DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM NEGERI WILAYAH PERSEKUTUAN KUALA LUMPUR
PERMOHONAN SEMAKAN NO: WA-25-453-12/2024

Dalam perkara Keputusan Responden seperti dinyatakan dalam Notis-Notis Taksiran bagi Tahun Taksiran 2017, 2018, 2019, 2021 dan 2023 kesemuanya bertarikh 28.10.2024, Notis Taksiran bagi Tahun Taksiran 2022 bertarikh 30.10.2024 beserta dengan surat Responden bertarikh 29.10.2024;

Dan

Dalam perkara suatu permohonan untuk antara lain suatu Perintah Certiorari;

Dan

Dalam perkara Aturan 53, Kaedah-Kaedah Mahkamah 2012.

BETWEEN

TWL HOLDINGS BERHAD
[Dulu dikenali sebagai Tiger Synergy Berhad] ….. PEMOHON

AND

KETUA PENGARAH HASIL DALAM NEGERI … RESPONDEN

GROUNDS OF JUDGMENT

[LEAVE AND STAY]

A. INTRODUCTION

[1] This is a leave application for judicial review and stay against the Notices of Assessment raised by the Respondent for years of assessment ("YA") 2017,2018, 2019, 2021, 2022 and 2023 ("Disputed YA's") in imposing deemed interest on the Applicant (collectively "Decision").

B. BACKGROUND FACTS

[2] The Applicant is a public listed company engaged in investment holdings. It invests through its special purpose vehicle ("SPV") subsidiaries predominantly involved in property development and construction. The Applicant will earn profits through dividends issued by the SPVs.

As the sole investor, the Applicant raised capital through rights issue of new ordinary shares, private placement and issuance of

redeemable convertible notes. These exercises were approved by Bursa Malaysia and Securities Commission. The capital raised will then be channelled to the SPV subsidiaries and used for land acquisition, investment in plants and fixed assets and managing working capital.

[3] On 29.10.2024, the Respondent raised notices of assessment based on the following issues:

(a) Substituted the transactions between the Applicant and its subsidiaries with loan transactions between banks and their customers and imposed deemed interest income on the Applicant under Section 140A of the Income Tax Act 1967 ("ITA") based on interest rate charged by banks amounting to RM 93,345,669 ("Deemed Interest"); and

(b) Disallowing deduction of employee share option scheme ("ESOS") expenses amounting to RM 29,482,558.

The Applicant only is disputing the Deemed Interest issue in this application

[4] The Applicant submits the only issue is whether the Respondent exceeded its jurisdiction when it used interest charged by licensed

banks as a comparable to impute interest income on the capital channelled by the Applicant to its subsidiaries under Section 140A (2) ITA.

C. RESPONDENT'S REPLY

[5] The AG's objection on domestic remedy is that the Applicant failed to exhaust a remedy available before the Special Commissioner Income Tax (hereinafter referred to as "SCIT"). The Applicant's application for judicial review is frivolous and vexatious and therefore is in contravention with Order 53 Rules of Court 2012 because there is in law provision for domestic remedy as provided under the ITA 1967.

[6] The Applicant cannot bypass the SCIT since there are disputed facts involved in this matter and such determination can only be reached through the calling of witnesses and production of documentary evidence before the SCIT.

D. FINDINGS OF THE COURT

[7] 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 i.e. unless the matter for judicial review is amenable to judicial review absolutely no success may be envisaged.*
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> *Returning to the mainstream, the appeal before us relates to the first stage i.e. 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 amenable to judicial review."*

[8] 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.

[9] In ***Bar Malaysia v Peguam Negara Malaysia [2026] CLJU 1404*****,** the Court of Appeal has 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.*

[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."

[10] The Applicant challenged the said decision was illegal, void, unlawful and/or in excess of authority. The issue is whether the Revenue exceeded his jurisdiction when he used interest charged by licensed banks as a comparable to impute interest income on the capital channelled by the Applicant to its subsidiaries under Section 140A (2) ITA.

[11] The Applicant further submits that the Respondent exceeded his jurisdiction and committed illegality as:

(a) Interest charged by banks on loans to their clients are clearly not comparable transactions under the Income Tax (Transfer Pricing) Rules 2012 and 2023 (“TP Rules”);

(b) The Applicant is an investment holding company that undertakes property development through its subsidiaries. It has completely different characteristics, functions, assets and risk from a licensed bank. All this information was submitted through a Transfer Pricing Report prepared by an independent tax consultant Ernst & Young to the Respondent but they chose to ignore it;

(c) The Applicant is not a bank and is prohibited from carrying out banking business and charge interest without a license under the Financial Services Act 2013 (“FSA”) , Therefore, the banks are not comparable under Rules 5 and 6 of the TP Rules and the decision is illegal. In fact, it is a criminal offence to do so under Section 8 FSA.

[12] The Respondent committed clear breach of natural justice by completely disregarding the Applicant’s Transfer Pricing Reports. The Revenue failed and refused to enquire and/or examine the

functions, assets and risks of the Applicant, substance of the funds that were injected into the Applicant's subsidiaries.

[13] The only objection from the AG is that the Applicant need to exhaust the alternative remedy provided for under ITA 1967 before filing for judicial review. The Applicant cannot bypass the alternative remedy; any dissatisfaction over the decision of the Respondent have to go through the SCIT.

[14] In this case, there is no dispute over a question of fact but a question of law, whether the Respondent had exceeded jurisdiction. 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 amenable issues.

[15] The Respondent had committed a clear error of law when it illegally substituted the Applicant's transaction with the interest rates

charged by licensed banks for loans as Deemed Interest under Section 140(2) of the ITA. The Respondent then imposed deemed interest at the interest rates charged by the banks to their banking customers. This is a breach of Section 140A(2) of ITA 1967 and Rule 6 of the Income Tax (Transfer Pricing) Rules 2012 and 2023 as the Applicant and the banks' transactions are not comparable transactions. The Respondent does not have the power to dictate that the Applicant should have charged interest as if it were a licensed bank.

[16] The Respondent failed to comply with Rule 6(2) and (3) of the TP Rules and stipulates that the comparable must be sufficiently similar and the Respondent in concluding the assessment for 2017 -2019 and 2021 – 2023 all dated 29.10.2024, had substituted the transactions between the Applicant and its subsidiaries and treated them as if they were interest bearing loans given by licensed banks to their banking customers. The deemed interest at the rates charged by the banks to their customers. The Respondent failed to consider that the Applicant is carrying out property development activities through its SPV subsidiaries. They are clearly not comparable to banks that provide financing and charge interest. The

Applicant is prohibited from charging interest as it is not licensed under Section 8 of Financial Services Act 2013.

[17] The law in interpreting tax provision is settled, when the meaning of a taxing provision is unclear, any ambiguity must be construed in favour of a taxpayer ***(see: Merimen Online Sdn Bhd v KPHDN [2025] 3 CLJ 1)*** where it was held by the Court of Appeal as per Ahmad Kamal Md Shahid JCA – "The courts always refused the respondent's attempts to rerite legislation"

His Lordship also refers to the Supreme Court decision in ***National Land Finance Co operative Society Ltd v Director General of Inland Revenue [1993] 1 MLRA 512; [1994] 1 MLJ 99; [1993] 2 AMR 3581*** that settled the interpretation of taxing statutes:

> *"…In construing the said amendments certain principles relating to the interpretation of taxing statutes must be followed. Firstly, there is no room for intendment in tax legislation and the rule of strict construction applies. Unless there are clear words tax cannot be imposed…Another principle is that where the meaning of a statute is in doubt the ambiguity must be construed in favour of the subject. Yet another principle is that an exemption from tax cannot be removed except by sufficiently clear words to achieve that purpose…"*

[18] This Court agrees with the Applicant that this application raises an important question of law which are suitable for determination by this Court and the only avenue is by way of judicial review application.

In ***Metacorp Development v Ketua Pengarah Hasil Dalam Negeri [2011] 5 MLJ 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."*

[19] As for the stay application against the Respondent decision, the Applicant requests for it to be allowed as to preserve the status quo pending the disposal of the judicial review application and to prevent

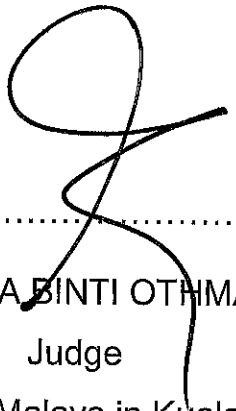
irreparable damage to the Applicant. The AG objects to the stay as Section 21C of the RPGT Act states that the institution of any proceedings under any written law against the Respondent did not relieve any person from liability to pay.

[20] The Applicant had successfully demonstrated that without the stay being given until the disposal of the judicial review substantively, it will trigger a domino effect that may lead to the withdrawal of financial facilities, halting of ongoing projects, implementation of cost cutting measures and inability to meet its construction obligations for the revenue that is required to be paid is huge amount. The Applicant provides corporate guarantees and inject funds into subsidiaries to support on going projects and a sudden demand of this huge amount could cause the domino effect as stated above. As for the stay, I allowed until the disposal of the judicial review application only just to preserve the status quo of the payment.

[21] This Court also allows leave to commence judicial review application for it is proper for the question of law to be disposed of by proper argument of the relevant tax law and its application

instead of being determined by calling of witnesses. Costs in the cause.

Dated on day 20th Month of October 2026



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NORLIZA BINTI OTHMAN

Judge

High Court of Malaya in Kuala Lumpur

Special Power Division (1)

For the Applicant: Nitin Vasant Venket Nadkarni & Jesslyn Teo Yi En

Messrs. Lee Hishammuddin Allen & Gledhill

For the Respondent: Norhaina Zulkifli

Attorney General's Chambers