



**PARAGRAPH 34A (4) SCHEDULE 2  
REAL PROPERTY GAINS TAX 1976**

**L & L  
V.**

**DIRECTOR GENERAL OF INLAND REVENUE  
MOF.PKCP.700-7/1/1496 & 1497**

 **SPECIAL COMMISSIONER OF INCOME TAX**

 **PUAN NIK ASMA ANITA BINTI MAKHTAR**

 **26 SEPTEMBER 2023**

The Taxpayers had acquired shares in a real property company (“RPC”) known as APSB vide a Settlement Agreement dated 21.8.2015 and subsequently, disposed of the said shares and submitted Form CKHT 1B. The

General of Inland Revenue (“the DGIR”) raised Notices of Assessment for real property gains tax for Year of Assessment (“YA”) 2018. The Taxpayers filed their appeals through Forms Q dated 8.2.2021 on the ground that the assessments raised were inaccurate and or erroneous.

The Taxpayers contended that the acquisition price of the RPC shares in APSB should be computed at RM3,095,650.30 which includes RM1,251,433.10 which is the ex-gratia sum due to the Taxpayers and the unpaid balance of the land’s purchase price of RM1,844,217.00 in accordance with the settlement agreement.

In response, the DGIR submitted that pursuant to Paragraph 34A (4) Schedule 2 RPGTA 1976, the disposal price of the chargeable asset is the amount or value of the consideration in money or money’s worth for the disposal of the chargeable asset. It is an Agreed Fact during trial that the disposal price of the said shares is the sum of RM4,927,784.00 which was received by the Taxpayers from the Purchaser. During the trial, the Taxpayers had also agreed on the acquisition price of their purchase of the shares in APSB are RM60,000 and RM40,000 respectively. Based on the above evidence, it is evident that the acquisition price of the shares is the amount or value of the consideration in money paid by the Taxpayers as determined by Paragraph 4 Schedule 2 RPGTA 1976.

The contention of the Taxpayers that the acquisition price should be computed at RM3,095,650.00 could not stand as the Settlement Agreement was not verified and no evidence was adduced to support the Settlement Agreement. Failure to verify the contents of the Settlement Agreement were detrimental and had rendered them inadmissible. Further, Paragraph 34A Schedule 2 RPGTA 1976 does not provide that the disposal price includes the liabilities incurred by the Taxpayers as mentioned in the Settlement Agreement as contended by the Taxpayers.

The Special Commissioner of Income Tax (“the SCIT”) on 26.9.2023 had dismissed the Taxpayer’s appeal and held that the Notices of Assessment raised against the Taxpayers for the real property gains tax are reasonable and justified. The Taxpayers have failed to discharge the burden of proof placed upon them that the assessments for the YA 2018 are excessive or erroneous in accordance with Paragraph 13 Schedule 5 Income Tax Act 1967.

*Editorial Notes:*

*The Taxpayers have the right to appeal against the decision of the SCIT within twenty-one (21) days from the date of the decision of the SCIT.*