IN THE COURT OF APPEAL OF THE DEMOCRAIC SOCIALIST REPUBLIC OF SRI LANKA.

CA (TAX) 23/2013

Seylan Bank PLC,

90, Galle Road, Colombo 03.

Appellant

Vs.

The Commissioner General of Inland Revenue, Department of Inland Revenue, Sir Chittampalam A Gardiner Mawatha, Colombo 02.

Respondent.

Before : K.T. Chitrasiri J.

L.T.B. Dehideniya J.

Counsel : K.N. Gunasekara with Sheranka Madanay for the Appellant.

P. Nawana, DSG for the Respondent.

Argued on : 02.03.2015

Written Submissions of the Appellant on : 01.04.2015

Written Submissions of the Respondent on: 02.04.2015

Decided on : 25.05.2105

L.T.B. Dehideniya J.

This is an appeal from the Tax Appeal Commission. The Commission has formulated six questions of law on which this Court is expected to express the opinion. Out of the said questions the first question is being in time bar, the Court was of the view that it should express its opinion on the said question before considering the rest of the questions. Accordingly, we heard the counsels on the said issue and on directions of the Court tendered their written submissions too.

The Tax Appeal Commission formulated the question as follows;

1. Was the assessment for the year 2007/ 2008 dated 26.03.2010 issued against the appellant time barred in terms of Section 163 (5)(a) of the Inland Revenue Act, as applicable to such year of assessment?

The year of assessment related to this case is the financial year of 2007/08. The assessee bank submitted the tax return for the said financial year on 30th September 2008. Parties do not dispute that the return was submitted within the stipulated time period. The assessor did not accept the return on certain aspects and acted under section 163 of the Act, send an assessment against the assessee bank, after considering the statements and records submitted with the return, on 26th March 2010. There is no dispute as to the date it was sent but the issue is whether that date comes within the time period prescribed by section 163 of the Inland Revenue Act.

Under section 106 of the Inland Revenue Act No 10 of 2006, the assessee had to submit his or its tax return on or before the 30 of September of that financial year. The Inland Revenue Amendment Act No. 19 of 2009 has extended this period and allowed the assessee to send the return on or before the 30th of November. The amended section 106 (1) reads thus;

> *106. (1) Every person who is chargeable with income tax under this Act for any year of assessment shall, on or before the thirtieth day of November immediately succeeding the end of that year of assessment, furnish to an Assessor, either in writing or by electronic means, a return in such form and containing such particulars as may be specified by the*

Commissioner General, of his income, and if he has a child, the income of such child.

The assessee had submitted the tax return to the Commissioner General before the amendment came in to existences, within the period allowed in the original Act.

The Amendment Act No 19 of 2009 has amended the section 163 by allowing the assessor additional six months to send out the assessment if he does not accept the return submitted by the assessee. The amended section 163 (5) (a) of the Inland Revenue Act reads;

163. (5) Subject to the provisions of section 72, no assessment of the income tax payable under this Act by any person or partnership-

(a) who or which has made a return of his own income on or before the thirtieth day of November of the year of assessment immediately succeeding that year of assessment, shall be made after the expiry of two years from the end of that year of assessment; and

The Appellant's argument is that this amendment does not apply to his case because he had to submit the return before the amendment and therefore, the principal enactment as it was then should apply to the assessor too. The Appellant's contention is that the assessor has to send the assessment within eighteen months as the law stood prior to the amendment. He further argues that the assessor cannot avail himself the benefit of the amendment where the Appellant could not. His argument is that the assessment dated 26th March 2010 is time bared.

The Respondent's argument is two folded. One argument is that the amendment came in to force within the eighteen months period where the assessor was entitle to send the assessment against the assessee and therefore the extension of time period is applicable. The other argument is that the time period is allowed for the assessor to send the assessment is a procedural law and any change in the procedural law can be considered as an amendment with retrospective effect.

Article 75 of the Constitution empowers the Parliament to enact laws with retrospective effect. The Article reads;

75. Parliament shall have power to make laws, including laws having retrospective effect and repealing or amending any provision of the Constitution, or adding any provision to the Constitution:

Provided that Parliament shall not make any law-

(a) suspending the operation of the Constitution or any part thereof, or

(b) repealing the Constitution as a whole unless such law also enacts a new Constitution to replace it.

There is no doubt that the legislature can enact any amendment to the Inland Revenue Act with or without retrospective effect. The Court has to consider whether there is a retrospective effect or not in the amendment.

Article 80 Sub Article (1) of the Constitution says that a bill passed by the Parliament will become a law when the certificate of the Speaker is endorsed.

80. (1) Subject to the provisions of paragraph (2) of this Article, a Bill passed by Parliament shall become law when the certificate of the Speaker is endorsed thereon.

(2) .....

(3) .....

The Inland Revenue (Amendment) Act No.19 of 2009 was endorsed by the Speaker on 31st March 2009. Therefore, the amendment act became a law of the country from that date. As per section 27 (6) of the said Amendment Act, the amendment brought in to the section 163 of the principal enactment is in operation from 1st of April 2009. Therefore, the law of the country from the 1st of April 2009 in relation to sending an assessment to the assessee by the assessor is the amended section 163 of the of the Inland Revenue Act. Accordingly, irrespective of whether the assessee had to submit the tax return on or before the 30th September 2009 or 30th November 2009, the assessor can send the assessment to the assessee within two years immediately succeeding that year of assessment.

Bindra's Interpretation of Statutes 10th edition page 19 says that "the primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the

legislature, actual or imputed". Maxwell on The Interpretation of Statutes 12th edition page 1 says that "a document which is presented to it as a statute is an authentic expression of the legislature's will, the function of a Court is to interpret that document according to the intent of them that made it". The legislature has expressed its intention clearly in the Amendment Act No. 19 of 2009. The preamble the act says that it is an Act to amend the Inland Revenue Act No. 10 of 2006. On the other hand the Parliament has expressed its intention as to how the enactment should come into force. As per section 27 (6) the intention of the legislature is to amend the section 163 of the principal enactment with effect from 1st of April 2009. That is to change the law with effect from that date. Therefore, the Appellant's argument that the principal enactment (without amendment) shall apply to his case because he has acted on the Principal Act cannot be accepted.

At this stage it is necessary to note that section 163 of the principal enactment has been further amended by Inland Revenue Amendment Acts Nos. 22 of 2011, 18 of 2013 and 8 of 2014. The two year period given to the assessor to send the assessment against the assessee was to start from the end of the year of assessment originally, which is the 31st of March, every year. This date (the starting day of the period) has been further pushed down to the thirtieth day of November of the immediately succeeding year of assessment by the said Act No. 22 of 2011.

As I have pointed out earlier, the Speaker has endorsed the bill on 31st March 2009. As per section 27(6) of the Amendment Act, section 163 of the principal enactment is amended from 1st of April 2009. The amended section does not apply retrospect. It operates only from the date specified in it. The law of the country has changed from that date. Therefore, from that date onwards, the new law shall apply.

The section 163 (5) of the Inland Revenue Act is a procedural law. It regulates the procedure of sending an assessment against the assessee by an assessor in the event that the tax return send by the assessee is not accepted by the assessor. Even if the amendment has a retrospective effect, it applies, if the amendment is only on procedural law. No party can have vested right on procedure.

Maxwell on The Interpretation of Statutes 12th edition page 222 says;

> *The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of courts. No person has a vested right in any course of procedure, but only the right of prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues, and if an Act of Parliament alters that mode of procedure, he can only proceed according to the altered mode. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.*

Brindra at page 1469 refers to Grander v. Lucas [1878] 3 AC 582 p.603 and cites;

> *It is perfectly settled that if legislature intended to frame a new procedure that instead of proceeding in this form or that, you should proceed in another and a different way, clearly then bygone transactions are to be sued and enforced according to the new form of procedure. Alteration in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.*

Then he goes to explain the citation;

> *In other words, if a statute deals merely with the procedure in an action, and does not affect the righties, the new procedure will prima facie apply to all such proceedings as well as future. No party has a vested right to a particular procedure or to a particular forum. All procedural laws are retrospective, unless the legislature expressly says that they are not. Hence, when a suit of or proceeding comes on for hearing or disposal, the procedural law in force at that time must be applied.*

Accordingly, the Appellant cannot rely on the legal principal of retrospective effect of a statute and succeed in the defence of the time bar as to the assessment sent against the Appellant by the assessor.

For the foregoing reasons, this Court is of the opinion that the assessment made for the year 2007/2008 dated 26th March 2010 and which issued against the Appellant, is not time bared.

We fix the matter for further argument on rest of the questions of law formulated by the Tax Appeal Commission.

Judge of the Court of Appeal

K.T.Chitrasiri J.

I agree.

Judge of the Court of Appeal