

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(APPELLATE AND SPECIAL POWERS DIVISION)**

CIVIL APPEAL NO: R2-14-7-07/2012

BETWEEN

KETUA PENGARAH HASIL DALAM NEGERI - APPELLANT

AND

**1. PROF. DR SYED MUHAMMAD - RESPONDENT
NAQUIB AL ATTAS**

**A Case Stated By the Special Commissioners of Income Tax
For The Opinion of the High Court Pursuant to
Paragraph 34 Schedule 5 Of The Income Tax Act 1967**

**(In the Matter of The Special Commissioners of Income Tax
Appeal No: PKCP (R)20/2011)**

BETWEEN

PROF. DR SYED MUHAMMAD - APPELLANT

AND

KETUA PENGARAH HASIL DALAM NEGERI - RESPONDENT

GROUND OF JUDGMENT

The respondent had filed a civil suit vide Civil Suit No 54-22-134-2003 against ISTAC, IIUM and others (hereinafter referred to as 'defendants') asking for certain declaration. The said civil suit was settled out of court when the defendants agreed to pay certain compensations to the respondent in accordance with the Deed of Settlement dated 20.2.2008.

2. The Appellant imposed income tax on all the items of compensations totaling RM2,500,000.00 (Settlement Sum) which includes the sum of RM1,950,000.00 received by the respondent as a compensation for "emotional pain, mental anguish and pain and suffering".

3. The respondent appealed to the Special Commissioners of Income Tax, who allowed the appeal. Now the appellant is appealing against that decision of the Special Commissioners.

Issue

Whether under the circumstances of this case, the sum of RM1,950,000.00 was chargeable to income tax under section 13(1)(e) of the Income Tax Act 1967.

Decision

1. The parties to the Deed of Settlement has categorized the compensation into various specific items. For instance, in items (i),(ii) and (iii) of section 3.04 of the Deed of Settlement the several sums are stated as compensations:-

(i) for loss of basic pay [item (i)] ;

- (ii) for loss of fixed allowance [item (ii)] ; and
- (iii) for loss of honorarium (item (iii)).

Whereas under item (v) of section 3.04, the said sum of RM1,950,000.00 is described as compensation for “emotional pain, mental anguish, pain and suffering”.

2. At the hearing of the appeal the respondent produced a letter dated 30th April 2008(Exhibit G) from Messrs Zaid Ibrahim & Co., solicitors for the defendants confirming that the said “sum of RM1,950,000.00 was not intended to be compensation for his loss of employment”.

3. The appellant did not rebut the content of the Deed of Settlement or the content of exhibit G. In fact the respondent was not cross-examined at all by learned counsel for the appellant at the hearing before the Special Commissioners. Therefore the contents of those documents must be taken as correct.

4. The Deed of Settlement inter alia provides as follows:-

Section 2.01 which states:-

“The plaintiff and the defendants agree to settle their dispute and the plaintiff shall upon receipt of the Settlement Sum hereinafter defined, instruct his solicitors to file a Notice of Discontinuance of the Suit”; and

Section 2.03 which states:

The plaintiff hereby agrees that the withdrawal and discontinuance of the Suit by him shall constitute a full, final and complete settlement of such action and issues raised therein ...

5. Thus it is clear to me that the respondent did not receive the said sum of RM1,950,000.00 as an employee in respect of gain of profit for an employment but he received it as a plaintiff in the civil suit as consideration for agreeing to discontinue the civil suit. Hence, he is entitled to get exemption under paragraph 14 of Schedule 6 of the Income Tax Act 1967.

6. Paragraph 14 of Schedule 6 of the Income Tax Act 1967 clearly provides as follows:-

“ 14. Sums received by way of death gratuities or as consolidated compensation for death or injuries”

7. Black’s Law Dictionary, 7th Edition defines injury to include “any invasion of personal rights, including mental suffering...”

8. Words, Phrases & Maxims Legally & Judicially defines “injury” to include “any wrong or damage done to another, either in his person, rights, reputation or property”.

9. Thus, I agree with the respondent that the respondent’s reputation as a World Scholar was injured and therefore paragraph 14 of Schedule 6 is definitely applicable, to exempt the said sum of RM1,950,000.00 from tax.

Conclusion

Based on the above, I agree with the respondent's submission and dismiss the appeal with cost.

**DATO' ZALEHA BINTI YUSOF
JUDGE
HIGH COURT OF MALAYA
KUALA LUMPUR.**

Dated: 8th November 2012.

For the Appellant: En. Ahmad Isyak Bin Mohd. Hassan bersama Puan Azrul Safinas binti Rosli ; Ketua Pengarah Hasil Dalam Negeri.

For the Respondent: Mr. Nik Saghir bin Mohd. Noor; Messrs Nik Saghir & Ismail