

LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

Republic of the Union of Myanmar
Revenue Appellate Tribunal
Income Tax Reference No. 2/2022

Applicant	Vs.	Respondent
PTTEP International Limited (Yangon Branch) No. 2, Sei Myaung Yeiktha Lane 8 1/2 Mile, Mayangone Township, Yangon Daw Thuza San (Authorised representative) 12/A Sa Na (Naing) 181432 Appearing for the applicant	-	Internal Revenue Department Office No. 46, Nay Pyi Taw
Appearing for the respondent	-	U Aung Myo Kyaw Advocate U Tin Htwe, Director (Departmental Representative) Internal Revenue Department
Date of the order	-	21 March 2023

Judgment

In the case, the tax audit team of the Large Taxpayers' Office found for the 2014-2015 income year that, after PTTEP International Limited (Yangon Branch) had entered into agreements to allocate petroleum block operating rights (farm out agreements - FOA) with JX Nippon Oil & Gas Exploration (Myanmar) Limited (JXN) and Total E & P Myanmar Limited (TEPM), a capital gain was generated pursuant to the transfer of certain operating rights and participating interests in petroleum block no. Block M-11, and that the period in which the capital gain was generated was within the period in which a re-assessment may be conducted according to the Income Tax Law. Unsatisfied with an order that assessed income tax of MMK 11,944,356,696 (USD 11,992,326) on a capital gain of MMK 29,860,891,740 (USD 29,980,815), PTTEP SA appealed to the Head of the Large Taxpayers' Office, but the Head of the Large Taxpayers' Office confirmed the income tax assessed on the capital gain. PTTEP SA appealed to the Revenue Appellate Tribunal against this order. The Revenue Appellate Tribunal handed down an order dismissing this income tax appeal. Arguing that it found legal issues in the judgment order of the Revenue Appellate Tribunal that have to be resolved, PTTEP SA applies to have the case referred to the Supreme Court of the Union as an income tax reference.



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After carefully studying the submissions of the applicant and the respondent, relevant documentary evidence, and the relevant laws and rules, the Full Bench examined whether the issues submitted by the applicant are legal issues that have to be resolved.

As, according to the FOAs entered into by the applicant PTTEP SA and the farmees, PTTEP SA was paid as the specified consideration USD 16,563,106.29 by the farmee JXN and USD 44,168,283.43 by the farmee TEPM for costs incurred by PTTEP SA in the past in the oil and natural gas exploration and drilling operation (past costs), and USD 9,000,000 by JXN and USD 20,980,815 by TEPM for additional costs that will be incurred in the future (carried costs), it is clear that PTTEP SA generated an income from the transfer of operating rights and participating interests (transfer of capital assets). It has been found that among this income, past costs are expenses that PTTEP SA already spent, so if PTTEP SA deducts, at the time of the conclusion of the FOA for Block M 11, these past costs from the total consideration for the transfer of operating rights and participating interests, the carried costs will remain from the consideration. It has been found that the Revenue Appellate Tribunal confirmed the LTO's assessment order because, although these carried costs were allocated as costs that will be incurred in the future, no evidence was submitted of their use as expenses, so it could be verified in accordance with the provisions of the PSC that PTTEP SA generated a capital gain from the transfer of participating interests. Therefore, because it has been verified that it was taken into consideration that the costs that will be incurred in the future (carried costs) are not costs incurred by the contractor for the business, and that the carried costs are a capital gain received from the farmout transaction, it can be considered that there is no legal issue to be resolved.

Regarding the point submitted by the applicant that the assessment of income tax on a capital gain confirmed by the Revenue Appellate Tribunal was made by combining two different acts that took place at two different times, it has been found that the Tribunal calculated and reviewed in the appeal according to the provisions in the PSC whether a gain arose from the transfer of operating rights and participating interests. It has been found that it is true that the transfer of operating rights and participating interests in Block M 11 to the farmees and the withdrawal of the farmees from the operating rights in Block M 11 are different acts performed at different times, but it can be confirmed that the income received from the transfer of capital assets generated a capital gain from the time that the farmees withdrew, and the consequences arising from different acts occurring at different times are a sequence of causally related events. According to the provisions of section 13 Income Tax Law, the gain realised from such capital asset shall be subject to tax under the heading capital gains if a capital asset is transferred by any other means. It has been found that according to the provisions in rule 5 (c) Income Tax Rules, which state that if such gain is realised, the assessment must be made in the income year in which the income is generated, and according to the provisions in sub-rule (d), which state that where the assessment is not completed within the income year, the assessment may be made in accordance with the provisions of the Law, it is not stipulated that the *[tax on]* the capital gains may be



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assessed only at the time of the transfer. Rather, it is stipulated that income [tax] must be paid under the heading of capital gains if gains are realised from the transfer. Because of this, it has been found that the assessment of income tax on gains arising from the transfer of operating rights and participating interests in Block M 11 is not inconsistent with the provisions of the Income Tax Law and the provisions of the PSC, and the review by the Revenue Appellate Tribunal has verified that there is no legal issue to be resolved.

When reviewing whether the income tax assessment of the Large Taxpayers Office exceeds the three-year limitation period set forth by section 21 (b) Income Tax Law, it has been found that while it is true that PTTEP SA and the farmees made farmout transactions in the fiscal year 2012-2013, the costs that will be incurred in the future (carried costs) received in advance from the farmees at that time could only be ascertained in the 2014-2015 fiscal year when the farmees withdrew from the operation in Block M 11 and surrendered their interests. In section 21 (b) Income Tax Law, it is stipulated that in exceptional cases, taxable income can be assessed or re-assessed within 3 years from the end of the assessment year. Therefore, the assessment year for PTTEP SA's capital gain generated in the 2014-2015 fiscal year is the 2015-2016 fiscal year. This capital gain may be re-assessed within 3 years from the end of the 2015-2016 fiscal year, and it has been verified that the Revenue Appellate Tribunal furthermore confirmed the assessment of income tax on capital gains in the 2018-2019 fiscal year. Because the Revenue Appellate Tribunal's review reviewed and decided in accordance with the provisions of the Income Tax Law, it is considered that there is no legal issue to be resolved.

Therefore, considering that there is no need to refer the decisions under review in the judgment passed by the Revenue Appellate Tribunal in Income Tax Appeal No. 6/2020 to the Supreme Court of the Union because no legal issues or issues with legal effect, and no reasonable doubts regarding legal issues have arisen, the following order has been made:

Order

Confirming the order issued by the Revenue Appellate Tribunal's Order No. Khaya (Form)/3/03 (468/2022) dated 27-7-2022, this reference by which a reference of the case to the Supreme Court of the Union is applied for is dismissed.

Myint Oo
Chairman

Kyaw Kyaw
Member

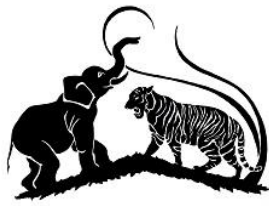
Zeya Kyin Yun
Member

Yi Yi Myint
Member

Win Naing
Member

Win Tin
Member

Oo Kyi
Member



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Full Bench

[Published in the Myanmar Gazette dated 5 April 2024.]

Republic of the Union of Myanmar
Revenue Appellate Tribunal
Income Tax Reference No. 4/2022

Applicant	Vs.	Respondent
PTTEP South Asia Limited (Yangon Branch) No. 2, Sei Myaung Yeiktha Lane 8 ½ Mile, Mayangone Township, Yangon Daw Thuza San (Authorised representative) 12/A Sa Na (Naing) 181432 Appearing for the applicant		Internal Revenue Department Office No. 46, Nay Pyi Taw
Appearing for the respondent	-	U Aung Myo Kyaw Advocate
	-	U Tin Htwe, Director (Departmental Representative) Internal Revenue Department
Date of the order	-	21 March 2023

Judgment

In the case, the tax audit team of the Large Taxpayers' Office found for the 2017-2018 *[sic]* income year that, after PTTEP South Asia Limited (Yangon Branch) (PTTEP SA) had entered into agreements to allocate petroleum block operating rights (farm out agreements - FOA) with MOECO Asia EP 2 Pte. Ltd. (MOECO EP2) and Palang Sophon Offshore Pte. Ltd. (Palang Sophon) (Farmees) in 2014 (2014-2015 fiscal year), a capital gain was generated pursuant to the transfer of certain operating rights and participating interests in petroleum blocks no. Block EP 2 and Block PSC-G, and that the period in which the capital gain was generated was within the period in which a re-assessment may be conducted according to the Income Tax Law. Unsatisfied with an order that assessed income tax of MMK 4,899,600,000 (USD 3,600,000) on a capital gain of MMK 12,249,000,000 (USD 9,000,000), PTTEP SA appealed to the Head of the Large Taxpayers' Office, but the Head of the Large Taxpayers' Office confirmed the income tax assessed on the capital gain. PTTEP SA appealed to the Revenue Appellate Tribunal against this order. The Revenue Appellate Tribunal handed down an order dismissing this income tax appeal. Arguing that

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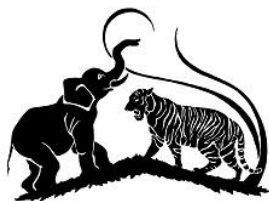
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it found legal issues in the judgment order of the Revenue Appellate Tribunal that have to be resolved, PTTEP SA applies to have the case referred to the Supreme Court of the Union as an income tax reference.

After carefully studying the submissions of the applicant and the respondent, relevant documentary evidence, and the relevant laws and rules, the Full Bench examined whether the issues submitted by the applicant are legal issues that have to be resolved.

As, according to the FOAs entered into by the applicant PTTEP SA and the farmees, PTTEP SA was paid as the specified consideration USD 3,198,355.16 for Block EP-2 and USD 7,843,712.72 for Block PSC-G by the farmee MOECO and USD 3,198,355.16 for Block EP-2 and USD 7,843,712.72 for Block PSC-G by the farmee Palang Sophon for costs incurred by PTTEP SA in the past in the oil and natural gas exploration and drilling operation (past costs), and USD 4,000,000 for Block EP-2 and USD 4,000,000 for Block PSC-G by MOECO and USD 500,000 for Block EP-2 and USD 500,000 for Block PSC-G by Palang Sophon for additional costs that will be incurred in the future (carried costs), it is clear that PTTEP SA generated an income from the transfer of operating rights and participating interests (transfer of capital assets). It has been found that among this income, past costs are expenses that PTTEP SA already spent, so if PTTEP SA deducts these past costs from the total consideration for the transfer of operating rights and participating interests, the carried costs will remain from the consideration. It has been found that the Revenue Appellate Tribunal confirmed the LTO's assessment order because, although these carried costs were allocated as costs that will be incurred in the future, no evidence was submitted of their use as expenses, so it could be verified in accordance with the provisions of the PSC that PTTEP SA generated a capital gain from the transfer of participating interests. Therefore, because it has been verified that it was taken into consideration that the costs that will be incurred in the future (carried costs) are not costs incurred by the contractor for the business, and that the carried costs are a capital gain received from the farmout transaction, it can be considered that there is no legal issue to be resolved.

Regarding the point submitted by the applicant that the assessment of income tax on a capital gain confirmed by the Revenue Appellate Tribunal was made by combining two different acts that took place at two different times, it has been found that the Tribunal calculated and reviewed in the appeal according to the provisions in the PSC whether a gain arose from the transfer of operating rights and participating interests. It has been found that it is true that the transfer of operating rights and participating interests in Block EP 2 and Block PSC-G to the farmees and the withdrawal of the farmees from the operating rights in Block EP 2 and Block PSC-G are different acts performed at different times, but it can be confirmed that the income received from the transfer of capital assets generated a capital gain from the time that the farmees withdrew, and the consequences arising from different acts occurring at different times are a sequence of causally related events. According to the provisions of section 13 Income Tax Law, the gain realised from such capital asset shall be subject to tax under the



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heading capital gains if a capital asset is transferred by any other means. It has been found that according to the provisions in rule 5 (c) Income Tax Rules, which state that if such gain is realised, the assessment must be made in the income year in which the income is generated, and according to the provisions in sub-rule (d), which state that where the assessment is not completed within the income year, the assessment may be made in accordance with the provisions of the Law, it is not stipulated that the [tax on] the capital gains may be assessed only at the time of the transfer. Rather, it is stipulated that income [tax] must be paid under the heading of capital gains if gains are realised from the transfer. Because of this, it has been found that the assessment of income tax on gains arising from the transfer of operating rights and participating interests in Block EP 2 and Block PSC-G is not inconsistent with the provisions of the Income Tax Law and the provisions of the PSC, and the review by the Revenue Appellate Tribunal has verified that there is no legal issue to be resolved.

Therefore, considering that there is no need to refer the decisions under review in the judgment passed by the Revenue Appellate Tribunal in Income Tax Appeal No. 8/2020 to the Supreme Court of the Union because no legal issues or issues with legal effect, and no reasonable doubts regarding legal issues have arisen, the following order has been made:

Order

Confirming the order issued by the Revenue Appellate Tribunal's Order No. Khaya (Form)/3/03 (470/2022) dated 27-7-2022, this reference by which a reference of the case to the Supreme Court of the Union is applied for is dismissed.

Myint OO
Chairman

Kyaw Kyaw
Member

Zeya Kyin Yun
Member

Yi Yi Myint
Member

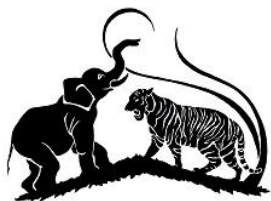
Win Naing
Member

Win Tin
Member

Oo Kyi
Member

Full Bench

[Published in the Myanmar Gazette dated 5 April 2024.]



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About Lincoln Legal Services (Myanmar) Limited

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

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