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).

Samson Rajarata Tiles (Pvt) Ltd,
No. 110, Kumaran Rathnam Road,
Colombo 2.

APPELLANT

CA No. CA/TAX/0014/2015
Tax Appeals Commission
No. TAC/IT/027/2014

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 Rumesh Perera for the Appellant.

Manohara Jayasinghe, DSG with Amasara Gajadeera, SSC for the Respondent.

WRITTEN SUBMISSIONS	:	03.10.2018 (by the Appellant) 01.10.2018 (by the Respondent)
ARGUED ON	:	17.05.2022 & 09.06.2022
DECIDED ON	:	24.11.2022

M. Sampath K. B. Wijeratne J.

Introduction

The Appellant is a limited liability company incorporated in Sri Lanka, engaged in the business of manufacture an export of roofing and floor tiles.

The Appellant submitted its return of income for the year of assessment 2009/2010[1] and the Assessor rejected the same by his letter dated 6th August 2012[2], issued in terms of Section 163 of the Inland Revenue Act No. 10 of 2006, as amended, (hereinafter referred to as 'the IR Act') on the grounds stated therein. Thereafter, the Assessor, proceeded to issue a Notice of Assessment[3].

Being aggrieved by the said assessment, the Appellant company appealed to the Commissioner General of Inland Revenue (hereinafter referred to as 'the CGIR'). The CGIR heard the appeal and made his determination on the 17th October 2014[4], reducing the interest expenses, house rent, freight expenses, Value Added Tax expenses (hereinafter referred to as 'VAT') and allowing the claim to deduct input advance, in full. But did not allow the claim to deduct meals expenses. The reasons given by the CGIR for not allowing the claims in whole or in part were the lack of documentary evidence to prove the expenses. Meals expenses were also disallowed on the same basis[5].

The aggrieved Appellant appealed to the Tax Appeals Commission (hereinafter referred to as 'the TAC') against the determination of the CGIR.

[1] At pp 23 to 26 of the appeal brief.
[2] At p. 31 of the appeal brief.
[3] At p. 43 of the appeal brief.
[4] At p. 11 of the appeal brief.
[5] *Vide* pp. 8 & 9 of the appeal brief.

The TAC made its determination on the 6th August 2015 confirming the determination of the CGIR, subject to the following variations; allowed the deduction of Rs. 836,065.00 VAT expenses but disallowed interest expenses of Rs. 9,594,519.00 and meals expenses of Rs. 3,446,008.00. The TAC reduced the amount of interest expenses as the Appellant's representative limited the claim to that amount[6].

Being aggrieved by the said determination of the TAC, the Appellant moved the TAC to state a case to this Court on the following five questions of law for the opinion of this Court.

The five questions of law read as follows;

1. ***Did the Commission err in law in arriving at a conclusion of fact that the loan given to the appellant by the sister company, Samson Rubber Industries (Pvt.) Ltd. was not reflected in the accounts of the lender, without any evidence in support of the said conclusion of fact?***
2. ***Did the commission err in law in disregarding the debit notes marked D6, D6(1), D6(2) and D6(3) issued by the lender and D5A which is the relevant ledger folio of the lender which shows that the loan is reflected in the accounts of the lender?***
3. ***In regard to meal expenses amounting to Rs. 3,446,008/-, did the commission err in law when it assumed that the Appellant should have provided material in support of the expense as required by section 106(13) of the Inland Revenue Act, No. 10 of 2006, whereas the section 106(13) does not have such requirement at all and whereas it merely refers to the discretion of an Assessor to call for documents specified in that section?***
4. ***In regard to the meal expenses referred to in the preceding question of law, as a result of the misreading of section 106(13) did the commission err in law in its failure to consider the circumstantial material produced on behalf of appellant?***
5. ***Did the commission fail to properly examine and/or apply and/or appreciate the facts and the law relevant to this matter?***

[6] *Vide* p. 3 of the TAC determination.

Factual background

Briefly, the facts relevant to the instant appeal are as follows.

As stated above, the Appellant is engaged in the manufacture of roofing and floor tiles. The Appellant submitted its return of income for the year of assessment 2009/2010 claiming *inter-alia* deductions for interest expenses and expenses incurred for meals[7].

According to the Appellant, Samson Rajarata Tiles (Pvt) Ltd, the Appellant company, (hereinafter referred to as 'the Appellant' or 'Samson Tiles') has obtained a loan for its business from its sister company Samson Rubber Industries (Pvt) Ltd (hereinafter referred to as 'Samson Rubber'). Samson Rubber has borrowed 100M from a third party and given it to the Appellant as a loan. The Appellant claimed the interest expenses said to have been incurred in respect of the said loan as a deduction allowed in ascertaining the profit and income of the company.

Analysis

Since the 1st and 2nd questions of law are inter-related, I will consider them simultaneously. The 3rd and 4th questions will also be considered in the same manner. The 5th question will be answered, based on the analysis provided to the preceding four questions of law.

Did the TAC err in law in concluding that the loan granted by Samson Rubber to the Appellant was not reflected in the lender's accounts?

The Appellant submitted that the 100M loan is shown in the book of accounts of Samson Rubber[8]. Also produced four debit notes issued by Samson Rubber[9] in support of the fact that interest expenses in respect of the 100M loan had been charged from the Appellant by Samson Rubber[10].

It is trite law that consideration of whether the available facts are sufficient to arrive at a conclusion, constitute a question of law[11].

[7] *Vide* return of income at pp. 23 to 26 of the appeal brief.
[8] At paragraph 22 of Appellant's Written Submission filed on the 3rd October 2018; 'D 5 A' at p. 87 of the appeal brief.
[9] 'D 6', 'D 6 (1)', 'D 6 (2)' and 'D 6 (3)' at pp. 82 to 85.
[10] *Vide* p. 69 of the appeal brief.
[11] *D. S. Mahawithana v. Commissioner of Inland Revenue,* 64 N.L.R. 217.

In the volume titled *Income Tax in Sri Lanka,* Gooneratne states that:[12]

'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 determining whether the TAC erred in its determination, this Court is required to examine whether there was sufficient evidence for the TAC to arrive at its conclusion.

Upon consideration of the document marked 'D 5 A', the ledger account of Samson Rubber, I observe that there are four entries pertaining to a 100M loan. The first entry dated 30th April 2009; pertaining to the 100M money market loan is a debit entry of Rs. 2, 608, 219.18. The second entry dated 7th May 2009, 100M loan interest amounting to Rs. 2, 701,369. 86 is also a debit entry. The third entry dated 22nd June 2009, pertaining to the100M loan is a debit of Rs. 1, 304,109.59. The fourth entry dated 8th June 2009 is a debit entry of 100M loan interest amounting to Rs. 2, 980,821.92. These four entries correspond with the four debit notes 'D 6', 'D 6 (1)', 'D 6 (2)' and 'D 6 (3)', issued by Samson Rubber to the Appellant. Although the Appellant submitted that the 100M loan is also reflected in 'D 5 A', no such entry is found and are only entries pertaining to the interest of a 100M loan. However, the 100M loan from Samson Rubber is shown in the financial statement of the Appellant company for the year ending on the 31st March 2010[13]. In any case, the debit entries in 'D 5 A' relating to a 100 M loan do not concern the interest paid by the Appellant. If it were, it would have to be credit entries, a receipt from Samson Tiles. Therefore, it is apparent that the entries for a 100M loan

[12] 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].

[13] 'R 1' at p. 98 of the appeal brief.

referred to in 'D 5 A' should relate to the loan obtained by Samson Rubber. The Appellant was not in a financial capacity to pay back the loan and therefore, shares of the Appellant company were issued to Samson Rubber in settlement of the debts[14]. According to the Appellant, share issue was in settlement of both the principle sum and interest[15]. It was also submitted that the Appellant company sustained losses and therefore, was compelled to issue shares in lieu of debts to all the creditors including the Appellant[16]. In proof of the above fact, the Appellant submitted an extract of the board resolution of the Appellant company dated 4th January *2009* upon which shares were issued to the Appellant and seven other associate companies[17]. The board resolution has the date 4th January 2010 in another place. Be that as it may, according to the shares certificate the date of issue is 1st February 2010[18]. It is significant the board has not resolved that the shares are issued in lieu of the debts. Neither does it specify for which consideration the shares are issued.

The Appellant claimed the amount of interest in issue as an expense incurred within the taxable year 2009/2010[19]. However, admittedly, the Appellant has not paid interest to Samson Rubber and the shares had been issued in lieu of the principal sum and the interest[20]. The value of the shares issued to Samson Rubber is Rs. 123,787,130.00. However, the Appellant failed to establish that the value of issued shares was the amount due by the Appellant.

The CGIR rejected the Appellant's claim of interest expenses on the grounds that such an income does not appear in the audited account of Samson Rubber[21]. The TAC also rejected the said claim on the same ground[22]. According to the Appellant, Samson Rubber repaid the loan and the interest to the lender and the Appellant had to settle the payments made by Samson Rubber. Samson Rubber made no profit from the transaction. The appellant was only required to pay the amount that Samson Rubber paid to the lender. The Appellant submitted that the above transaction was done by crediting the interest account in the ledger of Samson Rubber with

[14] At p. 69 of the appeal brief.
[15] At p. 92 of the appeal brief.
[16] At pp. 69 & 93 of the appeal brief.
[17] At p. 80 of the appeal brief.
[18] At p. 81 of the appeal brief.
[19] At page 93 of the appeal brief.
[20] At p. 92 of the appeal brief.
[21] At p. 8 of the appeal brief.
[22] At p.112 of the appeal brief.

the amount of interest debited to the Appellant and debiting the same account when the same amount is paid to the lender by Samson Rubber. The Appellant's contention was that due to the above accounting methodology, these entries were not reflected in the audited accounts of Samson Rubber, prepared at the year-end[23]. However, although the debit entries are in Samson Rubber's ledger account, the corresponding credit entries are not in the ledger accounts ('D 5 A') produced by the Appellant[24]. If the Appellant were to convince the authorities on the accounting procedure and the relevant corresponding entries, the Appellant could easily have submitted such account statements in support of the Appellant's contention.

The Appellant also submitted that the significant increase in the amount to be paid to Samson Rubber in the Appellant's financial statements for the financial year 2009/2010, in comparison to financial year 2008/2009, is evidence of payments due under the 100M loan obtained from Samson Rubber. It is apparent that there is such an increase in the Appellant's financial statements for the year ended on 31st March 2010. However, I am of the view that the foregoing fact alone cannot be regarded as evidence of payments made in respect of 100M loan, without further proof.

The Appellant submitted that under Section 25 (1) (f) of the IR Act, both the interest paid, and interest payable are deductible in ascertaining profits and income for a year of assessment. I concur in the Appellant's submission. Yet, the Appellant must first establish that the amount claimed as interest to be paid is in fact owed to Samson Rubber. As I have already stated above in this judgement, the amounts that the Appellant owed to Samson Rubber on the debit notes 'D 6', 'D 6 (1)', 'D 6 (2)', 'D 6 (3)' are not reflected in the ledger of Samson Rubber for the year 2010[25] and in the financial statement of the Appellant for the year ended on the 31st March 2010[26].

In the letter rejecting the return dated 6th August 2012[27], the Assessor and, in the *Notes of Interview* dated 20th December 2013[28] and in the *Appeal Report*[29] it is stated that the CGIR's delegate, exercising his discretion,

[23] At p. 93 of the appeal brief.
[24] At p. 87 of the appeal brief.
[25] 'D 5 A' at p.87 of the appeal brief.
[26] 'R 1' at p. 98 of the appeal brief.
[27] At p.31 of the appeal brief.
[28] At p.57 of the appeal brief.
[29] At p.61 of the appeal brief.

called for evidence in support of the Appellant's claim. Although some documents were submitted in response to this call, the Appellant has finally indicated that there are no more documents available.

S. Balalratnam, in his work titled *Income Tax in Sri Lanka*[30], cited the following extract from *Macpherson & Co. v. Moore 6 TC 114* which reads that;

'Where an assessee does not choose to submit accounts, or fails to make a true and full disclosure, or by fraud or wilful evasion endeavours to escape liability, so that the amount of his profits cannot be strictly determined, he cannot complain if a random assessment is made upon him by the Crown. '[31]

The CGIR affirmed the assessment on the ground that the interest expenses claimed by the Appellant were not reflected in the accounts of Samson Rubber[32].

E. Gooneratne in his book titled *Income Tax in Sri Lanka,* stated the following regarding the power to make use of the account statements of a third party in order to make an assessment of a taxpayer:[33]

'*An estimated assessment should not be a guess. An assessor must make an estimate of the income for the year of assessment and in preparing the estimate he must make use of the relevant data available to him. There are several sections in the Act which give him the power to obtain any information he requires for the purpose of making an estimate.* ***The data may be obtained from the file of another taxpayer***. ***The assessor has a right to use the data he obtained from the file of one taxpayer for the purpose of estimating the income of another taxpayer*** (emphasis added).'

'*There is no rule of law as to the proper way of making an estimate, there is no way of making an estimate which is right or wrong in itself. It is a question of facts and figures whether the way of making an estimate in any case is the best way in that case.*'

[30] Third Edition, 2001.
[31] At p. 648.
[32] *Vide* p. 8 of the appeal brief.
[33] *Supra* note 12, at p.424.

In the case of *Gamini Bus Company, Ltd v. Commissioner of Income Tax* [34] (Privy Council) it was held that even extracting data from a third party's tax file without disclosing the taxpayer's identity does not breach the principle of fair play and natural justice.

Therefore, in my view, the Assessor and CGIR has acted lawfully in obtaining information from the account statements of Samson Rubber, the sister company of the Appellant, in deciding to reject the return submitted by the Appellant.

E. Gooneratne states the following on rejection of accounts:[35]

'*The account prepared for each accounting period is a summary of the entries in the books of account. The statement of account annexed to a return, or submitted later, if required, is evidence tendered to prove the correctness of the return. A rejection of the account is a rejection of the evidence relied upon by the person assessed. An assessor may give the assessee an opportunity of supporting his return by producing accounts certified by an Accountant. The opportunity he gives to an assessee to produce certified accounts is an act done in the exercise of the discretion given to him to accept or reject the return.*[36] *The rejection of the account when produced is also an act done in the exercise of the discretion given to him to accept or reject the return. He can reject accounts which he believes to be false and unreliable although there is no direct or reliable evidence to prove them incorrect.*[37] *The sufficiency of the reason given for rejecting the accounts cannot be questioned; except in the course of an appeal against the assessment. The omission of a single item of receipt from the accounts is a sufficient reason for rejecting the account if the omission cannot be explained. The intentional omission of an item entitles the assessor to conclude that the account cannot be relied upon to show the whole of the trading profit.*'[38]

For the reasons set out above, I am of the view that the TAC did not err in arriving at the conclusion that the loan given to the Appellant by Samson

[34] Report of Ceylon Tax Cases, Vol. I p. 431 at pp. 434 & 435.
[35] *Supra* note 12, at pp. 422, 423.
[36] Gooneratne, citing *Wall v. Cooper* 14 TC 552.
[37] Gooneratne, citing *Gurmukh Singh v. CIT* AIR 1944 Lah 353; *Gange ram Balmochand v. CIT* AIR 1937 Lah 721; *Harmukhrai Dulchand In re* AIR 1928 Cal. 587.
[38] Gooneratne, citing *Rosetta Franks Ltd. v. Dick* 36 TC 100.

Rubber was not reflected in the lender's accounts. Furthermore, the TAC did not err in determining that the debit notes 'D 6', 'D 6 (1)', 'D 6 (2)', 'D 6 (3)' and the ledger account 'D 5 A' does not reflect the 100M loan. As a result, the TAC rightly denied the Appellant's claim to deduct interest expenses.

Accordingly, I answer the first and second questions of law in the negative in favour of the Respondent.

Whether TAC erred in its failure to consider the material produced by the Appellant with regard to meals expenses?

The next issue arises in this appeal is whether the Appellant established the meals expenses. The Assessor rejected the Appellant's claim to deduct the meals expenses in ascertaining profits and income of the company on the ground that they are not relevant to the production of income[39]. The claim of the Appellant is for a sum of Rs. 3,446,008.00 for the year of assessment 2009/2010. This is approximately Rs. 287,167.00 per month. In appeal the CGIR rejected the Appellant's claim for the deduction of meals expenses on the ground that no documents were produced to prove the expenses. There may be instances where valid reasons other than the reason upon which the Assessor rejected the return, which were not known to the Assessor at the time the return was rejected exist. It is therefore possible that the reasons on which the CGIR or the TAC confirm or reject the Assessor's assessment are different from the reasons given by the Assessor himself. E. Gooneratne, in his book titled *Income Tax in Sri Lanka*, expressed the same view in this regard[40].

The Appellant stated in its appeal to the TAC[41] that the receipts obtained from third parties for meals expenses are not traceable mainly due to the change of employees handling those subjects.

According to the Appellant, meals were supplied by certain individuals in the neighbourhood. The Appellant admits that the company obtained signatures of these suppliers on vouchers. However, submits that these vouchers for the relevant period are not traceable[42]. Even if this statement is accepted as correct, the Appellant could have produced account

[39] *Vide* p. 30 of the appeal brief.
[40] *Supra* note 12 at p. 421.
[41] At p.17 of the appeal brief.
[42] At pp. 68 & 91 of the appeal brief.

statements containing entries in relation to the supply of meals. But the Appellant has failed to submit any account statement as such. Nevertheless, the Appellant submits that since there is evidence to establish that the company did provide meals to its employees, the Assessor could have exercised her discretion and allowed the claim[43]. I agree with the Appellant's submission that the Assessor has the power to exercise her discretion. Yet, an Assessor must act in a legitimate manner. There should not be an arbitrary exercise of discretion. It should be based on adequate evidence. I observe that in proof of meals expenses the only evidence available to the Assessor was the Appellant's return which in my view is insufficient to support the claim.

Above all, the Appellant submitted on its own that the meal expenses are deducted from the monthly remuneration of the employees and the company maintained a record in respect of each employee in which those deductions are indicated[44]. In contrast to the above, in the written submissions made to the TAC on 3rd June 2015, for the first time, the Appellant submitted that in fact it was only 50% of the cost of the meals that was deducted from its employees[45].

It appears to me that the Appellant, having realized that the original claim is not sustainable has changed its stance later.

Later, the Appellant submitted a *specimen* of a record of meals expenses maintained by the Appellant ('D 8') to the CGIR, in proof of meals expenses[46]. The Appellant submitted that unless 'D 8' is contradicted by any other material, it establishes the fact that meals were provided by the Appellant[47]. I am not inclined to accept the Appellant's submissions as 'D 8' is only a specimen and not a real document. Furthermore, 'D 8' is not available in the brief.

Whether TAC erred in assuming that the Appellant is required under Section 106 (13) of the IR Act No. 10 of 2006 to provide material in support of the expenses?

The TAC confirmed the CGIR's determination on meals expenses on the basis that the Appellant was responsible for providing material in support

[43] At p. 16 of the appeal brief.
[44] At pp. 67 & 68 of the appeal brief.
[45] At p. 91 of the appeal brief.
[46] At p. 67 of the appeal brief.
[47] At p. 91 of the appeal brief.

of meals expenses, as required by Section 106 (13) of the IR Act[48]. However, as correctly submitted by the Appellant, Section 106(13) of the IR Act does not place an onus on the Appellant to produce such documents. The Section empowers an Assessor or Assistant Commissioner to give written notice to the taxpayer to produce the necessary documents etc. No doubt a taxpayer has a duty to oblige. Nevertheless, there is no burden imposed upon the taxpayer by the Section itself. Therefore, in my view, the TAC was mistaken in stating that Section 106(13) of the IR Act places a burden on the Appellant to provide documentation to support meals expenses. Yet, in my view, the above misstatement has not affected the final determination of the TAC on meals expenses. Although the Section does not impose that burden, it is the Appellant who should displace the assessment by providing the necessary evidence.

Next, I will consider the mutual obligations of the Assessor and the taxpayer.

S. Balaratnam, states that:

'*When an Assessor, on the basis of his judgement makes an assessment, the burden of showing that such an assessment is excessive is on the taxpayer. It is for the taxpayer to substantiate that the Assessor had not made an assessment to the best of his judgement. An Assessor is presumed to act in good faith and reasonably, in arriving at a judgement of the profits and income*[49]*.'*

'The Burden lies on the taxpayer to disprove the correctness of the estimated assessment and to establish a lower figure. Although the areas of dispute may revolve around the reasons of the Assessor for making the assessment, the onus of disproving the estimate will be on the taxpayer[50]*.*'

In the case of *Gamini Bus Co. Ltd v. Commissioner of Income Tax*[51] (S.C.) the following extract from the case of *Guillain v. Commissioner of Income Tax*[52] was cited;

'Where, owing to the unsatisfactory nature of the return made by the Assessee, the Assessor does not accept the return and makes an estimated

[48] At p. 4 of the TAC determination, at p. 112 of the appeal brief.
[49] S. Balaratnam, *Income Tax in Sri Lanka*, Third Edition, 2001. at pp.645, 646
[50] *Ibid* at p.649.
[51] Reports of Ceylon Tax Cases, Vol. I, p. 416 at p. 423.
[52] (1949) 51 N.L.R. 240.

assessment, then, the burden is on the Assessee to show what his correct income is. If he fails to do this, the estimated assessment must be accepted. There is no hardship in this rule, because an honest Assessee can easily discharge that onus by producing his correct accounts. It is the dishonest Assessee who will not be able to discharge the burden of showing that the Assessor's estimated assessment is excessive.'

S. Balaratnam states that;

'So long as the assessment made on the basis of judgement is properly arrived at from the facts available to an Assessor, the requirement that the assessment is properly made will be fulfilled[53]*.*'

In the instant case, I am of the view that the Assessor, before rejecting the return submitted by the Appellant, has given sufficient opportunity for the Appellant to prove the expenses in issue. However, the Appellant has failed to reconcile in an acceptable manner.

In view of the foregoing analysis, I hold that the TAC made no error in determining that the meals expenses are not deductible in ascertaining profit and income of the Appellant company.

Hence, I answer the third and fourth questions of law in the negative, in favour of the Respondent.

Did the TAC properly examine and/or apply and/or appreciate the relevant facts and law?

In light of the preceding analysis of facts and law relevant to this case and having considered the answers given to the above four questions of law, I answer the fifth questions of law in the negative, in favour of the Respondent.

Conclusion

I find that there is a misstatement in the TAC determination on Section 106 (13) of the IR Act. However, on the foregoing analysis, 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

[53] At p. 647.

or occasioned a failure or justice[54]. I am aware that TAC is not a Court. Nevertheless, in my view, this principle may also serve as a guideline for determining the issue above.

Thus, having considered all the arguments presented to this Court, it is my considered view that the Appellant has failed to prove its claims on a balance of probability[55] and therefore, the TAC did not err in arriving at its final determination.

Accordingly, I answer all five questions of law in the negative, in favour of the Respondent.

1. ***No.***
2. ***No.***
3. ***No.***
4. ***No.***
5. ***No.***

In light of the answers given to the above five questions of law, acting under Section 11 A (6) of the TAC Act, I affirm the determination made by the TAC and dismiss this appeal.

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

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando J.

I Agree.

JUDGE OF THE COURT OF APPEAL

[54] Proviso to the Article 138 (1) of the Constitution.
[55] *Lothian NHS Health Board v. HMRC* [2015] UKUT 264 (TCC).