

Bhurtun Chambers

Monthly newsletter

Issue No 22: April 2024

Introduction

Welcome to our newsletter for the month of April 2024!

In the world of taxation, precision is paramount, as is adhering to time limits, procedures, and obligations. However, this can sometimes be challenging considering the rapid pace at which tax laws change.

To address this, we make it a must to issue a newsletter every month to keep our readers updated on the latest developments in tax laws, both locally and internationally.

In this issue, we provide our customary summary of ARC decisions for the month and updates on important legislative amendments. Additionally, while staying up-to-date is crucial, it is equally important to remain grounded in fundamental principles. This is why we also delve into the 2023 Supreme Court case of *DE GUARDIA DE PONTE v ARC*, which has been cited in two ARC decisions this month.

Lastly, don't miss out on our lineup of dynamic tax training sessions for 2024. Designed to simplify the complexities of taxation, these sessions will empower you in mastering the intricacies of tax law.

Happy reading!

Table of Contents

Decisions Delivered by the Assessment Review Committee.....	3
Important Legislations and Legislative Amendments.....	11
Our Trainings.....	13

Decisions Delivered by the Assessment Review Committee

1. MURVIN RAMLAUL v/s DIRECTOR GENERAL-MRA ARC/IT/122-18

There were two main points of contentions in this matter.

The first one was about the non-payment of the 10% for the Objection unit of the Respondent to consider the objection lodged by the Applicant. The Applicant explained that they were considering the payment of 10% on the whole amount but needed time to gather the money due to their poor financial situation.

The Second contention was about the grounds of representation not being valid inasmuch as they challenged the merits of the decision, rather than the decision for the lapsing of the objection. Further, in the course of the hearing, the Respondent contended that the representations were bad in law because the Applicant had not given the reasons for the representations and that only the reply to the Statement of Case contained the reasons for the representations. The Respondent added that the reply to the statement of case is, under **s. 19 Mauritius Revenue Authority (MRA) Act**, an obligation which is separate from the obligation to lodge written representations, and that therefore same cannot be taken into consideration by the ARC.

The Applicant explained that whilst he had filed a representations form on 22 May 2018 at the registry without specifying the reasons for the representations, he also filed a copy of the representations form on the same date at the Respondent's office which specified the reasons of the representations together with the reply to the Statement of Case.

In light of these, the ARC deemed it wise to allow the Applicant 30 days as from the date of this ruling to pay the outstanding 10%, following which the Committee will refer the matter to the Office for Alternative Dispute Resolution (OADR) to consider the objection. After these, the Committee will decide on the issue of representation.

2. ANIL KUMAR UJODHA v/s DIRECTOR GENERAL-MRA ARC/CUS/33-15

This matter was concerned with duty-free benefit.

The Applicant here was appointed as Director-General of the ICAC in June 2006 on contract for 5 years and was re-appointed in June 2011 for 5 more years under the same terms and conditions as his initial contract, one of them being the remission of duty for the purchase of a car.

The Applicant had bought a duty-free car which was approved by the Respondent. The Applicant's contract was then terminated following which the Respondent informed the Applicant that proportionate duty and taxes had become payable. The Applicant filed an objection to the claims but same was rejected by the Respondent. Feeling aggrieved, the Applicant made representations to the ARC on the grounds that: the duty benefit was in respect of purchase of a car for *personal use*; that he *had not resigned* from employment; and that **s.5 Customs Tariff Act (CTA)** was being interpreted out of context by the Respondent.

The issue to be determined by the ARC was whether the Respondent was right to have claimed proportionate duty and taxes payable following the termination of contract of the Applicant in February 2015 in line with the PRB report and **s.5 CTA**.

The ARC decided to set aside the Applicant's representations. In reaching this decision, the Committee reasoned that even though the Applicant's benefitted of the duty exemption on a car for his personal use, it must be acknowledged that he benefitted same owing to his position as Director-general of the ICAC - a benefit which was available to certain people occupying distinct positions and not to the public at large nor to officers of any grade. Further, the Committee took the view that, since the contract came to an end, all the benefits that the Applicant was entitled to were no longer existing, especially the duty exemption. Thus, the Committee reasoned that **s.5 CTA** came into operation of Termination of the Applicant's contract.

3. MAGIC OCEAN CO LTD v/s DIRECTOR GENERAL-MRA ARC/VAT/92-16

In this matter, the Respondent made a motion to the effect that, out of the applicant's 8 grounds of representations, grounds 2 to 8 could be outright disposed of for not being proper grounds of representations – as they challenged the assessment and not the determination of objection. The Applicant objected on the ground that this motion was taken at a late stage of the hearing and that the grounds had been properly set.

In setting aside the motion made by the Respondent, the ARC first noted that the grounds of representations were lodged in 2016. It further noted that the Notice of determination itself stated "The assessment is therefore in order and is being maintained".

With this mind, the Committee took the view that it was legitimate for the Applicant to raise grounds pertaining to the assessment, otherwise the Notice of determination could have simply stated that the Respondent considered that the grounds of objection do not stand in light of all the explanations and documents submitted by the Applicant.

The Committee also took the view that this point should have been raised by the Respondent right from the beginning as this would now hamper the proper running of the hearing as sufficient evidence has already been adduced in the matter, in respect of the grounds of representations in dispute.

4. SCOTT HEALTH LTD v/s DIRECTOR GENERAL-MRA ARC/CUS/025-23

The issue here was about the time limit of 3 years under **s. 15(1B)(a) of the Customs Act** to raise a claim.

A Notice of Claim for underpayment dated 5 May 2023, was sent by registered post on 8 May 2023 and received by the Applicant on 10 May 2023.

The Applicant objected on the ground that the Notice of Claim was outside delay. In its Notice of determination, the Respondent informed the Applicant that the period to raise a claim would normally expire on 8 May 2023 after taking into consideration the **Interpretation and**

General Clauses Act and the **Public Holidays Act**, and that therefore the criteria under **s.15(1B)** had been complied with. Aggrieved, the Applicant made representations to the ARC.

The Committee decided to set aside the representations.

In reaching this decision, the committee first had regards to the wording of **s. 15(1B)(a)**, reproduced hereunder:

“Where a dispute referred to in subsection (1) is in respect of goods already cleared by Customs, the Director-General shall, not later than 3 years from the date of the validated bill of entry, issue to the owner of the goods, by registered post, a notice of assessment claiming:

- (i) the amount of duty, taxes or charges underpaid;*
- (ii) a penalty not exceeding 50 per cent of the amount underpaid referred to in subparagraph (i); and*
- (iii) interest on the amount underpaid at the rate of 0.5 per cent per month or part of a month from the date of the validated bill of entry to the date of payment.”*

[Emphasis is ours]

The ARC then noted that the Respondent in this case had strictly complied with the legal requirement of “issuing” the Notice by Registered post. As for the time limit of 3 years, the Committee explained that the material dates to be taken into account to determine the computation as to when the delay of 3 years started, were the dated of validated bill of entry and the date of posting (by registered post) of the Notice of Determination. After taking note of the date on which the Notice was posted, i.e. 8 May 2023, and the relevant provisions of the **Interpretation and General Clauses Act** and the **Public Holidays Act**, the Committee found that the Respondent had respected the time limit of 3 years.

*Of note, the Applicant argued that it was the “received date” i.e. “Notification”, and not the “posting date”, which should be regarded as the date of issue. In rejecting this proposition, the Committee explained that **s.15(1B)(a)** does not make mention of the term “Notification” and that interpreting it as such would be tantamount to interpreting the law beyond what had been provided.

5. SIKRA Co Ltd v/s DIRECTOR GENERAL-MRA ARC/IT/442-22

Feeling aggrieved by the Notice of Determination of the Respondent, the Applicant in this matter made representations to the ARC on 6 grounds. However, at the outset of the hearing, the Applicant moved that grounds 1 & 2 be taken as preliminary points of law, as they could dispose of the matter. With the concurrence of the Respondent, the case proceeded accordingly and the present ruling was limited to these two grounds, which have been reproduced below:

1. *The Respondent was wrong to consider that the Objections 1, 2, and 3 of the grounds of objection of the Applicant not valid. (sic) The Respondent provided no explanation. The Income Tax Act does not contain any provision that allowed the Respondent to reach such conclusion.*
2. *Objections 1, 2 and 3 are therefore deemed to have been allowed by the Respondent.*

The ARC decided to set aside grounds 1 & 2. In reaching this decision, the Committee took the view that the only issue which could be decided as a preliminary point of law was whether Objections 1, 2 and 3 were deemed to have been allowed.

s. 131B (8) Income Tax Act which reads:

Where the objection is not determined within the period specified in subsection (7), the objection shall be deemed to have been allowed by the Director-General.

[Emphasis is ours]

The condition of delay being not relevant for the matter at hand, the only issue for the Committee to decide was whether the objection had been “determined”. The Committee noted that Objections 1, 2 and 3, were specifically addressed in the Notice of Determination as follows:

“We do not consider the headings Objection 1 to Objection 3 and Objection 4 of yours grounds of objection to be valid in accordance with section 131A(2)(a) of the Income Tax Act.”

The ARC therefore considered that these grounds of objection had been dealt with, and that whether they were properly dealt with or otherwise was not within its purview presently.

Selected Decisions delivered by the Supreme Court

1. DE GUARDIA DE PONTE v THE ASSESSMENT REVIEW COMMITTEE (ARC) & ANOR [2023] SCJ 21

This 2023 Supreme Court case has been cited in two out of the five ARC decisions summarized above, namely **SIKRA Co Ltd** and **MAGIC OCEAN CO LTD**. As such, we have deemed it necessary to provide a summary of the decision with a view to reminding our readers of certain fundamental principles.

Background:

The MRA had raised an assessment on the Appellant on 28 June 2018. The latter objected to the assessment by serving a Notice of Objection 25 July 2018. In a letter dated 24 September 2018, the MRA wrote to the Appellant to inform him that he had not complied with the provisions of **s. 131A (2)(a) Income Tax Act** which provides that grounds of objection need to **be specific and detailed**. The MRA thus informed the Appellant that it had not alternative than to deem the objection to have lapsed. The Appellant was further informed that, pursuant to **s. 131B (9) Income Tax Act** and **s. 19 Mauritius Revenue Authority Act**, he could lodge written representations with the clerk of the ARC if he felt aggrieved by the MRA's decision and this not later than 28 days from the date he has been informed of the MRA's decision. **The Appellant accordingly made representations to the ARC**, but on the 23 November 2018, i.e. **33 days after the statutory delay of 28 days**. In a ruling on 26 August 2019, the Chairperson of the ARC, pursuant to **s. 19(2) MRA Act**, directed that the representations be accepted despite the delay since "other reasonable cause" was shown. As such, the merits of the representations against the decision of the MRA to lapse the objections of the Appellant was heard by the ARC on the 17 February 2020. The grounds in the representations read as follows:

"7. Precise reasons for the representations, including any point of law

INCOME TAX ASSESSMENTS 'OUT OF TIME'

SECTION 130(1) -TIME LIMIT TO MAKE ASSESSMENT

SECTION 112(1)(d)- RETURN AND PAYMENT OF TAX

PARLIAMENTARY DEBATE NO.25 23.07.2002”

The ARC:

The ARC found that the representations as couched did not relate to the decision of the MRA to lapse the objection, but were against the assessment raised.

The Supreme Court:

The Appellant made an appeal by way of case stated challenging the decision of the ARC to set aside the representations of the Appellant. In setting aside the appeal, the Court stated:

*“We can only reiterate that the hearing before the ARC concerned the grounds of representations against the decision to lapse the objection pursuant to section 131 A (2) (a) of the Income Tax Act. The appellant was clearly informed by the second respondent in a letter dated 24 September 2018 that the objection had been lapsed and that if he felt aggrieved by the decision of the second respondent he could make representations to the ARC. The ARC did hear the representations but **since the representations as styled under the grounds in the representations had nothing to do with the decision to lapse the objection, the ARC cannot be faulted.** We consider that **the ARC rightly heard the representations (now accepted after delay) against the decision taken by the second respondent to lapse the objection.** That is, **the ARC was not at the stage to review the assessment raised by the second respondent but the decision by the second respondent to lapse the objection.**”*

[Emphasis is ours]

The Appellant also made a plea that the Supreme Court should give the Appellant an opportunity to go back before the MRA.

In refusing to entertain this plea, the Supreme Court explained that the Appellant had an option provided in the law itself (see below*) and he had a choice to make before the hearing of the representations before the ARC instead of waiting for the hearing of the representations and also for the appeal before the Supreme Court.

* **s. 131 A (10) (a)(i) Income Tax Act** provides that:

“[w]here a person has lodged written representations under subsection (9) against a decision made under subsection (6) and, prior to the date fixed for the hearing of his representations-

(i) he complies with subsection (2)...;

“The Director General shall consider the objection as from the date that person withdraws his representations from the Assessment Review Committee.”

[Emphasis is ours]

Important Legislations and Legislative Amendments

1. CUSTOMS (AMENDMENT) REGULATIONS 2024

- Please refer to **Customs Regulations 1989 (CR-1989)**.
- **Regulations 90 of CR-1989** has been amended -
 - In paragraph (4)(c), by deleting the words "*subject to paragraph (4A), sell goods*" and replacing them by the words "*sell goods, other than those specified in the Twelfth Schedule,*";
 - By inserting the following new paragraph (4AA) after paragraph (4A):

“(4AA) An operator of a shop shall sell the goods specified in the Twelfth Schedule –

 - a) to visitors, to a duty-free-shop or to another shop under the Deferred Duty and Tax Scheme, to a departing citizen of Mauritius, to a diplomatic agent, or to a master or member of a crew leaving for a foreign port or airport; and
 - b) on payment of duty, excise duty or taxes, to any other person.
 - In paragraph (18), by deleting the definition of "mainly" and replacing it by the following definition –

"mainly", in relation to paragraph (4)(c), means 80 per cent, or such other percentage as the Director-General may approve, of the total annual turnover, excluding the total annual turnover relating to the goods specified in the Twelfth Schedule, of the operator representing sales to –

 - (a) visitors;
 - (b) departing citizens of Mauritius;
 - (c) masters or crews of aircrafts or ships leaving for foreign airports or ports; and
 - (d) diplomatic agents.

- Regulations 1989 have been amended by adding the Twelfth Schedule:
 1. Bags
 2. Confectionary
 3. Cosmetics
 4. Perfumes
 5. Spirits, alcoholic products, wine, ale or beer
 6. Watches
- These regulations came into force on 1 January 2024.

Our Trainings

The trainings that will take place in 2024 are as follows:

Month	Training
February	Payroll Taxes
	Mastering VAT
March	Trusts and Taxation of Trusts
April	Transfer Pricing
May	Directors' Duties and Rights of Shareholders
June	Business Plan Preparation
	AML/CFT
July	Practical Aspects of ARC Cases
	VAT for Beginners
August	Changes brought by the Finance Act 2024
September	Mastering Income Tax
October	International Taxation
November	Mastering VAT

December	Taxation of Real Estate Sector
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All relevant details may be obtained by sending an email to bhurtuntaxtraining@gmail.com or by visiting the Facebook page “Bhurtun School of Taxation”.

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, subject to all conditions being satisfied.

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