



**PARAGRAPH 34A SCHEDULE 2
REAL PROPERTY GAINS TAX 1976**

AEM MICROTRONICS (M) SDN BHD

V.

DIRECTOR GENERAL OF INLAND REVENUE

CIVIL APPEAL NO.: PA-14-2-04/2022

 **PENANG HIGH COURT**

 **YA DATO' ROZANA BINTI ALI YUSOFF**

 **30 OCTOBER 2023**

This is an appeal by AEM Microtronics (M) Sdn. Bhd. ('the Taxpayer') by way of a Notice of Appeal dated 21.04.2022 against the Deciding Order of the Special Commissioner of Income Tax ('the SCIT') dated 13.04.2022 wherein the

SCIT had dismissed the Taxpayer's appeal against the Notice of Assessment of the Real Property Gains Tax ('Form K') for Year of Assessment ('YA') 2016.

On 05.07.2012, the Taxpayer acquired 61,636,000 units of ordinary shares in Qualitek Electronics (M) Sdn Bhd ('QEM') from Microcircuit Technology (S) Pte. Ltd. amounting to RM2.47 per share. On 01.04.2016, the Taxpayer disposed 61,636,000 of the ordinary shares to two individuals pursuant to the Sale of Shares Agreement ('SSA'). The Director General of Inland Revenue ('the DGIR') subjected the gains on the disposal of 61,636,000 ordinary shares under Paragraph 34A Schedule 2 RPGTA 1976 ('Paragraph 34A') and raised a Form K for YA 2016 dated 21.08.2018 on the Taxpayer amounting to RM1,599,999.60.

The Taxpayer contended that QEM is not a real property company ('RPC') as defined under Paragraph 34A(6), thus the gains on the disposal of 61,636,000 ordinary shares were not subjected to Paragraph 34A. When QEM acquired a plot of land in the year 2000, the property's defined value was only 24.08% from its total tangible asset. However, QEM's defined value of real property had increased to more than 75% of the total tangible assets in the year 2010 due to the disposal of non-real property assets and not through acquisition of real property. The Taxpayer further submitted that QEM only owned a plot of land which it acquired in the year 2000. The Taxpayer also contended that the SCIT is erred when she interpreted the definition of RPC under Paragraph 34A(6) by considering QEM's defined value when the Taxpayer acquired the shares in QEM in the year 2012. The Taxpayer asserted that the RPC's definition under Paragraph 34A(6) provides that the property's defined value must be computed when QEM acquired the real property in the year 2000.

The Taxpayer also asserted that pursuant to the SSA, the Taxpayer and the Purchaser had agreed that the disposal price of the 61,636,000 shares is RM2.00 only and not RM 8,000,000.00 as alleged by the DGIR. It is agreed under the SSA that the Purchaser would pay to QEM for the debt settlement amounting to RM7,999,998.00.

The DGIR contended that QEM is a RPC and the gains received by the Taxpayer from the disposal of its shares in QEM is a disposal of chargeable asset pursuant to Paragraph 34A. Applying the test provided in Paragraph 34A(6) and as testified by SR1, QEM property's defined value was 99.69% of the value of its tangible assets when the Taxpayer acquired the shares in QEM in the year 2012. The definition of RPC provided under Paragraph 34A(6)(b) is clear and unambiguous, moreover Paragraph 34A should be read as a whole and not confined to certain words or subparagraph only. The SCIT is correct when she decided that the defined value of the real property or shares or both owned by the relevant company as referred in the definition of RPC is at the date of acquisition of the chargeable asset.

The DGIR further argued that pursuant to the SSA, the consideration or the disposal price of 61,636,000 units of shares in QEM is RM8,000,000. However, the Appellant had declared the disposal price or the consideration amount in Form CKHT 1B dated 01.04.2016 as RM2.00 only. The sum of RM7,999,998.00 paid by the Purchaser to discharge QEM's liabilities is part of the consideration for the sale of 61,636,000 units of shares as agreed by both parties under the SSA.

The High Court upheld the SCIT's decision and dismissed the Taxpayer's appeal with costs of RM3,000.00.

Editorial Note

The Taxpayer has a right to appeal to the Court of Appeal within 30 days from the date of the decision.