

**IN THE COURT OF APPEAL MALAYSIA**

**(APPELLATE JURISDICTION)**

**CIVIL APPEAL NO. W – 01(A) – 315 – 05/2018**

**BETWEEN**

**AMLIFE INSURANCE BHD**

**APPELLANT**

**AND**

**KETUA PENGARAH HASIL DALAM NEGERI**

**RESPONDENT**

[In the matter of Civil Appeal No. 14-6-06/2014 in the High Court of  
Malaya at Kuala Lumpur]

Between

Amlife Insurance Bhd

Appellant

And

Ketua Pengarah Hasil Dalam Negeri

Respondent]

[Case stated by the Special Commissioners of Income Tax for the  
High Court's opinion pursuant to paragraph 4 Schedule 5 of the  
Income Tax Act 1967]

In the matter of the Special Commissioners of Income Tax at  
Putrajaya Appeal No. PKCP (R) 27/2010

Between

AmLife Insurance Bhd

Appellant

And

Ketua Pengarah Hasil Dalam Negeri

Respondent]

**CORAM**

**AZIZAH BINTI HAJI NAWAWI, JCA**

**S. NANTHA BALAN, JCA**

**MOHAMED ZAINI MAZLAN, JCA**

**JUDGMENT**

**Introduction**

**[1]** The appellant's appeal pertains to the Notices of Additional Assessment dated 30 July 2009 issued by the respondent for the Years of Assessment 2003, 2004 and 2005. These notices arose out of an audit conducted by the respondent in 2008, where the respondent discovered that the appellant had:

- (i) claimed deduction on the expenses incurred in purchasing signboards in 2004 and 2005; and
- (ii) set off the current year's losses of its Shareholders' Fund from the General Fund.

**[2]** The respondent found these to be irregular and took the following action:

- (i) disallowed the deduction of the expenses for the signboards and taxed the amount deducted; and

- (ii) set off the current year losses in the Shareholders Fund from the aggregate income of the appellant's Life Fund and General Fund; and
  - (iii) imposed a penalty on the appellant on the additional tax assessed.
- [3]** The dissatisfied appellant appealed against the respondent's decision to the Special Commissioners of Income Tax ('SCIT') through a Case Stated.
- [4]** The SCIT decided in favour of the respondent regarding the signboards. The SCIT opined that the expenses in purchasing the signboards for its agents must be regarded as a capital expenditure, not revenue expenditure, as the signboards were assets or advantages to benefit the appellant's trade.
- [5]** As for the treatment of the losses in the Shareholders Fund, the SCIT disagreed with the views of both parties and decided that the losses should be set off against the appellant's Life Fund. Regarding the penalties imposed, the SCIT maintained the penalty imposed on the signboard expenditure but disallowed the penalty imposed on the treatment of the losses in the appellant's Shareholders Fund, as it was of the view that even the respondent did not make the correct finding.
- [6]** The appellant, dissatisfied with the SCIT's decision, appealed to the High Court. The High Court concurred with the SCIT's findings and dismissed the appellant's appeal.

**[7]** The appellant had initially canvassed the following three issues for this appeal:

- (i) the signboard expenses;
- (ii) the treatment of the Shareholders' Fund's losses; and
- (iii) the penalties.

The appellant, however, elected to pursue issue (ii) only in this appeal. The respondent did not appeal against the SCIT or the High Court's decision on issues (i) and (iii). This judgment will, therefore, concern issue (ii) only.

## **Background**

### ***The respondent's audit***

**[8]** The appellant sold general and life insurance before 2009. It confined its business to life insurance under a restructuring exercise in 2009. The appellant had, before the restructuring, transferred:

- (a) RM2,050,325.00 for the year of assessment ('YA') 2003, and
- (b) RM5,000,000.00 for the YA 2004,

from its Shareholders' Fund to its Life Fund to ensure that the latter was sufficiently solvent to meet its liabilities to policyholders. The appellant contended that this was in line with the requirement under Regulation 12 of the Insurance Regulations 1996 ('IR 1996'), which requires the appellant to make good any deficit in its Life Fund by transferring money from the Shareholders' Fund. Regulation 12 is as follows:

*12. (1) Where a life insurance fund is determined to be in deficit by an actuarial valuation as at the end of a financial year, the licensed life insurer shall apply any amount determined as transferable to the shareholders' fund under regulation 10 or 11 from another life insurance fund, to make good the deficit.*

*(2) A licensed life insurer shall immediately make good any deficit subsisting after the application under subregulation (1) by a transfer from the shareholders' fund into the life insurance fund in compliance with subsection 41(1) of the Act.*

.....

**[9]** Arising from these transfers, the appellant's Shareholders' Fund suffered losses of:

(a) RM1,741,492.00 for YA 2003, and

(b) RM4,799,307.00 for YA 2004.

[10] To address these losses, the appellant set off the losses from the surplus income of its General Fund. The appellant's method did not find favour with the respondent when it audited the appellant in 2008. The respondent took the position that the appellant should have offset the losses in its Shareholders Fund against the income of both the General and Life Fund combined and not just from the General Fund.

[11] The respondent then set off the appellant's Shareholders' Fund's current year losses from the combined income of the General Fund and Life Fund and apportioned the income back to the respective funds. The chargeable income from the appellant's Shareholders' Fund, General Fund and other sources of income were subjected to the standard tax rate of 28%. In contrast, the chargeable income from the Life Fund is subjected to a concessionary tax rate of only 8%. These tax rates are a primary factor for the appellant and shall be elaborated further later.

[12] The respondent then issued notices of additional assessment for YA 2003 to 2005 with penalties under section 113(2) of the Income Tax Act 1967 ('ITA 1967'). The appellant was dissatisfied with the respondent's decision and appealed to the SCIT.

### ***The case before the SCIT***

[13] The issue posed to the SCIT was whether the appellant's decision in setting off the current year losses in the

Shareholders' Fund against the income from the General Fund is correct in law. The appellant submitted to the SCIT that the losses in the Shareholders' Fund should only be deducted from the General Fund, as the funds in the Life Fund are held in trust for the policyholders under the Insurance Act 1996 ('IA 1996'), and can only be withdrawn following the strict procedures set out in the Act. The appellant also contended that its Life Fund's income should not be aggregated with the income of its other funds as the ITA 1967 had special provisions for it.

[14] The SCIT concluded that both the appellant and respondent's interpretation of the provisions in the ITA 1967 on the tax treatment of the appellant's losses in the Shareholder's Funds were erroneous. The SCIT opined that there are only two business categories, namely life and general insurance, under sect. 60(2)(a) ITA 1967, which states as follows:

*60. Insurance business*

(1) .....

(2) *For the purposes of this section –*

*(a) subject to paragraph (b), where an insurer carries on life business in conjunction with general business, the life and general business shall be treated as separate insurance business;*

(emphasis added)

[15] The SCIT took the view that life insurance and general insurance are separate businesses with their own source of income and that the concept of a Shareholders Fund is only found in the life insurance business. The SCIT concluded that the appellant's losses from the Shareholders' Fund should, therefore, be set off against the Life Fund as both funds come under the Life Insurance business, and that the General Fund comes under a separate category of general insurance business.

[16] The SCIT was also of the view that the appellant's responsibilities under the IA 1996 should not interfere with the application of the ITA 1967 as the two laws have distinct applications.

[17] As for the penalty imposed by the respondent under section 113(2) ITA 1967, the SCIT set aside this penalty as even the respondent did not make the correct computation.

[18] The appellant appealed to the High Court against the SCIT's decision.

### ***The High Court's findings***

[19] The High Court agreed with the SCIT's findings as it concluded that the SCIT had carefully examined the facts of the case and found no error in the computation as it was based on the relevant provisions of the ITA 1967. The High Court concurred with the SCIT's decision that the appellant's losses



from the Shareholders' Fund should only be set off against the Life Fund and not the General Fund, in consonant with section 60(2) ITA 1967. The High Court's findings were set out in paragraphs 61 and 62 of the judgment, which reads as follows:

*[61] It was the SCIT's finding that life Insurance Business and General Insurance Business were two separate businesses and generates two sources of income. This finding is supported by subsection 60(2) of ITA which read as follows:*

.....

*Therefore, it should be treated separately for the purpose of section 60(10A) of ITA.*

*[62] It is my considered view that the fact (sic) in this case was carefully examined by the SCIT in determining the correct method of computation in setting off the current year losses as stated in paragraph 34 – 50 at page 42 – 53 of the Case Stated. I find no error in the computation as it is based on the relevant provisions of the ITA.*

**[20]** There seems, however, to be an inconsistency in the High Court's decision, as it had in the preceding paragraph, namely paragraph 59(a) of the judgment, held that the respondent's approach was correct:

*[59] Based on the above, I am in agreement with the Respondent (sic) submission that:*

*(a) the Respondent's tax treatment with regards to the losses for the shareholders' fund is due and proper under subsection 44(2) of the ITA. For the Appellant to say that the Respondent has no legal or factual basis to apportion the losses from the shareholders' fund to the life insurance funds and the general insurance does not hold water. It could be that the Appellant disagrees with such treatment as the tax rate imposed on the life insurance business, at 8%, the general insurance business and the shareholder fund, at 28 (%), is different;*

**[21]** This finding would seem to contradict the SCIT's decision. On reflection, the High Court should have allowed the appellant's appeal in part and permitted the appellant to set off the losses against the General Fund too. The respondent, however, did not appeal against the High Court's decision on this issue and the setting aside of the penalty.

### **The appeal**

**[22]** There seem to be three positions taken on the treatment of the losses in the Shareholders Fund arising from the appellant, respondent and SCIT/High Court's approaches, which are summarised as follows:

#### Appellant's position

The losses should be set off against the income from the General Fund only.

Respondent's position

The losses should be set off against both the General and Life Funds.

SCIT's position (affirmed by the High Court)

The losses should be set off against the Life Fund only.

**[23]** In gist, the appellant and respondent agree that the funds in the General Fund can be used to offset the Shareholders Fund losses. That is the only common ground, as the respondent takes the position that the funds from the Life Fund should be combined with the General Fund to offset the losses in the Shareholders Fund. The SCIT, on the other hand, held that only funds from the Life Fund should be utilised to offset the losses in the Shareholders Fund. The SCIT and the respondent share common ground on this issue in that both take the position that the Life Fund can be used to offset the losses in the Shareholders' Fund.

**[24]** The only live issue in this appeal is whether the appellant should offset its losses from the Life Funds only, as it is common ground between the appellant and the respondent that the losses can be set off against the General Fund.

**[25]** The SCIT and the High Court, in deciding that the appellant should set off the losses from the Life Fund, took the view that the income of the Life Fund formed part of the aggregate income of the appellant within the meaning of section 44(2) ITA 1967. The crucial issue, therefore, is whether the income

of the Life Fund should be treated as part of the appellant's aggregate income under section 44(2) ITA 1967, as that was the fulcrum of the SCIT's findings that the High Court concurred with.

## **Findings**

### ***Chargeable income***

[26] It is necessary at the outset to determine the method for calculating the chargeable income under the ITA 1967. The computation of a chargeable income is set out under section 5 ITA 1967. Section 5(1) states as follows:

5. *Manner in which chargeable income is to be ascertained*

(1) *Subject to this Act, the chargeable income of a person upon which tax is chargeable for a year of assessment shall be ascertained in the following manner –*

(a) *first, the basis period for each of his sources for that year shall be ascertained in accordance with Chapter 2 of Part III;*

(b) *next, his gross income from each source for the basis period for that year shall be ascertained in accordance with Chapter 3 of that Part;*

- (c) *next, his adjusted income from each source (or, in the case of a source consisting of a business, his adjusted income or adjusted loss from that source) for the basis period for that year shall be ascertained in accordance with Chapter 4 of that Part;*
- (d) *next, his statutory income from each source for that year shall be ascertained in accordance with Chapter 5 of that Part;*
- (e) *next, his aggregate income for that year and his total income for that year shall be ascertained in accordance with Chapter 6 of that Part; and*
- (f) *next, his chargeable income for that year shall be ascertained in accordance with Chapter 7 of that Part.*

**[27]** Under section 43(1) ITA 1967, the statutory income from all sources of income is added to arrive at the aggregate income. The current year's losses can then be deducted against the aggregated income to arrive at the total income; section 44(2) ITA 1967. These two sections are as follows:

#### *43. Aggregate Income*

- (1) *Subject to this Act, the aggregate income of a person for a year of assessment (that person and year of assessment being in this section referred to as the*

*relevant person and the relevant year respectively) shall consist of –*

- (a) the aggregate of his statutory income, if any, for the relevant year from each of his sources consisting of a business, reduced by any deduction falling to be made for the relevant year pursuant to subsection (2);*
- (b) the aggregate of his statutory income, if any, for the relevant year from each of his other sources; and*
- (c) any additions falling to be made for the relevant year pursuant to Schedule 4.*

#### *44. Total Income*

*(1) .....*

*(2) Subject to subsections (3) and (5), there shall be deducted pursuant to this subsection from the aggregate income of the relevant person for the relevant year the amount of any adjusted loss from a source of his for the basis period for the relevant year or, where there is an adjusted loss from each of two or more sources of his for the appropriate basis period for each source for the relevant year, the aggregate of the adjusted loss from*

*each of those sources for its appropriate basis period for the relevant year.*

(emphasis added)

***Whether the Life Fund is part of the aggregate income***

[28] The pertinent issue is whether the Life Fund is part of the appellant's aggregate income under sections 5, 43 and 44 ITA 1967. Both the SCIT and High Court took the position that the Life Fund and the Shareholders' Fund are part of the same business, namely the Life Insurance Business and that the General Fund is a separate business coming under the general insurance business. The respondent, on the other hand, is of the view that the aggregate income consists of the Life, Shareholders and General Funds.

[29] Sections 43 and 44 of the Act are of a general application. Under section 60(2)(a) ITA 1967, life and general insurance are categorised as separate businesses. More importantly, under section 60(2)(c), the income from the Life Fund is treated as a separate source of income from the Shareholders Fund:

*60. Insurance Business*

*(2) For the purposes of this section –*

(a) *subject to paragraph (b), where an insurer carries on life business in conjunction with general business, the life business and the general business shall be treated as separate insurance business;*

(b) .....

(c) *where an insurer carries on life business, the income of the life fund shall be treated as a separate source of income from the income of the shareholders' fund in respect of the life business;*

(emphasis added)

**[30]** The tax rates on the income from Life Funds are remarkably lower than the other funds. It enjoys a concessionary rate of 8% compared to the 28% imposed on the General and Shareholders' funds. The concession given by the government is to encourage insurance companies to lower their premium for life insurance policyholders, which benefits them. The Income Tax Act was amended in 1994 in line with the government's intention, where section 60AB ITA 1967 was added for the specific concessionary tax rate on the income of Life Funds. The section reads as follows:



60AB. Chargeable income of life fund subject to tax

*The chargeable income in respect of the life fund as determined under subsections 60(3) and 60(4) is subject to tax as specified under Part VIII of Schedule 1.*

### PART VIII

*Notwithstanding Part I and Part II, income tax shall be charged on the chargeable income of a life fund, other than income arising from life re-insurance business of a resident or non-resident insurer at the rate of . . . . . 8 per cent.*

(emphasis added)

**[31]** Under section 60AB ITA 1967, the chargeable income of a Life Fund is determined under section 60(3):

*Insurance business*

60. (1) .....

(2) .....

(3) *The adjusted income of the life fund other than income arising from life re-insurance business, for the basis period for a year of assessment of an insurer resident for the basis year for that year of assessment shall be ascertained by -*

(a) *taking the aggregate of -*

- (i) *the amount of gross income for that period from the investments made out of any of the insurer's life funds; and*
  - (ii) *the amount of any gross proceeds (whether or not of an income nature) which are not gross income to which subparagraph (i) applies and which are first receivable in that period in connection with the realisation of those investments or any rights arising from them; and*
- (b) *deducting from that aggregate where subparagraph (a)(ii) is applicable for that period to gross proceeds receivable in connection with any investments or rights, the cost of acquiring and realising those investments or rights.*

**[32]** It is clear that there is a separate method under the ITA 1967 to calculate the income of a life fund, for the income is accorded a concessionary tax rate of 8%. The calculation method for the taxable income of Life Funds comes under section 60AB and 60(3) ITA 1967 and not section 5, section 43 and section 44. Under the principle of *generallibus specialia derogant*, where there are two provisions of written law in which one is general and the other specific, the specific provision overrides or excludes the application of the general provision. This principle was enunciated by the appellate court in *Luggage Distributors (M) Sdn Bhd v Tan Hor Cheng @ Tan Chi & Anor* [1995] 3 CLJ 520 (CA), where it was held:

*“.... It lies in the rule of construction expressed in the maxim generalibus specialia derogant. Where there are two provisions of written law, one general and the other specific, then, whether or not these two provisions are to be found in the same or different statutes, the special or specific provision excludes the operation of the general provision.” (p 550)*

**[33]** The High Court, with respect, fell into error in agreeing with the SCIT as it would result in the Life Fund's income being aggregated with the other Funds and, therefore, not being able to take advantage of the concessionary tax rate of 8%. In our view, the High Court misdirected itself in law when it failed to recognise that the income of a Life Fund must be expressly separated from the income of the other funds to enjoy the preferential tax rate. Therefore, Section 44(2) ITA 1967 should not be relied on to set off the losses from the Shareholders' Fund against the Life Fund, for the latter is not part of the appellant's aggregate income.

**[34]** It was not wrong for the respondent to set off the losses of the Shareholders' Fund from the General Fund as there are no provisions in the ITA 1967 which support the respondent's contention that the current year's losses from the Shareholders Fund are to be set off against both the General Fund and Life Fund. Section 60AB, read with section 60(3), creates a separate scheme for Life Fund profits that excludes section 5(1) and section 44(2).

**[35]** The correct method to determine the taxable income of the Shareholders' Fund and the General Funds under the ITA 1967 should be as follows:

- Statutory income  
[section 42 for General Fund and section 60(4B) for the Shareholders Fund];
- Aggregate income  
[section 43 – income of the General and Shareholders' Funds];
- Set off against current year losses to get the total income  
[section 44(2)];
- Chargeable income [tax rate of 28%].

**[36]** The aggregated income of the General and Shareholders' Fund would then be subjected to the regular tax rate of 28%. Therefore, It was right for the appellant to aggregate and set off the Shareholders Fund's losses against the General Fund under the provisions of sections 43 and 44(2) ITA 1967. Although the High Court agreed with the SCIT that the appellant's losses could be deducted from its aggregate income, it fell into error by concluding that the income from the Shareholders Fund could not be aggregated with the General Fund.

**[37]** The appropriate method to determine the taxable income of the Life Fund under ITA 1967 should be as follows:

- The aggregate of the gross income and gross proceeds and deducting the costs of acquiring the investments [section 60(3)];
- Adjusted income [section 60AB];
- Chargeable income [tax rate of 8%].

**[38]** The Life Fund cannot be part of the aggregate income. The High Court, in agreeing with the SCIT's decision, erred when it failed to consider the purpose and implications of sections 60AB and 60(3) ITA 1967. These two sections were enacted to give a preferential tax rate on the income of a Life Fund, which bears repeating at a concessionary rate of 8% as opposed to 28% on the income of the other funds. A separate tax treatment is created for Life Funds under the ITA 1967, consistent with the statutory segregation of Life Funds from the insurance companies' assets under the IA 1996.

### ***The provisions in the IA and IR 1996***

**[39]** The IA 1996 and its Regulations regulate the insurance industry and business. Any violations of the Act and its Regulations are deemed offences and punishable with imprisonment, hefty fines or both. Section 203 IA 1996 states as follows:

*General penalty*

203.(1) *A person who –*

(a) *contravenes or fails to comply with a provision of this Act; or*

(b) *fails to comply with a requirement notice, order or direction issued by the Minister or by the Bank under this Act or a regulation made under this Act,*

*commits an offence and, where no penalty is expressly provided, is liable on conviction to a fine of five hundred thousand ringgit or to imprisonment for a term of six months or to both.*

**[40]** Section 38 IA 1996 makes it mandatory for insurers to establish and maintain a separate insurance fund for each class of insurance. Section 42 of IA 1996 also stipulates that the insurer's assets must be kept separate from its insurance fund.

**[41]** Under Regulation 12 IR 1996 (as stated earlier), the insurer shall make good any deficit in the Life Fund by transferring any amount from its Shareholders Fund. Any surplus of assets over liabilities of a life insurance fund, however, can only be allocated by way of bonus to participating policies or transferred to the Shareholders Fund upon an actuarial

valuation and recommendation of the appointed actuary. This is set out under section 43(2) IA 1996:

*Withdrawal from insurance fund*

43. (1) .....

(2) Where upon an actuarial valuation of a life insurance fund, there is a surplus of assets over liabilities in the life insurance fund at the end of a financial year, the licensed life insurer, on the recommendation of the appointed actuary, may allocate a part of the surplus attributable to participating and non-participating policies –

(a) by way of bonus to participating policies; and

(b) for transfer out of the life insurance fund to the shareholders' fund,

*subject to such limits and such proportions as may be prescribed.*

.....

(emphasis added)

The actuary appointed must be approved by Bank Negara; section 83(1) IA 1996.

[42] The first point to note is that the appellant cannot transfer any surplus funds from its Life Fund to its Shareholders Fund

unless it has obtained the appointed actuary's recommendation as set out under section 43(2) IA 1996, as the funds are deemed to be held on trust for the policyholders and do not belong to the appellant. This is in contrast to the withdrawal of any surplus funds from its General Funds, where section 43(1) IA 1996 stipulates that its withdrawal is only subjected to the terms of its contract with the policyholders and constituent documents:

*Withdrawal from insurance fund*

43. (1) *Where there is a surplus of assets over liabilities in a general insurance fund at the end of a financial year, the licensed general insurer may withdraw the surplus subject to –*

*(a) any instrument or contract binding the licensed general insurer; or*

*(b) its constituent documents.*

**[43]** In the upshot, it is clear that the income from a Life Fund is treated differently from the incomes of an insurer's other funds, as the conditions for the appellant to withdraw any surplus from its General Funds and transfer it to its Shareholders Fund are less stringent than those for any withdrawal from its Life Fund.



- [44] The funds in the appellant's Life Fund do not belong to the appellant until and unless the stringent requirements under section 43(2)(b) IA 1996 are met, which in the appellant's case were not. The funds in the Life Fund remain there for the benefit of the policyholders and could not be deemed to be the appellant's income.
- [45] It is, therefore, erroneous for the SCIT to rule that the appellant's losses in its Shareholders' Fund should be set off against the Life Fund only without the appellant fulfilling the strict requirements under section 43(2)(b) IA 1996. The High Court committed a fundamental error of law in agreeing with the SCIT on this issue and concluding that the appellant would not be disregarding the provisions of the IA 1996 by complying with the provisions of the ITA 1967.
- [46] The case of *Lim Moon Heng v The Government of Malaysia & Anor* [2002] 2 CLJ 659 (HC) cited by the High Court does not support this proposition. The case concerns a bankrupt who was barred from travelling overseas by the Inland Revenue Board ('IRB') as he had tax dues even though the Official Assignee ('OA') had granted him leave. The bankrupt took the stand that the IRB had no authority to restrict his travels and that only the OA had authority over him as a bankrupt under the Bankruptcy Act 1967. The High Court held that the Bankruptcy Act and the powers conferred to the Official Assignee under it apply to a bankrupt who does not owe the IRB any tax, and that as the bankrupt still owes tax to the IRB, the Director General of IRB still retains power under the ITA

1967 to bar him from travelling. The court went on to state that a bankrupt person who has settled his taxes and was granted leave by the IRB to travel could still be barred by the OA from travelling if he still owes another claimant.

**[47]** The appellant here could not fulfil the requirements set by the respondent under the ITA 1967 without breaching the IA 1996 and suffering penal consequences. The appellant and any insurance company would commit an offence if they failed to abide by section 43(2)(b) IA 1996 requirements.

**[48]** The High Court, therefore, misdirected itself in law by holding that the appellant's responsibilities under the IA 1996 should not come into consideration and that it should only be concerned with the ITA 1967 on taxation matters (para 59(b) of the judgment). It failed to consider that the appellant would be committing an offence under the IA 1996 and liable to be fined or face imprisonment. The ITA 1967 and IA 1996 must be read harmoniously and interpreted purposively based on the purposes for which they were created. The purposive and harmonious approach was adopted by the Federal Court in *Tebin bin Mostapa v Hulba-Danyai bin Balia & Anor* [2020] 7 CLJ 561. Parliament could not have intended insurers to treat the income from their life funds as their own, particularly when the income is only subjected to the concessionary tax rate of 8%. The underlying intention was to encourage insurance companies to reduce the premium for life insurance for the benefit of policyholders; hence, strict regulatory measures were put in place for the income of life funds.

## Conclusion

- [49] We are mindful that an appellate court would be slow to intervene findings of facts made by the SCIT and the High Court unless it can be shown that they had erred on a question of law; *Chua Lip Kong v Director General of Inland Revenue* [1982] 1 MLJ 235 (PC) & *Lower Perak Co-operative Housing Society Berhad v Ketua Pengarah Hasil Dalam Negeri* [1994] 3 CLJ 541 (SC).
- [50] The courts are generally slow to interfere with the findings of facts made by the SCIT as the latter specialises in tax matters and practises of the business community and has “...special insight, understanding and appreciation of the evidence and facts, to make the findings drawn from those evidence and facts.” (per Abdul Wahab Patail JCA in *Kenny Heights Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* [2015] 5 CLJ 923 (CA)).
- [51] The Court may review the decision of the SCIT if the latter:
- (i) misdirected themselves on the law; or
  - (ii) answer the wrong question; or
  - (iii) omit to answer a question which they ought to have answered; or
  - (iv) considered factors which are not supported by the evidence before them; or

(v) reached a conclusion on facts which are not supported by the evidence before them; or

(vi) made a finding of fact which no reasonable person in the circumstances would have arrived at.

(see *Mamor Sdn Bhd v Director General of Income Tax* [1979] CLJU 145 (HC)).

**[52]** It is, therefore, trite that the courts should only intervene if it is shown that the SCIT erred on a question of law, resulting in a manifest error in the deciding order. Otherwise, it would amount to interference contrary to the intent of the legislation in setting up and empowering the SCIT; *Kenny Heights Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (supra).

**[53]** The High Court was plainly wrong when it failed to find that the SCIT had misdirected itself in law in interpreting the ITA 1967 and IA 1996. The High Court also fell into error by agreeing with the SCIT's stand that the appellant's responsibilities under the IA 1996 are not material and that the appellant's losses should be set off against the appellant's Life Funds only to arrive at its chargeable income.

[54] The appellant's appeal is therefore allowed with costs of RM20,000.00 here and below. The order of the High Court is to that extent set aside.

Dated: 26 March 2024.



(MOHAMED ZAINI MAZLAN)

JUDGE

COURT OF APPEAL, MALAYSIA

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[Messrs Lee Hishammuddin Allen & Gledhill]

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SFC Ashrina binti Ramzan & SFC Athari Faris bin Hussein,  
[Inland Revenue Board of Malaysia]

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