response, the Taxpayer contended that Section 90(3) ITA 1967 must be read together with Section 91(1) ITA 1967, which is the specific provision governing the DGIR's powers to raise assessment and to restrict a time limit for the DGIR to act. As the DGIR's contended that there was no assessment has been raised as the initial returns were a nullity, Section 91(1) ITA 1967 therefore applies and the DGIR must raise an assessment within five years. After five years, an assessment can still be raised but only to make good to any loss of tax pursuant to Section 91(3) ITA 1967. In the present case, there is no loss of tax as there was an overpayment and over reporting of income by the Taxpayer.

The Taxpayer further argued that Section 77A (1) ITA 1967 does not mandate filing of an accurate return and Section 112 ITA 1967 certainly does not criminalise or penalise the filing of an inaccurate return. It was only with effect from YA 2014 that Section 77A (4) ITA 1967 was inserted, which expressly made the use of audited accounts as mandatory. Imposition of penalty by the DGIR under Section 112(3) ITA 1967 is not unfettered and must not be exercised at whims and fancies.

The High Court had on 3.4.2023 dismissed the DGIR's appeal with costs and upheld the decision of the SCIT.

Editorial Note:
The DGIR has the right to file an appeal against the decision to the Court of Appeal within 30 days from the date of decision.