IN THE PRIVY COUNCIL **JCPC/2025/0113**

ON APPEAL FROM THE

SUPREME COURT OF MAURITIUS

IN THE MATTER OF:

MAURITIUS FREEPORT DEVELOPMENT CO. LTD.

Appellant

v/s

1. **THE DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY**
2. **THE ASSESSMENT REVIEW COMMITTEE**

Respondents

THE FIRST RESPONDENT's WRITTEN CASE

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*The second Respondent (namely, the Assessment Review Committee ("**ARC**"), which has been placed by the Revenue Tribunal) is taking no part in these proceedings.*

*References to the Appellant's Written Case are in the format **[AWC/paragraph(s)].** References to page numbers **[EB{X}]** are to page numbers in the Electronic Bundle.*

A. INTRODUCTION

1. Section 24 Income Tax Act 1995 ("**ITA 1995**") **[EB 283]** provides that, where a person has incurred certain types of capital expenditure, a deduction is allowed by way of an annual allowance. Regulation 7 of the Income Tax Regulations 1996 ("**ITR 1996**") **[EB 289**] deals with the rates of annual allowances. This appeal concerns the interpretation of the foregoing provisions.

2. The essential facts are not in dispute. The Appellant incurred capital expenditure in the years ended 31 December 1995 to 31 December 2005 (the "**1995-2005 CapEx**"). The Appellant deducted annual allowances under s.24 ITA 1995[1] **[EB 283]** in the year in which expenditure was first incurred and in each subsequent year up to and including Year of Assessment ("**YoA**")[2] 2006, but did not do so in YoA 2007 to 2011 (inclusive).

[1] The expenditure in dispute was incurred on items falling within s.24(1)(a)-(b) ITA 1995 **[EB 283/284]**.

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Subsequently, it deducted annual allowances in YoA 2012 in respect of the 1995-2005 CapEx. The Appellant also deducted annual allowances in YoA 2012 in respect of other capital expenditure (i.e. not the 1995-2005 CapEx): those other deductions are not in dispute in this appeal. The deductions in YoA 2012 resulted in a total loss for that year of Rs 158,630,630. This loss was carried forward by the Appellant to YoA 2013 and, as a result, the Appellant reported a total loss in YoA 2013 of Rs 34,431,195.

3. The First Respondent (the "**MRA**") disallowed annual allowances equal to Rs 84,698,483 which the Appellant had deducted in relation to the 1995-2005 CapEx in YoA 2012 (the "**Disputed Allowances**"), and thus it reduced the total losses for YoA 2012 from Rs 158,630,630 to Rs 73,932,147. In turn, the losses carried forward to YoA 2013 were reduced, which meant that instead of a loss in YoA 2013 there was a profit of Rs 50,267,288 which was assessed to tax.

4. The issue in dispute in this appeal is whether s.24 ITA 1995 **[EB 283]** and reg.7 ITR 1996 **[EB 289]** permitted the Appellant to deduct the Disputed Allowances in the circumstances set out above.

5. **Appeal to the ARC**: the Appellant appealed against the income tax assessment and the MRA's decision to disallow the Disputed Allowances. On 9 March 2023 the ARC allowed the appeals. It held that the wording of reg.7 ITR 1996 **[EB 289]** – namely, that the rate of annual allowance "*shall... not exceed*" a prescribed amount – imposed a maximum rate of annual allowance but permitted a taxpayer to deduct an annual allowance at a reduced rate, or deduct no annual allowance, in a particular year.

6. **Appeal to the Supreme Court of Mauritius ("SC")**: the MRA appealed against the decision of the ARC. On 14 April 2025 the SC allowed the appeal **[EB 168–172]**. It held that the ARC had failed to give effect to the language of s.24(1) ITA 1995 **[EB 283]** – namely, the references to capital expenditure being incurred "*in an income year*" and a deduction 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 of the SC) – which entitled the MRA to disallow the Disputed Allowances.

B. THE APPELLANT'S GROUNDS OF APPEAL

7. The Grounds of Appeal are, in summary, as follows.

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<u>B. THE APPELLANT'S GROUNDS OF APPEAL</u>

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8. **Ground 1**: The SC wrongly assumed that the Appellant had not deducted annual allowances in the year in which the capital expenditure had been incurred and failed to determine the issue in dispute: whether the Appellant can choose the timing and computation of annual allowances for capital expenditure pursuant to s.24 ITA 1995 **[EB 283]**.

9. **Ground 2**: The SC misinterpreted s.24 ITA 1995 **[EB 283]** by placing undue weight on the words "an" and "that", and failed to consider that the provisions (in summary) allow the taxpayer to choose the years in which and the rates at which the annual allowances are deducted.

10. **Ground 3**: The SC was wrong to find that the Appellant had not discharged the burden of proving the conditions necessary to deduct the Disputed Allowances.

11. **Ground 4**: The SC's judgment was procedurally irregular and deprived the taxpayer of a fair hearing because it determined the appeal on the basis of its own reasoning, erroneous factual assumptions, and without giving proper consideration to the parties' submissions.

C. THE MRA's CASE

C.1 Correct interpretation of the legislation

12. Fundamentally this appeal turns on the correct interpretation of s.24 ITA 1995 **[EB 283]** and reg.7 ITR 1996 **[EB 289]**, and the MRA submits that the correct interpretation is as follows. Some responses to the Appellant's contentions are set out in this section of the Written Case, since it is most convenient to do so, and other contentions are addressed separately below.

(i) The years in which deductions are available

13. An annual allowance must be deducted in the year in which the capital expenditure is incurred, and then in each succeeding year. That follows from the wording of s.24 ITA 1995 **[EB 283]** which states that "*where, <u>in an income year,</u> a person has incurred capital expenditure…he shall be allowed a deduction <u>in that income year and in each of the succeeding years</u>*" (emphasis added).

14. The reference to incurring expenditure in "*an income year*", and deduction being allowed

"*in that income year*" and "*in each of the succeeding years*", shows that deduction must be claimed in the year expenditure is incurred and then in each succeeding year.

15. At **[AWC/73-75; EB 256]** the Appellant argues that the word *"succeeding*" in s.24(1) ITA 1995 **[EB 283]** simply means that annual allowances can be claimed in the years following the year in which the expenditure was incurred, and it is not necessary for the said years to be consecutive – that is plainly wrong and completely ignores the words "*in each of*" which precede "*the succeeding years*".

16. It may be noted that the SC focused on the words "*in <u>an</u> income year*" and "*in <u>that</u> income year and in each of the succeeding years at such rate as may be prescribed*" (emphasis of the SC), and proceeded to conclude that a taxpayer is not "*free to claim the allowance in a year of his choice*".[3] Thus it can be seen that the SC agreed that allowances must be deducted in the year expenditure is incurred, and in each succeeding year.[4]

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[3] The SC drew attention to the fact that the legislation does not state "*in <u>any</u> income year*" (original emphasis). Clearly, the SC was drawing a contrast between "*in that income year and in each of the succeeding years*" (which is in the legislation) and "*in any income year*" (which is not in the legislation). Contrary to **[AWC/35(b); EB 245]** the SC was not drawing a contrast between "*where, in an income year, a person has incurred capital expenditure*" and "*where, in any income year, a person has incurred capital expenditure*". Indeed, if the legislation had used the word "*any*" instead of "*an*", the same interpretation adopted by the SC would follow (i.e. annual allowances must be deducted in the first year and then in each succeeding year).

[4] Although the SC added emphasis to the words "*in <u>that</u> income year*" (i.e. the year in which expenditure is incurred), it is submitted that the SC also considered that allowances must be deducted in each subsequent year because (1) that follows from the words "*and in each of the succeeding years*" which was part of the statutory wording specifically quoted by the SC in its analysis, (2) it follows from the SC's rejection of the argument that a taxpayer is free to claim the allowance in a year of his choice, and (3) if the SC only considered it obligatory to deduct an allowance in the year expenditure is first incurred then it would have found for the taxpayer. It may be noted that the Appellant also reads the SC's decision in this way: **[AWC/74; EB 256]** states that the SC interpreted the legislation to require continuity or an absence of gaps in the years in which annual allowances are claimed.

(ii) The rate at which allowances may be deducted

17. The rate at which annual allowances are deducted must be the same in each year.[5] That flows from a natural reading of the relevant provisions. In particular, s.24 ITA 1995 **[EB 283]** permits "*a deduction…by way of an annual allowance in that income year and in each of the succeeding years <u>at such rate</u> as may be prescribed*" (emphasis added); on a natural reading of the foregoing it follows that the rate of deduction must be the same in each year. That is reinforced by the fact that reg.7 ITR 1996 **[EB 289]** provides that *"For the purposes of section 24…<u>the rate of annual allowance</u> shall…not exceed the rate*" (emphasis added) set out in the Fourth Schedule,[6] and the said Schedule refers to "*rate of annual allowance*"; the foregoing also suggests that the same rate will be used consistently.

18. Indeed, if the rate could fluctuate that would produce absurd results (e.g. person X not claiming a deduction in a particular subsequent year would not have complied with the legislation, whereas person Y deducting Rs. 1 in that year would have complied; further, as per below, in working out available deductions for later years it would need to be assumed that the legislation had been complied with in earlier years, but it would not be known what rate person X should be assumed to have used in the year in which it did not take a deduction).

19. It is noted that s.5(2)(a) Interpretation and General Clauses Act 1974 ("**IGCA 1974**") **[EB 293]** provides that "*Words in the singular shall include the plural*", but that does not alter matters. Although the use of the word "*rate*" in the singular is relevant, the MRA is not solely relying on that. Rather it is a matter of reading the provisions as a whole and giving them their natural meaning; had it been intended that different rates could be deducted in different years, the legislation would have been worded differently. In *Blue Metal Industries Ltd v Dilley* [1970] AC 827 ("***Blue Metal***") **[EB 412–421]** the Privy Council (the "**JCPC**") was considering whether the Interpretation Act in New South Wales meant that a reference to a single company could be read as plural companies, and

[5] It may be noted that this point is not expressly addressed in the SC's decision.

[6] It may be noted that an earlier version of reg. 7 ITR 1996 **[EB 289]**, quoted by the ARC in its decision, referred to the Second Schedule in error. This has subsequently been corrected and it is not in dispute that it is the Fourth Schedule which is relevant.

said (at p.848) **[EB 416]** "*Acquisition of shares by two or more companies is not merely the plural of acquisition by one*". By analogy, being able to deduct annual allowances at different rates is not simply a matter of reading "*rate*" in the plural, but would require more fundamental changes to the drafting.[7] At **[AWC/84; EB 258]** the Appellant attempts to distinguish *Blue Metal* on the basis that it is not a tax case – self-evidently that is irrelevant, and has no impact on the validity of the foregoing point which is made by reference to *Blue Metal*.

20. The Appellant argues that if the legislature had intended to fix the rate of allowances available under s.24(1), it would have expressly done so. At **[AWC/55; EB 251]** it contrasts s.24(1) **[EB 283]** and s.24(7) ITA 1995 **[EB 285]**. The Appellant argues that s.24(7) ITA 1995 **[EB 285]** expressly provides for a fixed rate of annual allowances over a fixed period of time, whereas s.24(1) ITA 1995 **[EB 283]** does not expressly do so. However, the Appellant has fundamentally misunderstood the nature of s.24(7) ITA 1995 **[EB 285]**. The purpose of s.24(7) ITA 1995 is to give taxpayers a choice between a higher percentage of annual allowances over a fewer number of years (15% for 4 years), or a lower percentage over a greater number of years (10% for 6 years). It is unsurprising that s.24(1) ITA 1995 **[EB 283]** does not specify the number of years for which allowances can be deducted since that will depend on the applicable rate, which will vary according to the asset in question.

(iii) Calculating allowances when they have not been deducted in a particular year

21. The consequence of failing to deduct an annual allowance in a particular year, or failing to do so at the previous rate, is that in subsequent years the available annual allowances must be calculated on the assumption that the legislation had been applied correctly (i.e.

[7] The Interpretation Act being considered by the JCPC in *Blue Metal* provided that the singular included the plural unless the contrary intention appeared. Section 5(2)(a) IGCA 1974 **[EB 293]** is not stated to be subject to such a qualification, but the SC has previously read in such a qualification. In *Joint Venture Besix Gamma Civic v New India Insurance Co Ltd* [2015] SCJ 242 **[EB 686–687]**, the SC held that the effect of s.5(2)(a) IGCA 1974 **[EB 293]** is that "*words in the singular shall include the plural, unless the context otherwise require.*" In any case, even if the provision is not subject to such a qualification, that does not impact on the point set out above.

assuming deductions had been taken each year at the same rate).[8] This assumption does not require any words to be read into the legislation. This is merely the natural way in which the legislation ought to be applied and follows from the requirements of the legislation identified above; if one does not apply the legislation in this way, then it would undermine the said requirements and allowances would be available for different amounts/periods than should be the case based on a proper application of the legislative requirements. The Appellant's purported concerns at **[AWC/63; EB 253]** about the adherence of the MRA's interpretation to the rule of law are unfounded.

22. The MRA's interpretation can be illustrated with two simplified examples:

    a. Assume a taxpayer incurred capital expenditure in Year 1 and in that year, and in Year 2, it took deductions at 25% of cost, but in Year 3 it took no deduction. In turn it can still take a deduction of 25% in Year 4, because had it deducted 25% in Year 3 there would still have been 25% left to deduct in Year 4, but it cannot deduct anything in Year 5 even though the end-result is that only 75% has been deducted (over Years 1, 2 and 4), because had it deducted 25% in Year 3 as it should have done, then there would have been nothing left to deduct in Year 5.

    b. Assume a taxpayer incurred 1,000 of capital expenditure, and in Years 1 and 2 it took deductions of 50%, but this time of base value.[9] The deduction would be 500 in Year 1, and 250 in Year 2 (i.e. 50% of the written-down value from Year 1 of 500). Assume no deduction was taken in Year 3 – had it been taken, it would have been for 125 (i.e. 50% of the written-down value from Year 2 of 250, resulting in a written-down value of 125). In turn a deduction can be taken in Year 4, but it would be for 62.5 (i.e. on the assumption that 125 had been deducted in Year 3 resulting in a written-down value of 125), and not for a greater amount (e.g. the amount that could have been, but was not, deducted in Year 3).

[8] It may be noted that the SC did not expressly address the precise consequences of failing to deduct an annual allowance in a particular year or failing to do so at the previous rate (save, of course, that it held that the MRA was correct to disallow the Disputed Allowances).

[9] As per s.2 ITA 1995 **[EB 281]**, this is the written-down value of the expenditure after annual allowance deductions are taken into account.

23. At **[AWC/64; EB 253]** the Appellant argues that the MRA's interpretation is inconsistent with the statutory definition of base value, on the basis that the latter involves deducting amounts "*allowed*" and the Appellant says "*An allowance which was never claimed was never allowed, and it cannot therefore reduce base value*". The argument is misconceived. As a starting point, for the reasons given above, it is necessary to apply the legislation in the way submitted by the MRA, so as to ensure that the legislative requirements in relation to deducting annual allowances are not undermined. The definition of base value can be read consistently with that approach, i.e. even if a taxpayer has not deducted an annual allowance it is linguistically possible to say that the amount was "*allowed by way of annual allowance*" in the sense of the amount being permitted to be deducted, and thus that interpretation should be adopted to ensure that the legislation operates correctly.

24. The Appellant relies on s.24(5) ITA 1995 **[EB 283]**, which imposes a charge to tax where a taxpayer disposes of an asset in relation to which it has claimed annual allowances, to argue that "*allowed*" cannot be read as "*allowable*". Although it is not necessary for the JCPC to determine the point, one can see that s.24(5) ITA 1995 **[EB 283]** might operate by reference to allowances which have in fact been deducted. However, even if that is so, it has no impact on the meaning of the word "*allowed*" – it may be noted that s.24(5) ITA 1995 **[EB 283]** does not simply refer to allowances that have been "*allowed*", but rather it also uses the terminology of allowances being "*granted*". As an aside, there is no reason why, if necessary, "*allowed*" cannot have different meanings in different contexts. The fundamental point is that, for the reasons above, one must assume that the legislation was complied with in earlier years when calculating the amount of deductions that are allowable under s.24(1) ITA 1995**[EB 283]**.

(iv) The MRA's interpretation is reinforced by s.59 ITA 1995

25. For capital expenditure incurred before 1 July 2006, if the deduction of annual allowances resulted in a loss, the said loss could only be carried forward for 5 years (s.59 ITA 1995) **[EB 287]**. If the Appellant were correct that a taxpayer could pick-and-choose the years in which to claim deductions, and that the rates can fluctuate, then that would allow the aforementioned 5-year restriction to be circumvented. This point is not mentioned in the SC's decision, but nonetheless it reinforces the fact that the MRA's interpretation is correct.

26. At **[AWC/85; EB 259]** the Appellant contends that "*an anti-avoidance result cannot be reached by construction*". Plainly that is a fanciful submission, as demonstrated by the fact that the Appellant relies on cases such as *IRC v Duke of Westminster* [1936] AC 1 **[EB 644–674]** and ignores almost a century's worth of jurisprudence that has developed since (e.g. *BMBF v Mawson* [2005] 1 AC 684) **[EB 353–367]**.

27. At **[AWC/86; EB 259]** the Appellant relies on s.59(3) ITA 1995 **[EB 287]** which relates to capital expenditure incurred on or after 1 July 2006 (although the expenditure in the present case was incurred before that date as noted at **[AWC/87; EB 259]**). Section 59(3) ITA 1995 **[EB 287]** permits losses resulting from the deduction of annual allowances, claimed in respect of capital expenditure incurred on or after 1 July 2006, to be carried forward indefinitely. The Appellant considers that the ability to carry forward losses indefinitely is consistent with its view that one can pick-and-choose the years in which to deduct annual allowances. That is wrong. There is nothing inconsistent about imposing a restriction on the period for which annual allowances may be claimed but, if those allowances happen to give rise to losses, not restricting how many years those losses can be carried forward. Indeed, the introduction of s.59(3) ITA 1995 **[EB 287]** actually supports the MRA's interpretation. If annual allowances could be claimed in any year as the Appellant contends, then there would have been no need to make it possible to carry forward losses without time restriction, because, instead, a taxpayer could simply wait and deduct annual allowances later.

(v) Other points

28. Based on the MRA's interpretation of the legislation, it can be seen that there will be a limit on the number of years for which allowances can be deducted based on the rate of deduction: for example, if the rate of deduction is 20%, then allowances will be available in the year expenditure is incurred and the next four years. By contrast, on the Appellant's interpretation, that is not the case and *prima* facie deductions may be allowed for very many years into the future. The Appellant argues at **[AWC/56; EB 251]** that s.24(3) ITA 1995 **[EB 283]** effectively imposes a temporal restriction on annual allowances because the effect of that provision is to disallow any annual allowances in a year in which the asset in question does not produce gross income. Although the MRA accepts that this is the consequence of the restriction imposed by s.24(3) ITA 1995, it remains the case that deductions could be claimed for very many years into the future. In any event, the fact

that s.24(3) ITA 1995 imposes a restriction is not inconsistent with the MRA's interpretation of the legislation, as set out above.

29. Finally, contrary to the Appellant's Written Case (e.g. at **[AWC/30, 45; EB 243/247]**), it is neither the MRA's case, nor was it the SC's decision, that a taxpayer is obliged to claim an annual allowance in any particular year. It is entirely optional whether a taxpayer wishes to claim an annual allowance.[10] If a taxpayer chooses to claim an annual allowance, it must of course adhere to the requirements in the legislation (as explained above). A taxpayer is perfectly entitled to opt not to deduct annual allowances in certain years, even if it has the option to do so; nonetheless, if it later seeks to deduct annual allowances in other years, then the availability and quantum of allowances will be calculated assuming that they had been deducted each year at a uniform rate.

C.2 Application to the facts

30. On the facts of this case, no annual allowances were deducted in relation to the 1995-2005 CapEx in YoA 2007 to 2011 (and, in addition, it follows that deductions were not claimed at the same rate as in the past).[11] Thus the legislative requirements were not met. In determining the allowable deductions for YoA 2012 it must be assumed that the Appellant correctly deducted annual allowances in YoA 2007 to 2011. It follows that (subject to what is said in the next paragraph) the MRA was correct to deny deduction of the Disputed Allowances.

31. It has become apparent to the MRA that, in line with the principles set out above, some of the Disputed Allowances should have been allowed. In its Notice of Acknowledgement the MRA respectfully suggested that the JCPC should give a decision on the correct legal principles to be applied, and that the parties could then seek to reach

[10] The Appellant cites various cases to demonstrate that claiming annual allowances is optional, but it is not necessary to comment on these because the MRA accepts that it is optional.

[11] The Appellant contends at **[AWC/81; EB 257]** that it did deduct annual allowances in YoA 2007 to 2011, but at a nil rate. That is incorrect. An alleged deduction at 0% is, in reality, no deduction at all. In any event, even if one incorrectly considers there to have been deductions at 0%, the legislative requirements were nonetheless not met because deductions were not taken at the same rate as in the past.

agreement on the correct figures and, if necessary, the case could be remitted to the Revenue Tribunal (which has replaced the ARC) to determine the quantum of the Disputed Allowances that should be allowed/disallowed.

32. The reason the MRA did not ask the JCPC to determine the precise amounts of the Disputed Allowances that are allowable on the MRA's interpretation of the legislation was because it ultimately depends on evidence which is not before the JCPC. Based on the documents that the MRA has seen in the context of considering later YoA, the MRA understands that Rs 40,983,397 of the Disputed Allowances are allowable. If, the Appellant agrees that these figures are correct (on the assumption that the MRA's interpretation is correct), then the MRA is content for the JCPC to record these figures in its decision (again on the assumption that it agrees with the MRA's interpretation). Alternatively, the course of action set out in the previous paragraph will need to be followed.

D. FURTHER RESPONSES TO THE APPELLANT'S CONTENTIONS

33. **First**, **[AWC/58-59; EB 252]** incorrectly asserts that it is common ground that s.24 ITA 1995 [**EB 283]** must be interpreted on a literal basis. Nothing may turn on this, given that a court must give effect to the plain and unambiguous language of legislation unless it would create absurdity (*Shahid v Scottish Ministers* (SC) [2016] AC 429 at [20-21]) **[EB 707–740]**. Nonetheless, the notion that tax law is an island of literal interpretation has long been cast away (*BMBF v Mawson* (HL) [2005] 1 AC 684 at [32-33]) **[EB 353–367]**.

34. **Second**, contrary to Ground 1, the SC did not rely on any assumption that the Appellant did not claim annual allowances in the years in which the 1995-2005 CapEx was first incurred. Indeed, the Appellant accepts at **[AWC/18; EB 239]** that the SC "*did not spell out the fact that MFD had not claimed annual allowance in the years the 1995-2005 CapEx was first incurred*". The Appellant asserts that an assumption to this effect is a necessary implication of the SC's decision, but this does not follow from the SC's decision.

35. In any event, the point goes nowhere. The MRA accepts that annual allowances were deducted in the years in which the 1995-2005 CapEx was first incurred, but the critical point is that for YoA 2007-2011 deductions were not taken (at all, let alone at the same rate as in the past as required). It is the latter failure which means that the Disputed

Allowance were not (subject to [31] above) allowable. Further, contrary to Ground 1, the SC did address (correctly) whether the Appellant could choose the timing of deductions (although it is recognised that the SC's decision does not expressly address whether the same rate must be used each year).

36. **Third**, Grounds 2 and 3 are inconsistent with the proper interpretation of the legislation, which is as set out above. The SC was correct to find that the Disputed Allowances were not allowable. It is recognised that (as per [31] above) it may be that some of the Disputed Allowances were deductible, but the SC cannot be criticised for not finding that in circumstances where the Appellant was advancing a flawed interpretation of the legislation.

37. **Fourth**, at **[AWC/69-71; EB 254–255]** the Appellant provides two examples which allegedly demonstrate that the MRA's interpretation of s.24 ITA 1995 **[EB 283]** is erroneous. That is wrong.

38. Example 1 states that, if no deduction was claimed in the first year, but they are claimed later, it is not possible to know at what rate annual allowances are to be assumed to have been deducted in the first year. However, as can be seen from the analysis above, deductions in later years will be calculated on the assumption that deductions were taken in earlier years at the maximum rate. Contrary to **[AWC/70; EB 255]** the foregoing does not require there to have been additional express wording in the legislation – on the contrary, it follows from the proper interpretation of the legislation as drafted.

39. Example 2 presents a hypothetical scenario concerning an unspecified future tax holiday. The example goes nowhere. The alleged concern is that if there is a restriction on the number of years for which deductions can be claimed, but during some of those years a taxpayer benefits from a tax holiday, then to some extent the ability to benefit from the annual allowances will be lost. However, it is difficult to see how the hypothetical inability to benefit from annual allowances would be a concern, if instead the taxpayer is enjoying a tax holiday and not paying any tax at all.

40. **Fifth**, **[AWC/88–90; EB 260]** states that the SC's decision is capable of two alternative readings when it stated that the Appellant had failed to discharge the burden of demonstrating that the annual allowances were deductible. The MRA agrees with the Appellant's first reading, i.e. that the SC simply meant that deduction of the Disputed

Allowances was inconsistent with the SC's interpretation of the legislation, as opposed to the SC meaning that there was some further unspecified requirement, the burden of which had not been discharged. Thus the point about the burden of proof does not go anywhere. If the Appellant's interpretation of the legislation is correct it will succeed, and *vice versa*.

41. On a related note at **[AWC/91; EB 260]** it is said that the fact that the Appellant bears the burden of proof demonstrates that deducting annual allowances is optional. The point goes nowhere since the MRA accepts that it is optional (although, as an aside, a taxpayer can bear the burden of proof in relation to mandatory matters, e.g. even if it is mandatory to pay tax on certain amounts of income nonetheless a taxpayer can bear the burden of proving that the quantum of income was that which it alleges).

42. **Sixth**, turning to Ground 4, the Appellant states at **[AWC/23; EB 240]** that it is not pursuing this Ground "*as a free-standing* ground" but cryptically adds that "*its essence is woven in the discussion*" relating to the other Grounds and especially Ground 1. It is not entirely clear what is meant by this, but the MRA understands that the Appellant is no longer advancing Ground 4, and it is noted that the Appellant's Written Case does not contain any analysis of Ground 4. In any event, for completeness, it may be noted that Ground 4 is wrong because the SC's decision was not procedurally irregular and did not deprive the Appellant of a fair hearing: (1) the SC was perfectly entitled (to the extent it did so) to rely upon its own reasoning (see by analogy *HMRC v Bluecrest Capital Management (UK) LLP* [2025] 1 WLR 1925) **[EB 606–643]** (indeed the Appellant accepts this at **[AWC/36; EB 245]**); (2) presumably the alleged erroneous factual assumptions are those referred to in Ground 1 (as to which see above); and (3) the fact that the SC did not agree with the Appellant does not mean it did not properly consider its submissions (and, of course, even if the judgment did not refer to every submission made, this was not necessary). In any case, even if the allegations in Ground 4 were correct, that should have no impact; the fundamental point is that the SC reached the correct decision (subject to [31], in which respect the SC cannot be criticised for the reason mentioned in the previous paragraph).

43. **Seventh**, at **[AWC/93-95; EB 261]** the Appellant advances an alternative case. The MRA's position is (incorrectly) described as being "*that a deduction was mandatorily required in each relevant year and deemed to have been made notwithstanding the*

IN THE PRIVY COUNCIL **JCPC/2025/0113**

ON APPEAL FROM THE

SUPREME COURT OF MAURITIUS

IN THE MATTER OF:

MAURITIUS FREEPORT DEVELOPMENT CO. LTD.

<u>Appellant</u>

v/s

1. THE DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY

2. THE ASSESSMENT REVIEW COMMITTEE

<u>Respondents</u>

THE FIRST RESPONDENT's WRITTEN CASE

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*The second Respondent (namely, the Assessment Review Committee ("**ARC**"), which has been placed by the Revenue Tribunal) is taking no part in these proceedings.*

*References to the Appellant's Written Case are in the format **[AWC/paragraph(s)].** References to page numbers **[EB{X}]** are to page numbers in the Electronic Bundle.*

A. INTRODUCTION

1. Section 24 Income Tax Act 1995 ("**ITA 1995**") **[EB 283]** provides that, where a person has incurred certain types of capital expenditure, a deduction is allowed by way of an annual allowance. Regulation 7 of the Income Tax Regulations 1996 ("**ITR 1996**") **[EB 289**] deals with the rates of annual allowances. This appeal concerns the interpretation of the foregoing provisions.

2. The essential facts are not in dispute. The Appellant incurred capital expenditure in the years ended 31 December 1995 to 31 December 2005 (the "**1995-2005 CapEx**"). The Appellant deducted annual allowances under s.24 ITA 1995[1] **[EB 283]** in the year in which expenditure was first incurred and in each subsequent year up to and including Year of Assessment ("**YoA**")[2] 2006, but did not do so in YoA 2007 to 2011 (inclusive).

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[1] The expenditure in dispute was incurred on items falling within s.24(1)(a)-(b) ITA 1995 **[EB 283/284]**.

[2] A YoA corresponds to the previous calendar year, e.g. income in 2005 is assessed in 2006.

absence of claims", and it is said that in consequence the Appellant's tax position in earlier years must be re-calculated on the assumption that deductions were in fact claimed. Startlingly, and self-evidently incorrectly, it is said that this "*is also the course the [MRA] proposes*". It is clear that the Appellant has completely misunderstood the MRA's position.

44. It is not the MRA's case that claiming deductions is mandatory – on the contrary, it is optional. Further, the legislation does <u>not</u> require a taxpayer to be treated as having actually claimed annual allowances in years in which it did not do so. Although annual allowances are calculated on the assumption that they have previously been deducted each year at a uniform rate, it is not the case that a taxpayer is retrospectively treated as having actually deducted annual allowances in past years, i.e. it is not the case that the taxpayer's net income/loss and tax liability for past years is re-calculated.

45. Similarly, the MRA's acceptance that some of the Disputed Allowances are allowable (see [31] above) does not involve a retrospective recalculation of the tax position in any earlier YoA. It is simply a recognition that some of the Disputed Allowances were properly deductible in YoA 2012 on the basis of the correct interpretation.

E. CONCLUSION

46. For the reasons above the JCPC is respectfully requested to confirm that the MRA's interpretation of the legislation is correct.

47. If the Appellant agrees with the figures which follow from the MRA's interpretation, then the JCPC may wish to record those figures in its decision. Alternatively, the parties can seek to agree quantum, and in the absence of agreement the matter can be remitted to the Revenue Tribunal.

YVAN JEAN-LOUIS SC
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