(PROSIDING DIJALANKAN SECARA ZOOM)

BKK-1 Keputusan Selasa 29.7.2025
Pemohon: Chris Toh Pei Roo Bersama Soon Jia Ying
Responden Ahmad Isyak bin Mohd Hassan (SRC) Bersama Azleena Md Khairuddin (RC) & Nur Fazana binti Mohamad (RC)

(1) WA-25-60-03/2023

TANDA BESTARI DEVELOPMENT SDN BHD
No. Syarikat: 200001025329 (527936-D) …PEMOHON

DAN

KETUA PENGARAH HASIL DALAM NEGERI …RESPONDEN

This is merely a broad ground of judgment. I reserve the right to a detailed, complete grounds of judgment on appeal. My determination in this case is based on the evidence before me and on whose favour the balance of evidence has tilted.

THE FACTS

[1] In this broad judgment:

(1) The applicant (P) is a property development company and has in its land bank a plot of land held under No. Lot 106577, PN 96741, Mukim Dengkil, Daerah Sepang (the impugned land).

(2) The state authority compulsorily acquired the impugned land under the Land Acquisition Act 1960, where on 19.10.2016, P was paid a compensation of RM8,410,164.00 (the impugned assessment) for the Year of Assessment (YA) 2017.

(3) In 2017, P held this impugned compensation as stock in trade due to the nature of the company:

(a) DGIR alluded to the Court the following facts:

(i) On 28.2.2018, P filed their Form C: Income Tax Return, their tax return for YA 2017 conforming to s.77A of the Income Tax Act 1967 (ITA).
(Section 77A ITA obligates companies, trust bodies, or cooperative societies to furnish the income tax return for the year of assessment within seven months from the close of the accounting period)

(ii) The YA 2017 is deemed an assessment under section 90 ITA 1967.
(Section 90 ITA governs the self-assessment tax system, and how the DGIR is deemed to make an assessment based on returns furnished by taxpayers)

(iii) Section 99 ITA 1967:
(a) Grants an aggrieved taxpayer the right to appeal against the assessment made by the DGIR by filing Form Q within 30 days after receiving the notice of the evaluation.
(b) Unless an extension of time is granted, the notice of assessment becomes final and conclusive by default.

(c) Effective from the year of assessment 2020, the application for an EOT can be submitted within 7 years after the expiration of the 30 days.

(d) An appeal will be ventilated and heard before the Special Commissioner of Income Tax (SCIT)

(iv) P did not file any appeal against the notice of assessment, rendering it final under section 97 ITA. Every assessment shall be final and conclusive, save where an appeal has been preferred and not withdrawn or disposed of by the Act.

(b) Approximately five (5) years down the road, on 9.12.2022, the Federal Court **in Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Civil Appeal No.01 (f)- 38-08/2022 (W) reported in [2023] 5 MLRA 285, FC**. It was observed that:

(i) The landowner earned no profit from the adequate compensation from a compulsory acquisition exercise by the authorities.

(ii) Section 4C was therefore fundamentally flawed in providing that a business's profits or gains included compensation from compulsory acquisition, as adequate compensation had no element of profit or gain, nor any pecuniary advantage.

(iii) Section 4C of the ITA 1967 had taken away the safeguard of adequate compensation as guaranteed under Article 13(2) of the FC, and it had the effect of reducing the compensation paid to the landowner/taxpayer.

(iv) The landowner/taxpayer would no longer be receiving adequate compensation under Article 13(2) of the FC.

(v) Section 4C contravenes Art 13(2) of the FC and is thus unconstitutional.

(vi) However, the FC did not expressly announce when delivering the judgment whether the ruling applies retrospectively or only prospectively in future cases.

(4) Grounded on this ruling by the FC in December 2022, P attempted to revisit its YA 2017 on the premise that a declaration of unconstitutionality relates to the inception of section 4C, rendering all assessments grounded on the section unlawful irrespective of the period after the coming into force of the impugned section 4C in 2014:

(a) P wrote two letters to the DGIR, dated 21.2.2023 and 27.2.2023, demanding a refund of the tax paid under the defunct section 4C regarding the compensation received for the compulsory acquisition of the impugned land.

(b) P imposed a deadline on the DGIR, stating that if no response is received from the DGIR by 7.3.2023, it would be deemed that the DGIR had rejected the application for a refund.

(c) On 8.3.2023, P proceeded with the filing of the present Judicial Review application seeking a certiorari to quash the DGIR deemed decision supposedly to have arisen on 7.3.2023, when the DGIR did not respond to P's letters dated 21.2.2023 and 27.2.2023. For this JR:

(i) Leave was granted by the HC on 13.9.2023.

(ii) An appeal to the COA by the DGIR challenging the leave granted by the HC was dismissed by the COA on 16.5.2024.

(iii) Leave to appeal to the FC was denied on 10.9.2024.

(iv) The FC clarified on 5.11.2024 that the issue of whether the FC order was prospective or retrospective was never argued before the FC during the Wiramuda decision on 9.12.2022. Following the decision on 9.12.2022, the FC became functus officio.

In this JR, apart from asking for an order for certiorari to quash the deemed decision by the DGIR:

(v) P also seek a mandamus to compel the DGIR to comply with the FC's ruling, and that the tax assessment for YA 2017 under section 4C involving the compensation is unlawful.

(vi) P also seek a mandamus to compel the DGIR to allow the submission of a revised tax submission for YA 2017, and that the DGIR is obligated to issue P a refund for the taxes paid with 8% interest per annum on the said sum computed from the day P paid the said taxes.

(vii) P also seek a declaration that the DGIR is bound by and must give effect to the FC's ruling.

(viii) The Court allows all necessary consequential orders.

PARTIES ARGUMENTS

[2] P submitted that:

2.1 It is irrefutable that the Federal Court in Wiramuda, in its determination, did not issue a direction of prospectivity when passing judgment. The DGIR could have applied for it to be made prospective, but the DGIR failed to do so in that proceeding, rendering that FC Corum functus officio:

(1) The FC in Obata-Ambak Holdings Sdn Bhd v Prema Bonanza Sdn Bhd and other appeals [2024] 5 MLJ 897, FC observed the existence of exceptional circumstances from the facts to qualify that the ruling in Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals [2020] 1 MLJ 281, FC is to be applied prospectively, not retrospectively.

(2) Otherwise, there would be great injustice and devastating consequences to the housing industry as a whole, where house buyers were seeking to be unjustly enriched by rewriting the SPAs which they had accepted and from which they had benefited.

(3) The DGIR had not adduced any evidence to establish exceptional circumstances for prospective overruling to apply to the Wiramuda FC's determination.

(4) The Federal Court in Arumugam Pillai v Government of Malaysia [1980] 2 MLJ 283, FC had determined that once the Apex Court had decided on a tax-related issue, the tax department must apply those principles to all taxpayers, failing which JR would lie.

(5) If prospective overruling is applied, it would unjustly enrich the DGIR on the tax collection over an invalid law (s.4C ITA).

2.2 The High Court in **Pelangi Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri Application for Judicial Review No: R2-25-39-2011 (2011) MSTC, 30-036, HC KL (22.8.2011)** observed that:

(1) The DGIR reliance on s.111 of ITA (appeal process for tax refund) is misplaced because s.111 deals explicitly with an overpayment.

(2) It is clear that this is not a case of an overpayment. There was no legal basis for the payment made by the DGIR in the first place. The DGIR had subjected the gains arising from the compulsory land acquisition to income tax and consequently retained the tax refund, which at all material times was rightfully the taxpayer's money.

2.3 The HC in granting leave in the present JR observed:

(1) That the DGIR's failure to follow the FC ruling in Wiramuda renders its decision flawed. The DGIR had no right to retain the taxes paid from the compulsory acquisition of the impugned land.

(2) It would appear that the DGIR had unjustly enriched itself by collecting and retaining those taxes from an invalid law.

2.4 P Cited:

(1) Lord Goff, who referred to and followed with the dissenting judgment in Air Canada v British Columbia, held that money paid under unconstitutional legislation was generally recoverable.

(2) The High Court in **Power Root (M) Sdn Bhd & Ors v Director General of Customs [2014] 2 MLJ 271**, held that retaining ultra vires taxes (i.e., those collected under laws declared invalid) constitutes a breach of constitutional principle, thereby granting the taxpayers a right to restitution.

(3) Before the introduction of section 4C in 2014, it was argued that gains from a compulsory acquisition were not taxable as determined by the HC, COA and the FC, refusing to grant leave to appeal.

(4) The FC's determination in Wiramuda carries a retrospective effect in the absence of a clear direction by the FC that has now become functus officio. The DGIR is bound and must adhere to the impugned ruling by the FC.

(5) The HC on granting the leave for JR rejected P's arguments that:

(a) There was no decision, action or omission by the DGIR.

(b) P is out of time to file for JR and uses the two letters to jumpstart a fresh action timeline.

(c) An alternative remedy of an appeal to the SCIT has not been exhausted.

2.5 The DGIR:

(1) Can't withhold taxes collected on an invalid law.

(2) This is no longer an issue of tax assessment.

(3) P is entitled at law to restitution of the taxes paid under the invalid section 4C. The DGIR did not provide any legitimate reasons for rejecting the discharge application.

(4) As observed by the federal Court **in Ann Joo Steel Bhd v Pengarah Tanah dan Galian Negeri Pulau Pinang & Anor and Another Appeal [2019] 9 CLJ 153**, FC, that an order of the superior court must be obeyed until it is set aside or varied. It is not for anyone to decide for themselves whether an order of the court is wrongly issued and does not require their obedience to it.

(5) The Federal Court in **Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545**, citing the FC's determination in **Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143**, FC:

(a) That every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene.

(b) The courts are the only defence of the liberty of the subject against departmental aggression.

(c) The public bodies must be compelled to observe the law, and bureaucracy must be kept in its place.

[3] The DGIR argued that:

3.1 Relying on the Federal Court case of **Obata-Ambak Holdings Sdn Bhd v Prema Bonanza Sdn Bhd and other appeals [2024] 5 MLJ 897**, FC, the DGIR argued that **Wiramud**a, FC ought to be read prospectively and not retrospectively:

(1) An order invalidating legislation should take effect prospectively. Although the Wiramuda case order did not specify whether the order was to be read retrospectively or prospectively, the DGIR urged the court to consider the Obata Ombak case and to interpret it as a prospective ruling.

(2) If the court were to allow P's application, this would not only affect the DGIR significantly, but it would open floodgates of cases demanding the same treatment.

(3) The Federal Court ruling in **Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ**, FC was also cited, where it was observed that the doctrine of prospective overruling will apply in that case so as not to give retrospective effect to the declaration made, citing and following **Public Prosecutor v Dato' Yap Peng [1987] 2 MLJ 311**, SC that had ruled the doctrine of prospective overruling would be applied so as not to give retrospective effect to the declaration made with the result that all proceedings, convictions and acquittals which had taken place under the section before the date of the judgement in this matter would remain undisturbed and not be affected.

(4) The DGIR also cited it the Federal Court determination in **The Government of Malaysia & Anor v Aminah bt Ahmad (suing in her personal capacity and on behalf of 56 retired members of the public service) [2023] 5 MLJ 32,** FC and Court of appeal determination in Aminah bt Ahmad (suing in her personal capacity and on behalf of 56 retired members of the public services) v The Government of Malaysia & Anor [2022] 4 MLJ 74, CA where in a nutshell it was agreed that in cases of this nature involving public interests, and to mitigate the adverse consequences and hardship that the decision of the court may have on pensioners, the Courts (Apex and the Appellate) that this is an appropriate case, and in the public interest, for an order that the decision of this court is only to take effect prospectively.

(5) The DGIR also cited several Supreme Court authorities from foreign jurisdictions to support its argument on prospectivity.

3.2 Section 111 of the ITA 1967 allows a taxpayer to pursue a refund within 5 years of the assessment. Here, it is clear that the time has lapsed. P's assessment for YA 2017, in which the assessment was made on 28.2.2018, was declared by P themselves. It is unfair to allow P to circumvent the proper procedure established by law under the ITA 1967 for their gain. There are alternative remedies for disputes of assessment that have not been exhausted by P.

3.3 In the present case, there was no decision, action or omission by the DGIR to enable P to proceed to challenge the DGIR with this JR (L1):

(1) Section 4C ("Gains or profits from a business arising from stock in trade parted with by any element of compulsion) was a valid law at the time of YA 2017.

(2) P cannot treat a non-reply by the DGIR as a decision amenable to JR, citing the High Court determination in **Sime Darby Property (Selangor) Sdn Bhd v Menteri Kewangan Malaysia [2023] MLJU 260, HC**. P cannot impose a time-based obligation towards the DGIR.

(3) The DGIR alluded the Court to the position taken by the HC in that a non-reply is not a decision that is amendable to Judicial Review in the case of **BYG Architecture Sdn Bhd V. Menteri Kewangan Malaysia [2023] 9 CLJ 557** and **Shell Gas Holdings (Malaysia) Limited V. Menteri Kewangan Malaysia [2023] 1 LNS 1464**. A non-reply does not amount to a deemed decision.

(4) The application for JR is filed out of time, and there is a failure by P to apply for an abridgement of time (O.53, r.3(6) RC 2012). L1 is already time-barred at the time of filing, with no application made by P to extend time. The Federal Court **in Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor [2015] 3 CLJ 861**, had ruled that the failure of an applicant to apply for an extension of time had rendered and served as a basis for the Court not to exercise its discretionary power to extend time

FINDINGS

[4] In light of the foregoing, and after examining and considering the cause papers before the Court, and the respective arguments by the parties, I make the following findings:

4.1 The issue of prospectivity or retrospectivity:

(a) I take cognisance that the Federal Court **in Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Civil Appeal No.01 (f)- 38-08/2022 (W) reported in [2023] 5 MLRA 285**, FC did not apply the doctrine of prospective overruling in its determination since parties failed to advised and argue it before the Federal Court.

(i) The Federal Court is the Apex Court in the land, followed by the Court of Appeal.

(ii) Therefore, A High Court in its hierarchy that is subordinate to the Court of Appeal, and the Federal Court cannot declare a Federal Court ruling as retrospective or prospective.

(iii) That power resides with the Apex Court that delivered the impugned ruling. If the Federal Court intends for its decision to have a prospective effect, it will do so in its judgment. In the absence of such a statement, the general rule of retroactivity applies.

(iv) While the High Court might interpret the application of a Federal Court decision in specific cases, it does not have the authority to unilaterally change the effect of the FC's pronouncement on a point of law.

(b) In such circumstances, the Federal Court's ruling in Wiramuda remains as it is.

(i) The parties are bound by the FC's ruling in **Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Civil Appeal No.01 (f)- 38-08/2022 (W) reported in [2023] 5 MLRA 285, FC.**

(ii) To reiterate, as observed by the Federal Court **in Arumugam Pillai v Government of Malaysia [1980] 2 MLJ 283**, the Federal Court had determined that once the Apex Court had decided on a tax-related issue, the tax department must apply those principles to all taxpayers, failing which JR would lie.

4.2 That said:

(1) The DGIR opposition to this JR would not be tenable in the circumstances.

(2) As was held by the HC, in the premises, section 111 ITA (appeal for tax refund) would not apply as this issue relates to unlawful tax collection under an invalid law which had applied retrospectively, that is, distinguishable from overpayment under a tax assessment.

(3) The DGIR's inaction on the matter created an impasse that should not have been. It was a conscious decision on the part of the DGIR not to respond to P regarding his query concerning the tax refund for the tax paid under the invalid section 4C of the ITA, which applied retrospectively. The intentional decision to remain silent was unwarranted.

CONCLUSION

[5] By and large, based on the evidence available before this Court, I find that P has discharged its burden to establish its claim in the present proceeding. Consequently, I enter final judgment for P. OIT for prayer a, b, c, d, e (with variation, a 5% interest is allowed on the returned sum commencing from the date of the filing of this JR(L1), f, g. Parties to bear their own costs.

(2) WA-25-61-03/2023

LUSH DEVELOPMENT SDN BHD
No. Syarikat: 19950109432 (348635-D) **…PEMOHON**

DAN

KETUA PENGARAH HASIL DALAM NEGERI …RESPONDEN

This is merely a broad ground of judgment. I reserve the right to a detailed, complete grounds of judgment on appeal. My determination in this case is based on the evidence before me and on whose favour the balance of evidence has tilted.

THE FACTS

[1] In this broad judgment:

(1) The applicant (P) is a property development company and has in its land bank owned lands held under No. PT 44666 (103107), HS (D) 31457, Mukim Dengkil, Daerah Sepang , No. PT 44667 (103108), HS (D) 31458, Mukim Dengkil, Daerah Sepang, No. PT 446679(103110), HS (D) 31458, Mukim Dengkil, Daerah Sepang, No. PT 44670 (103108), HS (D) 31463, Mukim Dengkil, Daerah Sepang, No. PT 44672 (103255), HS (D) 31463, Mukim Dengkil, Daerah Sepang, No. PT 45171 (103241), HS (D) 31962, Mukim Dengkil, Daerah Sepang and No. PT 45173 (103243), HS (D) 31964, Mukim Dengkil, Daerah Sepang (the impugned lands).

(2) The state authority compulsorily acquired the impugned lands under the Land Acquisition Act 1960, where on 19.10.2016, P was paid a compensation of approximately RM22,470,845.00 (the impugned assessment) for the Year of Assessment (YA) 2017.

(3) In 2017, P held this impugned compensation as stock in trade due to the nature of the company:

(a) DGIR alluded to the Court the following facts:

(i) On 28.2.2018, P filed their Form C: Income Tax Return, their tax return for YA 2017 conforming to s.77A of the Income Tax Act 1967 (ITA).

(Section 77A ITA obligates companies, trust bodies, or cooperative societies to furnish the income tax return for the year of assessment within seven months from the close of the accounting period)

(ii) The YA 2017 is deemed an assessment under section 90 ITA 1967.
(Section 90 ITA governs the self-assessment tax system, and how the DGIR is deemed to make an assessment based on returns furnished by taxpayers)

(iii) Section 99 ITA 1967:
(a) Grants an aggrieved taxpayer the right to appeal against the assessment made by the DGIR by filing Form Q within 30 days after receiving the notice of the evaluation.
(b) Unless an extension of time is granted, the notice of assessment becomes final and conclusive by default.

(c) Effective from the year of assessment 2020, the application for an EOT can be submitted within 7 years after the expiration of the 30 days.

(d) An appeal will be ventilated and heard before the Special Commissioner of Income Tax (SCIT)

(iv) P did not file any appeal against the notice of assessment, rendering it final under section 97 ITA. Every assessment shall be final and conclusive, save where an appeal has been preferred and not withdrawn or disposed of by the Act.

(b) Approximately five (5) years down the road, on 9.12.2022, the Federal Court in **Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Civil Appeal No.01 (f)- 38-08/2022 (W)** reported in **[2023] 5 MLRA 285, FC**. It was observed that:

(i) The landowner earned no profit from the adequate compensation from a compulsory acquisition exercise by the authorities.

(ii) Section 4C was therefore fundamentally flawed in providing that a business's profits or gains included compensation from compulsory acquisition, as adequate compensation had no element of profit or gain, nor any pecuniary advantage.

(iii) Section 4C of the ITA 1967 had taken away the safeguard of adequate compensation as guaranteed under Article 13(2) of the FC, and it had the effect of reducing the compensation paid to the landowner/taxpayer.

(iv) The landowner/taxpayer would no longer be receiving adequate compensation under Article 13(2) of the FC.

(v) Section 4C contravenes art 13(2) of the FC and is thus unconstitutional.

(vi) However, the FC did not expressly announce when delivering the judgment whether the ruling applies retrospectively or only prospectively in future cases.

(4) Grounded on this ruling by the FC in December 2022, P attempted to revisit its YA 2017 on the premise that a declaration of unconstitutionality relates to the inception of section 4C, rendering all assessments grounded on the section unlawful irrespective of the period after the coming into force of the impugned section 4C in 2014:

(a) P wrote a letter to the DGIR, dated 21.2.2023, demanding a refund of the tax paid under the defunct section 4C regarding the compensation received for the compulsory acquisition of the impugned land.

(b) P imposed a deadline on the DGIR, stating that if no response is received from the DGIR by March 6, 2023, it would be deemed that the DGIR had rejected the application for a refund.

(c) On 8.3.2023, P proceeded with the filing of the present Judicial Review application (L1) seeking a certiorari to quash the **DGIR deemed decision** supposedly to have arisen on 6.3.2023, when the DGIR did not respond to P's letters dated 21.2.2023. For this JR**:**

(i) Leave was granted by the HC on 13.9.2023.

(ii) An appeal to the COA by the DGIR challenging the leave granted by the HC was dismissed by the COA on 16.5.2024.

(iii) Leave to appeal to the FC was denied on 10.9.2024.

(iv) The FC clarified on 5.11.2024 that the issue of whether the FC order was prospective or retrospective was never argued before the FC during the

Wiramuda decision on 9.12.2022. Following the decision on 9 December 2022, the FC became functus officio.

In this JR, apart from asking for an order for certiorari to quash the deemed decision by the DGIR:

(v) P also seek a mandamus to compel the DGIR to comply with the FC's ruling, and that the tax assessment for YA 2017 under section 4C involving the compensation is unlawful.

(vi) P also seek a mandamus to compel the DGIR to allow the submission of a revised tax submission for YA 2017, and that the DGIR is obligated to issue P a refund for the taxes paid with 8% interest per annum on the said sum computed from the day P paid the said taxes.

(vii) P also seek a declaration that the DGIR is bound by and must give effect to the FC's ruling.

(viii) The Court allows all necessary consequential orders.

PARTIES ARGUMENTS

[2] P submitted that:

2.1 It is irrefutable that the Federal Court in Wiramuda, in its determination, did not issue a direction of prospectivity when passing judgment. The DGIR could have applied for it to be made prospective, but the DGIR failed to do so in that proceeding, rendering that FC Corum functus officio:

(1) The FC in **Obata-Ambak Holdings Sdn Bhd v Prema Bonanza Sdn Bhd and other appeals [2024] 5 MLJ 897, FC** observed the existence of exceptional circumstances from the facts to qualify that the ruling in **Ang Ming Lee & Ors v Menteri Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan & Anor and other appeals [2020] 1 MLJ 281, FC** is to be applied prospectively, not retrospectively.

(2) Otherwise, there would be great injustice and devastating consequences to the housing industry as a whole, where house buyers were seeking to be unjustly enriched by rewriting the SPAs which they had accepted and from which they had benefited.

(3) The DGIR had not adduced any evidence to establish exceptional circumstances for prospective overruling to apply to the Wiramuda FC's determination.

(4) The Federal Court in **Arumugam Pillai v Government of Malaysia [1980] 2 MLJ 283, FC** had determined that once the Apex Court had decided on a tax-related issue, the tax department must apply those principles to all taxpayers, failing which JR would lie.

(5) If prospective overruling is applied, it would unjustly enrich the DGIR on the tax collection over an invalid law (s.4C ITA).

2.2 The High Court in **Pelangi Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri** Application for Judicial Review No: R2-25-39-2011 (2011) MSTC, 30-036, HC KL (22.8.2011) observed that:

(1) The DGIR reliance on s.111 of ITA (appeal process for tax refund) is misplaced because s.111 deals explicitly with an overpayment.

(2) It is clear that this is not a case of an overpayment. There was no legal basis for the payment made by the DGIR in the first place. The DGIR had subjected the gains arising from the compulsory land acquisition to income tax and consequently retained the tax refund, which at all material times was rightfully the taxpayer's money.

2.3 The HIC in granting leave in the present JR(L1) observed:

(1) That the DGIR's failure to follow the FC ruling in Wiramuda renders its decision flawed. The DGIR had no right to retain the taxes paid from the compulsory acquisition of the impugned land.

(2) It would appear that the DGIR had unjustly enriched itself by collecting and retaining those taxes from an invalid law.

2.4 P Cited:

(1) Lord Goff, who referred to and followed with the dissenting judgment in **Air Canada v British Columbia**, held that money paid under unconstitutional legislation was generally recoverable.

(2) The High Court in **Power Root (M) Sdn Bhd & Ors v Director General of Customs [2014] 2 MLJ 271, HC** held that retaining ultra vires taxes (i.e., those collected under laws declared invalid) constitutes a breach of constitutional principle, thereby granting the taxpayers a right to restitution.

(4) Before the introduction of section 4C in 2014, it was argued that gains from a compulsory acquisition were not taxable as determined by the HC, COA and the FC, refusing to grant leave to appeal.

(5) The FC's determination in Wiramuda carries a retrospective effect in the absence of a clear direction by the FC that has now become functus officio. The DGIR is bound and must adhere to the impugned ruling by the FC.

(6) The HC on granting the leave for JR rejected P's arguments that:

(a) There was no decision, action or omission by the DGIR.

(b) P is out of time to file for JR and uses the two letters to jumpstart a fresh action timeline.

(c) An alternative remedy of an appeal to the SCIT has not been exhausted.

2.5 The DGIR:

(1) Can't withhold taxes collected on an invalid law.

(2) This is no longer an issue of tax assessment.

(3) P is entitled at law to restitution of the taxes paid under the invalid section 4C. The DGIR did not provide any legitimate reasons for rejecting the discharge application.

(4) As observed by the federal Court in **Ann Joo Steel Bhd v Pengarah Tanah dan Galian Negeri Pulau Pinang & Anor and Another Appeal [2019] 9 CLJ 153, FC,** that an order of the superior court must be obeyed until it is set aside or varied. It is not for anyone to decide for themselves whether an order of the court is wrongly issued and does not require their obedience to it.

(5) The Federal Court in **Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545**, citing the FC's determination in **Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143, FC:**

(a) That every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene.

(b) The courts are the only defence of the liberty of the subject against departmental aggression.

(c) The public bodies must be compelled to observe the law, and bureaucracy must be kept in its place.

[3] The DGIR argued that:

3.1 Relying on the Federal Court case of **Obata-Ambak Holdings Sdn Bhd v Prema Bonanza Sdn Bhd and other appeals [2024] 5 MLJ 897, FC,** the DGIR argued that Wiramuda, FC ought to be read prospectively and not retrospectively:

(1) An order invalidating legislation should take effect prospectively. Although the Wiramuda case order did not specify whether the order was to be read retrospectively or prospectively, the DGIR urged the court to consider the Obata Ombak case and to interpret it as a prospective ruling.

(2) If the court were to allow P's application, this would not only affect the DGIR significantly, but it would open floodgates of cases demanding the same treatment.

(3) The Federal Court ruling **in Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ, FC** was also cited, where it was observed that the doctrine of **prospective overruling will apply in that case** so as not to give retrospective effect to the declaration made, citing and following **Public Prosecutor v Dato' Yap Peng [1987] 2 MLJ 311, SC** that had ruled the doctrine of prospective overruling would be applied so as not to give retrospective effect to the declaration made with the result that all proceedings, convictions and acquittals which had taken place under the section before the date of the judgement in this matter would remain undisturbed and not be affected.

(4) The DGIR also cited it the Federal Court determination in **The Government of Malaysia & Anor v Aminah bt Ahmad (suing in her personal capacity and on**

behalf of 56 retired members of the public service) [2023] 5 MLJ 32, FC and Court of appeal determination in **Aminah bt Ahmad (suing in her personal capacity and on behalf of 56 retired members of the public services) v The Government of Malaysia & Anor [2022] 4 MLJ 74, CA** where in a nutshell it was agreed that in cases of this nature involving public interests, and to mitigate the adverse consequences and hardship that the decision of the court may have on pensioners, the Courts (**Apex and the Appellate**) that this is an appropriate case, and in the public interest, for an order that the decision of this court is only to take effect prospectively.

(5) The DGIR also cited several **Supreme Court** authorities from foreign jurisdictions to support its argument on prospectivity.

3.2 Section 111 of the ITA 1967 allows a taxpayer to pursue a refund within 5 years of the assessment. Here, it is clear that the time has lapsed. P's assessment for YA 2017, in which the assessment was made on 28.2.2018, was declared by P themselves. It is unfair to allow P to circumvent the proper procedure established by law under the ITA 1967 for their gain. There are alternative remedies for disputes of assessment that have not been exhausted by P.

3.3 In the present case, there was no decision, action or omission by the DGIR to enable P to proceed to challenge the DGIR with this JR (L1):

(1) Section 4C ("Gains or profits from a business arising from stock in trade parted with by any element of compulsion) was a valid law at the time of YA 2017.

(2) P cannot treat a non-reply by the DGIR as a decision amenable to JR, citing the High Court determination in **Sime Darby Property (Selangor) Sdn Bhd v Menteri Kewangan Malaysia [2023] MLJU 260, HC.** P cannot impose a time-based obligation towards the DGIR.

(3) The DGIR alluded the Court to the position taken by the HC in that a non-reply is not a decision that is amendable to Judicial Review in the case of **BYG Architecture Sdn Bhd V. Menteri Kewangan Malaysia [2023] 9 CLJ 557** and **Shell Gas Holdings (Malaysia) Limited V. Menteri Kewangan Malaysia [2023] 1 LNS 1464.** A non-reply does not amount to a deemed decision.

(4) The application for JR is filed out of time, and there is a failure by P to apply for an abridgement of time (O.53, r.3(6) RC 2012). L1 is already time-barred at the time of filing, with no application made by P to extend time. The Federal Court in **Kijal Resort Sdn Bhd v. Pentadbir Tanah Kemaman & Anor [2015] 3 CLJ 861, FC** had ruled that the failure of an applicant to apply for an extension of time had rendered and served as a basis for the Court not to exercise its discretionary power to extend time

FINDINGS

[4] In light of the foregoing, and after examining and considering the materials before the Court, and the respective arguments by counsel on the JR(L1), I make the following findings:

4.1 **The issue of prospectivity or retrospectivity**:

(a) I take cognisance that the Federal Court in **Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Civil Appeal No.01 (f)- 38-08/2022 (W) reported in [2023] 5 MLRA 285, FC** did not apply the doctrine of prospective overruling in its determination since parties failed to advised and argue it before the Federal Court.

(i) The Federal Court is the Apex Court in the land, followed by the Court of Appeal.

(ii) Therefore, A High Court in its hierarchy that is subordinate to the Court of Appeal, and the Federal Court cannot declare a Federal Court ruling as retrospective or prospective.

(iii) That power resides with the Apex Court that delivered the impugned ruling. If the Federal Court intends for its decision to have a prospective effect, it will do so in its judgment. In the absence of such a statement, the general rule of retroactivity applies.

(iv) While the High Court might interpret the application of a Federal Court decision in specific cases, it does not have the authority to unilaterally change the effect of the FC's pronouncement on a point of law.

(b) In such circumstances, the Federal Court's ruling in Wiramuda remains as it is.

(i) The parties are bound by the FC's ruling in **Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Civil Appeal No.01 (f)- 38-08/2022 (W)** reported in **[2023] 5 MLRA 285, FC.**

(ii) To reiterate, as observed by the Federal Court **in Arumugam Pillai v Government of Malaysia [1980] 2 MLJ 283**, the Federal Court had determined that once the Apex Court had decided on a tax-related issue, the tax department must apply those principles to all taxpayers, failing which JR would lie.

4.2 That said:

(1) The DGIR opposition to this JR would not be tenable in the circumstances.

(2) As was held by the HC, in the premises, section 111 ITA (appeal for tax refund) would not apply as this issue relates to unlawful tax collection under an invalid law which had applied retrospectively, that is, distinguishable from overpayment under a tax assessment.

(3) The DGIR's inaction on the matter created an impasse that should not have been. It was a conscious decision on the part of the DGIR not to respond to P regarding his query concerning the tax refund for the tax paid under the invalid section 4C of the ITA, which applied retrospectively. The intentional decision to remain silent was unwarranted.

CONCLUSION

[5] By and large, on the evidence available before this Court, I find that P has discharged its burden to establish its claim in the present proceeding. Consequently, I enter final judgment for P. OIT for prayer a, b, c, d, e (with variation, 5% interest is allowed on the returned sum commencing from the date of the filing of this JR(L1), f, g. Parties to bear their own costs.