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

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

Phoenix O & M (Private) Limited,
Having its place of business at No. 16,
Barnes Place,
Colombo 7.

APPELLANT

CA No. CA/TAX/0022/2014
Tax Appeals Commission
No. TAC/ESC/001/2013

v.

Commissioner General of Inland Revenue,
Department of Inland Revenue,
Sir Chittampalam A, Gardiner Mawatha,
Colombo 2.

RESPONDENT

BEFORE : Dr. Ruwan Fernando J. &
M. Sampath K. B. Wijeratne J.

COUNSEL : Riad Ameen with Rushitha Rodrigo for the Appellant.

Chaya Sri Nammuni, SSC for the Respondent.

WRITTEN SUBMISSIONS	:	31. 07. 2019, 09.03.2022 & 07.06.2022 (by the Appellant) 27.09.2019 & 06.06.2022 (by the Respondent)
ARGUED ON	:	22.02.2022 & 15.03.2022
DECIDED ON	:	09.06.2022

M. Sampath K. B. Wijeratne J.

Introduction

The Appellant, Phoenix O & M (Private) Limited is a limited liability company incorporated in Sri Lanka engaged in the advertising business. The Appellant submitted its Economic Service Charge (hereinafter referred to as 'ESC') returns for the taxable periods ended on 31st March 2008 (07084), 30th June 2008 (08091), 30th September 2008 (08092) and 31st December 2008 (08093). The Assessor, rejected the aforementioned returns by his letter dated 27th September 2010[1] on the ground that the Appellant paid ESC only on the Commission received by the Appellant and not on the bill value. The Assessor, proceeded to issue assessments in terms of Section 9 (3) of the ESC Act, as amended by amendment Act No. 15 of 2007, in accordance with the bill values in the Appellant's letter dated 19th May 2010[2].

The Appellant appealed against the said assessment to the Commissioner General of Inland Revenue (hereinafter referred to as 'CGIR'). The Respondent CGIR heard the appeal and confirmed the assessments by his determination dated 24th December 2012.

The aggrieved Appellant appealed to the Tax Appeals Commission (hereinafter referred to as 'TAC') against the determination of the CGIR. The TAC by its determination dated 17th April 2014 confirmed the determination of the Respondent, CGIR.

[1] The letter tendered to Court by the Appellant along with the motion dated 20th July 2015.

[2] ibid

Thereafter, the Appellant moved the TAC to state a case to this Court on twenty-two questions of law[3]. However, the TAC stated a case to this Court only on six questions of law.

In *Commissioner General v. Dr. S.S.L. Perera*[4] His Lordship Janak De Silva J., stated that the obligation to frame the questions of law is initially placed on the TAC and not the Appellant. In *R. M. Fernando v. Commissioner of Income Tax* [5] His Lordship Basnayake C.J., specifically stated that it is not for the Appellant to state the questions of law arising on a case stated.

The six questions of law referred to this Court by the TAC are as follows:

1. **Did the Commission err in law in disregarding the legal meaning of the word RECEIVABLE which occurs in the definition of turnover, presented to the Commission on behalf of the appellant, on the authority of the case Crookston Brothers Vs. Furtado, and acting on a so-called literal meaning of the word, without any authority?**

2. **Did the Commission err in law in arriving at its conclusions relating to the ESC liability of the appellant on the basis of invoicing done for the purposes of Value Added Tax which is a tax, with its credit mechanism, entirely different from the Economic Service Charge?**

3. **Did the Commission misinterpret the letter of guarantee produced on behalf of the appellant in evidence, marked D4, when it said contrary to the contents of that document, that it merely authorized the media institution to accept adverting material furnished by the appellant, when the Commissioner of Inland Revenue herself accepted at page 3 of ~~the~~ her reasons for the determination that the purpose of D4A is to guarantee payment by the customer to the media institution?**

4. **Did the Commission err in law when it allowed itself to be guided by the charges made to the rates of Economic Service Charge with effect from 1st April 2011 when the periods under**

[3] At page 115 of the appeal brief.
[4] C.A. (Tax) 03/2017, C.A.M. 11.01.2019
[5] Ceylon Tax Cases, Vol. 1 p. 571 at p. 577

consideration were the four quarters in the one-year period which ended on 31.03.2009?

5. **Did the Commission err in law in its failure to consider the interpretation of the amendment and the effect thereof presented to the Commissioner on behalf of the appellant?**

6. **Having regard to the definition of "turnover" as given in Economic Service Charge Act No. 13 of 2006, and to the facts and circumstances which can properly be treated as established in this case, do the amounts collected by the appellant from the clients to be paid over to the media institutions constitute the turnover of the appellant or purposes of the Economic Service Charge Act?**

The Appellant, in the written submission filed in this Court moved to remit the case back to the TAC to include the balance sixteen questions of law or for this Court to hear and determine the said questions as well. However, at the argument, the learned Counsel for the Appellant did not pursue the application and confined his submissions to the six questions of law already before this Court.

Factual Background

The Appellant is in the business of advertising. According to the Appellant, advertising business comprises of the two features of designing and publishing/conveying advertisements to the public. The Appellant is engaged only in the first feature, designing advertisements. The second feature is carried out either by electronic or print media. The Appellant submitted that it does not own either electronic or print media. In this background the Appellant contended that since the Appellant cannot advertise *via* electronic or print media, Appellant's business is only designing advertisements. According to the Appellant, the Appellant only introduces clients to the media institutions to publish the advertisements. The relationship between the Appellant and the media institutions is an agency arrangement. The Appellant receives payment for designing advertisements for which the Appellant paid ESC and the balance is a payment made to the media institutions of which the Appellant receives a commission.

However, it is the Appellant who raises invoices to the clients for the total value of the publication as well; the charges of media and the Appellant's

Commission. Then the pertinent questions arise as to why the Appellant raises invoices on behalf of the media. According to the Appellant, the Appellant collects orders from customers[6] on behalf of the media and receives the commission from media[7] for which the Appellant pays ESC. The Appellant claims that the clients are the customers of the Appellant for whom the Appellant designs advertisements and are being introduced to the media by the Appellant for publishing those advertisements. The Appellant submitted that the clients enter into agreements with the media to get their advertisements published. However, no such agreements were produced. The Appellant, by motion dated 20th July 2015 tendered the documents which were said to have been included in the brief but such were not transmitted to this Court by the TAC. Along with the said motion, the Appellant submitted two letters of guarantee issued by two different clients whereby the clients have guaranteed payments due to media for advertising done in respect of their businesses ('D 4'). 'D 6' is a final reminder issued by the media to the client requesting them to settle the amounts outstanding to the media.

According to the Appellant, the media publishes advertisements and issues invoices to the client through the Appellant. The media issues a tax invoice to the Appellant for their charges for publication including VAT and the Appellant's agent Commission ('D 5'). In turn, the Appellant issues a tax invoice to the client for the total amount including VAT[8].

Thereafter, the Appellant collects payments from clients and pays the share of media, retaining its Commission[9]. The Respondent, CGIR acknowledged this methodology in his determination[10]. Nevertheless, the Appellant has made a self-contradictory statement regarding the payments in its own written submission. The Appellant stated that the clients directly make payments to the media for its services, including the Appellant's Commission[11].

Be that as it may, the Appellant's contention is that although it collects both, the amount due to the media and the Appellant's Commission, it is merely a practical arrangement between media and the Appellant. According to the Appellant, Appellant is an agent of media for publishing

[6] Paragraph 52 of the written submission filed by the Appellant on the 31st July 2019.
[7] Paragraph 53(b) of the written submission filed by the Appellant on the 31st July 2019.
[8] D5 page 2.
[9] Paragraph 65 to 68 of the written submission filed by the Appellant on the 31st July 2019.
[10] At page 3 of the CGIR's determination.
[11] At paragraph 47 (c) of the written submission filed by the Appellant on the 31st July 2019.

the advertisements[12]. Appellant's role in this regard is only introducing clients to the media, for which the Appellant receives only a Commission of 15 % out of the total turnover[13].

At this stage it is important to analyse the Appellant's role. Admittedly the Appellant is an advertising agent[14]. The Appellant designs advertisements for its clients which need to be published/communicated to the people. According to the Appellant, since the Appellant does not own a media institution, the Appellant introduces those clients to the media. According to the Appellant thereafter those clients become the clients of media. The Appellant contended that upon 'D 4' and 'D 6', media have the right to receive the dues from the clients and the clients are bound to make the payments to media. The Appellant argued that the demand made directly from the clients by the media establishes the fact that the clients are of media and not of the Appellant. The document tendered by the appellant with the motion dated 20th July 2015 is a summary of accounts, indicating the amounts owed by the Appellant to the media as at 11th June 2011. The media requests the Appellant to settle the identical amount stated in 'D 6', within the credit period to avoid suspension of the credit facilities offered to the Appellant. Hence, it is apparent that the contract is between the Appellant and media and 'D 4' only guarantees the payment to the media by the client, in the event the Appellant defaults. Therefore, initially, payments to the media arise out of invoices issued by the Appellant and a claim on the Letter of Guarantee will only occur in the event of failure. Therefore, in my view, the TAC erred in holding that 'D 4' merely authorizes the media institution to accept advertising materials furnished by the Appellant company to be published in the name of the client. However, this misstatement of fact has not affected the final determination of the TAC. Moreover, it is significant that in the letter of guarantee the client has described the Appellant as their agent and not as the agent of media, as stated by the Appellant. Further, in view of the above facts, it appears to me that although the client has guaranteed payments to media for advertising done in respect of their business, the Appellant is the one who dealt with the media, acting as agent of the client.

From the foregoing analysis of the facts, it seems to me that the clients who wish to advertise their product/service would seek the assistance of the Appellant who is an advertising agent. The designing of the advertisement,

[12] Paragraph 41, 42 and 52 of the written submission filed by the Appellant on 31st July 2019.
[13] Paragraph 41, 53(a) and (b) of the written submission filed by the Appellant on 31st July 2019.
[14] Paragraph 1 of the written submissions filed by the Appellant on 31st July 2019.

which is the creative element of advertising is done by the Appellant. According to the Appellant, thereafter the Appellant introduces the clients to media for publishing the advertisement and they become the clients of media. If this phenomenon is accepted the pertinent question arises as to why the Appellant even thereafter continues to issue invoices, call for and collect payments. Therefore, the only reasonable inference that this Court could draw is that the Appellant having undertook the task of advertising obtains the services of media to complete the project. Once the invoice for the publication is received by the Appellant from the media, the Appellant invoices the client for the said amount including its commission. Once the payment is received, the Appellant remits the media's share. As it was submitted by the Appellant, if it is the media who directly invoices, I do not see any justifiable reason for the Appellant to receive and remit the payment to the media.

Hence, it is clear that the Appellant charges the total amount from the client, and thereafter pays the media's share.

Next, I will consider the argument advanced by the Appellant that the *relevant turnover* in terms of Section 2 (1) of the ESC Act is only the Commission received by the Appellant, excluding the amount paid back to media.

Statutory provisions

I will start with reproducing the relevant Sections of the ESC Act.

Section 2 (1) reads as follows:

> *'**2**. (1) An Economic Service Charge (hereinafter referred to as "the service charge") shall, subject to the provisions of this Act, be charged from every person and every partnership for every quarter of every year of assessment commencing on or after April, I, 2006 (hereinafter in this Act referred to as "relevant quarter") in respect of every part of the **relevant turnover** of such person or partnership for that relevant quarter, at the appropriate rate specified in the Schedule to this Act:'* (emphasis added)

The term *'relevant turnover'* is defined in Section 2 (3) (a) which reads thus;

> '***2**. (3) in this Section-*

a) "relevant turnover" in relation to any person or partnership and to any relevant quarter means the aggregate turnover for that relevant quarter of every trade, business, profession or vocation, carried on or exercised by such person or partnership, as the case may be in Sri Lanka whether directly or through an agent or more than one agent:

The *turnover* is defined in section 2 (3) (b) of the ESC Act as follows;

'***2****. (3) (a) (...)*

(b) "turnover" in relation to any trade, business, profession or vocation and to any relevant quarter means the ***total amount receivable****, whether actually received or not, from every transaction entered into in that relevant quarter in the course of such trade, business, profession or vocation carried on or exercised by such person or partnership,* - (emphasis added)

The meaning of the expressions *"relevant turnover"* and *"total amount receivable"*

Having regard to the question of law No.1 stated to this Court that it becomes necessary to interpret the words *'total amount receivable'* in Section 2(3)(b). However, these words are not defined in the ESC Act. Therefore, they must be given its ordinary and natural meaning.

N.S. Bindra in his book *'Interpretation of Statutes'* states as follows[15]:

'First, the literal rule that, if the meaning of a section is plain, it is applied whatever the result; second, the 'golden rule' that the words should be given their ordinary sense unless that would lead to some absurdity or inconsistency with the rest of the instrument.'

The learned Counsel for the Appellant argued that the words *'total amount receivable'* should mean 'the amount lawfully receivable by the Appellant'[16].

The leaned Counsel cited the following judgments regarding interpretation of statutes imposing tax.

[15] Twelfth Edition, at pp. 314 and 316.
[16] Paragraph 96 of the written submissions filed by the Appellant on 31st July 2019.

Attention of the Court was drawn to the following extract from the case of *Sohli Captain v. Commissioner of Inland Revenue*[17]*;*

'(...) that express and unambiguous language is absolutely indispensable in Statutes passed for the purpose of imposing a tax, for such a Statute is always strictly construed.

He also cited *The Manager, Bank of Ceylon, Hatton v. The Secretary Hatton Dickoya Urban Council*[18] wherein the following extract from Maxwell on *Interpretation of Statutes*[19] was reproduced.

'Statutes which impose pecuniary burdens, also, are subject to the same rule of strict construction. It is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language because of some decree they operate as penalties. The subject is not to be taxed unless the languages of the statute clearly imposes the obligation.'

Further, the learned Counsel cited *Vallibel Lanka (Pvt) Limited v. Director-General of Customs and Three Others*[20] and reproduced the following extract.

'it is the established rule in the interpretation of statutes levying taxes and duties, not to extend the provisions of the statute by implication, beyond the clear import of the language used or to enlarge their operation in order to embrace matters not specifically pointed out. In case of doubt, the provisions are construed most strongly against the state and in favour of the citizen.'

I fully agree with the learned Counsel that tax legislation that imposes taxes should be interpreted strictly and the liability of tax must be imposed by clear and unambiguous language. Also, that if two constructions are possible, one in favour of the Assessee and the other in favour of the Assessor, the Court must adopt a construction favourable to the Assessee.

Nonetheless, upon a careful consideration of the language in Section 3 of the ESC, I am of the view that the language in the Section is clear an unambiguous and therefore, the question of two constructions will not arise.

[17] 77 N.L.R. 360.
[18] (2005) 3 S.L.R. 1.
[19] 11th Edition at p. 278.
[20] (2008) 1 S.L.R. 219.

Adverting to the issue, in my view, the words *'total amount receivable'* has to be read in conjunction with the words *'whether actually received or not'*. N.S. Bindra[21], cited the Privy Council decision in the case of *Robertson v. Day*[22] wherein it was held that *'It is a legitimate rule of construction to construe word in an Act of Parliament with reference to words found in immediate connection with them'.* Accordingly, I am of the view that the word *'receivable'* is used in Section 2 (3) (b) of the ESC Act to mean a sum which is not actually received at the time but, outstanding. Therefore, the meaning of the word *'receivable'* should not be stretched to mean anything outside the scope of the Section, since the lawfulness of an outstanding amount is not within the scope of the Section.

In determining the turnover, the allowable deductions are also set out in the Section itself[23]. Accordingly, any sum which should be paid as Value Added Tax (hereinafter referred to as 'VAT') in respect of a transaction is allowed to be deducted, but not any other tax payable.

N.S. Bindra[24] states as follows regarding a proviso in a statute:

'The proviso follows the enacting part of a section and is in a way independent of it. Normally, it does not enlarge the section, and in most cases, it cuts down or makes an exception from the ambit of the main provision. Provisos are often inserted to allay fears or misapprehension'.

Proviso of Section 2 (3) (b) provides that insurance premia received or receivable in respect of life insurance and insurance against damages or destruction by strike, riot, civil commotion, or acts of terrorism and paid into the consolidated fund by a person carrying on insurance business should not be considered as part of the turnover of such person.

It is also provided that in case of a bank, the receipt of interest, discounts, dividend, exchange, service charges, commissions, brokerage or any other income out of their business should form part of its turnover. It is within the common knowledge that apart from charging interest for the loans granted by banks, banks also pay interest to their depositors. However, amounts paid as interest are not included in subsection 2(3) as an allowable

[21] Twelfth Edition, at p. 359.
[22] 5 App Cas 62.
[23] Section 2 (3) (b) (a) and 2 (3) proviso (b).
[24] Twelfth Edition, at p. 292, citing *Kartar Singh v Lallusingh* AIR 1962 MP 104, 1961 Jab LJ 405, 1961 MPLJ 1241. *Valliammal v Area Committee for Madras City* (1962) ILR Mad 812, (1962) 1 Mad LJ 320, 75 MLW 36. *Madanlal Fakirchand v Changdeo Sugar Mills* AIR 1962 SC 1543.

deduction from its turnover. It is thus clear that having to pay part of one's turnover is not a ground for excluding it from the overall turnover.

'*Expressio unius est exclusio alterius*': expression of one thing is the exclusion of the other is a well-known maxim of interpretation.

Bindra expressed the following view regarding the above maxim:[25]

Expressio unius est exclusio alterius. - '*The express mention of one thing implies the exclusion of another. This maxim is a product of logic and common sense. No doubt this rule is neither conclusive nor of general application and is to be applied with great caution. It may be applied only when in the natural association of ideas, the contract between what is provided and what is left out leads to an inference that the latter was intended to be excluded. Very often particular words are used by way of abundant caution, and the application of the maxim becomes inadvisable.'*

On the above analysis, it is my considered view that the words *'relevant turnover'* in Section 2 (1) of the ESC Act should mean the total amount received by the Appellant, irrespective of the fact that a portion of it has to be paid back to the media institution (hereinafter referred to as 'the media').

The learned counsel for the Appellant citing *Crookston Brothers v. Furtado*[26] argued that the words 'in receipt of profits' must mean lawfully received profits and an agent is not lawfully in receipt of money due to his principle under a contract of sale made in the principle's name. However, the term to be interpreted in the instant case is not profit but, turnover. It was also cited *Gresham Life Assurance Society v. Bishop*[27] where Lord Lindley observed that '*a mere entry in an account which does not represent such a transaction does not prove any receipt whatever else it may be worth'.* However, in the case in hand the issue is not on profit and it is the relevant turnover in terms of ESC Act, where the word turnover is interpreted within the Act itself. Hence, in my view, the words '*relevant turnover*' should to be interpreted within the ESC Act itself, without recourse to external aid.

[25] N. S. Bindra, *Interpretation of Statutes*, Eighth Edition, 1997, at p. 148.
[26] 5 TC 602 at p. 626.
[27] (1902) AC 287.

N.S. Bindra states as follows on recourse to extrinsic aid in interpreting a statute;

'Recourse to extrinsic aid in interpreting a statutory provision would be justified only within well-recognised limits; primarily the effect of the statutory provision must be judged on a fair and reasonable construction of the words used by the statute itself.[28] *If the words of the statutes are explicit and unambiguous there can be no resort to external aid for their construction.*[29] *Language which is plain and easily understood should be looked at without extensive aid for the meaning intended*[30] [31]*.'*

The CGIR in his determination[32] observed that the definition of value of supply as per the VAT Act No. 14 of 2002, as amended, is similar to the definition given in the ESC Act and therefore, value of supplies declared in the VAT returns by the Appellant company should be considered for the purpose of the ESC Act as well. The learned Counsel for the Appellant citing *Senvec Lanka (Pvt) Ltd v. Commissioner General of Inland Revenue*[33] contended that the provisions of the VAT Act cannot be construed to impose tax claimed under ESC Act. His Lordship A.H.N.D Nawaz J., (Vijith K. Malalgoda, P. C. J., agreeing) held that Value Added Tax is collected based on 'taxable supply' (as opposed to 'turnover') whereas Economic Service Charge is charged based on 'turnover' and therefore, the provisions of the VAT Act cannot be construed to impose tax under ESC Act.

I agree with the view expressed by Their Lordships that the provisions of the VAT Act cannot be used to impose taxes under the ESC Act since the taxation principles are distinct in the two statutes. In the instant, case the

[28] *State of Punjab v. Sodhi Sukhdeo Singh* , AIR 1961 SC 493, 501 ; *Abdul Kalam v. Govt of Tamil Nadu*, (1992)1 MLJ 317 (DB); *P.K. Unni v. Nirmala Industries*, AIR 1990 SC 933 : (1990)1 MLJ 36 (SC) : (1987)2 MLJ 3 (reversed) : AIR 1981 Mad 254 and AIR 1981 SC 53 (overruled).

[29] Vide *P.K. Unni v. Nirmala industries*, AIR 1990 SC 933 : (1990) 1 JT 423 (The Supreme Court held time for making the deposit in terms of Rule 89 of Order XXI is 30 days and the decision to the contrary in (1987)2 MLJ 3 reversed, while those in AIR 1981 Mad 254 & AIR 1987 SC 53 overruled); *Ashok Kumar Alias Golbu v. Union of India*, AIR 1991 SC 1792 : 1991 Cri LJ 2483 (1991)3 JT 46 : 1991 SCC (Cri) 845; 1991 AIR SCW 1826; *Indian Association of Lawyers v. Principal Secretary*, 1994 Cr LJ 533 (AP) (FB).

[30] Jacobson v. Manucharetts, 197 US 11 : 49 l Ed 643; Smt. Piryambada Singh v. State ofU.P., 1989 JIC 262 [relying on *D. D. Joshi v. Union of India*, AIR 1983 SC 420; *Shutters v. Briggs*, (1922) AC 1 ; *Cartledge v. E Jopling & Sons Ltd*., (1963) AC 758]; *Om Prakash v. Dig Nijendra pal*, 1982 ALJ 376 (SC) : AIR 1982 SC 1230.

[31] N. S. Bindra, *Interpretation of Statutes*, Eighth Edition, 1997.

[32] At page 4 of the determination.

[33] CA/T/5/2010 [CA minutes of 7/4/2017].

VAT invoices are used as evidence for the limited purpose of establishing that the full amount was paid by the clients to the Appellant.

The learned Counsel submitted that the TAC, in its determination, has referred to the tax rate of 1%, which was later brought down to 0.25% with effect from the 1st of April 2011, in arriving at its conclusion whereas the period relevant to this case is 2007/2008 to 2008/2009. However, the fact remains that even at the relevant time, before it was brought down, the tax was at a low rate of 1% compared to other taxes. Moreover, it is only a passing observation in the course of the determination. Therefore, in my view, the misapprehension of the TAC has no bearing on the final determination.

The learned Counsel for the Appellant submitted that the TAC in arriving at its conclusion has made reference to an accounting statement issued by another newspaper publishing company[34]. He argued that the TAC could not have relied upon the accounting statement of a third-party company to justify the assessment against the Appellant.

It is trite law that consideration of whether the available facts are sufficient to arrive at a conclusion, constitute a question of law[35].

In the volume titled *Income Tax in Sri Lanka,* Gooneratne states that:[36]

'The principle is well established that where a tribunal arrives at a finding which is not supported by evidence the finding though stated in the form of a finding of fact is a finding which involves a question of law. The question of law is whether there was evidence to support the finding, apart from the adequacy of the evidence. The Court will interfere if the finding has been reached without any evidence or upon a view of facts which could not be reasonably entertained. The evidence can be examined to see whether the Board [being the Board of Review; the predecessor of the TAC] *being properly appraised of what they had to do could reasonably have arrived at the conclusion they did.'*

Hence, in my view, the submission made by the learned Counsel that the TAC erred in considering a document available in the brief pertaining to a

[34] Paragraph 135 of the written submission filed by the Appellant on 31st July 2019.
[35] *D. S. Mahawithana v. Commissioner of Inland Revenue,* 64 N.L.R. 217.
[36] M. Weerasooriya and E. Goonaratne, *Income Tax in Sri Lanka*, Second Edition 2009. At p. 452 [*citing Stanly v. Gramophone & Typewriter Co. Ltd.* 5 TC 358; *CIR v. Samson* 8 TC 20; *Cape Brandy Syndicate v. CIR* 12 TC 358*; Mills v. John* 14 TC 769; *Cooper v. Stubbs* 10 TC 29; *J.G. Ingram & Son Ltd. v. Callaghan* 45 TC 151].

third party, a document submitted by the Appellant company itself, has no merit.

Conclusion

I find that there are few erroneous findings made by the TAC in its determination. Yet, on the above analysis of facts and law, I agree with the final determination of the TAC. The Constitution of the Democratic Socialist Republic of Sri Lanka provides that no judgment, decree or order of any Court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice[37]. I am mindful that TAC is not a Court. Yet, in my view, the said principle can be applied as a guideline in deciding the instant case as well.

Thus, having considered all arguments of the Appellant, I hold that the TAC has not erred in arriving at the final determination that it arrived.

For the reasons set out above in this order I answer the questions of law raised in the case stated as follows:

1. ***No.***
2. ***No.*** **The TAC only commented on the VAT invoices to determine the relationship between the Appellant, the media and the clients. The Assessor made the assessment on the bill values given in Appellant's letter dated 19th May 2010.**
3. ***Yes.*** **The said finding is not substantiated. However, it did not affect the final conclusion.**
4. ***No.*** **It was only a passing observation made by the TAC and the TAC was not guided by the changes made to the ESC rates in arriving at its conclusion.**
5. ***No.***
6. ***Yes.***

Acting under Section 11 A (6) of the Tax Appeals Commission Act No. 23 of 2011 (as amended), I confirm the determination of the TAC and dismiss this appeal.

[37] Proviso to the Article 138 (1) of the Constitution.

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

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando J.

I Agree.

JUDGE OF THE COURT OF APPEAL