



High Court, Kuala Lumpur

January 20, 2020

Tax Litigation Division,
Legal Department of IRBM

THE HIGH COURT DISMISSED THE TAXPAYER'S APPEAL ON THE ISSUE OF DOUBTFUL EXPENSES

————— **EASB v KETUA PENGARAH HASIL DALAM**

BRIEF FACTS

EASB (“Appellant”) which business is selling reconditioned motor vehicle had claimed deductions under subsection 33(1) of the Income Tax Act 1967 (“ITA”) for Motor Vehicle Refurbishment expenses paid to AVSB for YA 2011 and YA 2012. Upon audit, it was found that the payment made to AVSB were based on invoices from 2 companies that were not exist. As such, there were doubt in the invoices submitted by the Appellant and KPHDN disallowed the deductions of the expenses under subsection 33(1) of the ITA and imposed penalty under subsection 113(2) of the ITA.

The Appellant appealed to the SCIT only on the issue of disallowance of the Motor Vehicle Refurbishment expenses. During the hearing, the Appellant failed to call witnesses from AVSB and the 2 companies to prove the said expenses. The SCIT heard the appeal and dismissed the appeal. The Appellant then appealed to the High Court.

JUDGE

YA Dato’ Sri Mariana Haji Yahya

REVENUE COUNSELS

Wan Khairuddin Wan Montil
Irfan Muashik Jantan

APPELLANT’S CONTENTIONS

The Appellant contended that the SCIT erred in not considering that the payments were made wholly and exclusively in the production of the Appellant's income and erred when SCIT paid emphasis on the issuer of the invoices, and not the purpose for which the sums were paid. The test in determining whether the expenses are deductible under Subsection 33(1) of the ITA is not to whom the payments were made or even from whom the invoices were issued, but for what purpose the payments were made.

KPHDN'S CONTENTIONS

KPHDN contended that the burden of proof shall be on the Appellant to prove that the invoices were genuine. The Appellant in this case failed to prove that the expenses were genuine and were made for Motor Vehicle Refurbishment. The expenses claimed were clearly shown to be doubtful expenses and cannot be proven to be incurred wholly and exclusively in the production of gross income as required under Subsection 33(1) of the ITA.

COURT'S DECISION

The High Court dismissed the Appellant's appeal with costs.