

# Long road ahead for Najib's tax case

by RAHIMI YUNUS

THE summary judgement that ordered Datuk Seri Mohd Najib Razak to pay the



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Inland Revenue Board (IRB) RM1.69 billion in additional income tax plus penalties, is just the beginning of a long legal battle awaiting the former prime minister.

Tax partner at law firm Raja, Darryl & Loh, Vijey Mohana Krishnan said there are two cases ongoing at the same time.

One is the IRB seeking payment of taxes via summary judgement at the High Court and the other is the challenge by Najib of the tax assessment at the Special Commissioners of Income Tax (SCIT), a special tribunal which handles tax appeals on the amount of tax assessed.

He said the Income Tax Act (ITA) 1967 precludes the court in the summary judgement case from hearing Najib's argument that the tax amount had been wrongly calculated, as the type of argument falls under the jurisdiction of the SCIT.

"The defendant can also seek judicial review proceedings to question the actions taken by the IRB DG, whether it was illegal and unreasonable and seek a stay against tax recovery," Vijey told *The Malaysian Reserve* yesterday.

He said a judicial review approach would be a potentially more strategic approach for

Najib, rather than arguing at summary judgement proceedings that the donations are not taxable given the "pay first talk later" provisions in the ITA 1967.

"The odds are against them if they continue with this type of argument used at summary judgement proceedings. The chances of a successful appeal may not be great, and the Court of Appeal may uphold the decision by the High Court," he added.

He also said Najib may seek from the court a stay of execution to hold any enforcement of the summary judgement pending the disposal of legal processes at the court and SCIT.

"This is quite a critical matter for Najib. If he fails to pay the taxes, the IRB can enforce the summary judgement in various ways and he could end up being declared bankrupt, which would disqualify him as an MP," Vijey said.

At the SCIT, he said an appeal by a taxpayer could be fixed for hearing in the next two and a half years due to the high number of cases at the special tribunal.

The tax law expert, however, said there is a chance for a hearing to be expedited due to

public interests or when it involves high-profile cases.

He said the burden of proof will be on the taxpayer at the SCIT, in which a hearing comprises a three-member panel.

Vijey said Najib would need to prove that the income was donations as claimed and that such donations are not taxable.

"He has to prove what it is and whatever that is, is not taxable under the law. Under normal circumstances, donations are not taxable, but one needs to determine what type of donations or payments they were.

"One cannot say automatically that things labelled as donations are not taxable," he said.

He further said all the legal processes will be carried for a long time and winning or losing at this stage is not important because the final decision in the long haul will matter the most.

Najib in a Facebook post said the truth will be proven at the SCIT, adding that the country's tax law was exploited by former Finance Minister Lim Guan Eng, who played propaganda to deceive those who are less literate in the Act and tax recovery processes.

Malaysian Reserve - 24/7/2020

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