



📍 Malacca High Court
📅 September 4, 2019
🏛️ Bahagian Rayuan Khas,
Jabatan Undang-Undang

JUDGE

YA Puan Maidzura
Mohammad

REVENUE COUNSELS

Normareza Mat Rejab
Norsyamimi Bukhari
Nordiana Sham

HIGH COURT DISMISSED JUDICIAL REVIEW APPLICATION ON RPGT ASSESSMENT

— CMK v. KETUA PENGARAH HASIL DALAM NEGERI

BRIEF FACTS

CMK applied for Judicial Review against KPHDN's decision to raise additional assessment on the disposal of shares by CMK in AMSB. AMSB was deemed by KPHDN as a Real Property Company ("RPC") under paragraph 34A Schedule 2 of Real Property Gains Tax ("RPGT") Act 1976.

CMK'S SUBMISSION

CMK contended that the disposal of his shares in AMSB is not subjected to RPGT as the disposal should not be deemed to be disposal of shares in RPC based on the purposive interpretation of paragraph 34A Schedule 2 of RPGT Act 1976. CMK argued that the decision of the High Court in *BINASTRA HOLDINGS SDN BHD v KETUA PENGARAH HASIL DALAM NEGERI* that applied the purposive approach ought to be preferred despite the Court of Appeal reversing the said decision as no grounds had been provided by the Court of Appeal.

KPHDN's failure to provide any basis in law for his decision to raise the impugned Notice of Additional Assessment renders the decision liable to be quashed.

KPHDN'S SUBMISSION

KPHDN contended that no exceptional circumstances exist for the court to grant judicial review application. The case requires determination on question of facts which falls within the purview of the SCIT.

The prevailing law at the time the assessment was raised is the application of literal construction to paragraph 34A Schedule 2 as was decided by the Court of Appeal in **BINASTRA** and the High Court in **KETUA PENGARAH HASIL DALAM NEGERI v CONTINENTAL CHOICE SDN BHD [2018] MSTC 30-165 8,790**. Alternatively, if the purposive approach is to be applied, the question of intention would arise which would then require determination of facts by the SCIT.

The additional assessment has been lawfully raised under section 15(1) of the RPGT Act 1976, not done in excess of the KPHDN's authority and had not been irrational and/or unreasonable. KPHDN is not statutorily bound to give reasons for his decision. Nevertheless, CMK had been informed on the reason additional assessment was raised.

COURT'S DECISION

The Court dismissed the application for Judicial Review. There was no clear lack of jurisdiction and no blatant failure by KPHDN to perform his statutory duty. Apart from that, the case involves question of facts that need to be determined by the SCIT.

KPHDN had provided the reason via his letter. Whether the reason is sufficient or not is immaterial.

The Judicial Review application was dismissed with costs and the stay application was disallowed.