

# Bhurtun Chambers

## Monthly newsletter

Issue No 16: July 2023

### **Introduction**

The Acts of Parliament and Regulations made under such Acts in the sphere of the Revenue Laws have been made to be strictly adhered to, except in instances where they have been declared to be null and void. This applies to both the Mauritius Revenue Authority as well as the taxpayers and other stakeholders.

We have seen instances where the cases of taxpayers have been set aside strictly on procedural matters and cases of taxpayers which have been successful in instances where reports of Government Valuers have been considered not to be in line with statutory requirements.

Such non-observance of statutory rules often results from an ignorance of statutory amendments. It is therefore mandatory for everyone to be kept updates of such amendments, which are published in the Government Gazette.

I invite you to read the summary of the decisions below. Numerous decisions have been delivered by the Assessment Review Committee pertaining to the drafting of precise reasons for representations.

Finally, I invite you to take cognisance of our training activities, the next one being on statutory amendments brought by the Finance (Miscellaneous Provisions) Act 2023 scheduled on 24 August 2023.

## Table of Contents

Decisions Delivered by the Assessment Review Committee .....	3
Important Legislative Amendments .....	18
Our Trainings .....	19

## **Decisions Delivered by the Assessment Review Committee**

### **1. AIRBUS DEFENCE AND SPACE LTD V DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/IT/655-17; ARC/VAT/220-17**

In this case, the Applicant was proceeding before the Committee on the basis that it did not have a permanent establishment in Mauritius.

The Respondent took an objection to the effect that the Committee had no jurisdiction to hear the issue relating to permanent establishment as that issue did not form part of the objection of the Applicant.

The Committee analysed the notice of objection and notice of determination.

The Committee observed that the issue of permanent establishment was in fact raised at the level of the objection. However, the Respondent did not take a decision on that issue given that he considered that the ground of objection relating to the issue of permanent establishment was not a valid ground of objection.

In the circumstances, the Committee referred the matter back to the Objection Unit for the objection to be considered, and should the Applicant be dissatisfied with the outcome, it may then lodge representations anew.

### **2. APIC INVESTMENT HOLDINGS LTD v DIRECTOR-GENERAL, MAURITIUS REVENUE AUTHORITY ARC/IT/68/13; ARC/IT/402/16; ARC/IT/403-16**

The matter relates to the years of assessment 2008/2009, 2012 and 2013.

The Respondent took a preliminary point to the effect that the reasons for the representations were too vague for the years of assessment 2012 and 2013..

The Committee referred to various pronouncements of the Supreme Court relating to grounds of appeal and the following principles were mentioned, among others:

1. Grounds of appeal should be drafted such that the Court and the other party may be properly informed of the case;
2. Grounds of appeal which are too vague will not be considered as grounds of appeal.
3. Grounds of appeal must be short and simple.

It was argued by the Respondent that the reasons for representation did not indicate in what manner the Respondent was wrong. They simply set out the interpretation of various applicable rules.

The Committee went on to mention that it would not be for the Committee to try to understand which part of a notice of determination was being challenged by any specific reason for representation. Reasons for representations should not be set out as a lecture. Furthermore, where reasons for representation are set out in an annex, such annex should be clearly identifiable.

The Committee also concluded that the reasons for representations should not be read together with evidence that would be produced during the Hearing. In such a case, the representations would be clearly wrong as they cannot stand alone.

For these reasons, the Committee set aside the representations for the years of assessment 2012 and 2013.

### **3. CARBO CERAMICS (MTIUS) INC v DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/IT/510-16 V.1; ARC/IT/510-16 V.2**

The Respondent took a point in law to the effect that the Applicant failed to specify the reasons for the representations.

The Committee observed that the requirement to specify reasons was a statutory one and not a mere technicality.

In the representations, the Applicant mentioned “see attached” and what was attached were the grounds of objection and not reasons for representations. The Committee

highlighted that it does not review assessments but the determination of objections. As such the grounds of objection and the reasons for the representations could not be the same document.

Furthermore, the attached grounds of objection were flawed given that they failed to mention clearly in what manner the Respondent was wrong.

The representations were set aside.

#### **4. COCA COLA INDIAN OCEAN ISLANDS LTD v Director-General, Mauritius Revenue Authority ARC/IT/86-21**

The Respondent raised a preliminary point to the effect that the reasons for the representations were not precise.

The Committee observed that the representations were not proper given that it had to refer to other documents in order to understand the reasons.

The Committee further concluded that the reasons were defective given that they did not precisely mention with what the Applicant was aggrieved with.

With regard to one particular reason, the Committee reiterated the principle that the Applicant could not canvass an issue which was not made live at objection level.

Representations were set aside.

#### **5. ELAHEE MOHAMED YOUSOUF & Anor v Registrar-General ARC/RG/222-19; ARC/RG/223/19**

The matter related to the valuation of an immovable property. Valuation reports were produced by valuers for each party.

The Committee observed that it could not rely on the valuation report of the Applicant given that sale comparables were not mentioned and that the date of valuation was 10 August

2021 whilst the deed of sale was dated 05 November 2018. It is a well established principle that the date of valuation should be the date of the deed.

The Committee considered that it could rely on the valuation report of the Respondent given that the comparables used were close to the property which was being valued and that the sale conditions were comparable.

The Committee accepted the valuation exercise of the Respondent.

Similar decisions were delivered in the cases of **ELAHEE MOHAMED YOUSOUF & Anor v Registrar-General ARC/RG/220-19; ARC/RG/221/19 and ELAHEE MOHAMED YOUSOUF v Registrar-General ARC/RG/219-19.**

## **6. MAURITIUS FREEPORT DEVELOPMENT CO. LTD v THE DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/IT/677-15; ARC/IT/441-16**

The Applicant incurred capital expenditure in the years 1995 to 2005 and claimed the annual allowance in 2012.

The Respondent was not agreeable and claimed that the annual allowance should have been claimed that the annual allowance should have been claimed in the year in which the capital item was put to use.

The Respondent further claimed that, in so doing, the Applicant circumvented the loss carry forward provision of five years.

Regulation 7 of the Income Tax Regulations provide as follows:

Reg 7(1)(b) provides:

### **7. Annual allowance**

(1) For the purposes of section 24 of the Act -

(b) the rate of annual allowance shall, in respect of each of the items specified in Column 1 of the Second Schedule to these Regulations, not exceed the rate corresponding to that item specified in Column 2 of that Schedule.

The Committee analysed the above regulation, in particular the term “shall...not exceed” and came to the conclusion that an ordinary interpretation was warranted. As such Committee concluded that:

1. It was for the Applicant to claim the annual allowance and same could not be imposed upon him;
2. The rate to claim varied between 0% and the maximum prescribed. Therefore the Applicant could claim a rate of 0% during the initial years.

The case for the Applicant was upheld.

## **7. GE MAURITIUS INFRASTRUCTURE HOLDINGS LTD v DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/IT/452-18**

This case again highlights the importance of drafting representations properly in line with the Mauritius Revenue Authority Act.

In this case, in the representations form, where precise reasons had to be mentioned, the term “see attached” was inserted. Attached to the representations form was a bundle of documents.

The Committee observed that the procedure adopted by the Applicant was improper. The precise reasons for the representations had to be clearly identifiable and was not for the Committee to go through all the documents in order to try to understand the reasons.

Furthermore, even if the reasons could have been identified, they would not meet the requirement of the Mauritius Revenue Authority Act as they failed to mention in what manner the Respondent was wrong.

Therefore, for precise reasons to be proper, it would not be sufficient for the Applicant to put forward his interpretation of the law. It must also clearly mention in what manner the Respondent was wrong.

Although no objection was taken by the Respondent to the representations, the Committee concluded that the representations were wrong and the representations were set aside.

#### **8. KALIANASOONDOORUM CURTHAN V DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/CUS/07-20**

The Applicant was granted excise duty and VAT concession on a motor vehicle on the basis that he was a returning citizen. For that purpose, he was subject to conditions and signed an undertaking as follows:

- (i) He is coming back to settle in Mauritius;
- (ii) He still holds Mauritian nationality/citizenship;
- (iii) He is aware that for a period of 4 years from the date of validation of the import declaration (09/04/2018), he shall not absent himself from Mauritius for more than 183 days in aggregate during each year or any other period unless the Director General is satisfied that the absence is due to any just or reasonable cause.

During the first year of the concession, the Applicant stayed 316 days abroad. Subsequently, the Respondent made a claim against the Applicant.

Based on the evidence on record, the Committee concluded that it was not satisfied that the Applicant could justify his stay outside Mauritius. Therefore, the representations were set aside.



## **9. Perfect Deal Ltd v Director-General, Mauritius Revenue Authority ARC/CUS/35-21**

The Applicant imported a car on which Rs 415,124 were paid as taxes. The Customs Declaration was dated 17 June 2019.

Because of certain defects, the car had to be re-exported and the Applicant made a claim for refund of taxes paid on 02 February 2021. The Respondent argued that the claim was made outside the statutory period. He relied on Regulation 17A of the Customs Regulations which reads as follows:

117A. Goods defective, obsolete or not according to specifications

For the purposes of section 23 (1A) of the Act, no refund shall be made unless—

- (a) the importer notifies the Director-General in writing within 5 working days of the date of the clearance of the goods specifying whether the goods are defective, obsolete or not according to specifications;
- (b) the seller agrees to the return of the goods; and
- (c) the goods are returned to the seller within 6 months of the date of notification under sub-paragraph (a).

The Committee concluded that the statutory period of 5 days to notify the Respondent was clear and had to be strictly applied.

The representations were therefore set aside.

## **10. SIP SOL WONG NG v REGISTRAR-GENERAL ARC/RG/151-21**

The issue related to the valuation of a portion of land.

The two important points to note from this decision are:

1. The surface area of the property to be valued has to be ascertained from the title deed;
2. A plot of land having a frontage on a public road will have a higher rate attached to it as compared to a plot of land without frontage on a public road.

### **11. PRAVIN AND DEVI SOOKHEE LTD v DIRECTOR-GENERAL, MAURITIUS REVENUE AUTHORITY ARC/LTD/22-11**

This is a case where a point was taken by the Respondent to the effect that issues pertaining to LPG was not raised at objection level and could thus not be taken before the Committee.

A Panel of the Committee allowed the Applicant to proceed on the issue of LPG. However, following the Ruling of the said Panel, the Panel was no longer available to proceed to Hear the matter and the matter was scheduled to start anew before a newly constituted Panel.

The newly constituted Panel considered that it was not bound by the previous Panel. It considered the submissions of both parties and concluded that the Applicant could not proceed on the issue of LPG.

Note: Section 18(2)(a) of the Mauritius Revenue Authority Act provides as follows:

Where a panel has started hearing representations under section 20 and a member can no longer form part of the panel, the Chairperson may, with the consent of the parties to the case, designate another member to form part of the panel and the reconstituted panel shall continue to hear the representations.

### **12. UPL CORPORATION LTD v THE DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/IT/621-17; ARC/IT/235-20**

The case relates to the application of the “pooling method” and the “source by source” method for the computation of foreign tax credit.

The relevant provisions are as follows:

Regulation 6 of the Income Tax (Foreign Tax Credit) Regulations:

In determining the amount of credit for foreign tax which may be allowed in accordance with this regulation, the taxpayer may –

- (a) compute the amount by reference to all foreign source income ... derived by him and which is chargeable to Mauritius tax in that year of assessment; or
- (b) compute the amount by reference to each item of foreign source income separately.

Regulation 8(3) of the Income Tax (Foreign Tax Credit) Regulations:

Notwithstanding regulation 6, where in the case of a qualified corporation, written evidence is not presented to the Director-General showing the amount of foreign tax charged on its foreign source income, the amount of foreign tax shall nevertheless be conclusively presumed to be equal to 80 per cent of the Mauritius tax chargeable with respect to that income and computed in accordance with regulations 5 and 6.

The Committee concluded that once the pooling method had been used by the Applicant under Regulation 6(3), the Applicant should use the same method to determine the higher of the proved amount and the presumed amount under Regulation 8(3) It was therefore not open to the Applicant to carry out that exercise with regard to each item of foreign source income.

The method of the Respondent was upheld and the representations were set aside.

### **13. CENTRE GAMING HOUSE LTD v DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/IT/477-15; ARC/IT/660-14; ARC/IT/661-14**

During the Hearing, after examination of the representative of the Applicant, the next step would be the cross-examination of the representative by Counsel for the Respondent.

Before the cross-examination started, Counsel for the Applicant took an objection to Mr Ujodha (representative of the Respondent) being present during the cross-examination given that he was the person involved in the investigation.

The Committee cited the following principles:

- i. 'In civil cases, the witnesses are usually present unless specifically ordered to withdraw upon application of any party....'
- ii. 'The matter is one for the discretion of the Judge and no question of natural justice is involved'.

The Committee analysed the circumstances and concluded that Mr Ujodha should not be present during the cross-examination of the representative of the Applicant.

#### **14. Enhanced Index Funds PCC v Director-General, Mauritius Revenue Authority ARC/IT/432-18**

This is yet another case where objection was taken by the Respondent relating to the manner in which representations had been drafted.

In the representations, the Applicant mentioned "see attached" and the attached document was a statement of case, which itself again referred to an attached document.

The Committee laid emphasis on the fact that it could apply principles applicable to grounds of appeal in criminal cases. The following extract is worth reproducing:

On this point the Committee will refer to the case of B.B. Rosunally & Ors v/s The MRA & Anor (2012) SCJ 380 in which the Supreme Court decided that "a close parallelism can be drawn between S93 of the District and Intermediate Courts (Criminal Jurisdiction) Act which deals with the procedure governing appeals from decisions of lower Courts and the present matter. Numerous decisions of this Court have established that procedural requirements

governing appeals should not be lightly disregarded and non-compliance with the procedures laid down will not be condoned unless such non-compliance is shown not to be due to the acts or omissions of the Appellant or his Legal Advisors”.

In the case of Rosunally the Court added that “the statutory procedural requirement of providing written reasons in the representations form filed with the Assessment Review Committee cannot be assimilated to mere technicalities in an appeal process which can be bypassed or disregarded (.....)”.

The Committee analysed the reasons for the representations and concluded that they did not satisfy section 19 of the Mauritius Revenue Authority Act. The representations were therefore set aside.

**15. KAPILDEO LOTUN V REGISTRAR GENERAL ARC/RG/265-21  
YASHVEER DEO LOTUN V REGISTRAR GENERAL ARC/RG/266-21  
KRISHNA COOMAREN SAWMYNADEN V REGISTRAR GENERAL  
ARC/RG/285-21**

In these three cases, the issue was the valuation of shares transferred.

For the purposes of making an assessment of the value of the shares, Mrs Kureemun advised the Respondent, which then issued the notice of assessment.

Subsequently, when objections were made by the Applicants, Mrs Kureemun formed part of the objections committee which considered the objections.

In the circumstances, the Committee considered that the objection process was flawed and set aside the claims against the Applicants.

**16. KUMARI KAMAL PRABHA JOGOO v REGISTRAR-GENERAL ARC/RG/27-22**

The matter relates to the assessment of the value of a portion of land found outside settlement boundary. Comparable sales were used by both parties to justify their respective values.

The first issue relates to the use of comparables by the Respondent which were not mentioned on the summary of the valuation report which accompanied the notice of assessment issued by the Respondent.

The summary of the valuation report has to accompany the notice of assessment as per statutory requirement. Therefore the Committee ruled that the Respondent had to limit himself to comparables mentioned on the summary and could not rely on additional comparables.

The second issue was whether the comparables mentioned in the summary were appropriate. The Committee analysed the applicable principles and concluded that the comparables used by the Respondent had material differences as compared to the property being assessed. Allowances would not cater for such differences.

The Committee therefore rejected the comparables of the Respondent. The comparables of the Applicant were found to be proper and therefore the declared value of the property being assessed was accepted.

The representations were therefore upheld, and the claim of the Respondent was set aside.

**17. Mrs Yassoda Ramsurrun & Oths v Registrar-General ARC/RG/1409-18; ARC/RG/1410-18; ARC/RG/1458-18; ARC/RG/1459-18**

The matter concerned the valuation of shares transferred. The issue related to the method to be used for the valuation of the shares. The Committee identified two methods, namely:

- (a) Balance Sheet or asset based valuation.

(b) Profit and loss account or income based valuation.

It was the contention that the income based valuation should be used whilst the Respondent used the asset based method.

The Committee analysed the balance sheets provided and observed that “the total assets stand at Rs 263.8 Million and Cash and Cash equivalents are Rs 197.5 Million”. The Committee therefore concluded that the net asset basis used by the Respondent was appropriate.

The representations were set aside.

**18. SAMAH DEVI DOOBREE v REGISTRAR-GENERAL ARC/RG/259-21  
DEV KUMAR GHURBURRUN v REGISTRAR-GENERAL ARC/RG/260-21**

The Applicants in both cases were challenging the valuation of a portion of land made by the Respondent.

A valuation report was drawn by the Government Valuer. A summary of that valuation report has to accompany the notice issued by the Respondent when assessing the value of the property. The content of that summary is regulated by section 28(2A) of the Land (Duties and Taxes) Act, the relevant part of which reads as follows:

A notice under subsection (2) shall be –

(a) accompanied by a summary of the valuation report in a form approved by the Registrar-General, giving the reason for the assessment, the basis of assessment, the valuation methodology and, where applicable, comparable transactions used;

(b) ...

During the Hearing, the Applicant intended to use an amended report which relied on other sale evidences.

The Committee considered that when the direct comparison method is used, as in the present matter, the comparables form a crucial part of the report. A substitution of the comparables render the amended valuation report fundamentally defective.

In addition, the valuation report of the Government Valuer suffered from other shortcomings.

The Committee concluded that the claim of the Respondent had to be set aside.

### **19. TOP FM LTD v THE DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/IT/264–21**

The Applicant amalgamated with Skywave Ltd. The issue was in relation to unrelieved losses under section 59A of the Income Tax Act, the relevant part of which reads as follows:

#### **59A. Transfer of loss on takeover or merger**

(1) Notwithstanding the other provisions of this Act, where –

(a) a company takes over another company engaged in manufacturing activities;

(b) 2 or more companies engaged in manufacturing activities merge into one company;

(c) a company takes over, or acquires the whole or part of the undertaking of another company and the Minister has deemed such a take-over or transfer of undertaking to be in the public interest,

any unrelieved loss of the acquiree may be transferred to the acquirer in the income year in which the takeover or merger takes place, on such conditions



relating to safeguard of employment or on such other terms and conditions as may be approved by the Minister.

The issue was precisely whether there was an amalgamation, as averred by the Applicant, or whether there was a merger or take-over as averred by the Respondent.

On this issue the Committee concluded that 'amalgamation' is a generic term which encompasses a merger and the terms 'amalgamation' and 'merger' are used interchangeably.

The second issue was whether other conditions of section 59A were satisfied. The Committee analysed sections 59 and 59A to conclude that in fact, section 59A was not applicable and it was section 59 that was applicable.

The Committee referred to the Parliamentary debates to conclude that section 59A was applicable to ailing companies.

Section 59 was applicable and the conditions were satisfied. The losses of Skywave Ltd could therefore be transferred to Top FM Ltd.

The notice of determination of the Respondent was therefore set aside.

## **Important Legislative Amendments**

1. Regulation 23D of the Income Tax Regulations has been amended in relation to the substance requirements for freeport operator or private freeport developer.

Regulation 23D, as amended, applies to freeport operator or private freeport developer. The substance requirements relate to the core income generating activities, employment and expenditure.

Regulation 23D has also been amended to include a non-exhaustive list of core income generating activities for a holder of a freeport operator certificate and private freeport developer certificate issued under the Freeport Act.

**The amendments come into force in respect of the year of assessment commencing on 1 July 2023 and in respect of every subsequent year of assessment.**

2. Income Tax (Common Reporting Standard) Regulations 2018 has been amended. The list of agreements to which the regulations give effect, found in Regulation 4(2) has been deleted. The list of such agreements will now be found in a list that will be published by the Director General of the Mauritius Revenue Authority.

The anti-avoidance provision under Regulation 12A has been replaced.

**The amendments came into effect on 17 June 2023.**

## Our Trainings

Bhurtun Tax Training Institution delivers training on a wide range of topics related to taxation.

On 16 and 23 May 2023, in collaboration with HLB Mauritius Ltd, we organised a training on **Advanced Taxation – Mastering the grey areas of Income Tax and VAT for efficient Tax Planning.**

On 04, 11, 18 and 25 July 2023, we organised a training on **Mastering Income Tax.**

The next training is on **An Analysis of the Amendments brought by The Finance (Miscellaneous Provisions) Act 2023** scheduled on 24 August 2023 (one whole day).

The trainings that will take place in 2023 are as follows:

An Analysis of the Amendments brought by The Finance (Miscellaneous Provisions) Act 2023	24 August 2023 (One full day)
Trusts and Taxation of Trusts	12, 19 & 26 September 2023 (3 half-days)
Transfer Pricing	17, 24 & 31 October 2023 (3 half-days)
CRS and FATCA	14, 21 & 28 November 2023 (3 half-days)
Statutory Interpretation	5 December 2023 (1 half-day)

All relevant details may be obtained by sending an email to [bhurtuntaxtraining@gmail.com](mailto:bhurtuntaxtraining@gmail.com) or by visiting the Facebook page “Bhurtun Tax Training Institution”.

## **TAILOR-MADE TRAININGS FOR EMPLOYERS**

Our training institution also provides trainings as per specific requirements of employers for the benefit of their employees. Such trainings are delivered within the premises of the employers. Some examples of such trainings are as set below, but of course, employers may request for specific trainings depending on the needs of their staff:

1. Mastering International Taxation
2. Mastering the Taxation of the Global Sector
3. The operation of the VAT system
4. Mastering the Income Tax System
5. The Taxation of Trusts and Foundations
6. Drafting of Trust Deeds
7. The Conduct of Cases before the Assessment Review Committee
8. The Rules of Statutory Interpretation
9. The Operation of the Pay As You Earn System (PAYE)
10. Trainings on Corporate Law including Duties of Directors, Rights of Shareholders
11. Trainings pertaining to AML/CFT

**Our Training Institution is approved by the MQA so that employers are eligible for appropriate refunds by the HRDC.**

**Ahmed Richard Bhurtun**

**Barrister and Founder of Bhurtun Chambers**

**Email: [bhurtuntaxtraining@gmail.com](mailto:bhurtuntaxtraining@gmail.com)**

**Phone: +230 59045181**

**Website : [bhurtunchambers.com](http://bhurtunchambers.com)**