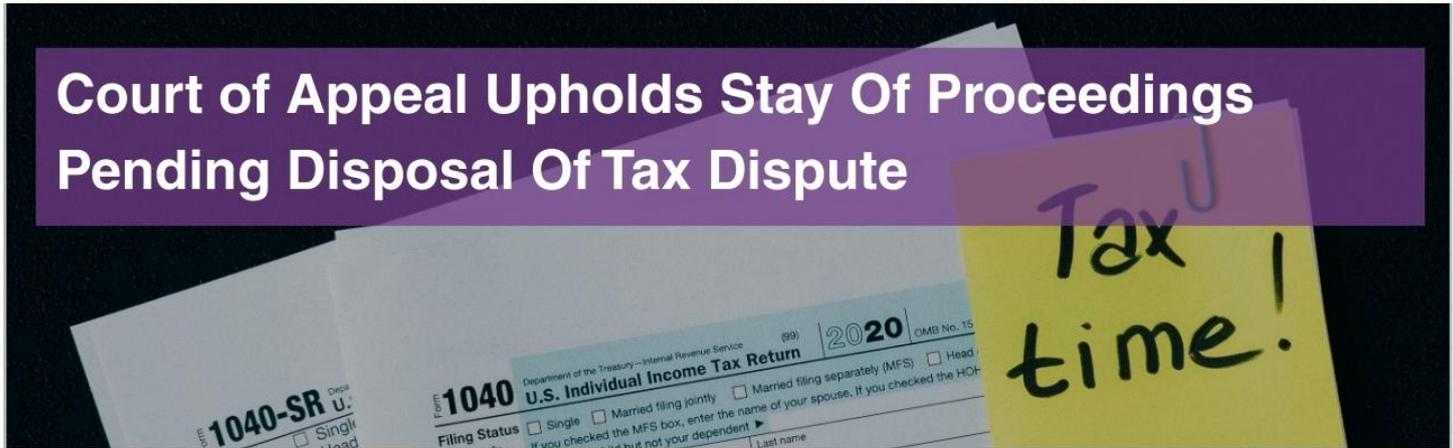


Court of Appeal Upholds Stay Of Proceedings Pending Disposal Of Tax Dispute



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Recently, the Court of Appeal upheld the stay of proceedings granted by the High Court in *Winning Paramount Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (2025) MSTC 30-815*, effectively suspending enforcement of additional assessments amounting to approximately RM86 million. The decision reinforces that notwithstanding the “pay first, dispute later” framework of the Income Tax Act 1967 (ITA), courts can intervene to prevent undue hardship while a judicial review is underway.

This outcome not only affirms the High Court’s jurisdiction to grant a stay in tax matters but also highlights the judiciary’s roles in balancing statutory obligations with fairness and justice.

The taxpayer was successfully represented by our firm’s Tax, SST & Customs Partner, S. Saravana Kumar together with tax associate, Tan Jass Key.

Brief Facts

The taxpayer is a company principally engaged in the development, leasing, and operation of warehouses and related facilities. In 2019, the taxpayer disposed of a leasehold land and duly submitted a real property gains tax (RPGT) return, which the Director General of Inland Revenue (Revenue) accepted. In 2020, the Revenue issued a certificate of clearance, exempting the gains from RPGT pursuant to the Real Property Gains Tax (Exemption) Order 2001.

In 2024, however, the Revenue reassessed the same transaction and recharacterised the gains as income chargeable under Section 4(a) of the ITA, resulting in additional assessments totalling approximately RM86 million.

The taxpayer commenced judicial review proceedings seeking, inter alia, to quash the additional assessments. The High Court granted leave under Order 53 of the Rules of Court 2012 (ROC) and, in conjunction with leave, allowed the application for a stay of proceedings to suspend enforcement of the assessments.

The Revenue subsequently appealed to the Court of Appeal against the granting of the stay.

The Revenue's Contentions

Before the Court of Appeal, the Revenue advanced three primary arguments:

(a) Applicable test

The Revenue submitted that the test for granting a stay required the existence of "special circumstances", which the taxpayer had allegedly failed to establish. While acknowledging the court's inherent discretion to grant a stay, the Revenue contended that such discretion must be exercised judiciously.

(b) Statutory framework under the ITA

Central to the Revenue's case was the argument that the court's inherent powers under Order 92 Rule 4 ROC must not undermine the statutory tax recovery framework, particularly Sections 103, 103B, and 106 of the ITA, which impose a clear obligation to pay assessed tax within 30 days of service of the notice, even if appeals are pending.

Relying on Federal Court authorities including *Mohd Najib bin Hj Abd Razak & Anor v Government of Malaysia and another appeal* [2023] 6 MLJ 483 and the long-established principle in *Arumugam Pillai v Government of Malaysia* [1980] 2 MLJ 283, the Revenue stressed that the ITA adopts a "pay first, dispute later" principle, with safeguards in place by way of refunds should the assessment ultimately be found to be incorrect. The stay granted by the High Court was therefore said to have the effect of circumventing this statutory scheme.

The Revenue also cited *Ahmad Zubair @ Ahmad Zubir bin Hj Murshid v Public Prosecutor* [2014] 6 MLJ 831 and *Karpal Singh v Public Prosecutor* [1991] 2 MLJ 544, arguing that the Court's inherent powers cannot override express statutory provisions and must be exercised strictly within the statute.

(c) Balance of convenience

Finally, the Revenue argued that the balance of convenience favoured it, noting that tax collection is a matter of public interest. Suspending enforcement would be inconsistent with the legislative intent underpinning Sections 103 and 106 of the ITA, undermining fiscal administration and the integrity of the tax system.

The Taxpayer's Contentions

The taxpayer's arguments in support of the stay application before the Court of Appeal were primarily anchored on the reasoning adopted by the High Court:

- (a) A stay is an interim relief and is not automatic upon leave being granted;
- (b) The taxpayer did not seek an injunction restraining the Revenue from exercising its statutory powers, but only a temporary suspension of the decision pending the disposal of the judicial review; and
- (c) The four well-established elements set out in *Godfrey Philips (Malaysia) Sdn Bhd v Timbalan Ketua Pengarah Kesihatan (Kesihatan Awam), Kementerian Kesihatan, Malaysia* [2011] 9 CLJ 670, namely, the merits of the case, irreparable harm, balance of convenience, and public interest, were duly considered and applied to the facts. These elements were not disputed.

The High Court had acted well within its jurisdiction and discretion by temporarily suspending the enforcement of the additional assessments pending disposal of the substantive judicial review.

Power To Grant Stay Is Not Ousted In Tax Matters

The taxpayer submitted that statutory provisions under the ITA, including Sections 103, 103B, and 106, do not oust the Court's inherent jurisdiction to grant a stay in tax matters. Reliance was placed on *Government of Malaysia v Jasanusa* [1995] 2 CLJ 711, where the Supreme Court held that:

- (a) Neither Section 103(1) nor Section 106(3) prevents a court from exercising its inherent power to grant a stay;
- (b) The court must balance the Government's interest in tax collection against the need to protect taxpayers from arbitrary, incorrect, or prematurely enforced assessments; and
- (c) Appellate intervention in the exercise of discretion should occur only in exceptional circumstances, such as where the lower court's decision was based on an error of law or fact or lacked any reasonable explanation.

Further support was drawn from *Mohd Najib*, where the Federal Court reiterated that judicial powers to grant a stay are not ousted by statutory regimes containing express enforcement mechanisms.

The taxpayer contended that the disposal had been granted an RPGT exemption and a valid certificate of clearance, which remained in effect at the time the income tax assessments were raised. By issuing additional assessments without first revoking the clearance, the Revenue undermined this legitimate expectation, justifying the granting of the stay. Enforcement without a stay would have rendered the judicial review nugatory, particularly given the substantial sum involved.

The taxpayer submitted that the authorities cited by the Revenue, including *Karpal Singh* and *Ahmad Zubayr*, arose in criminal contexts and involved materially different considerations. As such, they were distinguishable and inapplicable to the present judicial review concerning tax matters.

The Court Of Appeal's Ruling

After considering the parties' submissions, the Court of Appeal unanimously dismissed the Revenue's appeal and upheld the High Court's decision granting the stay on the following grounds:

- (a) There was no wrongful exercise of discretion by the High Court in granting the stay. The High Court had exercised discretion judicially and correctly, having regard to the circumstances of the case;
- (b) The Court of Appeal accepted that, in the absence of a stay, the taxpayer would suffer significant and irreparable prejudice, which constituted a valid basis for granting the stay; and
- (c) There was no error warranting appellate intervention, and no basis to interfere with the High Court's decision.

Commentary

This decision reaffirms the High Court's power to grant a stay of proceedings, even in tax matters governed by the "pay first, dispute later" principle under the ITA. By upholding the stay of enforcement of the additional assessments, the Court of Appeal has highlighted the continued relevance of judicial discretion and the courts' inherent powers in tax disputes.

This ruling illustrates the careful balancing courts must undertake between the public interest in tax recovery and the protection of taxpayers from arbitrary assessments. Even under statutory regimes with strict enforcement provisions, the power to grant interim relief remains a vital safeguard, ensuring that judicial review remains effective and is not rendered nugatory.

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