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SPECIAL COMMISSIONERS OF INCOME TAX

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29 OCTOBER 2026

SECTION 33(1), SECTION 39 & SECTION 113(2)
INCOME TAX ACT 1967

ACSB
V.
DIRECTOR GENERAL OF INLAND REVENUE
MOF.PKCP.700-7/1/2806-2809

The Taxpayer was appointed by IMSB as the sub-contractor for quarry production activities on several properties situated in Seberang Perai. Subsequently. through a Notice of Coordination, the Taxpayer appointed SQSB to undertake Quarry Face Development Works (QFDW") at the quarry. In consideration of these services, the Taxpayer paid SQSB tribute payment computed based on the type and quality of quarry products extracted and sold. The Taxpayer claimed the 'tribute' payments as deductible expenditure under Section 33(1) of Income Tax Act 1967 ("ITA 1967") and alleged that the QFDW formed part of the Taxpayer's income-producing operations. Following an audit, the Director General of Inland Revenue ("DGIR") disallowed the deductions and raised Notice of Additional Assessments for Year of Assessments 2017, 2018, 2019 and 2020. Dissatisfied, the Taxpayer filed an appeal to the Special Commissioners of Income Tax ("SCIT").

The Taxpayer argued that the QFDW involves clearing of trees, earth and weathered rocks that lie above the granite at the quarry. These works were necessary to access the granite, without which the Taxpayer earned no income as the granite is the only part of the quarry that carries commercial value. Thus, the tribute payments have a nexus to the Taxpayer's source of income at the quarry. Accordingly, the Taxpayer contended that the tribute payment is wholly and exclusively incurred in the production of the gross income for the Taxpayer and should be allowed full deductions under Section 33(1) ITA 1967.

The DGIR submitted that the QFDW constituted preliminary development works undertaken before any granite could be extracted, processed or sold. The expenditure was therefore capital in nature and was prohibited from deductions under Section 39(1)(c) ITA 1967. DGIR further contended that the tribute payments were incurred to develop the Taxpayer's profit-yielding structure, rather than in the actual production of gross income. Section 33(1) and 39(1)(c) ITA 1967 must be read together. The mere fact that expenditure is incurred for the purposes of the Taxpayer's business did not, by itself make the expenditure deductible. Where the expenditure was employed as capital to create, develop or enhance the profit yielding structure of the business, Section 39(1)(c) ITA 1967 applies.

On 29.10.2026, the SCIT dismissed the Taxpayer's appeal and concluded that the DGIR had both legal and factual basis to raise the additional assessment and the penalty imposed under Section 113(2) ITA 1967 was justified.

Editorial Note

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