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## ***Ketua Pengarah Hasil Dalam Negeri v CJSB: Important New Guidance on the Interpretation of Provisions Affording Relief to Taxpayers and Exercise of the DGIR's Powers to Impose Penalty***

In a closely reasoned judgment delivered on 2 February 2021 where the Ipoh High Court allowed the taxpayer's claims for agricultural incentives and industrial building allowances, the court made, among others, the following points:



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### **(a) Interpretations of provisions affording relief to taxpayers**

There is a long-standing divergence between the Malaysian cases as to whether an ambiguity in a tax incentive should be interpreted restrictively in favour of the Director General of Inland Revenue (**DGIR**), or liberally in favour of the taxpayer. After a comprehensive analysis of all the authorities, Su Tiang Joo JC held that any ambiguity in a tax incentive is to be read liberally, in favour of the taxpayer.

### **(b) Imposition of penalty under s 113(2) Income Tax Act 1967 (ITA)**

Guidance was also provided on the conflicting authorities dealing with the duty of the DGIR when imposing penalties. After examining the evolving jurisprudence on the obligation of decision makers to explain administrative actions, Su Tiang Joo JC held:

- a. that the DGIR must consider all relevant circumstances, including whether the taxpayer had acted in good faith, in deciding whether to impose a penalty;
- b. ***for the first time*** that, given that there is a punitive element, the DGIR should give reasons for his exercise of discretion when imposing a penalty; and



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- c. where the issue only involves a difference in interpretation of the law, a penalty normally ought not to be imposed.

The High Court ruled in favour of the taxpayer on all issues, and has also made available its grounds of judgment [here](#). The taxpayer was successfully represented by Dato' Nitin Nadkarni and Chris Toh Pei Roo from [Lee Hishammuddin Allen & Gledhill's](#) Tax, SST & Customs Practice.

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