

**DALAM MAHKAMAH RAYUAN MALAYSIA DI PUTRAJAYA  
(BIDANG KUASA RAYUAN)  
RAYUAN SIVIL NO. W-01-1-2005**

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**ANTARA**

**KERAJAAN MALAYSIA**

**.. PERAYU**

**DAN**

**NERACA UNTUNG SDN BHD**

**.. RESPONDEN**

**[Dalam Perkara Mahkamah Tinggi Malaya di Kuala Lumpur  
(Bahagian sivil)**

**Guaman No. S2-21-199-2001**

**Antara**

**Kerajaan Malaysia**

**.. Plaintiff**

**Dan**

**Neraca Untung Sdn Bhd**

**.. Defendan]**

**CORAM:**

**MOHD GHAZALI MOHD YUSOFF, JCA**

**ABU SAMAH NORDIN, JCA**

**RAMLY ALI, JCA**

RAMLY ALI, JCA

(DELIVERING JUDGMENT OF THE COURT)

1. The present appeal is against the decision of the learned High Court Judge on 28.10.2004 allowing the Respondent's appeal with costs against the decision of the learned Senior Assistant Registrar on 9.1.2004 granting the Appellant summary judgment under **Order 14 of the Rules of High Court 1980 (the Rules)**.
  
2. The factual background of the case is that the Appellant had served notices of assessment against the Respondent under the **Income Tax Act 1967** for an amount of RM12,127,759.20 for year of assessment 1997 and for an amount of RM606,517.20 for year of assessment 1997 (Additional) inclusive of tax increased under **section 103(4) and 103(5A)** of the Act. Both notices were served to the Respondent's last known address based on the return form (Form C) filed by the Respondent through its tax agent.

3. With regards to the 1997 notice, the Respondent's tax agent had vide letter admitted having received the same. However, with regards to the 1997 (Additional) notice there is no such admission of receipt, but the notice was never returned undelivered.
4. It would seem that pursuant to **section 145(2) of the Income Tax Act 1967**, as the said 1997, (Additional) notice was never returned undelivered, it is deemed to have been received by the Respondent. However the Respondent did not respond to both the notices.
5. Consequently, the Appellant initiated the present action against the Respondent to recover the said amount. The Appellant then filed an application under **Order 14 of the Rules** for obtain summary judgment. The application was allowed by the learned Senior Assistant Registrar on the 9.1.2004 and on appeal by the Respondent to the High Court,

the Learned High Court Judge on the 28.10.2004 allowed the appeal with costs and hence, this appeal.

6. Before this Court, the Appellant submitted that since service of the 1997 (Additional) notice was sent to the same address with the 1997 notice (which admittedly has been received by the Respondent through its tax agent), the 1997 (Additional) notice is deemed to have been received by the Respondent. The Appellant further submitted that, that being the case, the learned High Court Judge erred in holding that there are triable issues and contended that the Appellant should be allowed to enter summary judgment.
7. The Respondent on the other hand maintained that the 1997 (Additional) notice was not served on the Respondent and that non-service is a triable issue. Therefore the Respondent argued that summary judgment was rightly refused.

8. The sole issue in this appeal is whether the 1997 (Additional) notice had been served or deemed to have been received by the Respondent.

9. The 1997 notice dated 10.2.1999 was sent to the Respondent's last known address (as provided by the Respondent's tax agent) at:

NERACA UNTUNG SDN BHD,  
c/o MJH Taxation Services Sdn Bhd  
P.O. Box No. 13066,  
50798 Kuala Lumpur.

10. The 1997 (Additional) notice dated 14.2.1999 was also sent to the same address as stated above.

11. The fact that the 1997 notice had been received by the Respondent is not in dispute. This can be seen by a letter sent by the Respondent's tax agent dated 26.2.1999 to the Appellant; the said letter reads:

*“Merujuk kepada syarikat di atas, kami ingin memaklumkan kepada pihak tuan bahawa kami telahpun menerima Notis Taksiran (Borang J) untuk tahun taksiran 1997 bertarikh 10.2.1999”.*

12. The Learned High Court Judge agreed that the 1997 notice was received by the Respondent; in his grounds of judgment in relation to this, the learned judge said:

*“Afidavit Plaintiff juga menunjukkan bahawa agen percukaian Defendan telah menulis surat kepada Plaintiff mengakui menerima notice taksiran cukai tahun 1997. Oleh itu, adalah jelas bahawa notis taksiran cukai tahun 1997 ianya telah diterima oleh Defendan melalui agennya.”*

13. The Respondent denied having received the 1997 (Additional) notice despite the fact that the said notice was also sent to the same address on 14.2.1999 (four (4) days after the 1997 notice was sent).

14. The relevant provisions relating to service of notices in income tax matters are found in **section 145 of the Income Tax Act 1967; section 145(1) and (2)** read as follows:

*“145. (1) Subject to any express provision of this Act, for the purposes of this Act notices may be served personally or by ordinary or registered post.*

*(2) A notice relating to tax which is sent by ordinary or registered post shall be deemed to have been served on the person (including a partnership) to whom it is addressed on the day succeeding the day on which the notice would have been received in the ordinary course of post if it is addressed:*

*(a) in the case of a company, partnership or body of persons having a registered office in Malaysia:*

*(i) to that registered office;*

*(ii) to its last known address; or*

(iii) *to any person authorized by it to accept service of process.”*

15. The last known address of the Respondent for the purpose of correspondence was provided by the Respondent's tax agent via their letter dated 11.12.1998 to the Appellant (at page 157 of the Appeal Records). The said letter read as follows:

**“NERACA UNTUNG S/B**

*Kami bertindak sebagai ejen cukai bagi pelanggan kami yang tersebut di atas.*

*Dengan segala hormatnya dimaklukan bahawa mulai hari ini, sila hantar segala surat-menyurat, dokumen-dokumen dan sebagainya ke alamat pos seperti berikut:-*

**G.P.O. Box 13066**

**50798 Kuala Lumpur**

*Kerjasama daripada pihak tuan amat kami hargai dan sanjung tinggi.*

*Sekian, terima kasih.*

*Yang benar*

***NJH TAXATION SERVICES SDN BHD.”***

16. The same address was also based on the Respondent's return form (Form C) dated 30.8.1997 which was also sent to the Appellant by the Respondent's tax agent (at pages 152-153 of the Appeal Records).
17. Based on the above evidence, this Court is convinced and satisfied that the 1997 (Additional) notice has been properly sent to and served on the Respondent at its last known address in accordance with **section 145(1) and (2) of the Income Tax Act 1967**. The notice must be deemed or presumed to have been served on the Respondent. The

Respondent has failed to rebut the presumption. It is not disputed that the last known address of the Respondent was provided by the Respondent's tax agent personally. Hence, the Respondent's claim that the 1997 (Additional) notice was not received cannot hold water.

18. Tax due and payable may be recovered by the Appellant by civil proceedings as debt due under **section 106 of the Income Tax Act 1967**. In a suit under section 106, the production of a certificate signed by the Director – General of Income Tax giving the name and address of the Respondent and the amount of tax due from them shall be sufficient evidence of the amount so due and would be sufficient authority for the Court to give judgment for that amount. This is provided for **under section 142 (1)** of the same Act. In the present case the Director – General of Income Tax had issued the said certificate certifying the amount of tax due from the Respondent. Therefore, without any reason to the contrary, the Court can rely on the said certificate to give

judgment for that amount. There is no triable issue in this case.

19. On the above considerations, this Court unanimously is satisfied and hold that the 1997 (Additional) notice was properly sent and served on the Respondent. This Court also unanimously hold that this is a proper case to grant summary judgment as prayed for by the Appellant.
  
20. The appeal is allowed with costs. All orders of the High Court set aside and the order of the Senior Assistant Registrar is reinstated.

Dated this 23<sup>rd</sup> March 2009

t.t.

**RAMLY ALI**  
**JUDGE**  
**COURT OF APPEAL, MALAYSIA**

**Solicitors:**

1. **Nurhisham Ahmad (with Rizal Jefry)**  
**(Legal Officers – Inland Revenue Board of Malaysia)**  
**.. for the Appellant**
  
2. **Jayne Koe**  
**Tetuan Cheah Teh & Su** **.. for the Respondent**

**Legislation's Referred to:**

1. **High Court Rules 1980: Order 14**
  
2. **Income Tax Act 1967: Sections 103(4), 103(5A), 106,  
142(1) & 145(1) & (2)**