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MALAYSIA
IN THE HIGH COURT IN SABAH AND SARAWAK
AT KUCHING
TAX APPEAL NO.: KCH-14-1/9-2013

BETWEEN

**KETUA PENGARAH HASIL
DALAM NEGERI** ... **APPELLANT**

AND

**BINTULU LUMBER
DEVELOPMENT SDN BHD** ... **RESPONDENT**

BEFORE THE SPECIAL COMMISSIONER OF THE INCOME TAX
IN KUCHING
APPEAL NO. PKCP (R) 36/2010

BETWEEN

BINTULU LUMBER DEVELOPMENT SDN BHD ... APPELLANT

AND

KETUA PENGARAH HASIL DALAM NEGERI ... RESPONDENT

GROUND OF DECISION

Introduction

1. This is the appeal by the Inland Revenue against the decision of the Special Commissioner of Income Tax in allowing the claim of Bintulu Lumber Development Sdn. Bhd for Reinvestment Allowance ["RA"] for the year 2008.
2. Bintulu Lumber Development Sdn. Bhd ["the Respondent"] is incorporated on 25th October, 1995 and at all material times, is

1 resident in Malaysia dealing in logging and palm oil
2 cultivation and farming business.

3 3. The Respondent claimed Reinvestment Allowance for the year
4 2008 in respect of preparatory works [clearing and preparing
5 the ground, provision of irrigation or drainage systems and
6 construction of access roads and bridges] and planting of oil
7 palm trees as being incurred under paragraph 1A of Schedule
8 7A of the Income Tax Act 1967. The claim was disallowed by
9 the Director General of Inland Revenue ["the DG Revenue"].

10 4. Dissatisfied, the Respondent then appealed to the Special
11 Commissioner of Income Tax ["Special Commissioner"]
12 against the decision of the DG Revenue.

13 5. The Special Commissioner, after perusing the documents
14 tendered, indicated that they did not require oral testimony but
15 would allow the Respondent to call for such testimony should
16 they consider it necessary, at a later stage, for their decision.
17 The Special Commissioner directed the parties to file written
18 submission on an issue of law framed by the Special
19 Commissioner in the following terms, for determination:

20 *Whether the cultivation of palm oil falls within the ambit of*
21 *the words "cultivation of fruit" stipulated in paragraph*
22 *9(C) of Schedule 7A, Income Tax Act 1967*

23 6. On 22nd May 2012, the Special Commissioner allowed the
24 appeal in favour of the Respondent. Hence, the present appeal
25 by the DG Revenue.

26

1 **The Law**

2 7. Income Tax Act 1967, paragraph 1A of Schedule 7A provides:

3 *"1A. Subject to this Schedule, where a company which*
4 *has been in operation for not less than twelve months and*
5 *is resident in Malaysia for the basis year for a year of*
6 *assessment has incurred in the basis period for that year of*
7 *assessment, capital expenditure in relation to an*
8 *agricultural project in Malaysia for the purposes of any*
9 *qualifying project referred to under subparagraph 8 (c),*
10 *there shall be given to the company for that year of*
11 *assessment a reinvestment allowance of sixty per cent of*
12 *that expenditure.*

13 8. Paragraph 9 of Schedule 7A states:

14 *"Capital expenditure", in relation to an agricultural*
15 *project referred to in paragraphs 1A and 1C, means capital*
16 *expenditure incurred in respect of -*

- 17 *a) the clearing and preparation of land;*
18 *b) the planting of crops;*
19 *c) the provision of irrigation or drainage systems;*
20 *d) the provision of plant and machinery;*
21 *e) the construction of access roads including*
22 *bridges;*
23 *f) the construction or purchase of buildings*
24 *(including those provided for the welfare of*
25 *persons or as living accommodation for persons)*
26 *and structural improvements on land or other*
27 *structures; or*
28 *g) the construction of chicken and duck houses,*
29 *for the purposes of any of the following activities:*
30 *(aa) cultivation of rice and maize;*
31 *(bb) cultivation of vegetables, tuber and roots;*
32 *(cc) cultivation of fruits;*

1 **"Oil palm fruits** are product of plant growth. The
2 palm oil fruits is edible reproductive body of the
3 seed plant. It is a succulent plant part. It is the
4 fleshy seed-bearing part of a plant **used as food**".

5 At the same time, we find that Revenue has not seriously
6 disputed the dictionary meaning of the word "fruit", based
7 on the definition provided in Wikipedia (relied by both
8 sides), and the dictionary meaning referred to by Revenue.
9 For instance, we refer to the article referred to by the
10 Revenue titled "Description of the Palm Tree Fruit" in the
11 article eHow from the Internet, which heading the
12 following description is reproduced below

13 "Palm trees are found in tropical environments, and
14 they produce several types of edible fruit. Some types
15 of palm fruit used in food products includes dates, acai
16 barrier, and coconuts. Palm trees also produce oil
17 palm fruits, grown for its oil...."

18 Later down, the expression "oil palm fruit" is given the
19 following description:

20 "The African oil palm is grown for its oil **this**
21 **palm tree produces small oblong, orange fruits.** Oil
22 palm fruits are oily and greasy, unlike the other
23 types of palm fruits. If not harvested, they will drop
24 to the ground and spread oil. **Accordingly to**
25 **University of Georgia, an oil palm may contain up**
26 **to 300 fruits.**"

27 From the above emphasized words, there can be
28 no denial that palm oil trees produced palm oil
29 fruits. Thus, in summing up, based on the
30 dictionary meaning and other references from
31 the Internet referred to by both sides in their
32 respective bundles, we conclude the palm oil

1 **fruits fall within the ordinary, literal, dictionary**
2 **meaning of the word "fruit".**

3 10. The Special Commissioner rejected the DG Revenue’s
4 contention, which the Special Commissioner described as
5 narrow contention that palm oil fruits are not fruits as
6 commonly understood because they are not sweet, not edible
7 raw and not a food crop. Instead, the Special Commissioner
8 took judicial notice of a passage under the sub-heading “B. Oil
9 Palm fruits are edible fruits...” found in the Respondent’s
10 Bundle titled “Taxpayer’s Submission on Meaning of Fruits”
11 [which the DG Revenue had not disputed] that palm oil fruits
12 are not edible raw and a tropical culinary fruit.

13 11. The Special Commissioner rejected the DG Revenue’s
14 contention that the word “fruits” in paragraph 9(cc) of
15 Schedule 7A be interpreted to mean "fruits in Malaysia" in its
16 common and ordinary usage in this country.

17 12. The Special Commissioner stated further:

18 *"However, we find the real bone of contention and the*
19 *primary issue for determination raised by Revenue in this*
20 *case is that the word ‘cultivation of fruit’ within paragraph*
21 *9(cc) of Schedule 7A be interpreted to mean "fruits in*
22 *Malaysia", in its common and ordinary usage in this*
23 *country".....*

24 *Thus, it is observed that Revenue’s substantive position*
25 *on the interpretation of paragraph 9(cc) of Schedule 7A,*
26 *raised an issue on statutory interpretation applicable to tax*
27 *statutes, for the Special Commissioners to decide. It is now*
28 *necessary to see how the Court have interpreted tax statutes.*

- 1 13. Applying the principles from Palm Oil Research and
2 Development Board Malaysia & Anor v Premium Vegetable
3 Oils Sdn. Bhd. (and Another Appeal) [2004] 4 AMR 202,
4 given that the word “fruits” is not ambiguous or obscure and
5 the ordinary meaning of which has been defined in dictionaries,
6 Wikipedia and other internet articles produced by both sides,
7 the Special Commissioner applied the literal and ordinary
8 interpretation to the word “fruits” and opined that the general
9 word “fruits” means and cover every fruit there is, irrespective
10 of whether it is of Malaysian origin.
- 11 14. The Special Commissioner further found that the DG
12 Revenue’s interpretation of the word "fruit" to mean "fruit in
13 Malaysia" runs afoul of the second principle in Oil Palm
14 Research case, that is, the DG Revenue cannot read intendment
15 into the general word "fruit" to mean only "fruit in Malaysia".
- 16 15. The Special Commissioner decided that by applying the literal
17 interpretation, palm oil fruits comes under the ambit of the
18 word “fruits” in paragraph 9(cc), without causing any injustice
19 or ambiguity in its interpretation.
- 20 16. The Special Commissioner did not consider the fourth
21 principle in Oil Palm Research case as they are of the view that
22 the application of the first, second and third principles of
23 statutory interpretation have clearly determined the issue in
24 this case.
- 25 17. The Special Commissioner further fortified their view that
26 palm oil fruits falls within the ambit of “fruits” in paragraph
27 9(cc) by referring to Schedule A under Paragraph 3

1 “CANCELLATION” of Income Tax (Approved Crops) Order
2 1980, PU (A) 106, which included palm oil as approved crop
3 for the purpose of section 18 and paragraph 7 of Schedule 3 i.e.
4 qualifying agriculture expenditure where Capital Allowance
5 for capital expenditure expended is granted where oil palm
6 trees are planted on land cleared for planting. In view that
7 palm oil had been recognized and treated as an approved crop
8 as stated above, it fortified the proposition that palm oil fruits
9 are to be treated as fruits within the meaning of “fruits” in
10 paragraph 9(cc).

11 **Burden of Proof**

12 18. Where the decision of the Special Commissioner is appealed to
13 the High Court by way of cases stated [as in this appeal], the
14 burden lies on the Appellant to satisfy the court that the
15 Special Commissioner’s decision was based on the
16 misconception of the law or their conclusion cannot be
17 supported by the primary fact, and that conclusion on the
18 mixed facts and law was such that no reasonable Special
19 Commissioner could have reached it if they had correctly
20 directed themselves. See Director-General of Inland Revenue v
21 Hypergrowth Sdn Bhd [2008] 1 MLJ 417; [2008] 4 CLJ 250
22 cited in Kyros International Sdn. Bhd. v Ketua Pengarah Hasil
23 Dalam Negeri [2013] 2 MLJ 650.

24 **Preliminary Issue - Whether the Decision of The Special**
25 **Commissioner is Appeallable?**

26 19. The Respondent raised a preliminary issue on the appealability
27 of the Special Commissioner’s decision in this case. Learned

1 counsel for the Respondent submitted that only the decision on
2 question of law is appealable and that the Special
3 Commissioner has the final say on question of law. Learned
4 counsel for the Respondent submitted that the issue on how the
5 word “fruits” in paragraph 9(cc) of Schedule 7A should be
6 construed – whether by literal, liberal, purposive or mischief
7 interpretation – is a question of law, and that in this case, both
8 parties agreed that the word “fruits” should be given its literal
9 meaning and this is exactly what the Special Commissioner
10 had done [First Determination].

11 20. Learned counsel for the Respondent submitted that the Special
12 Commissioner adopted the dictionaries meaning and held that
13 “fruits” as envisaged by paragraph 9(cc) includes all kinds of
14 edible fruits as well as culinary fruits. These fruits are not
15 confined to sweet Malaysian fruits because the Dewan List
16 includes many sour, bitter fruits and fruits with bland taste as
17 well as culinary fruit [Second Determination]. It was submitted
18 that this is a determination on question of fact which is not
19 appealable.

20 21. Learned counsel for the Respondent further submitted that the
21 Special Commissioner also held that palm oil fruits are edible
22 raw and culinary fruits [Third Determination]. This is a
23 question of fact which is not appealable.

24 22. Likewise learned counsel for the Respondent submitted that
25 the Special Commissioner’s decision that palm oil fruits are
26 within paragraph 9(cc) of Schedule 7A is a question of fact and
27 it is not appealable [Fourth Determination].

1 23. On the other hand, Counsel for the Respondent submitted that
2 the question whether palm oil fruits fall within the ordinary
3 dictionary meaning of “fruits” in paragraph 9(cc) as found by
4 the Special Commissioner is a question of fact. If different,
5 conclusions are open as to whether palm oil fruits fall within
6 ordinary meaning of “fruits” in paragraph 9(cc), which of these
7 conclusions is the correct one is also a question of fact, citing
8 Taxation, Commissioner of (Cth) v Brambles Holdings Ltd 28
9 ATR 1, Ketua Pengarah Pertubuhan Keselamatan Sosial v
10 Vadivelan Sandara Saigara [2008] 9 CLJ 428, Light Company
11 v The Valuer General (1940) 40 SR (N.S.W.) 126 and
12 Collector of Customs v Pozzolanic Enterprise Pty Ltd [1993]
13 43 FCR 280.

14 24. I find it useful at this juncture to set out the general proposition
15 enunciated in Collector of Customs v Pozzolanic Enterprise
16 Pty Ltd, supra, as follows:

17 *"Distinction between a question of fact and a question of*
18 *law can be elusive. The proper interpretation,*
19 *construction and application of a statute to a given case*
20 *raises issues which may be or involve questions of fact or*
21 *law or mixed fact and law. Nevertheless they are five*
22 *general propositions which emerged from the cases:*

23 1. *The question of whether a word or phrase in a statute is*
24 *to be given its ordinary meaning or some technical or*
25 *other meaning is a question of law; [cases cited].*

26 2. *The ordinary meaning of the word or its non-legal*
27 *technical meaning is a question of fact [cases cited]*

28 3. *The meaning of a technical legal term is a question of*
29 *law; [cases cited]*

1 4. *The effect or construction of a term whose meaning or*
2 *interpretation is established is a question of law;*
3 *[cases cited]*

4 5. *The question whether facts fully found fall within the*
5 *provision of a statutory enactment properly construed*
6 *is generally a question of law; [cases cited].*

7
8 *This principle is qualified when a statute uses words*
9 *according to their ordinary meaning and a question is*
10 *whether the facts as found falls within those words. Where*
11 *it is reasonably open to hold that they do, then the question*
12 *whether they do or not is one of fact: Hope Bathurst City*
13 *Council at 8.”*

14 25. It should be noted that no evidence was called for in deciding
15 the question framed by the Special Commissioner, in other
16 words, there is no finding of primary facts arrived at by the
17 Special Commissioner. It is unarguable that the Respondent
18 and the DG Revenue have taken a common ground that the
19 word “fruits” in paragraph 9(cc) is unambiguous and therefore
20 the literal interpretation should apply. It is undisputed fact that
21 the Special Commissioner had adopted the literal interpretation
22 to the word “fruits” in paragraph 9(cc) by referring to the
23 dictionary meaning of the word. However, in my view, the
24 issue whether the conclusion reached by the Special
25 Commissioner in concluding that palm oil fruit is envisaged or
26 in consonance with the intention of the legislature is a mixed
27 question of law and fact and it is appealable.

28

1 **Appellant's Submission**

2 26. In order for the Respondent to be eligible for the Reinvestment
3 Allowance under paragraph 9(cc) of Schedule 7A, the capital
4 expenditure of RM12,818,016.04 must be incurred in the
5 cultivation of fruit. It is not in dispute that the preparatory
6 work carried out was for cultivation of palm oil fruit. The
7 bone of contention is whether palm oil fruits generally known
8 as fresh bunch fruits fall within the ambit of the word "fruits"
9 in paragraph 9(cc) of Schedule 7A.

10 27. The Palm Oil Research and Development Board Malaysia &
11 Anor v Premium Vegetable Oil case, supra, relied on by the
12 Special Commissioner in their decision, has laid down the
13 correct approach to be adopted by the the Court on
14 interpretation of taxing statute in these words:

15 *"The correct approach to be adopted by a court when*
16 *interpreting a taxing statute is that set out in the advice of*
17 *the privy counsel delivered by Lord Donovan in Mangin v*
18 *Inland Revenue Commissioner [1971] AC 739:*

19 *First, the words are to be given their ordinary meaning.*
20 *They are not to be given some other meaning simply*
21 *because their object is to frustrate legitimate tax avoidance*
22 *devices. As Turner J said in his (albeit dissenting)*
23 *judgment in Marx v Inland Revenue Commissioner [1970]*
24 *NZLR 182 at 208, moral percepts are not applicable to the*
25 *interpretation of revenue statues.*

26 *Secondly, "one has to look merely at what is clearly said.*
27 *There is no room for any intendment. There is no equity*
28 *about a tax. There is no presumption as to tax. Nothing is*
29 *to be read in, nothing is to be implied. One can only look*
30 *fairly at the language used" [cases cited].*

1 *Thirdly, the object of the construction of a statute being to*
2 *ascertain the will of the legislature, it may be presumed*
3 *that neither injustice nor absurdity was intended. If*
4 *therefore a literal interpretation would produce such a*
5 *result, and the language admits of an interpretation which*
6 *would avoid it, then such an interpretation may be adopted.*

7 *Fourthly, the history of an enactment and the reasons*
8 *which led to its being passed may be used as an aid to its*
9 *construction.”*

10 28. In Palm Oil Research case, supra, Steve Shim CJ [as he then
11 was] turned to the dictionary meaning when the Palm Oil
12 Research & Development Act 1979 did not define the term
13 “cess” stipulated under Part V therein.

14 29. In its endeavor to find the ordinary and literal meaning of the
15 word "fruit", the Special Commissioner resorted to the
16 following dictionary meaning of the word:

17 i. Merriam-Webster Dictionary – (a) "a product of plant
18 growth (as grain, vegetables, or cotton)".... (b) the
19 usually edible reproductive body of a seed plant: one
20 having a sweet pulp associated with the seed; (2) a
21 succulent plant part (as petioles of a rhubarb plant) used
22 chiefly in a dessert or sweet course” [cited by
23 Respondent].

24 ii. Oxford Fajar Advanced Learner’s English-Malay
25 Dictionary, A.S. Hornby defines fruit as the “fleshy
26 seed-bearing part of a plant used as food.” [cited by
27 Respondent].

1 iii. Webster’s Third International Dictionary defines fruit as
2 “a product of plant growth useful to man or animals (as
3 grain, vegetables, cotton, flax)” [cited by Respondent].

4 iv. Wikipedia, the free encyclopedia: “In common language
5 usage, "fruit" normally means the fleshy seed associated
6 structures of a plant that are sweet and edible in the raw
7 state, such as apples, oranges, grapes, strawberries, and
8 bananas” [cited by both sides].

9 30. Learned Counsel for the Appellant submitted that based on the
10 plain and ordinary meaning of fruits as expounded by the
11 dictionaries referred, the fruit is fleshy seed associated
12 structures of plant and sweet and edible in raw state. When
13 viewed in its ordinary, plain meaning and common usage in
14 Malaysia, the “fruits” in paragraph 9(cc) of Schedule 7A must
15 be the fruits found and known in Malaysia in its ordinary, plain
16 and common usage. As a guide of what kind of fruits are
17 recognized in common usage in Malaysia, reference was made
18 to a book entitled “Buah-Buahan Malaysia” [Malaysian fruits],
19 published by Dewan Bahasa dan Pustaka. Palm oil fruits is not
20 listed as fruit in the book.

21 31. Learned Counsel for the Appellant also referred to an article on
22 The Future of Mechanized High Density Fruit Cultivation in
23 Malaysia, research done by Horticultural Research Centre,
24 MARDI, on the production of major fruits, [see page 90 ABA-
25 1], and submitted that it can be seen, from the agronomist’s
26 definition of "fruit" under the limb of horticulture, that palm
27 oil fruit was not intended as fruit in its ordinary and natural
28 meaning.

1 32. Learned Counsel for the Appellant submitted that “fruits” in
2 paragraph 9(cc) of Schedule 7A carries the ordinary meaning
3 of fruit which does not include palm oil fruit. Various
4 legislations cited by the Respondent, namely, Palm Oil
5 (Research Cess) Act 1979, Oil Palm (Research Cess) Order
6 1979, Palm Oil Registration and Licensing Authority
7 (Corporation) Act 1976, Palm Oil Registration and Licensing
8 Authority (Corporations) (Amendment) Act 1989, Windfall
9 Profits Levy (Palm Oil Fruits) Order 2008 and Malaysian Palm
10 Oil Board Act 1998 all clearly show that the cultivation of
11 palm oil are regulated and is commonly used as oil and part of
12 the process or ingredient in food.

13 33. Learned Counsel for the Appellant in her submission referred
14 to section 2 of the Malaysian Palm Oil Board Act 1998 which
15 defines "palm oil" as "species of palm of the genus *Elaeis* or
16 any oil bearing genus of palm and includes hybrids of these
17 species, hybrids resulting from crossing these species or
18 hybrids with any other species or bybrids resulting from
19 crossing these species or hybrids with any other species or
20 nybrids of plants, and genetically engineered version of these
21 species or nybrids", "palm oil fruits" as "the unprocessed fruit
22 of the palm oil, whether in bunches or in loose form".
23 Amongst the "palm oil product" is "palm kernel cake" and
24 "palm oil" means "oil, whether in crude or processed form
25 originated or extracted from the pericarp of the palm oil fruit
26 and includes oil, whether in crude or processed form
27 originating or extracted from the kernel of the palm oil fruits."

1 34. Learned Counsel for the Appellant submitted that the
2 definition of palm oil fruit clearly shows that palm oil fruit is a
3 nomenclature attached to identify part of the oil palm tree. The
4 ordinary literal meaning of the word "fruit" does not consist
5 per se the palm oil fruit because it is not within what is
6 envisaged as the ordinary, literal and common usage of the
7 word "fruit".

8 35. Learned Counsel for the Appellant submitted that the word
9 "fruits" in paragraph 9(cc) of Schedule 7A is unambiguous and
10 should be given the general and ordinary meaning; the Special
11 Commissioner's reading of palm oil fruits into paragraph 9(cc)
12 of Schedule 7A has resulted in gross and manifest absurdity,
13 which defeats the general ordinary meaning and the common
14 usage as well as defeats the true intention of Parliament. Thus,
15 the Special Commissioner's conclusion tantamount to reading
16 an intendment into the word "fruit".

17 36. Learned Counsel for the Appellant submitted that the object of
18 the Reinvestment Allowance is for the purpose of cultivation
19 of "fruits" and those fruits in its ordinary plain meaning would
20 be fruits commonly known, recognized and of common usage
21 and found in Malaysia and not other countries.

22 37. It is the contention of the learned Counsel for the Appellant
23 that the Special Commissioner's interpretation of the word
24 "fruit" is contrary to the intention of the Legislature. The
25 reasons are [verbatim]:

26 a. The palm oil fruits known as fresh bunch fruit is not
27 recognized in essence as fruits as envisaged by the

1 Legislature in drafting paragraph 9(cc) as it involves fruits
2 that are recognized to be "fruit" in its common and
3 ordinary use of the language and ordinary meaning.

4 b. The intention of the Legislature and the purpose of
5 enacting the RA could be clearly seen in the Budget
6 Speech of Year 1995 which introduced the said RA and
7 also the subsequent executive summary on the
8 Government policy.

9 c. The ordinary and general meaning of fruit does not
10 encompass "palm oil fruits" and palm oil fruit is known as
11 “plant oil” whereby the palm oil fruits are oily and greasy
12 [Please refer to pages 482 – 489 RBA-2].

13 d. The Act as a whole had clearly indicated that palm oil
14 does not fall within the categories of fruits.

15 38. In gist, learned Counsel for the Appellant is contending that
16 the court in interpreting the word “fruits” in the context of
17 paragraph 9(cc) of Schedule 7A where the word itself is clear
18 and unambiguous, should apply the plain and ordinary
19 meaning as it is understood in common parlance. The court
20 should not add intendment to the word “fruits” as to include
21 palm oil fruits as it will produce gross and manifest absurdity
22 contrary to the intention of the Legislature.

23 **Respondent’s Submission**

24 39. Learned counsel for the Respondent submitted that the
25 Revenue’s contention that fruit as commonly understood or
26 according to common parlance is different from the dictionary
27 meaning of fruit. Such alleged meaning is akin to alleged term

1 of art, which must be proved. In other words, the Revenue
2 must prove that there is special meaning of “fruits” understood
3 by common people which is different from its dictionary
4 meaning. Yet, no such evidence had been led before the
5 Special Commissioner other than relying on the Dewan List,
6 which contains 26 sour fruits and at least 7 culinary fruits,
7 contradicting the Appellant’s contention that fruits must be
8 sweet and edible raw.

9 40. Learned counsel for the Respondent submitted that the Special
10 Commissioner did not decide that palm oil fruits are fruits
11 because they are so called. Their decision is based on the plain
12 ordinary dictionary meaning of fruit which includes both fruits
13 edible raw as well as culinary fruits, they also referred to the
14 Dewan List to show that fruits are not confined to those
15 Malaysian fruits that are sweet and edible raw. Besides, the
16 Special Commissioner has taken judicial notice (from the
17 internet materials and Wikipedia) that palm oil fruits are edible
18 raw as well as culinary fruits. Counsel for the Respondent
19 submitted that the DG Revenue had changed its stances from
20 fruits must be sweet and edible raw as those listed in Dewan
21 List by conceding that fruits are not confined to Malaysian
22 fruits.

23 41. Learned counsel for the Respondent submitted that the Special
24 Commissioner’s conclusion that the plain dictionary meaning
25 of fruit covers all kinds of edible fruits including culinary fruits
26 is correct. In principle as well as in logic, if something is
27 clearly within a literal reading of a provision by Parliament, if
28 the Parliament wants to exclude it, it would have done so

1 expressly, citing Galaxy Energy Technologies Sdn. Bhd. v
2 Deputy Collector of Stamp Duty, Malaysia & Anor [2011] 5
3 MLJ 145.

4 42. Learned counsel for the Respondent further submitted that the
5 Special Commissioner's decision on this point is not perverse
6 to the literal rule of interpretation. Based on the dictionary
7 meaning of fruit given in Merriam-Webster Dictionary and
8 Oxford Fajar Advanced Learner's English-Malay Dictionary,
9 palm oil fruits are product of plant growth. The palm oil fruit is
10 the edible reproductive body of a seed plant. It is a succulent
11 plant part. It is the fleshy seed-bearing part of a plant used as
12 food, includes all edible fruits and culinary fruits. The Special
13 Commissioner has found that palm oil fruits are edible raw as
14 well as tropical culinary fruit and they must, therefore, be
15 "fruits" within paragraph 9(cc) of Schedule 7A.

16 **Court's Decision**

17 43. It can be clearly seen from the Judgment of the Special
18 Commissioner that the Special Commissioner, in arriving at
19 the dictionary meaning of the word "fruit", has based on words
20 "*oil palm fruits ... used as food*", "*palm trees also produced oil*
21 *palm fruits*", African oil palm "*produced small oblong [sic],*
22 *orange fruits*", "*an oil palm may contain up to 300 fruits*". At
23 first glance, I would agree that on the dictionary meaning,
24 palm oil fruits commonly known as fresh fruit bunch is an
25 edible part of the oil palm tree, which is used as food, does
26 point to the fruit per se.

- 1 44. It is further noted that the Special Commissioner in applying
2 the literal and ordinary interpretation to the word "fruits",
3 opined that the general word "fruits" means and cover every
4 fruit there is, irrespective of whether it is of Malaysian origin.
- 5 45. The question to be asked is: whether the fruit in the oil palm
6 tree commonly known as fresh fruit bunch is the fruit within
7 the ambit of paragraph 9(cc) of Schedule 7A. In other words,
8 whether the reading of the Special Commissioner of palm oil
9 fruits into paragraph 9(cc) has resulted in gross and manifest
10 absurdity, which defeats the general ordinary meaning and the
11 common usage as well as defeat the true intention of the
12 Parliament?
- 13 46. The court can take judicial notice that although the fruit in the
14 oil palm tree is edible, no reasonable person would pluck the
15 fruit from the oil palm tree and eat it by itself. One does not
16 find the palm oil fruits being sold in the market or shops in
17 Malaysia as a fruit to be eaten raw or as culinary fruit.
- 18 47. It is common knowledge in Malaysia that oil palm trees were
19 cultivated as a commercial plant; the focus and the intent is on
20 processing and production of oil, which is certainly not eaten
21 or drunk by itself either. The palm oil is used as ingredient in
22 food, not as food per se.
- 23 48. The fact that oil palm trees are grown as a commercial crop in
24 Malaysia is evident from the fact that cultivation of oil palm
25 are regulated by various legislations, for example, Palm Oil
26 (Research Cess) Act 1979, Oil Palm (Research Cess) Order
27 1979, Palm Oil Registration and Licensing Authority

1 (Corporation) Act 1976, Palm Oil Registration and Licensing
2 Authority (Corporations) (Amendment) Act 1989, Windfall
3 Profits Levy (Palm Oil Fruits) Order 2008 and Malaysia Palm
4 Oil Board Act 1998.

5 49. I agree with the learned Counsel for Appellant that the fruits in
6 the oil palm tree is a nomenclature which refers to the fruit
7 bunch harvested from the oil palm tree. The edible oily and
8 greasy fruits after being processed become palm oil which has
9 commercial value and is used as food. It, however, cannot be
10 considered as fruit in the ordinary and plain meaning as
11 commonly understood in the common parlance. In my view,
12 the Special Commissioner had added intendment to the word
13 "fruits" to include palm oil fruits, thus resulting in gross and
14 manifest absurdity contrary to the intention of the Parliament.

15 50. In the Budget Speech Year 1996, the Finance Minister in
16 introducing the amendment to Schedule 7A stated under the
17 heading "Menambahkan Bekalan Makanan" thus:

18 *"43. Sebagai galakan tambahan, saya mencadangkan*
19 *supaya Elaun Pelaburan Semula diperluaskan untuk*
20 *meliputi aktiviti pengeluaran bahan makanan penting*
21 *seperti penanaman padi, jagung, buah-buahan, sayur-*
22 *sayuran, penternakan haiwan dan hidupan air*
23 *Dengan perluasan insentif ini ladang-ladang besar boleh*
24 *turut terlibat dengan pengeluaran bahan makanan."*

25 51. In the preceding paragraph 42 of the same speech, the then
26 Finance Minister said:

27 *"42. Lebih 50 peratus daripada peningkatan kadar*
28 *inflasi adalah disebabkan oleh kenaikan harga bagi*

1 *komponen makanan. Bekalan makanan telah berkurangan*
2 *berikutan berkurangnya kawasan Pengeluaran, keluasan*
3 *kawasan yang tidak ekonomik dan meningkatnya eksport*
4 *keluar negeri.”*

5 52. In “Rang Undang-Undang Kewangan [No. 2] 1995”, under
6 paragraph 12 which made reference to “Fasal 17” pertaining to
7 the amendment of Schedule 7A, states:

8 *“Fasal ini seterusnya bertujuan meminda Jadual 7A untuk*
9 *memasukkan projek pertanian sebagai projek yang layak*
10 *bagi maksud memperluaskan, memodenkan dan*
11 *mempelbagaikan perniagaan penanaman dan*
12 *penternakkan. Dengan adanya peruntukkan ini, syarikat*
13 *pemastautin yang menjalankan penanaman padi, jagung,*
14 *buah-buahan dan sayur-sayuran, penternakan dan*
15 *akuakultur boleh layak bagi elaun pelaburan semula.”*

16 53. It is vividly clear from the Budget Speech referred to above
17 that the intention of the Parliament in enacting paragraph 9(cc)
18 of Schedule 7A is to encourage food production activities as a
19 measure to combat inflation caused by rising prices of food
20 components. The objective of the Parliament is to alleviate the
21 hardship faced by Malaysians due to inflation and through
22 reinvestment allowance, it would give incentive to stimulate
23 food production activities such as “the cultivation of rice, corn,
24 fruits and vegetables, rearing of livestock and aquaculture.”

25 54. It is common knowledge that in Malaysia, the oil palm trees
26 are grown commercially and the palm oil processed from the
27 palm oil fruits is mainly for export. This is evident even in the
28 learned Counsel for the Respondent’s submission that the

1 restrictive approach of the DG Revenue is “deadly” to the palm
2 oil industry in Malaysia as this industry is sliding in its
3 domination in the supply arena and losing competitiveness due
4 to the unfavourable export tariff structure when compared to
5 Indonesia (Malaysia’s palm oil hurt by Indonesia’s Tax Cuts,
6 Malaysia Insider March 15, 2012, see Annexure P). Learned
7 Counsel for the Respondent further submitted *"The industry is
8 also under persistent, malicious and pernicious attacks by
9 producers of seed based edible oils and greenies. Parliament
10 could not have been oblivious to these matters. Therefore to
11 say or hold that paragraph 9(cc) does not cover the cultivation
12 of oil palm is to say that Parliament has no intention to help
13 the palm oil industry in its hour of need. Bearing in mind the
14 vital importance of oil palm to the country (both at present and
15 in future) Parliament cannot have intended the country to be
16 committing economic suicide"*.

17 55. Though persuasive this contention may sound, it cannot be
18 over-emphasized that the intention of the Parliament in giving
19 reinvestment allowance was to encourage cultivation of fruits
20 in its plain and ordinary language as understood in common
21 parlance in Malaysia, namely, fruits which one can pluck from
22 the tree and be eaten raw [in this respect, the book "Buah-
23 Buahan Malaysia" is a useful guide as to what are the fruits
24 commonly found and known in Malaysia]. I believe "fruits"
25 covers fruits which are not of Malaysian origin, like apples and
26 grapes, if they can be successfully cultivated and contribute to
27 food production.

1 56. In my view, if the Parliament had intended to include palm oil
2 fruits under "fruits" in paragraph 9(cc) of Schedule 7A, it
3 would have expressly provided for it. In the absence of such
4 expressed provision, palm oil fruit is a fruit per se, it is not the
5 fruit in the plain and ordinary meaning as understood in the
6 common parlance of Malaysia and, therefore, not within the
7 ambit of paragraph 9(cc) of Schedule 7A, Income Tax Act
8 1967.

9 57. For all the reasons above, I allow the appeal with costs of
10 RM20,000.00.

11

12

13 (DATUK YEW JEN KIE)

14 Judge

15

16 Date of Grounds of Decision: 30.9.2014

17

18 Date of Delivery of Judgment: 20.6.2014

19

18.7.2014 (on costs)

20

21 Date of Hearing: 29.10.2013

22

14.11.2013

23

24 For the Appellant:

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Puan Ashrina Rem Zan Ali

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Bahagian Litigasi Cukai

27

Ibu Pejabat LHDNM

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Menara Hasil Aras 11,

29

Persiaran Rimba Permai Cyber 8,

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63000 Cyberjaya,

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Selangor

32 For the Respondent:

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Dr Chew Peng Hui

34

Messrs Battenberg & Talma Advocates

Sibu

35 *Notice: This copy of the Court's Reasons for Judgment is subject to*
36 *editorial revision.*