IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Appeal No GYCV2017/005
GY Civil Appeal No 66 of 2013

BETWEEN

GUYANA STORES LIMITED	**APPELLANT**

AND

THE ATTORNEY GENERAL OF GUYANA	**1ST RESPONDENT**
THE REVENUE AUTHORITY	**2ND RESPONDENT**
THE COMMISSIONER GENERAL OF THE REVENUE AUTHORITY	**3RD RESPONDENT**

Before The Honourables **Mr. Justice Adrian Saunders**
Mr. Justice David Hayton
Mr. Justice Winston Anderson
Mme. Justice Maureen Rajnauth-Lee
Mr. Justice Denys Barrow

Appearances:

Mr. Stephen Fraser for the Appellant

Ms. Kim Kyte-Thomas, Ms. Oneka Archer-Caulder and Ms. Judy Stuart-Adonis for the 1st Respondent

Mr. Ronald Burch-Smith, Mr. Mark Waldron and Mr. Keoma Griffith for the 2nd and 3rd Respondents.

JUDGMENT
of
The Honourable Justices Saunders, Hayton, Anderson, Rajnauth-Lee and Barrow

Delivered by
The Honourable Mr. Justice Barrow
on the 5th day of March 2018

[1] This case began as a challenge by Guyana Stores Ltd. ("the Company") to the demand for unpaid taxes by the Second and Third Respondents ("the Revenue Authority"), which the Company resisted by filing proceedings in the High Court seeking, among other things, declarations that the attempt to collect tax from it was a violation of its constitutional right to protection of property.

[2] Acting Chief Justice Ian Chang, having granted certain conservatory orders without hearing the Respondents subsequently discharged those orders on the application of the Respondents, after considering their written submissions and the court file. He struck out the entire claim, principally on the ground that a claim purely for declaratory relief with no consequential and executory orders cannot be maintained.

[3] The appeal to the Court of Appeal was against that decision. However, instead of deciding that issue as a matter of general legal principle, as Chang CJ (ag) had done, the court proceeded to uphold the decision to strike out the action because, in the court's opinion, there had been no violation of the Company's constitutional rights and, therefore, the Company would not have been entitled in any event to a declaration. The Court of Appeal, therefore, decided the appeal by considering the merits of the Company's claim.

[4] On the hearing before this Court counsel for all parties addressed the merits of the claim and generally agreed that this Court should finally dispose of the claim. Of course, they varied widely as to the manner and nature of disposition.

The basic facts

[5] Consistent with that history of the proceedings, there were no findings of fact or even examination of facts in the courts below but some basic facts are accepted and will be treated as such, without making any finding in relation to these.

[6] In 2000, the Company was a public company controlled by the Government of Guyana which then sold the majority of its shares to the present majority shareholders. Under the Privatisation Agreement executed by the parties, it is contended, pre-privatisation taxes are to be paid by the Government and these have remained unpaid. Shortly after privatisation, disagreement regarding taxes arose and, as counsel informed this Court, there are pending court proceedings concerning the disputes.

[7] Over the years, The Inland Revenue Department of Guyana wrote numerous letters to the Company informing it of taxes due and payable, sending updated tax liability statements, inviting the Company to agree/disagree with stated tax liability amounts, withdrawing or discharging assessments, restating the amount of taxes due and finally demanding payment and warning of enforcement action. In a letter dated January 12, 2010 from the Revenue Authority's 'Objections and Appeals Section' the Company was told, with reference to a letter it had sent objecting to liability, the requirements for making objections in accordance with section 78(2) of the Income Tax Act, the time for doing so and that the objection must state precise grounds. In another letter dated May 13, 2010 the Revenue Authority noted that the Company had not sent an objection, it identified to the Company what the objection needed to contain and gave until 27th May 2010 for the objection.

[8] Similarly, the Company wrote many letters to the Revenue Authority, objecting to Statements of Assessment and making representations as to its liability. In a letter dated 4th August 2010 the Company explained why it had previously submitted unaudited returns and made payments based on financial statements and confirmed an earlier statement it had made to the Revenue Authority that should there be any difference in the audited Annual reports, the Company would make the correction and/or payment. The Company enclosed with that letter copies of Returns along with copies of receipts

of payments it had made for stated years, these being material missing from the Revenue Authority's files.

[9] The Company submits that it has not received notices of assessment for any year of assessment between 2001 and 2010, although it received notices that assessments were discharged in respect of certain years. It also submits that it did not receive any notice of assessment for years prior to 2000.

[10] By a letter of demand dated April 3, 2012, the Revenue Authority made demands for the years of assessment 1985 – 2010 and it appeared that the Authority vacated its earlier assessments. The Appellant contends that it was not aware of any lawful assessment prior to the demand.

[11] Finally, by a letter dated May 24, 2012, the Commissioner General of the Guyana Revenue Authority demanded the sum of $3,811,346,397 (three billion, eight hundred and eleven million, three hundred and forty-six thousand, three hundred and ninety-seven dollars). It was in reaction to this demand that the Company brought proceedings in the High Court for constitutional and other relief.

[12] By virtue of the *Fiscal Enactments (Amendment) Acts No. 16 of 1994* and *3 of 1996*, the Company had become liable to pay a 2% minimum corporation tax. It appears the Company had been paying this tax until it was advised, sometime after it had filed in February 2012 its audited Corporation Tax and Property Tax returns for the years of assessment 2001 to 2011, that the tax was unlawful and being wrongly applied.

The claim

[13] The claim that the Company filed some six weeks after the May 24th, 2012 demand letter from the Revenue Authority was for conservatory orders, declarations, and damages. The conservatory orders were sought to prevent the Respondents from

collecting or levying income, corporation, property and capital gains taxes for specified years of assessment along with any interest and penalties arising from those taxes.

[14] Declarations were sought that any attempt to levy or impose the 2% minimum corporation tax created by the *Fiscal Enactments (Amendment) Acts* was in breach of Articles 39, 40 and 142 of the Constitution; that the Company was not liable to pay the taxes, interest and penalties; that the Company was not liable to be assessed or reassessed except in accordance with the proper procedures outlined in ss. 70, 72, 76 and 78 of the Income Tax Act; and that the Revenue Authority did not follow proper procedure before issuing the demand letter of May 24, 2012, in reaction to which the Company brought court proceedings.

[15] The Company also claimed damages and punitive damages for breach of the Constitution. The Company claimed that the Revenue Authority's demand for payment constituted an unlawful acquisition of its property (money) because there was no lawful assessment of outstanding taxes before the demand letter was issued.

The decisions below

[16] As mentioned, the Chief Justice decided that the court could not grant the orders sought by the Company. He found that no final prohibitory or other enforceable order on which the conservatory orders could be sustained had been sought and that since no payment of demanded taxes had been made no claim for damages arose. He said that the only enforceable orders sought by the Company were for the payment of general compensatory damages and punitive damages but that the claim did not allege any basis for awarding damages so that claim could not proceed. The claim for damages, general or punitive, was therefore misconceived and was therefore dismissed.

[17] The Chief Justice said that since the claim for damages could not be maintained, the only remaining remedy sought by the Company was for a number of declarations

without any related consequential relief. Article 153(2) of the Constitution provides that the court may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of Articles 138 to 151 (inclusive). The Chief Justice highlighted the marginal note to Article 153 which reads "Enforcement of protective provisions" and, relying on case law from India, decided that declaratory orders without any consequential enforceable order(s) cannot be considered as orders made "for the purpose of enforcing or securing the enforcement" of any of the provisions of Articles 138 to 151. Therefore, in a constitutional action or motion for redress under Article 153 of the Constitution, it was incumbent upon the plaintiff or applicant to seek redress in the form of an enforceable order or, at the very least, a declaratory order coupled with a consequential enforceable order. On this basis he dismissed the motion as being deficient and misconceived. As mentioned, His Lordship did not hear arguments on the merits and his findings were solely based on the procedural deficiencies he identified.

[18] For its part the Court of Appeal considered submissions on the substantive issues, notwithstanding the objection to this course by the Company, and decided the appeal by considering the merits of the claim. The court considered the Company's submissions that a claim for purely declaratory orders was maintainable and accepted this as correct but did so, with respect, in an obscure way that merged with its conclusion that the Chief Justice was correct to hold that the Company did not have a claim that could succeed and had properly dismissed the claim.

[19] The Court of Appeal reached that conclusion on the basis that the imposition of taxes did not violate the fundamental rights of the Company and the collection of taxes was not a compulsory acquisition of property proscribed by Article 142 of the Constitution. It followed, on this conclusion, that there was no violation of constitutional rights for which a declaration could be granted. This conclusion also led to the further decision

that no damages could be awarded since there was no violation to compensate. In its judgment, the court stated that it was a taxation case the Company had brought to court which involved no constitutional violation.

The issues before us

[20] There are two main issues for this court to decide; one is the constitutionality of the demand for taxes from the Company and the other is the liability to tax where allegedly (a) no assessment was served on the Company and (b) the Revenue Authority has been incorrectly and unlawfully applying the provision for the payment of the 2% turnover tax. This second issue may be identified as the lawfulness of the demand.

[21] It is no longer an issue for this court to decide whether a claim for a constitutional violation which does not seek an enforceable order such as a prohibitory or compensatory order is maintainable. The pith of the first instance decision dismissing the claim was that it was not maintainable because it sought only a declaratory order and it is this decision that the Company appealed to the Court of Appeal and to this Court, although at this stage the ambit of the appeal has expanded. In written submissions the Attorney General asserted the acting Chief Justice was correct but when counsel was directed to the passage in the judgment of the Court of Appeal[1] stating the contrary, counsel yielded to that reality. For their part the Revenue Authority did not seek to support the decision of the acting Chief Justice but submitted that the matter was academic at this stage. In view of the determination of the Court of Appeal that a claim for a declaration alone is maintainable there is no need for this Court to pronounce on the matter more than to say it was surprising for the acting Chief Justice

[1] Guyana Civil Appeal No. 66 of 2013 Guyana Stores Ltd v AG and others [40]. The written judgment was not available at the time of the filing of the present appeal and at the time the parties were preparing written submissions.

to have decided as he did, in light of the very early decision to the contrary of the Privy Council in *Jaundoo v AG*[2], which was an appeal from Guyana.

The Company's constitutional issue

[22] The Company asserts it made a claim for constitutional relief in a tax dispute with the Revenue Authority because the Authority failed to assess the taxes payable by the Company in accordance with the provisions of sections 70 and 78 of the Income Tax Act. It was submitted that the procedure for disputing an assessment under that Act was not available to the Company because the procedure is available only after the taxpayer receives a notice of assessment. The Company says, having not received any notice of assessment, its only recourse was to bring a matter in the High Court. The Company says, that to be forced to pay the demanded 3 billion dollars in taxes in this situation would amount to the compulsory acquisition of its property in breach of Article 142(2)(a)(i) of the Constitution.

[23] The Company accepts that the clear meaning of Article 142(2)(a)(i) is that property taken in satisfaction of taxes cannot amount to compulsory acquisition of property in violation of the constitutional right. Article 142(2)(a)(i) provides as follows:

> *'(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the preceding paragraph –*
>
> > *(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property –*
> >
> > > *(i) in satisfaction of any tax, duty, rate, cess or other impost;'*

[24] However, the Company argues that the purported 2% minimum corporation tax is not truly a tax. The challenge is to section 4 of the Fiscal Enactments (Amendment) Act

[2] (1971) 16 WIR 141. See also *James v Attorney General of Trinidad and Tobago* (2010) 78 WIR 443 where the Privy Council upheld a High Court decision to grant a declaration and no other remedy.

which added a new provision to the Corporation Tax Act, section 10A, to provide for a 2% minimum tax. The section provides:

10 A

(1) Where for any year of assessment the corporation tax payable by a commercial Company is less than two per cent of the turnover of the commercial Company in the year of income immediately preceding that year of assessment, then, notwithstanding anything contained in sections 4 and 10, and subject to the other provisions of this section, for the aforesaid year of assessment there shall be levied on, and paid by, the commercial Company a corporation tax (in this Act referred to as "minimum tax") at the rate of two per cent of the turnover of the commercial Company in such year of income:

Provided that no minimum tax shall be payable by a commercial Company for any year of assessment where its turnover in the year of income immediately preceding that year of assessment did not exceed one million two hundred thousand dollars.

[25] The Company submits that this was not in fact a tax, but a loan, and as such it does not fall within the exception created by the Constitution, with the result that this "loan" amounts to compulsory acquisition of property. In its written submissions, the Company argues that the tax operates as follows: when the 2% minimum tax is paid, the taxpayer is credited with any difference between the normal 45% corporation tax on profits and the 2% minimum tax. If the taxpayer does well and can pay the 45% corporation tax, then it is credited from the excess minimum accrued in the preceding year(s) of assessment to the extent that the 45% corporation tax exceeds the 2% minimum tax, but the Company must pay the 2%. Credits from the 2% payments would be available for the taxpayer to satisfy its corporation tax in any subsequent year that

the 45% tax exceeds the 2% minimum 'tax'. It is this structure, the Company submitted, that exposes the 2% levy as a loan and not a tax; it is a forced loan and it is unconstitutional based on the decision in *IRC v Lilleyman,*[3] the Company submits. In that case the British Guiana legislature passed the National Development Savings Levy Ordinance, 1962, which provided for the levy on the emoluments of persons employed or resident in the country. The sums levied were to be treated as compulsory savings with provision for the payment of interest and redemption. The courts rejected the State's argument that the levy was really a tax and declared it was a forced loan and, therefore, unconstitutional.

[26] The Company also submits that the imposition of the 2% minimum 'tax' where no corporation tax is payable for 'loss years' is made in bad faith, unreasonable, arbitrary, capricious, whimsical, unconstitutional, null and void and in contravention of articles 39, 40 and 142 of the Constitution of the Republic of Guyana. It is only where corporation tax is payable that the 2% minimum tax may be imposed, it is submitted, and in a 'loss year' no tax is payable so the 2% minimum tax may not be imposed.

[27] The Company further contends that the long title of the Corporation Tax Act refers to the corporation tax as a 'tax on profits'[4] as does section 4 of the Act, which also refers to corporation taxes as taxes on profits. This, therefore, excludes the imposition of any taxes in years where the Company is unprofitable. It is also submitted that the 2% minimum tax is disproportionate, unconstitutional, null and void, insofar as it violates the constitutional requirement of proportionality.

[28] We reject the Company's attempt to identify the 2% minimum tax as a loan because, unlike the provisions considered in *Lilleyman,* in this case the State does not repay the taxpayer nor does the taxpayer have any right to repayment or redemption. The taxpayer

[3] (1964) 7 WIR 464.
[4] The Long Title says- "An Act to impose a tax on the profits of companies and for purposes connected therewith."

gets a credit, if and when the stated conditions are met, and may then apply that credit in reduction of its tax liability but it is never entitled to repayment. The obligation to repay is the essence of a loan; it is what makes a loan, a loan. The conditions for getting the benefit of a credit for having paid the 2% minimum tax may never arise and the taxpayer may get 'nothing' in return for having paid that impost. When the taxpayer does get something in return, it is a credit to the account of its tax liability; not repayment. The stated position of the Company in this case, that it has been operating for almost all years at a loss, is a demonstration of this situation where the Company can get no credit for having paid the 2% minimum tax.

[29] As the Attorney General submits, a tax exists where the law mandates payment of money to the State for the funding of public works and functions. Relying on the decision of Crane JA in *Bata Shoes v CIR and AG*,[5] the Attorney General submits that the 2% minimum tax is legally a tax, it therefore falls within the exception in article 142(2)(a)(i), and does not amount to an unconstitutional compulsory acquisition of property. We agree.

[30] In response to the argument that the 2% minimum tax may not be imposed and collected in years of loss/no profit, we agree with the Revenue Authority that the provisions of section 10A are clear and unambiguous. They submit that Parliament must be taken to have considered the implication of taxing turnover as distinct from taxing profit, and felt satisfied there was no need to exclude loss years or safeguard the taxpaying Company's capital. The historical accuracy in the words of section 4 of the Corporation Tax Act, that the Act taxed profit, was obviously altered by the passing of new legislation to create this new tax that was introduced into the pre-existing legislation. The departure from taxing only profit to now include a tax on turnover was deliberate

[5] [1976] 24 WIR 198.

and called for no amendment to the historical tax-on-profit premise, because the amendment proclaimed it operated *"notwithstanding anything contained in sections 4 and 10*". In this context, the word notwithstanding bears its common meaning -- "in spite of".

[31] We do not address the written submissions on proportionality because, while the Company discussed the legal principles relating to that requirement, it did not, in the slightest way, assert any facts or circumstances which would make this general tax on all commercial companies, even at first sight, disproportionate. It was appropriate that counsel did not pursue the line of argument.

[32] Another argument that we do not address is the argument that the 2% minimum tax is to be collected only in a year of profit because the Act charges the minimum tax when there is "corporation tax payable" so that if there is no corporation tax payable section 10A does not impose the minimum tax. This is a straight question of statutory interpretation and raises no constitutional question. If the Revenue Authority has been wrongly interpreting and applying the section, this alleged misapplication may be challenged by following the statutory procedure. The Company should not be permitted to invoke the constitutional jurisdiction of the courts by arguing that an alleged misapplication of a law is unconstitutional: as we have decided, the law is constitutionally valid, and the Income Tax Act provides a specialized procedure for challenging its application. In this regard it should be sufficient for us to refer to, without repeating, the often-quoted admonition stated by Lord Diplock in *Harikisson v AG*[6] that it is an abuse for litigants to bring claims for constitutional relief in matters where not only is an alternative remedy available but that remedy is the natural and, in particular cases such as the present, the statutorily provided recourse.

[6] (1979) 31 W.I.R. 347.

[33] The caution against abuse of process in constitutional law claims was repeated by this Court in *John Sealey v The Attorney General of Guyana and The Police Service Commission*[7] and *Stephen Edwards v The Attorney General of Guyana and The Police Service Commission*.[8]

[34] In summary, the Company has failed to make out any violation of the Company's constitutional rights and inappropriately sought constitutional redress in the face of an alternative remedy provided by the taxing statute, although its unsuccessful contention that the 2% turnover tax was not truly a tax could, if it had succeeded, have attracted constitutional relief. We therefore dismiss its constitutional challenge.

The lawfulness of the demand

[35] When the claims for relief filed in the High Court are examined, shorn of the constitutional issues, they boil down to the contentions that the Company was not liable to pay the taxes, interest and penalties; that it was not assessed in accordance with the proper procedures outlined in the Income Tax Act; and that the Revenue Authority did not follow the proper procedure before issuing the demand letter of 24th May 2012.

[36] The submissions of the Revenue Authority addressed to the issue of recourse call for first treatment because they submit that if the Company had a genuine objection to paying the taxes demanded they should have disputed the liability in accordance with the detailed and specialised procedure provided in section 78 of the Income Tax Act. The Revenue Authority relied on the following statement from the Supreme Court of Canada in *Canada v. Addison & Leyen Ltd:*[9]

> "Reviewing courts should be very cautious in authorizing judicial review in such circumstances. The integrity and efficacy of the system of tax assessments and appeals should be preserved. Parliament has set up a complex structure to

[7] [2008] CCJ 11 (AJ).
[8] [2008] CCJ 10 (AJ).
[9] [2007] 2 S.C.R. 793, 2007 SCC 33.

> deal with a multitude of tax-related claims and this structure relies on an independent and specialized court, the Tax Court of Canada. Judicial review should not be used to develop a new form of incidental litigation designed to circumvent the system of tax appeals established by Parliament and the jurisdiction of the Tax Court. Judicial review should remain a remedy of last resort in this context."[10]

[37] It is recognized, of course, that the Company did not bring a judicial review claim but a claim for constitutional relief and, to the limited extent of challenging the nature of the 2% turnover tax as a tax, were entitled to do so. But that entitlement did not alter the fact that at root, the underlying and primary issue the Company had was with the liability to pay the demanded taxes. That was an issue precisely suited for resolution by the specialised processes and tribunals established by the Income Tax Act for producing such resolution. Even if the Company was persuaded it had a constitutional challenge to the taxing statute, the recourse provided by law for challenging a liability to tax was not overreached or neutralized by bringing the constitutional challenge. During the hearing counsel was unable to answer credibly the question, why didn't the Company also engage the statutory procedure for challenging the assessment. Nothing stops a taxpayer from bringing two sets of proceedings, one in the High Court challenging an alleged constitutional violation and another before the Commissioner and the Appeal Tribunal.

[38] The contention by the Company that it did not follow the statutory procedure for disputing an assessment because no assessment was served on it is a strained one. As counsel accepted, there is no statutory form of notice prescribed for conveying an assessment to a taxpayer and the documents produced in evidence include letters, statements of assessment and, finally, a demand notice by which the Revenue Authority duly informed the Company of the amount in which it had been assessed. It was, therefore, perfectly open to the Company to notify the Commissioner of its objection,

[10] ibid, [11].

as the Act provides, and it is inconceivable that the Commissioner would have said, 'I did not serve you with a notice of assessment, therefore you may not object to the assessment of which I have notified you and so I reject the objection that you have made'.

[39] In particular, the letter to the Company from The Guyana Revenue Authority dated April 3, 2012 stated, "Please be informed that I have enclosed a Revised Tax Liability Statement taking into account Corporation and Property Tax Returns that were recently submitted and list of payments to facilitate reconciliation of your tax records as requested" [emphasis added]. The letter stated the total tax due and enclosed a table showing the tax assessed for each year going back to 1986 and ending 2010. A note at the bottom of the relevant page of the table states that corporation tax return was outstanding for year of assessment 2011. Other letters that were exhibited confirm the indication in this letter, that the Company and the Revenue Authority had been communicating on the amount of taxes owed by the Company and, as emphasized, the Company had filed tax returns that presented the Company's statement of its liability.

[40] Some significant conclusions flow from this state of affairs. It confirms the indication given in the basic facts stated above at [7] that there was no sudden and unheralded imposition of and demand for taxes from the Revenue Authority and, it appears, it was no arbitrary assessment. The Company had been filing tax returns and had previously accepted the liability to pay the 2% minimum tax and, manifestly, the Company was notified of the tax assessed for each year. The Company, therefore, had every opportunity to ask the Commissioner to review the assessments and had that opportunity following the letter of April 2012. Indeed, as late as May 14, 2012 the Commissioner is seen writing to the Company to say that after careful consideration of the Company's objection he had decided to amend his assessments for certain years and

that Corporation Tax held in abeyance for those years was discharged and was no longer payable.

[41] The Revenue Authority's letter of April 3, 2012 recorded that previous demands for payment of taxes due had been made and not met, and gave a final reminder to make full payment within 30 days, and trusted that every effort would be made to comply. It seems there was no compliance because the Commissioner wrote on 24th May 2012 demanding payment of $3,811,346,397, which sum now included interest and penalty and taxes for most of the years going back to 1985. The demand letter gave the Company 21 days to pay. The Company's response was to file High Court proceedings on 9th July 2012.

[42] The Company clearly knew of the statutory regime for disputing an assessment, which required them to make representations to the Commissioner and, if not satisfied with his response, to appeal to the Board of Review. As is common to Income Tax Acts in our jurisdictions, an appealing taxpayer is required to pay a portion of the assessed liability; in this case two-thirds of the sum due, as provided in section 81(5) of the Income Tax Act. This requirement, of course, has the salutary effect of denying taxpayers the financial gain at the expense of the nation of filing baseless appeals, as well as of relieving the taxpayer of incurring penalty and interest charges by simply withholding payment of taxes which later prove to be due, while the challenge wends its way through the process: in this case, for over five years.

[43] That the Company knew the procedure for challenging an assessment or liability is confirmed by the fact that a firm of accountants was acting for them in the Company's dealings with the Revenue Authority and these professionals would obviously have known. In addition, as mentioned at the outset, the Commissioner had written to the Company as recently as January 12, 2010 informing it of its right to object and the procedure for doing so.

[44] The challenge to the constitutionality of the tax having failed, the Revenue Authority's assessments and demand for taxes remain. The Court has not been directed to anything which gives it jurisdiction to review and hear an appeal against a tax assessment; no cause of action arises from this dispute between a taxpayer and the State. There is not, in this case, as existed in the Canadian case, even the possibility of the High Court and ultimately this Court engaging with the liability to tax by way of a judicial review challenge on the putative ground that the decision to impose or demand the sum assessed was an ultra vires or otherwise unlawful decision taken by the Revenue Authority in violation of administrative law principles. With the constitutional challenge dismissed there is nothing for this court to decide.

Disposition

[45] Broad considerations of justice beyond the strict application of the law gave rise during the hearing to considering whether it would be competent and appropriate for this Court to send the challenge to the liability for tax to go through the review and appeal process, since this is the proper, statutory process for resolving a dispute and this process was not engaged. There stands in the way of such recourse, which counsel for the Revenue Authority submits is in any event no longer available, the reality that the Company chose the course of resorting to the High Court for constitutional relief. It is clear that the Company could as easily have pursued the statutory procedure for disputing an assessment, and could have done so concurrently with its constitutional challenge. The Company must have considered it could lose the constitutional challenge to the validity of the tax and that this would leave undisturbed the demand for the taxes.

[46] That outcome having evented, the Company now finds itself in the position of having to deal with a legally undisputed demand. There is no basis for this Court to intervene to protect the Company from the consequences of its decision to not follow the statutory

provision for disputing a tax liability. It must be left to the Company and the Revenue Authority, as well as the State in its greater capacity, to resolve the dispute as to the liability to tax if, indeed, beyond the Company's challenge to the constitutionality of the 2% minimum tax, there was really a dispute.

[47] We dismiss the appeal with costs to the respondents.

/s/ A. Saunders

The Hon Mr Justice Saunders

/s/ D. Hayton

The Hon Mr Justice D Hayton

/s/ W. Anderson

The Hon Mr Justice W Anderson

/s/ M. Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee

/s/ D. Barrow

The Hon Mr Justice D Barrow