






SECTION 106, 142 & 145  
INCOME TAX ACT 1967

CHUA KEE MING  
v.  
GOVERNMENT OF MALAYSIA  
S-01(IM)(NCVC)-876-12/2022

 COURT OF APPEAL, KOTA KINABALU, SABAH  
 YA Datuk Supang Lian, JCA  
YA Dato' Collin Lawrence Sequierah, JCA  
YA Datuk Wong Kian Kheong, JCA  
 20 March 2024

The Appellant was assessed with Additional Taxes of RM1,174,623.42, RM577,732.48, RM2,791,982.75, RM2,783,846.62, RM62,592.12 and RM24,546.35 for the years of assessment (YA) 2011, 2012, 2013, 2014, 2015 and 2016 respectively.

The Notices of Additional Assessment were issued and sent by ordinary post to the Appellant to his last known address known to the Respondent at that time and had never been returned undelivered to the Appellant. Hence, the said Notices were deemed to have been duly served to the Appellant in accordance with paragraph 145(2)(c) of the Income Tax Act 1967 (ITA 1967).

The Appellant filed an appeal against the said Notices by way of Form Q on 16.4.2021 for YA 2011 to 2016. As the Appellant failed to fully pay the outstanding sum within 30 days from the date of service of the said Notices as provided under section 103 of the ITA 1967, an increase of 10% was imposed by virtue of subsection 103(5) of the ITA 1967.

The Appellant had made partial payment of RM8,000.00 for YA 2016 and left the remaining balance owed and payable at RM8,148,856.09.

The Appellant's main argument was that there were 3 different amounts claimed by the Respondent in this suit:

Writ of summon & Certificate under subsection 142(1) ITA 1967	: RM8,149,856.09
Statement of claim & Notice of application Order 14	: RM8,148,856.09
Order & Judgment 02.11.2022	: RM8,148,859.09

The Respondent's claim was not final, erroneous and just an estimation without proper calculation. The Appellant also relied on the Respondent's 'without prejudice letter' dated 08.04.2022 stating that the additional tax assessed was reduced from RM8,148,856.09 to RM3,458,250.63. The initial calculation of RM8,148,856.09 was grossly erroneous, incorrect and without basis. Therefore, the summary judgment ought not to be given.

The Respondent argued that since the Respondent's claim did not exceed the amount as stated in the certificate, it did not prejudice the Respondent's application and did not give rise to a triable issue that warranted a full trial. With regard to the letter dated 08.04.2022, it was issued for the purpose of out of court settlement with the Appellant. There were conditions being imposed on the Appellant if the Appellant agreed upon the proposal for settlement. Since there was no agreement to the settlement, the proposed amount of RM3,458,250.63 would no longer be relevant.

The Court of Appeal unanimously dismissed the Appellant's appeal with the cost of RM10,000.

**Nota Editor:** *Pembayar Cukai berhak untuk memfailkan rayuan terhadap keputusan Mahkamah Rayuan ini dalam tempoh 30 hari dari tarikh keputusan diberikan.*