



 Court of Appeal, Putrajaya

 March 1st, 2021

 Legal Department, IRBM

High Court Erred in Issuing The Order Of Prohibition Against DGIR

SEAPORT WORLDWIDE SDN BHD

v.

DIRECTOR GENERAL OF INLAND REVENUE

&

DIRECTOR GENERAL OF INLAND REVENUE

v.

SEAPORT WORLDWIDE SDN BHD

Keywords: Judicial Review - Prohibition Order - Domestic Remedy

JUDGES

Dato' Suraya binti Othman

Dato' Lee Heng Cheong

Dato' Nordin bin Hassan

COUNSEL FOR DGIR

Normareza binti Mat Rejab

Syazana Safiah binti Rozman

COUNSEL FOR TAXPAYER

Anand Raj

Abhilaash S

[Messrs. Shearn Delamore]

The taxpayer had filed Judicial Review (JR) against the DGIR and prayed for among others, an order of *Certiorari* to quash the notices of assessment and an order of Prohibition to prevent the DGIR from enforcing the assessment. The High Court dismissed the main reliefs prayed by the taxpayer but allowed the Order of Prohibition against the DGIR. Both parties appealed against the decision.

The Court of Appeal after hearing the extensive submission from both parties, unanimously decided in favour of the DGIR for all issues, by allowing the DGIR's appeal and dismissing the taxpayer's appeal.

The Court of Appeal agreed that domestic remedy is not a bar to JR but there need to be shown exceptional circumstance to justify the by-pass of the domestic appeal process under section 99 of the Income Tax Act 1967 (ITA 1967). The Court found no exceptional circumstances in this case and held that the taxpayer's contentions clearly involve merit of assessment that requires determination of facts by the SCIT.

The Court in allowing the DGIR's appeal against the Order of Prohibition held that DGIR has the power under the ITA 1967 to make assessment and institute civil recovery proceedings under s.103, 103B and 106 of the ITA 1967. Hence, there was no excess / lack of jurisdiction on the part of the DGIR in initiating the process of recovery of tax.

On the substantive issues, the Court confirmed the DGIR's assessment that the gains received from the leasing of the taxpayer's land is taxable as business income under paragraph 4(a) of the ITA 1967 and the development expenditures claimed by the taxpayer are not deductible under section 33(1) of the ITA 1967 as the taxpayer does not fulfil the definition of property developer under the Income Tax (Property Development) Regulations 2007. The Court was also of the view that the imposition of penalty under section 113(2) ITA 1967 was in accordance with the law.

