



 Kuala Lumpur High Court
 September 11, 2019
 Bahagian Rayuan Khas,
Jabatan Undang-Undang

JUDGE

YA Datuk Nordin Hassan

REVENUE COUNSELS

Muazmir Mohd Yusof
Nik Nur Halina Mohd Kashfi
Mohammad Danial Ahmad

NO EXCEPTIONAL CIRCUMSTANCES, APPLICATIONS FOR LEAVE FOR JUDICIAL REVIEW AND STAY DISMISSED BY COURT

— AALIB v. KETUA PENGARAH HASIL DALAM NEGERI

BRIEF FACTS

AALIB applied for leave for Judicial Review pursuant to Order 53 of the Rules of Court 2012 (“ROC”) for a certiorari to quash the decision of KPHDN made in the form of notices of additional assessment for Y/As 2014, 2015 and 2016 all dated 31.7.2019 (“the impugned Decision”). AALIB alleged that KPHDN is wrong in bringing the reinsurance commissions received to tax under section 60(8) of ITA 1967 whilst the income has been declared by AALIB pursuant to section 60(3A) of ITA 1967. AALIB also sought for an order for stay of proceedings.

AALIB’S CONTENTIONS

AALIB alleged that KPHDN had acted in excess of his jurisdiction when bringing the reinsurance commissions to tax under section 4(f) of ITA 1967 as “incidental gross income” in connection to the life insurance business under section 60(8) of ITA 1967. The reinsurance commissions has been brought to tax as “actuarial surplus from the life fund transferred to the shareholder’s fund” under section 60(3A) of ITA 1967.

There is no dispute of facts. The issues arise on the interpretation of section 60 of ITA 1967 and dispute is purely on points of law.

There are special circumstances which warrant the grant of stay. The amount of taxes and penalty imposed are large and would have an immediate effect / potential impact on AALIB's business.

KPHDN'S CONTENTIONS

KPHDN contended that a domestic remedy is available under Section 99 of the ITA 1967 and whether the reinsurance commissions received is "incidental gross income" under section 60(8) of ITA 1967 or is "actuarial surplus from the life fund transferred to the shareholders' fund" under 60(3A) of ITA 1967 involved questions of facts to be ventilated before the SCIT.

There are no exceptional circumstances that warrant the grant of leave for judicial review and stay of proceeding.

COURT'S DECISION

High Court decided that there are no exceptional circumstances and dismissed the AALIB's leave and stay applications.