




 Federal Court of Malaysia

 August 26, 2020

 Legal Department, IRBM

JUDGES

Y.A.A Tan Sri Azahar Bin Mohamed, Chief Judge of Malaya

Y.A. Puan Sri Dato' Zaleha Binti Yusof, FCJ

Y.A. Dato' Sri Hasnah Binti Dato' Mohammed Hashim, FCJ

Y.A. Datuk Hamindar Singh Dhaliwal, FCJ

Y.A Dato' Rhodzariah Binti Bujang, FCJ

REVENUE COUNSELS

Dr. Hazlina Hussain

Ashrina Ramzan Ali

Kwan Huey Shin

Mohammad Danial Ahmad

FEDERAL COURT DISMISSES BID TO QUASH IRBM'S ASSESSMENTS THROUGH JUDICIAL REVIEW

BLDSB V. KETUA PENGARAH HASIL DALAM NEGERI

SALIENT FACTS

The Appellant challenged the Respondent's assessments by way of Judicial Review and leave was not granted by the High Court and the decision was upheld by the Court of Appeal. The Appellant appealed to Federal Court.

APPELLANT'S SUBMISSION

1. The Appellant contended that the availability of the statutory remedy provided in the Income Tax Act 1967 ("ITA") does not bar the Appellant from commencing Judicial Review against the Respondent's decision where exceptional circumstances exist.
2. The Judicial Review application relates to the interpretation of paragraphs 9(b) and 9(cc) of Schedule 7A of the ITA for Reinvestment Allowance. The Appellant argued that the Respondent's interpretation of paragraphs 9(b) and 9(cc), Schedule 7A ITA is erroneous and the decision made based on the error would be illegal and *ultra vires* and arises from Respondent's clear lack of jurisdiction. This is an exceptional circumstance warranting Judicial Review. The Appellant argued that the Respondent had committed an error of law by raising assessments

RESPONDENT'S SUBMISSION

1. The Respondent argued that there is no existence of illegality, no error of law and no exceptional circumstances to warrant leave for Judicial Review. The Respondent had acted lawfully in following the interpretation of Schedule 7A of the Income Tax Act 1967 by the High Court and Court of Appeal in the earlier assessment involving Y/A 2008.
 2. The Respondent further contended that the Appellant should exhaust the domestic remedy to appeal to the Special Commissioners of Income Tax as the Appellant had failed to establish any exceptional circumstances in this case. The Appellant's application for Judicial Review is an abuse of process of the Court and frivolous.
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DECISION OF COURT

The Federal Court was not persuaded that the question of law posed is a matter of public importance that would give rise to exceptional circumstances justifying the granting of Judicial Review and unanimously dismissed the appeal with costs. This clearly indicates that the principles derived from a plethora of cases pertaining to the statutory appeal remedy/domestic remedy are still good law and viable.