In The Supreme Court of Belize A.D., 2010

Civil Appeal No. 2

In the Matter of an Appeal pursuant to section 43 (1) of the *Income and Business Tax Act*, CAP 55 of the Laws of Belize 2000

In the Matter of Sections 98, 100 and 102 of the *Income and Business Tax Act*, CAP 55 of the Laws of Belize of the Laws of Belize 2000

BETWEEN

CHX BELIZE LP APPELLANT

AND

COMMISSIONER OF INCOME TAX RESPONDENT

BEFORE: Hon. Justice Minnet Hafiz

Appearances: Mrs. Magalie Marin-Young for Appellant
Mr. Andrew Bennett for the Respondent

D E C I S I O N

Introduction

1. This is an Appeal by CHX Belize LP against the decision of the Commissioner of Income Tax which was upheld by the Income Tax Appeal Board on the 4th day of August, 2010.

2. CHX Belize LP is Bahamian company involved in petroleum operations in Belize, having certain working interests in Production Sharing Agreements with West Bay, U.S. Capital, and Belize Natural Energy Limited. CHX Belize LP is registered as an overseas company doing business in Belize as at the

25th day of September, 2007, under the Companies Act (hereinafter "CHX Belize LP").

3. The Commissioner of Income Tax is the public authority whose decision CHX Belize LP is appealing and her registered office is situate at Income Tax Department, Charles Bartlett Hyde Building, Mahogany Street Extension, Belize City, Belize (hereinafter "The Commissioner").

4. Details of order appealed

Decision contained in the order dated the 4th day of August, 2010 by the Income Tax Appeal Board Decision No. 4 of 2010 as follows:

a) *The decision of the Income Tax Appeal Board that Commissioner of Income Tax's assessment for June 2009 quarterly installment was not excessive;*

b) *The decision of the Income Tax Appeal Board that the expenses from all of the Appellant's Production Sharing Agreements Blocks made in the period are not allowable expenses to be deducted from income derived from petroleum operations;*

c) *That the decision of the Income Tax Appeal Board that the tax overpayments for the year 2008 being carried over are not allowable deductions from income derived from petroleum operations for quarterly installment due June, 2009.*

d) *The decision of the Income Tax Appeal Board that the demand by the Commissioner of Income Tax in respect of quarterly installments for June 2009 totaling BZD2,129,140.93 plus BZD63,874.25 in interest, is to stand;*

5. Details of which is challenged

a) *That the Income Tax Appeal Board erred in law when it held that section 100 and 102 of the Income and Business Tax Act did not permit the Appellant, then under commercial production occurring under one Petroleum Sharing Agreement, to deduct from its gross revenue derived from petroleum operations, expenses incurred under its combined*

petroleum operations under all its Petroleum Sharing Agreements whether or not under initial commercial production.

b) *That the Income Tax Appeal Board erred in law when it held that section 100 and 102 of the Income and Business Tax Act did not permit the Appellant, then under commercial production occurring under one Petroleum Sharing Agreement, to deduct from its gross revenue derived from petroleum operations, tax overpayments carried over from the previous year as an allowable deduction, for the purposes of arriving at chargeable income and quarterly tax installment due June, 2009.*

6. Grounds of Appeal

1. *Where there is an ambiguous revenue statute capable of two meanings then that statute must be interpreted in favour of the tax payer.*

2. *Neither sections 100 and 102 of the Income and Business Tax Act nor the Sixth Schedule to the said Act confine a Contractor to deduct from its gross revenues operation expenses derived from petroleum operations in respect of only the Production Sharing Agreement then in commercial production.*

3. *In other words, sections 100 and 102 of the Income and Business Tax Act do not unambiguously say that the Contractor cannot deduct from its gross revenue derived from petroleum operations, those operation expenses from other Production Sharing Agreements not then in commercial production.*

4. *Section 102 (2) of the Income and Business Tax Act and the Income Tax Bulletin No. 1.5.2 in fact permit a Contractor to combine revenue and expenses from several Production Sharing Agreements, and in a base year of initial commercial production, deduct any allowable deductions for tax purposes with respect to petroleum operations expenditure which remain unrecovered, and permit the carry forward of such loss (even from Petroleum Sharing Agreements that have been terminated) and the deduction from other revenues of the Contractor to the subsequent base year until fully recovered. An allowable deduction may therefore take place even though there is no Production Sharing Agreement, and ergo it does not matter that initial commercial productions is only under one and not all Production Sharing Agreements.*

5. *Consequently, allowable losses not carried over from earlier period may be applied to subsequent period from petroleum operations even*

though the Petroleum Sharing Agreement is terminated or not then in commercial production, once there is gross revenue from one Production Sharing Agreement in commercial production.

6. *Looking at the scheme of the Income and Business Tax Act then as it relates to petroleum operations, the legislators must have intended that once there is commercial production under one Production Sharing Agreement, the Contractor may carry over losses from other Production Sharing Agreements that are not yet under commercial production, and any ambiguity under the said Income and Business Tax Act must be read in favour of the tax payer.*

7. Order sought

That the amount assessed by the Commissioner of Income Tax for the June 2009 quarter be reduced by the amount of the overcharge, after allowing the Contractor to deduct from its gross revenue all deductions (including those from other Production Sharing Agreements) not restricted to the Production Sharing Agreement that has an initial commercial production.

The evidence

8. The court did not have the benefit of the notes of proceedings before the Appeal Board or any records whatsoever for the hearing of the appeal before this court. As such, it was ordered that affidavits be filed from both sides so the court could get some insights as to what transpired in this matter. The affidavit evidence will not be used to make any determination of factual issues as the appeal concerns the interpretation of certain sections of the **Income** and **Business Tax Act, Chapter 55.**

9. Kevin Herrera filed an affidavit on behalf of the Appellant and the former Commissioner of Income Tax, Mrs. Marilyn Ordonez filed an affidavit on behalf of the Respondent.

10. Mrs. Ordonez, former Commissioner of Income Tax deposed that during the period of January 2009 to September 2010 she was the Commissioner of Income Tax. She deposed that CHx Belize LP was registered with the Income Tax Department identification Number 131427 on the 1st day of January 2005 as a company carrying on the business of holding gas and oil working interest in Belize. That by virtue of the **Income and Business Tax Act Chapter 55** of the Laws of Belize R.E. 2000, tax is imposed on the profits arising from petroleum operations. Since the Appellant has been assigned a percentage of the interest of Belize Natural Energy and West Bay production sharing agreements, it is registered as a contractor and is liable to pay tax on the profits arising under those petroleum operations.

11. She further deposed that in regards to the Appellant's joint venture with US Capital Energy, she was informed by letter dated may 4th, 2010 from Mr. Dean Flowers of the Geology and Petroleum Department and verily believe that the Minister has not granted or approved the assignment of any US Capital Energy's interest under its PSA to the Appellant. Therefore it is not treated as a contractor. See Exhibit **"MO1"** for copy of letter.

12. Mrs. Ordonez deposed that in order to properly levy tax on profits from petroleum operations, every Contractor must keep separate accounts for each of those petroleum operations and the chargeable income of the contractor will be computed as if those petroleum operations are a separate business. That the chargeable income will be assessed by deducting from the contractor's gross revenue the value of royalties, government share of net petroleum and all allowable petroleum operation expenditures.

13. Mrs. Ordonez further deposed that she received the submission of the Appellant dated July 5th 2009, and attachment showing its estimated income tax from its joint venture with BNE for the second quarter of the basis year 2009. See **Exhibit "MO 2"** for a copy of the letter and attachments. That the submission showed that the Appellant deducted expenses of its joint

venture operation with US Capital Belize and West Bay Belize Limited, from the taxable income from its joint venture with Belize Natural Energy.

14. Mrs. Ordonez then deposed as to the disagreement between herself and Mr. Kevin Herrera which led to the appeal of her decision to the Board which was subsequently dismissed. See Exhibits **"MO 3", "MO 4"** and **"MO 5".**

15. Kevin Herrera, Country Manager of CHx Belize LP deposed that on the 5th day of July, 2009, he submitted estimated income tax installments for the second quarter of 2009 to the Respondent. That he made deductions of expenditures for expenses relating to the Appellant's participation in the West Bay and US Capital Blocks for 2008 and 2009. The total of these expenditures was USD$3,299,445.00. See **Exhibit "KH 1"** for estimated income tax installments for the second quarter of 2009.

16. At paragraph 2 of his affidavit he deposed that on the 7th day of July, 2009, the Appellant received a letter from the Respondent stating that based on sections 102 (1) and (2), and section 98(6) of the Income and Business tax Act, the Appellant was required to pay the installment payment from the joint venture without any deductions whatsoever. See **Exhibit "KH2"** for a copy of the letter.

17. Mr. Herrera deposed that on the 19th day of July, 2009, he wrote a letter to the Respondent informing her that the Appellant disagreed with the assertion by her that the Appellant would not be able to deduct expenditures relating to their participation in the West Bay and US Capital Blocks. He also informed the Respondent in the said letter that the Appellant's position was based on its interpretation of sections 98(6) and 102(2) of the **Income and Business Tax Act.** See **Exhibit "KH 3"** for a copy of the letter.

18. At paragraph 4, Mr. Herrera deposed that on the 12th day of August, 2009, the Respondent wrote a letter to him as Country Manager of the Appellant,

informing him that she disagreed with the Appellant's interpretation of sections 98(6) and 102(2) of the Income and Business tax Act in the Appellant's letter dated 19th day of July, 2009. That this letter also demanded that the installment payment for the second quarter of 2009 be made without the deductions. See **Exhibit "KH 4"** for copy of letter.

19. Mr. Herrera further deposed that on 26th day of August, 2009, he wrote a letter to the Chairman of the Appeals Board of the Income and Business Tax Department to formally appeal the position of the Respondent, that installment payments made quarterly by the Appellant should be done without any deductions for expenses from other PSA Blocks, and tax overpayments made in prior periods. See **Exhibit "KH 5"** for copy of the letter of appeal to the Chairman of the Appeals Board.

20. At paragraph 8, Mr. Herrera deposed that on the 10th day of August, 2010, the Chairman of Income Tax Appeals Board wrote a letter to the Appellant and enclosed the decision of the Board in regards to the Appellant's appeal. The decision was dated the 4th day of August, 2010. See **Exhibit "KH 7**" for a copy of the letter from the Chairman of the Income Tax Appeals Board.

Submissions by the Appellant

21. Mrs. Magali Marin-Young for the Appellant submits that chargeable income derived from petroleum operations is subject to income tax under **section 5 Part I** of the **Income and Business Tax Act** and **Part II** of the said **Act** sets out the machinery to calculate the tax payable.

22. Learned Counsel submits that as an assignee under any Production Sharing Agreement, CHX Belize LP is jointly and severally liable along with the named contractor in terms of the obligations under the said agreement, including the obligations for the payment of taxes on its chargeable income. That **section**

99 of the **Act** contemplates that a company may be involved in many different businesses, apart from petroleum operations, and mandates that it keep separate accounts in terms of its petroleum operations.

23. Further Learned Counsel submits that **section 102 (1)** of **the Act** contemplates that a contractor may comprise more than one corporation under a partnership or a joint venture. The income tax payable by the contractor, however, is to be calculated and assessed on the chargeable income of each corporation, individual, partner, joint venture, associate or other entity comprising the contractor. Learned Counsel gave an example which is that though CHX Belize LP is an assignee of Belize Natural Energy Ltd and jointly and severally liable with that same entity under the Production Sharing Agreement between Belize Natural Energy Limited and the Government of Belize, both Belize Natural Energy Ltd and CHX Belize LP each have to separately pay income tax on their respective chargeable income under sections 100 and 101.

24. Learned Counsel further submits that Initial commercial production is said to mean the date on which the first regular shipment of crude oil or natural gas, or both, is made under a programme of regular production and sale. That it is not disputed that initial commercial production has been taking place under the Production Sharing Agreement of Belize Natural Energy Ltd at the material time and therefore also by Chx Belize LP as joint venture partner.

25. Learned Counsel submits that there is no dispute that the several items claimed by CHX Belize LP are allowable deductions, that is, allowable "petroleum operation expenditures" incurred in such base year by Chx Belize LP.

26. Mrs. Magali Marin-Young further submits that the scheme of **Parts I** and **II** of **the Act** is to provide for taxation of the contractor's chargeable income

where it is involved in petroleum operations in Belize. Section 5 of ***the Act*** is the actual charging section under Part I and sections 100 and 102(5) under Part II are the machinery section which respectively set out how chargeable income is to be ascertained generally and when initial commercial production commences. That **Section 100** of **the Act** provides generally that "the chargeable income of a contractor derived from petroleum operations for the applicable basis year shall be determined by deducting from gross revenue for such basis year…all allowable petroleum operation expenditures incurred in the basis year…." And **section 102(5)** of **the Act** states that for the basis year when initial commercial production occurs, the petroleum operation expenditures which shall be deductible (for the purpose of calculating the tax under section 100) shall consist of: (1) the current basis year's operating expenditures incurred and (2) an amount with respect to any operating loss from prior basis years, determined in accordance with subsection (2).

27. Learned Counsel contends that under the definition section, being section 98 of ***the Act***, no distinction is made in terms of the sources of gross revenue and the definition is "the sum of all proceeds of sales and the monetary equivalent of the value of other dispositions of Petroleum produced and saved and not used in Petroleum Operations and any other proceeds derived from Petroleum Operations." Under **section 98** of **the Act,** "Petroleum Operations Expenditures" is defined as "expenditures made in conducting "Petroleum Operations hereunder, determined in accordance with the Sixth Schedule." That the Sixth Schedule makes no distinction whether the operations are taking place under different Production Sharing Agreements. Consequently, the machinery section of ***the Act*** makes it clear that to arrive at chargeable income for the basis year when initial commercial production commences, the contractor is to simply deduct from its gross revenues the current basis year's petroleum operations expenditures and any carry forward losses. Consequently, both **section 100** and **102(5)** of ***the Act*** have been consistent in generally permitting the contractor to deduct all petroleum operating

expenditure and not prescribing that it is only those under a Production Sharing Agreement that is then in initial commercial production.

28. Learned Counsel submits that consequently, since there is an initial commercial production under the Belize Natural Energy Ltd Production Sharing Agreement, and since CHX Belize LP is a joint venture party and hence a Contractor under ***the Act***, it may in terms of all petroleum operations it may be participating in at the material time, deduct allowable expenditures from all petroleum operations for the basis year including those under Production Sharing Agreements not experiencing any initial commercial production.

29. On the matter of carry forward of losses under **Section 102 (2)** of ***the Act*** Mrs. Marin Young submits that a Contractor may combine revenues and expenses from several Production Sharing Agreements, and in a base year of initial commercial production, any allowable deductions for tax purposes with respect to petroleum operations expenditure which remains unrecovered may be carried forward as allowable deduction to a subsequent basis year until fully recovered. If an operating loss remains unrecovered upon termination of a Production Sharing Agreement, such loss may yet be carried over and deducted from other revenues of the Contractor from petroleum operations in Belize. This Learned Counsel submits then confirms the view that allowable deduction may take place even when there is no Production Sharing Agreement in existence and so it does not matter that initial commercial production is only under one and not all the Production Sharing Agreements.

30. Further, Learned Counsel contends that **Section 102 (2)** of ***the Act*** permits allowable losses not recovered from earlier periods to be applied in subsequent periods against revenue from petroleum operations in Belize, even though a Production Sharing Agreement may be terminated. That the

petroleum operating expenditures may be so deducted under different Production Sharing Agreement once there is an initial commercial production.

31. Learned Counsel submits that the allowed petroleum operating expenditures in the basis year when initial commercial production commences are the current basis year's operating expenditures and the carry over. That the scheme under Part II of ***the Act*** is very clear, and the language is unambiguous, especially the machinery section, being sections 100, and 102(5) of ***the Act.***

32. On interpretation of Revenue Statute, Mrs. Marin-Young submits that revenue statutes, if clearly worded, must be applied even though they may operate against the tax payer in a manner that may appear to have been unintended by parliament, since it is presumed that Parliament acts purposefully in the use of its language. That the converse is also true, so that if the statute is clearly worded, if it operates in favour of the tax payer in a manner that is unintended by parliament, it must be also be applied. That if there is any ambiguity, however, **section 65** of the ***Interpretation Act***, **Chapter 1** of the Laws of Belize mandates that where the Courts are faced with two possible meanings or with an ambiguity, the Courts must prefer the construction which promotes the general legislative purpose underlying the provision. But, this only applies, however, where there is an ambiguity.

33. Learned Counsel further submits that **section 65** of the ***Interpretation Act*** is only applicable if the section is capable of two interpretations. Counsel contends that sections 100 and 102 (5) of **the Act** are very clearly worded in guiding the tax payer how to tabulate its chargeable income, so that it may deduct from its gross revenue, the value of royalty in such basis year, the value of the government's share, and all allowable petroleum operating expenditures in such basis years.

34. Mrs. Marin Young submits that the purpose of the **Income** and **Business Tax Act, Chapter 55** of the Laws of Belize, is to tax revenue derived from petroleum operations, and the purpose of section 102 is to allow the Contractor to recover any petroleum operating expenditure he has put out to produce petroleum so that the Contractor may recover his investment and thus there would be a greater incentive for the contractor to invest more to procure petroleum and thereby increase the opportunity for petroleum production so that there be revenue to collect.

35. Learned Counsel submits that sections 100 and 102(1) and 102 (5) of the ***Act***, are clearly worded, and must operate in favour of the tax payer even though it may operate in a manner unintended by Parliament. See judgment of Lord Wilberforce in ***W.T Ramsay Ltd v Inland Revenue Commrs*** **[1982] AC 300** at page 323.

Defendant's submissions

36. Learned Counsel Mr. Bennett submits that the **Petroleum Act** clearly mandates that any person other than the Government of Belize must enter into a contract before conducting petroleum operations. That one of the features in the contract is that an area will be specified in which the contractor will have the exclusive right to carry out petroleum operations. Also that it is made absolutely clear that the contractor takes upon himself all the risk associated with petroleum operations and the Government is not liable to make any reimbursement to the contractor with respect to investments made.

37. Learned Counsel submits that the **Income and Business Tax Act** contemplates that every contractor will have entered into a agreement with the Minister or is the assignee of a share of a production share agreement for conducting petroleum operations. Those operations will be conducted

according to a specific production share agreement and whenever there is a referral to the term contractor, there is a reference to such an agreement.

38. Learned Counsel further submits that in the context of a production share agreement signed between the government and a contractor, initial commercial production is the date on which the first regular shipment of crude oil or natural gas is made from a field which is the contract area where commercial discovery of crude oil or natural gas has been declared under a program of regular production and sale. That Belize Natural Energy is the only contractor which has been shipping crude oil from one of its field specified under its agreement. That neither West Bay nor US Capital Energy Ltd has found or made a shipment of crude oil or natural gas.

39. As for assessment of chargeable income, Learned Counsel submits that Tax treatment is done firstly by ensuring that a contractor keeping a separate account for petroleum operations and the chargeable income will be computed as if the Petroleum operations were a separate trade or business of the contractor. That since the Act contemplates that petroleum operations will be carried on by a contractor under a Production Share Agreement for a specific area, a formula is given for the contractor to determine his chargeable income. The Chargeable income will be determined by deducting from the gross revenue value of royalty, value of Government's share of net petroleum and all allowable petroleum expenditures.

40. Learned Counsel contends that this provision contemplates that there must be initial commercial production first and this initial commercial production can only come from a producing field which will be specified in a specific agreement with the Government. Therefore the term "petroleum operations" is referring to those operations conducted under a specific agreement. That since West Bay and US Capital are not in initial commercial production there can be no chargeable income and hence no deductions. The West

Bay PSA and the US Capital PSA are wholly different from the BNE PSA and no further interpretation can be made to take expenditures from a non producing field under one agreement and deduct those expenditures from the chargeable income of a producing field under another agreement.

41. Learned Counsel, Mr. Bennett in relation to carry forward losses submits that since a contractor cannot combine expenses from several Production Share Agreement, any allowable deductions for income tax purposes with respect to petroleum expenditures must be expenditures from operations conducted under a specific PSA. This is so because section 102(2) makes specific reference to the term "this agreement". That the tax bulletin contains the same production verbatim. Therefore the argument is made even stronger that each PSA is ring fenced so that deductible expenses from one agreement cannot be attached to the chargeable income under another PSA.

42. With regards to the **interpretation of taxing statutes**, Learned Counsel submits that it is no longer an accepted proposition that taxing statutes are to be interpreted literally without regard to the purpose of the legislature. In the case of **WT Ramsay Ltd v IRC [1921] 1 All ER 865** at **871** Lord Wilberforce stated:

> *"What are 'clear words' is to be ascertained on normal principle; these do not confine the courts to literal interpretation. There may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should , be regarded…"*

43. Mr. Bennett further submits that the scheme of Part II of the Income and Business Tax Act is for the government to collect its taxes on the profits derived from the profits of petroleum operations and not to provide a method for contractors to mitigate taxes due to the Government of Belize by earnestly trying to misunderstand what is a clear and unambiguous tax

scheme. The modern approach to interpreting statutes is that of the purposive approach which takes account not only of the ordinary meaning of words but also the context such as the subject matter, scope, purpose and to some extent the background of the Act.

44. Further, Counsel submits the interpretive approach submitted by the appellants does not remotely reflect the true spirit behind the Income and Business Tax Act. Instead that approach seeks to persuade the Court to adopt an interpretation which would allow contractors to mitigate the taxes due to the government on initial commercial production by strategically including expenditures from a non producing field under a wholly different PSA. By that means, a contractor without limit would endlessly deny the Government its share of taxes by simply consolidating expenditures from non producing areas.

45. Based on the foregoing arguments, Learned Counsel submits that the appeal should be denied and the decision of the Tax Appeal Board be upheld.

Determination

46. On 7th July, 2009 the Acting Commissioner of Income Tax informed CHx Belize LP by letter as shown in **Exhibit "KH 2**" that they have examined the **Income and Business Tax Act** and the Production Sharing Agreement of Belize Natural Energy Ltd. and have concluded that CHx Belize LP is required to pay the instalment payment from the joint venture without any deductions whatsoever. At paragraph 3 of the letter, the former Commissioner stated the following:

> *Your attention is hereby drawn to section 102(1) and (2) and the definitions in section 98(6), which clearly indicates that operating losses can only be allowed as a deduction*

and carry forward commencing in the basis year in which "Initial Commercial Production first occurs".

We request therefore, that you make your instalment payment immediately to avoid the accrual interest.

47. The decision of the Income Tax Commissioner was appealed to the Income Tax Appeal Board. The Board's decision is reproduced below in its entirety:

INCOME TAX APPEAL BOARD

An Objection by CHX LP against Assessment of Income Tax Installment for the quarter ending June 2009

DECISION No. 4 of 2010

The Income Tax Appeal Board, having heard an Objection by CHx Belize LP to the position taken by the Commissioner of Income Tax that installment payments made quarterly by CHx Belize LP should be arrived at without taking into account any deductions for: (a) expenses from other PSA Blocks and (b) tax overpayments made in prior periods, has determined as follows:

The Objector, CHx Belize LP, has failed to prove, *on a balance of probabilities, as required by Section 42(5) of the Income and Business Tax Act, Chapter 55 of the Laws of Belize, Revised Edition 2000, as amended, that the position taken by the Commissioner of Income tax is erroneous and that the installment payment objected to is excessive.*

Accordingly, the objection fails and the demand by the Commissioner of Income Tax in respect of the quarterly payment for June 2009 totaling the sum of $2,193,015.18, being tax installment of $2,129, 140.93 and interest of $63,874.25 stands.

48. The Appeal Board as can be seen in their decision is saying that CHx failed to prove that the position taken by the Commissioner of Income Tax is **erroneous** and that the installment payment of taxes is **excessive**. The court must therefore interpret the provisions of the **Income and Business Tax Act** applied by the Commissioner of Income Tax in arriving at her decision. The crux of the argument by CHx is that there is an initial commercial production under the Belize Natural Energy Ltd Production Sharing Agreement, and since it is a joint venture party and a Contractor under the **Income and Business Tax *Act***, it may in terms of all petroleum operations it may be participating in at the material time, deduct allowable expenditures from all petroleum operations for the basis year including those under Production Sharing Agreements not experiencing any initial commercial production.

49. The issue for the court is therefore whether on interpretation of the relevant sections of the **Income and Business Tax Act,** it allows for a Contractor, who has several Production Share Agreements, to consolidate allowable tax deductions from those several Production Share Agreements (even those not in Initial Commercial Production) and attach that same consolidated tax deductions to the chargeable income of a Production Share Agreement which is in Initial Commercial Production.

50. Exhibit **"M.O. 2"** shows that the Appellant deducted expenses of its joint venture operation with US Capital Belize and West Bay Belize Limited not in Initial Commercial Production, from the taxable income of its joint venture with Belize Natural Energy. Belize Natural Energy Ltd. is a registered company under the laws of Belize which has entered into a contract with the Government of Belize known as a Production Share Agreement (PSA) for the business of conducting petroleum operations in the territory of Belize. US Capital Energy Belize Ltd. is a registered company under the Laws of Belize and has entered into a contract with the Government of Belize known as a PSA for the business of conducting petroleum operations in the territory of Belize. West Bay Belize Ltd is a registered company under the Laws of Belize which has entered into a contract with the Government of Belize known as a PSA for the business of conducting petroleum operations in the territory of Belize.

<u>The statutory scheme for assessment of taxes</u>

51. The **Income and Business Tax Act, Chapter 55** revised edition 2003 was enacted for the payment of income and business tax. The Act was amended by **Act No. 12 of 2008**. The provisions relevant to this case include section 5 of Part I and sections 98, 100, 101 and 102 under Part II of the Act.

52. The Commissioner in her decision referred to **sections 98 (6), 102 (1)** and **(2)** of the **Income and Business Tax Act, Chapter 55**. Section 98 is the definition section of the Act. The definitions relevant will be reproduced as well as the other provisions relevant to this case.

"Contractor"	*shall mean a person who has entered into a contract with the Government under the Petroleum Act.*
"Gross Revenue"	*shall mean the sums of all proceeds of sales and the monetary equivalent of the value of other dispositions of Petroleum produced and saved and not used in Petroleum Operations and any other proceeds derived from Petroleum Operations.*
"Initial Commercial Production"	*shall mean the date on which the first regular shipment of Crude oil or Natural Gas, or both, is made under a program of regular production and sale.*
"Petroleum Operation Expenditures"	*shall mean expenditures made in conducting Petroleum operations hereunder, determined in accordance with the Sixth Schedule.*

Sections 102 (1) provides for the Tax Accounting principles as follows:

s. 102(1) *In the event that a* ***Contractor*** *at any time comprises more than one corporation, individual or entity, in the form of a partnership, joint venture, unincorporated association or other combination of entities or individuals, Tax shall in all cases be calculated and assessed on the basis of the Chargeable Income of each corporation, individual, partner, joint venture, associate, or other entity comprising the Contractor.*

Section 102(2) provides for carry forward of losses as follows:

s.102(2) *Commencing with the Basis Year in which* ***Initial Commercial Production*** *first occurs, any allowable deductions for Tax purposes with respect to Petroleum Operations Expenditures, the Royalty and the*

Government's share of Crude Oil production which remain unrecovered in any Calendar Year from Gross Revenues shall be treated as an operation loss and may be carried forward as an allowable deduction to subsequent Basis Year until fully recovered from Gross Revenues. In the event that an operation loss remains unrecovered upon the termination of this Agreement, such loss may be carried over and deducted from other revenues of the Contractor from Petroleum Operation in Belize.

Sections 99 and **100** are also relevant to this case. **Section 99** provides for separate accounts for petroleum operations. **Section 100** provide for assessment of Chargeable Income.

Section 99 provides as follows:

"A contractor carrying on any trade or business which consists of or includes Petroleum Operations shall keep separate accounts of such Petroleum Operations, and the chargeable incomes of such contractor for each basis year shall be computed as if such petroleum operations were a separate trade or business of that contractor.

Section 100 provides as follows:

*The **chargeable income** of a contractor derived from **petroleum operations** for the applicable basis year shall be determined by **deducting from gross revenues** for such basis year-*

(i) The value of any royalty in such basis year;

(ii) The value of the government's total share of net petroleum in such basis year; and

(iii) *All **allowable petroleum operation expenditures** incurred in such Basis Year. The Tax upon the*

Chargeable Income of a Contractor shall be 40% of chargeable income, and the contractor shall be obligated to pay such Tax to the Government for the Basis Year in question. (emphasis added).

Interpretation of statutes

53. Both Learned Counsel have made written and oral submissions on the interpretation of statutes and the court will be guided by the principles stated in the authorities cited. The court will look at the relevant sections of the **Income and Business Tax Act** and apply the literal meaning bearing in mind the scheme of the Act as a whole. However, if there is any ambiguity then the court will have to resort to the purposive interpretation. See **WT Ramsay Ltd v IRC [1921] 1 All ER 865** at page **871.**

Section 98(6) of the **Income and Business Tax Act**

54. **Section 98** is the Interpretation section and **section 98(6)** states the definition of "**Initial Commercial Production**" as *the date on which the first regular shipment of Crude oil or Natural Gas, or both, is made under a program of regular production and sale.* There is no dispute that there is an Initial Production under Belize Natural Energy. That Belize Natural Energy is the only contractor which has been shipping crude oil from one of its field specified under its agreement. Neither West Bay nor US Capital Energy Ltd has found or made a shipment of crude oil or natural gas. Belize Natural Energy is therefore the only entity which had Initial Commercial Production.

Section 102(1) of the **Income and Business Tax Act**

55. **Section 102 (1)** provides for the Tax Accounting principles. This section states that if the ***Contractor*** has *more than one corporation, individual or*

entity, in the form of a partnership, joint venture, unincorporated association or other combination of entities or individuals, Tax shall in all cases be calculated and assessed on the basis of the ***Chargeable Income of each*** *corporation, individual, partner, joint venture, associate, or other entity comprising the Contractor.* In my considered view, this section is clear and unambiguous. The taxes are assessed separately for each entity of the Contractor.

56. As such, CHx must have its taxes assessed separately for each of its Production Sharing Agreements. There is no dispute that CHx has been assigned 40% of Belize Natural Energy Ltd's production share Agreement and West Bay Belize Ltd has transferred 50% of its Production Share Agreement to CHx Belize Ltd. Whether the Minister has approved an assignment of any percentage of US Capital Energy Belize Ltd's Production share Agreement to CHx is not an issue for this court as it was not an issue determined by the Commissioner of Income Tax nor the Appeal Board. The court will concern itself solely with the interpretation of the statute. Any factual issue for determination will be redirected to the Commissioner of Income Tax, if necessary.

57. Since **section 102(1)** shows that taxes must be calculated and assessed on the basis of the chargeable income of each entity, it is obvious that there must be separate accounts for each of the entities. As such, separate accounts must be kept for Belize Natural Energy Limited, West Bay Belize Ltd. and US Capital Energy Belize Limited.

58. I am not convinced by the argument of Learned Counsel, Mrs. Marin-Young that **section 99** which provides for separation of accounts means

that all petroleum operations can be lumped together. **Section 99** cannot be read in isolation. It must be read along with **section 102(1)**. In my considered view, **section 102(1)** is clear and unambiguous. It provides for the assessment of chargeable income of each entity and as such there must be a separation of the accounts of each of the petroleum operations.

Section 100 of the **Income and Business Tax Act**

59. According to **section 102(1)** Tax shall in all cases be calculated and assessed on the basis of the **Chargeable Income**. How is the chargeable income determined? **Section 100** as amended provides for the **assessment of the chargeable income**.

Section 100 provides as follows:

> *The **chargeable income** of a contractor derived from **petroleum operations** for the applicable basis year shall be determined by **deducting from gross revenues** for such basis year-*
>
> *(i) The value of any royalty in such basis year;*
>
> *(ii) The value of the government's total share of net petroleum in such basis year; and*
>
> (iv) *All **allowable petroleum operation expenditures** incurred in such Basis Year. The Tax upon the Chargeable Income of a Contractor shall be 40% of chargeable income, and the contractor shall be obligated to pay such Tax to the Government for the Basis Year in question.* (emphasis added).

60. The chargeable income is derived by deducting from gross revenues certain things as shown above which include allowable petroleum operation expenditures. It means that the Act is contemplating that the entity has revenues which is derived from production and sale of Crude Oil or natural

gas. In other words, if an entity is not in initial commercial production then there can be no revenue and it follows that there can be no assessment of taxes.

61. Mrs. Marin-Young in her argument contended that under the definition section no distinction is made in terms of the sources of gross revenue. I do agree with Learned Counsel that the sources is not stated. However, if there is revenue it means that the entity is in production and there is sales from such production. The definition of **Section 98(5)** states that:

> "Gross Revenues" *shall mean the sums of all proceeds of sales and the monetary equivalent of the value of other dispositions of Petroleum produced and saved and not used in Petroleum Operations and any other proceeds derived from Petroleum Operations.*

62. The question is whether '*all proceeds'* in the definition means that proceeds can be from several entities. This definition of gross revenue cannot be looked at in isolation. The court has determined above that there must be separate accounts for each entity and as such though the definition does not state the sources of gross revenue, '*all proceeds'* in the definition, in my view, can only be referring to the proceeds of a particular entity.

63. As for the expenditures, Learned Counsel, Mrs. Marin-Young contended that the definition of the expenditures makes no distinction whether the operations are taking place under different Production Sharing Agreements. I do agree with Learned Counsel as the definition is concentrated on what is expenditures and nothing else. **Section 98(10)** provides:

"Petroleum Operation Expenditures" *shall mean expenditures made in conducting Petroleum operations hereunder, determined in accordance with the* ***Sixth Schedule****.*

64. The Sixth Schedule sets out how the Petroleum Operations Expenditures are to be calculated and accounted for and shows the manner in which it should be done. It includes labour cost, material cost, technical service cost and other costs. The Sixth Schedule provides a guideline for the Contractor to follow so that he can be aware of the allowable deductions. It is my considered view, that the Sixth Schedule shows how expenditures are determined and not whether it is from one or more entity. Further, **section 98(10)** which is a definition section cannot be looked at in isolation of the other sections in the Act. Based on the interpretation above of **section 99** concerning separation of accounts and **section 102(1)** concerning the tax accounting principles, expenditures to be deducted from gross revenues of a particular entity can only be expenditures from the said entity. Expenditures from different entities which are not in production and without revenues cannot be deducted from gross revenues of an entity which is in production. As such, I disagree with Mrs. Marin-Young that **section 100** of the Act permits a contractor to deduct all petroleum operating expenditures even if the entity is not in initial commercial production.

Section 102(2) of the **Income and Business Tax Act**

65. The Appellant further appealed on the ground that **section 102 (2)** of the Income and Business Tax Act permit a Contractor to combine revenue and expenses from several Production Sharing Agreements, and in a base year of initial commercial production, deduct any allowable deductions for tax purposes with respect to petroleum operations expenditure which remain unrecovered, and permit the carry forward of such loss and the deduction from other revenues of the Contractor to the subsequent base year until fully recovered.

Section 102(2) provides for carry forward of losses as follows:

> ***s.102(2)*** *Commencing with the Basis Year in which* ***Initial Commercial Production*** *first occurs, any allowable deductions for Tax purposes with respect to Petroleum Operations Expenditures, the Royalty and the Government's share of Crude Oil production which remain unrecovered in any Calendar Year from Gross Revenues shall be treated as an operation loss and may be carried forward as an allowable deduction to subsequent Basis Year until fully recovered from Gross Revenues. In the event that an operation loss remains unrecovered upon the termination of this Agreement, such loss may be carried over and deducted from other revenues of the Contractor from Petroleum Operation in Belize.* (emphasis added).

66. The court's interpretation of this section is that where there is Initial Commercial Production and the allowable deductions remain unrecovered from the gross revenues then this will be considered as an operation loss. What happens when there is an operation loss? This section says that it may be carried forward to subsequent years until it is fully recovered. But then the question arises as to what happens if the agreement or the Production Sharing Agreement expires before the allowable deductions is recovered. The section

goes on to say that this unrecovered allowable deductions can be recovered from other revenues of the Contractor from Petroleum Operations in Belize. This section therefore, further fortifies the interpretation given to the other sections as it clearly shows that there is a separation of revenues of petroleum operations. It is only where there is a termination of an agreement and the allowable deductions have not been recovered that a Contractor can go to the revenues of a different Production Sharing Agreement and deduct the allowable deductions.

67. Mr. Herrera for CHx deposed that he made deductions of expenditures for expenses relating to the Appellant's participation in the West Bay and US Capital Blocks for 2008 and 2009. The total of these expenditures is USD$3,299,445.00. See **Exhibit "KH 1"** for estimated income tax installments for the second quarter of 2009.
It is not disputed that West Bay and US Capital were not in Initial Commercial Production and had no Revenues. As such, it is my considered view, that the expenses of West Bay and US Capital cannot be deducted from the revenues of Belize Natural Energy. I agree with the submissions of Learned Counsel, Mr. Bennett that since West Bay and US Capital were not in Initial Commercial Production there can be no chargeable income and hence no deductions.

68. I am not convinced by Learned Counsel, Mrs. Marin-Young's argument that that since **section 102(2)** permit **losses not recovered** from earlier periods to be applied in subsequent periods then operating expenditures from an entity that is not in production may also be so deducted under different Production Sharing Agreement. This interpretation cannot be implied from this section.

The Legislature would have been specific if it had intended for Contractors to recover expenses from Production Sharing Agreement where there was no Initial Commercial Production. When a contractor enters into a contract he is taking a risk as there may not be any production. The expenses incurred for taking such risk cannot be imposed on other Production Sharing Agreements where there is Initial Commercial Production without specific provisions in the Act.

69. I therefore find that the Commissioner of Income Tax demand for payment of US $1,259,137. due for the quarter ended 30th June, 2009 was properly made in accordance with the **Income and Business Tax Act.** As such, the decision of the Appeal Board (upholding the decision of the Commissioner of Income Tax) is upheld by this court.

70. It is my considered view and I so find, that **sections 100, 102 (1), 102(2)** and **98(6)** of the **Income and Business Tax Act** is clear and unambiguous. These provisions do not allow a Contractor to deduct from its gross revenues, expenses for Production Sharing Agreements that do not have an Initial Commercial Production. Accordingly, the order sought for the amount assessed by the Commissioner of Income Tax for the June 2009 quarter to be reduced, is refused.

71. **Order**

The appeal of CHx Belize LP is dismissed.

I award prescribed costs to the Commissioner of Income Tax.

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Minnet Hafiz

Supreme Court Judge

Dated this 19th day of April, 2011.