



📍 The Special Commissioners
of Income Tax

📅 February 4, 2020

🏛️ Tax Litigation Division,
Legal Department, IRBM

CONTRIBUTIONS OF PARTNERS ARE VITAL TO PROVE EXISTENCE OF PARTNERSHIP

— ZMN v KETUA PENGARAH HASIL DALAM NEGERI

BRIEF FACTS

Appellant operates two (2) petrol stations business in the name of P and Z Enterprise. Several issues were discovered during the audit findings made to the Appellant for the YA 2012, 2013, 2014 and 2015.

JUDGES

Dato' Faiza Zulkifli
Pn Hanim Abdul Rahman
Tuan Ahmad Zakhi Daud

REVENUE COUNSELS

Abdul Aziz Harun
Farah Afiqah Nordin
Norhamizah Ab Han

ISSUES

1. Whether under declared sales for the YA 2010, 2011, 2012 and 2013 for P and Z Enterprise station shall be treated as income under Section 4 (a) of the ITA 1967;
2. Whether partnership exists for P and Z Enterprise station under the ITA 1967 for the YA 2010, 2011, 2012 and 2013; and
3. Whether the expenses of medical fees, 'Duit raya', workers' welfare, community services, bank interest and permit for foreign workers are deductible under Section 33 (1) of the ITA 1967.

APPELLANT'S CONTENTIONS

1. 1% evaporation of oil should be allowed by the Respondent.
2. Partnership Agreement exists between the Appellant and the partners.
3. The SSM status of the business was sole-proprietorship because of the Petronas's requirement and the Appellant was not permitted to register 'Borang P' for partnership by the Respondent.
4. The Appellant had produced all the receipts under Section 33 of ITA 1967.

RESPONDENT'S CONTENTIONS

1. The Respondent's findings were supported by the third party documents where the Appellant had failed to rebut the said documents.
2. The Respondent had considered evaporation rate at 0.5% based on the Appellant's own documents.

3. There was no partner's record in the companies' account or '*akaun semasa perkongsian*' or in the companies' ledger and the Appellant did not register '*Borang P*' under the ITA;
 4. The partnership agreement was produced & stamped two (2) days after the audit visit. It was an afterthought by the Appellant.
 5. The so called partners were merely in the Appellant's premise with the intention to learn the business and to assist the Appellant (the father) but did not fulfill his/her duties/responsibilities as a partner.
 6. Section 2 ITA and Section 3(1) Partnership Act 1961 were referred and the Appellant had failed to prove partnership elements in the said sections.
 7. Tax Computations that were prepared by the Appellant's tax agent were doubtful as the source documents for amount of partner's drawing were not produced and cannot be explained by the Appellant's witness. The Respondent had invoked Section 114(g) EA.
 8. The Appellant has failed to prove all the expenses claimed under Section 33(1) of ITA 1967 were wholly and exclusively incurred in the production of his gross income.
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COURT'S DECISION

1. The Appellant has failed to dispute the 3rd party documents produced by the Respondent and failed to call any witnesses to prove otherwise. The under declared sales should be treated under Sect 4(a) ITA 1967.
2. No evidence showed by the Appellant that evaporation rate used by the Respondent was incorrect.
3. Partnership does not exist merely with the existence of the partnership agreement. Contributions of partners are also vital. Appellant has failed to submit '*Borang P*' and to show there were activities in the partnership accounts.
4. The Appellant had failed to prove the expenses made by them. The expenses are not deductible under Sect 33 of ITA 1967.