**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR**

**DALAM NEGERI WILAYAH PERSEKUTUAN KUALA LUMPUR**

**PERMOHONAN SEMAKAN NO : WA-25-13-01/2026**

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**Dalam perkara Notis-Notis Taksiran (Borang J) bagi Tahun-Tahun Taksiran 2019, 2021,2022 dan 2023 serta Notis Taksiran Tambahan (Borang JA) bagi Tahun-Tahun Taksiran 2020 kesemuanya bertarikh 16.12.2025 yang dikeluarkan oleh Responden kesemuanya telah diserahkan kepada Pemohon pada 18.12.2025;**

**Dan**

**Dalam perkara suatu permohonan untuk antara lain suatu Perintah Certiorari;**

**Dan**

**Dalam perkaraAturan 53, Kaedah Kaedah Mahkamah 2012.**

**ANTARA**

**PIONEER RICH (MALAYSIA) SDN BHD**
**[No. Syarikat : 201801038458 (1300489-W] ….. PEMOHON**

**DAN**

**KETUA PENGARAH HASIL DALAM NEGERI … RESPONDEN**

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**GROUNDS OF JUDGMENT**
**[LEAVE AND STAY]**

## A. INTRODUCTION

[1] The Applicant seeks leave to commence judicial review and to obtain a stay of the Respondent (“Revenue “) decision in the form of the Notices of Assessment (“Form J”) for the Years of Assessment (“YAs”) 2019,2021,2022 and 2023 and the Notice of Additional Assessment (“Form JA”) for the YA 2020. These YAs 2019,2020, 2021,2022 and 2023 are collectively referred to as the “disputed YAs”.

[2] At all material times, the Applicant regarded Man Shun Industrial Limited a company incorporated in Hong Kong as its holding

company. The Applicant's principal activities are limited mainly to facilitating import and export arrangements involving electronic goods with instructions received from its holding company. The Applicant held an export license which was utilised to facilitate the export of electronic goods to an entity located in the USA. However, the Applicant did not contract nor receive any payments from the US company. All export instructions recorded under the Applicant's name were carried out strictly under the direction, control and commercial arrangements of its holding company.

[3] The Applicant did not receive any proceeds or payments from the US company, all payments were made directly to the holding company in Hong Kong . For YAs 2019 to 2023, the Applicant did not receive any income from its trading activities in Malaysia . For YA 2020, the Applicant's accounts reflected only a nominal surplus arising from reimbursement of administrative expenses from its holding company and not from trading activities.

[4] This leave application turns primarily on the legality of the Respondent's decision amounting to RM 36,280,781.67 in taxes and penalty demanded for the disputed YAs. The decision is premised on the Respondent's view that the Applicant should have

received but failed to declare chargeable income from its trading for the disputed YA's despite the Applicant having received no such income. The Respondent's decision  is tainted by errors of law and demonstrates clear lack of jurisdiction, where it is in breach of principles of natural justice and has constituted a denial of the Applicant's legitimate expectations.

**Error of law and clear lack of jurisdiction**

[5] The Respondent had imposed income tax on income that does not exist. This is contrary to Section 3 Income Tax Act (ITA) where the charge of income tax is only levied where there is income. The Respondent did not have any legal basis to apply Gross Profit Margin Method in purporting to estimate the Applicant's income for the disputed YAs. In doing so, the Respondent did not specify whether it was relying on any ITA provision.

**Breach of principles of Natural Justice**

[6] Section 91 of the ITA provide that the Revenue may raise an assessment within 5 years of the relevant year of assessment unless the case involves fraud, wilful deceit or negligence. Section 113(2) of the ITA further confers a discretion on the Revenue as to whether to impose penalties. That discretion is not unfettered and

cannot be exercised arbitrarily. The Revenue is required to give due consideration to all relevant facts and circumstances and the burden lies on the Revenue to justify  the imposition of any penalty.

In this case, the Revenue's decision has failed to adhere to give reasons in terms of imposing penalties where is has issued the time barred assessment for YA 2019 without providing reasons and imposed penalties under Section 113(2) and 112(3) of the ITA amounting to RM 11,259,608.63 for the disputed YAs without providing any or any sufficient reasons.

The Revenue also disregard the Applicant's accounting evidence in the form of the Audited Repots and Financial Statements for the disputed YAs that were prepared by a firm of professional without providing any justifications

**Denial of legitimate expectations**

[7] The Revenue's decision has also made in denial of the Applicant's legitimate expectations when they acted in a manner contrary to Section 3 of the ITAS by imposing income tax where there is no income . The Revenue applied a method not provided or authorised by the ITA in purporting to estimate the Applicant's income and failed to provide any or sufficient reason for its decision.

[8] The Applicant has plainly satisfied the low threshold for leave. There is a serious and arguable questions of law concerning the legality of the Revenue's decision and it is not frivolous nor vexatious and involves matters that are justiciable and of real substance. There is no dispute as to the material facts which would require ventilation before the Special Commissioners of Income Tax ("SCIT) but the issues raised in this application concerns purely questions of law involving the provisions of the ITA 1967 and the legality of the Revenue's conduct.

[9] The Applicant accepts that the Revenue's decision is appealable to the SCIT pursuant to the filing of a Form Q and that the Applicant has filed a Form Q but that should not be regarded as an abuse of process. The Form Q was not filed to enable the Applicant to have "a second bite of the cherry or litigating in instalments" in the event the judicial review is unsuccessful. Any determination by the superior courts in judicial review proceedings on the interpretation of the relevant provisions would bind parties. A final decision would also give rise to the application of the doctrines of res judicata and issue estoppel. The possibility of an unsuccessful party in judicial review seeking to re litigate the same issues afresh before the SCIT does not arise.

[10] Presently, there is no appeal before the SCIT as the Revenue has not forwarded the Form Q to the SCIT. Upon receipt the Form Q, the Revenue has a statutory period of 12 months to review the assessment pursuant to Section 101 of the ITA. During this review period "Dispute Resolution Proceedings"(DRP) may be conducted by the Revenue's Dispute Resolution Department which act as a neutral party during a discussion held with a tax payer in an effort to reach an out of court settlement.

[11] The Form Q was filed as a matter of prudence to preserve the Applicant's statutory right of appeal in the event that leave for judicial leave for judicial review is refused.

## B. RESPONDENT'S REPLY (ATTORNEY GENERAL)

[12] The AG submits that the Applicant's application for judicial review is frivolous and vexatious and therefore contravenes Order 53 Rules of Court 2012 because there is a law provision for domestic remedy as provided under the Income Tax Act 1967.

There is a clear and specific statutory right of appeal under Section 99 of the ITA by way of filing a Notice of Appeal (Form Q) to SCIT.

[13] It is not disputed that the Applicant has exercised this right and has filed the said appeal, however the appeal process remains pending and has not been determined. The said appeal is currently under review by the putative Respondent and has yet to be forwarded to the SCIT. The Applicant should have exhausted the domestic remedy before coming to Court. The disputed facts namely the allegation that the putative Respondent imposed income tax despite the Applicant never having received such income, applies a 15% gross profit margin method to estimate the Applicant's income, issued a time barred assessment for YA 2019 and imposed penalties are matters of fact which ought to be determined by the SCIT.

[14] It is well established principle that where Parliament has provided a specific statutory remedy, such remedy must be exhausted before recourse may be had to judicial review.

## C. FINDINGS OF THE COURT

[15] The test applicable in determining the grant or otherwise of the leave for judicial review was laid down in **WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd [2012] 4 MLJ 296 at p.303** where the Federal Court held:

"….Without the need to go into depth of the abundant authorities, suffice if we state that leave may be granted if the leave application is not thought of as frivolous, and if the leave is granted, an arguable case in favour of granting the relief sought at the substantive hearing may be the resultant outcome. A rider must be attached to the application though ie unless the matter for judicial review is amenable to judicial review absolutely no success may be envisaged.

Returning to the mainstream, the appeal before us relates to the first stage ie the leave application. With both the High Court and the Court of Appeal having rejected the leave application, we now begin by resolving certain preliminary matters, namely whether the appellant has the necessary locus standi, whether it has complied with the time factor, and whether the facts and circumstances before us are amendable to judicial review."

[16] The threshold for a leave application is a court hearing a judicial review application must determine whether 'prima facie there is a genuine case for review'. (see : **Dato' Seri Mohd Najib bin Tun Hj Abdul Razak v Attorney General & Ors [2020] 3 MLJ 114 at p. 129 COA).** The threshold requirement is low, but leave should be refused if the application is frivolous and vexatious, misconceived, applicant had no arguable case, the subject matter is not amenable to judicial review and the subject matter is non-justiciable.

[17] In **Bar Malaysia v Peguam Negara Malaysia [2026] CLJU 1404,** the Court of Appeal have cited a string of authorities to show that the leave stage is a filter.

> "[36] In *Association of Bank Officers, Peninsular Malaysia v Malayan Commercial Banks Association (supra),* the Supreme Court held that the guiding principles are that the application is not frivolous and that there is an arguable case. That formulation was expressly adopted by the Federal Court in *WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd (supra*) , where it held :
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> > "[12]…… At the leave stage, on a quick perusal of the material available, if the court thinks that subsequently at the substantive hearing stage an arguable case may be disclosed, and the relief sought may be granted, leave should be granted (*IRC v National Federation of Self Employed and Small Businesses Ltd [1982] AC 617*)
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> [37] The Federal Court also re emphasised its earlier decision in Mohd Nordin Johan v Attorney General Malaysia [1983] 1 MLJ 68; [1983] CLJ Rep 271; [1982] 1 MLRA 345, FC (per Raja Azlan Shah Ag LP) that leave should not be refused *in limine* if the point taken is not frivolous.
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> [38] To similar effect, the Court of Appeal in *Tan Kwor Ham & Ors v Pengurusan Danaharta Nasional Sdn Bhd & Ors (supra)* (per Gopal Sri Ram JCA) cautioned that the courts "*should not go into the merits of the case at the leave stage. Its role is only to see if the application for leave*

*is frivolous*. The same principles were reiterated by the Court of Appeal in *Muhibbah Engineering (M) Bhd v Ketua Pengarah Hasil Dalam Negeri (supra)*

[39] These authorities show that the leave stage is not intended to become a final adjudication of the issues.

[18] The Applicant seeks the following reliefs in their judicial review application:

(a) an order for certiorari to quash the Respondent's decision in the form of :

i. the Notices of Assessment ("Form J") for the YAs 2019,2021,2022 and 2023; and

ii. the Notice of Additional Assessment ("Form JA") for the YA 2020

all these are collectively referred to hereinafter as the "disputed YAs"

The Applicant challenged the said decision was illegal, void, unlawful and/or in excess of authority, in breach of principles of natural justice; made irrationally and/or unreasonable and in breach of the Applicant's legitimate expectations.

[19] The main argument put forward by the Applicant to see leave for judicial review is that the Respondent had committed errors of law and that its decision arises from clear lack of jurisdiction where the Respondent had imposed income tax on income that does not exist. This is contrary to Section 3 of the Income Tax Act 1967. The Applicant is also seeking a declaration that the Respondent did not have any legal basis to apply the Gross Profit Margin Method in purporting to estimate the Applicant's income for the disputed YAs. There is also breach of natural justice when the Respondent failed to give reasons for issuing the time barred assessment for YA 2019 and imposing penalties under Section 113(2) and 112(3) ITA for the disputed YAs. The Respondent had also disregard the Audited Reports and Financial Statements for the disputed YAs that were prepared by a firm of professionals.

[20] The Respondent's answers to this is there is a specific statutory remedy by way of filing a Notice of Appeal (Form Q) to SCIT, then such remedy must be exhausted before recourse may be had to judicial review.

[21] This Court at this leave stage is only concerned to see whether the present Judicial Review application is frivolous and whether the

Applicant has an arguable case. This Court will not go as far as to make a finding since the Applicant did not exhaust his rights (if any) to the internal or domestic remedies under the Income Tax Act in this context the appeal to SCIT , then this Court dismissed the Judicial Review Application even if the Applicant succeed in raising an arguable and amendable issues.

[22] The Applicant did not dispute there is a law provided for domestic remedy under the Income Tx Act 1967; and the Applicant has already filed the requisite Form Q . The questions that was raised by the Applicant in this application concern purely question of law involving the provisions of the ITA 167 and the legality of the Revenue's conduct.

[23] Section 3 of the ITA states that a tax known as income tax shall be charged for each year of assessment upon the income of any person accruing in or derived from Malaysia or received in Malaysia from outside Malaysia. The Applicant's tax liability as they submits was limited solely to YA 2020 where it had dutifully discharged it obligations by paying on a nominal surplus arising from administrative reimbursements by its holding company based in Hong Kong. As submitted by the Applicant the Revenue has erred

in law by imposing *income tax on income that did not exist and contravene Section 3 of the ITA.

[24] Then came the issue of penalties. Section 112(3) and 113(2) of the ITA confer a discretion on the Revenue to impose penalties

> "(3) Where in relation to a year of assessment a person make default in furnishing a return accordance with sub section 77(1) or sub section 77A(1) or (1B) or in giving a notice in accordance with subsection 77(3) and no prosecution under sub section (1) or (1A) has been instituted in relation to that default –
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> (a) The Director General may require that person to pay a penalty equal to treble the amount of the tax which, before any set off repayment or relief under this Act, is payable for that year; and
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> (b) If that person pays that penalty (or where the penalty is abated or remitted under sub section 124(3) so much, if any of the penalty has nor been abated or remitted), he shall not be liable to be charged on the same facts with an offence under sub section (1)
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> (2) Where a person
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> (a) makes an incorrect return by omitting or understating any income of which he is required by this act to make a return on behalf of himself or another person; or

(b) gives any incorrect information in relation to any matter affecting his own chargeability to tax or the chargeability to tax of any other person,

then, if no prosecution under sub section (1) has been instituted in respect of the incorrect return or incorrect information, the Director General may require that person to pay penalty equal to the amount of tax which has been undercharged in consequence of the incorrect return or incorrect information or which would have been undercharged if the return or information had been accepted as correct; and if that person pays that penalty (or where the penalty is abated or remitted under subsection 124(3), so much if any of the penalty as has not been abated or remitted), he shall not be liable to be charged on the same facts with an offence under sub section (1).

However this discretion to impose penalty is not unfettered and cannot be exercised arbitrarily.

In **Kim Thye Co v Ketua Pengarah Jabatan Hasil Dalam Negeri, Kuala Lumpur [1991]3CLJ at p. 24**, Richard Tallala J (as then was) states:

" As I see it subsection 1 of s. 113 is couched in mandatory terms but conditioned whereas subs 2 is expressed in terms which are discretionary. The Director General may require payment of the penalty.

He is not bound to require such payment. **He is given a discretion, a discretion which to my mind  cannot be exercise at whim or fancy but after due consideration  of all relevant facts and circusmtances**… “

The burden lie upon the Revenue  to justify the imposing of penalty and that the Revenue should have provide reasons for the exercise of its discretion. In this case, the Revenue issued the time barred assessment for YA 2019 and imposed penalties under Section 113(2) and 112(3) of ITA without reasons, moreover where the Applicant had furnished documents requested by the Revenue and had audited  the said accounts and the Applicant clarified that it did not generate any revenue for YAs 2019 to 2021.

[25] The Revenue then notified the Applicant of the conclusion of its audit and the proposed tax adjustment for YAs 2019 to 2021 but these adjustment was devoid of any substantive reasoning as to why it forms part of the Applicants chargeable income.’

[26] These issues raised by the Applicant is not basically challenge the facts of there is arears of assessment for disputed YAs but whether the Respondent had made its decision based on the provisions in

the ITA or  has adopted a methodology that is neither provided or not authorised by the ITA when it comes to the purported estimation of income. This Court is in agreement with the Applicant that this application raises an important questions of law which are suitable for determination by this Court.

In **Metacorp Development v Ketua Pengarah Hasil Dalam Negeri [2011] 5MLJ page 454 Rohana J (as she then was)**

> “[9] Thus relying on the principle laid down in majlis *Perbandaran Pulau Pinang* I hold that the availability of an alternative internal remedy in the form of an appeal process will not bar an application for judicial review. This is so especially where the complainant made to the court is one error of law or abuse of power that goes to the legality of the conduct of the decision making authority in this case.
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> [10] The applicant here had demonstrated illegality and unlawful treatment, thus it would be wrong to insist that it exhaust its statutory right of appeal, even if it is available. In fact a complaint that raises a question of law as in the present case, would preferably  be referred to the court, being a more appropriate forum.

[27] The Applicant here had demonstrate to this Court the basis for judicial review is not the amount of tax that the Revenue  levied on

them but whether the Revenue can impose income tax on the Applicant despite the Applicant not receiving such income. Another issue is whether the Revenue has any legal basis under the ITA to apply the Gross Profit Method in purporting to estimate the Applicant's income for the disputed YA's and whether the Revenue had failed to gives any sufficient reasons when they issued the time barred assessment for YA 2019 and imposing the penalties.

This is  not factual issues that can be dealt with by the SCIT but issues that goes to the provision of the ITA 1967 itself that gave the power to impose tax by the Revenue on tax payers.

[28] The basis of the Applicant file for judicial review is not about the amount of tax payable handed down by the Revenue but whether the Revenue had done it according to the provisions of Section 3 of the ITA and when it imposes the penalty, whether it is done in accordance with the proviso of section 113(2) and 112(3) of ITA . This as submitted by the Applicant pure questions of law that justify the leave application for judicial review.

**By filing Form Q does the Applicant be regarded as an abuse of court process**

[28] Filing of Form Q is a requirement under the proviso of Section 99 of ITA 1967 if the Applicant decided to proceed with the appeal. The filing of Form Q as mentioned by the Applicant is a matter of prudence to preserve the Applicant's statutory right to appeal in the event they failed in this judicial review. If the Applicant failed in their substantive argument in the judicial review, they can proceed on the appeal as to the amount that was tax by the Revenue and its penalties and they cannot re litigate this issue again before SCIT since there is a finding made as to the legality of the amount of tax and penalty imposed by the Revenue based on the interpretation of relevant provisions in the said Act.

**Is stay ought to be granted pending the full and final determination of judicial review application.**

[29] The Applicant applies for a stay of the Revenue's decision pending the full and final determination of the judicial review application. The Applicant submits this is to preserve the status quo by suspending the implementation of the impugned decision pending the determination of the present application, so that the Applicant is not denied the full benefit of a successful challenge.

[30] The AG submits that the issue of stay ought to be determined inter partes at the substantive stage.

[31] As for the stay, it is to be argued inter parte at the substantive stage or separately. That being the case, the Court will only allow an interim stay until the disposal of the substantive hearing of the inter parte stay.

## D. CONCLUSION

[32] Therefore, based on the above reasons, this Court allows Enclosure 1 with no order as to cost.

Dated: 14.7.2026

Norliza binti Othman

High Court Judge

Bahagian Rayuan Kuasa Kuasa Khas 1

Mahkamah Tinggi Kuala Lumpur

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|---|---|---|
| Solicitors for the Applicant | : | Chris Toh Pei Roo (Ng Jack Ming and Alvin Chong Jian Loong with him)<br>Messrs. Jack & Cheng |
| Solicitors for the Respondent | : | Airin binti Saharuddin<br>Federal Counsel<br>Attorney General’s Chambers |