



**TAX APPEAL - SECTION 140 & SECTION 33 INCOME
TAX ACT 1967**

SILVERDRUM CORPORATION SDN BHD

v.

KETUA PENGARAH HASIL DALAM NEGERI

[Q-01(A)-411-07/2021]

 **COURT OF APPEAL, KUCHING**

 **YA DATUK RAVINTHRAN A/L
N. PARAMAGURU
YA DATUK AZIMAH BINTI OMAR
YA DATUK NOORIN BINTI BADARUDDIN**

 **27.02.2025**

The Court of Appeal had dismissed the Taxpayer's appeal against the decision of the High Court on 16.06.2021. Three issues were determined in this appeal: (1) whether the sale of Sublot 43 and 58 of Imperiale Residence Project Phase 2 to the Taxpayer's directors was not at arm's length and thereby caught under Sections 140(1) and 140(6) of the Income Tax Act 1967 ("ITA 1967");

(2) whether the Taxpayer may claim deductions under Section 33(1) of the ITA 1967 for provisions of stamp duty and conversion premium; and (3) whether the Revenue was correct in imposing the penalty under Section 113(2) of the ITA 1967 on the Taxpayer for a sum of RM197,216.13.

The Taxpayer argued that the High Court had erred in law by failing to apply the judicial precedent laid down in the case of *Ketua Pengarah Hasil Dalam Negeri v Rainforest Heights Sdn. Bhd.* ("Rainforest Heights"). In that case, it was held that the sale to shareholders/directors with a discount of 10% did not fall under Section 140(6) of the ITA 1967. It was further argued that since the valuation by the Valuation and Property Services Department ("JPPH") had been rejected by the Special Commissioners of Income Tax ("SCIT") which preferred the valuation made by a private valuer, the SCIT and the High Court must amend the assessment to reflect the market value in that valuation. As for the claim for deduction on the estimated amount of stamp duty and conversion premium, the Taxpayer relied on the case of *Exxon Chemical Malaysia) Sdn. Bhd. v Ketua Pengarah Hasil Dalam Negeri* to justify that the provisions were deductible. It was argued that the expenses were incurred once the agreement for sale was signed, as the Taxpayer would be under an obligation to pay to the relevant authorities. It was also argued that the imposition of penalty under Section 113(2) of the ITA 1967 was unjustified because the Taxpayer had relied on the advice of the tax agent in preparing the tax return.

Meanwhile, the Revenue argued that the facts of *Rainforest Heights* were distinguishable. In the instant appeal, the valuation by the JPPH revealed a discount of more than 35% being given to the directors. Even the market value provided by the private valuer had exceeded 30% indicating that the purchase price was undervalued. The transaction in *Rainforest Heights* was also found by the SCIT to be commercially justified, unlike the present case where no reason had been provided to justify the high discount given to the directors. For the second issue, it was not disputed that the stamp duty and conversion premium may be claimed as a deduction. However, the payments were statutory payments and thus, the obligation to pay only arose when a demand was made by the statutory authorities. The SCIT and the High Court were correct in holding that no obligation existed at the time the deduction was claimed. Thus, the Revenue had correctly exercised the discretion to impose the penalty under Section 113(2) of the ITA 1967.

The Court of Appeal upheld the decision of the SCIT and the High Court, and dismissed the Taxpayer's appeal with costs of RM15,000.