

 Court of Appeal, Putrajaya

 November 25, 2020

 Legal Department, IRBM

COURT OF APPEAL CONFIRMED THE DGIR'S INTERPRETATION ON PROVISION FOR BAD DEBT

QUALITY CONCRETE HOLDINGS BERHAD v. DIRECTOR GENERAL OF INLAND REVENUE

Keywords: Bad & Doubtful Debt; subsection 34(2) of the Income Tax Act 1967.

The Appellant made a provision for bad and doubtful debt in the Income and Expenditure Statement for year ended 31.1.2004 and claimed for tax deduction for the balance of trade debt amounting to RM608,731.25. Upon audit, it was found that in the basis year ended 31.1.1998 for Year of Assessment ("YA") 1999, the value of works done at the amount of RM950,000.00 was not recognised as gross income for YA 1999 up to YA 2004. Thus, the DGIR disallowed the deduction of RM608,731.25 and imposed penalty under S.113(2) of the Income Tax Act 1967 ("ITA"). On appeal, the Special Commissioners of Income Tax ("SCIT") dismissed the appeal on issue (i) being the deductibility of the provision of bad and doubtful debt; and allowed the appeal on issue (ii) being the penalty imposed.

The Appellant appealed to the High Court on issue (i) and the DGIR cross-appealed on issue (ii). The High Court dismissed the Appellant's appeal on issue (i); and allowed the DGIR's cross appeal on issue (ii).

JUDGES

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Ravinthran A/L N. Paramaguru,
HMR

Che Mohd. Ruzima Ghazali, HMR

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The Appellant argued that the claim amount of RM950,000.00 had been reported under the Trade Debtors Account in the Balance Sheet as at 31.1.1998 for YA 1999. By virtue of S.24(1)(b) of ITA, the wordings in the provision clearly show that irrespective of where and how the sum of RM950,000.00 was entered and described in the account, if it is a trade debt arising in respect of carrying on a business, it shall be

treated as gross income from the business for the purpose of tax assessment. Therein, the Appellant's claim for bad debt should be allowable. On the issue of penalty, the Appellant had acted in good faith and the impugned assessment involved technical interpretation thus penalty should not be imposed.

The Court of Appeal unanimously dismissed the appeal on both issues and confirmed the additional assessment raised by the DGIR.

This decision gives finality on this issue since no further appeal is allowed. The Court of Appeal confirmed the DGIR's interpretation on S.24 and S.34 of the ITA that to claim the deduction for a debt under S.34(2) of the ITA, such debt has to be first specifically included in the gross income of the Appellant for the basis period for a year of assessment prior to the year of assessment to which the relevant period relates. The Court also affirmed that technical interpretation and good faith are not valid defenses for penalty under S.113(2) of the ITA. The penalty is correctly imposed under S.113(2) of the ITA since the Appellant had filed incorrect return and gave incorrect information when they claimed deduction for the sum of RM608,731.25.

