# 4

# SUMMARY OF TAX CASES

# A Malaysian Special Commissioners' Decisions

## 1.0 LCC V KETUA PENGARAH HASIL DALAM NEGERI (2000) MSTC 3,381

***Facts***

The taxpayer was a Malaysian citizen employed by a Malaysian Company (M.Co). In the year of assessment 1997 (YA97), the taxpayer was resident within the meaning of Section 7 of the Income Tax Act, 1967 (ITA), despite the fact that the taxpayer was present in the United States of America (USA) for 302 days during YA97, (i.e. during 1996). As part of his employment with M.Co. the taxpayer was required to be in the USA for the period of time mentioned above. During this time, his wages and bonuses were paid into his personal account at his bank account in Malaysia. As his duties in the USA were incidental to the exercise of his employment with M.Co, the income arising therefrom was deemed derived from Malaysia pursuant to sections 13(2)(a) and 13(2)(c) of the ITA. The taxpayer paid Malaysian tax on this income, as well as federal and state taxes in the USA.

The taxpayer sought unilateral relief in respect of the federal tax suffered in the USA amounting to RM1,798.38. The claim was made pursuant to paragraph 15 of Schedule 7, ITA. The Inland Revenue Board (IRB) did not allow the claim on the basis that the income was not foreign income, as it was deemed derived from Malaysia pursuant to section 13(2), ITA.

***Issue***

Is unilateral relief available to the taxpayer pursuant to paragraph 15, Schedule 7, ITA?

***Arguments***

***Taxpayer***

The taxpayer argued that the phrase “income from an employment exercised outside Malaysia” in paragraph 15, Schedule 7, referred to income in respect of an employment pursuant to which the employee is required to perform duties outside

Malaysia regardless of whether –

- the duties are incidental to the exercise of such employment;
- such employment is in Malaysia; and
- such income is derived (or deemed to be derived) from Malaysia or from outside Malaysia.

**IRB**

The IRB argued that notwithstanding the double tax suffered by the taxpayer, unilateral relief was not available because the phrase "income from an employment exercised outside Malaysia" referred only to foreign income within the meaning of paragraph 16, Schedule 7, ITA. "Foreign income" is defined in paragraph 16 to mean "income derived from outside Malaysia".

***Decision***

Held: The taxpayer's appeal was allowed for the following reasons:

(1) While it is important to read paragraphs 13 to 15 of Schedule 7, as well as Section 13(2), etc., the clear language used in paragraph 15, means that this paragraph can stand alone. It is clearly "specific only to employment income in respect of an employment exercised outside Malaysia involving Malaysian as well as foreign tax."

(2) In statutory interpretation, effect should be given to the ordinary meaning of a word.

(3) Paragraph 15 uses the word "may", and in this connection, it should be construed as "shall" and does not give the IRB the discretion to decide whether or not to grant unilateral relief.

(Note: The IRB had subsequently withdrawn its appeal to the High Court.)

## 2.0 FR SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI (2002) MSTC 3,390

***Facts***

The taxpayer was an investment holding company. It entered into a sale and purchase agreement with a third party (PNS) to acquire shares and warrants from PNS for a total consideration of RM496,270,479. To facilitate the acquisition of the shares and warrants, the taxpayer entered into a guarantee facility agreement with a bank. The guarantee facility agreement was granted to enable the taxpayer to furnish PNS an irrevocable bank guarantee for the purchase price of the shares and warrants. In consideration for the bank guarantee facility, the taxpayer was required to pay a guarantee commission and additional fee for extending the use of the guarantee. It sought to deduct these costs (i.e. the bank guarantee commission and additional fees) as being expenses wholly and exclusively incurred in the production of its business investment income. The IRB disallowed a deduction for the bank guarantee commission and guarantee facility extension fees.

***Issue***

Are the bank guarantee commission and extension fees deductible under Section 33(1) of the ITA?

***Arguments***

***Taxpayer***

(1) The taxpayer was carrying on the business of an investment holding company, and quarterly payments for the use of the guarantee facility were revenue expenses wholly and exclusively incurred in the production of the taxpayer's income.

(2) The consideration for the purchase of the shares and warrants should be differentiated from the consideration for the use of the guarantee facilities.

(3) The payments were akin to the payment of interest on a loan as the bank guarantee was in lieu of a loan, and hence the payments should be deductible under Section 33(1)(a).

(4) Alternatively, where reasonable doubt exists as to whether the payments were revenue or capital in nature, then the practical business approach should be adopted to regard the expenses as being wholly and exclusively incurred in the production of income.

***IRB***

(1) The payments for the use and extension of the guarantee facility were not wholly and exclusively incurred in the

production of income and therefore were not deductible under Section 33(1), ITA, as the taxpayer was an investment holding company

(2) Further, Section 39(1)(c) specifically prohibited a deduction for the payments on the basis that these were capital in nature.

(3) The payments were incurred for the purpose of acquiring assets of a capital nature, and not for the production of income itself.

(4) The payments were not in the nature of interest, as the taxpayer had not taken out a loan, and further had not paid PNS the purchase consideration.

***Decision***

Held: The taxpayer's appeal was disallowed for the following reasons:

(1) While the use of the bank guarantee facility satisfied some of the limbs of the deductibility test laid out by Section 33(1), the fees were not incurred in the production of gross income of the taxpayer, and hence not deductible under Section 33(1).

(2) Further, the purpose of the bank guarantee facility was to enable the taxpayer to acquire the shares and warrants, which constituted capital assets of the taxpayer. The payments for the use of this facility were therefore related to the cost of acquiring the capital assets, and hence the payments were capital in nature.

(3) The mere fact that a payment is recurrent does not mean that the payment is revenue in nature. Although the payments recurred, this did not change the nature of the payments.

(4) The fees for the use of the guarantee facility were not akin to a loan, and the facility was an undertaking given to PNS by the bank to ensure that the taxpayer would make payment to PNS for the full purchase price of the shares and warrants. No payments had actually been made to PNS by the taxpayer for the purchase of the shares.

(5) On the facts, there is no doubt as to the nature of the guarantee facility fees, and hence the requirement to adopt the practical business approach was not necessary, as this was not a "borderline" case.

(Note: The High Court had subsequently overturned the decision.)

## 3.0 M HOLDINGS SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI (2002) MSTC 3,403

***Facts***

The taxpayer was incorporated as a joint venture company in 1984. Its principal activity was that of property development. In May 1989, real property ("the subject property") was injected into the company at a cost of RM25 million. The subject property appeared as fixed assets in the annual accounts for the years ended 31 January, 1990 and 1991 respectively. From the years ended 31 January 1992 to 1994, the subject property was classified as 'current assets' and in the year ended 31 January 1995, it was shown under 'fixed assets' as 'investment property'. On 11 April, 1995, (four days after the signing of the 1995 accounts), the subject property was sold.

Thereafter, pursuant to an agreement between the taxpayer and one of the joint venture parties, a sum of RM2,000,000 was paid to the latter on account of the delay in the development project by the taxpayer.

The taxpayer submitted a Real Property Gains Tax (RPGT) return and the IRB raised an RPGT assessment. Subsequently, the IRB substituted the RPGT assessment with an income tax Assessment under Section 4(a) of the ITA. The taxpayer appealed.

***Issues***

(1) Should the disposal be subject to RPGT or income tax?

(2) If the disposal was subject to income tax, then:

   (a) Should the market price of the property at the time of its disposal be taken as the deductible cost?

   (b) should the payment of RM2 million to the joint venture party be deductible?

(3) Could the IRB maintain 2 assessments?

***Arguments***

***Taxpayer***

(1) The disposal of the subject property was a realization of a capital asset as the business of the taxpayer had not commenced, and in any case, the business was not one of developing and selling properties, but was one of developing property for investment purposes.

(2) If the disposal were to be subject to income tax, then the principle in DGIR v. LCW (1975) 1 MLJ should apply and the cost to the business should be taken to be the market value of the property at the time of the transfer from the fixed asset account to the current account

(3) The payment of RM2,000,000 to the joint venture party should be deductible in arriving at the taxpayer's adjusted income

(4) The RPGT assessment raised by the IRB should be final and conclusive and the IRB could not maintain two assessments, one under the ITA and one under the RPGT Act.

***IRB***

(1) The intention of the taxpayer was to develop the subject property as evidenced by the joint venture agreement

(2) The status of the subject property, the frequency of transactions, the development planning, the treatment in the accounts, etc. all together established that the subject property was acquired from the beginning as trading stock and not as an investment.

(3) The principle in the DGIR v. LCW case was not applicable.

(4) The RM2,000,000 was not deductible under Section 33(1), ITA.

(5) The IRB was not prohibited from issuing an income tax assessment as the RPGT assessment was invalid and was substituted by the income tax assessment. Additionally, there was no double taxation on the taxpayer, as the tax paid towards the RPGT assessment was credited towards the income tax payable.

***Decision***

Held: The taxpayer's appeal was disallowed for the following reasons:

(1) The intent to develop the property for sale was clear from the joint venture agreement, and the taxpayer's acts and conduct also showed the intention to treat the subject property as trading stock, rather than as a fixed asset.

(2) The dominant intention for the acquisition can be determined by considering the badges of trade. In the present case, the inference of intention was that of "an adventure in the nature of trade". Further, as the company described itself as a "property developer", prima facie, its activity must have been that of carrying on the business of property development for sale rather than investment. Additionally, the memorandum of association did not authorize the taxpayer to purchase land for investment.

(3) With respect to the applicability of the DGIR v. LCW case, in the latter case, the subject property was transferred from fixed assets to stock-in-trade and hence the market value of the property at the date of transfer was a cost to the business. In the present case, the subject property has been found to be trading stock from the outset and hence the DGIR v. LCW case does not apply. Further, the necessity in costing the stock would only arise where there is an appropriation of stock from one category to another, and in the present case, the transfer of the subject property from current assets to fixed assets on the grounds that it was for long-term investment, and thereafter its sale (4 days after having approved and signed the accounts) was not valid appropriation of the asset.

(4) The RM2,000,000 paid to the joint venture partner would have been deductible under Section 33(1), ITA if this had been a cost wholly and exclusively incurred in the production of gross income. In the present case, this amount was paid after the disposal of the subject property, out of the proceeds of sale. It was not therefore incurred in the production of income. Further, as it was paid out of the proceeds of sale, this amounted more to a distribution of profit and was a capital expense, and hence should not be deductible.

(5) The facts clearly indicated that the IRB did not maintain two assessments concurrently, as the RPGT return was substituted by the income tax return.

## 4.0 AIACL V KETUA PENGARAH HASIL DALAM NEGERI (2002) MSTC 3,438

***Facts***

The taxpayer is a non-resident insurer carrying on onshore life and general insurance business. The taxpayer also sold additional insurance benefits to life policies which are offered to the policyholders ("Riders") under supplementary agreements. The Riders are essentially extensions to the basic life policies and cannot be purchased on their own and insure policyholders against various additional risks and contingencies such as accidents giving rise to injury or death, etc.

The IRB treated the premiums paid under the abovementioned Riders as being part of the taxpayer's general business. Hence, Section 60(6) of the ITA applied and assessments were raised accordingly.

In addition, the taxpayer incurred expenses in respect of services provided by the American International Data Centre ("AIDC") which was part of the taxpayer's head office in Hong Kong. The AIDC charges related to the expenses incurred on maintaining and modifying existing projects upon the request of a relevant Branch as and when the need arises. The IRB disallowed the expenses on the basis that such payments fall within the ambit of Section 4A of the ITA and are therefore subject to withholding tax under Section 109B of the ITA and the restriction under Section 39(1)(j).

***Issues***

(1) Whether the premiums paid on the Riders are to be treated as part of the taxpayer's life insurance or general insurance business?

(2) Whether Section 4A(ii) of the ITA applied to the AIDC charges and are therefore deductible for tax purposes under Section 33(1) once the withholding taxes on those charges were paid?

### *Arguments*

### *Taxpayer*

(1) The Riders are part of the life insurance business and as such the tax treatment should be in accordance with Section 60(4) of the ITA.

(2) The AIDC charges are incurred wholly and exclusively in the production of gross income pursuant to Section 33(1) of the ITA.

(3) Section 4A of the ITA does not apply as this section refers to the taxation of the income of a non-resident and not the allocation of expenses within departments of the same entity. Consequently, Sections 109B and 39(1)(j) of the ITA are not applicable.

(4) On the assumption that the AIDC charges are considered to be business income assessable under Section 4(a) of the ITA, the income was not derived from Malaysia and therefore not taxable.

(5) Even if the AIDC charges are considered to be derived from Malaysian and therefore taxable under Section 4(a), the “income” will be deducted against the said AIDC charges which will be recognized as expenses wholly and exclusively incurred in the production of gross income. As such, with both the income and expense amounts being the same, there will not be any tax.

(6) Alternatively, even if Section 4A of the ITA were applicable, Section 4A(ii) does not apply to routine day-to-day office administration.

### *IRB*

(1) The Riders are part of the general insurance business of the taxpayer. As such, Section 60(6) of the ITA is applicable.

(2) Section 4A(ii) is applicable to the AIDC charges. As such, a deduction under Section 33(1) will only be allowed once withholding tax pursuant to the provisions of Section 109B are paid.

### *Decision*

Held: Taxpayer's appeal was allowed in part.

(1) It was determined that the Riders were part of the life insurance business based on Section 60(11) of the ITA, Section 2 of the Insurance Act 1963 (IA) and the principle arising from the case of Leong Kum Whay v American International Assurance Co. Ltd. (1999) 1 MLJ 24. Riders had already been existent before the coming into force of the ITA. If the legislature had intended to tax the gross or net premiums in respect of the Riders, there would have been a corresponding provision. In the absence of such a provision in the ITA, the legislative intent is thus clear. The IRB had no legal basis for its arguments.

(2) The proviso in Section 2(1)(a) of the IA allows only the Director General of Insurance and not the Director General of Inland Revenue to reclassify Riders from life to general insurance business. In addition, evidence showed that there had been no such direction made to the taxpayer nor the insurance industry to make such a reclassification.

(3) Based on the Service Agreement entered into for the AIDC charges by the taxpayer, the services rendered by the AIDC were specialized and technical and were not routine day-to-day administration services. As such, the AIDC charges were subject to withholding tax under Sections 4A(ii) and 109B of the ITA.

(Note: Both parties had appealed further to the High Court against the SC's decision but subsequently withdrew their appeals upon reaching a settlement)

## 5.0 P.C. SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI (2002) MSTC 3,469

***Facts***

The taxpayer was granted investment tax credit in 1980 but commenced business only in December 1983. In the year of assessment 1985 (basis period 1 December, 1983 to 30 April, 1984), the taxpayer claimed investment tax credit (ITC) on qualifying capital expenditure of RM4,786,512 of which the amount of RM1,950,136 was incurred prior to commencement. The claim for ITC for the amount of RM1,950,136 was rejected by the IRB.

### Issue

Whether upon the true construction of Section 26(1) of the Investment Incentives Act 1968 (IIA), the IRB was correct in disallowing the taxpayer's claim for ITC on the amount of RM1,950,136 which was incurred prior to the commencement date.

### Arguments

### Taxpayer

(1) The IRB's claim that ITC was disallowed on the amount in question as the assets were not in use in the year of assessment 1985 was erroneous as the taxpayer had commenced operations in December 1983. In the event that the IRB's basis of contention is upheld, the deeming provision as provided for in Paragraph 55, Schedule 3 of the ITA would be defeated.

(2) The interpretation of Section 26(1) of the IIA should be done in such a way so as to promote the purpose of the IIA, that is, for the establishment and development in Malaysia of industrial and other commercial enterprises for the promotion of exports and for incidental and related purposes.

(3) In order to avoid any ambiguity whatsoever, Section 26(1) of the IIA should be read together with Paragraph 55, Schedule 3 of the ITA (which deems capital expenditure incurred prior to the commencement date as having been incurred on that date itself).

### IRB

(1) The amount in question does not qualify for ITC as the expenditure was not incurred in the basis period for the year of assessment 1985 as required by Section 26(3)(a) of the IIA.

(2) There is no ambiguity in Section 26 of the IIA. It should be confined to itself and not interpreted together with any other provisions.

(3) Section 26 of the IIA is distinct and separate from Paragraph 55, Schedule 3 of the ITA. Both address different subject matters, that is, Section 26 of the IIA relates to the graning of ITC and Paragraph 55, Schedule 3 of the ITA addresses the computation of capital allowances.

### *Decision*

Held: Taxpayer's appeal was dismissed.

(1) There are two conditions to fulfill in order to qualify for ITC:

(i) The capital expenditure must be incurred in the basis period for the year of assessment; and

(ii) The assets are used in Malaysia in the basis period.

Whilst the second condition was fulfilled, the first was not. As such, ITC cannot be granted as Section 26 of the IIA has not been complied with.

(2) There was no doubt or ambiguity as to the wordings of Section 26 of the IIA. As such, the Special Commissioners (SC) was bound to give those words their natural and ordinary meaning. No absurdity nor injustice would arise by their doing so.

(3) As the ITA came into force a year before the IIA was enacted, it could not be argued that the deeming provision of Paragraph 55, Schedule 3 of the ITA also applied for the purpose of claiming ITC apart from the granting of capital allowance. The legislature then could not have contemplated the provision of Section 26 of the IIA. Sections 26(1) and 26(3) of the IIA prevails over the application of the deeming proviso in Paragraph 55, Schedule 3 of the ITA.

(4) In addition, it is evident that the deeming proviso of Paragraph 55, Schedule 3 of the ITA only applied to the claim for capital allowances because when the IIA was subsequently replaced by the Promotion of Investments Act 1986 (PIA), the said deeming provision was included under the proviso to Section 29 of the PIA. Therefore, it can be presumed that it was never the intention for Paragraph 55, Schedule 3 of the ITA to be read together with Section 26 of the IIA.

## 6.0 SUEP BHD V KETUA PENGARAH HASIL DALAM NEGERI (2002) MSTC 3,480

### *Facts*

The taxpayer, a limited company incorporated on 31 December, 1964 acquired certain pieces of land (hereinafter referred to as “Lot No. 1131”) on January 1965. Lot No. 1131 was later subdivided into various commercial and residential properties and recognized as “Current Assets” in the company’s records and accounts. However, in 1980 when the company submitted its proposal to be listed on the Kuala Lumpur Stock Exchange (KLSE), some of the aforementioned commercial properties were revalued and described as “Fixed Assets” held for long-term investment. In mid-1980, a Director’s Resolution was passed to reclassify the subject lots as “Fixed Assets” retrospectively from 1978.

On 7 November, 1980, the taxpayer was converted to a public company. In 1980, the taxpayer started to dispose of its ”Fixed Assets”. The profits on the sale of the subject lots and the interest received on the late payment of the proceeds were assessed to income tax.

***Issues***

(1) Whether the proceeds on the sale of the subject lots were chargeable under the Real Property Gains Tax Act, 1976 (RPGTA) or Section 4(a) of the ITA?

(2) Whether the related interest income received from the late payment of the proceeds is capital receipts or business income and therefore chargeable to tax?

***Arguments***

***Taxpayer***

The subject lots were held as capital assets (as evident from corporate records, accounts, etc.). Therefore, the sales proceeds are not subject to income tax but real property gains tax. As such, the interest income received on the late payment of the sales proceeds is a capital receipt and not chargeable to tax.

***IRB***

The subject lots are stock-in-trade and therefore the proceeds of their disposal is subject to income tax. Consequently, the interest income received on late payment of the sales proceeds is also subject to income tax.

***Decision***

Held: Taxpayer's appeal was allowed. However, the SC decided that the provisions of Section 24(2) of the ITA would apply at the point where the subject lots were transferred from “Current Assets” to Fixed Assets”.

(1) There was no evidence to prove that the subject lots were indeed held as "Fixed Assets" from 1965 to 1977. The reclassification of the subject lots as "Fixed Assets" was done retrospectively from 1978. Therefore, it is clear that the subject lots fall within the definition of "stock-in-trade" (Section 2 of the ITA) and consequently, the provisions of Section 24(2) of the ITA would apply.

(2) The retrospective effect of the Director's Resolution due to inadvertence was not valid for tax purposes.

(3) On the assumption that the Director's Resolution was valid in relation to the retrospective effect of the reclassification of subject lots to "Fixed Assets" from 1978, then there would be a transfer of assets from "Current Assets" to "Fixed Assets". Subsequently, the provisions of Section 24(2) would need to be complied with.

(4) However, the provisions of Section 24(2) were not complied with by the taxpayer. As such, the reclassification of the subject lots from "Current Assets" to "Fixed Assets" was not recognized by the IRB. As such, the subject lots were still considered as "Current Assets".

(5) Due to the non-compliance with Section 24(2) by the taxpayer, hence the IRB had treated the proceeds from the disposal as business income chargeable under Section 4(a) of the ITA and not chargeable under the RPGTA.

(6) The failure to comply with Section 24(2) by the taxpayer could still be rectified now as it was clear that the subject lots had indeed been reclassified based on corporate records, etc.

(7) Therefore, pursuant to Paragraph 26, Schedule 5 of the ITA, the assessments are to be amended by bringing to tax the market value of the subject lots at the time of their transfer as the taxpayer's gross income under Sections 4(a) and 24(2).

(8) Thus, once Section 24(2) was complied with, the subsequent disposal would be subject to tax under the RPGTA.

(9) Consequently, the interest income received from the late payment of the purchase proceeds would be capital receipts and therefore not taxable.

(Note: Both parties have appealed further to the High Court.)

# B Malaysian Court Decisions

## 1.0 KETUA PENGARAH HASIL DALAM NEGERI V MULTI PURPOSE HOLDINGS BHD (2001) MSTC 3,880 (HIGH COURT)

***Facts***

The taxpayer was an investment holding company deriving the following income:

- dividends from the holding of shares;
- interest from the granting of loans and advances to related companies as well as from the placing of funds on short-term deposits
- rental and plantation income

For the years of assessment 1982 – 1988, the IRB treated each counter of share investment, each loan/advance and each deposit as a separate source of income, and thereby segregated the income producing sources from the non-income producing sources.

***Issue***

Was the IRB's treatment of the income correct?

***Arguments***

***Taxpayer***

(1) The IRB's assessments were incorrect in law in that the dividend income and interest income should have been treated as singular sources however or wherever derived.

(2) The scheme by which chargeable income is to be ascertained as set out in the ITA had been ignored by the IRB. The sub-division of each source of income as proposed by the IRB was not authorized by law.

(3) There was a failure on the part of the IRB to recognise that income from all sources have to be aggregated pursuant to section 43, ITA.

***IRB***

The income should be segregated in the manner proposed because in relating section 4, ITA to section 33(1), ITA, the word 'source' refers to the activity or property which produces the income. The words 'employment', 'dividend', 'interest', etc. as used in section 4 are not sources of themselves. The source would be the "originating cause of the income".

***Decision***

Held: The IRB's appeal was dismissed for the following reasons:

(1) The manner in which a taxpayer's chargeable income should be ascertained, as set out in section 5(1)(c), ITA is relevant. This section makes reference to "a source consisting of a business", as well as other sources. The other sources must therefore relate the classes of income set out in section 4, which would include a "dividend" source and an "interest" source under section 4(c). Section 4(c) would have been worded differently if Parliament had intended each share counter and each loan to be treated as a separate source.

(2) The ITA adopts a comprehensive description of sources in section 4, and imposes tax upon gains and profits of a taxpayer as classified under section 4. There is no sub-division of these classes, and hence the IRB has no authority to further subdivide or disintegrate the groupings of profits and gains as set out in section 4.

## 2.0 HO SOON GUAN V KETUA PENGARAH HASIL DALAM NEGERI (2002) MSTC 3,887 (HIGH COURT)

***Facts***

The above case was an appeal by the taxpayer to the High Court from the decision of the SC reported as HSG v. Ketua Pengarah Dalam Negeri, [(2000) MSTC 3,170].

In the abovementioned case, the taxpayer who worked for a Bank, suffered from a illness which required him to wear a neck collar. In 1997, the Bank introduced a Separation Scheme for Resident Officers. It was open to officers who were, inter alia, suffering from illnesses. However, an employee was not required to furnish any reasons to participate in the Scheme, and similarly the Bank was not obliged to furnish any reason for accepting or rejecting an application. The taxpayer opted for early retirement under the Scheme and his application was accepted. He received an amount of RM390,437 under the Scheme. The amount was brought to tax after deducting the amount exempted of RM4,000 per completed year of service pursuant to Paragraph 15(1)(b), Schedule 6 of the ITA.

The SC dismissed the taxpayer's appeal and held that the taxpayer's loss of employment was because he participated in the Scheme and not because of any other reasons. The taxpayer's loss of employment was a choice made by the taxpayer under the Scheme which required no reason to be stated in the application nor did the Bank need to specify the reason for approving. As such, the SC held that the compensation qualified for exemption pursuant to only Paragraph 15(1)(b), Schedule 6 of the ITA.

***Issues***

Whether the SC's decision (as stated above) was correct?

***Arguments***

***Taxpayer***

The taxpayer contended that the compensation was for loss of employment due to ill-health and therefore he was entitled to total exemption under Paragraph 15 (1)(a), Schedule 6 of the ITA.

***IRB***

The IRB argued that the compensation was paid for loss of employment because the taxpayer participated in the Scheme and not because of ill-health. As such, the taxpayer was only entitled to exemption from tax under Paragraph 15(1)(b), Schedule 6 of the ITA.

***Decision***

Held: The taxpayer's appeal was dismissed.

The High Court held that the SC was correct in deciding that the decision to be made was based on a question of fact. In this case, it was to be decided whether the compensation received by the taxpayer was received for loss of employment as a result of ill health or not.

The SC's decision was based on the findings of primary facts and was not ex facie bad in law. The SC's findings that ultimately the taxpayer had retired and received the compensation under the Scheme and not on account of his ill health, was not wrong in law.

## 3.0 THE BOARD OF TRUSTEES OF THE SABAH FOUNDATION V KETUA PENGARAH HASIL DALAM NEGERI (2002) MSTC 3,894 (HIGH COURT)

***Facts***

The taxpayer, Sabah Foundation, is established by the Sabah Enactment Act 1966. The case was an application by the taxpayer for an order of certiorari against the decision of the DGIR which decided that the taxpayer was not a charitable institution and was thus not entitled to tax exemption under Paragraph 13, Schedule 6 of the ITA.

***Issues***

Whether Sabah Foundation is a charitable institution and whether all businesses carried out by a charitable institution must be carried out solely for the charitable purposes of the institution to qualify as a charitable institution entitled for an exemption under Paragraph 13, Schedule 6 of the ITA?

***Arguments***

***Taxpayer***

The IRB has acted illegally by failing to recognise that Paragraph 13(3) of Schedule 6 permits a charitable institution established for charitable purposes to carry on business even if that business is not done solely for the charitable purposes of that institution.

***IRB***

The taxpayer does not qualify for exemption because the taxpayer was not established purely for charitable purposes and because the taxpayer had vast powers to engage in business.

In order to qualify for exemption, a charitable institution established purely for charitable purposes would not be permitted to engage in business unless that business was carried out solely for the charitable purposes of that institution and the work connected with the business is carried out by persons who will benefit from the establishment of that institution.

***Decision***

Held: The applicant's appeal was dismissed.

(1) The taxpayer is a charitable institution as the purposes for its establishment under the Sabah Enactment Act 1966

are clearly charitable in nature, notwithstanding that the Enactment provides wide powers for the taxpayer to engage in business.

(2) A charitable institution is entitled to an exemption under Paragraph 13 for income derived from a business carried out in pursuit of its charitable purposes. It does not permit the DGIR to deny a charitable institution an exemption on the basis that the charitable institution is engaged in a business that is not in pursuit of its charitable purposes.

(3) As such, the DGIR has clearly misconstrued the width of its powers by denying the taxpayer an exemption on the basis that the taxpayer had wide powers to engage in business that went beyond the taxpayer's charitable objects.

## 4.0 BINASTRA HOLDINGS SDN BHD V KETUA PENGARAH HASIL DALAM NEGERI (2002) MSTC 3,897 (HIGH COURT)

***Facts***

The taxpayer acquired 75,000 shares in Sukma Pesona Sdn Bhd ('the Company'), a property developer and a registered owner of land, and later sold the 75,000 shares in the Company to Sin Heap Development Sdn Bhd ('Sin Heap') for RM600,000.

***Issue***

Whether the gains by the taxpayer from the disposal of shares in the Company to Sin Heap falls within the ambit of the RPGTA?

***Arguments***

***Taxpayer***

(1) The appellant is not a property speculator which Paragraph 34A was designed to catch;

(2) The appellant is not a real property company within the meaning of Paragraph 34A as stock in trade is not subject to RPGT; and

(3) The court must define the deeming provision according to the policy and purpose thereof so as not to arrive at an absurd or unjust decision.

***IRB***

Paragraph 34A of the RPGTA applies to the gains derived from the disposal of shares in the Company.

***Decision***

Held: The taxpayer's appeal was allowed for the following reasons:

(1) Disposal of shares per se does not attract RPGT. The purpose of Paragraph 34A is to ensure that individuals do not use companies to acquire land and then dispose of shares in such companies thereby avoiding payment of RPGT. The sequence of the Appellant's share acquisition and subsequent disposal is such that the property has been acquired by the Company prior to the Appellant's share acquisition and disposal. Therefore, the Appellant cannot be an individual who used the Company to purchase the real property.

(2) The Company is a developer company and the land held by it is its stock in trade. Any gain arising from the disposal of the land would fall within the purview of the ITA. Once a gain is found to be assessable under the ITA, an assessment under RPGT is invalid due to the definition of "gain" under the RPGTA.

## 5.0 KASSIM BIN SULONG & ORS V GUTHRIE ESTATES HOLDINGS LTD & ORS (2002) MSTC 3,904 (HIGH COURT)

***Facts***

Under the New Economic Policy, companies were allowed to restructure the ownership of estates to pass from the hands of companies incorporated in England to those incorporated in Malaysia. In light of this, ten UK Companies ("ten UK Ltds") which owned plantations in Malaysia had, prior to 31 January 1997, made a proposal to reconstruct the plantation interests of the ten UK Ltds. The reconstruction was carried out whereby the ten UK Ltds went into voluntary liquidation and all their assets were distributed to Guthrie Malaysia Plantations Bhd ("GMP"). In completing the restructuring process, the ten UK Ltds and GMP entered into agreements with six Malaysian companies ("the six Sdn Bhds") to sell to the six Sdn Bhds certain of the assets. The role of GMP was as the medium in which all the estates that the ten UK Ltds owned in Malaysia were eventually transferred to and ended in the hands of the six Sdn Bhds together with certain other assets and liabilities.

An entitlement called the "West Malaysian Credit" ("WMC") arose pursuant to provisions of Schedule 9 of the ITA. WMC is basically the amount of money to be refunded by the IRB to a person, for the double taxation paid by the person (which in this case is a company) which had commenced business prior to 1967 while income tax was charged under the Income Tax Ordinance 1947 (the taxing statute prior to the ITA).

***Issues***

Which entities (i.e. whether the six Sdn Bhds or GMP) were entitled to the WMC?

***Arguments***

***Appellant***

The WMC is exclusively attributable to the business operations of the ten UK Ltds. As such, it should be payable to GMP.

***Respondent***

Since all the estates between the ten UK Ltds were eventually transferred to the six Sdn Bhds together with other assets and liabilities, the WMC should be payable to the six Sdn Bhds. The role of GMP was merely the medium via which the process of reconstruction took place.

***Decision***

(1) As it is the operation of the estates that resulted in the WMC being payable, there is a "causal connection" which exists between the asset and the estates.

(2) Fundamentally, the objective of the restructuring exercise under the New Economic Policy was to facilitate the transfer of ownership in the estate from the companies incorporated in England to those incorporated in Malaysia. Therefore there is a corollary intention to surrender the plantation interests to the six Sdn Bhds., even if the WMC was attributable to the economic activity generated by the estates.

(3) It is instrumental to appreciate that it was stipulated in certain agreements that GMP agreed to sell assets on "a going concern basis" which included all book debts due in respect of the estates which were beneficially entitled to

GMP. Since the WMC amounted to a book debt, the transfer should include the WMC. Besides, the six Sdn Bhds also undertook the specified liabilities which include all creditors, retirement gratuity provisions and accrued charges attributable to the estates, and in proportion, a certain amount of liability of the ten UK Ltds for Malaysian and United Kingdom taxation. Therefore, the six Sdn Bhds should be entitled to what is due in respect of the plantations interests.

(4) As far as the IRB is concerned, the transfer of assets and liabilities by contract from GMP to the six Sdn Bhds, transfers the right to entitlement of the WMC to the latter.

## 6.0 PARAMOUNT (M) (1963) SDN BHD V PESURUHJAYA KHAS CUKAI PENDAPATAN & ANOR (2002) MSTC 3,908 (HIGH COURT)

***Facts***

This case concerned a taxpayer seeking a Declaratory Order before the High Court, that proceedings in the income tax appeal to the Special Commissioners was invalidated and thereby the Deciding Order of the Special Commissioners was invalid on grounds, inter alia, for the failure of the DGIR to comply with section 140(5) of the ITA and rules of natural justice.

In this case, following investigations conducted by the DGIR, it was alleged that the taxpayer was evading tax. Accordingly, there were "fictitious purchases" and "fictitious lodgments" amounting to willful misconduct by the taxpayer.

However, in spite of the mandatory statutory requirement expressly provided for under section 140(5) of the ITA, no particulars of the alleged willful misconduct were provided to the taxpayer with the Notice of Assessments. The DGIR merely provided a "Summary of Account Irregularities".

The chronology of proceedings commenced with the taxpayer seeking leave to apply for an Order of Certiorari ("the Certiorari Application) to quash the assessments. The High Court granting leave, at the same time granted an Interim Order that "all proceedings arising from or relating to or for enforcement of the assessments be stayed" until the Certiorari application is disposed of and determined ("the Interim Order").

Notwithstanding the Interim Order, the taxpayer had requested the DGIR to forward the appeal to the Special Commissioners, which the DGIR did. As a result, the Certiorari Application was adjourned. Later when the Certiorari Application was heard, the application was dismissed. (The taxpayer appealed against the dismissal to the Court of Appeal).

When the appeal before the Special Commissioners was heard, it was ruled that there was "fraud or willful default or negligence committed by the taxpayer under section 9(3)" of the ITA. The taxpayer then appealed against the Deciding Order by way of Case Stated.

Upon reviewing of the relevant papers, the new solicitors engaged at that time advised the taxpayer that the proceedings before the Special Commissioners were held in direct breach of the High Court Order which ordered a stay of proceedings. This and the aforesaid contravention of section 140(5) of the ITA formed the "grave concerns" which were brought to the attention of the Special Commissioners, where it was decided that taxpayer seek a Declaratory Order on the validity of the appeal.

***Issues***

(1) Whether the various breaches of the High Court Order invalidate the appeal and the Deciding Order?

(2) Whether the failure to comply with Section 140(5) of the ITA and the rules of natural justice invalidates the appeal and the Deciding Order?

***Arguments***

***Applicant***

The DGIR is legally bound to provide the reasons and basis for the assessments under section 140(5) of the ITA and also pursuant to the rules of natural justice and the various breaches of the Interim Order invalidated the appeal before the Special Commissioners and their Deciding Order.

***Respondent***

Section 140 of the ITA is a power given to the respondent to disregard certain transactions. It is not a provision for making an assessment but for making adjustments as the respondent thinks fit, with a view to counteracting the whole or any part of any such direct or indirect effect of the transaction. As such, the fundamental rules on natural justice, in particular, audi alteram partem (hear the other side), had no application in relation to the respondent in the circumstances of the case.

A taxpayer can never seek judicial review under Order 53 of the Rules of the High Court 1980 as section 99 of the ITA provides taxpayers with a statutory right of appeal to the Special Commissioners. As such, the High Court Order or any other order obtained for judicial review proceedings would be null and void and can be ignored.

***Decision***

Held: The applicant's appeal was upheld on the following grounds:

(1) In order to enable the applicants rightfully to discharge the burden of disproving the assessments, the applicants require particulars thereof. The respondent's failure to provide these particulars to the applicants would not only be a breach of its statutory duty under section 140(5) of the ITA but also a breach of the rules of natural justice, if not an outright denial of justice itself.

(2) In addition, since an adjustment under section 140(1)(c) of the ITA would inevitably encompass an additional assessment or an ordinary assessment, the law imposes a duty on the respondent to furnish the applicant with "particulars" of the adjustment. This is also a correlative requirement under the rules of natural justice which provides for disclosure of particulars in order to give the applicants reasonable opportunity to set out its case and appeal against the assessments.

(3) The existence of an alternative remedy is not a bar to judicial review and cannot operate to oust the jurisdiction of the High Court, much less render the High Court Order null and void. Where there are genuine grounds for judicial review, it is the refusal rather than the grant of the relief which is the exceptional case.

(4) In relation to High Court Orders, it was emphasized that superior court orders, even if they were irregular, should be adhered to until set aside by the special proceedings or overturned on appeal.

(5) Accordingly, mere consent, conduct, waiver or acquiescence cannot grant jurisdiction where none exists or oust jurisdiction where it does exist. As such, the Special Commissioners' state of mind or knowledge of the High Court Order, even if existent, was therefore irrelevant

because the DGIR was prohibited at the outset from sending forward the appeal under section 102(1) of the ITA.

(6) In passing, it was held that even though the taxpayer only requested for particulars without reference to any specific statutory provision, e.g. Section 140(5) of the ITA until the case was filed, it would suffice to preserve the applicant's right to particulars.

## 7.0 KERAJAAN MALAYSIA V CHEN BOON HEOW (AS LIQUIDATOR FOR SYARIKAT SIN HWA PLANTATIONS SDN BHD) (2002) MSTC 3,950 (COURT OF APPEAL)

***Facts***

This is an appeal from the Government of Malaysia against the decision of the High Court which rejected the Appellant's application on 21 June 1999 for an originating summons moving the High Court to order that the proof of debt filed with the liquidator of Syarikat Sin Hwa Plantations Sdn Bhd ("the Company") be accepted and the sum as stated therein be paid to the IRB by the Respondent.

In 1982, the IRB filed a claim against Syarikat Sin Hwa Plantations Sdn Bhd vide Civil Suit No 796 of 1982 in the High Court for a sum of RM618,394.67 and was awarded a summary judgment. The company appealed to the Federal Court (in Civil Suit No 335 of 1984) against the decision and on 21 January 1986 was given unconditional leave to defend and the summary judgment of the High Court was set aside.

The Respondent was appointed the liquidator of the company in 1996. The Appellant filed the proof of debt for the amount which was the subject matter of Civil Suit No 796 of 1982 with the Respondent in 1997 which the Respondent rejected. This led to the Appellant's application of 21 June 1999 to the High Court to order that the proof of debt be accepted and the sum stated therein be paid by the liquidator to the Appellant.

***Issues***

Whether the proof of debt against a liquidated company needs to be proven and whether a certificate issued under Section 108 of the ITA would satisfy the requirement?

***Arguments***

***Appellant***

The IRB is estopped from pursuing its claim further by the legal principle of res judicata because the taxpayer was granted unconditional leave to defend by the Federal Court.

The IRB is guilty of laches for its delay in pursuing its claim pursuant to the order of the Federal Court in Civil Suit No 335 of 1984.

The amount in the proof of debt have not been proven since the claim is the subject matter of a civil action which has not been decided by the High Court.

***Respondent***

The Company was wrong to reject the amount stated in the proof of debt. The Company, at the date of the order for winding up the same, is justly and truly indebted to the Government of Malaysia in the sum of RM618,394.67 as stated in the requisition notice issued under Section 108 of the ITA.

***Decision***

Held: The appeal was dismissed for the following reasons:

(1) The learned judge of the High Court has erred in dismissing the originating summons filed by the Appellants at the High Court on 21 June 1999 relying on res judicata and laches. The defence of res judicata is unavailable as Civil Suit No 796 of 1982 is still pending in the High Court.

Moreover, the Appellant has not committed any laches in their filing of the proof of debt.

(2) Normally, a notice of requisition under Section 108 of the Income Tax Act 1967 would be accepted as proof that the amount stated therein is due and payable to the Government. In this case, the proof of debt filed has not been proven as the Federal Court is not satisfied that there is conclusive proof that the Company owed the Appellant the sum that was claimed in Civil Suit No 796 of 1982.

(3) Therefore, the learned judge of the High Court has come to the right conclusion to dismiss the Appellant's application.

## 8.0 LIM MOON HENG @ LIM BOON SIANG V THE GOVERNMENT OF MALAYSIA & ANOR (2002) MSTC 3,957 (HIGH COURT)

***Facts***

The taxpayer, an adjudged bankrupt, had applied to the Official Assignee ("OA") for leave to travel outside Malaysia and a bank guarantee of RM 50,000 was furnished. The taxpayer then instructed his advocates to write to the IRB to seek leave to travel outside Malaysia. The application was rejected by the IRB under Section 104 of the ITA unless the income tax assessment of RM197,140.09 was settled in full or a bank guarantee of RM200,000 is furnished.

***Issue***

Who was the proper authority to grant leave to the taxpayer who was a bankrupt?

***Arguments***

***Appellant***

The taxpayer argued that the ITA is only applicable to a person who is not adjudged as a bankrupt and was therefore not applicable to the taxpayer who was an adjudged bankrupt. The only appropriate legislation governing the affairs, interests and assets of the taxpayer being an adjudged bankrupt was therefore the Bankruptcy Act, 1967 ("BA").

It was further argued that the defendants by submitting their claims for unpaid income tax revenue from the taxpayer to the OA, the OA under Sections 8, 24(4) and 58 of the BA has jurisdiction over all affairs in respect of the assets and interests of the taxpayer and that the IRB is therefore the same as any other creditor of the plaintiff. It follows that the IRB therefore has no authority to intervene by issuing a Section 104 certificate under the ITA. As such, the IRB had no right or jurisdiction to restrict or hinder the taxpayer's freedom of movement as guaranteed by the Federal Constitution by prohibiting the taxpayer from travelling freely out of Malaysia under Section 104 of the ITA.

***Respondent***

The IRB had the right to restrict the Defendant pursuant to Section 104 of the ITA.

***Decision***

(1) Both the BA and the ITA have distinct applications and as such the question of which of the two Acts take precedence over the other does not arise. The ITA was enacted to regulate the collection of revenue of the country and the BA is to protect the creditors' interests

(2) Where a bankrupt did not owe the IRB any tax, Section 38(1)(c) of the BA was applicable and the OA was the full and final authority to grant leave to a bankrupt to travel abroad. On the other hand, where the taxpayer still owed tax to the IRB or where the IRB had filed a claim with the OA, although the OA had granted leave to a bankrupt to travel abroad, the Director General of Inland Revenue (DGIR) still retains the power under Section 104(1) of the ITA to stop the bankrupt from leaving unless he has fulfilled certain conditions imposed therein.

(3) An international passport was not "property" as defined under Section 2 of the BA. Since the taxpayer's international passport was not vested in the OA, the IRB still possessed the right to stop the taxpayer from leaving Malaysia unless he fulfilled the conditions stipulated.

(4) Where a bankrupt had settled his tax and was granted leave by the DGIR to travel abroad, the bankrupt still, under Section 38(1) of the BA required the approval of the OA for such trips if he owed other claimants.

## 9.0 GENERAL PRODUCE AGENCY SDN BHD & ANOR. V COLLECTOR OF STAMP DUTY (2002) MSTC 3,960 (COURT OF APPEAL)

***Facts***

The first appellant (i.e. the taxpayer) in this case owned over 90% of the equity of the second appellant. On 15 January 1996, a reconstruction agreement was entered into between the taxpayer and the second appellant companies wherein it was provided for the sale and purchase of a piece of land registered in the taxpayer's name for a consideration.

An instrument of transfer was executed and an application for exemption of stamp duty on the instrument under Section 15A of the Stamp Act 1949 (the "Act") was submitted to the Collector. The Collector requested a copy of the confirmation from the Foreign Investment Committee ("FIC") that approval for the transfer of the land was not needed as the Collector's office had been informed by the FIC that any transfer involving more than RM5 million would require the FIC's approval although the transfer may be between associated companies. Subsequently, an application was made to the FIC for approval wherein the FIC replied that it had no objection to the transaction provided that the second appellant would have 30% equity for a Bumiputera company before 31 December 1997.

The taxpayer and the second appellant then terminated the first reconstruction agreement and a second reconstruction agreement was entered into on 28 October 1996. A fresh memorandum of transfer (Form 14A) was also executed. Stamp duty exemption was subsequently applied for the fresh agreement enclosing a copy of the consent from the FIC to the transaction.

The Collector rejected the application on the basis that there was a condition which had been imposed by the FIC that the second appellant should divest 30% of its equity to a Bumiputera company by a certain date. Since there was such an arrangement, the taxpayer would cease to have more than 90% of the equity in the second taxpayer within the meaning of Section 15A(4)(c) of the Act and as such the instrument of transfer did not qualify for exemption for stamp duty.

***Issue***

Was the transfer of land from the taxpayer to the second appellant effected in pursuance to an arrangement whereby the two companies were to cease to be associated by reason of a change in the percentage of the issued share capital held by the taxpayer in the second appellant?

***Arguments***

***Taxpayer***

(1) The taxpayer argued that stamp duty was not payable by reason of the fact that at the time of the application for the exemption and that at the date of the transfer, the transferor company owned more than 90% of the shares in the transferee company and thus were entitled to exemption from stamp duty under Section 15A(1).

(2) The taxpayer further argued that it was never the intention of the taxpayer and the second appellant to relinquish any part of their shares to a third party. The divestment of 30% of their shares to a third party (within the specified

date prescribed by the FIC) cannot in such circumstances be regarded as "pursuant to" or "in connection with" any "arrangement" made by the taxpayer and the second appellant. It must therefore, be viewed as a condition "imposed" upon them by the FIC. Even if at some future time, the transferee company were to divest 30% of its shares, this will be done post facto and therefore would be outside of the ambit of Section 15A(4)(c) of the Act.

***IRB/Collector***

The Collector, on the other hand, argued that the taxpayer and the second appellant had a choice upon termination of the first agreement and the cancellation of the transfer Form 14A dated 6 March 1996, by reason of not having obtained prior approval of the FIC, whether or not to proceed with the transaction in question. Upon receipt of the FIC's conditional approval, subject to the condition that the transferee company was to have 30% Bumiputera equity before 31 December 1997 (extended by the FIC), the taxpayer and the second appellant had chosen to proceed with the said transfer and a fresh agreement for the sale and purchase of the said land and a fresh instrument of transfer was executed.

As they had chosen to proceed, the condition imposed by the FIC was clearly accepted. As such, they were not "compelled" to divest the 30% equity and that by executing the fresh agreement, there was therefore an "arrangement" where the transferor company (within the meaning of Section 15A(4) of the Act) was to a divest a 30% equity stake in the transferee company to a Bumiputera company by 31 December 1997.

***Decision***

Held: The taxpayer's appeal was allowed on the following grounds:

(1) Section 15A(4) of the Act was designed to prevent tax avoidance and there was no hint that the associated companies had made an arrangement to avoid paying stamp duty on the first transfer instrument or the second transfer instrument. The FIC was not a party to the fresh agreement entered into between the taxpayer and the second appellant. It would be unjust to interpret Section 15A(4)(c) to mean that imposition of a condition by a stranger (the FIC) which the second appellant felt com-

pelled to abide by, meant that the appellant intended to avoid paying stamp duty on the transfer instrument.

(2) The meaning of the words “in connection with” and “arrangement” which appears in Section 15(4)(c) are very wide. Whilst there need not be a legally binding nexus between the conveyance or transfer and the offending arrangement, however the situation must be such that liability to stamp duty of the instrument in question can be assessed, that is:

- the arrangement must be in existence at that point of time with all parties thereto being identifiable;
- the mere intention to enter into a relevant arrangement is not sufficient; and
- the arrangement must have taken place or will take place and not merely be a probable event.

## 10.0 KETUA PENGARAH HASIL DALAM NEGEI V PAN CENTURY EDIBLE OILS SDN BHD (2002) 3,967 (HIGH COURT)

***Facts***

The taxpayer is in the business of refining and processing crude palm oil. The price of crude palm oil, the raw material of the business, fluctuates and the amount of cash needed to purchase the crude palm oil varied from time to time.

When the price is low and less cash was required to fund a purchase, the excess cash was placed on short term and long term deposits and on Negotiable Certificates of Deposits.

The placing of deposits and lifting of deposits were continued on a regular and repetitive basis (daily basis, week in and week out in each month) for the relevant years of assessment. The object of placing on short term deposits was to deal with excess cash in hand to turn over and make profits.

***Issue***

Whether interest income of the taxpayer derived from the short term or long term deposits was business income under Section 4(a) or interest income under Section 4(c) of the ITA?

### *Arguments*

#### *Taxpayer*

The interest income from short term and long term deposits is part and parcel of its business income or ancillary to its business or it is business income arising out of an adventure or concern in the nature of trade and therefore should be chargeable to tax as income under Section 4(a) of the ITA.

#### *IRB*

Fixed deposits whether short term or long term was current assets and liquid cash which could be obtained at any time. Placing of money in fixed deposits had no relevance to the business of palm oil refining and there was no element of risk. Although the transactions were repetitive, they did not amount to trade as there was no profit-making motive.

### *Decision*

Held: The taxpayer's appeal was allowed for the following reasons:

(1) The excess funds placed in the fixed deposits together with the interest earned would be ploughed back into the company to be used in its business of refining and processing of oil palm in time of need. These excess funds were in fact the temporary surplus working capital of the taxpayer.

(2) As such, interest despite the fact that it was referred to in Section 4(c) of the ITA nevertheless constitutes business income and is therefore subject to Section 4(a) of the ITA if it was received in the course of carrying on a business of putting the taxpayer's excess cash to profitable use by placing it on short term and long term deposits.