IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 57

Tax Appeal No 10 of 2022

In the matter of Section 81(2) of the Income Tax Act 1947

And

In the matter of Section 81(2) of the Income Tax Act

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In the matter of Section 81(2) of the Income Tax Act (Cap 134)

And

In the Matter of a Grounds of Decision dated 29 August 2022
made in Income Tax Board of Review Appeal No 3 of 2019

Between

Singapore Cement Manufacturing Company (Private) Limited
… *Applicant*

And

Comptroller of Income Tax
… *Respondent*

JUDGMENT

[Revenue Law — Income taxation — Capital allowance]

Singapore Cement Manufacturing Co (Pte) Ltd
v
Comptroller of Income Tax

[2023] SGHC 57

General Division of the High Court — Tax Appeal No 10 of 2022
Choo Han Teck J
1 March 2023

10 March 2023 Judgment reserved.

Choo Han Teck J:

1 This is an appeal by Singapore Cement Manufacturing Pte Ltd ("the appellant") for accelerated capital allowance under s 19A of the Income Tax Act (Cap 134, 2014 Rev Ed) ("ITA"). Its claim, pertaining to a cement silo constructed in 2013 ("the Silo"), was rejected by the Comptroller of Income Tax ("the Comptroller"), and the appellant appealed to the Income Tax Board of Review ("the Board"), which dismissed its appeal. The appellant is a Singapore incorporated company in the business of importing cement for distribution and sale to concrete suppliers in Singapore. Prior to 2011, the appellant had only been importing Japanese ONADA Brand Ordinary Portland Cement ("OPC"). In 2011, the appellant began importing a new type of cement under the Japanese TAIHEYO brand, known as Portland fly-ash cement ("PFAC"). In 2013, the appellant constructed the Silo in preparation for the increased demand of PFAC. The Silo has a capacity of 24,000 tons. Although the appellant intended the Silo

to be used for storage and distribution of PFAC, it is not disputed that the Silo can store any type of cement.

2 The appellant receives cement by ship, with an average of 11,000 tons of cement received per shipment. Cement trucks that distribute the cement to the appellant's customers can only carry 35 tons of cement per trip. As cement trucks cannot be loaded directly from the ship, 11,000 tons of cement is offloaded into the Silo in the 3 days that a ship docks at the Jurong Port ("the offloading process"). The unloading of the shipment is a continuous 24-hour operation that only stops during inclement weather. Once the shipment is completely offloaded, over the next seven to eight working days, the 11,000 tons of cement is dispensed in batches of 35 tons into cement trucks for distribution ("the batching process"). However, unlike the offloading of shipments into the Silo, this batching process is not continuous as there are breaks during the times the cement is not being loaded onto the trucks. There is no processing or transformation of the cement inside the Silo. Other than filtration as the cement enters the last portion of the Silo, the cement is dispensed in the same form it enters the Silo.

3 The Silo is purpose-built for optimum storage and distribution. It is a cylindrical structure with a height of 65 metres and a diameter of 23 metres. It consists of two sections — a section representing approximately the top two-thirds of the volume of the Silo, where cement is stored after it is unloaded from the ship ("the storage section"), and a section representing approximately the bottom one-third of the volume of the Silo which contains equipment for dispensing the cement into trucks ("the dispensing section"). Cement is loaded from the ships into the Silo from the top and is dispensed from the bottom into the awaiting trucks.

4 Each time a ship with PFAC docks at the Jurong Port, the offloading and batching processes begin. Some 11,000 tons of cement begin their journey from the docked ship through the cantilever air slider bridge (the "Cantilever Air Slider Bridge") to the Silo, where it is lifted to the roof of the Silo by a bucket elevator ("the Bucket Elevator") that feeds into the storage section. The cement falls by gravity to the base of the storage section, which takes the shape of an inverted cone ("the Inverted Cone"). The circumference of the inverted cone is lined with pneumatic valves ("the Pneumatic Valves") which separate the storage section and the dispensing section. These Pneumatic Valves are essentially the gateway for cement to flow into the dispensing section. When the Silo is ready to dispense, the Pneumatic Valves are opened, allowing the cement to flow into the dispensing section. Bearing in mind that the Pneumatic Valves are along the circumference of the inverted cone, eight fluid slides ("the Fluid Slides") direct the cement flowing through the Pneumatic Valves inwards into an aerated bin ("the Aerated Bin") in the centre of the Silo. The aerated bin is temperature regulated by heated compressed air from the blowers ("the Blowers") below. The Blowers are regulated by a computer system ("the Computer System"). Cement from the aerated bin passes through the vibrating filter ("the Vibrating Filter") where unusable cement is removed, before it enters the batching chute ("the Batching Chute") through which it is finally dispensed into the awaiting cement truck parked on the weighbridge ("the Weighbridge") that ensures all cement trucks are loaded uniformly in weight.

5 On 3 June 2016, the appellant, through their tax agents, applied for an advance tax ruling under s 108 of the ITA as to whether the Silo qualifies as a plant, and therefore be entitled to an accelerated capital allowance under s 19A of the ITA. The Comptroller is of the view that the Silo comprises various assets, all of which may be classified as either structural or functional assets. The

Comptroller disallowed the appellant's claim on the former (the structural assets), but allowed the claim on the latter, the functional assets, namely, the mechanical and electrical equipment installed within the Silo that perform operational functions relating to the dispensing of cement. These equipment are (in order of their usage in the offloading and batching processes described above):

(a) The Bag Filter System;

(b) The Cantilever Air Slider Bridge;

(c) The Bucket Elevator;

(d) The Pneumatic Valves;

(e) The Fluid Slides;

(f) The Aerated Bin;

(g) The Blowers;

(h) The Computer System;

(i) The Vibrating Filters;

(j) The Batching Chute; and

(k) The Weighbridges.

(collectively, the "Equipment")

6 The Comptroller disallowed capital allowances on the former group, which comprised:

(a) The Silo Walls; (which form the structure of the Silo)

(b) The Inverted Cone;

(c) The Top House (which houses the Bucket Elevator);

(d) The Pigeon House; (which houses the Bag Filter System);

(e) The Blower Room; (which houses the Blower); and

(f) The Control Room (which houses the Computer System).

(collectively, the "Disputed Assets")

7 The value of the two categories are as follows:

Description	Amount
Equipment (capital allowance allowed)	$3,443,890
Disputed Assets (capital allowance disallowed)	$14,635,481

8 Dissatisfied, the appellant appealed to the Board against the Comptroller's decision disallowing capital allowances for the Disputed Assets. The Board, after hearing parties and conducting a site visit to the Silo, found for the Comptroller. The central issue in this appeal was whether the Board was correct in finding that the Silo was a building as opposed to a plant.

9 Counsel for the appellant, Mr Vikna Rajah, argues that the Board erred in law and fact. First, he says that the Board misapplied the leading decision of *ZF v Comptroller of Income Tax* [2011] 1 SLR 1044 ("*ZF*") by not applying the cases of *Schofield v R&H Hall* (1974) 49 TC 538 ("*Schofield*") and *Inland Revenue Commissioners v Barclay, Curle & Co Ltd* [1969] 1 WLR 675 ("*Barclay Curle*"), which he submits were endorsed by the Court of Appeal in *ZF*. According to counsel, these cases would have inclined the Board to find

that the Silo is a plant. Secondly, he says that the Board erred in applying the factors in *ZF* by focussing on the physical characteristics of the Silo without giving due consideration to its active operational functions. Thirdly, he says that the Board erred in fact in failing to regard the Equipment and the Disputed Assets together as an integrated whole. Lastly, he says that the Board erred by taking into consideration the previous tax treatment of the appellant's other silos (which is not in issue in this appeal) under the Industrial Building Allowance.

10 As the Court of Appeal explained in *ZF* (at [72]), the question of whether an asset is a plant is a question of fact:

> 72 We turn first to Mr Aw's alternative argument, that the question of whether the Appellant's dormitories were "plant" is one of fact and degree and that the answer given by the Board should be treated as decisive unless it was an unreasonable conclusion on the facts. While we agree completely with Mr Aw's statement of the law, we are of the view that both the Board and the learned Judge below had, with respect, erred in law (as opposed to fact) by focusing on the sole factor of the dormitories being used as the "setting" or "premises" for the taxpayer's business without taking into consideration other relevant factors. The Board, in arriving at its decision, had expressly disregarded the fact that the dormitories were portable and demountable, and that they were only intended to be situated at the Site for nine years at the most.

If the Board was correct in law and the appeal is merely on the facts — that the Board applied the factors referred to in *ZF* erroneously when it found that the Silo is not a plant, then for the appeal to succeed, counsel for the appellant has to show that the Board's finding was an "unreasonable conclusion". An appellate court examines the record of appeal, whereas the Board, as a specialist tribunal, not only hears evidence from witnesses, but also, as in this case, visits the site to see the Silo.

11 On the appellant's first argument, I do not think that the Board had erred in law. I do not agree with Mr Rajah's argument that the Board misunderstood *ZF* by not applying the cases of *Schofield* and *Barclay Curle*. The mutually exclusive categorisation of "plant" and "building" is not disputed. It is further agreed between the parties that in situations where an asset has characteristics that may justify a classification as both "plant" and "building", the question is, which category is more appropriate in the circumstances.

12 The appellant's basis for saying that the Board erred is that *Schofield* and *Barclay Curle* are relevant in establishing that the Silo is a plant. I disagree with Mr Rajah — although these cases provide examples of what other jurisdictions consider to be a plant, it is of no help to our courts when we are faced with the question of whether an asset is a plant or building under Singapore law. Counsel for the appellant accepts that those cases were decided under the UK's income tax law which allows an asset to be classified as both a building and a plant. Accordingly, the courts deciding those cases did not have to determine whether the asset was either a plant or a building. Thus, even if those cases are relevant insofar as they describe the character of a plant, they are of limited value because they offer no help in determining whether the Silo is a plant or building. That was precisely the question before the Board. It is, of course, not disputed that the Silo has certain characteristics of a "plant" — were this not the case, there would have been no dispute to begin with. Thus, the Board did not err in law by finding that these cases are of no relevance when a court has to consider on the facts, whether the Silo was a plant or a building.

13 I am of the view that the Board's findings were reasonable, and I affirm their finding that the Silo is a building as opposed to a plant. Mr Rajah also submits that the Board had erred in finding that the operational function of the

Silo was the storage and housing of equipment and cement. The appellant claims that the Silo performs the following six active operational functions in relation to the cement: transportation, control, filtration, batching, preservation and protection. However, the batching process described above shows that the first four functions of transportation, control, filtration, and batching of cement are performed only by the Equipment (for which the appellant has already been granted capital allowances). As for the remaining two functions of preservation and protection that the appellant says are also performed by the Silo, I agree with counsel for the Comptroller, Mr Bjorn Lee, that those are functions that can be equally performed by, and are in fact, integral to a building. If the function of protection and preservation is allowed as a factor pointing in favour of an asset being characterised as a plant, the distinction between plants and buildings (such as warehouses and storage facilities) will be blurred. Excluding the Equipment for which the appellant had been granted capital allowance, the function of the Disputed Assets is storage and housing. This was what the Board found, and I am of the view that it is correct.

14 The final argument advanced on the appellant's behalf is that the Board was wrong not to have treated the Silo as an indivisible whole. To this end, the appellant's counsel reasons analogously to *Schofield* and *Commissioner of Inland Revenue v Waitaki International Ltd* [1990] 3 NZLR 27 ("*Waitaki*") where the grain silos and a cold storage room were respectively considered to be a plant. However, as Mr Lee correctly points out, these cases were decided in jurisdictions that permit an asset to be both a building and a plant simultaneously. In these jurisdictions, the inquiry of whether an asset is a plant is separate from whether it is a building — so long as it can be independently established that an asset is a plant, it is irrelevant that it is also a building. Thus, these cases do not support the appellant's proposition of the indivisibility of

assets, because the question of divisibility could not have arisen in those cases as there is no rule of mutual exclusivity between plants and buildings — unlike Singapore law.

15 Section 19A of the ITA does not preclude the Comptroller from classifying parts of the Silo as separate assets for differentiation for tax purposes. In my view, this is a necessary power, without which, every asset must be classified on an all-or-nothing basis. There are many assets that contain equipment giving them the features of a plant, but on the whole, it is more of a building. Otherwise, the rule in *ZF*, when read strictly, may apply to plant-like structures that are fixed to a building and would not be given the allowance under s 19A.

16 Furthermore, breaking down an asset into its constituent smaller assets makes it easier to distinguish between machinery, plant, and building vis-à-vis one complex asset as a whole. For example, it ensures that a building which houses only machinery (for example, a car assembly factory) does not become a plant. In this case, the Comptroller rightly considered the Equipment to be machinery and allowed capital allowance to be claimed on that basis. A plant is something other than a building that has a functional purpose but does not fit within the definition of machinery (for example, the temporary housing in *ZF*). A building on the other hand carries with it a nuance of permanence, being a built-up structure intended to house things and/or people.

17 I am of the view that the Comptroller's assessment of the Silo as a building with machinery is a fair and reasonable assessment. In any case, the divisibility of the Equipment may be inferred from the appellant's own presentation of its case. The appellant provided separate cost schedules for the

construction of the Disputed Assets and the Equipment from the instant it requested for an advance ruling. From the breakdown of the expenditure incurred in the construction of the Silo, it is clear that the Silo could only be fitted with the Equipment after the Disputed Assets were fully constructed. Finally, it was not disputed that the Equipment is maintained by contractors other than those maintaining the Disputed Assets. Thus, I agree with the Board's finding that the Equipment is separate from the Disputed Assets.

18 Even if the Board was wrong to have considered them as divisible assets, a strong case could be made that the entire Silo resembles a building more than it does a plant. The primary function of the Silo is still storage. The Equipment provides the means by which the Silo is loaded and unloaded. But the purpose of the Silo is to store the 11,000 tons of cement from the docked ships, until it has been fully dispensed into the trucks.

19 Finally, although I have decided that the application of *ZF* alone justifies the finding that the Silo is not a plant, I must address the appellant counsel's submission that the appellant's other silos, which are essentially the same in structure, are irrelevant to this appeal. I am of the opinion that how other silos are treated for tax purposes is a relevant consideration. The appellant is correct to say that the Comptroller is not bound by a tax position which it adopts previously (except where administrative law principles demand otherwise), but it cannot be claimed that a silo is a building that qualifies for the Industrial Building Allowance ("IBA") and also said that the same silo is a plant that qualifies for capital allowance under s 19A of the ITA. Capital allowance under s 19A of the ITA was not enacted as a replacement to the IBA. The mutually exclusive classification of plant and building laid down in *ZF* has been the law since 2010, when the IBA was still in force (it is due to be phased out by 2023).

The appellant's submission leaves a perplexing question to be answered as to how the Silo can qualify for two different tax allowances, one specifically for buildings (the IBA) and the other for plants (capital allowance under s 19A of the ITA) when the two are mutually exclusive.

20 For the above-mentioned reasons, I am of the view that the Board was not wrong to find that the Silo is a building and not a plant. The findings of the Board, after a site visit to the Silo, cannot be said to be unreasonable. I therefore dismiss the appeal.

21 I will hear the question of costs at a later date if parties are unable to agree costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Vikna Rajah and Koh Chon Kiat (Rajah & Tann Singapore LLP) for the appellant;
Bjorn Lee Long Jin and Timothy Tan Ding Yuan (Inland Revenue Authority of Singapore (Law Division)) for the respondent.