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BY LEGAL DEPARTMENT

COURT OF APPEAL, PUTRAJAYA

YA DATUK HAJJAH AZIZAH BINTI HAJI NAWAWI
YA DATO' AZIZUL AZMI BIN ADNAN
YA DATO' DR CHOO KAH SING

04 JULY 2024

JUDICIAL REVIEW ORDER 53 RULES OF COURT 2012 & SECTION 99 INCOME TAX ACT 1967

OOI CHIENG SIM v KETUA PENGARAH HASIL DALAM NEGERI [W-01(IM)-317-06/2021]

The Taxpayer filed a judicial review application under Order 53 of the Rules of Court 2012 against the decision of the Director General of Inland Revenue (Revenue) in the Notice of Assessment for the year of assessment (YA) 2019 and Notices of Additional Assessment for YA 2014, 2016, 2017 and 2018 on grounds that the decision was illegal, void, unlawful, irrational, unreasonable and made without due consideration of the Taxpayer's legitimate expectations or natural justice.

The High Court Judge had dismissed the Appellant's leave application and hence, this appeal before the Court of Appeal.

In the Taxpayer's submission, it was argued that the assessment and additional assessments raised against the Taxpayer based on the capital statement summary that had been attached to the letter dated 14.10.2020 was vague and provided neither details nor reasoning on how the final assessments were computed. In the absence of reasons, the Taxpayer was unable to ascertain the accuracy of the assessment and additional assessments. The Taxpayer also contended that the Revenue had acted in an unreasonable manner in his letter dated 13.10.2020 where the Revenue had given twenty-one (21) days for the Taxpayer to respond before raising the assessment and additional assessments and yet, on the following day vide the decision dated 14.10.2020 had raised the assessment and additional assessments.

In response, the Revenue submitted that the High Court Judge was correct to dismiss the Taxpayer's judicial review application at the leave stage as the Taxpayer had failed to demonstrate exceptional circumstances for the case to proceed to the substantive stage. The Revenue also argued that the Taxpayer must satisfy the threshold test of an arguable case to succeed in the judicial review application at the leave stage where the application must not be frivolous or vexatious, and further arguments at the substantive stage are justified. Thus, the application for leave to commence judicial review must be dismissed where an alternative remedy was available for the aggrieved party.

The Revenue further argued that the Income Tax Act 1967 provided a statutory right of appeal to the Special Commissioners of Income Tax (SCIT). The Revenue submitted that the main issue on this case was about the tax raised based on the Capital Statement. By looking at the Capital Statement, it involved questions of facts. All the objection on the finding based on Capital Statement should be ventilated before the SCIT as the Taxpayer had filed an appeal by way of Form Q on 5.4.2021.

In delivering the judgment, the Court of Appeal Judges unanimously dismissed the Taxpayer's appeal with cost of RM5,000. The Court of Appeal Judges agreed with the decision made by the High Court that the issues involving question of facts must be ventilated before the SCIT.

Editorial Notes: *The Taxpayer has the right to apply for leave to appeal to the Federal Court within 30 days from the date of this decision.*