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Tax Litigation Division, Legal Department of IRBM

WITHOUT COMPREHENSIVE AND ACTIVE MAINTENANCE, RENTAL INCOME IS SUBJECT TO TAX UNDER S.4(d) OF THE INCOME TAC ACT 1967

BCSB v. DIRECTOR GENERAL OF INCOME TAX

JUDGES

YA Puan Rosidah Abu Bakar
YA Tuan Effandi Nazila Abdullah
YA Tuan Ahmad Zakhi Mohd Daud

REVENUE COUNSELS

Ahmad Isyak Mohd Hassan
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ISSUES

1. Whether the income received by the Appellant in YA 2011 from letting of properties is taxable under section 4(a) of the ITA as business income or section 4(d) of the ITA as rental income.

2. If income mentioned in question 1 above is taxable under section 4(d) of the ITA as rental income, whether the Respondent was correct to disallow and add back the Administration Expenses and the Capital Allowance in YA 2011.

3. Whether the Respondent was correct to disallow the claim for deduction for Bank Overdraft and Term Loan Interest under section 33(1) of the ITA in YA 2010 and 2011

4. Whether the imposition of penalty under section 113(2) of the ITA for YA 2010 and 2011 is justified and correct in law.

FACTS

The Appellant which its principal activities are investment in shares, landed properties, consultancy services and agriculture services has been letting out properties and receiving income since YA 2001 until YA 2011. This is the principal income of the Appellant since its inception. The said income received from letting of the properties had been declared and taxed under section 4(a) of the Income tax Act 1967 as a business income from YA 2001 to 2011.

On 14.5.2014, the Respondent conducted a tax audit on the Appellant and found that the income received by the Appellant from letting the properties from YA 2011 is to be taxed under section 4(d) of the ITA as rental income pursuant to the Public Ruling No. 4/2011. As a result, the Respondent withdrew the Capital Allowance for the properties and added back the same in the tax computation for YA 2011. Subsequently, the Respondent raised Notices of Additional Assessment for YA 2010 and 2011.

APPELLANT'S SUBMISSIONS

1. The rental income is the business income of the Appellant under section 4(a) of the ITA since its inception in 2001.

2. The Public Ruling No 4/2011 has no force of law.

RESPONDENT'S SUBMISSIONS

1. Public Ruling 4/2011 was effective in YA 2011 and it clearly stipulated that in order to treat a rental income as a business income under subsection 4(a) of the ITA, the Appellant has to provide comprehensive and active maintenance to the properties. The Appellant had failed to fulfil this requirement and had only provided maintenance upon request by the tenants.

2. Section 138A of the ITA empowered the Director General to make a Public Ruling in relation to the application of any provisions of the ITA. Public Ruling 4/2011 offers guidelines to the public and the officers with regards to the tax treatment of the rental income.

3. Section 4 of the ITA sets out the classes of income on which tax is chargeable. However, section 4 does not provide any criteria in determining whether an income falls under subsection (a) or (b), (c), (d), (e) or (f). Therefore, the DGIR is empowered/authorized under s.138A of the ITA to issue a public ruling on the application of the provision in the Act.

4. As the income is taxable as rental income under subsection 4(d) of the ITA, the Respondent is correct for disallowing the administration expenses and capital allowance for this non-business income. The interest expenditure for the term loan and bank overdraft claimed by the Appellant are also not permitted as they were not wholly and exclusively incurred in the production of gross income of the Appellant.

DECISION

The SCIT agreed with the Respondent's submission and unanimously dismissed the Appellant's appeal. The assessment and penalty imposed by the Respondent for YA 2010 and 2011 are confirmed and maintained.