

# Najib, son have to pay over RM1.7bil

## Federal Court rejects appeal and rules that they have to settle unpaid taxes

**PUTRAJAYA:** Income tax arrears amounting to RM1.69bil and RM37.6mil must be paid by Datuk Seri Najib Razak and his son Datuk Mohd Nazifuddin, respectively, to the Inland Revenue Board (LHDN).

This followed a decision by the Federal Court's five-member bench led by Court of Appeal president Justice Abang Iskandar Abang Hashim in dismissing Najib and Nazifuddin's appeal against the summary judgments entered against them over income tax arrears.

When reading out the decision, Federal Court Justice Nallini Pathmanathan said the LHDN is levying tax on the appellants in the same manner it does for all citizens of the nation.

"The appellants have not been singled out for discriminatory treatment nor treated in a manner not provided for in the Income Tax Act. There is no evidential basis on the record to support such a contention.

"Accordingly, there is no basis for the contention that there has been a contravention of Article 8 of the Federal Constitution," she said.

Justice Nallini further said the appellants can still bring their case for reassessment before the Special Commissioners of Income Tax (SCIT).

"However, it is equally clear from a perusal of the Income Tax Act 1967 (ITA) as a whole, that it is not a final determination of the sum due and owing by the taxpayer because Section 99 (1) of the ITA remains untouched and



**Victory for the taxman:** Hazlina (second from left) and her team leaving the Palace of Justice in Putrajaya, after the Federal Court's decision was announced. - Bernama

enables the taxpayer to proceed with his grievances through the SCIT and the entire hierarchy of the courts," she said.

Justice Nallini pointed out that the court, under Section 106 of the ITA, is fulfilling the purpose of recovery or collection only.

"It is not undertaking a full judicial adjudicatory role. Its full adjudicatory judicial power is deferred to the appeal arising from the decision of the SCIT by way of questions of law, or administrative or constitutional judicial review at a subsequent stage.

"This is consonant with the 'pay first dispute later' mode of tax

imposition by the government.

"In our full grounds of judgment, we have examined cases from South Africa, Australia, Hong Kong and Ghana. It is evident the pay first, dispute later mechanism inherent in the ITA is utilised the world over," she added.

According to Justice Nallini, Section 106 (3) of the ITA has a rational relation to the collection of taxes efficiently and expeditiously in that it serves to ensure for the purposes of enforcement that section precludes matters which are deferred to the dispute resolution mode specified in the statute.

She said the power of constitutional review contained in Article 4 (1) of the Federal Constitution is a formidable instrument and should be wielded by the judiciary with great care.

"If it were to be used indiscriminately or where there is no substantive basis for its invocation, the results could cause considerable damage.

"In this appeal, it could stultify the country's tax collection system as validly provided for, and adversely affect the functioning of the government and the people. Therefore, the appeal is dismissed with no order as to costs,"

she added.

The other judges in the panel were the Chief Judge of Malaya Mohamad Zabidin Mohd Diah and Federal Court justices Mary Lim Thiam Suan and Abu Bakar Jais.

Head of Revenue solicitor Dr Hazlina Hussain represented the LHDN, while Najib and Mohd Nazifuddin were represented by Tan Sri Muhammad Shafee Abdullah.

The former prime minister and his son were appealing against two High Court decisions to allow LHDN's application to enter summary judgments over the income tax arrears case.

A summary judgment is obtained when the court decides on a case, through written submissions, without a full trial and calling witnesses.

Two separate High Courts had allowed the LHDN's applications to enter summary judgments to recover tax arrears from the duo, for the period between 2011 and 2017.

Both Najib and Mohd Nazifuddin lost their appeals in the Court of Appeal in September 2021 to set aside the summary judgments.

On May 10, last year, the Federal Court granted them leave to pursue their appeals with the Federal Court. — Bernama