



 Kuala Lumpur High Court  
 September 12, 2019  
 Bahagian Rayuan Khas,  
Jabatan Undang-Undang

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## JUDGE

YA Datuk Nordin Hassan

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## REVENUE COUNSELS

Mohd Harris Hanapi  
Wan Hamdanie Wan Mohamad  
Zul-Hasymi Mohamad  
Marvianna Zainol

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# LEAVE FOR JUDICIAL REVIEW DISMISSED: THE ISSUE OF APPLICABILITY OF SECTION 140 SHOULD BE HEARD BEFORE SCIT

— APSB v KETUA PENGARAH HASIL DALAM NEGERI

## BRIEF FACTS

APSB filed a leave application pursuant to Order 53 of the Rules of Court 2012 (“ROC”) for a certiorari to quash the decision of KPHDN made in the form of notices of additional assessment for YAs 2015, 2016 and 2017 all dated 31.05.2019 (“the Impugned Decision”).

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## APSB’S CONTENTIONS

APSB has the right to make application for judicial review despite the fact that Form Q has been filed to Special Commissioner of Income Tax (“SCIT”).

KPHDN should have raised the assessments under section 140 of the Income Tax Act 1967 (“ITA”) in disregarding the APSB’s audited account and relied on a third party’s financial statement. KPHDN’s decision to treat other companies’ income as the APSB’s income is incorrect and illegal.

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## KPHDN'S CONTENTIONS

The application for judicial review is an abuse of the process of the court as the Applicant has filed an appeal to the SCIT under Section 99 of the ITA as the domestic remedy.

Section 140 of the ITA is not applicable as the assessment was raised under Section 91 (1) of the ITA. Nevertheless, the argument on Section 140 of the ITA is rebutted based on the decision of the High Court in the case of **AEON Credit Service (M) Berhad**. The SCIT is the best quorum to decide on this issue as it involves question of facts.

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## COURT'S DECISION

The Court dismissed the leave application and held that the issues raised can be resolved by evidence through witnesses and documents. The grounds raised in this case substantially are question of facts which have to be determined by the SCIT as the judges of facts.

There are no exceptional circumstances for this court to exercise its discretion to grant leave prior to the applicant exhausting the domestic remedy of appealing to the SCIT for its decision.