



Special Commissioner
of Income Tax @
Putrajaya

January 16, 2020

Tax Litigation Division,
Legal Department, IRBM

JUDGES

YA Tuan Azahari Abu Hanit
YA Tuan Ahmad Zakhi Daud
YA Tuan Effandi Nazila Abdullah

REVENUE COUNSELS

Abdul Aziz Harun
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SCIT RULED THAT ORAL AGREEMENT WAS INSUFFICIENT TO ESTABLISH THE EXISTENCE OF A PARTNERSHIP

— BA v. KETUA PENGARAH HASIL DALAM NEGERI

BRIEF FACTS

The Appellant operates a petrol station business in the name of B Enterprise. Upon audit, it was found that the Appellant had under-declared sales and profit and claimed deductions for some expenses which were not allowable. The Appellant claimed that his son was a partner to B Enterprise and made distribution of income of partnership for YA 2012, 2013, 2014 and 2015. The Respondent disallowed the said distribution. The Appellant agreed to all audit findings except the issue of the non-allowable of distribution of income for partnership.

ISSUE

Whether there is an existence of a partnership for B Enterprise to make distribution of profit under the Income Tax Act 1967 ('ITA') for YA 2012, 2013, 2014 and 2015?

APPELLANT'S CONTENTIONS

1. Although registration of partnership is required under SSM for the purpose of licensing, the existence of a partnership and its legality are subjected to the Partnership Act 1961; and
2. The Appellant and his partner had complied with Section 2 and Section 55 of the ITA 1967 wherein the parties had agreed to incorporate any rights, power, assets or expertise to carry on the business and sharing of profits. Thus the partnership did exist.

RESPONDENT'S CONTENTIONS

1. The SSM search stated that the Appellant's business was a sole proprietorship business.
 2. The Appellant did not submit any registration of partnership to the Respondent and did not register '*Borang P (Borang Nyata Perkongsian)*' under the ITA;
 3. There was no partner's record in the company's '*akaun semasa perkongsian*' or in the company ledger and the Appellant had failed to show any distribution of partnership profits. There was no formal partnership agreement for B Enterprise to prove the existence of the partnership.
 4. The partner, who is the Appellant's son, did not make any capital contribution to the business, was not at the business premise on a full-time basis and did not fulfill his duties/responsibilities as a partner.
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COURT'S DECISION

The court unanimously dismissed the Appellant's appeal and decided that there is no partnership in B Enterprise. Without a formal and legally binding partnership agreement, an oral agreement alone was insufficient to prove the existence of a partnership.