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**Lessons learned from an interesting Mauritius Supreme Court Case Law -**

**Krong On Leung PAH Hang versus The Mauritius Revenue Authority (MRA)**

The landmark decision in the matter of K O Leung PAH Hang v The Mauritius Revenue Authority (MRA) issued in 2007 is instrumental in shedding light on the responsibility of tax authorities to review, without prejudice, the furnished documentation in support of a tax assessment.

The case law has marked the necessity for the Tax Authority to consider all documents and information provided by a taxpayer before making a best judgement assessment.

The salient facts of the case of K O Leung PAH Hang v The Mauritius Revenue Authority (MRA) have been outlined below.

**Background of the case**

Mr K O Leung PAH Hang (the appellant) was involved in the business of restauration and operating clubs (Karaoke and Disco Clubs). The supplies made by the business in terms of food, drinks and admission fees to karaoke and disco clubs were vatable at 15%. The submitted VAT returns of the appellant were examined by the MRA (the respondent). The latter raised a notice of assessment with adjustments made to the VAT payable amounts leading to an additional VAT liability on the basis of a mark-up exercise.

Objections were made to the MRA and following the notice of determination issued in favour of the latter, the appellant made a representation to the Assessment Review Committee (ARC).

The appellant finally appealed to the Supreme Court for review of the ruling of the Assessment Review Committee (ARC) which upheld the determination of the MRA. The ARC argued that the mark-up exercise provided by both parties was biased and affirmed to adopt a middle figure in light of the best of judgement approach.

**Grounds of representations of the appellant and respondent**

* The appellant asserted that the mark-up exercise performed by the MRA for drinks was incorrect and a wrong basis was used to estimate the taxable supplies which led to the additional VAT liability. Along the same vein, the appellant propounded a revised mark-up exercise to the ARC.
* The respondent averred in its statement of facts that the mark up exercise was conducted based on the documents adduced by the appellant to gain comfort on the reliability of the accounts.
* The appellant went further on to contend that accounts reviewed by qualified accountants were submitted to the Tax Authority and it was unfair on the part of the latter to disregard

same to proceed to another method of calculation unless the inaccuracy of such accounts were proven.

* The appellant inferred that the mark up exercise was erroneous as firstly, it was relied on supply of drinks only and secondly, it was applied to all taxable supplies of the business while using the wrong cost price of drinks.

**Judgements of the Supreme Court**

The gist of the matter was the unreasonableness of the MRA to challenge the accounts certified by a qualified accountant, the conduct of a faulty mark-up exercise only to gain comfort, and to deduce excessive percentage mark-ups in the absence of any evidence.

The Supreme Court ruled that the adoption of a middle figure to validate the mark-up exercise was arbitrary and a recollection of the principle revolving around “la justice du Roi Salomon’’. The Judgment of Solomon is a story from the Hebrew Bible in which King Solomon of Israel ruled between two women both claiming to be the mother of a child. Solomon revealed their true feelings and relationship to the child by suggesting to cut the baby in two, with each woman to receive half. The Supreme Court Judge pointed out that “This method of dispensing justice is, however, foreign to legal science”.

After due deliberations and assertions by both parties, the Supreme Court adjudicated in favour of the appellant, quashed the decision of the ARC and remitted the case to the MRA with directions to calculate the tax in the absence of evidence showing the incorrectness of the appellant’s accounts, on the basis of the latter’s accounts prepared by his certified accountants and in accordance with the approach laid down in Porlo Taco Co Ltd v Commissioner of Income Tax [1975 SCJ 216].

It is worth noting that the Porlo Taco Case mentioned in the Leung PAH Hang Case is another important tax case to enlighten us on the meaning of a ‘best of judgement assessment’. We have reproduced hereunder the guidance provided by the Judge in the Porlo Taco Case to the Tax Authority in the exercise of its power to make assessment upon a taxpayer:

1. *“ When the Commissioner refuses to accept a return made by a taxpayer, he should to the best of his judgement determine the amount of the taxpayer’s chargeable income and assess him accordingly”*
2. *“The word judgement ’implies consideration of something. However futile the commissioner may think it to be, in view of his past knowledge, to look into the taxpayer’s accounts and whether his examination may turn out to be a mere formality, his duty is to go honestly and fairly through the process of seeking information upon which to found an assessment in each individual case. An assessment arrived at otherwise would be no assessment at all. The word ‘assessment’ itself would indeed connote some kind of computation inconsistent with that would, in the circumstances, amount to complete guess work, not even that kind of guess work or arbitrariness which an assessor may legitimately resort to in certain circumstances in the absence of information”*

**Our Conclusions**

Our conclusions drawn from the case are notably to ascertain that tax authorities should not attempt to follow ‘’la justice du Roi Salomon’’. They must perform their functions honestly and bona fide, and come to a decision which is reasonable and not arbitrary. They should lay emphasis on the careful examination of submitted factual information and they are empowered to set aside repugnant documents causing ambiguity, irrelevance or incongruence.

It is pivotal that tax audits are conducted in accordance with the prevailing legislations to protect the interests of stakeholders and preserve the fundamental rights of the taxpayers. By the same token, the opportunity to be heard in a fair and reasonable manner will definitely elevate the confidence of taxpayers.

The Supreme Court in the matter of K O Leung PAH Hang has proven that taxpayers should not be denied their rights to seek fairness in decisions delivered by the tax authorities where it is found that such decisions are cushioned on unfounded grounds.

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