



**JUDICIAL REVIEW APPLICATION
INCOME TAX ACT 1967 OR REAL PROPERTY
GAINS TAX ACT 1976**

MB VEST SDN BHD

V.

KETUA PENGARAH HASIL DALAM NEGERI

 **JOHOR BAHRU HIGH COURT**
 **YA PUAN MANIRA BINTI MOHD NOR**
 **24TH SEPTEMBER 2025**

The Taxpayer is principally engaged in the hotel business. The Taxpayer acquired 7 lots of land totaling of 7,327.7526 square meters. On 02.04.2012, a Development Agreement was signed with SKS Southern Sdn. Bhd (“developer”) to develop 5,090.0768 square meters of the land into 2 blocks of service apartment known as Tri Tower Serviced Apartment. In return, the Taxpayer received 72 units of serviced apartments from the developer, which were subsequently disposed of in stages.

The Taxpayer submitted Form RPGT 1A on 30.8.2013 and the Director General of Inland Revenue (DGIR) issued a Real Property Gains Tax (RPGT) assessment notice amounting to RM169,436.90 on 30.4.2015, which was fully paid by the Taxpayer. In 2018, the Taxpayer disposed of another 33 units of serviced apartments, with a total gain of RM23,911,947.00, and reported the gains of disposal under the RPGT through Form CKHT 1A. The DGIR later audited the Taxpayer after found that the transactions involved a series of disposals and constituted elements of trade.

In exercising his statutory duties, the DGIR discharged the RPGT assessment and issued assessment under the Income Tax Act (ITA). An additional assessment for the Year of Assessment (YA) 2018 was issued through notice dated 28.12.2023 amounting to RM6,565,197.37 under subsection 4(a) ITA.

Dissatisfied with the assessment raised, the Taxpayer filed Judicial Review Application to quash the notice of assessment and contends that the DGIR erred in raising the assessment under the ITA as the disposal of the apartments should have been subjected to RPGT. The Taxpayer further argues that there are no elements of badges of trade in the disposal. Therefore, the disposal of apartments should be subjected to RPGT and the DGIR is estopped from raising the same disposal under the ITA.

The Taxpayer asserts that the subject matter of this case is amenable to judicial review because the DGIR had acted in excess of its jurisdiction and authority, blatant failure to perform its statutory duty, breached principles of natural justice and legitimate expectation of the Taxpayer which the DGIR’s Decision and the penalty imposed is illegal and contrary to Article 96 of the Federal Constitution. The Taxpayer also argues that the alternative remedy under section 99 of the ITA is not a bar to the Taxpayer’s application for Judicial Review as both are entirely different processes and procedure.

The Taxpayer further relies on the Federal Court decision in *Ketua Pengarah Hasil Dalam Negeri v Kind Action (M) Sdn Bhd [2005] 4 CLJ 501*, where the Federal Court had allowed the judicial review on the ground that there was an excess or abuse of power by the DGIR in imposing tax under the RPGT and ITA which is amounting to double taxation.

In response, the DGIR asserts that there are no exceptional circumstances warranting the judicial review application to be allowed in this case. The Taxpayer still has right to be heard before the Special Commissioners of Income Tax (SCIT) and that right is well preserved by the provisions of the ITA. The issue of badges of trade clearly involves questions of fact and intention, which must be proven by the Taxpayer through witness evidence before the SCIT.

The DGIR further submits that no issue of double taxation arises in this case and *Kind Action* is distinguished. Based on the facts, the DGIR had discharged the RPGT assessment before issuing the assessment under the ITA following an audit.

Decision: The High Court agreed with the DGIR’s submission and dismissed the Taxpayer’s Judicial Review Application with cost of RM3,000.00. In brief, the High Court held that the issue involving badges of trade is question of facts that should be heard and decided by the SCIT. No issue of double taxation arises as the RPGT assessment has been discharged.