



📍 The Special Commissioners
of Income Tax

📅 January 31, 2020

🏛️ Tax Litigation Division,
Legal Department, IRBM

JUDGES

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CLINIC FAILED TO PROVE ITS EXPENSES ARE ENTITLED FOR DEDUCTIONS UNDER S.33(1) OF THE ITA 1967

— KISB v KETUA PENGARAH HASIL DALAM NEGERI

ISSUES

1. Whether the following expenditures are eligible for deduction under Section 33(1) of the Income Tax Act 1967 ("ITA"):-
 - (a) Training expenses;
 - (b) Repair and maintenance;
 - (c) Service and maintenance; and
 - (d) General expenses.
2. Whether the business income reported by the Appellant in its Financial Statement as "Business Unit 1" and "Business Unit 2" should be declared and reported separately or should be consolidated.

APPELLANT'S SUBMISSION

1. The Appellant contended that all the expenditure mentioned above were basic expenses and a necessity in providing a conducive training to its patients as well as the buyers of the vitamin supplements allegedly sold by the Appellant.
2. Under the Appellant's Memorandum and Articles of Association, the Appellant is allowed to carry on any kind of business activity i.e. *"to carry on as general traders, dealers ... and to transact every kind of agency business."* Therefore, the Appellant is allowed to carry on any business activity which is profitable to it and it was wrong for the Respondent to consider its "Business Unit 1" and "Business Unit 2" as separate entities for the purpose of tax computation.

RESPONDENT'S SUBMISSION

1. The expenditures in question were not eligible for deduction under Section 33(1) of the ITA for the following reasons:
 - (a) a number of expenses were not incurred by the Appellant but by one of its directors;
 - (b) a number of expenses were not wholly and exclusively incurred by the Appellant in the production of its gross income as it was of personal expenses in nature; and
 - (c) a number of expenses were found to be doubtful as they were not supported by the relevant documentation.
 2. With regards to the second issue, the income of "Business Unit 2" was wrongly declared and reported by the Appellant as the income was from the multi-level-marketing (MLM) business of one of the Appellant's directors and therefore it should be declared and reported separately from the Appellant's income.
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COURT'S DECISION

The SCIT held that the Appellants had failed in proving that the expenses incurred by the Appellant are eligible for deduction under Section 33(1) of the ITA as the Appellant had failed to call any witness to support its claim and failed to show that the expenditure is not capital in nature. The expenses incurred were found not related to the business of the Appellant.