**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of a case stated under Section 170 of the Inland Revenue Act, No. 10 of 2006 (as amended).

Ogilvy Action (Pvt) Ltd,
(Formerly known as Ogilvy Outreach (Pvt) Ltd),

Having its place of business at
No. 53, Rosmead Place,
Colombo 07 and its registered office at No. 16, Barnes Place,
Colombo 07.

**Appellant**

**Case No. CA/TAX/0016/2013**
**Tax Appeals Commission**
**No. TAC/IT/022/2011**

**Vs.**

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

**Respondent**

**Before** : Dr. Ruwan Fernando J. &

M. Sampath K.B. Wijeratne J.

: Riad Ameen with Rushitha Rodrigo and

Zam Zam Ismail for the Appellant.

Chaya Sri Nammuni, S.S.C. for the Respondent.

**Argued on** : 19.07.2021 & 09.08.2021

**Written Submissions filed on**

: 14.12.2016 & 27.10.2021 (by the Appellant)

11.05.2018 &13.10.2021(by the Respondent)

**Decided on** : 12.11. 2021

**Dr. Ruwan Fernando, J.**

## Introduction

[1] This is an appeal by the Appellant by way of a case stated against the determination of the Tax Appeals Commission dated 14.02.2013 confirming the determination made by the Respondent on 15.12.2011 and dismissing the Appeal of the Appellant. The period relates to the year of assessment 2007/2008.

## Factual Background

[2] The Appellant is engaged as consultants in the business of advertising, sales promotion, marketing and research services including product development and package designing. While carrying out its business, the Appellant used the vehicles from employees and outsiders and supplied them to employees for travelling in connection with its business and private purposes of the employees.

[3] The Appellant paid a sum of money for the use of the said vehicles and claimed a sum of Rs. 10,053,173 as expenses incurred in the travelling of vehicles in connection with its business and private purposes of the employees. The breakup of the claim of Rs. 10,053,173 is as follows:

| | | |
|---|---|---|
| Rs. 2,335,000/ | - | Employees |
| Rs. 3,203,500/- | - | Outsiders |
| Rs. 1,496,400/- | - | Mercantile Leasing |
| Rs. 2,589,435/- | - | Fuel expenses |
| Rs. 328,300/- | - | Repair Maintenance |

[4] At a discussion held by the Senior Assessor, the Appellant agreed to the disallowance of a sum of Rs. 1,496,400/- in respect of travelling paid for the vehicle used by the Director, Ogilvy Outreach Pvt Ltd on the ground that the said sum was paid to a finance company under a hire purchase agreement as lease rental which did not represent an amount paid to employees for the use of their vehicles for the purposes of the business of the Appellant (Vide- page 24 of the docket and page 4 of the Tax Appeals Commission brief).

[5] The Appellant claimed the balance sum of Rs. 5,538,500 (Rs. 7,034,99 – Rs. 1,496,400/) as deductions in the computation of profits and income of the Appellant. The Assessor allowed a sum of Rs. 2,589,435/- as fuel expenses and a sum of Rs. 328,300/- as repairs and maintenance expenses, but disallowed a sum of Rs. 5,538,500 on the basis that it was rental that was not allowed to be deducted under Section 26 (2) of the Inland Revenue Act, No. 10 of 2006, as amended (hereinafter referred to as the Inland Revenue Act).

[6] The Appellant appealed to the Commissioner-General of Inland Revenue (hereinafter referred to as the Respondent) against the said assessment and the Respondent by its determination dated 15.12.2011 confirmed the assessment and dismissed the appeal (pp. 1-4 of the Tax Appeals Commission brief).

## Appeal to the Tax Appeals Commission & the Court of Appeal

[7] Being dissatisfied with the said determination of the Respondent, the Appellant appealed to the Tax Appeals Commission and the Tax Appeals Commission by its determination dated 14.02.2013 confirmed the determination of the Respondent and dismissed the Appeal.

### Questions of Law

[8] Being dissatisfied with the said determination of the Tax Appeals Commission, the Appellant appealed to the Court of Appeal and formulated the following questions of law in the case stated for the opinion of the Court of Appeal.

(i) Did the Commission err in law/misdirect itself in law, in its refusal to apply the maxim *generalia specialibus non derogant* in the context of two conflicting provisions involved in the present case, namely, Section 25 (1) (k) and Section 26 (2)?

(ii) Did the Commission err in law by expecting an express stipulation in the section itself, as to whether it is a general provision, whereas, whether a section is a special or a general provision has to be discovered by the reader himself on a consideration of the intrinsic terms of the Section itself?

(iii) Did the Commission err in law in its interpretation of Section 25 (1)(k) and Section 26 (2) which interpretation renders Section 25 (1)(k) nugatory in regard to the expenditure referred to in the proviso (1) to Section 25 (1)(k)?

(iv) Did the Commission err in law/misdirect itself in law in its refusal to follow the principle concerning the effect of prohibition on special deductions followed in the Privy Council decision in the case of Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago, which is a decision of highest persuasive authority and which considered sections 10 and 12 of the Income Tax Ordinance of Trinidad and Tobago which sections are structurally identical with Sections 25 and 26 of the Inland Revenue Act, though the individual items of expenditure provided for the sections may be different?

(v) Did the Commission err in law/misdirect itself in law by allowing itself to be guided by the decision of the Supreme Court in the case of *P. D. Rodrigo v. Commissioner General of Inland Revenue* which case, has no relevance to the present case as regards the facts of the case or issues to be resolved?

(vi) Did the Commission err in law by misunderstanding the issue to be resolved in the context of two conflicting sections, namely, Section 25 (1) (k) and Section 26 (2) of the Inland Revenue Act, when it stated-

> "The issue to be resolved in this case is not, whether section 26 applies only to the "general deductions" allowed under section 25 (1) or to special deductions permitted under the same sub-section, but rather, to determine the deductions that are not allowed to be made in determining the statutory income of a person and further to determine whether such deductions are prohibited under certain provisions included in some paragraphs which set out "special deductions" referred to in Section 25 (1) itself (examples being provisos to paragraph (b), (h, (k) of the section)"?

(vii) Is the sum of Rs. 5,538,500 paid by the Appellant company during the year ended 31.03.2008 in relation to the vehicles used by the employees for both the business purposes of the Appellant and the private and domestic purposes by the employees, deductible in the computation of the profits of the Appellant in terms of Section 25 (1)(k) of the Inland Revenue Act, No. 10 of 2006, notwithstanding any prohibition in Section 26 (2) of the same Act?

[9] At the hearing of the appeal, Mr. Riad Ameen, the learned Counsel for the Appellant and Mrs. Chaya Sri Nammuni, the learned Senior State Counsel for the Respondent made extensive oral submissions on the eight questions of law submitted for the opinion of the Court

**Analysis**

[10] The arguments focused on whether the travelling expenses claimed by the Appellant for using the vehicles from employees and others in connection with the business of the Appellant and the private purposes of such employees are deductible under Section 25 (1) (k) of the Inland Revenue Act and if so, whether or not such expenses are restricted or disqualified by the prohibition of deduction in Section 26 (2) of the Act. The arguments also focused on whether or not, Section 25 (1) (k) is a specific deduction rule and Section 26 (2) is a general prohibition of deduction rule and if so, whether or not, what has been expressly provided by Section 25

(11) (k) can be taken away by the general prohibition of deduction rule in Section 26 (2). The arguments further focused on whether or not the Tax Appeals Commission has erred in law in interpreting the provisions of Section 26 (2) nugatory in regard to the expenditure referred to in the proviso (1) to Section 25 (1) (k).

[12] At the hearing, Mr. Ameen submitted that the word "outgoings" includes everything that "goes out" and gives a wider meaning than the word "expenses" in Section 25 (1) of the Inland Revenue Act, whereas the word "expenses" is limited by the words "incurred in the production of the profits or income" and thus, only expenses incurred in the production of the profits or income, are deductible as "expenses". He submitted, however, that "outgoings" are not limited by the words "incurred in the production of the profits or income" and thus, the word "outgoings" includes items irrespective of whether or not they are "incurred in the production of the profits or income". He strongly relied on the decision of the Supreme Court in *Hayley and Company Ltd v. Commissioner of Inland Revenue*, 65 N.L.R. 174, *Rodrigo v. The Commissioner-General of Inland Revenue* (2002) 1 Sri LR 384 and the decision of the Privy Council in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (1967) AC 1, in support of his contention.

[13] On the other hand, the learned Senior State Counsel while conceding that outgoings are wider than expenses submitted that the outgoings must, however, be linked to the income and expenditure and thus, the outgoings must be of such a nature as would come within the meaning of the expression "incurred in the production of profits", relying on the observations made by Sinnetamby, J. in *Hayley and Company Ltd v. Commissioner of Inland Revenue* (supra). Her contention was that the umbrella clause and the prohibition in Section 26 (1) (g) apply to the word "outgoings" as well, however, the question whether outgoings have been incurred in the production of income will not arise in the present case as the expenses claimed by the Appellant in Section 25 (1) (k) relate to rentals that cannot be deducted as an outgoing under Section 26 (2) of the Inland Revenue Act.

**The Scheme Relating to the Deduction of Expenditure under the Inland Revenue Act**

[14] Under Section 2 (1) of the Inland Revenue Act, income tax shall, subject to the provisions of the Inland Revenue Act, be charged at the appropriate rates specified in the First, Second, Third, Fourth and Fifth Schedules to the Act, for every year of assessment commencing on or after April, 1, 2006 in respect of the profits and income of every person for that year of assessment-

(a) wherever arising, in the case of a person who is resident in Sri Lanka in that year of assessment; and

(b) arising in or derived from Sri Lanka, in the case of every other person.

[15] Under section 3 of the Act, income tax payable upon the profits and income or profit or income of a person in respect of number of categories of "profits and income" or "profits" or "income" listed in Sections 3 (1) (a) to (j), including from a trade or business or employment or any other source whatsoever, not including profits of a casual and non-recurring nature.

**Deductions allowed in ascertaining profits and income-General Deduction Rule- Section 25(1)**

[16] Income chargeable with income tax is, however, arrived at after taking into account the various exemptions and deductions allowed under the Act and thus, the profits and income or profit or income on which income tax is payable may be either exempted or deducted by the provisions of the Act. Income tax is calculated by deducting "general" and "specific" expenses from the taxpayer's total assessable income for the assessment year. In *Hayley and Company Ltd v. Commissioner of Inland Revenue* (supra), Basnayake C.J., dealing with Section 9 (1) of the Income Tax Ordinance of Ceylon (Cap. 188), which is the corresponding provision of Section 25 (1) of the Inland Revenue Act, No. 10 of 2006, classified the types of deductions for the purpose of Section 9 (1) of the Income Tax Ordinance of Ceylon (Cap. 188).

[17] Basnayake C.J., stated that Section 9 (1) deals with three classes of deductions, (i) "outgoings"; (ii) "expenses" incurred by the assessee in the production of the profits or income" and (iii) the specific deductions allowed by paragraphs (a) -(i) thereof. The general deductions referred to by Basnayake C.J., in Section 9 (1) are "outgoings" and expenses incurred by the assessee in the production of profits and income while the deductions referred to in paragraphs (a) -(i) thereof are the specific deductions. A general deduction provision generally allows the taxpayer to deduct from his assessable income any outgoings or expenses incurred in the production of profits and income of any person.

[18] The body of Section 25 (1) of the Act contains what is known as a general rule of deduction that allows the deduction of "all outgoings and expenses" incurred in the production of profits or income of any person. Section 25 (1) of the Inland Revenue Act reads as follows:

> *(1) Subject to the provisions of subsections (2) and (4) there shall be deducted for the purpose of ascertaining the profits or income of any person from any source, all outgoings and expenses incurred by such person in the production thereof,* ***including-....***

[19] Section 25 (1) is called a general deduction rule because it deducts all types of "outgoings and expenses" and thus, it prescribes a positive test of deductibility. It provides for what is deductible for the purpose of ascertaining the profits or income of any person from any source. These deductions are allowed only if they fulfil the cumulative criteria of being within the permissive provisions of Section 25 (1) and outside the general prohibitive provisions of Section 26 (1) or 26 (2).

## Outgoings and expenses-General deductions

[20] As Section 25 (1) provides that all outgoings and expenses can generally be deducted in terms of the general rule of deduction, firstly, it is important to understand the "outgoings and expenses" referred to in Section 25 (1). In order to be qualified for deduction under Section 25 (1), first, it must have been all "outgoings" and "expenses" incurred in the production of the profits or income. However, there is a distinction

between “outgoings” and “expenses” for the purposes of Section 25 (1) of the Inland Revenue Act.

[21] In the New Shorter Oxford English Dictionary on Historical Principles (Clarendon Press, 1993, Volume 2) at p 2038, “outgoing” is defined to be “expenditure, outlay”. The Black’s Law Dictionary (West, 9th Ed, 2009) at 658 defines the term “expense” as “an expenditure of money, time, labour, or resources to accomplish a result; especially, a business expenditure chargeable against revenue for a specific period”. “Expenditure” in turn is defined by Black’s Law Dictionary as “1. The act or process of paying out; disbursement. 2. A sum paid out”.

[22] Conversely, the Appellant contended that an expense in question need not be incurred in the production of income for it to be deductible under Section 25 (1) of the Inland Revenue Act, relying on the decision in *Hayley and Company Ltd v. Commissioner of Inland Revenue* (supra) and *Rodrigo v. The Commissioner-General of Inland Revenue* (supra) that while all expenses are outgoings, all outgoings are not expenses and thus, outgoings are not limited by the words ‘incurred in the production of the profit or income”.

[23] The learned Senior State Counsel, however, argued that both outgoings and expenses in Section 25 (1) must be incurred in the production of the profits or income and thus, if the expenses of travelling were outgoings as claimed by the Appellant, it must be shown that they were incurred in the production of the profits or income of the Appellant.

[24] The meaning of “outgoings” was examined by two Sri Lankan cases in *Hayley and Company Ltd v. Commissioner of Inland Revenue* (supra) and *Rodrigo v. Commissioner of Inland Revenue* (supra). In this regard, it must be noted that the decision of the Supreme Court in *Hayley and Company Ltd v. Commissioner of Inland Revenue* (supra) was followed by Bandaranayake J, (as she then was) in *Rodrigo v. Commissioner of Inland Revenue* (supra). The decision in *Hayley and Company Ltd v. Commissioner of Inland Revenue* (supra) dealt with the general deduction rule in Section 9 (1), specific deduction rule in sub-sections (1) -(i) of Section

9 (1) thereof, and the prohibition of deduction rule in Section 10 (c) of the Income Tax Ordinance (Chap 188), is instructive.

[25] In *Hayley and Company Ltd v. Commissioner of Inland Revenue* (supra), Basnayake C.J., drew a distinction between the word "outgoings" and "expenses" in Section 9 (1) of the Income Tax Ordinance of Ceylon and considered their relationship and limitations. This case considered the question whether the loss suffered by the burglary was an "outgoing" under Section 9 (1) of the Income Tax Ordinance of Ceylon for the purpose of ascertaining the profits or income of the Company from its trade or business. Basnayake, C.J. explained the distinction between the word "outgoings" and "expenses" at p. 175 as follows:

> *"The word "outgoings" mean what goes out and is a word of wide import. It is the opposite of the equally wide expression "expense", which means what comes in. In the context the word "expense" is limited by the words "incurred by such person in the production thereof, while the word "outgoings" is not so limited. The two words are designed to express two different concepts one of wider import than the other. All outgoings are not expenses incurred in the production of the profits or income; but all expenses incurred in the production of the profits or income are outgoings. Apart from expenses incurred in the production of profits or income the section specifically mentions other outgoings. The word "outgoings" in this context, must be construed as outgoings other than those specifically mentioned. …."*

[26] Apart from the outgoings as deductions, a taxpayer can also rely on the expenses incurred in the production of income to be claimed as deductions, which are all outgoings but all outgoings are not expenses incurred in the production of the profits or income. Based on the reasoning of Basnayake, C.J. in *Hayley and Company Ltd v. Commissioner of Inland Revenue* (supra), stated that the term "outgoing" is wider than the term "expense" and while the word "expense" is limited by the words "incurred in the production of the profits or income", the word "outgoing" is not limited by those words.

[27] On the analysis of the facts and circumstances of the case, Basnayake, C.J., held that while the loss suffered by burglary was not an expense incurred in producing the profits of the business, the loss was an outgoing

deductible under Section 9 (1) in ascertaining the profits or income. Sinnetamby, J. in the same case, while agreeing that the word "outgoing" is wider than the term "expense", stated that it must not be limited to voluntary payments, but would also include involuntary outgoings such as petty theft by subordinates (p. 177). Sinnetamby, J. stated however, that the "outgoings" must be of such a nature as would come within the meaning of the expression "incurred in the production of profits" (supra). Sinnetamby, J. held that the loss suffered by the assessee must be regarded as incidental to the assessee's business and thus, it was deductible under Section 9 (1) of the Ordinance.

[28] The only disagreement of the views expressed by Basnayake, C.J. and Sinnetamby, J. related to the question whether or not the outgoings must be limited by the words "incurred in the production of profits or income". The proposition of Basnayake, C.J. was confirmed by the Supreme Court decision in *Rodrigo v. Commissioner of Income Tax* (supra) where Bandaranayake, J. (as she then was) with Sarath N. Silva, C.J. and Ismail, J. agreeing observed at page 390:

> *"It is obvious that Section 23 focuses on all aspects of expenses as it refers not only to "expenses", but also to the "outgoings". The word "outgoings" gives a wider meaning than the word "expense". "Outgoings" incurred by a person carrying out a profession, could include a wide variety of items, which would not come within the meaning of "expenses". Basnayake, C.J. in Hayley and Company Ltd v. Commissioner of Inland Revenue (supra), considered the two phrases referred to above which formed section 9 (1) of the former Income Tax Ordinance. Section 9 (1) is similar to section 23 (1) of our current Act".*

[29] Having reproduced the observations made by Basnayake, C.J. at page 175 of the judgment, quoted at paragraph 22 of this judgment), Bandaranayake, J. stated:

> *"On the other hand, in addition to the outgoings a taxpayer would also rely on the expenses that incurred in the production of the income to be claimed as deductions".*

[30] This proposition is also consistent with the observations made by Privy Council in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra). The Privy Council considered the question whether the conception of "the production of income" used in Section 10 (1) is appropriate to the specific deduction under Section 10 (1) (f) of the Act. The Privy Council stated as all the sub-paragraphs in Section 10 (1) (a) -(k) are not directly aimed at what may broadly be called trade, business or profession, the language of Section 10 (1) (f) is not necessarily related to a business, the conception of the "production of income" is not intended to apply to the specific deduction in Section 10 (1) (f).

[31] The cumulative effect of the views expressed by Basnayake, C.J. and Bandaranayake, J. is that while the word "expenses" is limited by the words "incurred in the production of profits or income", "outgoings" incurred by a person carrying out a profession could include a wide variety of items, which would not come within the meaning of "expenses".

**Deductions not allowed in ascertaining profits and income-General Prohibition of Deduction Rule-S.26**

[32] Next, I will turn to deductions prohibited in ascertaining profits and income of any person in terms of the provisions of the Inland Revenue Act. While Section 25 (1) refers to general deductions allowed in ascertaining profits or income, Section 26 deals with deductions not allowed in ascertaining profits and income (general prohibition of deduction). In essence, Section 26 of the Act prescribes a negative test of deductibility and prohibits deductions in respect of all outgoings or expenses specified in Section 26 of the Act. This means that even if they fall within Section 25 (1), we will still need to consider whether they would be excluded under Section 26 for the purpose of the general deductibility or general limitations on deductibility.

[33] In order to decide the question whether general deductions permitted under Section 25 (1) are prohibited under Section 26 (2), Sections 25 (1) and 26 (2) have to be read together as both Sections apply to the general deductibility of outgoings or expenses. It was not disputed by the parties at the hearing that Section 25 (1) and Section 26 must be read together in

considering whether or not any outgoing or expenses referred to in Section 25 (1) is capable of being deducted as the dispute relates to the deductibility of expenses referred to in sub-sections (k) of Section 25 (1) and limitation of deductions under Section 26 (2) of the Act.

[34] In order to decide this matter, the Respondent strongly relies on the decision of the Supreme Court in *Rodrigo v. Commissioner-General of Inland Revenue* (supra). Bandaranayeke, J. (as she then was), in interpreting the provisions of Sections 23 (1) and 24 (1) (g) of the Inland Revenue Act, No. 28 of 1979, which are identical to Section 25 (1) and 26 (1) (g) of the Inland Revenue Act, No. 10 of 2006, was of the view that:

> *"Sections 23 (1) and 24 of the Act have to be read together as both provisions apply to the deductibility from the income. While section 23 spells out the permissible expenses, section 24 expressly disallows the whole of part of certain expenses, which if not so prohibited, would be allowable. The combined effect of sections 23 and 24 therefore is to divide all outgoings and expenses into two categories: outgoing expenses which are deductible and not deductible".*

[35] In order to be qualified for a general deduction under Section 25 (1), outgoings or expenses must have fulfilled the requirements of Section 25 (1), (which depends on the circumstances of each case), read with the prohibitions set out in Section 26 of the Act. In other words, when they qualify both under Sections 25 (1) and 26, they are allowable deductions in ascertaining the profits and income of any person.

[36] The prohibition of deductions (negative limb) in Section 26 (1) may relate to an outgoings or expenses such as (i) domestic or private expenses; (ii) expense of a capital nature or loss of capital; (iii) employment expenses, expenses in travelling outside Sri Lanka; (iv) entertainment expenses; (v) cost of any improvement effected, rent or expenses; (vi) any disbursement or expenses of such persons, not being money expended for producing profits or income, etc.

[37] In these proceedings, Section 26 (2) is pertinent and it reads:

*"No person carrying on any trade, business, profession or vocation shall be entitled to any sum for* ***depreciation by wear and tear, or for renewal, or to any allowance under paragraph (1) or paragraph (c) of subsection (1) of section 25: -***

*(a) for any year of assessment, in respect of any vehicle used for travelling for the purpose of his trade, business, profession or vocation, except in respect of-*

*(i) a motorcycle or bicycle used for such purpose by an officer, who is not an executive officer in the employment of such person; and*

*(ii) a motor coach used for transporting employees of such person to or from their place of work; and*

*(b) in respect of any plant, machinery, fixtures, equipment or articles provided for the use of any officer or employee of such person, in the place of residence of such officer or employee, or*

***for any deduction for any rental or annual payment in respect of any such vehicle, plant, machinery, fixtures, equipment or articles as are referred to in paragraphs (a) and (b)****".*

[38] The effect of Section 25 (1) read with Section 26 is that it permits deductions of all outgoings and expenses which satisfy the following characteristics under Section 25 (1):

(i) deductions must have been either outgoings or expenses; and

(ii) (a) they must be outgoings incurred in the carrying out a trade, business, profession or vocation, which could include, a wide variety of items, which would not come within the meaning of "expenses"; or

(b) they must be expenses incurred in the production of the profits or income; and

(iii) they must be not deductions prohibited under Section 26 in ascertaining profits and income (excluded deductions from the general deduction in Section 25 (1)).

**Specific Deduction Formula-Section 25 (1) (a) -(w)**

[39] During the course of arguments, Mr. Ameen submitted that Section 25 (1) which refers to all outgoings and expenses is the general deduction rule while sub-sections (a) to (w) of Section 25 (1) contain specific items of deductions that are specifically permitted by the legislature. His contention was that Section 25 (1) (k) is a specific deduction rule that specifically allowed deduction of expenses incurred for travelling in connection with the business use of the vehicles by the Appellant.

[40] Mr. Ameen further submitted that the general prohibition of deduction in Section 26 (2) is a general deduction provision disallowing expenses in respect of "rental" and it is of wider application. His contention was that Section 25 (1) (k) is a special rule of deduction permitted in respect of actual expenses in travelling in connection with business use of the vehicles and the expenses paid to the employees have been included in the remuneration of the employees and PAYE tax has been deducted from such remuneration and paid to the Inland Revenue Department.

[41] The learned Senior State Counsel while disputing the contention of Mr. Ameen that Section 25 (1) (k) is a special rule of deduction submitted that the Sections 25 and 26 of the Inland Revenue Act are intrinsically linked and they have to be read together. She strenuously, contended that the deductions allowed under Section 25 (1) including those of the expenses set out in Section 25 (1) (k) are restricted by the limitations of deduction under Section 26 (2). She argued that the travelling costs referred to in section 25 (1) (k) are not permissible deductions under Section 26 (2) and accordingly, the Appellant's claim that Section 26 is the general limitation rule and Section 25 (1) (k) is a special deduction rule cannot apply as it is not specifically stated in the Act. She strongly relied on the decision of the Supreme Court in *Rodrigo v. The Commissioner-General of Inland Revenue* (supra).

[42] In addition to the general deductions (outgoings and expenses) specified in Section 25 (1), it has several other sub-sections, referring to several outgoings or expenses that are permitted to be deducted, which the Appellant has described them as "special items of deductions". Those paragraphs, i.e. (a) to (w), which contain specific items of deductions are all outgoings or expenses within the interpretation adopted by Basnayake C.J. (p. 175) and Sinnetamby, J. (p. 177) *in Hayley and Company Ltd v. Commissioner of Inland Revenue (supra).*

[43] The Appellant has referred to paragraph (k) of Section 25 (1) as one such special item of deduction within the meaning of "outgoings" which deducts, subject to paragraphs proviso (i), actual expenses incurred by such person or any other person in his employment in travelling within Sri Lanka in connection with the trade, business, profession or vocation of the last-mentioned person. Section 25 (1) (k) reads as follows:

"K- *the actual expenses incurred by such person or any other person in his employment in* ***travelling within Sri Lanka in connection with the trade, business, profession or vocation in the first-mentioned person:***

*Provided that no deduction under the preceding provisions of this paragraph shall be allowed to any person-*

*(i) in respect of expenses incurred in relation to a vehicle used partly for the purposes of his trade, business, profession or vocation and partly for the domestic or private purposes of an executive officer being employed by him or a non-executive director of such organization,* ***unless the value of the benefit as specified under the proviso to paragraph (b) of subsection (2) of section 4 of this Act, has been included in the remuneration of such officer, for the purposes of deduction of income tax under Chapter XIV of this Act,*** *where such benefit is not exempt under paragraph (s) of subsection (1) of section 8 of this Act;*

*(ii) in respect of expenses incurred in relation to a vehicle, where more than one vehicle is provided to any employee of such person or to any non-executive director or to any other individual who is not an employee, but rendering services in the trade, business, profession or vocation, carried on by such person, if such vehicle is not the first*

*vehicle provided to such employee or non-executive director or such other individual, as the case may be;*

*(iii) in respect of expenses incurred in relation to a vehicle where such vehicle is provided to any other person who is not an employee of such person and who does not render any services to the trade, business, profession or vocation carried on by such person;*

*(iv) in respect of expenses incurred in relation to the reimbursement of any expenditure on a vehicle belonging to an employee of such person who has been allowed by the employer to claim such expenses, unless the value of benefit of using such vehicle for non-business purposes by such employee as determined by the Commissioner-General, has been included in the remuneration of such employee for the purposes of deduction of income tax under Chapter XIV, or in the opinion of the Commissioner-General such amount that is reimbursed represents only expenses on allowable travelling expenses in relation to the trade, business, profession or vocation carried on by such employer; and*

*(v) in respect of any expenses incurred by such person by reason of any travelling done by any other person in his employment between the residence of such other person and his place of employment or vice versa.*

[44] I shall now proceed to consider whether the legislature intended that in addition to the general deductions in Section 25 (1), the sub-sections (a) -(w) allow a catalogue of specific deductions, when it has already permitted all outgoings and expenses to be deducted as a general rule subject to the general limitation set out in Section 26.

[45] The Tax Appeals Commission has taken the view at p. 4 of the determination that deductions cannot be made both under Section 26 and under Section 25 (1) (k) and taking both Sections together, in their literal context, the meaning of Section 25 (1) is restricted by the words given in Section 26, applying the statement made by Bandaranayake, J. (as she then was) in *Rodrigo v Commissioner-General of Inland Revenue* (2002) 1 Sri L.R. 384 at pp 392-392. It reads as follows:

*"The issue to be resolved in this case is not, whether Section 26 applies only to "general deductions" allowed under Section 25 (1) or to "special deductions" permitted under the same subsection, but*

*rather, to determine the deductions that are not allowed to be made in determining the statutory income of a person and, further, to determine whether such deductions are prohibited under certain provisions included in some of the paragraphs which set out the "special deductions" referred to in Section 25 (1) itself (examples being provisos to paragraph (b), (d), (h), (k) of the section). A viewpoint to this effect was expressed by Shirani A. Bandaranayake, J. in the case of Rodrigo v Commissioner-General of Inland Revenue, where she observed that "the combined effect of Sections 23 and 24 (which are similar to Section 25 and 26 of the present Act) is to divide all outgoings and expenses into two categories, outgoings and expenses which are deductible and not deductible……taking both these sections together, in their literal context, it appears that the meanings of words in Section 23 (1) is restricted by the words given in Section 24 (1) (g) of the Act."*

[46] The Tax Appeals Commission has further taken the view that the legislature has not intended to treat Section 25 (1) (k) as a specific provision, as the legislature has not made specific references in Section 26 limiting its application to the "general deductions" and therefore, any deduction permitted under Section 25 (1) including paragraphs (a) -(s) may still be subject to the prohibitions set out in Section 26. The findings of the Tax Appeals Commission at pp. 4-5 are as follows:

*"It is also clear that deductions cannot be made both under Section 26 and under the provisions of some of the "special deductions" claimed to be permitted under some paragraphs of subsection (1) of Section 25. It could also be argued that, if the intention of the legislature were to limit the deductions disallowed under Section 26 only to "general deductions" permitted under Section 25 (1) ("all outgoings and expenses incurred in the production thereof", it could have made specific references in Section 26 to limit its application only to the "general deductions" and not to the "special deductions" permitted under Section 25. Therefore, any deductions permitted under Section 25 sub-section (1) under paragraph (a) to (s) may still be subject to the prohibition on deductions set out in Section 26."*

[47] I am unable to agree with the view of the Commission that in the absence of any express reference in Section 26 limiting its application to the general deductions permitted under Section 25 (1), all the deductions

under Section 25 (1) including those under sub-sections (a) to (w) will be restricted by Section 26.

[48] The paramount object of statutory interpretation is to discover the intention of the legislature and this intention is primarily to be ascertained from the text of enactment in question (Bindra's Interpretation of Statutes, 10th Ed. p. 408). That does not mean that the text is to be construed merely as a piece of prose, without reference to its nature or purpose and therefore, as Holmes J. stated in *Lenigh Valley Coal Co. v. Yensavage* (218 FR 547, 553), "statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them". The question whether the legislature intended to treat a section to be a general or special provision has to be discovered by the Court having regard to the context, purpose or object underlying the Act as a whole rather than seeking to find express words in a section.

[49] As noted, Basnayake C.J. is referring to Section 9 (1) of the Income Tax Ordinance, which is the corresponding provision of Section 25 (1) has clearly stated in *Hayley v. Commissioner of Inland Revenue* (supra) *that* the deductions allowed by sub-sections (a) -(i) are **specific deductions.** No submission was made by the learned Senior State Counsel to convince us that the classification of deductions made by *Basnayake* C.J. referring to the **specific deductions** in sub-sections (a) -(i) of Section 9 (1), cannot be applied to similarly structured sub-sections (a) -(w) of Section 25 (1) of the present case.

[50] The body of Section 25 (1) contains the general deduction formula that allows the general deduction of "all outgoings and expenses incurred in producing profits or income, which are subject to the general limitations set out in Section 26. In addition to that, the sub-sections (a) to (w) of Section 25 (1) also allow a catalogue of specific deductions in ascertaining profits or income of any person and Section 25 (1) (k), which, subject to the proviso, allows the deduction of actual travelling expenses incurred by any taxpayer within Sri Lanka or a person in his employment in connection with the trade, business, profession or vocation of the said person.

**Relationship between Sections 25 (1), 25 (1) (k) and 26**

[51] Now, the question is, if all deductible outgoings and expenses in Section 25 (1) are subject to the limitations set out in Section 26 as claimed by the Respondent, why did the legislature include several catalogues of other deductions in several sub-sections (a) -(w) of Section 25 (1)? It is inconceivable that the legislature would have included several other specific items of deductions in sub-sections (a) -(w) of Section 25(1), if all the outgoings and expenses are restricted by the general limitation provisions in Section 26 of the Act. In order to determine this question, it is necessary to consider the relationship between Section 25 (1) and Section 25 (1) (k), and the scheme of Section 25 (1) (k) and Section 26 (2) of the Act.

**Whether the word "including" in Section 25 of the Act is expansive in nature or the same is to be read in a restrictive manner**

[52] One of the issues that has been argued extensively before this Court is with regard to the true and correct interpretation to be given to the word “including” at the end of Section 25 (1) of the Act. The Tax Appeals Commission has taken the view that any deduction permitted under Section 25 (1) including deductions specified in sub-sections (a) to (s) are subject to the prohibitions on deductions set out in Section 26. Mr. Ameen referred to the Privy Council decision in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) in support of his argument that the use of the word “including” in introducing the catalogue in Section 25 (1) enlarges the meaning of the words or phrases contained in the statute. He submitted that if the intention was to make the list exhaustive, the legislature would not have used the word “including”' only, but would not have used the word “means” or the expression “means and includes”.

[53] The learned Senior State Counsel submitted that the word “including” in Section 25 (1) is intended to be exhaustive or restrictive of the expenses covered by sub-sections (a) -(w) of Section 25 (1), which is only equivalent to “mean and include”. She strongly relied on the decision of this Court in *CEI Plastics Limited v. Commissioner General of Inland Revenue,* CA Tax

03/2013 decided on 01.02.2019 and submitted that the decision of the Privy Council in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) relied on by the Appellant is not applicable to the present case.

[54] In *CEI Plastics Limited v. Commissioner-General of Inland Revenue* (supra), His Lordship Janak de Silva J, having considered the analysis made by Tambiah J. in *The Commissioner of Inland Revenue v. A.L.J. Cross Raj Chandra* (67 N.L.R. 174 at 178) and *Rodrigo v. The Commissioner General of Inland Revenue* (supra) stated at page 9 that:

> *"It is not possible to give the word "includes" in section 25(1) of the Act an extended meaning in the context in which it is used and I hold that the interest incurred by the Appellant to the value of Rs. 167,075,212/- in relation to its business of share trading is not deductible for the purpose of ascertaining the profits or income of the Appellant from the profits of its other business of manufacturing and selling plastic items."*

[55] Before I proceed to consider the applicability of the decision in *CEI Plastics Limited v. Commissioner-General of Inland Revenue* (supra), to the facts of the present case, it is significant to identify the context in which the word "including" has been used by the legislature at the end of the body of Section 25 (1). The interpretation of the term "including" at the end of the body of Section 25 (1) becomes paramount and therefore, one has to understand the true intent of the legislature and put a proper construction to the same. In relation to the meaning to be given to the word "including", the Appellant and the Respondent have cited various definitions and judgments where the word "including" or "includes" or "mean and include" is used in different contexts. For a proper comprehension of the term "including", one should examine the views taken by courts in different jurisdictions.

[56] I do not think, however, that there could be any inflexible rule that the word "including" or "include" should be read always as a word of extension or exhaustion without reference to the context in which it is used by the legislature. In view of the submissions made by both Counsel on behalf the parties, it is necessary to consider the question whether the

word “including” in section 25 (1) of the Act is to be taken as exhaustive that includes all the expenses referred to in Section 25 (1)(a) -(w) or an extended meaning in the context in which it is used, in addition to all legitimate deductions.

[57] The word "includes" has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word "include". Webster's Dictionary defines the word "include" as synonymous with "comprise" or "contain". According to Black’s Law Dictionary, p. 905, the word “including” may, according to context, express an enlargement and have the meaning of and, or in and addition to or merely specify a particular thing already included within general words.

**Extensive Construction**

[58] It is well-settled that when the interpretation clause used an inclusive definition, it would be generally expansive in nature and thus, it seeks to enlarge the meaning of the words or phrases used in an interpretation clause, unless it manifests a contrary intention very clearly (P. M. Bakshi, Interpretation of Statutes, First Edition, 2008, pp. 242-243). In such case, the word “include” must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include (*Commissioner of Inland Tax v. Banddarawathie Fernando Charitable Trusts* (63 N.L.R 409). It is true that generally, when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive.

**Exhaustive Construction- “means and include”**

[59] Moreover, the words “means and includes” indicates an exhaustive explanation of the meaning which, for the purposes of the interpretation of a statute, must invariably be attached to these words or expressions. The use of the words, “means and includes” would, therefore, suggest that the definition is intended to be exhaustive and not extensive (*P. Kasilingam v. P.S.G. College of Technology*, AIR 1995 SC 1395, p. 1400). Lord Watson in *Dilworth v. Commissioner of Stamps,* [1899] A.C. 99, P.C.) stated that it is susceptible of another construction, which may be

imperative if the concept of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural words used defined. He stated at pp. 105-106:

> *"But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include," and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions".*

[60] In that sense, the term "include" would suggest definition to be exhaustive and not extensive (*Reliance Industries Ltd, Bombay v State of Maharashtra* AIR 2006 Bom 213). Thus, the word "include" may, where the context so demands, be equivalent to "mean and include", in which case the definition, though apparently inclusive, is to be taken as exhaustive *(Dilworth v. Commissioner of Stamps).*

**Enumerative construction-includes**

[61] Under the third category of construction, the function of the word "includes" is merely enumerative and **brings under one nomenclature all transactions possessing certain similar features, but going under different names** (*Reserve Bank of India v Peerless General Finance and Investment Co. Ltd,* AIR 1987 SC 1023 p. 1041). This construction was adopted by Thambiah J. in *Commissioner of Inland Revenue v. Cross Raj Chandra* 67 N.L.R. 174 at p. 179) as the third category of the function of the word "includes" and in such cases, the term is placed preceding the word "includes" and is followed by a number of other terms which, in common parlance, may not connote the term which precedes the word "includes".

[62] As Tambiah J. explained, the word "business" is defined as "Business includes agricultural undertakings", but in common parlance, agricultural undertakings will not be construed as business (supra). In this situation, the setting, context and object of an enactment may provide sufficient guidance for interpretation of the word "includes" or "including" for the

purposes of such enactment. Tambiah, J. after an exhaustive analysis of cases, recognized these three categories of the function of the word "includes" in *Commissioner of Inland Revenue v. Cross Raj Chandra* (supra) and stated at pp. 178-179) that:

1. The word "includes" is generally used in interpretative clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute and when so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include;

2. But, the word "includes" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be then, equivalent to mean and include and, in that case, it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions;

3. Under the third category, the word "includes" is merely enumerative and in such cases, the term is placed preceding the word "includes" and is followed by a number of other terms which, in common parlance, may not connote the term which precedes the word "includes".

[63] From the above decisions, it can be said that the word "includes" or "including" can have the following functions in a statute:

1. The word "includes" or "including" is normally used in any statute to enlarge the scope of the definition or expression to include things that would not properly fall within its ordinary connotation. In other words, it is used as an extensive word;

2. If the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined, it can be also used to give an exhaustive

or restrictive meaning and, in that case, it may be used as equivalent to "means" and also "means and includes";

3. The setting, context and object of an enactment, may provide sufficient guidance for interpretation of the word "includes" for the purpose of such enactment bringing under one nomenclature all transactions possessing certain similar features but going under different names.

**The Principle of Construction in *Patrick Reynolds v. Income Tax Commissioner for Trinidad and Tobago***

[64] Now, I will turn to *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra), which on a similar structure of another Income Tax Ordinance (Income Tax Ordinance-Laws of Trinidad and Tobago) proceeded to construe the word "including" and relationship between the general deduction, prohibition of deduction and the specific deduction rules in ascertaining the profits or income of a taxpayer.

[65] In the said case, both the Appellant and his wife (Mrs. Reynolds) had at all material times been living together and had been in receipt of income from earnings and investment. Mrs. Reynolds entered into a deed of covenant under which she undertook to make annual payments to a trustee for the benefit of the four children of the marriage. The Appellant's return of income for the relevant year of assessment showed a total income received in the preceding year of $ 40,164.86 of which $ 18,202 represented Mrs. Reynolds' income. The Appellant claimed that the aggregate sum of $ 14,000 paid by Mrs. Reynolds under the deed of covenant should be deducted from her income in computing the Appellant's chargeable income.

[66] The main issues, *inter alia*, that arose for the determination in the said cases were as follows:

1. Whether Section 10 (1), on its true construction and having regard to the word "including" was a word of extension?

2. If so, whether it was intended to embrace the deductions specified in sub-paragraphs (a) to (k) of Section 10 (1), in addition to all legitimate deductions of expenses incurred in the production of income;

3. If so, whether the prohibition of deduction in Section 12 (1) (b) negatived the provisions of Section 10 (1(f);

4. Whether annual payments under deed of covenant was deductible from assessment of husband's income; and

5. Whether the wife was the "disponer" within Section 34 (2) of the Income Tax Ordinance of Trinidad and Tobago.

[67] The Privy Council considered the issue whether the general limitation in Section 12 (1) (f), which prohibited the general deduction under Section 10 (1), intended to take away the specific deduction that has been expressly provided under Section 10 (1) (f) of the Income Tax Ordinance (Laws of Trinidad and Tobago). Section 10 (1) of the Income Tax Ordinance (Laws of Trinidad and Tobago) contains a similar structure to Section 25 (1) of the Act and at the end of the body of the said Section, refers to the word "including" as follows:

> *"10 (1) -For the purpose of ascertaining the chargeable income of any person, there shall be deducted all outgoings and expenses wholly and exclusively incurred during the year preceding the year of assessment by such person in the production of the income,* ***including.****....."* [emphasis added]

[68] Then, there are sub-paragraphs (a) to (k) of Section 10 (1) which sets out examples of permissible deductions and sub-paragraph (f) of Section 10 (1) allowed annuities to be deducted. It reads:

> *"10 (1) (F) -* ***annuities or other annual payments,*** *whether payable within or out of the Colony, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract: Provided that no voluntary allowances or payment of any description shall be deducted".*

[69] On the other hand, Section 12 (1) deals with the prohibition of deduction rule and disallowed disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring income. It reads as follows:

> *"For the purpose of ascertaining the chargeable income of any person, no deduction shall be allowed in respect of (a) domestic or private expenses; (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income.... f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of acquiring the income..."*

[70] The Privy Council considered the most important question whether the use of the word "including" at the end of the body of Section 10 (1) would be expansive or restrictive in nature in the context of the prohibition of deduction under Section 12 (1) (b). The Privy Council referred to the following observations made by Lord Watson in *Dilworth v. Commissioner of Stamps,* (supra) at pp. 105-106 and stated that the word "include" is generally used in a statute, to enlarge the meaning of words or phrases in a statute and that it enumerates categories of classes which will not be included in the concept of the term which precedes. It reads:

> *"The word 'includes' is very generally used in interpretation clauses to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include".*

[71] Having analysed the decision in *Dilworth v. Commissioner of Stamps,* (supra), the Privy Council stated that:

1. Section 10 (1), on its true construction, and having regard to the word "including" which was a word of extension, was intended to embrace the deductions specified in sub-paragraphs (a) to (k) in addition to all legitimate deductions of expenses incurred in the production of income;

2. Section 12 (1) (b) which was of limited application, did not negative or fetter the provisions of Section 10 (1) (f) of the Income Tax Ordinance (Laws of Trinidad and Tobago).

[72] Lord Hodson stated at p. 11:

> *"In looking at this section as a whole, including all its sub-paragraphs, their Lordships have already noticed that not all of the sub-paragraphs appear to be directly aimed at what may broadly be called trade, business of profession and they are of the opinion that the language of sub-paragraph (f), in particular the reference to a "will" points to the conclusion that (f) is looking at something which is not necessarily a business and that the conception of "the production of the income" is inappropriate and certainly not necessary to be regarded as a provision which governs this subparagraph. Their Lordships, therefore reading the word "including" broadly have reached the same conclusion as Blagden J. at first instance, following the decision of Gilchrist J. in an earlier case of an appeal in Trinidad by one Joseph Galvan Kelshall (No. 443 of 1939). This construction as Gilchrist J. pointed out is supported by the fact that in sub-paragraph (f) there are no limiting words referring specifically to the acquiring of income, such as appear in sub-paragraphs (a), (b) and (h) of the same section. Further, this construction is not inconsistent with section 12 which read together with section 10, is of limited application and does not take away that which has been expressly provided by section 10(1)(f) ".*

[73] The decision in *Reynolds v. Income Tax Commissioner for Trinidad and Tobago* (supra) established the following propositions in the interpretation of the functions of the word "including" in a similarly structured Act that:

1. The use of the word "including" in Section 10 (1) was a word of extension and intended to embrace the deductions specified in sub-paragraphs (a) to (k) of Section 10 (1), in addition to all legitimate deductions of expenses expressly provided by Section 10 (1) (f);

2. The word "Including" is generally used to enlarge the meaning of the preceding word (Reynolds v. Income Tax Commissioner for Trinidad and Tobago [1966] 1 W.L.R. 19).

[74] Articulated in this broad analysis, it is not always necessary that the word "including" would convey expansiveness nor is it necessary that the word "including" shall always be interpreted to include, within its sweep, such items, which may not be generally included within the term, which is sought to be defined by using the word "including". The courts in interpreting the word "includes" or "including" are not adopting any uniform rule and thus, sometimes, the word "includes" may be extensive or sometimes exhaustive. But whether the meaning of the word **"including"** is extensive in nature (a phrase of extension) or exhaustive in nature (a phrase of restriction), depends on the setting, context and object in which it is used in any statute in its entirety and the purpose of the statute intended by the legislature. Depending on that, the word "including" may be intended to clarify or explain or restrict the definition in an exhaustive manner, or add or extend the definition in an extensive manner.

**General provisions of Construction in *Reynolds v. Income Tax Commissioner for Trinidad and Tobago***

[75] Now, the question is whether the specific deductions expressly provided in a statute are limited or restricted or disqualified by the general deductions not allowed by a statute. The decision in *Reynolds v. Income Tax Commissioner for Trinidad and Tobago* (supra), also recognised the general rule of construction that general provisions yield to special provisions when the Privy Council stated that the general deduction provisions in Section 10 (1) read with the prohibition of deduction in Section 12 (1) (b) did not negative or fetter or take away the deduction which has been expressly provided by Section 10 (1) (f). unless it is expressly prohibited in the provisions of the statute.

[76] The learned Senior State Counsel, however, sought to argue that the provision in Section 10 (1) (f) of the Income Tax Ordinance of Trinidad and Tobago is not identical to Section 25 (1) (k) of the present case and thus, the judgment in Patrick *Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) can be distinguished from the facts of the present case.

[77] It is true that the specific deduction provision in Section 10 (1) (f), which relates to the deduction of annuities or other annual payments is not identical to Section 25 (1) (k) of our Inland Revenue Act, but Section 26 (2) of our Act is similar to Section 12 (1) (b) of the Income Tax Ordinance of Trinidad and Tobago. It is not disputed, however, that Section 10 (1) of the Income Tax Ordinance of Trinidad and Tobago is identical to the corresponding Section 25 (1) of the Inland Revenue Act of Sri Lanka, which specifies the general deduction rule.

[78] The Privy Council, however dismissed the appeal on different grounds. The Privy Council was of the view that the payments to the trust for the maintenance and benefits of a taxpayer's children are within the prohibition of Section 12 (1) (b), which prohibits any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income.

[79] It is not in dispute that Section 12 (1) of the Income Tax Ordinance of Trinidad and Tobago relates to the limitation to a general deduction provision in Section 10 (1), which prohibits deductions spelled out in Section 10 (1). The principle emanating from this analysis is that while the general deduction rule is restricted by the prohibition of deduction rule, any deduction provision which has been **specifically provided by any statute** is not taken away by the general prohibition of deduction unless it is expressly prohibited by the provisions of the statute.

[80] In my view, the above principle in Patrick *Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) is relevant and applies in interpreting similarly structured general deduction rule in Section 25 (1) and the prohibition of deduction in Section 26 when a specific deduction formula has been expressly provided by a tax statute, unless the effect of such specific provision has been limited by the provisions of the same statute indicating any contrary legislative intention in the Act.

**Scheme of Section 25 (1) (k) and Section 26**

[81] Now the question is whether the word "including" in Section 25 (1) (k) was intended to embrace the deductions specified in sub-section (k) of

Section 25 (1) of the Act, in addition to all legitimate deductions in Section 25 (1) and if so, whether or not the expenses set out in sub-section (k) of Section 25 (1) are prohibited by the deductions specified by Section 26 (2) in the light of the intention of the legislature as disclosed by the setting, object and context of the Inland Revenue Act.

[82] Section 25 (1) (k), specifically deducts actual travelling expenses incurred by the taxpayer or a person in his employment in connection with his trade, business or vocation of the taxpayer. On the other hand, Section 26 (2) prohibits any rental or annual payment in respect of any vehicle, machinery, fixtures, equipment or articles as are referred to in paragraph (a) and (b) of the Act.

**Amendments made to the Inland Revenue Act, No. 10 of 2006**

[83] During the course of the argument, Mr. Ameen submitted before us that the two amendments introduced to the original provision of Section 25 (1) (k) of the Inland Revenue Act, No. 10 of 2006 further indicate that the legislature first excluded rental in the proviso to section 25 (1) (k) and then, included rental before it was repealed from the proviso to the said Section. He submitted that the legislature would not have done so if rental expenses were never deductible by virtue of section 26 (2) of the Act and therefore, the legislature in enacting the proviso (i) to Section 25 (1 (k), and amending that twice is not intended to render Section 25 (1) (k) nugatory by the general prohibition of deduction contained in Section 26 (2).

[84] The learned Senior State Counsel, however, submitted that the intention of the legislature in amending the proviso to Section 25 (1) (k) was to make the prohibition contained in section 26 (2) clearer and thus, the prohibition contained in Section 26 (2) is not taken away by the provisions of the Inland Revenue Act, No. 10 of 2006 or the amendments made to the Inland Revenue (Amendment) Act, No. 10 of 2007 or the Inland Revenue (Amendment) Act, No. 9 of 2008.

[85] Section 25 (1) (k) of the original Inland Revenue Act, No. 10 of 2006 had a main provision and a proviso with four sub-paragraphs. The deduction under Section 25 (1) (k) is subject to five provisos. At the end of the sub-paragraph (iv) and just before proviso (v), included an explanation by

excluding from expenses incurred "any lease rental or other rental payment". It reads as follows:

> *"For the purposes of sub-paragraph (i), (ii), (iii) and this sub paragraph, "expenses incurred" shall not include any lease rental or other rental payment in respect of such vehicle or the cost of acquisition or the cost of financing of the acquisition of such vehicle"*

[86] The legislature had specifically excluded lease rental or other rental from paragraphs (i)-(iv) of the proviso when Section 26 (2) had already excluded rental or annual payment in respect of certain types of vehicles. It seems that the lease rental or other rental was excluded from the proviso (i)-(iv) to Section 25 (1) (k) so that the conditions for the applicability of those sub-paragraphs will not include lease rental or other rental payment in respect of such vehicles. In the present case, however, the relevant year of assessment relates to 2007/2008 and the Inland Revenue (Amendment) Act, No. 10 of 2007 came into operation on 30.03.2007 and therefore, the said explanation at the end of paragraph (v) in that form did not apply to the Appellant in the present case.

[87] Section 25 (1) (k) was amended by the Inland Revenue (Amendment) Act, No. 10 of 2007 by repealing the said sub-paragraphs to the said provisos by including the "lease rental or other rental" within the meaning of the provisos at the end of paragraph (v) as follows:

> *"For the purpose of this proviso, "expenses incurred" shall include any lease rental or other rental payment in respect of such vehicle or the cost of acquisition of such vehicle".*

[88] The legislature has included lease rental or other rental within the meaning of "expenses Incurred" for the purpose of the said proviso irrespective of the fact that Section 26 (2) also prohibits deductions on rental in respect of vehicles under certain circumstances. This enabled a taxpayer or a person in his employment to include rental or other rental payment in respect of such vehicles under proviso (i) if the rental of vehicles was included in the remuneration of the employees, PAYE tax had been deducted and remitted to the Inland Revenue Department.

[89] By the Inland Revenue (Amendment) Act No. 9 of 2008, which came into operation on 24.02.2008, the above-mentioned paragraph (v) of section 25 (1) (k) was repealed, containing the word "lease rental or other rental" in the said proviso. The effect of repealing rental or other rental payment from the said proviso was to obliterate rental from the proviso as if it had never existed. The legislature appears to have removed rental or other rental payment in respect of such vehicle or the cost of acquisition of such vehicle to avoid any conflict with Section 26 (2) so that rental or annual payment in respect of any vehicle referred to in **paragraphs (a) and (b) of Section 26 (2)** will only be governed by Section 26 (2).

**General and Specific Deduction Formula in the same Statute**

[90] Now the question is, if an item of expenditure passed the general positive test in Section 25 (1) and the specific deduction formula in Section 25 (1) (k), could the legislature have intended that the specific deduction provision in Section 25 (1) (k) would still be disqualified under a general prohibition of deduction in Section 26 (2). In other words, the question is whether the deduction allowed by Section 25 (1 (k) is specifically prohibited by the words in Section 26 (2) and therefore, the travelling or rental expenses claimed by the Appellant are not permissible expenses to be deducted as submitted by the learned Senior State Counsel.

[91] The Tax Appeals Commission seems to have taken the view that the deduction allowed under Section 25 (1) (k) is subject to the restrictions imposed by Section 26 (2) and therefore, those restrictions shall prevail over the deductions allowed under Section 25 (1) (k) on the basis of the decision in Rodrigo *v. Commissioner General of Inland Revenue* (supra).

***Rodrigo v. Commissioner General of Inland Revenue***

[92] The Tax Appeals Commission has relied on the following statement made by Bandaranayake, J. (as she then was) in *Rodrigo v. Commissioner General of Inland Revenue* (supra):

> *"Sections 23 (1) and 24 of the Act have to be read together as both provisions apply to the deductible from the income. While section 23*

*spells out the permissible expenses, section 24 expressly disallows the whole or part of certain expenses, which, if not so prohibited, would be allowable deductions. The combined effect of sections 23 and 24 therefore is to divide all outgoings and expenses into two categories; outgoing expenses which are deductible and not deductible".*

[93] The Tax Appeals Commission has come to the conclusion that the decision of the Supreme Court in *Rodrigo v. Commissioner General of Inland Revenue* (supra), applies to this case as well. Its findings at pp. 151,152 are as follows:

*"Further, as referred to above, these two provisions were considered by the Supreme Court in the case of Rodrigo v. Commissioner General of Inland Revenue, where Shirani Bandaranayake, J. observed that "the combined effect of Section 23 and 24 (which are similar to Section 25 and 26 of the present Inland Revenue Act) is to divide all outgoing and expenses into two categories, outgoings and expenses which are deductible and not deductible…Taking both these Sections together, in their literal context, it appears that the meanings of words in Section 23 (1) is restricted by the words given in Section 24 (1) (g) of the Act". Therefore, it would appear that decision of the Supreme Court will apply to the issue that has been raised in this case".*

[94] Section 23 (1) of the Inland Revenue Act, No. 28 of 1979, similar to Section 25 (1) of the Inland Revenue Act, No. 10 of 2006 was in the following terms:

*".....there shall be deducted for the purpose of ascertaining the profits or income of any person from any source, all outgoings and expenses incurred by such person in the production thereof* ***including*****.....".**

[95] Section 24 (1) (g) of the Inland Revenue Act, No. 28 of 1979, was in the following terms:

*"For the purpose of ascertaining the profits or income of any person from any source no deduction shall be allowed in respect of any disbursements or expenses of such person not being money expended for the purpose of producing such profits and income."*

[96] The words "the meanings of words in Section 23 (1) are restricted by the words given in Section 24 (1) (g) of the Act" are consistent with the

scheme of Section 25 (1) of the Inland Revenue Act, No. 10 of 2006, which is the general deduction provision and Section 26 of the Inland Revenue Act, No. 10 of 2006, which is the general prohibition of deduction. Accordingly, the general deduction provision in Section 25 (1) as relates to all outgoings and expenses are restricted by the general prohibition of deduction in section 26 (1) and (2).

[97] The Supreme Court observed that Section 24 (1) (g) read with Section 23 (1) of the Act, show that-

(a) all outgoings and expenses incurred by a person in the production of income from any source could be incurred as deductions-Section 23(1);
(b) any disbursement or expenses which was not spent for the purpose of production of profits and income cannot be deducted as specified in Section 24(1)(g).

[98] Having identified the combined effect of the two sections, the Supreme Court held that the general deduction provision in Section 23 (1) is restricted by the general prohibition provision in Section 24 (1) (g) and thus, although all outgoings and expenses incurred are deducted under Section 23 (1), any amount which was not expended for the purpose of producing the income cannot be deducted (p. 395).

[99] It is crystal clear that the Supreme Court in *Rodrigo v. Commissioner General of Inland Revenue* (supra), only considered the combined effect of the two general provisions, namely, the general deduction provision-positive rule and the general prohibition of deduction-negative rule. It held that the general deduction provision in Section 25 (1) (positive rule) is restricted by the general prohibition of deduction provision in Section 26 (negative rule). This principle that Sections 25 (1) and 26 should be read together on the basis of the judgment in *Rodrigo v. Commissioner General of Inland Revenue* (supra) is consistent with the position taken by the Appellant in the present case and in my view, it is the correct interpretation of the said two provisions. This principle, however, did not prevent the Tax Appeals Commission from considering the distinction between the specific deduction in Section 25 (1) (k) and the prohibition of deduction in Section 26 (2).

[100] However, the Supreme Court *in Rodrigo v. Commissioner General of Inland Revenue* (supra) was not invited to consider the interpretation of the Privy Council decision in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) or the relationship between any **specific deduction** provision such as Section 25 (1) (k) and the **general prohibition on deduction** provision such as Section 26 (2) in the present case.

[101] In the present case, however, the Tax Appeals Commission was specifically invited to consider whether Section 25 (1) (k) is a specific deduction provision and if so, its relationship and effect with Section 26 (2). In other words, the Tax Appeals Commission was specifically invited to consider whether the general deduction rule is intended to interfere with the special deduction provision unless it manifests any other legislative intent very clearly.

***CEI Plastic Limited v. Commissioner of Income Tax***

[102] Now, I shall consider whether the decision of this Court in *CEI Plastic Limited v. Commissioner of Income Tax* (supra) is binding on this court under the concept of stare decisis as submitted by the learned Senior State Counsel who said that the decision of that case is a confirmation of the decision of the Supreme Court in *Rodrigo v. Commissioner General of Inland Revenue* (supra). She further relied on the decision in *CEI Plastic Limited v. Commissioner of Income Tax* (supra) to convince us that the word "including" in Section 25 (1) includes the expenses set out in Section 25 (1) (k) and therefore, such expenses are restricted by the words in Section 26 of the Act.

[103] The said case related to the deductibility of interest expense amounting to Rs. 167,075,212/- in determining the profits from the trade of the Appellant in calculating the income tax liability. The Assessor refused the deduction on the basis that such interest expense related to share trading activities of the Appellant. The Appellant argued that it was entitled to deduct the interest incurred in relation to its share trading business to the said value in terms of Section 25 (1) (f) of the Inland Revenue Act and sought to argue that the word "including" in Section 25 (1) is intended to enlarge the meaning of the general statement in Section 25 (1).

[104] His Lordship Janak de Silva, J. cited with approval the entire passage of the judgment delivered by Tambiah J. at pp. 413-414 (Vide- paragraph 61 of this judgment) and two other judgments of the Supreme Court, namely, *The Commissioner of Income Tax v. Baddrawathie Fernando Charitable Trust* (63 N.L.R. 409) and *The Ceylon Tea Propaganda Board v. The Commissioner of Income Tax* (67 N.L.R. 1). Having referred to those judgments and Section 25 (1) and sub-section 25 (1) (f), His Lordship Janak de Silva, J. stated that:

1. The word "includes" can have different meaning in the context in which it is used;
2. Our courts have not uniformly given the word "including" an extended meaning and has instead on some occasions interpreted the word "includes" as the equivalent of "means".

[105] His Lordship referred to the decision of this Court in *ICIC Bank Limited v. The Commissioner-General of Inland Revenue* (C.A. Tax 28/2013 C.A.M. 16.07.2015) that interpreted that (i) the phrase "all outgoings and expenses incurred by such person in the production thereof" means the outgoings and expenses incurred for the purpose of generating the taxable income; and (ii) the word "thereof" referred to the income generated by expending the said outgoings and the expenses.

[106] Janak de Silva, J. however, relied on the following approach taken by Bandaranayake, J. in *Rodrigo v The Commissioner General of Income Tax* (supra), when His Lordship stated at p. 11:

> *"Section 23 (1) and 24 (1) of the Inland Revenue Act, No. 38 of 2000 have to be read together in their literal context, it appears that the meaning of words in section 23 (1) is restricted by the words given in section 24 (1)(g) of the Act. Bandaranayake J., further held (at page 394) that if any part of the expenses could be clearly identified as having being expended for the purpose of delivering money not being profits or income liable to tax, such amount could not be deducted in terms of section 24 (1)(g)".*

[107] Having followed the above-mentioned approach taken by Bandaranayake J. in *Rodrigo v. The Commissioner General of Income Tax (supra),* Janak de Silva, J. proceeded to pronounce that it is not possible to

give the word "includes" in Section 25 (1) of the Act an extended meaning in the context in which it is used at p. 11 as follows:

> *"Sections 23 (1) and 24 (1) (g) of the Inland Revenue Act, No. 38 of 2000 corresponds to sections 25 (1) and 26 (1) (g) of the Act and it is a trite rule of interpretation that the interpretation given by courts to similar words in the previous act is applicable when the same words in the new act is interpreted.* ***Accordingly, it is not possible to give the word "includes" in section 25 (1) of the Act an extended meaning in the context in which it is used*** *and I hold that the interest incurred by the Appellant to the value of Rs. 167,075,212/- in relation to its business of share trading is not deductible for the purpose of ascertaining the profits or income of the Appellant from the profits of its other business of manufacturing and selling plastic items".*

[108] In the present case however, the parties are at issue on the question whether or not, Section 25 (1) (k) would fall within the general prohibition of deduction provision in Section 26 (2) and if not, Section 25 (1) (k) being a specific deduction is taken away by the words in Section 26 (2). Both Courts in *Rodrigo v. Commissioner General of Inland Revenue* (supra) and *CEI Plastic Limited v. Commissioner* of Income Tax (supra) were not called upon to interpret the structure of the general deduction rule, the prohibition of deduction rule and the specific deduction rule.

[109] In particular, the Court in CEI *Plastic Limited v. Commissioner* of Income Tax (supra) did not consider the question whether or not, in addition to the general deduction formula in Section 25 (1), one or more sub-sections of Section 25 (1) is a specific deduction formula and if so, whether or not the combined effect of Section 25 (1) and Section 26 (1) (g) takes away such specific deduction formula expressly provided by Section 25 (1) (f). Those decisions confined to the general deduction rule and the prohibition of deduction rule.

[110] In *CEI Plastic Limited v. Commissioner* of Income Tax (supra), the decision in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) was merely referred to, but the applicability of the ratio in that case was not decided by the Court of Appeal.

[111] On the other hand, the Privy Council in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) specifically considered identical issues that arose in the present case. Although the judgment of the Privy Council in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) was cited by both parties before the Tax Appeals Commission, it has not considered the validity of the principle enunciated by the Privy Council, which is relevant and applies in interpreting the general and specific deduction rules in the present case.

[112] The scheme of the Act clearly suggests that the word "including" in Section 25 (1) was intended by the legislature to extend to the specific deduction in Section 25 (1) (k), in addition to all legitimate deductions of expenses incurred in the production of income. But the general prohibition of deduction in Section 26 (2) does not neutralise or negate the specific deduction provision in section 25 (1) (k) unless a contrary intention is indicated very clearly. In the light of the discussion above, I come to the irrefutable conclusion that "including" in Section 25 (1) is extensive and expansive and not restrictive in nature.

**Doctrine of stare decisis**

[113] The doctrine of stare decisis emanating from *CEI Plastic Limited v. Commissioner of Income Tax* (supra) was raised by the learned Senior State Counsel. A ratio decidendi is the rule of law on which a judicial decision is based and it is based on the principle that like cases should be decided alike (*Customs and Excise Commissioners v. Le Rififi Ltd* (1995) STC 103). The doctrine of stare decisis only involves this, that when a case has been decided in a court, it is only the legal principle or principles upon which that court has so decided that bind courts of concurrent or lower jurisdictions and require them to follow and adopt them when they are relevant to the decision in later cases before those courts (*Ashvlle Investments Ltd v. Elmer Contractors Ltd* (1989) 1 Q.B. 488, 494).

[114] I hold that the judgment in *CEI Plastic Limited v. Commissioner* of Income Tax (supra) is not a judicial precedent to be followed in the present case as the legal principles upon which that case was decided are not the identical legal principles raised in the present case except the meaning of "including" considered in that judgment. As noted, it cannot be said in the

context of the legislative intention indicated in sub-paragraph (i) of the proviso to Section 25 (1) (k) that the word "including" in Section 25 (1) will be equivalent to "mean and include" and thus, Section 25 (1) (k) is restricted by the general prohibition of deduction rule in Section 26 (2) as submitted by the learned Senior State Counsel.

[115] The Tax Appeals Commission neither considered the principle laid down in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) nor drew attention to the effect of the inclusive clause-word "including", in Section 25 (1) taking the context in which it is used in the statute. It has totally failed to consider the relationship between the general provision and the specific provision, and construe its meaning as occurring in the body of the statute either to be extensive or exhaustive (mean and include).

[116] Articulated in this broad analysis, and read in its proper context, the word "including" at the end of Section 25 (1) is a term of extension and not a restrictive definition. In other words, the specific dedication specified in Section 25 (1) (k) is wider than the general deduction formula in the body of Section 25 (1) in the sense, it is not subject to the restrictions on deductibility in Section 26 (2). In other words, Section 26 (2) does not neutralise or negate the specific deduction provision in Section 25 (1) (k) unless a contrary intention is indicated in the provisions of the Inland Revenue Act.

**Are restrictions on Section 25 (1) (k) imposed by Section 26 or other provisions of the Act?**

[117] The rule that when the legislature has provided a specific deduction rule, it is not subject to the restrictions on deductibility will not, however, apply if any, contrary legislative intention is indicated in the Act, such as the use of the expression "notwithstanding anything contained in the Act" or any word that neutralises the effect of any specific deduction rule.

[118] The legislature has provided specific deductions in several sub-sections of Section 25 (1) notwithstanding the prohibition of deductions under Section 26 (1). Section 26 (1) (h) prohibits from deduction **any expenditure of a capital nature** or any loss of capital incurred by such

person, but, notwithstanding such prohibition, a specific deduction of a capital nature is also contained in Section 25 (1) (b) (i) of the Act. This provision, irrespective of it being a capital nature, specifically deducts "any sum equal to one fourth of any payment made by such person as consideration for obtaining a license in his favour of any manufacturing process used by such person in any trade or business by such person.

[119] Another example is Section 25 (1) (b) (ii). Irrespective of whether Section 26 (1) (h) prohibits from deduction **any expenditure of a capital nature,** the specific deduction of capital nature is also contained in Section 25 (1) (b) (ii) of the Act. This provision, irrespective of it being a capital nature, specifically deducts "a sum equal to one tenth of the cost of acquisition of any intangible asset, other than goodwill, acquired by such person, subject to the proviso contained therein.

[120] In these two examples, the legislature has intended that any expenditure of a capital nature which is generally not allowed to be deducted under Section 26 (1) (h) is to be deducted as specific deductions under Section 25 (1) (b) (i) and (ii), despite such deductions are of capital expenditures. If the legislature intended to deduct all expenses of a capital nature as general deductions under Section 26 (1), there was no need for the legislature to specifically deduct certain other capital expenses in section 25 (1) (b) (i) and (ii), unless it is provided in the Act that notwithstanding anything contained in Section 25 (1) (b) (i) and (ii), the provisions of Section 26 (1) (h) would apply.

[121] There is another example in Section 26 (1) (g) and Section 25 (1) (l). Section 26 (1) (g) prohibits from general deduction any **disbursements or expenses of such person**, not being money expended for the purpose of producing such profits or income. Despite such prohibition from deduction, the legislature has permitted a specific deduction in Section 25 (1) (l), which specifically deducts any expenditure incurred by a company in the liquidation, which is not incurred in the production of profits or income of a company. Despite the fact that the expenditure incurred in the liquidation of a company is not incurred in the production of profits or income, the legislature intended that such expenses would be specifically deducted by Section 25 (1) (l).

[122] A similar analysis applies to any expenditure incurred in the formation of a company, which is one of capital nature, which is prohibited to be deducted under Section 26 (1) (h). The special rule of deduction in Section 25 (1) (l) however, permits such expenditure of a capital nature for the formation of a company despite it being a capital expenditure.

[123] If the legislature intended to deduct all expenses of a capital nature as general deductions under Section 26, there was no need for the legislature to specifically deduct other capital expenses in Section 25 (1) (l), unless it is provided in the Act that notwithstanding anything contained in Section 25 (1) (l), the provisions of Section 26 (1) (h) would apply. These examples clearly demonstrate the intention of the legislature that Section 26 (1) of the Inland Revenue Act does not prohibit the specific deductions allowed to be deducted under the aforesaid sub-sections unless it is referred to and restricted by Section 26 (1) or other provisions of the Act.

[124] As noted, no such restrictions are found in the Act limiting the scope of the deduction contained in Section 25 (1) (k) and therefore, it cannot be said that the legislature intended that the general prohibition of deduction in Section 26 (2) applies notwithstanding anything contained in Section 25 (1) (k).

**Nature and Character of Expenses incurred by the Appellant**

[125] The contention of the learned Senior State Counsel at the hearing was that after the rental and other rental payment were completely repealed from the scope of the proviso to Section 25 (1) (k) by the Inland Revenue (Amendment) Act, No. 9 of 2008, the deduction of rental is now governed by Section 26 (2), which prohibited rental expenses claimed by the Appellant.

[126] It is now necessary to consider whether the expenses incurred and claimed by the Appellant fall within the ambit of the deduction under Section 25 (1) (k) or under the prohibition of deduction under Section 26 (2) and if so, whether the Tax Appeals Commission was correct in holding that the rental expenses sought to be deducted by the Appellant are subject to the prohibitions on deductions set out in Section 26 (2) of the Act.

[127] As noted, Section 25 (1) (k) is, however, subject to the proviso which prohibits the deduction of actual travelling expenses in specific circumstances referred to in sub-paragraphs (i) -(v) of the said proviso. Proviso (i) reads as follows:

> *"Provided that no deduction under the preceding provisions of this paragraph shall be allowed to any person-*
>
> *(i) In respect of expenses in relation to a vehicle used partly for the purposes of his trade, business, profession or vocation and partly for the domestic or private purposes of an executive officer being employed by him or a non-executive director of such organization, unless the value of the benefit as specified under the provision to paragraph (b) of subsection (2) of section 4 of this Act, has been included in the remuneration of such officer, for the purposes of deduction of income tax under Chapter XII of this Act.."*

[128] The proviso to Section 25 (1) (k) is uniquely structured and designed first, to restrict the scope of the main provision of deduction and then, permit the deduction subject to some qualifications. The first part of this sub-paragraph (i) of the proviso restricts the scope of Section 25 (1 (k) and disallows deduction of travelling expenses if the vehicle is used **partly** for the purposes of his trade, business, profession or vocation and **partly** for the domestic or private purposes. It singles out vehicles used by **executive officers** being employed by the taxpayer or **non-executive director** of such organisation **partly** for the purpose of trade or business and **partly** for the domestic or private purposes of such officers. The second part of this proviso however, allows a deduction and singles out a special treatment, if the value of the benefit has been included in the remuneration of such employee and income tax has been deducted in terms of Chapter XIV of the Act.

[129] The value of benefit as specified under the proviso to paragraph (b) of subsection (2) of Section 4 reads as follows:

> *"(2) For the purposes of this section, the value of any benefit, in relation to an individual who has received, or derived such benefit, means-*
>
> *(a)...*

*(b) where the market value of such benefit cannot be readily ascertained or such benefit has no market value, the cost that would have to be incurred by other individual to obtain such benefit;*

*Provided that the Commissioner-General may, having regard to the market value of that benefit or the cost that would have to be incurred by any other individual to obtain that benefit, by order published in the Gazette, specify the value to be placed on any benefit, and where a value is so specified in respect of a benefit, such value shall be deemed to be the value of such benefit".*

[130] The deductibility of the actual travelling expenses relating to those vehicles depends on the fulfilment of the conditions laid down in proviso (i) and therefore, this proviso to Section 25 (1) (k) has been expressly provided by the legislature as a specific deduction formula so as to allow deduction of actual travelling expenses in respect of special category of persons, vehicles and the special method of deducting tax under Chapter XIV. In the present case, there is **no dispute** that the employees had used their personal vehicles and other vehicles for the business activities of their employer (Appellant) who had maintained PAYE Pay Sheet in the prescribed form for the purpose of PAYE tax deduction. It is also **not in dispute** that the Appellant has included the value of the benefit in the remuneration of the employee and income tax has been deducted and remitted to the Inland Revenue Department.

**Actual travelling expenses**

[131] The deduction of travelling expenses referred to in Section 25 (1) (k) applies to expenses actually incurred and not necessarily incurred in connection with trade, business, profession or vacation of a revenue nature. As long as the liability to pay an expense at the end of the year has been incurred, it is deductible notwithstanding that actual payment only falls due in a later tax year (Silke on South African Income Tax, 3rd Ed, 1963, pp. 136-137).

[132] The Appellant has claimed a sum of Rs. 5,538,500/- incurred in travelling within Sri Lanka for the use of such vehicles in connection with its business or its employees' private use and there is **no dispute** that taxes had been paid and remitted to the Inland Revenue Department. There is

**no dispute** that the said value of the benefit as required by the Inland Revenue Act has been included in the remuneration of employees, deducted and remitted to the Department of Inland Revenue as required by the proviso to paragraph (b) of subsection (2) of Section 4 of the Inland Revenue Act, No. 10 of 2006.

[133] It was not disputed that the sum of Rs.5,538,500/- was not based on an CGIR-approved method for claiming expenses related to the use of an automobile for business purposes**,** which cannot be validly deducted as actual expenses incurred in connection with the trade or business of the Appellant. There is **no dispute** that the said sum of Rs. 5,538,500/- has been actually incurred by the Appellant in Sri Lanka in connection with its business and such vehicles had been used by its employees for travelling purposes in connection with the business activities of the Appellant as well as their private use.

[134] The Assessor has acknowledged in the written submissions filed before the Tax Appeals Commission on 27.06.2012 that the sums paid to the Appellant's employees were included in their remuneration and PAYE tax had been paid. It reads as follows:

> *"**We agreed that the amount paid for lease rentals to the employee taken to their employment benefit and PAYE tax paid accordingly.** Further, we also accept that rental paid Rs. 3,203,500/- to outsiders. **Accordingly, above expenses were incurred in the production of income. However, section 26 prohibits such expense to deduct as an expense**"*(Vide- page 30 of the brief).

[135] The Deputy Commissioner Vijitha Paranamana in her reasons for determination has never stated that the Appellant has not fulfilled the conditions for the application of the proviso (i) of Section 25 (1) (k). It was never disputed before the Assessor, CGIR and the Tax Appeals Commission that the expenses claimed by the Appellant were not travelling expenses and such expenses were not deductible under Section 25 (1) (k) on the ground that the conditions stipulated in proviso (i) were not fulfilled by the Appellant.

[136] The Assessor, CGIR and the Tax Appeals Commission only decided that such expenses are prohibited under Section 26 (2) and thus, no issue with regard to the deductibility of expenses incurred by the Appellant as travelling expenses under Section 25 (1) (k) of the Inland Revenue Act can be raised at this of a case stated before this Court. In fact, the learned Senior State Counsel never raised any issue at the hearing that the conditions in Section 25 (1) (k) were not fulfilled and therefore, there is no dispute at all that the expenses in question are deductible under Section 25 (1) (k) of the Act.

[137] For those reasons, I hold that such actual travelling expenses incurred by the Appellant for the use of the vehicles in question in connection with its business fall within the ambit of permitted deduction contemplated in proviso (i) to Section 25 (1) (k) of the Act.

**Rental of Vehicles Disallowed under S. 26 (2)**

[138] The Assessor, CGIR and the Tax Appeals Commission have disallowed the deduction claimed by the Appellant under Section 25 (1) (k) on the sole ground that the expenses in dispute are **rentals** that cannot be deducted under Section 26 (2) of the Act. The term "rental" is not defined in the Act. "Renting" means a usually fixed periodical return, especially, an agreed sum paid at fixed intervals by a person for any use of the property or vehicle or house or room etc. It is also the amount paid by a hirer to the owner for the use of the property or vehicle or house or room etc.

[139] As noted in paragraph 36 of this judgment, Section 26 (2) relates to deductions not allowed in respect of the following three categories of costs or allowances or rentals/annual payment, namely:

(i) any sum for any **depreciation by wear and tear or for renewal**; or

(ii) any allowance in respect of **any vehicle used for travelling under paragraph (a) or paragraph (c) of sub-section (1) of Section 25;** or

(iii) any rental or annual payment in respect of any **such vehicle**...as are referred to in paragraphs (a) and (b).

**Travelling Provided by Employer to Employees**

[140] The second category relates to travelling provided by employer to employees and has two limbs. First, paragraph (a) of Section 25 (1) refers to an **allowance for depreciation by wear and tear** of certain assets acquired, constructed or assembled and arising out of their use by such person in any trade, business, profession or vocation carried on by him. The depreciation by wear and tear under sub-paragraph (ii) of paragraph (a) includes motor vehicles acquired by such person, at the rate of twenty per annum, on the cost of acquisition. Second, paragraph (c) of Section 25 (1) refers to any **sum expended by such person for the renewal of any capital asset employed by such person** for producing such profits or income, if no allowance for the depreciation thereof is deductible in respect of that asset.

**Section 26 (2) (a)**

[141] Sub-paragraph (a) of Section 26 (2) expressly prohibits domestic or private expenses incurred by any person in respect of **any vehicle** used for travelling for the purpose of trade, business, profession or vocation. But the employer is allowed a deduction of the expenses incurred by him in providing a motorcycle or bicycle used **for such travelling** by any non-executive officer in his employment, or operating a motor coach used for transporting employees to and from their place of work.

[142] The intention of the legislature in Section 26 (2) (a) is to prohibit deduction of depreciation by wear and tear of certain types of vehicles and renewal of capital assets, including such vehicles as specified in paragraphs (a) and (c) of Section 26 (2).

**Section 26 (2) (b)**

[143] Section 26 (2) (b) has two parts. The first part prohibits expenses incurred by any person in respect of any plant, machinery, fixtures, equipment or articles provided for the use of any officer or employee of such person in the place of residence of such officer or employee. The second part prohibits **deduction of rental in respect of such vehicles** as are referred to in paragraph **(a) and (b).** The legislature intended to prohibit on rental to be applicable to the types of vehicles referred to in paragraphs (a) and (b).

[144] The legislature intended that the prohibition of deduction in paragraph (a) and paragraph (b) to be applicable to types of vehicles on which depreciation and renewal of any capital asset employed by such person. The prohibition of deduction under Section 26 (2), will apply in respect of **such vehicles** used either for travelling referred to in Section 26 (2) (a) or rental referred to in Section 26 (2)(b). Articulated by this analysis and having regard to the legislative intention, purpose and the context in which the language is used in Section 26 (2), I am of the view that the legislature did not intend the prohibition to be applicable to other types of vehicles not referred to in paragraphs (a) and (b) of Section 26 (2).

[145] On the other hand, the legislature has limited the scope of the deduction allowed under Section 25 (1) (k) and singled out certain special category of persons, vehicles and the approved method of payment to be eligible for deduction. The legislature, by enacting the sub-paragraph (i) of the proviso to Section 25 (1) (k), first, disallowed the deduction, if the vehicle is used partly for trade or business and partly for private purpose of the employee. The legislature then restricted such prohibition and allowed the deduction if the value of the benefit has been included in the remuneration of such employees for the purpose of deduction of income tax under Chapter XIV of the Act.

[146] The actual travelling expenses incurred by an employer for using vehicles partly for the purposes of his trade, business, profession or vocation and partly for the domestic or private purposes of an executive officer employed by him or a non-executive director of such organisation are intended by the legislature to be deducted in Section 25 (1) (k) where the value of the benefit has been included in the remuneration of such employees for the purpose of deduction of tax under Chapter XIV of the Act.

[147] On the other hand, no such concept is envisaged by the legislature in Section 26 (2) in prohibiting deductions in respect of vehicle used for travelling or rental in connection with the employer's trade or business activities referred to in that Section. For those reasons, the travelling expenses incurred by the Appellant for the use of the vehicles from the employees and others in connection with its business activities and private

purposes of such employees fall within the ambit of Section 25 (1) (k) read with proviso (i) of that Section.

[148] On the facts and circumstances of the case, it cannot be said that the expenses incurred by the Appellant for the use of business vehicles provided by employees and others who owned or possessed them in connection with its business and private use of employees would attract the rental within the ambit of the prohibition of deduction in Section 26 (2) of the Act.

[149] I hold that the general prohibition of deduction in Section 26 (2) which, read together with Section 25 (1), does not take away that which has been expressed provided by Section 25 (1) (k) read with proviso (i) of the Inland Revenue Act and the Tax Appeals Commission has erred in holding that Section 25 (1)(k) is restricted by Section 26 (2) and thus, expenses claimed under Section 25 (1)(k) cannot be deducted.

**Maxim *generalia specialibus non derogant***

[150] Mr. Ameen invited us to apply the maxim *generalia specilia derogant* if the Court takes the view that there is a conflict between Section 25 (1) (k) and 26 (2) and hold that Section 25 (1) (k) should prevail over the general prohibition of deduction in Section 26 (2). The maxim "*generalia specialibus non derogant*"means that, for the purposes of interpretation of two statutes in apparent conflict, the provisions of a general statute must yield to those of a special one. This rule has also been applied as between different provisions of the same statute or two separate statutes in numerous cases to resolve a conflict between specific provision and general provision (*J. K. Cotton Spinning and Weaving Mills Co. Ltd v. State of Uttar Pradesh,* AIR 1961 1170 at p. 1174).

[151] I do not consider that it is at all a clear case for the application of the maxim *generalia specialibus non derogant,* when there is no inconsistency or conflict between the special deduction rule in Section 25 (1) (k) and the general deduction of prohibition in Section 26 (2).

[152] The Privy Council did not apply the maxim *generalia specialibus non derogant,* in *Patrick Alfred Reynolds v. Commissioner for Income Tax,*

*Trinidad & Tobago*, but applied the general rule of construction that the general deduction provisions (s. 12 together with s.10 (1)), do not take away what has been expressly provided by the specific provision (s. 10 (1)(f).

[153] The Tax Appeals Commission has erred in law in interpreting the provisions of Section 26 (2) in a manner so as to render the intention of the legislature in enacting the provisions of Section 25 (1 (k) of the Inland Revenue Act nugatory. The Tax Appeals Commission has erroneously confirmed the determination made by the Respondent disallowing the sum of Rs. 5,538,500/- claimed by the Appellant under Section 25 (1) (k) on the basis that such expenses are rental within the meaning of Section 26 (2) of the Inland Revenue Act.

**Conclusion & Opinion of Court**

[154] For those reasons, I hold that the Appellant is entitled to deduct the said sum of Rs. 5,538,500/- under Section 25 (1) (k) of the Inland Revenue Act, No. 10 of 2006 as amended.

[155] In these circumstances, I answer questions of law arising in the case stated in favour of the Appellant and against the Respondent as follows:

(i) No. The maxim *generalia specialibus non derogant* does not apply *as* there is no inconsistency or conflict between the special deduction in Section 25 (1) (k) and the general deduction of prohibition in Section 26 (2).

(ii) Yes

(iii) Yes

(iv) Yes

(v) Yes

(vi) The Tax Appeals Commission has erred in holding that the issue to be resolved is not whether Section 26 applies only to the "general deductions" allowed under Section 25 (1) or to special deductions permitted under the same sub-section. However, there is no inconsistency or conflict between the special

deduction in Section 25 (1) (k) and the general prohibition of deduction in Section 26 (2).

(vii) Yes

[156] For those reasons, I annul the assessment issued by the Assessor for the Year of Assessment 2007/2008 in respect of the sum of Rs. 5,538,500/- claimed by the Appellant under Section 25 (1) (k) of the Inland Revenue Act.

[157] The Registrar is directed to send a certified copy of this judgment to the Tax Appeals Commission.

**JUDGE OF THE COURT OF APPEAL**

**M. Sampath K.B. Wijeratne, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**