



**JUDICIAL REVIEW – ORDER 53 RULES OF COURT
2012 – DOMESTIC REMEDY – SECTION 99 INCOME
TAX ACT 1967**

IMPIANIKA DEVELOPMENT SDN BHD

v.

**KETUA PENGARAH HASIL DALAM NEGERI
[WA-25-399-12/2020]**

 **HIGH COURT**

 **YA DATO' AMARJEET SINGH A/L SERJIT SINGH**

 **09 MAY 2024**

The Taxpayer filed a judicial review (JR) application to quash the decision of the Director General of Inland Revenue (DGIR) made vide a Notice of Assessment dated 10.12.2020 for the year of assessment (YA) 2017 amounting to RM41,978,355.07 in additional taxes and penalties including the audit finding letters dated 21.5.2020, 14.8.2020, 29.9.2020, 1.10.2020, 1.12.2020 and 8.12.2020 (collectively referred to as "Decision").

The Taxpayer entered into a Privatisation Agreement dated 25.11.2014 and a Supplementary Agreement dated 14.8.2015 with the Mayor of Kuala Lumpur (DBKL) for the construction of a project known as "Razak Mansion". The total contract sum for the Razak Mansion project is RM284,411,335.63. The 19.91-acre "Exchanged Land" consisting of Parcel A, Parcel B, Parcel C1, Parcel C2 and Parcel C3 would be transferred to the Taxpayer in return for the construction of the Razak Mansion. On 16.6.2017, the Exchanged Land was transferred to the Taxpayer vide the Form 14A. The Exchanged Land was developed as the Razak City Residence project, a mixed development of 5,748 units of serviced apartments and 121 units of office shop. Based on the investigation, the DGIR found that the gross income of the Taxpayer for Phase 1 (New Razak Mansion) submitted in the tax calculation amounting to RM137,444,534 and the total claimed cost was RM155,834,508.00 (audited account) and thus The Razak Mansion project had a carry-forward loss of RM20,043,759.00 (actual loss). Phase 2 (Razak City Residence) recorded an estimated loss (unfinished projects) of RM24,690,527.00 and the total loss carried forward for the YA 2017 was RM44,734,286.00. The cost of land used in Phase 2 was RM284,411,336.00. The Taxpayer considered Phase 1 and Phase 2 as one project. However, upon review of the audited accounts for the year ended 2017 and the income tax calculation for YA 2017, it was found that the Taxpayer reported the total gross income and total cost of the Razak Mansion project upon completion as follows:

DETAILS	RM
Contract Revenue	137,444,534
Add : MAIWP Income	2,500,000
Less : Project Costs	155,834,508
Actual Loss	15,889,974

The reported Contract Revenue of RM137,444,534 equaled to the total Contract Sum as stated in the Supplementary Agreement. The income tax calculation for YA 2017 reported an actual loss on the construction of the Razak Mansion project amounting to RM20,043,759. Meanwhile, the estimated gross loss of the Razak City Residence project for YA 2017 was RM24,690,527. The Taxpayer had included together the actual loss of the Razak Mansion project and the estimated gross loss of the Razak City Residence project. The Taxpayer had reported the construction of Razak Mansion project and Razak City Residence project as one and same project. The Taxpayer also failed to provide progress billing and final account for the purpose of income claims. No cash payment was accepted and a Contract Sum of RM284,411,336 was recorded as the land cost for the Razak City Residence project. The land assessment by the Valuation and Property Services Department (JPPH) confirmed that the market value of the Exchanged Land at the date of transfer was RM443,860,000. Meanwhile, the audited accounts for the year ended 2017 showed that the Exchange Land had been charged to the bank. The Bank approved a Syndicated Facilities Agreement (SFA) amounting to RM480,000,000. Based on the investigation, the DGIR raised 2 issues; namely whether the Razak Mansion project and Razak City Residence project were the same project, and if they were 2 separate projects, what was the contract value (revenue) for the Razak Mansion project.

The Taxpayer contended that the DGIR had committed errors of fact and law by deciding that the Taxpayer had received taxable income pursuant to the Privatisation Agreement and Supplemental Agreement entered into with DBKL. The Agreements were entered into for the Taxpayer to acquire and purchase the Exchanged Land from DBKL in exchange for consideration. The Taxpayer had purchased the Exchanged Land from DBKL in exchange for the following consideration: (a) the Taxpayer was to develop the Razak Mansion Project to be handed over to DBKL, the cost of which was valued at RM137,444,534.00; and (b) the Taxpayer was to pay a cash consideration of RM146,966,801.63 to DBKL. The Revenue had committed errors of fact and law by deciding that the Taxpayer had under-declared its income for YA 2017 amounting to RM152,774,775.00 pursuant to the Privatisation Agreement and Supplemental Agreement.

In delivering the judgment, the High Court had dismissed the Taxpayer's application for JR with cost of RM5,000.00 and held that such issue fell within the purview of the Special Commissioners of Income Tax and not vide a JR application.

Editorial Notes: *The Taxpayer has the right to appeal to the Court of Appeal within 30 days from the date of the decision.*