Bhurtun Chambers

ARC Findings Update No. 6 of 2024:

FUNWORLD CO LTD v DIRECTOR-GENERAL, MAURITIUS REVENUE AUTHORITY

ARC/IT/613-17

14 August 2024

FACTS

The Applicant was a private company operating an amusement centre and a gaming house next to each other under the trading name "Kiddyland" and "Ti Vegas" respectively. Following assessments raised in respect to gaming tax under **S.119 Gambling Regulatory Authority (GRA) Act** and objections made, the Applicant made representations to the ARC.

The Basis of the assessment was as follows:

"a) We have adjusted the company's gross takings by applying a multiplier of 3.0 on the declared gross takings.

b) The above multiplier is our best of judgment estimates based on comparative information of your competitors and our observations during our visits to your place of business and your competitors." [Emphasis is ours]

ISSUE

The issue to be decided was whether the assessment was fair and was properly raised under **S.119 GRA Act**.

CONCLUSION AND REASONING OF THE ARC

In finding in favour of the Applicant, the ARC considered that:

1) The MRA had failed to give due consideration of the obligation placed on it for the installation of the central electronic monitoring system (CEMS) under **S.109 GRA Act**, which would have confirmed their suspicion of any malpractices in terms of meter readings and correct recording of schedules.

2) The MRA had relied upon the 'drop' (which is the total amount or points in the machine, that is, the cash in terms of tokens or notes plus points that have been gained) to calculate the multiplier to raise the assessment. However, the Committee considered that the comparison of the drop figure was based on different standards which made the multiplier unreliable – it was tantamount to aligning the profitability of different companies on the same standard.

3) Mr. Ujodha, a witness who deponed on behalf of the MRA had given contradictory version – he confirmed in his witness statement that all arithmetical calculation were tested and found to be correct contradicting his own statement before the Committee that there were discrepancies in the meter readings.

   Of note here, the Applicant had made a motion to the effect that there was a perception of bias or unfairness on the part of the MRA because this witness, who was the assessing officer for the MRA, who represented the MRA at the hearing, and who was the only witness who deponed for the MRA at the hearing, may have tailored his evidence (in witness statement and when he deponed) after he had the benefit of listening to all the witnesses for the Applicant and their cross-examination. In holding that this motion did not stand, the Committee reasoned that this issue should have been raised as a preliminary objection at the start of the matter and that now the Applicant's witnesses had already deponed and adduced evidence before the Committee

4) The current basis to raise the assessment should have been under the **GRA Act** based on information available as per the CEMS which is very specific to the gaming industry.

Note: The decision will also apply in the cases, ARC/IT/614-17, ARC/IT/62-19 and ARC/IT/506-19.

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