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LHDN MALAYSIA
BY LEGAL DEPARTMENT

COURT OF APPEAL

YA DATO' AHMAD KAMAL BIN MD SHAHID
YA DATUK LEONARD DAVID SHIM
YA DATO' SRI LATIFAH BINTI HAJI MOHD TAHAR

27th AUGUST 2026

Section 110B Income Tax Act 1967

AIA BERHAD v. KETUA PENGARAH HASIL DALAM NEGERI W-01(A)-111-03/2025 & W-01(A)-116-03/2025

The Court of Appeal unanimously dismissed both taxpayer's appeal and affirmed the decision of High Court dated 19.02.2025 dismissing both judicial review application as the contested facts and technical computations belonged to the Special Commissioners of Income Tax ("SCIT").

The taxpayer, AIA Berhad is a licensed life insurance company carrying business in Malaysia. In the ordinary course of its business, the taxpayer manages various insurance funds, including life funds and shareholders' funds, and is required under the Income Tax Act 1967 (ITA) to submit annual income tax returns together with tax computations for each year of assessment. The Revenue issued a series of audit findings and thereafter raised additional assessments on 25 September 2020 for Years of Assessment (YA) 2015-2017 and 13 August 2021 (YA 2018 and 2019). The Assessments arose from the Revenue's reassessment of the taxpayer's position, including the rejection of the taxpayer's tax computations that sought to claim a set-off under section 110B of the ITA. The Appellant claims a tax set-off under section 110B ITA in respect of tax charged on its actuarial surplus transferred from its Life Fund to its Shareholders' Fund. The taxpayer segregates its Life Fund into two components, namely the Investment-Linked Operating Fund ("ILOF") and the Investment-Linked Fund ("ILF"), whilst maintaining that both funds collectively form part of its Life Fund for the purposes of section 110B.

It is undisputed that the actuarial surplus transferred to the Shareholders' Fund arose only from the ILOF. No actuarial surplus was transferred from the ILF to the Shareholders' Fund during the relevant years of assessment. Due to this, in computing the tax set-off under section 110B and the Income Tax (Set-Off for Tax Charged on Actuarial Surplus) Rules 2008 ("Set-Off Rules"), investment income derived from the ILF was disregarded by the Revenue on the basis that section 110B grants relief only in respect of tax charged on the portion of actuarial surplus actually transferred to the Shareholders' Fund. Since no actuarial surplus was transferred from the ILF, the Revenue excluded investment income attributable to the ILF from the computation of the tax set-off and confined the computation to income referable to the actuarial surplus transferred from the ILOF. Consequently, additional assessments amounting to RM163,570,354.65 were raised.

The taxpayer submitted that its challenge was legal, not factual: whether section 110B and the Set-Off Rules permitted the ILF to be excluded before applying the formula. Identifying the lawful inputs was a matter of statutory construction and jurisdiction; only the arithmetic belonged to the SCIT. BNM did not treat ILOF and ILF as separate statutory funds; both remained one life fund. A nil ILF transfer did not remove ILF income from that fund. Under Rule 3, A × (B/C) × D, A is transferred surplus, B investment income and realisation proceeds, C is B plus premium surplus, and D the tax rate. Because B and C referred to the whole life fund, excluding ILF income reduced the B/C ratio and produced a narrower base for relief than for tax under section 60. No provision expressly authorised the exclusion; it was therefore said to be an extra-statutory condition and jurisdictional error. The taxpayer argued that such illegality was an exceptional circumstance permitting judicial review despite the appeal filed to SCIT under section 99 ITA.

The Revenue contended that section 110B is targeted double-tax relief triggered only by an actual transfer of actuarial surplus to the shareholders' fund. The taxpayer had to prove the surplus, transfer and amount; without a transfer, the formula had no qualifying subject matter. The Revenue relied on the taxpayer's own computations: the ILOF showed a transfer, while Schedule 7 recorded nil from the ILF. The distinction was therefore transferred versus untransferred surplus, not ILOF versus ILF. No affidavit, actuarial report, revised computation, reconciliation, board resolution or contemporaneous evidence showed that an ILF transfer had occurred but was wrongly recorded.

A was the formula's controlling element; B and C only allocated tax attributable to qualifying transferred surplus, while D was the tax rate. Including ILF income without an ILF transfer would enlarge the B/C ratio and create relief where no second shareholder-fund tax arose, converting section 110B into a general rebate. The taxpayer had to fall clearly within the relief. Whether surplus arose, was transferred and in what amount depended on actuarial and accounting evidence, making the dispute factual or mixed and for the SCIT. With Form Q appeals already filed, parallel judicial review was an abuse of process. The Revenue also submitted that no jurisdictional error or procedural unfairness was shown and sought dismissal with costs.

The Court of Appeal held that the taxpayer's appeal has no merits in law. The Court agrees with the Revenue that there is no question of jurisdiction or procedural fairness to be determined. The question for the Court's determination is treatment of surplus under section 110B of the ITA. Revenue's decision founded entirely from the taxpayer's own computation. No actuarial surplus was transferred into the Shareholder's Fund. In absence of any evidence of transfer, the Revenue is correct and obliged to conclude that s. 110B is not triggered. The Revenue thus did not act illegally or outside of its jurisdiction. Further, the taxpayer's case is merit centric, namely the quantum of amount transferred under section 110B of the ITA, which is fact-sensitive. This falls squarely within the remit of SCIT to determine the questions of fact, and mixed issues of fact and law. It is an abuse of the process of the court to file judicial review when an appeal to SCIT has been filed.