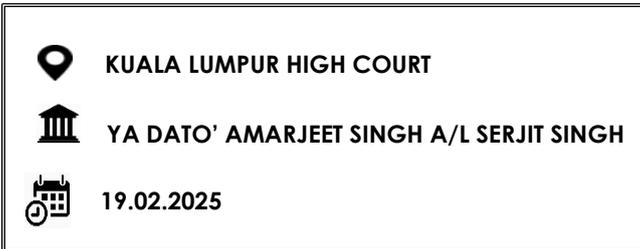




**JUDICIAL REVIEW APPLICATION  
ORDER 53 RULES OF COURT 2012  
SECTION 110B INCOME TAX ACT 1967**

**AIA BERHAD v KETUA PENGARAH HASIL DALAM  
NEGERI**

**[WA-25-295-08/2021 & WA-25-297-10/2020]**



The High Court dismissed the Taxpayer's application for Judicial Review ("JR") under Order 53 of the Rules of Court 2012 made against the Revenue for an order of Certiorari on Notices of Additional Assessment for the Years of Assessment ("YA") 2015, 2016, 2017, 2018 and 2019 on the grounds that the decision was illegal, void, and in excess of authority and/or unreasonable.

The Taxpayer submitted that the Revenue had excluded the Investment-Linked Fund from the computation of tax on the actuarial surplus. The Taxpayer argued that the Revenue had decided that there was no surplus that has been transferred from the Investment-Linked Fund to the shareholders' fund. The Taxpayer further argued that the Revenue had misinterpreted the scope and intent of Section 110B of the Income Tax Act 1967 ("ITA 1967") and the Income Tax (Set-Off For Tax Charged On Actuarial Surplus) Rules 2008 ("Set-Off Rules"), consequently posing incorrect questions to themselves where neither Section 110B of ITA 1967 nor the Set-Off Rules authorizes the Revenue to segregate the Investment-Linked Fund from the Investment Operating Fund or the standard non-participating life insurance fund. The Taxpayer also asserted that the presence of alternative recourse should not bar its JR application before the High Court where it was also argued that the Revenue's decision to ignore the Investment-Linked Fund from the calculation of tax under the Set-Off Rules warrants the High Court's intervention.

In response, the Revenue argued that the ITA 1967 provided a statutory right of appeal to the Special Commissioners of Income Tax ("SCIT"). The Revenue argued that the main issue in this case was about the tax raised based on the set off in actuarial surplus under Section 110B of ITA 1967. There is a dispute on whether there is a transfer of actuarial surplus from the life fund to the shareholders' fund, where from the Revenue's view that based on the tax calculation, the amount of transfer is nil. Although the Taxpayer had given their own account on the calculation of the surplus, there were no reason given why it was not reflected in the tax calculation. Hence, the amount of actual surplus that could be claimed by the Taxpayer was a question of fact and needed to be ventilated before the SCIT.

The Revenue further submitted that the issues of interpretations of tax law were very technical in nature as they involved the determination of facts and should be determined by the SCIT based on the documentary evidence where the JR application was not the right remedy for the Taxpayer to quash the assessments that was raised by the Revenue.

In delivering the judgment, the High Court Judge has dismissed the JR application with cost of RM3,000 for each suit. The High Court Judge agreed that the issues involving question of facts must be ventilated before the SCIT.

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