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

In the matter of an appeal under Section 170 of the Inland Revenue Act, No. 10 of 2006 (as amended), from a determination of the Tax Appeals Commission.

Lasith Malinga,
No. 26/1, Dickmans Road,
Colombo 05.

Appellant

Case No. CA/TAX/15/2019
Tax Appeals Commission Case Stated
No. TAC/IT/043/2015

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.

Counsel : Senaka De Seram with Thiran Ediriweera for the Appellant

Manohara Jayasinghe, S.S.C. for the Respondent

Argued on	:	30.07.2021
Written Submissions filed on	:	11.11.2021(by the Appellant) 21.05.2020 & 31.08.2021 (by the Respondent)
Decided on	:	30.11.2021

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 07.05.2019 confirming the determination made by the Respondent dated 26.11.2015 and dismissing the Appeal of the Appellant. The years of assessment related to 2008/2009, 2009/2010 and 2010/2011.

Factual Background

[2] The Appellant Mr. Lasith Malinga is a well-known national cricketer. The Appellant was contracted to the Sri Lanka Cricket, the official body responsible for the governance of the sport of cricket in Sri Lanka (hereinafter referred to as the SLC). His main source of income was essentially the contract and match fees paid to him by SLC in terms of the Players' Annual Contract. The Appellant was also an employee of Brandix Lanka (Pvt) Ltd and in addition, he entered into several agreements with private companies for advertising and promoting their products and services. Accordingly, the Appellant received income from the following sources during the relevant periods of assessment:

1. Income received from the Sri Lanka Cricket (SLC) under the Players' Annual Contract during the above-mentioned periods;
2. Employment Income from Brandix Lanka (Pvt) Ltd during the above-mentioned periods; and

3. Income from Advertisement and promotion of several private companies, such as Britanial Lanka (Pvt) Ltd., W. G. N. Global Services (Pvt) Ltd and Mobitel (Pvt) Ltd.

[3] On 09.08.2008, the Sri Lanka Cricketers' Association wrote to SLC expressing its concerns over the decision taken by SLC not to award a central contract to the Appellant and stated *inter alia*, that the Appellant was injured while representing Sri Lanka and as a result, he lost match fees and tour payments. The Sri Lanka Cricketers' Association requested SLC to reconsider its decision not to award a central contract to the Appellant and get him back playing as soon as possible. Having noted the said request contained in the letter sent by the Sri Lanka Cricketers' Association, SLC decided on 16.09.2008 to compensate the Appellant by affording him a sum of US $ 15,000 (Rs. 1,609,500/-).

Basis for the Assessment

[4] The Appellant submitted his returns of income for the said years of assessment, claiming exemptions under Sections 13 (v), 8 (1) (f) and 13 (f) of the Inland Revenue Act. The Assessor by letter dated 18.11.2013 however, refused to accept the same and issued assessments for the following reasons:

1. Year of assessment 2008/2009

(a) In terms of the Contract with SLC, the total taxable income paid to the Appellant by SLC was Rs. 6,150,420/-, which consists of Rs. 1,609,500/- for compensation as a rest player, Rs. 472,986 as sponsorship fees from Dilma Company and Rs. 4,067,934/- for the period of cricket played for SLC. The Appellant has, however, declared only Rs. 1,898,262/- in his statement of accounts understating his employment income of Rs. 4,252,158/-;

(b) Although the Appellant's employment income from Brandix Lanka (Pvt) Ltd was Rs. 1,230,000/-, he has declared it as Rs. 952,500/- and thus, understated the said income by Rs. 277,500/-;

(c) The Appellant has understated the cash and non-cash benefits as per the contracts entered with companies for trade promotion and advertising as follows:

i. The total income received from Britania Lanka (Pvt) Ltd was Rs. 3,762,500 but the said income has been declared only as Rs.1,750,000;
ii. The total income received from W. N. G. Global Services (Pvt) Ltd was Rs. 1,400,295 but the Appellant has declared only Rs. 701,123;
iii. The Appellant has not declared the payment of Rs. 1,500,000/- and a sum of Rs. 480,000/- as non-monetary benefit of telephone facilities provided free of charge from Mobitel Pvt Ltd; and
iv. The Appellant has failed to submit all the details and documents requested by the Assessor by his letters and thereby failed to prove the correctness of his returns.

2. Year of assessment 2009/2010

(a) The total Income received from SLC in terms of the contract is Rs. 4,001,426/- and the amount from participating in provincial cricket matches held with local cricketers is Rs. 23,000/-. The Appellant has declared only Rs. 2,654,747/- understating the income of Rs. 1,369,679/-;

(b) The failure to declare the value of telephone facilities of Rs. 480,000/- provided by Mobitel Pvt Ltd as a free of charge for providing trade promotion and advertising for the company;

(c) The failure to submit all the details and documents requested by the Assessor by his letters and thereby failed to prove the correctness of his returns.

3. Year of assessment 2010/2011

(a) The total income received from SLC in terms of the contract is Rs. 12,689,337/- which consists of Rs. 11,136,401 received from contracts with SLC, Rs. 97,977/- from inter provincial cricket matches and the sponsorship payment from Mobitel Pvt Ltd in sum of Rs. 1,454,959/. The Appellant has, however, declared only Rs. 1,803,023/- which amounts to an under declaration of income of Rs. 10,886,314/-;

(b) The benefit received from Mobitel Pvt Ltd for the free telecommunication facilities amounting to Rs. 480,000/- has not been declared as an income;

(c) The failure to declare the balance of the commercial bank in a sum of Rs. 3,984,294.77;

(d) The failure to submit all the details and documents requested by the assessor by his letters and thereby failed to prove the correctness of his returns.

[5] The Assessor has exempted the match fees paid to the Appellant in relation to matches played in Sri Lanka with competitors from outside Sri Lanka under Section 13 (v) of the Act, but determined that all other payments, including contract fees and match fees paid to the Appellant in connection with matches held outside Sri Lanka are liable to income tax. Accordingly, the Assessor assessed the Appellant for the said three years of assessment, taking into consideration the Appellant's income liable to tax as follows (Vide- pages 132-134 of the Tax Appeals Commission brief):

Description	Year of Assessment 2008/09	Year of Assessment 2009/10	Year of Assessment 2010/11
Undisclosed liable employment income received from SLC	4,252,158	1,369,679	10,886,314
Undisclosed employment income received from Brandix Lanka (Pvt) Ltd	277,500		
Undisclosed employment income received from following companies for advertisement and trade promotional given below			
(i) Britania Lanka (Pvt) Ltd	2,012,500		
(ii) W.N.G.Global Services (Pvt) Ltd	699,172		
(iii) Mobitel (Pvt) Ltd	1,980,000	480,000	480,000
Total undisclosed income	9,221,350	1,849,679	11,366,314

Add			
Declared income as per return	5,301,885	7,521,349	6,434,385
Adjusted total statutory income	14,523,215	9,371,028	17,800,699
Assessable income	14,523,215	9,371,028	17,800,699

Appeal to the Commissioner-General of Inland Revenue

[6] Being dissatisfied with the said assessment, the Appellant appealed to the Commissioner-General of Inland Revenue (hereinafter referred to as the Respondent) and the Respondent by its determination dated 26.11.2015 confirmed the assessments. The Respondent determined that contract fees and match fees cannot be exempted under section 8 (1) (j) of the Inland Revenue Act in respect of matches held outside Sri Lanka but match fees paid to the Appellant in respect of matches held in Sri Lanka with the participation of competitors outside Sri Lanka, are exempted from tax under Section 13 (v) of the Inland Revenue Act.

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 07.05.2019 confirmed the determination of the Respondent and dismissed the Appeal. Being dissatisfied with the said determination of the Tax Appeals Commission, the Appellant appealed to the Court of Appeal.

[8] The amounts of tax in dispute for the years of assessment are as follows:

Tax in dispute	**Years of Assessment**		
	2008/2009	**2009/2010**	**2010/2011**
Tax	3,096,812	682,698	4,087,432
Penalty	1,548,406	341,349	2,043,716
Total	4,645,218	1,024,047	6,131,148

Questions of Law in the Case Stated

[9] The Appellant has formulated the following Five Questions of Law in the Case Stated for the opinion of the Court of Appeal.

1. Assuming without conceding that sum of Rs. 1,609,500/- received by the Appellant in respect of which exemption in terms of Section 13 (f) of the Inland Revenue Act, No. 10 of 2006 was claimed, is not a capital sum by way of compensation for an inquiry, having regard to the ratio decidendi of the case of *Craib v. Commissioner of Income Tax* (Report of Ceylon Tax Cases Vol. 1 page 156), did the Commission err in law in holding that, that the amount which is neither a contract payment nor a payment for services, nor a payment to which the Appellant was entitled, is income liable to tax?

2. Did the Commission err in law in concluding that the fees received by the Appellant in terms of the contract he had with Sri Lanka Cricket, in respect of which exemption was claimed in terms of Section 13 (v) of the Inland Revenue Act, No. 10 of 2006, are not exempt in terms of that provision, which conclusion is based on an erroneous interpretation of the word "participation" which occurs in the relevant provision?

3. Did the Commission err in law in concluding that the fees received by the Appellant in terms of the contract he had with Sri Lanka Cricket, in respect of which exemption was claimed in terms of Section 8 (1) (j) of the Inland Revenue Act, No. 10 of 2006 as well, are not exempt in terms of that provision, which conclusion is based on an irrelevant and extraneous consideration that any payment made in Sri Lanka has to be in rupees in order to avoid violation of the Exchange Control Act?

4. Having regard to the meaning of the word "income" as explained in the case of *Thornhill v. Commissioner of Income Tax* (Report of Ceylon Tax Cases Volume 1 page 180), is the sum of Rs. 1,609,500/- referred to in the question of law number one is income at all within the meaning of the judicial definition referred to in the case?

5. Are not the amounts received by the Appellant in terms of the contract he had with the Sri Lanka Cricket in respect of which exemption was

claimed in terms of Section 13 (v) and 8 (1) (j) of the Inland Revenue Act, No. 10 of 2006 exempt in terms of the said provisions?

6. Did the Commission fail to appreciate the facts and the law relating to the matter under consideration properly and to apply the law correctly?

[10] At the hearing of the appeal, Mr. Senaka De Seram, the learned Counsel for the Appellant and Mr. Manohara Jayasinghe, the learned Senior State Counsel for the Respondent, made extensive oral submissions and thereafter written submissions were filed on behalf of the both parties.

Main Issues for determination

[11] In view of the submissions made by Mr. De Seram and the learned Senior State Counsel, the determination made by the Tax Appeals Commission and the Questions of law formulated, this Court is now invited to determine the following man questions:

1. On the facts and in the circumstances of this case, whether the contract fees and the match fees received by the Appellant in US Dollars in relation to matches played outside Sri Lanka are exempted from income tax under section 8 (1) (j) of the Inland Revenue Act (This relates to the question of law Nos. (3), (5) and (6)).

2. On the facts and in the circumstances of this case, whether the contract fees and the match fees received by the Appellant in Sri Lanka Rupees in relation to matches played in Sri Lanka and at which competitor from outside Sri Lanka participated are exempted from income tax under section 13 (v) of the Inland Revenue Act (This relates to the question of law Nos. (2), (5) and (6)).

3. On the facts and in the circumstances of this case, whether the payment of US$ 15,000 (Rs. 1,609,500/-) granted by the SLC to the Appellant for the year of assessment 2008/2009 is exempted from income tax under Section 13 (f) of the Inland Revenue Act as a capital sum received by the Appellant as compensation for injuries (This relates to the questions of law bearing Nos. (1), (4) and (6)).

Statutory provisions & categories of persons liable to Income Tax

[12] Before adverting to the questions at hand, it would be appropriate to take note of the statutory provisions of the Inland Revenue Act as regards the categories of persons liable to pay income tax in Sri Lanka and the sources of income chargeable with tax for the purpose of this case.

Imposition of Income Tax

[13] Section 2 of the Inland Revenue Act provides two modes of taxation, namely, resident based and non-resident based (source based). Section 2 of the Inland Revenue Act, which is the charging Section*, inter alia,* stipulates that income tax shall be charged for every year of assessment in respect of the profits and income of every person for that year of assessment.

Resident persons. 2 (1) (a)

[14] Any person who is a resident of Sri Lanka is subjected to the Inland Revenue Act and liable to pay income tax on the "profits and income"' earned by such a resident, after getting various deductions therefrom as admissible under different provisions of the Act. Any resident person in Sri Lanka is liable to pay income tax if the income arising in Sri Lanka in respect of the profits and income of such resident person for that year of assessment.

Non-residents-s. 2 (1) (b)

[15] On the other hand, in case of a non-resident person (which term is defined in Section 217 read with Section 79 of the Inland Revenue Act) in Sri Lanka is liable to pay income tax in respect of profits and income of such non-resident person arising in or derived from Sri Lanka in that year of assessment. In this sense, the income tax on non-resident is source based, i.e., source of such income is in Sri Lanka and, therefore, even a non-resident is liable to pay tax on income earned in Sri Lanka.

Sources of Income & Exemptions-

[16] Section 3 lays down the sources of income that is chargeable with tax in respect of profits and income or profits or income and enumerates a list of exceptions to liability. As a general rule, as set out in Sections 2 and 3, is that any resident or non-resident person is subject to pay tax at the appropriate rates specified in the relevant schedules to the Act in respect of the profits and income of such person for that year of assessment arising

out of any trade, business, profession, vocation, employment dividends, interest or discounts, rents, royalties or premiums etc.

[17] Having established the general principle that any person who is either resident of Sri Lanka or non-resident, is subject to the Act and liable to pay income tax as aforesaid, the Inland Revenue Act sets out exemptions in Chapter III. In the present case, the Appellant claims that he is not liable to pay income tax from the contract fees and the match fees received from SLC, relying on the following exceptions to liability:

1. Section 8 (1) (j) of the Inland Revenue Act;
2. Section 13 (v) of the Inland Revenue Act; and

[18] The Appellant has also claimed that the payment of US$ 15,000/- received from the SLC is exempt from income tax under Section 13 (f) of the Inland Revenue Act.

Players' Contract with the SLC

[19] Before we consider these exemptions and refer to the authorities which were cited at the hearing of this appeal, I shall refer in some detail to the terms of the Players' Contract to find out its terms, conditions and the obligations of the parties under the Players' Contract. The Tax Appeals Commission brief contains the following Sri Lanka Cricket Players' Annual Contracts:

1. Sri Lanka Cricket Players' Annual Contract-2006/2007- effective from 01.03.2006 to 28.02.2007 (pp. 23-39);
2. Sri Lanka Cricket Players' Annual Contract-2008/2009- effective from 01.03.2008 to 28.02.2009 (pp. 298-314).

[20] The Cricketers' Association by its letter dated 09.08.2008 has admitted that the Appellant was contracted to the SLC during the period from 01.01.2007 to 29.02.2008 (paragraphs 1 and 2 of the letter dated 09.08.2008 at page 151 of the Tax Appeals Commission brief). It is, thus, not in dispute that the Appellant was under a contract of employment with the SLC during the relevant periods in question, 2008/2009, 2009/2010 and 2010/2011. The dispute relates to the Appellant's eligibility of the exemptions under Sections 8 (1) (j), 13 (f) and 13 (v) of the Inland Revenue Act.

[21] In terms of the Sri Lanka Cricket Players' Annual Contract, the Appellant has agreed to abide by the terms, conditions and obligations of the Player and the SLC has agreed to abide by its obligations as morefully set out in the said Players' Annual Contract. Clause 3 of the contract refers to the obligations of the Player and clause 4 refers to the Contract fee of the Player.

Obligations of the Player-clause 3

[22] Clause 3.1 refers to the general obligations of the Player such as (to attend and participate in all training sessions, team meetings and official functions as directed by SLC and play in all matches, including 75% of the provincial tournament matches for which he has been selected unless he has been expressly excused before and by SLC from such attendance and other conditions laid down in clause 3.1.

[23] Clause 3.2 to 3.7 refers to other specific obligations of the player such as (i) to attend to cricket promotional activities and maintain fitness; (ii) not to conduct himself in a manner that may deem him unfit to play in or incapable of playing in any match or remain a member of the team; (iii) to adhere to ICC Code of Conduct and Drugs and Doping Rules of ICC; and (iv) to comply with anti-corruption reporting duty and procedures etc.

Contract fee-clause 4

[24] Clause 4 which refers to contract fee and provides as follows:

"4.1 *For and in consideration of the due compliance by the player with all of the items, conditions, covenants, stipulations and obligations of the player to be done, observed the performed by the player hereunder the SLC shall pay to the player a contract fee equivalent of United States Dollars Sixty Thousand (US 60,000/-) for the entirety of the Term provided that the Controller of Exchange has granted approval for the payment by the SLC and for receipt by the player of such sum in such currency;*

4.1.1. SLC shall pay the player his fees in foreign currency, in respect of his services rendered abroad during the Term. However, in the event that approval is not available, SLC shall pay to the player the equivalent thereof, at the given time, in Sri Lanka Rupees;

4.1.2. Provided further that in the event that this Agreement is terminated howsoever, by either party before the lapse of the entirety of the

Term, SLC shall pay and the player shall be entitled to receive only the pro rata portion of the Contract Fee for the period for the period during which this agreement was in force;

4.1.3. The Contract Fee shall be paid to the Player quarterly by the end of each quarter;

4.1.4. Provided that in the event of the Player not being selected to the national squad of any tournament for a period of six (6) months or more due to his poor performance, the player shall only be entitled to 50% of the contract fee he would otherwise be entitled to for the said period. However, if the Player upon being selected for a Tour or prior to being so selected, the player informs of his intention not to participate in such Tour or Matches as the case may be, then SLC shall have the right to withhold sums of money not exceeding 50% of the contract fee payable to the player under this contract;

4.1.5. For avoidance of doubt, where the Player has been selected for a Tour, but due to no fault of the Player, the Selectors direct to rest the player for a particular Tour or Match, the Player shall, notwithstanding non participation of such Match, due to such direction, be entitled for fees in respect of that Match as the case may be provided the Selectors so informs SLC;

4.1.6. When the Player requests leave of absence to play cricket overseas, a reduction will be made on pro-rata basis of the Contract Fee. However, such leave will only be granted in the absence of ICC sanctioned international matches (home or abroad) and provincial matches, during such requested leave of absence period".

Limitations to the payment of contract fees

[25] The payment of full contract fees to every player having a contract with the SLC is, however, subject to the following three deductions set out in clauses 4.1.4 - 4.1.6 of the Contract, namely:

1. Where the player is not selected to the national squad of any tournament for a period of 6 months or more due to his poor performance, he is entitled to 50% of the contract fee (clause 4.14);

2. Where the player has been selected for a Tour or Match, but due to no fault of the player, the selectors direct to rest him for a Tour or Match, he shall, notwithstanding his non-participation of such Tour or Match due to such direction, be entitled for **fees in respect of**

such Tour or Match provided the selectors so informs SLC (clause 4.15);

3. Where a player is granted leave of absence to play any cricket overseas, 2.5% of his contract fee will be deducted for every month such player is on leave (clause 4.16).

Payment of Contract fees

[26] The Players' Annual Contract provides that the contract fee equivalent to of the US Dollars 60,000/- for the entirety of the Term will be paid subject to the approval by the Controller of Exchange (clause 4.1). Clause 4.1.1 provides that Players' fees in foreign currency will be paid by the SLC, in respect of his services rendered abroad during the term and where the approval is not available, SLC shall pay to the Player the equivalent thereof in Sri Lankan Rupees. There is no dispute that in terms of the Players' Contract, the contract fees involve US Dollar and Sri Lankan Rupee (LKR) components and the US Dollar component is paid in respect of the matches played abroad and the Sri Lankan Rupee component is paid in respect of matches played in Sri Lanka.

Match fees

[27] Unlike contract fees, the match fees are not specifically referred to in the Players' Contract. However, Clause 4.2 of the Players' Contract provides that in addition to contract fees, a Player is also entitled to such other payments as are specified in **Schedule IV** of the contract as follows:

> **"4.2 In addition to the Contract Fee SLC shall make such payments as are specified in Schedule IV".**

[28] The payment referred to in clause 4.2 may include match fees, seniority fees and other tour payments (see- the tables at pp. 258-259 of the Tax Appeals Commission brief, which refer to match fees and seniority fees in addition to contract fees paid to the Appellant). A match fee is generally a particular amount for every match, paid to a player who has been nominated to the squad representing the team, depending on the payment determined by the employer having regard to the type of match (e.g. test, one day internationals, T 20 etc.) and ranking or grading. However, it was not disputed that the match fee may differ from format to format of the

match (test match, one day internationals (ODI) and T 20) and from the playing 11 who will be paid a fixed individual amount while other members of the squad will be paid a proportionate lesser and equal amount decided by the employer (SLC).

[29] It is not in dispute that the SLC has paid match fees in foreign currency (US Dollars) in respect of matches played outside Sri Lanka and in Sri Lankan Rupee (LKR) in respect of the matches played in Sri Lanka (Vide- SLC Letters at pp. 154-160 of the Tax Appeals Commission brief).

Employment Income

[30] Section 4 (1) of the Inland Revenue Act relates to profits from employment and provides that profits from employment include-

(a) (i) any wages, salary, allowance, leave, pay, fee, pension, commission, bonus, gratuity, perquisite or such other payment in money which an employee receives in the course of his employment;

(ii) the value of any benefits to the employee or to his spouse, child or parent, including the value of any holiday warrant or passage;

(iii) any payment to any other person for the benefit of the employee or of his spouse, child or parent,

whether received or derived from the employer or others.

(b) (i) any retiring gratuity or any sum received in commutation of pension;

(ii)..

(iii)...

(iv)any sum received as compensation for loss of any office or employment

(v)...

[31] Now, the question is whether the contract fees and match fees fall within the meaning of profits from employment under Section 4 of the Inland Revenue Act and if so, whether or not they are exempted under Sections 8 (1) (j) and 13 (v) of the Inland revenue Act as claimed by the Appellant.

Assessable Income in relation to contract fees, match fees and payment received from SLC and the exemptions granted or not granted by the Assessor

[32] The following tables prepared by the Respondent at pp. 258-259 of the Tax Appeals Commission brief set out the assessable income in relation to contract fees, match fees and payment received from SLC and the exemptions granted or not granted under Section 8 (1) (j), 13 (v) and 13 (f) by the Assessor:

Year of Assessment 2008/2009

Date	Description	Taxable Income (Rs.)	US$	Applicable section for exemption	Rupee (Rs.)	Applicable section for exemption	Exemption granted or refused
22.09.08	Compensation				1,609,500	13 (f)	Not entitled under s. 13(f)
02.12.08	**Contract fees** (25%-3rd Ins.)		10,326	8(1)(j)	2,169,762	13(v)	Not entitled under s 13(v)
17.02.09	Dilima Sponsorship	472,986					Liable to tax
18,03.09	Match fee (25%-Indian Tour)				153,900	13(v)	Granted under s. 13(v)
24.07.09	**Contract fee** (25%-final ins.)				1,898,262	13(v)	Not entitled under s. 13(v)
		472,986			5,831,424		

Year of Assessment 2009/2010

Date	Description	Taxable Income (Rs.)	US$	Applicable section for	Rupee (Rs.)	Applicable section for	Exemption granted or refused

				exemption		exemption	
30.04.09	**Match fees** Ruhunu Team	23,000					Liable to tax
26.05.09	**Contract fees** (1st Ins.)		4,758	8(1)(j)	814,816	13(v)	Not entitled under s. 8(1)(j) or 13(v)
07.05.09	**Match fees** &Win Bonus, Pakistan Tour				2,056,500	13(v)	Granted under s. 13(v)
07.10.09	**Match fees** NZ Tour of Sri Lanka				1,263,000	13(v)	Granted under s. 13(v)
17.10.09	**Match fees** NZ Tour of Sri Lanka				345,000	13(v)	
17.10.09	**Contract fees**-2nd Quarter Ins.)		7,392	8(1)(j)	504,809	13(v)	Not entitled under s. 13(v)
30.10.09	Match fees, Sri Lanka A Team & Pakistan A Team				258,750	13(v)	Not entitled under s. 13(v)
23.12.09	**Contract fees**-3rd Ins.)			8(1)(j)	1,335,122	13(v)	Not entitled under s. 8(1)(j) or 13(v)
02.03.10	**Contract fees** (4th Ins.)			8(1)(j)	1,346,679	13(v)	Not entitled under s. 8(1)(j) or 13(v)
		23,000			7,924,676		

Year of Assessment 2010/2011

Date	Description	Taxable Income (Rs.)	US$	Applicable section for exemption	Rupee (Rs.)	Applicable section for exemption	Exemption granted or refused
02.04.10	Provincial 1 day & T 20	24,000					Liable to tax
23.04.10	Distribution of Prize Ruhunu Team	22,727					Liable to tax
20.04.10	**Match fee**-Sri Lanka A Team & Pakistan A Team				258,750	13(v)	Granted under s. 13(v)
05.07.10	M. Max Asia Cup 2010				1,199.348	13(v)	Granted under s. 13(v)
27.07.10	Mobitel Sponsorship	585,207					Liable to tax
21.09.10	**Contract fees**-2nd Ins.)		9288	8(1)(j)	5,757,453	13(v)	Not entitled under s. 8(1)(j) & 13(v)
04.10.10	ACC on A/C Asia Cup				524,393	13(v)	Granted under s. 13(v)
07.10.10	**Match fee** Sri Lanka vs. India Test Series				1,725,000	13(v)	Granted under s. 13(v)
07.07.10	**Match fee** Sri Lanka/India /NZ				2,290,220	13(v)	Granted under s. 13(v)
09.12.10	**Contract fee-**3rd ins.)		4655	8(1)(j)	2,878,726	13(v)	Not entitled under s. 8(1)(j) & 13(v)

29.12.10	Seniority fee-Australian Tour		14,000	8(1)(j)	21,000	13(v)	Granted under s. 13(v)
15.02.11	Provincial Tournament 2011	20,000					Liable to tax
15.02.11	Provincial Tournament 2011	31,250					Liable to tax
20.02.11	Asia Cup RDICS-Rested Player	250,088					Liable to tax
23.02.11	ODI Series-W. Indies Tour 2010/2011				1,020,580	13(v)	Granted under s. 13(v)
16.03.11	Mobitel Sponsorship	869,752				13(v)	Liable to tax
16.03.11	**Contract fee (4th ins.)**		4644	8(1)(j)	2,500,222	13(v)	Not entitled under s. 8(1)(j) & 13(v)

[33] Accordingly, the payments made to the Appellant including contract fees in respect of matches played in Sri Lanka or outside Sri Lanka had not been exempted under Section 8 (1) (j) or 13 (v) of the Act. The match fees granted to the Appellant in respect of matches played in Sri Lanka with the participation of a foreign competitor had been, however, exempted under Section 13 (v) of the Act while the match fees in respect of national matches played in Sri Lanka without the participation of foreign player had not been exempted under Section 13 (v) of the Inland Revenue Act.

Exemption under Section 8 (1) (j) of the Inland Revenue Act

[34] As per the Sri Lanka Cricket Players' Contract, the Appellant has received, *inter alia*, the contract fees and match fees in relation to matches held in Sri Lanka and outside Sri Lanka. The Appellant first claimed that the contract fees and match fees received by him in respect of matches held

outside Sri Lanka are exempted from income tax under Section 8 (1) (j) of the Inland Revenue Act. Section 8 (1) (j) of the Act reads as follows:

> *"The emolument earned or the pension arising in any year of assessment, in foreign currency, by or to any individual resident in Sri Lanka in respect of-*
>
> *(i) services rendered by him in that year of assessment; or*
>
> *(ii) past services rendered by him or his spouse,*
>
> ***outside Sri Lanka** in the course of any employment carried on, or exercised by him or his spouse, if such emoluments or pension are **paid to him in Sri Lanka or** such emoluments or pension (less such amount expended by such individual outside Sri Lanka as is considered by the Commissioner-General to be reasonable expenses) **are remitted by him to Sri Lanka**".*

[35] In order for a taxpayer to succeed in the exemption under section 8 (1) (j), he must satisfy the following elements:

1. The emolument earned or the pension arising in any year of assessment, in **foreign currency**;
2. The emolument or pension paid to any **individual resident in Sri Lanka**;
3. The services rendered **in the course of any employment** carried on, or exercised by him or his spouse in the same year of assessment;
4. The emoluments paid to the taxpayer **in Sri Lanka** or such emolument is **remitted by him to Sri Lanka**;
5. The emolument or pension paid in respect of **services rendered by him** in that year of assessment or past services rendered by him or his spouse **outside Sri Lanka**.

Five Requirements in Section 8 (1) (j) of the Inland Revenue Act

[36] Now, I shall consider whether or not the five requirements set out in Section 8 (1) (j) have been fulfilled by the Appellant.

1. Emoluments paid foreign currency in any year of assessment

[37] As noted in paragraphs 32, the contract fees and match fees have been paid in US Dollars in each year of assessment, 2008/2009, 2009/2010 and 2010/2011 in respect of matches played outside Sri Lanka and thus, the

requirement that the emolument was earned in foreign currency in any year of assessment has been satisfied.

2. Resident in Sri Lanka

[38] It is not in dispute that the Appellant is a resident in Sri Lanka in terms of the provisions in Section 79 (2) of the Act and thus, the Appellant has satisfied the second requirement.

3. Services rendered in the course of any employment in the same year of assessment

[39] It is not in dispute that the Appellant rendered services to the SLC in the course of employment in the same year of assessment in respect of which returns were filed and thus, the Appellant has satisfied this requirement.

4. Emoluments were paid in Sri Lanka or such emoluments were remitted by him to Sri Lanka.

[40] The next question is to consider the question whether or not the emoluments were paid to the Appellant in Sri Lanka or such emoluments were remitted by the Appellant to Sri Lanka. The Tax Appeals Commission has taken the view that the exemption under section 8 (1) (j) has no application for the following reasons:

a. The money was not paid to the Appellant in Sri Lanka as the Exchange Control Act prohibits payments paid to residents in Sri Lanka otherwise than in Sri Lankan Rupees;

b. There has been no remittance of the money to Sri Lanka by the Appellant.

[41] As correctly submitted by Mr. De Seram, the second part of section 8 (1) (j) in respect of the place at which the payment of emoluments shall be made to the taxpayer has two alternative elements. The payment due to the taxpayer can be made in the following methods:

1. the emoluments can be paid to him in Sri Lanka; or

2. the emoluments can be remitted to Sri Lanka by him.

[42] The Tax Appeals Commission has taken the view that the exemption has no application as the Exchange Controls Act, No. 24 of 1953 prohibits

payment being made to residents in Sri Lanka otherwise than in Sri Lankan Rupees. There is no dispute that the SLC had collected all the payments due to the players in respect of the matches played outside Sri Lanka irrespective of any prohibition in the Exchange Control Act. The documents issued by the SLC at pages 157-160 of the Tax Appeals Commission brief referring to the dates of payment, cheque numbers and the payment types reveal that all payments had been made to the Appellant by the SLC in Sri Lanka. The document at page 160 of the Tax Appeals Commission brief further reveals that the SLC has transferred all US$ payments to the Appellant's USD Account.

[43] Accordingly, any such prohibition under the Exchange Control Act is not relevant to the determination of the income tax liability of the taxpayer under the Inland Revenue Act. The part of the finding of the Tax Appeals Commission that the Exchange Controls Act prohibits payment being made to residents in Sri Lanka otherwise than in Sri Lankan Rupees for the application of the exemption in the present case is in my view, is erroneous and shall stand corrected.

[44] The Tax Appeals Commission has further stated that as the emoluments were earned in foreign currency by a resident in Sri Lanka, it shall be remitted by the Appellant to his NRFC account of a Bank in Sri Lanka and as the Appellant has not remitted USD payments to Sri Lanka, the exemption under section 8 (1) (j) has no application. As the SLC has collected and made payments in US Dollars in Sri Lanka (Vide- pp. 157-160 of the Tax Appeals Commission brief) in respect of the matches played outside Sri Lanka, it is obvious that the payments had been remitted to the SLC Account to be paid to the Players in Sri Lanka.

[45] The part of the finding of the Tax Appeals Commission that there is no proof that the Appellant has remitted the moneys due to him to his Sri Lankan Bank through a NRFC account will not arise as the payment had been made to the Appellant in Sri Lanka through SLC. Accordingly, that part of the finding of the Tax Appeals Commission is erroneous and shall stand corrected.

5. Services were rendered outside Sri Lanka

[46] The final requirement to be satisfied is that the services were rendered by the Appellant outside Sri Lanka. In other words, the question is whether the disputed income can be categorised as having been received by the Appellant from "services rendered outside Sri Lanka" as contemplated by section 8 (1) (j) or from services rendered within Sri Lanka.

[47] At the hearing of this appeal, Mr. De Seram contended that the Appellant has not claimed the exemption on the entire contract fee, but only on that part of the contract fee, which has been paid to him whenever, the Appellant has participated in the respective matches outside Sri Lanka. He submitted that the payment of contract fees and matches in respect of matches played by the Appellant fall within the ambit of the exemption under Section 8 (1) (j) for the following reasons:

1. The payment of contract fees and match fees involve a US Dollar and Sri Lankan Rupee component and fees are paid in Sri Lankan Rupees for matches participated by the Player in Sri Lanka while the fees are paid in US$ for matches participated by the Player outside Sri Lanka;

2. Whenever matches are played in and outside Sri Lanka, contract fee is apportioned into Rupee component and US$ component by the SLC using a formula adopted by the SLC according to the number of matches played in Sri Lanka and number of matches played outside of Sri Lanka;

3. The match fees are also paid when a Player participates in matches and thus, as the Appellant had participated in matches in question outside Sri Lanka, his match fees paid in respect of matches played outside Sri Lanka are exempted from income tax under Section 8 (1) (j) of the Act.

4. The key requirement for the application of the exemption under section 8(1) (j) is the "**participation in the match",** while other deducted payments referred to in clauses 4.14, 4.15 and 4.16 of the Contract are based on the **non-participation** of the Player;

5. Section 8 (1) (j) is applicable if and only if the Player has participated in the matches which is the fundamental requirement and the Appellant

was claiming fees only in respect of the matches participated by him in Sri Lanka and outside Sri Lanka;

6. The Appellant has participated in all matches without any reduction as evidenced by the letter of the SLC dated 21.08.2017 (page 227 of the Tax Appeals Commission brief) and therefore, the fees received by the Appellant in the form of US Dollar component in respect of matches participated by the Appellant outside Sri Lanka are exempt from tax under Section 8 (1) (j) of the Inland Revenue Act; and

7. Once the contract fee is split into rupee and US Dollar components, the receipts of the US Dollar payment on the basis of the matches played by the player (participation in matches) abroad is exempt as it satisfies the requirement in Section 8 (1) (j) while the payment of contract fee in Sri Lankan component is exempt under Section 13(V) of the Act.

[48] On the other hand, it was the submission of the learned Senior State Counsel that subject to the three deductions referred to in clauses 4.14, 4.15 and 4.16 of the Contract, every player having a contract with the SLC is entitled to receive contract fees or match fees regardless of the number of matches he has played, whether in Sri Lanka or outside Sri Lanka. He further submitted that match fee is paid for every match for which a player is selected to be part of a squad irrespective of whether he plays a particular match so long as he is part of the national squad selected by the selectors for such match or tour.

[49] The exemption applies where the emolument by a resident in Sri Lanka is earned in foreign currency in respect of services rendered **outside Sri Lanka** provided that such emolument is either paid to him in Sri Lanka or such emolument is remitted by him to Sri Lanka. The entire dispute hinges on the determination of the question whether the emolument earned by the Appellant in foreign currency 'in the course of his employment' was in respect of services rendered **outside Sri Lanka** within the meaning of the exemption under Section 8 (1) (j) of the Act.

[50] In determining whether the services were rendered outside Sri Lanka within the meaning of Section 8 (1) (j) of the Act, it is useful to answer the following questions:

1. Where the contract was concluded?
2. Who is paying the employee and who deducts any payment due to the employee?
3. Who the services are being rendered to?
4. How the services are being rendered?
5. Is the participation of the player in matches a requirement for the purpose of determining that the player rendered services outside Sri Lanka?
6. Where the services are being rendered?

1. Where the contract was concluded?

[51] The contract of employment was entered into by the SLC and the Appellant in Sri Lanka. The Appellant chose a Sri Lankan address as his *domicilium*, as did his employer, the SLC. The contract itself stipulates concerning the terms and obligations, law governing the contract and provides that the laws of Sri Lanka clearly governed the contract. (Vide-clause 7.1). The answer to the first question has to be Sri Lanka as the contract clearly provides that the contract was entered into at Colombo 07, Sri Lanka.

2. Who is paying the employee and who deducts payments?

[52] In terms of the contract, all fees due to the Player (contract and match fees etc.) shall be paid by the SLC (clause 4.1, 4.1.3 and 4.2). In terms of clauses 4.1.4 - 4.16, the SLC is entitled to make deductions referred to in the said clauses and in terms of clause 4.3, the SLC is entitled to deduct from any payment due to be made to the player which, it may be advised by its tax/legal advisers to deduct by reason of the operation of any law.

3.Who the services are being rendered to?

[53] The answer to the third question too has to be the employer, SLC, which is located in Sri Lanka. The Appellant has agreed and undertaken *inter alia*:

(i) to represent Sri Lanka at national and other levels if and when called upon to do so by the SLC (preamble to the Contract);

(ii) play in all matches, including 75% of the provincial tournament matches for which he has been selected;

(iii) attend all training sessions, meetings and official functions as directed by SLC;

(iv) play representative cricket as decided by SLC, represent SLC at official functions as SLC may direct, and make himself available for all sponsorship, promotions, including television, radio and other appearance as required by SLC;

(v) wear such clothing, match-wear and leisure wear as shall be directed by SLC, both on and off the field, including during the course of Tours, Matches, practice sessions, pre-match warm-ups, official and social functions, promotions and other events and occasions specified by the SLC (vide- clause 3).

[54] It is manifest that the Appellant is rendering services to SLC in terms of the Players' Contract and not to any individual or employer or entity located outside Sri Lanka.

4. How the services are being rendered?

[55] The Appellant has agreed to provide his services to SLC by playing matches and representing Sri Lanka at national and international levels and attending functions and events subject to conditions stipulated by SLC in the contract. He has further agreed to provide his aforesaid services to SLC as described in the preamble and clause 3 of the contract.

5. Is the participation of the player in matches a requirement for the purpose of determining that the player rendered services outside Sri Lanka?

[56] The Appellant has claimed that the key requirement for the application of the exemption under section 8 (1) (j) is the "**participation in the match**" played outside Sri Lanka and thus, where the Appellant has participated in matches held outside Sri Lanka, his contract fees in US$ component is exempted under Section 8 (1) (j) of the Act.

[57] It is not in dispute that for the non-participatory nature of deducted contract fees are paid to a player having a contract with SLC in situations referred to in clauses 4.14 (non-selection of a player for 6 months or more due to poor performance), 4.15 (direction of selectors to rest a player due to no fault of the player) or 4.16 (leave of absence being granted to play cricket overseas). Conditions in clause 3 of the contract refer to the conditions such as attending to training sessions, fitness, education,

anticorruption procedures and complying with rules and regulations codes of conduct etc. On the other hand, clause 4.12 further provides that in the event that the contract is terminated by either party before the lapse of the entirety of the Term, SLC shall pay and the Player shall be entitled to receive the pro rata portion of the Contract fee for the period during which the Contract was in force.

[58] The stand of the Appellant is, however, that whenever the player has been nominated to a squad and he has participated in matches held outside Sri Lanka, his US Dollar component and the LKR component of fees are both exempt from income tax on the application of the exemption under Section 8 (1) (j) of the Act whereas the player does not participate in matches, he is liable to income tax.

[59] The main requirement for the application of the exemption is that the emoluments earned in foreign currency by a resident in Sri Lanka in respect of services rendered by him in the course of employment shall be rendered outside Sri Lanka. In view of this stand, the question is whether the applicability of Section 8 (1) (j) exemption arises whenever a player who has participated in matches held outside Sri Lanka and received US$ payment of the contract fee or match fee from SLC.

Apportionment of Contract Fees and Tax Liability

[60] Mr. De Seram referred to the formula adopted by SLC to determine the Sri Rupee component of contract fees and the USD component of contract fees and submitted that SLC has apportioned the contract fee according to the number of matches played by the Appellant in Sri Lanka and the number of matches played by the Appellant outside Sri Lanka. He submitted that therefore, the principle underlying the exemption of contract and match fee is the participation in the matches played outside Sri Lanka, which falls within Section 8 (1) (j) of the Act.

[61] The formula followed by the SLC only applies to contract fees and it has been applied to determine the players' annual contract fees for USD and LKR components according to the number of match days played in Sri Lanka and number of match days played outside Sri Lanka. It is as follows:

$$\text{For LKR Payment} = \frac{\text{Total Contract fees}}{\text{Total No. of match days}} \times \text{No of match days played in Sri Lanka}$$

$$\text{For US \$ Payment} = \frac{\text{Total Contract fees}}{\text{Total No. of match days}} \times \text{No of match days played outside Sri Lanka}$$

[62] The purpose of distinguishing matches played in Sri Lanka and overseas as set out in the SLC formula is an internal formula to determine the contract fee or match fee in the form of US Dollars component and the Sri Lankan Rupee component on the basis of match days played in Sri Lanka and outside Sri Lanka. The internal formula of SLC cannot be used to determine the tax exemption set out in Section 8 (1) (j) unless it is contained in Section 8 (1) (j) of the Act that the emoluments earned in foreign currency in respect of services rendered outside Sri Lanka shall be derived from **participation** as a resident person in the course of employment carried out by such person.

[63] The Appellant relies on the formula applied by the SLC to support his contention that the SLC has apportioned player's contract fee according to the number of match days played by the Appellant in addition to the fulfilment of the conditions of items 3 of the contract. Conditions in clause 3 of the contract refer to the conditions such as attending to training sessions, fitness, education, anticorruption procedures and complying with rules and regulations codes of conduct etc.

[64] In cases where several parts of the composite contract are performed in different tax jurisdictions, the concept of apportionment may be validly applied, to determine which fiscal jurisdiction can tax that particular part of the transaction. This concept helps to determine the capacity to tax an event, where the territorial jurisdiction of a particular state lies and composite transactions which have some operations in one territory and some in others occur.

[65] In the present case, however, the services rendered by the Appellant as a national player is exclusively for SLC, as his employer representing Sri Lanka both inside and outside Sri Lanka and the physical activity of the

Player is intimately connected with one complete contract and thus, the concept of apportionment on the basis of number of taxable activities that take place in different jurisdiction has no application.

[66] The question of taxability of the Appellant's profits and income in different jurisdictions will not arise in the present case, as the Player's Contract in question cannot be split up for the purpose of receiving profits and income from matches played in Sri Lanka and matches outside Sri Lanka in one complete contract. The payment for different services to be rendered to SLC by the Appellant either in Sri Lanka or outside Sri Lanka, such as onshore and offshore services leading to division of profits and income arising in two tax territories are not clearly demarcated in the contract.

[67] The contract can be held to be a complete contract that has to be read as a whole and not in parts. Parties were *ad idem* that there existed no distinction between any service rendered in two territories irrespective of the fact some matches are played in Sri Lanka and other outside Sri Lanka as part of the player's contractual obligations in complete transaction. In other words, the payment of contract fees and match fees in respect of matches played in Sri Lanka or outside Sri Lanka is based on the fulfilment of the obligations and the conditions set out in the complete Contract representing Sri Lanka at national and international matches if and when called upon to do so by SLC.

[68] Section 2 of the Inland Revenue Act says that income tax shall, subject to the provisions of the Act, be charged in respect of the profits and income of every resident person for that year of assessment wherever arising in and not derived from the carrying on of operations or activities in Sri Lanka. In the present case, there are no composite transactions in the contract to be operated in different territories to apportion the profits and income arising from different operations in different jurisdictions. The contractual obligations of the players to play matches in Sri Lanka and outside Sri Lanka cannot be attributed to the different types of operations and services in different jurisdictions that can create different types of income and profits between the two services and operations carried on in Sri Lanka and outside Sri Lanka. If that is the case, it might reasonably be argued that there must be apportionment of the profits as between the two services and operations in Sri Lanka and outside Sri Lanka.

[69] The Appellant's income tax in respect of profits or income has arisen wherever, from one complete employment contract between the employer (SLC) and employee (Appellant) and the question of appointment of profits between the matches played in Sri Lanka and outside Sri Lanka does not arise.

[70] The contract, however, does not set out any condition to the effect that the receipt of his contract fees by any player having a contract with the SLC shall be based on the matches played by him either in Sri Lanka or outside Sri Lanka. There is nothing to indicate in the Players' Annual Contract that the determination of the contract fees or match fees in US$ or LKR component is based on the number of matches played (participation) by the player either in Sri Lanka or outside Sri Lanka.

[71] On the contrary, a guideline is already contained in Section 13 (V) of the Act, which lays down the condition for the applicability of the exemption that arises where the profits and income of any person or any partnership is **derived from the participation as a competitor**, **official or organiser** of any sporting or athletic event held in Sri Lanka. There is no statutory condition whatsoever, in Section 8 (1) (j) that provides that the emoluments earned by the resident person arising in foreign currency in the course of employment shall be derived from the participation of such person similar to the requirement that is available in Section 13 (V) of the Act.

[72] It is settled law that where an exemption is conferred by a statute by way of any exemption clause, it has to be interpreted strictly in its entirely and not in parts when the issue relates to the eligibility of an exemption claimed by an Assessee. A construction of such a provision depends, *inter alia,* upon the purpose for which the concession is sought to be granted and upon the fulfilment of such conditions as may be specified therein. In *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and Others,* Civil Appeal No. 3327 of 2007, decided on 30.07.2018, five judges of the Indian Supreme Court having considered previous conflicting judgments of the Supreme Court applied the principles for the interpretation of exemption clauses in taxation and held at paragraphs 41 and 52 that:

1. Every taxing statue including, charging, computation and exemption Clause (at the threshold stage) should be interpreted strictly;

2. The burden of proving the applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification;

3. In case of ambiguity in a charging provision, the benefit must necessarily go in favour of subject/assessee, but the same was not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State;

4. The ratio in *Sun Export Corporation, Bombay v. Collector of Customs* [(1997) 6 SCC 564], the case is not correct and all the decisions which took a similar view as *in Sun Export Corporation, Bombay v. Collector of Customs* (supra) stands over-ruled.

[73] It is well-settled that in order to claim the benefit of a tax concession, a party who seeks such concession must comply with all the conditions of a provision and the benefit is not conferred, by stretching or adding words to the provision. In *State Level Committee v. Morgardshammar India Ltd* AIR 1966 SC 524, the Indian Supreme Court held that:

> *"….. It must be remembered that no unit has a right to claim exemption from tax as a matter of right. His right is only insofar as it is provided…. While providing for exemption, the Legislature has hedged it with certain conditions. It is not open to the Court to ignore these conditions and extend the exemption."*

[74] Any interpretation which would extend the plain terms of the exemption and confer and unintended benefit on the Asseesse on any supposed intention of the exempting authority must be rejected. It is settled that a claim of exemption must fall within the four corners of the exemption provision (*Vidarbha Co-op Marketing Society v. Commissioner of Income Tax* (1985) 156 ITR 422 (Bom.). Thus, an exemption clause cannot be unduly stretched to produce unintended result in derogation of the plain language employed therein (*Collector of Customs, Bombay v. MI Exports Ltd* (2001) 6 SCC 756).

[75] It will appear from the scheme used in the Inland Revenue Act that the legislature has granted the exemption with a view to encouraging any resident person to earn emoluments arising in foreign currency by rendering services outside Sri Lanka in the course of any employment where

such emolument is paid to him in Sri Lanka or such emoluments are remitted by him to Sri Lanka.

[76] The internal formula adopted by SLC is only an administrative arrangement to determine and distribute the US$ and LKR components of the contract fee according to the number of match days played either in Sri Lanka or outside Sri Lanka. The formula in question is not part of the conditions stipulated in the contract for the determination of the contract fees of the players and thus, the formula can only be regarded as an internal formula by SLC for the purpose of determination of US$ component and LKR component of contract fees.

[77] It is not a formula to determine the profits and income earned by a taxpayer from employment income by way of contract fees and match fees for the purpose of tax liability which is governed solely by the charging section and deductions and statutory exemptions laid down in the Act.

[78] The internal formula adopted by SLC cannot expand the scope of the law or cannot create tax liability contrary to the statutory provisions and thus, it has no existence in the eye of law. The reason is simple. An internal administrative formula cannot travel beyond the statute. It is not binding on the tax authorities and courts under the tax statute and such internal formulas cannot give effect to, in determining the tax liability of the assessee. It is for the Court to decide what the particular provision of the statute says and any formula which is contrary to the statutory provisions has no existence in law.

Payment of Match Fees

[79] The formula adopted by SLC does not apply to match fees as it is restricted to the determination of the US$ and LKR components of the contract fees. As noted in paragraph 28 of this judgment, payments other than contract fees, including match fees are paid to the Player as specified in Schedule IV of the Contract. There is nothing to indicate in the Players' Contract that the payment of match fee of a Player having contract with SLC and selected to the national squad, depends solely on the physical participation of a player in each match, or where he, though in the squad, is not playing a particular match due to the decision of the team management,

is not entitled to a match fee in respect of such match held either in Sri Lanka or outside Sri Lanka.

[80] The Appellant's Representative at page 167 of the written submissions filed on behalf of the Appellant before the Tax Appeals Commission has conceded that match fees are paid irrespective of whether the players participated or not in matches depending on circumstances as follows:

> *"Match fees are which are of various types such as test match fees, one day internationals, 20/20 matches, win bonus, tour fees, caption's fees, etc are also paid in addition to contract fees the amount of which is decided for each match and is an amount in US Dollars per match. This is distributed among the players in the squad irrespective of whether they participated or not depending on the circumstances. If the match is played in Sri Lanka, rupee equivalent is paid. The Assessee has also received match fees of different types of which details are included in the summary of payments issued by the Accountant of the SLC (Marked as Documents No. 15, 16 and 17)".*

[81] It is not in dispute that a player in the playing 11 will be paid a fixed match fee determined by the SLC as set out in Schedule IV for each match depending on their ranking or gradings or the format of the match (test, one day internationals, T 20 etc.) either in US$ when a match is played outside Sri Lanka and in LKR when a match is played in Sri Lanka. The other players in the squad who are available to play, but did not play (participate) in that match due to circumstances such as the condition of the pitch and playing conditions etc. will also be paid a proportionate lesser match fee as they are all part of the team and bench strength representing the team (squad). The match fees for them will also be paid either in US$ when a match is played outside Sri Lanka and in LKR when a match is played in Sri Lanka.

[82] The payment of match fee of a player in the squad, is not based on the participation of a player for a particular match as claimed by the Appellant and each and every member of the squad, who is available to play, is entitled to a match fee for that particular match, but the amount of the match fee differs from the format to format, grading of the player and whether a player is in playing 11. If the player is playing in playing 11, he will be paid a fixed match fee depending on the aforesaid factors. Where a player is available to play, but did not play (participate) in the match due to the aforesaid circumstances, he will also be paid a proportionate lesser match fee.

[83] Subject to the above-mentioned deductions and grading, a player having a contract with SLC, will be entitled to contract fees set out in clause 4 according to the grading of Players in US$ or LKR components, disregarding the matches played by such player either in Sri Lanka or overseas. Subject to the above-mentioned deductions with regard to the match fees, every member of the squad will also be entitled to a match fee in US$ or LKR components, according to the grading of the Player, disregarding whether he is played by the team management in a match either in Sri Lanka or overseas.

[84] Under such circumstances, I hold that subject to the aforesaid deductions and qualifications, the income earned by the Appellant by way of contract and match fees from SLC under the Players' Contract is not solely depended on the playing in a match as claimed by the Appellant for the purpose of the exemption under Section 8 (1) (j) of the Inland Revenue Act.

6.Where the services are being rendered-outside Sri Lanka or in Sri Lanka?

[85] The final element to be considered is where the services are being rendered by the Appellant, whether in Sri Lanka or outside Sri Lanka. In terms of the Contract between the SLC and the Appellant, the SLC has agreed to provide the facilities to improve his skill and ability and develop his potential on the condition that he shall be available to represent Sri Lanka (page 1 of the contract). The SLC has agreed to raise finance from various funding sources to provide such facilities to the Appellant and the Appellant has agreed to represent Sri Lanka if and when called upon to do so by the SLC (clause 3).

[86] In terms of the Players' Contract, the Appellant was contracted to represent Sri Lanka at national and international levels if and when called upon to do so by the SLC and the Appellant has agreed to represent Sri Lanka whenever called upon to do so by SLC. The relevant portions of the agreement at pages 1-2 are reproduced below for clarity:

> *"Whereas the Player has gained recognition in Sri Lanka as a Cricketer of talent, ability and skill with the potential to represent Sri Lanka at national and other levels and has been recommended by the National Selectors to be fit to be given a contract by SLC upon terms and conditions hereinafter set out and*
>
> *"Whereas SLC has decided to afford the Player with facilities to improve his skill and ability and develop his potential provided that the player shall keep*

himself free and available to represent Sri Lanka at national and other levels if and when called upon to do so by the SLC, and

Whereas the Player has agreed with SLC to avail himself of such facilities as may be provided by the SLC and to keep himself available to represent Sri Lanka whenever called upon to do so by SLC, and

Whereas the monies required by SLC to avail the said facilities to the Player and to other cricketers who will be similarly engaged by SLC are raised by SLC from various sources (hereinafter referred to as "the financiers") and .....

Whereas SLC and the Player has agreed to execute a written Agreement specifying all of the terms and conditions upon which SLC shall provide such facilities to the Player and the Player shall keep himself available to represent Sri Lanka as aforementioned if and when called upon to do so by SLC."

[87] The income earned by the Appellant representing Sri Lanka is Sri Lanka-sourced income and the services were rendered by the Appellant as employee to his employer, SLC, irrespective of the fact that the Appellant physically performed what was contractually bound by him to do so outside Sri Lanka (physical activity) as and when called upon to do so by SLC. SLC being the employer of the Appellant has made the payments in the form of contract fees and match fees in USD currency where matches were held outside Sri Lanka and in Sri Lankan Rupees where the matches were held in Sri Lanka.

[88] The nature of the services he rendered either inside or outside Sri Lanka are set out in the contract with the Appellant's employer and there is no suggestion in the contract that the Appellant acted beyond the scope of his employment. The source of the remuneration is the employment income and the source of employment through ICC sanctioned international matches (home and abroad) or provincial matches are arranged by SLC, which is the official body responsible for the governance of the sport of cricket in Sri Lanka, being a member of the International Cricket Council (clause 4.1.6).

[89] The Appellant having a contract with SLC rendered services to the employer, SLC, which exists in SL and not to any person or entity located outside Sri Lanka. The source of employment income is located at the place where the services are rendered by the Appellant to SLC and the services rendered by the Appellant to SLC could be regarded as the employee's duties in Sri Lanka representing Sri Lanka in terms of the contract with SLC.

In the present case, there is no foreign employment in relation to that income by way of an employment contract with the foreign employer by the Appellant who was required to render any service to any foreign employer.

[90] The Appellant being an employee of SLC and as the representative of the employer (SLC), has rendered services to SLC, both in Sri Lanka and outside Sri Lanka and his physical activity of performing contract during the Term of the contract outside Sri Lanka is part and parcel of the Contract with SLC which exists in Sri Lanka. Thus, he has to travel abroad representing SLC from time to time and render services in the nature of playing matches for SLC, which is necessarily the same services rendered to the SLC in Sri Lanka. The Appellant has received emoluments for performing the physical activity outside Sri Lanka in the course of employment with SLC from a source of employment arranged by SLC through ICC sanctioned matches and such emoluments were received in respect of services rendered for or on behalf of his employer, SLC.

[91] There is a sufficiently close connection between the Appellant and the SLC for rendering the service outside Sri Lanka representing Sri Lanka at international matches and the employment contract, to interpret the rendering of the services for Sri Lanka is no more than a contractual obligation by the Appellant to his employer, the SLC. The emoluments are received by the Appellant from his employer (SLC), in the course of employment at ICC sanctioned international matches which only occur upon the rendering of his duty-bound services to SLC whether outside or inside Sri Lanka. The source of the remuneration (employment) received by the Appellant for rendering services to his employer, SLC outside Sri Lanka is the same source from which remuneration was received by him from SLC inside Sri Lanka at ICC sanctioned international matches.

[92] As per the terms of the contract with SLC, the Appellant was under full contract of SLC and he had no choice or option to refuse the contractual obligations to play matches played in Sri Lanka or outside Sri Lanka, which is decided, not by the Appellant but by SLC. The Appellant is under an obligation to follow all the directions of SLC, including (i) wearing such clothing, match-wear and leisure wear, in such manner and at such time as shall be directed by SLC both on and off the field; (ii) but not limited to during the course of tours, matches, practice sessions, pre-match warm ups, official

functions, social functions, promotions and any other events or occasions specified by SLC from time to time and as per applicable ICC regulations (clause 3.1.h).

[93] Under the contract, he cannot play any cricket match or competition, whether in Sri Lanka or elsewhere the playing in which match or competition does not fall within the Players' obligations arising without the prior express written approval of SLC. He cannot enter into any negotiations and/or contracts or agreements with any third party or parties to play cricket without prior express written approval of SLC (3.1.l). On the other hand, the Appellant cannot take part in any form of cricket, if he is rested by the selectors (3.1.r).

[94] It is manifest that under the contract, even the time and place of playing matches and their remunerations including contract and match fees, seniority fees, tour fees, and all other fees are decided by SLC. Under the contract, the Appellant was not providing any service as any independent worker and the status of the Appellant was that of an employee rather than an independent worker. Under the contract, the Appellant was simply a contracted employee of SLC and is a representative of SLC and working under SLC and thus, he is merely providing services to SLC as and when required by SLC which is located in Sri Lanka.

[95] In the present case, the Appellant has rendered services to SLC, which is located in the territory of Sri Lanka and is the beneficiary or recipient of services. The service provider and the recipient of services are located in Sri Lanka and services are rendered to SLC which is located in Sri Lanka. No services are rendered by the Appellant to any other beneficiary outside Sri Lanka. The words 'services rendered outside Sri Lanka' cannot be simply referred to a foreign country without identifying the person to whom the services are rendered in the course of employment of the Appellant.

[96] Where the remuneration is earned for these services rendered by the Appellant under a complete contract with SLC will be taxed in Sri Lanka as the source of employment income is located at the place where the services under the contract are rendered to the SLC in Sri Lanka. This means that the source or originating cause of income from employment arises in Sri Lanka in terms of the contract with SLC. Thus, the services are rendered by the Appellant to SLC, which exists in Sri Lanka, irrespective of the place where

the activity is physically performed outside Sri Lanka as he was bound to do so under his employment contract with SLC.

[97] The originating cause or source of the income in question was the contract of employment entered in Sri Lanka under which the Appellant was bound to render services to SLC as a national cricketer and the services were rendered by the Appellant representing Sri Lanka to his Sri Lanka employer, namely, the SLC. The place where the services were physically performed i.e. outside Sri Lanka, is only a place at which he is bound to perform his duty as an employee of the SLC in terms of the Contract.

[98] In my view the rendering of the services was no more than contractual performance by the taxpayer to the Sri Lankan employer (SLC) located in Sri Lanka and the source of the income earned during the foreign tour in the course of employment was no different to the source of the income earned by the Appellant for services rendered in Sri Lanka as the representative of SLC. It is a reciprocal obligation or arrangement between the Appellant and SLC irrespective whether certain matches are physically performed (played) in Sri Lanka and others are performed outside Sri Lanka.

[99] So, the Appellant is liable to income tax in Sri Lanka if the employment income in foreign currency received by him arises from services rendered to his employer, the SLC which exists in Sri Lanka. Thus, the income earned is treated as Sri Lankan-sourced income and the place at which the services were rendered shall be the territory of Sri Lanka for the purpose of the tax liability whether the physical activity was itself performed in respect of some matches played outside of Sri Lanka, as he is bound by the contract as the representative of SLC.

[100] Accordingly, the contract fees and matches fees paid to the Appellant for services rendered to the SLC in respect of matches held overseas in the course of his employment under the contract with SLC is not exempted from income tax under Section 8 (1) (j) of the Inland Revenue Act.

Exemption under Section 13 (v) of the Act

[101] The next question is to consider whether the Appellant is entitled to the benefit of the exemption under section 13 (v) of the Inland Revenue Act whenever, he has derived profits and income from the participation as a

competitor of cricket event held in Sri Lanka **with the participation of any competitor outside Sri Lanka.**

[102] Section 13 (v) of the Act reads as follows:

> *"The profit and income of any person, any partnership derived from the participation as a competitor, official or organiser of any sporting or athletic event held in Sri Lanka and at which competitor from outside Sri Lanka participates".*

[103] It seems that the legislative intent in granting the exemption under Section 13 (v) is to promote the Sri Lankan sporting and athletic events held in Sri Lanka with the participation of foreign competitors by exempting any competitor, official or organiser of any sporting or athletic events of their income derived from their individual participation in such sporting or athletic events held in Sri Lanka.

[104] Where the exemption in section 13 (v) clearly provides that the participation in any sporting or athletic event is a condition precedent for the applicability of the exemption under section 13 (v), non-participation is a disqualification for the applicability of the exemption. As section 13 (v) applies to the income derived only from the individual participation of such event held in Sri Lanka and thus, the match fees paid to the Appellant for playing matches held in Sri Lanka with his participation with foreign competitors are exempt from income tax.

[105] There is no dispute that the Appellant was a competitor of many sporting event (matches) involving foreign teams and that he received payments in **Sri Lankan Rupees** in respect of matches played in Sri Lanka with foreign competitors with their participation. The Appellant has clearly derived profits and income from the participation as a competitor of cricket matches held in Sri Lanka and at which competitors from outside Sri Lanka participated.

Payments received as match fees in respect of tournaments held in Sri Lanka with or without foreign competitors

[106] The Assessor has, however, regarded the payment received as match fees in respect of tournaments held in Sri Lanka, where the players are from other countries are exempted under section 13 (v) of the Inland Revenue Act. However, the Assessor has stated that the match fees received from

provincial matches played in Sri Lanka are made liable to tax. The Commissioner General of Inland Revenue in confirming the assessment issued by the Assessor in his reasons for the Determination of Appeals has made the following observations at pages 52 and 53 of the Tax Appeals Commission brief:

> *"Payments made as match fees*
>
> *When the assessment has been made by the Assessor, he has considered the payments received as match fees in respect of tournaments in Sri Lanka, where the players are from other countries and exempted under section 13 (v) of the Inland Revenue Act, No. 10 of 2006, whereas the match fees received from provincial matches played in Sri Lanka were made liable to tax"*

[107] The Respondent has detailed the match fees exempted and not exempted under section 13 (v) of the Act for the following three assessment periods (p. 275 of the Tax Appeals Commission brief):

	2008/2009		2009/2010		2010/2011	
	Liable	Exempted 13 (v)	Liable	Exempted 13 (v)	Liable	Exempted 13 (v)
Match fees India Tour		153,900				
With Ruhunu Team			23,000			
Pakistan Tour				2,056,500		
NZ tour				1,263,000		
SLA team with Pakistan				345,000		
				258,750		
Provincial matches					24,000	
Sri Lanka with Pakistan					22,727	
Max Asia Cup						258,750
						1,199,348
Price money Asia Cup						524,393
Sri Lanka v. India test						1,725,000

SL/Ind/NZ series		2,290,220
Australian Tour		21,000
Inter Provincial match	20,000	
Price for Provincial match	31,250	
Match fees ODT		1,020,580
Match fees Asia Cup		250,087

[108] The above-mentioned table clearly indicates that the payments received by the Appellant as match fees in respect of matches played in Sri Lanka with a foreign competitor is an income derived by the Appellant from participation as a competitor and therefore, such match fees are exempted from income tax under section 13 (v) of the Inland Revenue Act as correctly determined by the Assessor.

Provincial Matches Played in Sri Lanka

[109] As noted, the contract fees paid to the Appellant in respect of the matches played in Sri Lanka are not determined on the basis of the number of matches played by the Appellant in Sri Lanka and therefore, the contract fees paid to the Appellant in respect of matches played in Sri Lanka do not fall within the purview of the exemption under Section 13 (V) of the Inland Revenue Act. However, the match fees received by the Appellant from provincial matches played in Sri Lanka do not involve foreign competitors and such match fees do not fall within the scope of the exemption under Section 13 (v) of the Inland Revenue Act as correctly decided by the Assessor.

[110] I hold that the payments received by the Appellant as match fees in respect of matches held in Sri Lanka with the participation of foreign competitors are exempt from income tax under Section 13 (v) whereas the match fees received by the Appellant from provincial matches played in Sri Lanka are liable for income tax as correctly decided by the Assessor, Respondent and the Tax Appeals Commission.

Payment of USD 15000 (Rs. 1,609,500/) and the Exemption under Section 13 (f) of the Inland Revenue Act

[111] The final issue is whether the sum of Rs 1,609,500/- which is mentioned in the schedule for the year of assessment 2008/2009 is covered by the exemption under Section 13 (f) of the Inland Revenue Act. Section 13 (f) reads as follows:

> *"There shall be exempt from income tax-*
>
> > *Any capital sum received by way of death gratuity or as compensation for death or injuries".*

[112] The Assessor regarded the said payment as part of the Appellant's employment contract and accordingly, included the said amount in the assessment as income from employment received from SLC. It was the position of the Respondent before the Tax Appeals Commission that the said payment was part of the contract fee and thus, it was not paid as compensation for the injury suffered by the Appellant (p. 335). The Tax Appeals Commission stated that the payment of Rs. 1,609,500/- will not fall under Section 13 (f) of the Inland Revenue Act and the said payment was made to a rest player for loss of income due to the non-participation in matches as a result of ankle injury. It reads at p. 335 as follows:

> *"However, it is clear from the letter dated 09.08.2008 written by the Secretary SLC to the Chief Executive Officer of SLC and the reply sent, that the payment made to the Appellant, Lasith Malinga was not compensation for the injury he suffered, but it was a payment made to give him support for the loss of income, due to his non-participation in matches as a result of the ankle injury. Therefore, the capital sum paid to the Appellant was not to compensate him in respect of the ankle injury suffered, but it was to compensate him for the loss of income. Hence, it was a payment made to a rest player. Therefore, this payment of Rs. 1,609,500/- will not fall under Section 13 (f) of the Inland Revenue Act, and it is liable for income tax".*

[113] At the hearing Mr. De Seram submitted that the payment of Rs. 1,609,500/- was a capital sum paid to the Appellant by SLC as compensation for his ankle injury sustained by him while playing cricket for SLC and therefore, the said payment attracts the exemption under Section 13 (v) of the Inland Revenue Act. He submitted that the compensation paid to the

Appellant was a personal payment on account of his injuries while playing cricket for SLC and thus, it cannot be regarded as profits or income within the meaning of Section 2 of the Inland Revenue Act.

[114] On the other hand, the learned Senior State Counsel submitted that the sole purpose of the letter sent by the Cricketers' Association dated 09.08.2008 to SLC was to seek a new contract from SLC as SLC unfairly denied a contract to the Appellant due to ankle injury and thus, the said payment of USD 15,000 was made by SLC as an incentive and motivate the Appellant in the wake of the termination of the contract and his attempt to seek a central contract from SLC. He further submitted that the Appellant was insured by SLC with a comprehensive surgical and hospitalisation cover and he received compensation for ankle injury pursuant to the said Insurance Policy. He submitted that under such circumstances, the payment of USD 15,000 cannot be classified as compensation received by the Appellant for injuries as envisaged by Section 13 (f).

[115] In view of the submissions of the parties, two important questions that arise and relate to the questions of law bearing Nos. 1 and 4 are:

1. Whether the sum of USD 15,000 (Rs. 1,609,500/) was granted by the SLC to the Appellant as compensation for injuries sustained by the Appellant and if so, whether it is covered by the Exemption under Section 13 (f) of the Inland Revenue Act;

2. If not, whether the sum of USD 15,000 (Rs. 1,609,500/) that was granted by the SLC to the Appellant was an emolument paid to him as an inducement or advance to enter into a contract of employment and if so, whether it was as income accrued to him from employment assessable to tax under Section 4 (1) of the Inland Revenue Act.

Capital Sum

[116] According to Cambridge English Dictionary, a capital sum generally means the amount of money paid at one time rather than a series of payments, for example by an insurance company in an insurance policy (e.g., capital sum if death occurs or injury during the life of the policy) or on an investment or a gift for damage. The question whether a receipt is capital receipt or revenue income depends on the facts of the

particular case as no single test as infallible or no single criterion as decisive in the determination of the question can be formulated (*Commissioner of Income Tax v. Rai Bahadur Jairam Valji* and others, 1959 AIR 291). The question whether the payment of US$ 15,000/- was of a capital or revenue nature must ultimately be decided on the facts of the particular case.

Compensation

[117] The expression 'compensation' by itself connotes some payment to make up certain losses suffered by the person getting the compensation and thus, if no loss is suffered, no question of receiving compensation arises. The Compact Oxford Reference Dictionary, 2001 defines compensation as: "something given to compensate for the loss, suffering or injury. “Black’s Law Dictionary defines compensation in the following terms:

> *“Payment of damages or any other act that a Court orders to be done by a person who has caused injury to another and must make the other whole”.*

[118] Therefore, compensation is the concept of indemnification, in the sense that it, more fully and completely indemnifies a person against any loss or damage or suffering or injury. This may include loss of injuries, death, loss of revenue (income) or loss of office or employment or loss of damages etc. It must be mentioned that, for the purposes of the Act, it is not necessary for a payment to amount to compensation that the recipient be entitled to it under the law. The principles that apply to the determination of the damages in civil suit will not apply to the determination of the compensation for loss of office, employment or injury under the assessment of taxable income under the Inland Revenue Act.

[119] Nevertheless, the use of the word “compensation” in a document authorising payment by a payer in his own selection **is not decisive** and can be misleading. It cannot be necessarily assumed that it was either an income (which is liable to income tax) or capital (which not assessable to income tax), in the hands of the assessee. The question whether a payment is a capital payment or a revenue payment solely depends on the facts and circumstances of the particular case

Income

[120] Mr. De Seram referred to the decision in *Thornhill v. The Commissioner of Income Tax*, Reports of Ceylon Tax Cases Vol. 1, to support his submission that the payment of Rs. 1,609,500/- (US$ 15,000) paid to the Appellant does not fall within the characteristics of income in Section 3 of the Inland Revenue Act and therefore, the said payment is not liable to income tax. In *Thornhill v. The Commissioner of Income Tax* (supra), the main question was whether the sum of Rs. 19,622.19 was received by the Appellant in respect of his estate under the Tea and Rubber Control Ordinance as tea and rubber coupons to which he was entitled under the said Ordinance, and realised by the sale of these coupons constituted profit or income within the meaning of Section 6 (1) (a) or 6 (1) (b), or whether it represented realisation of capital.

[121] Soertsz, J. in that case referred to the statement made in *Tennant v. Smith* (1892) A.C. 150 that "for income tax purposes, 'income' "must be money or something capable of being turned into money". But, Soertsz, J. held however, that this statement needs qualification as all money and all things capable of being turned into money are not necessarily "income" for tax purposes. Soertsz, J. referred to the following essential characteristics of "income" identified by Cunningham and Dowland in their Treatise on Land and Income Tax and Practice, at p. 128 and held that these essential elements provide adequate tests by which to ascertain whether a particular receipt is "income" or not within the meaning of the Income Tax Ordinance

(a) It must be a gain;

(b) It must actually come in, severed from capital, in cash or its equipment;

(c) It must be either the produce of property or/and the reward of labour or effort;

(d) It must not be a mere change in the form of, or accretion to, the value of articles in which it is not the business of the taxpayer to deal; and

(e) It must not be a sum returned as a reduction of a private expense.

[122] Having applied the above-mentioned tests, Soertsz, J. held *inter alia,* that (i) the amount in question is "profits and income" derived from the business of an agricultural undertaking, and is therefore assessable under section 6 (1) (a); (ii) if it does not fall within the scope of section 6 (1) (a), it is

caught up by the "residuary" subsection 6 (1) (h) as this is not something causal or something in the nature of a windfall. No doubt, these elements provide adequate tests by which to ascertain whether a particular receipt is "income" receipt or capital receipt, and if it is an income receipt, whether it attracts the exemption under Section 13 (f) as claimed by the Appellant.

Profits from Employment

[123] Now the first question is whether upon the facts and the circumstances of the case, the payment of USD 15,000 received by the Appellant from SLC can be classified as compensation for injuries as envisaged by Section 13 (f) of the Inland Revenue Act.

[124] In view of the five tests laid down in *Thornhill v. The Commissioner of Income Tax*, (supra), there can be no question that the payment in question represents a gain and the payment has actually come in, the sense, it has reached the hands of the Appellant, in the form of cash. But in his return, the Appellant has shown it as "non-taxable income". With regard to other elements, Mr. De Seram submitted that as the payment was a special payment, it was similar to a personal gift granted to the Appellant to compensate him for the injury which prevented the Appellant from playing in matches for a considerable length of time. He strongly relied on the case in *Craib v Commissioner of Income Tax*, (supra) in support of his contention.

[125] In *Craib v Commissioner of Income Tax*, (supra), the Appellant who was a Superintendent of Estate had contracted amoebic dysentery whilst in his employer's employment and it was said that he had contracted the illness due to his employment. The Appellant was granted a special bonus of Rs. 10,000/- by his employers having considered his exceptional services to the Company and in consideration of the fact that he has to undergo medical treatment while at home**.**

[126] The Appellant claimed to exempt this sum of Rs. 10,000/- as a taxable income on the ground, *inter alia,* that (i) it was not profits or income under Section 6 (2) (a) of the Income Tax Ordinance; (ii) the said sum of Rs. 10,000/- was not a bonus or gratuity, but was a voluntary gift proceeding from goodwill, without any obligation on his employer's part to pay any such sum; (iii) it was prompted by the fact that the Appellant was ill and needed special treatment and that it was a gratitude for the Appellant's good services; and

(iv) it was a consolidated compensation for injuries that falls under Section 7 (1) (k) of the Ordinance.

[127] Accordingly, the Appellant argued that the sum of Rs. 10,000/- was a personal gift on personal grounds, for a particular purpose, namely, to provide for a holiday and to enable the Appellant to recuperate his health. The Assessor however, refused his application and included this sum as a part of his income on the ground that the payment was a gratuity or bonus within the meaning of Section 6 (2) (a) which was wide enough to include all voluntary payments of whatsoever nature and that the reason for payment or the object to which it is to be applied is immaterial.

[128] The Board of Review dismissed the Appeal holding that the said sum was a bonus or gratuity under Section 6 (2) (a) and that it was not exempt from taxation under Section 7 (1) (k) of the Ordinance. The point for decision was whether the payment to the Appellant can be regarded as "profits from any employment" within the meaning of Section 6 (2) (a) of the Ordinance

[129] Allowing the Appeal, the Supreme Court held that (i) the payment of Rs. 10,000/- was a personal gift and could not be regarded as profits from any employment within the meaning of Section 6 (2) (a) of the Income Tax Ordinance; and (ii) the long service rendered by the appellant to the Commissioner was the motive, but not the consideration, for the payment. Rejecting the arguments of the Respondent that the guiding factor should be the actual word "special bonus" used in the resolution authorising the payment, the Court held that the Appellant should not be penalised for the choice of a word "special bonus", whether it be deliberate or accidental, by the party making the payment.

General Principles

[130] Before embarking upon a discussion on the applicability of the said judgment to the facts of this case and the exemption under Section 13 (f), it is necessary to refer to the general principles that are applicable to the determination of the nature of payment received by the Appellant to be treated as income chargeable to tax.

(i) Nature and quality of payment

[131] The test is that in determining whether this payment amounts to a return for loss of income or profits or gains liable to income tax, one must have regard to the nature and quality of the payment. The relevance must

be attached to the nature of the receipt in the hands of the person who receives the payment.

(ii) Extent of the Payment or words used in documents used by the payer

[132] The other principle is that as a general rule, the fact that the amount involved was large or small or that it is described as "pay" or "remuneration" or "bonus" (*Crab v. Commissioner of Income Tax*, (supra), or "compensation" etc. has no decisive nature in determining the quality of the payment received by the recipient.

(iii) Periodicity of the payment

[133] The other principle is that as a general rule, the periodicity of the payment does not make the payment a recurring income. To constitute income, profits or gains, however, there must be some source from which the payment in question must arise and connection must clearly exist between the receipt of the payment and the source. If the payment was not received to compensate for a loss of office or employment, such payment cannot properly be described as income or profits or gains as commonly understood within the meaning of Section 4 (1). On the other hand, if the payment was received to compensate for a loss of profits or income in the hands of the Appellant, such payment can properly be described as income, profits or gains liable for tax.

(iv) Relevancy of Motive or intention of the contributors

[134] As to the contention that the motives or intention of the contributors, SLC is a relevant factor to decide the nature of the payment, it must be noted that the character or nature of the payment received cannot be solely determined in the choice of a word, whether it be deliberate or accidental, by the party making the payment (*Crab v. Commissioner of Income Tax*, (supra). It would be thus, unfair to bind the Assessee to the strict meaning of words authorizing the payment, which cannot be described as a special payment, gift or income or profits within the meaning of Section 2 or 4 of the Act.

(v) Voluntary payments made by reason of office or employment.

[135] The other principle is to consider whether the receipt can be described as income or profits from office or employment, or whether it is a capital payment as compensation for injuries under section 13 (f) or an addition to the remuneration for loss of earnings that fall within the meaning of section 4 (1).

Application of General Principles

[136] The first test as described, would be to decide the question: what was the quality of the payment from the point of view of the recipient? The nature or quality of payment cannot be decided on the basis of the words selected by the payer at his "whims and fancies" which cannot bind the payee (supra). The reason is that the nature or quality of the payment may vary according to the circumstances (*Commissioner of Income Tax, Hyderabad-deccan vs. Vazir Sultan and Sons* (1959 AIR 814). It must be, however, noted that in trying to ascertain the quality of the receipt of the payment (proper payment) and arriving at the proper conclusion, what the parties intended the sum to represent can be taken into consideration (*The Commissioner of Income Tax, Bombay v. E.D. Sheppard, d*ecided on: 12.12.1962 Civil Appeal No. 527 of 1961).

[137] The justification of this proposition is simple. It may not be possible to assess the quality of the payment without considering the different positions of the payer and of the payee. The ascertainment of the respective positions of the payee, for example, may help the payee to show that the payment granted was not what is stated in strict words used by the payer but it may well be that it was made for some entirely different account.

Whether the ankle injury occurred during the period of the Contract

[138] In the application of these principles, the first question is whether the ankle injury occurred during the period of the Players' Contract between the Appellant and the SLC. It is not in dispute that the Appellant as an outstanding and a skilful national cricketer who represented Sri Lanka both as a test, ODIs and T-20 cricket upon a contract offered by SLC. It is also not in dispute that the Term of contract between the Player and SLC was for a period of 1 year commencing on the first day of March each year and ending on the 28th day of February of the following year.

According to the documents available in the Tax Appeals Commission brief, the Appellant was contracted to SLC during the periods from 01.03.2006 to 28.02.2007 (pp 23-39), 01.03.2007 to 28.02.2008 (pp 151/224), 01.03.2008 to 28.02.2009 (298-314), 01.03.2009 to 28.02.2010 and 01.03.2010 to 28.02.2011.

[139] As per the letter of the Cricketers' Association (pp. 151/224), the Appellant was having a contract with SLC for the period from 01.03.2007 to 28.02.2008 and the said contract expired on 28.02.2008. The said payment of US$ 15,000 was made by SLC in response to the letter dated **09.08.2008** sent by the Secretary of the Cricketers' Association to SLC, which reflects the **purpose of the request** made to SLC from the point of the Appellant. It reads as follows:

> *"09.08.2008*
> *Mr. Duleep Mendis,*
> *Chief Executive Officer,*
> *Sri Lanka Cricket,*
> *37, Maitland Place,*
> *Colombo 12.*
> *Dear Duleep,*
>
> *Re: Lasith Malinga Central Contract*
>
> *We write to express our concern that the recent decision taken by SLC to not to award a contract to Lasith Malinga is unfair considering his outstanding contribution to Sri Lanka during the last contract period from 1 March 2007 to 29 Feb 2008.*
>
> *During the **last contract period from March 2007 to Feb 2008**, Lasith was an outstanding performer in Sri Lanka. He was one of the stars of ICC World Cup, taking 10 wickets in 8 matches and claiming a world record with four consecutive wickets. He was rated the 17th best bowler in the world **in March 2008 when the SLC contract expired** and last year, he claimed 40 ODI wickets in 25 one-day internationals at 24.22 and 20 wickets in seven Tests.*
>
> *His fitness record since making his debut has been excellent. This is his major injury Lasith has suffered in three-and-half years. Indeed, in the last year, he played more ODIs (25 out of a maximum of 30) than any other Sri Lanka bowler. **For three out of the five matches he was available for selection but was rested.** He missed just two games in the entire year because of an ankle injury.*

We'd like to stress that Lasith was injured while representing Sri Lanka. As a result of that injury, ***he has already lost match fees and tour payments*** *that in other countries like England and Australia that cover lost earnings for two years, he would be insured against.*

Our concern is that the decision to not offer Lasith a contract is not only unfair, but it could lead to disillusionment and disappointment at a time when he needs support and care from Sri Lanka Cricket. We need to protect and look after match-winners like Lasith or we risk losing their unique talents forever.

We urge you to request that the Interim Committee to reassess at their ***decision not to award Lasith a central contract*** *and consider instead what can be done to help get him back playing as soon as possible.*

After all, he did play for the country up to 02 days prior to the renewal of the new contract, which was in March 2008.

Graeme La Brooy,
Secretary"

[140] I shall now examine letter sent by SLC to the Cricketers' Association authorising the payment of US$ 15,000 to the Appellant in order to ascertain the motive that prompted SLC in authorising the said payment. It reads as follows:

"*19.09.2008*

Mr. Graeme La Brooy,
Secretary,
Sri Lankan Cricketers' Association
Taj Samudra Hotel,
25, Galle Face Centre Road,
Colombo 03.

Dear Graeme,

Lasith Malinga Central Contract

This refers to your letter dated 09.08.08 re subject captioned above.

The interim Committee of Sri Lanka Cricket at its meeting held on 16.09.08 noted the contents of your letter and decided to compensate Lasith Malinga by affording him US$ 15,000/-.

Thank you,
Yours Sincerely.

Duleep Mendis
Chief Executive"

[141] The wording of the letter issued by SLC, refers to a "compensation of US$ 15,000/-" without describing the purpose or object to which it was granted. Superficially, the choice of wording in not referring to the purpose and object of the payment in specific terms, may be deliberate or accidental by SLC that authorised the payment. It seems, however, that the words used in the SLC letter "The Interim Committee of Sri Lanka Cricket at its meeting held on 16.09.08 noted the contents of your letter" are self-explanatory.

[142] As noted, the language used in a document is not decisive and the question has to be determined by a consideration of all the attending circumstances described in paragraphs 126-131. Nevertheless, the language cannot be ignored altogether, but must be taken into consideration along with other relevant circumstances.

[143] As indicated in the letter of the Cricketers' Association, the Cricketers' Association has admitted the following crucial matters relevant to this case:

1. The Appellant was under a contract of employment with SLC for the period commencing from **01.03.2007 to 28.02.2008** and the said contract expired on **28.02.2008**.

2. The Appellant played more than 25 ODIs out of maximum 30 and for three out of the remaining five matches and he was available for selection, but was rested by the selectors and thus, he missed two matches due to an ankle injury occurred **during the contract period from 01.03.2007 to 28.02.2008;**

3. As a result of the injury, he has lost match fees and tour payments and in other countries like England and Australia, such lost earnings are covered for two years by insurance policies;

4. The Appellant did play a match for 2 days prior to the renewal date of the new contract on 01.03.2008.

[144] It is manifest that the Appellant had a contract of employment with the SLC from 01.03.2007 to 28.02.2008 and that the Appellant was injured while playing cricket during the said period from 01.03.2007 to 28.02.2008. The Cricketers' Association has admitted in the said letter that out of five matches, the Appellant was available for selection for three matches, but as he was rested, he missed two matches in the entire year (from 01.03.2007 to 28.02.2008) because of an ankle injury. It seems that the Appellant was not selected for few matches due to an ankle injury and admittedly, he lost match fees and tour fees during that period.

Purpose of the letter of the Cricketers' Association

[145] As noted, the contract for the period from 01.03.2007 to 28.02.2008 expired on **28.02.2008** and thereafter, the Appellant by letter dated **09.08.2009** sought to secure a new central contract from SLC as indicated in the letter of the Cricketers' Association. Mr. De Seram however, relied on the following words of the letter sent by the Cricketers" Association to SLC to indicate that the Appellant sought compensation for ankle injury:

> *"and consider instead what can be done to help get back playing as soon as possible".*

[146] It is crystal clear that the said letter including the words referred to by Mr. De Seram does not indicate whatsoever, that the Appellant sought any compensation from SLC for injuries sustained by him and his motive was clearly to secure a new contract with SLC. Had he intended to claim compensation for injuries from SLC, he could have easily asked for the same in the said letter sent by the Cricketers' Association to SLC.

[147] Mr. De Seram further relied on the letter issued by SLC on 18.09.2017 (p. 222) to contend that the said letter supports the position of the Appellant that SLC has admitted that the Appellant obtained medical treatment in Australia for his ankle injury sustained while playing cricket during the period 2008 to 2009. The fact that the Appellant sustained an ankle injury and received treatment in Australia is not disputed in the present case. A perusal of the said letter issued by SLC at the request of

the Appellant on **18.09.2017** however, reveals that this letter had been issued by SLC after a period of almost 9 years after the payment in question was made by SLC. There is nothing to indicate in the Tax Appeals Commission brief that the Appellant sought compensation for injuries from SLC at or about the time the payment in question was made by SLC.

[148] Mr. De Seram brought to our attention the section of the Manual of Income Tax issued by the Inland Revenue Department, which refers to the taxability of medical expenses met or incurred by an employer. He argued that the said Manual of Income Tax supports the position of the Appellant that the Appellant is entitled to claim the exception under Section 13 (f) of the Inland Revenue Act. The relevant section reads as follows:

> *"Medical benefits*
>
> *Medical expenses met or reimbursed by an employer are profits from employment, unless such expenses were incurred on account of injuries sustained by an employee in the course of carrying out his duties.*
>
> *Where an employer makes periodic contributions on behalf of an employee to a medical or health insurance scheme the value of the benefits is the amount of the contribution made each year. Where the employer makes a block contribution on behalf of all the employees, an employee is assessed on the actual amount of the expenses reimbursed under the scheme".*

[149] As the learned Senior State Counsel brought to our attention, the contract clearly provides that SLC shall insure the Player and shall provide the Player with a copy of the relevant policy as set out in clause 5.3 of the Contract (p. 302). It reads as follows:

> *"5.3 Insurance*
>
> *The SLC shall insure the Player and shall provide the Player with a copy of the relevant policy in Schedule V annexed hereto".*

[150] It is not in dispute that the Appellant being a national player having a contract with SLC was insured by SLC with a comprehensive surgical and hospitalization cover and therefore, he was entitled to receive compensation for his ankle injury and hospitalisation charges while being treated in Australia. Had he not received any compensation for his ankle

injury and hospitalisation charges either in Sri Lanka or in Australia, from the insurance policy, he could have easily informed SLC in the letter dated 09.08.2008 that he had not received any compensation in terms of the Insurance Policy. The Appellant never disputed at the hearing that he was not entitled to receive compensation from the insurance policy or that he never received any payment from the insurance policy for his ankle injury and hospitalisation charges in Australia.

[151] Under such circumstances, I am not inclined to agree with the submission of Mr. De Seram that the purpose of the letter sent by the Cricketers' Association was to seek compensation from SLC in respect of injuries sustained by the Appellant.

Whether the Payment was an income accrued to the Appellant from Employment

[152] It was also contended on behalf of the Appellant that the payment granted by SLC could not be regarded as a payment in consideration of services rendered to SLC under a contract of employment and therefore, it cannot be held to be assessable. The next question is to decide whether the payment in question was an income accrued to the Appellant from employment with SLC. The question whether or not the payment received by the Appellant was part of his contract of employment depends on the facts and circumstances of the case.

[153] As noted in paragraph 31, Section 4 (1) of the Inland Revenue Act, which relates to profits from any employment is not limited to profits received in the course of employment. This Section applies to a payment made in respect of past services or future services as well. It therefore applies to an emolument which is paid as an inducement to enter into a future contract of employment and to perform services in the future. This is consistent with the analysis that an emolument which is derived from being an employee or becoming an employee (*Shilton v. Wilmshurst (HM Inspector of Taxes*) (1991) BTC 66, at p. 4)).

[154] The result is that where an emolument is paid to, for being or becoming an employee in respect of past services or as an inducement to enter into employment and provide future services, then the emolument

is received from the employment. On the other hand, if an emolument is not paid as a reward for such past or as an inducement to enter into employment and provide future services, but for some other reason, such emolument does not receive from the employment (supra).

[155] In this context, the question is from the standpoint of the Appellant who received the said payment, whether it accrues to him as a past service to SLC or as an incentive or motivation or advance to enter into a future contract with SLC under which he would perform services for SLC.

[156] Now, reverting to the facts of this case, the Appellant was injured and therefore, not selected by SLC for certain matches during the term of the contract from 01.03.2007 to 28.02.2008 and as a result, the Appellant lost match fees and tour fees as indicated in paragraph 3 of the letter sent by the Cricketers' Association. As the contract was not renewed by SLC at the expiry of the period on 28.02.2008, the Appellant on **09.08.2008,** through the Cricketers' Association wrote to SLC seeking to secure **a new central contract** from SLC while also highlighting the loss of match fees and tour fees during the period he was injured from 01.03.2007 to 28.02.2008.

[157] On **19.09.2008**, SLC granted the sum of USD 15,000 to compensate the Appellant without any reference to the purpose of the payment except to refer to "Lasith Malinga's Central Contract" as the caption of the said letter, which has the same reference to the letter sent by the Cricketers' Association.

New Contract with SLC with effect from 01.03.2008 to 28.02.2009

[158] Significantly, the Appellant and SLC entered into a new central contract No. 122 in **November 2008** (without specifying the date) but the term of the contract stipulates that the contract shall be in force for a period of 12 months from **01.03.2008 to 28.02.2009** (Vide-Sri Lanka Cricket Players' Annual Contract 2008/2009, No. 122 at pp. 298-314 of the Tax Appeals Commission brief). Page 1 of the Contract reads as follows:

> ***"THIS AGREEMENT** is made and entered into at Colombo on this … day of November 2008 between Arjuna Ranatunga Chairman, Kangadaran Mathivanan Secretary Sujeewa Rajapakse, Treasurer, Sidath Wettimuni, Lalith Wickremasinghe, Premasara Epasinghe, Guy De Alwis, Ashok Pathirage and Aravinda De Silva, Members of the Interim Committee*

appointed by the Honourable Minister of Sports and Public Recreation ..... (hereinafter called and referred to as SLC) of the One Part ***and*** *Lasith Malinga of Bopegoda, Ratgama (hereinafter referred to as 'Player) of the Other Part...."*

[159] Paragraph 2 of the Contract at page 3 reads as follows:

"2. TERM

This agreement shall be in force for a period of Twelve (12) months commencing on the first ***(01st) day of March 2008*** *and ending on the* ***28th day of February 2009*** *(hereinafter referred to as "the Term').....".*

[160] There is no dispute that the Appellant entered into a contract with SLC for the period 2008/2009 and thus, the Appellant was contracted to SLC for the said period (see further p.15 of the written submissions filed on behalf of the Appellant). The significant aspect of this new contract is, however, that there is a close connection between the payment of USD 15,000 granted to the Appellant on **19.09.2008** and the contract fee of Rs. 60,000 agreed by the parties in the said contract signed in November 2008.

[161] In the Annual Contract for the period from **01.03.2008 to 28.02.2009**, SLC agreed to pay the Appellant an annual contract fee equivalent of US$ 60,000/- for the entirety of the term (12 months) **but deducted the said US$ 15,000/- already granted to the Appellant from the contract fee of US$ 60,000/-** as indicated in clause 4.3. of the contact as follows:

"4.3 *Deductions from payments*

USD 15,000/- which SLC have been already given to you will be deducted from the contract fee of USD 60,000/-"

It is to be noted that the obvious typographical errors in clause 4.3 above shall, in my view stand corrected as "SLC has already given to you").

[162] It is crystal clear that the payment of US$ 15,000/- was granted on **16.09.2008** in response to the letter dated **01.09.2008** in which the Cricketers" Association first complained about the unfair denial of a new contract to the Appellant from 01.03.2008 to 28.02.2009. Then the Association appealed to SLC to reassess the decision not to award a central

contract to a match winning outstanding Cricketer so as to enable him to play Cricket as soon as possible (paragraphs 5 and 6).

[163] After the payment of US$ 15,000 was granted by SLC to the Appellant on **19.08.2008**, SLC proceeded to enter into the new central contract with the Appellant in **November 2008** covering the entire period from 01.03.2008 to 28.02.2009 as requested by the Appellant in the said letter dated **09.08.2008** but deducted the said sum of Rs. 15,000/- from the contract fee of USD 60,000. The Appellant as the Player and Mr. K. Mathivanan and Mr. Duleep Mendis, Secretary, Interim Committee and the Chief executive of SLC on behalf of SLC signed the said Contract in the presence of two witnesses at Colombo.

[164] Why did the Appellant agree to deduct the said sum of USD 15,000 granted to him by SLC on 19.09.2008 if it was granted to him only as compensation for injuries sustained by him which is not an emolument received from the employment contract? Why did SLC deduct USD 15,000 from the contract fee of USD 60,000 referred to in the new contract unless USD 15,000 was a payment made to the Appellant as an inducement or advance to enter into a future contract of employment and perform services in the future? If the said sum of USD 15,000 was intended to be a payment for compensation for injuries as claimed by the Appellant, there was absolutely no reason for the parties to refer to the said payment as part of the new employment contract signed in November 2008, deduct the said payment from the contract fee and agree that the term of the contract will be effective from 01.03.2008 to 28.02.2009.

[165] The Appellant who agreed to deduct USD 15,000 from the contract fee of USD 60,000 for the period from 01.03.2008 to 28.02.2009 on the basis that the said USD 15,000 was already paid to him by SLC cannot now blow hot and cold and invite us to hold that the said payment was not a part of the new central contract with SLC for the period from 01.03.2008 and 28.02.2009.

[166] The result is that the Appellant and SLC regarded that the payment of USD 15,000 was part of the earning of the Appellant's contract of employment for the period from 01.03.2008 to 28.02.2009 and thus, from the standpoint of the Appellant, it was an emolument from his contract of

employment and part of the contract fee of USD 60,000. Thus, it was not a mere compensation for injuries as he claimed by the Appellant.

Deduction of Withholding Tax by SLC from USD 15,000

[167] As noted in paragraph 112, the use of the word "compensation" in a document authorising payment by a payer in his own selection is not decisive and thus, the question whether a payment which is termed as "compensation" by the payer in his own selection is a capital payment or a revenue payment solely depends on the facts and circumstances of particular case.

[168] Details of payments from 01.04.2008 to 31.03.2009 issued by the Accountant of SLC in respect of the Appellant as indicated at p. 158 of the Tax Appeals Commission read as follows:

LASITH MALINGA

DETAILS OF PAYMENTS FROM 01.04.2008 TO 31.03.2009

Date of Payments	Cheque No.	Description	Rs. Payments	WHT Deducted
22-Sep-2008	758986	Compensation National Player	1,609,500.00	80,475.00
2-Dec-2008	697533	Contract Fee 25%-3rd Instalment-1/3/08-28/2/09	2,169,762.00	108,488.10
17-Feb-2009	574977	Dilma Sponsorship Fee (1/10/07 to 30/09/08)	472,986.77	23,649.34
18-Mar-2009	549899	Match Fees-National Team Players-Indian Tour 09	153,900.00	7,695.00
24-Mar-2009	549975	Contract Fee 25%-Final Instalment- 1/3/08-28/2/09	1,898,262.00	94,913.10
			6,304,410.77	315,220.54

[169] The table reveals that SLC has deducted a sum of Rs. 80,475/- as withholding tax out of the said USD 15,000 (Rs. 1,609,500/0) received by the Appellant from SLC on the basis that the said payment was part of the employment income of the Appellant together with contract fees and match fees referred thereof.

[170] In *Craib v. Commissioner of Income Tax* (supra), a special payment was granted to a retired Superintendent of an Estate in view of his exceptional services to the Company and in consideration of the fact that he had to undergo medical treatment at Home. Under such circumstances, the

Supreme Court held that the payment was a personal gift and could not be registered as profits from any employment within the meaning of the Income Tax Act.

[171] In the present case, no question of premature termination of contract or premature retirement of the Appellant arises due to injuries as a new annual contract was granted by SLC to the Appellant with effect from 01.03.2008 to 28.02.2009 but both parties agreed that the said payment of US$ 15,000 was to be regarded as part of the employment contract for the said period.

[172] Applying the principles enunciated and the facts and circumstances of the case, I am not inclined to agree with Mr. De Seram that the amount was paid as a capital sum as compensation for injuries to the Appellant as envisaged by Section 13 (f) of the Inland Revenue Act. The Tax Appeals Commission correctly decided that the said payment of USD 15,000 (Rs. 1,609,500) will not fall under Section 13 (f) of the Inland Revenue Act. In the result, the said amount of USD 15,000 (Rs. 1,609,500/-) is an income within the meaning of the judicial definition of income referred to in *Thornhill v. Commissioner of Income Tax* (supra).

[173] I am of the view that the said payment of USD 15,000 was granted by SLC to the Appellant being a prospective employee as an advance or inducement to enter into a contract of employment with SLC and perform services in the future, which the Appellant did and included the said payment as part of the contract fee for the period from 01.03.2008 to 28.02.2009. It constitutes an income from employment within the meaning of Section 4 (1) of the Inland Revenue Act. Accordingly, the Appellant and SLC entered into the new contract of employment in November 2008 for the period from 01.03.2008 to 28.02.2009, deducted the said USD 15,000 from the contract fee of USD 60,000 and performed the services as an employee under the said contract of employment. The said amount of USD 15,000 is an income accrued to the Appellant from employment under Section 4 (1) of the Inland Revenue Act and therefore, is assessable to income tax as correctly decided by the Assessor in the assessment.

[174 That payment of USD 15,000 is not limited to mere loss of income as a rest player as stated by the Tax Appeals Commission and that part of the

finding of the Tax Appeals Commission shall stand corrected. The Tax Appels Commission however, correctly decided that the said payment of USD 15,000 was not compensation for the injury suffered by the Appellant and therefore, the said payment will not fall under Section 13 (f) of the Inland Revenue Act.

Conclusion & Opinion of Court

[175] In these circumstances, I answer Questions of Law arising in the case stated against the Appellant and in favour of the Respondent as follows:

1. No. The Tax Appeals Commission correctly decided that the sum of Rs. 1,609,500/- does not come within the exemption set out in Section 13 (f) of the Inland Revenue Act. It was a payment granted to the Appellant as an advance or inducement to enter into a contract of employment and perform services in the future, which the Appellant did and included the said payment as part of the contract fee. It is an income accrued to the Appellant and received from employment;

2. No. The contract fees paid to the Appellant in respect of the matches played in Sri Lanka are not determined on the basis of the number of matches played by the Appellant in Sri Lanka and therefore, the contract fees paid to the Appellant do not fall within the purview of Section 13 (v) of the Act. Match fees derived by the Appellant from the participation as competitor in respect of matches held in Sri Lanka and at which competitor from outside Sri Lanka participated, are exempted from income tax under Section 13 (v) of the Act. The Assessor has granted such exemptions accordingly (see-pp258-259)

   Match fees received by the Appellant from provincial matches played in Sri Lanka do not involve a foreign competitor from outside Sri Lanka and such match fees do not fall within the scope of the exemption under Section 13 (v). They are liable to income tax and the Assessor has correctly taken the same position.

3. Contract fees and match fees paid to the Appellant for services rendered to the SLC in respect of matches held overseas in the

course of his employment under the contract with SLC are not exempted from income tax under Section 8 (1) (j) of the Inland Revenue Act;

4. The amount of Rs. 1,609,500/- is an income from employment within the meaning of the judicial definition of income referred to in *Thornhill v Commissioner of Income Tax* (supra);

5. No, the answers to above questions of law Nos. 2 and 3 applies;

6. No, subject to the above answers.

[176] For the reasons enumerated in this judgment, and subject to our observations in paragraphs 43-45 and 174 of this judgment, we confirm the assessment determined by the Tax Appeals Commission dated 07.05.2019.

[177] 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