

**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/0010/2013
Tax Appeals Commission
No. TAC/OLD/VAT/017**

Vs.

Janashakthi Insurance Company Limited,
No. 47, Muttiah Road,
Colombo 02.

Respondent

**AND THEREAFTER IN THE SUPREME
COURT BETWEEN**

**SC Appeal No. 114/2019
S.C. (Spl.) L.A. Application No. 217/2018**

Janashakthi Insurance PLC,
(Previously known as Janashakthi Insurance
Company Limited and thereafter as
Janashakthi Insurance Company PLC),

No. 675, Dr. Danister de Silva Mawatha,
Colombo 09.

(Previously of No. 47, Muttiah Road,
Colombo 02)

And also, of,

No. 55/72, Vauxhall Lane,
Colombo 02.

Respondent-Appellant

Vs.

The Commissioner General of Inland
Revenue,

Department of Inland Revenue,

Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

Appellant-Respondent

**AND NOW IN THE COURT OF APPEAL
BETWEEN**

The Commissioner General of Inland
Revenue,

Department of Inland Revenue,

Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

Appellant

Vs.

Janashakthi Insurance PLC,

No. 75, Kumaran Ratnam Road,

Colombo 02.

Respondent

Before

:

Dr. Ruwan Fernando J. &

M. Sampath K.B. Wijeratne J.

Counsel : Chaya Sri Nammuni, Deputy Solicitor
General for the Appellant

Dr. Shivaji Felix with Nivantha Satharasinghe
for the Respondent

Argued on : 17.05.2022

Written Submissions filed on

: 25.08.2022 (by the Appellant)
20.07.2022 (by the Respondent)

Decided on : 02.09.2022

Dr. Ruwan Fernando, J.

Introduction

[1] The Respondent was a company incorporated in Sri Lanka and the nature of the business of the company is carrying out insurance business in Sri Lanka. The Respondent submitted its VAT returns for the period ending 31.03.2004 & 28.02.2005. The Senior Assessor by letter dated 30.12.2005 refused to accept the said returns and the assessments were made for the relevant taxable periods. The notices of assessments were sent to the Respondent accordingly.

[2] The Respondent appealed to the Commissioner General of Inland Revenue who by its determination dated 10.06.2015 confirmed the said assessments. Being aggrieved by the said determination of the Commissioner General, the Respondent appealed to the Tax Appeals Commission. When the said Appeal was taken up for hearing, the Respondent raised the following two preliminary objections before the Tax Appeals Commission (hereinafter referred to as the TAC).

1. The said assessments were contrary to the law and therefore, of no force or avail in law;
2. The appeal to the TAC was time barred by operation of law.

[3] The TAC decided to make a ruling on the said preliminary objections before hearing the substantive questions of law, and by its determination dated

26.02.2013, upheld the first preliminary objection in respect of the validity of the said assessments and disallowed the second preliminary objection in respect of the time bar for an appeal to be determined by the TAC. Accordingly, the TAC annulled the said assessments that had been previously confirmed by the determination of the Commissioner General of Inland Revenue dated 10.06.2015.

[4] The Commissioner General of Inland Revenue appealed to the Court of Appeal against the said determination of the TAC and the TAC by letter dated 17.05.2013 transmitted to the Court of Appeal a Case Stated under section 11A of the Tax Appeals Commission Act, No. 23 of 2011 (as amended). It contained the following seven questions of law for the opinion of the Court of Appeal:

1. Whether the Tax Appeals Commission has jurisdiction to annul an assessment due to service of unsigned notice of assessment even all other mandatory requirements have been fulfilled in order to make the assessment;
2. Whether duly served notice of assessment with the omission of signature affect the validity of assessment;
3. Whether duly served notice of assessment which was printed and issued by computer, without signature of issuing officer is an error covered by the section 61 of the Value Added Tax Act, No. 14 of 2002;
4. Whether Assessee can challenge the validity of assessment at the hearing of the appeal at the Appeals Commission;
5. Whether the Assessee can raise an issue as a preliminary objection at the hearing of Appeal at the Appeals Commission, which has not been raised at the time of Appeal
6. Whether issuia notice of assessment by an Assessor which is generated through computer under the provision of section 28 of the Value Added Tax Act, No. 14 of 2002, is exercising of the discretionary power of a ministerial act;
7. Whether the name of the Commissioner General, Deputy Commissioner or Assessor duly printed or signed on the assessment notice under section 60 of the Value Added Act, No. 14 of 2002 is a mandatory requirement.

Judgment of the Court of Appeal

[5] The Court of Appeal in its judgment dated 08.06.2018 held that the TAC erred in deciding to annul the notices of assessments and answered the questions of law Nos. 3, 6, 7 in favour of the Appellant. The Court of Appeal however, answered the questions of law Nos. 1, 2, 4 and 5 only on the basis that the opinion with regard to the said questions of law Nos. 1, 2 4 and 5 depends on the facts of each case.

Appeal to the Supreme Court

[6] Being aggrieved by the decision of the Court of Appeal, the Respondent appealed to the Supreme Court and the main contention of the Respondent was that the Court of Appeal erred in law by failing to answer all the questions of law in the Case Stated (Vide- page 3 of the Supreme Court judgment). The Supreme Court in its judgment dated 26.06.2020 upheld the position of the Respondent that all the questions of law ought to be answered and, set aside the judgment of the Court of Appeal. The Supreme Court directed the Court of Appeal to determine all the questions of law that have been raised in the Case Stated, if answering the said questions may result in the confirmation, reduction, increasing or annulling the assessment determined by the Commission.

[7] The relevant direction of the Supreme Court at p. 13 of the judgment reads as follows:

“As observed by this Court, the Court of Appeal in its opinion had only answered 3 questions out of the 7 questions before them. Questions 1, 2 4 and 5 had only answered as “it depends on the facts of each case” but the Court had failed to consider those questions in the circumstances of the instant case, and answer them accordingly (p. 12).....

The judgment of the Court of Appeal dated 08.06.2018 is set aside. The Court of Appeal is hereby directed to answer all the questions that have been raised in the case stated, if answering the said questions may result in confirmation, reduction, increasing or annulling the assessment determined by the Commission (p. 13)“.

Request of the Appellant to amend the questions of law

[8] The Appellant by motion dated 23.02.2021, sought permission to amend the questions of law in place of the seven questions of law in the Case Stated before

this Court. The proposed five questions of law sought by the Appellant to be amended in place of the questions of law in the Case Stated are as follows:

1. Has the TAC erred in law in proceeding to annul the assessments having held that it had a patent lack of jurisdiction?
2. Without prejudice to the above question of law, has the TAC erred in law in proceeding to annul the assessments on the basis that the assessments were invalid, when the appellate power of the TAC is contingent upon a valid assessment?
3. Without prejudice to the above questions of law, has the TAC erred in law in proceeding to annul the assessments on the basis that the assessments were invalid, notwithstanding the Assessee being estopped from claiming that the assessments were invalid having involved the appellate provisions on the basis that the assessments were valid and having failed to raise their purported invalidity before the CGIR?
4. Without prejudice to the above questions of law, has the TAC erred in law in proceeding to annul the assessments on the basis of a failure to print the name of the Assessor and to include the signature in the notice of assessment?
5. Without prejudice to the above questions of law, has the TAC erred in law in not considering that the omission of a signature falls within an omission contemplated by section 61 of the VAT Act?

Objections of the Respondent to the proposed questions of law

[9] The Respondent objected to the motion 23.02.2021 filed by the Appellant seeking to amend the questions of law contained in the Case Stated on the following grounds:

1. The present appeal is not being heard by the Court of Appeal in the ordinary course of events, and the Court of Appeal is rehearing this appeal based on a specific direction issued by the Supreme Court to answer all the questions that have been raised in the Case Stated, if the answering the said questions may result in confirmation, reduction, increasing or annulling the assessments determined by the TAC;
2. Once the Case Stated is fixed for hearing, on the said specific direction of the Supreme Court, it only contains the questions that are to be considered

by the Court of Appeal and nothing else as held by the Supreme Court in the said Supreme Court judgment;

3. The Appellant is not entitled to request the Court of Appeal to amend the questions of law in circumstances where the Supreme Court has directed the Court of Appeal to hear and determine all seven questions of law in the Case Stated;
4. The specific direction from the Supreme Court to the Court of Appeal does not empower the Court of Appeal to amend the questions of law, and the Court of Appeal too cannot *ex mero motu* add the questions of law in circumstances where the rehearing is being conducted under and in terms of a specific directive of the Supreme Court;
5. The Appellant did not make any complaint that the questions of law proposed by the Appellant had not been included in the Case Stated by the TAC, and no application has been made by the Appellant on this basis to the Court of Appeal;
6. It is the duty of the Court of Appeal to rehear the case and determine the specific questions of law arising on the Case Stated subject to the caveat laid down by the Supreme Court when answering the said questions of law, and to do otherwise, would amount to a variation of the judgment of the Supreme Court;

Response of the Appellant to the objections of the Respondent

[10] The Appellant in support of the said proposed amendments to the questions of law in the Case Stated submitted that the questions of law in the Case Stated have been framed in a general manner and therefore, the proposed questions of law have been framed in a more concise and logical manner so as to understand the basis of the appeal and assist the Court to deal with all the legal issues that arise on the Case Stated.

[11] The Appellant further submitted that the judgment of the Supreme Court was to rehear the appeal and answer all the questions that have been raised in the Case Stated, if answering the said questions may result in confirmation, reduction, increasing or annulling the assessments determined by the Commission. The Appellant submitted that the judgment of the Court of Appeal was set aside on the basis that the Court failed to answer all the questions of

law, but there was no direction whatsoever, that prevents the Court of Appeal from amending new questions of law at this stage of the appeal.

[12] The Appellant relied on several authorities to substantiate the position that there is no restriction on the Court of Appeal in considering an additional question of law outside the Case Stated if answering such question may result in confirmation, reduction, increasing or annulling the assessment determined by the Commission.

[13] The main question before this Court is whether or not the five questions of law proposed by the Appellant should be accepted as new questions of law in place of the questions of law in the Case Stated in terms of the provisions of the Tax Appeals Commission Act, No. 23 of 2011 (as amended).

Appeal by way of a Case Stated

[14] Subsections (1) and (2) of section 11A of the Tax Appeals Commission Act, No. 23 of 2011 (as amended) (hereinafter referred to as the TAC Act) provide for the procedure to be followed by the TAC where an application is made by any person who preferred an appeal to the TAC requiring the TAC to state a case on a question of law for the opinion of the Court of Appeal. Section 11 A (1) reads 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;

[15] An appeal by way of a Case Stated, is a procedure set out in the TAC Act by which, upon an application of a party to the TAC, the TAC is required to state a case on a question of law for the opinion of the Court of Appeal. Section 11A (2) of the TAC Act reads as follows:

"(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 the case when stated and signed to the Court of Appeal, within fourteen days after receiving the same”.

[16] In the present case, there is no complaint whatsoever, that the TAC has failed to formulate in the Case Stated the questions of law that arise in the Case Stated or that the questions of law proposed by the Appellant for the consideration of the TAC have not been included in the Stated Case. The Appellant now seeks to amend the questions of law in place of the questions of law in the Case Stated on the ground that the questions of law proposed by the Appellant have been framed in a more concise and logical manner so as to understand the basis of the appeal and assist the Court to deal with all the legal issues that arise on the Case Stated.

[17] Section 11A (6) of the TAC Act provides 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”.

[18] It is settled law that 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 that results either in the confirmation, reduction, increasing, or annulment of the assessment determined by the TAC on a Case Stated. It is solely a matter, however, for the Court of Appeal to decide whether any proposed new question of law should become a part of the Case Stated.

[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. Janashakthi Insurance Company Limited* (SC. Appeal No. 114/2019), 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. Janashakthi 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. Similarly, 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] Where a new question of law will result either in the confirmation, reduction, increasing, or annulment of the assessment determined by the TAC, 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. Janashakthi Insurance Company Limited* SC. Appeals No. 114/2019 decided on 26.06.2020), *Hatton National Bank PLC, v. The Commissioner General of Inland Revenue*, CA/TAX/0001/2010, decided on 03.06.2022).

[21] Now it is the duty of this Court first to identify the questions of law in the Case Stated and to consider whether the questions of law proposed by the Appellant arise on the Stated Case, and if the proposed questions of law so arise on the Stated Case, the Court may either to add the new question of law or cause a Case Stated to be sent back to the Commission for necessary

amendments. 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.

Basis of the TAC determination

[22] In the present case, the TAC annulled the assessments upholding the first preliminary objection raised by the Respondent that no valid notices of assessment have been served on the Appellant for the following reasons:

1. The notices of assessments are not signed or do not bear the name and the designation of the person making the said assessments as required by section 60 (1) of the VAT Act, No. 14 of 2002 (as amended) (hereinafter referred to as the VAT Act) and therefore, the notices of assessment are invalid or void in law, which cannot be cured in terms of section 61 of the VAT Act;
2. The failure to duly print the name of the Commissioner General or deputy Commissioner or Assessor or signed thereon amounts to a violation of the law as provided in section 60(1) of the VAT Act. The requirement of having the name duly printed or signed by the person authorized to issue the notice is a mandatory requirement under section 60(1) of the VAT Act;
3. No valid notices of assessment have been served on the taxpayer due to the failure of the Appellant to comply with the mandatory provisions of section 60(1) of the VAT Act. The resulting position would give rise to a situation where there is a patent lack of jurisdiction to decide the assessment without a valid notice of assessment under section 60(1) of the VAT Act, No. 14 of 2002.

Questions of law formulated by the TAC

[23] Upon the application made by the Appellant to the TAC to state a case as required by section 11A (1) of the TAC Act, the TAC forwarded to the Court of Appeal the aforesaid seven questions of law for the opinion of the Court of Appeal. A perusal of the seven questions of law submitted by the TAC reveals that they are based on the matters determined by the TAC in respect of the first

preliminary objection as morefully set out in the following paragraphs of the Case Stated submitted by the TAC.

- 6 *When the appeal of Janashakthi Insurance Co. Ltd. was taken up before the Tax Appeals Commission, it's Representative raised two preliminary objections. First preliminary objection was that the assessments were contrary to law and therefore, of no force or effect in law, for the reason that the notices of assessment were not signed and/or do not bear the name and the designation of the person making the assessments. The second preliminary objection was that the appeal to the Tax Appeals Commission was time barred by operation of law;*
- 7 *The Tax Appeals Commission after considering the oral and written submissions made by the Representatives for Janashakthi Insurance Co. Ltd. and the Commissioner General of Inland Revenue annulled the assessments in this case upholding the first preliminary objection raised that, no valid notices of assessment have been served on Janashakthi Insurance Co. Ltd. The copy of the aforesaid determination is annexed hereto marked X3;*
- 8 *The Tax appeals Commission made its determination upholding the first preliminary objection that the assessment was contrary to law and therefore of no force or effect in law was on the ground that the imperative requirements of section 60(1) of the Value Added Tax Act, No. 14 of 2002 which required that every notice given by the Commissioner General or an Assessor under the Act to be valid, the name of the Commissioner General, Deputy Commissioner or the Assessor should be duly printed or signed. In this case, the assessment notices were unsigned and/or did not bear the name and the designation of the person making the assessment."*

[24] It is crystal clear that the questions of law already formulated by the TAC arise on the Case Stated and therefore, the opinion of the Court of Appeal is sought in respect of the following main questions of law arising on the Case Stated:

1. Whether the TAC has erred in law in proceeding to annul the assessments, holding that it has no jurisdiction due to the service of unsigned notices of assessment with the omission of the name or the signature of the Commissioner General or Deputy Commissioner or Assessor duly printed as mandatorily required by section 60 of the VAT Act;

2. Whether the name of the Commissioner General or Deputy Commissioner or Assessor duly printed or signed on the assessment notice is a mandatory requirement under section 60 of the VAT Act;
3. Whether the TAC has erred in law in proceeding to annul the assessments disregarding the fact that the duly served notices of assessment which were printed and issued by the computer without the signature of the issuing officer falls within the omission/error contemplated by section 61 of the VAT Act;
4. Whether the Assessee can challenge the validity of the assessment at the hearing of Appeal at the Tax Appeals Commission;
5. Whether the Assessor can raise an issue as a preliminary objection at the hearing of Appeal at the Tax Appeals Commission, which has not been raised at the time of Appeal.
6. Whether the issuing a notice of assessment by an Assessor which is generated through a computer under section 28 of the VAT Act is an exercise of a discretionary power or a ministerial act.

[25] A comparison of the questions of law in the Case Stated and the proposed questions of law is done in the following table to understand whether any new question of law that arises on the Stated Case has been raised by the Appellant in the proposed questions of law, or whether they are identical questions of law set out on the Stated Case, but reframed or rephrased in a different manner.

Questions of law in the case stated	Proposed questions of law
1. Whether the Tax Appeals Commission has jurisdiction to annul an assessment due to service of unsigned notice of assessment even all other mandatory requirements have been fulfilled in order to make the assessment.	A. Has the TAC erred in law in proceeding to annul the assessments having held that it had a patent lack of jurisdiction?
2. Whether duly served notice of assessment with the omission of signature affect validity of assessment;	B. Without prejudice to the above question of law, has the TAC erred in law in proceeding to annul the assessments on the basis that the

	assessments were invalid, when the appellate power of the TAC is contingent upon a valid assessment?
3. Whether duly served notice of assessment which was printed and issued by the computer, without signature of issuing officer is an error covered by the section 61 of the Value Added Tax Act, No. 14 of 2002;	C -Without prejudice to the above questions of law, has the TAC erred in law in proceeding to annul the assessments on the basis that the assessments were invalid, notwithstanding the Assessee being estopped from claiming that the assessments were invalid having involved the appellate provisions on the basis that the assessments were valid and having failed to raise their purported invalidity before the CGIR?
4. Whether Assessee can challenge the validity of assessment at the hearing of the appeal at the Appeals Commission;	D -Without prejudice to the above questions of law, has the TAC erred in law in proceeding to annul the assessments on the basis of a failure to print the name of the Assessor and to include the signature in the notice of assessment?
5. Whether the Assessee can raise an issue as a preliminary objection at the hearing of the Appeal at Appeal Commission, which has not been raised at the time of Appeal	E -Without prejudice to the above questions of law, has the TAC erred in law in not considering that the omission of a signature falls within an omission contemplated by section 61 of the VAT Act?
6. Whether issuing a notice of assessment by an Assessor which is generated through computer under the provision of section 28 of the Value Added Tax Act, No. 14 of 2002, is exercising of the	

discretionary power of a ministerial act;	
7. Whether the name of the Commissioner General, Deputy Commissioner or Assessor duly printed or signed on the assessment notice under section 60 of the Value Added Act, No. 14 of 2002 is a mandatory requirement.	

[26] The following table sets out the key issues that arise in the Case Stated and the questions of law already formulated by the TAC and the proposed questions of law that deal with those issues. This is necessary to understand whether or not the proposed questions of law arise on the Stated Case or they are identical to the questions of law already set out in the Case Stated.

Issues	Questions of law in the Case Stated dealing with the issue	Proposed questions of law dealing with the issue
The jurisdiction of the TAC to annul the assessment due to service of unsigned notice of assessment (patent lack of jurisdiction)	1	A + B
Does the duly served notice of assessment with the omission of signature affect the validity of the notice of assessment?	2	D
Is the duly served notice of assessment which was printed and issued by the computer without the signature of the issuing	3	E

officer is an error covered by section 61 of the TAC Act?		
Can the Assessee challenge the validity of the assessment before the TAC?	4	C
Can the Assessee raise an issue as a preliminary objection at the hearing before the TAC which has not been raised at the time of the Appeal?	5	C
Will issuing a notice of assessment by an Assessor which is generated through a computer under section 28 of the VAT Act is exercising a discretionary or ministerial act?	6	E
Will the name of the Commissioner General or Deputy Commissioner or Assessor duly printed or signed on the assessment notice under section 60 of the VAT Act is a mandatory requirement?	7	E

[27] The first question of law in the Case Stated relates to the jurisdiction of the TAC to annul the assessment due to service of unsigned notice of assessment. The Appellant's second proposed question of law (B) also relates to the powers of the TAC to annul the assessment on the basis of the invalidity of the assessment when the appellate power is contingent upon a valid assessment. Table 2 of the Appellant's written submissions indicates that the first question of law in the Case Stated is consistent with the Appellant's proposed second question of law **(B)**- vide- table-2 at p.5 of the Appellant's written submissions).

The Appellant, however, submits that the Appellant's proposed first question of law is a new question of law which arises from the facts of the Case Stated. The Appellant's first proposed question of law also relates to the annulment of the assessment due to patent lack of jurisdiction of the TAC **(A)**.

[28] I am unable to agree with the learned Deputy Solicitor General that the Appellant's proposed first question of law **(A)** constitutes a new question of law arising from the facts of the Case Stated when the first question of law in the Case Stated is based on the jurisdiction of the TAC to annul the notice of assessment due to service of unsigned notice of assessment. In my view, the first question of law in the Case Stated is clear and precise in nature, and the Court is able to decide the issue of jurisdiction of the TAC to annul the notice of assessment due to service of unsigned notice of assessment without raising a separate new question of law. For those reasons, I am of the view that, in the present case, the amendment of those questions of law will not arise under section 11A (6) of the TAC Act.

[29] The second, sixth and the seventh questions of law in the Case Stated relate to the question whether the omission of signature or the failure to print the name of the Assessor on the notice of assessment is a mandatory requirement or a ground for the annulment of the notice of assessment. The said questions of law are more or less identical to the Appellant's proposed fourth questions of law. Table 2 of the Appellant's written submissions indicates that the second, sixth and the seventh questions of law in the Case Stated are consistent with the Appellant's fourth proposed question of law **(D)** (see- the table-2 on page 5 of the Appellant's written submissions). For those reasons, I am of the view that, in the present case, the amendment of those questions of law will not arise under section 11A (6) of the TAC Act.

[30] The third question of law in the Case Stated relates to the question whether the duly served notice of assessment, which was printed and issued by the computer without the signature of the issuing officer is an error covered by section 61 of the Vat Act. The said question of law is identical to the Appellant's proposed fifth question of law **(E)**. Table 2 of the Appellant's written submissions indicates that the said question of law is consistent with the Appellant's proposed fifth question of law **(E)** (vide the table-2 on page 5 of the Appellant's written submissions). For those reasons, I am of the view that, in the present case, the amendment of the said question of law will not arise under section 11A (6) of the TAC Act.

[31] The 4th and the 5th questions of law in the case states relate to the question whether the Assessee can challenge the validity of the assessment as a preliminary objection before the TAC when it has not been raised at the time of the Appeal. In short, this question of law is whether the Assessee is estopped from raising such issue before the TAC when it failed to raise it previously in its appeal before the CGIR. The said questions of law are identical to the Appellant's proposed third question of law **(C)**. Table 2 of the Appellant's written submissions indicates that the said 4th and the 5th questions of law are consistent with the Appellant's proposed third question of law **(C)** (vide- the table- 2 on page 5 of the Appellant's written submissions). For those reasons, I am of the view that, in the present case, the amendment of the said questions of law will not arise under section 11A (6) of the TAC Act.

[32] The learned Deputy Solicitor General relied on the decision of the Court of Appeal in *Commissioner General of Inland Revenue v. S.S.L. Perera*, CA Tax 3/17 decided on 11.01.2019 and invited us to step in and fill any void in the questions of law formulated by the TAC, by framing the proposed questions raised by the Appellant as they arise on the Stated Case. I am inclined to agree with the learned Deputy Solicitor General that the Court of Appeal has the power to hear and determine any question of law arising on the Stated Case and amend a question of law under the first part of section 11A (6) of the TAC Act, if answering the said question may result in the conformation, reduction, increasing or annulling the assessment determined by the TAC. The Appellant's proposed questions of law, however, do not raise any new point arising on the Stated Case upon which the actual decision of the TAC may be either upheld or confirmed as the questions of law already formulated in the Case Stated adequately deal with all the matters that were determined by the TAC in respect of the first preliminary objection and submitted for the opinion of the Court of Appeal.

[33] I am not inclined to agree with the learned Deputy Solicitor General that the questions of law so framed by the TAC in the Case Stated are inadequate or erroneous, or they have been framed so general in nature by the TAC upon which the no actual decision of the TAC might be either upheld or set aside, when the questions of law in the Case Stated deal with all contentious issues that were raised and determined by the TAC in the first preliminary objection. In the circumstances, the submission of the Appellant that the proposed questions of law ought to be allowed to make the questions of law more

precise, and logical, so that the Court will understand the basis of the appeal or they assist the Court in its adjudication of the questions of law in the Case Stated submitted by the TAC has no merit.

[34] In the circumstances, I am of the view that in the present case, the amendment of the questions of law in the Case Stated will not arise under section 11A (6) of the TAC Act. In view of these findings, the consideration of the question whether or not the direction of the Supreme Court prevents the Court of Appeal from amending the questions of law proposed by the Appellant will not arise.

Conclusion

[35] For those reasons, I hold that in the present case, the amendment of the questions of law in the Case Stated proposed by the Appellant by motion dated 23.02.2021 is not necessary and the seven questions of law formulated by the Tax Appeals Commission in the Case Stated and submitted to the opinion of the Court of Appeal by letter dated 17.05.2013 will constitute the questions of law in this Case Stated.

JUDGE OF THE COURT OF APPEAL

M. Sampath K.B. Wijeratne, J.

I agree.

JUDGE OF THE COURT OF APPEAL