Ruling issued by the Assessment Review Committee

Mauritius Freeport Development Co. Ltd (“Applicant”)

v/s

The Director General, Mauritius Revenue Authority

(“Respondent” or “MRA”)

ARC/IT/677-15 & ARC/IT/441-16

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On 9 March 2023, the Assessment Review Committee ("ARC") issued its ruling in favor of the Applicant with regards to its claim of capital allowance on the assets it acquired.

Facts of the case

- The Applicant is a third party freeport developer and has claimed capital allowance on assets acquired during the income years ended 31 December 1995 to 31 December 2005 in the year of assessment 2012. The Applicant had a tax loss in the year of assessment ("YOA") 2012.
- In the first case (ARC/IT/677-15), the MRA disallowed the whole of the capital allowance claimed by the Applicant in YOA 2012 on the grounds that the annual allowance should have been claimed in the year in which the assets were put in use.
- As a result of the first case, in the second case (ARC/IT/441-16), the MRA reduced the amount of tax losses brought forward to YOA 2013 by the amount of capital allowance claimed in YOA 2012 and as per the MRA, the Applicant should have chargeable income instead of a tax loss for the YOA 2013.

Our Analysis

Pursuant to section 63 of the Income Tax Act 1995 ("ITA"), which refers to section 24 of the ITA, where in an income year a company has incurred capital expenditure on specified assets, including any item of capital nature which is subject to depreciation under the normal accounting principles, it 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 the rate prescribed in the Income Tax Regulations 1996 ("IT Regulations").

In this newsletter, the words "capital allowance" and "annual allowance" are being used interchangeably to mean the same thing.

The Applicant claimed capital allowance during the years 1995 to 2005. However, between the years 2006 to 2010, no capital allowance was claimed since the Applicant was less profitable in those years and wanted to keep the higher figures of the tax written down values on which it could claim capital allowances during the later years when it will be profitable.

Two rules have been invoked on the first case, as follows:

1. Noscitur a sociis rule; and
2. Literal rule.

The noscitur a sociis rule of construction was applied to section 24 of the ITA by the Learned Counsel of the MRA, whereby due regard must be paid to the verbal context in order to have the meaning of a particular word. That is, annual allowance should operate as a deduction of capital expenditure incurred, based on depreciation under the normal accounting principles and that the flexibility in the computation of annual allowance was never meant to be a device by which a taxpayer could claim annual allowance in an unprincipled way according to its whims and caprices.

The application of the noscitur a sociis rule of construction in the first place was incorrect as this rule should be brought in aid only when the literal rule yields to an ambiguous, contradictory or absurd meaning.

Hence the primary rule of interpretation to be applied to this case is the literal rule which the ARC rightly invoked.

According to section 7(1)(b) of the IT Regulations, *"the rate of annual allowance shall, in respect of each of the items specified in Column 1 of the Fourth Schedule to these Regulations, not exceed the rate corresponding to that item specified in Column 2 of that Schedule."*

By applying the literal rule of interpretation to the above, the prescribed rate is the maximum rate and no minimum threshold has been prescribed. Therefore, there is no authority which prohibits a taxpayer from claiming annual allowance at zero rate. This interpretation also aligns with the rational behind annual allowance which is actually an incentive for taxpayers to invest in capital assets.

As enunciated through the different court cases mentioned in the ruling, a claim for annual allowance lies within the discretion of a taxpayer. It is a benefit introduced for the taxpayer and not for the Revenue and the tax benefit cannot be forced on the taxpayer.

Based on the above, the ARC upheld that the application of the literal rule leads to an interpretation which is neither ambiguous nor self-contradictory.

Conclusion

By reading section 24 of the ITA together with section 7(1)(b) of the IT Regulations, the legislator did not impose a minimum rate or threshold for annual allowance. Therefore, a taxpayer may choose to claim annual allowance at the rate of zero.

For completeness, annual allowance can be claimed when the conditions set out in section 24 of the ITA are met and this includes:

- Capital expenditure has been incurred;
- The capital expenditure was incurred exclusively in the production of gross income; and
- The total amount of annual allowance does not exceed the amount of capital expenditure incurred.

The motive of the taxpayer for exercising this choice of claiming zero annual allowance was found not relevant for the purposes of section 24 of the ITA. If the MRA was of the view that the Applicant's motive was to avoid liability to income tax, it should have invoked section 90 of the ITA, which it has not.

Since the main matter "annual allowance" was well taken, the second case was rendered otiose.

Supplementary remarks

In the current case, the Applicant was a third party freeport developer and during the period under assessment, the capital expenditure incurred by the Applicant was exclusively in the production of its gross income.

As from the year of assessment commencing 1 July 2023, income derived by a company issued with a certificate as a private freeport developer under the Freeport Act will be eligible for 8 years of income tax exemption, subject to the company satisfying the prescribed conditions. In this respect, where such a private freeport developer acquires capital expenditure during the period in which it is availing of the income tax exemption, that is, the capital expenditure would not be exclusively used in the production of its gross income, it would not be eligible to claim annual allowance on the capital expenditure incurred during the mentioned period.

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