

IN THE COURT OF APPEAL IN PUTRAJAYA

(APPELLATE JURISDICTION)

CIVIL APPEAL NO: W-01-405-09/2012

KETUA PENGARAH HASIL DALAM NEGERI ... APPELLANT

AND

MERCEDES-BENZ MALAYSIA SDN. BHD. ... RESPONDENT

Revenue Law – Income Tax – Withdrawal of stock – Section 24 (2) ITA 1967 – Sec 35(2) ITA 1967

Issue : i) Whether the cars sold in the secondary sales channel are stock in trade withdrawn for the Appellant's own use as envisaged under section 24(2) of the ITA?

ii) Whether the written down value of the Used Cars as stock-in-trade should be deductible under section 35 of the ITA in ascertaining the Taxpayer's adjusted income in respect of the Year of Assessment 2003.

Decision : The Appellant's appeal dismissed.
On concurring with the High Court's judgment, the Court of Appeal held that the Tax Payer has two modes of earning profits in the one trade comprising of manufacturing and selling vehicles.

The facts found by SCIT clearly established that the need to register the new vehicles under the Taxpayer's name was necessary by law to ensure that the vehicles could be sold in the secondary sales channel. This is how the Taxpayer conducts its business of selling Used Cars. The Taxpayer's business has to be looked as a whole set of operation directed towards producing income and the mere registration

of the vehicles does not *ipso facto* mean there was withdrawal of stock for own use.

The Court of Appeal also is in the view that the Taxpayer is entitled to rely on Section 35(2) of the ITA to deduct the written down value of its Used Car stock. The registration of the cars in the Taxpayer's name is to create a second hand market, there is no evidence to support a finding that it was withdrawal of stock for its own use.

Status : The High Court's decision upheld by Court of Appeal. No Grounds of Judgment available at Court of Appeal. No right of further appeal.

Date of Judgment : 17.9.2014