



ORDER 53 RULES OF COURT 2012 -
SECTION 91, 99 & 113 INCOME TAX ACT 1967

INFRA RANCAK SDN BHD
v.
DIRECTOR GENERAL OF INLAND REVENUE
(JA-25-4-03/2023)

 CIVIL 2 HIGH COURT OF JOHOR BAHRU
 PUAN NURULHUDA NUR' AINI BINTI MOHAMAD
 04 APRIL 2024
COUNSELS FOR THE DGIR:
1. MOHD HARRIS HANAPI
2. AZLEENA BINTI MD. KHAIRUDDIN

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 made in the form of a notice of additional assessment for the year

assessment (YA) 2017 including penalty dated 16.02.2023 and an Order for Certiorari to quash the DGIR's decision issued on 16.02.2023 which was time-barred under Section 91(1) of the Income Tax Act 1967 (ITA) 1967). The taxpayer had also filed an appeal against the same notice of assessment to the Special Commissioners of Income Tax (SCIT) pursuant to Section 99 of the ITA 1967 on 13.03.2023.

The taxpayer argued that the word "*may*" in Section 99(1) of the ITA 1967 indicated that it was not compulsory for the aggrieved party to file an appeal against the assessment to the SCIT within 30 days after the service of the notice of assessment. Further, there were no provisions under the ITA 1967 which prohibited the aggrieved party or the taxpayer in this case to apply for Judicial Review application before exhausting the domestic appeal procedure under Section 99(1) of the ITA 1967. The basis for the taxpayer's judicial review application was not vested under the ITA 1967 but under the additional powers of the High Court in Paragraph 1 of the Schedule of the Courts of Judicature Act 1964.

The taxpayer submitted that it was entitled to claim a deduction for payment of consultancy fees pursuant to Section 33(1) of the ITA 1967 and Regulations 6, 8(1) and 8(2) of the Income Tax (Property Development) Regulations 2007. The taxpayer also argued that the DGIR's additional assessment for YA 2017 dated 16.02.2023 was time-barred pursuant to Section 91(1) of the ITA 1967 and the DGIR had failed to discharge the burden of proof that the taxpayer had committed fraud or wilful default or negligence in submitting the tax return.

Meanwhile, the DGIR submitted that the taxpayer had failed to fulfill the requirement of exceptional circumstances as laid down by the Supreme Court in the case of *Government of Malaysia & Another v. Jagdis Singh* [1987] CLJ (Rep) 110. The issues of deductibility of consultancy fees under Section 33 of the ITA and the time-barred assessment were question of facts which need to be ventilated before the SCIT by virtue of *Malayan Weaving Mills Sdn Bhd v Director General of Inland Revenue* [1999] 6 MLJ 405 and *Saujana Triangle Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2018] MLJU 171.

In delivering the judgment, the High Court had dismissed the taxpayer's application for Judicial Review with cost of RM5,000. The High Court Judge held that such issues fell within the purview of the SCIT.

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