

 Kuala Lumpur High Court
 September 18, 2019
 Special Appeal Division,
Legal Department, IRBM

CASES

1. CCMB V DGIR
2. SS SB v DGIR
3. MBB V DGIR
4. T&L P SB v DGIR
5. SMSB v DGIR
6. SCGBSSB v DGIR
7. SWISB v DGIR

JUDGE

YA Dato' Sri Mariana Binti
Hj Yahya

REVENUE COUNSELS

Muazmir Mohd Yusuf
Normareza Mat Rejab
Mohd Harris Hanapi
Wan Hamdanie Wan Mohamad
Zul-Hasymi Mohamad
Nik Nur Halina Mohd Kashfi
Norsyamimi Bukhari
Marvianna Zainol
Mohammad Danial Ahmad
Nordiana Sham

7 APPLICATIONS FOR LEAVE FOR JUDICIAL REVIEW DISMISSED. TAXPAYERS TO EXHAUST INTERNAL REMEDY PROVIDED UNDER SECTION 99 OF INCOME TAX ACT 1967 ("ITA")

BRIEF FACTS

7 taxpayers filed a separate leave application in the KL High Court for an order of certiorari to quash the notices of assessment raised by the Director General of Income Tax for various Years of Assessment. All the applications were fixed for hearing before YA Dato' Sri Mariana binti Hj Yahya on different dates. The leave applications had been objected by the Attorney General's Chambers and IRB legal team, which also appeared in Court as a Putative Respondent. The Learned High Court Judge then fixed the date of decision for all cases on 18.09.2019.

TAXPAYER'S CONTENTIONS

In general, taxpayers contended that Judicial Review is available despite existence of an alternative remedy if there are exceptional circumstances as guided by the supreme court in **Government of Malaysia & Anor v Jagdis Singh [1987] 2 MLJ 185**. It will be wrong to insist the Applicants to appeal before the SCIT.

AGC & DGIR CONTENTIONS

In objecting the leave, the Respondent argued that the applications for judicial review is an abuse of the process of the court as the taxpayers have the right to appeal to the SCIT under section 99 of the ITA as the domestic remedy. Merit of the assessments must be determined by the judges of facts which is the SCIT. Hence, judicial review should only be made in exceptional circumstances if it could be shown that there is a clear lack of jurisdiction or blatant failure to perform some statutory duty or there is a breach of principles of natural justice.

COURT'S DECISION

The Court dismissed the leave application for judicial review and held that taxpayers should appeal against the assessments to the SCIT according to section 99 of the ITA which clearly provides alternative remedy for the taxpayers to appeal against the assessments.