IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for a case stated 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).

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

Appellant

Case No. CA/TAX/0018/2015
Tax Appeals Commission
No. TAC/OLD/IT/041

Vs.

Holcim Lanka Limited,
No. 413,
R.A.De Mel Mawatha
Colombo 03.

Respondent

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

M. Sampath K.B. Wijeratne J.

: Chaya Sri Nammuni, D.S.G for the Appellant

		Dr. K. Kanag-Isvaran, P.C. with Shivaan Kanag-Isvaran for the Respondent
Argued on	**:**	23.05.2022 & 30.05.2022
Written Submissions filed on		
	:	25.07.2022 &02.09.2019 (by the Appellant)
		23.08.2022 & 29.04.2019 (by the Respondent)
Decided on	:	09.09.2022

Dr. Ruwan Fernando, J.

Introduction

[1] This is an appeal by way of a Case Stated against the determination of the Tax Appeals Commission dated 15.10.2015. By the said determination, the Tax Appeals Commission, subject to condition, allowed the appeal of the Respondent made against the determination of the Commissioner General of Inland Revenue dated 22.10.2008. The period under appeal relates to three years of assessment, 2001/2002, 2002/2003 and 2003/2004.

Factual Background

[2] The Respondent Holcim Lanka Limited acquired Puttalam Cement Company Limited in 1996 and taken over the business and the assets of the Sri Lanka Cement Corporation, in terms of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act, No. 23 of 1987. The Respondent entered into anagreement bearing No. 88 dated 04.06.1998 with the Board of Investment of Sri Lanka under section 17 of the Board of Invsestment Law, No. 4 of 1978 (hereinafter referred to as the BOI Law).

[3] Pursuant to the said agreement and the Regulations made under the BOI Law and published in Extraordinary Gazette No. 1019/13 dated 17.03.1998 issued under the BOI Law, the Respondent became entitled to an exemption from income tax subject to the following conditions:

1. The Respondent shall modernize, upgrade and operate the said business at the land and premises morefully described in the First Schedule to the agreement;
2. The Respondent shall make an investment not less than Rs. 1,500 million as the additional investment in the project within a period of 36 months from the date of the agreement, and the said additional investment shall be infused for the above purpose;
3. The said period of exemption depends on the quantum of capital infused as follows:

Value of Additional investment	Period of exemption
500 M - 1499 M	10 years
1500 M - 2499 M	12 years
2500 M - 4499 M	15 years
Above - 5000 M	20 years

[4] The Respondent met the capital commitment of Rs. 500 Million to qualify for the tax exemption in terms of the said BOI agreement and the Gazette No. 1019/13. The Respondent infrormed the BOI that it wished to have the tax holiday period commenced from 01.04.1999 but indicated to the BOI that it would be investing in the project in excess of the Rs. 1,500 million by the time the project is completed. Thereafter, the Respondent invested a sum of Rs. 1,300 million in the project and opted for 10 years tax exemption period commencing from 01.04.1999. Accordingly, the BOI reviewed the additional investment requirement of Rs. 1,500 million and entered into the supplementary agreement bearing No. 10 dated 06.07.2000 with the Respondent. The Respondent thereafter completed the minimum additional investment criterion of Rs. 1,500 million as required by clause 10(vi) of the BOI agreement and the BOI issued the tax certificate dated 24.12.2002 under and in terms of clause 10 (vi) of the BOI agreement bearing No. 88 dated 04.06.1998.

[5] The Respondent furnished the return of income for the year of assessment 1998/1999 and declared a sum of Rs. 529,220,790/- as taxable profit. The Respondent furnished the return of income for the year of assessment, 1999/2000 and declared a sum of Rs. 50,579,372/- as taxable

loss. The Respondent furnished the return of income for the year of assessment 2000/2001 and declared a sum of Rs. 59,068,407/- as brought forward loss. The Respondent furnished the return of income for the year of assessment 2001/2002 and declared a sum Rs. 117,349,938/- as statutory income and Rs. 371,303,000/- as brought forward loss. The Respondent in its tax adjustment increased the losses relating to years of assessment 1999/2000 and 2000/2001 as follows:

1999/2000	-	Rs. 324,146,118.00
2000/2001	-	Rs. 486,674,118.00
Total losses	-	Rs. 810,820,236.00

[6] The Assessor by letter dated 24.02.2006, rejected the returns of income furnished by the Respondent for the year of assessment 2001/2002 for the following reasons:

1. Interest claimed to be deducted under section 29 of the Inland Revenue Act, No. 38 of 2000 cannot be allowed since, it should have been claimed under section 23 of the Act;

2. Losses claimed by the tax adjustment statement cannot be allowed, since the said losses are not taxable/allowable and the profits of the enterprise have been exempted for a period of 10 years from 01.04.1999 under the BOI Law.

[7] The return furnished for the years of assessment 2002/2003 and 2003/2004 were also rejected on the same basis and the assessments were issued in respect of the years of assessment 2001/2002, 2002/2003 and 2003/2004. The Respondent appealed to the Commissioner General of Inland Revenue who by its determination dated 22.10.2008 allowed the interest claimed under section 29 of the Inland Revenue Act, No. 38 of 2000 on the basis of the computation given in the appeal, but rejected the losses claimed by the tax adjustment statement dated 03.01.2005. Accordingly, the assessments for the said periods were revised.

Appeal to the Board of Review

[8] Being dissatisfied with the said determination of the Commissioner General of Inland Revenue, the Respondent appealed to the Board of Review. Subsequently, with the enactment of the Tax Appeals Commission Act, No.

23 of 2011 and the Tax Appeals Commission (Amendment) Act, No. 20 of 2013, the appeal was transferred to the Tax Appeals Commission.

[9] The only issue before the Tax Appeals Commission (hereinafter referred to as the TAC) was the tax exemption period and the date of the commencement of the tax exemption period. The TAC by its determination dated 15.10.2015 decided that the Respondent was entitled to a twelve (12) year tax exemption period commencing on 01.01.2001 for the following reasons:

1. In terms of clause 10 (i) and 10(vi) of the BOI agreement No. 88, the tax exemption period shall be decided by the BOI in terms of the certificate issued by the BOI, and the BOI in its certificate dated 24.12.2002 decided that the 12 year tax exemption period commenced from 01.01.2001;
2. The Executive Director of the BOI by letter dated 24.12.2002 declared that the Respondent is entitled to enjoy 12 year tax holiday period commencing from 01.01.2001 and accordingly, the date of the commencement of the tax holiday period should be considered as 01.01.2001.

[10] The relevant findings of the TAC at pp. 16 -17 of the determination, read as follows:

> *"On the strength of the certificate dated 24.12.2002 and the letter dated 02.06.2010, referred to above, there is no doubt as to the entitlement of the Appellant Company for a twelve (12) year tax exemption period which commenced from 01.01.2001. Accordingly, we hold that the date of the commencement of the tax holiday should be considered as 01.01.2001……*
>
> *The only issue for decision in this case was the period and the date of the commencement of the tax exemption. We have decided that the Appellant is entitled to a twelve (12) year tax exemption period which commenced on 01.01.2001. However, as to how the loss mentioned in this case is computed and its correctness should be decided by the Respondent. Subject to the above condition, we allowed the appeal of the Appellant".*

[11] The TAC allowed the appeal of the Respondent subject to the above-mentioned condition.

Appeal to the Court of Appeal

[12] Being dissatisfied with the said determination of the TAC, the Appellant made an application to the TAC by letter dated 11.11.2015 for a Case Stated for the opinion of the Court of Appeal. The TAC set out the following questions of law in the Case Stated for the opinion of the Court of Appeal.

1. Has the TAC erred in law determining that the commencement date of the exemption period on 01.01.2001 by ignoring the commencement date in terms of the Original Agreement No. 88 entered by the above company with the Board of Investment of Sri Lanka on 04.06.1998?

2. Has the TAC erred in law determining the date of commencement of tax holiday as 01.01.2001 by ignoring the commencement date 01.04.1999 as agreed by the parties in terms of its Supplementary Agreement No. 10 dated 06.07.2000, entered into between the company and the Board of Investment of Sri Lanka?

3. Has the TAC erred in law determining that the commencement of tax holiday date as 01.01.2001, without considering the facts that effect of such decision increases the B/F losses since the company has claimed large amount of capital allowances of fixed assets investment of the company on the basis of commercial production has been commenced on 01.04.1999?

4. Has the TAC erred in law coming to the conclusion that the date of commencement decided was only for the mere fact of the amount of investment and not considering the essential fact of commencement of commercial production date of 01.04.1999?

5. Has the TAC erred in law coming to conclusion that the losses incurred from 01.04.1998 to 31.12.2000 are entitled to be carried forward as the profits of the enterprise have been exempted only from 01.01.2011 according to its determination?

6. Has the TAC erred in law coming to the conclusion on the period and the date of the commencement of the tax exemption period, ignoring that the powers of the BOI and the Commissioner General of Inland Revenue relating to review of scope agreement was slightly discussed

at the very recent Court of Appeal Cases of Ceylon Steel Corporation Limited v. Commissioner General of Inland Revenue (CA Tax/10/2010) and CA/Tax/18/2013.

[13] At the hearing of the appeal, Mrs. Chaya Sri Nammuni, the Deputy Solicitor General for the Appellant and Dr. K. Kanag-Isvaran, P.C. for the Respondent made extensive oral submissions in respect of the above-mentioned questions of law submitted for the opinion of the Court.

Issues to be Resolved

[14] In view of the submissions made by the learned Deputy Solicitor General and Dr. K. Kanag-Isvaran, P.C., the issue before this Court for determination is the period of tax exemption and the date of commencement of the tax exemption period, the Respondent is contractually entitled to in terms of the agreement between the Respondent and the BOI.

Submissions of the Appellant

[15] The learned Deputy Solicitor General challenged the date of commencement of the tax exemption period specified in the certificate issued by the BOI, and argued that Respondent is only entitled to a tax holiday period of 10 years commencing from 01.04.1999. She submitted that therefore, the Respondent is not entitled to claim losses for the years of assessment 1999/2000 and 2000/2001 aggregating approximately to Rs. 819 Million for the following reasons:

1. Although the agreement No. 88 stipulated that the Respondent would be given a 12 year tax exemption, if the Respondent actually infused a sum of Rs. 1,500 million within a period of 36 months from the date of the agreement, the said agreement is only a conditional agreement for the following reasons:

   (a) The said agreement stipulates that if the Respondent fails to meet the investment of Rs. 1,500 million additional infusion, the said agreement would be revised by the BOI.

   (b) The said period of 12 years shall be reckoned from the date of the first commercial production is made after the infusion of additional

capital. The first commercial production is, however, a one-time occurrence. In the present case, the Respondent's auditors have admitted that the commercial production commenced on 01.04.1999 after meeting the additional capital infusion of the first slab of over Rs. 500 Million.

2. The Respondent's investment fell short of the required investment of Rs. 1,500 million and therefore, the Respondent by letter dated 09.09.1999 opted for a 10 year tax exemption and agreed to commence the tax holiday period from 01.04.1999 Therefore, the BOI entered into a supplementary agreement No. 10 dated 06.07.2000 with the Respondent, which provided that the Respondent was only entitled to a tax exemption period of 10 years reckoned from 01.04.1999;

3. Although the BOI issued the certificate dated 24.12.2002, and the letter dated 02.06.2010 stating that the Respondent was entitled to enjoy 12 year tax holiday commencing from 01.01.2001, by letter dated 02.06.2010, the BOI cancelled the letter dated 24.12.2002;

4. The cancellation of the supplementary agreement by letter dated 18.11.2009 is futile and therefore, the revocation of the supplementary agreement by letter dated 18.11.2009 cannot override the contractual obligations stipulated in the supplementary agreement, which supports as evidence that the exemption was for a period of 10 years and not 12 years as claimed by the Respondent.

Submissions of the Respondent

[16] On the other hand, Dr. Kanag-Isvaran, P.C. submitted that in order to avail itself of the 12 year tax holiday granted in terms of clause 10 (vi) of the agreement, the Respondent was required to invest a sum of Rs. 1,500 million prior to the 3rd June, 2001, which constituted 36 months from the date of entering into the agreement. He submitted that the Respondent within the contractually stipulated 36 months, completed the required investment of Rs. 1,500 million, and by letter dated 22.10.2002 confirmed to the BOI that it had invested a sum of Rs, 1,515 million during the period of 06.06.1998 to 31.12.2000.

[17] Dr. Kanag-Isvaran drew our attention to the certificate issued by the BOI dated 24.12.2002 under and in terms of clause 10(vi) of the agreement and strenuously contended that the said certificate issued by the BOI is the one and only certificate issued by the BOI in terms of clause 10(vi) of the BOI agreement entered into by the parties, which cannot be challenged before the Court of Appeal in the current appeal by way of a Case Staed.

[18] He further submitted that prior to the expiry of the 36 month period to invest a sum of Rs. 1,500 million, the parties entered into a supplementary agreement, as a consequence of the uncertainty prevailed at that time as to whether the Respondent would be in a position to invest the minimum amount of Rs. 1,500 million to qualify for the enhanced 12 year tax holiday in terms of clause 10(vi). He, however, argued that upon the Respondent investing the required amount of Rs. 1,500 million prior to the expiration of the 36 month period, the said supplementary agreement was of no force or effect in law and was subsequently terminated by the BOI by its letter dated 18.11.2009, which was further confirmed by the Chairman of the BOI by his letter dated 02.06.2010.

Analysis

Agreement between the Respondent and the BOI under the BOI Law

[19] It is not in dispute that section 17(1) of the Board of Investment of Sri Lanka Law (hereinafter referred to as the BOI Law) empowers the BOI to enter into agreements with any enterprise and grant exemptions from any law referred to in Schedule B thereto, or modify or vary the application of any such laws, to such enterprise in accordance with such regulations made by the Minister. Section 17 of the BOI Law reads as follows:

"(1) The Board shall have the power to enter into agreements with any enterprise in or outside the Area of Authority and to grant exemptions from any law referred to in Schedule B hereto, or to modify or vary the application of any such laws, to such enterprises in accordance with such regulations as may be made by the Minister.

(2) Every such agreement shall be reduced to writing and shall, upon registration with the Board, constitute a valid and binding contract between the Board and the enterprise".

[20] Clause 2 (ii) of the Regulations, No. 1 of 1998 made by Gazette No. 1019/13 dated 19.03.1998 made by the President under section 24 of the BOI Law provides *inter alia*, that:

> *"2. The Board of Investment of Sri Lanka established by the Board of Investment of Sri Lanka Law, No. 4 of 1978 (hereinafter referred to as the Board) may, in addition to anything contained in the provisions of any previous regulations made by the Board, embody or incorporate in any agreement entered into with an enterprise under section 17 of the said Law any one of the following provisions:*
>
> *That the provisions of the Inland Revenue Act, No. 28 of 1979 relating to the imposition, payment and recovery of income tax in respect of the profits and income shall not apply in respect of the existing enterprise or a new enterprise which is found by the acquisition of assets of an existing enterprise and which is engaged in the manufacture of cement, steel or textiles manufacturing and/or textile processing industry including yarn and/or thread or with the approval of the Minister any other industry as may be determined by the Board with an additional investment of any sum of such value as is specified in column I below, to meet the additional cost of the project for the period specified in the corresponding entries in column II.* ***The said period should be reckoned from the date on which the enterprise makes its first commercial export or production, as the case may be, after the additional investment is made.****[Emphasis added]*

Column I	*Column II*
Value of additional investment	*Period of exemption*
(a) Not less than Rs. 500 Million to Rs. 1,499 Million	*10 years*
(b) Not less than Rs. 1,500 Million to Rs. 2,499 Million	*12 years*
(c) Not less than Rs. 2,500 Million to Rs. 4,499 Million	*15 years*
(d) Above Rs. 5,000 Million	*20 years*

[21] The Respondent entered into an agreement, No. 88 dated 04.06.1998 with the BOI and in terms of the clause 10 of the said agreement, the business carried out by the Respondent was afforded certain benefits and

tax exemptions subject to the conditions set out in the recital to the said agreement, and clause 10(i) and 10(iv) of the said agreement as follows:

1. *To modernize and upgrade the existing cement factory at Puttalam for the manufacture of cement, its stores, quarry and transport system on the land at Puttlammorefully described in the First Schedule to the Agreement (Recital to the Agreement);*

2. *In accordance with and subject to the powers conferred on the Board under section 17 of the said law No. 4 of 1978 and the Regulations that may be applicable thereto the following benefits and/or exemptions and/or privileges are hereby granted to the enterprise, in connection with and/or in relation to the said business.*

    (i) *hereinafter referred to "as said tax exemption* ***For a period of 12 years reckoned from the year of assessment as may be determined by the Board (****period") the provisions of the Inland Revenue Act, No. 28 of 1979 relating to the imposition , payment and recovery of income tax in respect of the profits and income of the Enterprise* ***shall not apply to the profits and income of the Enterprise;***

    For the above purpose the year of assessment shall be reckoned from the date on which the enterprise makes ***its first commercial productionafter the additional investment is made as specified in a certificate issued by the Board.***

    Provided, however, in the event the investment actually committed were to fall short of the required amount, the tax exemption period granted to the enterprise by the Board will be reviewed accordingly. The enterprise shall ensure to obtain a certificate annually to the effect that the tax exemption period is available to the Enterprise from the Board ***until the full amount of Rupees One Thousand Five Hundred Million (Rs. 1500 Million) is committed to the project of the Enterprise.***

[22] Pursuant to the said agreement and the regulations published in the Gazette, No. 1019/13, the Respondent became entitled to an exemption from income tax subject to the following two conditions:

1. The Respondent must invest the minimum additional investment of Rs. 1,500 million within a period of 36 months from the date of the agreement;
2. The tax certificate issued by the BOI must be obtained by the Respondent as stated in clause 10(i) of the agreement.

Determination of the tax exemption period and the date of the commencement of the tax exemption period?

[23] Now the question is who should decide the tax exemption period and the date of commencement of the tax exemption period in terms of the agreement between the Respondent and the BOI. As noted, section 17(1) of the BOI Law provides that the BOI shall have the power to grant exemptions from any law referred to in Schedule B thereto, or to modify or vary the application of any such laws, to such enterprises in accordance with such regulations as may be made by the Minister. According to Clause 10 (i) of the BOI agreement, subject to the powers conferred on the BOI under section 17 of the said Law, and the regulations that may be applicable, the Respondent was entitled to a period of 12 years tax exemption from the year of assessment as may be determined by the BOI. The said 12 year tax exemption, however, will apply on the specific undertaking of the Respondent that the minimum additional investment of the Respondent shall not be less than Rs. 1,500 million to be made within a period of 36 months from the date of the agreement made on 04.06.1998 (clause 10 (vi).

[24] Clause 10(i) of the agreement further makes provision for the determination of the year of assessment, and provides that the year of assessment shall be reckoned from the date on which the enterprise makes its first production **after the additional investment is madeas specified in a certificate issued by the Board.** Accordingly, it is the BOI that should determine whether the Respondent has fulfilled the minimum additional investment of the enterprise which shall not be less than Rs. 1,500 million to be made within a period of 36 months from the date of the agreement.

Minimum additional investment of Rs. 1,500 million&issuance of BOI certificate

[25] In order to be entitled to the 12 year tax exemption period granted in terms of clause 10(i) of the agreement, the Respondent was required to invest a sum of Rs. 1,500 million within a period of 36 months from the date of the agreement. This means that in terms of clause 10(vi), the Respondent was required to invest the said sum of Rs. 1,500 million prior to 03.06.2001. The Respondent completed the required investment criterion of Rs. 1,500 million within the contractually stipulated period set out in clause 10(vi) of the Agreement (Vide- pp. 420-422 of the TAC brief).

[26] The BOI by letter dated 24.12.2002 acknowledged and confirmed that the Respondent has fulfilled the condition stipulated in section 10 (vi) of the agreement and issued the certificate dated 24.12.2002 under and in terms of clause 10(vi) of the agreement. The said certificate reads as follows:

> *"Managing Director,*
> *Holcim Lanka Limited,*
> *Level 3, Hemas House*
> *75, Braybrook Place*
> *Colombo 02.*
>
> *Dear Sir,*
>
> *HOLCOM LANKA LIMITED-(Formerly Puttalam Cement Company Ltd)*
> *Issuance of Tax Certificate*
>
> *We refer to the Agreement No. 88 dated 4th June 1998 entered into between the Board of Investment of Sri Lanka and Your enterprise and confirm that you have fulfilled the condition stipulated in section 10 (vi) therein.*
>
> ***Accordingly, the twelve (12) year tax exemption period has commenced from 01st January 2001.***
>
> *Yours faithfully,*
> *Eeecutive Director (Monitoring)*
> *Board of Investment of Sri Lanka*
>
> *Co. (i) Commissioner-General, Department of Inland Revenue....*
> *(ii)M/s. KPMG Ford Rhodes, Thorinton& Co., (Chartered Accountants)...*

[27] In the circumstances, the BOI determined that the Respondent invested a sum of Rs. 1,500 million within a period of 36 months from the date of the agreement as required by clause 10 (vi) of the agreement and issued the certificate under clause 10(vi) of the agreement declaring that the twelve (12) year tax exemption period commenced from **01.01.2001.**

Supplementary Agreement

[28] It is not in dispute that in terms of clause 10(vi) of the agreement, the Respondent had time till 03.06.2001 to commit the minimum additional investment of Rs. 1,500 million to the project. According to the letter dated 02.09.1999 of the Chairman of the BOI, the Respondnetby letter dated 23.08.1999 informed the BOI that it has made a total investment of Rs. 1,150 million and wished to make the balance before the end of the year 1999 (p. 115 of the TAC brief). The Chairman of the Respondent company by letter dated 09.09.1999 wrote to the BOI expressing willingness to commence the tax holiday period from 01.04.1999 whilst reiterating that it would be spending far in excess of the Rs. 1,500 million by the time the whole upgrade is completed (p. 114 of the TAC brief).

[29] It is relevant to note that the Respondent made an additional investment of Rs. 1,300 million for the restructuring and upgrading of the said business during the period stipulated in the BOI agreement No. 88, and by letter dated 25.05.2000, opted to enjoy for a tax exemption period of ten (10) years commencing from 01.01.1999 (see-recital 5 of the supplementary agreement dated 06.07.2000 at p. 82 of the TAC brief). The BOI having reviewed the additional investment of Rs. 1,300 million committed by the Respondent **at that time**, and the confirmation of the Respondent opting for the 10 year tax exemption period from 01.04.1999, entered into the supplementary agreement bearing No. 10 dated 06.07.2000 (pp 80-83 of the Tac brief).

[30] Proviso to clause 10 (i) of the BOI Agreement deals with a situation where the investment made by the enterprise falls short of the required amount of 1,500 million. It provides that in the event the investment actually committed were to fall short of the required amount, the tax exemption period granted to the enterprise by the Board will be reviewed by the BOI and the Enterprise shall ensure to obtain a certificate annually

to the effect that the tax exemtion is available to the enterprise until thefull amount of Rs. 1,500 million is committed to the project. The proviso to clause 10(i) is reproduced for clarity as follows:

> *"Provided however, in the event the investment actually committed were to fall short of the required amount, the tax exemption period to the Enterprise by the Board will be reviewed accordingly. The Enterprise shall ensure to* ***obtain a certificate annually to the effect that the tax exemption is available to the Enterprise*** *from the Board* ***until the full amount of Rupees One Thousand Five Hundred Million (Rs. 1500 Mn) is committed to the project of the enterprise****".*

[31] It is crystal clear that the principal agreement was modified by the parties in consideration of the additional investment of Rs. 1,300 million committed by the Respondent at that time, and therefore, the supplementary agreement was entered into by the parties in consequence of the review made by the BOI to meet the proviso to clause 10(i) of the Agreement.

[32] The learned Deputy Solicitor General relied on clause 6 of the recital and clause 1 of the supplementary agreement, and argued that in terms of those clauses, the Respondent had opted for a 10 year tax exemption period commencing from 01.04.1999 instead of 12 years and therefore, the supplementary agreement is the legally binding document embodying the final decision with regard to the issuance of the tax exemption period and not the principal agreement. Clause 1 of the supplementary agreement reads as follows:

> "*Notwithstanding anything stated in the said Agreement, the profits and income of the Enterprise in connection with and/or in relation to the said business shall be exempted from the provisions of the Inland Revenue Act, No. 28 of 1979 for a period of 10 years reckoned from 1st April 1999 in consideration of the additional investment of Rupees One Thousand Three Hundred Million (Rs. 1300) Mn) already made by the Enterprise in respect of restructuring and upgrading of the said business*"

[33] The said supplementary agreement only modified the principal agreement No. 88 dated 04.06.1998 to the extent that the tax exemption period of 12 years was substituted to a period of 10 years, and the additional investment Rs. 1,500 million was substituted to Rs. 1,300 million.

Subject to those modifications to the principal BOI agreement, No. 88, the principal agreement continued to be in full force and effect and binding between the parties. It is relevant to note that the supplementary agreement is supplemental to the principal agreement and the principal agreement remained in full force and effect and binding on the parties as set out in the following clause 5 of the supplementary agreement:

> *"This Agreement shall be supplemental to the said Agreement and the said Agreement modified as aforesaid shall continue to be in full force and effect and binding between the parties hereto".*

[34] Under clause 5 of the supplementary agreement, the supplementary and the principal agreement to the extent modified by the supplementary agreement, have to be read together to make a complete agreement between the parties. In my view, the supplementary agreement is not an independent agreement, but is only supplemental to the principal agreement to the extent modified by the supplementary agreement. For those reasons, I am not inclined to agree with the submission of the learned Deputy Solicitor General that the supplementary agreement is the legally binding document embodying the final decision with regard to the issuance of the tax exemption period.

Conduct of the parties upon entering into the supplementary agreement

[35] The supplementary agreement was signed on 06.07.2000 but the BOI did not issue any annual certificate to the Respondent on the basis of the supplementary agreement entered into between the parties declaring that the Respondent was entitled to the ten (10) year tax exemption period commencing from 01.04.1999.The Respondent who, previously, wished to make the higher additional investment criterion of Rs. 1,500 million within a period of 36 months as required by the principal agreement, met the higher additional investment requirement of Rs. 1,500 million during the period of June 6, 1998 to December 31, 2000 (pp.420-422).

[36] The BOI was satisfied that the Respondent has fulfilled the condition stipulated in clause 10(vi) of the principal agreement, and therefore

determined that the 12 year tax exemption period commenced from 01.01.2001 and issued the tax certificate accordingly.

[37] The Respondent by letter dated 20.03.2003 informed the Appellant that the BOI issued the tax certificate for the 12 year tax exemption period to commence from 01.01.2001 and submitted the tax adjustment statement declaring losses for the years of assessment 1999/2000, 2000/2001 and 2001/2002 (pp. 15-18 of the TAC brief). It is also relevant to note that the Executive Director (Monitoring) of the BOI by letter dated 13.10.2004 informed the Appellant that in terms of the tax certificate dated 24.12.2002 issued by the BOI, the tax holiday has commenced from 01.01.2001 (p. 19 of the TAC brief). The the said letter reads as follows:

"Mr. E.A. Edirisinghe,
Deputy Commissioner,
LTU Audit Unit, 6,
Dept. of Inland Revenue
Sir Chittampalam A. Gardiner Mawatha
Colombo 2.

HOLCIM LANKA LTD,
COMMENCEMENT OF TAX HOLIDAY PERIOD

We refer to your letter dated 09.09.2004 regarding the above and wish to clarify the following:

1. *In reply to a clarification sought by the enterprise, BOI has inquired by our letter dated 2nd September 99, whether the enterprise wishes to qualify:*
   (a) *For 10 year tax holiday period commencing from 1st April 1999 by investing Rs. 500 Million;or*
   (b) *12 year tax holiday period investing Rs. 1500 Mn. Since the enterprise has requested to issue them the tax certificate immediately after investing an additional amount of Rs. 500 Mn.*
2. *Though Holcim Lanka Ltd. Has informed the Board that they wish to commence their tax holiday period from 1st April 99, we could have agreed for same if they have opted for the entitlement of 10 year tax holiday period by investing an additional investment of Rs. 500 Mn. However, the Board has not issued the tax certificate on that basis;*
3. *Subsequently, the KPMG Ford Rhodes Thornton & Co., the tax authorities in behalf of Holcim Lanka Ltd. By its letter dated 27th September 2002*

(copy attached) has requested to issue the tax certificate on the basis of an investment of Rs. 1500 Mn. and 12 years tax holiday period as provided for in the Agreement. Having examined their request and since the required investment was made by the enterprise as at 31st December 2002. Accordingly, the tax holiday has commenced from 01.01.2001.

Trust the above clarification sastisfies with your requirements.

Yours faithfully,

A.M.C. Karunasekera
Executive Director (Monitoring)"

[38] It is true that the Respondent having made an investment commitment of Rs. 1,300 million previously, opted for a 10 year tax exemption as set out in the supplementary agreement. It is also necessary, however, to take into consideration the circumstances in which it was written and the intention which the supplementary agreement was to convey, and how the parties acted subsequently, under the principal agreement. In this regard, it is relevant to reproduce the following observations contained in a Bench of the Madras High Court in *Mangalam v. C.S. Appavoo* AIR 1976 Mad. 360, at p. 363:

[46] "8. As each case has to be decided on its own facts, it cannot be laid down with precision that the language deployed in an instrument should govern in all circumstances and for all times, notwithstanding the fact the parties who had occasion to refer to it intended that it should be understood in a specified way. If there is such evidence of supervising the conduct by the parties, then, notwithstanding the express nature of the words used in an instrument, such surrounding circumstances might be taken into consideration in order to understand the legal effect of the words used by the parties to the instrument".

[39] It is, therefore, abundantly clear that the subsequent conduct of the Respondent and the BOI indicated that irrespective of the supplementary agreement, the Respondent met the higher additional investment requirement of Rs. 1,500 million within a period of 36 months from the date of the principal agreement, and the BOI confirmed that the Respondent fulfilled the condition stipulated in clause 10(vi) of the principal agreement. Accordingly, the BOI issued the tax certificate determining that the 12 year tax exemption period commenced from 01.01.2001.

Cancellation of the Supplementary Agreement

[40] It was the contention of Mr. Kanag-Isvaran, P.C. that upon the Respondent investing the required capital of Rs. 1,500 million before the expiration of the 36 month period, the said supplementary agreement was of no force or effect in law and accordingly, the BOI by letter dated **18.11.2009** terminated the said supplementary agreement. A perusal of the said letter reveals that the supplementary agreement was cancelled by the BOI on the basis that the Respondent had achieved the additional investment of Rs. 1,500 million during the period of 36 months in terms of clause 10(vi) of the agreement. The said letter reads as follows:

> *"Managing Director,*
> *HOLCIM (LANKA) LIMITED,*
> *No. 413,*
> *R.A.De Mel Mawatha,*
> *Colombo 03.*
>
> *HOLCIM (LANKA) LIMITED,*
>
> *I write on the instructions of the Investment and Monitoring Department of the Board to inform you that having noted that you have achieved the required investment of Rs. 1.5 Bn, within the time period granted under the principal Agreement, we hereby cancel and terminate the supplementary agreement No. 10 dated 6th July 2000 entered into between the Board and HOLCIM (LANKA) LIMITED".*

[41] The learned Deputy Solicitor General however, submitted that the said letter cancelling the supplementary agreement was issued by the BOI nearly 10 years after the completion of the tax exemption period granted by the BOI to the Respondent which came into effect from 01.04.1999 and therefore, the purpose of the supplementary agreement of granting 10 years tax exemption has been fulfilled and completed, when the cancellation letter was issued on 18.11.2009. She further challenged the cancellation of the supplementary agreement by the BOI by letter dated **18.11.2009** relying on a letter sent by the Executive Director (Legal) of the BOI dated **25.01.2010** in which she has proceeded to withdraw his own letter dated 18.11.2009 (p. 458).

[42] The said Executive Director (Legal) has withdrawn the said letter dated **18.11.2009** by her own letter dated **25.01.2010** on the basis that

Respondent had enjoyed the tax holiday period with effect from 01.04.1999 in terms of the supplementary agreement, contrary to the tax certificate issued by the BOI on **24.12.2002** determining that the twelve year tax exemption period has commenced from 01.01.2001 (p. 461).

[43] In view this confusion created by the said letter of the Executive Director (Legal) dated 25.01.2010, which almost had the effect of cancelling the certificate issued by the BOI by letter dated 24.12.2002, the Chairman of the Respondent Company, by his letter dated **02.06.2010** (p. 416) wrote to the Chairman/Director-General of the BOI complaining against the said Executive Director (Legal)'s letter dated 25.01.2010 and requesting the Chairman/Director-General of the BOI to withdraw the said letter dated 25.01.2010.

[44] In order to dispel any confusion created by the said letter of the Executive Director (Legal) dated 25.01.2010, the Chairman/Director-General of the BOI by his letter dated **02.06.2010** (p. 457) informed the Respondent with a copy to the Appellant that:

1. As per the decision taken by the Board on **24.05.2010**, the supplementary agreement was cancelled and terminated; and
2. The principal agrement stands in force and the Respondent is entitled to enjoy 12 years tax holiday period commencing from 01.01.2001.

[45] The said letter dated 02.06.2010 reads as follows:

> ***"HOLCIM (LANKA) LIMITED-TERMINATION OF A SUPPLEMENTARY AGREEMENT***
>
> *This is to inform you that the Supplementary Agreement, No. 10 dated 6th July 2000 entered into between Holcim Lanka Limited and the Board in terms of the BOI Law, No. 4 of 1978 is hereby cancelled and terminated, as per the decision taken by the Board on 24th May 2010.*
>
> *Please be informed that the Principal Agreement which the Board has entered into with Holcom Lanka (Private) Limited stands in force and in terms of the principal Agreement, Holcim Lanka (Private) Limited is entitled to enjoy 12 years tax holiday period commencing from 1st January 2001, as already informed by Executive Director (Monitoring), BOI by his letter dated 24th December 2002.*

Yours faithfully,
Board of Investment of Sri Lanka

Sgd

Chairman/Director-General"

[46] The letter of the Chairman/Director-General of the BOI is a clear confirmation of the tax certificate dated 24.12.2002 issued by the BOI on the basis that (a) as the Respondent invested a sum of Rs. 1,500 million within a period of 36 months from the date of the BOI Agreement, the supplementary agreement, was cancelled, as per the decision taken by the Board on 24th May 2010; and (b) therefore the principal agreement shall stand in force and in terms of the principal agreement, the Respondent is entitled to enjoy 12 years tax holiday period commencing from 1st January 2001. For those reasons, I am of the view that there is no merit in the submission of the Appellant that the cancellation of the letter dated 18.11.2009 by the letter dated 25.01.2010 validates the tax exemption of 10 years given in the supplementary agreement dated 06.07.2000.

First commercial production date

[47] The next argument of the Appellant was that the first commercial production was made by the Respondent on 01.04.1999 as indicated in the written submissions filed on behalf of the Respondent at p. 45 of the TAC brief. The contention of the Appellant was that though the Respondent can continue to invest an additional investment, it cannot have two or more first productions as the first commercial production referred to in Gazette No. 1019/13 is a one-time occurrence and the tax exemption commenced from the date of the first commercial production that occurred on 01.04.1999. Accordingly, the Appellant argued that 01.04.1999 shall be regarded as the date on which the tax exemption commenced.

[48] The Gazette No. No. 1019/13 provides that the provisions of the Inland Revenue Act, No. 28 of 1979 shall not apply in respect of an enterprise which is engaged in certain industries …as may be determined by the Board with an additional investment of any sum of such value as is specified in column I below, to meet the additional cost of the project for the period specified in the corresponding entries in column II. It further provides that the tax exemption period specified in column II should be reckoned from

the date on which the enterprise makes its first commercial export or production, as the case may be, **after the additional investment is made as follows:**

Column I	*Column II*
Value of additional investment	*Period of exemption*
(a) Not less than Rs. 500 Million to Rs. 1,499 Million	*10 years*
(b) Not less than Rs. 1,500 Million to Rs. 2,499 Million	*12 years*
(c) Not less than Rs. 2,500 Million to Rs. 4,499 Million	*15 years*
(d) Above Rs. 5,000 Million	*20 years*

[49] According to the said Gazettee, the tax holiday period will depend on the higher additional investment of any sum of such value as is specified in column I is made to meet the additional cost of the project specified in column II. The effect of this clause of the Gazettee is that the tax exemption period will commence on the date of the first commercial production **after meeting the higher investment criterion,** and not on the date of the lowest additional investment criteria (Rs. 500 million) is made.

[50] The Respondent in the present case met the higher additional investment criteria of Rs. 1,500 million within a period of 36 months from the date of the agreement dated 04.06.1998, and claimed the 12 year tax holiday from the date of the first commercial production after making the higher additional investment criteria of Rs. 1,500 million. If the Respondent was able to meet only the lowest additional investment criterion of Rs. 500 million or Rs. 1,300 million within a period of 36 months from the date of the principal agreement, I accept the Appellant's argument that the tax holiday period would have commenced on 01.04.1999, which was the date of the first commercial production after meeting the lowest investment criterion of either Rs. 500 million or Rs. 1,300 million. However, it is not the case here.

[51] In the instant case, however, the tax certificate was issued by the BOI on 24.12.2002 only upon the fulfilment of the higher additional investment

commitment of Rs. 1,500 million within a period of 36 months and in terms of clause 2(ii) of the Gazette No. 1019 /13, the tax exemption period shall be reckoned from the date on which the enterprise makes its first commercial production **after an additional investment of any sum of such value as is specified in column I** to meet the additional cost of the project for the period specified in column II. In my view, the determination made by the BOI as specified in the certificate issued by the BOI on 24.12.2002 is consistent with clause 2 (ii) of the Gazette No. 1019/13, and the principal BOI agreement No. 88 dated 04.06.1998.

[52] Accordingly, I am not inclined to agree with the submission of the Appellant that the first commercial production date ought to be regarded as 01.04.1999 when the additional investment of Rs. 1,500 million was made within a period of 36 months from the date of the principal BOI agreement as required by clause 10(vi) of the principal agreement.

[53] The Appellant seeks to challenge the tax certificate issued by the BOI in terms of clause 10(vi) of the BOI Act on the ground, *inter alia,* that it has been issued contrary to the already decided tax exemption period set out in the supplementary agreement. It is to be noted that the tax certificate dated 24.12.2002 issued by the BOI is **the one and only certificate** issued by the BOI in terms of clause 10(vi) of the BOI agreement No. 88 as correctly submitted by Mr. Kanag-Isvaran.

[54] This raises the question whether or not the tax certificate issued by the BOI in terms of clause 10(vi) of the principal agreement can be challenged by the Appellant in this proceeding. Mr. Kanag-Isvaran heavily relied on the decisions of the Court of Appeal in *Commissioner-General of Inland Revenue v. Seylan Development PLC* (C.A. (TAX) Appeal No. 10/2004 decided on 06.04.2017 and *Setmil Developers Lanka (Pvt) Ltd v. Commissioner of Inland Revenue* C.A./TaxNo. 27/2019 decided on 22.03.2022 in support of his contention that it is the BOI that must determine the date of the commencement of the tax exemption period, and specify it in the certificate issued by the BOI, as it has happened in the present case. He submitted that therefore, the certificate issued by the BOI cannot be challenged by the Appellant in this proceeding unless the Appellant challenged the said certificate by way of writ proceeding.

[55] In *Commissioner-General of Inland Revenue v. Seylan Development PLC (supra),* the Respondent entered into an agreement with the BOI and clause 10 (1) of the said agreement provided a tax exemption clause. The Respondent in that case sought to deduct the loss incurred in the year 1998/1999 from the total statutory income as that loss could have been assessed under section 32 (5) (b) of the Inland Revenue Act, No. 10 of 2006. The Court of Appeal was called upon to decide the single question: "when does the tax holiday period commence?" In other words, the question was: "Is it the date determined by the Assessor or it is the date determined by the BOI which has been confirmed by the Tax Appeal Commission". His Lordship Surasena, J. held that:

> "*Careful consideration of clause 10(1) of the Agreement shows that there must be two basic requirements for the tax exemption period to commence. Those two requirements are as follows:*
>
> 1. *Either the Respondent must have commenced making profits or a period of 5 years must have lapsed from the date of its commercial or production operation;*
> 2. *The BOI must have determined and specified the year (described in "I" above) in a certificate issued by the Board.*
>
> ***Therefore, in any case, it is the BOI which must determine the date of commencement of the tax exemption period, which must be specified in a certificate issued by the board. The BOI pursuant to that agreement has determined that the Respondent is entitled to the Tax Holiday period of 5 years commencing from 2003.04.01 to 2008.09.03****".[emphasis added]*

[56] Having perused the certificate which confirmed that the Respondent complied with the investment criterion as required by clause 10 (1) of the said agreement, the Court of Appeal held that the Respondent was entitled for the tax holiday period of 5 years commencing from 01.04.2003 to 31.03.2008, His Lordship Surasena, J. held at page 16:

> *These facts clearly show that the year of assessment 1998/1999 is not qualified to be a year of tax exemption as it has not met any of the two requirements set out above. Therefore, the year of assessment 1998/1999 is not within the tax exemption period determined by the BOI. Thus, any profit that may have been made during that year becomes assessable*

under the Act as the tax exemption does not apply to that year. Therefore, any loss that the Respondent had incurred in the year 1998/1999 could be deducted from the total statutory incomenas that amount of the loss could have been assessable under the Act if it had been a profit."

[57] The question involved in *Setmil Developers Lanka (Pvt) Ltd v. Commissioner of Inland Revenue (supra)* was the deductibility of the tax losses incurred by the Appellant during the period of commercial operations, but prior to the commencement of the tax exemption period by carrying them forward to the subsequent year of assessment from the previous year under section 32 (5) (a) of the Inland Revenue Act, No. 10 of 2006. While endorsing the decision of the Court of Appeal in *Commissioner-General of Inland Revenue v. Seylan Development PLC (supra),* the Court of Appeal *in Setmil Developers Lanka (Pvt) Ltd v. Commissioner of Inland Revenue (supra)* held that the BOI must determine the project implementation period and the date of the commencement of the tax exemption period. It thus, held:

"[47] Under such circumstances, I hold that it is the BOI that must determine the project implementation period and the date of the commencement of the tax exemption period, which must be specified in a certificate issued by the BOI having regard to the two rules set out in Clause 12 (i) of the Agreement. I further hold that it is the BOI that must determine whether or not the Appellant had met the investment criteria before determining whether or not the Appellant is entitled to the tax concessions referred to in Sub-Clauses (i), (ii) and (iii) of Clause 12 (i) of the Agreement.

[48] It is obvious that the BOI could not have determined that the Appellant had met the investment criterion and issued a certificate determining the tax exemption period before the lapse of (i) the period of 24 months from the date of the Agreement (Clause 6) and (ii) the extended project implementation period granted by the BOI (31.03.2009).

[49] The period of 24 months set out in the Agreement for the project implementation was extended by the BOI and when the Appellant satisfied the minimum investment committed to the project during the extended project implementation period, the BOI decided by letter dated 07.06.2011 that the Appellant had met the investment criterion (p. 17). The BOI by the same letter determined that the Appellant was entitled to the first year of tax holiday, covering the period from 01.04.2009 to 31.03.2010 (2009/2010) and not prior to that year of assessment (2009/2010)".

[58] The learned Deputy Solicitor General sought to distinguish the present case from the two cases in *Commissioner-General of Inland Revenue v. Seylan Development PLC* (supra) and *Setmil Developers Lanka (Pvt) Ltd v Commissioner of Inland Revenue* (supra) on the basis that the issue here is not whether it is the BOI which has the power to decide what the tax exemption period is, but whether or not the tax exemption periods already decided by the BOI is valid or binding. As noted, the only document that could determine the tax exemption period and the date of the commencement of the tax exemption period is the tax certificate issued by the BOI dated 24.12.2002 in terms of clause 10(vi) of the principal BOI agreement. That tax exemption period cannot be decided solely on the date of the first commercial production after the lower additional investment criteria of Rs. 500 million was made on 01.04.1999.

[59] The learned Deputy Solicitor General however, heavily relied on the decision of the Court of Appeal in *Ceylon Steel Corporation Limited v. Commissioner General of Inland Revenue* CA/TAX/10/2010 & CA/TAX 18/2013 decided on 06.08.2015 in support of her argument that it is the Commissioner General of Inland Revenue that has the power and authority to implement the provisions of the Inland Revenue Act, and the BOI has no power whatsoever, to review the scope and the terms and conditions of the BOI agreement. She relied on the following statement made by Chitrasiri J. at page 10 of the said judgment:

> *"More importantly, it is the Commissioner General of Inland Revenue that has the power and authority to implement the provisions of the Inland Revenue Act. He is not bound by the opinions expressed by the Board of Investment of Sri Lanka when it comes to determining tax liability under the law. Therefore, it is not incorrect to decide that the Board of Investment does not possess the power to review the scope and the terms and conditions of the Agreement ……".*

[60] A perusal of the said judgment reveals that the first question that arose for determination was whether or not the tax exemption set out in clause 10(1) of the BOI agreement extended to income derived from import and sale of stirrups, and the second isuue was whether the BOI posseses the power to review the scope, the terms and conditions of agreements entered into by the Appellant in the said case. His Lordship Chitrasiri J. found on the first issue that the the tax exemption applied only to the

matters connected with modernization and upgrading the factory but the import and sale of stirrups will have no bearing to modernize and upgrade the factory and accordingly, the tax exemption does not extend to the import and sale of stirrups. His Lordship's observations at pp. 5-7 of the judgment are as follows:

> *"…Consideration to afford the tax exemption by the BOI was kicked off, upon a request made by the appellant company by its letters dated 15.11.1096 and 01.04.1998. Requests made in those two letters were to seek approval to modernize and upgrade the company's existing factory at Athurugiriya. Therefor, the exemptions that were sought by the appellant could be applied only to the matters connected with moidernising and upgrading the factory at Athurigiriya of the appellant company. ….*
>
> *Needless to say that import and sale of stirrups will have no bearing to modernize and upgrade the appellnat' s factory at Athurigiriya. Admiredly, the appellant company has made profits by importing and selling stirrups even though such an activity does not relate to modernize and upgrade the existing factory at Athurugiriya. Therefore, I must clearly mention that the tax exemptions referred to in clause 10(1) in the agreement 72 is applicable and also is restricted to the claims that do come within the purpose for which the very same agreement was executed.*
>
> *Therefore, it is my considered view that the import and swle of stirrups by the appellant does not cover the purpose for which the agreement 72 was entered into. ….Hence, it is clear that the exemptions referred to in the agreement bearing No. 72 does not extend to import and sale of stirrups since it has no bearinf to the very purpose of entering into thr agreement bearing No. 72. In the circumstances, it is my opinion that the exemption clause 10(1) in the agreement bearing No. 72 will not apply when detrminng tax liability of the appellant for the income derived from import and sale of stirrups".*

[61] On the second issue, His Lordship Chitrasiri J. found that the BOI in interpreting the tax exemption in section 10 of the agreement expanded its scope by including the import and sale of stirrups such as steel wire rods which did not qualify for tax exemption under section 10. In the circumstances, Chitrasiri J. observed that "*it is the Commissioner-General of Inland Revenue that has the power and authority to implement the provisions of the Inland Revenue Act. He is not bound by the opinions expressed by the Board of Investment of Sri Lanka when it comes to determining the tax liability under the law".*

[62] In the instant case, the question arose whether the BOI could determine the date of the commencement of the tax exemption period as is specified in the certificate issued by the BOI in terms of clause 10(vi) of the BOI agreement, or whether the tax exemption period referred to in the supplementary agreement determines the date of the commencement of the tax exemption period. It is crystal clear that the judgment of the Court of Appeal in *Ceylon Steel Corporation Limited v. Commissioner General of Inland Revenue* (supra) has no relevance to the facts of the present case, and can be clearly distinguishable on its facts.

[63] In the circumstances, the TAC cannot be faulted in holding that (i) the only document that could be considered as a certificate issued by the BOI is the certificate issued by the Executive Director (Monitoring) dated 24.12.2002 after the higher additional investment requirement of Rs. 1,500 million was made as required by clause 10(vi) of the BOI agreement; and (ii) the commencement of the tax exemption period commenced from 01.01.2001, and not from 01.04.1999.

[64] Accordingly, the losses claimed by the Respondent for the relevant years of assessment shall be determined by the Appellant on the basis that the 12 year tax exemption period has commenced from 01.01.2001. The question as to how the losses claimed in the tax adjustment statement is computed and its correctness should be decided by the Appellant as determined by the TAC in its determination dated 15.10.2015.

Conclusion & Opinion of Court

[65] For those reasons, 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. The TAC has decided that the Respondent is entitled to the

twelve (12) year tax exemption commencing from 01.01.2001, and in view of the said determination, the questionas as to how the losses claimed by the Respondent in the tax adjustment statement should be computed and its correctness should be decided by the Appellant (Commissioner General of Inland Revenue).

6. No. The said judgment has no relevance to the present case.

[66] For those reasons, I confirm the determination made by the Tax Appeals Commission dated 15.10.2015 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