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LHDN MALAYSIA
BY LEGAL DEPARTMENT

COURT OF APPEAL

YA Dato' Azizul Azmi
YA Datuk Dr Shahnaz Sulaiman
YA Dato' Azahari Kamal Ramli

17 AUGUST 2026

SECTION 113(2) INCOME TAX ACT 1967

NISHIMATSU CONSTRUCTION CO. LTD
V
KETUA PENGARAH HASIL DALAM NEGERI
W-01(A)-582-09/2024

The appeal concerns additional assessments and penalties raised against Nishimatsu Construction Co., Ltd (Malaysia Branch) for YAs 2013 to 2016 in respect of income derived from the Shimizu-Nishimatsu-UEM Builder-IJM Joint Venture ('JV'). The Appellant's own basis period was 1 April to 31 March, while the JV's accounting period was 1 January to 31 December. In its original tax returns, the Appellant declared its own business income for the full April-to-March basis period, but declared only nine months of its JV income, namely April to December. The JV income attributable to January to March was omitted from the original returns and was later declared through revised returns after the Appellant received the relevant Partnership Income Distribution Statement (Forms CP30). Following a tax audit, the Respondent issued Notices of Additional Assessment dated 27 September 2018 on the basis that the Appellant had understated its chargeable income. The additional tax amounted to RM5,310,530.77 and penalties imposed under section 113(2) of the Income Tax Act 1967 ('ITA') amounted to RM866,625.95, giving a total of RM6,177,156.72. The Special Commissioners of Income Tax ('SCIT') and the High Court upheld the assessments and penalties.

The Court of Appeal had unanimously dismissed the appeal and upheld the decision of the SCIT and the High Court. Cost of RM50,000 in favour of the Respondent.

Issue 1: Whether the Appellant was correct to omit the income of the JV from January to March and wait until the JV closes its FY before reporting the income for those 3 months via revised returns?

The Appellant ought to have used the first 3 months' income (January to March for that YA) as reported in the management accounts of the JV in its income tax return. The obligation to declare such income is not subject to the pre-condition that the income is subject to a statutory audit. In this case, the Appellant ought to have used the first 3 months' income as reported in the management account for the purposes of this income tax return. The failure to declare its partnership income for the months of January, February and March for the relevant YAs in the income tax returns constituted a contravention of section 77A of the ITA. The decision of the SCIT and the High Court was thus correct.

Issue 2: Whether the DGIR was correct in exercising his discretion in imposing a penalty of 15% for the underdeclared income for each YA

The power of DGIR to impose a penalty under section 113(2) of the ITA has been engaged by reason of the incorrect return. There is nothing in evidence to suggest that discretion exercised under that power has been incorrectly exercised. Good faith is no defence against liability for penalty under s. 113(2), however the Court is hesitant to rule that good faith is not a relevant consideration for the exercise of discretion under section 113(2). Where the DGIR forms the view that the return has been given in good faith for example in this case, where the Appellant was of the mistaken but honest belief that it could hold in abeyance the partnership income for the first quarter of the YA, then the DGIR would be fully entitled to impose a penalty of much less than 100%. This is precisely what the DGIR did by imposing the 15% penalty. Good faith may not be a defence under section 113(2) but this does not mean that it is not a relevant consideration in exercising his discretion under that section. The *dicta* contained in cases such as *Ketua Pengarah Hasil Dalam Negeri v TCY Jaya* and *Syarikat Ibraco Peremba* must be properly understood in this light.