

 Court of Appeal, Putrajaya

 March 1, 2021

 Legal Department, IRBM

#### JUDGES

Yaacob Md Sam, JCA

S. Nantha Balan, JCA

Nordin Hassan, JCA

#### COUNSEL FOR DGIR

Ahmad Isyak Mohd Hassan

Mohammad Danial Bin Ahmad

#### COUNSEL FOR TAXPAYER

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S. Saravana Kumar

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Pang Shan Ping

[Messrs. Bodipalar Ponnudurai  
De Silva]

## Court of Appeal ruled section 4C Income Tax Act 1967 does not contravene the Federal Constitution

**WIRAMUDA (M) SDN BHD**

**v.**

**DIRECTOR GENERAL OF INLAND REVENUE**

Keywords: Judicial Review – substantive stage – whether section 4C ITA 1967 contravenes Article 13(2) FC – no exceptional circumstances

The Applicant is a property developer. In 2015, the Appellant received compensation from the Selangor state government for the compulsory acquisition of four(4) plots of its land pursuant under the Land Acquisition Act 1960 (LAA 1960). The DGIR raised a notice of additional assessment on the compensation pursuant to sections 4C and 24(1)(aa) ITA 1967.

The High Court Kuala Lumpur on 29.9.2020 dismissed the Appellant's application for judicial review, *inter alia* for an order to quash the additional assessment.

The Court of Appeal dismissed the Appellant's appeal and ruled as follows:

- i. The taxation imposed on the Appellant is in accordance with the law. Sections 4C and 24(1)(aa) ITA 1967 was enacted by Finance Act 2014 and passed by the Parliament and conforms to Article 13 and 96 of the Federal Court (FC). Section 4C ITA 1967 is a Federal law enacted by the Legislature. Thus, the taxation could not be said to be *ultra vires* the Constitution.

- ii. Article 13(2) FC does not restrict the legislative power of Parliament but merely require adequate compensation to be awarded.
- iii. On the facts of the case, the Appellant was not deprived of adequate compensation for the land that was acquired. By S. 37 of the LAA 1960, the Appellant has the right to object to the amount of compensation awarded by way of land reference to the High Court. The facts show that the Appellant's complaint had been referred to Shah Alam High Court for determination. In the circumstances, the Court finds no transgression of constitutional principle or any infringement of the constitution in the Appellant's case. Thus, the court was of the view that section 4C of the ITA 1967 is *intra vires* of the FC.
- iv. On the issue of whether the Appellant can bypass the alternative remedy provided under section 99 ITA 1967, the Court held that it is trite principle of law that when alternative remedy exists, judicial review could only be exercised in very exceptional circumstances.
- v. The Appellant contended that there is a special or exceptional circumstance on the basis that section 4C ITA 1967 contravenes Article 13 FC. Therefore it is contended that there is a clear lack of jurisdiction on part of the DGIR to invoke section 4C ITA 1967 and impose tax on the Appellant.
- vi. The Appellant's contention is without merit as it had been decided that section 4C does not contravene the FC. Therefore, there is no exceptional circumstance that entitle the Appellant to bypass the alternative remedy of the domestic appeal process under section 99 of the ITA 1967.

On the third issue of whether the land was the Appellant's stock in trade, the Court ruled that the issue involves the determination of question of facts which falls under the jurisdiction of the SCIT as the judges of fact.

**Editorial Note:**

Leave to appeal to the Federal Court had been granted to the taxpayer on 02.08.2022.

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