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BANK LIABILITIES CANNOT BE DEDUCTED FROM THE CONSIDERATION SUM IN ASCERTAINING THE DISPOSAL PRICE OF SHARES UNDER PARAGRAPH 34A OF SCHEDULE 2 OF THE REAL PROPERTY GAINS TAX ACT 1976.

NRB v. KETUA PENGARAH HASIL DALAM NEGERI

BRIEF FACTS

The Appellant in this case had on 24.5.2004 acquired 3,000,000 ordinary shares in SRSB (Real Property Company) from NKHSB at the purchase price of RM 14,937,000.00. The Appellant then disposed of the said shares to BPSB (“the Acquirer”) vide a Share Sale Agreement dated 29.9.2016 for the consideration price of RM 35,500,000.00.

The Respondent had thereafter raised a real property gains tax assessment amounting to RM 1,055,149.50 against the Appellant vide a Notice of Assessment dated 27.12.2016 based on the consideration sum of RM 35,500,000.00 (as stated in the Share Sale Agreement). The Appellant appealed against the assessment raised on the basis that the Real Property Gains Tax should be calculated based on the net disposal price of RM 20,888,222.71, after deducting the existing bank liabilities of RM 14,611,777.29 owed by SRSB to Ambank Islamic Berhad, RHB Islamic Bank Bhd and Hong Leong Bank Bhd from the total consideration sum of RM 35,500,000.00.

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ISSUE

Whether the amount of RM 14,611,777.29 claimed by the Appellant as existing bank liabilities can be deducted in ascertaining the disposal price of 3,000,000 shares pursuant to an Agreement dated 29.9.2016.

APPELLANT'S SUBMISSION

The amount of RM 35,500,000.00 was only the gross disposal price of shares. The Appellant did not get the whole sum of RM35,500,000.00 from the Acquirer as some portion of it were utilised to settle the existing bank liabilities owed by SRSB. The Share Sale Agreement expressly stated that the consideration sum of RM 35,500,000.00 is subjected to the utilisation of RM 14,611,777.29 to settle the existing bank liabilities owed by SRSB. Therefore, RPGT assessment should be calculated based on the net disposal price of the shares at the amount of RM 20,888,222.71 after deducting the amount of RM 14,611,777.29 being the amount for the existing bank liabilities from the gross disposal price of shares.

RESPONDENT'S SUBMISSION

Being a Real Property Company, the disposal of shares by the Appellant to the Acquirer is subjected to Paragraph 34A of Schedule 2 of the Real Property Gains Tax Act 1976 ("Paragraph 34A") The amount of RM 14,611,777.29 being the existing bank liabilities forms part and parcel of the consideration sum and should not be deducted from the total consideration sum in

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assessing the RPGT. The Acquirer must make payment according to the terms of the Agreement. The Appellant had acknowledged the amount of RM 35,500,000.00 as the consideration price for the disposal of shares based on Form 32A (Form of Transfer of Securities) submitted by the Acquirer.

The High Court in the cases of *KPHDN v. Tan Teik Kin (2010) MSTC 30-018* and *KPHDN v. Chan Lian Yen (2010) MSTC 30-013* ruled that Paragraph 34A of Schedule 2 is clear that liabilities form part and parcel of the consideration price and therefore should not be deducted in its computation of the disposal price of the shares.

DECISION

The SCIT dismissed the Appellant's appeal and maintained the assessment. The total consideration sum of RM 35,500,000.00 includes the sum of RM 14,611,777.29 (existing bank liabilities) which also forms part and parcel of the total consideration sum and cannot be deducted from the total consideration sum in ascertaining the disposal price of 3,000,000 shares pursuant to an Agreement dated 29.9.2016.

REVENUE COUNSELS FOR THE RESPONDENT

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