**IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL** **JCPC/2025/0113**
**ON APPEAL FROM THE SUPREME COURT OF MAURITIUS**

**MAURITIUS FREEPORT DEVELOPMENT CO. LTD**

**Appellant**

**-v-**

**1. THE DIRECTOR-GENERAL MAURITIUS REVENUE AUTHORITY**
**2. THE ASSESSMENT REVIEW COMMITTEE**[1]

**Respondents**

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**STATEMENT OF FACTS AND ISSUES**
**WITH A CHRONOLOGY ANNEXED**

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## Introduction

1. This is an appeal from the decision of the Supreme Court of Mauritius (the "**Supreme Court**") delivered on 14 April 2025 and reported as "2025 SCJ 153".

## The Facts

2. The Appellant is a third-party Freeport developer. Its principal activities are to provide logistics, warehousing and distribution facilities in the Mauritius Freeport zone. It also provides industrial and office space for rental and "handling of fish" activities.

3. The Appellant incurred capital expenditure in the years ended 31 December 1995 to 31 December 2005 (the "**1995-2005 CapEx**"). In its tax returns, the Appellant claimed and deducted annual allowances under section 24 of the Income Tax Act 1995 ("**ITA 1995**") in the year in which expenditure was first incurred and in each subsequent year up to

[1] As of 5 January 2026 the Second Respondent (the "**ARC**") has been replaced by the Revenue Tribunal. The ARC is not taking any part in these proceedings.

and including Year of Assessment ("**YoA**")[2] 2006, but did not do so in YoA 2007 to 2011 (inclusive).

4. Subsequently, in its tax returns the Appellant claimed and deducted annual allowances in YoA 2012 in respect of the 1995-2005 CapEx. The Appellant also claimed and deducted annual allowances in YoA 2012 in respect of capital expenditure other than 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 MUR 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 MUR 34,431,195.

5. On 30 June 2015 the First Respondent (the "**MRA**") issued an assessment (the "**First Assessment**") disallowing annual allowances amounting to MUR 84,698,483 which the Appellant had deducted in respect of the 1995-2005 CapEx in YoA 2012 (the "**Disputed Allowances**"). Accordingly, the Appellant's loss for YoA 2012 was adjusted from MUR 158,630,630 to MUR 73,932,147.

6. On 23 June 2016 the MRA issued an assessment (the "**Second Assessment**") in relation to YoA 2013 reducing the loss brought forward by the amount disallowed in YoA 2012, such that instead of a loss in YoA 2013 there was a profit of MUR 50,267,288 which was assessed to tax.

7. The Appellant objected to both assessments. The MRA maintained the assessments in notices of determination dated 17 November 2015 and 24 October 2016 respectively. The Appellant filed representations with the ARC on 10 December 2015 (in connection with the First Assessment), and on 17 November 2016 (in connection with the Second Assessment). The proceedings before the ARC lasted for 5 days over a period from 15 October 2018 until 12 September 2022. At the hearing before the ARC, the MRA argued that the notices of determination should be maintained for reasons other than those set out in the notices of determination. It argued that the annual allowances should be computed in the year the capital expenditure was incurred and in each succeeding year

[2] A YoA is the year in which tax is assessed and it is based on the previous calendar year, for example, income that is earned in 2005 is assessed YoA 2006.

consecutively and without interruption, in accordance with the accounting principles enshrined in section 24(1)(f).

8. The ARC held that the Disputed Allowances were properly deductible.

9. The MRA appealed to the Supreme Court by way of case stated. The Supreme Court allowed the appeal and held that the MRA was correct to disallow the Disputed Allowances, for reasons other than those argued by the MRA before it[3].

10. The proceedings before the Supreme Court lasted for 1 day.

**The Issues**

11. In order to provide context to the issues, some relevant legislation is set out first.

12. Section 24 of the ITA 1995 provided as follows:

> "(1) Subject to the other provisions of this section, where, in an income year, a person has incurred capital expenditure on –
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> (a) the acquisition, construction or extension of any –
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> (i) industrial premises;
>
> (ii) clinics;
>
> (iii) shops and shopping malls;
>
> (iv) offices and showrooms;
>
> (iv) restaurants; or
>
> (v) entertainment premises;
>
> (b) the acquisition of plant or machinery;
>
> …
>
> 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.
>
> …

[3] The MRA objects to the wording underlined in red.

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

…"

13. The Disputed Allowances relate to expenditure incurred on items falling within section 24(1)(a)-(b) of the ITA 1995.

14. Regulation 7 of the Income Tax Regulations 1996 ("**ITR 1996**") provided as follows:

"For the purposes of section 24 of the Act –

…

(b) the rate of annual allowance shall, in respect of each of the items specified in Column 1 of the Second Schedule[4] to these Regulations, not exceed the rate corresponding to that item specified in Column 2 of that Schedule.

…"

15. The prescribed rates provided for in the Fourth Schedule to the ITR 1996 are:

Industrial premises excluding hotels – 5% of cost
Motor vehicles – 25% of base value
Computer hardware – 50% of base value
Furniture and Fittings – 20% on base value
Other plant or machinery costing more than MUR 60,000 – 35% of base value

16. The term "base value" is defined in section 2 of the ITA 1995 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"

[4] At the relevant time regulation 7 referred to the Second Schedule. The said Schedule was renumbered as the Fourth Schedule, and regulation 7 now refers to the Fourth Schedule.

17. The relevant provisions of Section 59 of the ITA 1995 provide as follows:

"(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)."

18. The issue for the Judicial Committee of the Privy Council is whether section 24 of the ITA 1995 and regulation 7 of the ITR 1996 (together with the relevant Schedule thereto) permitted the Appellant to claim and deduct the Disputed Allowances in the circumstances set out above. This issue turns on whether annual allowances must be deducted in the year capital expenditure is incurred and in each subsequent year thereafter[5] and at the same rate in each year.

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[5] The parties have not been able to agree on the inclusion of the words "without interruption", nor on whether the MRA's interpretation of section 24 has the effect that annual allowances are forfeited in any year in which they are not claimed. It is the Appellant's understanding that, on the MRA's interpretation, section 24 requires a taxpayer to deduct and claim the annual allowance in the year the capital expenditure is incurred, and in each subsequent year without interruption and at the same rate, failing which the allowance is forfeited. The Appellant submits that this is both the natural reading of the Supreme Court's judgment and the necessary effect of the MRA's interpretation of section 24. The MRA considers that saying that allowances must be deducted without interruption, or else be forfeit, incorrectly suggests that there is an obligation to deduct allowances, but that is not the MRA's position – deductions are optional.

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2 September 2026

| Counsel for the Appellant | Counsel for the MRA |
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| Patrice Doger de Spéville SC<br>Angelique Desvaux de Marigny SC<br>Johanne Hague | Yvan Jean-Louis SC<br>Imran Afzal KC<br>David Tipping |

**ANNEX: CHRONOLOGY**

| DATE | EVENT |
|---|---|
| 18 July 2013 | The MRA requested information and documents concerning annual allowances deducted in YoA 2012. |
| 30 June 2015 | The MRA issued the First Assessment for YoA 2012, disallowing annual allowances of MUR 84,698,483 (i.e. the Disputed Allowances). |
| 24 July 2015 | The Appellant objected to the First Assessment. |
| 17 November 2015 | The MRA issued a Notice of Determination in relation to the First Assessment. |
| 10 December 2015 | The Appellant filed Grounds of Representation with the ARC in connection with the First Assessment. |
| 23 June 2016 | The MRA issued the Second Assessment for YoA 2013, reducing the loss brought forward from YoA 2012 such that there was chargeable income of MUR 50,267,288 which was assessed to tax. |
| 19 July 2016 | The Appellant objected to the Second Assessment. |
| 24 October 2016 | The MRA issued a Notice of Determination in relation to the Second Assessment. |
| 17 November 2016 | The Appellant filed Grounds of Representation with the ARC in connection with the Second Assessment. |
| 9 March 2023 | The ARC delivered its Finding. |
| 12 April 2023 | The ARC stated a case. |
| 17 April 2023 | The MRA appealed by way of case stated to the Supreme Court against the Finding of the ARC. |
| 22 January 2024 | First sitting of the Supreme Court – the matter was remitted to the ARC for a better case to be stated. |
| 29 February 2024 | A Better and Amended case was stated by the ARC. |
| 4 November 2024 | Second sitting of the Supreme Court – the hearing. |

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| 14 April 2025 | The Supreme Court delivered its judgment allowing the MRA's appeal and quashing the ARC's decision. |
| 12 June 2025 | The Supreme Court granted conditional leave to appeal to the Judicial Committee of the Privy Council. |
| 22 September 2025 | The Supreme Court granted final leave to appeal to the Judicial Committee of the Privy Council. |