

IN THE COURT OF APPEAL IN PUTRAJAYA

(APPELLATE JURISDICTION)

CIVIL APPEAL NO: W-01-177-04/2013

SYARIKAT IBRACO PAREMBA SDN BHD

... APPELLANT

AND

KETUA PENGARAH HASIL DALAM NEGERI

... RESPONDENT

*Revenue Law – Disregard transaction - Section 140 of Income Tax Act 1967 - Imposition of penalty - Section 113(2) of Income Tax Act 1967*

Issues :

- (a) Whether the Respondent is correct to disregard the Appellant's transactions under section 140(1)(a) of Income Tax Act 1967; and
- (b) Whether the penalty imposed under section 113(2) of Income Tax Act 1967 is correct in law.

Decision : The Appellant's appeal dismissed.

The Court of Appeal held that the Income Tax Act 1967 empowers the Director General, where he has reason to believe that any transaction has the direct or indirect effect of evading or avoiding any duty or liability which is imposed or would otherwise have been imposed on any person by the Act, to disregard or vary the transaction and make such adjustments as he thinks fit with a view to counteracting the whole or any part of any such direct or indirect effects of the transaction.

There was tax avoidance when the transactions entered into by the Appellant through shell companies revealed the factual situation that the tax position was altered. The Appellant had in fact implemented a scheme following the advice of the Tax Consultant in perpetuating one original intention of selling of the Properties as intended to do from the start.

Section 113(2) of Income Tax Act 1967 gives a discretion to the Respondent to impose a penalty on a person who has failed to observe the requirements of the law as provided in paragraph 2(a) or (b) of section 113. It is self-evident that section 140 does not expressly nor impliedly exclude the operation of section 113.

Status : The High Court's decision upheld by Court of Appeal and Court of Appeal's Grounds of Judgment available. No right of further appeal.

Date of Judgment : 29.5.2014