



📍 Kuala Lumpur High Court  
📅 September 4, 2019  
🌐 Bahagian Rayuan Khas,  
Jabatan Undang-Undang

## JUDGE

YA Datuk Wong Kian  
Kheong

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## REVENUE COUNSELS

Muazmir Mohd Yusof  
Nik Nur Halina Mohd Kashfi  
Mohammad Danial Ahmad

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# INVOCATION OF SECTION 140 OR 140A OF ITA IS TO BE DETERMINED BY THE SCIT

—SPSA v. KETUA PENGARAH HASIL DALAM NEGERI

## BRIEF FACTS

A leave application filed by SPSA 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 assessments for the Years of Assessment (Y/As) 2014 and 2015 and notices of additional assessments for Y/As 2012 and 2016 all dated 31.7.2019 (“the Impugned Decision”).

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## SPSA’S CONTENTIONS

SPSA contended that even in tax cases where an alternative remedy exists, judicial review remains available so long as exceptional circumstances are present.

The KPHDN has disregarded SPSA’s cost contribution arrangement under section 140A of ITA. Section 140(1) of the Income Tax Act 1967 (“ITA”) should be invoked to disregard and re-characterise the Cost Contribution arrangement into an intra-group services arrangement.

Exceptional circumstances exist in the present application as the impugned Decision arose from a clear lack of jurisdiction and KPHDN’s blatant failure to perform its statutory duty under sections 140(1) and 140(5) of ITA. Section 140A only permits KPHDN to substitute the price and not to disregard or vary a transaction.

SPSA also sought for a stay of all further proceedings including the enforcement and effect of the impugned Decision until the full and final determination of the application.

SPSA contended that there are special circumstances which warrant the grant of stay. The amount of taxes and penalty imposed is large and will result in a financial crisis for the company.

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## **KPHDN'S CONTENTIONS**

KPHDN argued that the question on whether section 140 or section 140A applies is mere difference in interpretation which does not amount to exceptional circumstances and does not attract judicial review. SPSA has failed to establish special circumstances and SPSA has not exhausted the alternative remedy available.

The determination of whether section 140 or 140A applies require the establishment of facts and is very technical in nature. Therefore, it has to be ventilated before the SCIT as judges of facts who have expertise and experience dealing with similar issues.

Stay order sought by SPSA will have an effect of restraining KPHDN from performing his statutory duty under the law. There is no special/ exceptional circumstances established to justify stay sought.

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## **COURT'S DECISION**

High Court dismissed the SPSA's leave for judicial review & stay application. The invocation of section 140 or 140A is a question of facts and should be determined by the SCIT.