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

[2024] SGHC 281

Tribunal Appeal No 4 of 2024

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

And

In the matter of Sections 19A(1) and 19A(1B) of the Income Tax Act (Cap 134)

And

In the Matter of Income Tax Board of Review Appeal Nos 21 to 23 of 2016 and a Grounds of Decision delivered on 7 June 2024

Between

Changi Airport Group (Singapore) Pte Ltd

… *Appellant*

And

Comptroller of Income Tax

… *Respondent*

JUDGMENT

[Revenue Law — Income taxation — Capital allowance]

Changi Airport Group (Singapore) Pte Ltd
v
Comptroller of Income Tax

[2024] SGHC 281

General Division of the High Court — Tribunal Appeal No 4 of 2024
Choo Han Teck J
18 October 2024

1 November 2024 Judgment reserved.

Choo Han Teck J:

1 The appellant is Changi Airport Group (Singapore) Pte Ltd ("the appellant"), a Singapore incorporated company, and its principal activities are to own, develop, manage and provide airport and airport-related facilities and services. It was appointed in 2009 pursuant to the Civil Aviation Authority of Singapore Act 2009 as the successor company for the airport undertaking of the Civil Aviation Authority of Singapore. Since then, it has been the licensed aerodrome operator of Changi Airport.

2 By an agreed statement of facts dated 13 July 2022 ("ASOF"), the following are undisputed between the parties. In the Years of Assessment ("YAs") 2011, 2012 and 2013, the appellant made certain claims for capital allowances under s 19A of the Income Tax Act (Cap 134, 2008 Rev Ed) (the "ITA") for capital expenditure in respect of two runways ("Runway"), various taxiways ("Taxiway"), and aprons ("Apron") (collectively, the "RTA") on the

basis that they were "plant" within the meaning of s 19A of the ITA; and various other assets referred to as "Security Installations", which are not the subject of the present appeal. The capital expenditure in respect of the RTA amounted to $272,575,162 across the three YAs. The Comptroller of Income Tax (the "Comptroller") took the view that the RTA were not "plant", and consequently disallowed the capital allowance claims on the RTA, but granted the appellant industrial building allowances under s 16 of the ITA on the basis that the RTA were "structures".

3 The Comptroller had also granted capital expenditure of $141,643,030 on various specialised systems or aerodrome equipment (the "Aerodrome Equipment"), comprising, among others, the airfield lighting system; aircraft docking guidance system; airport radar systems; apron floodlight system; docking guidance systems; flight information display system; floodlight system; interceptors; and traffic lights control system. The ASOF states that not all the Aerodrome Equipment are part of the specialised systems or sub-systems in the aerodrome, as some of these assets are in the terminal buildings. The significance of this will become clear shortly.

4 The appellant appealed against the Comptroller's assessment before the Income Tax Board of Review (the "Board"), ITBR Appeal Nos 21 to 23 of 2016 (the "ITBR Appeal"). The pertinent portion of the Board's written decision rendered on 7 June 2024, against which lies the appellant's appeal before me, was that the RTA was not a "plant" which qualified for capital allowances under s 19A of the ITA.

5 The parties were in general agreement concerning the characteristics of the RTA. It is agreed in the ASOF that the RTA are "designed to facilitate and

ensure the safe landing, taxiing, and take-off of aircraft at Terminals, 1, 2, 3 and 4 of Changi Airport". This is borne out and supported by three key characteristics of the RTA highlighted by the appellant, which the Comptroller did not dispute, namely:

(a) that it was designed and constructed with transverse slopes, with a specific asphalt mix design which promotes the rapid drainage of water and increases friction to reduce the occurrence of aquaplaning;

(b) that it was constructed with three layers of pavement, which allows load to be transferred evenly over the base layer, thus providing strength and friction for aircraft operations; and

(c) that the Apron contains an embedded reinforcing steel mesh that prevents lightning hazards on the Apron.

6 Mr Tan Kay Kheng ("Mr Tan"), who appeared for the appellant, advances his case in this appeal on four principal grounds, namely:

(a) that the Board erred in applying the factors in *ZF v Comptroller of Income Tax* [2011] 1 SLR 1044 ("*ZF*");

(b) that the Board misapplied certain the foreign authorities of *Schofield v R&H Hall* (1974) 49 TC 538 ("*Schofield*"), *Inland Revenue Commissioners v Barclay, Curle & Co Ltd* [1969] 1 WLR 675 ("*Barclay Curle*"), and *Commissioner of Inland Revenue v Waitaki International Ltd* [1990] 3 NZLR 27 ("*Waitaki*") in finding that the RTA was not "plant";

(c) that the Board erred in concluding that the Aerodrome Equipment and the RTA were not an indivisible asset which should be classified as "plant"; and

(d) that the Board erred in finding that the RTA was more appropriately classified as a "structure" despite having accepted the appellant's evidence in relation to the exact operational role that the RTA played in the appellant's business.

7 The Comptroller joined issue with the appellant, and, counsel for the Comptroller, Mr Bjorn Lee ("Mr Lee"), submits that as a preliminary issue, the appellant's appeal only raised questions of fact. He accordingly invites me to dismiss the appellant's appeal *in limine* on the basis that it did not raise any question of law or mixed law and fact as required under s 81 of the ITA. Mr Lee also relies on *ZF* at [68] and *Comptroller of Income Tax v AQQ* [2014] 2 SLR 847 at [123], submitting that the question of whether the RTA is a "plant" is a question of fact and degree, and that the Board's finding should not be interfered with unless it is a finding which no reasonable body of members could have reached. Mr Lee argues that the appellant's contention that the Board had erred in placing undue emphasis on certain facts while omitting to accord sufficient weight to others, is really an objection to the Board's assessment of the evidence, which is an exercise in fact-determination: *THM International Import & Export Pte Ltd v Comptroller of Goods and Services Tax* [2024] SGHC 97 ("*THM*").

8 I am unable to agree with the Comptroller's position in this regard. The fact that the appeal concerns the Board's "assessment of evidence" is not determinative of whether the appeal only raises issues of fact. The crux of the inquiry is the issue for which such assessment of the evidence was undertaken.

In my view, there is a distinction between the assessment of the evidence for the purposes of findings of foundational facts on which legal principles are subsequently applied, and a finding of fact that is made after applying a multi-layered legal test (such as the test in *ZF*) for determining if an asset is "plant". This distinction is also borne out in the following passage in *THM* at [40]:

> … To illustrate, there might have been an issue of law or mixed law and fact if there was a dispute as to the legal definition of "supply", or as to whether a particular form of supply – say, a supply of content in the virtual world – could constitute a "supply" under the GST Act. The dispute raised by the Appellant relates to a logically anterior matter, namely, whether the Goods claimed to have been supplied existed. It would only be after this fact is established that the legal or mixed question as to whether this amounted to a "supply" within the meaning of the GST Act, and in turn, whether the Appellant had a right to an input tax refund, would arise.

9 It is implicit in Mr Lee's submission that the "assessment of evidence" in this case is not with the view of disputing the foundational facts (for example, the Board's finding as to what was the operational role of the RTA; or the extent of integration of the RTA with the Aerodrome Equipment). It is clear that facts in the record are accepted by the parties as final. The appellant's case is that the Board erred in how it had weighed these foundational facts together according to the legal principles governing the assessment of "plant". The Comptroller accepts that such an appeal may succeed if the appellant can show that the Board's finding was an unreasonable conclusion. In my view, this is no more than what the appellant is seeking to do by way of this appeal. I therefore decline to dismiss the appellant's appeal on Mr Lee's preliminary objection, and now consider the four grounds advanced by the appellant.

10 The first ground of appeal is the Board's alleged misapplication of the principles in *ZF*. First, Mr Tan submits that the Board's conclusion that the RTA

was a "structure" was "unprincipled and an error of law" (though I think counsel meant "not based on principles", which is not the same as "unprincipled"), on the basis that the term "structure" is unhelpful and vague. He says that there is no distinction between a "building" and a "structure" and accordingly, the key question is whether the asset is more appropriately described as a plant or as a building. Mr Tan submits that because the RTA does not conform to the idea of a building that provides shelter, it should be more appropriately described as plant.

11 I am unable to accept this argument. First, the distinction between "plant" and "building" that Mr Tan seeks to draw is a false one. The Court of Appeal in *ZF* made clear that the correct distinction is between "plant and machinery" and "buildings and structures", rather than "plant" and "buildings":

> 18 Currently, Part VI of the ITA provides for capital allowances in respect of three broad categories of capital assets, as follows:
>
> (a) industrial buildings and structures (ss 16–18 ITA);
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> (b) plant and machinery (ss 19, 19A, and 20–22 ITA); and
>
> (c) certain intangible assets (ss 19B, 19C and 19D ITA).
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> Of particular relevance to the present appeal is the fact that the ITA draws a distinction between plant and machinery, on the one hand, and buildings and structures, on the other. This distinction can be traced back to the time when capital allowances first originated in 1878. At that particular point in time, s 12 of the UK Customs and Inland Revenue Act 1878 (c 15) provided for deductions from chargeable income in respect of "wear and tear … of any machinery or plant used for the purposes of the concern". No allowances for buildings or structures were given then and, even for plant and machinery, deductions could only be claimed in respect of physical deterioration and not depreciation in value *per se*.

12 The legislative purpose is to keep the regimes for industrial buildings and structures on the one hand, and plant and machinery on the other, separate and distinct. Seen in this light, the definition that Mr Tan seeks to confine "buildings or structures" to, as being limited to a conventional understanding of a building which provides shelter (or "buildings proper" as described by the Court of Appeal in *ZF*), is manifestly underinclusive. Even if a building or a structure may bear similar characteristics, the plain meaning of the conjunction "or" adopted in s 16 of the ITA suggests that buildings and structures are different. Legislative interpretation requires us to assume that Parliament does not legislate in vain. As a matter of logic, one may also contend that the plain and ordinary meaning of a building is a specific type of structure. In *ZF*, the Court of Appeal focussed on the term "building" because the portable dormitories in question "resembled buildings from a physical perspective": *ZF* at [77]. However, for the above reasons, there is nothing inherently erroneous about the proposition that a "structure" is distinct from "building".

13 Next, Mr Tan submits that the Board had placed undue emphasis on the fact that the malfunctioning of the RTA does not automatically the RTA useless, even though it accepted that it would have repercussions on the operational effectiveness and efficiency of the airport. Mr Tan submits that in placing weight on this fact, the Board erred in law by substituting the "more appropriate" test in *ZF* (that is, whether an asset is more appropriately classified as "plant" or "building") with a test of "necessity" (that is, whether the Aerodrome Equipment is necessary to the functioning of the RTA). This, Mr Tan says, is a misapplication of the factor of the "exact operational role" of the asset as stipulated in *ZF*.

14 In my view, counsel misses the point of the Board's reasoning. The assessment of whether the RTA could operate when the Aerodrome Equipment did not function was the Board's inquiry into the question whether the RTA and the Aerodrome Equipment operated as a single, indivisible piece of apparatus for the purpose of assessment.

15 In *Singapore Cement Manufacturing Co (Pte) Ltd v Comptroller of Income Tax* [2023] 5 SLR 1099 ("*Singapore Cement*") at [15]–[16] this court held:

> 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.
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> 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.

16 The assessment of the divisibility of a complex asset is an anterior inquiry to identify the exact apparatus in question, and thereafter determine its exact operational role. For example, in *Singapore Cement* at [17], the issue was whether the cement silo was capable of being divisible into its constituent parts comprising the silo structure and the equipment. In the present case, the Board's

inquiry as to whether the RTA could continue to function in the absence of the Aerodrome Equipment was part of its inquiry in determining if the RTA could be differentiated from the Aerodrome Equipment. This was evident in the question raised by the Board:

> when looking at the fundamental proposition of "plant" consisting in *apparatus* that is utilised for carrying on the trade or business concerned, there is a question exactly what *apparatus* is the Appellant asking us to classify as "plant"?"
>
> [emphasis in original]

17 The Board accepted that the RTA are closely integrated and interconnected with the Aerodrome Equipment, and further that there is a whole interconnected system that enables Changi Airport to function as effectively and efficiently as it does. The appellant says that it necessarily follows that the entire interconnected system would be the apparatus in question. This was the exact proposition which the Board had difficulties accepting, that the entire interconnected system was the apparatus to be classified for the purposes of s 19A of the ITA. It is clear from the Board's decision that it viewed the RTA and Aerodrome Equipment as divisible, and accordingly crystallised the exact operational role of the RTA, which it held to be the space on which take-off, landing, travelling and the resting of aircraft occurs.

18 Mr Tan invites me to conclude that the Board had erred in finding that the RTA and the Aerodrome Equipment are indivisible. This is the tenor of his third and fourth grounds of appeal (see above at [6]). However, I am unable to agree with this submission. First, he submits that the Aerodrome Equipment is not designed to work without the RTA. But the converse, as the Board noted, does not hold. The RTA continues to function even in the absence of the Aerodrome Equipment.

19 Secondly, Mr Tan submitted that the RTA is "core and critical" to the appellant's business, as it performs a critical function in facilitating the safe landing, rollout, take-off, ground movement and high-speed exits of aircraft. He says that the RTA does not comprise mere tarmac platforms that function only as setting or premises, but provides additional functions such as being a navigational instrument, preserving the safety of aircraft, preventing skidding, providing support for aircraft and preventing electric shocks.

20 However, as the Comptroller correctly points out in its submissions, the function of navigation is primarily performed by the Aerodrome Equipment such as the airfield lighting system, instrument landing system, signs and aircraft docking guidance system, for which capital allowances have been granted. And one must also not overlook the role of the pilots in the navigation of the aircraft on the RTA. As for the function of preserving the safety of aircraft, save for the fact that the RTA must be durable enough for aircraft to land, traverse and rest, this function is also primarily performed by the Aerodrome Equipment. Finally, the functions of prevention of skidding, bearing heavy aircraft load, and the prevention of electric shocks are functions which augment the primary function of being a structure on which aircraft may traverse and rest: *Singapore Cement* at [13]. Further, the fact that a structure or a building is purpose-built to the trade of the taxpayer does not render it a "plant".

21 Thirdly, I do not consider the analogy raised by Mr Tan of a motor vehicle to be helpful. Mr Tan suggests that a motor vehicle may still perform its basic functions of driving even if assets which are not necessary for this basic function (for example, its headlights and windshield) are faulty. I assume that Mr Tan seeks to compare the motor vehicle to the RTA, and the non-essential

assets to the Aerodrome Equipment. However, this analogy does not take the appellant's case very far because the facts of the present case are fundamentally different. As I have observed above, Mr Tan invites me to impute the functions discharged by the Aerodrome Equipment onto the RTA, which I am unable to accept. Whereas a motor vehicle is physically integrated as a single piece of machinery, the RTA and the Aerodrome Equipment are not. As Mr Lee emphasised in his oral submissions, not all of the Aerodrome Equipment are physically located on the RTA, with some even being housed on buildings several hundred metres away.

22 Finally, Mr Tan argues that the RTA and the Aerodrome Equipment are akin to a dry dock which is regarded as a single unit of plant (including the dock, valves and the provision of electricity and pumps). In my view, however, they are different. The distinguishing factor of a dry dock is that it is an apparatus performing the function of a hydraulic lift for raising ships and holding them in position (see *ZF* at [32]). In contrast, the RTA is a structure on which aircraft move, and the mobility of the aircraft is not the product of the RTA, but the aircraft's own technical capabilities, enhanced by the Aerodrome Equipment.

23 For these reasons, I did not accept the appellant's submission that the RTA and the Aerodrome Equipment were to be considered as a single asset to be assessed for income tax purposes. Consequently, I also agree with the Board that the basic function of the RTA is a structure which allows for aircraft to traverse and rest. Accordingly, it is the premise on which the appellant's trade occurs, as opposed to an apparatus used for the trade. In this regard, Mr Tan submits that the RTA should be considered the "very tools of trade" because it is an integral part of the means required for the trading operations of the appellant.

24 However, the focus of the inquiry as to the exact operational role of the asset is not on the extent to which it is functional, or integral to the taxpayer's business. Indeed, the fact that an asset is functional was noted by the Court of Appeal in *ZF* at [31] to be "at best, neutral and, at worst, circular in nature" because the inquiry is not whether the asset is functional, but whether it functions as a "plant" or "building". Therefore, the submission that the RTA plays an integral function in the appellant's business sheds no light on whether it functions as a "plant" or as a "structure". For the reasons above, I am of the view that the RTA is more a "structure" than a "plant". I therefore uphold the decision of the Board.

25 For completeness, I address the appellant's second ground of appeal (see above at [6]) that the Board had misapplied the cases of *Schofield, Barclay Curle* and *Waitaki*. The appellant says that the Board had acknowledged that the grain silo, dry dock and cold store in these cases respectively constituted an identifiable apparatus which were integrated, but erred in defining the RTA as mere "space". Mr Tan objects to the term "space" which the Board adopted. He submits that the Board had created a new concept of "space" that is not recognised in statute or jurisprudence. In my view, this would be an overly narrow reading of the Board's decision. As Mr Lee points out, and I agree, it is evident that the Board adopted the term "space" as an interchangeable reference to "structure" which it had found the RTA to be.

26 Mr Tan further submitted that the Court of Appeal in *ZF* had endorsed these foreign cases and the assets therein as "plant". He says that it was the approach that assets could both be "plant" and "building" that the Court of Appeal in *ZF* rejected, as opposed to the rulings that those assets were incorrectly held to be "plant". First, as I held in *Singapore Cement* at [12],

caution must be had to directly applying the rulings in these foreign cases directly by analogy (for example, concluding that a grain silo is a plant under Singapore Law because *Schofield* held that there were factors which pointed to it being "plant"). Although I accept that these cases provide nuances and principles which may assist the court in assessing whether an asset has qualities of "plant", the court must be conscious of the ultimate objective of the exercise under Singapore law namely, whether the asset is more appropriately described as "plant" or "building or structure". That is a unique exercise, and indeed, central to our jurisprudence because of the rule of mutual exclusivity between capital allowances for plant/machinery and building/structure.

27 Contrary to Mr Tan's submission, *ZF* did not endorse *Waitaki* as a case in which the asset in question there, for the purposes of Singapore law, would be "more akin to large, integrated pieces of machinery or equipment than to buildings or structures as such". This is made clear in [54], where the Court of Appeal observed that:

> In other words, although one could conceivably characterise the cold-stores or freezers in *Waitaki* as buildings proper, the New Zealand Court of Appeal took the view that these structures were in fact and in substance, in the nature of *large apparatus or equipment or machinery*. Crudely put, they were *large refrigerators*.

28 The court merely observed the view which the New Zealand Court of Appeal took, and noted that the cold stores could conceivably be "characterised" as buildings proper. Therefore, the court's treatment of *Waitaki* does not suggest that such an asset would have to be described as "plant" under s 19A of the ITA.

29 Further, Mr Tan refers to the Court of Appeal's holding in *ZF* at [77] that:

> In the circumstances, the dormitories were more akin to apparatus or equipment or machinery (albeit like, for example, the dry dock in *Barclay Curle* ([32] *supra*) and the silos in *Schofield* ([38] *supra*), being rather large in size).

30 Mr Tan submits that the Court of Appeal, by its reference to *Barclay Curle* and *Schofield*, accepts that such assets could be treated as "plant" under the ITA. I do not think that the mere alluding to the similarity in sizes between the assets there and the dormitories in *ZF* could justify the proposition formulated by the Mr Tan. *Barclay Curle* and *Schofield* are cases where unclear use of terminology had given rise to considerable ambiguity (see *ZF* at [29] and [32]–[38]).

31 I conclude by returning to a point which Mr Tan emphasised in the course of his oral submissions, that the definition of "plant" must not be too narrow. He referred me to the 19th century case of *Yarmouth v France* (1887) 19 QBD 647 ("*Yarmouth*") in which the English Court of Appeal held that a horse fixed to a carriage is a plant because it is an apparatus used by the farmer to transport his produce. Mr Tan says that it was not open to the Board to say that a "road is a road" (referring to the RTA) because it would be akin to saying that a "horse is a horse", when *Yarmouth* held that a horse could be "plant".

32 Given the technical nature of revenue law, the Court of Appeal in *ZF* at [70] cautioned against oversimplification, of which Mr Tan's reliance on *Yarmouth* is an example. There are crucial differences between the English income tax regime and the ITA (one of which is illustrated above at [26]). In any event, as has been made clear, what constitutes a "plant" is a matter of fact, and our tribunals may not necessarily find that a horse is a plant. Depending on

the precise context, a horse may be just a horse; just as a road may be just a road.

33 It will be more consistent for assessments under s 19A of the ITA to remain, as *ZF* had envisioned, one where the facts as well as context are of primary importance. In this regard, not only is the Board the primary trier of fact, having the benefit of hearing witness testimony and visiting the relevant sites, it is also a specialist tribunal constituted by legislature with the subject-matter expertise to adjudicate upon these disputes. Therefore, as long as there is reasonable ground for the Board's findings, the court should be slow to intervene: see *THM* at [17] and *Singapore Cement* at [10].

34 For the aforementioned reasons, I do not agree with the appellant that the Board's decision was unreasonable in the circumstances, nor did the Board err in law. I affirm the finding of the Board and dismiss the appeal. I will hear parties on costs at a later date if parties are unable to agree costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Tan Kay Kheng, Tan Shao Tong, Goh Ziluo (WongPartnership LLP) for the appellant;
Bjorn Lee Long Jin and Flora Koh Swee Huang (Inland Revenue Authority of Singapore (Law Division)) for the respondent.