

 Shah Alam High Court
 Sept 21, 2020
 Legal Department, IRBM

HIGH COURT DISMISSED THREE APPLICATIONS FOR STAY OF PROCEEDINGS FOR NO SPECIAL CIRCUMSTANCES PROVED

ISSUES

Whether the Applicants had succeeded in establishing special circumstances warranting the Court to grant stay of proceedings.

CASES

1. MPSB V DGIR
 2. TPKSB v DGIR
 3. SBESB V DGIR
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JUDGE

Y.A Dato Sri Tun Abd Majid
Bin Dato Hj Tun Hamzah

REVENUE COUNSELS

Dr. Hazlina Hussain
Marvianna Zainol
Mohamad Danial Ahmad

SALIENT FACTS

1. The Applicants have filed applications for leave to commence Judicial Review against the notices of assessments / additional assessments raised against the Applicants.
 2. The High Court had on 14.8.2020 dismissed the Applicants' applications for leave to commence Judicial Review.
 3. The Applicants had later following the decisions of the High Court filed applications for stay of proceedings to stay all proceedings with regards to the notices of assessments / additional assessments pending the determination of the Appellants' appeals before the Court of Appeal and/or the Special Commissioners of Income Tax.
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APPLICANT'S SUBMISSION

1. The Applicants contended that special circumstances exist warranting the Court to grant stay. The Applicants also contended that neither Section 103 of the Income Tax Act 1967 ('ITA') or 106 of the ITA bars the court from its inherent jurisdiction to grant stay and referred to the case of Government of Malaysia v. Jasanusa.

2. The Applicants applied for stay to preserve the integrity of the Applicants' appeals before the Court of Appeal. The Applicants contended that the Respondent had yet to make tax refunds amounting to RM 3.8 billion to taxpayers and this is a special circumstance warranting status quo to be preserved.

RESPONDENT'S SUBMISSION

1. The Respondent referred to the case of Bintulu Lumber Development Sdn Bhd wherein the Federal Court had dismissed the Appellant's appeal and held that there is no error of law committed by the DGIR and taxpayer ought to exhaust the domestic remedy to challenge the assessments raised.

2. This High Court's decision in dismissing the Applicants' applications for leave to commence Judicial Review is correct in law as it is consistent with Bintulu Lumber.

3. The reason given by Applicants that stay should be granted to preserve status quo so that appeal won't be rendered nugatory has no basis as the Applicants are lacking in potential to succeed in their appeals. Appeals to the Court of Appeal do not operate as a stay.

4. The grounds put forward in the applications for stay are not special circumstances which could warrant the Court to grant stay. Since the Applicants' leave application had failed, the issue of stay of proceedings must also fail.

5. The Applicants' applications for stay are based on the Applicants' personal grounds which do not tantamount to special circumstances.

6. Section 103 of the ITA provides that tax payable shall be due and payable on the due date whether or not a person appeals against the assessment and Section 106(1) of the ITA states that tax due and payable may be recovered by the Government by civil proceedings as debt due to the Government.

COURT'S DECISION

The Court found no circumstances as in the case of *Jasanusa* in the Applicants' cases. The Court also found that the Applicants had failed to prove special circumstances. With no special circumstances, it is proper to look at the scheme of tax provided under Section 103 of the ITA.

The court dismissed the Applicants' applications.