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SECTIONS 81, 91 & 99
INCOME TAX ACT 1967

NA'IMAH BINTI ABDUL KHALID
V.
KETUA PENGARAH HASIL DALAM NEGERI
JUDICIAL REVIEW NO.: BA-25-116-08/2024

HIGH COURT SHAH ALAM

YA PUAN EVAWANI FARISYTA MOHAMMAD

06th AUGUST 2026

This is a judicial review application filed by Na'imah binti Abdul Khalid ("Taxpayer") against Ketua Pengarah Hasil Dalam Negeri ("DGIR") in respect of a Notice of Additional Assessment for Year of Assessment 2018 dated 13.8.2024 in the sum of RM313,820,336.13. The Taxpayer seeks, among others, an order of certiorari to quash the said assessment.

Prior to the impugned assessment, the DGIR had conducted investigations into the tax affairs of the late husband, resulting in a settlement of RM31,498,069.63 for YAs 2017–2019 in 2023. Subsequently, the DGIR commenced a compliance review against the Taxpayer concerning three foreign properties in the United States valued at RM700,572,811.00 and issued various requests for documents relating to the source of funds used to acquire those assets. Following the Taxpayer's alleged failure to furnish the requested information, the DGIR raised the Notice of Additional Assessment under section 91 of the Income Tax Act 1967 ("ITA").

The principal issues before the Court are whether the dispute should be determined through judicial review or through the statutory appeal mechanism under section 99 of the ITA; whether section 45 of the ITA precludes the DGIR from assessing the Taxpayer separately for YA 2018; whether the assessment constitutes impermissible double taxation in light of the earlier settlement involving the late husband; whether the DGIR possesses statutory power to treat the value of foreign assets as taxable income; and whether the DGIR's investigation into the Taxpayer foreign assets and requests for historical records were lawful exercises of its powers under the ITA.

The Taxpayer's primary contention was that she had elected for joint assessment under section 45 of the ITA and was therefore statutorily deemed to have no separate chargeable income for YA 2018. The Taxpayer further argued that the assessment constitutes double taxation because matters concerning the shareholding increase had already been investigated and settled with her late husband. The ITA contains no provision authorising the DGIR to convert foreign asset values into taxable income. The Taxpayer also contends that sections 78 to 82A of the ITA are merely information-gathering provisions and not charging provisions and the DGIR failed to establish any Malaysian-sourced income under section 3 of the ITA. The requests for historical documents dating back more than twenty years were unreasonable and contrary to section 82A of the ITA and the Taxpayer possessed a legitimate expectation that matters already investigated and settled would not be reopened.

On the other hand, the DGIR argues that the dispute is fundamentally factual in nature and must therefore be ventilated before the Special Commissioner of Income Tax rather than through judicial review. DGIR maintains that it acted within its statutory powers under sections 81 and 91 of the ITA, that the Applicant had failed to provide necessary documents to verify the source of funds used in significant transactions involving foreign assets, and that the assessment represents a lawful best judgment assessment rather than a tax on wealth. DGIR further denies any double taxation, contending that the Taxpayer's assessment is based on distinct grounds from the earlier assessment and settlement involving her late husband, and maintains that neither section 45 or the territorial principle under section 3 of the ITA bars the DGIR from conducting inquiries or raising assessments where it appears that income may have been omitted from the joint assessment.

The High Court agreed with the Taxpayer that the impugned Additional Assessment for YA 2018 could not be sustained in law as it was founded on assumptions and inferences. The Court held that the DGIR had impermissibly relied on the Taxpayer's failure to furnish certain information and documents requested under section 81 of the ITA, more so where the documents requested related to transactions and acquisitions allegedly undertaken some 20 to 30 years ago, as the basis for treating the full value of the foreign assets amounting to RM700,572,811.00 as taxable income. The Court found that section 81 merely confers powers to obtain document and does not create a statutory deeming provision allowing the value of assets to be automatically converted into chargeable income. As such, the DGIR's approach exceeded the scope and purpose of the statutory provision.

The Court further found that the assessment methodology adopted by the DGIR was fundamentally flawed and arbitrary as it was based on the disposal or settlement value of the foreign assets rather than their actual acquisition cost or any proven income source linked to the relevant year of assessment. The Court held that there was no legal or evidential basis for equating the value realised from the assets with taxable income derived by the Taxpayer in YA 2018. The relevant YA should be 1990s and the additional assessment should be subjected to section 91(3) of the ITA.

The Court accepted the Taxpayer's contention that the DGIR had drawn an unsupported inference that the Taxpayer's inability to explain the source of funds used to acquire the foreign assets necessarily meant that the entire value of those assets constituted undeclared income. The Court held that such reasoning was speculative and inconsistent with the established principles governing tax assessments. The burden remained on the DGIR to establish a nexus between the alleged taxable income and the relevant charging provisions of the ITA.

On the issue of best judgment assessment, the Court held that the impugned assessment did not satisfy the requirements of a valid assessment under section 91 of the ITA. While the DGIR possesses wide powers to raise a best judgment assessment where information is unavailable, such assessment must nevertheless be based on reasonable inferences and available evidence. In the present case, the assessment was found to have been premised largely on assumptions, conjecture and the absence of explanations from the Taxpayer rather than on verified facts and supporting evidence.

The Court agreed with the Taxpayer that the impugned assessment gave rise to a prima facie case of double taxation as the same factual matrix relating to the increase in share capital and the Taxpayer's financial affairs had previously been investigated and resolved through the settlement entered into with her late husband on 22 November 2023.

On that note, the application for judicial review was allowed with no order to cost.

Editorial Note:
The DGIR has the right to file an appeal against the decision by the High Court within 30 days from the date of the decision.