



**Award of Interest on Tax Refund - Section 111 & Section
111D Income Tax Act 1967 - Section 11 Civil Law Act 1956**

KEYSIGHT TECHNOLOGIES MALAYSIA SDN BHD

v.

DIRECTOR GENERAL OF INLAND REVENUE

[W-01(A)-272-05/2021]



COURT OF APPEAL



YA DATUK SERI KAMALUDDIN BIN MD SAID

YA DATO' ABU BAKAR BIN JAIS

YA DATO' COLLIN LAWRENCE SEQUERAH



12th JUNE 2024

The Court of Appeal was unanimous in dismissing Taxpayer's application for award of interest on tax refund.

The Taxpayer sought for an order for award of interest to be granted in respect of the refund sum of RM286,285,621.01 at the rate of 3.21% per year from 27.10.2017 until 24.05.2024 and post-judgment interest on the judgment debt of RM346,724,084.37 at the rate of 5% per annum from 25.5.2024 until full settlement thereof. The application was to cover its actual borrowing cost on the loan that was taken to pay the tax and to compensate for the loss of use of money that belonged to the Taxpayer. The rate of 3.21% was claimed to be at arm's length and lower than the standard prescribed rate of 5% for post-judgment interest.

The Taxpayer relied on section 11 of Civil Law Act 1956 ("CLA 1956") to argue that the court was vested with discretion to impose interest payment as compensation. The Taxpayer contended that it was entitled to restitution on any money paid to the Director General of Inland Revenue ("DGIR") pursuant to unlawful or erroneous demand and relied on the decisions in *Woolwich Building Society v Inland Revenue Commissioners* (No. 2) [1992] 3 All ER 737 and *Pelanggi Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2012] 1 MLJ 825 to support its contention that pursuant to the decision of the court in allowing the Appellant's appeal, the tax which had been paid must be refunded together with interest.

The DGIR argued that even though the court had the discretion to award interest, the discretion must be exercised in appropriate circumstances. It would be inappropriate to impose interest on the DGIR in light of sections 91, 97, 99, 103 and 106 of the Income Tax Act 1967 ("ITA 1967"). The court should give full effect to the spirit, intention and whole framework of tax legislation that emphasized speedy collection of tax in spite of appeal and expressly excluding compensation/interest when dealing with refund arising from tax appeal. It would be against the public interest to punish the DGIR by imposing interest on the refund as the collection of tax was one of the DGIR's most important duty in serving its public purpose.

The DGIR submitted that section 11(1) of the CLA 1956 only applied to trial proceedings for recovery of debt or damages. The instant case was not for the recovery of debt or damages and the payment of tax did not create a debtor-creditor relationship between the Taxpayer and the DGIR. Moreover, in *Woolwich's* case, since the law had been declared to be void or ultra vires, then the demand itself was ultra vires and unlawful. It was not a case where in the normal course of appeal, the demand was made pursuant to an assessment which was then decided in favour of the Taxpayer. Similarly, the decision in *Pelanggi's* case was distinguishable and peculiar to the facts of its case.

More importantly, the ITA 1967 did not provide for payment of interest in refunding money to the taxpayers when the assessment had been determined upon appeal. Section 111D(4) of the ITA 1967 had specifically excluded a situation whereupon tax was to be refunded pursuant to an appeal under section 99 of the ITA 1967.

The Court held that as a matter of award of interest, it was under the discretion of the Court. In all circumstances of the case, this was not an appropriate case where payment of interest ought to be given. Therefore, the tax that had been paid was to be refunded without interest.