DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN
KUALA LUMPUR, MALAYSIA
(BAHAGIAN KUASA-KUASA KHAS)
RAYUAN SIVIL NO.: WA-14-26-10/2022

Antara

Panasonic AVC Networks Johor (M) Sdn Bhd ... Perayu

Dan

Ketua Pengarah Hasil Dalam Negeri ... Responden

[Kes Dinyatakan Oleh Pesuruhjaya Cukai Pendapatan
Bagi Pendapat Mahkamah Tinggi Menurut Perenggan
34 Jadual 5 Akta Cukai Pendapatan 1967

Dalam Perkara
Pesuruhjaya Khas Cukai Pendapatan
No. Rayuan: PKCP(R)18/2012

Antara

Panasonic AVC Networks Johor (M) Sdn Bhd ... Perayu

Dan

Ketua Pengarah Hasil Dalam Negeri ... Responden]

JUDGMENT

INTRODUCTION

[1] This is an appeal by Panasonic AVC Networks Johor (M) Sdn Bhd ("the taxpayer") against the deciding order of the Special Commissioners of Income Tax ("SCIT") dated 9 February 2018 ("the deciding order"). The SCIT had dismissed the appeal against the additional assessment for the Year of Assessment ("YA") 2003 raised by the Director General of Inland Revenue ("DGIR") against the taxpayer.

[2] The deciding order of the SCIT dismissing the appeal was in the following terms:

> *"Perayu tidak layak untuk menuntut elaun pelaburan semula di bawah Jadual 7A Akta Cukai Pendapatan 1967 bagi perbelanjaan modal yang dibelanjakan untuk peralatan audio dan video dalam tahun taksiran 2003*

semasa Perayu menikmati elaun cukai pelaburan ke atas electrical, musical instrument di bawah Akta Penggalakan Pelaburan 1986 dalan tahun taksiran yang sama.

Notis Taksiran Tambahan bagi tahun taksiran 2003 yang berkaitan dengan rayuan ini hendaklah dikekalkan".

[3] The only issue in the instant appeal was whether the taxpayer is entitled to claim reinvestment allowance under Schedule 7A of the Income tax Act 1967 ("ITA") on the capital expenditure incurred on audio and video equipment in the year of assessment 2003 while the Appellant enjoys investment tax allowance on electrical musical instrument under Promotion Investment Act 1986 ("PIA") in the same year of assessment.

[4] In other words, whether the approval of investment tax allowance for some products under the PIA prevents a taxpayer from claiming reinvestment allowance under Schedule 7A of the ITA in respect of other products for which investment tax allowance has not been approved. The issue turns on the

interpretation of paragraph 7(b) of Schedule 7A as the law stood in the year of assessment ("YA") 2003 ("the Disputed Provision"). The issue before me is a pure question of law.

[5] On 9 December 2024, I decided the issue in favour of the taxpayer and allowed the appeal. This judgment contains the reasons for my decision.

FACTS

[6] The facts are not in dispute. The taxpayer is a company that manufactures and sells audio, video, and electronic musical instrument products. The taxpayer was on 11 July 1997 granted a pioneer certificate under the PIA in respect of its promoted products, i.e., "electrical musical instrument". The taxpayer's pioneer status was for the period 5 October 1998 until 4 October 2003. The pioneer status entitled the taxpayer investment tax allowance for the YA 1998 to YA 2003.

[7] In addition to the promoted products, the taxpayer also manufactures "non-promoted products".

[8] The taxpayer made an application to cancel its pioneer status from 31 March 2002. The application was allowed commencing from 26 February 2003. The change calls into play the issue of "reinvestment allowance" under Schedule 7A of the ITA. Reinvestment allowance is a special incentive relief. It is provided under Section 133A, read with either Schedule 7A or Schedule 7B of the ITA. The instant case seals with Schedule 7A of the ITA.

[9] The issue of reinvestment allowance arose for the YA 2003. The taxpayer said that it had incurred capital expenditure for:

(a) The manufacturing of the promoted products, and since the taxpayer had been granted approval, it claimed investment tax allowance under the PIA for the promoted products. The taxpayer did not claim reinvestment allowance on the promoted products.

(b) The expansion, modernisation, and automation of its business in manufacturing audio and video equipment, i.e., the non-promoted products. The taxpayer claimed

reinvestment allowance under Schedule 7A of the ITA for these non-promoted products.

[10] The DGIR disallowed the taxpayer's claim for reinvestment allowance on the non-promoted products on the basis that the taxpayer is precluded from claiming reinvestment allowance by virtue of paragraphs 1 read with 7(b) of Schedule 7A as the taxpayer has been granted pioneer status under the PIA and is therefore not entitled to claim reinvestment allowance.

Schedule 7A

[11] Schedule 7A of the ITA in force at the material time was in the following words (only the relevant paragraphs are reproduced below):

> *1. Subject to this Schedule, where a company which is resident in Malaysia –*
>
> *(a) has been in operation for not less than twelve months;*
>
> *(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) or (b);

(c) (deleted by Act 591)

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:

Provided that such expenditure shall not include capital expenditure incurred on plant or machinery which is provided wholly or partly for the use of a director, or an individual who is a member of the management, or administrative or clerical staff.

7. This Schedule shall not apply to a company –

(a) for the period during which the company –

(i) has been granted pioneer status under the Promotion of Investments Act 1986 in respect of any promoted activity or promoted product and which is applying or intends to apply for the grant of a pioneer certificate; or

(ii) has been granted a pioneer certificate under the Promotion of Investments Act 1986 in respect of a promoted activity or promoted product and whose tax relief period has not ended or ceased;

(b) for the period prescribed under subsection 29(2), 29A(3), 29B(2), 29C(2) OR 29G(2) of the Promotion of the Investment Act 1986 in respect of a promoted activity or promoted product for which the company has been granted approval under section 27, 27A, 27B, or 27F of that Act.

The additional assessment

[12] For the YA 2003, the taxpayer claimed investment tax allowance under the PIA for capital expenditure incurred for its promoted products. *The taxpayer also claimed that it had incurred capital expenditure for its non-promoted products* and claimed reinvestment allowance under Schedule 7A for the non-promoted products.

[13] The DGIR disallowed the taxpayer's claim for the reinvestment allowance on the non-promoted products. The DGIR said that the taxpayer is not entitled to claim reinvestment allowance since it has already been granted pioneer status under the PIA. The taxpayer appealed to the SCIT.

[14] The SCIT opined that paragraph 7(b) is "clear and unambiguous". The paragraph excludes reinvestment allowance from being claimed by a company in respect of a promoted activity or promoted product for which the company has been granted approval under the PIA.

[15] As a result, the SCIT proceeded to hold that the taxpayer was not entitled to claim reinvestment allowance for capital expenditure incurred in respect of the non-promoted products and upheld the additional assessment made by the DGIR for the YA 2003. Hence, this appeal.

ANALYSIS AND DECISION

[16] The issue before me turns on the interpretation of the Schedule 7A of the ITA, specifically, paragraphs 1 and 7(b).

DGIR's submission

[17] The DGIR submitted that the exclusion from an entitlement to reinvestment allowance is based on the status of the company and not the product, i.e., promoted product or non-promoted product. The literal rule applies as the paragraphs 1 and 7(b) of Schedule 7A are clear and unambiguous. The argument proffered is that once the company is granted pioneer status and is granted investment tax allowance in respect of its promoted product or activities, the taxpayer is excluded from claiming reinvestment allowance under Schedule 7A of the ITA. The condition of paragraph 7(b) is satisfied, given that the taxpayer has been granted investment tax allowance from 5 October 1998 until 26 February 2003 (being the period shortened from 4 October 2003 at its request). It is submitted that since the taxpayer has been granted pioneer status, it is entitled to investment tax allowance in respect of promoted activity or promoted product and is excluded from claiming under Schedule 7A of the ITA for reinvestment allowance.

[18] In short, the DGIR submits that since the taxpayer was holding the status of a pioneer company under the PIA and its financial year for the YA 2003 was from 1 April 2002 to 31.3.2003, the taxpayer was entitled to only claim investment tax allowance since its status was yet to expire for the YA 2003. Hence, the taxpayer is not entitled to claim reinvestment allowance for the YA 2003 by virtue of paragraph 7(b) of Schedule 7A of the ITA. The status of the taxpayer as a pioneer company precluded it from being eligible for the reinvestment relief. In view of the submissions made, the DGIR prays for the appeal to be dismissed.

Taxpayer's submission

[19] The taxpayer submitted that paragraph 1 read with paragraph 7(2) of the Schedule 7A only restricts a claim for reinvestment allowance in respect of promoted activities or products for which the company has already been granted investment tax allowance under the PIA 1986. The taxpayer pointed out that paragraph 7(2) of Schedule 7A contains the words "in respect of a promoted activity or promoted product"

("the Additional Wording"). The Additional Wording did not exist in the provision as originally enacted. It was submitted that the Additional Wording had been deliberately inserted by Parliament.

[20] The nub of the taxpayer's submission was that the provision, as it originally stood, did not contain the Additional Wording and therefore did not draw any distinction between "promoted activities and products" and "non-promoted activities and products". The provision merely excluded reinvestment allowance for a company which had been granted pioneer status, or investment tax allowance under the PIA. It was emphasised when the Additional Wording were inserted, Parliament is presumed to know the law as it then stood prior to making the amendment. In interpreting the provision, it was submitted that this Court must give every word meaning, for Parliament does not act in vain.

[21] In light of the above, it was submitted that the provision is not a blanket exclusion of reinvestment allowance for a company with pioneer status under the PIA. The reinvestment allowance is only to be excluded in respect of a promoted activity or promoted product for which the taxpayer has already been

granted investment tax allowance under the PIA. This is based on the following:

(i) The provision ought to be given its ordinary meaning and not be interpreted simplistically to exclude the taxpayer's claim for reinvestment allowance on the non-Promoted Products as: (a) the provision contains the following Additional Wording, "in respect of a promoted activity or promoted product" meaning that the reinvestment allowance is only to be excluded to a company in respect of promoted products; and (b) accordingly, the reinvestment allowance is only excluded insofar as the promoted products are concerned (electronic musical instruments) and not to non-promoted products (audio and video equipment).

(ii) The insertion of the Additional Wording makes it clear that reinvestment allowance is only excluded in respect of "a promoted activity or *promoted product*" for which the company has been granted PIA approval. Otherwise, the Additional Wording would be rendered meaningless.

(iii) The provision cannot possibly be said to "provide relief" to any taxpayer. The DGIR is of the view that the provision is an "exclusion clause". Accordingly, it does not come within the *Littman v Baron* principle. The general principle that ambiguity is to be construed in favour of the taxpayer would apply. Where *Littman v Baron* does not apply, the authorities are unanimous that tax legislation must be read liberally in favour of the taxpayer.

(iv) The taxpayer had incurred more than RM 59 million in capital expenditure to expand, modernise, and automate its business in respect of the non-promoted products and did not claim the incentive under the PIA for this expenditure. The DGIR's interpretation would mean that a taxpayer would be precluded entirely from any claim for reinvestment allowance under Schedule 7A simply because it enjoys a limited incentive under the PIA in respect of entirely different activities and products. There is no indication that Parliament intended this to be the case. On the contrary, the legislative history and insertion of the Additional Wording show that Parliament intended the exact opposite.

[22] The taxpayer prayed that the appeal be allowed.

My decision

[23] I agree with the taxpayer's interpretation and therefore need not to restate the submission.

[24] In this regard, I also rejected the DGIR's submission that the amendment to the provision i.e., paragraph 7(b) of Schedule 7 was as an avoidance of doubt for the reason that the amendment was made at the same time with Section 2(1) of PIA in relation to the interpretation of "Pioneer Status", which includes the wording of "in respect of a promoted activity or promoted product" in sections 25, 26 and 27 of the PIA.

[25] It was in order to dispel any doubt that the second amendment envisages the exclusion of a pioneer company and a company currently enjoying investment tax allowance in respect of promoted activity and promoted product from enjoying the reinvestment allowance. The whole paragraph 7 of the Schedule 7A was reconstructed wherein the word "This schedule

shall not apply to a company -" was added in the beginning of the paragraph itself. Hence, *it is pertinent to stress here that the amendment is not in any way intended to address the defects of the earlier amendment.*

[26] For the above reasons, I allowed the appeal.

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Amarjeet Singh Serjit Singh
Judge
High Court Kuala Lumpur

Dated: 2 May 2025

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