



## SECTION 131 OF THE INCOME TAX ACT 1967

KETUA PENGARAH HASIL DALAM NEGERI

v.

SIME DARBY ARA DAMANSARA SDN BHD

[W-01(A)-551-08/2022]



COURT OF APPEAL



YA DATUK SUPANG LIAN

YA DATO' LIM CHONG FONG

YA DATO' DR. HJ ALWI BIN HJ ABDUL WAHAB



14<sup>TH</sup> JANUARY 2025

The appeal of the Revenue had been unanimously dismissed. The appeal before the Special Commissioners of Income Tax (“SCIT”) emanates from an application for relief made by the Taxpayer under section 131(1) of the Income Tax Act 1967 (“ITA 1967”) for Year of Assessment (“YA”) 2010.

The Taxpayer’s relief with regard to tax refund on the revised tax computation which was made on the basis that there was an error or mistake by treating the gains received from the compulsory acquisition of its land as part of its taxable income in YA 2010. The Taxpayer had adopted this position through the declaration in the tax return form for YA 2010 based on the Decision Impact Statement (“DIS”) that was issued by the Revenue in February 2007 which distinguished the decision in *Ketua Pengarah Hasil Dalam Negeri v Penang Realty Sdn Bhd* [2006] 3 MLJ 597 (“Penang Realty”). The DIS stated that section 24(1)(a) of ITA 1967 would be applicable on gains received from compulsory acquisition where the asset (i.e. land) that was compulsorily acquired was a stock in trade. Subsequently, the Taxpayer sought to revise its tax computation upon the decision of the High Court in *Metacorp Development Sdn. Bhd. v Ketua Pengarah Hasil Dalam Negeri* [2011] 5 MLJ 447 (“Metacorp”) which confirmed the decision in Penang Realty’s case.

The Revenue argued that no error or mistake was committed by the Taxpayer since the gains had been declared as income in the tax return form after much deliberation and in full awareness and consciousness of the laws and its implication including the decision in Penang Realty’s case. If the Taxpayer did not agree with the Revenue, the Taxpayer ought to have filed an appeal by way of Form Q under section 99 of the ITA 1967. Hence, it was a deliberate act on the part of the Taxpayer by declaring the gains as taxable income. Moreover, the Revenue’s prevalent practice was to tax gains from compulsory acquisition that fulfilled section 24(1)(a) ITA 1967. The DIS was the Revenue’s prevailing practice that was issued under section 131(4) of the ITA 1967.

The Taxpayer on the other hand argued that it made a mistake by relying upon and following the Revenue’s view as contained in the DIS. The Taxpayer then sought to revise its tax computation based on the decision in Metacorp’s case.

Upon dismissing the Revenue’s appeal, the Court of Appeal held that the Taxpayer had in good faith relied on the DIS. The Taxpayer thereafter realised the decision of Metacorp and therefore, tax was paid by the Taxpayer under a mistake. The DIS was not the Revenue’s prevailing practice.

The appeal is dismissed with costs of RM20,000 to the Taxpayer.