



**ORDER 53 RULES OF COURT 2012 -
JUDICIAL REVIEW APPLICATION -
DOMESTIC REMEDY - LEAVE STAGE**

REGIONAL LAND SDN BHD

v.

DIRECTOR GENERAL OF INLAND REVENUE

W-01(IM)-181-04/2023



COURT OF APPEAL, PUTRAJAYA



YA DATUK HAJJAH AZIZAH BINTI HAJI NAWAWI

YA DATO' MOHD NAZLAN BIN MOHD GHAZALI



YA DATUK WONG KIAN KHEONG

29 MARCH 2024

COUNSELS FOR THE APPELLANT:

DATO' NITIN V. NADKARNI, JASON TAN JIA XIN & CHUA CHUN YANG

COUNSELS FOR THE REVENUE:

MOHAMMAD HAFIDZ BIN AHMAD & SYAZANA SAFIAH ROZMAN

The taxpayer filed an appeal against the decision of the High Court Judge (HCJ) dismissing the taxpayer's application for leave to commence Judicial Review (JR application).

The JR application sought to challenge the assessments raised by the Director General of Inland Revenue (Revenue) for the years of assessment (YA) 2019 and 2020 by subjecting the taxpayer's gains from the disposal of land to tax under the Income Tax Act 1967 (ITA).

The taxpayer contended that there was no dispute of facts in this case. At the leave stage, the court should not consider whether or not there were exceptional circumstances to justify the grant of substantive judicial review. The matter should be considered at the substantive stage. The HCJ thus erred in holding that the issue of alternative remedy ought to be dealt with at the leave stage and dismissed the application for leave on the basis that the alternative remedy for appeal had not been exhausted before the Special Commissioners of Income Tax (SCIT).

In response, the Revenue submitted that the JR Application is disputing on the validity of the assessments as the taxpayer was of the view that the disposal of the land should be subjected to the Real Property Gains Tax Act 1976 (RPGTA). The issues should be ventilated before the SCIT and the taxpayer should proceed with the appeal under section 99 of the ITA instead of filing the application for leave before the High Court. The fact that the dispute on whether the imposition of tax should be under the RPGTA or ITA necessarily required the determination of intention of the taxpayer (whether the purpose of acquisition of the. As such, the SCIT would be the appropriate quorum to deal with such issue as it involved question of facts.

The Court of Appeal had dismissed the taxpayer's appeal with cost of RM10,000.00 and held that such issue fell within the purview of the SCIT.

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