



**TAX APPEAL - DISPOSAL OF SHARE BY REAL  
PROPERTY COMPANY - CONSIDERATION IN MONEY OR  
MONEY'S WORTH - PARAGRAPH 34A SCHEDULE 2  
RPGTA**

**ENG CHIN TIAN & 3 OTHERS**

**v.**

**DIRECTOR GENERAL OF INLAND REVENUE**

**[B-01(A)-535-10/2023]**



**COURT OF APPEAL**



**YA DATUK HAJJAH AZIZAH BINTI HAJI NAWAWI, HMR**

**YA DATO' LIM CHONG FONG, HMR**

**YA DATO' DR. CHOO KAH SING, HMR**



**19 JUNE 2024**

The Taxpayers filed an appeal against the decision of the High Court in dismissing the Taxpayers' appeal against the Deciding Order of the Special Commissioners of Income Tax ("SCIT").

The sole issue before the Court of Appeal was whether both the High Court and the SCIT had committed any error of law in holding that the consideration for the disposal of 1,000,000 shares in Gagah Makmur Sdn Bhd ("Gagah") by the Taxpayers to Yap Lam Boon and Ang Kun Huat was RM6,799,500.00 and not RM2,799,500.00.

Gagah was the beneficial owner of a 906.60-acre piece of agricultural land in Sungai Lokan Telupid, Beluran, Sabah ("land"). The Taxpayers were shareholders of Gagah, a real estate company. On 27.4.2004, Gagah entered into a Sale and Purchase Agreement with Express Credit Sdn Bhd to acquire the land for RM6,799,500.00 and obtained a loan facility of RM4,000,000.00 from Public Bank Berhad ("PBB") to partially finance the purchase. On 30.11.2004, the Taxpayers and others entered into a Share Sales Agreement ("SSA") with Yap Lam Boon and Ang Kun Huat ("vendor") to dispose their shares in Gagah. The Revenue raised an assessment on 28.4.2017 and 4.5.2017 against the Taxpayers for the Year of Assessment 2004, taking RM6,799,500.00 as the disposal price of the 1,000,000 shares. The Taxpayers disagreed with the assessment stating that the disposal price of the shares was only RM2,799,500.00, being the only payment they received from the vendor.

The Taxpayers argued that under Paragraph 34A, Schedule 2 of the Real Property Gains Tax Act 1976 ("RGPTA"), the disposal price of the 1,000,000 shares should be RM2,799,500.00 instead of RM6,799,500.00 and the Revenue had misconstrued the ratio of *Ketua Pengarah Hasil Dalam Negeri v Chan Lian Yen [MSTC 30-013]* wherein the High Court had decided that in determining the disposal price of the shares, the liability shall be part of the disposal price of the shares. Unlike in *Chan Lian Yen's* case, the payment of the loan of RM4,000,000.00 was optional. The shares were transferred from the Taxpayers to the Purchasers without the loan of RM4,000,000.00 being settled as a one-off payment within 7 days of the completion date of the SSA. The consideration amount of RM6,799,500.00 was not a definitive and conclusive price but rather a conditional price, dependent on the existing loan. Consequently, the intention of the parties pertaining to the consideration of the shares in the SSA was either RM6,799,500.00 (including the loan of RM4,000,000.00) or RM2,799,500.00 (excluding the amount of RM4,000,000.00). Therefore, only RM2,799,500.00 was the actual consideration paid by the purchasers to the Taxpayers and others.

The Revenue argued that it was not disputed that Gagah was a real property company under Paragraph 34A, Schedule 2 of the RPGTA and the Taxpayers were its shareholders. In determining the disposal price of the chargeable assets, i.e. the shares, Paragraph 34A(4) has clearly laid out the manner based on the amount of value of the consideration in money or money's worth for the disposal of the chargeable assets. Based on the SSA, the purchase price of Gagah's ordinary shares was agreed between parties at RM6,799,500.00. From the reading of clause 2 of the SSA, the amount of RM2,799,500.00 was a part payment of the purchase price. Further, Clause 3 of the SSA stated that the purchasers were given an option to pay the full sum of RM4,000,000.00 but the option was not taken by the purchasers. It was evident from clause 3 of the SSA that stated that the purchasers shall ensure the principal sum of RM4,000,000.00 in respect of the loan together with the interest and all other sums levied by PBB were duly paid by Gagah at the time and manner required by PBB. This entailed that the loan which was the responsibility and/or liability of the Taxpayers has now, in accordance with the SSA, became the responsibility of the purchasers. It could be concluded that the Taxpayers had benefited by no longer having to ensure the payment of the loan to PBB. This benefit amounted to a consideration under the SSA. The purchase price of the shares in Gagah as per the SSA was RM6,799,500.00 (reference was made to the case of *Mulpha Pacific Sdn Bhd v. Paramount Corn Bhd [2003] 4 CLJ 294*).

The Court of Appeal, by a unanimous decision, dismissed the Taxpayers' appeal with cost of RM10,000.00 to the Revenue.