KUCHING HIGH COURT

YA JC ALEXANDER SIEW HOW WAI

6 MARCH 2024

SUBPARAGRAPH 34A (4) SCHEDULE 2
REAL PROPERTY GAINS TAX ACT 1976

TAN SRI LEONARD LINGGI JUGAH &
KERESA PLANTATIONS SENDIRIAN BERHAD
V.
DIRECTOR GENERAL OF INLAND REVENUE
KCH-14-2/3-2021

The Taxpayers were originally a shareholders of Arus Plantation Sdn. Bhd. ("Arus"), a Real Property Company ("RPC") in Malaysia. On 9.11.2009, Asian Plantations Limited ("APL") had taken over Arus through a Share Swap Agreement ("SSA") and due to SSA, the First Appellant ("LLJ") received 2,026,000 APL shares worth RM8,289,379.00 and the Second Appellant ("KPSB") received 13,383,000 APL shares worth RM54,756,544.50 in return to their Arus shares swapped to APL. By virtue of the "shares swap" exercise, both LLJ & KPSB had upgraded themselves from being the majority shareholder of Arus, a RPC, to be the majority shareholder of APL. Both LLJ & KPSB had re-acquired Arus shares through their shareholdings in APL. The word "swap' can also be "exchange" and under Section 2 Real Property Gains Tax Act 1976 ("RPGTA 1976"), the definition of the word "acquire' also includes "exchange". On 13.10.2014, both LLJ & KPSB had disposed of their shares in APL to FGV Holdings Berhad ("FGVHB") for RM23,381,818.00 for 2,026,00 APL shares belonging to LLJ and RM153,460,720.00 for 13,383,000 APL shares belonging to KPSB.

Subsequently, the Taxpayers have submitted Form RPGT 1B (Disposal of Shares in Real Property Company) to the Director General of Inland Revenue ("the DGIR") as required under Section 13(1) RPGTA 1976. The DGIR is of the opinion that the disposal is subject to RPGTA 1976 because APL is a RPC at the date of acquisition of ARUS shares which is on 9.11.2009. The DGIR raised the Notices of Assessment for real property gains tax ("Forms K") dated 10.2.2015 in the sum of RM2,017,229.40 for LLJ and RM14,805.626.25 for KPSB.

The Taxpayers contended that APL was not a RPC at all material time. Even if it was, it had ceased to be one the moment it was listed in the London Stock Exchange ("LSE") on 30.11.2009 and therefore the disposal of any APL shares should not be subjected to RPGT. After APL was listed in LSE, its group of companies had acquired more lands. By the disposal date which was on 13.10.2014, APL Group had 24,486 hectares of land in Sarawak. At the very most, if at all, only the original portion of BJ Corporation Sdn Bhd's land of 4,795 hectares should be treated as being subject of RPGT. The disposal of APL shares by the Taxpayers subsequent to the shares swap on 9.11.2009 were not RPC shares as defined in the RPGTA 1976. Further, the disposal was concluded during the RPGT exempt period from 1.4.2007 until 31.12.2009. There is no evidence that APL is an RPC. The DGIR did not even properly determine whether APL was an RPC at the material time.

In response, the DGIR asserted that an acquisition of shares in Arus which is an RPC by both the Appellants through the shares swap exercise shall be deemed to be an acquisition of a chargeable asset, and where such shares are disposed of to FGVHB, such disposal shall be deemed to be a disposal of a chargeable asset notwithstanding that at the time of disposal of such shares the relevant company is not regarded as an RPC anymore.

The DGIR further argued that pursuant to Paragraph 34A (4) Schedule 2 RPGTA 1976, the disposal price of the chargeable asset is the amount or value of the consideration in money or money's worth for the disposal of the chargeable asset. Both SSA and the Form CKHT 1B as submitted by the Taxpayers had declared and specified the total disposal price of shares. Furthermore, the Taxpayers were not entitled to the exemption No. 2/2007 as the exemption was not applicable to the Taxpayers.

The High Court affirmed the decision of the SCIT and dismissed the Taxpayers' appeal with costs of RM10,000. The Court held that the Taxpayers failed to discharge the onus of showing the Forms K raised by the DGIR were excessive and erroneous. In the view of the Court, the DGIR was not wrong in treating APL as an RPC and there was no error on the part of the DGIR in the computation of the quantum of the RPGT payable.

Editorial Note
The Taxpayer has the right to file an appeal to the Court of Appeal within 30 days from the decision of the High Court.