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BY LEGAL DEPARTMENT

SPECIAL COMMISSIONERS OF INCOME TAX

PUAN FAJRUL SHIHAR BINTI ABU SAMAH

30 JUNE 2026

SECTION 44A(9) INCOME TAX ACT 1967

SDPKLE
V.
DIRECTOR GENERAL OF INLAND REVENUE
MOF. PKCP.700-7/1/2144

The Taxpayer is the surrendering company under the group relief provisions under Section 44A of the Income Tax Act 1967 ("ITA 1967"). For the Year of Assessment ("YA") 2017, the Taxpayer surrendered adjusted losses to the claimant company (SPDB). Following a tax audit, the Director General of Inland Revenue ("DGIR") discovered that certain expenses claimed by the Taxpayer were incorrect. Consequently, the Taxpayer's adjusted losses were reduced and the amount of losses surrendered to the claimant company were revised. The reduction of losses resulted in additional tax payable by the claimant company amounting to RM373,589.04. The DGIR then imposed a penalty of the same amount on the Taxpayer under Section 44A(9)(b) ITA 1967 due to incorrect information relating to the surrendered losses.

The main issue was whether the DGIR had a legal basis to impose a penalty under Section 44A(9)(b) ITA 1967 on the Taxpayer and raising an additional assessment on the claimant company under Section 44A(9)(a) ITA 1967.

The Taxpayer contended that the word "or" in Section 44A(9) ITA 1967 should be interpreted disjunctively according to its ordinary meaning. Therefore, the DGIR could only exercise one course of action; issue an additional assessment on the claimant company under Section 44A(9)(a) ITA 1967 or impose a penalty on the surrendering company under Section 44A(9)(b) ITA 1967. The Taxpayer further argued that the DGIR acted unlawfully by invoking both provisions simultaneously.

In response, the DGIR argued that Section 44A(9) ITA 1967 should be read purposively and conjunctively. The DGIR submitted that Section 44A(9)(a) ITA 1967 and Section 44A(9)(b) ITA 1967 serves different purposes and operate on different entities: - Section 44A(9)(a) ITA 1967 enables the DGIR to raise an additional assessment against the claimant company to recover tax undercharged due to excessive group relief claimed while Section 44A(9)(b) ITA 1967 empowers the DGIR to impose a penalty on the surrendering company for furnishing incorrect information. The amount of tax undercharged by the claimant company must first be determined before the corresponding penalty under Section 44A(9)(b) ITA 1967 can be calculated.

The Special Commissioners of Income Tax ("SCIT") had on 30.06.2026 dismissed the Taxpayer's appeal and held that the Taxpayer had failed to discharge the burden of proof under Paragraph 13, Schedule 5 ITA 1967. Accordingly, the Notice of Assessment dated 30.08.2021 for YA 2017 were upheld.

Editorial Note:

- *The Taxpayer is entitled to file an appeal against the decision of the SCIT within 21 days from the date of the decision.*