



High Court Rules Petrol Station Canopies And Lighting Qualify As Plant For Capital Allowance

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For more information, please contact:

Datuk D P Naban
naban@rdslawpartners.com

S. Saravana Kumar
sara@rdslawpartners.com

Amira Azhar
amira@rdslawpartners.com

Recently, the High Court allowed the taxpayer's appeal against the decision of the Special Commissioners of Income Tax (SCIT) and held that the capital expenditure incurred on petrol station canopies and lighting qualifies as plant for the purposes of capital allowances under Schedule 3 of the Income Tax Act 1967 (ITA).

Brief Facts

The taxpayer is in the retail and marketing of petroleum products through petrol stations across Malaysia. The taxpayer incurred capital expenditure in relation to the construction of new petrol stations as well as the refurbishment and upgrading of existing petrol stations. As part of these works, the taxpayer installed petrol station canopies and metal halide lighting systems affixed to the canopies. The canopies were constructed using specialised materials designed to meet safety requirements, particularly in light of the highly flammable nature of petroleum products, while the lighting systems were installed to provide adequate illumination and visibility for operations, especially during night-time.

The taxpayer treated the expenditure incurred on the canopy and the halide lighting as qualifying expenditure under Schedule 3 and accordingly claimed capital allowances on these items. The basis of the claim was that the canopy and lighting formed part of the operational apparatus of the petrol station and were integral to the carrying on of its business.

However, upon audit, the Director General of Inland Revenue (DGIR) took the position that the canopy and lighting constituted part of the building structure of the petrol station and did not fall within the meaning of “plant” under Schedule 3. On this basis, the DGIR disallowed the taxpayer’s claim for capital allowances in respect of these items.

The taxpayer appealed against the DGIR’s decision to the SCIT. The SCIT agreed with the DGIR’s position and ruled that the canopy and lighting were part of the premises or setting in which the business was carried out and therefore did not qualify as plant expenditure.

Being aggrieved by this decision, the taxpayer filed an appeal to the High Court.

The SCIT’s Ruling

The main issue considered by the SCIT was whether the canopy and halide lights qualified as “plant” under Schedule 3. The SCIT disallowed the taxpayer’s appeal on the basis that:

- The canopy was a permanent structure forming part of the petrol station building;
- The halide lights were fixtures attached to the canopy and form part of the overall premises; and
- Both the canopy and lighting merely provide the setting in which the business was carried out, rather than constituting plant used in the business.

The SCIT placed significant emphasis on the structural and physical characteristics of the assets, taking the view that assets forming part of the premises or building cannot ordinarily qualify as plant. The SCIT characterised the canopy as analogous to a roof, the primary function of which is to provide shelter and protection, and therefore forming part of the business setting rather than an operational tool. They further took the position that the taxpayer’s business of selling petrol could be carried out without the specific canopy and lighting in question, and therefore these assets were not sufficiently integral to the core operations of the business to be classified as plant.

The Taxpayer's Contention

The taxpayer's submissions can be summarised as follows:

- (a) The SCIT adopted an unduly narrow interpretation of the term "plant" and failed to apply the established legal principles that the term should be given a wide and functional meaning, taking into account the nature of the taxpayer's business and the role played by the asset in question;
- (b) The canopy and halide lights were integral and indispensable to the operation of petrol stations. Given that petrol is a highly flammable substance, the design and construction of petrol stations are subject to stringent safety requirements. As such, the taxpayer cannot simply use ordinary structures or lighting systems, but must install specialised canopy structures and lighting designed to meet safety and operational standards;
- (d) The canopy performs functions that go beyond merely providing shelter. It was constructed using specialised, non-flammable materials and is designed to ensure safety, facilitate the operation of fuel dispensing activities, and enhance the overall functionality of the petrol station. It also contributed to the branding and visual identity of the petrol station, which plays a role in attracting customers;
- (e) The halide lights, when integrated with the canopy, formed part of a single system that ensures adequate illumination and visibility, particularly during night-time operations. This is essential not only for operational efficiency but also for safety and customer accessibility;
- (f) The canopy and lighting, when considered together, constituted part of the apparatus or tools with which the taxpayer carries on its business, rather than merely forming part of the setting in which the business was conducted;
- (g) The fact that the canopy was a structure or is affixed to the ground does not preclude it from qualifying as "plant". It was well established that an asset may still constitute plant even if it formed part of a structure or performs a passive role, provided that it was used in the business and contributes to its operation; and

- (h) The SCIT failed to give due consideration to the functional test, which required an assessment of whether the asset plays a role in the carrying on of the business, as opposed to merely providing the setting for the business. Proper application of this test would have led to the conclusion that the canopy and halide lights qualify as plant expenditure under Schedule 3 of the ITA.

The DGIR's Contention

The DGIR contended that the SCIT's decision was correct for the following reasons:

- (a) The canopy was a permanent and immovable structure forming part of the petrol station building. Its primary function was to provide shelter and protection from weather conditions;
- (b) The halide lights were fixtures attached to the canopy and are integrated into the overall structure of the petrol station. Thus, they cannot be viewed independently but must be regarded as forming part of the building or setting;
- (c) The canopy and lighting merely provided the setting or environment in which the taxpayer's business is conducted and did not constitute apparatus or tools used in the operation of the business;
- (d) The taxpayer's business of selling petrol did not depend on the specific canopy and lighting in question. The DGIR argued that the core activity of the business namely, the sale of petrol could be carried out regardless of the presence or particular specifications of the canopy and lighting; and
- (e) The canopy was analogous to a roof or building structure, and its permanence and immovability reinforced its classification as part of the premises rather than as plant.

The High Court's Ruling

The High Court held that the SCIT had erred in its findings and that the canopy and halide lights qualify as as a plant under Schedule 3. In arriving at its decision, the High Court held that:

- (a) The term "plant" must be given a wide and functional interpretation, taking into account the nature of the taxpayer's business;
- (b) The canopy and halide lights were not merely part of the setting, but constitute part of the apparatus used in carrying on the petrol station business;

- (c) The canopy performed multiple functions beyond providing shelter including safety, branding and customer attraction;
- (d) The halide lights were integral to the canopy system and are necessary for the safe and effective operation of the petrol station, particularly during night-time; and
- (e) An asset does not cease to qualify as plant merely because it was a structure or forms part of a building, as long as it played a functional role in the business.

Recently, the High Court allowed the taxpayer's appeal against the decision of the Special Commissioners of Income Tax (SCIT) and held that the capital expenditure incurred on petrol station canopies and lighting qualifies as plant for the purposes of capital allowances under Schedule 3 of the Income Tax Act 1967 (ITA).

In coming to its decision, the High Court emphasised that the proper test is the functional test as established by The Court of Appeal in *Ketua Pengarah Hasil Dalam Negeri v Tropiland Sdn Bhd* (2013) MSTC 7701, namely whether the asset is used as part of the apparatus with which the business is carried on, as opposed to merely forming part of the setting in which the business is conducted. The court found that the SCIT had failed to properly apply this test and had instead placed undue emphasis on the structural nature of the assets.

Accordingly, The High Court set aside the decision of the SCIT and ordered that the relevant assessments be amended, with a refund of the excess tax and penalties imposed on the taxpayer.

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KUALA LUMPUR

Level 16, Menara 1 Dutamas No. 1, Jalan Dutamas 1,
Solaris Dutamas, 50480 Kuala Lumpur
T: +603 6209 5400
F: +603 6209 5411
enquiry@rdslawpartners.com

PENANG

Suite S-21E & F21st Floor, Menara Northam,
No. 55, Jalan Sultan Ahmad Shah, 10050
Penang
T: +604 370 1122
F: +604 370 5678
generalpg@rdslawpartners.com

JOHOR BAHRU

8-35, Menara Delima Satu, Jalan Forest City 1,
Pulau Satu, 81550 Gelang Patah, Johor Bahru
T: +607 585 6414
F: +607 509 7614
generaljb@rdslawpartners.com