

**JUDGMENT OF THE JUDICIAL
COMMITTEE OF THE PRIVY
COUNCIL**

**Marie Henri Dominique Galea
(Appellant)**

v

**The Assessment Review
Committee and the MRA**

Introduction

This appeal, brought before the Judicial Committee of the Privy Council, concerns the appellant, Marie Henri Dominique Galea (the “appellant”), and his attempt to claim deductions for financial losses incurred by the Société Agricole de Mont sur Mont (SAMM), a partnership in which he held a 92% stake. The losses in question were claimed against his other gross income for the tax years 2005/06 and 2006/07.

The central issue was whether SAMM was operated “with a view to profit,” a criterion necessary for it to qualify as a business under section 2 of the Mauritius Income Tax Act 1995 (ITA). This appeal arose after the Assessment Review Committee (ARC) and the Supreme Court of Mauritius (Supreme Court) ruled against the appellant, finding that SAMM did not meet this criterion. The Privy Council ultimately disagreed and allowed the appeal.

Point at issue

Under section 2 of the ITA, a “business” includes any activity “carried on with a view to profit.” Furthermore, section 20(1) allows taxpayers to offset losses incurred in the production of gross income against other forms of income.

The case turned on the interpretation of “with a view to profit.” Initially, the Supreme Court took this to imply an objective test, i.e., whether the activity was likely to generate profit. However, the appellant argued—and the Privy Council agreed—that the proper test is subjective: whether the taxpayer genuinely intended to earn a profit, regardless of whether profit was actually likely or achieved.

Background

SAMM was formed in 1993 and purchased two plots of mountainous, abandoned land in Baie du Cap, Mauritius. The land, comprising approximately 200 acres, was bought for about 4 million Mauritian Rupees. The appellant owned 92% of SAMM, with the remaining 8% held by Mr. Piat.

From 1997 onwards, various commercial activities were carried out on the land:

- Deer farming and hunting expeditions (“chassée”) were established. A stable population of 250–300 deer was maintained, with three to four annual hunts organised. Some participants paid to join, while others contributed services (e.g., trained dogs) in lieu of fees.
- Sale of venison and live monkeys generated additional income when permitted by law.
- Other ventures included attempts at wild boar rearing, developing eco-tourism, and renting out a small on-site house.

Despite these efforts, SAMM consistently reported financial losses each year from 1996/97 through 2006/07, although income increased significantly over time—from Rs 15,000 in the early years to around Rs 700,000 in the relevant tax periods.

Procedural History

In 2007, the Mauritius Revenue Authority (MRA) began investigating the appellant's tax filings. It later disallowed his claims to offset SAMM's losses against other income. The appellant appealed to the ARC, which dismissed his appeal in 2013. A further appeal to the Supreme Court was also rejected in 2023, upholding the ARC's view that SAMM's sustained losses and lack of profitability disqualified it as a business under the ITA.

Grounds of Appeal to the Privy Council

The appellant argued that the lower courts misinterpreted the phrase "with a view to profit" by applying a reasonable expectation standard, thus using an objective test. He contended that the correct standard, supported by foreign case law, was a subjective assessment of his genuine intention to make a profit—even if profitability was not realistically foreseeable.

In support, the parties cited decisions such as:

- *Grieve v Commissioner of Inland Revenue (New Zealand)* – confirming the sufficiency of a genuine intent to profit.
- *Backman v The Queen (Canada)* – allowing for an ancillary profit motive to suffice.
- *Ingenious Games LLP (UK)* – reaffirming that intention, not actual profit, matters for defining a business.

Both parties ultimately agreed that a subjective test was the correct interpretation, but the disagreement remained on how that test applied to the facts of the case.

Privy Council's Analysis

1. Was there a material error of law?

Yes. The Board found that both the ARC and the Supreme Court misapplied the law by assessing SAMM's business status based on whether there was a reasonable expectation of profit. The phrase "with a view to profit" should have been interpreted subjectively, focusing on the appellant's actual intent, not the likely success of his ventures.

The Board rejected the MRA's argument that the ARC's reasoning implicitly included a subjective assessment. The language used by the ARC demonstrated a clear reliance on an objective standard, especially when it emphasised the improbability of profit in the near future.

2. How should the decision be remade?

Having set aside the decisions of the ARC and Supreme Court, the Board proceeded to remake the decision based on the available evidence. Using criteria set out in *Grieve*, the Board analysed:

- The nature and continuity of SAMM's activities
- Its gradual income growth
- The employment of staff
- Investments in land and infrastructure
- Various initiatives pursued to generate revenue

The Board found these actions consistent with a genuine intention to operate a business, even if losses persisted. Importantly, there was no credible challenge to the appellant's testimony about his profit-making intent during the original hearings.

The MRA's suggestion that the appellant lacked credibility was not accepted, especially since this issue was never raised during cross-examination. On the contrary, SAMM's long-term commitment to commercial ventures—including efforts to expand and diversify income—demonstrated a clear business mindset.

Conclusion

The Privy Council concluded that the ARC and Supreme Court decisions were vitiated by a material error of law. It held that SAMM qualified as a business, carried on with a view to profit during the relevant tax years. As such, the appellant was entitled to deduct SAMM's losses against his other gross income.

The appeal was allowed, and the decisions of the ARC and the Supreme Court were set aside.

The Privy Council's decision in *Galea v the ARC and the MRA* provides several broad, practical lessons for individuals and entities navigating tax obligations, business classification and the challenges of loss-making ventures. These insights are especially relevant for those operating in agriculture, niche ventures, or long-term development projects.

1. Losses alone do not invalidate a business status

Even though SAMM incurred cumulative losses exceeding Rs 8 million, it was ultimately recognised as a valid business. What mattered most was the genuine intention to make a profit, not the actual financial outcomes during the relevant tax years.

2. Intent matters more than outcome

The legal test for "carried on with a view to profit" is subjective. What matters is the taxpayer's actual intention to make profit and not whether an objective observer would have expected success. Courts will examine the taxpayer's purpose, planning and conduct to determine if a profit motive existed, even if operations were inefficient or unsuccessful.

3. Substance Over Form

SAMM's operational facts supported the appellant's claim that his venture was not a hobby or personal indulgence, but a commercial activity. The Privy Council emphasised that actions, investments and operational decisions carry greater weight than assumptions about a venture's success.

4. Credible testimony is critical

The success of the appeal hinged significantly on the credibility and consistency of the appellant's testimony, which was not seriously challenged at any point in the proceedings. He clearly articulated his intent to make a profit, explained the evolution of the business, and showed awareness of the challenges faced.

5. Legal misinterpretations can and should be challenged

This case serves as a reminder that taxpayers should not be deterred from contesting decisions where interpretations of the law are flawed.

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