



CIVIL APPEAL – SECTIONS 91(1), 99, 103, 106 OF THE  
INCOME TAX ACT 1967 – SUMMARY JUDGMENT -  
ORDER 14 RULES OF COURT 2012

GOVERNMENT OF MALAYSIA  
v.  
KUALA REJANG INDUSTRIAL SYNERGY SDN BHD  
& 2 ORS.  
[Q-01(IM)(NCVC)-565-10/2021]



COURT OF APPEAL (KUCHING)



YA DATO' LEE SWEE SENG  
YA DATO' AZIZUL AZMI BIN ADNAN  
YA DATO' DR. HJ. ALWI BIN HJ. ABDUL WAHAB



21 AUGUST 2024

The Revenue filed an appeal against the decision of the High Court Judge delivered on 14.9.2021, in dismissing the Revenue's application for summary judgment.

The writ filed by the Revenue against the Taxpayer to recover the debt owing to the Government of RM4,116,323.97 for income tax including the increase in tax for the year of assessment (YA) 2016 (additional assessment).

The additional assessment raised due to the Taxpayer's disposal of land in which the Revenue initially raised under the Real Property Gains Tax Act 1976 (RPGTA). The Taxpayer submitted its tax return for YA 2016 together with its audited account on 24.8.2018. The Revenue then conducted an audit exercise against the Taxpayer and found that some expenses claimed by the Taxpayer should not be allowed. Hence, both parties mutually agreed on 17.5.2019 that the Revenue will raise additional assessment for YA 2016 for a sum of RM3,850,495.70 with the penalty rate at 10%. The Revenue then raised the additional assessment on 28.5.2019.

Instead of paying the debt due as agreed after the audit, the Taxpayer filed application for extension of time to file appeal under Section 100(1) of the ITA (Form N) on 01.02.2021 and notice of appeal under Section 99 of the ITA (Form Q) on 19.03.2021 to the SCIT. The Revenue then commenced civil recovery against the Taxpayer.

The Taxpayer challenged the merit of the additional assessment and questioned the validity of the additional assessment and concurrently, the Taxpayer filed the appeal to the Special Commissioner of Income Tax (SCIT). The High Court dismissed the Revenue's application for summary judgment and ruled that the Taxpayer successfully raised triable issues and ordered this case to proceed for a full trial. The Taxpayer argued inter alia, that the original tax was assessed under the RPGTA and that the contract/transaction of the current action was amended on many occasions caused by the change of conditions. The matter was still ongoing and yet to be concluded and the completion date was extended to 31.8.2021. The Appellant's claim against the Respondent in this action was premature as the transaction had yet to be finalized.

The Revenue argued that there was an error of law in the High Court's decision in which the court did not take into account the position of the tax law in collecting the debt due to the Government under Sections 103 and 106 of the Income Tax Act 1967 (ITA) and the decision of the Federal Court in the case of *Mohd Najib Hj Abdul Razak v. Government of Malaysia & Another Appeal* [2023] MLRAU 240. All the issues raised by the Taxpayer boiled down to the same main issue i.e. the correctness and merit of the additional assessment, in which it should be ventilated before the SCIT.

The Court of Appeal, by a unanimous decision, allowed the Revenue's appeal with the cost of RM10,000.00 payable by the Taxpayer to the Revenue.

**Editorial Note:** *The Taxpayer has right to appeal to the Federal Court within 30 days from the date of this decision.*