

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL DIVISION

CIVIL SUIT NO. S5-21-102-2008

BETWEEN

KERAJAAN MALAYSIA

.....PLAINTIFF

AND

KUMPULAN PINANG HARTANAH SDN BHD.....DEFENDANT

GROUND OF JUDGMENT

This is the Plaintiff's application for Summary Judgment under 0 14 RHC against the Defendant.

The Plaintiff's claim is for an outstanding real property gains tax in the sum of RM 932,987.55.

The Defence of the Defendant is that:

- a) the Defendant is not a "chargeable person" on the disposal of the chargeable asset;
- b) there is no chargeable gains on the disposed asset.

The Defendant contends that the asset was acquired on 24.5.1995 at the value of RM 12, 600, 000.00 and it was disposed at the market value of only RM 10, 982, 159.26 on 26.8.2000. This shows that the Defendant incurred a loss of RM 1,617,840.74.

Consequently there is no gain which can be chargeable by the Plaintiff. The Defendant contends that pursuant to section 7 (1) (b) of the Real Property Gains Tax 1976, these are allowable loss.

The Courts Findings

Most of the case law authorities on tax are premised on the Income Tax cases and not on real property gains tax as in the vcase herein. However the principle as set out in those income tax cases are applicable as the provisions in the Income Tax Act and the Real Property Gains Tax Act 1967 are similar.

It is to be noted that the scheme of the Income Tax laws in the country envisaged that tax shall be paid although the person assessed disputes the assessment in the notice of assessment. This is provided for in section 21 (1) and fortified by 23 (3) of the Real Property Gains Tax Act 1976 Act. The court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under section 21 (4) of the same.

The Notice of Assessment for the year of Assessment 2000 was served on the Defendant by post to the last known address of the Defendant and this was admitted by the Defendant in its affidavit of

reply. Thus, the Notice of Assessment has been duly served on the Defendant, and hence section 21 and 23 (3) of the Real property Gains Act 1976 applies. On service of a notice of assessment , the tax payable by the Defendant, under the assessment becomes due and payable whether or not the Defendant appeals against the assessment and would be recovered by the Government by civil proceedings as a debt due to the Government. The question of whether the assessment itself was proper or otherwise is not for this court to determine. (Refer to the case of ***Teng Chua Huat v Government of Malaysia*** [1997] 7 CLJ 358)

The Real Property Gains Tax Act 1976 made provisions for appeals for person aggrieved by the assessment made on him as follows:

“18 (1) A person aggrieved by an assessment made on him may appeal to the Special Commissioners against the assessment in the manner as an appeal against an assessment of income tax made under the Income Tax Act 1967, and the provisions of Sections 99, 100, 101 and 102 of that Act, as far as they are applicable and with the necessary modifications, shall apply to an appeal against an assessment made under this Act.....”

It is to be noted that section 20 (1) of the Real Property Gains Tax Act 1976 provides that an assessment shall become final and conclusive as regards the amount of the tax assessed on the expiry of the time for appeal against the assessment.

The contention by the Defendant is considered a plea which the court could not entertain. (Refer to section 23 (3) of the Real Property Gains Tax Act 1976.

There is a dearth of authorities that supports the effect of the section 23(3) of the Real Property Gains Tax Act 1976. Gill F.J in delivering the judgment in a Federal Court case of ***Sun Man Tobacco Co. Ltd v Government of Malaysia*** [1973] 2 MLJ 163 held that:

“.....the effect of the relevant provisions of the Income Tax 1967 is that on the service of a notice of assessment on the person assessed, the tax payable under the assessment becomes due and payable at the place specified in the notice, whether or not the person appeals against the assessment, and can then be recovered by the Government by civil proceedings as a debt due to the Government. On such civil proceedings being brought by the Government, the court has no power to entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased.”

In the case of ***Teng Chua Huat v Government of Malaysia*** the Court held that assessment of tax by the revenue can never be construed as a triable issue.

The Defendant's recourse is by appealing to the Commissioner of Income Tax which has been entrusted with such powers to entertain

appeal as provided under section 18 the Real Property Gains Tax Act 1976.

The Plaintiff had issued the Certificate pursuant to section 48 (1) of the Real Property Gains Tax Act 1976, which conclusively shows the amount that is due that warrants this court granting the order for the amount sought for.(Refer to ***Government of the Federation of Malaysia v Lee Tain Tshung*** [1992] 1 MLJ 269.

Thus for the above reasons, I grant the application by the Plaintiff for Summary Judgment under 0 14 RHC against the Defendant with costs.

Datin Zabariah Mohd Yusof

Tarikh : 11.6.2009

Bagi Pihak Plaintiff : Puan Suhaila
Lembaga Hasil Dalam Negeri

Bagi Pihak Defendant : Encik B. Jeyasingham
Tetuan Ghazi & Lim