

Michaelmas Term
[2026] UKPC 44
Privy Council Appeal No 0113 of 2025

JUDGMENT

Director-General, Mauritius Revenue Authority and another (Respondents) *v* Mauritius Freeport Development Co. Ltd (Appellant) (Mauritius)

From the Supreme Court of Mauritius

before

Lord Briggs
Lady Rose
Lord Doherty

JUDGMENT GIVEN ON
25 November 2026

Heard on 7 October 2026

Appellant
Patrice Doger de Spéville SC
Angélique Desvaux de Marigny SC
Johanne Hague
(Instructed by Sheridans Solicitors LLP)

Respondents
Yvan Jean-Louis SC
Imran Afzal KC
David Tipping
(Instructed by RWK Goodman LLP)

LADY ROSE:

Introduction

1. This appeal raises a short point of law on the proper construction of section 24 of the Income Tax Act 1995 ("ITA 1995"). The provision concerns the calculation of taxable profits, specifically the deductions that taxpayers are allowed to make from their gross income in respect of expenditure they have incurred acquiring certain capital items for use in their business. It raises an issue as to the years of assessment in which those deductions can be made and how section 24 applies if the taxpayer decides not to make a deduction in one particular year, even though, according to the regime established in the ITA 1995, it was entitled to do so.

2. The facts giving rise to the appeal are not in dispute. The Appellant is a Freeport developer providing logistics, warehousing and distribution facilities in the Mauritius Freeport zone. It also provides industrial and office space for rental. The Appellant incurred capital expenditure ("capex") in the years ended 31 December 1995 to 31 December 2005 ("the 1995-2005 Capex"). In its tax returns, the Appellant claimed annual allowances under section 24 of the ITA 1995 in the year in which the 1995-2005 Capex was first incurred and in each subsequent year of assessment ("YoA") up to and including the YoA 2006. But it did not include any claim for deduction in respect of that 1995-2005 Capex in the YoA 2007 to YoA 2011 inclusive.

3. Subsequently in its tax returns, the Appellant claimed and deducted annual allowances in the YoA 2012 in respect of that 1995-2005 Capex. The deductions it made in respect of that Capex and other capex resulted in a total loss for that year of about MUR 158.6 million. The Appellant carried forward some of that loss to the following YoA 2013 and as a result the Appellant reported a total loss in YoA 2013 of MUR 34.4 million.

4. The First Respondent ("the MRA") has disallowed a substantial proportion of the deductions that the Appellant made in respect of the 1995-2005 Capex in the YoA 2012 and 2013. The MRA argues that even though the Appellant did not actually claim any deductions in the YoA 2007 to 2011, it could have done. The effect of that is, MRA asserts, that the value of the capex that is still available to be deducted in YoA 2012 (then carried forward to YoA 2013) is diminished as if the Appellant had claimed what it was entitled to claim in the years it skipped. The MRA argues that on the proper construction of section 24, capex deductions work on a "use it or lose it" basis in the sense that although taxpayers can choose not to claim deductions to which they are entitled, they are treated as if they had when it comes to valuing what is left of the capex available to be deducted in later years. The MRA therefore issued assessments for the YoA 2012 and 2013, greatly reducing the amounts allowed as deductible and hence greatly reducing the loss incurred in YoA 2012 and carried forward to YoA 2013.

5. The Appellant disputes this construction of section 24. It argues that, given that the MRA accepts that the taxpayer has the option whether or not to claim a deduction for capex it has incurred, the Appellant can choose in which YoA it claims that deduction. If the taxpayer decides to skip a year, that year is then ignored for the purpose of valuing what is left of the capex available to be deducted in a later year. The Appellant therefore challenged the assessments before the Assessment Review Committee ("the ARC").

6. The ARC held that the disputed allowances were properly deductible. They issued a Case Stated on 2 April 2023 which they then revised and reissued on 29 February 2024. The MRA appealed to the Supreme Court by way of case stated and the Supreme Court allowed the appeal: judgment of 14 April 2025 (Judge A D Narain and Judge S Beekarry-Sunassee). The Supreme Court held that the MRA was correct to disallow the deductions claimed by the Appellant. The Appellant now appeals to the Board.

7. Although there are four grounds of appeal, the main issue is contained in grounds 2 and 3. Ground 1 can be swiftly disposed of. It asserts that the Supreme Court erred in assuming, contrary to the evidence, that the Appellant had not claimed an annual allowance in the year in which the 1995-2005 Capex had been incurred and hence the Court had not resolved the real dispute between the parties. This Ground is, in the Board's view, based on an incorrect reading of the judgment. It was common ground that allowances were claimed and deductions from gross profits made in the first year of entitlement and in some succeeding years before the Appellant decided to skip some years. There is nothing in its judgment to suggest that the Supreme Court failed to appreciate this.

8. Ground 4 raises a procedural point which the Appellant did not pursue.

9. Grounds 2 and 3 raise the point of principle on the proper construction of section 24 that the Board is asked to determine. As to the actual figures that should be deducted from gross profits in YoA 2012 and 2013, the MRA accepts that it miscalculated the appropriate amounts when it assessed those two years. The amount of the losses shown in the revised assessments issued by the MRA as the amounts which, according to the MRA's reading of section 24, the Appellant was entitled to claim were therefore wrong. They will need to be recalculated but that arithmetical exercise can be carried out once the point of principle raised by the appeal is settled.

2. Section 24 and the rival contentions as to how it operates

10. Section 24 is in the Part of the ITA 1995 which deals with allowable deductions. Section 18 provides:

> "(1) Any expenditure or loss shall be deductible from the gross income … 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 …for that income year."

11. That section appears not to distinguish between revenue expenditure and capex, but section 26(1) provides that notwithstanding section 18, no deduction shall be made in respect of "any investment, expenditure or loss to the extent to which it is capital or of a capital nature". Capex is dealt with in section 24, subsection (1) of which provides so far as relevant as follows:

> "(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 …
>
> (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."

12. Some of the other subsections of section 24 make specific provision for particular kinds of capex. For example, there are provisions limiting the total amount of allowance for motor cars or for investment in spinning factories, or factories for weaving, dyeing or knitting fabrics.

13. Section 24(3) provides that:

> "No annual allowance shall be allowed under this section unless the expenditure is incurred exclusively in the production of gross income"

14. The rates at which deductions can be allowed have been prescribed for the purpose of section 24(1) by the Income Tax Regulations 1996 (as amended). Regulation 7 provides that for the purposes of section 24, the rate of annual allowance shall, in respect

of each item specified in Column 1 of the Fourth Schedule to the Regulations, not exceed the rate corresponding to that item in Column 2 of that Schedule. The Fourth Schedule lists various kinds of capex including ships and aircraft, green technology equipment (as defined in the Regulations), industrial premises and commercial premises. Column 2 gives a percentage rate of annual allowance expressed in one of two ways. For some items the percentage allowance is applied to the cost or the item, and for others it is applied to the "base value". The term "base value" is defined in section 2 of the ITA 1995:

> "'**base value'** means 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"

15. For example, the rate allowed for industrial or commercial premises excluding hotels is an annual allowance of 5% of the cost per year so that the taxpayer can deduct 5% of the cost in 20 years of assessment. The rate for the acquisition of a solar energy unit is 100% so that the total cost can be deducted in the year in which the expense is incurred. The rate for a ship is 20% of base value. That means that the taxpayer can deduct 20% of the cost of the ship in the first year and then can deduct 16% (that is 20% of 80%) of the cost of the ship in the next year and then can deduct 12.8% (that is 20% x (80%-16%)) and so on.

16. The MRA therefore argue that section 24, read together with the Regulations, applies in the following way. Taking first the case where the prescribed rate is an annual allowance expressed in the Fourth Schedule to the Regulations as a percentage of cost. Where, for example, the taxpayer buys an industrial building for 1000 he can deduct 50 of that cost in the year in which he incurs the expenditure and is also entitled to deduct a further 50 in each of the succeeding 19 years. If he deducts 50 in year in which he buys the building but does not claim any deduction in the next two years, he in effect loses the opportunity to deduct those two annual allowances. He may then deduct a further 50 in each of the next 17 years. But after the 20th year there is no more allowance available to him even though 100 of the costs of the industrial building has never been used to reduce his gross income so that he has paid more tax than he needs to have paid.

17. In cases where the prescribed rate for the annual allowance is expressed as a percentage of base value, MRA submits that it applies in the following way. For a hotel, for example, the annual allowance is 30% of the base value. This means that if the hotel cost 1000 to acquire, the taxpayer can deduct 300 in the year in which he incurs the expenditure. That leaves a remaining base value of 700. In the next year he can claim 30% of 700 that is 210, leaving a remaining base value of 490. In the third year his claim would be 30% of 490, that is 147 leaving a base value of 343. In the fourth year he could claim 30% of 343, that is 103 leaving a base value of 240. In the fifth year he could claim

30% of 240, that is 72 leaving a base value of 168. He can continue to claim 30% of an ever-diminishing base value.

18. MRA says, subject to a caveat discussed below as to whether the same rate must be applied in each year, that if the hotel owner chooses not to claim the allowance in, say, the second and third years, he can then choose to make a deduction in the fourth year. But the available base value of the hotel would be treated as having been reduced by the amounts that he could have deducted in the second and third years, even though he chose not to deduct those amounts from his gross income. The amount deductible in year 4 would therefore be 103 not 210. If the taxpayer then skipped the fifth year, the base value in year six would be 168 so the allowable deduction would be 50.4 not 147.

19. The Appellant argues that it is clear from the case law, discussed below, that deductions of capex allowances are not obligatory; it is a matter of choice for the taxpayer whether to claim them or not. It follows from that, it argues, that it is also a matter of choice in which year, if any, the taxpayer claims the deduction. That is, broadly, the argument that the ARC accepted. Taking the example of an industrial building, the Appellant submits that the taxpayer can deduct an amount of 50 in any year of his choosing up to a maximum of 20 years; there is no particular year or series of years that he is obliged to choose. Taking the example of the hotel, if he skips a year then the base value remains the same unless or until he decides to claim a further annual allowance. If therefore he claimed the 300 of the 1000 cost in the first year and then skipped the second and third years, the base value of the hotel would stay at 700 so that he could, if he chose, claim 210 in the fourth year.

3. The proper construction of section 24

20. The Board's approach to statutory interpretation is well-established. The meaning of the words used in the statute must be ascertained in the light of their context and the purpose of the statutory provision: see for example the Board's recent judgment in *University of the West Indies v Occupational Safety and Health Authority and Agency (Trinidad and Tobago)* [2025] UKPC 42, paras 26 onwards. The Appellant referred in its written case to "the literal rule of construction" as the appropriate approach for the Board to take. However, it is also well-established that statutes setting out regimes for taxation are not to be interpreted in a more literal way than any other statutes: see *Rossendale Borough Council v Hurstwood Properties (A) Ltd* [2021] UKSC 16, [2022] AC 690 at paras 12-13.

21. In the Board's judgment, the MRA's construction of section 24 is correct; the taxpayer may choose whether or not to claim the allowance permitted by section 24, but the regime does not give him the further choice of when to claim the allowance in the way the Appellant contends. The starting point is the ordinary meaning of the words used

in section 24(1). This was the focus of the Supreme Court's decision that the plain meaning of section 24 was obvious from a reading of the section itself. They noted that the wording said that the deduction could be claimed "in that income year" referring back to the income year in which person has incurred capital expenditure. That was different from wording which allowed deduction "in any income year" which is in effect how the Appellant argued the provision should be read. Added to this is the fact that the wording refers to an annual allowance in that income year and "in each of the succeeding years". The Board concludes that that is clearly inconsistent with the Appellant's submission that the taxpayer can claim the deduction in any succeeding year.

22. Further, this accords with the purpose of allowing capital expenses to be deducted incrementally across a number of years rather than in the year they are incurred as is permitted with revenue expenses. Lord Nicholls of Birkenhead explained in *Barclays Mercantile Business Finance Ltd v Mawson* [2004] UKHL 51; [2005] 1 AC 684, para 3 that a trader computing his profits will ordinarily make some deduction for depreciation in the value of the machinery or plant which he uses: "Otherwise the computation will take no account of the need for the eventual replacement of wasting assets and the true profits will be overstated." That observation was cited with approval by the Supreme Court of Mauritius considering section 24 of the ITA 1995: see *Soopramanien v Assessment Review Committee* [2016] SCJ 68.

23. Turning to the interpretation of section 24 in light of the other provisions of the Act, the application of section 59 of the ITA 1995 as regards carrying forward losses also points clearly in favour of the MRA's construction of section 24. It provides as follows:

> "**59. Losses**
>
> (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)."

24. Subsections (4), (5) and (6) of section 59 then empower the Director-General to determine the quantum of the loss set off or carried forward if he is not satisfied with the loss claimed by the taxpayer.

25. Section 59 therefore generally allows a loss to be carried forward only for the following five income years. It then expressly disapplies that five-year limit where the loss that the taxpayer wishes to carry forward is a loss attributable to an annual allowance claimed in respect of capital expenditure incurred on or after 1 July 2006. One can assume from this that the five-year limit is intended still to operate to prevent the carrying forward beyond five years of loss attributable to capex incurred before that date. As Mr Afzal KC pointed out, according to the Appellant's construction of section 24, the taxpayer is free to choose which year in which to claim the allowance and is not limited to any particular year, following the year in which the capex is incurred. But if that is right, then there would be no need for section 59(3)(a) to disapply the five-year limit in respect of post-1 July 2006 capex. There would also be no difference in that regard between capex incurred before or after that date. The Board agrees with the MRA that section 59 is entirely undermined by the Appellant's reading of section 24.

26. The Appellant relies on the definition of the "base value" in section 2 of the ITA 1995 as computing the value "after deducting therefore any amount *allowed* by way of annual allowance" (emphasis added). "Allowed" in that context, the Appellant submits, must mean actually allowed and deducted not merely permitted although not deducted. If the base value is calculated taking account only of amounts in fact deducted, it would not make sense for the straight percentage cost rates to be applied in a different way.

27. The Board does not accept that the word "allowed" in the definition of base value means actually deducted. That wording can be contrasted with section 24(5) which deals with the adjustment to be made if the capital asset is disposed of for either more or less than its extant written down value. It provides: (emphasis added)

> "(5) Subject to subsection (6) [sales to related companies], 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; or
>
> (b) which is less than the amount to which the value of the asset has been reduced by the allowance, the difference shall be allowed as a deduction from the gross income of the person in that income year."

28. Thus, if the asset is sold for more than its written down value, the excess is deemed to be gross income; if it is sold for less, then the difference is allowed as a deduction in that income year. But it is clear that when calculating the extant value to be compared with the proceeds of disposal, the comparison is with the "extent of the amount of the allowance *granted*" rather than merely the amount "allowed". This shows that where the drafter wishes to identify the value computed on the basis of allowances actually claimed and deducted, this is made clear.

29. The Appellant relies on various arguments to overcome this construction of the statutory wording. First, it argues that the rates prescribed in the 1996 Regulations are expressly stated to be maximum rates. If the taxpayer decides to skip a year, it is in effect claiming an allowance at the rate of 0% for that year. It can then claim an allowance at a higher rate of its choosing in later years, up to the maximum percentage set out in the Fourth Schedule. The MRA argues that failing to claim an allowance is not the same as claiming an allowance at 0%. Further the MRA says that according to the wording of section 24, the taxpayer is only entitled to claim an allowance in each of the succeeding years which is "at such rate" as it claimed in the income year in which the expenditure was incurred. The MRA accepts, for the purpose of this appeal at least, that the taxpayer does not have to claim the maximum rate prescribed. But the MRA submits once a taxpayer chooses a rate other than 0%, that is the "such rate" at which it can claim for the succeeding years. The MRA points to section 24(7) which expressly permits a taxpayer which has incurred a specified amount of capex in the stated years to claim an investment tax credit of 15% over four years or 10% over six years. This, the MRA submits, shows that in the absence of such provision, the taxpayer does not have a choice of rate from year to year.

30. The Board agrees that the Appellant cannot simply rely on the Interpretation and General Clauses Act 1974, section 5(2)(a) to read "such rate" in the singular as including "such rates" in the plural, thereby allowing a taxpayer to vary the rate of deduction over the years in which it makes claim. In *Blue Metal Industries Ltd v R W Dilley* [1970] AC 827, the Board, hearing an appeal from the High Court of Australia, considered whether a similar provision in the New South Wales Interpretation Act 1897 applied to treat a statutory reference to a "transferee company" in the singular as including more than one

such company. Lord Morris of Borth-y-Guest, delivering the judgment of the Board, referred to the Interpretation Act as a "drafting convenience" which should not be used to change the character of legislation. Acquisition of shares by two or more companies was not merely the plural of acquisition by one, it was a quite different acquisition presupposing a different legislative policy.

31. The question of what happens if the taxpayer deducts capex at a rate lower than the maximum specified in some years does not arise in the present appeal. The Appellant claimed allowances at the maximum rates in the year of expenditure and in the later years in which it claimed. The Board rejects the Appellant's argument that deciding not to claim an allowance is the same as claiming at 0%. But the Board leaves open the question whether the diminution in the base value in skipped years is always the maximum prescribed rate or the uniform rate at which the taxpayer has claimed an allowance in the years preceding the skipped year.

32. Me Patrice Doger de Spéville SC appearing for the Appellant relied on the decision of the High Court and the Court of Appeal of England and Wales in *Elliss v BP Oil Northern Ireland Refinery Ltd* [1987] STC 52 ("*Elliss*"). In that case the taxpayers argued that in computing their profits for consecutive accounting periods, their incomes were to be reduced only by the capital allowances of which they chose to avail themselves. They asserted that they were thereby able to retain larger amounts of expenditure qualifying for allowance and then carry those amounts forward. The Crown argued that the capital allowances set out in the regime fell to be deducted automatically in computing the profits for the accounting period in which they arose; the allowances did not have to be claimed by the taxpayer. The Special Commissioners held in favour of the taxpayers and their decision was upheld by the High Court and the Court of Appeal.

33. Both the High Court and the Court of Appeal noted the paradox of the case that it was the inspector that was arguing for the allowance to be deducted from the taxpayers' income to reduce their taxable profits and it was the taxpayers insisting on claiming less than the full amount to which they were entitled. The explanation was that the taxpayers calculated that by not claiming capital allowances in less profitable years, they could claim annual allowances in later, more profitable years, based upon higher figures for write-down values of the machinery, plant or buildings in question.

34. Walton J dismissed the Crown's appeal: [1985] STC 722. He said, at p 733, that since allowances were being introduced for the benefit of the taxpayer, it was to be expected 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". In the Court of Appeal, Balcombe LJ (with whom Bingham LJ and Sir Nicolas Browne-Wilkinson V-C agreed) stated that it was common ground between the parties that under the predecessor legislation, the taxpayer had been able to choose whether or not to take the capital allowances to which he was entitled. The question was whether the wording

of the Finance Act 1965 provisions changed that position when corporation tax was first introduced. The relevant section, section 56(1), provided that in computing the company's profits, "there shall be made in accordance with this section all such deductions and additions … in respect of capital expenditure…" and section 56(2) provided that "Allowances … shall be given effect by treating the amount of any allowance as a trading expense of the trade in that period…". This mandatory wording, the Crown submitted, obviated the need to make a claim for an allowance and instead provided for the allowance to be made automatically and compulsorily.

35. The Court of Appeal [1987] STC 52 rejected this contention. It would have marked a fundamental change in the previous position and that was not signalled by provisions which on their face appeared only procedural or technical. Balcombe LJ noted, at p 55, that the deductions continued to be referred to as "allowances":

> "An allowance, being a thing allowed, carries the connotation that what is allowed should first be claimed, as indeed was, and remains, the case with income tax. 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."

36. Bingham LJ also rejected the argument that capital allowances had lost their previous permissive quality and that a company incurring such expenditure "had willy-nilly to accept the allowances year by year whether it wanted them or asked for them or not."

37. What *Elliss* decided therefore is that under the legislation considered there, the deduction of capital allowances was not automatic but had to be claimed. That is not the issue in dispute in the present appeal. The MRA is not arguing that the Appellant's tax assessments should be recalculated so as to incorporate any particular deduction or allowance for the years which the Appellant decided to skip. The MRA is content for the Appellant not to claim the allowance but simply asserts that the effect of that is that only a diminished value for the capex items is available in the later years.

38. There is nothing in the judgments in *Elliss* that indicates clearly whether the construction arrived at by the Court of Appeal had the effect that the taxpayers in that case hoped to achieve, namely that the written down value of the plant and machinery was carried forward undiminished over the years for which they did not claim an allowance. That issue was not addressed. The Board does not accept the Appellant's submission that conferring a choice on the taxpayer whether to claim the allowance necessarily means that the taxpayer must then be able to carry forward the undiminished capex value to any later year of its choosing.

39. Even if that were the effect of the Court of Appeal's decision in *Elliss*, the wording of the applicable statutory provisions before that Court was different from section 24 of the ITA 1995. It did not, it appears, specify, as section 24 does, that the allowance must, if the taxpayer wishes to claim it, be claimed in the year of expenditure and in each succeeding year thereafter.

40. Similarly, the Board does not consider that the other cases relied on by the Appellant assist it in this appeal. *Collard v Mining & Industrial Holdings Ltd* [1989] STC 384, concerning the sequencing of double tax relief and advance corporation tax set-off, turned on the detailed legislative provisions at issue in that appeal. *Carr v Armpledge Ltd* [2000] STC 410 concerned the scope of the taxpayer's ability to carry back surplus advance corporation tax to earlier accounting periods. Peter Gibson LJ noted (at p 415f) that it was plain that the ability to use advance corporation tax against mainstream corporation tax operated by way of a relief for the benefit of the taxpayer. The taxpayer was given the power, but not the obligation, to make a claim subject to certain limitations specified in the provisions. The judge said, at p 417, that a taxpayer "is ordinarily entitled to make use of a relief afforded to him in the most advantageous way which he chooses". Those limitations did not require the taxpayer to carry back advance corporation tax incurred in one year before carrying back advance corporation tax paid in an earlier year. However, that was, of course, subject to limitations imposed by the wording of the legislation. Any such generally stated principle cannot in the Board's view prevail against the express wording of section 24(1).

4. Conclusion

41. The Board therefore concludes that the point of principle as to the proper construction of section 24 of the IGTA 1995 must be decided in the Respondent's favour. Having regard to what the Board said in para 9 above, the parties should agree the recalculation of the assessment, failing which the matter should be remitted to a lower court.