



📍 Court of Appeal, Putrajaya

📅 June 23, 2020

🏛️ Legal Department, IRBM

JUDGES

YA Datuk Hanipah Farikullah
(HMR)

YA Dato' Lee Swee Seng
(HMR)

YA Dato' Che Mohd Ruzima
Ghazali (HMT)

REVENUE COUNSELS

Dr. Hazlina Hussain
Normareza Mat Rejab
Nurul Amalina Mantaza

COURT OF APPEAL DISMISSED JUDICIAL REVIEW APPLICATION ON RPGT ASSESSMENT

CMK V. KETUA PENGARAH HASIL DALAM NEGERI

ISSUES:

1. Whether the Appellant is barred from the remedy of judicial review because of the existence of alternative remedy?
2. Whether the issue of the existence of exceptional circumstances had been satisfied when the court granted leave for judicial review?
3. Whether the case involves purely question of law that can be determined by way of judicial review?
4. Whether the Appellant had demonstrated the existence of special circumstances:
 - a) Clear lack of jurisdiction arising from an error of law - The disposal of shares in the company should not be deemed as shares in Real Property Company ("RPC") based on purposive interpretation of paragraph 34A, Schedule 2 of Real Property Gain Tax Act ("RPGTA");
 - b) Blatant failure to perform statutory duty - The Respondent had effectively imposed Real Property Gains Tax at the rate of 79%;
 - c) Serious breach of the principles of natural justice - Failure to provide reasons or basis for the additional assessment before the additional assessment was raised; and
5. Whether the disposal price of the shares include the amount of money paid under the sale of shares agreement to settle the liabilities of the company?

SALIENT FACTS

1. On 05.05.2015, AM, a housing developer company had purchased a piece of vacant commercial land. The Appellant acquired shares in AM on 05.06.2015. AM had been deemed as a RPC as it is a controlled company and the defined value of its land was more than 75% of its total intangible asset.
2. On 12.06.2017, the Appellant and other shareholders entered into a sale of shares agreement to dispose their shares in AM. Under the sale of shares agreement, the consideration paid for the sale of shares is based on the value of the land owned by AM and was paid to the shareholders after deducting the liabilities of AM.
3. The Appellant had declared the disposal of his shares as a disposal of shares by RPC through Form CKHT 1B. An assessment was raised in the sum of RM2,205,384.90 on 17.01.2018 on the basis that AM is a RPC. On 19.07.2018, additional assessment was raised under Section 15(1) RPGTA in the amount of RM3,341,115.30 due to the mistake in determining the date on which AM became a RPC.
4. The Appellant had filed an appeal to the SCIT on 08.08.2018. The application of judicial review was then filed to the High Court on 13.08.2018.
5. The High Court had granted leave for judicial review without the presence and notification to the Respondent on 16.08.2018. Upon hearing at the substantive stage, the High Court had dismissed the judicial review application on 04.09.2019.

APPELLANT'S SUBMISSION

1. During the hearing of the appeal at the Court of Appeal, the Appellant had put on record that the appeal is only confined to the issue of breach of principles of natural justice. The Appellant had submitted as follows:-
 - a) Based on the submission of the Form CKHT 1B, the Respondent had already raised an assessment on the disposal of the shares. However, the Respondent had raised the additional assessment without giving any explanation or basis.
 - b) The additional assessment was raised without giving any right to be heard to the Appellant.

RESPONDENT'S SUBMISSION

1. Section 15(1) of RPGTA does not provide any right to the Taxpayer to be consulted or given explanation before the assessment is raised by the Revenue. Therefore, to interpret as such would be putting words into Section 15(1) of RPGTA.

The assessment and additional assessment were based on the Taxpayer's own documents. The cover letter to the notice of additional assessment had explained that the additional assessment was made due to the mistake in determining the date on which AM became a RPC. The tax computation had also been provided which explained in detail on how the tax was computed. Therefore, the reason for raising the additional assessment had been sufficiently explained.

2. This is not a case of the Revenue applying the anti-avoidance provision under Section 25 of RPGTA which then would require the Revenue to give basis for its decision.

DECISION OF COURT

The Appellant had not shown that there is a breach of the principles of natural justice. Furthermore, alternative remedy is available and have yet to be exhausted. The Appeal is dismissed with cost.