



**ORDER 53 RULES OF COURT 2012 -  
JUDICIAL REVIEW APPLICATION - TIME BAR -  
SECTIONS 91(1) AND 91(3) ITA – ITA vs RPGTA**

**KUMPULAN CONSTRUCTIONS SDN BHD**

**v.**

**DIRECTOR GENERAL OF INLAND REVENUE  
(KCH-25-4/2-2023)**

 **KUCHING HIGH COURT**

 **YA TUAN LEONARD DAVID SHIM**

 **15 APRIL 2024**

The Taxpayer filed a judicial review application against the Revenue for an Order for Certiorari to quash the Revenue's decision in the form of a notice of additional assessment for the year of assessment (YA) 2013 dated

30.12.022 (Form JA) for the sum of RM13,536,920.00 (Decision) and the demand notice dated 30.12.2022.

The Taxpayer raised the issue of whether the Revenue was authorized to tax the gain from the disposal of shares by the Taxpayer under the Income Tax Act 1967 (ITA) despite the Revenue had made a finding that the gain on the disposal of the shares was subject to the Real Property Gains Tax Act 1976 (RPGTA). The Taxpayer submitted that the Revenue had clearly revoked his own finding including the computations as reflected in the Certificate of Non-Chargeability and clearance letter and tax audit clearance letter for YA 2013 under the RPGTA. Further, the Revenue did not provide any valid justifications or reasons for such revocation. The Taxpayer also submitted that the Revenue should not act arbitrarily by revoking his own finding including the computations and subsequently made the impugned Decision without any justifications. Therefore, such actions of the Revenue were made with a clear lack of jurisdiction. The Taxpayer also asserted that the jurisdiction as conferred by subsection 91(1) of the ITA would be subjected to statutory limitation and can only be legally and validly exercised within the period of five years under subsection 91(1) of the ITA.

In response, the Revenue submitted that the Taxpayer had the remedy to appeal to the Special Commissioners of Income Tax (SCIT) against the tax treatment upon issuance of the notice of additional assessment. There were no exceptional circumstances that warranted for judicial review in this case. The SCIT was the right avenue to determine whether the Taxpayer would be subjected to either under the ITA or the RPGTA. The Revenue relied on subsection 91(3) of the ITA to support the argument that the Revenue may at any time make an assessment for any year of assessment for the purpose of making good any loss of tax attributable to fraud, willful default or negligence. The facts to support the Revenue's position on the existence of fraud, willful default or negligence must be determined before the SCIT.

In delivering the judgment, the High Court had allowed the Taxpayer's application with cost of RM10,000.00. The High Court Judge held that the Revenue had no legal basis to subject the gain from the disposal of shares for YA 2013 to tax under the ITA beyond the statutory time limit as provided under subsection 91(1) of the ITA. The High Court Judge also held that the Revenue could not rely on subsection 91(3) ITA because the decision in the Form JA and the demand notice was made under subsection 91(1) ITA instead of subsection 91(3) ITA.

**Nota Editor:** *KPHDN berhak untuk memfailkan rayuan terhadap keputusan Mahkamah Tinggi ini dalam tempoh 30 hari dari tarikh keputusan diberikan.*