Michaelmas Term
[2025] UKPC 57
Privy Council Appeal No 0063 of 2024

JUDGMENT

Director General, Mauritius Revenue Authority (Appellant) *v* Claude Didier de Senneville and 7 others (Respondents) (Mauritius)

From the Supreme Court of Mauritius

before

Lord Briggs
Lord Leggatt
Lord Burrows
Lady Rose
Lady Simler

JUDGMENT GIVEN ON
1 December 2025

Heard on 16 October 2025

Appellant
Philip Baker KC
Dilpreet K. Dhanoa
Kritananda N. Reddy (of the Mauritius bar)
(Instructed by RWK Goodman LLP (London))

Respondents
Desire Basset SC (of the Mauritius bar)
Johanne Hague (of the Mauritius bar)
Medina Torabally (of the Mauritius bar)
(Instructed by Etude Guy Rivalland (Mauritius))

LADY SIMLER:

1. Introduction

1. This is an appeal about the liability to pay tax on the sale of land in Mauritius. The respondents are associates of the Société du Vieux Moulin (referred to below as "the Société"). The Société was formed in 1988 and owned two large contiguous plots of undeveloped land in Grand Baie. The original cost of this land was shown in the accounts of the Société to be (Mauritian rupee) MUR 1,607,000. A morcellement permit was obtained in 2003 (allowing the land to be sub-divided into smaller parcels for sale as separate building plots). The permit allowed for the land to be parcelled into 93 (or possibly 91) residential lots. The first lot was sold on 30 December 2003.

2. Although Mauritius does not charge capital gains tax on the disposal of land and immovable property, value accretions are taxed as income if they fall within section 10 of the Income Tax Act 1995 ("the ITA 1995"). The legislation distinguishes business profits, which are taxable, from personal gains on the realisation of capital assets. As laid down in section 10(3)(c) of the ITA 1995, business profits include profits from the sale of property acquired in the course of a business, the main purpose of which is the acquisition and sale of immovable property.

3. The Mauritius Revenue Authority ("the Revenue") viewed the profits from the sale of the land in Grand Baie as business profits and assessed the respondents (as associates of the Société) to income tax for the years of assessment 2004/05 to 2006/07 (inclusive) on the basis that the land had been acquired in the course of a business, the main purpose of which was the acquisition and sale of land pursuant to section 10(3)(c) of the ITA 1995. In computing the taxable income from the sale of that land, the Revenue treated the original cost of the land when it was acquired in 1988 as the principal relevant base cost to be deducted from the sales receipts in order to produce a net income figure. The respondents disputed the assessments. They contended that the land was bought for their own personal use for the purpose of building a house for each of them, and not for business use. They said that unfortunately, however, they did not have sufficient funds to build their houses immediately, so the land remained undeveloped until 2001, at which point they received advice to parcel it into individual plots to maximise its value. They sought an adjudication from the Assessment Review Committee ("the ARC") on this basis, the burden being on them to displace the Revenue's assessments.

2. The decisions below

4. The ARC found that the explanation given by the respondents lacked credibility and that the respondents could not "seriously contend that they had bought the land for their personal use". Rather, the ARC had "no hesitation in holding that the facts of this

case show that [the respondents] from the very beginning bought the land through the Société Du Vieux Moulin with the intention of having a morcellement done after a few years in view to make a considerable profit." The ARC therefore held that the respondents were involved in a business the purpose of which was the acquisition and sale of property.

5. The respondents' position then was that in calculating the profit from the sale, the proper course was to take the market value of the land before development in March 1999 (MUR 41,793,000) as the base cost rather than the cost of acquiring the land (MUR 1,607,000).

6. The ARC considered the approach to be applied was that set out by the Privy Council in *De Maroussem v Commissioner of Income Tax* [2004] UKPC 43; [2004] 1 WLR 2865 ("*De Maroussem*"). In that case, land was originally acquired in 1947 as agricultural land and was principally used for rearing cattle and deer. The land had development potential, but it was not until 1988 that the prospect of a morcellement scheme arose. The taxpayer then participated in that scheme with a developer and the owner of the land and the land was sub-divided into plots and sold over a period of time. On that basis the Board concluded that the taxpayer was liable to tax on the profit from his participation in an undertaking or scheme devised for the purpose of making a profit (the equivalent of what is now section 10(3)(a) of the ITA 1995, then section 11(1)(h) of the Income Tax Act 1974) and not section 10(3)(c) because the land was not acquired in the course of a land dealing business. Lord Scott of Foscote, giving the judgment of the Board, held that, where land is acquired in this way and only later subjected to a profitmaking development scheme, the scheme uplift alone is taxed as income in order to avoid converting historical capital accretion into income:

> "34. ... Their Lordships have no difficulty, on the facts of this case, in agreeing with the Supreme Court that the taxpayer was party to an 'undertaking or scheme entered into or devised for the purpose of making a profit'. But the only profit the landowners, Medine and the taxpayer, stood to make was their respective share of the value added to the land by the work to be done by the Societe in implementing the morcellement scheme. In their Lordships' opinion, paragraph (h) should be construed so as to equate the 'sum or benefit' which is subjected to tax with the profit or gain derived by the taxpayer from the undertaking or scheme in question."

7. The approach in *De Maroussem* presupposes that a capital asset is to be included in a scheme. In such a case, the base cost to be deducted from the profits is the market value immediately prior to the implementation of the scheme, rather than the original acquisition cost of the asset (here, land). As the Revenue points out, the approach in *De Maroussem* does not address the situation where, from inception, land is acquired in the

course of a business of buying and selling immovable property (for example, as trading stock) and later sold.

8. Despite its finding that the respondents had "from the very beginning" the intention of having a morcellement done after a few years and that they were involved in a business the purpose of which was the acquisition and sale of immovable property, the ARC saw no reason to distinguish *De Maroussem*. The ARC said that what mattered was that, between the moment the land was purchased and the moment just before the development of the land, its value had changed and gained in value. Accordingly, the ARC took the relevant base cost as the value of the land just before its development in order to compute the profit for each respondent from the sales of the plots of land. The ARC accepted the respondents' evidence as to the market value of the land in March 1999, just before its development, when the Société was issued with an environmental impact assessment licence (a significantly higher figure than the historical cost figure).

9. Appeals from the ARC are by way of case stated and are limited to points of law. As set out in section 21 of the Mauritius Revenue Authority Act 2004: "Any party who is dissatisfied with the decision of the committee under section 20(7), as being erroneous in law, may lodge in the Registry of the Supreme Court an appeal against that decision." The Revenue appealed arguing that the ARC had erred in law on the computation issue and that it was wrong to apply the principle established in *De Maroussem* to the facts of this case which are distinguishable.

10. A case was stated for the opinion of the Supreme Court. The appeal was heard by Chan Kan Cheong J and Benjamin Marie Joseph J and proceeded on the basis of an acceptance by the respondents of the findings of fact made by the ARC. Indeed, when challenged in the Supreme Court about what appeared to be an attempt by the respondents' counsel to go behind the findings of fact made by the ARC, counsel made clear that he accepted the ARC's findings and did not seek to maintain the argument that had been rejected by the ARC. It was also common ground on the appeal that the profits from the sale of the 93 residential plots should be brought into account as gross income of the respondents as associates of the Société under section 10(3). In other words, it was accepted by the respondents that the profits were business profits.

11. By a judgment dated 15 March 2023, the Supreme Court upheld the ARC's decision, albeit on different grounds. As the land was not sold as bare land (but only after it had been parcelled into residential lots) the Supreme Court held that section 10(3)(c) of the ITA 1995 was inapplicable. Instead, the Supreme Court held that there was a change in the purpose and nature of the land once it was parcelled into lots and, in any case, "the circumstances show[ed] that the respondents were in fact engaged in an '*undertaking or (a) scheme entered into or devised for the purpose of making a profit*'" (original emphasis) (within the terms of section 10(3)(a) of the ITA 1995). Having reached that conclusion the Supreme Court applied the principle in *De Maroussem*, recognising that

the bare land enjoyed development potential and had a market value before the implementation of the morcellement scheme; and that the development of the land following the implementation of the scheme added value to the land. It held that the tax due was to be calculated by deducting from the total morcellement receipts the market value of the land prior to the implementation of the scheme (as at March 1999) (and not the original cost of the land).

3. The relevant provisions of the ITA 1995

12. Income tax is imposed in Mauritius under section 4 of the ITA 1995 on the "chargeable income" of an individual.

13. Pursuant to section 47(1) of the ITA 1995, a resident société has no liability to income tax. Instead, and subject to other provisions of the ITA, every associate of a resident société is liable to income tax on his or her share of income from that société: section 47(2). In other words, a société is like a partnership for tax purposes and is treated as transparent for income tax purposes in Mauritius.

14. The net income of an associate from a resident société is deemed to be the share to which he or she would have been entitled in the income of the société during an income year if the income had been wholly distributed among the associates: section 47(3). To calculate the individual's net income, the associate is deemed to have received that part of the gross income of the société, and to have incurred that part of the allowable deductions of the société, in proportion to his or her respective share in the income of the société. The gross income of a société is calculated in accordance with section 51 of the ITA which in turn provides that the gross income shall include the income referred to in section 10(1) (b), (c), (d) and (f) of the ITA 1995.

15. Section 10 of the ITA 1995 deals with what income is treated as included in "gross income". Relevantly here, it provides that, subject to the other provisions of the ITA 1995, the gross income of an individual shall include "any gross income derived from any business": section 10(1)(b).

16. Section 10(3) is central to this case. It provides so far as material:

> "(3) For the purposes of subsection (1)(b), gross income derived from a business shall include—

> (a) any sum or benefit, in money or money's worth, derived from the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit, irrespective of the time at which the undertaking or scheme was entered into or devised; …
>
> (c) any sum or benefit, in money or money's worth, derived from the sale of any immovable property or interest in immovable property, where the property was acquired in the course of a business the main purpose of which is the acquisition and sale of immovable property;
>
> (d) any increase in the value of trading stock on hand at the time of transfer by sale or otherwise of a business or on the reconstruction of a company; …"

17. Section 2 of the ITA 1995 is an interpretation provision. It defines the term "business" as including "any trade, profession, vocation or occupation, manufacture or undertaking, or any other income earning activity, carried on with a view to profit". It also defines "chargeable income" as meaning, "(b) … (i) in the case of an individual, the amount remaining after deducting from the net income the income exemption threshold to which that individual is entitled; and (ii) in any other case, the net income." "Net income" is then defined as "the aggregate amount remaining after deducting from the gross income all allowable deductions".

4. The appeal to the Judicial Committee of the Privy Council

18. The Revenue now appeals to the Board. The single issue raised by the appeal is whether, in computing the respondents' net taxable income under section 10 of the ITA 1995, it is appropriate to take as a base cost the historical cost of the land sold (MUR 1,607,000) (as the Revenue contends) or the value of the land just before its development (taken as MUR 41,793,000) (as the respondents contend and as held by both the ARC and the Supreme Court on appeal). The issue in turn depends on the proper interpretation of section 10 and whether the approach to the computation of taxable profits adopted in *De Maroussem* should be applied.

19. The Revenue essentially contends that the ARC's conclusion that the respondents were from the outset involved in a business the purpose of which was the acquisition and sale of property was a clear finding of fact leading to the conclusion that section 10(3)(c) of the ITA 1995 was applicable. It was an error of law for the Supreme Court to substitute

its own view of the facts and to conclude that only section 10(3)(a) applied because the land was sold after parcelling and not as "bare land". That was a misdirection because subsection (c) contains no "bare land" qualifier. It simply looks to whether the property was "acquired in the course of a business, the main purpose of which is the acquisition and sale of immovable property" (section 10(3)(c)) and that is what the ARC found. It follows that the *De Maroussem* approach to the computation of the net income from the sale of the land (namely, taxing only the profit from "just before development" to the time of sale) was incorrectly applied.

20. The Revenue's written case proceeded on what was thought to be the common understanding between the parties that the fact that the land was acquired in the course of a business was not only an express finding of fact by the ARC but was also an uncontested fact before the Supreme Court.

5. The respondents' written case

21. In their written case (dated 4 September 2025), the respondents stated that, in resisting this appeal, they would seek, for the first time, to challenge certain findings of fact made by the ARC. In particular, they indicated a challenge to the finding that the land at Grand Baie was acquired by the Société in the course of a business, the main purpose of which was the buying and selling of land and was therefore trading stock. The respondents submitted that if the ARC had not misdirected itself in law, it would have concluded that the Société did not purchase the land in 1988 in the course of such a business, and it would have followed instead that the only correct conclusion on the facts was that the Société derived a benefit from the carrying out of a morcellement scheme within the meaning of section 10(3)(a) of the ITA 1995. Furthermore, on that basis, the benefit derived from the carrying out of the scheme was correctly computed in line with the approach taken in *De Maroussem*.

22. The respondents' written case makes two important concessions.

23. First, the respondents accept that the mere fact that bare land had to be developed or transformed to implement a morcellement does not automatically mean that section 10(3)(c) of the ITA 1995 is inapplicable. In other words, they agree with the Revenue that subsection (c) does not contain any bare land qualifier. It follows that the reason given by the Supreme Court for interfering with the ARC's conclusion that section 10(3)(c) applied involved a misdirection of law.

24. Secondly, the respondents concede that the *De Maroussem* approach cannot be applied in a section 10(3)(c) case (concerning benefits derived from the sale of land or property "acquired in the course of a business, the main purpose of which is the

acquisition and sale of immovable property") where, in effect, the land in question constitutes trading stock at the time of its acquisition.

25. The Board has no doubt that these concessions were rightly made. It follows from them that, unless the respondents can persuade the Board that section 10(3)(a) applies to this case, the Revenue's appeal must be allowed.

26. The respondents maintain that the Supreme Court was correct to disagree with the ARC's finding that section 10(3)(c) was applicable (albeit its reasons were erroneous). This is because, as the respondents contend, no reasonable tribunal, properly instructed as to the law, could have reached the factual findings and conclusions it did based on the evidence on record. They rely on the principle established in *Edwards v Bairstow* [1956] AC 14, 36 that where "the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal … the court must intervene. It has no option but to assume that there has been some misconception of the law and that, this has been responsible for the determination. So there, too, there has been error in point of law. … the true and only reasonable conclusion contradicts the determination." It is common ground that this principle applies in Mauritius as was explained in *Mauritius Breweries Ltd v Commissioner of Income Tax* [1997] MR 1; and see also *Kerzner International Mauritius Holdings Ltd v Assessment Review Committee* [2021] UKPC 18, para 18.

27. The respondents' written case argued that the erroneous findings have had a material bearing on the outcome of the case and asserted that the respondents could not have cross-appealed the ARC's decision or the Supreme Court judgment since in both cases they were the successful party. The written case explained that the respondents had always accepted (either before the ARC or the Supreme Court) that the Société derived gross income from a business within the meaning of section 10(3) of the ITA 1995 and the sole point of contention in the appeal is whether or not the gross income from a business is derived from the carrying out of a "scheme" within the meaning of section 10(3)(a) or whether section 10(3)(c) in fact applies.

28. The Revenue objected to the new case being advanced for the first time by the respondents on this appeal to the Board on the ground that they do not have a right of appeal on questions of fact from decisions of the ARC and that there was no *Edwards v Bairstow* challenge in the Supreme Court to the ARC's factual findings.

6. Should the respondents be permitted to advance a new case on appeal to the Board?

29. Accordingly, the first question for the Board is whether to permit this new case to be advanced for the first time before the Board. While it is true that the respondents could

not have cross-appealed the ARC's decision, there is no doubt (and the respondents accepted) that the arguments now raised could and should have been raised in argument before the Supreme Court as an alternative basis for upholding the ARC's decision. The argument based on *Edwards v Bairstow* raises points of substance on which the Board would have wanted to have the views of the local court. It is only in exceptional circumstances that the Board will depart from its settled practice of refusing to allow new arguments to be raised before it: see for example, *St Nicholas Grammar School Ltd v Arnulphy* [2022] UKPC 23 at para 3. No sufficiently exceptional basis for departing from that practice was put forward in this case. As the Board made clear at the hearing, permission to advance this new argument is refused. The Board would add that, even had it been available to be advanced, the argument would have faced formidable difficulties. There was on the face of it ample evidence to support the impugned findings, and the Board has doubts that an *Edwards v Bairstow* challenge is even arguable here.

7. Is there any other permissible basis on which to resist the Revenue's appeal?

30. In the light of that decision and having regard to the concessions made by the respondents (as explained at paras 22-24 above) the sole question that now remains is as follows. Is there any other permissible argument available to the respondents in resisting this appeal, that would establish that section 10(3)(c) is inapplicable, that the case falls properly within section 10(3)(a), and that the *De Maroussem* approach therefore applies to the computation of the chargeable income in each of their cases?

31. Counsel for the respondents, Ms Johanne Hague, sought, in these circumstances, to build on an alternative legal argument their counsel had tried to develop in the Supreme Court. The argument is that, even if the respondents had an intention to do a morcellement in 1988, that does not automatically mean that the land was acquired "in the course of" a business of buying and selling land. Although Ms Hague was at pains to emphasise her acceptance of the case-law establishing that an isolated transaction can constitute a business, in her submission the land did not constitute trading stock on acquisition even if there was an intention to do a morcellement from the outset, because the lengthy period over which the land was held is inconsistent with trading. Put another way, Ms Hague submitted that the fact that the land was left idle for at least 11 years is inconsistent with it being trading stock and does not reflect the economic reality of a business of buying and selling land. The respondents simply did not buy the land in the course of a business of buying and selling land; their only business was the intended scheme involving the development of the morcellement.

32. The Board does not accept these submissions. First, the Board is not persuaded that the argument is open to the respondents in the first place. Having heard the point developed by Ms Hague, the Board is unable to find any reference to it in the submissions (whether written or oral) made by counsel to the Supreme Court. Nor, as Ms Hague was constrained to accept, was it made even in the respondents' written case for this appeal.

It is a new point and, as before, the respondents have advanced no exceptional circumstances that would justify a departure from the Board's settled practice of refusing to allow new arguments to be raised before it.

33. Secondly, and in any event, given the ARC's findings, the argument that this was not a land acquisition in the course of a land dealing business has no merit. The starting point is to consider the words of the legislation, rather than a gloss on those words. Section 10(3) identifies what is included in "gross income derived from a business". The whole point of section 10(3)(c) is to bring within the charge to income tax profit or gains that might otherwise have been regarded as capital, because they are derived from the sale of land acquired in the course of a business, the main purpose of which is the acquisition and sale of immovable property, in other words a land dealing business. The test set by the legislation for bringing these particular profits into the charge to income tax is not that the property is "trading stock". Section 10(3)(c) does not refer to trading stock. There is provision made for taxing trading stock in section 10(3)(d) but it has no application here.

34. On the express wording of subsection (c), it bites where the land was acquired "in the course of" a land acquisition and sale business. The Board can see no reason why the requirement that the land was acquired "in the course of a business" cannot be satisfied by a business established by the purchase of the land itself (assuming there is no business otherwise already in existence). Moreover, as a matter of legal certainty, especially in the tax context, whether land bought in the course of a business established by that acquisition is land bought in the course of a land dealing business, cannot depend on what happens to the land after it is acquired. The fact that such land is held for a lengthy period and/or kept idle cannot alter or undermine the existence of the business at the time of its purchase; nor can it mean that the tax treatment of the land changes over time so that it comes to be treated at some later point as not having been acquired in the course of that business of buying and selling land. The respondents' arguments, if accepted, would lead to great uncertainty and would give rise to the possibility of manipulation.

35. As Mr Baker KC for the Revenue submitted, the Revenue sought to charge tax under section 10(3)(c) in this case. The burden of proof was then on the respondent taxpayers to prove their case at the ARC that the land was not acquired in the course of a business, the main purpose of which is the acquisition and sale of immovable property, and thereby to displace the assessments. Their case was that they bought the land for personal use and intended to divide it and build four homes for themselves. But their evidence was found not to be credible by the ARC. The respondents gave no other evidence or explanation (for example, that they did not buy the land for acquisition and disposal, but they then changed their minds years later and came up with the subsequent morcellement scheme). Once their personal use explanation was rejected, and no alternative argument was advanced by them, there was no middle ground. In context, this was a binary choice for the ARC.

36. The ARC found (unsurprisingly in the circumstances) that the land was bought by the respondents through the Société with the intention, from the very beginning, "of having a morcellement done after a few years in view to make a considerable profit". From this the ARC concluded that there was a business of buying and selling land. It was this land purchase that fulfilled part of the intended business, and, in those circumstances, the acquisition could not but be in the course of the land dealing business. Put another way, if from the very beginning the land was bought with the intention of having the morcellement, it is difficult (if not impossible) to see how the land was not bought in the course of that business. In the circumstances of this case, the finding of an intention to have a morcellement at the time that the respondents acquired the land is, of itself, enough to support the conclusion that the acquisition was in the course of a land dealing business for the purposes of section 10(3)(c) and nothing more was necessary.

8. Conclusion

37. It follows, in light of the respondents' acceptance that the approach in *De Maroussem* cannot be imported and applied in a case where section 10(3)(c) applies, that the Revenue's appeal must be allowed.

38. The Revenue's assessments of the respondents to income tax for the years of assessment 2004/05 to 2006/07 (inclusive) must be restored. This means that the relevant base cost to be deducted from the receipts from sales of the sub-divided plots is the original cost of the land at Grand Baie and not its March 1999 market value.