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BY LEGAL DEPARTMENT

HIGH COURT KUALA LUMPUR

YA DATO' AMARJEET SINGH A/L SERJIT SINGH

23 MAY 2023

SECTIONS 97(1), 101(2), 102(5)(a) & 102 (7)

INCOME TAX ACT 1967

OPHIR QUARRY SDN. BHD.
V.
DIRECTOR GENERAL OF INLAND REVENUE
WA-14-41-07/2020

The Taxpayer appealed against the decision of the Special Commissioners of Income Tax ("SCIT") on 30.11.2017 by way of Case Stated dated 29.04.2020. At the SCIT's stage, the Taxpayer filed an appeal vide PKCP(R) No. 122/2013 (hereinafter referred to as "the First Appeal") against the Notice of Additional Assessment ("Form JA") issued by the Director General of Inland Revenue ("DGIR") for the Year of Assessment ("YA") 2009 on the issue of capital allowance. The Taxpayer and the DGIR had then recorded a settlement agreement dated 13.01.2015 ("Settlement Agreement") before the SCIT and the Deciding Order was issued consequently.

Pursuant to the Settlement Agreement, the DGIR issued the Notice of Reduced Assessment ("JR") for the said YA 2009. Dissatisfied with the JR, the Taxpayer filed another appeal which was registered as PKCP (R) No 277/2016 (hereinafter referred to as "the Second Appeal") on the ground that the Settlement Agreement entered into by the Taxpayer was under mistake. The DGIR raised a preliminary objection on the validity of the Second Appeal and that the JR was issued based on the Settlement Agreement in accordance with Section 102(5)(a) of the Income Tax Act 1967 ("ITA 1967"). As such, the JR is not appealable. The SCIT allowed the preliminary objection and consequently dismissed the Second Appeal. Dissatisfied with the SCIT's decision on the Second Appeal, the Taxpayer appealed to the High Court.

The Taxpayer submitted that the Second Appeal was decided by the SCIT only on the preliminary objection raised by the DGIR without considering the merits of appeal. The JR raised was a mistake by both parties as it included the item which was not supposed to be included. It is erroneous, ultra vires and breach of jurisdiction for the DGIR to argue that if parties have signed an agreement under Section 102(5)(a) ITA 1967, then the matter becomes final. The Taxpayer asserts that they are not prohibited to file another appeal against JR as Section 99 ITA 1967 indicates that the Taxpayer is at liberty to file an appeal. The DGIR cannot deny the legal right vested in the Taxpayer to appeal as it is on the newly reduced assessment. Nothing in the ITA 1967 prohibits the Taxpayer to appeal against a fresh JR issued by the DGIR. The Taxpayer is only prohibited to appeal against the previous additional assessment or against the Deciding Order.

In response, the DGIR submitted that the Settlement Agreement was entered into under Section 102(5)(a) ITA 1967 and by virtue of Section 102(7) ITA 1967, the said agreement shall have effect as if it is an agreement under Section 101(2) ITA 1967 and that the appeal before the SCIT shall abate. Further, the Deciding Order dated 13.01.2015 issued by the SCIT is final and conclusive and therefore is not appealable. Thus, the JR issued by the DGIR pursuant to the settlement agreement is valid. As such, it is submitted that pursuant to Section 97(1)(b) ITA 1967, the said assessment which was made, agreed to or determined shall be final and conclusive.

On 23.05.2023, the High Court has dismissed the Taxpayer's appeal with costs and upheld the decision of the SCIT.

Editorial Notes

The Taxpayer has a right to appeal to the Court of Appeal within 30 days from the date of the decision.