



Special Commissioner
of Income Tax @
Putrajaya

August 30, 2019

Bahagian Litigasi Cukai,
Jabatan Undang-Undang

JUDGES

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CONTRIBUTION PAYMENTS PAID TO SELANGOR HOUSING AND PROPERTY BOARD IS NOT DEDUCTIBLE UNDER SECTION 33(1) OF THE ITA 1967

— EASB v. KETUA PENGARAH HASIL DALAM NEGERI

BRIEF FACTS

The Appellant was granted with exemption from Selangor Housing and Property Board (“LPHS”) under *Pekeliling Tanah dan Galian Selangor Bil. 3/2007* to be exempted from building low cost houses and was required to pay a contribution sum to LPHS as a condition to the said exemption. The Respondent disallowed the said amount to be deducted under section 33(1) of the Income Tax Act 1967 (“ITA”).

ISSUES

1. Whether the Respondent is time-barred under section 91(3) of the ITA from raising the following Notice of Additional Assessment (“Form JA”), Notices of Assessment (“Form J”) and Notification of Non-Chargeability (“Form NL”) against the Appellant;
2. Whether the contribution payments made by the Appellant to LPHS under *Pekeliling Bil. 3/2007* for an exemption from a requirement to build low cost houses and to get the right to build medium cost houses were deductible under Section 33 of the ITA.

APPELLANT’S CONTENTIONS

The Respondent has failed to prove that the Appellant has been negligent. Furthermore, the Respondent ought not to be allowed to lift the time bar to raise the assessments out of time.

In determining if an expenditure is an expenditure incurred in producing income, it is sufficient for a taxpayer to show that the expenditure is for the purpose of producing income.

RESPONDENT'S CONTENTIONS

The Appellant had negligently prepared and submitted its tax returns as there were many issues discovered apart from the issue of the contribution payments. The Appellant had agreed with all the issues save for the contribution payments.

The contribution payments made to LPHS was for the production of gross income and not in the production of gross income from that source. The payment was made for the purpose of releasing an obligation to build low cost houses. The Appellant chose to disregard their original source of income from building the low cost flats by creating a new source of income which was more profitable. The Appellant's action in getting the said exemption is capital in nature as they intended to create a new source of income.

COURT'S DECISION

The SCIT dismissed the Appellant's appeal and ruled that the Appellant was negligent in filing their tax returns.

The Appellant had failed to comply with *Pekeliling Bil. 3/2007 LPHS* and the contribution payments were paid voluntarily in order to be exempted from building the low-cost housing projects and therefore not deductible under Section 33 of the ITA.