AB v Assessment Review Committee & Mauritius Revenue Authority

2016 SCJ 68, R No. 108872 (bis)

Entitlement to annual allowance on building

Background/ Facts

AB is a Mauritian citizen residing and working in USA. He purchased an immoveable property at Pereybere which he would use on his return after retirement or sell at a profit. He occasionally rented the property out to tourists. He declared his rental income from the property for tax purposes.

AB claimed capital allowances on the immoveable property in his calculation of his taxable rental income. The Mauritius Revenue Authority ('MRA') contended that the subject property fell within the definition of investment property under IAS 40 and could not be subject to depreciation since it appreciates in value over time. Consequently AB could not benefit from any capital allowance.

Upon representation to the Assessment Review Committee ('ARC'), the latter came to the conclusion that as such the expenditure could not be said to have been incurred 'exclusively in the production of gross income' as required under the Income Tax Act and that the MRA was right to disallow the capital allowances claimed on the building.

The Law

When a person, who keeps proper records, acquires in an income year an item of a capital nature which is subject to depreciation under the normal accounting principle and the expenditure was incurred exclusively in the production of gross income, he shall be allowed a deduction of the capital expenditure by way of an annual allowance in that income year and in each of the succeeding years at prescribed rates.

Appeal

The central issue is whether AB can claim an annual capital allowance in respect of the capital expenditure incurred in the acquisition of the immoveable property at Pereybere.

The Court stated that a close reading of the law indicates that the annual capital allowance is meant for persons or entities engaged in business and that only businesses have an obligation to prepare accounts in compliance with normal accounting principles, be it for tax purposes and if mandatorily required under the Companies Act.

Allowing for depreciation under accounting principles or capital allowance under the relevant tax legislations has, as its main objective, if not the only one, to allow a business entity to cater for 'the need for the eventual replacement of wasting assets'. In the present case, AB was not engaged in a line of business and that he would eventually have to replace the 'asset'.

The Court ruled that the ARC rightly concluded (a) that a building bought to run a business will be considered as to be capital in nature and subject to depreciation under normal accounting principle, and (b) the expenditure was not exclusively incurred in the production of gross income.

It could hardly be inferred that AB purchased the property exclusively for renting it out. There was duality of purpose using it as a residence and renting it.