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BY LEGAL DEPARTMENT

HIGH COURT SHAH ALAM

YA DR SHAHNAZ BINTI SULAIMAN

04 JUNE 2025

SEKSYEN 4C INCOME TAX ACT 1967

CENTRALFIELD SDN BHD V. KETUA PENGARAH HASIL DALAM NEGERI BA-25-54-08/2023

The Applicant principal activity is property development and investment. On 31.05.2016 the Applicant received a compensation from the Selangor State of Authority for the compulsory acquisition of the land held under No.PT 3790, HSD 155803 Mukim Sungai Buloh Daerah Petaling ("The Land"), via Notice of Award of the Land Administrator under Section 16 of the Land Acquisition Act 1960. The deemed assessment was made by virtue of Section 90(1) of the Income Tax Act 1967 (ITA) when the compensation was brought to tax by the Applicant as part of income in its tax return made for Year of Assessment 2016 (YA 2016) pursuant to Section 77A ITA. There was no appeal made to the Special Commissioner of Income Tax (SCIT). On 9.12.2022, the Federal Court in Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Civil Appeal No.01 (f)- 38-08/2022 (W)) (*Wiramuda*) ruled that Section 4C ITA is unconstitutional and thus any compensation received from compulsory acquisition of the land by the State Authority is not taxable. Upon the decision in *Wiramuda*, on 27.6.2023 the Applicant issued a letter to the Respondent, requesting for a refund of the tax paid pursuant to Section 4C ITA for YA 2016.

It was the Applicant contention that the Federal Court's decision in *Wiramuda* should be applied retrospectively as the Federal Court made no declaration that its decision was to apply prospectively, and as a result, the ruling must be given full retrospective effect. This contention is based on the decision in the case of *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and Another case [2017] 3 MLJ 561*. The Applicant also contends that the Respondent, as an arm of the executive, is bound by the principle of legality and must comply with the decision of the Federal Court. Retaining taxes collected under an unconstitutional provision amounts to unjust enrichment and violates the fundamental constitutional requirement that no tax shall be levied except under valid law. Please see *Woolwich Equitable Building Society and Inland Revenue Commissioners [1993] AC 70 (HOL); see Article 96 of the Federal Constitution.*

The Respondent, on the other hand, argues that in reliance to the recent Federal Court (FC) ruling in *Obata-Ambak Holdings Sdn Bhd v Prema Bonanza Sdn Bhd* and other appeals [2024] 5 MLJ 897, the FC cited an earlier decision in *Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor* and other appeals [2020] 1 MLJ 281 in which the FC in *Ang Ming Lee* did not address whether their decision should be applied prospectively or retrospectively. In reaching its conclusion, the FC in *Obata-Ambak* considered the laws that were in effect at the time the Sale Purchase Agreements were signed. The Federal Court in Obata-Ambak case also held that a retrospective invalidation of a legislation undermines legal certainty and predictability. The invalidation of a legislation or any provision of the legislation would have serious ramifications and implications on those who would have relied on its validity in the past. The Respondent in this case submits that the decision of the Federal Court of Wiramuda was made on 9.12.2022 and the court also did not address whether the law would be taken into effect retrospectively or prospectively. Retrospective application of a judicial decision that invalidates a statute can have disruptive and seemingly unfair consequences. Reference was also made to another FC case of *Government of Malaysia & Anor v Aminah bt Ahmad (suing in her personal capacity and on behalf of 56 retired members of the public service) [2023] 5 MLJ 32* and reliance was focusing to the Court of appeal finding where the court affirmed that a judicial decision deeming legislation unconstitutional falls within the doctrine of prospective overruling and should not be applied retrospectively. It was held that to mitigate the adverse consequences and hardship that the decision of the court may have on pensioners, the court was of the view that this was an appropriate case, and in the public interest, for an order that the decision of the court was only to take effect prospectively from the date of the decision of the court.

The Respondent also submits that Section 4C was a valid law during the assessment is deemed to have been made for YA 2016. Section 4C ITA 1967 was inserted via Finance Act 2014 [Act 761] where it was passed and enacted by the parliament as a valid and enforceable law from the YA 2014 onwards. The Applicant, in declaring their income for YA 2016, also complied with the law as it stood at the time, which had not yet been declared unconstitutional.

Decision: The High Court agreed with the Respondent submission and thus dismissed the Applicant's Judicial Review Application with no order as to cost. - *Obata- Ambak, Aminah's (followed) - Semenyih Jaya, Woolwich (distinguished).*