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

In the matter of an appeal by way of Stated Case on a question of law for the opinion of the Court of Appeal under and in terms of Section 11A of the Tax Appeals Commission Act, No. 23 of 2011 (as amended).

Hotel Yapawwa Paradise (Private) Ltd,
Kindom Road,
Yapahuwa,
Maho.

APPELLANT

CA No. CA/TAX/0001/2018
Tax Appeals Commission No. TAC/VAT /003/2015

v.

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 : Riad Ameen for the Appellant.

Amasara Gajadeera S.C., for the Respondent.

WRITTEN SUBMISSIONS	:	22.10.2018 & 22.04.2022 (by the Appellant) 22.10.2018 & 21.04.2022 (by the Respondent)
ARGUED ON	:	18.01.2022 & 10.02.2022
DECIDED ON	:	27.05.2022

M. Sampath K. B. Wijeratne J.

Introduction

The Appellant is a limited liability company incorporated in Sri Lanka. Its principal business activities are related to hotel and tourist industry.

The Appellant submitted its Value Added Tax (hereinafter referred to as 'VAT') returns for the quarterly periods from 1st January 2011 to 31st March 2011 (11030) and the Assessor did not accept the same on the ground that the Appellant has made a taxable supply under the VAT Act No. 14 of 2002, as amended, (hereinafter referred to as 'the VAT Act') by disposing a building. Accordingly, an assessment was issued to the Appellant Company. The Appellant appealed to the Commissioner General of Inland Revenue (hereinafter referred to as 'CGIR') against the said assessment and the CGIR confirmed the assessment by his determination.

Being aggrieved by the said determination, the Appellant appealed to the Tax Appeals Commission (hereinafter referred to as 'TAC') in accordance with Section 7 of the TAC Act No. 23 of 2011, as amended (hereinafter referred to 'the TAC Act').

The TAC by its determination dated 12th September 2017, dismissed the appeal and confirmed the CGIR's determination.

The Appellant then in accordance with Section 7 of the TAC Act moved the TAC to state a case on the following questions of law for the opinion of this Court.

i. **Did the Commission contravene the rules of natural justice by failing to give an opportunity to the Appellant to respond to the Respondent's written submission?**

ii. **As a matter of Law can a building situated on land be disposed by way of a book entry recorded in the annual accounts of a company?**

iii. **Did the Commissioner~~r~~[1] err in law in concluding that there was a disposal of building (situated on law)[2] based only on an entry in the annual accounts of the appellant in the absence of any other evidence of such disposal?**

iv. **Was the appellant the owner of the building?**

v. **Is it only owner of a building who can claim depreciation allowance for the purpose of income tax?**

vi. **As a matter of Law could the Appellant be treated as the owner of a building only on the basis that the Appellant claimed depreciation allowances for the purpose of income tax?**

vii. **Did the Commissioner~~r~~ err in law when it concluded that the building has been transferred by the Appellant (in terms) to the Ayurveda, Kurklink Maho (Pvt) Ltd?**

viii. **Can the making of a book entry in the annual account constitute a supply of a building by the Appellant in terms of the Value Added Tax Act No. 14 of 2002?**

ix. **In any event, does a disposal of building constitute a supply made in the course of carrying on or carrying out a taxable activity?**

x. **Was there a taxable supply made by the appellant in relation to a supply of the said building during the Taxable period of 1st January to 31st march 2011?**

xi. **Did the Commissioner err in law in failing to determine the appeal within the time period stipulated by law?**

[1] Since the word 'Commissioner' in questions No. (iii) & (vii) is inappropriate and not in conformity with the questions suggested by the Appellant (at page 229 of the appeal brief), the said word is corrected as 'Commission'.

[2] Since it appears that there are typographical errors in questions No. (iii) & (vii), those words are enclosed in brackets.

It was agreed at the argument that, of the above eleven questions of law, questions one, nine and eleven need not be decided by this Court. After examining questions 2 to 8 and 10, I am of the view that these questions are interrelated and can therefore be addressed together.

Factual background

The Appellant company, Hotel Yapawwa Paradise (Private) Limited (hereinafter referred to as 'the Appellant') operated a hotel named Hotel Yapawwa Paradise in a building constructed on a land owned by Ananda Simon Pattiya and leased to Ayurveda Kurklinik Maho (Private) Limited (hereinafter referred to as 'Kurklinik (Pvt) Ltd') for a period of fifty years from 15th May 2001 to 15th May 2051 by Lease Agreement No.2318 dated 15th May 2001 attested by Padmini H. Wehella, Notary Public[3]. According to the recital of the lease, the lessor has got his title upon Deed of Transfer No. 1987 dated 7th September 1988, attested by the same Notary who attested the lease agreement. It is further recited that the indenture of lease is executed upon permission granted by the Divisional Secretary, Maho, by his letter dated 9th May 2001. Hence, it appears that the leased land is a state land alienated under the Land Development Ordinance.

As it was submitted by the learned Counsel for the Appellant, Werner Simon is the chairman and a shareholder of both the Appellant company and Kurklinik (Pvt) Ltd. His adopted child Ananda Simon Pattiya, the lessor, was a director and a shareholder of both companies. The learned Counsel for the Appellant submitted that in consequent to the execution of the lease agreement, Kurklinik (Pvt) Ltd constructed the hotel building with the funds provided by Werner Simon[4].

However, in the audited accounts of the Appellant for the year ended on the 31st March 2010, the hotel building was shown as an asset of the Appellant[5]. A similar entry is in the audited account statement for the year ended on the 31st March 2008 as well[6]. The Appellant submitted that the above entries are incorrect since the Appellant is not the legal owner of the building. According to the Appellant, it was an accounting error.

The Respondent challenged the Appellant's position and contended that it was the Appellant who constructed the building. Attention of Court was

[3] At page 134 of the appeal brief
[4] *Vide* paragraph 25 of the written submissions filed by the Appellant on 22-10-2018
[5] At page 168 of the appeal brief
[6] At page 200 of the appeal brief

drawn to the entry in the same audited accounts for the year ended on the 31st March 2010 where an amount analogous to the value of the hotel building is shown as a loan from Kurklinik (Pvt) Ltd[7]. A similar entry is in the audited account statement for the year ended on the 31st March 2008 as well[8].

In reply, the learned Counsel for the Appellant, assuming without conceding, submitted that even if the building was constructed by the Appellant, since it doesn't have soil rights it will get only a servitude right, *ius superficiarium*.

The hotel was completed in 2008 and the Appellant commenced its operations in the same year. On the 8th August 2011, the Board of Directors of Kurklinik (Pvt) Ltd, on legal advice, resolved that Ananda Simon Pattiya is the legal owner of the land and that the hotel building has been financed by Kurklinik (Pvt) Ltd, the lessee of the lease hold land. Accordingly, the accounting book entries of both the Appellant and Kurklinik (Pvt) Ltd were corrected[9]. In consequent to the corrections made to the accounting entries, the hotel building which was declared as an asset of the Appellant company in the previous accounting statements was no longer an asset of the Appellant company in the balance sheet and the loan balance due to Kurklinik (Pvt) Ltd was also dropped correspondingly[10].

Matters in dispute

The Assessor, based on the audited accounts for the year 2010/2011 made his assessment on the ground that the Appellant has transferred the hotel building in satisfaction of a debt owed to Kurklinik (Pvt) Ltd[11]. It was also stated that the Assessor, before making the assessment, has requested the details of disposal of assets by his letter dated 26th March 2012, but the Appellant failed to submit them[12]. Therefore, the Assessor has proceeded to issue a VAT assessment for the taxable period from 1st January 2011 to 31st March 2011 (11030) based on the audited statement of accounts of the Appellant.

[7] At page 166 of the appeal brief
[8] At page 199 of the appeal brief
[9] At pages 60, 62, 63, 66 and 126 of the appeal brief
[10] At pages 62 and 63 of the appeal brief
[11] *Vide* item 2 of the Written Submissions of the Respondent at page 108 of the appeal brief and paragraph 17 of the Written Submissions filed in this court.
[12] Item 4 of the Written Submissions at page 108 of the Appel brief

The Appellant contended that although it is stated in the Appellant's corrected statement of accounts that the building had been transferred to Kurklinik (Pvt) Ltd[13], mere correction of accounts does not constitute a supply of goods within the VAT Act. It was also submitted that the hotel building being an immovable property can only be legally transferred by a notarial executed deed.[14] In support of its contention, Respondent cited *Ceylon Estate Agency and Warehousing Co. Ltd. v. N. St. C.H. De Alwis*[15] wherein it was observed that, '*it is settled law that the mere use of a descriptive term cannot affect the reality of a transaction'.* In *De Silva v. De Silva*[16] Hearne J., observed that *'……no matter what name or designation the parties give to a contract or transaction, the Court will inquire into the substance of the transaction and give effect to what it finds its true substance or nature to be.'* Accordingly, the learned Counsel for the Appellant argued that tax has to be imposed on the substance of the transaction and not merely on the form in which it may appear in a document.

In reply the Respondent contended that the Appellant has claimed depreciation allowance under Section 25 (1) of the Inland Revenue Act No. 10 of 2006 (hereinafter referred to as 'the IR Act') during the years of assessment 2008/ 2009 and 2009/2010. The learned State Counsel for the Respondent submitted in his written submission[17]that to claim capital allowance under Section 25 (1) (a) of the IR Act, two conditions have to be met *i.e.*, that the asset should be owned by the person or the company and that the asset should be used in any trade, business, profession or vocation carried out by the person. It was submitted that by claiming the depreciation allowance for two years of assessment, the Appellant is estopped from denying its ownership of the building. However, it appears that the Respondent, CGIR, has taken a contrary view in his determination that ownership of a building is not a requirement to claim capital allowance on qualified buildings[18].

[13] At pages 60 and 62 of the appeal brief
[14] Section 2 of the Prevention of Frauds Ordinance
[15] 70 N.L.R. 31 at p. 35
[16] 39 N.L.R. 169 at p. 171
[17] At paragraph 24
[18] At page 99 of the appeal brief

The TAC, in its determination, observed that no one without an ownership in a property can make a claim for depreciation allowance and the very fact of making the claim itself proves that the Appellant had an ownership[19].

Statutory provisions

I will advert to the above issue as to whether only an owner of a building could claim depreciation allowance by referring to the relevant statutory provisions.

Section 25 (1) (a) of the IR Act reads thus;

> *25 (1) (a) an allowance for depreciation by wear and tear of the following assets acquired, constructed or assembled and arising out of their use by such person in any trade, business, profession or vocation carried on by him-*

The entitlement to depreciation allowance for buildings is set out in Section 25 (1) (a) (v) which reads as follows:

> *25 (1) (a) (v) any **qualified building**, any unit of a condominium property acquired and which is approved by the Urban Development Authority established by the Urban Development Authority Law, No. 41 of 1978, and constructed to be used as a commercial unit or any hotel building (including a hotel building complex) or any industrial building (including any industrial building complex) acquired from a person who has used such buildings in any trade or business, at the rate of six and two third per centum per annum, on the cost of construction or cost of acquisition, as the case may be:* (emphasis added)

Section 25 (7) (e) defines *qualified building* to mean *'a building constructed to be used for the purpose of a trade, business, profession or vocation, other than to be used as a dwelling house by an executive officer employed in that trade, business, profession or vocation.'*

Section 25 (1) (a) set out the general rule of deductions and the specific rules are set out in sub sections (i) to (vi) of the same Section.

Accordingly, a building constructed to be used for the purpose of business qualifies for the depreciation allowance.

[19] At pages 5 of the TAC determination

Meaning of the expression "constructed"

The question then arises as to whether the allowance is allowed to the owner who constructed the building or to any person who constructed the building. To resolve this issue, the word 'constructed' used in the IR Act needs to be scrutinized. On the same words in the same statute, Bindra states that[20]:

'*It is an ordinary canon of interpretation that a word keeps the same meaning at least throughout in any Act,[21] and, as far as possible, the same meaning ought to be given to that expression.[22] It is well established that in order to interpret a term in a particular legislation its use in the same legislation in another provision is the best clue for interpretation.*'

The word 'constructed' is used in six instances in Section 25 of IR Act No. 10 of 2006. More importantly, in Section 25 (1) (a) (iv) the word 'constructed' is used in two instances which reads as follows:

> *25 (1) (a) (iv) 'any bridge, railway track, reservoir, electricity or water distribution line and toll roads* ***constructed by such person or acquired from a person who has constructed such assets****, at the rate of six and two third per centum per annum, on the cost of construction or cost of acquisition, as the case may be.'* (emphasis added)

In terms of aforementioned sub section, two categories of persons are entitled to the depreciation allowance. One is the person who did the specified construction and the other who acquired it from the person who constructed the assets. On a careful consideration of the above subsection, it seems to me that the second category of persons will be entitled to the allowance only if they have acquired *"assets"* from a person who has constructed them.

[20] N. S. Bindra, *Interpretation of Statutes*, Eighth Edition, 1997. at pp.266, 267

[21] Bindra, citing [*In re* Acting Advocate-General, AIR 1932 Bom 71, 77 (FB); Kekra v. Sadhu, 23 IC 238; Emperor v. Makunda, 8 Cr LJ 18: 4 N.L.R. 78; Ajit Kumar Mukherjia v. Chief Operating Superintendent, EIR, Calcutta, AIR 1953 Pat 92; Balakrishna Murthy v. Somhyya, AIR 1959 Andh Pra 186, 192 (Ranganadham Chetty, J.), Shabuddin Sheik v. J. S. Thekor, AIR 1969 Guj 1 (FB)]

[22] Bindra, citing [Lal Chand v. Radha Kishan, 1977 Cur LJ (Civil) (SC) 57. W. B. Headmasters' Association v. Union of India, AIR 1983 Cal 448.]

The *Black's Law Dictionary*[23] defines the word *"asset"* as *'an item that is owned and has value'.*

Therefore, it is clear that the second class of persons who would be eligible for the benefit under section 25(1)(a)(iv) is a person who acquires the construction from its owner. Therefore, it is clear that the intention of the legislature is that the first class of persons who carry out the construction should also own it.

From the above analysis, I conclude that it is the owner of a building constructed for business purposes who is eligible for the depreciation allowance.

The learned State Counsel, citing *Attorney General v. Herath*[24], submitted that the Appellant has fulfilled the attributes of ownership, namely, (i) the right to possession and right to recover possession (ii) the right of use and enjoyment; and (iii) the right of dispossession.

On the other hand, the learned State Counsel cited from *Kanga & Palkhivala's* work on '*The Law and Practice of Income Tax'*[25] wherein it is stated that in determining ownership for depreciation allowance, Tax Court is not guided by the concept of ownership in the strict sense of property law.

She cited the decision of the Indian Supreme Court in the case of *Mysore Minerals v. CIT*[26] wherein it was observed that *'the terms "own", "ownership" and "owned" are generic and relative terms; that they have a wide and also a narrow connotation, and the meaning would depend on the context in which the terms are used:*

"……anyone in possession of property in his own title exercising such dominium over the property as would enable others being excluded therefrom and having the right to use and occupy the property or to enjoy its usufruct in his own right would be the owner of the building though a formal deed of title may not have been executed and registered….."

I am mindful that the Indian authorities are not binding on our Courts. The statutory provisions of the two jurisdictions are also not identical. Yet, this could serve as a guideline in arriving at our own conclusion on the

[23] Ninth Edition, WEST. A Thomson Reuters business
[24] 62 NLR 145
[25] Eleventh Edition Vol. 1 p. 878, 2020, Lexus Nexis
[26] 239 ITR 775

application of tax principles. In the aforementioned judgment, the Indian Supreme Court considered Section 32 (1) of the Indian Income Tax Act, where it is expressly provided that depreciation allowance is allowed in respect of property *"owned"* by the assessee, in whole or in part. In that case, the Supreme Court of India gave a liberal interpretation to the specific word *"owned"*, for revenue purposes.

In this case, the lease exists between the landlord, Ananda Simon Pattiya, and Kurklinik (Pvt) Ltd. It is evident from the terms of the lease agreement that the lessee, Kurklinik (Pvt) Ltd, is permitted to construct permanent or semipermanent buildings on the land. The lessee has agreed to deliver up and surrender the premises to the lessor at the expiration or other sooner determination of the term of the lease, without any reservation. It is settled law that a lessee cannot even claim compensation unless it is expressly stipulated for its payment.

Therefore, it is Kurklinik (Pvt) Ltd which could exercise the dominium on the property during the term of operation of the lease and not the appellant holding under the lessee. Consequently, even under a liberal rule of interpretation, the appellant cannot be regarded as the owner of the immovable.

On the other hand, even if the appellant built the hotel building, he does not have soil rights of the land on which it is built. As a result, he is not entitled to the building. His rights, if any, being a *bonafide* possessor is the right to compensation in respect of the buildings, against the owners of the land. In ordinary circumstances at this instance the maxim *quicquid plantatur solo solo cedit* (which is affixed to the soil goes with the soil) should apply.

However, as it was correctly submitted by the learned Counsel for the Appellant, there is an exception to the above rule, the servitude of *ius superficiarium*. The essence of the concept is an interest in a building, apart from the land on which it stands. The agreement between the landowner and the person who acquires the right, is the foundation of the *ius superficiarium*. In *Ahamado Natchia v. Muhamado Natchia*[27] Layard C. J., observed '*the right is acquired and lost like immovable property, and is even presumed to be granted, when the owner of the ground permits another to build thereupon. The right can be alienated…'.* Maasdorp in

[27] 9 N.L.R. 331, The Law Property in Sri Lanka, Volume one, by Professor G.L. Peiris

'*Introduction to Grotius'*[28] translated the text of *Grotius* 2.46 to read as '*the ius superficiarium is presumed to be granted when the owner of the ground allows another person to build on his ground'*

In the aforementioned case of *Ahamado Natchia v. Muhamado Natchia*[29] Lascelles C.J., made the following observations in his Lordship's judgment regarding the above text of *Grotius*;

'*it is true that the passage from Grotius contemplates the possibility of the agreement being inferred from the fact that the owner permits another to build on his land. But, in my opinion, it is only in exceptional cases that such an inference could be made safely. In my opinion, claims to a right of superficies should not be allowed, unless the agreement between the parties is clearly demonstrated. To sanction laxity of proof in this respect would be to expose proprietors of house property to serious danger from claimants alleging that some former owner has permitted them or their ancestors to build on his land'*[30]

Accordingly, in the aforementioned case, *ius superficiarium* was not allowed on the basis the agreement lacked sufficient clarity.

In *Samarasekera v. Munasinghe* [31] Gratiaen J., observed that '*the ius superficiarium is a servitude which can without doubt be created in Ceylon by notarial grant; similarly, once acquired, it can be alienated by notarial conveyance…'*

From the above analysis, it is clear that the *ius superficiarium* has to be created by an agreement between the soil owner and the builder. Although it could be created by prescription there is no such claim in the instant case.

On the other hand, as it was submitted by the learned Counsel for the Appellant, even it is assumed that such right is created, it could have been transferred by the Appellant to Kurklinik (Pvt) Ltd only by a notarial conveyance.

In view of the above analysis, it is my considered view that the Appellant is not entitled to claim depreciation allowance. Further, allowing depreciation allowance does not amount to recognition of ownership. If

[28] P 278
[29] *Supra* note 24, at p. 332
[30] At p. 332
[31] 55 N.L.R. 558

depreciation allowance is wrongly allowed, it is a matter for the CGIR to rectify it.

Chargeability of VAT

Next, I will advert to the most important issue as to whether there was *supply of goods* by the Appellant in respect of the building. The chargeability of VAT is stipulated in Section 2 (1) of the VAT Act which reads thus:

> '*2 (1) Subject to the provisions of this Act, a tax, to be known as the Value Added Tax (herein after referred to as 'the tax') shall be charged-*
>
> *a) at the time of supply, on every taxable* ***supply of goods*** *or services, made in a taxable period, by a registered person in the course of the carrying on, of carrying out, of a taxable activity by such person in Sri Lanka.'*
>
> *b) (...)*
>
> *(2) (...)*
>
> *(3) (...)*

Section 83 of the VAT Act interprets the terms '*supply of goods*' to mean '*the passing of exclusive ownership of goods to another as the owner of such goods or under the authority of any written law and includes the sale of goods by public auction, the transfer of goods under a hire purchase agreement, the sale of goods in satisfaction of a debt and the transfer of goods from a taxable activity to a non-taxable activity;'*

As it has been already observed above in this judgment, there isn't any evidence to the effect that the Appellant has any sought of ownership of the building. Therefore, it is obvious that the Appellant doesn't have an ownership to be transferred to Kurklinik (Pvt) Ltd.

During the argument, the learned State Counsel also placed reliance on the definition 'supply of goods' in Section 83 of the VAT Act which includes '***sale of goods*** *in satisfaction of a debt'*. It was argued that as it appears from the accounting entries, the Appellant has transferred the building to Kurklinik (Pvt) Ltd in satisfaction of a debt which satisfies the requirement of supply of goods under the VAT Act. However, notably satisfaction of a

debt alone will not amount to supply of goods. It should be a sale of goods in satisfaction of a debt. As I have already observed above in this judgment, the Appellant has no right to the building to sell it to Kurklinik (Pvt) Ltd. Hence, in my view, the aforesaid argument of the learned State Counsel has no merit.

The next matter for consideration is whether the alleged disposal of building constitutes a supply made in the course of carrying on or carrying out a taxable activity.

According to Section 2 (1) (a) of the VAT Act, VAT could be imposed on a registered person;

i. in the course of;
ii. the carrying on, or carrying out of;
iii. a taxable activity

The words '*carrying on*' and '*carrying out*' are not defined in the Act. Therefore, those words have to be given their ordinary grammatical meaning. In terms of Article 23 (1) of the Constitution, all laws in Sri Lanka are enacted and published in the Sinhala and Tamil languages, together with an English translation. If there is an inconsistency between the Sinhala and Tamil texts, the Sinhala text shall prevail. Hence, it would be important to examine the Sinhala text for the aforementioned words '*carrying on*' and '*carrying out*'. The Sinhala text reads 'කරගෙන යාමේදී' (carrying on) and 'කිරීමේදී' (carrying out). Upon a careful consideration of the above terms, it appears to me that even a single taxable activity is captured under the term 'කිරීමේදී' (carrying out).

However, in the case of *Customs & Excise Commissioners v Morrison's Academy Boarding Houses Association*,[32] the words '*in the course of*' have been interpreted as follows:

"*The use of words in the course of suggests that the supply must be not merely in sporadic or isolated transaction but continued over an appreciable tract of time and with such frequency as to amount to a recognizable and indefinable activity of the particular person on whom the liability is to fall.*"

[32] [1978] STC 1, at p.8

It is clear that the transfer of the building as it appears in the statement of accounts is an isolated or sporadic act.

The next matter is whether the alleged transfer of the building is a '*taxable activity*'. The word '*taxable activity*' found in Section 2 (1) (a) has been defined in Section 83 of the VAT Act, which reads thus;

> *"taxable activity" means –*
>
> *a) any* ***activity carried on as a business, trade****, profession or vocation other than in the course of employment* ***or every adventure or concern in the nature of a trade*** (emphasis added)*;*
> *b) (…)*
> *c) (…);*

It is important to note that the definition of a taxable activity in the VAT Act includes not only any activity carried on as a business or trade, but also *every adventure or concern in the nature of a trade*. Hence, it need not be a business or a trade alone. Any act in the nature of a trade is also captured under the definition. This gives the term 'taxable activity' a very broad definition. Yet, in my view, in the instant case, the transfer of the building appearing in the accounting entries is not an activity carried on as a business or trade or an adventure or concern in the nature of a trade.

Accordingly, even if it is assumed that there was a transfer of the hotel building, there was no taxable supply of goods under the VAT Act.

Conclusion

For the reasons set out above, I hold that the TAC erred in law when it arrived at the conclusion that it did.

I, therefore, answer the questions of law in the following manner.

I. As agreed between the parties, an answer is not required.

II. **No.** There was no taxable supply of goods under the VAT Act.

III. **Yes.** TAC erred in concluding that the building was transferred based on an entry in the account statement.

IV. **No.** The appellant has no dominium over the property.

V. **Yes.** Any person entitled to use and occupy the property or to enjoy its usufruct as of right would be the owner for revenue purposes.

VI. **No.** Claiming the depreciation allowance will not give rise to an inference of ownership, particularly when it is improperly claimed.

VII. **Yes.**

VIII. **No.**

IX. As agreed between the parties, an answer is not required.

X. **No.**

XI. As agreed between the parties, an answer is not required.

In light of the answers given to the above questions of law, acting under Section 11 A (6) of the TAC Act, I annul the assessment determined by the TAC.

The Registrar is directed to send a copy of this judgment to the Secretary of the TAC.

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando J.

I Agree.

JUDGE OF THE COURT OF APPEAL