



📍 The Special Commissioners
of Income Tax

📅 January 20, 2020

🏛️ Tax Litigation Division,
Legal Department, IRBM

THE SCIT DISMISSED TAX PAYER'S CLAIM FOR EXPENSES TO OBTAIN AND SECURE FINANCING

- i. **PM v DGIR**
- ii. **PR v DGIR**
- iii. **PI v DGIR**

BRIEF FACTS

The Appellants' principal activities are manufacturing and marketing of petroleum products in Malaysia. The Appellants contended that the expenses listed below incurred under the First Working Capital Facility Agreement dated 4 April 2012 (for PR) and Second Working Capital Facility Agreement dated 19 April 2012 (for PM and PI) were deductible under Subsection 33(1) of the Income Tax Act 1967 ("ITA") :

- (a) Upfront fees;
- (b) Stamp duty charges;
- (c) Other working capital facilities related charges;
- (d) Agency fees; and
- (e) Legal fees ("The said expenses")

JUDGES

Tn Effandi Nazila Abdullah
Tn Ahmad Zakhi Daud
Pn Rosidah Abu Bakar

REVENUE COUNSELS

Feruz Anwar Seth
Wan Khairuddin Wan Montil

ISSUE

Whether the said expenses incurred by PR to obtain and secure the financing under the "*First Working Capital Facility Agreement*" dated 4 April 2012 and by PM and PI under the "*Second Working Capital Facility Agreement*" dated 19 April 2012 are deductible under Section 33(1) of the ITA?

APPELLANT'S SUBMISSIONS

1. The Respondent's contentions and decisions to reject the Appellants' tax treatment to subject the financing expenses to deduction under Section 33(1) of the ITA were of no legal or factual basis as the Facilities Agreements were entered into solely for vagaries of the business of trading in petroleum and petroleum related products and not to augment capital and create an enduring asset.

2. The working capital facilities provided through the Facilities Agreement were utilised to purchase the Appellants' stock in trade and is revenue in nature. Expenditure relating to working capital facilities and the performance of profit earning operations must be of a revenue and not capital thus deductible under Section 33(1) of the ITA.

RESPONDENT'S SUBMISSIONS

1. The expenses incurred by the Appellants were capital expenditure and therefore not deductible. The Appellants are all involved in the petroleum business activity and in order to allow the expenses to be deducted under Section 33(1) of the Income Tax Act 1967, the Appellants ought to prove that all the expenses were wholly and exclusively incurred in the production of their gross income.
 2. The expenses incurred by the Appellants in obtaining and securing the financing was about obtaining a sustainable source of income thus was capital in nature and not allowable for deduction under Section 33(1) of the ITA.
 3. Based on the tax treatment on "*Layanan Cukai Ke Atas Perbelanjaan Guaman dan Professional*" under Public Ruling (P.U.) No. 6/2006, specifically at paragraph 4.1, the Respondent had laid down the general principles and the criteria on expenses that can be deducted under Section 33(1) of the Income Tax Act 1967.
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COURT'S DECISION

The SCIT is of the view that the expenses incurred by the Appellants were capital expenditure and therefore not deductible. Therefore, the appeal is dismissed and the assessment raised by the Respondent is maintained.