

Taxable and non taxable essay sample

[Economics](#), [Tax](#)



Penang Realty Sdn. Bhd. v. Ketua Pengarah Hasil Dalam Negeri The fact in this case, Penang Realty Sdn. Bhd. had bought two pieces of land in 1956 namely, Heintz Estate in Penang and Heintz Estate in Perak. The company was incorporated on 5 July 1965 and was carrying out the business of housing development and businesses relating to realties. The evidence shows that a portion of the land in Tanjong Bungah was compulsorily acquired by the Government in August 1980 and the area acquired was 121, 204. 61 square fit. In May 1982, the taxpayer was paid RM 1, 035, 762. 91 as compensation.

The Inland Revenue Board (IRB) assessed the amount to income tax. The taxpayer was unhappy with the assessment and appealed to the Special Commissioners. The counsel for the taxpayer contended it was unfair for the Government to forcibly acquire the taxpayer's land and then back 30% of the compensation as trading profit. The Special Commissioners were of the opinion that the compulsory acquisition by the State Government only involved a “ change of customer” for the taxpayer since the taxpayer had bought the subject land with the view of selling parts of it at a profit. It did not change the colour of transaction which constituted trading in land within meaning of section 4(a) of the ITA. The Special Commissioners the compensation received by the taxpayer as a result of compulsory acquisition of a portion of their land is taxable under section 4 of the Income Tax Act 1967 (ITA). The Special Commissioners dismissed the appeal of taxpayer after hearing the appeal. The taxpayer appealed to the High Court.

The High Court allowed the appeal where it was decides that the compulsory acquisition by the Government of the appellant is land could not constitute a

sale, the proceeds of which were subject to tax as the element of compulsion vitiated the intention to trade, so the taxpayer of the land should not be taxed.

The IRB was dissatisfied with this decision and appealed to the Court of Appeal. In the court of Appeal, the judges felt the compulsory acquisition by the Government in the instant case cannot constitute a sale in the normal course of business. The profits should not be assessed to income tax because the element of compulsion negates the intention to trade. Therefore the appeal by the IRB was dismissed unanimously with costs. In my opinion, The High Court decision correct it is important to establish a motive for transaction, failing which it become difficult to tax the profit.

In this case the decision the judges felt the compulsory acquisition by the Government in the instant case cannot constitute a sale in the normal course of business. The profits should not be assessed to income tax because the element of compulsion negates the intention to trade and it did not change the colour of transaction which constituted trading in land within meaning of section 4(a).

Ketua Pengarah Hasil Dalam Negeri v Multi-Purpose Holdings Bhd

The summary of this case, the taxpayer of Multi-Purpose Company incorporated in 1975 that has its principal business activity as a holding and investment company. It received income as divided income from the holding of share in various companies. It also received income as interest income from the giving of loan to related companies and from the placing of fund on

short-term deposits. In addition, the taxpayer received rental income and plantation income.

The issue in the matter is the chargeability of the taxpayer under the Income Tax Act 1967 to income tax on the various types of income the taxpayer that received for the year 1982 to 1988. Ketua Pengarah Hasil Dalam Negeri was adopted a method of computation of such income which dissatisfy to the taxpayer. The problem arises because the Ketua Pengarah Hasil Dalam Negeri was treat each counter of the share investment, loan given by the taxpayer and deposit placed by the taxpayer as separate sources of the income of the taxpayer's income. The Special Commissioner of Income Tax allowed the taxpayer's appeal and help that Ketua Pengarah Hasil Dalam Negeri assessment was incorrect.

The Special Commissioner of Income Tax reasoning was that income which was chargeable to tax was categories under six group by section 4(a) to (f) of the Income Tax Act 1967 and Ketua Pengarah Hasil Dalam Negeri cannot further subdivide each source by treating each counter source by treating each counter of the share investment as a separate source or apportion the divided between income producing and non-income producing. According to The Special Commissioner of Income Tax, to do so would disintegrate the grouping or categories further than what was authorized by the Act.

I my opinion, the decision The Special Commissioner of Income Tax are satisfied that appellant has successfully discharged the responsibility of providing that respondent's Ketua Pengarah Hasil Dalam Negeri assessment

in respect of issues the divided income be allowed and interest income be allowed are wrong as envisaged in Para 13 of schedule 5 of the Act.

Gloucester Railway Carriage and Wagon Co Ltd v CIR [1925] 12TC720

Gloucester Railway Carriage and Wagon Co Ltd Company were established before the First World War. The company main activity was the operation of a passenger boat service. The company also carried on business as shipbuilders and repairers at a shipyard where it built ship for the passenger boat services. Before the Second World War, the receipts of the passengers carrying business exceeded those of the shipyard business. From time to time ship, which had been employed in the passenger carrying business, was replaced by newer and more suitable craft. The company accountant gave unchallenged evidence that the company had always kept its passengers carrying business (including the ships, which are its fixed capital assets) separates from its shipyard business.

The revenue treated any profit on the sales of the old ship from the passengers carrying business as capital profit. At the outbreak of the Second World War the Admiralty requisitioned the company's vessels. During the war the company carried on the business of shipbuilding and repairing. The passenger carrying business went into abeyance. After the end of the war, with the object of re-commencing its passenger's boat services the company re-acquired requisitioned vessels and purchased others from the Admiralty. The company also repaired and converted vessels for use as passenger carriers. Certain of the vessels acquired, some of which were used by the company for a time in its passenger's boat services, were subsequently sold.

The company argued before the general Commissioners that the profit arising from the sale of these vessels were capital profits. The commissioner decides that the profits were trading profit. In this case the court accepted as a finding of fact by the Commissioners that the company carried on only one business. The business being that of making a profit in one way or another out of wagons, all the wagons owned by the company, however used, remained part of the company's stock in trade, or circulating capital. Harman J in the High Court held that there were evidences on which the Commissioners could come to the conclusion that the sales were made in the way of trade. Harman J described the various transactions that the company had undertaken and decides that the company carried on two strands of business that were balancing to each other.

Harman J did not see the buying and selling of boats as parts of the company's attempts to restart their passengers carrying activities but he realize this as a profitable venture that the company carried on so long as it was as profitable and cease when it was no longer so. In the court of Appeal Jenkins L J examined the facts and come to the conclusion that there was evidence upon which the Commissioners could decide that the ship were not part of the fixed capital of the passenger carrying business. The company in its ship buying, modification and selling activities was carrying on a trade. Jenkins L J thought that this was a separated trade. It did not matter that for a while the company used the vessels in question in its passengers carrying business. He said that position could have been different if the company had maintained a permanent passenger carrying fleet; exchanging vessels as and when necessary to keep the fleet up to date. There was evidence on

which the Commissioners could conclude that these ships never did become the “ fixed capital assets” of a business of carrying passengers, but they were, throughout the relevant period, the subjects of trade, albeit that while in hand they or most of them were used for passenger carrying purposes.

In my opinion I agree with the judge came to the conclusion that, there were here not two separated business.

S (PG) Sdn Bhd v. Ketua Pengarah Jabatan Hasil dalam Negeri.

INTRODUCTION

The taxpayer, a family company, had purchased three pieces of land in a prime area of Penang Island. Nine years later, the taxpayer disposed of the lands and was assessed to income tax on the profit. The taxpayer appealed on the basis that it had not been trading in land. ISSUE

1. Whether the gains arising from the disposal of the subject lands in 1982 by the appellant namely Lot 729, Lot 730 and Lot 57(1) all in the North-east District, Pulau Pinang, to Primo Corporation Sdn Bhd are chargeable for assessment under sec. 4(a) of the Income Tax Act 1967. 2. Whether the transaction in which the appellant was involved in is an adventure or concern in the nature of trade or not depends in the final analysis entirely on the facts and the circumstances surrounding the transaction. The acid test to be applied therefore is to examine the nature and purpose of the particular transaction and determine whether from the acts and conduct of the company from the date the property was acquired to the date of disposal, an inference can be drawn to suggest that the transaction has given rise to a

trading activity being carried out or that it is merely a realization of investment. ARGUMENT

The appellant contended that the gains arising from the transfer of the subject lands by the appellant to Primo Corporation Sdn Bhd in 1982 are not chargeable to income tax under sec. 4(a) of the Income Tax Act 1967. The respondent contended that the gains arising from the said transfer by the appellant to Primo Corporation Sdn Bhd in 1982 are chargeable to income tax under sec. 4(a) of the Income Tax Act 1967. COURT HELD

Held: appeal dismissed.

The gains arising from the disposal of Lot 729, Lot 730 and Lot 57(1) all in North-East District, Pulau Pinang by the Appellant in 1982 was an adventure in the nature of trade and that the Appellant is chargeable for assessment under sec. 4(a) of the Income Tax Act 1967. The Notice of Assessment dated 27 October 1984 for the Year of Assessment 1983 is confirmed. TYC v Comptroller of Income Tax

Fact of the case

The appellant was the director of the estate of the late Mr WKS at the time of his death on 16 February 2005. During his employment, the late Mr WKS was granted share options under the various companies' respective share option plans. After the death of Mr WKS, the various committees in these companies gave approval to the estate to exercise certain options which were not yet exercisable by Mr WKS at the time of his death which would have been exercisable by him only from 18 May 2005 and 23 November 2005 respectively had he remained alive. The options were then exercised by the

appellant. The respondent regarded the gains to be subject to tax and as shares from the exercise of the share options and any gains from the sale of the shares were transferred to the appellant. The gains would be assessed in the name of the appellant. The case were whether the share options could be obtained by the estate by reason of any office or employment whether the gains fell within the scope of sec 10(6) of the Income Tax Act.

Conclusion

In this case law, gains or profits arising from the exercise of the share options by the Appellant as executor constituted an income receipt to the Estate of the deceased, which would be taxed under Income Tax Act. *PR Pte Ltd v Comptroller of Income Tax*.

Fact of the case

The taxpayer is a proprietor of a club known as PTC Club which activities consisted of the maintenance and operation of a proprietary club to provide social, recreational and sporting facilities to its members. On 27 December 1985, the members of the Club agreed to increase the number of members of the Club. New members were required to pay a fee, of which 85% constituted the initiation deposit and 15% constituted the entrance fee. The Constitution provided that the initiation deposit is refundable when an individual or corporate life member at any time within six months of having been a member of the Club for 30 years gave written notice to the Club of his intention to terminate his membership. Upon such notice, and upon the member discharging all monies, debts and other liabilities owing to

the Club, the Club will refund the initiation deposit to the member concerned.

On transfer of the membership, the transferor would lose the right of refund of the initiation deposit, but the new member, the transferee, would have same rights as other members, including the right to the refund of the initiation deposit paid by the transferor, upon giving notice to the Club within six months of being a member for 30 years. Further, the Club is entitled to forfeit sums representing the initiation deposits of members of the Club under certain circumstances. The initiation deposits were classified in the Club's accounts as deferred liabilities, while entrance fees were classified as part of its income. The case is about whether the payments made by members of the Club to the Appellant and that initiation deposits constitute income accrued to the taxpayer which would be taxable.

Conclusion

In this case law, the initiation deposit constituted part of the consideration provided by the potential member for membership in the Club and it accrued to the taxpayer as income. The computation of the transfer fee for transfer of membership suggested that the initiation deposit was consideration for the membership. The initiation deposits are taxed as income when received by the taxpayer

Ho Soon Guan v Ketua Pengarah Hasil Dalam Negeri

In Ho Soon Guan v KPHDN (Civil Appeal No. R1-14-3-99), the taxpayer worked for his employer, a bank which offered a separation scheme, (" the

Scheme”) that provided for early retirement with payment of benefits. Officers were invited to apply to the Scheme.

The taxpayer applied to join the Scheme. When he applied to join the Scheme he had taken a special post with the bank which was lower than that which he had occupied before, because he was afflicted with polymyositis which necessitated him having to wear a neck collar. His application was approved and he left the service of the bank about one year before he was actually due to retire. On retirement under the Scheme, Tax Cases 42 he was paid RM390, 437 as “ compensation for loss of employment”. The Inland Revenue Board (IRB) imposed a tax of RM113, 021. 60 on this amount.

The taxpayer argued that he was exempt from tax because of ill health under paragraph 15(1)(a) of Schedule 6 to the Act. The IRB refused to allow an exemption but instead awarded a reduction of RM4, 000 per annum pursuant to paragraph 15(1)(b) of Schedule 6 to the Act. The SCIT ruled that the taxpayer’s loss of employment was a choice made by the taxpayer when he participated under the Scheme and not because of health reasons. However, the SCIT ruled that the compensation qualified for the exemption of RM4, 000 for each completed year of service under paragraph 15(1)(b) of Schedule 6 to the Act. The taxpayer appealed to the High Court which confirmed the finding of the SCIT which was not wrong in law.

ALF Properties Sdn Bhd v Ketua Pengarah Jabatan Hasil Dalam Negeri In facts of this case, the company has also through its wholly-owned subsidiary, Hoklian Development Sdn. Bhd., entered into a joint-venture with Koperasi Jaya Diri Malaysia Bhd (KOJADI)., on a 50: 50 basis, to acquire the entire

issued capital of ALF Properties Sdn. Bhd. for \$41.25 million. The Agreement for the said acquisition has been signed with the shareholders of ALF Properties Sdn. Bhd. recently. ALF Sdn. Bhd. owns a piece of land exceeding 190,000 square fit, at the junction of Jalan Ampang and Jalan Yap Kwan Seng, Kuala Lumpur. Plans are being made to develop the said land into an office complex for rental. The Board foresees the prevailing good demand for office space in Kuala Lumpur will enable the Company to enjoy very good rental income. The new management must refer to the appellants' management that came into being after Hoklian Development and KOJADI bought the appellants company.

The development order was a planning permission and was related to the subject land. The land mentioned in the statement by the Chairman of Hoklian Holdings was the entire land, which is the seven lots, including the subject land. What the appellants relied on as indicating their intention to hold the subject land as an investment was the statement that plans were being made to develop the entire land into an office complex for rental. It was the intention of renting the office complex, as opposed to selling it, that was important to the appellants' case. That would be an indication of an intention to hold the land as an investment. That plans were being made to develop the land into an office complex could not be seriously disputed because it was a fact that planning permission had been granted twice for the purpose, once before and once after the making of the statement. What could be disputed was the statement that it was the appellants' intention to keep the office complex for rental.

The case stated the Special Commissioners listed five reasons for finding that the Chairman's statement "loses its value and efficacy". As reason, the Special Commissioners said: "The three valuation reports in the agreed bundle of documents indicate contrary to what is contained in the Chairman's Statement, that not all the land was approved for commercial use". It seems to be directed against the Chairman's statement as to the appellants' intention to develop "the said land", which referred to the entire land, into an office complex. It seems to suggest that the statement is questionable because spoke of the entire land being developed into an office complex whereas planning permission for the purpose had been given only for the subject land. Viewed firmly in manner the Chairman's Statement was of course not correct, but when applied to the subject land, it was correct because it is a fact that before the making of the statement the appellants had applied for and obtained planning permission to build an office complex on the subject land.

The Special Commissioners reasons may be reduces to be one reasons is that Chairman's Statement was not the appellants' statement but was only one emanating from a party which, while anticipating the acquisition of 50% interest in the appellant company, had not yet acquired it, so that the intention mentioned by the Chairman cannot be accepted as proof of the appellant company's intention. The Special Commissioners said that they were unable to consider the matters in the passage quoted because there were no evidences to prove those matters. The Appellant's Notes of submission in the High Court drew from that statement the corollary that

facts that the said Land was held for as long as ten years may tend to indicate that the purpose of acquisition was for investment.

M Development Sdn Bhd v. Ketua Pengarah Hasil dalam Negeri.

INTRODUCTION

The taxpayers were engaged in property and housing development. In 1975 the taxpayers acquired a piece of land to develop shop lots. In 1978 the project was completed. The taxpayers retained a corner unit (“ No. 70”) which it occupied as its office until January 1982 when No. 70 was sold. The taxpayers filed a notice of disposal of fixed assets. However, the tax authorities raised income tax assessments, rejecting the taxpayers’ submission that No. 70 was withdrawn for its own use within the meaning of sec. 24(2) of the Income Tax Act. The taxpayer appealed. ISSUE

1. Whether disposal of the land is stock-in-trade or fixed assets 2. Whether subject to income tax

ARGUMENT

The appellant argued that the cost of the property was transferred from the current asset in the annual accounts of the appellant for year ending 31 July 1979 to the “ freehold land & building account” under fixed assets. The property was withdrawn for their own use within the meaning of sec. 24(2) of the Income Tax Act 1967. COURT HELD

Held: appeal dismissed.

The retention of the property in this case does not amount to it being withdrawn for the own use of the appellants within meaning of the section and it is our view that it should be treated as a disposal of a stock-in-trade

when it was sold in 1982. Therefore, they are liable to pay income tax under sec. 4(a) of the Income Tax Act 1967 for the sale of the property at the time of its disposal. Accordingly, we dismissed the appeal and confirmed the assessment made by the respondent

KLE Sdn Bhd v. Ketua Pengarah Jabatan Hasil dalam Negeri.

INTRODUCTION

The taxpayer was a company whose objects included the power to acquire land and hold it as an investment and the power to carry on the business of a property-dealing company. The taxpayer had purchased land which was left idle for five years and then sold at a profit. The taxpayer's management had changed in the year that it acquired the land but its objects remained the same. The disposal of the land was the taxpayer's only transaction in land. The land was not improved or developed except for minor earthworks to prevent erosion. At the time the land was sold, the taxpayer was not in need of funds. The taxpayer was assessed to income tax on the profit from the disposal of the land. The taxpayer appealed to the Special Commissioners. ISSUE

1. Whether the profit from the disposal of the land was a non-assessable investment profit, or an assessable business or trading profit. 2. Whether the disposal of the land was an act in pursuance of the intention to invest or the intention to carry out a trading activity. ARGUMENT

The taxpayer contended that the profit was not assessable to income tax being proceeds of its capital asset. The land was not bought with the intention to trade as it was always treated as a fixed asset and was

unsuitable for development into a housing estate due to its location. The Revenue contended that the profit was business profit and was assessable to income tax. It contended that the taxpayer acquired the land with the intention of developing it into a housing estate and that such intention had not changed despite the new management taking over. The fact that the land was not used to generate income during the taxpayer's period of ownership nor utilized for personal use or personal enjoyment suggested that the taxpayer was waiting for the right moment to dispose of it for profits; such transaction was very much in the nature of a trade. COURT HELD

Held: appeal dismissed

The profit from the disposal of part of a piece of land in Town of Tampoi, Mukim of Tebrau, Johor was from an adventure in the nature of trade, and therefore, should be assessable to income tax under sec. 4(a) of the Act

Binastra Holdings v. Director General of Inland Revenue

Facts of the case

Binastra Holdings Sdn Bhd is a holding and investment company. It acquired a total of 75, 000 shares (atRM1 per share) in Sukma Persona Sdn Bhd (SPSB) which was in the business of developing property. SPSB was then the registered owner of land which was alienated to it by the Selangor State Government for development and sale as housing units. This land was subsequent converted for housing development. On 6th April 1998; Binastra Holdings sold its 75, 000 shares in SPSB forRM600, 000. The IRB assessed the taxpayer on this under paragraph 34A, Schedule 2 of the Real Property

Gains Tax Act 1976 (“ RPGT Act”). Binastra Holdings Sdn Bhd’s appeal to the Special Commissioners of Income Tax (SCIT) was dismissed.

Decision

The issue before the High Court was therefore, whether the gains made by the taxpayer from the disposal of the shares within the ambit of the RPGT Act. Where the taxpayer bought shares in SPSB on 25th June 1996, it had already acquired the property to be developed on 7th June, 1995. Thus the gains made under the disposal of the shares placed it outside the ambit of paragraph 34A, Schedule 2 of the RPGT Act. The subject land was subdivided into separate individual titles for sale with buildings thereon as stock-in-trade, due to SPSB’s activities in working on and maturing the land.

The asset of SPSB in this instance was not real property comprising land, but stock-in-trade. As such, RPGT cannot be imposed since there was no chargeable asset under the RPGT Act. Paragraph 34 also purports to equate the shares of a company with the character of its assets. Since the character of the assets here was not real property, SPSB could not be a real property company and so, the RPGT Act did not apply. For a “ gain” to be taxable under the RPGT Act, a company must be a real property company as determined by paragraph 34A, Schedule 2 of the RPGT Act. However, it must first be determined whether the gain of the stock-in-trade was liable to income tax. If it did, and so taxable under the Income Tax Act 1967 (“ the Act”), it was not to be taxed as a “ gain” under the RPGT Act.

Opinion

The gain from the selling of shares cannot be taxed as it does not fulfill the Real Property Gain Tax Act condition. It does not fulfill the requirement under paragraph 34A, Schedule 2 of the RPGT Act. The gain must be a real property to be taxed under Real Property Gain Tax Act.

CIT v. B. C. Srinivasa Setty

The case is about whether the transfer of the goodwill of a newly commenced business can give rise to capital gain taxable under section 45 of Income Tax Act 1961. B. C. Srinivasa Setty is a registered firm that manufactured and sold agarbattis in India. Clause (13) of the instrument of partnership executed on the 28th July 1954 showed that the goodwill of the firm had not been valued, and the valuation would be made on dissolution of the partnership. The period of the partnership was extended by an instrument dated 31st March 1964, and it contained a similar clause which is Clause (13). Subsequently, the firm was dissolved by a deed dated 31st December 1965. At the time of dissolution, the goodwill of the firm was valued at Rs. 1, 50, 000.

A new partnership by the same name was constituted under an instrument dated 2nd December 1965 and it took over all the assets, including the goodwill and liabilities of the dissolved firm. The ITO made an assessment on the dissolved firm for the assessment year 1966 and 1967 but did not include any amount on account of the gain arising on transfer of the goodwill. The Commissioner, being of the view that the assessment order was prejudicial to the revenue, decided to invoke his revision jurisdiction,

setting aside the assessment order directed the ITO to make a fresh assessment after taking into account the capital gain arising on the sale of the goodwill.

Decision

In appeal before the Income-tax Appellate Tribunal, Srinivasa Setty maintained that the sale did not attract tax on capital gains under section 45 of the Income Tax Act 1961. Accepting the contention, the Tribunal allowed the appeal. At the instance of the Commissioner, it referred a question of law to the High Court of Karnataka which, as reframed by the High Court, reads as follows: “ Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that no capital gains can arise under s. 45 of the Income-tax Act, 1961, on the transfer by the firm of its goodwill to the newly constituted firm ?

” By its judgment dated 4th July 1974, the High Court answered the question in the affirmative, holding that the value of the consideration received by Srinivasa Setty for the transfer of its goodwill was not liable to capital gains tax under Section 41 of the Act. Civil Appeal No. 1146 of 1975 is directed against that judgment. A variety of elements goes into its making, and its composition varies in different trades and in different businesses in the same trade, and while one element may preponderate in one business, another may dominate in another business. And yet, because of its intangible nature, it remains insubstantial in form and nebulous in character.

Opinion

The goodwill consideration received is not taxable. The income is from the

transfer of goodwill is not taxable as it did not attract tax on capital gains under section 45 of the Income Tax Act 1961. Moreover, the transfer of goodwill is not liable to capital gains tax under section 41.

Suep Bhd v. Ketua Pengarah Hasil Dalam Negeri (KPHDN)

Facts

The taxpayer, a limited company incorporated on 31 December 1964 acquired certain pieces of land (hereinafter referred to as “ Lot No. 1131”) on January 1965. Lot No. 1131 was later sub-divided into various commercial and residential properties and recognized as “ Current Assets” in the company’s records and accounts. However, in 1980 when the company submitted its proposal to be listed on the Kuala Lumpur Stock Exchange (KLSE), some of the aforementioned commercial properties were revalued and described as “ Fixed Assets” held for long-term investment.

In mid-1980, a Director’s Resolution was passed to reclassify the subject lots as “ Fixed Assets” retrospectively from 1978. On 7 November, 1980, the taxpayer was converted to a public company. In 1980, the taxpayer started to dispose of its” Fixed Assets”. The profits on the sale of the subject lots and the interest received on the late payment of the proceeds were assessed to income tax. The issues are whether the proceeds on the sale of the subject lots were chargeable under the Real Property Gains Tax Act, 1976 (RPGTA) or Section 4(a) of the ITA and whether the related interest income received from the late payment of the proceeds is capital receipts or business income and therefore chargeable to tax? Arguments

Suep Bhd argued that the subject lots were held as capital assets (as evident from corporate records, accounts, etc.). Therefore, the sales proceeds are not subject to income tax but real property gains tax. As such, the interest income received on the late payment of the sales proceeds is a capital receipt and not chargeable to tax. The IRB argued that the subject lots are stock-in-trade and therefore the proceeds of their disposal is subject to income tax. Consequently, the interest income received on late payment of the sales proceeds is also subject to income tax. Decision

The court decided that Suep Bhd's appeal was allowed. However, the SC decided that the provisions of Section 24(2) of the ITA would apply at the point where the subject lots were transferred from " Current Assets" to Fixed Assets". Opinion

The subject's lot is capital assets as proved by Suep Bhd. As the capital asset is not subject to tax, the lot is not taxable under Income Tax Act 1967. However, Suep Bhd needs to change it from current asset to fixed asset.

Mamor sdn bhd v Director General of Inland Revenue

Facts of the case

The facts of the case are as follows; Mamor Sdn. Company Ltd was incorporated in 1968. The company's activities have been doing business farmers and growers and dealers in all types and description of the product and carry on business as timber merchants, sawmill proprietors. In 1968 Johor State Government has been considering a plan to separate the state land to private sector development. In August, 1968 was published in the press that the Government would alienate 42,000 acres of virgin land in the

district and the River Pangali Centre on 99-year lease for the plan. Successful approval of the company by the State Government by notice dated 30 November 1969 which will be 7. 000 acres in the District Nyior in Kluang, for the development of oil palm plantations are subject to the payment of various charges and specific terms and conditions as per notice.

As a condition that the company will be given the right to remove timber from the land, the company is required to enter into an agreement with the State Government with the extraction of timber from the land and hand over 1, 500 acres from 7000 acres when fully planted with oil palm for State Development Johor Corp. Johor State Economic Development Corporation of small holders. in alienate 1, 500 acres in June 1969, the taxpayer enters into an agreement with the State Government under that. It was licensed in April 1970 and began logging operations on July 20, 1970, subject to royalty payments, to sell timber from the land because it has been cleared, about 1, 000 acres a year. Business is claiming the company's plantation business operators. The company was subsequently appointed a contractor for harvesting and selling timber from concessions. Revenue from the sale of timber has been purchased to charge in the year 1971 to 1973 on the grounds that they are gains or profits from businesses that fall under section 4 (a) of the ITA. The arguments

This issue is whether the proceeds from the sale of timber is taxed as a separate business or adventure in the nature of trade, or whether it was received in courses that develop the land into an oil palm plantation, where it will menjadimodal assets that the company has pay a premium to the

State Government. Commissioners went out to find that the appellant has carried out different activities. They concluded that the activities of extracting and selling timber and develop land in an oil palm plantation, like the others. Appeal

Taxpayers appealed to the High Court to review the decision of the Special Commissioners. High Court to help the extraction and sale of timber are the realization of capital assets, which have been carried out in the clearing of the land to an oil palm plantation. Accordingly, the amount of money received as capital proceeds, is not taxed. It is a single activity such as oil palm plantations. However, the Federal Court to cancel the decision and the company appealed to the Privy Council.

In reversing the decision of the Federal Court, the Privy Council allowed the appeal on the grounds that the Commissioners do not involve the main points to draw the conclusion that the receipt is income. The agreement will be reviewed as a whole. Feelings and extraction of timber is a necessary and obligatory step can not be separated from the process of developing the land as an oil palm plantation. Wood is part of the capital assets acquired by the payment of capital and the amount of money received from timber sales is to reduce capital expenditure in developing assets. According to the company was not doing business timber operator is responsible for the receipt of tax imposed under ' other income'. Opinion

I agree with the Special Commissioner of the facts found by the Special Commissioners and draw reasonable inferences from the extraction and sale of timber and oil palm land development projects is an activity for tax

purposes. The amount of money received by the appellants from the extraction and sale of timber from said land for the basis period of the amount of money received in the course of development of the land into a palm and therefore not subject to income tax, development tax and timber profits tax.

Suasana Indah Sdn. Bhd, (SISB) V Ketua Pengarah Hasil Dalam Negeri [(2006) 1 MLJ 539]

Facts of the case

In this case, the appellant atmosphere Indah Sdn (SISB), while the respondent is the Director General of the State performance results. The issue of the appellant has provided change SISB two piece of land in Gombak, extend the lease for 99 years and the subdivision of this land through the joint effort (JV) agreement. Appellant was paid a sum of compensation of RM6. 4 million due to several disagreements between friends, and because of this JV agreement has been terminated. The main issue of this case is whether the receipt is capital or income receipt, and if the case is it taxable or not taxable. The facts of this case is a service provided by the appellant amounted to RM4. 8 million and it is reflected as capital contributions to JV. JV, while others said the value of RM5. 3 million. This led to misunderstanding between partners, and eventually led to the termination of the agreement. Hence, the total rm6. 4million assumed by the appellant as a capital receipt as it is to lose the rights under the JV or alternatively as a withdrawal of capital from the partnership. The arguments

Respondents said that the payment of RM6. 4 million was compensation for loss or for services rendered on the termination of the agreement of income. Therefore, assessable under Section 22 (2) (b) of the Income Tax Act 1967. appellant is not satisfied with the high court's decision and an appeal to the Court of Appeal. Appeal

In the court of appeal, given the issues is “ whether ‘ JV related to the overall structure of profit-making apparatus appellant. If this case the acceptance is considered as a capital receipt and is not taxable. But if he proves that he is connected to the apparatus the appellant to make profit from it is considered as acceptance of the chargeable income and tax. Opinion

Since there is no any evidence which represents that the JV related to the whole profit making structure of the appellant. Therefore, the contract also has nothing to do with the structure of the entire profit made. So the appellant's appeal rejected by court of appeals. In my opinion, I totally agree with the decision of the High Court because the amount of money received by the (SISB) is received and the income should be taxed.

AIACL v. Ketua Pengarah Hasil Dalam Negeri

Since there is no any evidence which represents that the JV related to the whole profit making structure of the appellant. Therefore, the contract also has nothing to do with the structure of the entire profit made. So the appellant's appeal rejected by court of appeals. In my opinion, I totally agree with the decision of the High Court because the amount of money received by the (SISB) is received and the income should be taxed. Fact of the case

The taxpayer was a non-resident company carrying on onshore insurance in life business and general business. In addition to life insurance, the taxpayer sold under additional agreements to the life policies, riders, which are additional insurance benefits to life policies offered to policyholders. The Director-General of Inland Revenue considered the premiums paid for Riders under supplementary agreements as part of general business. They further contended that the Riders should be treated in accordance with the Income Tax Act 1967. The taxpayer also incurred expenses in respect of services provided by American International Data Centre which was part of the taxpayer's Head Office in Hong Kong. The taxpayer then sought deduction for these expenses under the Act of income. This was disallowed by the Director-General of Inland Revenue who argued that the payments to A. I. D. C. fell under sec. 4A of the Act and were therefore subject to withholding tax under section of the Act and the prohibition under sec. 39(1)(j) of the same. The case was whether Riders were to be treated as part of the taxpayer's life business or as part of the taxpayer's general business for the purposes of the Act.

Conclusion

In this case law, the premiums in respect of the life business are not taxed whereas the premiums in respect of Malaysian general business are taxed by virtue of Section 60(6) of the Act. The premiums paid for Riders under additional agreements attached to basic life insurance policies as part of general business and not as part of payments made for life insurance business.

FLSO A/S v. Director General of Inland Revenue

Fact of the case

The case concern about the taxability of royalties paid to the taxpayer that is Danish company by its joint venture shareholder. It is a Malaysian company and for the use of the taxpayer's technical know-how. A dispute arose between the taxpayer and the Director General as to whether the royalties were exempt from payment of withholding tax and as to whether approval for the exemption from withholding tax from another Ministry was required. The taxpayer's application to the Ministry of Finance for exemption was rejected. Meanwhile, the joint venture shareholder had deducted a sum from the royalties payable to the taxpayer and forwarded it to the Director General being payment of withholding tax. The taxpayer appealed against the Director General's decision to impose withholding tax on the royalties.

Conclusion

Section 132 provides for relief from double taxation, the income which is chargeable to tax in both the contracting countries, In this case, Malaysia and Denmark are exempted from taxability.

Penang Realty Sdn. Bhd. v Ketua Pengarah Hasil Dalam Negeri (2006). Facts
The plaintiff company was incorporated on July 5, 1956 and was carrying out the business of housing development and business relating to realties. The taxpayer bought a large plot of land in Penang in 1956 and built houses to be rented out to the Royal Australian Air Force (RAAF). The taxpayer was assessed on the profits made from the subsequent sale of 88 houses. The taxpayer disputed the assessments claiming the houses were built as an

investment and as such the profits should be considered as a capital appreciation. The taxpayer appealed to the Special Commissioners of Income Tax. The Special Commissioners decided that the profits from the sale of houses were from business activities. Taxpayer was dissatisfied with the decision and appealed the case to High Court. High Court dismissed the case and it was brought to the Court Of Appeal. Issue / Arguments

The issue of the appeal was whether the disposal of the 88 units of houses was a realization of investment in the subject land or a disposal in the course of business. It could not be disputed after looking at the Memorandum of Association that the taxpayer was a company carrying on business of housing development and other business relating to realties. It was the contention of the taxpayer that the houses were built for rental. Thus the 88 units of houses cannot fall within the definition of stock in trade. So the sale of the houses should not be subject to income tax. Application of Law

This case falls under sec4(a) of Income Tax Act 1967.

Decision

The Special Commissioners as well as the Judge in the Court of Appeal used the case of *Simmons v Inland Revenue Commissioners (1980)* to assist in resolving the issue whether the sale of the appellants 88 units of houses is the realization of an investment and therefore subjected to income tax

Kanowit Timber Sdn. Bhd. v Ketua Pengarah Hasil Dalam Negeri (2008) Facts

The taxpayer in this case was a logging company in the business of extracting and selling timber. The taxpayer appointed a subcontractor to fell

and extract timber, and in the course of doing so, the taxpayer sold its logging equipment to the subcontractor. In addition, the subcontractor also paid the tax payer lump sum amount of RM 2, 120 000 for the use of logging roads and logging camp facilities for a 10 years period. This represented, in part the amounts incurred by the taxpayer to repair and maintain the logging roads and camp for which a deduction had been claimed in the taxpayer's tax returns for the relevant periods. The taxpayer reported the RM 2, 120 000 as sundry income in the audited accounts but did not bring this to tax on the basis that the receipt was capital in nature. IRB contended that the payment represented rental or toll usage charges for the logging roads and camp facilities. IRB also argued that the payment was a recoupment of the cost incurred and previously deducted under section 33 of Income Tax Act 1967 and was taxable as income under section 22. Issue / Arguments

The issue arise from this case is whether the sum of RM 2, 120 000 received for the use of logging roads and camp facilities by logging contractor under a Supplementary Agreement from Alpha Prosper Sdn. Bhd. is a capital or revenue receipt and whether the receipt within section 22(2)(a)(i) of the Income Tax Act 1967. Application of Law

This case falls under section 22(2)(a)(i) of Income Tax Act 1967. According to this sec, the gross income of a person from a source of his for the basis period for a year of assessment shall include any sums receivable or deemed to have been received Decision

The High Court held that the sum of RM 2, 120 000 is a revenue receipt and is taxable under section 22(2)(a)(i) of the Act. The date of the decision was 30 July 2008 and it is unreported at the time of printing.

Ketua Pengarah Hasil Dalam Negeri V Chellam Investment Sdn. Bhd. Facts

The taxpayer was involved in palm cultivation, property letting and investment. In 1981, the taxpayer sold its estate to developer and developed the land become housing estate that expected to be completed by 1984. From the sale of the estate, a number of taxpayer's employees were displaced. The taxpayer than come to an agreement and reserving 50 houses for these displaced workers. However, out of the 50 reserved houses, only 30 houses taken up by the workers and leave taxpayer to fulfill its obligation to purchase remaining 20 units. The taxpayer then sold 19 out of the 20 houses and reserving one unit for his own occupation.

Arguments

The Inland Revenue Board had issued a requisition to the taxpayer for the payment of RPGT due when the taxpayer submitted a real property gain tax return. The Inland Revenue Board then retracted its initial position and issued a notice of assessment to taxpayer for the relevant year of assessment. The taxpayer was asked to assess the gains on disposal of property income tax under Section 4(a) of ITA 1967. The taxpayer argues on the IRB notice of assessment and claimed that the transaction of disposal of the house was a capital realization which should be subject to the Real Property Gains Tax Act 1976.

Decisions

The Special Commissioners' finds the fact that the intention of the taxpayer at the time when the houses were purchased is to provide housing for its displaced workers and was not to be disturbed. The purchase and subsequent disposal of the house was not done in the course of the taxpayer's business. The subsequent change in circumstances did not alter the taxpayer's intention for the purchased unit and it was not an adventure in the nature of trade which undertake for profit-making purposes. The Special Commissioners then decide that the gain on disposal of the property was subject to RPGT and not income tax under Section 4(a) of the ITA 1967.