



Judicial Review - Income Tax Exemption - Facilitation Fund –
Expenditure - Legitimate Expectation - Ultra Vires - Natural Justice -
Doctrine of Proportionality - Abuse of Process - Alternative Remedy -
Illegality - Irrationality - Error of Law - Government Grant - P.U.(A)
207/2006 - Estoppel

1. KETUA PEGAWAI EKSEKUTIF/ KETUA PENGARAH HASIL
DALAM NEGERI
2. LEMBAGA HASIL DALAM NEGERI MALAYSIA
v.
LANDMARK PROPERTY SDN BHD
[S-01(A)-444-08/2021]

 COURT OF APPEAL

 YA LEE SWEE SENG, HMR
YA LIM CHONG FONG, HMR
YA ALWI BIN ABDUL WAHAB, HMR

 13 MARCH 2025

The Revenue appealed against the High Court’s decision in allowing the judicial review application by Landmark Property Sdn Bhd (“Taxpayer”) to quash the additional tax assessments raised against the Taxpayer for the Years of Assessment (“YA”) 2016, 2017 and 2018.

The Revenue contended that the High Court erred in fact and law by ruling that the assessments were ultra vires of the Income Tax (Exemption) (No. 22) Order 2006 [“P.U.(A) 207/2006”], irrational, and without jurisdiction.

The Taxpayer, being a property developer received a government Facilitation Fund of RM104.2 million (“Facilitation Fund”) to finance a housing project under the PPA1M scheme. The Revenue conducted a tax audit and disallowed the Taxpayer’s deduction of expenditures funded by the grant by virtue of P.U.(A) 207/2006 which prohibited tax deductions for expenses financed by the government grants. The Revenue then issued additional tax assessments for YA 2016, 2017, and 2018.

The Revenue argued that the High Court erred in its findings on the merits and facts of the case particularly regarding the interpretation of P.U.(A) 207/2006, the application of tax deductions and the Taxpayer’s use of the Facilitation Fund. The Revenue’s decision to disallow certain tax deductions was based on a proper audit investigation which concluded that the entire amount of RM104.2 million was used to finance project expenditures. Clause 4 of the Facilitation Fund Agreement, required the entire RM104.2 million government grant to be fully utilized for project expenditures. The investigation findings were supported by the financial records and banking transactions which showed that the government grant was deposited into designated accounts and subsequently used for the PPA1M housing project. This directly contradicted the High Court’s conclusion that only a portion of the Facilitation Fund was spent on deductible expenditures. Paragraphs 3(1) and 3(2) of P.U.(A) 207/2006 explicitly prohibited tax deductions for expenses financed by the government grants and the High Court had misinterpreted these provisions. The earlier Global Settlement Agreement reached between the Revenue and KTI Sdn Bhd and between the Revenue and Dataran Jayamakmur Sdn Bhd involved the Taxpayer and it also did not in any way deal with the issue of Facilitation Fund and therefore the Revenue was at liberty to carry out audit on the issue and further to raise assessments against the Taxpayer where it appeared that none or no sufficient assessments had been made to the Taxpayer. Further, the determination of whether the Facilitation Fund was used for deductible expenditures was a question of fact that should have been decided by the Special Commissioners of Income Tax (“SCIT”). The High Court overstepped its judicial function by engaging in factual findings that were outside the scope of judicial review and the High Court’s failure to properly consider the audit investigation findings, the financial documentation, and statutory tax provisions resulted in an erroneous decision warranting its reversal by the Court of Appeal. It was also argued that the Taxpayer had filed its appeal to the SCIT against the Notices of Assessment and decided to stay the proceeding before the SCIT while pursuing the course of Judicial Review which clearly an abuse of the process of the court.

The Taxpayer, argued that the High Court correctly quashed the additional tax assessments which were ultra vires of P.U.(A) 207/2006 and violated the principles of natural justice, legitimate expectation and irrationality. The Taxpayer contended that the Facilitation Fund granted by the Government was meant to bridge the gap between the Gross Development Cost (GDC) and the Gross Development Value (GDV) of the PPA1M housing project and was not used to finance project expenditures. The Revenue’s actions were illegal because the assessments were based on a misinterpretation of P.U.(A) 207/2006, which exempts government grants from income tax but did not prohibit deductions for expenditures unrelated to the grant. Additionally, the Taxpayer had entered into a Global Settlement Agreement with the Revenue in 2018, which closed the tax audit with no further adjustments, reinforcing the expectation that the expenditures were deductible. The Revenue’s reopening of the tax investigation and issuance of fresh assessments in 2020 amounted to a breach of this agreement and an abuse of process.

The Taxpayer also argued that the Revenue's assessment was irrational because it disregarded financial records and imposed penalties at an excessive 60% rate without justification. Lastly, the Revenue's insistence on statutory appeal through the SCIT was misplaced as the case involved exceptional circumstances, justifying judicial review.

The Court of Appeal, by unanimous decision, allowed the Revenue's appeal with cost of RM30,000.00 here and below payable to the Revenue.

Editorial Note: The Taxpayer has the right to further appeal to the Federal Court subjects to leave to appeal granted by the Federal Court.