The Court:

Supreme Administrative Court of the Slovak Republic

Docket Number:

2Sfk/36/2023

Court file identification number:

1019200139

Date of decision:

24. 09. 2024

Name and surname of the judge, SSA:

Prof. JUDr. Juraj Vačok

ECLI:

ECLI:SK:NSSSR:2024:1019200139.1

JUDGMENT IN THE REPUBLIC OF MENESLOVAKIA

The Supreme Administrative Court of the Slovak Republic, sitting in a panel composed of the President of the Senate, prof. JUDr. JurajVačok, PhD. and the members of the Senate JUDr. Elena Berthotyová, PhD., JUDr. Marian Trenčan, in the legal case of the plaintiff: Minebea Access Solutions Slovakia s. r. o. (formerly U-Shin Slovakia s. r. o.), with registered office at K letiskuBudova 1329, 040 17 Košice, ID No: 35 893 427, represented by Deloitte Legal s. r. o, with registered office: Pribinova34, 811 09 Bratislava, ID No: 36 868 019, against the defendant: Financial Directorate of the Slovak Republic, the applicant's appeal against the judgment of the Regional Court in Bratislava No 1S/10/2019-154, as follows

Decides :

I. The cassation complaint is dismissed.

II. The parties to the proceedings are not entitled to reimbursement of the costs reasonably incurred in the cassation proceedings.

Reasons :

I. Proceedings before the public authorities

1. The Tax Office for Selected Tax Subjects (hereinafter 'the tax administrator') issued Decision No 101406817/2018 of 23 July 2018 (hereinafter 'the tax administrator's decision'), by which, pursuant to Article 68(5) of the Tax Code as amended (hereinafter 'the Tax Code'), it assessed the applicant for a tax difference of EUR 1 837 565,62 in corporation tax for the tax period 2011. The tax authorities considered the applicant to be a contract manufacturer and a company with limited functions within the Valeo group (dependent person). On the basis of the contract for product group management technical services signed on 12 December 2011, three invoices totalling EUR 3,000 were booked to account No 518965 at the end of the accounting period (after taking into account all invoices, credit notes and internal documents charged during the accounting period). 383 000, - € from the supplier Valeo Securite Habitacle, S.A.S. After accounting for that expenditure, the income tax amounted to € 277 529,39, whereas the applicant was still entitled to claim relief under Section 35c of Act No 366/1999 Coll. on income tax in the version in force at the time in the amount of € 237 067,25. Pursuant to Article 2(i) and Article 21(1) of Act No 595/2003 Coll. on Income Tax, as amended ('the Income Tax Act'), the tax authorities excluded from tax costs the amount in question for the purchase of management and technical services.

According to the tax administrator's assessment, the provision of the management and technical services in question has not been proven. At the same time, the tax authorities, pursuant to Article 17(5) of the Income Tax Act, determined the applicant's profit margin, using the methodology of Article 18 of the Income Tax Act, to be 5,23 % (the applicant's operating margin on total operating costs was 0,91 %) on the ground that the operating margin achieved by the applicant

was not within the range of independent comparable operating margins on total operating costs. It determined the profit margin as the median of the operating cost margins of the companies selected by the applicant between 2009 and 2011. On the basis of the margin thus determined, the tax administrator increased the applicant's tax base by €6 288 398.

2. The applicant appealed against the tax administrator's decision. By decision No 102296937/2018 of 21 November 2018 ('the defendant's decision'), the defendant upheld the decision of the tax administrator pursuant to Article 74(4) of the Tax Code.

II. Proceedings before the Administrative Court

3. The applicant brought a general administrative action against the defendant's decision before the Regional Court in Bratislava (hereinafter referred to as the 'Administrative Court'). In it, he claims that the case was wrongly assessed in law; that the decisions of the public authorities are unreviewable on account of their incomprehensibility and lack of reasons; that the findings of fact by those authorities were insufficient for a proper assessment of the case; and that there was a substantial infringement of the provisions on proceedings before public authorities, which resulted in the adoption of an unlawful decision.

The applicant requested the Administrative Court to annul the defendant's decision together with the decision of the tax administrator and to refer the case back to the defendant for further proceedings.

4. By judgment No 1S/10/2019-154 ('the judgment of the Administrative Court'), the Administrative Court dismissed the action as unfounded pursuant to Article 190 of the Code of Civil Procedure in the version in force ('the CCP'). In its grounds of appeal, the Court of First Instance stated the following with regard to each of the pleas in law raised in the application:- Valeo is an independent group whose focus is the design, manufacture and marketing of components, integrated systems and modules for the automotive industry. The applicant is a manufacturing plant belonging to that group. Its primary function is the manufacture of components for the automotive industry.

The structure of production, as defined by the owner at the time of its establishment, focused on the manufacture of cab and trunk door locking systems for cars and trucks, door locks and keys and door handles. The implementation of production was the result of the pre-production phases. A project team at both divisional and production plant level was responsible for the entire project. The applicant did not negotiate the price directly with the customer and there was no separate sales department. The applicant was not independently responsible for pricing, even on the input side.

The selection of major suppliers of strategic commodities is a matter for the group. The applicant was not involved in any strategic decisions or in monitoring their implementation. It drew up its business plan for the following period in cooperation with the competent entities in the group. Although the applicant owns the production facilities, prepares and manages the production process and monitors the quality of production, it is on the basis of a licence agreement for specific technologies, which predisposes the applicant to depend on the group's know-how and, at the same time, to receive significant support from entities at various levels of the group. It does not carry out research and development activities on its own.

The applicant was not entitled to make independent decisions on the utilisation of spare production capacity. In view of the above, the applicant can be characterised as a contract manufacturer or a manufacturer with limited functions and risks. This conclusion of the public authorities was reached on the basis of a sufficient factual finding and the correct reasoning followed by the public authorities was duly substantiated;- with regard to the services in account No 518965, the applicant stated that during the tax year, on an ongoing quarterly basis, each of the individual product lines S08, S10, S34 were purchased from the dependent person Valeo Securite Habitacle, S.A. A.S.invoiced management fees with the billing text "internal fees", "adjustment" or "redevance".The total amount booked on the basis of the invoices was € 1.136.000, - of which € 83.000, - for the S34 Handles activity, € 531.000, - for the S10 Locksets activity and € 522.000, - for the S08 Latches activity. At the same time, credit notes were entered in that account cancelling all the invoices for those management fees.

Subsequently, the three invoices received on 22 December 2011 referred to in paragraph 1 of this judgment were entered in the accounts for a total amount of EUR 3 383 000. All these invoices had the billing text Managt&Techn. Services byPG2011. Only the introductory designation was changed - S 34, S10, S08. They referred to the contract Agreement formanagement and technical services by Product Group concluded in December 2011.

The administrator called on the claimant several times to demonstrate what the content of those management and technical services was, what the specific outputs were, what services were actually received, what specific benefits accrued to the claimant from those services and on the basis of what documents the amount of the costs entering the cost bases was quantified and how the costs were allocated to the claimant. However, apart from the contract, the accounting documents and invoices or the general descriptions, the applicant did not provide any relevant evidence to prove that the services actually took place on the basis of the invoices in question;- the operating margin of OMTC (operating margin

on total operating costs) achieved by the applicant of 0,91 % is not within the range of independent comparable profit margins.

The tax administrator correctly made adjustments to the transfer prices pursuant to Article 17(5) of the Income Tax Act in the amount of 5,23 % by the difference by which the transfer prices differ from those used by independent persons;- the decisions of the public authorities (decision of the tax administrator, decision of the defendant) comply with the statutory requirements as to form and content. They shall be comprehensible.

It is clear from them what evidence has been taken, its evaluation and its legal assessment;- the tax administrator has taken the evidence proposed by the applicant. The witness W.V. gave general information.It is not apparent from the notes of her statement that the applicant challenged the process of the deposition on the spot, despite the fact that his representative was present at the deposition. Consequently, the applicant's additional pleas alleging interference with the applicant's rights during the testimony of that witness, which were raised only before the administrative court, cannot stand either.

Another witness proposed by the applicant, Mr A.L., the applicant's former financial director, was heard by the tax administrator and subsequently the applicant reserved the right to raise any objections to the content of the notes recording that testimony and to the tax administrator's statements, which it did subsequently. Pursuant to those reservations, he sought to put further questions which he had prepared, but the tax administrator did not allow him to do so. It does not appear from the minutes what specific questions, on what subject, the applicant was not allowed to put. Moreover, there was nothing to prevent the applicant from delivering a written witness statement. The tax administration correctly assessed the statement of this witness as being of non-evidentiary value on the ground of the provision of general information;- the tax administration acted in accordance with the law when it did not accept the applicant's power of attorney relating to his representation during the tax audit for acts carried out after the end of the tax audit.

III. Cassation complaint, position of the parties

5. The applicant lodged a cassation complaint against the judgment of the administrative court. He pleaded that the administrative court had erred in law in its decision (Article 440(1)(g) of the Code of Civil Procedure). The appellant claims that the Court of Cassation should alter the judgment of the administrative court by annulling both the defendant's decision and the decision of the tax administrator and by referring the case back to the tax administrator for further proceedings.

In its cassation complaint, the applicant argued that:- the disputes raised by the tax administrator and the defendant concerning the disputed costs of the services on account no. 518965 are unlawful with insufficient definition of those disputes;- the tax administrator did not allow the applicant to ask the witnesses Mr V. and Mr L. all the questions prepared;- the tax administrator unlawfully refused the power of attorney granted by the applicant to Deloitte Tax Ltd;- there was an incorrect assessment of the functional and risk profile.

The negotiations, decisions and drafting were managed by the applicant. The local sales support teams acted only as intermediaries who passed on reports from the applicant. The applicant was responsible for preparing the sales price strategy. At the same time, he took the final decisions on the implementation of the project. The applicant did not provide production services to any production customer, developed its own range of products, had the right to use technology and equipment which was under its complete control, managed quality, performed functions such as purchasing raw materials, production planning, and owned inventories. He signed contracts with suppliers, with the exception of global suppliers of raw materials. The applicant does not have the profile of a contract manufacturer, but of a full-fledged manufacturer;- the services charged to tax expenses in account No 518965 were on-demand services. The plaintiff did not use any shared services in 2011. In that connection, the applicant referred to the request for a bilateral transfer pricing agreement between France and Germany within the group in order to point to the conclusions of the tax authorities in relation to the group in Germany. Germany is considered to be the country of reference, while the enquiry on the German side ended in 2017 without a finding. The contract on the basis of which the three invoices for the disputed tax expenses were issued is applied worldwide, the costs associated with it are relevant for the purposes of assessing the remuneration as market remuneration, and the services in question exist;- the administrative court did not deal with all of the applicant's arguments and gave insufficient reasons for its judgment.

6. In its statement of appeal, the defendant upheld the judgment of the administrative court. It considers that the applicant's objections are unfounded.

IV. Legal assessment of the case by the Court of Cassation

7. The Supreme Administrative Court of the Slovak Republic, acting in its capacity as cassation court (hereinafter 'the cassation court'), has examined the judgment of the administrative court.

8. The Court of Cassation did not consider it necessary to order a hearing in the case, having regard to Article 455 of the Code of Civil Procedure, and decided on the cassation complaint without ordering a hearing. The judgment was announced publicly after the date of the announcement had been notified in accordance with Article 137(4) C.C.P..

9. Having regard to Articles 439(1), 442(1) and 443(2)(a) C.C.P. in force until 30 June 2023, the Court of Cassation found that the cassation complaint lodged was directed against a judgment against which it was admissible, had been lodged by an authorised person and had been lodged in good time. The court fee for lodging the cassation complaint has been paid.

10. Having examined the merits of the case, the Court of Cassation came to the conclusions which it stated in the operative part of its judgment.

The Court of Cassation gives further reasons for those conclusions in the following text.

11. The point of appeal alleging that the applicant's evidence relating to the disputed charges for services on account No 518965 was insufficiently disputed is unfounded. The Administrative Court correctly pointed out that the public authorities sufficiently disputed the actual supply of the disputed services to the applicant.

The Court of Cassation points out, in accordance with what the Court of First Instance stated, that, pursuant to Article 24(1) of the Tax Code, the applicant bears the burden of proof. That fact is not called into question by the case-law referred to by the applicant on this point (Resolution of the Constitutional Court of the Slovak Republic ('the Constitutional Court') No II.ÚS 784/2015-9, Constitutional Court ruling No I.ÚS 259/2022-37, judgment of the Supreme Court of the Slovak Republic, Case No 3Sžf/1/2011 of 15 March 2011).

12. The Administrative Court has dealt extensively with the issue of disputed costs. It pointed out that the three invoices for disputed tax expenses were preceded by invoices from the same supplier for a lower amount, which were cancelled on the basis of credit notes charged in December 2011. The Administrative Court also pointed out that the tax administrator had repeatedly asked the applicant to prove what the content of the management and technical services for which the invoices were issued were.

13. In that connection, the Court of Cassation observes that it is not possible to ascertain from the formal documents (invoices Nos 1114701, 1114702, 1114703, contract for management and technical services of the product groups) what services were received. The attention of the Administrative Court and the public authorities was rightly drawn to the fact that the invoices issued indicate only the general provision of management and technical services with reference to the abovementioned contract. That contract, which directly states that the parties to it are companies of the VALEO group and is dated December 2011 (the exact date of conclusion is not indicated on the contract), only states in general terms what services the applicant may choose and purchase according to its needs. The Court of Cassation notes that the individual invoices were delivered to the applicant on 30 December 2011, at the end of the tax period, when the applicant must already have had an idea of the revenues and costs for the tax period in question. At the same time, this was a period in which the applicant could still influence the overall economic result for the year in question. It is true that, according to the written notice, the contract concluded should have entered into force as from 1 January 2011. However, it is difficult to imagine and to believe that the parties to the contract acted for a whole year on the basis of a contract of which the signed written version was known to the parties only in December of that year.

14. Insofar as the applicant refers to the distribution of the burden of proof, also from paragraph 23 of the Constitutional Court's ruling no. I. ÚS 259/2022-37, to which the applicant referred, it follows that, when examining written documents, it is sufficient for the tax authorities to establish that the taxpayer has disputed the credibility, truth or completeness of the two pieces of evidence submitted. The tax authorities are therefore not obliged to prove that the applicant has actually carried out the services which the applicant claims to have incurred as real costs (tax expenses). Pursuant to Article 24(1) of the Tax Code, the applicant, in its capacity as a taxable person, is still under that obligation. However, the applicant has not actually proved what specific services, to what extent and at what time, which can be regarded as actual costs of the applicant, were actually supplied to the applicant on the basis of the three invoices issued by VALEO SECURITE HABITACLE, S.A.S.

15. In the light of the foregoing, both the public authorities and the administrative court came to the correct legal conclusion that the applicant had not discharged its burden of proof.

16. As regards the objection concerning the fact that the tax authorities did not allow questions to be put during the testimony of the witness Ms. V., the Court of Cassation notes, in agreement with the administrative court, that this witness was questioned by the tax administrator on 24-25 April 2018. According to the minutes of the oral hearing (separate minutes were drawn up for each day), the applicant's representative also took part in the examination of that witness. The minutes show that the applicant was allowed to ask questions of the witness. It does not appear from the

minutes that the applicant's representative objected to the procedure followed by the tax authorities. He signed both minutes without any reservations during the course of his testimony.

17. The witness Mr L. was examined by the tax administrator on 7-8 June 2018. It is apparent from the minutes of the oral hearing (separate minutes were drawn up for each day) that the witness was asked questions both by the tax authority's staff and by the applicant in its capacity as taxpayer. It is true that at the end of the minutes of 8 June 2018 there is a statement by the applicant's representative according to which the applicant requested several times during the hearing to ask questions which he had prepared, but was not allowed to do so by the tax administrator. Thereafter, however, the tax administrator noted in the minutes in response that no questions of the claimant were refused or rejected during the oral hearing. Neither the minutes of the oral hearing nor the claimant's subsequent June 21, 2018 submission to those minutes indicate what specific questions the claimant still wished to ask the witness.

18. In light of the foregoing, the administrative court correctly assessed that the objection as thus framed cannot stand. It is undisputed that, pursuant to Article 25(4) of the Tax Code, the taxpayer has the right to be present and to ask questions during the witness's testimony. The applicant has not shown, and it does not appear from the administrative file, that that right has been infringed. Moreover, in so far as the applicant did not specify directly what questions he wished to ask, he did not specify the precise wording of those questions.

19. The present objection must be assessed in accordance with Article 191(1)(g) of the CST, according to which, when attributing infringements of the provisions on proceedings before public authorities, account must also be taken of the effect of those infringements on the lawfulness of the decisions taken. However, that cannot be assessed solely on the basis of a general assertion of the impossibility of asking further questions, unless the applicant has specified what specific questions he intended to ask and why those questions might have an impact on a better determination of the facts.

20. The purpose of the testimony is not a 'competition' to see who can ask more questions. Therefore, a point of appeal cannot be based solely on the fact that the plaintiff asked fewer questions than the defendant.

Witness testimony is a means of evidence intended to clarify the facts. In so far as the applicant was satisfied that the witnesses could have given further evidence on the matter, he could, as the Court of First Instance stated, have submitted an affidavit in support of his case. It is clear from the minutes of the oral hearing that both witnesses were members of the Valeo group at the time of their statements. Moreover, the applicant, after questioning Witness V, stated that he had provided her in advance with a list of questions which he intended to ask.

21. In view of all those facts, no procedural irregularity was found in the administrative procedure in the testimony of the abovementioned witnesses which could have resulted in an unlawful decision by one of the public authorities. The applicant's objection concerning the failure to allow the above-mentioned witnesses to be questioned is therefore unfounded.

22. As regards the point of appeal alleging unlawful refusal of the power of attorney, the Court of Cassation states that the administrative court correctly assessed the action of the tax administrator in refusing to allow the applicant to be represented on the basis of the power of attorney of 23 April 2018. That power of attorney is linked to the tax audit process, which, however, was completed on 9 June 2017. It is clear from the wording of that power of attorney that it does not apply to subsequent proceedings after the tax audit has been completed.

23. The Court of Cassation adds that, in the case of a power of attorney which, in view of its written wording, is bound not to the tax proceedings but to the tax audit, the tax administration is not obliged to examine whether the applicant's real intention as principal was different from that expressed in the written power of attorney submitted. In the power of attorney in question, the applicant duly declared that he was issuing the power of attorney for tax inspection. The tax authorities therefore had no reason to question the intention thus expressed and to enquire of the claimant whether he really meant it as he had written it in the power of attorney. In the light of the foregoing, the objection that the authorisation of 23 April 2018 was disregarded is unfounded.

24. As regards the point of appeal concerning the assessment of the applicant's profile, the Court of Cassation notes that the public authorities and the administrative court have, like the administrative court, dealt in detail with the question of why the applicant has independent status. The Administrative Court summarised and reassessed those reasons in paragraphs 41 to 44 of its judgment.

25. The conclusions of the public authorities, with which the Administrative Court agrees, demonstrate that the applicant was a dependent person within the Valeo group in 2011. The facts referred to by the Administrative Court in paragraph 44 of its judgment and described by the Court of Cassation in its summary of the conclusions of the Administrative Court's judgment demonstrate that the applicant is a dependent person. A dependent person is defined in Section 2(n)(2) of the Income Tax Act as a person or entity linked economically, personally or otherwise. It follows from the facts

established (significant lack of independence in strategic decision-making, drawing up of a business plan with other entities within the group, dependence on the group's know-how, ...) that the applicant meets that definition.

26. The defence in the appeal that the applicant is an independent business entity within the group cannot stand up. The facts that the selling price of the product is known at the beginning of the project, that the applicant did not have a sales department itself and that customer relations are managed through the business group, including marketing activities, necessarily lead to the conclusion that the applicant is a dependent person within the group. The mere fact that the applicant participates in the development and improvement of its products does not give rise to a conclusion of independent status if its overall know-how is dependent on the group.

27. In assessing whether the applicant has the status of a dependent person, the public authorities also applied, in accordance with Article 18(1) of the Tax Code, the Organisation for Economic Cooperation and Development's transfer pricing methodology set out in the Transfer Pricing Directive for Multinational Enterprises and Tax Administration. The Court of Cassation is aware that the assessment itself is a very demanding process in which all the specificities of the business entities under assessment must be taken into account. This is confirmed by point 3.55 of the Directive, according to which transfer pricing is not an exact science (cf. Transfer Pricing Litigation in Slovakia - Relevance of the OECD Transfer Pricing Directive. In. Acta Universitatis Carolinae 4/2022, Czech Republic).

28 In view of the above, it is important that the public administration, after assessing the individual criteria for concluding whether a person is a dependent person, duly justifies its conclusion. Consequently, it is also equally important that, in the case of the adjustment of the tax base of dependants, once it has assessed that the tax subject is a dependent, the tax administration, on the basis of the correct discretion determined by it after having selected the most appropriate methodology for adjusting the tax base, also duly justifies all its procedures (cf. the judgment of the Court of Cassation Case No 4 of the Court of Cassation Sfk/42/2023 of 21 August 2024).

29. According to Article 27(2) of the part of the sentence before the semicolon of the SSP, in the case of a decision ... issued by a public authority ... on the basis of the administrative discretion permitted by law, the administrative court shall examine only whether the decision ... did not exceed the limits and considerations laid down by law. It is apparent from the reasoning of the public authorities, with reference to the above-mentioned facts, why the tax authorities and the defendant considered the taxpayer to be a dependent person. It is also apparent from those decisions what methodology, in accordance with the methodology laid down in Section 18 of the Income Tax Act, the tax authorities used to adjust the tax base of the applicant as a dependent person. The Administrative Court therefore acted lawfully in accepting the conclusions of the public authorities in question. In the light of the foregoing, the present appeal is unfounded.

30. The Court of Cassation addressed the point of appeal concerning the assessment of the services in Account No 518965 in paragraphs 11 to 15 of its judgment, in which it considered the allocation of the burden of proof. The Court of Cassation, in awarding tax expenses in respect of the three disputed invoices in the account in question, emphasises, in accordance with the above, that the burden of proving that the expenses in question were actually incurred lies with the applicant pursuant to Article 24(1) of the Tax Code. In so far as the applicant claims that the services in question were on-demand services, i.e. that the applicant should have paid for the possibility of using the services in question, it is hardly conceivable that the applicant would have been interested in 2011 in volumes of more than EUR 3 million in subscribing to on-demand services on the basis of a contract, the written wording of which was agreed with the supplier in December 2011. The Court of Cassation reiterates in this appeal that, for tax purposes, it is necessary to name each expense (tax expenditure) properly and to justify its validity (Article 19 of the Income Tax Act).

31. Proper proof of tax expenditure is not only necessary for the purposes of the proper payment of tax to the national budget. Fictitious tax expenditures may lead to a reduction of income tax and thus to an unfair advantage within the business environment. Therefore, it is important that each tax entity proves its tax expenditures.

32. In view of the above, the public authorities correctly assessed that the real existence of the disputed costs had not been established. The Administrative Court therefore did not err in accepting the public authorities' factual and legal assessment. The applicant's point of appeal is therefore unfounded.

33. On the point of appeal relating to the inadequate statement of reasons and the failure to deal with the applicant's arguments, the Court of Cassation notes that, pursuant to the first sentence of Article 139(2) of the CST, in the grounds of the judgment the administrative court shall set out a brief summary of the administrative procedure, a brief summary of the contested decision, a substantial summary of the applicant's arguments and the submissions of the defendant and, where appropriate, of the other parties, the persons involved in the proceedings and the public concerned, an assessment of the essential factual allegations and legal arguments.... In the light of that provision, the Court of Cassation finds that the administrative court dealt sufficiently and comprehensively with both the factual allegations and the legal arguments of all the parties to the proceedings. It is apparent from the judgment that the pleas in law are identified, and the Court of First Instance gives a fairly extensive reasoning for each of the pleas in law.

34. On this point of appeal, the Court of Cassation also refers to paragraph 20 of the judgment of the Supreme Court of the Slovak Republic, Case No 1Sžfk/23/2018 of 21 January 2020, according to which ... the administrative court does not have to give detailed answers to all the issues raised by the parties, but only to those which are of substantial importance for the case or which sufficiently clarify the factual and legal basis of the decision without going into all the details of the dispute raised by the parties. Therefore, the reasoning of the decision of the Court of First Instance and the subsequent decision of the Court of Cassation (which explains succinctly and clearly the factual and legal basis of the decision) should be sufficient to conclude that, in that respect, the fundamental right of a party to a fair trial is fully realised.

35. The Court of Cassation does not find that the administrative court failed to respond to any of the points raised in the application. The Court of Cassation therefore finds the contested point of appeal to be unfounded. Final assessment and reasoning of the judgment as regards costs

36. Pursuant to Article 461 of the Civil Procedure Code, the Court of Cassation dismisses a cassation complaint if, on examination, it finds that it is not well-founded. The Court of Cassation, having found the points of appeal to be unfounded, ruled in accordance with the provision in question.

37. The Court of Cassation decided on the costs of the cassation proceedings in accordance with Article 467(1) in conjunction with Article 167(1) and the second sentence of Article 168 of the Civil Procedure Code in the manner set out in the operative part of the judgment. Pursuant to Article 167(1) C.C.P. ... The court awards the applicant the right to full ... against the defendant. reimbursement of the costs reasonably incurred by the defendant in the proceedings, if the plaintiff has ... success.

Pursuant to Article 168 of the C.C.P.C., the administrative court shall, according to the proportion of the defendant's success in the case as against the applicant, award the defendant the right to reimbursement of the costs reasonably incurred in the proceedings only if it can be fairly demanded to do so. However, a public authority may be awarded compensation for legal costs only exceptionally.

The Court of Cassation did not award the applicant the costs of the cassation proceedings, since it was unsuccessful in the cassation proceedings. The Court of Cassation also did not award costs to the defendant.

Although the defendant was successful in the proceedings, it has the status of a public authority and the Court of Cassation did not find any exceptional reasons for awarding costs to it. Pursuant to Article 3(3)(b) of Act No 151/2022 Coll. on the Establishment of Administrative Courts and on Amendments to Certain Acts, as amended, the administration of justice in the present case passed from 1 June 2023 to the Administrative Court to the Administrative Court in Bratislava. Therefore, this judgment will also be served through the Administrative Court in Bratislava.39. This decision was unanimously adopted by the Court of Cassation.

Proper proof of tax expenditures is not only necessary for the purpose of proper payment of tax to the State budget. Fictitious tax expenditures may lead to a reduction of income tax and thus to an unfair advantage within the business environment. It is therefore important that every taxpayer proves its tax expenditure.

Lessons learned:

No appeal is admissible against this judgment.