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

In the matter of an appeal by way of the 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).

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

Appellant

Case No. CA/TAX/0024/2019
Tax Appeals Commission
No. TAC/IT/021/2015

Vs.

Ceylon Cold Stores PLC,
No. 117, Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

Respondent

Before	**:**	Dr. Ruwan Fernando J. &
		M. Sampath K.B. Wijeratne J.
Counsel	:	Vikum de Abrew, Additional Solicitor General with Dr. C. Ekanayake, State Counsel for the Appellant
		Dr.Shivaji Felix with Nivantha Satharasinghe for the Respondent
Argued on	**:**	14.02.2022 &20.06.2022
Written Submissions filed on	:	27.04.2021 (by the Appellant)
		19.04.2022 (by the Respondent)

Decided on : 05.08.2022

Dr. Ruwan Fernando, J.

Introduction

[1] A Case Stated under section 11A of the Tax Appeals Commission Act, No. 23 of 2011 (as amended) was transmitted to this Court by the Tax Appeals Commission by letter dated 13.08.2019. It contained the following two questions of law for the opinion of the Court of Appeal:

1. Whether the Tax Appeals Commission erred in determining that the cessation of the glass bottles and crates used for the business activities of the Appellant company which have been claimed allowance for depreciation is not a disposal pursuant to the section 25 (7) (d) of the Inland Revenue Act, No. 10 of 2006 (as amended);

2. Whether the Tax Appeals Commission has erred in determining the amount recovered from the forfeited deposits of distributors for the bottles not returned is capital receipt.

[2] When this matter was taken up for argument on 02.03.2021 and 05.05.2021, this Court heard the learned Additional Solicitor General and Dr. C. Ekanayake, who made submissions on behalf of the Appellant. On 29.11.2021, Dr.Shivaji Felix, the learned Senior Counsel for the Respondent sought to add the following new question of law for the opinion of the Court of Appeal:

3. Whether the assessment made by the Assessor is time barred and if so, whether the appeal ought to be dismissed?

[3] Dr. Shivaji Felix submitted that the proposed new question ought to be allowed under section 11A (6) of the Tax Appeals Commission Act, No. 23 of 2011 as amended (hereinafter referred to as the TAC Act) for the following reasons:

1. Although the time bar issue has not been specifically set out by the Tax Appeals Commission (hereinafter referred to as the "TAC") as a question of law in the case stated, it was a ground of appeal before the TAC and therefore, it constitutes a question of law arising on the stated case;

2. The time bar issue has been specifically considered by the TAC and it is borne out in the determination made by the TAC (X3) and therefore, even if the time bar issue has not been previously raised by the Respondent, it is a question of law that can be raised at any time as it relates to the patent error of jurisdiction;

3. The Court of Appeal can include any questions of law arising on the stated caseprovided that such a question of law relates to the assessment under appeal before the Court of Appeal, and if the time bar of the assessment isanswered in favour of the Respondent, the assessment is no longer valid and the assessment is liable to be annulled as contemplated by section 11A (6) of the TAC Act.

[4] The learned Additional Solicitor General vehementlyobjected to add the new question of law proposed on behalf of the Respondent and submitted that the questionof law sought to be added ought not to be allowed for the following reasons:

1. The proposed question of law does not arise on the case stated;
2. The proposed question of law is inordinately belated as it was sought to be added after the conclusion of the Appellant's argument on the already formulated questions of law on the merits of the appeal.

[5] The learned Additional Solicitor General submitted first, that the question of law sought to be added by the Respondent is on a procedural issue which was abandoned by the Respondent as the substantive question of law was decided by the TAC in its favour and the Respondent. He submitted that the Respondent did not prefer an appeal or a cross appeal by way of a case stated and therefore, that matter cannot be formulated as a question of law in the case stated by the Respondent at this stage of the appeal.

[6] The main question before this Court is whether or not the question of law proposed by the Respondent pertains to the case stated and has an impact on the assessment under appeal and if so, whether it can be allowed to be raised as a new question of law for the opinion of this Court.

Relevant Provisions of the Tax Appeals Commission Act, No. 23 of 2011 (as amended)

[7] The Tax Appeals Commission Actwas enacted by Parliament to provide for the constitution of a Tax Appeals Commission, to specify the powers of such Commission and the procedure to be followed in hearing and disposing of such appeals. Subsections (1) and (2) of section 11A of the TAC Act provide for the procedure to be followed by the TAC where an application is made to the TAC by any person who preferred an appeal under section 7(1)(a) or the Commissioner General requiring the TAC to state a case on a question of law for the opinion of the Court of Appeal. Subsections (1) and (2) of section 11A of the TAC Act read as follows;

(1) Either the person who preferred an appeal to the Commission under paragraph (a) of subsection (1) of section 7 of this Act (hereinafter in

this Act referred to as the "appellant") or the Commissioner-General may make an application requiring the Commission to state a case on a question of law for the opinion of the Court of Appeal. Such application shall not be entertained unless it is made in writing and delivered to the secretary to the Commission, together with a fee of one thousand and five hundred rupees, within one month from the date on which the decision of the Commission was notified in writing to the Commissioner-General or the appellant, as the case may be;

(2) The case stated by the Commission shall set out the facts, the decision of the Commission, and the amount of the tax in dispute where such amount exceeds five thousand rupees, and the party requiring the Commission to state such case shall transmit such case, when stated and signed to the Court of Appeal, within fourteen days after receiving the same

[8] A party who is aggrieved by the determination of the TAC may, in the application propose certain questions of law for the consideration by the TAC to be referred to the Court of Appeal, but the TAC cannot blindly repeat and adopt those proposed questions of law without giving its mind to them as the responsibility to state a case is vested in the TAC by the provisions of the TAC Act (*Commissioner General of Inland Revenue v. Janashakthi Insurance Company Limited* (S.C. Appeal No. 114/2019 decided on 26.06.2020).

[9] This is manifested from the words "the case stated by the Commission" in section 11A (2) of the TAC Act, which means that is the duty of the TAC to state a case on a question of lawfor the opinion of the Court of Appeal. The role of the Board of Review to state a case on a question of law was considered by Basnayake C.J. in *R.M. Fernando V. Commissioner of Income Tax* (Reports of Ceylon Tax Case's Vol I page 571) and His Lordship Basnayake, C.J. stated the role of the Board of Reviewfor stating a case as follows;

"The responsibility for stating a case is vested by the statute in the Board of Review and although the statue provides for the appointment of a clerk and legal adviser to the Board it cannot delegate its function to either of them. Though in the performance of its statutory duty it may make use of its ministerial officers, the ultimate responsibility of the due and proper performance of its duty rests with the Board and the Board alone. If it is the practice to leave the preparation of the case entirely to one of his ministerial officers and for the Board merely sign the case as stated by such officer that practice is not warranted by law and must cease forthwith".

[10] It is settled law now that in terms of section 11A (2) of the TAC Act, it is the duty of the TAC to state a case on a question of law for the opinion of the Court of Appeal, and it is not for any party aggrieved by the determination made by the TAC to state a case and formulate the question

of law arising on a case stated, even though such party may propose a question of law for the consideration by the TAC (*R.M. Fernando v Commissioner of Income Tax* (Reports of Ceylon Tax Cases Vol 1 p. 571, at 577, *Commissioner General of Inland Revenue v. Janashakthi Insurance Company Limited* (supra) and *The Commissioner General of Inland Revenue v. Dr. S.S.L. Perera*, CA Tax /03/2017 decided on 11.01.2019).

[11] In the present case, the question of time bar was answered in favour of the Appellant by the TAC, but the assessment was annulled and the appeal was allowed by the TAC on substantive grounds. The Appeal was preferred by the Commissioner General of Inland Revenue (CGIR) against the determination made by the TAC in allowing the Appeal on substantive grounds. Upon the application made by the Appellant to the TAC to state a case as required by section 11A (1), the TAC formulated two questions of law and forwarded them for the opinion of the Court of Appeal. As the time bar issue was answered by the TAC in favour of the Appellant (CGIR),the question of the time bar of the assessment was not considered by the TAC as a question of law for the opinion of the Court of Appeal.

[12] The TAC Act has, however, granted two opportunities to the Court of Appeal to reconsider the questions of law submitted by the TAC and the Court of Appeal, may, either refer them to the TAC for necessary amendments under section 11A (5) of the TAC Act, or formulate additional questions of law in the case stated under section 11A (6) of the TAC Act. Section 11A (5) of the TAC Act reads as follows:

> *"11 A (5). Any two or more Judges of the Court of Appeal may cause a stated case to be sent back to the Commission for amendment, and the Commission shall amend the case accordingly".*

[13] The effect of Section 11A (5) is that once the case stated is received by the Court of Appeal, either upon an application made by a party, or on its own, it canreconsider the case stated submitted by the TAC once again, and where it is found that the case stated requires an amendment, it can send it back to the TAC for necessary amendment.

[14] The Respondent now invites this Court to act under section 11A (6) of the TAC Act and add the proposed new question of law stating that the time bar issue, which was a ground of appeal was specifically considered by the TAC in its determination annexed to the stated case marked X3. It was the contention of Dr. Felix that if the proposed question of law is answered by this Court in favour of the Respondent, it will result in the annulment of the assessment determined by the TAC in terms of section 11A (6) of the TAC Act. Section 11A (6) of the TAC Actprovides as follows:

"11A (6) Any two or more Judges of the Court of Appeal may hear and determine any question of law arising on the stated case and may, in accordance with the decision of court upon such question, confirm, reduce, increase or annul the assessment determined by the commission, or may remit the case to the commission with the opinion of the Court, thereon. Where a case is so remitted by the Court, the Commission shall revise the assessment in accordance with the opinion of the court".

[15] Now it is the duty of this Court, first to identify the question of law in the stated case for the opinion of the Court of Appeal, and then, if necessary, eitherto cause a stated case to be sent back to the TAC for necessary amendment or to add the new question of law. Accordingly, there is no restriction whatsoever, on the Court of Appeal to reconsider the questions of law submitted by the TAC and formulate an additional question of law proposed by any party, if the answers to new questions of law may result in the confirmation, reduction, increasing or annulling the assessment determined by the TAC as contemplated by section 11A (6) of the TAC Act.

[16] The words "**any question of law arising on the stated case"** in section 11A (6) clearly signify that it is open to the Court of Appeal to consider any question of law arising on the stated case **and** it may result in the confirmation, reduction, increasing, or annulment of the assessment determined by the TAC, or the remitting the case to the TAC with the opinion of the Court, thereon. For this purpose, the words "hear and determine any question of law arising on the case stated" signify that the Court must hear the parties, identify and consider any question of law arising on the stated case. This process permits any party, either the Appellant or the Respondent, to propose to the Court of Appeal, any question of law arising on the stated case. But it is solely a matter for the Court of Appeal to decide whether or not any such proposed new question of law is arising on the stated case.

[17] In this regard, it is relevant to consider the decision in *R.M. Fernando v Commissioner of Income Tax* (1959) 1 Reports of Ceylon Tax Cases 650, in which Bannayake C.J. at p. 660 stated:

"The statute does not require the Board to formulate in catechistic from the questions which this Court has to decide. Sub-section (5) of section 74, requires the Court to hear and determine any questions of law arising on the stated case and not ***any question or questions formulated*** *by the Board. The function of the Board is to set forth the facts and the decision of the Board and not to formulate as it was done in this case, specific questions to be answered by this Court. The present practice is likely to result in a party being stated out of Court".*

[18] At the inquiry, Dr. Felix submitted that at the hearing before the Court of Appeal, any party is entitled to propose to the Court of Appeal to add any

new question of law arising on the stated case for the opinion of the Court of Appeal, and accordingly, the Respondent is entitled to raise the new question of law that arises on the stated case, and determined by the TAC as a ground of appeal during the hearing before the TAC. It is useful now to reproduce the following statement made by Janak de Silva J. in *The Commissioner General of Inland Revenue v.Janashakthi General Insurance Co. Ltd* CA Tax 14/2013 decided on 20.05.2010 at p. 6:

> *"Therefore, this Court can hear and determine any question of law arising on the Case Stated. This provides the opportunity to* ***either party*** *to propose a new question of law or to amend a question of law to this Court. Where the Court is of the view that it arises from the Case Stated, they can be accepted as part of the Case Stated provided that the answer to the new or amended questions of law may result in the confirmation, reduction, increasing or annulling the assessment determined by the TAC, or requires the remitting of the case to the TAC with the opinion of the Court so that the TAC can revise the assessment in accordance with the opinion of the Court".*

[19] In this context, it is apt to consider the principles of law enunciated by the Supreme Court in *Commissioner General of Inland Revenue, v. Janashankthi Insurance Company Limited* (supra), when the Court of Appeal is invited to consider the admission of a new question of law for the opinion of the Court of Appeal. In *Commissioner General of Inland Revenue, v. Janashankthi Insurance Company Limited* (supra), the Supreme Court held that:

1. The legislature had expected the Court of Appeal to consider the case stated once the case stated is remitted to the Court of Appeal, and prior to it being determined by the Court of Appeal;
2. The provisions introduced by the Tax Appeals Commission Act give the opportunity to the Tax Appeals Commission and the Court of Appeal to carefully consider the questions of law that are to be contained in the case stated before it being taken up for hearing before the Court of Appeal;
3. The power of the Court of Appeal to consider an additional question of law is not restricted to the questions identified in the case stated, but the Court is permitted to consider a new question of law agreed upon by the Court, if the Court is of the view that the answer to a new question of law may result in the confirmation, reduction, increasing or annulling the assessment determined by the Commission. or the remitting the case to the Tax Appeals Commission with the opinion of the Court;
4. The Court of Appeal is free to decline to answer any of the question or questions, that is included in the case stated, if the court is of the view

that it may not result in the confirmation, reduction, increasing or annulling the assessment determined by the Commission, but in any other instance, the Court of Appeal is required to answer all the questions before them.

[20] It is now settled law that where a new question of law will result either in the confirmation, reduction, increasing, or annulment of the assessment determined by the Board of Review or the Tax Appeals Commission on a stated case or the remitting the case to the Board of Review with the opinion of the Court, a new question of law may be permitted to be raised by the Court of Appeal (*The Commissioner General of Inland Revenue v. Dr. S.S.L. Perera* CA/Tax/No. 3/2017 decided on 11.01.2019, *Royal Ceramics Lanka PLC v. The Commissioner General of Inland Revenue* CA Tax No. 5/2008 decided on 12.05.2020), *Commissioner General of Inland Revenue v.Koggala Garments (Pvt) Ltd* CA. Tax 01/2008 decided on 05.04.2017, *Illukkumbura Industrial Automation (Private) Limited v. Commissioner General of Inland Revenue,* CA. Tax 05/2016 decided on 30.11.2020), *Commissioner General of Inland Revenue, v. Janashankthi Insurance Company Limited* SC. Appeals No. 114/2019 decided on 26.06.2020),and *Hatton National Bank PLC, v. The Commissioner General of Inland Revenue,* CA/TAX/0001/2010, decided on 03.06.2022).

[21] At the inquiry, the learned Additional Solicitor General for the Appellant objected to the new question of law proposed by the Respondent to be formulated as a question of law on the ground that it does not arise on the stated case. I shall now proceed to consider whether or not such additional questions of law proposed by the Respondent should be permitted to be raised on the basis of the tests settled in the decisions of the Court of Appeal and the Supreme Court.

Appeal on a question of law to the Court of Appeal

[22] As noted, section 11A (1) of the TAC Act provides that either party who preferred an appeal to the TAC or the CGIR make an application requiring the TAC to state a case on a question of law for the opinion of the Court of Appeal. The TAC Act, however, sets out the following requisites of a valid application to the TAC to state a case on a question of law and unless such requisites are satisfied, the application may not be entertained by the TAC:

1. It shall be made in writing;
2. It must be delivered to the secretary to the Commission;
3. It should be accompanied by a fee of one thousand and five hundred rupees;
4. It must be made within one month from the date on which the decision of the TAC was notified in writing to the CGIR or the Appellant.

[23] An appeal by way of case stated under the TAC Act constitutes a distinct route of appeal and must be distinguished from any ordinary appeal filed in the original courts by filing a notice of appeal or a petition of appeal under the provisions of the Civil Procedure Code. Where such a party has made an application having been satisfied with the requisites of section 11A (1) of the TAC Act, it is not necessary for such party to file a notice of appeal or petition of appeal setting out the grounds of appeal separately. It may be possible for such a party,however, to propose a question of law for the consideration of the TAC, but it is for the TAC to state the case on a question of law for the opinion of the Court of Appeal.

Whether the answer to the new question will result in the adjustment of the assessment contemplated by section 11A (6) of the TAC Act

[24] Now the question is whether the additional question proposed on behalf of the Respondent has a direct bearing on the validity of assessment, and if it is answered in favour of the Respondent at the end of the hearing, whether it will result in the in the confirmation, reduction, increasing or annulment of the assessment determined by the Commission.

[25] It is not in dispute that the Respondent being dissatisfied with the assessment made by the Assessor appealed to the CGIR and disputed the validity of the assessment for the following reasons:

1. The assessment is time barred in terms of section 163(5) of the Inland Revenue Act, No. 10 of 2006;
2. The notice of assessment is invalid as it has been received via ordinary post;
3. The amount of Rs. 60,105,422/- recovered from the forfeited deposit of distributor for the bottle not returned capital nature and it is not related to any trading income and not liable for income tax.

[26] The CGIR dismissed the Appeal (pp. 20-23 of the TAC brief) and the Respondent appealed to the TAC. When the appeal was taken up for argument before the TAC, the Appellant and the Respondent raised the following issues (pp. 251 of the TAC brief) before the TAC and invited the TAC to answer the following questions:

1. Whether the assessment made by the Assessor for the year of assessment 2009/2010 is time barred in terms of section 163(5) of the Inland Revenue Act, No. 10 of 2006 as amended by the Inland Revenue (Amendment) Act, No. 22 of 2012;
2. Invalidity of the assessment due to section 194 (2) of the Inland Revenue Act, No. 10 of 2006 for the failure to serve the assessment by registered post;

3. Whether the amount of Rs. 60,105,422 from the forfeited deposits of the distributors of the bottles not returned is of a capital nature or revenue nature.

[27] The TAC having considered the said three issues decided in its determination dated 14.05.2019 that:

(1) **The assessment was not time barred**;

(2) The reasons for the assessment had been sent by the determination after 30 days, but it has not infringed the legal rights of the Appellant; and

(3) The deposits in question were not trading receipts and thus, no liability for income tax arises. Accordingly, the TAC annulled the assessment and allowed the appeal.

[28] Being aggrieved by the determination made by the TAC on the substantive ground, namely, namely that the deposits in question were not trading receipts, the Appellant (Commissioner General of Inland Revenue), made an application to the TAC to state a case on a question of law for the opinion of the Court of Appeal. The TAC repeated the two questions of law proposed by the Appellant for its consideration and formulated two questions of law referred to in paragraph 1 of this order.

[29] As noted, the time bar was a ground of appeal before the TAC, and it was specifically determined by the TAC as part of the appeal before the TAC as borne out by the determination of the TAC (X3). It is crystal clear that the time bar of the assessment was a matter in dispute before the TAC and falls within the scope of the case stated that includes the question of facts and law determined by the TAC in its decision.Accordingly, thequestion of the time bar of the assessment that had been raised and determined by the TAC arises on the stated case, which related to the validity of the assessment determined by the TAC, although it was not included in the case stated submitted to the Court of Appeal by the TAC.

[30] It is settled law that the power of the Court of Appeal in considering the questions of law is not restricted to the questions identified in the case stated, but the Court of Appeal is permitted to consider new questions of law agreed upon by the court, if the answers to new questions of law may result in the confirmation, reduction, increasing or annulling the assessment determined by the Commission (*Commissioner General of Inland Revenue, v. Janashankthi Insurance Company Limited (supra,pp 9-10).*

[31] As noted, the TAC did not include the whole case, including the time bar which related to the validity of the assessment and arose on the stated case. However, it does not prevent the Court of Appeal from raising it as a new question of law, if it has the potential to result in the confirmation, reduction,

increasing or annulling the assessment determined by the Commission. It is apt to refer to the decision in *M.P.Silva v Commissioner of Income Tax* (1947) 1 Reports of Ceylon Tax Cases 382, in which Canekeratne J. who having considered section 74(5) of the Income Tax Ordinance, No. 2 of 1932 stated at pp. 385-386:

> *"The jurisdiction of this Court is, by section 75, sub-section 5, to "hear and determine any question of law arising" on a case transmitted under this Ordinance. This involves the construction of the language of the Case Stated. It must be interpreted in the light of common knowledge and by the common sense of the language used. All questions that could be raised on the whole case were intended to be let open. We decided instead of sending the case, as requested by the Counsel, at the start to proceed with the hearing and see whether there was any necessity for adopting the course suggested. It became apparent later that it was unnecessary".*

[32] I will now refer to the dicta of Abrahams C.J., in *Commissioner of Income Tax Vs. Sarverimuttu Ratty* (Report of Ceylon Tax Case, Vol 1, 103 at 109:

> *"Incidentally, there was no reference to us on this point by the Board of Review, since that point was not put to the Board when they were called upon to adjudicate in appeal, but we are not, of cause precluded from considering any point upon which the actual decision of the Board might be upheld, no matter what might have been their reasons for arriving at that decision" (emphasis added).*

[33] The qualification that must be applied *inter alia*, when a new question of law is considered to be added is whether it has the potential to result in the in the confirmation, reduction, increasing or annulling the assessment determined by the Commission. It is relevant to reproduce the following statement made by Janak Silva J. in Dr. S.S.L. Perera Tax 03/2017 decided on 11.01.2019 at p.

> *"Accordingly, I hold that it is open for this Court to consider questions of law other than what is set out in the case stated. However, I wish to state that such a course of action is permissible only if the answer to the new question of law may result in the confirmation, reduction, increasing or annulling the assessment, determined by the Commissionor requires the remitting of the case to the TAC with the opinion of the Court. Questions of law which are purely of academic interest cannot be raised (Navaratnam v. Commissioner of Income Tax (Reports of Ceylon tax Cases, Vol. 1, page 378 at 381). The same test applies to questions of law to be formulated by the TAC for reference to this Court".*

[34] I took the same view in our judgment in *C.S.D.B. Mutunayagam v Commissioner General of Inland Revenue* CA Tax 46/2019, decided on 30.07.2021 at p. 29, however, different circumstances as follows:

> *"[100] The jurisdiction of the Court of Appeal is, however, not limited to the questions of law set out in the case stated and the Court of Appeal has the power to determine a question of law, not specifically raised at an earlier stage provided it is a question that can be decided on the facts as found by the Commission (Kalem v. Jeffry (1914) 3 KB 160)), W.S. Try Ltd v. Johnson 1946 (1) AER 531, London County Council v. Tavern 1956 (1) WLR 1296, W.W.S. Fernando v. CIT 3 Cey. TC 15). Section 11A (6) of the Tax Appeals Commission Act provides that the Court of Appeal may hear and determine any question of law arising on the stated case and may, in accordance with the decision of Court upon such question, confirm, reduce, increase or annul the assessment determined by the Commission, or may remit the case to the Commission with the opinion of the Court, thereon".*

[35] Accordingly, it is the duty of this Court to determine any question of law arising from the case stated not set out in the case stated transmitted by the TAC, if the answers to new questions of law may result in the confirmation, reduction, increasing or annulling the assessment determined by the TAC.

Delay

[36] The learned Additional Solicitor General raised the question of delay in raising the new issue at this stage of the appeal and submitted that there has been a serious intervening period between the time, the case stated was submitted to the Court of Appeal and the time at which the application for the new question of law was sought to be added. He submitted that the Respondent has failed to meet the requisite due diligence expected in the proceedings before this case ought to be conducted and therefore, this belated application should be dismissed.

[37] I wish to emphasize that where this Court permits the proposed question to be added as a question of law for the opinion of this Court, it would not mean by itself that we venture into an answer in favour of the Respondent, as that matter has to be decided at the end of the appeal. In the present case, the TAC in fact went into the merits of the assessment and annulled it, and therefore, there is a decision on assessment determined by the TAC. Where it is found that the proposed new question has the potential to result in the annulment of the assessment which is under appeal, the new question would have to be allowed, irrespective of whether it was sought to be added this stage of the appeal.

[38] The proposed question of law in relation to the time bar of the assessment proposed by the Respondent is arising on the stated case and relates to the question of the validity of the assessment determined by the TAC. Thus, it can be raised at this stage provided that the parties have been given a fair opportunity to address the question of law before judgment, which has not so far, passed. Under such circumstances, If the proposed question of law which is arising on the case stated is answered in favour of the Respondent, the assessment is no longer valid, and it will result in the annulment of the assessment determined by the Commission.

Conclusion

[39] For those reasons, the application of the Respondent to add the proposed question of law is allowed and the new question of law proposed by the Respondent on 14.02.2022 will now constitute a question of law in this case stated. It is numbered as the question of law No. 3 for the opinion of the Court of Appeal.

JUDGE OF THE COURT OF APPEAL

M. Sampath K.B. Wijeratne, J.

I agree.

JUDGE OF THE COURT OF APPEAL