



📍 High Court, Kuala Lumpur

📅 March 11<sup>th</sup>, 2021

🏛️ Legal Department, IRBM

## HIGH COURT REVERSED SCIT'S DECISION, CONFIRMED ASSESSMENT ON SOLE PROPRIETOR

### DIRECTOR GENERAL OF INLAND REVENUE v. ABD WAHID BIDIN

**Keywords:** sole proprietorship - partnership – Partnership Act 1961

The High Court had allowed the DGIR's appeal on the issue of whether the Taxpayer's income derived from the operation of his petrol stations was assessable as a sole proprietorship or partnership.

#### JUDICIAL COMMISSIONER

Dato' Ahmad Kamal Md Shahid

The Taxpayer operated two petrol stations which were registered as a sole proprietorship. It was claimed that the businesses were in fact carried out by way of partnership with his two children. The Taxpayer declared 50% share of his profits in the businesses and his children declared the remaining profits as partners.

#### COUNSEL FOR DGIR

Normareza Mat Rejab  
Syazana Safiah binti Rozman

The DGIR had rejected the claim of partnership as the businesses were registered as a sole proprietorship and no evidence of partnership had been furnished to the DGIR during audit. Additional assessment was raised on the Taxpayer as a sole proprietor and the assessments on his two children were accordingly reduced.

#### COUNSEL FOR RESPONDENT

Siti Nabihah Ahmad  
*[Messrs. Zailan & Associates]*

The DGIR submitted that a partnership agreement alone does not prove the existence of partnership for income tax purposes. To constitute a partnership, the elements of partnership must be established.

It was argued that facts must be established to show that the elements of a partnership had been fulfilled. During audit, the Taxpayer claimed that there was no Partnership Agreement but no explanation was given as to how the Partnership Agreement was suddenly available during hearing. Aside from the Partnership Agreement, the Taxpayer has failed to prove any participation in the capital by the purported partners or other significant contribution to the purported partnership by the partners. Since the return form for partnership (Form P) was also not filed, the DGIR has no basis to raise assessment on a partnership. Thus, the income of the Taxpayer from the operation of the petrol station was correctly assessed solely on the Taxpayer as a sole proprietor.

The High Court allowed the DGIR's appeal and confirmed the additional assessments raised by the DGIR.

**Editorial Note:** This case is pending appeal to the Court of Appeal.