

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR**  
**(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)**  
**PERMOHONAN SEMAKAN KEHAKIMAN NO: WA-25-135-05/2017**

Dalam perkara suatu Keputusan Responden seperti yang dinyatakan melalui surat bertarikh 15.5.2017 yang telah disampaikan kepada Pemohon pada 15.5.2017;

Dan

Dalam perkara notis-notis taksiran tambahan tahun taksiran 2008, 2009, 2010, 2011, 2012 dan 2013 bertarikh 15.5.2017;

Dan

Dalam perkara suatu permohonan untuk antara, suatu Perintah Certiorari;

Dan

Dalam perkara Aturan 53 Kaedah-Kaedah Mahkamah 2012.

Antara

**Magnum Holdings Sdn Bhd**

**... Pemohon**

**Dan**

**Ketua Pengarah Hasil Dalam Negeri**

**... Responden**

**(Didengar Bersama)**

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR**  
**(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)**  
**PERMOHONAN SEMAKAN KEHAKIMAN NO: WA-25-137-05/2017**

Dalam perkara suatu Keputusan Responden seperti yang dinyatakan melalui surat bertarikh 15.5.2017 yang telah disampaikan kepada Pemohon pada 15.5.2017;

Dan

Dalam perkara notis-notis taksiran tambahan tahun taksiran 2008, 2013, 2014 dan 2015 bertarikh 15.5.2017 dan notis-notis taksiran tahun taksiran 2011 dan 2012 bertarikh 15.5.2017;

Dan

Dalam perkara suatu permohonan untuk antara, suatu Perintah Certiorari;

Dan

Dalam perkara Aturan 53 Kaedah-Kaedah Mahkamah 2012.

**Antara**

**Magnum Berhad**

**... Pemohon**

**Dan**

**Ketua Pengarah Hasil Dalam Negeri**

**... Responden**

**(Didengar Bersama)**

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR**  
**(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)**  
**PERMOHONAN SEMAKAN KEHAKIMAN NO: WA-25-172-06/2017**

Dalam perkara suatu Keputusan Responden seperti yang dinyatakan melalui surat bertarikh 22.5.2017 yang telah disampaikan kepada Pemohon pada 22.5.2017;

Dan

Dalam perkara notis-notis taksiran tambahan tahun taksiran 2008 bertarikh 22.5.2017;

Dan

Dalam perkara suatu permohonan untuk antara, suatu Perintah Certiorari;

Dan

Dalam perkara Aturan 53 Kaedah-Kaedah Mahkamah 2012.

**Antara**

**Magnum Holdings Sdn Bhd**

**... Pemohon**

**Dan**

**Ketua Pengarah Hasil Dalam Negeri**

**... Responden**

## Grounds of Decision

Azizah Nawawi, J:

### **Applications**

[1] There are three (3) applications for leave to commence judicial review:

- i. In **WA – 25 – 135 – 05/2017**, the applicant is seeking to quash the Notices of Assessment with penalty dated 15.5.2017 for the years of assessment (“YAs”) 2008, 2009, 2010, 2011, 2012 and 2013;
- ii. In **WA – 25 – 137 – 05/2017**, the applicant is seeking to quash the supplementary Notices of Assessment with penalty dated 15.5.2017 for the years of assessment 2008, 2013, 2014 and 2015 and the Notices of Assessment with penalty for the year 2011 and 2012 dated 15.5.2017; and
- iii. In **WA – 25 – 172 – 06/2017**, the applicant is seeking to quash the notice of additional assessment with penalty dated 22.5.2017 for the years of assessment 2008.

[2] The grounds of application are that the respondent’s decision is illegal, void, unlawful and/or in excess of authority and is irrational and/or unreasonable.

[3] The putative respondent, Director General of Inland Revenue (the “**DGIR**”) was invited by this court to submit on the legal issue of whether leave should be granted. Both the learned Federal Counsel from the Attorney General Chambers and the legal counsel for DGIR objected to this application for leave. The only ground of objection is that there is an alternative remedy of appeal under section 99 of the Income Tax Act 1967 (the “**ITA 1967**”).

[4] Having considered the applications and the submissions of the parties, this court has granted the application for leave in all three (3) applications.

### **The Salient Facts**

[5] Magnum Berhad was incorporated in Malaysia and was previously known as Multi-Purpose Holdings Berhad. The principal activities of Magnum Berhad are that of investment holding, provision for share registration and provision of management services.

[6] Magnum Holdings Sdn Bhd is a wholly owned subsidiary of Magnum Berhad and its principal activity is investment holdings.

### ***WA – 25 – 135 – 05/2017***

[7] The DGIR has issued a letter dated 12.9.2014 to inform the applicant of DGIR’s audit visit to the applicant’s premise.

[8] Between 29.9.2014 to 3.5.2017, there were submissions of documents by the applicant to the DGIR and an exchange of letters between the parties. In a letter dated 3.3.2017, DGIR informed the applicant that the applicant's interest expenses in TVSB and the loan stock interest in respect of the investment in Magnum Corporation Sdn Bhd in the YAs 2008-2013 are not deductible.

[9] Despite the applicant's objection to DGIR stand in the letter dated 3.3.2017, the DGIR issued the Notices of Assessment for the YAs 2008 to 2013 with penalty, which are as follows:

(i)	YA 2008:	RM52,477,427.14
(ii)	YA 2009:	RM92,490,396.73
(iii)	YA 2010:	RM85,693,830.21
(iv)	YA 2011:	RM80,201,236.01
(v)	YA 2012:	RM73,016,376.65
(vi)	YA 2013:	RM69,872,564.84

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[10] The DGIR has issued a letter dated 3.2.2017 to the applicant to request for documents for tax audit purpose for YA 2008-2015.

[11] Between 24.2.2017 to 3.5.2017, there were submissions of documents by the applicant to the DGIR and an exchange of letters between the parties. In a letter dated 15.3.2017, DGIR informed the applicant that the applicant's interest expenses incurred for the

investment in portfolio of shares for the YAs 2008, 2011-2013 and interest expenses related to interest income source for the YAs 2013-2015 are not deductible on the basis that the applicant should have applied the tax deduction under section 33(1)(a) of the Income Tax Act 1967 (the "ITA 1967") instead of section 33(2) of the ITA 1967. The DGIR also informed the applicant that the applicant's dividend income of RM2,808,920.00 was not declared for YA 2008.

[12] Despite the applicant's objection to DGIR stand in the letter dated 15.3.2017, the DGIR issued the Notices of Additional Assessment for the YAs 2008, 2011 to 2015 with penalty, which are as follows:

(i)	YA 2008:	RM8,127,098.26
(ii)	YA 2011:	RM8,380,617.93
(iii)	YA 2012:	RM3,868,827.65
(iv)	YA 2013:	RM1,675,174.24
(v)	YA 2014:	RM235,571.60
(vi)	YA 2015:	RM426,342.48

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[13] On 15.5.2017, the DGIR has issued and served on the applicant a notice of Assessment with penalty for YA 2008 in the sum of RM52,477,427.14. This is the subject matter of the application in **WS – 25 – 135 – 05/2017**.

[14] However, on 22.5.2017, the DGIR has issued a notice of Additional Assessment for the YA 2008, where the amount of income tax payable is now revised and increased to RM53,107,427.14. Consequently, the additional income tax payable for YA 2008 amounts to RM630,000.00

### **Findings of the Court**

[15] The grounds of all the three (3) applications are essentially that the DGIR's notices of assessment and notices of additional assessments with penalty are tainted with illegality, is void, unlawful and/or in excess of authority, irrational and unreasonable.

[16] The core issue here is whether this application for leave should be dismissed as the applicant should have proceeded with the appeal process statutorily provided by the ITA 1967.

[17] Section 99 of the ITA 1967 provides that a person who is aggrieved by the assessment of the DGIR may appeal to the Special Commissioners for Income Tax ("**SCIT**"). If the applicant is not satisfied with the decision of the SCIT, it has a statutory right of appeal to the High Court pursuant to para 34, Schedule 5 of the ITA 1967.



[18] In **Government of Malaysia & Anor v. Jagdis Singh** [1987] 2 MLJ 185, the Supreme Court states the following principles:

- (i) Judicial review is always at the discretion of the court but where there is another avenue or remedy open to the applicant, it will only be exercised in exceptional circumstances; and
- (ii) the applicant must show exceptional circumstances, such as a clear lack of jurisdiction or a blatant failure to perform some statutory duty or a serious breach of natural justice.

[19] In **Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Glugor denganTanggungungan** [1999] 3 MLJ 1, the Federal Court made the following findings:

- (i) There are certain classes of cases such as planning, employment and tax cases whereby a statute provides for a special appeal procedure, and so the courts understandably may not grant judicial review. However, this is always subject to the grant of review in certain cases, for example, where an applicant is able to demonstrate excess or abuse of power, or breach of natural justice [pp 40B-F]; and
- (ii) where the main grounds of judicial review are that the public body had acted unfairly, abused its powers, judicial review is more appropriate, as the issues raised are issues of public

importance, going beyond the significance of the case itself [pp 40H-41B].

[20] The above principles were followed by Justice Low Hop Bing in **Ta Wu Realty Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri & Anor** [2004] 6 MLJ 53. On the facts of the case, His Lordship held that the issues of the validity of the notices and the errors of law may be raised as issues before the Special Commissioners, where the applicant is given every opportunity to present its case in the tribunal of the first instance. The High Court decision was affirmed by the Court of Appeal in **Ta Wu Realty Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri & Anor** [2009] 1 MLJ 555, where the Court held at page 567:

*[21] The Supreme Court thus in Jagdis Singh had held that the discretion is still with the courts to act by way of judicial review, **but where there is an appeal procedure available to the applicant, certiorari should not normally issue save in exceptional circumstances** (see also *R v Chief Constable of Merseyside Police; ex parte Calveley & Ors* [1986] QB 424).*

*[22] To repeat the guidelines of Jagdis Singh, **the exceptional circumstances in the circumstances of this appeal required to be established by the appellant were that:***

- (a) the first respondent had a clear lack of jurisdiction; or**
  - (b) there was a blatant failure by the first respondent to perform some statutory duty; or**
  - (c) there was a serious breach of the principles of natural justice.”.**
- (emphasis added)

[21] In **Ketua Pengarah Hasil Dalam Negeri v. Alcatel-Lucent Malaysia Sdn Bhd & Another** [2017] 1 MLJ 563 (FC), Zainun Ali FCJ in her Ladyship’s supporting judgment reasons at page 594 (Column H-I) held that a party who is dissatisfied with an assessment or notice of assessment issued by the Revenue has the remedy to exercise its right to appeal under section 99 of the Act:

*“[127]. A party who is dissatisfied with an assessment or administrative decision issued by the Revenue under section 109 or 109B is not left without any remedy. In the circumstance of this case, if it is dissatisfied with assessment or notice of assessment issued by the appellant, the 1<sup>st</sup> respondent ought to have exercised its right to appeal under section 99 of the Act. Before the Special Commissioners, the 1<sup>st</sup> respondents would have an opportunity to make known its dissatisfaction. It will*

*have the opportunity to tender exhibits and give evidence if necessary.”*

- [22] There is no issue with regards to the principles enunciated by the cases cited above. However, in the present application, the applicant's complaint is that the DGIR has failed to apply the legal position in **Multi-Purpose Holdings Bhd v. Ketua Pengarah Hasil Dalam Negeri** [2001] 8 CLJ 462 (involving the same parties) and that the DGIR is bound by the legal interpretation of that case. Since the DGIR had refused to apply the decision in *Multi-Purpose*, then the DGIR had exceeded his jurisdiction.
- [23] In **Multi-Purpose** case (supra), the subject matter is the taxable income under the notices of assessment for YAs 1982 to 1985 and the computation of taxes chargeable from 1986 to 1988. The issue in this case is whether the sources of income mentioned in section 4 of the ITA 1967 were indivisible and hence not open to further subdivision.
- [24] The SCIT has decided that *“in respect of share income, all counters of shares relating to the case whether income producing or non-income producing are a single source of income under s. 4(c) of the Act and that the same principle equally applied to interest income”*. Thus the SCIT has allowed deductions in respect of dividend income and interest income. This decision by SCIT was affirmed by Justice KC Vohrah and DGIR did not appeal against the said decision.

- [25] In the present application, the applicant also raised the same issue as in the Multi-Purpose case, that is whether the DGIR can segregate the applicant's investment in TVSB from its investment in MCSB on the premise that its investment in TVSB did not produce any income. This act of segregation, according to the applicant is contrary to the legal principle in Multi-Purpose.
- [26] As such, bearing in mind that it is the submission of the applicant that the facts and the law in this case falls squarely within the case of **Multi-Purpose**, I am of the considered opinion that **Multi-Purpose** case will be binding on both the SCIT and the DGIR.
- [27] Therefore, since the **Multi - Purpose** case is binding on the DGIR, the failure to apply the principles in **Multi-Purpose** case amounts to an excess of jurisdiction. In **Ketua Pengarah Hasil Dalam Negeri v. Mudah.My Sdn Bhd** [2017] 5 CLJ 283, the Court of Appeal held that if the taxpayer can demonstrate illegality, then it would be wrong to insist on the exhaustion of an alternative remedy, that is an appeal to the SCIT.
- [28] Added to that, if the DGIR is seeking to revisit the legal position in **Multi-Purpose** case, then the proper forum is this court, as both the SCIT and the DGIR are equally bound to apply the High Court decision in **Multi-Purpose**.

[29] Premised on the reasons enumerated above, the applications for leave are allowed with cost in the cause.



(AZIZAH BINTI HAJI NAWAWI)  
JUDGE  
HIGH COURT MALAYA  
(Appellate and Special Powers Division 2)  
KUALA LUMPUR

Dated: 18<sup>th</sup> January 2018

For the Applicant : DP Naban/S.Saravana Kumar/Janice  
Tan Ying (PDK)  
Messrs Lee Hishammuddin Allen & Gledhill  
Kuala Lumpur.

Attorney General  
Chambers : Noor Fadzila bte Ishak  
Senior Federal Counsel  
Jabatan Peguam Negara  
Putrajaya.

Putative Respondent : Ashrina Ramzan Ali, Senior Revenue  
Counsel/Abu Tariq Bin Jamaluddin, Senior  
Revenue Counsel/Muhammad Farid Jaafar,  
Senior Revenue Counsel  
Lembaga Hasil Dalam Negeri  
Cyberjaya, Selangor.

Salinan Diakui Sah



Nor Laily Binti Hasim  
Setiausaha Kepada  
Y.A. Datin Azizah Binti Haji Nawawi  
Mahkamah Tinggi Kuala Lumpur