

# SRS loses dispute with taxpayer because of evidence filed during litigation 2/48/20



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On 17 November the Supreme Court dismissed an appeal by the State Revenue Service (“SRS”) against the Regional Court’s ruling that had granted a petition for overturning the SRS’s decision.

## Facts and circumstances

During a tax audit, the SRS suspected that the petitioner’s expenses exceeded his income, so he must have concealed some taxable income and his reported cash savings cannot be recognised. As a result, the petitioner was assessed to personal income tax, interest on arrears, and a penalty. During litigation, he submitted bank account statements confirming the existence of borrowed funds. The court accepted the new evidence, found it credible, and granted the petition on that basis.

## The Supreme Court’s ruling

This ruling offers a valuable interpretation of an earlier case-law finding that all evidence must be submitted during the tax audit, with the submission of additional evidence during the appeal against the SRS’s decision and in court being an exception. The taxpayer had to explain why the evidence was submitted late, and the court had to evaluate the credibility of that explanation and the reliability of the evidence. We are aware of several cases where in applying this finding, the court refused to evaluate evidence submitted during litigation. Such a hard line taken by the court is based on the need to persuade the taxpayer to cooperate during the tax audit and to prevent him from first evaluating the information gathered and findings made by the SRS in the decision resulting from the tax audit, and later deciding which facts he is willing to reveal or refute during litigation.

In this case, the Supreme Court pointed out the SRS’s mistaken view that in establishing facts and grounds, the Regional Court had no power to rely on the evidence the petitioner had submitted to the court of first instance solely because the reasons he gave for his failure to submit that evidence on time were not credible. The fact that bank account statements were not submitted until litigation does not automatically make that evidence incredible. If an account statement confirmed by the bank shows that the person has received cash by bank transfer from another person and has withdrawn that amount from his bank account in cash, then there must be a good reason to question the truth of that information.

In summary, the Supreme Court has explained that the case-law findings relating to cases where a taxpayer does not submit fresh evidence until litigation begins are not intended to prevent the court from using the evidence submitted during litigation, but rather to explain the taxpayer’s duty to cooperate with the SRS. The court is not banned from accepting evidence submitted in the course of litigation if the court

finds it credible despite its late submission.