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HIGH COURT, KOTA BHARU

Y.A TUAN SHAMSUL BAHRIN BIN ABDUL MANAF

30 NOVEMBER 2025

COUNSELS FOR DGIR: MUHAMMAD ARIF BIN ZAINI & AMIR SYAFIQ BIN ABDUL KARIM

SECTION 4(a) INCOME TAX ACT 1967

YU GIM SAN
v.
KETUA PENGARAH HASIL DALAM NEGERI
RAYUAN SIVIL NO: DA-14-1, 2, 3, 4 & 5-06/2024

The Taxpayer was involved in the business of buying and selling rubber. The Taxpayer had purchased five (5) parcels of land, namely Lot 613, Lot 1029, Lot 1901, Lot 1904 and Lot 1231 from the year 1983 until 2008 and subsequently disposed off all of the land in the Year of Assessment ("YA") 2012 and YA 2013.

Lot 1901 but not for Lot 613 and Lot 1904. The Director General of Inland Revenue ("DGIR") then issued "Perakuan Tidak Dikenakan Cukai" for YA 2012 and YA 2013 against the Taxpayer under the Real Property Gains Tax Act 1976 ("RPGTA 1976"). Following the audit exercise conducted in 2020, the Notices of Additional Assessments ("JA Forms") dated 28.10.2020 were issued by the DGIR on the basis that the gains from the sale of the five (5) parcels of land should be subjected to income tax under Section 4(a) of the Income Tax Act 1967 ("ITA 1967").

The Taxpayer conceded that Lot 613 should be taxed under the ITA 1967. However, for the remaining lots, the Taxpayer contended that the gains from the disposal of the land were capital in nature and therefore not taxable under the ITA 1967. Furthermore, the Taxpayer had previously been exempted from paying tax under RPGTA 1976 on the disposal of Lot 1029, Lot 1231 and Lot 1901. The Taxpayer's conduct in respect of these lots was consistent with the treatment for long-term investment, as no development works were carried out, no subdivision or conversion of land took place, no advertisements were placed, and no agents or brokers were appointed to secure purchasers. The sales were isolated and occurred only after long periods of ownership. The Taxpayer also relied on the Federal Court decision in *Ketua Pengarah Hasil Dalam Negeri v. Kind Action (M) Sdn Bhd [2025] 4 CLJ 501*, contending that the DGIR should be estopped from raising assessments under the ITA 1967, as exemptions from tax had been granted to the Taxpayer under the RPGTA 1976.

The DGIR argued that the Special Commissioners of Income Tax ("SCIT") had correctly determined that the gains arising from the disposal of the four (4) parcels of land fell within the meaning of "gains or profits from a business" under Section 4(a) ITA 1967. The DGIR further argued that the SCIT applied the correct legal test by considering the subject matter of the transactions, the duration of ownership, the frequency and pattern of the Taxpayer's land dealings, the intention inferred from conduct and surrounding circumstances as well as the absence of any alternative explanation for disposal. On the issue of estoppel as decided in *Kind Action*, the DGIR submitted that there was no double taxation in this case that would warrant the application of estoppel. The Taxpayer had never been assessed to tax under the RPGTA 1976 as the "Perakuan Tidak Dikenakan Cukai" did not impose any tax on the Taxpayer. Therefore, the DGIR was not estopped from raising the additional assessments under the ITA 1967.

On 30.11.2025, the High Court dismissed the Taxpayer's appeal with costs of RM25,000.00.

Editorial Note

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