SECTION 60 & SECTION 131
INCOME TAX ACT 1967

HLAB
V.
DIRECTOR GENERAL OF INLAND REVENUE
MOF.PKCP.700-7/3/55 &66; MOF.PKCP.700.7/1/749 & 1665

SPECIAL COMMISSIONERS OF INCOME TAX

TUAN SHAZRIL BIN GHAZALI, PUAN FAJRUL SHIHAR BINTI ABU SAMAH & PUAN NIK ASMA ANITA BINTI MAKHTAR

1ST MARCH 2024

The Taxpayer is principally engaged in the business of underwriting life insurance. The Taxpayer issued two subordinated debt instruments respectively and paid interest payments gradually to the subscribers (“**Interest Expenses”**). The funds generated from the subordinated debt was deployed for investments in unit trusts, bonds and investment property (“**the Investments**”). The Taxpayer also derived rental income from its fixed asset properties (“**the Properties**”). In order to maintain the Properties, the Taxpayer also incurred various expenses (“**Expenses Relating to the Properties Rented Out**”). The Taxpayer made an application under section 131 Income Tax Act 1967 (“ITA 1967”) (“**Relief Application**”) on 27.12.2020 for Year of Assessment (“**YA**”) 2014 and YA 2015 in respect of its error and mistake in not claiming for deductions on the Interest Expenses and Expenses in relation to Properties Rented Out, which were then rejected by the Director General of Inland Revenue (“**DGIR**”). The Taxpayer also claimed deductions under section 33(1) ITA 1967 on the said expenses for YA 2019 and YA 2020. DGIR contended that section 60 ITA 1967 is the specific provision which governs insurance business and the expenses claimed by the Taxpayer are not listed under said section.

The crux of the dispute is whether the deductibility of the Interest Expenses and the Expenses Relating to the Properties Rented Out are hindered by section 60 ITA 1967. The Taxpayer contended that the application of section 60 ITA 1967 does not preclude the application of section 33(1)(a) and (c) ITA 1967 but merely supplements it. The tax returns filed were based on the mistaken belief that the Interest Expenses and the Expenses Relating to the Properties Rented Out are deductible under section 33(1) ITA 1967. The Taxpayer also contended that it had satisfied the statutory requirements of filing a Relief Application, and that the DGIR’s act of disallowing the simultaneous applicability of section 33(1) together with section 60(3) and (3A) ITA 1967 cannot be considered a ‘*practice*’ without the issuance of a Public Ruling. Therefore, there is no existence of any ‘*prevailing practice*’ in this regard.

In response, the DGIR asserted that at the time when the Taxpayer filed its tax returns for YA 2014 and YA 2015, the DGIR’s position in relation to Interest Expenses and the Expenses Relating to the Properties Rented Out under Life Fund and Shareholders’ Fund were in accordance with section 60(3) ITA 1967. It was the practice of the DGIR not to allow deductions on Interest Expenses in that matter. Therefore, the Taxpayer’s tax returns were based on the ‘*practice of Director General prevailing at the time the returns were made*’. Further, there was no ‘*error and mistake*’ within the meaning of section 131 ITA 1967 committed by the Taxpayer as the tax returns were prepared in accordance with DGIR’s prevailing practice and/or position at that point of time.

The DGIR further argued that section 60 ITA 1967, being the specific provision governing the insurance business, has specifically provided for the mechanism in ascertaining the adjusted income of the Life Fund and of the Shareholders’ Fund. Section 60(3) and Section 60(3A) ITA 1967 must be read with Section 52 ITA 1967 in determining whether the deductions on expenses incurred by the Appellant should be allowed under Section 33(1) ITA 1967. The word ‘inconsistency’ under Section 52 ITA 1967 refers to any

inconsistency between the application of Section 60(3) and Section 60(3A) with Section 33(1) ITA 1967 in relation to the allowable deductions that can be claimed by the taxpayer. The DGIR also highlighted that the word 'void' in Section 52 ITA 1967 clearly refers to 'the inconsistency' of the application of the special provision (Section 60(3) and Section 60(3A) ITA 1967) and the application of general provision (Section 33(1) ITA 1967) only. It is an exception to the general provision, *Generalia Specialibus Non Derogant.*

Further, the word "shall" as states in Section 131(4) ITA 1967 is mandatory for the DGIR to deny any relief under Section 131(1) ITA 1967 to be granted to the Taxpayer as the 'mistake' alleged falls within the exception under Section 131(4) of the Act. The Taxpayer's contention that there was no proof of the DGIR's 'prevailing practice' as there was no Public Ruling issued is clearly against the spirit of Section 137A and Section 131 ITA 1967. The position in relation to the insurance business has been consistently maintained by the Respondent as to date. This shows that the DGIR's '*prevailing practice*' is to disallow any expenses that is not prescribed under Section 60(3) and Section 60(3A) of the Act.

The SCIT on 1.4.2024 unanimously held that the Taxpayer failed to discharge its burden of proof under paragraph 13 Schedule 5 ITA 1967 and that the DGIR was correct in disallowing the Taxpayer's Relief Application under section 131 of the Act.

Editorial Note
The Taxpayer has a right to appeal to the High Court within 21 days from the date of the decision.