

DALAM MAHKAMAH RAYUAN MALAYSIA

RAYUAN SIVIL NO:

TAHUN 2018

ANTARA

LEAW TUA CHOON

... PERAYU

DAN

KETUA PENGARAH HASIL DALAM

NEGERI

... DEFENDAN

[DALAM MAHKAMAH TINGGI MALAYA DI MELAKA

DI DALAM NEGERI MELAKA

PERMOHONAN SEMAKAN KEHAKIMAN

NO: MA-25-01-03 TAHUN 2018

Dalam perkara suatu Keputusan Responden seperti yang dinyatakan dan dianggap dalam satu surat bertarikh 19.02.2018 dan telah dianggap disampaikan kepada saya pada 20.02.2018;

Dan

Dalam perkara notis taksiran tahun taksiran 2017 dan notis taksiran tambahan tahun taksiran 2017 bertarikh 19.02.2018;

Dan

Dalam perkara suatu permohonan untuk antara lain, suatu Perintah Certiorari;

Dan

Dalam perkara Aturan 53 Kaedah-Kaedah Mahkamah 2012.

ANTARA

LEAW TUA CHOON

... PLAINTIF

DENGAN

KETUA PENGARAH HASIL DALAM NEGERI

... DEFENDAN

GROUND'S OF JUDGEMENT

Application for Stay

1. I had dismissed the Applicant's application for leave to commence judicial review under **Order 53 Rule 3 of the Rules of Court 2012** vide the said Notice of Application dated 14.3.2018 for certiorari to quash the Respondent's Decision in the form of notice of assessment and notice of additional assessment for the year of assessment 2017 dated 19/02/2018.

2. I also dismissed consequently the Applicant's application for all further proceedings be stayed until the full and final determination of judicial review application herein.
3. Nevertheless, upon dismissal of this action, the Applicant made an oral application for stay of proceeding pending filing an appeal against my decision in Encl. 1.
4. I grant the said oral application for stay where it is plain that such application had been supported by sufficient or special circumstances that merit the exercise of this Court's discretionary power to warrant a stay order.

Grounds Supporting the Application

5. Briefly, the grounds supporting this application are as follows:
 - a) The Applicant urges this Honorable Court to preserve the status quo of the Applicant prior to the Respondent's Decision since the implementation of the Respondent's Decision will cause irreparable damage to the Applicant;
 - b) The Applicant emphasizes the amount of taxes and penalty imposed by the Respondent upon the Applicant which constituted to an

indisputably large amount i.e. RM9,244,167.00, considering the Applicant is an individual taxpayer and such will cause the Applicant fall into a financial crisis;

- c) The Applicant will under the real threat that the Respondent may invoke its powers under **Real Property Gains Tax Act 1976 (RPGTA)** to demand payment of the disputed tax by commencing civil actions against the Applicant under **sections 21 and 23 of the relevant RPGTA**. Not only that, the Applicant may be prevented from leaving Malaysia if the Respondent may exercise its powers under **section 22 of RPGTA** since the said disputed taxes had not been paid by the Applicant; and
- d) The Applicant has been a law-abiding, responsible and good corporate taxpayer and as such the Respondent's Decision may create substantial tax liabilities for the Applicant which would result in unjust enrichment to the Applicant.

Finding of Court

6. It is a well-established principle that the party seeking a stay must show "special circumstances" and what will constitute "special circumstances" is varied from case to case. Before this Court, I have

considered the competing rights of both parties in the matter that the appeal would be rendered nugatory if the stay application was refused (**Jagdis Singh a/l Banta Singh v Outlet Rank (M) Sdn Bhd [2013] 4 MLJ 213**).

7. It is relevant to refer **section 73 of the Courts of Judicature Act 1965** where a stay of proceeding pending appeal at the Court of Appeal must be so ordered by the court below or the Court of Appeal.
8. In this regard, I am inclined to consider with greater latitude in the aspect that there is always a possibility that the Respondent's Decision or Enclosure 1 judgment be reversed or varied because no human being is infallible. It would be necessary for granting so pending the appeal in such to preserve the status quo of the parties involved who have legitimate interest and expectation which this Court should provide protection for (**Erinford Properties Ltd v Cheshire County Council [1974] 2 All ER 448**).
9. It is also pertinent to note that, at all times the taxpayers' interests must be protected against arbitrary or incorrect assessments, if any and it was ample to give this Court to exercise its discretion sufficiently and appropriately by on the footing there is possibility of arbitrary or incorrect

assessments which may be influenced by the target to be achieved rather than the correctness of such assessment (**Government of Malaysia v Jasanusa Sdn Bhd [1995] 2 CLJ 701**).

10. Therefore, it was evident from the fact that this Court allow the application for stay of proceeding by the Applicant to avoid the Applicant be deprived of the results of the appeal and to ensure that appeal will not become academic. Reference is made to a Supreme Court case of **Chong Woo Yit v Government of Malaysia [1989] 1 CLJ (Rep) 9** as follows:


“We are satisfied that in this case there are no triable issues and therefore dismissed the taxpayer’s appeal with costs. However, as it was not due to any fault on the part of the taxpayer that his appeal to the Special Commissioners has still not been heard since 1985, in the exercise of our inherent jurisdiction we ordered a stay of execution until determination by the Special Commissioners of the taxpayer’s appeal against the assessments raised against him...” (Emphasis added)

11. In the present case, the thrust of the application for stay is that it was an enormous amount of money to be paid by the Applicant and it is true that having regard to maintain the status quo and preserve the

integrity of the appeal with observance of balancing the judicial principle of fairness and natural justice; as well as extent of prejudice that may be suffered by the Applicant if the proceeding is not being stayed (**Universal Trustee (M) Bhd v Lambang Pertama Sdn Bhd & Anor [2015] 7 MLJ 305**).

Conclusion

12. Based on the above stated reasons, I hereby allowed the Applicant's application for stay of proceeding pending outcome of appeal of Enclosure 1.


(DATO' HAJI AHMAD NASFY BIN HAJI YASIN)

Hakim

Mahkamah Tinggi Malaya

(Melaka)

Bertarikh: 25 Mei 2018