



📍 Kuala Lumpur High Court

📅 October 13, 2020

🏛️ Legal Department, IRBM

HIGH COURT CONFIRMED THE ASSESSMENTS RAISED BY THE DGIR UNDER SECTION 4(a), INCOME TAX ACT 1967

TGSB v DIRECTOR GENERAL OF INLAND REVENUE

This is an appeal by the taxpayer to the high court by way of case stated against the decision of the Special Commissioners of Income Tax affirming the notices of assessment and additional assessment for YA 2010, 2011 and 2012.

JUDGE

Y.A. Dato' Ahmad Kamal Bin
Md. Shahid

The assessments were disputed on the following grounds:

REVENUE COUNSEL

Muazmir Bin Mohd Yusof
Nordiana Binti Sham

a. The DGIR is time-barred under section 91(1) of the Income Tax Act 1967 from raising the Notice of Assessment for the YA 2010;

b. the gains from the disposal of properties are not subject to section 4(a) of the ITA; and

c. the Respondent incorrectly imposed a penalty under Section 113(2) of the ITA at the rate of 45%.

APPELLANT'S COUNSEL

Khaled Bin Abd Jalil
Najmi Dawami Bin Abd Hamid @
Mohd Akib
[Messrs. ND Hamid & Associates]

THE APPELLANT'S SUBMISSION

1. The alleged mistake of paying RPGT instead of declaring the proceeds as business income does not ipso facto prove negligence.
2. There is no badges of trade because:
 - i. The Appellant's witness has education until Standard 6 only;
 - ii. Each disposal is necessitated by different motives in different situations and circumstances far from being systematic;
 - iii. The proceeds from the disposals were utilized to reinvest in other properties;

- iv. The big number of properties acquired and the relatively small number of transactions of sale by the Appellant support the fact that the properties were acquired for investment and not trading;
 - v. The properties were rented out as an investment to generate income;
 - vi. The accounting records state the properties as investments;
 - vii. No enhancement to the properties;
 - viii. No systematic method in acquisition and disposal of the real properties.
 - ix. The Appellant was forced to sell the properties in Bangi because of corporate social responsibility
3. No penalty should be imposed as the assessments were a result of technical adjustment.
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THE DGIR'S SUBMISSION

1. The finding of primary facts and inferences by the SCIT are unassailable and can neither be overruled nor supplanted by the Court.
2. The SCIT found that the Appellant is negligent as the Appellant failed to report its profit accordingly under ITA 1967. The Appellant also failed to get the confirmation from the DGIR or its tax agent on the treatment of gains received from the sale of properties. Therefore, the element of negligence on the part of the Appellant has been established and the Respondent is not time-barred to raise the Notice of Assessment for YA 2010.
3. The gains received by the Appellant from the disposal of the properties are subject to Section 4(a) ITA 1967. The facts proved that the properties were acquired for the purpose of resale at profit and all properties were in a saleable condition.
4. The Appellant failed to produce any rental/tenancy agreements for any of the properties in this case. There was no evidence to show that during the holding period of the said properties, those properties generates any/certain amount of income.
5. All the properties were held within a very short period of time. Most of the properties were disposed within 10 months to 4 years after it was acquired.

6. The contention that the Appellant was forced to sell all the said properties in Bangi due to corporate social responsibility is untenable as those properties were sold at a higher market price and were sold to a private institution. There was no element of compulsion or forced sale in the said transaction.
 7. The law is very clear that where an incorrect return is filed, the DGIR has a discretion to impose penalty. In this case, the DGIR had applied his mind to the facts and circumstances and used his discretionary power to impose penalty at the rate of 45% as found by the SCIT in the Case Stated. No issue on technical adjustment arises in this case.
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THE HIGH COURT'S DECISION

The High Court on 13 October 2020, affirmed the SCIT's decision and maintained the assessments raised by the DGIR. The Appellant is required to pay costs of RM5,000 to the DGIR subject to allocator.

