



📍 Shah Alam Session's Court
📅 September 9, 2019
🏛️ Cawangan Guaman
Kuala Lumpur

JUDGE

YA Datin Nursinah Azmi

REVENUE COUNSEL

Nur Sakinah Ahmad

THE LAW

1. Order 14 Rules of Court 2012
2. Sections 75A, 97, 99, 103, 106, 142 & 145 of the Income Tax Act 1967.

A DIRECTOR IS LIABLE UNDER SECTION 75A OF THE INCOME TAX ACT 1967 TO MAKE PAYMENT FOR ITS COMPANY TAX ARREARS

GOVERNMENT OF MALAYSIA v ASB

BRIEF FACTS

1. The First Defendant had submitted late its Income Tax Return forms for the Years of Assessment 2010, 2011, 2012, 2013 and 2014, and failed to furnish its Income Tax Return forms for the Years of Assessment 2015 and 2016. Therefore, an estimated tax was raised against the First Defendant.
2. The Plaintiff filed a Writ Summon and Statement of Claim for the amount of RM710,770.81. As the Defendants have no defence to this claim, the Plaintiff proceeded to file a Notice of Application for Summary Judgment.
3. The Second Defendant and the Third Defendant are the directors of the company, **holding not less than twenty per cent of the ordinary share capital** in the First Defendant's company and are jointly and severally liable under section 75A of the Income Tax Act 1967 to pay for the First Defendant's tax arrears.

PLAINTIFF'S SUBMISSIONS

1. Notices of Assessment were duly served to the registered and business address of the First Defendant and had never been returned undelivered to the Plaintiff. The First Defendant failed to make payment on the tax amount which is due and payable.
2. The First Defendant also failed to file any appeal to the Special Commissioners of Income Tax within stipulated time. Therefore, the assessments raised are final.
3. The Honorable Court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased.

4. The Honourable Court agreed to the Plaintiff's submission that the Second Defendant and the Third Defendant are the directors of the First Defendant's company, holding not less than twenty per cent of the ordinary share capital and shall be jointly and severally liable under section 75A of the Income Tax Act 1967 to make payment of the First Defendant's tax arrears.

DEFENDANT'S SUBMISSIONS

The Defendant failed to file any submissions within the dateline given by the Court and only filed the submission on the date fixed for Judgment.

COURT'S DECISION

The Honourable Court allowed the Plaintiff application for Summary Judgment with cost of RM2,500.00 to be paid by the Defendants to the Plaintiff. The Honourable Court agreed with the Plaintiff's submissions that a director of a company who is holding not less than twenty per cent of the ordinary share capital in the company shall be jointly and severally liable under section 75A of the Income Tax Act 1967 to pay the tax arrears of the company.