

Bhurtun Chambers

Monthly newsletter

Issue No 15: March 2023

Introduction

Statutory interpretation is a key tool to apply statutory provisions properly. The statutory provisions are incorporated into our law by the legislator and applied by the executive. In the event of any dispute, same would be resolved by the judiciary.

The words enacted by the legislator may therefore not be properly given effect to in case they are not interpreted in an appropriate manner.

It is therefore crucial for accountants, tax representatives and other professionals to be conversant with the Interpretation and General Clauses Act. It is an Act of Parliament which provides for the interpretation of words or terms used in our domestic legislations. It also provides for general principles, such as computation of time and the exercise of powers.

The case of **Africa Plus** (see summary at page 3) is a perfect example of the principles to be applied to interpret enactments. You may also note that our training institution will deliver a training on statutory interpretation later during the year. I invite you to see our training calendar at page 8.

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Decisions Delivered by the Assessment Review Committee

1. AFRICA PLUS DIRECT IOI LTD v DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/1T/499-15

The Applicant held a licence as “Freeport Operator” issued by the then Board of Investment (“BOI”) from 11 January 2011 to 14 January 2014. It was the case for the Applicant that it was exempt from Income Tax based on section 49 of the Income Tax Act which reads as follows:

49. Companies in the freeport zone

(1) Subject to this section, the income of a freeport operator or private freeport developer shall be exempt from income tax.

It was the case for the Respondent that, for section 49 to apply, the Applicant, in addition to being a freeport operator, must establish that it has carried out any freeport activity and/or the income of the company has been derived from freeport activities and/or the company is registered at Customs.

The Committee concluded that a plain and literal meaning must be given to section 49(1) which did not impose any other condition apart from the fact that the person must be a freeport operator.

Therefore, the fact that the Applicant did not carry out any freeport activity and that it was not registered at Customs as an exporter did not have any bearing on the exemption. Furthermore, any breach of the conditions must be dealt with by the BOI/Economic Development Board.

The representations were therefore allowed.

2. ARCIMBOLDO LTD v DIRECTOR-GENERAL, MAURITIUS REVENUE AUTHORITY ARC/VAT/03-18

The Applicant was acting as an agent of property owners and was collecting rent on their behalf. The issue was whether VAT was chargeable on the total amount of VAT or only on the commission received by the Applicant.

The Committee after considering all the evidence observed that:

- a. The Applicant was not involved in finding customers only, but was managing the rental;
- b. Reservations were booked through the Applicant;
- c. Rentals and deposits were credited into the account of the Applicant;
- d. Applicant also provided other services such as DSTV, linen change and cleaning;
- e. Applicant was also involved in market analysis and the formulation of rental rates.

Based on the above observations, the Committee concluded that the Applicant was acting more as a principal than as an agent. The Committee therefore concluded that the Applicant had not been able to prove that it was not making a taxable supply of rental of properties.

The representations were set aside.

3. Jabil (Mauritius) Holdings Ltd v Director-General, Mauritius Revenue Authority ARC/IT/38-21

The Applicant made an objection to the Director General of the Mauritius Revenue Authority following an assessment. The main issue raised was in relation to expenses.

Subsequently, when the matter came before the ARC, the Applicant raised an issue regarding foreign tax credit. The Respondent objected to this issue being canvassed at the level of the ARC.

The Committee analysed the applicable principles, including the provisions of section 19 of the Mauritius Revenue Authority Act. It concluded that the Applicant cannot raise the issue of foreign tax credit given that the issue was not raised before the objection. It also concluded that the objection of the Respondent to the issue of foreign tax credit could be taken at any point in time and not necessarily before the statement of case of the Respondent was filed.

Selected Decisions delivered by the Supreme Court

1. CHAN TAI KONG PROPERTIES LTD & ANOR v THE ASSESSMENT REVIEW COMMITTEE & ANOR 2023 SCJ 66

The Appellant appealed against the decision of the ARC with regard to the valuation of immovable property. There were 4 grounds of appeal and the Respondent took a preliminary objection to the effect that all the grounds relates to issues of fact and not issues of law.

Section 21(1)(a) of the Mauritius Revenue Authority reads as follows:

Any party who is dissatisfied with the decision of the Committee under section 20(7), as being erroneous in law, may lodge in the Registry of the Supreme Court an appeal against that decision.

(Underlining is ours)

The Supreme Court analysed the 4 grounds of appeal and concluded that all challenged the appreciation of facts of the ARC. The Court concluded that the objection of the Respondent was well taken and set aside the appeal.

It is worth noting therefore that the decision of the ARC on matters of fact cannot be challenged before the Supreme Court on appeal unless the finding of the ARC was unreasonable or perverse.

2. BENJAMIN ADZENYAMEBEYE ESHUN v AFRICAN NETWORK INFORMATION CENTRE (AfrinIC) LTD 2023 SCJ 63

The Applicant made an application to the Supreme Court for the appointment of three directors under section 136 of the Companies Act, which reads as follows:

136. Court may appoint directors

(1) Where -

(a) there are no directors of a company, or the number of directors is less than the quorum required for a meeting of the Board; and

(b) it is not possible or practicable to appoint directors in accordance with the company constitution or under section 140(3),

a shareholder or creditor of the company may apply to the Court to appoint one or more persons as directors of the company, and the Court may make an appointment if it considers that it is in the interests of the company to do so.

(2) An appointment shall be made on such terms and conditions as the Court thinks fit.

The Court considered that, in order to exercise its discretion to appoint the directors, there must be goods grounds, and in this particular case, whether there was a deadlock situation.

The Court observed, after having considered all the facts, that there was no deadlock. Among others, the injunction issued against the Respondent to appoint directors was not yet determined and it could proceed with the other items on the Annual General Members Meeting.

The Application was therefore not granted.

Our Trainings

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

On 07, 14 and 21 March, we delivered a highly practical training on **Practical Aspects of Assessment Review Committee Cases**. It involved 9 moot-like case studies through which participants developed their skills to prepare and present cases.

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

Advanced Taxation-Mastering the Grey Areas of Income Tax And VAT for Efficient Tax Planning	16 & 23 May 2023 (2 half-days) REGISTER HERE
Mastering Income Tax	06, 13, 20 & 27 June 2023 (4 half-days)
The Operation of the Pay As You Earn System (PAYE)	11 July 2023 (1 half-day)
Changes to be brought by the Finance Act 2023	To be scheduled
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 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. The Conduct of Cases before the Assessment Review Committee
7. The Rules of Statutory Interpretation

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

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