CHARTERED TAX INSTITUTE OF MALAYSIA

e-CIRCULAR TO MEMBERS

CHARTERED TAX INSTITUTE OF MALAYSIA (225750-T)

e-CTIM TECH 67/2014 **3 October 2014**

TO ALL MEMBERS

TECHNICAL

Direct Taxation

TAX CASE UPDATE

Validity of additional assessments issued under Section 91(1) and the appropriate method of computation to be adopted

Ketua Pengarah Hasil Dalam Negeri (KPHDN) v Debir Desa Development Sdn Bhd (HC 2011) (Civil Appeal No: R1-14-20-07)

Date of Judgment: 8 Oct 2011

Facts

This is an appeal by the KPHDN (Appellant) against the decision of the Special Commissioners of Income Tax (SCIT) who had allowed the appeal by the taxpayer (Respondent) against additional assessments raised by the Appellant in respect of years of assessment (YA) 1996, 1997, 1998, and 1999.

The taxpayer is a company incorporated under the Companies Act 1965 and holds a housing developer's licence. The taxpayer had acquired 2 contiguous pieces of land in Kuala Lumpur (the "said Lands") for the purpose of carrying out a mixed development project comprising of residential and commercial building units (the "Project"). In its implementation of the Project, the taxpayer undertook the following processes:

- Applied for planning approval for the Project by submitting a single layout plan to DBKL. The plan was approved by DBKL.
- Upon approval by DBKL, the taxpayer submitted a single application to the Pentadbir Tanah Wilayah Persekutuan KL (the "Land Office") for approval of conversion of the conditions in the titles and subdivision of the said Lands. Following that approval, a premium of RM1,077,260 was paid for the entire Project. Other approvals were also obtained and statutory contributions were made.
- Obtained approvals from the relevant authorities for the Project's infrastructure works such as earthworks, road, drains etc. Single applications and approvals were obtained in respect of each infrastructure. Earthworks for the Project started in 1995.

For income tax purposes, the taxpayer computed profits using the progressive payment formula for estimating annual profits in accordance with Revenue's guidelines. The formula is as follows:

$$\text{Estimated Gross Profit} = \frac{\text{Payment Received \& Receivable}}{\text{Total Value of Development of Project}} \times \text{Estimated Gross Profit for the Project}$$

The taxpayer's computation of chargeable income based on the above formula for YA 1996 to YA 2000 was accepted by Revenue and assessments were issued. Tax was paid accordingly.

However, in a letter dated 16.10. 2002, Revenue proposed to the taxpayer to use the final actual realized sales and profit figures in the progress payment formula (instead of estimated profits) and apply it retrospectively from 1995 to 1999 ("Spreading Back Proposal"). An additional assessment dated 9.10.2002 for YA 1996 was issued based on the Spreading Back Proposal. The taxpayer

did not agree to the Spreading Back Proposal. The additional assessment was paid under protest.

In Jan 2003, Revenue made another proposal to treat the Project as 3 projects, namely the shop office, the shopping mall/plaza, and the condominium, on the grounds that the commencement date for the construction of the shop office and the condominium were different and that the site for the mall/plaza was sold in 1999 before the commencement of construction of the buildings. Subsequently (on 23.8.2004), the Revenue issued additional assessments for YA 1997, 1998 and 1999 based on the 3 projects proposal.

The taxpayer duly filed the Form Q to the SCIT to appeal against the additional assessments for the years of assessment 1996, 1997, 1998 and 1999.

Issues

The issues for the determination of the SCIT are: (i) whether in the circumstances of the case, the additional assessments for the relevant years were correct and validly made on the taxpayer, and (ii) in the event that the said assessments were incorrect, what method of computation should be adopted by the taxpayer in ascertaining its adjusted income for the relevant YA. The SCIT allowed the taxpayer's appeal and ordered that the additional assessments for the relevant years be set aside.

Revenue then appealed to the High Court (hereafter referred to as "the Court") against the SCIT's decision.

Decision:

Appeal dismissed with costs.

The following is a summary of the Grounds of Judgment:

1. The Court reiterated the principles enunciated in *Edwards v Bairstow and Harrison* [1956] AC 14 (House of Lords) and approved by the Supreme Court in the case of *Lower Perak Co-operative Housing Society Bhd v Ketua Pengarah Hasil Dalam Negeri* [1994] 2 MLJ 713, pertaining to the duty of the Court when hearing appeals from the SCIT:

   > "*When the case comes before the court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything ex facie which is bad law….it is, obviously erroneous in point of law. But without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene…*"

2. The Court took note of the findings of the SCIT as stated in the Case. The core of the appeal is whether the Respondent was carrying out 3 projects/ phases or just one. Revenue's contention that the Project consisted of 3 separate phases (namely, Phase A (shop offices); Phase B (shopping mall); Phase C (condominium)) was premised on the following:
   - Progress payments for each phase were received on different dates;
   - Different entries of development properties and expenditure in the audited accounts (e.g. for the financial year ending 31.12.1999, separate entries were made for "building work" done for the shop offices and for the condominium.);
   - Different commencement dates for the shop offices and for the condominium;
   - A proposal for the development of the shopping mall was separately made for DBKL approval on 14.7.1998.

   It was noted that these same arguments which were "regurgitated" in the appeal before the

Court, have been duly noted by the SCIT.

3. Revenue cited the case of Sarawak Properties Sdn. Bhd. v The DGIR [1974] 4 AMR 3181 as being "on all fours with the instant case" in support of the points made in (2) above. However, the Court was of the view that the instant Case can be distinguished from the case cited, and adopted the Respondent's list of distinguishing features, including the facts that the Respondent had only one Development Expenditure (DE) Account, and was the single owner for the Project (while Sarawak Properties had 2 DE accounts and there were 2 different owners for the 2 respective projects, there was no relation in terms of authority, approvals, statutory contributions, etc. between the 2 projects).

4. Revenue further submitted that recent developments show that whether a project is one or many, a vital criterion is what development units were involved and whether there is a cost accumulating centre and not whether the projects have a single layout plan or whether there is a single application for approvals from authorities as was the approach taken by the SCIT.

   Revenue contended that the SCIT did not find that there is one cost accumulating centre or that the company accounts treated the entire development as one project. Citing the following for support –

   i. Regulation 3 of the Income Tax (Property Development) Regulations 2007 (PDReg);
   ii. Paragraph 3 of the Public Ruling No. 1/2009 (PR No. 1/2009),

   However, it was pointed out by the Court that both the PDReg and the PR No. 1/2009 were not submitted before the SCIT and the PDReg are deemed to have effect from YA 2006 and subsequent YAs, while the date of issue of the PR No. 1/2009 was 22.5.2009 and is effective for YA 2006 and subsequent YAs. Hence, the PDReg/ PR No. 1/2009 cited above are not applicable to the appeal at hand.

   What is applicable is the PR No. 3/2006 dated 13.3.2006 (now replaced by the PR No. 1/2009) which defines "Project" as "a cluster of development units within a designated geographical area forming a cost accumulating centre including vacant lots for development".

   (*Note: In the PR No. 1/2009, the definition of "Project" has the added phrase "and where a cluster of development unit is erected in more than one phase, the development units erected in each phase shall be treated as a separate cluster of development units erected within a designated geographical area".)*

5. The SCIT had also noted that the witnesses for the Respondent had testified to the following –
   - Different phases do not equate to different projects;
   - Earnest deposit is not a cost accumulating centre;
   - The taxpayer had only one cost accumulating centre.

   All the above facts were not challenged by Revenue. The irresistible inference from the above observations is that the SCIT had made a finding of fact that the Project consisted only of one project and not 3 projects. The Court agreed with the Respondent's submission that such a finding of fact is unassailable since it has been substantiated by evidence and there is no misdirection in law. (Ref. KPHDN v. Aneka Jasaramai Ekspress Sdn Bhd [2005] MSTC 4095)

6. The Court agreed with the Respondent's submission that the SCIT's finding is the additional assessment for YA 1997 was statute barred because it was not made within 6 years as required under S91(1) of the ITA. Although Revenue invoked S91(3) of the ITA (fraud, wilful default or negligence on the part of the taxpayer), the SCIT's finding was that Revenue only appeared to rely on negligence but had failed to prove negligence on the part of the Respondent.

Based on the above grounds, the Court found that there was no misdirection in law in the finding of the SCIT, neither was there any justification to reverse the finding of the SCIT.

Members may read the full Grounds of Judgment from the Kuala Lumpur Law Courts Official website.

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)

RAYUAN SIVIL NO: R1-14-20-07

ANTARA

KETUA PENGARAH HASIL DALAM NEGERI … PERAYU

DAN

DEBIR DESA DEVELOPMENT SDN BHD … RESPONDEN

KES DINYATAKAN OLEH PESURUHJAYA KHAS CUKAI PENDAPATAN BAGI PENDAPAT MAHKAMAH TINGGI MENURUT PERENGGAN 34 JADUAL 5 AKTA CUKAI PENDAPATAN 1967

(DALAM PERKARA

PESURUHJAYA KHAS CUKAI PENDAPATAN RAYUAN NO. PKCP(R) 14/2005

ANTARA

DEBIR DESA DEVELOPMENT SDN BHD … PERAYU

DAN

KETUA PENGARAH HASIL DALAM NEGERI…RESPONDEN)

GROUNDS OF DECISION

1. This is an appeal by the Ketua Pengarah Hasil Dalam Negeri ("KPHDN")("Appellant"), against a Deciding Order of the Special Commissioners of Income Tax ("SCIT") who had allowed the appeal by the Respondent, Debir Desa Development Sdn. Bhd. ("Respondent") against additional assessments to income tax imposed by the Appellant in respect of Years of Assessment 1996,1997,1998 and 1999. The decision of the SCIT is contained in the Deciding Order dated 15.2.2007. Upon a request of the Appellant, the SCIT on 9.8.2007 stated a case ("Case Stated") for the opinion of the High Court pursuant to paragraph 34 Schedule 5 of the ITA. I had dismissed the appeal of the Appellant with costs and hence this appeal.

2. The facts admitted or proved as found by the SCIT as a result of the documentary evidence and submission by the parties before the SCIT as per pp.5-10 of the Case Stated is reproduced for convenience -

> "(i) The Appellant [now **Respondent** in this appeal at High Court] was incorporated on 7.12.1994 under the Companies Act 1965 as a private limited company.
>
> (ii) The Appellant is a housing developer and holds a developer's licence issued pursuant to the Housing Developers (Control and Licensing) Act 1965.
>
> (iii) By virtue of two Sale and Purchase Agreements both dated 7.1.1995 the Appellant acquired by purchase from Syarikat Permodalan Kebangsaan Bhd. two (2) contiguous pieces of land,

P.T.8592 and Lot 44676 (the "said Lands") both of Mukim Batu, Kuala Lumpur, with a total area of approximately 32.5 acres.

(iv) The said Lands were acquired by the Appellant for the purpose of carrying out a mixed development comprising residential and commercial building units (the "Project"). The name given to the Project is "Medan Putra". This name was given approval by Dewan Bandaraya Kuala Lumpur ("DBKL") on 24.8.1995.

(v) The building units in the Medan Putra Project could broadly be classified as shop-office, shopping mall/plaza and condominium.

(vi) To enable the Project to be implemented the Appellant applied for planning approval of its layout plan. A single layout plan for the Project was submitted to and approved by DBKL.

(vii) Upon approval of the layout plan, the Appellant submitted in a single application to the Pentadbir Tanah Wilayah Persekutuan, Kuala Lumpur (the "Land Office") for approval of conversion of the conditions in the titles and subdivision of the said Lands on which the Project was situated. This application was approved and the premium of RM1,077,260.25 for the entire Project was paid. In addition, other approvals were obtained and statutory contributions were made for the Project.

(viii) Approvals from the relevant Authorities for the Project's infrastructure works such as earthworks, road, drains, water reticulation, and sewers were made and obtained. Single applications and approvals were obtained in respect of each of infrastructure. Physical works i.e. earthworks for the Project started in 1995.

(ix) In computing the profits for income tax purposes, the Appellant followed the Respondent's guidelines by using the progressive payment formula for estimating annual profits and tax. The formula was as follows –

$$\text{Estimated Gross Profit} = \frac{\text{Payment Received \& Receivable}}{\text{Total Value of Development of Project}} \times \text{Estimated Gross Profit for the Project}$$

Based on the Respondent's [now the **Appellant** in this appeal at High Court] formula given in the above paragraph, the chargeable income and tax payable for the respective years were as follows -

Y/A	1996-1997	1998	1999	2000 (PYB)
Chargeable Income	-85,537	17,829,640	6,225,465	116,728,968
Tax Payable and Paid	NIL	4,992,299.20	1,743,130.20	NIL

The Respondent accepted the above figures and issued Notices of Assessments in Form J for the respective years based on the above formula. Tax was paid accordingly. Subsequently there were some minor adjustments to the above figures and the corresponding JA & JR Forms were issued. The revised chargeable income and tax payable and paid were as follows –

Y/A	1996	1997	1998	1999	2000 (PYB)
Chargeable Income	1,198,135	5,109,638	11,485,150	6,246,106	116,606,221
Tax Payable and Paid	359,440.50	1,532,891.40	3,215,842	1,748,909.68	NIL

(x) On 21 March 2002, the Respondent issued Notice of Assessment in Form J for the sum of RM32,649,741 in respect of Year of Assessment 2000 (PYB).

(xi) However, by letter dated 16 October 2002, the Respondent proposed to use the final actual realized sales and profit figures (instead of estimates of the value of the development and gross profit of the Project as stipulated in the Respondent's guidelines) in the progress payment formula and apply it retrospectively from 1995 to 1999 to get the estimated profits for the respective years (the "Spreading Back Proposal").

(xii) By the same letter of 16 October 2002, the Respondent invited the Appellant to agree to their proposal as in paragraph 11 above.

(xiii) However, the Appellant was already on 16 October 2002, served with an additional assessment (Form JA) dated 9 October 2002, by which an additional assessment for Year of Assessment 1996 amounting to RM892,694.40 was raised based on the Respondent's Spreading Back Proposal.

(xiv) The Appellant did not agree to the Respondent's Spreading Back Proposal as it was a departure from the normal accepted practice of the Respondent. The Appellant therefore appealed and objected to the additional

assessment for Year of Assessment 1996. The aforesaid additional assessment was paid under protest. Around January 2003, the Respondent subsequently suggested another proposal which treated the Project as three (3) projects.

(xv) In the month of September 2003, the Respondent conducted a field audit on the Appellant's business. Thereafter, the Respondent took the stand that the housing Project carried out by the Appellant consisted of three (3) projects, each product, namely: shop-office, shopping mall/plaza and condominium constitute a separate project the 3 Projects Proposal. That conclusion was reached by the Respondent on the ground that the commencement date for the construction of the building for the shop-office and the construction date of the buildings for the condominium were different while the site for the mall/plaza was sold in 1999 before the commencement of construction of the buildings.

(xvi) The Respondent therefore revised the tax computations and issued additional assessments based on the Spreading Back Proposal and the 3 Projects Proposal as follows –

Year of Assessment	Date of Assessment	Additional Assessment Raised	
1996	9.10.2002	RM 892,694.40	(based on Spreading Back to Proposal)
1997	23.8.2004	RM3,225,854.40	(based on 3 Projects Proposal)
1998	23.8.2004	RM6,029,213.12	
1999	23.8.2004	RM2,700,823.16	

(xvii) The Appellant objected to the Respondent's treatment of the Project using the Spreading Back Proposal and the 3 Projects Proposal. Notices of Appeal in Form Q were duly filed against the assessments."

3. Before delving into the merits of the appeal, the Court is mindful of the case of **Lower Perak Co-operative Housing Society Bhd v. Ketua Pengarah Hasil Dalam Negeri [1994] 2 MLJ 713** at p.732F-H where the Supreme Court approved and followed the principles

enunciated in **Edwards v. Bairstow and Harrison [1956] AC 14** (House of Lords) pertaining the duty of the Court when hearing appeals from the SCIT-

> "*When the case comes before the court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination.*"

Issue

4. The issue before the SCIT is (i) whether in the circumstances of this appeal, the additional assessments in respect of Years of Assessment 1996,1997,1998 and 1999 were correct and validly made on the Respondent; and (ii) in the event the additional assessments were incorrect or not validly made by the Respondent, what method of computation should be adopted by the Respondent in ascertaining its adjusted income for the relevant years of assessment.

Findings of the Court

5. The findings of the SCIT are found at pp. 43-52 of the Case Stated. Basically as pointed out by the Appellant the core of this appeal is whether the Respondent was carrying out 3 projects / phases or just one. The Appellant argued that the Medan Putra Project consisted of 3 separate phases -

(a) Phase A – shop offices;

(b) Phase B- shopping mall; and

(c) Phase C- condominium.

5.1 The Appellant's contention that the Medan Putra Project consisted of 3 separate projects is premised on the following:

(a) Progress payments were received on different dates -

(i) for shop offices - in 1995 and 1996;

(ii) for condominium - in 1997;

(iii) for shopping mall - none.

(b) Different entries of development properties and expenditure whereby in the audited account for year ending 31.12.1999 (Exh.V), the Respondent reported of 2 types of development expenditures incurred-

(i) "building work done for shop offices"; and

(ii) "building work done for condominium."

(c) Different commencement dates for shop offices and condominium, namely 1995 for the former and 1997 for the latter.

(d) A proposal for the development of the shopping mall was separately made for DBKL approval on 14.7.1998. The development did not commence and the Respondent later sold the piece of land meant for this phase of development on 15.3.1999.

5.2 It is to be observed that this contention of the Appellant has been noted by the SCIT in the Case Stated at pp.13-16; so to my mind the Appellant is merely regurgitating the same argument during the appeal at the High Court.

6. The contention of the Appellant on the Spreading Back Proposal and the 3 Projects proposal has been canvassed at pp.16-18 of the Case Stated.

7. The Appellant contended (a) the SCIT's basis for deciding there is only one project is found at paragraph 6(iii) to (viii) at pp.5-6 of the Case Stated; (b) the SCIT did not find there is one cost accumulating centre or that the company accounts treat the entire development as one project; (c) for tax purposes, one essential criterion is how the projects are treated in the accounts or how the costs from each project are reported in the accounts. In this regard the Appellant relied on the case of **Sarawak Properties Sdn. Bhd. v. The Director General Of Inland Revenue [1974] 4 AMR 3181** and submitted as follows:

(i) It is on all fours with the instant case in that there were separate entries of payment received and separate development expenditure declared in the accounts and there should be separate phases in the Medan Putra Project.

(ii) In the event of separate phases, the estimated gross profit computed for year of assessment should be based on the percentage of completion of each phase of the project, and therefore the Appellant's additional assessments on the Respondent for Years of Assessment 1997, 1998, 1999 are correct.

(iii) The tax computation based on the Completed Contract Method is to be disregarded as in this instant appeal it

was agreed that the tax computations submitted by the Respondent to the Appellant were based on the Percentage of Completion Method.

7.1 Again it is to be pointed out the same arguments were ventilated and noted by the SCIT at pp. 19-20 of the Case Stated.

8. The Appellant referred to regulation 3 of the Income Tax (Property Development) Regulations 2007, ruling (sic- should be cited as paragraph) 3 of the Public Ruling No.1/2009- Property Development and ruling(sic- should be cited as paragraph) 4.8 and 4.10 of the Public Ruling No.3/2006 - Property Development & Construction Contracts. The Appellant submitted that recent developments show that whether a project is one or many, a vital criterion is what development units are involved and whether there is a cost accumulating centre, and it is not whether the projects have a single layout plan or whether there is a single application for approvals from authorities as was the approach taken by the SCIT.

8.1 As far as regulation 3 of the Income Tax (Property Development) Regulations 2007 and paragraph 3 of the Public Ruling No.1/2009- Property Development are concerned, these were not submitted before the SCIT. Rightly so since in the case of the Income Tax (Property Development) Regulations 2007, they were made on 5.6.2007 and regulation 1 (2) states "*These Regulations are deemed to have effect from the year of assessment 2006 and subsequent years of assessment."*

8.2 In the case of paragraph 3 of the Public Ruling No.1/2009- Property Development, the date of issue is 22.5.2009 and paragraph

16 states "*This Ruling is effective for the year of assessment 2006 and subsequent years of assessment. It supersedes the Public Ruling No. 3/2006 dated 13 March 2006."*

8.3 In the light of the effective dates for of the Income Tax (Property Development) Regulations 2007 and the Public Ruling No.1/2009- Property Development, regulation 3 and paragraph 3 are not applicable to the appeal at hand.

8.4 What is applicable before the SCIT then was only Public Ruling No. 3/2006 dated 13 March 2006 (Exh.M)(now superseded by Public Ruling No.1/2009- Property Development), which the SCIT had noted namely, paragraphs 4.8 and 4.10 at pp.21 and 22 of the Case Stated as "the term "*Project*" is defined in the Respondent's own Public Ruling on Property Development (Exhibit 'M') to mean "*a cluster of development units within a designated geographical area forming a cost accumulating centre including vacant lots for development*." (paragraph 7.3(ii)).

8.5 In addition the SCIT noted –

(a) "Appellant's expert witness AW2 testified that different phases do not equate to different projects. This fact was not challenged by the Respondent." (paragraph 7.3(i));

(b) "The Appellant's witness AW3 who is an accountant testified that earnest deposit is not a cost accumulating centre. The Appellant did not challenge or disagree with this fact."(paragraph 7.3(ii));

(c) "However building construction cost is only one component of the total development expenditure which comprises also other expenditure e.g. cost of earthworks,

infrastructure works, capital contributions/fees paid to Authorities, Professional fees etc. Appellant's witness AW3 had shown that the Appellant has only one Development Expenditure Account i.e. only one cost accumulating centre. The Respondent did not challenge or disagree with this fact." (paragraph 7.3(iii)).

8.6 The irresistible inference to be drawn from the aforesaid observations is that the SCIT made a finding of fact at p.46 of the Case Stated that the Medan Putra Project consisted only of one project and not three projects as the Appellant postulated. I agreed with the submission of the Respondent that such a finding of fact is unassailable since it has been substantiated by evidence and there is no misdirection in law (see the statement of Raja Azlan Shah F.J. (as His Majesty then was) which appears in the judgment of Raus Sharif J (now PCA) in the case of **KPHDN v. Aneka Jasaramai Ekspress Sdn Bhd [2005] MSTC 4095** at p.4097).

8.7 In the light of the Court's view that finding of the SCIT that there is only one project is correct, it means that the table marked as Encl.15A (during the appeal proceedings) pertaining to the Respondent's tax computation attached to the Respondent's letter Ref.AL\C.1851257-07 dated 4.6.04 in Document 15 of Bundle C (Agreed Bundle of Documents) and the table marked as Encl.15B (during the appeal proceedings), the Respondent's worksheet for the Respondent's tax computation for Y/A 1996 to Y/A 2000 are no longer relevant.

9. As for the argument with respect to the case of **Sarawak Properties Sdn. Bhd.** (supra), I agreed with the Respondent the case can be distinguished . In this regard I gratefully adopt the table illustrated by the Respondent showing the major features as to why in **Sarawak Properties Sdn. Bhd.** (supra) the SCIT found it is more than one project in contrast to the Medan Putra Project which is a single project -

"

Sarawak Properties case	Medan Putra case
(i) 2 cost accumulating centres, i.e. 2 Development Expenditure Accounts Company accounts treat the TAR Centre and the 68 units of shophouses as 2 separate projects.	One cost accumulating centre i.e. one Development Expenditure Account only. Company accounts treat the entire development as one project.
(ii) Different owners for the 2 respective projects. TAR Centre project owned by Sarawak Properties while shophouses project owned jointly by Sarawak Properties and Tamasa Holdings.	1 owner for the single project. 1 owner for the single project.
(iii) Each project is developed on a separate lot of land. TAR Centre developed on Lot 273 & Shophouses developed on Lot 274.	Single project developed over one amalgamated piece of land (from previously 2 contiguous pieces of land namely PT 8592 and Lot 44676) with the shopoffice products spread over these 2 pieces of land.
(iv) The 2 projects are identified with separate project name. TAR Centre project is called "Tun Abdul Rahman Centre" and Shop-house project is called "Taman Sri Sarawak".	The single project comprising 3 products is called "Medan Putra Business centre and condominium".
(v) No relation in terms of authority, approvals, statutory contributions, etc. between the 2 projects.	Authority approvals, statutory contributions, professional fees etc. were all applied for and paid for on a single project basis.

"

10. The Appellant contended that the Additional Assessment for the Year 1997 was not statute barred as the Respondent was negligent because of wrong estimates of value of the Project and estimate of gross profit. In this regard I agreed with the Respondent's submission that the SCIT 's finding is the Additional Assessment for the Year 1997 was statute barred because it was not made within 6 years as required under s.91(1) of the ITA.

10.1 As for the assessment after the six year limitation period it can only be made pursuant to s.91(3) of the ITA on the ground of fraud, wilful default or negligence. However in invoking s.91(3) of the ITA, the SCIT's finding is it only "appears" that the Appellant was relying on negligence but failed to prove negligence on the part of the Respondent.

11. The Court has considered the Written Submissions of the Appellant and the Respondent (Encls.9 and 15 respectively), the Reply to the Respondent's (Taxpayer) Outline Submission (Encl.17) and the oral submissions. Based on what I have addressed above I find there is no misdirection in law in the finding of the SCIT and neither is there any justification to reverse the finding of the SCIT. I did consider the other issues submitted in the respective submissions of the parties. However, I am not inclined to dwell on any of them as I am of the view it will not affect the final determination of this appeal. Accordingly, I had dismissed the appeal of the Appellant with costs.

Dated: 8.10.2011

SGD. (**DATUK LAU BEE LAN**)
Judge

Counsel for the Appellant:

Puan Neng Juliana Ismail
Peguam Kanan Hasil
Lembaga Hasil Dalam Negeri
Jabatan Undang-Undang
Blok 9, Tingkat 9
Kompleks Bangunan Kerajaan
Jalan Duta
50758 Kuala Lumpur

Counsel for the Respondent:

Encik Nik Saghir bin Mohd Noor
Messrs Nik Saghir & Ismail
Advocates & Solicitors
Level G2 & Mezzanine
Plaza Permata
No.6, Jalan Kampar
50400 Kuala Lumpur