

Bhurtun Chambers

ARC Rulings/Decisions Update No. 1 of 2024:

JEAN NOEL STEEVE JULIEN V/S DIRECTOR GENERAL-MRA

ARC/IT/72-20

10 June 2024

FACTS

The Applicant and his wife were married under the regime of legal separation of goods and property since August 2005. They were residing in an apartment acquired by the Applicant's Wife in June 2005, i.e. before marriage.

In March 2016, the couple contracted a loan of MUR 2,450,000 from Bank X for the purchase of a second apartment.

In September 2017, the Applicant contracted a loan of MUR 2,350,000 from Bank Y to settle existing liabilities with Bank X.

In his Income Tax Return for the year of assessment 2019/2020, the Applicant claimed interest relief on the loan. The Respondent did not allow it, contending that the Applicant's spouse was already the owner of a residential building.

The Applicant objected to this on the ground that he is married under the regime of legal separation of goods and property.

The Applicant then made representations to the ARC after the objection was determined against him.

ISSUE

Whether the Applicant can be denied the allowance on interest of the loan which he has contracted considering that he is married under the regime of "*séparation des biens*".

CONCLUSION AND REASONING OF THE ARC

The ARC decided to uphold the Representations of the Applicant.

In reaching this decision, the Committee looked at the **Article 1476 - DU RÉGIME LEGAL DE SÉPARATION DE BIENS** of the Mauritian Civil Code and **S.27A – INTEREST RELIEF** of the Income Tax Act.

The Committee explained that whilst **S.27A** is silent about the matrimonial regime under which the spouses are married, **Article 1476** clearly stipulates that under the regime of “*séparation des biens*”, the ownership of the matrimonial house remains solely with the spouse who is the owner of the property.

The Committee took the view that although the spouse of the Applicant was already the owner of an apartment when the second apartment was acquired, the first apartment did not belong to the “communaute”. The Committee explained that the phrase property belong to the spouse in the **Income Tax Act** is concerned with whether the property belongs to the “communaute” or not. In this matter, the committee reasoned, as the first apartment was purchased before the marriage and the spouses were married under “*séparation des biens*”, it was as if the spouses were not married when it comes to property. The Committee also took into consideration that the Applicant had contracted the loan from Bank Y for refunding the previous loan from Bank X and was claiming allowance on interest on this – i.e. not for a different purpose.

The Committee therefore took the view that the Applicant would be entitled to the interest relief claimed by him in his return. However, the Committee also made it clear that the fact that the spouse of the Applicant is the co-owner of the matrimonial house would not deny the Applicant the interest relief provided that the loan was solely contracted by him, and interest relief is not being claimed by the Applicant’s spouse.

The Committee also highlighted that whenever legal issues arise in relation to properties held by one or both spouses, it is crucial to determine the ownership of a property before proceeding any further.

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