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LHDN MALAYSIA
BY LEGAL DEPARTMENT

COURT OF APPEAL

YA DATO' DR CHOO KAH SING
YA DATO' FAIZH JAMALUDIN
YA DATO' AMARJEET SINGH SERJIT SINGH

17th AUGUST 2026

Section 4(a) Income Tax Act 1967

KETUA PENGARAH HASIL DALAM NEGERI V. EXCEPTIONAL LANDMARK SDN BHD W-01(A)-376-08/2025

The Court of Appeal unanimously dismissed the Revenue's appeal and affirmed the decision of Special Commissioners of Income Tax (SCIT) dated 20.01.2023 and High Court dated 02.07.2025. The appeal concerned whether the gain from the disposal of a three-storey building comprising office, warehouse and showroom at No. 3, Jalan Keluli 15/16, Section 15, Shah Alam was taxable as business income under section 4(a) of the Income Tax Act 1967 (ITA) or treated under the Real Property Gains Tax Act 1976 (RPGTA). The taxpayer acquired the property on 23.07.2012 for RM23.6 million from OSK Trustees Berhad, as trustee for Axis REIT, and disposed of it on 04.08.2014 to RHB Trustees Berhad, as trustee for Axis REIT, for RM52.5 million. The taxpayer filed its RPGT return on 22.08.2014 and the Revenue issued a certificate of clearance dated 24.02.2015 on the basis that the disposal was exempted from payment of RPGT under the Real Property Gains Tax (Exemption) (No. 4) Order 2003. Upon audit, the Revenue took the view that the gain was income from an adventure or concern in the nature of trade and issued a notice of additional assessment for YA 2014, inclusive of penalty, amounting to RM7,231,103.96. The RPGT certificate was not revoked or discharged.

The Revenue submitted that the appeal was not a factual rehearing but concerned the correct legal characterisation of substantially undisputed facts. The central question was whether the profit from the property was capital in nature or income from an adventure or concern in the nature of trade under section 4(a), read with section 2 of the ITA. On badges of trade, the Revenue's case was that the objective facts had to be viewed cumulatively: the taxpayer was incorporated with nominal capital, acquired a substantial commercial property substantially through financing, held it for only about two years, enhanced or improved it, sold it back into the Axis REIT structure at a substantial profit, had no financial necessity to sell, distributed substantially the entire profit to shareholders and became dormant thereafter. The Revenue also argued *that Kind Action* was distinguishable because no RPGT was imposed or paid in this case. The certificate of clearance merely recorded non-chargeability under an exemption order and was not an assessment capable of attaining finality under section 20 of the RPGTA. Therefore, there were no concurrent RPGT and income tax liabilities and no double taxation.

The taxpayer argued that the Revenue could not assess the same disposal under the ITA after accepting the RPGT return and issuing the certificate of clearance. The taxpayer relied principally on *Kind Action* and contended that the Revenue's position resulted in impermissible double taxation and breached the taxpayer's legitimate expectation. On the merits, the taxpayer maintained that it was a finding of fact that the property was acquired and held as an investment asset. It relied on the single-property transaction, the long-term 8.5-year lease, rental income throughout the holding period, consistent accounting treatment as a non-current asset and the absence of repeated dealings or any change of intention to trading stock. It was a finding of fact that the directors have no influence over decision of AXIS Reit despite being a common director. It was also proven that despite the borrowings, the company has the financial ability to service the loan. The taxpayer further submitted that the badges of trade did not support a finding of adventure in the nature of trade. Profit on sale, a favourable offer and subsequent distribution of sale proceeds were said to be insufficient to convert a capital realisation into taxable business income. The penalty under section 113(2) ITA was also challenged on the basis that the assessment itself was unsustainable.

The Court of Appeal held that it will not interfere with the findings of the SCIT and affirmation by the High Court below. The main issue is whether the Respondent's disposal of the subject property, after 2 years they had purchased, could trigger the fact that the disposal was a revenue gain instead of a capital gain. The Court of Appeal, having considered the decision of the SCIT in examining all the badges of trade, agrees with the conclusion of the SCIT. Likewise, the Court agrees with the finding of facts by the High Court that the High Court did not find that the SCIT's finding of facts were perverse, wholly unreasonable, unsupported by evidence, inconsistent with the established facts or that the SCIT had misdirected herself. The Court of Appeal finds that there is no merit in the appeal. The appeal is dismissed with no order as to costs.