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COURT OF APPEAL

YA DATUK NANTHA BALAN A/L E.S MOORTHY
YA DATO' LIM CHONG FONG
YA DATO AHMAD KAMAL BIN MD SHAHID

20 JANUARY 2025

PARAGRAPH 34 SCHEDULE 5 OF THE INCOME TAX ACT 1967

HERNG JOO SDN BHD
v.
KETUA PENGARAH HASIL DALAM NEGERI
[W-01(IM)-372-07/2023[

The Appellant ("Taxpayer") filed an appeal under section 99 of the Income Tax Act 1967 ("ITA 1967") against the Notice of Additional Assessment for the year of assessment ("YA") 2012 dated 11.3.2016 through Form Q dated 6.4.2016.

The Special Commissioners of Income Tax ("SCIT") dismissed the Taxpayer's appeal on 22.9.2022. Dissatisfied with the SCIT's decision, the Taxpayer proceeded to file an appeal to the High Court. However, instead of filing the Notice of Appeal to the Secretary of the SCIT, pursuant to Paragraph 34(2) Schedule 5 of the ITA 1967, the Taxpayer filed the appeal to the High Court vide Notice of Appeal on 4.10.2022.

On 9.12.2022, the Taxpayer was notified by the SCIT that their time to file an appeal has lapsed. On 10.1.2023, during the case management before the Registrar of the High Court, the Taxpayer was again informed that the time for filing the appeal has lapsed and the Taxpayer then requested for an extension of time to file the notice of appeal. It was only on 13.2.2023, the Taxpayer filed an application for extension of time to serve the notice of appeal dated 4.10.2022 to the SCIT. On 22.6.2024, the High Court dismissed the Taxpayer's application for an extension of time to file and serve the notice of appeal dated 4.10.2022 to the SCIT. The Taxpayer then appealed to the Court of Appeal.

Before the Court of Appeal, the Taxpayer argued that it was correct to file the Notice of Appeal to the High Court instead of filing it to the Secretary of the SCIT and that the Notice of Appeal was valid. The Taxpayer further contended that the delay in serving the notice of appeal to the SCIT was unintentional and not on the basis of disrespecting the Court. With regards to the Court's discretion, the provision on extension of the time period for filing and serving of the notice of appeal was clearly provided in the Rules of Court 2012. Therefore, there was no prejudice against the Respondent ("Director General of Inland Revenue/DGIR") considering that the Notice of Appeal and the Records of Appeal had been filed and served to the DGIR in time even though it had not been served to the SCIT.

The DGIR argued that the Learned High Court Judge had not erred in law and in facts when dismissing the Taxpayer's application. The Taxpayer had failed to comply with the clear statutory provision to file the Notice of Appeal to the Secretary of the SCIT in accordance with Paragraph 34(2) Schedule 5 of the ITA 1967, hence there was no valid appeal before the High Court and the Court of Appeal. As there was no valid appeal, the question of extension of time to serve the notice of appeal to the SCIT did not arise and the appeal should be dismissed. With regard to the delay, the DGIR argued that there was no valid and cogent reason proffered by the Taxpayer to justify the delay for court's consideration. Reasons on unintentional mistake and not prejudicing the DGIR was not a valid reason to justify the delay. It was further argued that the High Court had observed that the Taxpayer was only bringing one issue before the SCIT, whereby it was purely question of facts which had been determined before the SCIT. There was no question of law worth noting and there were no indications by the Appellant in their Affidavit of any question of law to be appealed at the High Court

The Court of Appeal unanimously held that the Appellant's appeal was to be dismissed with cost of RM5,000.00.