

 Kuala Lumpur High Court
 July 9, 2020
 Legal Department, IRBM

FOUR APPLICATIONS FOR LEAVE FOR JUDICIAL REVIEW DISMISSED: TAXPAYERS TOLD TO GO TO THE SPECIAL COMMISSIONERS OF INCOME TAX

CASES

1. CASB v KPHDN
2. BBMDSB v KPHDN
3. GORSB v KPHDN
4. EDSB v KPHDN

JUDGE

YA Dato' Sri Mariana Hj Yahya

REVENUE COUNSEL

1. Dr. Hazlina Hussain
2. Mohammad Hafidz Ahmad
3. Ridzuan Othman
4. Marvianna Zainol

BRIEF FACTS

4 taxpayers which are CASB, BBMDSB, GORSB and EDSB filed separate leave applications in the KL High Court for an order of certiorari to quash the notices of assessment raised by the Director General of Income Tax for various Years of Assessment. All the applications were fixed for hearing before YA Dato' Sri Mariana Hj Yahya on different dates. The leave application had been objected by the Attorney General's Chambers and IRB legal team also appeared in Court as a Putative Respondent. The Learned High Court Judge then fixed the date of decision for all cases on 09.07.2020.

TAXPAYER'S CONTENTIONS

In general, taxpayers contended that Judicial Review is available despite existence of an alternative remedy if there are exceptional circumstances as guided by the supreme court in *Government of Malaysia & Anor v Jagdis Singh [1987] 2 MLJ 185*. It will be wrong to insist the Applicants to appeal before the SCIT.

AGC & DGIR CONTENTIONS

In objecting the leave, Respondent argued that the application for judicial review is an abuse of the process of the court as the taxpayers have a right to appeal to the SCIT under section 99 of the ITA as the domestic remedy. Merit of the assessments must be determined by the judges of facts which is the SCIT. Hence, judicial review should only be made in exceptional circumstances if it could be shown that there is a clear lack of jurisdiction or blatant failure to perform some statutory duty or there is a breach of principles of natural justice.

COURT'S DECISION

The Court dismissed the leave application for judicial review and held:

1. All four cases involve question of facts and law and should be ventilated before the SCIT;
2. The court should be slow in usurping the SCIT's role in determining the tax appeal;
3. Hence, the taxpayers should appeal against the assessments to the SCIT according to section 99 of the ITA which clearly provides statutory remedy for the aggrieved taxpayers.