DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)
RAYUAN SIVIL NO: WA-14-6-05/2018

ANTARA

LAVENDER CONFECTIONERY & BAKERY SDN BHD ...**PERAYU**

DAN

KETUA PENGARAH HASIL DALAM NEGERI ...**RESPONDEN**

JUDGMENT

[1] This is an appeal by the appellant by way of case stated against the deciding order of the Special Commissioners of Income Tax ('SCIT') dated 3.5.2017 pursuant to para 34 of Schedule 5 of the Income Tax Act 1967 ('ITA 1967').

[2] The SCIT disallowed the appellant's claim for industrial building allowance ('IBA') and reinvestment allowance ('RA') for the year of assessment 2011. The SCIT also affirmed the respondent's decision to impose penalty under subsection 113(2) of ITA 1967 against the appellant in the sum of RM1,134.00.

The Backgrounds Facts

[3] The agreed facts in the case stated are as follows :

(i) The appellant is a company with a business address at no. 5, Jalan Mutiara 7, Kawasan Perindustrian Plentong, 81750 Masai, Johor.

(ii) The appellant's main activity is in the business manufacturer, distributor and dealer in cakes, confectionary, breads and biscuits.

(iii) The appellant has an outlet at One Utama, Kuala Lumpur which also involved in manufacturing process.

(iv) On 30.8.2012, the appellant filed a notice of appeal (Form Q) against the deemed notice of assessment for the year assessment 2011 due to the appellant's dissatisfaction with the respondent's decision in disallowing the appellant's claim for IBA and RA.

(v) On 2.10.2014, the respondent by letter to the appellant again disallowed the appellant's claim for the IBA and RA.

(vi) The details of the IBA and RA claimed by the appellant for year assessment 2011 are the following :

IBA

No	Item	Capital Expenditure Incurred
(a)	Additional demolition of substructures	RM5,325.00
(b)	Concrete topping to driveway	RM84,994.00
(c)	Interlocking paver	RM48,670.00
(d)	Front entrance culvert, fencing and gate	RM68,127.00
(e)	Metal sheet boundry	RM21,343.00
(f)	Guard house	RM30,014.00

(The above items are collectively referred as the '**IBA Disputed Items'**).

RA

No.	Item	Capital Expenditure Incurred
(a)	Sinmag spiral mixer	RM16,000.00
(b)	Sinmag autobun divider	RM40,000.00
(c)	2 units of electric donuts fryers	RM4,590.00
(d)	2 units of electric donuts fryers	RM3,500.00

(The above items are collectively referred as '**RA Disputed Items'**).

(vii) The respondent's reasons for disallowing the appellant's claim for the IBA among others is that the costs of demolition of structures is an expenditure which does not qualify under the IBA and the other IBA Disputed Items did not form part of the appellant's factory.

(viii) The respondent also disallowed the appellant's claim for RA on the ground that the RA Disputed Items were not used in the factory.

(ix) In the circumstances, by letter dated 18.8.2015, the appellant filed an appeal (Form Q) to the SCIT.

(x) The SCIT in its deciding order dated 3.5.2017 unanimously dismissed the appellant's appeal and the deciding order *inter alia* are the following :

> "***ADALAH DIPUTUSKAN SECARA SEBULAT SUARA*** *bahawa Perayu tidak layak mendapat tuntutan Elaun Bangunan Industri;*
>
> ***ADALAH DIPUTUSKAN JUGA SECARA SEBULAT SUARA*** *bahawa Perayu tidak layak mendapat tuntutan Elaun Pelaburan Semula;*
>
> ***DAN*** *Responden telah mengenakan penalti dengan betul sebagaimana dibenarkan oleh Akta 53;*
>
> ***MAKA DENGAN INI ADALAH DIPUTUSKAN SECARA SEBULAT SUARA*** *bahawa rayuan Perayu ditolak dan Notis Taksiran Tambahan tertarikh 2 November 2014 bagi tahun taksiran 2011 yang berkaitan dengan rayuan ini akan dikekalkan.*"

(xi) Dissatisfied with the SCIT's decision, the appellant filed this present appeal.

The Issues

[4] The main issues in this appeal are as follows :

(i) whether the appellant is entitled to claim the industrial building allowance (IBA) in respect of the capital expenditure of the IBA Disputed Items pursuant to Schedule 3 of the Income Tax Act 1967 ('ITA 1967').

(ii) whether the appellant is entitled to claim reinvestment allowance (RA) in respect of the capital expenditure of the RA Disputed Items pursuant to Schedule 7A of the ITA 1967.

(iii) whether there is any basis for respondent to impose the penalty against the appellant under subsection 113(2) of ITA 1967.

The appellant's submission

[5] In essence, the appellant's submission on the abovementioned issues are the following :

(i) The appellant has fulfilled all the requirement stipulated in section 42 and schedule 3 of ITA 1967 to be entitled for the IBA.

(ii) The demolition of the substructures, which is item (a) of the IBA Disputed Items, was a preparatory measures for the manufacturing works and a necessary step in the construction of the building. Therefore it qualify as a part of qualifying building expenditure under Schedule 3.

(iii) The other IBA Disputed Items which are items (b) to (f) of the IBA Disputed Items are necessary and integral to ensure the functioning of the factory and as such qualified for the IBA.

(iv) As to the claim for reinvestment allowance, the appellant contends that the requirements of Schedule 7A of ITA 1867 has been fulfilled in respect to all the RA Disputed Items claimed by the appellant.

(v) The appellant further submits that the reference made by the respondent to the Industrial Co-ordination Act 1975 (ICA 1975) in relation to the definition of 'factory' is erroneous and the conclusion that the One Utama outlet is not a factory as is not licence under ICA 1975 is misconceived.

(vi) On the issue of penalty under subsection 113(2) of ITA 1967, the appellant contends that the appellant had acted in good faith, has made a full disclosure and the dispute arose is in regard to the interpretation inter alia of Schedule 3 and Schedule 7A of the ITA 1967. As such, the said penalty should not has been imposed by the respondent.

The Respondent's submission

[6] On the contrary, the respondent submits that the appellant has failed to fulfil the requirements of schedule 3 to qualify for the IBA.

[7] The respondent further contends that the costs incurred for the demolition of the original substructures of the industrial building does not qualify for IBA.

[8] As to the costs incurred for other IBA Disputed Items, the respondent submits that they are expenditures incurred outside the factory and are not within part of the appellant's factory. As such they are not qualified for the IBA.

[9] In regards the reinvestment allowance, the respondent submits that the One Utama outlet has never obtained any licence for manufacturing pursuant to the ICA 1975. As such, the manufacturing activity at One Otama outlet is illegal.

[10] It is also the respondent contention that the RA claim are not in relation to the qualifying project under paragraph 1 of Schedule 7A and as such, the claim cannot be allowed.

[11] Further, as to the penalty under subsection 132(2), the respondent contends that the respondent had exercised its discretionary powers and imposed the said penalty after having considered the facts and circumstances of the appellant's case. The respondent submits that there is legal and factual basis to impose the said penalty against the appellant.

Decision Of This Court

Industrial Building Allowance (IBA).

[12] ***Subsection 42(1)*** of the ITA 1967 provides :

> "***42***. *(1) Subject to this Act, the statutory income (if any) of a person from a source for a year of assessment (that year of assessment being in this section referre to as the relevant year) shall consist of –*
>
> *(a) the amount of his adjusted income (if any) from that source for the basis period for the relevant year; and*
>
> *(b) the amount of –*
>
> *(i) any balancing charge or the aggregate amount of the balancing charges;*
>
> *(ii) any agriculture charge or the aggregate amount of the agriculture charges; and*
>
> *(iii) any forest charge or the aggregate amount of the forest charges,*
>
> *falling to be made for the relevant year under Schedule 3 in relation to that source,*
>
> *reduced by the amount of any allowance or the aggregate amount of the allowances falling to be made for the relevant year under that Schedule in relation to that source.*"

[13] Further, Schedule 3 of the ITA 1967 provides several allowable deduction in the form of allowance which includes the IBA.

[14] ***Subparagraph 3(1) of Schedule 3*** states :

> "*3. (i) Subject to paragraph 6, qualifying building expenditure is capital expenditure incurred on the construction or purchase of a building which is used at any time after its construction or purchase, as the case may be, as an industrial building.*"

[15] Industrial building is then defined under paragraph 63 of Schedule 3 which is as follows :

> "*Subject to paragraphs 64 to 66, a **building is an industrial building** within the meaning of this Schedule if it is **used for the purposes of a business and** –*
>
> *(a)* ***it is used as a factory****;*
>
> .
>
> . "

[16] The word ***'factory'*** under subparagraph 63(a) is further defined under subparagraph 64 in the following phrase :

> "*64. In subparagraph 63(a)* ***'factory' includes*** *–*
>
> *(a) a building consisting of a mill, workshop (other than a workshop used for the repair or servicing of goods, if the repair or servicing is carried out in conjunction with or incidentally to the business of selling those goods) or other building for the housing of machinery or plant of any description for the manufacture of any product of the subjection of goods or materials to any process or the generating of power used for the purposes of that manufacture or process;*"

[17] Based on the abovestated statutory provisions, in order for the appellant in the present case to qualify for the IBA, the requirements that need to be fulfilled are as follows :

(i) it is a building used for the purposes of a business.

(ii) it is a building used as a factory.

[18] As alluded to earlier, 'factory' *inter alia* includes a building for the housing of machinery or plant of any description for the manufacture of any product or the subjection of goods or materials to any process.

[19] In the present case, as regards the expenditure incurred by the appellant for the demolition of the substructures, the issue is whether it is a capital expenditure incurred on the building which is then used as an industrial building.

[20] In order to determine this issue, reference to the proved facts in the case stated is pertinent which amongst others are as follows :

(i) The appellant has bought a two storey factory building which was used by previous occuppant to manufactured chairs and need to demolish parts of the building to suit the appellant's business activity.

(ii) Certain parts of the building need to be demolished before the factory for the appellant's business can be constructed.

(iii) The demolition works was also to allow the appellant to construct a driveway for the appellant's lorries to enter the premise and to transport the finished goods.

(iv) The demolition of the substructure was done to get the building ready for the appellant's manufacturing works.

(v) The demolition and renovation works are not for cosmetic purposes.

[21] Here, the proved facts shows that the demolition works done by the appellant is a necessary action for the construction of the building for appellant's business activity.

[22] The SCIT in its decision has failed to elaborate the reason for deciding that the expenses or demolition of the substructures is not allowance capital expenditure under Schedule 3.

[23] Having considered the proved facts and the provisions of the ITA 1967 in particular Schedule 3, I find the expenditure incurred by the appellant for the demolition works qualified as part of the qualifying building expenditure under Schedule 3. Therefore, in this regard, the said capital expenditure is entitled for the IBA.

[24] With regard to the other items of the IBA Disputed Items, the respondent's decision and affirmed by the SCIT that the said items do not form part of the appellant factory on the reason that they are located outside the factory.

[25] To recap, the items are :

(i) concrete topping to driveway;
(ii) interlocking parer;
(iii) front entrance, culvert, fencing and gate;
(iv) metal sheet boundry;
(v) guard house.

[26] Firstly, the definition of factory under paragraph 64 is not exhaustive as the word **'includes'** is used.

[27] In Court of Appeal case, ***Tenaga Nasional Bhd v Tekali Prospecting Sdn Bhd [2002] 2 MLJ 707*** at page 714, it states :

> *"Particular emphasis is to be placed upon the word 'includes' in this definition.* ***On settled principles of statutory interpretation, it is clear that when an Act of Parliament employs the expression 'includes'*** *to define some other word or expression,* ***the intention is to leave the meaning of the expression defined open ended****. By contrast, when the word 'means' is employed to define something, there is a rebuttable presumption of statutory interpretation that Parliament intends to restrict the meaning of the expression defined. The difference to which we have just adverted is plainly apparent when one compares the definition of 'equipment' with that of 'energy' and 'generating station' also appearing in s 2 of the Act. Both the latter expressions are immediately followed by the word 'means'. Mr Kaneselingam frankly concedes that the word 'includes' does leave the definition of the expression 'equipment' fairly open ended."*

[28] Further, the word building under paragraph 64 also includes any structure erected on land as defined under section 2 of the ITA 1967.

[29] In this regard, I agree with the interpretation of the word 'building' by the SCIT in the case of ***Director General of Inland Revenue v C.Company of Malaysia Bhd [1980] MTJ 67*** which said this :

> *"As per definition in Section 2 of the Act the term* ***'building' includes any structure erected on land (not being plant and machinery). In view of this definition we are of the view that the term building in paragraphs 63 and 64 includes a structure erected on land****. Therefore a building or a structure which fulfils the conditions spelled out in paragraph 64 is a 'factory' for the purposes of that paragraph."*

[30] On this issue, the functionality test that the items claimed are necessary and integral to the appellant manufacturing activity is a factor in determining the meaning of the word 'factory'. As explained in the case of ***Ketua Pengarah Hasil Dalam Negeri v Success Electronics & Transformer Manufacturer Sdn Bhd [2012] MSTC 30-039*** where Abang Iskandar J (as he then was) said this :

> "*There was no error made by the learned Special Commissioners in that material regard relating to the meaning to be assigned to the word 'factory'. Suffice for me to add there that as is trite, any ambiguity in a provision that seeks to deprive a citizen of his property ought to be resolved in favour of the citizen, in this case the taxpayer. The ITA has defined factory in Schedule 3, but not in schedule 7A para (1b). The learned Special Commissioners had derived great assistance on the meaning to be assigned to what word from a distillation of a number of decisions in cases in which the courts had been faced with the task of deciding what a factory ought to conclude, rather than failing back on to the rather narrow meaning assigned to that word by an ordinary dictionary.* ***The functionality of the claimed items in the overall context of the production in the manufacturing process in the factory ought to be taken as a valid factor to be considered in giving the appropriate meaning to the word 'factory'.***"

[31] This functionality test was also adopted in the case of ***Ketua Pengarah Hasil Dalam Negeri v OKA Concrete Industries Sdn Bhd [2015] MSTC 30-091***, where it states :

> "*[12] It has been ruled in* ***Success Electronics (supra)*** *that* ***the 'functionality of the claimed items in the overall context of production...ought to be taken as a valid factor...'*** *Based on the evidence of witnesses before it, I find that SCIT was correct to hold that those items claimed by the respondent are necessary and integral to the respondent's manufacturing acitivity, based on functionality test, that every of such items performs an integral function in the context of the respondent's business of manufacturing ready mixed concrete and precast concrete products.*"

(see also Ketua Pengarah Hasil Dalam Negeri v Pirgos (M) Sdn Bhd [2014] 1 MLJ 701).

[32] Reverting to the present appeal, the respondent's witness (RW1), as stated in the case stated admitted that all the IBA Disputed Items are necessary and integral part of the appellant factory. At paragraph (xlvii) page 14 of the case stated states :

> "*(xlvii) RW1 juga bersetuju bahawa setiap Barang Dipertikaikan IBA ('IBA Disputed Items') adalah bahagian yang perlu dan penting dalam kilang Perayu.*"

[33] Apart from this, the entirety test is also applicable in regards this issue. This test is used in the case of ***Bullcrof & Main Collieries Ltd v O'brady (H.M Inspector of Taxes) 17 TC 93***. Where Justice Rowlatt said this :

> "*The critical matter is ...what is the entirety? I think it is very largely a question of degree...*"

[34] In ***Smith v York Race Committee [1993] 1 KB 517***, Justice Finlay explained in the following words :

> "*...all that could be said would be that 'building'* ***must cover adjuncts*** *that is to say,* ***a courtyard or something of that sort necessarily used in connection with the building.***"

[35] This 'entirety test' is also adopted in ***Director General of Inland Revenue v C. Company of Malaysia*** (supra) where this was said :

"...one must use good sense to determine whether the construction, be it road (the instant case) administrative block (the Laboratories case) or factory embankment (Whieldon Sanitary Potteries case) etc. Is that I would call an integrative component of the building i.e. part of its entirety."

[36] In the same case it was concluded as follows :

*"In the instant case we have found that the **internal road system linking the various buildings** and for the reasons mentioned above, **the internal roads therefore form part of the entirety of the industrial buildings** and qualify for capital allowances. **Without the road system the industrial buildings would not be able to function adequately in the business of the respondent**.*

*Finally, I would say that the distinction drawn between 'building' and 'structure' is merely academic...**building includes structure but structure does not necessarily mean building**... A road regarded in isolation would probably be a mere structure in England or Malaysia because the construction of the road would probably constitute an erection. But it would not be a building in either country **if viewed in isolation. However, if it is part of the entirety of the building it qualifies for industrial building capital allowance**. So whether we consider the problem in England or Malaysia the safest course is to ask ourselves the question – **Is it part of the entirety? If it is then it follows that it is an industrial building or rather part of it.**"*

[37] Having considered the functionality and the entirety test and the definition of 'building' which includes any structure erected on the land, I am of the considered view that the other IBA Disputed Items mentioned above are eligible for IBA.

Reinvestment Allowance (RA)

[38] As regards the issue of reinvestment allowance, ***paragraph 1 of Schedule 7A of the ITA 1967*** provides :

"1. Subject to this Schedule, where a company which is resident in Malaysia –

> *(a) has been in operation for not less than thirty-six months; and*
>
> *(b) has incurred in the basis period for a year of assessment capital expenditure on a factory plant or machinery used in Malaysia for the purposes of a qualifying project referred to under subparagraph 8(a).*

There shall be given to the company for that year of assessment a reinvestment allowance of an amount equal to sixty per cent of that expenditure incurred on plant or machinery which is provided wholly pr partly for the use of a director or an individual who is a member of the management, or administrative or clerical staff."

[39] ***Subparagraph 8(a) of Schedule 7A*** defines 'qualifying project' as follows :

*"8. In this Schedule, **'qualifying project'** means –*

> *(a) a project undertaken by a company, in expanding, modernising or automating its existing business in respect of manufacturing of a product or any related product within the same industry or in diversifying its existing business into any related product within the same industry;"*

[40] The provision of paragraph 1 of Schedule 7A is plain and clear and should be given its literal and natural meaning.

(see Affin Credit v Yap Yuen Fui [1984] 1 MLJ 169, PP v Sihabduin Hj. Salleh [1980] 2 MLJ 273, Duport Steels Ltd v Sir [1980]1 All ER 529).

[41] Further in interpreting taxing statutes, in the often quoted case of ***National Land Finance Co-operative Society Ltd v Director***

General if Inland Revenue [1993] 4 CLJ 339, Gunn Chit Tuan CJ (Malaya) (as he then was) at page 343 said this :

> "*We realise that revenue from taxation is essential to enable Government to administer the country and that the Courts should help in the collection of taxes whilst remaining fair to tax payers. Nevertheless, we should remind ourselves of the principle of strict interpretation as stated by Rowlatt J. In :*
>
> > ***'...in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used...'***"

[42] In the present case, it is proved facts that :

(i) the appellant is a company which is resident in Malaysia and has been in operation more than 36 months.

(ii) the appellant has incurred capital expenditure in expanding its existing business for the RA Disputed Items in the basis period for the year assessment 2011.

[43] In the circumstances, the requirement stipulated under paragraph 1 of Schedule 7A has been fulfilled by the appellant which entitled the appellant the RA in respect of the RA Disputed Items.

[44] The sole reason for the respondent and the SCIT to disallowed the appellant's claim on the RA Disputed Items is that these items are used in the One Utama outlet which has not obtain manufacturing licence. The respondent make reference to section 3 of the Industrial Co-ordination Act 1975 which provides :

> "*3. (1)* ***No person shall engage in any manufacturing activity unless he is issued a licence*** *in respect of such manufacturing activity.*
>
> *(2) Any person who fails to comply with subsection (a) is guilty of an offence and is liable on conviction to a fine not exceeding two thousand ringgit or to a term of imprisonment not exceeding six months and to a further fine not exceeding one thousand ringgit for every day during which such default continues.*"

[45] On this issue, the word 'factory' was not defined under Schedule 7A for purpose of the RA and thus, the word should be given its ordinary meaning as defined in the dictionary. The functionality test as alluded to ealier is a factor to be considered in determining the word factory.

(*see Ketua Pengarah Hasil Dalam Negeri v Success Electronics & Transformer Manufacturer Sdn Bhd (supra) which this High Court decision has been affirmed by the Court of Appeal*).

[46] In connection to this, the RA is also not restricted to 'production area' only as Schedule 7A does not say so and even if there is an internal guidelines or ruling by the respondent that it is only restricted to production area, it has no force of law.

[47] In this regard, it is instructive to make reference to the case of ***Ketua Pengarah Hasil Dalam Negeri v OKA Concrete Industries Sdn Bhd*** (supra) where the Judge explained :

> "*[13] In* ***'Success Electronics' (Supra)*** *the Revenue's witness had admitted that the Revenue only granted reinvestiment allowance for 'prodiction area'and such was an internal ruling of the revenue. The revenue's witness also admitted that the condition for 'production area' is not contained under Schedule 7A of the ITA. The Revenue's action in making such, ruling is like re-writing the law. The Palm Oil Research and*

Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd (2005) MSTC 4,098; [2004] 2 CLJ 265, the Federal Court held:

> *'If this court were to accept the argument of counsel for the appellant, then we would not be promoting the purpose or object of the 1979 Act but be defeating it. For, in such event we would, through unauthorised legislative power, be re-writing statute'.*

If Parliament had intended reinvestment allowance to be restricted only to 'production area', then Parliament would have surely specified this clearly in Schedule 7A*. In United Kingdom, the United Kingdom tax authority's attempt to impose an additional condition in determining the taxpayer's eligibility for industrial building allowance was rejected by the House of Lords in Saxane Lilley & Skinner (Holdings) Ltd v Commissioner of Inland Revenus [1967] 44 TC 122, Lord Reid commented that :*

> *'The Crown's main argument was that 'in use for the purposes of a trade' or of a part of a trade means wholly or mainly in use for such purposes. But that involves writing in words which are not there, and I can see nothing in the context to make that necessary. Moreover, it requires no feat of imagination in a draftsman to see that cases may arise where the same building or the same part of it is being used for two purposes, and if it were intended to exclude such cases I would expect that to be made clear...'."*

[48] Reverting to the present appeal, based on the abovementioned authorities, the appellant's factory includes also the One Utama outlet in Kuala Lumpur. The One Utama outlet continues the manufacturing process of breads and confectionaries in the principle factory at Plentong where the final products are produced.

[49] For the reasons above, the decision of the SCIT that One Utama outlet is not a factory as it is not licensed under ICA 1975 is misconceived and an error of law.

[50] In addition, the RA Disputed Items are capital expenditure incurred for plant and machinery that leads to the expansion of the appellant's business which entitled for RA under paragraph 1 of Schedule 7A.

[51] In this regard, I agree with the Justice Lim Chong Fong in ***Ketua Pengarah Hasil Dalam Negeri v Nulogitec Industries Sdn Bhd [2017] MSTC 30-147*** which said this :

> "*I have however carefully reviewed the express provision in para 8(a) of Schedule 7A and find that* ***the operative if not also governing words are 'its existing business'****. Thus, it is plain to be that the reinvestment* ***must be in the existing business and not in the existing factory*** *as so contended by the DGIT: otherwise that would be a strained interpretation of the statute that was not contemplated by Parliament.*"

[52] In the circumstances, I also find that the appellant is entitled to claim the RA in respect of the expenditure of the RA Disputed Items pursuant to Schedule 7A of ITA 1967.

Penalty

[53] It is not disputed that the respondent has discreationary power to impose penalty against taxpayer under ***subsection 113(2)*** which reads :

> "*(2) Where a person –*
>
> *(a) makes an incorrect return by omitting or understating any income of which he is required by this Act to make a return on behalf of himself or another person; or*

(b) gives any incorrect information in relation to any matter affecting his own chargeability to tax or the chargeability to tax of any other person,

Then, if no prosecution under subsection (1) has been instituted in respect of the incorrect return or incorrect information, ***the Director General may require that person to pay a penalty equal to the amount of tax which has been undercharged in consequence of the incorrect return or incorrect information or which would have been undercharged if the return or information had been accepted as correct****; and, if that person pays that penalty (or, where the penalty is abated or remitted under subsection 124(3), so much, if any, of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under subsection (1).*

[54] Having decided that the appellant is entitle for the IBA and RA, consequently, there is no incorrect return or incorrect information furnished by the appellant to the respondent in the present case to attract the penalty provision of subsection 113(2) of the ITA 1967.

[55] The returns or information was also made in good faith with full disclosure and only involved a matter of interpretation of the relevant provisions of ITA 1967. As such, the penalty should not have been imposed against the appellant.

(see Piramid Intan Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2015] MSTC 30-100, M1 Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2015] MSTC 10-050).

Conclusion

[56] Based on the aforesaid reasons, the appellant's appeal is allowed with costs of RM3,000.00.

[57] The appellant is entitled for the IBA in respect of the expenditure of the IBA Disputed Items and the RA in respect of the capital expenditure of the RA Disputed Items.

[58] The penalty imposed against the appellant pursuant to subsection 113(2) of ITA 1967 is set aside.

DATED THIS 12TH NOVEMBER 2018

[NORDIN BIN HASSAN]
JUDGE
HIGH COURT SPECIAL AND APPELLATE POWERS
KUALA LUMPUR HIGH COURT.

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