DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)
PERMOHONAN BAGI SEMAKAN KEHAKIMAN NO: WA-25-144-08/2016

Dalam perkara suatu Keputusan Responden yang terkandung dalam surat-surat bertarikh 8.8.2016 dan telah disampaikan kepada Pemohon pada 15.8.2016;

Dan

Dalam perkara suatu permohonan untuk antara lain, suatu Perintah Certiorari;

Dan

Dalam perkara Aturan 53 Kaedah-Kaedah Mahkamah 2012.

ANTARA

ISKANDAR COAST SDN BHD ... PEMOHON

DAN

KETUA PENGARAH HASIL DALAM NEGERI ... RESPONDEN

<u>GROUNDS OF JUDGMENT</u>

Introduction

1. The Applicant had filed an application for Judicial Review for the Court to grant *inter alia* the followings –

   (a) a Declaration that the Respondent is bound by and shall give effect to the decisions of the Supreme Court in *Lower Perak Co-Operative Housing Society Berhad v Ketua Pengarah Hasil Dalam Negeri [1994] 3 CLJ 540* ***("Lower Perak")*** and the concurrent decisions of the High Court and Court of Appeal in *Ketua Pengarah Hasil Dalam Negeri v Penang Realty Sdn Bhd [2006] 2 CLJ 835* ***("Penang Realty")*** and *Ketua Pengarah Hasil Dalam Negeri v Metacorp Development Sdn Bhd (2011) MSTC 30-024* ***("Metacorp Development")*** which held that gains arising from the compensation for compulsory acquisition of land are not subject to income tax as the element of compulsion vitiates the intention to trade;

   (b) a Declaration that the gains from the compensation for the compulsory acquired land of PTD 71076, PTD 71079, PTD 72272, PTD 72273, PTB 22056, PTB 13178 and PTD 71077 **("the land")** owned by the Applicant are not subjected to income tax under the Income Tax Act 1967 **("the Act")**;

   (c) an order for Certiorari to remove into this Honourable Court for the purpose of it being quashed the decision of the Respondent in issuing the notices of additional assessments dated 8.8.2016 for the years of assessment 2008, 2009 and 2013 to subject the gains arising from the compensation for the compulsory acquisition of the parcel of lands known as PTD 71076, PTD 71079, PTD 72272, PTD 72273, PTB 22056, PTB 13178 and PTD 71077 belonging to the Applicant on the premise that the Respondent had acted *ultra vires*, illegality and without jurisdiction;

   (d) All further proceedings including the enforcement of the Decision be stayed until the full and final determination of the application to quash the Decision.

2. Lists of documents filed by both parties are as follows –

(a) 'Notis Pendengaran bagi Permohonan Semakan Kehakiman' dated 8.9.2016;

(b) 'Permohonan Bagi Semakan Kehakiman' (Ex-parte) dated 18.8.2016;

(c) 'Pernyataan yang difailkan Menurut Aturan 53 Kaedah 3(2) Kaedah-Kaedah Mahkamah 2012' dated 17.8.2016;

(d) 'Afidavit Sokongan' affirmed by Soh Choo Sen on 18.8.2016 ("Applicant's Affidavit in Support");

(e) 'Afidavit Jawapan Responden' affirmed by Yazid Bin Ahmad on 16.11.2016 ("Respondent's Affidavit in Reply");

(f) 'Afidavit Jawapan Pemohon' affirmed by Soh Choo Sen on 1.12.2016 ("Applicant's Affidavit in Reply");

(g) 'Afidavit Jawapan Responden II' affirmed by Yazid Bin Ahmad on 22.12.2016 ("Respondent's Affidavit in Reply II");

(h) 'Afidavit Balasan Pemohon II' affirmed by Soh Choo Sen on 9.1.2017 ("Applicant's Affidavit in Reply II");

(i) 'Afidavit Tambahan Responden' affirmed by Yazid Bin Ahmad on 6.4.2017 ("Respondent's Additional Affidavit"); and

(j) 'Afidavit Balasan Pemohon' affirmed by Soh Choo Sen on 18.4.2017 ("Applicant's Affidavit in Reply III").

THE ISSUES

3. The Applicant and the Respondents have filed their respective written submissions and also made oral submissions before this Court.

4. Having read the written submissions and heard the oral submissions, the issue raised before this Court is whether the compensation for compulsory acquisition of parcel of lands belonging to the Applicant is subject to income tax. The Applicant's submitted that the said compensation is not taxable. The Respondent submitted that it is taxable. At the same time the Respondent raised a preliminary

issue that the Applicant's leave application should not have be granted to the Applicant since there was no exceptional circumstances exist.

5. Respondent submitted that **Section 99 of the Act** further provides that where a person is aggrieved by an assessment raised under the Act, a person may file an appeal to the Special Commissioners of Income Tax ("SCIT") within 30 days after the service of the notice of assessment. In other words, this Court has no jurisdiction to entertain the Applicant's application when there is an available remedy provided for the Applicant under section 99 of the Act.

6. The Respondent has raised a jurisdictional issue as preliminary ground, thus my considered opinion is that the issue must be first determined to make sure that this Court has the jurisdiction to hear and determine the Applicant's application.

7. Before this Court proceeds to determine the preliminary issue, it is important to appreciate the events leading to the filing of this application for judicial review.

THE EVENTS

8. The summary of events extracted from the Affidavits of the Applicant and the Respondent are as follows: -

   a) During investigation on the Applicant's company, the Respondent had obtained several documents related to the Applicant's business activities for YA 2008 until 2013, the audited report for YA 2009 until 2013 and also the Applicant's tax computation.

      (refer to Exhibit "SCS-13", "SCS-14" and "SCS-15" of the Applicant's Affidavit in Support for the copies of Applicant's tax computation for YA 2008, 2009 and 2013).

b) Subsequently, on 17.2.2015, the Respondent received the Applicant's audited file from its tax agent, Messrs Ernst & Young for YA 2012 and 2013 and also for YA 2008 to 2011 on 2.3.2015.

c) Vide a letter dated 24.2.2015, the Respondent had requested from the Applicant's tax agent, Messrs Pricewaterhouse Coopers Taxation Services Sdn Bhd ("PWC") to provide the copies of tax computation for YA 2011 to 2013.

(refer to Exhibit "YA-1" of the Respondent's Affidavit in Reply).

d) On 26.2.2015, the Applicant's tax agent had forwarded copies of tax computation for YA 2011 to 2013.
(refer to Exhibit "YA-2" of the Respondent's Affidavit in Reply).

e) From the review and inspection of the said documents forwarded by the Applicant, the Respondent found out that the Applicant had omitted/failed to report the gain from a compensation received on the compulsory acquisition of land by the Johor State Government for the purpose of constructing the coastal highway ('lebuhraya pesisir pantai'). The Respondent then issued a letter of investigation findings to the Applicant on 20.4.2015.

(refer to Exhibit "SCS-5" of the Applicant's Affidavit in Support).

f) The details of the 7 parcels of land owned by the Applicant that were acquired and compensated by the Johor State Government to the Applicant for the years 2008 and 2009 are as follows:

a) Part of land at PTD 71076	RM 3,499,500.00
b) Part of land at PTD 71079	RM 7,744,524.00
c) Part of land at PTD 72272	RM 939,810.00
d) Part of land at PTD 72273	RM10,635,221.00

e)	Part of land at PTB 22056	RM10,700,000.00
f)	Part of land at PTB 13178	RM46,915,509.00
g)	Part of land at PTD 71077	RM 5,536,256.00

(hereinafter referred to as **"the land"**)

(refer to paragraph 6 of the Respondent's Additional Affidavit).

g) The Applicant had then requested for an extension of time from the Respondent via letter dated 29.4.2015 dan 19.5.2015.

(refer to Exhibit "YA-3" of the Respondent's Affidavit in Reply).

h) Via letter dated 26.5.2015 *(Exhibit "SCS-16" of the Applicant's Affidavit in Support),* the Applicant had responded to the Respondent that the gain from the compulsory acquisition of land was not subjected to income tax and referred to the case of ***Lower Perak, Penang Realty and Metacorp Development*** because the element of "compulsion vitiates the intention to trade".

i) After reviewing the facts and the case law which related to this case, the Respondent issued a letter dated 4.2.2016 to the Applicant *(Exhibit "SCS-6" of the Applicant's Affidavit in Support)* and informed the Applicant that the Respondent maintained its previous decision that the Applicant had failed to report the gain/income from the compensation received by them. The Respondent also make reference to subsection 24(1)(a) of the Act, in which the income has to be reported in the year it is receivable. The Respondent had also completed the tax computation and forwarded it to the Applicant. After considering all facts, documents and provision of the law in this case, the Respondent was of the opinion that the case of ***F. Housing Sdn Bhd (1976) 2 MLJ 18*** and **subsection 24(1) of the Act** were applicable **because the Applicant had prior knowledge of the intention of the Government to acquire the said land.** By referring to the case of ***Metacorp Development***, the Court of Appeal had agreed that compulsory acquisition of land did not fall under subsection 24(1) of the Act **UNLESS the taxpayer when obtaining the said land had knowledge that it would be acquired by the government.**

APPEAL REMEDY UNDER SECTION 99 OF THE ACT

9. Section 99 of the Income Tax Act provides that where a person is aggrieved by an assessment raised under the Act, a person may file an appeal to the Special Commissioners of Income Tax ("SCIT") within 30 days after the service of the notice of assessment. In the present case, since there was no appeal under section 99 of the Act was filed by the Applicant by way of Form Q to appeal against the Notices of Assessment to the SCIT and thus had failed to adhere the appeal process provided for under the Act therefore, a remedy or appeal process is available for the Applicant under the Act.

10. For ease of reference, section 99 of the Act is reproduced as follows:

> *"99. (1) A person aggrieved by an assessment made in respect of him may appeal to the Special Commissioners against the assessment by giving to the Director General within thirty days after the service of the notice of assessment or, in the case of an appeal against an assessment made under section 92, within the first three months of the year of assessment following the year of assessment for which the assessment was made (or within such extended period as regards those days or months as may be allowed under section 100) a written notice of appeal in the prescribed form stating the grounds of appeal and containing such other particulars as may be required by that form."*

11. By virtue of section 99 of the Income Tax Act ("the Act"), I agree with the Respondent's submission that the Applicant had failed to exhaust the remedy provided under the Act. The Applicant had filed its application by way of judicial review instead of filing an appeal before the SCIT.

LEAVE APPLICATION FOR JUDICIAL REVIEW

12. I have checked the record of Court's proceeding and it shows the Applicant filed leave for judicial review application on 18.8.2016 together with the certificate of urgency dated 17.8.2016. The Applicant sought prayers for certain declaratory reliefs in the said application and that leave be granted for the Applicant's application to set aside the Respondent's decision dated 8.8.2016 which the Applicant received on the 15.8.2016.

13. The impugned decision contains in the Respondent's letter dated 8.8.2016 in Exhibit "SCS-4" of the Applicant's affidavit dated 18.8.2016 stated that-

"CUKAI KENA BAYAR	15.8.2016	RM 7,937,882.00
CUKAI TAMBAHAN KENA BAYAR		RM 2,95,443.50"

14. Before the Respondent issued the decision in the letter dated 8.8.2016, in its letters dated 4.2.2015 and 20.4.205 respectively, the Respondent had considered the Applicant's view on point of law that the gain from the compulsory acquisition of land was not subjected to income tax. However, the Respondent's rejected the Applicant's view and the Respondent was the opinion that the Applicant had prior knowledge of the intention of the Government to acquire the said lands. The Respondent's stand was that the Applicant had failed to report the gain/income from the compensation received by them from the government in respect of compulsory acquisition of its lands. The Respondent also make reference to subsection 24(1)(a) of the Act, in which the income has to be reported in the year it is receivable.

15. Section 24 (1) (a) of the Act provides as follows: -

"24. (1) Where in the relevant period a debt owing to the relevant person arises in respect of-

(a) Any stock in trade sold (or parted with on requisition or compulsory acquisition or in a similar manner) in or before the relevant period in the course of carrying on a business:

(b) ....

(c) ....

the amount of the debt shall be treated as gross income of the relevant person from the business for the relevant period.

16. Not satisfied with the Respondent's decision, the Applicant sought declaratory reliefs for this Court to determine that the decision was wrong, ultra vires the Act and lack of jurisdiction and also based on the cases referred to by the Applicant that the gain from the compulsory acquisition of land was not subjected to income tax. In other words, the decision of the Respondent to impose tax was illegal.

17. The leave application was served on the Attorney General Chambers under Order 53 rule 3(3) of the Rules of Court 2012. The leave application received no objection from the Attorney General Chambers. The presiding judge granted the Applicant's leave for judicial review application on 5.9.2016. The learned judge also granted interim stay until the disposal of the judicial review application to set aside the Respondent's decision.

PRELIMINARY OBJECTION

18. The Respondent submitted that although this Court had granted the Applicant's Leave Application, it is always at the discretion of the court to make an order that the judicial review application is not available to the Applicant where there was clear fact that there is an alternative remedy exists. The Respondent referred to the case of ***Government of Malaysia & Another v. Jagdis Singh [1987] 2 MLJ 185***, where the Supreme Court had decided that there was no special circumstance exists for the court to grant the judicial review application after hearing appeal from the Inland Revenue Department.

19. On the other hand, the Applicant submitted that this Court exercised its discretion in granting leave and determining this matter by way of judicial review. It is well settled law that the exercise of such a discretion will be **interfered with by an appellate Court only in exceptional circumstances**; for example, where it has been demonstrated that the decision of the Judge below is shown to have depended on an erroneous basis of law or fact or where no reasonable explanation is open save that the decision depended on an erroneous basis of law or fact. More particularly, the fact that the appellate Court might have exercised the discretion differently is beside that point and will not therefore constitute a sufficient ground for overturning the Judge's decision.

20. I have considered the Respondent's and the Applicant's submissions and the authorities relied on by both parties.

21. The relevant passage of the judgment of the Supreme Court in ***Jagdis Singh (supra)*** held as follows-

> *"Hashim Yeop Sani SCJ had reviewed a number of British cases in the above case and in the course of it agreed with them. His Lordship approvingly said-*
>
> > *A clear principle is reiterated here i.e. it is not a rigid rule that whenever there is an appeal procedure available to the applicant he should be denied judicial review. Judicial review is always at the discretion of the court <u>but where there is another avenue or remedy open to the applicant it will only be exercised in very exceptional circumstances.</u>*
> >
> > *In Re Preston was a tax case. It was quite clear from the speeches of their Lordships in the House of Lords that the Inland*

Revenue Commissioners were not immune from the process of judicial review.

But what was also made clear is that remedy by way of judicial review is not to be available where an alternative remedy exists except in very exceptional cases.

In answer to the first question we would therefore hold that the discretion is still with the courts but where there is an appeal provision available to the Applicant certiorari should not normally issue unless there is shown a clear lack of jurisdiction or a blatant failure to perform some statutory duty or in appropriate cases a serious breach of the principles of natural justice." (Emphasis added)

22. In the present case, the crux of the matter is whether there exist exceptional circumstances of clear lack of jurisdiction or a blatant failure to perform some statutory duty or in appropriate cases a serious breach of the principles of natural justice for the Applicant to circumvent the express provision of appeal procedure under section 99 of the Income Tax Act. In other words, can leave be granted to the Applicant by way of judicial review where an alternative remedy exists.

23. I have considered the Applicant's submission. I reminded myself that in this case, the determination whether there exist exceptional circumstances is not from the perspective of an appellate Court point of view with regards to decision of the judge below in an appeal but rather at stage where the application for judicial review was filed by the Applicant at the High Court at the first instance and the judge hearing the application in exercising discretion had granted the application based on exceptional circumstances exist in the application as provided by law.

24. In the present case the leave application for judicial review was granted to the Applicant on 5.9.2016.

25. Be that as it may, the Applicant submitted that in granting leave, this Court had considered the following cases:

a) The Supreme Court in ***Government of Malaysia & Anor v Jagdis Singh*** **[1987] CLJ 110 (Rep)** held that the Respondent is not immune from the process of judicial review.

b) *Jagdis Singh* held that judicial review in tax cases is available in exceptional cases.

The exceptional case in the present matter is the Revenue/Appellant's clear lack of jurisdiction to issue the impugned notices of additional assessment despite the decisions of the superior Courts in *Penang Realty* and *Lower Perak.* It is trite law that lack of jurisdiction includes error of law committed by a decision making authority.

c) The Federal Court unanimously held in ***Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan*** **Tanggungan [1999] 3 CLJ 65** that the

"availability of an alternative domestic remedy <u>will not shut down an application for judicial review</u> where the complaint made to the Court is one of "error of law" or "abuse of power" <u>going to the legality of the conduct of the ... decision-making authority</u>...". The Federal Court added that *"extensive appellate structure does not prevent the Court in appropriate cases from entertaining*

an application for judicial review where the statutory scheme provides no equally convenient remedy".

26. The Applicant also referred to the case of ***Tuan Sarip Hamid &Anor v. Patco Malaysia Berhad [1995] 3 CLJ 627,*** where the Supreme Court held that if, taking account of a brief argument on either side, the Judge is satisfied that there is a case fit for further consideration, then he should grant leave.

27. The case of ***Tuan Sarip Hamid' case,*** the Supreme Court referred to the English Court of Appeal case of *R. v Secretary of State for the Home Department, ex parte Rukshanda Begum* [1990] Crown Office Digest 109, Dip, wherein the guidelines to be followed by the court in considering an application for leave have been laid down as follows:

(i) The Judge should grant leave if it is clear that there is a point for further investigation on a full inter partes basis with all such evidence as is necessary on the facts and all such argument as is necessary on the law.

(ii) If the Judge is satisfied that there is no arguable case he should dismiss the application for leave to move for judicial review.

(iii) If on considering the papers, the Judge comes to the conclusion that he really does not know whether there is or is not an arguable case, the right course is for the Judge to invite the putative respondent to attend and make representations as to whether or not leave should be granted. That inter partes leave hearing should not be anywhere near so extensive as a full substantive judicial review hearing.

The test to be applied by the Judge at that inter partes leave hearing should be analogous to the approach adopted in deciding whether to grant leave to appeal against an arbitrator's award... namely: if, taking account of a brief argument on either side, the Judge is satisfied that there is a case fit for further consideration, then he should grant leave.

28. I agree with the Applicant that the test whether there is an arguable case would apply in granting leave because the threshold at leave application for judicial review stage is very low.

29. In the present case, the issue is not whether there was an arguable case but the statutory compliance with the appeal process under section 99 of the Income Tax Act. Thus the issue is whether leave for judicial review granted on 5.9.2016 was based on exceptional circumstances and whether the Applicant had established that its application falls under the recognized exception to the general rule that judicial review is not to be available where an alternative remedy exists.

30. The Respondent has submitted that the Applicant had been granted a leave for Application of Judicial Review which had been made *ex-parte* to this Court in chambers. The Respondent was only served with an extract of the sealed copy of the notice of the same after the leave had been granted by this Court.

31. In this regard. I agree with the Respondent that the leave application was granted in the absence of the Respondent therefore, leave should not have been granted to the Applicant since the Respondent was not able to present its objection. The Respondent was not invited as the putative Respondent to attend and make representations as to whether or not leave should be granted. (See: Order 53 r. 8 of the Rules of Court 2012 and ***Tuan Sarip Hamid' case)***.

32. The Applicant was correct on the law as it stands that the Court may be persuaded to exercise its discretion if the Applicant can show that its case falls under the exceptional circumstances but however, from the record of proceeding on 5.9.2016, there is no record to show that leave was granted based on the consideration and satisfaction that the circumstances of the Applicant's case is exceptional. The record only shows that leave

application was granted because there was no objection from the Attorney General Chambers. It is not disputed that in revenue cases, the Attorney General is not acting for the Respondent.

33. The Applicant's reference to Order 53 rule 9 of the Rules of Court 2012, where it is prescribed that an application to set aside any order made by this Court shall not be entertained, but the aggrieved party may appeal to the Court of Appeal. Hence, if the Revenue (Respondent) is of the view that leave should not have been granted by this Court, then the Revenue should have appealed to the Court of Appeal, which it did not do so in the present matter.

34. The Applicant's contention does not make sense because the Respondent is not the party at the leave application stage which is an ex-parte before a judge in chamber (see Order 53 r. 3 (2) of the Rules of Court 2012) and the application is required to be served on the Attorney General Chamber under Order 53 r. 3(3). The Respondent is not the aggrieved party at this leave stage for purpose of appeal under Order 53 r. 9. The Respondent can only be the aggrieved party after the judge makes any order in inter parte hearing and to appeal against the Order. Order 53 r. 9 does not allow the order of the judge to be set aside. Therefore, there is nothing the Respondent can do to exercise its right to object and benefit the early dismissal of any application relating to non-compliance of section 99 of the Income Tax Act.

35. The Applicant cited the Federal Court in ***Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan*** **Tanggungan [1999] 3 CLJ 65** which observed that:

(a) The availability of appeal **does not debar** the court from quashing an order by certiorari and that everything depends upon the facts of the case.

(b) When **genuine grounds** for judicial review are alleged, it is the refusal rather than the grant of relief which is exceptional course.

(c) Where the Court considers that the applicant was **denied "substantial" justice** by the decision-maker whose decision is being impugned, then this fact will weigh heavily in favour of a finding of exceptional circumstances.

(d) If an applicant in judicial review proceedings can demonstrate **illegality**, that is to say unlawful treatment, it would be **wrong to insist that he exhaust his statutory right of appeal** where one is available.

(e) **Why should illegal action be not nipped in the bud** by the quicker, more convenient and adequate remedy of Judicial Review rather appeal?

(f) When **unlawful conduct** is proved before a court of justice, it should generally be willing to say so and grant relief, **whether an equally convenient, beneficial and effectual alternative remedy exists or not**.

(g) If a complaint raises a **question of law** which could be dealt with by appeal or by judicial review, the latter may be preferable on the ground that **judicial review may be quicker** than the appeal procedure.

(h) Judicial review would be the appropriate route in **issues of law** of public importance as the principles involved in the case are more important than the case itself

36. I have considered the Applicant's submission that the existence of an alternative remedy is not a bar to judicial review and cannot operate to oust the jurisdiction of the High Court.

37. While I agree with the Applicant's submission, however it is only in exceptional circumstances that it can oust the jurisdiction of the High Court. In this case, the "no objection" from the Attorney General Chambers cannot be an exceptional circumstances meriting the granting of leave for judicial review. In my considered opinion there must be grounds such as the *"error of law" or "abuse of power" going to the legality of the conduct of the ... decision-making authority* that would be considered as exceptional circumstances to grant leave for judicial review.

38. In my considered opinion, although this Court had granted the Applicant's Leave Application, it is always at the discretion of the court to make an order that the judicial review application is not available to the Applicant where there was clear fact that there is an alternative remedy exists. This is also best illustrated in the case of **Jagdis Singh** where the Supreme Court had decided that there was no special circumstance exists for the court to grant the judicial review application after hearing appeal from the Inland Revenue Department.

39. The decision of the Supreme Court in ***Jagdis's* case** was followed by another revenue case in ***Ta Wu Realty Sdn Bhd** v. **Ketua Pengarah Hasil Dalam Negeri & Another [2008] 6 CLJ 235***. In this case, the application for leave for *certiorari* to quash a notice of assessment under the Income Tax Act 1967 was rejected by the Court of Appeal. The principle in ***Jagdis's* case** was cited as follows -

> *"[21] The Supreme Court thus in Jagdis Singh had held that the discretion is still with the courts to act by way of judicial review, but where there is an appeal procedure available to the applicant, certiorari should not normally issue save in exceptional circumstances (see also*

R v. Chief Constable of Merseyside Police ex parte Calveley [1986] QB 424).

[22] To repeat the guidelines in Jagdis Singh's case, the exceptional circumstances in the circumstances of this appeal required to be established by the Applicant are as follows -

i. the first respondent had a clear lack of jurisdiction; or

ii. there was a blatant failure by the first respondent to perform some statutory duty; or

ii. there was a serious breach of the principles of natural justice."

40. The Applicant argued that the dispute involves question of law which are more suitable to be decided by way of judicial review. The question of law as contended by the Applicant involves the applicability of subsection 24(1) of the Act and the decision in the cases of *Lower Perak Co-Operative Housing Society Berhad v Ketua Pengarah Hasil Dalam Negeri [1994] 3 CLJ 540, Ketua Pengarah Hasil Dalam Negeri v Penang Realty Sdn Bhd [2006] 2 CLJ 835*and *Ketua Pengarah Hasil Dalam Negeri v Metacorp Development Sdn Bhd (2011) MSTC 30-024* relied by the Applicant that the gain from the compulsory acquisition of lands was not subjected to income tax on one hand and on the other hand, the decision in the case of *F. Housing Sdn Bhd (1976) 2 MLJ 18 and Metacorp Development,* relied by the Respondent that the Court of Appeal had agreed that compulsory acquisition of land did not fall under subsection 24(1) of the Act UNLESS the taxpayer when obtaining the said land had knowledge that it would be acquired by the government.

41. It was submitted that the judicial review application instead of appeal process may be preferable on the ground that judicial review may be quicker than the appeal procedure. Judicial review would be the appropriate route in issues of law of public importance as the principles involved in the case are more important than the case itself

42. I have considered the Applicant's submission. In the recent revenue cases development, two Federal Court decision involving judicial review application which dealt with the very same issue on the availability of domestic remedy was pronounced. The Taxpayer in the 2016 case of ***Bandar Nusajaya Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Rayuan Sivil No: 01(f)-5-02/2015(W))*** had argued that issues in dispute involves question of law which are more suitable to be decided by way of judicial review. The Federal Court in allowing the Revenue's appeal and rejecting the Applicant's claim has stated that where there is available domestic remedy prescribed by the regulating Act, the domestic remedy must first be exhausted.

43. In ***Metacorp Development*** (supra) and ***Penang Realty*** (supra), which the Applicant relied upon, it was held that:

(a) The taxpayer did not sell the land acquired by way of business. It was forcibly acquired from the taxpayer and compensation was paid;

(b) A forced acquisition even resulting in profit cannot constitute a sale, the proceeds of which are subject to tax because the element of compulsion vitiates the intention of trade;

(c) Trading required an intention to trade and therefore, the state of mind of those in control of the taxpayer and their motives were most material;

(d) No tax is leviable on the profits made on account of the compulsory acquisition of the taxpayer's property; and

44. The Applicant distinguished the case of ***F Housing Sdn Bhd v Director General of Inland Revenue* [1976] 2 MLJ 183** on its own facts as the taxpayer in ***F Housing*** knew fully well that the land in question was to be acquired by the Government even

before they bought it. The taxpayer intended to profit from the difference between the acquisition award and the purchase price.

45. The Respondent submitted that based on factual relationship between the Applicant, IIB and Khazanah Nasional through the related shareholdings, the Applicant **had the prior knowledge and was aware** that the said land would be acquired by the Government before hand and had intention to profit from the compulsory acquisition of the said land by the Government.

46. It is the Respondent's submission that the case of ***F. Housing Sdn Bhd (1976) 2 MLJ 18*** and **subsection 24(1) of the Act** were applicable in this case **because the Applicant had prior knowledge of the intention of the Government to acquire the said land.** Further, by referring to the case of ***Metacorp Development***, the Court of Appeal had agreed that compulsory acquisition of land did not fall under subsection 24(1) of the Act **UNLESS the taxpayer when obtaining the said land had knowledge that it would be acquired by the government.**

47. It is laid down in the case of ***Metacorp Development v Ketua Pengarah Hasil Dalam Negeri,*** the High Court judge stated as follows:

> *"[21] However, upon scrutiny I am of the view that the Court of Appeal in Penang Realty endorsed the High Court decision which distinguished the case of* ***F Housing Sdn Bhd****, on the facts found by the learned High Court judge in that case (see pp 23 & 24). My reading of Penang Realty is that the Court of Appeal had upheld the High Court decision which distinguished these facts found by the court in F Housing. The main distinguishable fact is that* ***the act of directors*** *of the company in F Housing and* ***the knowledge of the acquisition that they possessed*** *had caused the compensation to be treated as gross income and hence taxable because that by themselves* ***had made the acquisition a trade in the course of business. The knowledge of acquisition is not present in the Penang Realty*** *which in my view had led to the decision that it is not a trade relying on the principle*

enunciated by the Supreme Court in Lower Perak Co-Operative Housing. The Court of Appeal in fact opined and followed that Supreme Court ruling that compulsion vitiates trade. Though there is also compulsory acquisition in the Penang Realty there is ***nothing in the judgment that suggests that the company was aware*** *of any impending acquisition as in F Housing."*

48. It is the duty of the Respondent to administer each and every provision of law contained in the Act and the duty of the court to apply the law to facts of the case. Justice Rowlatt J in the case of ***Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 1 K.B. 64*** says-

> *"It is simply means that in taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about tax. There is presumption as to tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used."*

49. And the decision of Cape Brandy (supra) was referred and followed in Malaysia by the Supreme Court in the case of ***National Land Finance Co-operative v Director General of Inland Revenue [1993] 2 AMR 52.***

50. Therefore, for the purpose of this particular issue the Respondent submitted that the income derived by virtue of a compulsory acquisition by the Government **is deemed as gross income of the Applicant under paragraph 24(1)(a) of the Act** and the prior knowledge of the parties is so crucial here.

51. The Respondent's finding that the Applicant's **prior knowledge of the intention of the Government to acquire the said land** was based on factual relationship between the Applicant, IIB and Khazanah Nasional through the related shareholdings. The Applicant **had the prior knowledge and was aware** that the said land would be acquired by the Government before hand and had intention to profit from the compulsory acquisition of the said land by the Government.

52. The following were the reasons which lead to the Respondent's decision that the gain/profit from the compulsory acquisition of land by the government were subject to income tax. It was submitted that the Applicant had knowledge that the said land would be acquired by the government based on the following facts and documents -

i) **Khazanah Nasional Berhad ("Khazanah Nasional")** is the entity responsible for drafting the "Comprehensive Development Plan" (**"CDP"**) for "Wilayah Iskandar" which is now known as **Iskandar Malaysia**. The construction of coastal highway from the City Centre to Nusajaya is one of the development agenda which is stated in the said CDP plan.

(refer Exhibit "YA-4" of the Respondent's Affidait in Reply).

ii) The cover page of the CDP Plan where it shows that this CDP Plan **was prepared by Khazanah Nasional**.

(refer to "Comprehensive Development Plan" (CDP) for Wilayah Iskandar / "South Johor Economic Region" (SJER); at page 3 of Exhibit "YA-10" of the Respondent's Additional Affidavit).

iii) Based on the CDP Plan, on **July 2005**, the Government of Malaysia had tasked Khazanah to conduct a **"feasibility study"** for the development of the Wilayah Iskandar. The Special Project Team that was formed consisted of Khazanah Nasional officers, consultants, experts from various field including land, federal and state government officers. This is clearly contained in the CDP Plan for Wilayah Iskandar as follows :

"It is against this backdrop that in July 2005, the Government of Malaysia had tasked Khazanah to conduct a feasibility study for the development of a special economic zone in South Johor in

what was then referred to as Southern Belt Economic Zone (SBEZ). A Special Project Team (SPT) was formed in Khazanah to undertake the task...."

(refer to Ekshibit "YA-4" of the Respondent's Affidavit in Reply for copy of the CDP Plan at page 1-1, paragraph 1.2)

iv) Following that, in **October 2005**, based on the *"Conceptual Outline Plan"* that was presented by Khazanah Nasional for the development of Wilayan Iskandar, Khazanah Nasional was tasked to develop *"a detailed and comprehensive Master Plan"* for Wilayah Iskandar. This is contained in the CDP Plan for Wilayah Iskandar as follows:

"In October 2005, Khazanah presented a Conceptional Outline Plan for the proposed South Johor Economic Region (SJER) [also known as "Wilayah Iskandar"] to the National SJER Planning Committee (NSPC)... The NSPC further tasked Khazanah to develop a detailed and comprehensive Master Plan for the development of SJER....."

(refer to Ekshibit "YA-4" of the Respondent's Affidavit in Reply for copy of the CDP Plan at page 1-2, third paragraph)

v) In **Mac 2006**, the development of Wilayah Iskandar was launched by the Prime Minister as part of the agenda in The Ninth Malaysian Plan ("RMK-9"). The CDP Plan that had been completed by Khazanah Nasional would be used in developing the Wilayah Iskandar.

(refer to Ekshibit "YA-4" of the Respondent's Affidavit in Reply for copy of the CDP Plan at page 1-2, third paragraph)

vi) One of the agenda in CDP Plan was to repair the connectivity between the cities through the building of the roads and highways as well as upgrading the existing roads and highways. **The land acquisition for**

the development of the Coastal Highway that connects Johor Bahru, Danga Bay and Nusajaya is included in this plan. The draft proposal to construct **the new road from Johor Bahru to Nusajaya** is also stated in this CDP Plan.

(refer Exhibit "YA-5" of the Respondent's Affidavit in Reply a copy of "Urban Linkage System" Chapter 15).

vii) Subsequently, on **10.10.2006**, the **Applicant's company was formed**. Paragraph 2(b) of this submission for the details of the Applicant's company (formerly known as "Kota Selat Tebrau Sdn Bhd") and its parent company is Khazanah Nasional dan IIB.

viii) Apart from IIB (formerly known as "South Johor Investment Corporation Berhad"), the other shareholders of Applicant's company are **Danga Bay Holdings Sdn Bhd ("Danga Bay Holdings")** and **Kumpulan Prasarana Rakyat Johor Sdn Bhd ("KPRJ")**.

(refer to Ekshibit "YA-11" of the Respondent's Additional Affidavit for copy of Form 24 Companies Act 1965 dated 5.7.2007).

ix) Subsequently, via 'Subscription Agreement' dated 17.1.2007 and 18.6.2007, the Applicant has acquired land from its shareholders which are Khazanah Nasional, IIB, Danga Bay Holdings and KPRJ. The land was part of the capital injection into the company by its shareholders.

(refer to Ekshibit "YA-6" of the Respondent's Affidavit in Reply for copy of 'Subscription Agreement' dated 17.1.2007 and 18.6.2007).

53. **IIB** (formerly known as "**South Johor Investment Corporation Berhad**") is a subsidiary to **Khazanah Nasional Berhad ("Khazanah Nasional")**. This can be seen at page 5 of IIB's company search which clearly shows that Khazanah Nasional had 60% shareholding in IIB. In addition, IIB's company search also shows that IIB was formerly known as "South Johor Investment Corporation

Berhad".*(also refer to Exhibit "YA-9" of the Respondent's Affidavit in Reply).* The summary of these 3 companies i.e. Khazanah Nasional and its subsidiary as are follows:

KHAZANAH NASIONAL BERHAD (Holding/parent company)

⇩

ISKANDAR INVESTMENT BERHAD ("IIB")
(formerly known as **"South Johor Investment Corporation Berhad"**)
(Khazanah Nasional holds 60% shares in IIB)

⇩

ISKANDAR COAST SDN BHD (Applicant)
(formerly known as **"Kota Selat Tebrau Sdn Bhd"**)
(IIB holds 80% shares in Applicant's company)

54. The Respondent submitted that based on factual relationship between the Applicant and IIB and Khazanah Nasional through the related shareholdings, the Applicant had the knowledge and was aware that the said land would be acquired by the Government before hand and had intention to profit from the compulsory acquisition of the said land by the Government.

55. The Respondent further submitted as follows: -

i. In order to increase the value of the properties and consequently, obtain higher value of compensation, the Applicant has also made an application to the 'Pejabat Pengarah Tanah Dan Galian Johor' to change the status of the land which were agricultural land and leasehold for 99 years to freehold. Several of the status of the said land that had been converted to freehold are part of the land located in PTD 13178, PTD 72272 and PTD 72273.

(refer to Ekshibit "YA-12" of the Respondent's Additional Affidavit for copy of approval from 'Pejabat Pengarah Tanah Dan Galian Johor'

dated 4.4.2007 in relation to the application of the change of status of the land from 99 years of leasehold to freehold.

ii. The Applicant had **changed the status of most of the said land** which were agricultural land and leasehold for 99 years **to freehold**.

(refer to the said land title, Ekshibit "SCS-11" of the Applicant's Afidavit in Support).

iii. The Applicant had submitted letters through its tax agent dated 11.2.2016 and 3.3.2016 to the Respondent for an extension of time to respond to hte Respondent's letter dated 26.5.2015.

(refer to the said letters, Ekshibit "YA-7" of the Respondent's Afidavit in Reply).

iv. Vide letter dated 31.3.2016 *(Ekshibit "SCS-17" of the Applicant's Afidavit in Support)*, the Applicant informed the Respondent that it did not have knowledge in respect of the government's intention to acquire the said land and the Applicant only knew about it through the **government gazette dated 3.7.2008** which was **18 months after the said land was transfered by the Applicant's shareholders to the Applicant's company as a capital injection.** The Applicant also stated that the facts that Khazanah Nasional being responsible on the said CDP Plan for 'Iskandar Malaysia' did not mean that the Applicant had prior knowledge about the acquisition of the land by the government.

v. After reviewing the response given by the Applicant and in consideration of all relevant facts, documents, provisions and also case law, the Respondent is of the opinion that **subsection 24(1)(a) of the Act** and the case of ***F. Housing*** **is applicable** to this Applicant's case and issued a letter dated 30.6.2016 *(Exhibit "SCS-8" of the Applicant's Affidavit in Support).*

56. The Respondent's reason to maintain its stand were based on–

a) The Applicant's company was formed after Wilayah Iskandar was launched.

b) Khazanah Nasional which is the parent company of the Applicant was the party responsible to draft the CDP Plan for the development of Wilayah Iskandar/Iskandar Malaysia. Hence, the Applicant had knowledge that the said land would be acquired by the government. This has been confirmed by the Applicant via its letter dated 31.3.2016 *(Ekshibit "SCS-17" of the Applicant's Afidavit in Support).*

57. I have considered the arguements by both parties and it is not disputed that the cases referred by either party are perculiar on their own facts.

58. This is where the Federal Court had in the recent decision of ***Ketua Pengarah Hasil Dalam Negeri v Alcatel-Lucent (M) Sdn Bhd (Civil Appeal No. 01(f)-18-08/2012(W))*** decided on the issues of domestic remedy is very pertinent. Suriyadi Halim Omar FCJ has commented,

> *"[60] Had the respondents filed an appeal before the Special Commissioners, where the onus is on the respondents to establish their position, they will be accorded every opportunity to show where the appellant went wrong. The Respondents may request for attendance of witnesses to give evidence on oath and request any witness to produce any books, papers or documents which is in his custody or his control necessary for the purpose of appeal. Therefore, before the Special Commissioners, the respondents will have all the opportunity to undo what the appellant determined (see Director-General of Inland Revenue v Lahad Datu Timber Sdn Bhd [1978] 1 MLJ 203).*

[61] At the completion of the hearing of the appeal, the Special Commissioners shall give their decision in the form of an order known as a deciding order, and which in certain circumstances may be final. Either party to the proceedings before the Special Commissioners may appeal on a question of law against a deciding order, or may request the Special Commissioners to state a case (generally known as case stated) for the opinion of High Court. Any dissatisfied party may appeal only up to the Court of Appeal (Tio Chee Hing v United Overseas (Malaysia) Bhd (2013) 2 CLJ 910; Koperasi Jimat Cermat dan Pinjaman Keretapi Bhd v Kumar Gurusamy (2011) 3 CLJ 241; Ketua Pengarah Hasil Dalam Negeri v Syarikat Jasa Bumi (Woods) Sdn Bhd (Civil Application No. 8-31-99 (S) (Unreported)).

[62] By filing an appeal before the Special Commissioners the respondents would have had that opportunity to challenge the decision of the appellant as to whether the payments were indeed royalty...

[63] By circumventing the Special Commissioners from resolving these issues, and unwittingly leaving the deeming provision unrebutted, the first respondent's payments to the second respondent are thus income derived from Malaysia."

[81] The relevant question that must follow is, did the appellant make an assessment i.e. carry out an official administrative act, when he ordered the first respondent to make payments of the withholding tax? Without a doubt the answer is in the affirmative. That being so, with the imposition of the withholding tax being an assessment, it is thus subject to appeal to the Special Commissioners under section 99."

59. In applying the principles in the above said case with the present case, my view is, had the Applicant filed an appeal before the Special Commissioners, where the onus is on the Applicant to establish their position, they will be accorded every opportunity to show where the Respondent went wrong. Most importantly, when the cases referred to by either party show that decisions

derived by Special Commissioners much dependant on the facts of the case i.e. the Respondent to prove that the taxpayer when obtaining the said land had knowledge that it would be acquired by the government to fit into the decision of *F. Housing Sdn Bhd (1976) 2 MLJ 18 and Metacorp Development,* the Respondents may request for attendance of witnesses to give evidence on oath and request any records or documents which is in his custody or his control necessary for the purpose of appeal. Therefore, before the Special Commissioners, the Applicant will have all the opportunity to undo what the Respondent determined to fit the decision in *Ketua Pengarah Hasil Dalam Negeri v Penang Realty Sdn Bhd [2006] 2 CLJ 835* relied by the Applicant in its favour. After the case, either party to the proceedings before the Special Commissioners may appeal on a question of law against a deciding order, or may request the Special Commissioners to state a case (generally known as case stated) for the opinion of High Court. It is much easier to determine the issue of law based on the proven facts found by the Special Commissioner in the Case Stated.

60. In general, the court will not interfere with an authority's decision on the ground that the authority has adopted one interpretation but not the other which was favorable to the individual. On this point, the principles laid down in **Ta Wu's case** will be of help where it was held as follows:

> *"[27] Currently, only the Income Tax Act, Petroleum Income Tax Act, Real Property Gains Tax and Stamp Duty Act, impose direct taxes on chargeable income. It is also incontrovertible, for purposes of this case, only the Income Tax Act and the Real Property Gains Tax Act are applicable. In such a predicament, where there are only two reasonable interpretations, and the assessment could only fall under one of these two Acts, and one in chosen over the other as reflected in the assessment notice, that cannot be said to be an error of law on the face of the records (as per the pleadings). If there is only one possible interpretation and the Inland Revenue had rejected in then a judicial review would be in order. Professor M.P Jain in Administrative Law of Malaysia and Singapore p. 373 had authored -*

<u>It will not be an error of law apparent on the face of the record where two reasonable interpretations of law are possible and the tribunal has adopted one of them... Mere formal or technical errors of law do not attract judicial review.</u>

[31] The above two cases may be summed up this way: a court will not interfere with an authority's decision on the ground that it has adopted one interpretation but not the other which was favorable to the individual, or that the view adopted by the authority appears to the court to be less reasonable than the alternative construction.".

61. In my considered opinion, the Special Commissioners of Income Tax do have powers to hear the said matter since the Special Commissioners of Income Tax are the "judges of facts" who have the jurisdiction to hear the matter. To submit that the Respondent is right or not to raise the notices of additional assessment is in substance questioning the merit of the assessment raised. In ***Ta Wu's*** case, it was held that Special Commissioners of Income tax are the proper forum to decide on the merits of an assessment. The Court of Appeal Judge, Suriyadi Halim Omar said this:

"[25] This course of action was taken up, as somehow the appellant had been distracted, eventually to be deviated by the guidelines of Jagdis Sigh (supra), resulting in the unwittingly failure to discuss this ground. It must be understood that a court listening to a certiorari application sits in a supervisory jurisdiction, and merely to scrutinize the manner the assessment was arrived at by the Director General. Put another way, the court is only concerned with the legality of the decision making process and not eventual decision i.e., that 1998 assessment, in relation to the current case. ***To state that the impugned Form J is invalid, and that in contains an error of law on the face of that Form J, is a question pertaining to the merits of the assessment, <u>a matter better reserved</u> for the Special Commissioners or a matter***

to be transmitted as case stated to the High Court."

62. In any event, the door for the Applicant to bring the matter to High Court on any question of law is not entirely closed. The decision of the Special Commissioners of Income Tax is appealable to the High Court by way of a Case Stated. This safeguard is well explained in the case of ***Ta Wu*** as follows -

> *"[6] Before The Special Commissioners a taxpayer, in this case the appellant, will have all the opportunity to ventilate his disgruntlement, with every opportunity to tender exhibits, and give oral evidence if necessary (Director-General of Inland Revenue v. Lahad Datu Timber Sdn Bhd [1978] 1 MLJ 203). If the taxpayer is successful, the tax so paid will be refunded in full. A taxpayer has an additional safeguard in that in the event a dispute on questions of law is identified it may be transmitted to the High Court by way of case stated. To dispel any fear of the taxpayer, merely because he has to face such an awesome body in the form of the government, Gill FJ in Sun Man Tobacco Co. v Government of Malaysia [1973] 2 MLJ 163 had occasion to state:"*

63. Based on the doctrine of stare decisis, the decision made by the Federal Court in rejecting the Taxpayer's claim as the domestic remedy available has not been exhausted by the Taxpayer in the case of ***Bandar Nusajaya*** *(supra) and* ***Alcatel-Lucent*** *(supra)* is binding on all Courts of this land therefore it is also binding upon this Court.

64. The doctrine of "*stare decisis*" is the corner stone of our legal system and in this regard, the Federal Court decision in the ***Co-Operative Central Bank Ltd v. Feyen Development Sdn Bhd [1997] 3 CLJ 365*** of which sets out the principle succinctly:

> *"Our task in answering this question, has been made considerably easier by the assistance we have derived from the remarks of Lord*

Hailsham in Cassell and Co. Ltd. v. Broome [1972] AC 1027, which indicate the reaction of the House of Lords to the Court of Appeal's refusal to follow a previous decision of the House on the ground that it had been given per incuriam.

Touching on the repercussions of the Court of Appeal advising Judges of first instance to ignore decisions of the House of Lords, Lord Hailsham said this (at p. 1054 B to D):

> *"... I am driven to the conclusion that when the Court of Appeal described the decision in Rookes v. Barnard as decided "per incuriam" or "unworkable", they really only meant that they did not agree with it. But, in my view, even if this were not so, it is not open to the Court of Appeal to give gratuitous advice to Judges of first instance to ignore decisions of the House of Lords in this way and, if it were open to the Court of Appeal to do so, it would be highly undesirable. The course taken would have put Judges of first instance in an embarrassing position, as driving them to take sides in an unedifying dispute between the Court of Appeal or three members of it (for there is no guarantee that other Lord Justices would have followed them and no particular reason why they should) and the House of Lords. But, much worse than this, litigants would not have known where they stood. None could have reached finality short of the House of Lords, and, in the meantime, the task of their professional advisers of advising them either as to their rights, or as to the probable cost of obtaining or defending them, would have been, quite literally, impossible. Whatever the merits, chaos would have reigned until the dispute was settled, and, in legal matters, some degree of certainty is at least as valuable a part of justice as perfection.*

And, in a famous passage (at p. 1054 D and E) Lord Hailsham concluded this part of the case, by saying:

The fact is, and I hope that it will never be necessary to say so again, <u>that in the hierarchical system of Courts that exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers</u>. Where decisions manifestly conflict, the decision in Young v. The Bristol Aeroplane Co. offers guidance to each tier in matters affecting its own decisions. It does not entitle it to question considered decisions in the upper tiers with the same freedom."

[Emphasis added]

65. In conclusion it is my considered opinion that that there are no exceptional circumstances for the court to allow the application. The dispute raised by the Applicant shall be dealt with by the Special Commissioners of Income Tax like any other appeals on assessment.

66. The Applicant's judicial review application is dismissed with Costs of RM 5,000.00.

Dated: 26th October 2017

(KAMALUDIN BIN MD. SAID)
HIGH COURT JUDGE
KUALA LUMPUR HIGH COURT

Solicitors

Messrs Lee Hishamuddin Allen & Gledhill (Datuk D.P Naban together with S. Saravana Kumar) for the Appellant

Lembaga Hasil dalam Negeri (Ahmad Isyak bin Mohd Hassan together with Ruzaidah Bte Yaacob) for the Respondent

Cases Referred to

Lower Perak Co-Operative Housing Society Berhad v Ketua Pengarah Hasil Dalam Negeri [1994] 3 CLJ 540

Ketua Pengarah Hasil Dalam Negeri v Penang Realty Sdn Bhd [2006] 2 CLJ 835

Ketua Pengarah Hasil Dalam Negeri v Metacorp Development Sdn Bhd (2011) MSTC 30-024

F. Housing Sdn Bhd (1976) 2 MLJ 18

Government of Malaysia & Another v. Jagdis Singh [1987] 2 MLJ 185

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65

Tuan Sarip Hamid & Anor v. Patco Malaysia Berhad [1995] 3 CLJ 62

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65

Ta Wu Realty Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri & Another [2008] 6 CLJ 235.

Bandar Nusajaya Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Rayuan Sivil No: 01(f)-5-02/2015(W))

Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 1 K.B. 64

National Land Finance Co-operative v Director General of Inland Revenue [1993] 2 AMR 52

Ketua Pengarah Hasil Dalam Negeri v Alcatel-Lucent (M) Sdn Bhd (Civil Appeal No. 01(f)-18-08/2012(W))

Co-Operative Central Bank Ltd v. Feyen Development Sdn Bhd [1997] 3 CLJ 365