



TECHNOLTIC ENGINEERING SDN BHD
v.
GOVERNMENT OF MALAYSIA AND 2 OTHERS
[W-01(A)-506-09/2023]

 COURT OF APPEAL

 YA AZIZAH BINTI NAWAWI, HMR
YA AZIMAH BINTI OMAR, HMR
YA AZMI BIN ARIFFIN, HMR

 15 AUGUST 2024

The Taxpayer filed an appeal against the decision of the learned High Court Judge, in dismissing the Taxpayer’s judicial review application against the Deciding Order of the Special Commissioner 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 not allowing the extension of time to file the notice of appeal (“Form Q”).

The Director General of Inland Revenue (“DGIR”) raised an assessment against the Taxpayer under Section 90(3) of the Income Tax Act 1967 (“ITA 1967”) for the Years of Assessment (“YA”) 2009-2016. The Taxpayer then filed the return forms (“Forms C”) in 2020. Subsequently, the Taxpayer applied for an extension of time (“Form N”) to file an appeal under Section 99 of the ITA 1967 on 27.7.2021. However, the DGIR rejected the application, citing that the Taxpayer’s failure to provide a reasonable cause for failing to file the Forms C within the time required under Section 77 of the ITA 1967. The DGIR then forwarded the Taxpayer’s Form N to the SCIT for consideration, as stipulated under Section 100 of the ITA 1967. On 15.2.2022, the SCIT rejected the Taxpayer’s Form N through a Deciding Order, which the Taxpayer received on 1.3.2022. Dissatisfied with the decisions of both the SCIT and DGIR, the Taxpayer filed the application for judicial review on 20.5.2022 against the Government of Malaysia (“GOM”), DGIR and SCIT. The GOM and SCIT were represented by the Attorney General Chambers (“AGC”) while the DGIR was represented by the Senior Revenue Counsel. The High Court then dismissed the judicial review application on 30.8.2023. Hence, the present appeal before the Court of Appeal.

The Taxpayer submitted several reasons for the delay inter alia; that the Notices of Assessment were served and delivered to their former tax agent, PricewaterhouseCoopers Taxation Services Sdn Bhd (PWC) rather than being personally delivered to the Taxpayer; changes in their personnel and staff; the Notices of Assessment were merely assessments and not based on the Taxpayer’s actual income and disruptions caused by the Covid-19 pandemic.

The DGIR argued that the assessments for YA 2009 to 2016 were imposed correctly under Section 90(3) of the ITA 1967. The Taxpayer was negligent for failure to submit the required Forms C under Section 77A of the ITA 1967 within the stipulated timeframe of seven months after the end of the accounting period. Furthermore, the Taxpayer did not file any appeal against the Notices of Assessment within 30 days, as mandated by Section 99 of the ITA 1967. Due to this failure, the assessments for YA 2009 to 2016 became final and conclusive under Section 97(1)(a) of the ITA 1967. The DGIR stated that compliance with Sections 77A, 99 and 100 of the ITA 1967 was mandatory and not procedural. The Taxpayer’s failure to comply with these statutory requirements could not be rectified by any subsequent actions. The Taxpayer had in fact, employed a tax agent who should have advised the effect of the omission and non-compliance. Despite this, the Taxpayer sought an extension of time to file an appeal via Form N, which was only submitted in July 2021. The DGIR reviewed the appeal and found no reasonable cause for the delay ranging from 3 to 9 years for YA 2009-2016. Consequently, the application was rejected and forwarded to the SCIT for consideration.

There was no flaw in the decision-making process and the decisions of the SCIT and DGIR were made legally and within the powers granted under the ITA 1967. The Taxpayer failed to provide evidence for the delay and did not challenge the fact that the Notices of Assessment were sent to their last known address. Additionally, the Taxpayer did not inform the DGIR of any changes regarding their tax agent, PWC, which remained their tax agent until 2021. Moreover, the Taxpayer was a habitual defaulter, having failed to submit their tax returns for several years even prior to Covid-19 pandemic.

The Court of Appeal, by a unanimous decision, dismissed the Taxpayer’s appeal with the cost of RM15,000.00 to the AGC and DGIR.

Editorial Note: *The Taxpayer has right to file leave to appeal to the Federal Court within 30 days from the date of this decision.*