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HC Allows Appeal On Industrial Building Allowance And Reinvestment Allowance

L C & B Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

On Monday (12 November), the High Court reversed a decision of the Special Commissioners of Income Tax (**SCIT**) which had disallowed the taxpayer's claim for industrial building allowance (**IBA**) and reinvestment allowance (**RA**).

In 2011, the taxpayer had claimed IBA for several items, including concrete topping to driveways, metal fences and a guardhouse. Meanwhile, the taxpayer claimed RA for the purchase of several mixers and fryers for one of its outlets in Selangor. The taxpayer's claim for IBA was disallowed on the grounds that the items claimed were situated outside the factory building, albeit still within the vicinity of the factory compound. However, the taxpayer's claim for RA was rejected as the outlet in Selangor was not a factory and did not have a manufacturing licence pursuant to the Industrial Co-ordination Act 1975 (**ICA**).

The High Court allowed the taxpayer's appeal. Our Tax, SST & Customs partner S Saravana Kumar, assisted by Steward Lee, successfully represented the taxpayer.

Industrial building allowance

The High Court agreed with our submission that the SCIT had misdirected themselves in law by disregarding the decisions in the landmark cases of *Director General of Inland Revenue v C. Company of Malaysia Bhd* [1980] 10 MTJ 67 and *Ryoshindoh Manufacturing Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (2014) MSTC 30-072**,** which state that a factory building for IBA purposes is not merely restricted to the physical building but may include adjuncts or structures used in relation to the building if it can be shown that they are integral and necessary to ensure the adequate functioning of the factory.

The High Court rejected the Inland Revenue Board (IRB)'s contention that IBA is only allowed for the construction of new buildings and that these items were not necessary for the proper functioning of the

taxpayer's business. It was accepted that the IRB has no authority to dictate the manner in which taxpayers are to conduct their business.

Reinvestment allowance

In deciding that the ICA has no bearing in the determination of a taxpayer's eligibility for RA, the High Court agreed that the IRB is not allowed to read into the Income Tax Act 1967 (**ITA**) an additional condition for the allowance of RA. If Parliament had intended for such licence under the ICA to be a prerequisite, it would have been stipulated clearly in Schedule 7A of the ITA.

Further, it was decided that plants and machineries are not required to be placed *in a factory* for the purposes of claiming RA. This is so long as the plants and machineries are used in Malaysia for the expansion, modernisation, automation or diversification of the taxpayer's business. In such circumstances, as in the present matter, the RA claim should be allowed as an incentive.

If you have any queries pertaining to IBA, RA or other tax incentives, please contact S Saravana Kumar at tax@lh-ag.com

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