



**PARAGRAPH 34A, SCHEDULE 2,
REAL PROPERTY GAINS TAX ACT 1976**

YAP MUN YUE

V.

**KETUA PENGARAH HASIL DALAM NEGERI
WA-14-30-11/2022**



HIGH COURT OF KUALA LUMPUR



YA DATO' AHMAD KAMAL BIN MD. SHAHID



7 DECEMBER 2023

The Taxpayer is one of the shareholders of a real property company (“RPC”) with the shareholding of 400,000 units of shares. The Taxpayer acquired the shares in two (2)

40 units of share on 04.04.2013 and 399,960 units of share on 25.03.2014. The 399,960 units of shares were acquired after the company became a RPC on 02.05.2013. On 23.12.2015, the shareholders of the RPC entered into a Share Sale Agreement to dispose their respective shares at a consideration price of RM8,500,000.00. Following the disposal, the Taxpayer filed Form CKHT 1B on 18.02.2016 and the Director General of Inland Revenue (“DGIR”) issued an additional assessment vide Form KA on 11.09.2017 in relation to the disposal. Dissatisfied with the assessment, the Taxpayer filed an appeal to the Special Commissioners of Income Tax (“SCIT”). The issue raised is whether the acquisition price of the 399,960 shares in the RPC on 25.03.2014 should be valued at the actual acquisition price which is RM1.00 each or at the price of market value.

The SCIT on 01.11.2022 had dismissed the Taxpayer’s appeal and held the acquisition price of the 399,960 shares by the Taxpayer are valued at RM1.00 per share by virtue of Paragraph 34A(3)(b) Schedule 2 Real Property Gains Tax Act 1976 (“RPGTA 1976”) and to be read with Paragraph 4 Schedule 2 RPGTA 1976. The Taxpayer then filed an appeal against the SCIT’s decision and requested for the High Court’s opinion on whether the decision of the SCIT is correct in law.

The Taxpayer contended that the SCIT had erred in law when the SCIT ignored the law in Paragraph 23 Schedule 2 RPGTA 1976 as two (2) of the shareholders in the RPC are connected persons i.e. husband and wife. The Taxpayer also contended that the RPC then is a “controlled company” by virtue of Section 139 Income Tax Act 1967 and therefore the shares were acquired as a result of transaction between connected persons and was made otherwise than by way of a bargain made at arm’s length. The Taxpayer further submitted that due to the given circumstances, the value of the shares must follow market value as required by Paragraph 9 Schedule 2 RPGTA 1976. The price of RM1.00 per share is not an arm’s length price.

The DGIR submitted in determining the acquisition price under Paragraph 34A(3)(b) Schedule 2 RPGTA 1976, that Paragraph 4(1) Schedule 2 RPGTA 1976 should apply in this case to ascertain the acquisition price of the 399,960 unit of shares which had been allotted to the Taxpayer. The DGIR submitted that the SCIT had correctly ruled that RM1.00 is the value of the shares based on the documents and evidence adduced, including the Form 24 of the RPC, Financial Statements and Form CKHT 1B. The DGIR contended that in order to determine the value of shares in a company, the performance and outlook of the company, among other things should be examined.

The High Court on 07.12.2023 dismissed the Taxpayer’s appeal with costs of RM2,000.00.

Editorial Note:

- *The Taxpayer has the right to file an appeal within 30 days from the decision of the High Court.*