

**TECHNICAL**

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**Direct Taxation**

**TAX CASE UPDATE**

**Appeal against disallowance of “suspicious” payment for purchase of fuel**

**OREN-PUBA SDN BHD v KPHDN**

High Court of Malaya at Kuala Lumpur

Civil Appeal No: R1-14-10-2009

Date of Judgment: 29 March 2010

**Facts and Issues:**

The taxpayer (Appellant) carried on the business of dealing in diesel and other fuel products. In the course of an audit of the Appellant's accounts carried out by the Respondent in 2006, it was found that an amount of RM1.6 million was paid for purchases of diesel from a diesel supplier called “Seng & Co” (SCo.). These purchases were regarded as “suspicious” by the Respondent because payment was not made to SCo. but to the joint account of 2 named individuals. The Respondent's witness (RW1) testified that a staff member of SCo., one Tan Seong Eng (“Tan”) had said in a telephone conversation, that there was no such dealing between SCo. and the Appellant in 2003, and this was later confirmed by a letter.

Despite having been given all the supporting documents for the purchases as well as the letters of instruction from SCo. to pay the purchase price to the third party by the Appellant, the Respondent maintained its stand and raised an additional assessment for YA 2003 on the Appellant dated 29 August 2006, by disallowing the RM1.6 million payment for purchases of diesel.

The Appellant appealed against the assessment to the Special Commissioners of Income Tax (SCIT). The issue for determination was whether the amount of RM1.6 million for purchases of diesel should be allowed to be deducted in the calculation of adjusted income, or disallowed as a “suspicious transaction” as contended by the Respondent.

The SCIT found that the relevant supporting documents (exhibits) submitted as proof of the purchases in question were all prepared by the Appellant, and no document whatsoever from SCo. was tendered as proof. Based on the facts and evidence adduced, the SCIT agreed with the Respondent that the Appellant had failed to prove that the purchases of diesel from SCo. actually occurred. They found that the amount of payments in question was not deductible, not because the Respondent was “suspicious” but because there were no such purchases from SCo.

Hence, this appeal against the decision of the SCIT.

**Decision:**

Appeal dismissed. The grounds of decision are summarized below:

**1. Submissions**

- 1.1 The **Appellant** contended that SCIT's decision not to attach any weight to the documents (exhibits) submitted as proof of purchases from SCo. on the grounds that they were all prepared by the Appellant (although these exhibits were duly proved) showed that the

SCIT had acted upon *a view of the facts which could not reasonably be entertained* (*Edwards (Inspector of Taxes) v Bairstow*[1956] H.L. (E) 36]) because the nature of the documents (purchase orders, tank chits, cheques etc.) could hardly be produced by a supplier (SCo.) and must necessarily emanate from the Appellant. It was further submitted that the evidence of RW1 and the letter from SCo. (mentioned above) were both inadmissible in evidence as being hearsay, whilst there was overwhelming documentary evidence (675 pages) to show that there were purchases of diesel from SCo.

1.2 The **Respondent** submitted that the SCIT has correctly directed themselves in law and arrived at a conclusion which is correct in law. The primary facts found by the SCIT are (amongst others) –

- (a) no documentary evidence from SCo. was tendered to prove that purchases from SCo. were made by the Appellant;
- (b) RW1's testimony that SCo's staff member (Tan) had said that there were no dealings between the Appellant and SCo. in 2003. The SCIT accepted that this evidence was later confirmed by a letter.

The SCIT did not believe the taxpayer's evidence, and so long as the decision is supported by the primary facts, the Court should not interfere (*Cannon Industries v Edwards* [1966]1 All ER 456).

## 2. Decision of the Court

2.1 On the Appellant's contention that the SCIT erred in taking into consideration the testimony of RW1 and the letter from SCo., the Court found that the SCIT's decision that the Appellant had failed to prove that the purchases of diesel from SCo. actually occurred was not solely based on the aforementioned testimony and evidence. The SCIT had found (as fact) that the exhibits submitted by the Appellant were prepared by the Appellant, and also made the finding of fact mentioned in paragraph 1.2(a) above.

2.2 Based on the evidence, the SCIT were not satisfied that the Appellant had proved its claim. The Appellant conceded that apart from its own documentary evidence and the evidence of its witness, no other evidence was forthcoming to prove its claim. The onus is on the Appellant to show that the assessment should not have been made. The Court was unable to find any error on the part of the SCIT in their consideration of the evidence, and the conclusion reached. In the opinion of the Court, based on the facts and evidence, the SCIT were justified in reaching their conclusion.

Members may read the full Grounds of Judgment at the [Institute's website](#) and the [LHDNM website](#).

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