MAURITIUS REVENUE AUTHORITY

THE RATIO

TAX DISPUTE SUMMARY

The Ratio

The Ratio

FIRST EDITION

ISSUE 1 / JANUARY 2025

FOREWORD

Dear Readers,

Welcome to The Ratio, a dedicated feature where we aim to highlight the latest jurisprudential developments in the field of taxation.

Taxation, as we know, is a complex field, where the many branches and practices of revenue laws intertwine to create a compelling yet intricate canvas. Navigating this ever-evolving canvas can be challenging.

Our goal through each edition of The Ratio is to demystify the legal principles behind recent and landmark tax decisions. We explore how these decisions shape the tax landscape, providing clarity and insight into how tax laws are applied in real-world scenarios, offering precedents that guide strategic decisions and interpretations

The legal principles discussed in this column not only guide the application of the revenue laws but also ensure legal certainty, fairness, and impartiality in resolving tax disputes.

In this inaugural edition and as we embark on a new year, we reflect on landmark decisions from the ARC and the Courts during the last year—a particularly effervescent period marked by significant developments in tax controversy.

From innovative interpretations of tax laws, to much-needed clarifications on certain revenue provisions, and the imperative to find a delicate balance between procedural requirements and the precepts of fairness, this edition covers it all and promises to be an engaging read.

As we step into the New Year, we find ourselves at the cusp of exciting developments in the taxation landscape. With the possible introduction of the Revenue Appeal Tribunal, in particular, significant changes could soon be on the horizon, reshaping the way that tax disputes are resolved. We remain committed to navigate these changes with you and to ensure that you are informed and empowered to navigate this transition smoothly.

We wish all our readers a year of opportunity and growth!

Legal Services Department
Mauritius Revenue Authority

CONTENTS

PRAVIN AND DEVI SOOKHEE LTD v DG, MRA [ARC/LTD/22-11]

The ARC deliberated on a motion made by the Applicant to amend the Representations form lodged at the ARC by the Applicant. The proposed amendment sought to include LPG gas purchases as a new issue in contention, which the Applicant argued that it purportedly impacted their sales/turnover directly despite not raising this issue at the objection stage.

The ARC highlighted that a previous ruling was delivered wherein the Applicant was debarred from raising the LPG gas issue as it did not form part of the grounds of objections and grounds for representation. Despite the Applicant's attempt to amend the representations, citing oversight and the relevance of the issue to their corporate tax return, the ARC ruled against the amendment. They emphasized that the issue of LPG gas was neither included in the original Notice of Objection nor considered during the determination phase, thus falling outside the jurisdiction of the ARC to decide anew. Drawing on legal precedents and procedural fairness, the ARC declined the amendment, noting that it would prejudice the Respondent and bypass the proper channels of objection and determination. They distinguished cases where amendments were allowed based on points of law versus factual amendments like the one proposed.

In conclusion, the ARC refused the proposed amendment, reaffirming the importance of adherence to procedural rules and the need for issues to be properly raised and considered at the appropriate stages of assessment and objection. The Committee directed the parties to focus on the Notice of Determination for further proceedings, ensuring fairness in the resolution of the case in an expeditious manner.

SIKRA CO LTD v DG, MRA [ARC/IT/442-22]

In this matter, the Applicant (which provides educational services and operates under the name 'Dukesbridge') was issued with Notices of Assessment, the basis of which was the disallowance of certain expenses claimed in its return of income and also the addition of depreciation for the second year of assessment.

The Appellant, at the stage of objection, argued interalia, that it should be treated as an exempt entity, that the assessment was biased and that margins in the private education sector have been ignored.

The Respondent issued its Notice of Determination in which it found that the above grounds of objection were not "valid in accordance with Section 131A (2) (a) of the ITA" whilst considering and determining the other grounds of objection.

The Applicant raised a preliminary objection before the Committee to the effect that the Notice of Determination was wrongly issued by the Respondent and that the above grounds were therefore deemed to have been allowed. In a gist, it was argued by the Applicant that Respondent could not have considered and determined certain grounds of objection of the Applicant whilst considering that other grounds were not valid and that therefore the Respondent had acted ultra vires.

It was argued on behalf of the Respondent on the other hand that the powers of the DG, MRA under Section 131A of the Income Tax Act were unambiguously wide and includes the power to consider each of the grounds of objection in silo and to allow or disallow certain of these grounds independently from each other.

The Committee found in favour of the Respondent and set aside the preliminary objection raised on behalf of the Applicant.

PATEL ENGINEERING LTD v DG, MRA [ARC/IT/134-19]

The ARC adjudicated on the tax liability of Patel Engineering Ltd (PEL), an Indian company, concerning accrued interest income in Mauritius derived from its subsidiary, Waterfront Developers Ltd (WDL). The dispute revolved around the interpretation of Section 5 of the Income Tax Act (ITA) and Article 11 of the Mauritius-India Double Taxation Avoidance Agreement (DTAA).

PEL contested the assessment raised by the MRA, arguing that since the accrued interest had not been physically received, Section 5 of the ITA did not apply. Conversely, the MRA maintained that under Section 5 of the ITA, income accruals in Mauritius are taxable, irrespective of actual receipt. Legal counsels for both parties presented detailed arguments referencing international conventions and judicial precedents. The MRA cited the Vienna Convention on the Law of Treaties to emphasize the need for a purposive interpretation of the DTAA, asserting that accrued income should be taxed as per Section 5 of the ITA. PEL countered the argument, invoking principles of statutory interpretation and previous case law, arguing that tax liability should only arise upon actual receipt of income as defined in the DTAA.

After careful consideration of submissions and legal precedents, the Committee ruled in favor of the MRA. It was held that under Section 5 of the ITA and Article 11 of the DTAA, accrued interest income, even if not physically received, is taxable in Mauritius. The Committee underscored the need to interpret domestic laws in harmony with international agreements ratified by Mauritius, emphasizing the legislative intent to tax accrued income under the prevailing legal framework.

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AVC VACATION CLUB LIMITED v DG, MRA [ARC/IT/343-21]

In the matter involving **AVC Vacation Club Limited vs DG MRA**, the Committee deliberated on AVC's claims for bad debt deductions under section 60 of the Income Tax Act.

AVC sought to justify its position that debts had become bad without the necessity of legal action, presenting their debt recovery policies and emphasizing their business's international context. Witnesses from AVC detailed their operational procedures, including efforts made to recover debts through communication and a "Power of Sale" letter claim process rather than through Court proceedings and legal processes.

The MRA countered by citing statutory requirements and precedents, arguing that AVC failed to sufficiently prove that debts had indeed become irrecoverable. They referred to legal precedents such as Bentley Apparel Ltd v. Commissioner of Income Tax (2004) SCJ 174, where the case of Dinshaw v. Commissioner of Income Tax (Bombay) was referred in order to support their stance that debt must objectively prove to be irrecoverable. They conducted an investigation into a sample of debts to support their decision, challenging AVC's assertions regarding the eligibility of debts for bad debt deductions.

Ultimately, the ARC upheld the MRA's arguments, emphasizing that whilst legal action was not mandatory, AVC needed to demonstrate that all reasonable steps, including potential legal actions, had been taken to recover debts, including but not limited to insolvency and bankruptcy.

The Committee underscored the importance of adherence to statutory provisions and objective criteria in determining that a debt is irrecoverable in order to be eligible for bad debt deductions under the Income Tax Act.

GODOLPHIN LTD v DG, MRA [ARC/IT/275-22]

The matter of **Godolphin Ltd. V DG MRA**- though it is presently under appeal before the Supreme Court- has shed light on the statutory criteria for eligibility to claim for partial exemption under the laws of Mauritius, and more particularly under Regulation 23 D of the Income Tax Regulations 1996.

The ruling of the ARC provides an interesting analysis of the historical underpinnings and raison d'etre of the substance requirements which are at the source of the cumulative conditions required under Regulation 23D of the Income Tax Regulations. In this matter, the ARC found that the Applicant was not compliant with the employment criteria set forth therein.

In particular, the Applicant sought to argue that, based on its operational structure managed through St Lawrence Management Ltd. (SLML), along with the involvement of resident directors and committees, it satisfied the employment criterion. It was argued on behalf of the Applicant that SLML's oversight of administrative tasks, coupled with the roles of resident directors, constituted sufficient engagement in core income generating activities (CIGA).

Conversely, it was contended on behalf of the Respondent that SLML's activities primarily comprised routine administrative functions rather than substantial oversight of CIGA. They pointed to detailed invoices and service agreements from other providers such as Navroh UK Ltd. and Nean Wealth Advisors (UK) Ltd., which outlined critical financial management and strategic tasks essential for an investment holding company.

The ruling meticulously examined the nature and extent of services provided as evidenced by invoices and agreements. It highlighted that while SLML invoiced for administrative duties, Navroh and Nean invoiced for crucial financial functions like tax filing, financial statement preparation, and legal document drafting. The Committee found that SLML's staff roles did not sufficiently meet the criteria of skilled employees actively overseeing CIGA as mandated by Regulation 23D.

The Committee underscored the legislative intent behind Regulation 23D, stressing the need for entities to substantively fulfill conditions for partial tax exemption. It upheld the MRA's decision to deny Godolphin Ltd. the tax benefits sought, concluding that the entity did not adequately demonstrate compliance with the employment criterion.

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LOGENDRA APPAYA v DG, MRA [ARC/CUS/85-18]

In the matter involving **Logendra Appaya and the DG of MRA**, the ARC deliberated on the dispute concerning the repayment of proportionate excise duty and taxes following the expiry of Mr. Appaya's employment contract à durée déterminée. Mr. Appaya, who held the position of Adviser on Legal Issues at the Ministry of Housing and Lands, had been granted a duty concession on a motor vehicle under the PRB report provisions from October 2015.

The crux of the issue was whether Mr. Appaya was obligated to reimburse Rs.288,015 in duties and taxes, demanded by the MRA under section 5 of the Customs Tariff Act 1969, due to his contract for a definite term having ended before the completion of the four-year duty concession period. Mr. Appaya contended that the duty exemption was granted under the PRB report and was contingent upon his employment terms with the Ministry of Housing and Lands, as he did not resign nor was his contract terminated. According to him, his employment contract being one for definite term has reached its contractual expiry and without the option for renewal. In defense, the MRA maintained that the duty concession was inextricably linked to Mr. Appaya's employment status, making him liable for repayment upon his contract expiry before the end of the four-year concessionary period as set out in law. After considering both sides, the ARC affirmed the MRA's decision.

They concluded that although Mr. Appaya's contract did not explicitly specify the four-year duty concession period, the provisions of the CTA 1969 became an implied term of his employment contract once he has benefited from the concession. This decision underscored the ARC's interpretation of the contractual and statutory obligations governing duty concessions, affirming the MRA's authority to enforce repayment based on the expiry of Mr. Appaya's employment contract à durée déterminée since the concession was granted to him by virtue of the post that he held as Adviser on Legal Issues at the Ministry of Housing and Lands.

HEALTHY MEALS LTD V/S DG, MRA [ARC/VAT/41-21]

In the case of **Healthy Meals Ltd v/s Director-General, MRA**, the ARC determined on a dispute where the Applicant, operating a fast-food outlet under the trade name 'Subway' at the Mauritius SSR International Airport, was challenged by the MRA for failing to charge VAT on its sales at its Departure Hall outlet.

The MRA's field audit revealed that VAT was charged at the Arrival Hall but not at the outlet situated at the Departure Hall, leading to an assessment such that VAT should have been applied by virtue of sections 9 and 11 of the VAT Act.

The Applicant contested this, arguing the Departure Hall sales were zero-rated or qualified as an export given that there was purportedly no consumption at the outlet and the sales were allegedly sold to departing passengers who did not consume the food items in Mauritius, thus were contending that same did not constitute a taxable supply under the VAT Act.

The Committee found the Applicant did not meet the criteria for zero-rated supplies or duty-free status, highlighting that the food was sold in Mauritius as it constituted a supply of goods and was not subject to Customs Control, which could not amount to an export.

The Applicant's arguments regarding food consumption restrictions were deemed irrelevant. Ultimately, the Committee upheld the MRA's assessment, confirming that VAT should have been charged at standard rate on the food items sold by the Applicant at the Departure Hall.

VAYRES INVESTMENTS LTD V/S DG, MRA [ARC/IT/235-18 & ARC/IT/243-20]

In **Vayres Investments Ltd v/s Director General, MRA**, the ARC determined whether an income tax assessment issued on June 19, 2018, for the income year ending June 30, 2014, was time-barred under section 130 of the Income Tax Act.

The Applicant argued that the assessment was invalid as it exceeded the three-year statutory limit and the Respondent cannot go backward beyond three years in the past, preceding the year of assessment. They contended that the Director-General, MRA could not validly assess beyond three years. The Respondent, however, relied on the ARC Ruling in the case of Numelec Ltd v MRA, arguing that the reference point is the year of assessment in which the return is made should be based on the year of assessment in which the return was made, and that the period for assessment was correctly applied as the year of assessment is that of 2016/2017 which is as per the Notice of Assessment dated 19 June 2018.

The Committee concluded that the three-year limit should be applied based on the year of assessment in which the return was made, rather than the submission date. Consequently, the Committee ruled that the phrase "beyond three years of assessment in which the return is made, should not be interpreted as 3 years from the date the assessment is raised in cases where a return has been made under sections 112,113,116 and 119, i.e. once a return is made in December 2014, time starts running for the Director-General to issue the assessment within a period of three years from the corresponding year of assessment, which is YOA 01 July 2014 to 30 June 2015 in the present matter, was found not to be time-barred, as it fell within the allowable period for assessment under section 130.

FUNWORLD CO LTD V/S DG, MRA [ARC/IT/613-17]

In the case of **Fun world Co Ltd v/s Director General, MRA**, the ARC reviewed a dispute concerning a gaming tax assessment made by the MRA. Fun world Co Ltd, an operator of gaming machines, challenged the MRA's assessment, which was based on applying a multiplier of 3 to the 'drop' figures from its gaming machines to estimate tax liabilities.

Fun world argued that the multiplier was derived from inconsistent and erroneous comparisons with other operators, given the varying definitions and applications of 'drop' figures in the industry. Additionally, discrepancies in meter readings and the MRA's failure to employ the required Central Electronic Monitoring System (CEMS) further compromised the accuracy of the tax assessment.

The Committee found that the MRA's methodology lacked precision, particularly in its use of the multiplier and comparison standards, and noted that the lack of CEMS installation prevented a reliable assessment of machine operations.

As a result, the Committee determined that the MRA's approach was unreliable and ought to have been made under the GRA Act based on information available as per the CEMS which is very specific for the gaming industry and upheld Fun world's challenge.

The Ratio

AVAGO TECHNOLOGIES TRADING LTD V/S DG, MRA [ARC/IT/602/15 & ARC/IT/145-16 & ARC/IT/265-17]

In the case of **Avago Technologies Trading Limited (ATTL) v/s DG, MRA**, the ARC reviewed a dispute where the Applicant, ATTL, contested the legitimacy of the royalty fees paid to its related entity, GEN IP (Singapore). The MRA whilst agreeing that some royalty was payable, did not agree that the royalty, deducted as allowance expenses for the concerned years, was wholly and exclusively incurred in the production of gross income and was of the view that the payments were not in accordance with the arm's length principle under section 75 of the Income Tax Act and gave rise to tax avoidance arrangement under section 90 of the ITA. The MRA challenged these fees, arguing that they were excessive and structured to avoid taxes by shifting profits from Mauritius—where ATTL faced a low effective tax rate—to Singapore, where royalty income was exempt from taxation. This case delves into whether the royalty payments adhered to the arm's length principle or were manipulated to evade tax obligations.

The MRA asserted that the payments were disproportionately high compared to industry standards and aimed at shifting profits to a tax-free jurisdiction. ATTL defended the payments as necessary for utilizing essential IP and generating income, supported by a transfer pricing report that justified the fees.

The ARC analyzed these arguments and agreed with the MRA's position. They found that the royalty payments were excessive and primarily intended to shift profits. The ARC determined that the TNMM used by ATTL was flawed, as it did not accurately reflect the IP's value or services provided. They supported the MRA's view that the CUP method would have provided a more accurate measure and emphasized that even a Transfer Pricing Report must align with commercial reality and economic substance.

In conclusion, the ARC ruled in favor of the MRA, affirming that ATTL's royalty payments were excessive and constituted a tax avoidance scheme. By limiting the deductible amount to 5% of net sales, the ARC endorsed the MRA's assessment that the high payments were designed to shift profits to a tax-exempt jurisdiction. This ruling highlights the need for adherence to the arm's length principle and robust commercial justifications for intercompany transactions. It also indicates that Mauritius may benefit from clearer transfer pricing regulations to address similar issues effectively in the future.

VAYRES INVESTMENTS LTD V/S DG, MRA [ARC/IT/609-17]

In **Vayres Investments Ltd v/s Director General, MRA**, the ARC addressed an issue regarding the legality of a gaming tax assessment issued by the MRA for the period of May 2014 to December 2015. The Applicant, a gaming operator in Rodrigues Island, contested the assessment, arguing that the MRA had incorrectly applied the "best of judgment" principle from the Income Tax Act (ITA) and used a multiplier to calculate the tax owed. The Applicant contended that the assessment methodology was flawed as it was not grounded in the Gambling Regulatory Authority (GRA) Act.

The Respondent contended that the audit was conducted in line with its general policy and that the discrepancies in the company's records warranted the tax demand, which amounted to Rs. 10,996,839 after adjustments. The Respondent further argued that the Applicant's objections lacked sufficient documentary evidence to substantiate its claim.

The Committee concluded that the MRA had misapplied the law by relying on the "best of judgment" principle under the ITA, which was not applicable in the context of gaming tax assessments governed by the GRA Act. Additionally, it was found that the MRA's failure to use the Continuous Emissions Monitoring System (CEMS) undermined the integrity of the assessment. As a result, the Committee upheld the Applicant's representation and set aside the assessment.

GLOBALSPORTS LTD V/S DG, MRA [ARC/VAT/90-15 & ARC/VAT/159-19]

In the case of **Globalsports Ltd v/s DG, MRA**, the ARC addressed a tax dispute between Globalsports Ltd, a totalisator operator and the MRA regarding discrepancies in tax computations related to "All-for-All" bets. The MRA issued an assessment after identifying discrepancies in how the Applicant treated reinvested amounts in the betting process, claiming Rs.17,645,573/- in taxes, penalties, and interest, later reduced to Rs.13,124,091/- following an objection.

The central issue was the interpretation of the term "gross stake" under the Gambling Regulatory Authority (GRA) Act. The Applicant argued that only the initial stake in "All-for-All" bets should be subject to taxation, relying on dictionary definitions and the GRA's Tote Rules. The Respondent, however, contended that each subsequent leg of the bet represented a separate transaction that should be taxed. The Committee noted the unique nature of "All-for-All" bets, which involve reinvestment of winnings into subsequent bets.

The Committee concluded that within the framework of totalisator betting, tax calculations should be based on the total gross profits generated from the betting activity, rather than just on the initial bet. This approach accounts for the cumulative value of each win after pay-outs are made, with specific calculation methods varying according to regulations and applicable tax types. Given this analysis, the Committee upheld the assessment and set aside the Applicant's representation.

HING TSE INVESTMENT CO LTD V/S DG, MRA [ARC/VAT/281-16]

In **Hing Tse Investment Co Ltd v/s DG, MRA**, the applicant contended that its operations, as a Limited Pay-Out Machine Operator, do not extend to those of a bookmaker who are engaged in fixed odds betting on virtual horse racing and that the MRA does not have the authority to redefine its licensed activities on the grounds that its operations are focused on simulated games and as such, they lack the characteristics that define traditional bookmaking such as negotiating bets on uncertain outcomes.

However, the Respondent argued that one of the characteristics of Limited Pay-Out Machines is to provide players with electronic credits or tokens based on skill or chance and this is where the machine has deviated from compliance to statutory requirements. The machine operates by issuing tickets that do not represent skill-based rewards but are rather transactions similar to sales. Moreover, another characteristic of Limited Pay-Out Machine is the interaction with players directly and the absence of same further undermined the applicant's claims of compliance. The tickets also displayed the term 'win' thereby suggesting that the Applicant is potentially engaged in bookmaking activities.

The Committee stressed on the significance of distinguishing between a Limited Pay-Out Machine and other forms of gaming machines as taxation by the MRA will be based on the classification of gaming machines.

Section 119 of the Gambling Regulatory Authority (GRA) Act grants the Director General the power to assess licensees with regards to compliance and also includes the ability to make assessments if cases of non-compliance is suspected or even in cases where activities, which are outside the scope of the licence, are being conducted. This implies that the MRA does have the authority to raise an assessment if a licensee is involved in activities that are beyond the scope of its licence.

In conclusion, the ARC upheld the MRA's arguments by stating that simulated horse racing is indeed a bookmaker activity as its characteristics aligns with that of traditional betting practices.

ALTIUS LTD V/S DG, MRA [ARC/IT/147-14]

In the case of **Altius Ltd v/s DG, MRA**, the Respondent issued an assessment to the Applicant as regards the sale of a building situated at Ebene. The Respondent has disallowed the annual allowance claimed by the Applicant and also made an adjustment in the computation of CSR which amounted to an additional tax liability of Rs. 2.6M.

In determining the outcome of the case, the Committee considered extensively the principles relating to the 'badges of trade'. The Committee made reference to the authority of Junction Properties Ltd v/s CIT in its analysis to conclude that the representations of the Applicant were devoid of any merits.

The Committee observed in its findings that there was nothing to suggest that the business of the Altima Group or Altima Ltd which is the parent of the Applicant (Special purpose vehicle set up by Altima Ltd) was affected by adverse economic conditions and that the business was able to continue largely unaffected, such that, the compensation received was a trading receipt and hence, subject to income tax.

The Committee therefore set aside the representations of the Applicant and upheld the determination of the Respondent.

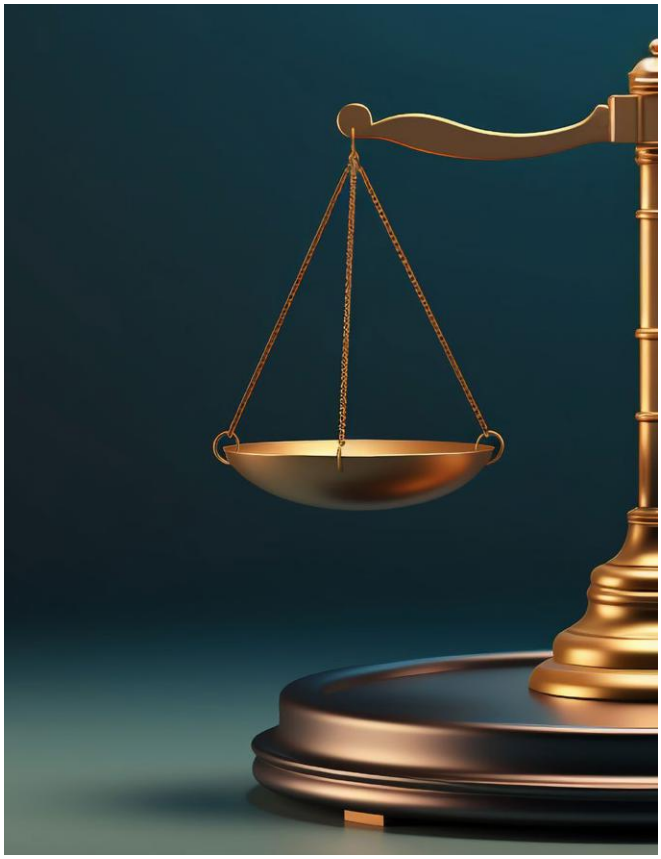
SMIT SALVAGE PTE LTD v THE ASSESSMENT REVIEW COMMITTEE & ANOR [2024 SCJ 59]

In the case of Smit Salvage Pte Ltd v The Assessment Review Committee & Anor [2024 SCJ 59], the Supreme Court of Mauritius addressed an appeal concerning a ruling issued under section 69A of the Value Added Tax Act (VAT Act). Smit Salvage Pte Ltd, the Appellant, had applied for a tax ruling seeking clarification on the VAT implications of leasing helicopters from the Police Helicopter Squadron for salvage operations involving the MV Wakashio vessel.

Faced with an unfavorable ruling from the DG of MRA, the Appellant lodged representations before the ARC purportedly under section 40(1) of the VAT Act, which allows challenges to decisions on taxable supplies. However, the ARC ruled that it does not have jurisdiction to hear this matter, asserting that rulings under section 69A of the VAT Act did not fall within the purview of its statutorily defined jurisdiction.

On appeal, the Supreme Court concluded that the ruling issued by the Director General MRA did indeed constitute a decision, as it determined the tax liability on the services provided. The Court emphasized that section 40(1)(a) of the VAT Act provided a broad basis for appeal against decisions regarding taxable supplies, without requiring a formal assessment to have been issued by the MRA. Furthermore, the Court rejected arguments that specific inclusion in the Fifth Schedule of the MRA Act was necessary for appeal, noting that section 40(1)(a) already encompassed decisions related to taxable supplies.

The Supreme Court thus allowed the appeal, set aside the ARC's ruling, and remitted the matter to the ARC for reconsideration based on its jurisdiction to review the DG's rulings under section 69A of the VAT Act



MODE YELLOW HOLDINGS LIMITED v DG, MRA & ANOR [2024 SCJ 70]

In Mode Yellow Holdings Limited v The DG, MRA & Anor [2024 SCJ 70], the Supreme Court of Mauritius considered an appeal by Mode Yellow Holdings Limited (the "Appellant") against a ruling of the ARC whereby the ARC had refused the appellant's motion to amend its ground of representation pertaining to foreign tax credit. The appeal was axed solely on this issue.

The Supreme Court deliberated on whether an appeal could challenge the ARC's decision rejecting this amendment. It was the contention of the Respondent that the ruling was not final under Section 21 of the Mauritius Revenue Authority Act, which only allows appeals against ARC decisions which are final.

The Supreme Court determined an appeal, having regard to the provisions of Section 20 and 21 of the MRA Act can only lie from a final decision of the ARC and not on preliminary or interlocutory ones.

The judgment highlighted the statutory requirement for finality in appeals, ensuring that appeals are not used to interrupt ongoing proceedings before administrative bodies like the ARC. It also reflected on the legislative intent behind establishing strict procedural timelines for tax-related matters, underscoring the importance of procedural efficiency while safeguarding substantive rights.

Ultimately, while acknowledging the appellant's procedural challenges in obtaining necessary documents from abroad, the Court affirmed the ARC's discretion in managing its proceedings and adhering to procedural rules without allowing appeals on preliminary or interlocutory decisions.

HEERALALL N. v DG, MRA [2024 SCJ 56]

In Heeralall N. v DG, MRA [2024 SCJ 56], Nirmal Heeralall, acting as Receiver and Manager of Best Flour & Co Ltd (in Receivership), challenged the priority ranking in the distribution of the proceeds of sale between Mauritius Commercial Bank Ltd (Bank) and the Mauritius Revenue Authority (MRA) regarding inscribed privileges on properties for unpaid taxes. The Supreme Court (Bankruptcy Division) had previously determined that the MRA's privilege under section 21L of the Mauritius Revenue Authority Act took precedence over the Bank's fixed and floating charges, citing specific provisions of the Code Civil Mauricien (CCM), MRA Act and the ITA.

Mr. Heeralall lodged an appeal before the Court of Civil Appeal on grounds including the interpretation of tax laws, in particular, the applicability of section 81A of the Income Tax Act. Section 21L of the MRA Act and the application of the CCM. His arguments emphasized on the timing of Bank's inscriptions which were prior to the MRA's inscription of privilege. The MRA countered that its rights to inscribe privileges were statutory and took precedence, supported by the legal obligation imposed on Receivers under section 81A of the Income Tax Act to set aside such sums as may be due.

The Court ruled that the statutory provisions were conflicting, confusing and uncertain but held that MRA will be entitled to recover the amount the amount of tax in accordance with the provisions of section 21M of the MRA Act and Articles 2149 and 2152 of the Civil Code (taxes due payable for a maximum period of 12 months, being the highest in amount). However, as far as the inscribed privilege of the MRA is concerned, the MRA's remaining taxes will rank after the Bank's charges since MRA has inscribed privileges after the Bank.

The Court of Civil Appeal has urged the legislator to intervene in order to provide clarity to the confusing state of the law in its present form.

VARCITY MAURITIUS LTD v THE ASSESSMENT REVIEW COMMITTEE & ANOR [2024 SCJ 260]

This matter concerns an appeal heard by the Supreme Court against a ruling of the ARC dismissing the Appellant's grounds of representations as being too general and vague (on the premise interalia that the grounds of representations were merely a rehash of the Appellant's grounds of objections) to warrant a hearing on the merits.

Whilst the Supreme Court acknowledged that the ARC is entitled to look for reasons for representations which are clear and specific and which leave no doubt as to the question on which it is being called to pronounce itself- the Supreme Court found fault with the ARC's decision to shut out the Appellant's representations outright, without first considering whether such any vagueness in the grounds of representations may be corrected through the provision of particulars. The moreso since, in the matter at hand, the issue in contention related to the interpretation of the law- so that there would not have been any material difference between the grounds at objection stage and at the stage of representations.

Ultimately, the Supreme Court found in favor of the Appellant and remitted the matter back to the ARC for hearing on the substantive issue of VAT applicability under item 48(a) of the VAT Act.

The judgment underscored the importance of procedural fairness and the ARC's obligation to fairly assess representations filed before it, even when drafted by non-legal professionals. The decision serves as a reminder of the ARC's quasi-judicial role in tax matters and the need for flexibility in evaluating representations to ensure taxpayers' rights to a fair hearing are upheld.

Flexi Investment Ltd V/S MCB LTD & Anor [2024 SCJ 526]

In the case of **Flexi Invesment Ltd v/s MCB LTD & Anor**, an application was made under section 71(1) of Courts Act coupled with section 201 of the Sale of Immoveable Property Act ('SIPA') for the erasure of inscription and charges burdening a plot of land of 350 toises situate at Roche Bois.

The Court observed that in matters governing the sale of Immoveable property

('IP'), the SIPA finds its application. For a property to be freed of any inscription, payment has to be made in accordance to the established procedures under the SIPA. However, in the case at hand, all the procedures in regards to the property in lite have not been completed before the Competent Court which is the Master and Registrar.

The Court further observed that allowing the erasure of the charges and privileges inscribed on the property in lite will in fact be circumventing the procedures before the Master and Registrar as prescribed by the 'SIPA'.

The application was set aside and the matter is to follow its due course before the Competent Court.

S Hawoldar v/s DG, MRA [2024 SCJ 443]

This case relate to an appeal by way of case stated against an oral ruling delivered by the Committee whereby the Appellant's preliminary objection was set aside. In its judgment, the Court noted that the ARC has not adjudicated on the merits of the representations made by the Appellant.

The Supreme Court further observed that an appeal may lie only against a final decision of the ARC and not an interlocutory one. As clearly stated by the Court, an interlocutory judgment is not a final judgment that disposes finally of a suit; one which puts the party in the impossibility of moving further or proceeding with the hearing of an action on the merits; one which concludes the right of the parties.

The Court concluded that that the Ruling of the ARC was not final inasmuch as the issues raised by the Appellant in the case before the ARC, were not finally determined, that is, preventing the Appellant from proceeding further. In these circumstances, the appeal was set aside

S Hawoldar v/s DG, MRA [2024 SCJ 443]

The Applicant, an owner of various advertising structures was granted leave to apply for Judicial Review of the decision of the MRA in relation to advertising structure fee ('ASF'), interest and penalties due for the period January 2012 to the first quarter of 2022, and the related decision-making process.

In its decision, the SC observed that the application for Judicial Review was misconceived and was improperly seeking the court to substitute itself for the ARC which was statutorily tasked under the Advertisements Regulation Act to assess the liability to ASF and ensuring its recovery.

The Court was concerned with the fact that the Applicant was asking the court to calculate anew the amount of ASF to be paid and, on that score, set aside the application for judicial review.

Summary of ALTEO ENERGY LTD V/S ARC & DG, MRA (2025 SCJ 47)

In **Alteo Energy Ltd v Assessment Review Committee & Anor (2025 SCJ 47)**, Alteo Energy Ltd, a company, engaged in electricity production, claimed 80% exemption on interest income earned by the Company; a claim which was rejected on the basis that the interest income was not derived from the company's core income generating activities (CIGA) in line item 7 of Sub-Part B of the Second Schedule to the Income Tax Act 1995 and Regulation 23D of the Income Tax Regulations 1996 (the Regulations). The ARC upheld the MRA's decision, leading to an appeal before the Supreme Court.

It was argued that the ARC had misinterpreted the law by imposing an additional condition such that interest income must be linked to the company's main business activity. Alteo Energy Ltd maintained that the wording of the above item 7 and Regulation 23D was clear and did not require such a restriction. It further contended that the use of the word *"includes"* in defining CIGA indicated that the list of activities was non-exhaustive, thereby allowing other forms of income, including interest, to qualify for the exemption. Alteo Energy Ltd contended that ARC's reasoning led to an absurd interpretation of the Regulation 23D.

On the other hand, the MRA maintained that the substance requirement under the above item 7 had to be read alongside Regulation 23D, which explicitly defines CIGA as including financing-related activities. They argued that a broad interpretation of the word *"includes"* would allow unrelated industries to benefit from an exemption primarily designed for financial entities. The MRA relied on statutory interpretation principles and contended that CIGA must have a sufficient connection to the generation of interest income.

The Supreme Court found that tax provisions must be interpreted strictly with any ambiguity resolved in favour of the taxpayer and held that the definition of CIGA, using the word *"includes"*, was non-exhaustive and should be interpreted broadly to encompass any company satisfying the three prescribed conditions under Regulation 23D.

Summary of MANVENDRA SINGH & ANOR V DG MRA & ORS 2025 SCJ 37

The Applicant made an application for leave to apply for judicial review of the decision of the MRA on the grounds of being purportedly illegal, in breach of natural justice, Wednesbury unreasonable and irrational. The Applicant's contended that the MRA has acted ultra vires and has exercised his powers to request information and documents in an abusive manner. The MRA submitted that the Applicant failed to exhaust all alternate remedies available before seeking leave for judicial review; which is a remedy of last resort.

The Supreme Court set aside the application for leave for Judicial Review on the basis that there was no arguable case inasmuch as the decision to request information is a step in the process which the MRA adopted when deciding to raise an assessment and not amenable to judicial review.

Summary of VARSHA SINGH & ANOR V DG MRA & ORS 2025 SCJ 37

The Applicant made an application for leave to apply for judicial review of the decision of the MRA on the grounds of being purportedly illegal, in breach of natural justice, Wednesbury unreasonable and irrational; inasmuch as the request for information by the Respondent is in regards for time-barred years and the MRA allegedly acted in breach of Section 127(3) of the Income Tax Act. The Applicant further contended that the failure to comply with the above request renders her liable to be prosecuted and hence, premature for the purposes of judicial review. The MRA submitted that the Applicant failed to exhaust all alternate remedies available before seeking leave for judicial review; which is a remedy of last resort. It was also argued that the decision to request for information lacks the necessary ingredients of a final decision, thereby not rendering same amenable to Judicial Review.

The Supreme Court set aside the application for leave for Judicial Review on the basis that the decision to request information is not a final decision and therefore not amenable to judicial review. The Supreme Court further took the view that the above decision, which the Applicant might be aggrieved by, can be challenged in its full latitude before the ARC. Further, given the fact that the date to furnish the requested information was on 04 September 2023, and such has lapsed, therefore, there was no live issue for the Supreme Court to adjudicate thereupon

MRA v JAMES CLYDE BANCHE [CN:24/2023]

In the matter before the Financial Crimes Division of Intermediate Court of Mauritius, the Accused, James Clyde Blanche, was charged for having breached sections 112 and 147(1)(a) & (2) of the Income Tax Act (ITA) 1995 by submitting false returns of income. The Accused entered a plea of guilty to the charges and was consequently found guilty as charged.

Considering the seriousness of the offences committed, and the Accused's attempt to conceal its tax liability, the Court imposed fines of Rs.10,000/- under each count. Additionally, the Accused was ordered to pay Rs.551,560/- and Rs.83,991/- respectively, representing three times the amount of tax evaded under each count.

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