



**SECTION 4(a) INCOME TAX ACT 1967 &
REAL PROPERTY GAINS TAX ACT 1976**

DIRECTOR GENERAL OF INLAND REVENUE

V.

SIN SENG BEE TRANSPORT SDN. BHD.

WA-14-13-10/2021

 **HIGH COURT KUALA LUMPUR**

 **YA DATO' WAN AHMAD FARID BIN WAN
SALLEH**

 **01 AUGUST 2023**

The Taxpayer is in the business as manufacturers, importers, exporters, distributors and dealers in agricultural produce and operators and contractors of transportation. The Taxpayer bought a rubber land in 1995 (“the Land”) and

sold the same in 2011. The issue raised is whether the disposal of the Land is subjected to Section 4(a) Income Tax Act 1967 (“ITA 1967”) or Section 3(1) of the Real Property Gains Tax Act 1976.

The Director General of Inland Revenue (“the DGIR”) contended that the disposal of the Land falls squarely within the elements of badges of trade. Firstly, the Land which is the subject matter of the appeal was acquired for a purpose of resale at a profit. The DGIR further asserted that the dealing in lands were more profitable than the Taxpayer’s business in transportation and agriculture, and that the reason for acquiring the Land was to resell when it fetched a high price. Further, there were also repetition of sales by the Taxpayer on several lands, i.e. 11 transactions in total between the years 2007-2008. There had also been an alteration to the Land to render it more saleable, as a Planning Permission to develop housing projects and industrial area on the Land was obtained in 1996. This Planning Permission was in fact, is an adventure in the nature of trade. It is further contended that the Taxpayer from the very beginning had the intention or motive to sell if the right price was offered by any purchaser. The Taxpayer admitted that they did not plan to replant old rubber trees on the Land, since the main objective was to sell the Land it at higher price. This evidence was extracted during cross-examination and was un rebutted by the Taxpayer. The learned Special Commissioners of Income Tax failed to acknowledge the testimony by the Taxpayer’s witness that the value of the Land had increased drastically after a portion of it was acquired by the State Government to develop school even though this evidence was also un rebutted.

The Taxpayer, on the other hand argued that, as the Land was purchased in 1995 and sold in 2011 and the Taxpayer had no intention to trade in the said Land, as the witness clearly stated that his father bought the Land for investment. Further, the Land was not acquired in the ordinary course of trade and it was classified as fixed asset in the account since 1995. This clearly indicated that the Land was held for a long-term investment.

The High Court had on 01.08.2023 dismissed the DGIR’s appeal and upheld the decision of the SCIT in favour of the Taxpayer. The High Court held, *inter alia*, the Land was for a long-term investment by the Taxpayer based on all the evidence adduced, and none of the elements of badges of trade existed.

Editorial Notes

- *The DGIR has the right to file an appeal against the decision by the High Court within 30 days from the date of the decision.*