



Judicial Review – Order 53 Rules of Court 2012
Tax exemption – Section 127(3)(b) Income Tax Act 1967
Business income – Section 4(a) Income Tax Act 1967

D PRISTINE MEDINI SDN BHD
v.
KETUA PENGARAH HASIL DALAM NEGERI
[JA-25-19-05/2021]

 **HIGH COURT, JOHOR BAHRU**
 **YA TUAN NOOR HISHAM BIN ISMAIL**
 **17 OKTOBER 2024**

This was a leave application for judicial review pursuant to Order 53 of the Rules of Court 2012 by the Taxpayer to quash the decision of Director General of Inland Revenue (“DGIR”) in the form of Notices of Additional Assessments for Years of Assessments (“YA”) 2015 till 2019 all dated 30.4.2021 amounting to RM985,935.94.

The Taxpayer was a property developer for the development project in Johor. The development project started in 2013 and was completed in 2018. The Taxpayer was granted a tax exemption under section 127(3)(b) of the Income Tax Act 1967 (“ITA”) and the Income Tax (Exemption Order) (No. 19) Order P.U.(A) 417/2007 under the Incentive and Support Package.

During the course of business, a number of purchasers failed to pay the full price of the condominium units and/or failed to fulfill the terms in the Sales and Purchase Agreement resulting in the forfeiture of the purchaser’s deposits by the Taxpayer. On 4.11.2020, the DGIR issued the audit findings against the Taxpayer and took the position that the “forfeited deposit received from purchasers”, “unit cancellation fees” and “late payment charges” received by the Taxpayer were incidental income and did not fall within the scope of the Exemption Order. Vide a letter dated 16.11.2020, the Taxpayer explained that the properties were sold in the course of trading in land and any profit from the sales would be considered as business income. Thus, the forfeited deposits and unit cancellation fees were the business income of the Taxpayer as a property developer under Section 4(a) of ITA and were clearly exempted under the Exemption Order. The DGIR maintained its decision through letters dated 9.3.2021 and 30.3.2021 and issued the Notices of Additional Assessment for YA 2015-2019 on 30.4.2021. The Taxpayer then filed the application for judicial review against the Notices of Additional Assessment.

The DGIR argued that the issues of eligibility of exemption and determination of whether forfeiture of deposits, unit cancellation fees and late payment charges were exempted from tax involved determination of facts which should be ventilated before the Special Commissioners of Income Tax (“SCIT”) through documentary evidence. Witnesses should be called to testify and verify the accounts and documents and prove the facts therein. The Notices of Additional Assessments and the DGIR’s audit finding letter dated 4.11.2020 were issued in accordance with ITA and was not tainted by illegality, irrationality and procedural impropriety. There were no issues of estoppel and legitimate expectation as the DGIR was carrying out its duties under the law and had acted pursuant to the additional information found during audit. For the stay application, the Taxpayer did not prove the existence of special circumstances to warrant for stay.

The High Court ruled that the Taxpayer failed to prove the existence of exceptional circumstances and dismissed the Taxpayer’s leave application for judicial review with cost of RM5,000. Dispute on assessment involved mixed issues of facts and law and the main issue on determination of source of income should be ventilated before the SCIT. The Taxpayer should pursue the domestic remedy provided under Section 99 of ITA. Interim stay was granted pending the disposal of formal application for stay by the Taxpayer provided that the application was to be filed within one month from the date of decision.

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