



High Court, Kuching

February 7, 2020

Tax Litigation Division,  
Legal Department of IRBM

# KPHDN IS CORRECT IN SETTING THE MARKET VALUE OF A PROPERTY BASED ON JABATAN PENILAIAN DAN PERKHIDMATAN HARTA TANAH'S VALUATION REPORT IN ASCERTAINING THE DISPOSAL PRICE

KSB v DGIR

## ISSUES

### JUDGE

YA Lee Heng Cheong

### REVENUE COUNSELS

Ahmad Isyak Mohd Hassan  
Ruzaidah Yaacob

1. Whether the SCIT was correct in law in holding that the Respondent is correct in setting the market value for the said Property based on Jabatan Penilaian dan Perkhidmatan Harta Tanah's Valuation Report dated 10.05.2015 ("JPPH's Valuation Report") pursuant to Paragraph 11(2)(c) of Schedule 2 of the Real Property Gains Tax Act 1976 ("RPGTA 1976") and s.25(2)(c) and (d) of the RPGTA 1976.
2. Whether it is correct in law for the SCIT to hold that the Appellant had engaged in tax avoidance under s.25(2) of the RPGTA in acquiring and disposing of the said Property at the same price of RM398,000.00, thereby allowing the Respondent to disregard the disposal price of RM398,000.00 and value the disposal of the said Property at a market value of RM600,000.00 pursuant to Paragraphs 9(e), 11(1) and 11(2)(c) of Schedule 2 of the RPGTA 1976.

## FACTS

1. On 28.6.2011, the Appellant entered into a Sale and Purchase Agreement with Midas Residence Sdn Bhd, to purchase a condominium unit described as Parcel No. B3-1, Level 3 of Block B, being the Tropics Condominium ("the Property"). The acquisition price was RM398,000.00.
2. On 18.9.2014, the Appellant entered into a sub-sale and purchase agreement of the Property (as a vendor), with one Ms. H(as a purchaser). The disposal price was RM398,000.00. Ms H was the former wife of one of the directors of the Appellant, Mr. X.
3. Based on the JPPH's Valuation Report dated 10.7.2015, the market value of the said Property on 18.9.2014 was RM600,000.00.
4. The Respondent issued a notice of assessment dated 13.08.2015, for the amount of RM39,307.60, based on chargeable gains of RM195,538.00, from the disposal of the Property. This is based on the market value at RM600,000.00 for the disposal of the Property on 18.9.2014.

5. No evidence given by the Appellant's witness to justify that the market value of the Property on 18.9.2014 was RM398,000.00.
  6. Based on terms of Mr. X's and Ms H's divorce property settlement (as stated in the decree nisi by the High Court), Mr. X shall transfer the said property to Ms H with a market value between RM450,000.00 to RM700,000.00.
- 

## **APPELLANT'S SUBMISSION**

1. The provisions of a taxing Act ought to be strictly interpreted with no room for any intendment. The principle of strict interpretation also applies to the RPGTA 1967.
2. When construing the provisions of the RPGTA 1967, this Court ought to only look at the ordinary meaning of the words stated and to not impose any liability on the Appellant where doubt exists as to the meaning of the provisions of the RPGTA 1967. The expression 'consideration', in its plain and ordinary sense, must mean an amount or a sum actually paid by the purchasers of the said lots to the taxpayer (the vendor).
3. Based on the scheme of the RPGTA 1967, the Respondent could only value the disposal of the said Property at market value pursuant to Paragraphs 9(e) and 11 of Schedule 2 of the RPGTA 1967 in the event the Appellant engages in tax avoidance under s.25(2) of the RPGTA 1967. Otherwise, the original disposal price of RM398,000.00, which is the subject matter of this dispute, ought to be maintained.
4. It is not a tax avoidance under s.25(2) of the RPGTA 1967 when the tax payer obtains a reduction in his tax liabilities as a result of him reducing his income or suffering a loss/etc.
5. The Appellant did not make any profit on the said Property's disposal as the Appellant had disposed the said Property at the same price the Appellant had acquired it for. The SCIT had misdirected itself in concluding that the reduction in the Appellant's RPGT tax liability, as a result of the Appellant's disposal of the said Property at the same price as its acquisition price, constitutes tax avoidance under s.25(2) of the RPGTA 1967. Instead, the aforementioned arrangement constitutes tax mitigation which the Appellant is perfectly entitled to enjoy and not tax avoidance under s.25(2) of the RPGTA.
6. The SCIT had misdirected itself in concluding that the Purchaser is a person that is connected to the Appellant as Paragraph 23 of Schedule 2 of the RPGTA 1967 does not identify ex-wives or ex-daughters-in-law as connected persons. The Purchaser is independent of the Appellant.

## REVENUE'S SUBMISSION

1. The assessment raised by the Respondents is correct on the grounds that the assessment was raised based on the market value provided by the JPPH through its Valuation Report dated 10.7.2015 for the disposal of the Appellant's property on 18.9.2014 at RM600,000.00.
2. The facts that the property was disposed by the Appellant with no gain and no loss after 3 years after acquisition raises a reasonable doubt and warrant the invocation of subsection 25(2) of the RPGT Act.
3. The Appellant's witness has never contested on the said JPPH's Valuation Report and no evidence was presented to prove that it was wrong. It is the duty of the Appellant to prove that the Valuation Report is incorrect.
4. The market value of the property is RM600,000.00 on the grounds that based on terms of Mr. X's and Ms H's divorce property settlement stated in the decree nisi by the High Court, Mr. X shall transfer the property to Ms H with a market value between RM450,000.00 to RM700,000.00. Based on this decree nisi, it is clear that the value of the property is not only RM398,000.00 as agreed by parties but more i.e. between RM450,000.00 to RM700,000.00 (to be exact, RM600,000.00).

---

## COURT'S DECISION

The High Court Judge dismissed the Appellant's appeal with cost of RM1,500.00. The finding of court are as follows -

1. That the property was transferred pursuant to the divorce settlement between the said husband and the wife whereby the said property to be transferred to the wife must be between RM450,000.00 to RM700,000.00. There was no evidence that the wife agreed to accept the property with a lesser value.
2. With the absence of such evidence, the court finds that the property must be in compliance with the said divorce settlement order.
3. Further, the valuation report from JPPH stating that the market value of the property is RM600,000.00 and such valuation was unchallenged.
4. In the light of the above, the Respondent has sufficient grounds to believe that the consideration of RM398,000.00 for the property was not bona fide.
5. There are no merits in this appeal.