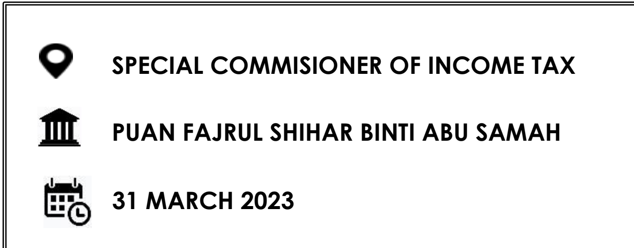

SECTIONS 33(1) & 39(1)(b) INCOME TAX ACT 1967 & P.U.(A) 277

SUSB
V.
DIRECTOR GENERAL OF INLAND REVENUE
PKCP(R) 380 – 382/2017

The Taxpayer's principal activity is property development. The Taxpayer was exempted from constructing 20% low-cost houses, 20% medium low-cost houses and 10% medium cost houses and required to pay contribution payment to *Lembaga Perumahan Hartanah Selangor* ("LPHS").

The Director General of Inland Revenue ("DGIR") raised a Notice of Additional Assessment under Section 91(3) Income Tax Act 1967 ("ITA 1967") for Year of Assessment ("YA") 2011 where the DGIR had disallowed the Appellant's expenditure claim pursuant to Section 33(1) ITA 1967 in relation to the contribution payment of low-cost houses made to LPHS.

The Taxpayer contended that the payment made to LPHS is an actual expense and the sole purpose of obtaining the low-cost exemption is to eliminate a burdensome requirement imposed on the land in order to generate its business income. The Taxpayer is obligated to comply with *Pekeliling Pengarah Tanah Dan Galian Selangor Bilangan 3/2007* as well as *Pekeliling Lembaga Perumahan dan Hartanah Selangor Bil. 1 Tahun 2011* and without paying it, the Taxpayer has to develop low-cost houses. The Taxpayer argued that the payment was wholly and exclusively incurred for its business, it's a revenue expenditure and not penal in nature. The DGIR had also failed to discharge his burden of proof under Section 91(3) ITA 1967 to raise the assessment out of time.

In response, the DGIR asserts that the Taxpayer was exempted from building the low-cost and medium-cost houses and knew of its obligation to pay the contribution amount to LPHS before the construction even to begin. The contribution payment made to LPHS is caught under Section 39(1)(b) ITA 1967 and it's not an allowable expense under Section 33(1) ITA 1967.

The DGIR further argued that the Taxpayer did not have the intention to develop any low-cost and medium-cost houses to generate its gross income. In order for any outgoings and expenses to be allowed as deductions, it must be wholly and exclusively incurred in the production of gross income. The contribution payment to LPHS was solely made for the production of a higher income to the Taxpayer, and the requirement to pay the contribution had already existed even before the construction had begun. This does not change the nature of payment made as 'capital in nature'. Consequently, the contribution payment made to LPHS is the payment made for the production of the Taxpayer's income, from its high cost houses.

The DGIR also argued that by virtue of Income Tax (Property Development) Regulations 2007 ("P.U.(A) 277"), the Taxpayer is required to claim the expenses incurred based on the year when the projects were completed. The projects are deemed to have been completed on the date of the Certificate of Fitness for Occupation ("CCC") was issued in YA 2011, but the Taxpayer had only claimed for the construction costs in YA 2012. Therefore, the documentary evidence of the CCC ought to have been read with P.U.(A) 277 which shows that the Taxpayer had negligently submitted its tax return to the DGIR.

The SCIT had on 31.03.2023 dismissed the Taxpayer's appeal and held that the DGIR had basis to raise the time-barred assessment under Section 91(3) ITA 1967. The SCIT also held that the Taxpayer failed to discharge its burden of proof under Paragraph 13 Schedule 5 ITA 1967 and the DGIR was correct to impose penalty.

Editorial Note

- *The Taxpayer has the right to file an appeal against the decision by the Special Commissioners of Income Tax within 21 days from the date of the decision.*