






**JUDICIAL REVIEW - ORDER 53 RULES OF
COURT 2012 - SECTION 44A(9) ITA 1967**

**MUHIBBAH MARINE ENGINEERING SDN BHD
v.
DIRECTOR GENERAL OF INLAND REVENUE
(WA-25-70-01/2020)**

 **KUALA LUMPUR HIGH COURT**
 **DATO' AMARJEET SINGH A/L SERJIT SINGH**
 **1 APRIL 2024**

COUNSELS FOR THE DGIR:

- 1. MOHD HARRIS BIN HANAPI**
- 2. MOHAMMAD HAFIDZ BIN AHMAD**
- 3. MOHAMAD ASYRAF BIN ZAKARIA**
- 4. MUHAMMAD DANIAL IZZAT BIN ZULBAHARI**

The taxpayer filed a judicial review application against the Director General of Inland Revenue (DGIR) for an Order of Certiorari to quash the DGIR's decision in the form of notices of assessment all dated 17.01.2020 for the years of assessment (YA) 2015 and 2016.

The taxpayer raised the issue on the interpretation of the word "or" under Section 44A(9) of the Income Tax Act (ITA) 1967 and contended that there was no dispute of facts in this case. The taxpayer submitted that the term "or" must be read disjunctively and in applying the plain and natural definition of the word "or" in a disjunctive manner, it would be apparent that from the reading of Section 44A(9) ITA 1967 only allowed the DGIR either to make an assessment or additional assessment against the claimant company in order to make good of any loss of tax or penalize the surrendering company for providing incorrect information for the amount of tax which had or would have been undercharged by the claimant company due to incorrect information. Hence, the DGIR should be restricted to either raising an assessment or additional assessment against the taxpayer (the claimant company) or penalizing the surrendering company (Muhibbah Engineering (M) Bhd).

In response, the DGIR submitted that the issue arose from the claim for deduction on "project accrued expenses" by Muhibbah Engineering (M) Bhd which resulted in a loss in its book and subsequently the loss had been surrendered to the taxpayer. However, the DGIR had disallowed the claim for deduction on the grounds that the expenses were provisional expenses. These facts must be ventilated first before the Special Commissioner of Income Tax (SCIT) and not for the court to decide on the issue of fact. The SCIT being the judges of facts should decide on matter pertaining to mixed question of facts and law. Further, the word "or" as reflected in Section 44A(9) ITA 1967 applied to both the surrendering company and the claimant company based on two different scenarios in line with the clear intention of the Parliament as stated in the Hansard.

In delivering the judgment, the High Court had dismissed the taxpayer's application with cost of RM5,000.00. The High Court Judge held that such issue fell within the purview of the SCIT and not vide a judicial review application.

Nota Editor: Pembayar Cukai berhak untuk memfailkan rayuan terhadap keputusan Mahkamah Tinggi ini dalam tempoh 30 hari dari tarikh keputusan diberikan.