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

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

CEI Plastics Limited,
108, W.A.D. Ramanayake Mawatha,
Colombo 12.

Appellant

Case No. CA/TAX/0010/2017
Tax Appeals Commission
No. TAC/OLD/IT/035

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.

: F.N. Goonewardena for the Appellant.

Dr. Charuka Ekanayake, S.C. for the Respondent.

Argued on : 12.01.2022

Written Submissions filed on

: 02.07.2018 & 24.02.2022 (by the

Appellant)

11.05.2018 & 09.03.2022 (by the Respondent)

Decided on : 27.05. 2022

Dr. Ruwan Fernando, J.

Introduction

[1] This is an appeal by the Appellant by way of a case stated against the determination of the Tax Appeals Commission dated 14.02.2017 confirming the determination made by the Respondent on 15.10.2010 and dismissing the Appeal of the Appellant. The period relates to the years of assessment 2005/2006 and 2006/2007.

Factual Background

[2] The Appellant is a limited liability Company incorporated in Sri Lanka and engaged in the business of manufacturing and selling of plastic items. In addition to the principal activity of the Company, it is engaged in the business of share trading in public listed Companies in Sri Lanka.

[3] The Appellant has submitted the return of income for the above year of assessment and claimed a deduction of the interest expenses of Rs. 52,479,392 and Rs. 150,015,560/- respectively against its profits for the purposes of calculating its income tax liability. The Assessor refused to grant a deduction of part of the aforesaid interest expenses on the following grounds:

1. Interest expenses related to share trading activities of the Appellant have been financed through interest bearing loans and the interest expenses incurred in its share trading activities have been charged to the profit and loss account of its principal business of manufacturing and selling plastic items;
2. The Appellant has made investment in shares of other Companies and granted loans without interest to the Chairman/Directors of the Company through interest bearing loans and thus, such interest expenses related to investment and loans to Chairman/Directors are

not allowed as a deduction from the business of manufacturing and selling plastic items in terms of Section 23 read with Section 24 (1) (g) of the Inland Revenue Act, No. 38 of 2000 (as amended).

[4] Accordingly, the Assessor adjusted profit/assessable income for the years of assessment 2005/2006 and 2006/2007 as follows:

2005/06

Bank Loans and overdrafts (As per audited statements of accounts)		540,880,423
Loan granted to chairman/directors)	200,000.000	
Investment in shares of other companies	375,723,437	575,723,437
Interest expenses		52,479,392

Y/A 2005/06

Adjusted Profit/Assessable income as your computation	137,317,103
Add	
Disallowable interest	52,479,103
Adjusted Profit/Assessable income	189,796,206

2006/07

Bank Loans and overdrafts (As per audited statements of accounts)		1,719,658,881
Loan granted to chairman/directors)	220,000.000	
Investment in shares of other companies	1,183,172,223	1,403,172,223
Interest expenses		150,015,560

Y/A 2006/07

Adjusted Profit/Assessable income as your computation		49,798,643
Add		
Disallowable interest	1,403,172,223 x 150,015,560 / 1,719,568,881	122,406,640
Adjusted Profit/Assessable income		172,205,283

[5] Accordingly, the notices of assessment were issued by the Assessor and being dissatisfied with the said assessments, the Appellant appealed to the Commissioner-General of Inland Revenue (hereinafter referred to as the

Respondent) and the Respondent by its determination dated 15.10.2010 confirmed the assessment and dismissed the appeal (Vide- reasons for the determination at pp. 1-5 of the Tax Appeals Commission brief).

Appeal to the Tax Appeals Commission & the Court of Appeal

[6] Being dissatisfied with the said determination of the Respondent, the Appellant appealed to the Board of Review and with the establishment of the Tax Appeals Commission, the said appeal was transferred to the Tax Appeals Commission.

[7] The Tax Appeals Commission held in its determination that (i) the Appellant is engaged in two separate business activities, namely manufacturing of plastic items; and (ii) the Appellant conducted a share trading business by regularly purchasing and selling shares and thus, it is not a case of making investments in shares for the purpose of obtaining dividends; (iii) deduction of interest expenses incurred in its share trading activities should deducted from the profits received from the share trading activities and not from the income received from the main business of the Appellant; (iv) since the interest received from share trading activities can be deducted under Section 23 of the Inland Revenue Act, No. 38 of 2000 or Section 25 of the Inland Revenue Act, No. 10 of 2006, Sections 29 of the Inland Revenue Act, No. 38 of 2000 or Section 32 of the Inland Revenue Act, No. 10 of 2006 cannot be applied. Accordingly, the Tax Appeals Commission by its determination dated 14.02.2017 confirmed the determination of the Respondent and dismissed the Appeal.

Questions of Law

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

1. Was the Tax Appeals Commission functus officio to make a decision on the appeal in view of Section 10 of the Tax Appeals Commission Act, No. 23 of 2011, as amended?

2. Was the interest incurred by the Appellant to the value of Rupees 52,479,103 which was disallowed by the CGIR an expense which is deductible in determining the profits from the trade of the Appellant for the Year of Assessment 2005/2006 in terms of Section 23 of the Inland Revenue Act, No. 38 of 2000?

3. Was the interest incurred by the Appellant to the value of Rupees 122,406,640 which was disallowed by the CGIR an expense which is deductible in determining the profits from the trade of the Appellant for the Year of Assessment 2006/2007 in terms of Section 25 of the Inland Revenue Act, No. 10 of 2006?

4. Has the Tax Appeals Commission erroneously and wrongfully disregarded the specific evidence with regard to the payment of interest for the Years of Assessment 2005/2006 and 2006/2007 which entitled the Appellant to deductibility of such interest in terms of Section 29(2) of the Inland Revenue Act, No. 38 of 2000 and Section 32 (5) of the Inland Revenue Act, No. 10 of 2006?

5. In the alternative to (2) above, was the interest incurred by the Appellant to the value of Rupees 52,479,103 deductible in determining the assessable income of the Appellant for the Year of Assessment 2005/2006 in terms of Section 29 (2) of the Inland Revenue Act, No. 10 of 2006?

6. In the alternative to (3) above, was the interest incurred by the Appellant to the value of Rupees 122,406,640 deductible in determining the assessable income of the Appellant for the Year of Assessment 2006/2007 in terms of Section 32 (5) of the Inland Revenue Act, No. 10 of 2006?

7. Notwithstanding the above, was the basis used by the CGIR in arriving at the interest expenses attributable to the investment (share trading) business of the Appellant erroneous in law?

[9] At the hearing of the appeal, Mr. F.N. Goonewardena, the learned Counsel for the Appellant and Dr. Charuka Ekanayake, State Counsel for the Respondent made extensive oral submissions on the seven questions of law submitted for the opinion of the Court

Analysis

Question of Law, No. 1

Is the determination made by the Tax Appeals Commission time barred?

[10] At the hearing, Mr. Goonewardena submitted that after all appeals pending before the Board of Review were transferred to the Tax Appeals Commission in terms of Section 10 of the Tax Appeals Commission Act, No. 23 of 2011, the Tax Appeals Commission was required to decide such appeals within a period of 180 days from the date of such transfer, but in terms of the Tax Appeals Commission (Amendment) Act, No. 04 of 2012, this period was extended to 12 months from the date on which the Commission shall commence its sittings. He further submitted that this period was further extended by the Tax Appeals Commission (Amendment) Act, No. 20 of 2013 to 24 months from the date on which the Commission shall commence its sittings for the hearing of each such appeal, which makes it very clear that the intention of Parliament is that Section 10 (as amended), is a mandatory provision of law which requires strict compliance.

[11] Mr. Goonewardena submitted that the appeal was first heard by the Commission on 17.10.2013 but the determination was made by the Commission on 14.02.2017, which is clearly beyond the time period specified by the Tax Appeals Commission Act and accordingly, the determination of the appeal by the Tax Appeals Commission was time barred by operation of law. He relied on the decision of the Court of Appeal in *Mohideen v. Commissioner-General of Inland Revenue* ((CA 2/2007 (20-15) Vol. XXI. BASL Law Journal, page 170) in support of his contention.

[12] On the other hand, the learned State Counsel submitted that the time limit specified in Section 10 of the Tax Appeals Commission Act (as amended) is not mandatory, but rather directory and the failure to adhere to the time limit specified in the Tax Appeals Commission Act (as amended) cannot render the Tax Appeals Commission *functus officio* to hear and determine the appeal. He relied on the decisions of this Court in *Stafford Motor Company Limited v. The Commissioner General of Inland Revenue* (CA /Tax/17/2017, decided on 15.03.2019), *Kegalle Plantations PLC v.*

Commissioner General of Inland Revenue (CA/Tax/09/2010) decided on 04.09.2018, *S.P. Muttiah v Commissioner General of Inland Revenue* (CA/Tax/46/2019) decided on 30.07.2021 in support of his contention.

[13] It is common ground that the initial appeal was made by the Appellant to the Board of Review in terms of the provisions of the Inland Revenue Act, No. 38 of 2000, and in terms of proviso to Section 10 of the Tax Appeals Commission Act, No. 23 of 2011, all appeals pending before the Board of Review were deemed to stand transferred to the Tax Appeals Commission. Section 10 of the Tax Appeals Commission Act, No. 23 of 2011, stipulated that the Tax Appeals Commission shall make the determination within a period of **one hundred and eighty days** from the date of the commencement of the hearing of the appeal. It reads as follows:

> *"The Commission shall hear all appeals received by it and make its decision in respect thereof, within **one hundred and eighty days** from the date of the commencement of the hearing of the appeal".*

[14] The proviso to Section 10 of the Tax Appeals Commission Act, No. 23 of 2011 reads as follows:

> *"Provided that. All appeals pending before the respective Board or Boards of Review in terms of the provisions of the respective enactments specified in the schedule to this Act, shall with effect from the date of coming into operation of the provision of this Act be deemed to stand transferred to the Commission and the Commission shall make its decision in respect thereof, within hundred and eighty days from the date of such transfer notwithstanding anything contained in any other written law".*

[15] Section 10 of the Tax Appeals Commission Act was amended by Section 7 of the Tax Appeals Commission (Amendment) Act, No. 4 of 2012, which stipulated that the determination of the Commission shall be made within two hundred and seventy days. Section 10 of the Tax Appeals Commission Act was further amended by Section 7 of the Tax Appeals Commission (Amendment) Act, No. 4 of 2012 by the substitution of the words "within hundred and eighty days from the date of such transfer" of the words "within twelve months of the date on which the Commission shall commence its sittings". This Amendment came into effect on

15.02.2012 and pending appeals were transferred to the Tax Appeals Commission from the Board of Review. In terms of Section 13 of the said Act, the amendment was to have retrospective effect and was deemed to have come into force from the date of the Principal Act (i.e. 31.01.2011).

[16] Section 10 of the Tax Appeals Commission Act, no 23 of 2011 was further amended by Section 7 of the Tax Appeals Commission (Amendment) Act, No. 20 of 2013 by the substitution for all the words commencing from "two hundred and seventy days" to the end of that Section, of the following: -

> ***"Two hundred and seventy days from the date of the commencement of its sittings for the hearing of each such appeal***
>
> *Provided that, all appeals pending before the respective Board or Boards of Review in terms of the provisions of the respective enactments specified in Column I of Schedule I, or Schedule II to this Act, notwithstanding the fact that such provisions are applicable to different taxable periods as specified therein shall with effect from the date of coming into operation of the provision of this Act be deemed to stand transferred to the Commission, and the Commission shall, notwithstanding anything contained in any other written law make its determination in respect thereof, within twenty four months from the date on which the Commission shall commence its sittings for the hearing of each such appeal.".*

[17] In terms of Section 14 of the Tax Appeals Commission (Amendment) Act, No. 20 of 2013, the amendment was to have retrospective effect and was deemed to have come into force with effect from 01.04.2011. Section 15 of the Tax Appeals Commission (Amendment) Act, No. 20 of 2013 further provides an avoidance of doubt clause as follows:

> *"For the avoidance of doubts, it is hereby declared, that the Commission shall have the power in accordance with the provisions of the principal enactment as amended by this Act, to hear and determine any appeal that was deemed transferred to the Commission under section 10 of the principal enactment,* ***notwithstanding the expiry of the twelve months granted for its determination by that section prior to its amendment by this Act."***

[18] Accordingly, Section 10 of the Tax Appeals Commission Act, No. 23 of 2011 as last amended by the Tax Appeals Commission (Amendment) Act, No. 20 of 2013 now provides as follows:

> *"The Commission **shall** hear all appeals received by it and make its determination in respect thereof, within **two hundred and seventy days from the date of the commencement of its sittings for the hearing of each such appeal**:*
>
> *Provided that, all appeals pending before the respective Board or Boards of Review in terms of the provisions of the respective enactments specified in Column I of Schedule I, or Schedule II to this Act, notwithstanding the fact that such provisions are applicable to different taxable periods as specified therein shall with effect from the date of coming into operation of the provision of this Act be deemed to stand transferred to the Commission, and the Commission shall notwithstanding anything contained in any other written law make its determination in respect thereof, within twenty four months from the date on which the Commission shall commence its sittings for the hearing of each such appeal".*

Mandatory vs. Directory

[19] Section 10 of the Tax Appeals Commission Act stipulates that the Tax Appeals Commission shall make its determination within 270 days from the date of the commencement of its sittings for the hearing of the appeal. Superficially, the effects of non-compliance of a provision are dealt with in terms of the mandatory-directory classification. Generally, in case of a mandatory provision, the act done in breach thereof is void, whereas, in case of a directory provision, the act does not become void, although some other consequences may follow (P.M. Bakshi, Interpretation of Statutes, First Ed, 2008422).

[20] The argument advanced by Mr. Goonewardena was that the word "shall" used in Section 10 is normally to be interpreted as connoting a mandatory provision, meaning that what is thereby enjoined is not merely desired (directory) to be done but must be done (mandatory). Thus, he submitted that the effect of such breach of a mandatory provision, which has the consequence of the determination of the Tax Appeals Commission rendering invalid. But, the use of the word "shall" does not always mean that the provision is obligatory or mandatory as it depends upon the

context in which the word "shall" occurs, and the other circumstances as echoed by the Indian Supreme Court case of The Collector of *Monghyr v. Keshan Prasad Goenka,* AIR 1962 SC 1694 at p. 1701) in the following words:

> *"It is needless to add that the employment of the auxiliary verb " shall" is inconclusive and similarly the mere absence of the imperative is not conclusive either. The question whether any requirement is mandatory or directory has to be decided, not merely on the basis of any specific provision which, for instance, sets out the consequence of the omission to observe the requirement, but on the purpose for which the requirement has been enacted, particularly in the context of the (1) [1958] S.C.R. 533, other provisions of the Act and the general scheme thereof. It would, inter alia, depend on whether the requirement is insisted on as a protection for the safeguarding of the right of liberty of a person or of property which the action might involve".*

[21] Thus, an enactment in form is mandatory might, in substance be directory and that the use of the word "shall" does not conclude the matter (*Hari Vishnu Kamath v. Ahmad Ishaque* AIR 1955 SC 233). It is not in dispute that Section 10 of the Tax Appeals Commission Act does not say what will happen if the Tax Appeals Commission fails to make the determination within the time limit specified in Section 10 of the Tax Appeals Commission Act, No. 23 of 2011 as amended.

Legislative Intent

[22] The question as to whether a statute is mandatory or directory is a question which has to be adjudged in the light of the intention of the Legislature as disclosed by the object, purpose and scope of the statute. If the statute is mandatory, the act or thing done not in the manner or form prescribed can have no effect or validity and if it is a directory, a penalty may be incurred for non-compliance, but the act or thing done is regarded as good (P.M. Bakshi, Interpretation of Statutes, p. 430 & *Mohanlal Ganpatram v. Shri Sayaji Jubliee Cotton and Jute Mills Co. Ltd* AIR 1966 Guj. 96). *In State of U.P., v. Baburam Upadhya*, reported in AIR 1961 SC 751, the Supreme Court of India said that when a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute.

[23] Crawford on "Statutory Construction" (Ed. 1940, Art. 261, p. 516) sets out the following passage from an American case approvingly as follows:

> *"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other".*

[24] According to Sutherland, Statutory Construction, Third Ed. Vol. III, p. 77:

> *"The difference between mandatory and directory statutes is one of effect only. The question generally arises in a case involving a determination of rights as affected by the violation of, or omission to adhere to statutory directions. This determination involves a decision of whether or not the violation or omission is such as to render invalid Acts or proceedings to the statute, or the rights, powers, privileges claimed thereunder. If the violation or omission is invalidating, the statute is mandatory, if not, it is directory".*

[25] Then the question is this: What is the fundamental test that is to be applied in determining whether or not the failure to obey the time bar provision in Section 10 of the Tax Appeals Commission Act was intended by the legislature to be mandatory or directory? The question whether the non-compliance with a statutory provision can be classified as mandatory rendering the proceedings invalid or directory leaving it intact depends, on the consideration of whether the consequences of the non-compliance were intended by the legislature to be mandatory or directory. This proposition was echoed by Lord Woolf MR (as he then was) in *R v. Secretary of State for the Home Department, Ex p Jeyeanthan [2000] 1 WLR 354*, who stated that it is "much more important to focus on the **consequences of the non-compliance**". He elaborated this proposition in the following words at p. 360:

> *"In the majority of cases, whether the requirement is categorized as directory or mandatory, the tribunal before whom the defect is properly raised has the task of determining what are to be the*

consequences of failing to comply with the requirement in the context of all the facts and circumstances of the case in which the issue arises".

[26] Here, it is also desirable to remember the words of Lord Hailsham of St. Marylebone L.C. in his speech in *London and Clydeside Estates Ltd. v. Aberdeen District Council* [1980] 1 W.L.R. *182* , 188–190. He stated at p. 36:

"The contention was that in the categorization of statutory requirements into 'mandatory' and 'directory,' there was a subdivision of the category 'directory' into two classes composed (I) of those directory requirements 'substantial compliance' with which satisfied the requirement to the point at which a minor defect of trivial irregularity could be ignored by the court and (ii) those requirements so purely regulatory in character that failure to comply could in no circumstances affect the validity of what was done. When Parliament lays down a statutory requirement for the exercise of legal authority it expects its authority to be obeyed down to the minutest detail. But what the courts have to decide in a particular case is the legal consequence of non-compliance on the rights of the subject viewed in the light of a concrete state of facts and a continuing chain of events".

[27] In *Howard and Others v. Bodington* (1877) 2 PD 203, the Court of Arches considered the question whether the consequences of a failure to comply with a statutory requirement are mandatory or directory. Lord Penzance stated at pp. 211-212:

"Now the distinction between matters that are directory and matters that are imperative is well known to us all in the common language of the courts at Westminster. I am not sure that it is the most fortunate language that could have been adopted to express the idea that it is intended to convey; but still, that is the recognized language, and I propose to adhere to it. ***The real question in all these cases is this: A thing has been ordered by the legislature to be done. What is the consequence if it is not done?*** *In the case of statutes that are said to be imperative, the Courts have decided that if it is not done the whole thing fails, and the proceedings that follow upon it are all voids. On the other hand, when the Courts hold a provision to be mandatory or directory, they say that, although such provision may not have been complied with, the subsequent proceedings do not fail. Still, whatever the language, the idea is a perfectly distinct one. There may be many provisions in Acts of Parliament which, although they are not strictly obeyed, yet do not appear to the Court to be of that material importance to the subject-matter to which they refer, as that the*

legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings. On the other hand, there are some provisions in respect of which the Court would take an opposite view, and would feel that they are matters which must be strictly obeyed, otherwise the whole proceedings that subsequently follow must come to an end".

[28] In the absence of any express provision, the intention of the legislature must be ascertained by weighing the consequences of holding a statute to be directory or mandatory and having regard to the importance of the provision in relation to the general object intended to be secured by the Act *(Caldow v. Pixcell* (1877) 1 CPD 52, 566) & *Dharendra Kriisna v. Nihar Ganguly* (AIR 1943 Cal. 266). As held in *Attorney General's Reference (No 3 of 1999),* the emphasis ought to be on the consequences of non-compliance, and asking the question whether Parliament can fairly be taken to have intended total invalidity.

[29] Now the question is, to which category does Section 10 in this case belong? The question as to whether Section 10 is mandatory or directory depends on the intent of the legislature, and not upon its language, irrespective of the fact that Section 10 is couched in language which refers to the word "shall". The intention of the legislature must be ascertained not only from the phraseology of Section 10, but also by considering its purpose, its design and more importantly, the consequences which would follow from construing it one way of another.

[30] Again, the question is, what is the consequence of the failure to adhere to the time limit specified in Section 10 that has been intended by the legislature to be categorized as mandatory or directory. Accordingly, one has to identify the tests to be applied in deciding whether a provision that has been disregarded as mandatory or directory, and then applies them to the statute which stipulates the determination shall be made within the time limit specified therein, but makes no reference to any penal consequences.

Consequence of non-compliance with a statutory provision

[31] In considering a procedural requirement from this angle, a court is likely to construe it as mandatory if it seems to be of particular importance in the context of the enactment, or if it is one of a series of detailed steps,

perhaps in legislation which has created a novel jurisdiction, (*Warwick v. White* (1722) Bunb. 106; 145 E.R. 612) or if non-compliance might have entailed penal consequences for one of the parties (*State of Jammu and Kashmir v. Abdul Ghani* (1979) Ker LJ 46). Where the disobedience of a provision is made penal, it can safely be said that such provision was intended by the legislature to be mandatory (*Seth Banarsi Das v. The Cane Commissioner* & Another, AIR 1955 All 86).

[32] As noted, the fact that no penal consequence is stated in a statute, however, is only one factor to be considered towards a directory construction, and there are other factors to be considered in determining whether a provision of a Statute is mandatory or not. As noted, one of the factors in determining whether the consequence of non-compliance provision was intended by the legislature to be mandatory or directory is to consider the broad purpose and object of the statute as Lord Penzance stated in *Howard v. Bodington* (*supra*) at 211 as follows:

> *"I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look into the subject-matter: consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."*

[33] The legislature is a purposive act, and judges should construe statutes to execute that legislative purpose, intent and context (Robert A. Katzmann, Judging Statutes 31 (2014) by focusing on the legislative process, taking into account the problem that the legislature was trying to solve (Henry M. Hart, Jr. & Albert M. Sacks, "The legal Process: Basic Problems in the Making and Application of Law" 1182 (William N. Eskridge, Jr. & Phillip P. Frickey Eds., (1994). We must thus, ascertain what the legislature was trying to achieve by amending the Tax Appeals Commission Act, twice as far as the time bar is concerned.

[34] A legislative intention to amend Section 10 twice by increasing the time periods for the determining of appeals does not necessarily or conclusively mean that the failure to make the determination of the Tax Appeals Commission within the time limit specified in Section 10 is mandatory. If such drastic consequence was really intended by the

legislature, it would have made appropriate provisions in express terms in Section 10 to the effect that "the appeal shall be deemed to have been allowed where the Tax Appeals Commission fails to adhere to the time limit specified in Section 10 of the Tax Appeals Commission Act.

[35] There are guidelines in tax statutes which stipulate that the failure to observe any time limit provision would render the appeal null and void or that the appeal shall be deemed to have been allowed. For example, Section 165 (14) of the Inland Revenue Act, No. 10 of 2006 as amended, provides that "an appeal preferred to the Commissioner-General shall be agreed to or determined by the Commissioner-General within a period of two years from the date on which such petition of appeal is received...". The same section specifically stipulates that "where such appeal is not agreed to or determined within such period, the appeal shall be deemed to have been allowed and tax charged accordingly".

[36] The legislature in its wisdom has placed time limit for the speedy disposal of appeals filed before the Commissioner-General and the overall legislative intention sought to be attained by the Inland Revenue Act in Section 165 (14) was to ensure that an appeal before the Commissioner-General of Inland Revenue is disposed of within a period of 2 years from the date on which the Petition of Appeal is received. As the Commissioner-General is an interested party against another interested party (tax payer) in the tax collection, it shall determine the appeal within 2 years from the receipt of the Petition of Appeal and if not, the appeal shall be deemed to have been allowed, and tax charged accordingly, so as to safeguard the rights of the taxpayer

[37] Although the Tax Appeals Commission Act was amended by Parliament twice and increased the period within which the appeal is to be determined by the Commission from 200 days to 270 days with retrospective effect, the legislature in its wisdom did not specify any penal consequence or any other consequence of non-compliance of the time bar specified in Section 10 of the Tax Appeals Commission Act. Had the legislature intended that the non-compliance with Section 10 to be mandatory, it could have easily included a provision with negative words requiring that an act shall be done in no other manner or at no other time than that designated in the Section or a provision for a penal consequence

or other consequence of non-compliance. This proposition was echoed by FOTH, C. J. in *Paul v. The city of Manhattan* (1973) 212 Kan 381 as follows:

> *"The language of the enactment itself may provide some guidance. Thus, we said in Shriver v. Board of County Commissioners, 189 Kan. 548, 370 P. 2d 124, "Generally speaking, statutory provisions directing the mode of proceeding by public officers and intended to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties cannot be injuriously affected, are not regarded as mandatory, unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated". (p. 556. Emphasis added). A critical feature of mandatory legislation is often a provision for the consequences of non-compliance. This element was noticed by early legal commentators, for in Bank v. Lyman, supra, we find this observation (p. 413)."*

[38] Bindra's Interpretation of Statutes, 10th Ed. referring to the decision of *Paul v. The city of Manhattan* (supra), states that factors which would indicate that the provisions of a Statute or Ordinance are mandatory are: (1) the presence of negative words requiring that an act shall be done in no other manner or at no other time than that designated; or (2) a provision for a penalty or other consequence of non-compliance (p. 433).

[39] The object sought to be attained by Section 10 of the Tax Appeals Commission Act has been designed primarily to expedite the appeal process filed before the Tax Appeals Commission, which was established by an Act of Parliament comprising retired Judges of the Supreme Court or the Court of Appeal and those who have gained wide knowledge and eminence in the field of Taxation.

[40] It is settled law that the Courts cannot usurp legislative function under the disguise of interpretation and rewrite, recast, reframe and redesign the Tax Appeals Commission Act, because this is exclusively in the domain of the legislature. This proposition was lucidly explained by Lord Simonds in *Magor and St Mellons Rural District Council v. Newport Corporation* [1951] 2 All ER 839, HL. Referring to the speech of Lord Denning MR, Lord Simonds said at page 841: "It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation", Lord Simonds further stated at 841:

"The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and the duty of the court to travel outside them on a voyage of discovery are strictly limited. If a gap is disclosed, the remedy lies in an amending Act and not in a usurpation of the legislative function under the thin disguise of interpretation".

[41] The same proposition was echoed by Arijit Pasayat, J. in the Indian Supreme Court case of *Padmasundara Rao and Ors. v. State of Tamil Nadu and Ors.* AIR (2002) SC 1334, at paragraph 14, as follows:

"14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary".

[42] Section 10 of the Tax Appeals Commission Act, No. 23 of 2011 granted time to the Tax Appeals Commission to hear all appeals within one hundred and eighty days from the date of the commencement of the hearing of the appeal. The Tax Appeals Commission (Amendment) Act, No. 4 of 2012 extended the said time period from one hundred and eighty days to two hundred and seventy days from the date of the commencement of the hearing of the appeal. The Tax Appeals Commission (Amendment) Act, No. 20 of 2013 however, reduced the time limit granted to the Tax Appeals Commission to conclude the appeal by enacting that the time specified in Section 10 shall commence from the date of the commencement of its sittings for hearing the appeal.

[43] The legislature has, from time to time, extended and reduced the time period within which the appeal shall be determined by the Tax Appeals Commission, but it intentionally and purposely refrained from imposing any consequence for the failure on the part of the Tax Appeals Commission to adhere to the time limit specified in Section 10.

[44] The legislature amended the Tax Appeals Commission Act, twice with retrospective effect and provided time frames to conclude appeals quickly as possible within the time limit of 270 days from the date of the commencement of its sittings for the hearing of such appeal. It is true that the legislature has amended Section 10 with retrospective operation but if

it intended to take away the jurisdiction of the Tax Appeals Commission and render its determination made outside the time limit specified in section 10 invalid, it could have easily made, with retrospective effect, appropriate provision in express terms that the appeal shall be deemed to have been allowed or other consequence of non-compliance.

[45] On the other hand, the proviso to Section 10 of the Tax Appeals Commission Act, No. 23 of 2011 granted time for the Commission to make its determination in respect of appeal transferred to the Commission from the Board of Review within a period of hundred and eighty days (180) from the date of such transfer, notwithstanding anything contained in any other written law. The Tax Appeals Commission (Amendment) Act, No. 4 of 2012 extended the said time period from hundred and eighty days to twelve months of the date on which the Commission shall commence its sittings. (Vide-Section 7 of the Act, No. 4 of 2012). The Tax Appeals Commission (Amendment) Act, No. 20 of 2013 extended the said time period to twenty-four months from the date on which the Commission shall commence its sittings for the hearing of each such appeal.

[46] It is crystal clear that these procedural time limit rules in respect of appeals received by the Tax Appeals Commission or appeals transferred from the Board of Review to the Commission have been devised by the legislature to facilitate the appeal process by increasing and reducing the time period within which such appeals shall be concluded. The provision for the determination of an appeal by the Tax Appeals Commission within a period of 270 days from the commencement of its sittings for the hearing of an appeal has been designed with a view to regulating the duties of the Tax Appeals Commission by specifying a time limit for its performance as specified in Section 10 of the Act.

[47] So that the legislature, in its wisdom has made provision in Section 10 to the effect that the appeal shall be disposed of speedily within a period of 270 days from the date of the commencement of the sittings for the hearing of the appeal. But the legislature imposed no drastic and painful penal consequence or other consequence of non-compliance, including prohibitory or negative words in Section 10, rendering the determination of the appeal null and void for non-compliance of the time limit specified in Section 10. In my view, they are not intended to make the parties suffer

from the failure of the Commission to make the determination within the time limit specified in Section 10 of the Tax Appeals Commission Act.

[48] Any procedural retrospective operation of a provision, in my view, cannot take away the rights of parties who have no control over those entrusted with the duty of making determination within the time limit specified in Section 10. The retrospective operation of Section 10 without any penal or other consequence of non-compliance, by itself, cannot be treated as a factor in determining that the legislature intended that the failure to adhere to the time limit specified in Section 10 is mandatory.

Consequences of non-compliance of a statute by those entrusted with public duty

[49] One of the important factors that is necessary for determining whether a provision is mandatory or directory is to find as to who breached the time limit specified in Section 10-whether it was breached by one of the parties to the action or by those entrusted with the performance of a public duty. Also coming under this head are cases where the Court will take into account the practical inconveniences or impossibilities of holding a time limit requirement to be mandatory where the public duty is performed by a public body. If the statutory provision relates to the performance of a public duty, the Court is obliged to consider whether any consequence of such breach would work serious public inconvenience, or injustice to the parties who have no control over those entrusted with such public duty.

[50] Apart from the absence of reference to penal sanction and other consequences of non-compliance of Section 10, the impossibility of adhering to the time limit provision is also a factor in influencing the court to construe the time limit provision is not mandatory, but as directory only. As noted, the pending appeals were transferred to the properly constituted Tax Appeals Commission after the amendment to Section 2 was enacted by the Tax Appeals Commission (Amendment) Act, No. 4 of 2012 which came into effect on 15.02.2012. A perusal of the record (p. 34) reveals that the appeal was first fixed for hearing on 17.10.2013 and the appeal was first held by the Tax Appeals Commission consisting of Justice

H. Yapa, Mr. J. Somasundaram (Member) and Mr. P.A. Pematilake (Member).

[51] The next hearing was held on 28.11.2013 only with the participation of two Members and thus, the hearing was postponed to 28.01.2014 (p. 36). On 28.01.2014, the Commission directed the parties to tender written submissions on or before 21.02.2014 and fixed the next hearing on 20.03.2014. (p. 51) On 20.03.2014, the hearing was conducted and the next hearing was fixed for 29.05.2014 (p. 100). On 29.05.2014, the Commission conducted its sitting with a new Member (Mr. M.N. Junaid) and decided that since another appeal involving the same parties was being heard in the Court of Appeal on the identical issue, the next hearing will be held after receiving the decision of the Court of Appeal (p. 102). The next hearings were fixed for 17.07.2014 and 02.09.2014, and on 02.09.2014, the Commission directed the parties to file written submissions on or before 15.09.2014 and reserved the determination (p. 106).

[52] However, the Secretary to the Commission on the direction of the Commission informed the parties to be present at the Commission on 19.05.2015 to fix a new date for hearing (p. 129) and accordingly, the on 19.05.2015, the Commission fixed a date for hearing on 23.07.2015 (p. 132). On 23.07.2015, the Commission further directed the Appellant to file written submission on or before 10.08.2015 and the next hearing was fixed for 08.09.2015 (p. 134). On 08.09.2015, the hearing was not held as Mr. Junaid was indisposed and thereafter, the hearing was not held due to a vacancy in the Tax Appeals Commission (p. 160).

[53] After a New Member (Justice S. Rajapaksha) was appointed by the Minister of Finance, the hearing was held on 02.06.2016 and the Commission gave time for the settlement of the matter, and the next hearings were fixed for 30.06.2016 and 14.07.2016 (p. 163 & p. 165). On 14.07.2016, the Commission was not properly constituted (p. 167) and on 04.08.2016, the hearing was postponed on an application made by the Respondent (p. 169). On 22.11.2016, the Commission reserved the decision (p. 191) and thereafter, on 14.02.2017 made the determination.

[54] It is true that The Tax Appeals Commission Act has imposed a duty on the Tax Appeals Commission to make the determination within the time

limit specified in Section 10 but the parties had no control over those entrusted with the task of making the determination within the time limit specified in Section 10. Should the parties who have no control over those entrusted with the task of making the determination be made to suffer for any failure or delay on the part of the Tax Appeals Commission in not making its determination within the time limit specified in Section 10? I do not think that the legislature intended that the time limit specified in Section 10 is mandatory where it is impossible for the Commission to make its determination within such period due to practical reasons or where the parties had no control over those entrusted with the task of making the determination within the time limit specified in Section 10. I held the same view in our decision in *S.P. Muttiah v Commissioner General of Inland Revenue* (supra).

[55] Maxwell, Interpretation of Statute, 11th Ed. at page 369 referring to the ascertaining the intention of the legislature in relation to the interpretation of limitation provision states:

> *"On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them. It has often been held, for instance, where an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, then the Act was directory only and might be complied with after the prescribed time" [emphasis added.]*

[56] Where the statute imposes a public duty on persons and to treat, as void, acts done without compliance with the statute would cause serious inconvenience to persons who have no control over those entrusted with this duty, then the practice is to hold the provision to be directory only so as not to affect the validity of such action taken in breach of such duty (*Montreal Street Rly. Co. v. Normandin* (1917) AC 170, 175). Lord Sir Arthur Channell echoed this proposition in that case at p. 176 as follows:

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done. This principle has been applied to provisions for holding sessions at particular times and places (2 Hale, P. C., p. 50, Rex v. Leicester Justices (1827) 7 B & C. 6 and Parke B. in Gwynne v. Burnell (1835) 2 Bing. N.C. 7);….".

[57] This proposition is further confirmed by Sutherland's Statutory Construction, Third Ed. Vol. 3. at p. 102 as follows:

"A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others is directory unless the nature of the act to be performed, or the phraseology of the statute, is such that the designation of time must be considered a limitation of the power of the Officer". At p. 107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory may be directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow the non-compliance with the provision…."

[58] If we hold that the literal compliance with the time limit specified in Section 10 is mandatory, disregarding the fact that neglect was performed by those who are entrusted with the duty, we will be disregarding the practical impossibility of the Commission and inconvenience of holding proceedings and making a determination strictly within the time limit specified in Section 10. In the present case, the duty to make the determination within the time limit specified in Section 10 is statutorily entrusted to the members of the Tax Appeals Commission in terms of the provisions of the Tax Appeals Commission Act, No. 23 of 2011 as amended, and the parties had no control whatsoever, over the Tax Appeals Commission.

[59] As Lord Sir Arthur Channell put it correctly, it would cause the greatest injustice to both parties who had no control over those entrusted with the

duty of making the determination, if we hold that neglect to observe the time limit specified in Section 10 of the statute renders the determination made by the Commission *ipso facto* null and void. In my view, every limitation period within which an act must be done, is not necessarily a prescription of the period of limitation with painful and drastic consequences and the parties who have no control of those entrusted with a statutory duty and no fault of them should not be made to suffer and lose their rights for the failure to adhere to the time limitation specified in a provision.

[60] In *S.P. Muttiah v. Commissioner General of Inland Revenue* (supra), this Court held at page 77 and 78;

> *'If we interpret the legislative intent of Section 10 from its mere phraseology, without considering the nature, purpose, the design, the absence of consequences of non-compliance and practical impossibility, which would follow from construing it one way or the other, it will tend to defeat the overall object, design, the purpose and spirit of the Tax Appeals Commission Act"*

[61] If we hold that the determination of the Commission is null and void, it will cause serious injustice to parties who have no control over those entrusted with the duty of discharging functions under the Tax Appeals Commission Act. In *Stafford Motor Company Limited v. The Commissioner General of Inland Revenue (supra),* Janak de Silva, J. held that the time limits granted to the Tax Appeals Commission to make a determination is not mandatory as the Tax Appeals Commission Act, No. 23 of 2011 (as amended) does not spell out any sanction for the failure on the part of the Tax Appeals commission to comply with the time limit set out in Section 10 of the Tax Appeals Commission Act.

[62] In the same case, Janak de Silva, J. having specifically considered the implication of the Court of Appeal decision in *Mohideen v. Commissioner-General of Inland Revenue* ((CA 2/2007 (20-15) Vol. XXI. BASL Law Journal, page 170), held at page 6 that the following statement made by His Lordship Gooneratne J. referring to the statutory time bar applicable to the Board of Review in making its determination under the Inland Revenue Act, No. 38 of 2000 is an obiter:

"*If specific time limits are to be laid down, the legislature needs to say so in very clear and unambiguous terms instead of leaving it to be interpreted in various ways. To give a restricted interpretation would be to impose unnecessary sanctions on the Board of Review. It would be different or invalid if the time period exceeded two years from the date of oral hearing. If that be so, it is time barred." was an obiter dicta statement (*emphasis added).

[63] The principle laid down by Gooneratne J. in *Mohideen v. Commissioner General Inland Revenue* (supra) was that the hearing for the purpose of time limit of 2 years specified in the second proviso to Section 140 (10) of the Inland Revenue (Amendment) Act, No. 37 of 2003 commences from the date of the oral hearing and no more. That was the principle upon which the case was decided by His Lordship Gooneratne J. which represents the reason and spirit of the decision, and that part alone is the principle which forms the only authoritative element of a precedent in *Mohideen v. Commissioner General Inland Revenue* (supra).

[64] In *Mohideen v. Commissioner General Inland Revenue* (supra), after having fully endorsed the proposition of law that the hearing contemplated in the said time bar provision is nothing but oral hearing, His Lordship as a passing remark stated "It would be different or invalid if the time period exceeded 2 years from the date of the oral hearing. If that be so, it is time barred" (p. 176). That part of the statement enunciated by His Lordship Gooneratne J. is manifestly an obiter and not the ratio having a binding authority. Justice Jank de Silva, in *Staford Motors v. Commissioner-General of Inland Revenue (supra)*, *Kegalle Plantations PLC v. The Commissioner-General of Inland Revenue* (CA/Tax 09/2017 decided on 04.09.2014) and *CIC Agri Business (Private) Limited v. The Commissioner-General of Inland Revenue* (CA/Tax 42/2014 decided on 29.05.2021), arrived at a similar conclusion.

[65] We took the same view in our judgments in *Mr. S.P. Muttiah v. The Commissioner General of Inland Revenue,*CA/TAX/46/2019,decided on 26.06.2021 and *Amadeus Lanka (Pvt) Ltd v. CGIR* (C.A Tax 4/19 decided on 30.07.2021. In *Mr. S.P. Muttiah v. The Commissioner General of Inland Revenue*, we further held that the directory interpretation of Section 10 is consistent with the object, purpose and design of the Tax Appeals

Commission Act, which is reflected in the intention of the legislature and that if a gap is disclosed in the Legislature, the remedy lies is an amending Act and not in a usurpation of the legislative function under the thin disguise of interpretation.

[66] I hold that having considered the facts and he circumstances and legal principles, the failure to adhere to the time limit specified in Section 10 was not intended by the legislature to be mandatory with painful and drastic consequences of rendering such determination null and void. For those reasons, I hold that the determination of the Tax Appeals Commission in the present case is not time barred and thus, I answer the Question of Law No. 1 in favour of the Respondent.

Questions of Law Nos. 2, 3 & 7

Deductibility of interest expenses in ascertaining the profits and income & the Interest attributable to the share trading business

[67] At the hearing, Mr. Goonewardena submitted that the share trading transaction carried on by the Appellant is not a "trade or business" but is a part of the investment business of the Appellant as contemplated by Section 3 (a) of the Inland Revenue Act, No. 10 of 2006. His contention was that share trading was merely an activity which forms part of the investment business of the Appellant but it is not a business itself. He relied on the decision of the Supreme Court in *K.A. Don Albert V. Municipal Revenue Inspector* 65 N.L.R. 1 in support of his contention.

[68] On the other hand, the learned State Counsel submitted that the Appellant's core business was manufacturing and selling plastic items, and in addition to its core business activities, the Appellant is also engaged in a separate business of trading in shares of public listed companies in Sri Lanka by investing in shares of John Keels Holding PLC through interest bearing loans and overdraft facilities. He submitted that the share trading activity carried on by the Appellant constitutes a "business" within the meaning of Section 3 (a) of the Inland Revenue Act..

[69] The first question that arises for determination is whether the interest expenses incurred by the Appellant on the loans taken for share trading

activities are deductible against the profits derived from the Appellant's principal business of manufacturing and selling plastic items. In this context, I desire to ascertain the meaning of the term "business" and identify the distinction between "business activity" and "investment activity" within the meaning of the Inland Revenue Act, No. 38 of 2000 (hereinafter referred to as "the IRA 2000) or the Inland Revenue Act, No. 10 of 2006 (hereinafter referred to as the "IRA 2006).

Whether the share Trading activity of the Appellant is a business within the meaning of the words "profits from any business" under Section 3 (a) of the Inland Revenue Act

[70] Section 3 of the Inland Revenue Act lists the types of income chargeable with income tax and Section 3 (a) of the Inland Revenue Act reads as follows:

"3. For the purpose of this Act, "profits and income" or profits "or "income" means:

(a) the profits from any trade, business, profession or vocation for however, short a period on or exercised".

[71] The word "business" has been judicially considered by the highest authorities and the word "business" itself is a word of large and indefinite import (*Smith v. Anderson* (1880) 15 Ch. D. 247, 259) and in fiscal statutes, it must be construed in a broader rather than a restricted sense (*Mazagaon Dock Ltd v. Commissioner of Income Tax* (1958) 34 ITR 368). In the Privy Council case of *Income Tax Commissioner v. Shaw Wallace & Co* (59 Indian Appeals, 206 at 213), Sir George Lowndes observed at page 212:

"Income, their Lordships think, in this Act connotes a periodical monetary return coming in with some sort of regularity or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Thus, income has been likened pictorially to the fruit of a tree, or the crop of a field. It is essentially the produce of something which in often loosely spoken of as capital. But capital, though possibly the source in the case of income from

securities, is in most cases hardly more than an element in the process of production."

[72] After setting out the sources from which the taxable income under the Act was to be derived as enumerated in section 6, one of which was "business" as defined in section 2(4), it was observed by the Privy Council at page 213:

"The words used are no doubt wide, but underlying each of them is the fundamental idea of the continuous exercise of an activity."

[73] In *Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax,* AIR 1955 SC 176**,** their Lordships of the Supreme Court of India, while referring with approval to the dictum in *Income Tax Commissioner v. Shaw Wallace & Co.,* (supra) held that "the words used in that definition are no doubt wide, but underlying each of them is the fundamental idea of the continuous exercise of an activity", observed at page 773:

"The word business connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose. On the other hand, a single and isolated transaction has been held to be conceivably capable of falling within the definition of business as being an adventure in the nature of trade provided the transaction bears clear indicia of trade. The question, therefore, whether a particular source of income is business is."

[74] In *Narain Swadeshi Weaving Mills v. Commissioner of Excess profits Tax* (supra), their Lordships of the Supreme Court stated that (a) the mere fact that a person received amounts by gambling, or betting or in a game of chance, does not be itself establish that the transaction is in nature of a business, and income is not casual and non-recurring; (b) It must further be established that it must involve **continuous exercise of activity or an organised or systematic effort or enterprise on part of the assessee.**

[75] In *Commissioners of Inland Revenue v. Korean Syndicate, Ltd.,* (1921) 3 KB 258; the Court of Appeal of England held that the company was carrying on the business for which object it had been incorporated, namely, (a) the business of acquisition of concessions and (b) the turning of the same to account, although it might be doing so in a passive rather than an active way.

[76] In *Inland Revenue Commissioners v Westleigh Estates Company Limited, Inland Revenue Commissioners v. South Behar Railway Company, Limited, Inland Revenue Commissioners v. Eccentric Club, Limited.* [1924] 1 K.B. 390, Pollock M.R. stated at pp. 413-412 as follows:

> *"Its business may be quiescent, and, to a large extent, a matter of routine. Its receipts may be derived, if not wholly, at least almost entirely from the annual payments made to it by the Secretary of State; but it remains a company alive, and still requiring, if only in smaller details, the direction of its directors and the duties carried out by its secretary. It is still concerned in the business of disposing of and dividing the profits, which it has become entitled to by reason of its greater activity in the past, and that activity, as well as possibly others, may be awakened and quickened in the future. For these reasons I am of opinion that the appeal must be allowed, with costs here and below".*

[77] This decision was affirmed by the House of Lords in *Inland Revenue Commissioners v. Westleigh Estates Company, Limited, Inland Revenue Commissioners Same v. South Behar Railway Company, Limited, Inland Revenue Commissioners v. Eccentric Club, Limited. decided on 19.02.1925* and Lord Summer at page 711 stated:

> *"It is obvious that the Company's objects have by no means been accomplished. It is obvious, too, that during its present period of dormant life, it has very little to do. I do not attach much importance to the domestic operations of declaring and paying dividends, remunerating directors and presenting reports, but the operation of receiving and thus discharging the annuity payments goes on continuously and however, simple it is not a mere passive acquiescence. It is the transaction of business between debtor and creditor resulting periodically in the discharge of a debt. The present is not the case of a company existing to do one act only and once for all. Not only did the company existing to do one act only and once for all. Not only did the company make the agreement of 1906, but it plays its recurring part in every payment and receipt of gains, and there is here, therefore, that "repetition of acts", which Lord Justice Brett says (15 Ch. D. at p. 277) is implied in "carrying on business".*

[78] The word "business" has been defined in Section 217 of the Inland Revenue Act, No. 10 of 2006 and the definition is inclusive and not exhaustive in nature. It is as follows:

"Business" includes an agricultural undertaking, the racing of horses, the letting or leasing of any premises, including any land by a company and the forestry"

[79] Thus, the word 'business" connotes some real, substantial and systematic or organized course of activity or conduct with a set purpose, and It is a word of extensive use and indefinite signification. Therefore, the Inland Revenue Act could not have used a larger word to define the term "business" in Section 217 of the Act. Then, "business" is a particular occupation, as agriculture, trade, mechanics, art, or profession, and when used in connection with particular employments, it admits of the plural that is, businesses (*Smith v. Anderson* (supra), p. 259).

[80] The House of Lords rejected the argument in *Liverpool and London and Globe Insurance Co. v. Bennett* 6 T.C. 327 that investments of reserve funds were not part of the business of the company, and held that the interest and dividends derived from the said investments irrespective of their object formed part of the company's trading profit. In *Graham v. Green* (1925) 2 K.B. 37 at 42, ROWLATT J. referred to the distinction between any individual acts and the conception of business/trade acts as an organism, and held at p. 41 that the conception of a trade or business or vocation which is an organised effort to obtain emoluments differs in its nature from the individual acts as follows:

"But then there is no doubt that if you set on foot an organized seeking after emoluments which are not in themselves profits, you may create, by way of a trade, or an adventure, or a vocation, a subject matter which does bear fruit in the shape of profits or gains. A different conception arises, a conception of a trade or vocation which differs in its nature, in my judgment, from the individual acts which go to build it up, just as a bundle differs from odd sticks. You may say, I think, without an abuse of language, that there is something organic about the whole which does not exist in its separate parts".

[81] He then proceeded to apply the test to determine the individual acts and trade/business acts in case of making profits or losses, and held at page 41 that when a person makes an organised effort to obtain emoluments, earns profits or incurs losses, such profits or losses are due

to the organised trade/business activities, and not the individual activities as follows:

> *"As I have said, there is no doubt that one might create a trade by making an organized effort to obtain emoluments which are not in themselves taxable as profits, and the most familiar instance of all, of course, is a trade which has for its object the securing of capital increment. A person who buys an object which subsequently turns out to be worth more than he gave for it, and which he sells, does not thereby make a profit or gain for income tax purposes. But he can organize himself to do that in a commercial and mercantile way, and the profits, which emerge are taxable profits, not of the transaction, both of the trade. In the same way, he may carry on the trade of selling things which he has not got and buying them when the price has fallen. That is a capital accretion, only the operations are reversed. He sells first and buys afterwards. And in that way, he may make losses or he may make profits. If he makes losses, the losses cannot be said to be the results of the individual acts; they are the results of the trade as a whole. Test it in this way. A person may organize an effort to find things. He may start a salvage or exploring undertaking and he may make profits. The profits are not the profits of the findings, they are the profits of the adventure as a whole. Again, he may make a loss. One cannot say that the loss was due to the failure to find. The loss is due to the trade. That is a good test, because it shows the difference between the trade as an organism and the individual acts".*

[82] The Appellant heavily relied on the decision of the Supreme Court in *K.A. Don Albert v. Municipal Revenue Inspector* 65 N.L.R. 1 in support of its stand. *K.A. Don Albert v. Municipal Revenue Inspector (supra)* did not involve the imposition of taxation, and it was only concerned about the interpretation of the words "trade or business' in terms of the by-law made under section 147 of the Municipal Councils Ordinance (Cap. 252). The by-law made under section 147 of the Ordinance prohibited certain trades or businesses to be offensive trades or businesses including "manufacture or storing of furniture or manufacture and storing of furniture.

[83] The Supreme Court held that (i) the words "trade or business" in section 147 of the Municipal Councils Ordinance are coupled together and the meaning of the word "business" is coloured by the word "trade: (ii) the context should be regarded as excluding all other meanings of the words

except those that are compatible with its associate trade; (iii) the question whether a business consisting of many ancillary activities is one business within the meaning of section 147 or a number of separate businesses under one direction has to be determined by an examination of the various activities.

[84] Having applied the above test, the Supreme Court held that the activities of stocking, polishing, touching-up, assembling, repairing were all parts of one business of dealing with furniture, and the prohibition in the by-law did not apply to storing of furniture per se but, it applies only to the storing of furniture of others for gain. The facts and the issues in the present case are totally different from the case relied on by the Appellant and thus, the decision of the Supreme Court in *K.A. Don Albert v. Municipal Revenue Inspector (supra)* will not support the argument of the Appellant.

[85] The facts of this case reveal that the Appellant has obtained loans for the investment in shares of John Keels Holding PLC and other companies and carried on business regularly and systematically in an organized effort and in a commercial and mercantile manner, to obtain profits and income. In *B.P. Medonza v. The Commissioner of Inland Revenue* [(1979) 1 N.L.R. 459], the question was whether or not betting activities amounted to a business. It was held that if betting on horse racing can be shown to be so organized and carried on systematically, they amount to a business. Samarawickrema J. observed at pp. 477-478:

> *"Where the evidentiary material discloses the facts which I have set out, it is not possible for this Court to hold that there is no evidence to support a finding that the assessee's betting activities amount to a business. In point of fact the evidence amply supports such a finding. The order of the Board states: "The systematic and continuous way the assessee had taken bets, the time and labour he had put into them, the facilities he had built around himself to place these bets and deposit the winnings clearly indicate that betting was a vocation and his dominant intention was to gain money".*

[86] As stated, the Appellant has carried on its share trading activities regularly, systematically and in an organized manner to obtain profits, and thus, any losses made in the course of such operations cannot be said to be the result of the individual act of the Appellant, but they are the results

of the organized business activities of the Appellant. The nature of the share trading carried on by the Appellant in the present case is not a mere case of holding of investments in shares for the purpose of earning dividends so as to exclude it from the expression of "carrying on a business". In the result, there is no merit in the contention of the Appellant that the share trading carried on by the Appellant is merely an individual activity, and not a business activity conducted by the Appellant.

[87] Janak de Silva J. in *CEI Plastics Limited v. Commissioner General of Inland Revenue* CA/Tax/03/2013 decided on 01.02.2019 took the same view at page 6 of the judgment as follows:

> *"In the instant case, the Appellant had obtained separate bank facilities for the specific purpose of share trading and the shares so purchased were mortgaged as security. There had been repetitive share trading transactions which had been carried on systematically in an organized manner. There facts in my view establish that the share trading activity referred to by the Appellant constituted a "business" within the meaning of Section 3 (a) of the Act".*

[88] Applying the principles laid down in the above-mentioned cases, which I have cited, I desire to say that the interest incurred by the Appellant in relation to its share trading activity falls within the words "the profits from any business" under Section 3 (a) of the Inland Revenue Act, No. 38 of 2000 or the Inland Revenue Act, No 10 of 2006.

Is share trading a separate and distinct business activity from the principal business activities of the Appellant?

Investment activity and business activity-

[89] The next question to decide is whether the share trading activity carried on by the Appellant is a separate business activity from the business of manufacturing and selling of plastic items or it is a part and parcel of the main business activities of the Appellant.

[90] At the hearing, the learned State Counsel submitted that the Appellant who conducts two separate business activities is obliged to maintain separate accounts so that the profits and income from each distinct business could be identified separately as required by Section 98 (5) of the

Inland Revenue Act, No. 38 of 2000 or Section 106 (11) of the Inland Revenue Act, No. 10 of 2006.

[91] The Appellant concedes that it is involved in the business of manufacturing and selling of plastic items, and in addition to the said business, it is involved in the share trading by investing in the shares of John Keels Holdings PLC, where the Appellant together with other related persons, is the largest single shareholder (Written submissions of the Appellant dated 03.07.2018, p.1). The Appellant, however, asserts that although the Appellant is involved in two lines of business, these businesses do not enjoy different tax rates and thus, Section 106(11) of the Inland Revenue Act, No. 10 of 2006 does not apply to the Appellant. On that basis, the Appellant argues that there is no requirement for the Appellant to maintain and prepare separate statement of accounts for each line of business.

[92] According to the audited statement of accounts of the Appellant, as contained in the letters of the Assessor (pp. 31-43 & 31-41), the Appellant has obtained loans and overdraft facilities from Banks for the periods in question as follows:

	Y/A 2006/2006 (Rs.)	Y/A 2006/2007 (Rs.)
Bank loans and overdrafts obtained	540,880,423	1,719,658,881
Investment in shares of other companies	375,713,437	1,183,172,223
Interest expenses	52,479,392	150,015,560

[93] The Appellant has purchased and sold shares during the years of assessment in question and the number of transactions that occurred in respect of buying and selling shares, as shown in Tax Appeals Commission brief (p. 31-14) are as follows:

Year of Assessment	**2005/06**	**2006/07**
Purchase of shares	375,723,437	1,183,172,323
sale proceeds value	56,767,752	51,326,417
profit	54,823,737	4,347,519

[94] The turnover from manufacturing plastic items and short-term loan obtained by the Appellant for the years of assessment as stated at page 31-8 of the TAC brief is as follows:

Turnover from

	2005/06	2006/07
Manufacturing plastic items	606,743,846	731,326,559
Short term loan obtained	27,000,000	129,909,296

[95] The above figures demonstrate that the turnover of manufacturing of plastic items for the year 2006/07 (Rs 731,326,559) is less than the value of the purchase of shares in the year 2006/07, which confirms that the Appellant has obtained bank loans and overdrafts (Rs. 1,719,658,881) and invested in the share market (Rs.1,183,172,323). The figures further confirm that the Appellant is involved in the share trading business and regularly, systematically and in an organized manner purchased and sold shares invested in John Keels Holding PLC. The transactions stated above clearly demonstrate that the Appellant is involved in two separate business activities, the manufacture and selling of plastic items, and share trading business.

[96] The contention of the Appellant that the investment in shares should be treated as an activity for the purpose of receiving dividends is clearly negated by the fact that the Appellant is involved in an organized share trading business of buying and selling shares for profits. In the case of holding investment shares for the purpose of earning dividends, the investor knows, at the time of investing in those shares that it may generate dividend income as and when such dividend income is generated that would be earned by the investor. The transaction of trading business carried on by the Appellant is not confined to mere "dealing in or holding of investments" or wholly or mainly for the purpose of earning or receiving dividends.

[97] There are two separate business activities carried on by the Appellant. One is the manufacture and selling of plastic items, and the other is the share trading. Each of the business does not comprise two or more

business activities of an allied nature, and they are completely two separate business activities. In the present case, shares are held as "stock-in-trade", and the Appellant is involved in the business of buying and selling of shares for the purpose of earning profits or income. It becomes a business activity of the Appellant to deal in those shares as a business proposition.

[98] Therefore, it is not possible to accept the contention of the Appellant that both business activities are embedded in each other or both business activities can be combined as part and parcel of one business of the company for the purpose of calculating the profits of the Appellant for the years of assessment in question.

[99] The Appellant further contends that Section 106 (11) is an administrative provision which simply sets out an obligation to prepare separate accounts so that separate lines of business which are taxed differently can be separately identified. The Appellant further contents that Section 106 (11) does not specify or provide the basis of deductibility of expenses for each line of business and thus, there is no basis for a separate computation of profit for each line of business unless there is a specific provision to that effect in the Inland Revenue Act.

[100] Section 98 (5) of the Inland Revenue Act, No. 38 of 2000 and Section 106 (11) of the Inland Revenue Act, No. 10 of 2006 relate to the obligation of any taxpayer to maintain and prepare separate statements of accounts in a manner that the profits and income from each such business activity can be separately identified. Section 98 (5) of the Inland Revenue Act, No. 38 of 2000 reads as follows:

> *"Where any person carries on or exercises more than one business, trade, profession or vocation and the profits and income from such business, trade, profession or vocation are chargeable with tax at different rates, such person shall maintain and prepare statements of accounts in a manner that the profits and income from each such activity may be separately identified".*

[101] Section 106 (11) of the Inland Revenue Act, No. 10 of 2006 read as follows:

> *"Where any person carries on or exercises more than one trade, business, profession vocation and the profits and income from such trade, business, profession or vocation are exempted from or*

chargeable with tax at different rates, such person shall maintain and prepare statements of accounts in a manner that the profits and income from each such activity, may be separately identified".

[102] This section [(S. 106(11)] was included in the Inland Revenue Act, No. 10 of 2006 after the judgment of the Supreme Court in *Rodrigo v. The Commissioner General of Inland Revenue* (2002) 1 Sri L.R. 384). In *ICICI Bank v. The Commissioner-General of Inland Revenue* (CA Tax No. 28/2013 decided on 16.07.2015), in addition to its primary banking business, the Appellant Bank also invested money in Sri Lanka Development Bonds. The Appellant in that case argued that all its business activities including the investment fall within one banking business. The Court of Appeal found that the Appellant carried on more than one business, including one trade, business, profession or vocation and thus, the Appellant was engaged, within the scope of banking businesses, in multiple businesses at the same time earning income from separate sources.

[103] The Court of Appeal took the view that (i) as section 106 (11) of the Inland Revenue Act recognises that one entity can have several businesses; (ii) where a person carries on or exercises more than one trade, business, profession or vocation, the profits and income from such trade, business etc. are exempted from tax at different rates; (iii) such person must however, maintain and keep separate statement of accounts in a manner that the profits and income from each activity to be separately identified; and (iv) unless the Appellant keeps a separate account, he will not be able to obtain the tax benefit as the tax benefit is granted only to the accrued interest in the investment of Sri Lanka Development Bonds.

[104] The Appellant also relies on 13 (t) of the Inland Revenue Act, No. 10 of 2006 which exempts profits and income-

(ii) for any year of assessment commencing on or after April 1, 2017, derived by or accruing to any person or partnership, from the sale of any share, a right to any share, a bonus share or a share warrant in respect of which the share transaction levy under section 7 of the Finance Act, No. 5 of 2005, has been charged."

[105] The Appellant's argument is that where the profits from the sale of shares in unlisted companies or where the Share Transaction Levey has not been paid, would not attract an exemption and would be taxed at the normal rates which are applicable to companies. On this basis, the Appellant argues that there is no basis for the assertion of the Tax Appeals Commission that the share trading is a separate business of the Appellant which attracts a different rate of tax from the core business. Section 13 (t) exempts only profits from the trading of shares of public listed companies in respect of which a share transaction levy has been charged in terms of section 7 of the Finance Act, No. 5 of 2005.

[106] Section 7 relates to the imposition of Share Transaction Levy and provides that "There shall be imposed with effect from the year commencing on January 1, 2005 and for every year thereafter, a levy to be called the Share Transaction Levy at the rate of 0.2 per centum shall be imposed of Share Transaction Levy from every buyer and seller, on the turnover of every share trading transaction, which is conducted through a Stock Exchange".

[107] The Appellant has admitted in paragraph 1 of the written submissions dated 03.07.2018 that:

> *"It also has a substantial portfolio of shares in public listed companies in Sri Lanka. The principal investment of the Appellant is in the shares of John Keels Holdings PLC, where the Appellant, together with other related persons, is the single largest shareholder".*

[108] Accordingly, the argument of the Appellant that the profits from the sale of shares in unlisted companies would not attract an exemption and would be taxed at the normal rates which are applicable to companies has no basis. The Appellant's own admission indicates that the share trading activities fall within the ambit of the exemption provided for in Section 13 (t) of the Inland Revenue Act, No. 10 of 2006.

[109] In dealing with the Question of Law No. 7, the Appellant argues that the Tax Appeals Commission has impliedly accepted that interest expenses relating to a strategic investment may be deductible, whereas the interest expenses relating to share trading would not, but the Tax

Appeals Commission has failed to identify, based on the figures mentioned as to what part of the shares fell into each category, and what portion of interest expense would be deductible.

[110] In *ICICI Bank v. Commissioner General of Inland Revenue* (supra), Dehideniya, J. stated at p. 9:

> *"As I have mentioned earlier, the Appellant has disregarded the law. Section 106(11) of the IRA imposes a duty cast upon the Respondent to maintain separate accounts, when it became necessary. Even though the Appellant has not produced any document or a separate account in this case, the Appellant stated at the inquiry that they are keeping all the data in their computers. Still, they failed to submit them at the inquiry. Without conducting the business as required by law, the Appellant cannot be heard to say that the system adopted by the Commissioner is arbitrary, and the opinion of this court is that it is not bad in law".* (emphasis added)

[111] The Appellant cannot be heard to say that the Tax Appeals Commission has failed to identify the correct portion of the interest expense when the Appellant failed to maintain separate accounts as required by law and submit them at the inquiry before the Assessor, the Respondent and the Tax Appeals Commission. It is abundantly clear that the Appellant has failed to maintain and prepare separate accounts as required by Section 98 (5) of the IRA 2000 and Section 106 (11) of the IRA 2006.

[112] There is a statutory obligation upon the Appellant to maintain and prepare separate accounts in a manner that the profits and income from each such activity, can be separately identified. The Appellant has, however, calculated the profit of the share trading business by deducting the interest expenses from the income of the share trading business and charged the interest expenses of the share trading business to the profit and loss statement of the core business of manufacturing and selling of plastic items.

[113] It is not in dispute that the Appellant is entitled to claim an exemption stipulated in Section 13 (t) of the Inland Revenue Act in respect of its share trading, but the Appellant is under obligation to maintain and prepare

separate accounts in respect of its two separate businesses as required by Section 106 (11) and claim such benefit under Section 13 (t). For that purpose, the Appellamt must show that it carries on one business entity, which has two branches or each of the business activity comprises two or more business activities of an allied nature to constitute the whole business. The Appellant has failed to show that carried on business entity, which has two branches or each of the business activity comprises two or more business activities of an allied nature to constitute the whole business.

Deductibility of interest expenses as outgoings and expenses in ascertaining the profits and income of the Appellant

[114] The next question is to decide whether or not the interest expenses incurred by the Appellant are deductible under Section 23(1)(h) of the IRA 2000 or under Section 26(1)(f) of the IRA 2006 as outgoings and expenses incurred "in the production of" the profits or income of the Appellant.

[115] The Appellant, however, argues that the Appellant is entitled to deduct the interest expenses of its share trading business to the value of Rs. 52,479,392 (for the year 2005/06) and Rs. 150,015,460 (for the year 2006/07) in determining the profits from business of the Appellant for the said years of assessment in terms of Section 23 (1) (h) of the Inland Revenue Act, No. 38 of 2000 or Section 25 (1) (f) of the Inland Revenue Act, No. 10 of 2006. Mr. Goonewardena relied on the decisions of this Court in *Geometry Global (Private) Limited v. Commissioner-General of Inland Revenue* CA/Tax/01/2017, decided on 12.11. 2021 and *Ogilvy Action (Pvt) Ltd v. The Commissioner General of Inland Revenue* CA/Tax/0016/2013, decided on 12.11.2021, in support of his contention that the specific deduction rules in the Inland Revenue Act are not restricted by any general restriction placed by the statute on deductions.

[116] On the other hand, the learned State Counsel submitted that the umbrella clause and the prohibition in Section 26 (1) (g) apply to the word "outgoings" as well, however, the question whether outgoings have been incurred in the production of income will not arise in the present case as the expenses claimed by the Appellant in Section 23(1)(h) of the IRA 2000

or Section 25 (1) (f) of the IRA 2006 relate to interest expenses that cannot be deducted as an outgoing under Section 24 (g) of the IRA 2000 or Section 26 (1) (g) of the IRA 2006.

[117] The learned State Counsel strongly relied on the decisions in *CEI Plastic Limited v. Commissioner General Inland Revenue* C.A/Tax/03/2013 decided on 01.02.2019, *Rodrigo v. Commissioner General of Inland Revenue* (2002) 1 Sri L.R. 384, *ICICI Bank Limited v. Commissioner General of Inland Revenue* C.A. Tax/28/2013, decided on 16.07.2015, *The Ceylon Tea Propaganda Board v. Commissioner of Inland Revenue* 67 N.L.R. 1 and *the Commissioner General of Inland Revenue v. A.L.J. Cross Raj Chandra* 67 N.L.R. 174 in support of his contention

The Scheme relating to the deduction of expenditure in ascertaining profits and income under the Inland Revenue Act

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

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

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

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

Deductions allowed in ascertaining profits and income-General Deduction Rule- Section 23 (1) of the IRA 2000 and Section 25(1) of the IRA 2006

[120] Income chargeable with tax is, however, arrived at after taking into account the various exemptions and deductions allowed under the Act and thus, the profits and income or profit or income on which income tax is payable may be either exempted or deducted by the provisions of the Act. Income tax is calculated by deducting "general" and "specific" expenses from the taxpayer's total assessable income for the assessment year. In *Hayley and Company Ltd v. Commissioner of Inland Revenue* (supra), Basnayake C.J., dealing with Section 9 (1) of the Income Tax Ordinance of Ceylon (Cap. 188), which is the corresponding provision of Section 23 (1) of IRA 2000 or Section 25 (1) of the IRA 2006, classified the types of deductions for the purpose of Section 9 (1) of the Income Tax Ordinance of Ceylon (Cap. 188).

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

[122] The body of Section 23 (1) of the IRA 2000 or I Section 25 (1) of the IRA 2006 contains what is known as a general rule of deduction that allows the deduction of "all outgoings and expenses" incurred in the production of profits or income of any person. Section 23 (1) of the IRA 2000 reads as follows:

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

[123] Section 25 (1) of the Inland Revenue Act, No. 10 of 2006 reads as follows:

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

[124] Section 23 (1) or Section 25 (1) is called a general deduction rule because it deducts all types of "outgoings and expenses" and thus, it prescribes a positive test of deductibility. It provides for what is deductible for the purpose of ascertaining the profits or income of any person from any source. These deductions are allowed only if they fulfil the cumulative criteria of being within the permissive provisions of Section 23 (1) or 25 (1) and outside the general prohibitive provisions of Section 24 (1) or 26 (1) or 26 (2).

[125] Firstly, it is important to understand the "outgoings and expenses" referred to in Section 23(1)/25 (1). In order to be qualified for deduction under Section 23(1)/25 (1), first, it must have been all "outgoings" and "expenses" incurred in the production of the profits or income. However, there is a distinction between "outgoings" and "expenses" for the purposes of Section 23(1)/25 (1) of the Inland Revenue Act.

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

[127] The meaning of 'outgoings' was examined by two Sri Lankan cases in *Healy and Company Ltd v. Commissioner of Inland Revenue* (65 N.L.R. 174) and *Rodrigo v. Commissioner of Inland Revenue* ((2002) 1 Sri LR 384). In this regard, it must be noted that the decision of the Supreme Court in

Healy and Company Ltd v. Commissioner of Inland Revenue (supra) was followed by Bandaranayake J, (as she then was) in *Rodrigo v. Commissioner of Inland Revenue* (supra). The decision in *Healy and Company Ltd v. Commissioner of Inland Revenue* (supra) dealt with the general deduction rule in Section 9 (1), specific deduction rule in sub-sections (1) -(i) of Section 9 (1) thereof, and the prohibition of deduction in Section 10 (c) of the Income Tax Ordinance (Chap 188), is instructive.

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

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

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

<u>"incurred in the production of the profits or income",</u> the word "outgoing" is not limited by those words.

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

[131] The only disagreement of the views expressed by Basnayake, C.J. and Sinnetamby, J. related to the question whether or not the outgoings must be limited by the words "incurred in the production of profits or income". The proposition of Basnayake, C.J. was confirmed by the Supreme Court decision in *Rodrigo v. Commissioner of Income Tax* (supra) where Bandaranayake, J. (as she then was) with Sarath N. Silva, C.J. and Ismail, J. agreeing interpreted the provisions of the Inland Revenue Act, No. 38 of 2000 and observed at page 390:

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

[132] Having reproduced the observations made by Basnayake, C.J. at page 175 of the judgment, Bandaranayake, J. in *Rodrigo v. Commissioner of Inland Revenue* (supra) stated at page 390:

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

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

Deductions not allowed in ascertaining profits and income-General Prohibition of Deduction Rule-S.24 of the IRA 2000 or S.26 of the IRA 2006

[134] Next, I will turn to deductions prohibited in ascertaining profits and income of any person in terms of the provisions of the two Inland Revenue Acts. While Section 23(1)/25 (1) refers to general deductions allowed in ascertaining profits or income, Section 24 (1) of the IRA 2000 or Section 26 (1)/ (2) of the IRA 2006 deals with deductions not allowed in ascertaining profits and income (general prohibition of deduction). Section 24 (1)/24 (1)(g) of the IRA 2000 reads as follows:

> *"24 (1) For the purpose of ascertaining the profits or income of any person from any source, no deduction shall be allowed in respect of—*
>
> *(g) any disbursements or expenses of such person, not being money expended for the purpose of producing such profits or income."*

[135] The identical Section 25 (1)/25 (1)(g) of the IRA 2006 reads as follows:

> *"26 (1) For the purpose of ascertaining the profits or income of any person from any source, no deduction shall be allowed in respect of—*

(g) any disbursements or expenses of such person, not being money expended for the purpose of producing such profits or income."

[136] In essence, Section 24(1) or 26 (1) of the Act prescribes a negative test of deductibility and prohibits deductions in respect of all outgoings or expenses specified in Section 23(1)/25(1) of the Act. This means that even if they fall within Section 23(1)/25 (1), we will still need to consider whether they would be excluded under Section 24/26 for the purpose of the general deductibility or general limitations on deductibility.

[137] In order to decide the question of whether general deductions permitted under Section 23(1)/25 (1) are prohibited under Section 24/26, Sections 23(1)/25 (1) and 24/26 have to be read together as both Sections apply to the general deductibility of outgoings or expenses. in *Rodrigo v. Commissioner-General of Inland Revenue* (supra) in interpreting the provisions of Sections 23 (1) and 24 (1) (g) of the Inland Revenue Act, No. 38 of 1979, which are identical to Section 25 (1) and 26 (1) (g) of the Inland Revenue Act, No. 10 of 2006, Bandaranajake, J. (as she then was) stated that:

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

[138] It was not disputed by the parties at the hearing that Section 23(1)/25 (1) and Sections 24/26 must be read together in considering whether or not any outgoing or expense referred to in Section 23(1)/25 (1) is capable of being deducted as the dispute relates to the deductibility of expenses referred to Section 23(1)(h) of the IRA 2000 or Section 26(1)(f) of the IRA 2006, and limitations of deductions under Section 24(1) (g) of the IRA 2000 or Section 26(1)(g) of the IRA 2006.

[139] In order to be qualified for a general deduction under Section 23(1)/25 (1), outgoings or expenses must have fulfilled the requirements of Section 23(1)/25 (1), (which depends on the circumstances of each case), read with

the prohibitions set out in Sections 24/ 26 of the Act. In other words, when they qualify both under Sections 23(1)/25 (1) and 24/26, they are allowable deductions in ascertaining the profits and income of any person.

[140] The prohibition of deductions (negative limb) in Section 24 (1) (g) of the IRA 2000 or 26 (1) (g) of IRA 2006 may relate to an outgoings or expenses such as (i) domestic or private expenses; (ii) expense of a capital nature or loss of capital; (iii) employment expenses, expenses in travelling outside Sri Lanka; (iv) entertainment expenses; (v) cost of any improvement effected, rent or expenses; (vi) any disbursement or **expenses of such persons, not being money expended for producing profits or income,** etc.

[141] The effect of Section 23(1)/25 (1) read with Section 24(1)/26 (1) is that it permits deductions of all outgoings and expenses which satisfy the following characteristics under section 23(1)/25 (1):

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

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

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

(iii) they must be not deductions prohibited under Section 24/26 in ascertaining profits and income (excluded deductions from the general deduction in Section 23(1)/25 (1).

Specific Deduction Formula-Section 23 (1) (a) -(t) or 25 (1) (a) -(w)

[142] In addition to the general deductions (outgoings and expenses) specified in Section 23 (1)/25 (1), it has several other sub-sections, referring to several outgoings or expenses that are permitted to be deducted, which the Appellant has described them as "special items of deductions". Those paragraphs, i.e. (a) to (w) of S. 23 (1) of the IRA 2000 or S. 25 (1) of the IRA

2006, which contain specific items of deductions are all outgoings or expenses within the interpretation adopted by Basnayake C.J. (p. 175) and Sinnetamby, J. (p. 177) *in Healy and Company Ltd v. Commissioner of Inland Revenue (supra).*

[143] I shall now proceed to consider first, whether the legislature intended that in addition to the general deductions in Section 23 (1)/25 (1) of the IRA, the sub-sections (a) -(w) allow a catalogue of specific deductions, when it has already permitted all outgoings and expenses to be deducted as a general rule subject to the general limitation set out in Section 24/26.

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

[145] As noted, *Basnayake* C.J. referring to Section 9 (1) of the Income Tax Ordinance, which is the corresponding provision of Section 25 (1) has clearly stated in *Hayley v. Commissioner of Inland Revenue (supra) that* the deductions allowed by sub-sections (a)-(i) are specific deductions**.** The body of Section 23 (1)/25 (1) contains the general deduction formula that allows the general deduction of "all outgoings and expenses incurred in producing profits or income, which are subject to the general limitations set out in Section 24/26. In addition to that, the sub-sections (a) to (w) of Section 23(1)/25 (1) also allow a catalogue of specific deductions in ascertaining profits or income of any person and Section 23(1)(h)/25(1)(f), which, allows the deduction of interest paid or payable by such person.

Relationship between sections 23(1)/25 (1), 23(1)(h)/25(1)(f) and 24(g)/26(1)(g)

[146] Now, the question is, if all deductible outgoings and expenses in Section 23(1)/25 (1) are subject to the limitations set out in Section 24/26, why did the legislature include several catalogues of other deductions in several sub-sections (a) -(w) of Section 23(1)/25 (1)? It is inconceivable that the legislature would have included several other specific items of deductions in sub-sections (a) -(w) of Section 23(1)/25(1), if all the outgoings and expenses are restricted to the general limitation provisions in Section 24/26 of the Act. In order to determine this question, it is necessary to consider the relationship between Section 23(1)/25 (1) and Section 24(1)(g)/26(1)(g) of the IRA 2000 or IRA 2006.

Whether the word "including" in Section 23 (1)/25(1) of the Act is expansive in nature or the same is to be read in a restrictive manner

[147] One issue that arose during the hearing was the true and correct interpretation to be given to the word “including” at the end of Section 23(1)/25 (1) of the Act. Mr. Goonewardena referred to the decision of this Court in *Geometry Global (Private) Limited v. Commissioner General of Inland Revenue* (supra) and *Ogilvy Action (Pvt) Ltd v. The Commissioner General of Inland Revenue* (supra) and argued that the word “including” must necessarily be construed to be an expansive meaning and thus, the specific deduction rule in Section 23(1)(h)/25(1)(f) is not restricted at all by any general restrictions placed by the general prohibition rules in Section 24(1)(g)/25(1)(g).

[148] The learned State Counsel strongly relied on the decision of this Court in *CEI Plastics Limited v. Commissioner General of Inland Revenue,* CA Tax 03/2013 decided on 01.02.2019 and submitted that the decision of the Privy Council in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) relied on by the Appellant is not applicable to the present case.

[149] Before I proceed to consider the decisions in *CEI Plastics Limited v. Commissioner-General of Inland Revenue* (supra) and *Geometry Global (Private) Limited v. Commissioner-General of Inland Revenue* (supra) and

Ogilvy Action (Pvt) Ltd v. The Commissioner General of Inland Revenue (supra), I propose to identify the context in which the word "including" has been used by the legislature at the end of the body of Section 23(1)/25 (1). In identifying the relationship between the Sections 23(1)/25 (1), 23(1)(h) and 24(g)/26(1)(g), it is significant to consider the context in which the word "including" has been used by the legislature at the end of the body of Section 23(1)/25 (1).

[150] The interpretation of the term "including" at the end of the body of Section 23(1)/25 (1) becomes paramount and therefore, one has to understand the true intent of the legislature and put a proper construction to the same. I do not think, however, that there could be any inflexible rule that the word "including" or "include" should be read always as a word of extension or exhaustion without reference to the context in which it is used by the legislature. I took the same view in *Geometry Global (Private) Limited v. Commissioner-General of Inland Revenue* (supra) and *Ogilvy Action (Pvt) Ltd v. The Commissioner General of Inland Revenue* (supra).

[151] It is now necessary to consider the question of whether the word "including" in section 23(1)/25 (1) of the Act is to be taken as exhaustive that includes all the expenses referred to in Section 23(1)/25 (1)(a) -(w) or it is an extended meaning in the context in which it is used, in addition to all legitimate deductions. The word "includes" has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word "include". Webster's Dictionary defines the word "include" as synonymous with "comprise" or "contain". Black's Law Dictionary, p. 905, word including may, according to context, the expression, an enlargement and have the meaning of and, or in and addition to or merely specify a particular thing already included within general words.

Extensive Construction

[152] It is well-settled that when the interpretation clause used an inclusive definition, it would be generally expansive in nature and thus, it seeks to enlarge the meaning of the words or phrases used in an interpretation clause, unless it manifests a contrary intention very clearly (P. M. Bakshi, Interpretation of Statutes, First Edition, 2008, pp. 242-243). In such case, the word "include" must be construed as comprehending, not only such

things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include (*Commissioner of Inland Tax v. Banddarawathie Fernando Charitable Trusts* (63 N.L.R 409). It is no doubt true that generally, when the word "include" is used in a definition clause, -it is used as a word of enlargement, that is to make the definition extensive and not restrictive

Exhaustive Construction- "means and include"

[153] Moreover, the words "means and includes" indicates an exhaustive explanation of the meaning which, for the purposes of the interpretation of a statute, must invariably be attached to these words or expressions. The use of the words, "means and includes" would, therefore, suggest that the definition is intended to be exhaustive and not extensive (*P. Kasilingam v. P.S.G. College of Technology*, AIR 1995 SC 1395, p. 1400). Lord Watson in *Dilworth v. Commissioner of Stamps,* [1899] A.C. 99, P.C.) stated that it is susceptible of another construction, which may be imperative if the concept of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural words used. He stated at pp. 105-106:

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

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

Enumerative construction-includes

[155] The third category of construction, the function of the word "includes" is merely enumerative and brings under one nomenclature all transactions possessing certain similar features, but going under different names (*Reserve Bank of India v Peerless General Finance and Investment Co. Ltd,* AIR 1987 SC 1023 p. 1041. This construction was adopted by Thambiah J. in *Commissioner of Inland Revenue v. Cross Raj Chandra* 67 N.L.R. 174 at p. 179) as the third category of the function of the word "includes" and in such cases, the term is placed preceding the word "includes" and is followed by a number of other terms which, in common parlance, may bot connote the term which precedes the word "includes".

[156] As Tambiah J. explained, the word "business" is defined as "Business includes agricultural undertakings", but in common parlance, agricultural undertakings will not be construed as business (supra). In this situation, the setting, context and object of an enactment may provide sufficient guidance for interpretation of the word "includes" or "including" for the purposes of such enactment. Tambiah, J. after an exhaustive analysis of cases, recognized these three categories of the function of the word "includes" in *Commissioner of Inland Revenue v. Cross Raj Chandra* (supra) and stated at pp. 178-179) that:

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

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

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

[157] For the above decisions, we can infer that the word “includes” or “including” can have the following functions in a statute:

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

2. If the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined, it can be also used to give an exhaustive or restrictive meaning and, in that case, it may be used as equivalent to “means” and also “means and includes”;

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

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

[158] Now, I will deal with the decision in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra), which was relied on by Mr. Goonewardena. It proceeded to construe the word “including” and the relationship between the general deduction, prohibition of deduction and the specific deduction rules in ascertaining the profits or income of a taxpayer under the Income Tax Ordinance (Income Tax Ordinance (Laws of Trinidad and Tobago). In the said case, both the Appellant and his wife (Mrs. Reynolds) had at all material times

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

[159] Main issues that arose for the determination in the said cases were as follows:

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

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

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

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

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

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

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

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

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

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

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

[163] The Privy Council considered the question whether the use of the word "including" at the end of the body of Section 10 (1) would be expansive or restrictive in nature in the context of the prohibition of deduction under Section 12 (1) (b). Lord Hodson stated at p. 11:

"In looking at this section as a whole, including all its sub-paragraphs, their Lordships have already noticed that not all of the sub-paragraphs appear to be directly aimed at what may broadly be called trade, business of profession and they are of the opinion that the language of sub-paragraph (f), in particular the reference to a "will"

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

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

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

2. The word "Including" is generally used to enlarge the meaning of the preceding word (*Reynolds v. Income Tax Commissioner for Trinidad and Tobago* [1966] 1 W.L.R. 19), however, it depends on the setting, context and the object in which it is used in any statute in its entirety and the purpose of the statute intended by the legislature;

3. Depending on the question referred to in (2) above, the word "including" may be intended to clarify or explain or restrict the definition in an exhaustive manner, or add or extend the definition in an extensive manner;

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

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

[165] The principle emanating from this analysis is that (i) the word "Including" is generally used to enlarge the meaning of the preceding word, but whether it is expensive or restrictive depends on the setting, context and the object in which it is used in any statute in its entirety and the purpose of the statute intended by the legislature; and (ii) while the general deduction rule is restricted by the prohibition of the deduction rule, any deduction provision which has been specifically provided by any statute is not taken away by the general prohibition of deduction unless it is expressly prohibited by the provisions of the statute.

Rodrigo v. Commissioner General of Inland Revenue

[166] The Supreme Court in *Rodrigo v. Commissioner General of Inland Revenue* (supra) stated that Section 24 (1) (g) read with Section 23 (1) of the Act, show that-

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

[167] Bandaranayake, J. held at pp. 391-392 and 394 in *Rodrigo v. Commissioner-General of Inland Revenue* (supra) that Sections 23/25 and 24/26 should be read together as both sections apply to the deductibility from income. The relevant findings are as follows:

"Sections 23 (1) and 24 of the Act have to be read together as both provisions apply to the deductibility from the income. While section 23 spells out the permissible expenses, section 24 expressly disallows the whole or part of certain expenses, which if not so prohibited, would be allowable deductions. The combined effect of sections 23 and 24 therefore is to divide all outgoings and expenses into two categories; outgoing expenses which are deductible and not deductible. ...(p. 391)

Taking both these Sections together, in their literal context, it appears that the meanings of words in Section 23(1) is restricted by the words given in Section 24 (1) (g) of the Act"..(p. 392).

"However, it would be necessary to give a meaning to the words in section 24 (1) (g) of the Act. If any part of the expenses could be clearly identified as having being expended for the purpose of deriving money not being profits or income liable to tax, such amount could not be deducted in terms of section 24 (1) (g). Specific expenses relating to the earning of exempt income are given as an example for such a situation" (p. 394).

[168] Having identified the combined effect of the two sections, the Supreme Court held that the general deduction provision in Section 23 (1) is restricted by the general prohibition provision in Section 24 (1) (g) and thus, although all outgoings and expenses incurred are deducted under Section 23 (1), any amount which was not expended for the purpose of producing the income cannot be deducted (p. 395). The words "the meanings of words in Section 23 (1) are restricted by the words given in Section 24 (1) (g) of the Act" as stated by the Supreme Court are consistent with the scheme of Section 25 (1) of the Inland Revenue Act, No. 10 of 2006, which is the general deduction provision and 26 of the Inland Revenue Act, No. 10 of 2006, is the general prohibition of deduction.

[169] Accordingly, the general deduction provision in Section 25 (1) as relates to all outgoings and expenses are restricted by the general prohibition of deduction in section 26 (1) and (2). This means that even if they fall within Section 23(1)/25 (1), it is necessary to consider whether they would still be excluded under Section 24/26 for the purpose of the general deductibility or general limitations on deductibility as

[170] This principle that Sections 25 (1) and 26 should be read together on the basis of the judgment in *Rodrigo v. Commissioner General of Inland Revenue* (supra) is consistent with the position taken by the Court of Appeal in *Global (Private) Limited v. Commissioner General of Inland Revenue* (supra) and *Ogilvy Action (Pvt) Ltd v. The Commissioner General of Inland Revenue* (supra).

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

CEI Plastic Limited v. Commissioner of Income Tax

[172] The decision in *CEI Plastic Limited v. Commissioner of Income Tax* (supra) is identical to this case. His Lordship Janak de Silva, J. cited with approval the entire passage of the judgment delivered by Tambiah J. at pp. 413-414 (Vide- paragraph 56 of this judgment) and two other judgments of the Supreme Court, namely, *The Commissioner of Income Tax v. Baddrawathie Fernando Charitable Trust* (63 N.L.R. 409) and *The Ceylon Tea Propaganda Board v. The Commissioner of Income Tax* (67 N.L.R. 1). Having referred to those judgments and Section 25 (1) and sub-section 25 (1) (f) stated that:

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

[173] His Lordship referred to the decision of this Court in *ICIC Bank Limited v. The Commissioner-General of Inland Revenue* (C.A. Tax 28/2013 C.A.M. 16.07.2015) that interpreted that (i) the phrase "all outgoings and expenses incurred by such person in the production thereof" means the outgoings

and expenses incurred for the purpose of generating the taxable income; and (ii) the word "thereof" referred to the income generated by expending the said outgoings and the expenses. Having followed the above-mentioned approach taken by Bandaranayake J. in *Rodrigo v. The Commissioner General of Income Tax (supra),* Janak de Silva, J. proceeded to pronounce that it is not possible to give the word "includes" in Section 25 (1) of the Act an extended meaning in the context in which it is used at p. 11 as follows:

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

[174] The Court of Appeal in CEI *Plastic Limited v. Commissioner* of Income Tax (supra) did not, however, consider the question whether or not, in addition to the general deduction formula in Section 25 (1), one or more sub-sections of Section 25 (1) is a specific deduction formula and if so, whether or not the combined effect of Section 25 (1) and Section 26 (1) (g) takes away such specific deduction formula expressly provided by Section 25 (1) (f). This Court in *Global (Private) Limited v. Commissioner General of Inland Revenue* (supra) and *Ogilvy Action (Pvt) Ltd v. The Commissioner General of Inland Revenue* (supra) specifically considered this legal position in the context of the decision in *Reynolds v. Income Tax Commissioner for Trinidad and Tobago* (supra) in detail.

[175] The decision in Patrick *Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) should be read together with the qualification identified by Lord Hodson at the end of the passage at p. 11 (Vide- paragraph 162 of the judgment) that **unless it is expressly prohibited by the provisions of the statute or the effect of such**

specific provision has been otherwise limited by the provisions of the same statute.

[176] Geometry *Global (Private) Limited v. Commissioner General of Inland Revenue* (supra) and *Ogilvy Action (Pvt) Ltd v. The Commissioner General of Inland Revenue* (supra) related to the deductibility of the actual travelling expenses incurred by a taxpayer or any person in his employment in travelling in connection with the trade, business as provided in section 25(1) (k). The general deduction provision in section 26(2) in that case disallowed any sum for depreciation by wear and tear or for renewal, or any allowance under paragraph (a) or paragraph (c) of subsection (1) of section 25 in relation to any rental or annual payments in respect of such vehicle referred to in paragraphs (a) and (b). The Court considered the following questions: (i) whether or not Section 25 (1) (k) is a specific deduction provision and if so, its relationship and effect of section 26 (2) on the specific deduction provision; (ii) whether the specific deduction provision in section 25(1)(k) is taken away by the general limitation provision in section 26(2); and (iii) whether the general deduction rule is intended to interfere with the specific provision unless it manifests a contrary intention in the provisions of the Act.

[177] Articulated in this broad analysis, it is not always necessary that the word 'including' would convey expansiveness nor is it necessary that the word 'including' shall always be interpreted to include, within its sweep, such items, which may not be generally included within the term, which is sought to be defined by using the word 'including'. It is in this context, I stated in *Geometry Global (Private) Limited v. Commissioner General of Inland Revenue* (supra) that in construing the meaning of "including" in the context in which it is used as regards travelling expenses referred to in Section 25(1)(k) read with section 26(2) at paragraph 73:

> *"The courts in interpreting the word "includes" or "including" are not adopting any uniform rule and thus, sometimes, the word "includes" may be extensive or sometimes exhaustive. But whether the meaning of the* word **"including"** *is extensive in nature (a phrase of extension) or exhaustive in nature (a phrase of restriction),* ***depends on the setting, context and object in which it is used in any statute in its entirety and the purpose of the statute intended by the legislature. Depending on that, the word "including" may be***

intended to clarify or explain or restrict the definition in an exhaustive manner, or add or extend the definition in an extensive manner".

[178] Further, in Geometry *Global (Private) Limited v. Commissioner General of Inland Revenue* (supra) at p.80, this Court considered the relationship between the specific deduction and the general prohibition of deduction, and the test to be applied in the context of the decision in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) as follows:

> *"A general deduction read together with a general prohibition of deduction, does not take away what has been expressly provided by any specific deduction unless it is otherwise provided in the Act. In my view, the above principle in Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago (supra) is of a highest persuasive authority and applies in interpreting similarly structured general deduction rule in Section 25 (1) and the prohibition of deduction in Section 26 when a specific deduction formula has been expressly provided by a tax statute,* ***unless the effect of such specific provision has been otherwise limited by the provisions of the same statute"*** *(emphasis added).*

Nature and Character of Expenses incurred by the Appellant

[179] It is now necessary to consider whether the interest expenses incurred and claimed by the Appellant fall within the ambit of the deduction under Section 23(1)(h)/25 (1)(f) or under the prohibition of deduction under Section 24(1)(g)/26 (1) (g).

[180] As stated, the question whether or not, the word "including" in section 23(1)/25(1) is extensive or restrictive depends on the context in which it is used in the combined effect of the specific deduction formula specified in Section 23(1)(h)/25(1)(f) and the general prohibition of deduction formula in Section 24(1)(g)/26(1)(g), and where a contrary intention is expressed in the scheme of the Act, the word "including" may not be given an extended meaning.

[181] In the said two cases [(*Global (Private) Limited v. Commissioner General of Inland Revenue* (supra) and *Ogilvy Action (Pvt) Ltd v. The Commissioner General of Inland Revenue* (supra)], the Court examined the

effect of Section 25(1)(k) and Section 26(2) and held that in the context in which the provisions are used in the Act, the specific deduction provision in Section 25(1)(k) is not taken away by the general deduction rule in Section 26(2) as the provisions of the Act did not expressly or by implication take away the effect of the specific deduction provision in Section 25(1)(k).

[182] It is to be noted that in *Hayley v. Commissioner of Inland Revenue (supra)* however, the question whether or not the outgoings must be limited by the words "incurred in the production of profits or income" was not conclusively decided as there was a disagreement between Basnayake, C.J. and Sinnetamby, J. on this question. In this context, in *Geometry Global (Private) Limited v. Commissioner-General of Inland Revenue* (supra) and *Ogilvy Action (Pvt) Ltd v. The Commissioner General of Inland Revenue* (supra), while holding that the general deduction under Section 25 (1) shall be read with the general prohibition of deduction in Section 26, this Court held that the specific deduction will prevail unless the effect of such specific provision has been otherwise limited by the provisions of the same statute.

[183] The deduction allowed under Section 23(1)/25(1) relates to all outgoings and expenses, incurred by a taxpayer in the production of profits or income of such person, including the interest paid or payable under paragraph (f) of Section 23(1)/25(1). As stated in the case *Hayley and Company Ltd v. Commissioner of Inland Revenue* (supra), in order to be qualified for deduction under Section 23(1)/25 (1), it must have been "all outgoings" and "expenses" incurred in the production of the profits or income, that must be deducted to ascertain such a profit (see- the language in S. 23 (1)/25(1). This means in the present case, all expenses that have been incurred in the business of manufacturing and selling of plastic items in ascertaining the profits or income of the said business.

[184] In my view, Section 24(1) (g) or Section 26 (1) (g) of the Act prescribes a negative test of deductibility and prohibits deductions in respect of all outgoings or expenses specified in Section 23(1)/25(1) of the Act. This means that even if they fall within Section 23(1)/25 (1), it is necessary to consider whether they would still be excluded under Section 24/26 for the

purpose of the general deductibility or general limitations on deductibility as Bandaranayake, J. held at p. 391 in *Rodrigo v. Commissioner-General of Inland Revenue* (supra).

[185] Section 24(g)/26(1)(g) expressly prohibits the deduction of expenses and disbursements **not incurred in the production of profits or income in ascertaining the profits such person**. The Appellant has taken loans and overdraft facilities from banks for its share trading activities, which is a separate business and calculated the profit of the share trading business by deducting the interest expenses from the income of the share trading business. The Appellant has charged such interest expenses of the share trading business to the profits and loss account in arriving at the profits and income from the manufacturing and selling plastic items.

[186] The Privy Council in *Patrick Alfred Reynolds v. Commissioner for Income Tax, Trinidad & Tobago* (supra) however, dismissed the appeal on different grounds. The Privy Council was of the view that the payments to the trust for the maintenance and benefits of a taxpayer's children are within the prohibition of Section 12 (1) (b) which prohibits any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income. *Hayley v. Commissioner of Inland Revenue (supra)* considered the question whether the loss suffered by the burglary was an "outgoing" under Section 9 (1) of the Income Tax Ordinance of Ceylon for the purpose of ascertaining the profits or income of the Company from its trade or business.

[187] In the present case, the interest expenses related to the share trading activities that had been charged to the profit and loss account in arriving at profits from manufacturing and selling plastic items. It is not in dispute that the Appellant's share trading activities fall within the meaning of section 13 (t) which exempts share trading business from income tax. It is crystal clear that the interest expenses incurred by the appellant relate to the loans and overdrafts obtained for separate share trading activities of the Appellant and not for the production of profits or income in respect of the core business of manufacturing and selling plastic items.

The deduction provided for in Section 23(1)(h)/25(1)(f) in relation to interest paid or payable by a taxpayer has been otherwise limited or expressly taken away by the prohibition of deduction in Section 24(1)(g)/26(1)(g) in ascertaining the profits or income of the Appellant. Accordingly, such interest expenses cannot be deducted for the purpose of deriving the profits or income of the business of manufacturing and selling plastic items under Section 24 (1)(g)/26(1)(g).

[188] Therefore, the cases decided by in *Geometry Global (Private) Limited v. Commissioner General of Inland Revenue (supra) and Ogilvy Action (Pvt) Ltd v The Commissioner General of Inland Revenue* (supra) can be distinguished from the facts of this case. The reasoning except the manner in which this Court broadly considered the relationship between the general deduction provision, the general prohibition on deduction provision and the specific deduction provision and the circumstances under which the word "including" in section 25(1) is applied, is consistent with the decision in *CEI Plastic Limited v. Commissioner of Income Tax (supra).*

[189] For those reasons, I hold that it is not possible to construe an extensive meaning to the word "including" in section 23(1)/25(1) in the present case, in the context in which it is used in Section 23(1)(h)/25(1)(f) and 24(1)(g)/26(1)(g) of the Inland Revenue Act".

[190] For those reasons, I hold that the interest incurred by the Appellant to the value of Rs. 52,479,103 for the year of assessment 2005/2006 in terms of section 23 of the Inland Revenue Act, No. 38 of 2000 cannot be deducted for the purpose of ascertaining the profits or income of the Appellant from the profits of its business of manufacturing and selling plastic items. For those reasons, I hold that the interest incurred by the Appellant to the value of Rs. 122,406,640 for the year of assessment 2006/2007 in terms of section 25 of the Inland Revenue Act, No. 10 of 2006 cannot be deducted for the purpose of ascertaining the profits or income of the Appellant from the profits of its business of manufacturing and selling plastic items.

Question of Law 4-6

Deductibility of the interest incurred by the Appellant under Section 29(2) of the IRA, No. 30 of 2000 or section 32 (5) of the IRA, No. 10 of 2006

[191] The next question is to consider whether the interest expenses incurred by the Appellant to the value of Rs. 52,479,103 and Rs. 122,406,640 is deductible in determining the assessable income of the Appellant under Section 29 (2) of the IRA 2000 or Section 32 (5) of the IRA 2006.

[192] It was the contention of Mr. Goonewardena that Section 29(2) of the IRA 2000 and Section 32(5) of the IRA 2006 specifically provide for the deductibility of the interest expenses provided that certain criteria are satisfied, and that these two Sections do not refer to any specific principles set out in Sections 23/25 of the IRA 2000 and 24/26 of the IRA 2006 relating to the requirement of being incurred in the production of a particular source of income. He further submitted that the Finance Controller of the Appellant has indicated the actual interest which was paid by the Company for the relevant year and thus, based on the decision in *ICICI Bank Ltd v. CGIR* (supra), the interest expenses should have been deductible under Section 29(2) of the IRA 2000 or Section 32 (5) of the IRA 2006.

[193] The learned State Counsel, however, submitted that the Appellant has already calculated the profits of the share trading business in order to claim the tax exemption provided for in Section 13 (t) and deducted the interest expenses from the income of the share trading business in terms of section 23/25 of the Inland Revenue Act and therefore, the Appellant is not entitled to deduct the interest expenses under Section 29(2)/32(5) of the Act.

[194] Section 29(2) of the IRA 2000 is identical to Section 32 (5) of the IRA 2006. It reads as follows:

> "There shall be deducted from the total statutory income of a person for any year of assessment

(a) sums paid by such person for that year of assessment by way of annuity or interest not deductible under Section 25. For the purposes of this paragraph, interest does not include the excess referred to in paragraph (x) or paragraph (y) of subsection (1) of section 26:

Provided that-

(i) no deduction shall be allowed in respect of any such sum paid, unless the Assessor or Assistant Commissioner is satisfied that the recipient of such payment has issued a valid receipt for such payment, containing name, address and the income tax file number (if any) of such person in Sri Lanka or that the tax has been deducted under this Act before or at the time such payment is made; no deduction shall be allowed

(ii) (ii) where for any year of assessment any such sum paid and deductible under this subsection exceeds the total statutory income for that year, the excess shall be treated for the purposes of this section, in the same manner as a loss incurred in a trade during that year

(iii) (iii) where any sum is paid by such person by way of an annuity, no deduction shall be allowed in respect of such annuity, unless such annuity is paid–……"

[195] In terms of these two provisions, the interest expenses which are not deductible under section 23 or 25 can be deducted from the total statutory income of the taxpayer subject to several conditions. In the present case, the Appellant has already calculated the profit of the share trading business and deducted the interest expenses of the share trading business, which is exempted from income tax in terms of Section 15 (v) of the IRA 2000 and Section 13 (t) of the IRA 2006. Accordingly, the question of the deductability of interest expenses on share trading under Section 29(2) or Section 32 (5) of the Act will not arise.

[196] The Appellant however, strongly relies on Section 32 (5)(a) (iv) of the IRA 2006. For the application of this subsection, the Assessor or Assistant Commissioner must be satisfied with factual matters, namely, that the recipient of such payment has issued a valid receipt for such payment,

containing name, address and the income tax file number (if any) of such person in Sri Lanka or that the tax has been deducted under this Act before or at the time such payment is made. It has been submitted in the written submissions filed on behalf of the Appellant that the Finance Controller of the Appellant has produced an affidavit with confirmation with the relevant proof under the Banking Act as required by Section 32 (5)(a) (iv). A perusal of the TAC brief reveals that the affidavit of the Finance Controller of the Appellant has only been submitted to the Tax Appeals Commission **on 22.11.2016** with letters issued on a letterhead of the Commercial Bank, Sampath Bank, Nations Trust Bank, DFCC Bank in the year **2008.** The letter of the State Bank of India is dated **29.07.2015** and thus, it has been issued long after the assessments and the determination made by the Respondent.

[197] There is nothing to indicate, however, that any of the documents issued by the Banks had been submitted **to the Assessor or the Assistant Commissioner** as required by Section 32 (5) (a) (iv) **on or about the time the assessments were made by the Assessor or the Assistant Commissione**r and the appeal was decided by the Respondent. Had those letters been, in fact addressed to the Assessor or the Assistant Commissioner, the Appellant could have produced these letters sent to the Assessor and the Assistant Commissioner during the assessment process or the appeal process before the Respondent. Unless the relevant documents set out in the said subsection are produced before the Assessor or the Assistant Commissioner, and the Assessor or Assistant Commissioner is satisfied with the rerlevant recipient of such payments, no deduction under this section can be allowed.

[198] There was nothing before the Assessor or the Assistant Commissioner to be satisfied at the inquiry with any valid receipts issued for payment containing the details as required by Section 32 (5)(a)(iv) and that factual matters referred to in the said subsection were not gone into by the Assessor or the Assistant Commissioner either during the assessment or the appeal process. The Appellant has clearly failed to maintain and keep or maintain separate accounts and produce valid receipts for payment at the inquiry before the Assessor or the Assistant Commissioner. The Appellant cannot be heard to say that those

documents were produced before the Tax Appeals Commission with an affidavit based on the decision in *ICIC Bank v. CGIR* (supra) when the same was produced before the Tax Appeals Commission long after the assessments were made, and the appeal was decided by the Respondent contrary to the legal obligation set out in Section 32(5)(a)(iv) of the Inland Revenue Act.

[199] I hold that the Appellant has not satisfied the conditions for the applicability of the deduction as set out in Section 29 (2)/32 (5) (a) (iv) of the Inland Revenue Act and accordingly, the Appellant cannot seek to deduct the interest expenses incurred in terms of the Section 29(2) of the IRA 2000 or Section 32 (5) of the IRA 2006.

Conclusion & Opinion of Court

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

1. No.
2. No
3. No
4. No
5. No
6. No
7. No

[201] For those reasons, I confirm the determination made by the Tax Appeals Commission dated 14.02.2017 and 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