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BY LEGAL DEPARTMENT

SPECIAL COMMISSIONERS OF INCOME TAX

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30 JUNE 2026

SECTION 44A(9)(b) INCOME TAX ACT 1967

LKPSB
V.
DIRECTOR GENERAL OF INLAND REVENUE
MOF.PKCP.700-7/1/2252-2253

Through an audit exercise against the Taxpayer it was revealed that the Taxpayer had surrendered losses to a related company, LIPSB pursuant to the group relief provisions under Section 44A of the Income Tax Act 1967 ("ITA 1967") for the Years of Assessment ("YA") 2016 and 2017. Following a comprehensive review of documents submitted by the Taxpayer, it was found that there were excess losses previously surrendered resulted in overclaimed group relief by the claimant company (LIPSB). The Director General of Inland Revenue ("DGIR") thereafter imposed a penalty on the Taxpayer under Paragraph 44A(9)(b) ITA 1967, in amounts equivalent to the tax undercharged at the claimant company through Notices of Assessment under Paragraph 44A(9)(b) (Form G) for YA 2016 and YA 2017.

The central issue is whether the DGIR is legally entitled to impose penalty under Paragraph 44A(9)(b) ITA 1967 notwithstanding that a Notices of Additional Assessment (Form JA) under Paragraph 44A(9)(a) ITA 1967 was issued to the claimant company.

The Taxpayer's sole contention is that the word "or" in Subsection 44A(9) ITA 1967 must be interpreted disjunctively, thereby preventing the DGIR from invoking both paragraphs (a) and (b). The Taxpayer has accepted the audit findings and does not dispute the computation of penalty.

In response, the DGIR argued that Subsection 44A(9)(a) and 44A(9)(b) ITA 1967 operate complementarily, not exclusively. The Taxpayer's reliance on the phrase "or" to argue mutual exclusivity is misconceived in law and this is not merely a question of wording, it is also a question of how Section 44A ITA 1967 operates as a complete statutory mechanism. Paragraph (b) of Section 44A(9) ITA 1967 provides that the penalty must be equal to the amount of tax undercharged in the claimant company which can only be determined by applying paragraph (a). Without executing paragraph (a), paragraph (b) cannot operate.

The Special Commissioners of Income Tax ("SCIT") had on 30.6.2026 allowed the Taxpayer's appeal and held that Notices of Assessment under Paragraph 44A(9)(b) (Form G) for YA 2016 and YA 2017 raised against the Taxpayer is to be set aside.

Editorial Note

- *The DGIR has the right to file an appeal against the decision by the SCIT within 21 days from the date of the decision.*