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High Court Quashes RM 313 Million Additional Tax Assessment Against Taxpayer Who Elected For Joint Assessment

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Last week, the High Court quashed a RM 313 million additional tax assessment raised against a taxpayer who had elected for joint assessment with her late husband. The court held that the assessment was illegal and irrational and amounted to double taxation.

In *NAK v Ketua Pengarah Hasil Dalam Negeri*, the High Court allowed the taxpayer's judicial review application and quashed the Inland Revenue Board's (IRB) Notice of Additional Assessment (Form JA) for the year of assessment (YA) 2018.

The additional assessment was based on the 2018 market value of three foreign assets acquired by the taxpayer more than three decades earlier.

The court found, among other things, that the IRB had sought to assess the taxpayer on the same basis on which income had already been assessed and settled with her late husband, and that there was no legal basis for treating the 2018 market value of the foreign assets as income for YA 2018.

The taxpayer was successfully represented by the firm’s Tax, SST & Customs Partners, S. Saravana Kumar and Nur Amira Ahmad Azhar together with Senior Associate, Dharshini Sharma.

Background

The taxpayer elected for joint assessment with her late husband under Section 45 of the Income Tax Act 1967 (ITA) for YA 2018. In June 2023, the IRB commenced a tax investigation against her late husband, expressly examining, among other matters, the taxpayer's shareholding in a company.

The investigation was subsequently resolved amicably in November 2023 by a settlement of RM31,498,069.63 million for the YAs 2017 to 2019.

However, In Jan 2024, the IRB reopened its inquiry, this time against the taxpayer and in relation to the same subject matter. The IRB sought explanations concerning an increase in share capital and three foreign assets which had been used as collateral.

Between March and August 2024, the taxpayer's solicitors informed the IRB that the assets were situated overseas, that no income in respect of the assets had been received in Malaysia and that the assets had been acquired more than 30 years earlier.

After a few rounds of communication, the IRB issued the disputed assessment against the taxpayer.

The taxpayer commenced judicial review proceedings where among others, the Court of Appeal granted a stay order in favour of taxpayer and the High Court dismissed the Attorney General's objection to the leave application commence judicial review proceedings.

Taxpayer's Arguments

The taxpayer advanced several grounds in challenging the assessment:

Joint Assessment

The taxpayer argued that pursuant to Section 45(4) of the ITA, she was deemed by law to have no separate chargeable income for YA 2018 because her income had already been aggregated with and assessed on her late husband.

The use of the word "shall" in Section 45(4) was mandatory and left the IRB with no discretion to subsequently disaggregate income that had already been aggregated pursuant to the statutory joint assessment regime.

Accordingly, any assessment raised against her separately for YA 2018 was said to be ultra vires.

Double Taxation And Estoppel

The taxpayer further argued that the IRB had already investigated and settled the same share-capital increase issue for the same YA against her late husband. The subsequent assessment against her, based on the same factual circumstances and statutory regime, therefore amounted to double taxation.

She relied on the Federal Court's decision in *Ketua Pengarah Hasil Dalam Negeri v Kind Action Sdn Bhd*, where the court held that imposing tax twice on the same transaction under two different statutory regimes was illegal and that the doctrine of estoppel could apply against the IRB.

No Power To Treat Asset Value As Income

The taxpayer also submitted that the ITA is an income tax statute, rather than a wealth tax statute. Sections 78 to 82 of the ITA, she argued, confer investigatory and information-gathering powers but do not empower the IRB to deem the market value of an asset to be taxable income.

The taxpayer relied on *Exxon Chemical (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* and *National Land Finance Co-operative Society Ltd v Director General of Inland Revenue* for the proposition that taxing provisions must be construed strictly and that any ambiguity should be resolved in favour of the taxpayer.

Territorial

The taxpayer also relied on Section 3 of the ITA, which limits income tax chargeability to income accruing in, derived from or received in Malaysia.

She argued that "financial capability" to acquire an asset was not a concept recognised by the ITA and that the IRB had failed to identify any Malaysian-sourced income. Instead, the assessment was based on the 2018 market value of assets acquired decades earlier.

Retention Of Records

The taxpayer further contended that the IRB's demand for sale and purchase agreements, bank statements and loan documents dating back to the 1990s was unreasonable.

Section 82A of the ITA requires taxpayers to retain records for seven years and the taxpayer argued that Sections 78 to 81 could not be used to circumvent that statutory limit.

It was submitted that it was unreasonable to expect a party to produce records from a distant period, particularly where tax legislation itself required records to be retained for only seven years.

IRB's Position

The IRB argued that the judicial review application was an abuse of process because the taxpayer had an alternative remedy under Section 99(1) of the ITA and had already lodged a Form Q appeal with the Special Commissioners of Income Tax (SCIT).

It contended that the taxpayer had to establish exceptional circumstances before the High Court could intervene through judicial review, and that the dispute involved factual issues principally whether she could substantiate the source of funds used to acquire the foreign assets which were more appropriately determined by the SCIT.

The IRB also maintained that the additional assessment was validly issued under Section 91(1) of the ITA as a best-judgment assessment.

According to the IRB, the value of the foreign assets demonstrated the existence of undeclared income and justified the additional assessment. Its requests for information and documents under Sections 78 to 80A were, it said, valid exercises of its statutory powers.

The IRB further argued that the taxpayer's failure to provide the requested documents entitled it to raise the assessment based on the value of the assets as taxable income.

High Court's Decision

The High Court allowed the judicial review application and quashed the additional assessment.

On the issue of alternative remedies, the court accepted that taxpayers should generally exhaust an available statutory appeal, such as an appeal to the SCIT, before seeking judicial review.

However, relying on the Federal Court decisions in *Kind Action* and *Mohd Najib*, the High Court held that it retained jurisdiction to entertain judicial review proceedings where exceptional circumstances including illegality, were present.

The assessment amounted to double taxation as the court found that the issue involving shareholding amounting to RM320,286,407 for YA 2018 had already been assessed and settled in respect of the taxpayer's late husband.

Importantly, the three foreign assets relied upon in the additional assessment were the same source identified by the IRB in its Jan 2024 letter as being connected to that shareholding.

The High Court therefore concluded that the basis of the new assessment was the same basis that had already been assessed and settled with the late husband.

Raising a further assessment against the taxpayer on that same basis amounted to double taxation and was contrary to the ITA.

The court also held that, even if there had been an omission to declare income connected with the acquisition of the foreign assets in the 1990s, that income should have been assessed in the YA in which the alleged omission occurred.

There was, the court found, no concept under the ITA that permitted the mere ownership of an asset to be treated as if the asset had been acquired in the YA under review, with its market value consequently treated as undeclared income for that year.

The IRB had itself maintained that it was taxing the source of funds used to acquire the assets, rather than the assets themselves.

The demand for decades-old documents was unreasonable as Sections 82 and 82A of the ITA require records to be retained for seven years. The court noted that the IRB was already aware, from the taxpayer's letter in Aug 2023 and the Compromise and Settlement Agreement executed December 2018, which was furnished to the IRB that the assets were acquired in the 1990s.

In those circumstances, the IRB’s act to require the taxpayer to produce decades-old records was irrational.

Foreign assets did not establish Malaysian taxable income The court further held that Section 3 of the ITA confines the charge to income accruing in, derived from or received in Malaysia.

The assets in question were foreign-situated assets and did not, in themselves, constitute income received in Malaysia.

In the absence of evidence that income derived from the assets had been received in Malaysia, the High Court held that the ITA did not apply to tax the taxpayer on the value of those assets.

Outcome

The High Court accordingly quashed the IRB's notice of additional assessment. The decision underscores the limits of the IRB's assessment and investigatory powers, particularly where an assessment seeks to treat the value of long-held foreign assets as income for a later year of assessment.

It also highlights the significance of a taxpayer's statutory election for joint assessment and the court's willingness to intervene by judicial review where an assessment is alleged to be unlawful despite the availability of a statutory appeal.

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