



JUDICIAL REVIEW APPLICATION ORDER 53 RULES OF  
COURT 2012 - CHARITABLE FOUNDATION - REVOCATION  
OF TAX EXEMPTION STATUS - SECTION 44(6) ITA

YAYASAN BUAH PINGGANG KEBANGSAAN  
MALAYSIA

v.

DIRECTOR GENERAL OF INLAND REVENUE  
[BA-25-78-09/2020]



HIGH COURT SHAH ALAM



YA DR. SHAHNAZ BINTI SULAIMAN



28 NOVEMBER 2024

The Taxpayer, a registered charitable foundation, had its tax exemption status granted under Section 44(6) of the Income Tax Act 1967 (“ITA”) in 1970.

Following a compliance audit, the exemption was revoked via a letter dated 17.6.2020 due to alleged non-compliance with conditions, particularly concerning a points system introduced in 2019. The Taxpayer contended that these conditions were not originally imposed or communicated, thus rendering the revocation arbitrary.

The subject matter of the Taxpayer’s judicial review application is the revocation of the Taxpayer’s tax exemption status granted under Section 44(6) ITA which the Taxpayer contended that it was made via the Director General of Inland Revenue’s (“DGIR”) letter dated 17.6.2020 and subsequently raised assessments for the years of assessment (“YA”) 2017 and 2018 on 22.6.2020. The central issue was whether the revocation of the tax exemption status was legally justified or constituted an arbitrary imposition of new, uncommunicated conditions by the DGIR, in violation of Section 44(6) of ITA and relevant administrative principles.

The Taxpayer contended that the revocation of its tax exemption under Section 44(6) of ITA by the DGIR was procedurally flawed and unlawful. The exemption, granted in 1970 without conditions, was revoked following a 2019 audit based on a newly introduced and uncommunicated points system. The Taxpayer argued that this retroactive imposition was arbitrary and lacked a statutory basis, violating legitimate expectations. The Taxpayer asserts that the DGIR’s 17.6.2020 letter represents the final, reviewable decision, as earlier letters were merely preliminary. Additionally, they challenged the DGIR’s authority under Section 148 ITA to impose new conditions without legislative procedures.

In response, the DGIR submitted that the revocation of the Taxpayer’s tax exemption under Section 44(6) ITA was lawful and justified due to multiple breaches of conditions. The DGIR argued that the judicial review application was time-barred, as the decision was made on 29.8.2019 and reaffirmed on 25.11.2019, with the 17.6.2020 letter merely confirming this. Filed on 17.9.2020, the application exceeds the three-month limit under Order 53 Rule 3(6) of the Rules of Court 2012. The DGIR further submitted that there were several compliance failures, including operating profit-driven dialysis centers, inadequate financial aid, unauthorized constitutional changes, poor financial transparency, and offering external nursing training. Citing Section 148 ITA, the DGIR asserted its authority to impose conditions, including a points system, as necessary regulatory measures.

In addition, the DGIR submitted that the Taxpayer had omitted material facts, particularly the 29.8.2019 letter, misleading the court and violating the duty of full disclosure. The DGIR contended that the revocation was proportionate, given repeated warnings and continued non-compliance, making the action necessary rather than excessive. Therefore, the DGIR concluded that the judicial review application should be dismissed on procedural and substantive grounds.

In delivering its decision, the court dismissed the preliminary objection by the DGIR and was satisfied that there was unreasonableness and/or illegality to warrant this court to allow the Taxpayer’s application for judicial review. This court ordered an order for Certiorari to quash the DGIR’s decision in the form of a letter dated 17.6.2020 withdrawing the Taxpayer’s tax exemption status under Section 44(6) ITA. No order as to costs.

**Editorial Note:** *The Revenue has right to appeal to the Court of Appeal within 30 days of the decision date.*