



 Federal Court, Putrajaya

 December 21, 2020

 Legal Department, IRBM

NO ERROR OF LAW COMMITTED BY THE DGIR IN RAISING THE ASSESSMENTS, STATUTORY APPEAL REMEDY PREVAIL OVER JUDICIAL REVIEW APPLICATION

MALAYAN BANKING BERHAD

v.

DIRECTOR GENERAL OF INLAND REVENUE

Keywords: Leave application under section 96(a) of the Courts of Judicature Act 1964 – Dismissal of leave application for Judicial Review.

JUDGES

Tengku Maimun Tuan Mat, CJ

Rohana Yusuf, PCA

Hasnah Mohammed Hashim, FCJ

COUNSEL FOR DGIR

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The paramount principle of law that judicial review would only be granted in exceptional circumstances has been reinforced once again by the apex court when it dismissed the application for leave to appeal to the Federal Court by Malayan Banking Berhad (Maybank).

Originally, Maybank's application for leave for judicial review to quash the Notices of Assessment raised by the Director General of Inland Revenue (DGIR) had been dismissed by the High Court. The Court of Appeal then affirmed the decision of the High Court and Maybank, in a final effort, filed an application for leave to appeal to the Federal Court.

Maybank in its grounds to challenge the assessments by way of judicial review contended that the DGIR had erroneously relied on its Qualifying Plant and Machinery for Claiming Capital Allowances (Public Ruling No. 12/2014) to disallow the Bank's accelerated Capital Allowance

claims for the banking system software despite the clear wording of the Rules which state that banking systems, software systems or software package, being information and communication technology equipment qualify for accelerated Capital

Allowance under the Rules. Such error is an exceptional circumstances justifying for the granting of leave to commence judicial review.

In objecting the said application, the Deputy Revenue Solicitor argued that, the application should be dismissed because of the judicial opinion which is settled law regarding the exhaustion of domestic remedies and exceptional circumstances in tax cases, thus there is no uncertainty on the judicial precedent regarding judicial review in tax matters.

A Three-man panel led by the Chief Justice dismissed the application for leave to appeal and made an order that the tax due under the said assessments must be paid within 30 days from the date of its decision.

In the dismissal of the applicant's application for leave to appeal at Federal Court, the applicant's route to challenge the DGIR's assessment via Judicial Review comes to a halt with the affirmation by the Federal Court of the Court of Appeal and High Court's decision. Thus it is now confirmed that DGIR has legally raised the said assessments for YAs 2014 to 2017 and there is no error of law on the part of the DGIR.

