

Decision Impact Statement

Penang Realty Sdn. Bhd. v. Ketua Pengarah Hasil Dalam Negeri

Citation (s)

(2006) 2 CLJ 835
(2006) 3 MLJ 597

This document is not public ruling, but provides a statement of the Director General of Inland Revenue position in relation to the said decision and how the law will be administered as a consequence of the decision.

Administrative Treatment (Implication on Current Public Rulings and Determinations)

Brief Summary of Facts

1. This case is a decision of the Court of Appeal, an appeal from the decision of the Kuala Lumpur High Court registered as Tax Appeal No. R1-14-10-95.
2. The Appellant bought two pieces of land namely, Heintz Estate in Penang and Heintz Estate in Perak.
3. The evidence shows that a portion of the subject land, Lot 2833, Bandar Tanjong Bongah was compulsorily acquired by the Government in August 1980 and the area acquired was 121,204.61 sq. ft.
4. In May 1982, the Appellant was paid the sum of RM1, 035,762.91 as compensation where IRB sought to tax the said compensation and accordingly assessed that sum.
5. The Appellant was unhappy with the assessment imposed and appealed to the Special Commissioners of Income Tax and it was dismissed. The Appellant took up the appeal to the High Court and again it was dismissed and now, the appeal was heard before the Court of Appeal.

Issue Decided By The Court

Whether the compensation received by the Appellant as a result of compulsory acquisition of a portion of their land is taxable under section 4 of the Income Tax Act 1967 (ITA).

Decision By The Court

1. The Court of Appeal on 20 April 2006 had decided that the proceeds of which the Appellant, Penang Realty Sdn. Bhd. received were not subject to income tax.
2. The Court of Appeal had allowed the appeal where it was decided that the compulsory acquisition by the Government of the Appellant's land could not constitute a sale, the proceeds of which were subject to tax as the element of compulsion vitiated the intention to trade.
3. The Court had heavily relied upon the case of *Lower Perak Co-Operative Housing Society Berhad v. Ketua Pengarah Hasil Dalam Negeri* (1994) 3 CLJ 540 as opposed to the case of *F. Housing Sdn. Bhd. v. Director General of Inland Revenue* (1976) 2 MLJ 183 which was relied by the Special Commissioners of Income Tax in which the Court of Appeal had ruled out that case since facts of both cases are different, so it can be easily distinguished and therefore, the Special Commissioners of Income Tax had misdirected themselves by relying to the said case.

Implications of the Decision

1. It is important to note that the Court of Appeal did not consider the provision of section 24 (1) (a) of the ITA where the said provision clearly provides that any debt arises in respect of stock in trade which is compulsorily acquired shall be treated as gross income from a business.

Section 24 (1) (a) of the ITA provides as follows -

“24. (1) Where in the relevant period a debt owing to the relevant person arises in respect of -

- (a) any stock in trade sold (or parted with on requisition or compulsory acquisition or in a similar manner) in or before the relevant period in the course of carrying on a business;
- (b) -not applicable-
- (c) -not applicable-

The amount of the debt shall be treated as gross income of the relevant person from the business for the relevant period.”

2. As the decision was entirely based on the principle enunciated in *Lower Perak Co-Operative Housing Society Berhad v. Ketua Pengarah Hasil Dalam Negeri* (1994) 3 CLJ 540, the DGIR is of the opinion that section 24 (1) (a) of the ITA is applicable to other cases where asset compulsorily acquired is a stock in trade of a person.

Administrative Treatment

Implications on Current Public Rulings and Determinations

None is directly affected by the decision.

Legislative References

Income Tax Act 1967 section 2

Case References

Lim Foo Yong Sdn. Bhd. v. Comptroller General of Inland Revenue (1986) 2 CLJ 1

Lower Perak Co-Operative Housing Society Bhd. v. Ketua Pengarah Hasil Dalam Negeri (1994) 3 CLJ 540

West v. Phillips (1956-1960) 38 TC 203