ReveNews
LHDN MALAYSIA
BY LEGAL DEPARTMENT

MAHKAMAH RAYUAN, PUTRAJAYA

YA DATUK RAVINTHRAN A/L N. PARAMAGURU, HMR
YA DATO' HAJI AZMAN BIN ABDULLAH, HMR
YA DATUK AZHAHARI KAMAL BIN RAMLI, HMR

19 NOVEMBER 2024

Tax Appeal – RPGTA v ITA – Badges of Trade – Section 4(a) ITA – Case Stated - Schedule 5 ITA

MEDAN PRESTASI SDN BHD
v.
KETUA PENGARAH HASIL DALAM NEGERI
[S-01(A)-554-09/2021]

This is an appeal by the Taxpayer against the decision of the High Court dated 16.03.2023 in dismissing its appeal against the decision of the Special Commissioners of Income Tax ("SCIT") on 10.05.2019. The main issue is whether the gains received by the Taxpayer from the disposal of 12 parcels of land are trading receipts and taxable as business income under Section 4(a) of the Income Tax Act 1967 ("ITA) or capital receipts taxable under the Real Property Gains Tax Act 1976 ("RPGTA")?

The Taxpayer is a wholly owned subsidiary of MK Land Holdings Berhad ("MKL"). On 21.4.1995, the Selangor State Government entered into a Privatisation Agreement ("PA") with MKL to construct 50,000 low-cost homes in 9 districts of Selangor with all basic and external infrastructures. Through the PA, the State shall provide the land, the finance and undertake the sales of the houses whereas MKL shall provide technical expertise in design, drawing and completion of the construction of the housing units. Further on 26.6.1996, MKL executed Supplemental Agreement with the State where 400 acres of land had been alienated to the Taxpayer and the State specified that 75% of the land is to be developed for the low cost, low-medium cost and medium cost housing on its own cost and expense carry out and undertake the development and to complete all stages of the project including allocation, sale and collection of the proceeds of the housing units in the project.

However, the Taxpayer has disposed of 12 parcels of land (the remaining 25% of the land) on 30.06.2002 and 30.06.2004 and those disposals were reported/declared under RPGTA. Upon audit, the Revenue assessed and subjected the disposal of the land as business income under Section 4(a) of the ITA and issued the notices of assessment for YA 2002, 2003 and 2004 dated 07.08.2007 for a total amount of RM12,628,225.62.

The Taxpayer contends that the land is meant for investment and would be rented out whereas another part of it would be used to build a showroom. However, there is no rental agreement being made and the building plan which is intended to be the showroom is not signed by certified architect and is only produced at the hearing at the SCIT. The High Court has found that the Taxpayer fails to prove its contention, and the contemporaneous documents speaks otherwise.

Furthermore, the Taxpayer's witness has failed to corroborate the testimony that the land is intended to be the Taxpayer's investment where office buildings and showrooms would be constructed. There is also confusion in the Taxpayer's audited annual report in respect of the land where it is initially stated for investment, but later the intention seemed to be for the purpose of rental collection. The SCIT and the High Court have made a strong finding that the land is not meant for investment but for development/trading. Thus, the gains arising from the sale of the said land is the business income of the Taxpayer.

The Taxpayer has argued that the sale of the land is a forced sale due to the company's financial difficulties. The Revenue submits that the circumstances leading to the disposal of the said land reflect the existence of profit-making undertaking or scheme. The fact-findings by the SCIT are approved by the High Court where the Taxpayer has failed to prove that the land is meant for investment and the authenticity of the architect drawing is questionable.

The Court of Appeal has unanimously agreed with the facts found by the SCIT and affirmed the decision of the High Court. There are no circumstances that warrant the Court of Appeal's interference and the Taxpayer's appeal is dismissed with cost of RM10,000.