



## SECTION 33(1) INCOME TAX ACT 1967

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**KYH  
V.  
DIRECTOR GENERAL OF INLAND REVENUE  
MOF.PKCP.700-7/1/593-595**

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 **SPECIAL COMMISSIONERS OF INCOME TAX**

 **PUAN FAJRUL SHIHAR BINTI ABU SAMAH**

 **10<sup>th</sup> JANUARY 2025**

The Taxpayer, acting as the administrator of the Estate of MR (Sole Proprietor) appealed against the assessments raised by the Director General of Inland Revenue (DGIR) for the Year of Assessments (YAs) 2012, 2014, and 2015 all dated

28.02.2018 through Forms Q dated 19.6.2019. The Taxpayer claimed the amount paid to the Client's Account (to off-set against the money siphoned by a former employee) and the interest paid on the loan should be allowed as deduction under Section 33(1) Income Tax Act 1967 (ITA 1967). However, the DGIR found that the expenses claimed by the Taxpayer could not be allowed under Section 33(1) ITA 1967 against the Client's Account.

The Taxpayer contended that such expenses should be allowed under Section 33(1) ITA 1967 based on the Public Ruling 4/2012: Deduction for Loss of Cash and Treatment of Recoveries which states that the "loss of cash caused by the theft or embezzlement by employee is allowable as it arises directly from the necessity of delegating certain duties of the business to employee".

In response, the DGIR asserted that the general test on the deductibility of expenditure under the ITA 1967 provided under Section 33(1) ITA 1967, states that all outgoings and expenses must be incurred during the relevant period "wholly and exclusively" in the production of gross income. In addition to that, the deductibility of the expenses must also not be prohibited by Section 39 ITA 1967. The embezzlement by the Taxpayer's employee were not "wholly and exclusively" incurred in the production of the Taxpayer's income and the supporting documents produced by the Taxpayer could not sustain their claims. The money in the Client's Account is money belonging to the Taxpayer's clients and not for the Taxpayer's business. The Client's Account is not taxable under Paragraph 4(a) ITA 1967. Only after the legal fees are credited into the Office Account will it be recognized as the Taxpayer's business income. Such business losses can only be treated as ordinary commercial principles if they are non-capital in nature. The loss of cash caused by theft, defalcation, or embezzlement is generally allowable as a deduction in computing the adjusted income of business, provided that such loss is incidental to the business carried on. Unlike in this case, such loss is not incidental to the business carried out by the Taxpayer as the type of loss and repayments made by a solicitor to reimburse the Client's Account which fund had been siphoned by an employee are not expenses incurred in the production of income. Moreover, based on the case of *Ketua Pengarah Hasil Dalam Negeri v Bar Malaysia (supra)*, the documents and information of the Taxpayer's Client's Account are protected by solicitor-client privilege and could not be made available to the DGIR.

On 10.1.2025, the Special Commissioners of Income Tax (SCIT) held that the Taxpayer had successfully proved its appeal as required under Paragraph 13 Schedule 5 ITA 1967. The SCIT ruled that the Notice of Assessments for the YAs 2012, 2014 and 2015 are to be set aside.

### **Editorial Note:**

- *The DGIR has the right to file an appeal against the decision of the SCIT within 21 days from the date of the decision.*