JCPC 2025/0113

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE SUPREME COURT OF MAURITIUS

MAURITIUS FREEPORT DEVELOPMENT CO. LTD
Appellant

-v-

THE DIRECTOR-GENERAL MAURITIUS REVENUE AUTHORITY
Respondent

THE ASSESSMENT REVIEW COMMITTEE
Co-Respondent

WRITTEN CASE OF THE APPELLANT

I. Introduction

1. This is an appeal as of right under section 81(1)(b) of the Constitution of the Republic of Mauritius whereby the Appellant is challenging a judgment delivered by the Supreme Court of Mauritius on 14 April 2025. The case raises and hinges on a question of law, namely the proper construction of section 24(1) of the Income Tax Act (hereinafter "ITA") and Regulation 7(1)(b) of the Income Tax Regulation 1996 (hereinafter "IT Regulations").

2. The Appellant is the Mauritius Freeport Development Co Ltd (hereinafter "MFD"), a third-party freeport developer whose principal activities are to provide logistics, warehousing and distribution facilities in the Mauritius Freeport zone. It also provides industrial and office space for rental.

3. The Respondent, the Mauritius Revenue Authority (hereinafter "MRA") is a statutory body established under the Mauritius Revenue Authority Act 2004 and

is inter alia responsible for the assessment and collection of taxes and duties in Mauritius.

4. The Co-Respondent, the Assessment Review Committee (hereinafter "ARC"), was at all material times a statutory body established under the Mauritius Revenue Authority Act 2004 to hear appeals against determinations of the MRA and Registrar General which reviewed certain tax assessments and related tax decisions of the MRA. Its functions and powers were taken over by the Revenue Tribunal set up under the Revenue Tribunal Act 2025 which came into operation on 5 January 2026.

5. The Appellant, the Respondent and the Co-Respondent will hereinafter respectively be referred to as MFD, MRA and ARC.

6. There are two cases. They involve the same parties and relate to substantially the same issue. The first one is in respect of the Year of Assessment 2012 and the other one is in respect of the Year of Assessment 2013. Both were heard together before the ARC and the latter delivered a single decision applicable to both cases. The Supreme Court decision did not refer to Year of Assessment 2013 but has a natural impact on it.

II. Factual background

7. Between the income years 1995 to 2005, MFD claimed, and the MRA accepted, annual allowance pursuant to section 24 of the ITA in respect of capital expenditure incurred by it during those years on various items including machinery, plant and buildings (hereinafter the "1995-2005 CapEx"). Between the income years 2006 and 2010, MFD did not claim annual allowance in respect of the 1995-2005 CapEx. In the Year of Assessment 2012, MFD started claiming annual allowance again in relation to the 1995-2005 CapEx. MFD considered that by not claiming annual allowance in less profitable years, it could claim allowances in later more profitable years, based upon higher figures of the written down values of the machinery, plant or buildings in question.

8. The MRA noted in a correspondence dated 15 June 2015[1] concerning Year of Assessment 2012 that MFD had claimed "capital allowances" on assets acquired during the income years ended 31 December 1995 to 31 December 2005 in the Year of Assessment 2012 in the amount of MUR 84,698,483. In the said letter dated 15 June 2015, the MRA informed MFD that:

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[1] **EB, pages 61-62**

(i) it had used assets in the income year ended 31 December 1995 to 31 December 2005 to derive income therefrom, and therefore, "capital allowances" should have been claimed in the year in which the assets were put to use by virtue of Section 24 of the ITA; and

(ii) the carrying forward of losses arising on annual allowances in respect of capital expenditure incurred on or before 30 June 2006 is restricted to a time limit of 5 years. As MFD has deferred the claim for annual allowance in the Year of Assessment 2012, it had circumvented the restriction imposed by section 59 of the Income Tax Act.

9. An analogous letter was issued by the MRA in respect of Year of Assessment 2013 on 23 June 2016.[2]

The MRA's Decision in respect of Years of Assessment 2012 and 2013

10. The MRA disallowed annual allowances amounting to MUR 84,698,483 which had been claimed by MFD for the Year of Assessment 2012. As a result, MFD's tax loss was revised from MUR 158,630,630 to MUR 73,932,147 and MFD's tax liability for the year of assessment 2013 was correspondingly increased, resulting in a tax due of MUR 11,159,336 plus interest[3]. Despite MFD's objections, the assessments for both years of assessment were maintained by the MRA in notices of determination dated 17 November 2015 and 24 October 2016 respectively[4].

Representations before the Assessment Review Committee ("ARC")

11. MFD made representations to the ARC in respect of both years of assessment.

The Findings of the ARC

12. On 9 March 2023, the ARC found that the Director-General of the MRA had been wrong to disallow the annual allowances of MUR 84,698,483 claimed by MFD on assets acquired as at 31 December 2005 and that such annual allowances had been correctly claimed in accordance with Section 24 of the Income Tax Act[5].

[2] **EB, pages 65-68.**
[3] **EB, page 72.**
[4] **EB, pages 69-70 and pages 71-72.**
[5] **EB, pages 43-60 and annexes at pages 61-72.**

Appeal by the MRA

13. The MRA lodged an appeal with the Supreme Court of Mauritius by way of case stated. It raised three grounds (set out at pages 4-5 of the Electronic Bundle) which revolved around the proper construction of section 24 of the ITA.

The Proceedings before the Supreme Court

14. The above appeal was initially listed to be heard on 22 January 2024 before the Supreme Court (Mrs Justice A.D. Narain and Mrs Justice S. Beekarry-Sunassee), but on that date, the Court, exercising its discretion under Rule 6, paragraph 2 of the ARC Appeal Rules 2007, remitted for it to state and sign a better case under each ground of appeal indicating clearly and in accordance with Rule 42F the question of law on which the opinion of this Court is required and to amend therefrom any justification, comment and matter not provided for under Rule 4 Paragraph 2[6].

15. The case was eventually heard before the same bench on 4 November 2024 and a judgment delivered on 14 April 2025[7], whereby the appeal was allowed on grounds (a) and (b), and the decision of the ARC quashed with costs against MFD.

III. <u>The Grounds of Appeal</u>

16. The grounds of appeal[8] are set out hereunder in full, for convenience.

Ground 1

The Supreme Court erred in assuming, contrary to the undisputed evidence on record, that the Appellant had not claimed annual allowance in the year in which the capital expenditure had been incurred with the result that it did not resolve the real point of law in dispute between the parties, that is, whether the Appellant can choose the timing and computation of annual allowance relating to capital expenditure pursuant to section 24 of the Income Tax Act and regulation 7(1)(b) and the Fourth Schedule of the Income Tax Regulations.

Ground 2

The Supreme Court erred in law in its interpretation of section 24 of the Income Tax Act and in particular by placing unwarranted weight on the words “an” and “that”, instead of interpreting section 24(1) as a whole and together with regulation

[6] **EB, pages 97-99**.
[7] **EB, pages 168-172.**
[8] **EB, page 180**.

7(1)(b) and the Fourth Schedule of the Income Tax Regulations and thereby failed to consider that the said provisions:

a. did allow the taxpayer to claim annual allowance in the year of expenditure and any succeeding year(s), without imposing a minimum rate and any obligation to claim uniformly and consecutively;
b. did not direct the taxpayer to claim annual allowance based on the accounting concept of depreciation;
c. did not empower the Respondent, in the absence of an express provision to that effect, to transform a tax privilege into a burden by effectively retrospectively forcing upon the Appellant claims for annual allowance in years in which the latter had in fact not applied for the same.

Ground 3

As a result of its misconceived interpretation of section 24 of the Income Tax Act and of its misapprehension of the facts, the Supreme Court of Mauritius wrongfully found that the taxpayer had failed to discharge the burden of proving the conditions set by law to benefit from the annual allowance it had claimed.

Ground 4

The Supreme Court's judgment is procedurally irregular and deprived the taxpayer of a fair hearing in that it upheld the Respondent's appeal based on its own summary interpretation of section 24 of the Income Tax Act and erroneous factual assumptions and without proper consideration of the grounds of appeal and submissions made on behalf of the parties.

IV. The Issues on Appeal to the Judicial Committee of the Privy Council

17. The central issue of the present appeal is that of the proper interpretation of section 24 of the ITA read together with regulation 7(1)(b) and the Fourth Schedule to the IT Regulations.

18. Ground 1 impugns the fact that the Supreme Court appears to have relied on the incorrect assumption that MFD had not claimed annual allowance in the years in which it first incurred the relevant 1995-2005 CapEx to justify the MRA's disallowance in the Year of Assessment 2012. The word "assumed" is used in Ground 1 because the Supreme Court admittedly did not spell out the fact that MFD had not claimed annual allowance in the years the 1995-2005 CapEx was first incurred, but this is the necessary implication which it makes. Indeed, the only articulated reason by the Supreme Court for refusing the annual allowance claim in respect of Year of Assessment 2012 relates to a failure on the part of

the taxpayer to discharge the burden placed on it and satisfy the MRA that it is in law entitled to the annual allowance. Such an assumption is inconsistent with the evidence on record. In fact, and significantly, the MRA itself confirms that annual allowance was claimed in the year the relevant 1995-2005 CapEx was first incurred in its Notice of Acknowledgement[9].

19. The question whether MFD had claimed annual allowance in respect of the 1995-2005 CapEx was never made an issue, be it before the ARC or the Supreme Court, and it was therefore not open to the Supreme Court to assume otherwise. Instead, the question was one of construction of section 24 of the ITA and its interaction with Regulation 7(1)(b) and the Fourth Schedule of the IT Regulations. As a result of this error, the real question in dispute, that is, whether annual allowance is compulsory and must be claimed in the year the capital expenditure is made and those immediately succeeding that year uniformly and without interruption, was not adequately addressed and remained unresolved.

20. Ground 2 challenges the construction adopted by the Supreme Court.

21. Ground 3 seeks to impugn the result yielded by the wrongful interpretation of section 24 and in particular challenges the finding of the Supreme Court that MFD failed to discharge the burden of establishing its entitlement to the annual allowance claimed.

22. Ground 3 being concerned with a consequence yielded by the erroneous construction impugned under Ground 2, it is proposed that Grounds 2 and 3 be, with the leave of the Board, dealt with together under the heading ‘the Proper Interpretation of section 24 of the ITA’, the burden of proof component being addressed under part F.

23. The Appellant does not propose to pursue Ground 4 as a free-standing ground. Rather, its essence is woven in the discussion relative to the other grounds of appeal and more specifically, under Ground 1.

24. Before embarking on the requisite analysis of the case, it is helpful, as a preliminary step, to set out the basic legal framework applicable to annual allowance in Mauritian Law.

[9]Respondent’s Notice of Acknowledgement dated 20 January 2026, paragraph 21. **EB, page 223**

V. The Statutory Framework

25. The relevant provisions of the applicable legislation, in relation to the relevant years of assessments, are set out hereunder:

Section 24 of the ITA- Annual allowance[10]

(1) Subject to the other provisions of this section, where, in an income year, a person has incurred capital expenditure on –

(a) the acquisition, construction or extension of any –
(i) industrial premises;
(ii) clinics;
(iii) shops and shopping malls;
(iv) offices and showrooms;
(v) restaurants; or
(vi) entertainment premises;
(b) the acquisition of plant or machinery;
(c) agricultural improvement on agricultural land;
(d) scientific research;
(e) the setting up of golf courses; or
(ea) the acquisition of patents;
(f) the acquisition or improvement of any other item of a capital nature which is subject to depreciation under the normal accounting principles;
(g) the acquisition of a solar energy unit; or
(h) research and development, including innovation, improvement or development of a process, product or service,

he shall be allowed a deduction of the capital expenditure so incurred by way of an annual allowance in that income year and in each of the succeeding years at such rate as may be prescribed.
(…)

(2) No annual allowance shall be allowed under this section unless the expenditure is incurred exclusively in the production of gross income;

(4) (a) The total amount of allowance claimed under this section shall not exceed in the aggregate —
(i) in the case of a motor car, 3 million rupees;

[10] Sections 24(4) and 24(5) reproduced from the Case Stated by the Assessment Review Committee dated 12 April 2023, **EB, page 48.**

(ii) in any other case, the amount of the capital expenditure incurred;
(b) Paragraph (a)(i) shall not apply to a person carrying on the business of tour operators and car rental.

(5) Subject to subsection (6) where, in an income year, a person sells or otherwise transfers an asset in respect of which an allowance has been allowed under this section at a price or for a consideration

(a) in excess of the amount to which the value of the asset has been reduced by the allowance, the excess to the extent of the amount of the allowance granted shall be deemed to be the gross income of the person in that income year;

<u>Section 59 of the ITA – Losses</u>

(1) Where a company satisfies the Director-General that it has, in an income year incurred a loss, it may deduct that loss in computing its net income for that income year.

(2) Where the amount of loss cannot be fully relieved under subsection (1), the company may, subject to subsection (3), claim that the unrelieved amount of the loss be carried forward and set-off against its net income derived in the following 5 income years, subject to such conditions as may be prescribed.

(3) The time limit of 5 years referred to in subsection (2) shall not apply for the carrying forward of any amount of loss that is attributable to –

(a) annual allowance claimed in respect of capital expenditure incurred on or after 1 July 2006;
(b) a deduction claimed under sections 64, 65 and 161A(55).

(4) Where the Director-General is not satisfied with a claim for loss made by a person under this section, the Director-General shall determine the quantum of the loss available for set-off or carry forward and shall give notice of his determination to the person.

(5) Where loss available for set-off or carry forward has been determined under subsection (4) and it is subsequently found that the loss determined has been overstated, the Director-General may make another determination of the quantum of loss and give notice of his determination to the person referred to in subsection (4).

(6) Where any person is dissatisfied with a determination by the Director-General under subsection (4) or (5), he may object to the determination in the manner provided in section 131C.

Regulation 7(1) of the IT Regulations

For the purposes of section 24 of the Act-
(a) [….]
(b) the rate of annual allowance shall, in respect of each of the items specified in Column 1 of the Fourth Schedule to these Regulations, not exceed the rate corresponding to that item specified in Column 2 of that Schedule.

The prescribed rates provided for in the Fourth Schedule to the IT Regulations are:

Buildings – 5% on cost
Motor Vehicles – 25% on base value
Office equipment – 35% on base value
Computers – 50% on base value
Furniture and Fittings – 20% on base value

Section 2 of the ITA defines "base value" as "the cost to the owner of any fixed asset or other capital expenditure incurred for the production of gross income after deducting therefrom any amount allowed by way of annual allowance".

VI. Preliminary Observations

26. Before analysing the issues underlying the present appeal, it is important to underscore two important issues: (i) the MRA's interpretation of section 24 has undergone repeated and significant shifts throughout the proceedings, assuming, at different stages, distinctly different arguments; and (ii) the MRA now makes major concessions as regards annual allowances which it should have (but did not) allow in respect of capital expenditure.

27. At the time of the assessment, the MRA stated that "*The company has used these assets in the income years ended 31 December 1995 to 31 December 2005 to derive income thereof and therefore, the allowances should be claimed*

in the year in which the assets were put to use by virtue of section 24 of the Income Tax Act". Thus, the MRA's then stand was that once the taxpayer had put the asset to use in a year, it had an **obligation** to claim annual allowance.

28. In the course of the ARC proceedings, the MRA conceded in its written submissions that annual allowance was indeed an option but that once it was first claimed, it had to be claimed in line with the concept of depreciation and normal accounting principles pursuant to section 24(1)(f), that is at a uniform rate and without interruption.

29. Before the Supreme Court, the MRA maintained its concession that a claim for annual allowance was an option and not an obligation but maintained that it had to be claimed in line with normal accounting principles and the concept of depreciation.

30. The posture of the MRA in its Notice of Acknowledgement dated 20 January 2026 marks a new U-turn on the question whether annual allowance ought to have been mandatorily claimed by the taxpayer. It was not the Respondent's case before the Supreme Court that section 24 of the ITA contained a mandatory requirement to claim annual allowance nor that annual allowance <u>must</u> be deducted as from the year of expenditure. It is thus stricto sensu incorrect for the Respondent to affirm as it does that the Supreme Court "*agreed that allowances must be deducted in the year expenditure is incurred, and in each succeeding year*"[11]. Further, the MRA does not explain in its Notice of Acknowledgement how its former concession about the optional character of a claim for annual allowance is to be reconciled with the judgment of the Supreme Court, thereby completely averting the question.

31. More fundamentally, MFD notes that the MRA now accepts that it may have wrongly disallowed annual allowances claimed on buildings in the Year of Assessment 2012 and suggests that there is a need for the parties to reach an agreement on the issue of quantum in the wake of the determination of the Board, failing which the matter would need to be remitted to the Revenue Tribunal for determination[12].

32. With respect, it is the position of MFD that any such error is independent of and does <u>not</u> result from the Supreme Court's reasoning but would have been committed at the outset. Indeed, the one constant in the MRA's approach to section 24 was that MFD should have claimed annual allowance consecutively and uniformly (albeit initially on the basis that MFD had started doing so from

[11] Respondent's Notice of Acknowledgement dated 20 January 2026, paragraph 14**. EB, page 219**

[12] Respondent's Notice of Acknowledgement dated 20 January 2026, footnote 10 and paragraph 25. **EB, pages 222-224**

the year of capital expenditure). It is thus surprising and regrettable that the concession is being made with minimal explanation only some 10 years after the assessments were raised and without the precise revised figures being put forward. What clearly emerges from the above is that MFD was assessed on an incorrectly inflated amount with the result that it was wrongly deprived of the use of sums to which it was perfectly entitled for 10 years.

33. MFD rejects the suggestion that the matter should be remitted to the Revenue Tribunal on this issue and submits, with respect, that the MRA is duty bound to state before the Board, whether the assessments for the Years of Assessment 2012 and 2013 would, on the MRA's current interpretation of section 24, result in any chargeable income for any of the Years of Assessments 2012 or 2013. MFD submits that it would not. As a result, it is submitted that, the situation is such that, even if the Board decides to dismiss the current appeal, MFD would not be liable for any tax whatsoever.

VII. The Decision of The Supreme Court

34. The operative part of the Supreme Court judgment is brief enough to be reproduced wholesale below:[13]

> "*It seems to us that there is no need to complicate this appeal by referring to elaborate rules of statutory interpretation in the manner done in the grounds of appeal, and we say so in view of the plain meaning of section 24 which is obvious from a reading of the section itself. We therefore propose to deal with the three grounds together.*
>
> *Reference in section 24 of the Act is to capital expenditure being incurred "in an income year", with a deduction of the capital expenditure so incurred being allowed by way of an annual allowance "in that income year and in each of the succeeding years at such rate as may be prescribed"* [Emphasis is ours].
>
> *We find that the section does not say "in any income year", in which case the first respondent could have been justified in its interpretation of section 24, i.e. that the taxpayer is free to claim the allowance in a year of his choice, and that it is ultimately a matter of tax planning.*
>
> *Based on the literal meaning of section 24, the MRA was therefore right to disallow part of the annual allowances on assets acquired during the years 1995 to 2005 and claimed in the year 2012*".

[13] **EB, pages 170-171**.

35. The approach of the Supreme Court is disconcertingly simple:

   a. First, it observes that *reference in section 24 of the Act is to capital expenditure being incurred "in <u>an</u> income year", with a deduction of the capital expenditure so incurred being allowed by way of an annual allowance "in <u>that</u> income year and in each of the succeeding years at such rate as may be prescribed";*

   b. Second, it relies (solely) on the fact that the word "an" as opposed to "any" is used in section 24(1) to determine "income year" and concludes that it follows that the taxpayer cannot claim annual allowance in any year it chooses.

36. We note, at the outset, that the Supreme Court failed to address either party's submissions in its judgment and instead proceeded to allow the appeal based on its own interpretation of section 24. While it was entitled to allow the Respondent's appeal for different reasons from those submitted by the Respondent, the Supreme Court's reasoning is, at best, lacunary as it fails to engage with several core interpretive points namely:

(i) the meaning to be given to the term "allow" in section 24(1) of the ITA;
(ii) the meaning of the term "succeeding" in section 24(1) of the ITA;
(iii) the interaction of section 24 of the ITA with regulation 7 and the Fourth Schedule of the IT Regulations;
(iv) the absence of any deeming provision in section 24 of the ITA; and
(v) the absence of any forfeiture provision in section 24 of the ITA.

37. It is the case for MFD that the determination of the Supreme Court is flawed, as it will demonstrate in section VIII below.

VIII. <u>Analysis</u>

Ground 1: Annual allowances were claimed in the first year of expenditure contrary to the Supreme Court's assumption

38. When the Supreme Court refers to capital expenditure being incurred "in <u>an</u> income year" and annual allowance being claimed "in <u>that</u> income year" (with emphasis <u>only</u> on the underlined words), the Supreme Court (i) is clearly referring to the claiming of annual allowance in the year of expenditure of the

capital item; (ii) proceeds on the assumption that the Appellant did not claim annual allowance in the first year of expenditure. This is not factually correct.

39. In fact, the Respondent confirms in its Notice of Acknowledgement[14] that the Appellant did claim annual allowance in respect of capital expenditure incurred between 1995 and 2005 in the year of expenditure up to and including year of assessment 2006. This serious error alone should be sufficient to set aside the Supreme Court's judgment as the Supreme Court left the real question in dispute between the parties unresolved.

40. We disagree with the Respondent's contention that "*if the SC only considered it obligatory to deduct annual allowance in the year the expenditure is first incurred then it would have found for the taxpayer*". Our contention is that the Supreme Court summarily determined the question before it based on an erroneous factual assumption as to whether the Appellant did claim in the first year of expenditure of the capital item.

41. The Supreme Court focused on a question which was not in issue between the parties: is there an obligation to claim in the year the capital expenditure is first incurred? The Supreme Court replies in the affirmative and concludes that the MRA was right without analysing the rest of the statutory provision. The inference therefore is that MFD did not claim in the year of assessment. There is no further analysis. Instead, the Supreme Court goes on to conclude that MFD did not discharge the burden of proof that it had satisfied the requirements of section 24.

42. In any event, even assuming that the MRA is right when it submits that the Supreme Court made no such assumption and in fact determined that the Appellant should have claimed annual allowance in each and every year from the year of expenditure and without interruption, there is no such requirement in the face of the plain words of section 24(1) (as elaborated further under Grounds 2 and 3).

Grounds 2 and 3: The Proper Interpretation of section 24 of the ITA

A. <u>Section 24(1) grants an option to the taxpayer and does not impose an obligation to claim annual allowance in each and every year</u>

43. In **Black-Clawson International v Papierwerke Waldhof- Aschaffenburg EGLR 161 AT [82]**[15], Lord Diplock said:

[14] Respondent's Notice of Acknowledgement dated 20 January 2026, paragraph 21. **EB, page 223**
[15] Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591, **EB, pages 368-411.**

"*The acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it. Where those consequences are regulated by statute, the source of that knowledge is what the statute says. In construing it, the court must give effect to what the words of the statute would be reasonably understood to mean by those whose conduct it regulates (…)*"

44. In applying the literal rule of construction, the Supreme Court failed to address and give due consideration to the plain and natural meaning of each and every word in section 24(1) of the ITA, contrary to the presumption that every word in an enactment is to be given meaning, and that the court must endeavour to give significance to every word thereof[16].

45. By concluding that the Appellant was not free to choose the year in which it could claim annual allowance, the Supreme Court interpreted section 24 in such a way as to convert a privilege that <u>may</u> be claimed at the option of a taxpayer into a burden which <u>must</u> be claimed by the taxpayer from the year of the capital expenditure and each year thereafter consecutively without interruption or else be forfeited. This interpretation is plainly wrong and we say so for the following reasons:

    (a) The starting point is the language of section 24 itself, and the wording of section 24 of the ITA, regulation 7 and the Fourth Schedule of the IT Regulations, which are clear and unambiguous, and effect should be given to their plain meaning[17].

    (b) It is submitted that the Supreme Court wrongly paraphrases section 24 of the ITA when it links the requirement of capital expenditure being incurred to the phrase "in that income year" to justify its finding that the ARC did not give effect to the literal interpretation of section 24 of the ITA, without factoring in the sentence "he shall be allowed" in its reasoning.

    MFD submits that the phrase "in that income year" is in fact relevant to the year in which the taxpayer makes a claim for annual allowance, a claim which itself presupposes that a capital expense has been made in that year and will only be entertained in those circumstances. If the

[16] As noted in Bennion on Statutory Interpretation at Section 21.2, **EB, pages 772-803.**

[17] **Pabaroo v Varmah & Ors [2013] SCJ 197** states that: *"It is a well settled rule of statutory interpretation that where the language of a statute is clear and straightforward, there is no need to delve any further in its statutory construction. The words must be given their plain and literal meaning and the legislature must be intended to mean what it has plainly expressed".* **EB, pages 688-693.**

taxpayer does not claim annual allowance in the year in question, section 24 does not provide that his right to claim annual allowance in the "succeeding years" is forfeited. The forfeiture point is further addressed under Part B below.

As a result, the Supreme Court summarily discards the elaborate written and oral submissions made by the Appellant before it that section 24 "allows" the Appellant to claim annual allowance and that it is a benefit that it can claim at its option (subject to certain conditions being satisfied) and not a burden that can be thrust upon him. The disproportionate emphasis placed by the Supreme Court on the use of the word "an" as opposed to "any' before "income year" in section 24 ignores the other clear words of the statutory provision.

Section 24(1) of the ITA provides that a deduction shall be <u>allowed</u>, that is, it is an option granted to the Appellant. As observed by Balcombe LJ in **Elliss (HM Inspector of Taxes) v BP Oil Northern Ireland Refinery Ltd; Elliss (HM Inspector of Taxes) v BP Tyne Tanker Co Ltd [1985] STC 722,** *An allowance being a thing allowed, carries the connotation that what is allowed should first be claimed (…) One would have expected a change in nomenclature had the intention been to change the nature of capital allowances from something permitted to something required in the case of corporation tax*"[18];

(c) The word "shall' in section 24(1) is relevant to the treatment of the annual allowance applied for and not to the claiming of the allowance[19];

(d) Such option may (but <u>does not have to</u>) be exercised in the year of expenditure and each year that follows, provided the other conditions of section 24 and regulation 7 of the IT Regulations are met (such as for example, the expenditure is incurred in the production of the Appellant's gross income under section 24(3) of the ITA); and

(e) In regulation 7 of the IT Regulations, any meaning of the phrase "*shall....not exceed*" can only be considered as the rate prescribed being a maximum threshold, without any minimum prescribed rate and without any prescription for uniformity. There is also no time frame in which such allowance ought to be claimed.

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[18] **1987 STC 52, EB, pages 567-575.**
[19] See by analogy: **Ellis (HM Inspector of Taxes) v BP Oil Northern Ireland Refinery Ltd; Ellis (HM Inspector of Taxes) v BP Tyne Tanker Co Ltd [1985] STC 722 [1987] STC 52,** at page 8 of the judgment, paragraph 4. **EB, pages 576-605**

46. The annual allowance under section 24 of the ITA is therefore a permissible deduction: a privilege granted to incentivise capital investment, not a taxing provision. By its very nature, a benefit conferred by the legislature cannot be imposed on the taxpayer: a privilege cannot become a disadvantage, nor an option transformed into a burden. This interpretation is in line with the structure of the ITA as a whole. Mauritius operates under a self-assessment system: unless expressly provided otherwise, deductions and allowances have to be claimed by the taxpayer first.

47. This interpretation is consistent with the approach taken by courts in England and India to the nature of annual (or capital) allowances.

48. In **Ellis (HM Inspector of Taxes) v BP Oil Northern Ireland Refinery Ltd; Ellis (HM Inspector of Taxes) v BP Tyne Tanker Co Ltd [1985] STC 722,** BP Tyne and BP Oil had incurred capital expenditure on the provision of machinery and plant for trading purposes prior to the end of 1972. Section 3 of the Finance Act (No. 2) 1975 prevented them from carrying forward losses incurred before the end of 1972. The companies therefore decided not to claim allowances in respect of expenditure incurred for periods prior to the end of 1972, giving them increased claims for allowances for 1973 and subsequent years. The Inland Revenue claimed that the companies were obliged to take the allowance in the periods in which the expenditure was incurred. It was held at first instance that the legislation did not oblige the companies to take the allowance in the periods in which the expenditure was incurred and that they were free to renounce the allowances for those periods. The Crown appealed and the Court of Appeal, upheld the first instance judgment and dismissed the appeal and adopted the reasoning of Walton J.

49. Walton J had explained the nature of capital allowances as incentive granted to the taxpayer:

"*...*
But, whatever may be the nature of an allowance to which a taxpayer may be entitled, and however wide or narrow the scope of the income against which such allowance may fall to be made, it is as plain as a pikestaff that the allowance in question has been added as a benefit to the taxpayer and not as a benefit to the Revenue.
(...)
the allowances in all cases being introduced for the benefit of the taxpayer, it is to be expected that the maximum quilibet potest renunciare juri pro se introducto will apply; that it is to say, that a person who is entitled to a benefit of this nature, introduced for his own benefit, may take as much or as little thereof as he chooses just as he pleases: omnes licentiam habent his, quae pro se indulta sunt, renunciare".

50. In the Indian case of **Commissioner of Income Tax v Mahendra Mills (15 March 2000)** (**EB, pages 546-566**), after the Supreme Court of India considered whether the Income tax officer could not grant depreciation allowance to an assessee who had not claimed it, held that:

"*Provision for claim of depreciation is certainly for the benefit of the assessee. If it does not wish to avail that benefit for some reason, benefit cannot be forced upon him. It is for the assessee to see if the claim of depreciation is to his advantage.*

...

A thing is "allowed" when it is claimed... It is rightly said that a privilege cannot be to a disadvantage and an option cannot become an obligation".

51. The Indian Supreme Court in Mills (supra) quoted **CIT v Shri Someshwar Sahakari Sakhar Karkhana Ltd (1989)177 ITR 433 (Bom.)** (**EB, pages 493-498**)**:**

"*In our view, to sum up on the first issue, the assessee has a choice to claim or not to claim a deduction on account of depreciation. If he chooses not to claim it, the Income-tax Officer is not entitled to allow a deduction on account of depreciation*", and

52. **In CIT v Friends Corporation (1989) 180 ITR 334 (P&H**) (**EB, pages 491-492**), it was stressed that:
"*There is no gainsaying that allowance for depreciation is a benefit available to the assessee to claim, but not one that can be thrust upon him against his wishes*".

53. Furthermore, a review of other comparable sections of the ITA demonstrates that MFD's interpretation of section 24 is the correct one. It is submitted that there is a distinction to be drawn between the use of the terms "*shall be deductible*" and "*shall be allowed a deduction*" in the ITA. In the first case, the legislator has expressly stipulated when an amount is deductible. One may consider, for example, the wording of section 18(1) of the ITA which provides that "*Any expenditure or loss shall be deductible from the gross income, other than gross income specified in section 10(1)(a), of a person in the income year in which it is incurred to the extent to which it is exclusively incurred in the production of his gross income*". In other words, the expenditure can only be deducted in that year (subject to the ability to carry forward losses pursuant to section 59 of the ITA).

54. By contrast, section 24 of the ITA provides that a taxpayer "*shall be allowed*" a deduction of a capital expenditure "*in that income year and in each of the*

succeeding years…". The term "allow", when read together with the remainder of the sentence (and regulation 7 of the IT Regulations), can only be interpreted as a flexible option available to the taxpayer.

55. Finally, it is apposite to note that where the legislature intends to be prescriptive as to the timing of a deduction, it says so expressly. Section 24(7) of the ITA (investment tax credit for investment in a spinning factory), for example, expressly provides for a deduction at a specified rate <u>over a fixed period</u>. By contrast, neither section 24(1) of the ITA nor regulation 7 of the IT Regulations impose any such temporal restriction: they provide only for a maximum rate of 35% (and no minimum), with no restriction on the period over which the allowance may be claimed.

56. A possible criticism that may be advanced by the Respondent is that the Appellant's interpretation of section 24 of the ITA would permit annual allowance deductions to be claimed over an indefinite period and that this would yield an absurd result. It is however submitted that such qualms can be easily disposed of. Indeed, section 24(3) of the ITA imposes an important constraint, namely that no annual allowance shall be allowed under that section unless the <u>expenditure is incurred exclusively in the production of gross income</u>. In practice, this means a taxpayer cannot claim annual allowance once an asset ceases to produce gross income, for example, where it has become obsolete. *A contrario*, there is nothing anomalous in a taxpayer claiming annual allowance on a long-lasting asset (like a building for example) over a long period since such an asset by its very nature continues to produce gross income for many years.

57. Therefore, while section 24 does allow a taxpayer to claim annual allowance in any year it chooses, this option is still subject to the proviso contained in section 24(3) of the ITA and the maximum rate prescribed under regulation 7 and the Fourth Schedule of the IT Regulations.

B. <u>Section 24 does not contain any forfeiture or deemed deduction provision</u>

58. It is common ground between the parties that the construction of section 24 must be conducted in accordance with the literal rule. The MRA never sought to argue that a contextual approach like the one used in **W. T. Ramsay Ltd v Inland Revenue Commissioners [1982] AC 300**[20]**,** and **Altrad Services Ltd and another v HMRC [2024] EWCA Civ 720**[21] was to be resorted to. Neither before the ARC, nor before the Supreme Court was it sought to disapply the

[20] [1982] AC 300, **EB, pages 753-771**
[21] [2024] EWCA Civ 720, **EB, pages 295-338**

literal rule. The parties were never divided upon how the section should be construed; they were divided upon what the literal meaning is.

59. The Supreme Court borrowed the following quote from **Soopramanien v The Assessment Review Committee and Anor [2016] SCJ 68**[22] which replicated the famous words of Mr Justice Rowlatt in **Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 12 TC 358** (**EB, pages 460-480**).

   "*In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption about a tax. Nothing is to be read in, nothing is to be implied. One can only look at the language used*."

60. MFD submits that it is the MRA's construction which requires words to be supplied, namely:
   (i) a mandatory annual deduction;
   (ii) a minimum rate;
   (iii) a requirement of uniformity between years;
   (iv) a rule of forfeiture; and
   (v) a rule of deemed compliance (regardless of whether a taxpayer was in fact entitled to claim such annual allowance in the year in question).

61. The ARC had already made this very point, listing seven requirements which the MRA sought to introduce and which the section does not contain[23]- the first being "*the allowances should be claimed in the year in which the assets were put to use*", the proposition the Supreme Court reinstated without addressing the ARC's reasons for rejecting it. MFD adds that a construction founded upon the precise language of the IT Regulations sits uneasily with the MRA's own acknowledgement that regulation 7(1)(b) refers to the Second Schedule "in error"[24].

62. In its Notice of Acknowledgement, the MRA concedes that certain assumptions must be made for the Supreme Court's reasoning to hold[25]. The MRA suggests that annual allowances must be calculated on the assumption that "*deductions had been taken in each year at the same rate*".

63. The fact of the matter is that the interpretation given to section 24 by the Supreme Court does not accord with the plain statutory language used therein. Neither section 24 of the ITA, nor regulation 7 of the ITR, nor the Fourth Schedule to which the latter refers contains either a "deeming" or a "forfeiture"

[22] **EB, page 170**. See also **EB, pages 694-706**.
[23] **EB, page 58**.
[24] Respondent's Notice of Acknowledgement dated 20 January 2026, footnote 5. **EB, page 220.**
[25] Respondent's Notice of Acknowledgement dated 20 January 2026, paragraph 17. **EB, page 221**

provision capable of supporting the interpretation of the Supreme Court. Reading in words to this effect would impermissibly strain the legislation well beyond its literal and natural meaning and poses serious concerns about adherence to the rule of law.

64. The ITA is not merely silent as to deeming; it provides to the contrary. “Base value”, the very quantity upon which the reducing-balance rates in Column 2 of the Fourth Schedule operate, is defined by section 2 of the ITA as the cost of an asset after deducting therefrom any amount allowed by way of annual allowance. An allowance which was never claimed was never allowed, and it cannot therefore reduce base value. The MRA accepts that definition, describing base value in its Notice of Acknowledgement as the written-down value of the expenditure after annual allowance deductions are taken into account[26]. Its case accordingly requires the Board to apply a statutory definition and, in the same breath, to depart from it. Nor can “allowed” in section 2 be read as “allowable”: section 24(5) measures the excess charge by reference to the amount of the allowance “granted”, and what is granted is something done, not something that might have been done[27]. On the MRA’s reading, a taxpayer who had taken no allowance at all could be charged upon a disposal as though he had taken them in full, and so taxed upon relief he never received. On any view, this would yield an absurd result.

65. In **Carr (Inspector of Taxes) v Armpledge Ltd, 2000 WL 571233 (2000)** (**EB, pages 481-490**), Lord Goldsmith's proposition[28] that the taxpayer is entitled to take advantage of a relief to the extent and in the manner that he wanted subject only to any express or implied statutory prohibition, such implication only being made where it is necessary and where the statute unambiguously so requires, was accepted by Peter Gibson LJ who had this to say[29]:

“(…) *I did not understand Mr. McCall to dispute Lord Goldsmith's proposition. He accepted that it was for the Crown to show that by necessary implication effect had to be given to claims to carry back surplus ACT for accounting periods in the chronological order of those periods, it being conceded by him that there were no express words on which he could rely for that requirement.*
16.With all respect to the judge, I think that his approach in looking for an express provision on which the taxpayer could rely was therefore wrong, the absence of such a provision not being a valid reason for his conclusion. Further, in dismissing the authorities as in effect of no assistance, the judge overlooked

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[26] Respondent’s Notice of Acknowledgement dated 20 January 2026, footnote 8. **EB, page 221**
[27] **EB, page 48.**
[28] based on Farmer v Bankers Trust [1990] STC 564 (**EB, pages 675-685**), Elliss v BP Oil Northern Ireland Refinery Ltd [1985] STC 722 (**EB, pages 576-605**) and Collard v Mining & Industrial Holdings Ltd. (1989) 62 T.C. 448 (**EB, pages 499-545**).
[29] At paragraph 16 of the Judgment.

their significance in establishing the proposition which is now not in dispute. The Collard case shows how far it is necessary to go to imply words in a statute. In that case double tax relief was available but the quantum depended on whether or not the taxpayer applied a particular provision. It chose not to do so and it was held to be entitled to do that. It could choose how it wished to take the relief available. The Crown's construction involved implying words into the statute. The Court of Appeal had been impressed by an anomaly but found itself unable to supply what Lord Oliver (at p. 491) in the House of Lords called the legislative gap. He agreed with this court on that and (at p. 493) said that to make an implication in a taxing statute to impose a tax which the legislature had not sought to enact in express terms must be almost, if not completely, unheard of. Similarly, in my view, to imply a provision to deny to the taxpayer the right to a relief which the statutory provisions on their face would appear to allow may also be thought a rarity." [Emphasis is ours].

66. With respect, the Supreme Court has fundamentally misunderstood the nature of annual allowance. It is neither a one-off deduction nor an annual deduction of a fixed amount: the value of the capital expenditure decreases each year by reference to the "written down value" of the asset in the preceding year. To "assume" or "deem" that an annual allowance has been claimed in a given year, regardless of whether it was or whether the other requirements of section 24 were satisfied, the law would have had to provide expressly for such a deeming (and, in effect, forfeiture) mechanism. It does not.

67. The Supreme Court's decision does not address at all the consequences of failing to deduct an annual allowance at a particular rate[30]. Had the Supreme Court done so, it may well have considered the considerable challenges of effectively reading in a "forfeiture" or "deeming" provision in section 24 of the ITA.

68. It is submitted that this erroneous interpretation would give rise to formidable difficulties in practice. Two examples are set out below.

69. **Example 1**: If a taxpayer does not claim annual allowance in the first year of expenditure, the Supreme Court says that section 24 of the ITA requires that it should. But at what rate? As mentioned above, the law only prescribes a maximum (but no minimum rate). In addition, if the taxpayer in question were to do so in say, year 5 after expenditure, the effect of the Supreme Court judgment would be to retroactively calculate annual allowance as if the taxpayer did in fact claim it in year 1 and arguably at the same rate it applied it in year 5.

[30] The Respondent suggests that the Supreme Court did not expressly address those consequences. In fact, the Supreme Court decision is completely silent on this point.

70. Again, section 24 (or any other provision in the ITA or the IT Regulations) does not provide for this "deeming" computation. As Etherton LJ remarked in **The Commissioners for Her Majesty's Revenue & Customs v Halcyon Films LLP [2009] EWHC 1082 (Ch)**, had the draftsman intended such effect, it is reasonable to expect that this would have been stated clearly and expressly. This has not been done[31]. Any attempt to interpret the law in this way would be tantamount to rewriting it. This is untenable, the more so as both parties in this case are relying on the literal interpretation of the law.

71. **Example 2**: If a company were to benefit from a tax holiday (and therefore produce exempt income) during the period in which the capital expenditure was incurred, section 24(3) of the ITA would prevent it from claiming annual allowance during those "tax holiday" years since the capital expenditure would not have been incurred in the production of the company's gross income. However, it may well be that the taxpayer is entitled to claim annual allowance after the expiry of the tax holiday as it starts producing gross income. Again, if the Supreme Court's interpretation is correct, this would mean that annual allowances that cannot (by virtue of section 24(3) of the ITA) be claimed during those years would effectively be forfeited notwithstanding and the tax written down value of the capital items would decrease each year accordingly. Interpreting section 24 in a way so as to simultaneously force a taxpayer to claim an annual allowance and yet prevent it from doing so (because in that year it does not meet the conditions) is an obvious absurdity.

72. We reiterate here that the MRA itself conceded before the Supreme Court that section 24 grants an option to a taxpayer as to whether or not to claim annual allowance[32]. The MRA's case before the Supreme Court was that while section 24 grants an option, once a taxpayer begins to claim it cannot do so "*in an unprincipled way according to its whims and caprices*"[33] and must do so in accordance with its depreciation policy pursuant to section 24(1)(f). It has now abandoned the argument relating to section 24(1)(f) but fails to address in its Notice of Acknowledgement why it now agrees with the Supreme Court that section 24 imposes a mandatory requirement.

C. <u>The option is granted in each "succeeding" year: it is not an obligation to claim consecutively.</u>

73. Section 24(1) refers to annual allowance being allowed in "each of the <u>succeeding</u> years" [Emphasis is ours]. The Supreme Court ought to have looked at the word "succeeding" and relied on its ordinary meaning instead of

[31] Paragraph 23 of the judgment, **EB, pages 741-752.**
[32]**EB, page 36**, paragraph 3.
[33]**EB, page 36**, paragraph 5.

equating it with “consecutive” to conclude that the Appellant was not entitled to choose the year in which to claim annual allowance. The Respondent makes the same error in its Notice of Acknowledgement[34].

74. The term “succeeding” should be interpreted in accordance with its ordinary meaning. The Collins dictionary defines the term “**succeeding**” as “*being that which follows; subsequent; ensuing*”[35] whereas it defines “**consecutive** periods of time or events” as those which *“happen one after the other without interruption”[36].* The term "**succeeding**" simply denotes temporal order, that is, what comes after, as opposed to what precedes and not continuity or absence of gaps as erroneously assumed by the Supreme Court.

75. This meaning of "succeeding" is entirely consistent with the Appellant's interpretation of section 24 of the ITA as granting an option to claim annual allowance. Properly construed, section 24 gives the Appellant the option, in a year of expenditure and in each succeeding year, to claim annual allowance or not, subject to the conditions in section 24 of the ITA and regulation 7 of the IT Regulations being satisfied.

76. In any event, the fact that section 24(1) does not say "in any year" - as the Supreme Court contended - is irrelevant: section 24(1) grants an option to claim annual allowance, not an obligation to do so.

D. <u>Regulation 7 of the IT Regulations stipulates a maximum rate with no minimum</u>

77. Whilst interpreting section 24 of the ITA, the Supreme Court makes no reference whatsoever to regulation 7 of the IT Regulations (read together with the Fourth Schedule) which clearly prescribe a maximum rate (and no minimum rate) for annual allowance according to the type of capital expenditure[37].

78. In so doing, the Supreme Court failed to address the question of rate altogether, despite this being one of the questions it was expressly asked to determine, given the MRA’s own case that the rate of annual allowance had to be claimed uniformly.

79. The Respondent attempts to address this in its Notice of Acknowledgement[38], suggesting that a uniform rate of deduction "*flows from a natural reading of the*

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[34]Respondent’s Notice of Acknowledgement dated 20 January 2026, paragraph 13. **EB, page 219**
[35] Collins English Dictionary
[36] Collins English Dictionary
[37] This aspect is not addressed at all in the Supreme Court judgment. The Respondent suggests that the point is merely not “expressly addressed” in the decision (Respondent’s Notice of Acknowledgment dated 20 January 2026, footnote 4). **EB, page 220**
[38]Respondent’s Notice of Acknowledgement dated 20 January 2026, paragraphs 15-16. **EB, pages 220-221**

relevant provisions." We respectfully disagree: nothing in section 24 of the ITA, regulation 7 of the IT Regulations, or the Fourth Schedule is capable of supporting that proposition. Indeed, this is precisely why the Respondent had earlier invoked the *noscitur a sociis* rule before the Assessment Review Committee and the Supreme Court, in order to rely on section 24(1)(f) of the ITA to argue that the rate should instead track the Appellant's depreciation policy.

80. Regulation 7 and the Fourth Schedule of the IT Regulations are clear and unambiguous: they prescribe only a maximum rate and impose no requirement that the rate be applied uniformly. The MRA itself acknowledges that, by virtue of section 5(2)(a) of the Interpretation and General Clauses Act 1974, "words in the singular shall include the plural." Nothing in the legislation therefore prevents the Appellant from applying varying rates from year to year, including a rate of 0%.

81. It is MFD's submission that this limb is a complete answer to the appeal, whatever view the Board may take of the temporal words in section 24(1) of the ITA. Section 24(1) does not itself fix the quantum of the deduction: it remits quantum entirely to "*such rate as may be prescribed*". Even upon the MRA's reading - that a deduction must be taken in the year of expenditure and in each succeeding year - what falls to be deducted in any given year is the prescribed rate, and the only prescription is that the rate "*shall … not exceed*" the figure specified in Column 2 of the Fourth Schedule[39]. A rate of nil is a rate which does not exceed that ceiling. Section 24(1) and regulation 7(1)(b) are accordingly satisfied in a year in which no allowance is deducted, and the Appellant's compliance is established regardless of whether the Board accepts the construction advanced under Part A above.

82. The ARC was right to hold that had the legislature intended a floor it would have said so, adopting a formula such as "not less than X per cent and not more than Y per cent"[40]. The MRA's own evidence before the ARC accepted that a taxpayer may claim at a rate lower than the ceiling, contending only that the rate could never be zero[41]; and its counsel stated before the Supreme Court that an asset subject to a ceiling of 25 per cent might lawfully be depreciated over ten years, which he accepted the taxpayer "is allowed to do under the law"[42]. Once a rate below the ceiling is conceded, a stopping place must be identified. None has ever been identified, because the IT Regulations contain none. That is the force of the ARC's observation that the MRA's proposition

[39] **EB, pages 17**, 117-118.
[40] **EB, page 54.**
[41] **EB, page 54,** witness statement of Mrs S.L. Chan Hon Sen, paragraph 9.8(i).
[42] **EB, pages 149-150.**

would require determining how "lower" a taxpayer is allowed to claim[43]. Neither the MRA nor the Supreme Court has said where the supposed minimum lies, and no such minimum can be spelled out of the words "shall … not exceed".

83. Nor does deferral permit compression. Because the Column 2 figure is a ceiling in the year of claim as much as in any other year, a taxpayer who deducts nothing in one year does not thereby become entitled to deduct more than the prescribed rate in the next. What is deferred is the timing of the relief; its measure is unaffected, and the aggregate remains capped by section 24(4)(a) of the ITA at the amount of the capital expenditure incurred[44]. The apprehension that the Appellant's construction would permit an accelerated write-off is therefore unfounded.

84. In response to the MRA's contentions on this aspect, we also make the following observations:

(i) The MRA refers to the case of **Blue Metal Industries Ltd v Dillet [1970] AC 827** (**EB, pages 412-421**) in support of its argument that section 24 of the ITA would have been drafted differently if different rates of annual allowance could be deducted over the years. The case is not relevant. It is not a tax case, still less one concerning annual allowance, and its principles cannot simply be imported into the interpretation of section 24 of the ITA. The rich body of case law on the nature of annual allowances (referred to at paragraphs 48 to 52 above) is the more appropriate point of reference;

(ii) The contention that if the rate could fluctuate, it would produce absurd results assumes that section 24 of the ITA contains a mandatory and automatic requirement to claim annual allowance. The alleged "absurd" result simply does not arise if the provision is interpreted correctly, i.e. it grants an option to a taxpayer in each and every year to claim (or not) annual allowance). In fact, the absurd results referred to by the MRA are those which flow from the Supreme Court's erroneous interpretation (as per the examples set out in paragraphs 68 to 71 above).

(iii) In any event, this point goes nowhere: the question before the Board is whether section 24 of the ITA allows a taxpayer to choose the timing and manner in which to claim annual allowance (subject to the other conditions of section 24 ITA and regulation 7 of the IT Regulations being satisfied) and therefore whether section 24 allowed the Appellant not to

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[43] **EB, page 54**.
[44] **EB, page 48.**

claim annual allowance between the years of assessment 2007 and 2011 and resume in year of assessment 2012.

E. Section 59 of the ITA: anti-avoidance cannot be achieved through construction

85. The Respondent's suggestion that the Appellant's interpretation would enable a taxpayer to circumvent section 59 of the ITA is misplaced: an anti-avoidance result cannot be reached by construction[45]. First, the point was only mentioned in MRA's letter dated 15 June 2015 but neither pursued at the time of the Notices of Assessment or before the ARC and the Supreme Court. Secondly, as the ARC correctly observed[46], the Respondent had other avenues available had it considered that the Appellant computed annual allowance so as to avoid income tax, notably section 90 of the ITA, the general anti-avoidance provision, under which the burden of proof would have rested on the Respondent.

86. In any event, section 59 of the ITA supports the Appellant's interpretation in relation to capital expenditure incurred on or after 1 July 2006. Section 59(3)(a) expressly allows annual allowances to be carried forward indefinitely thereby giving credence to the interpretation relied upon by MFD, for had the legislator intended otherwise, the scenario contemplated by section 59(3) would simply not have arisen. Of particular interest is the fact that the same tax outcome ensues whether a taxpayer claims annual allowance in the year in which the expenditure is first incurred or in a later year, whether there are consecutive claims or not: the period over which annual allowances are claimed, and the rate at which they are claimed, would therefore cause no loss of revenue to the MRA.

87. The capital expenditure in the present matter was admittedly incurred before 1 July 2006 and is not caught by the exception set out in section 59(3)(a) above, but this should not affect the proper interpretation of section 24 and regulation 7. Those provisions have not materially changed, and nothing in the judgment of the Supreme Court or the Notice of Acknowledgement of the MRA suggests that section 24 should be interpreted differently after that date.

F. The finding on the burden of proof

88. The Supreme Court adopted from *Soopramanien v The Assessment Review Committee and Anor [2016] SCJ 68* the proposition that the burden lies upon a taxpayer who is claiming an allowance to satisfy the MRA that he is in law entitled to it and that all the conditions prescribed are satisfied, and held that

[45] See Ayrshire Pullman Motor Services v IRC (1929) 14 TC 754 (**EB, page 35**; see also **EB, pages 339-352**); IRC v Duke of Westminster [1936] AC 1 (**EB, pages 644-674**) and Collins Family Trust (**EB, page 59**).
[46] **EB, page 59**.

the burden had not been discharged[47]. MFD challenges that finding, which cannot stand upon either of the two readings it will bear.

89. Upon the first reading, the finding means no more than that, upon the Supreme Court's construction of section 24 of the ITA, the allowance was not available in the Year of Assessment 2012. So understood it adds nothing whatever to the construction holding and falls with it. It is not an independent basis for the decision and cannot support the judgment if the construction is wrong.

90. Upon the second reading, the finding means that some condition of entitlement was not established. If that is what was meant, the Court did not identify which condition. The ARC had set out the conditions which section 24 of the ITA imposes and had found each of them satisfied[48]; entitlement and quantum were not in dispute between the parties; and the sole question stated for the opinion of the Court was the correct method of computation of annual allowance under section 24(1) of the ITA and regulation 7(1)(b) of the IT Regulations[49]. Moreover, upon an appeal by way of case stated the Court was bound by the facts stated. The ARC made no finding of any failure of proof, and none of the questions of law stated raised one. A finding of that character was therefore made without evidential foundation and without notice to MFD, which had no opportunity to meet it.

91. In any event the proposition adopted presupposes a claim-based scheme, and so accepts MFD's construction rather than displacing it. If the annual allowance accrued of its own force, there would be nothing for the taxpayer to claim and no burden for him to discharge. The ARC made precisely this point: because the taxpayer bears the burden of satisfying the MRA of his entitlement, he must first claim the allowance, and it cannot be forced or "thrust upon" him[50]. The authority relied upon to decide against MFD thus paradoxically fuels its case and tells in its favour.

IX. <u>Relief</u>

The primary case

92. If the Appellant is right upon the construction of section 24 of the ITA (read together with regulation 7 and the Fourth Schedule of the IT Regulations), the decision of the ARC should be restored. The loss available to be carried forward

[47] **EB, pages 171-172.**
[48] **EB, pages 57-60.**
[49] **EB, page 132**.
[50] **EB, page 57**.

from Year of Assessment 2012 is Rs 158,630,630; the assessment for Year of Assessment 2013 falls; and no question of remittal arises.

The alternative case

93. Even if MFD's proposed construction is found to be wrong, the order below cannot in any event stand for a further reason. The interpretation advocated by the MRA, namely that a deduction was mandatorily required in each relevant year and deemed to have been made notwithstanding the absence of claims, has been applied by it in one direction only: the MRA thrusts annual allowances on MFD so as to trigger the 5-year time limit under section 59 of the ITA and *a fortiori* to extinguish losses; but it conversely ignores the necessary consequences flowing from the imposed deduction on MFD's losses.

94. This is a point of consistency of statutory interpretation, not mere computation. If deductions are to be treated as taken because the statute compels them, they must be treated as taken in every year the statute compels them, and the loss position recomputed accordingly throughout the period in issue. The Appellant is ready to produce that computation if it becomes necessary for the Board to delve into that point.

95. That is also the course the Respondent proposes. It has itself accepted that "some of the Disputed Allowances should have been allowed"[51], and that in the absence of agreement quantum should be remitted to the Revenue Tribunal, which has replaced the ARC[52].

96. On no view are the assessments restored by the Supreme Court correct as made.

X. Summary Of Reasons

97. MFD respectfully submits that the appeal should be allowed for the following reasons.

(1) BECAUSE the Respondent has never applied the construction it now defends: it accepts, in respect of the very assessment in issue, that annual allowances should have been allowed on expenditure incurred in years in which none had previously been claimed;

(2) BECAUSE the Supreme Court proceeded upon a factual premise which was mistaken, left unanswered the questions of law which it had itself remitted

[51] Respondent's Notice of Acknowledgement dated 20 January 2026, paragraph 20. **EB, page 222**
[52] Respondent's Notice of Acknowledgement dated 20 January 2026, paragraph 20. **EB, page 222**

the case to obtain, including the interaction of section 24 with regulation 7(1)(b), and made a finding upon the burden of proof which either adds nothing to its construction holding or was made contrary to the facts stated;

(3) BECAUSE section 24(1) of the ITA confers an entitlement upon the taxpayer and imposes no obligation to claim, as the MRA accepted before the ARC and the Supreme Court;

(4) BECAUSE the ITA is claim-based throughout, capping what is claimed and fixing the fate of a loss by reference to what is claimed;

(5) BECAUSE the ITA contains no provision deeming an allowance to have been granted where none was claimed;

(6) BECAUSE the Appellant satisfied every condition of section 24 and no provision of that section has ever been identified which it failed to satisfy, whereas the Respondent's construction requires five separate rules to be read in which the legislature did not enact;

(7) BECAUSE the words "in that income year and in each of the succeeding years" fix the commencement and the duration of the entitlement and do not require a deduction in every year, whereas the Respondent's reading requires the same words to carry three obligations which are nowhere expressed;

(8) BECAUSE section 24 remits quantum entirely to the prescribed rate, and regulation 7(1)(b) prescribes a maximum and no minimum, so that even upon the Respondent's reading of the temporal words a deduction at a rate of nil satisfies the section; and no floor has ever been identified by either the Respondent or the Supreme Court;

(9) BECAUSE the controls on the claiming of annual allowance are those which the legislature expressly enacted: namely the requirement for the expenditure to be incurred in the production of gross income contained in section 24(3), the aggregate cap in section 24(4)(a), and the ceiling in Column 2 of the Fourth Schedule of the IT Regulations;

(10) BECAUSE an anti-avoidance result cannot be achieved by construction where the anti-avoidance provision (namely section 90 of the ITA) has not been invoked.

XI. <u>Orders Sought</u>

98. The Appellant accordingly seeks orders that the appeal be allowed; that the judgment of the Supreme Court dated 14 April 2025 be set aside; that the

decision of the Assessment Review Committee dated 9 March 2023 be restored; that the order for costs made below be set aside; and that the Respondent pay the Appellant's costs here and below.

12 August 2026

Patrice Doger de Spéville SC

Angélique A. Desvaux de Marigny SC

Johanne Hague, of Counsel,

Instructed by Sheridans

For the Appellant