

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

In the matter of an Application for Writ of  
*Mandamus* under article 140 of the  
Constitution of Democratic Republic of Sri  
Lanka.

Manikka Hetti Mudalige Nicholas  
Cansious Perera,  
"MH MUDALIGEWAREHOUSING"  
No. 40, Church Road,  
Nagoda, Kandana.

**Court of Appeal Case No.  
CA/WRT/390/19**

**PETITIONER**

1. Commissioner General of Inland Revenue,  
Department of Inland Revenue,  
No.81, Sir Chittampalam A Gardinar  
Mawatha,  
Colombo 002.
2. Mrs.M.P.S. Pathirane,  
Deputy Commissioner,  
Department of Inland Revenue,  
Gampaha Regional Office,  
No.46, Kandy Road, Yakkala.
3. Mr.W.P.I.S. Weththasingha,  
Deputy Commissioner,  
Department of Inland Revenue,  
Gampaha Regional Office,  
No.46, Kandy Road, Yakkala.
4. Mr.D.U.A. Jayawardena,  
Deputy Commissioner,  
Department of Inland Revenue,  
Gampaha Regional Office,  
No.46, Kandy Road, Yakkala,
5. Mr.G.C.Mahanama,  
Senior Commissioner (Zone III),  
Department of Inland Revenue. No.81,

Sir Chittampalam A Gardinar Mawatha,  
Colombo 02.

6. Mr.W.M.S.S.Walisundara,  
Deputy Commissioner.  
Department of Inland Revenue,  
Gampaha Regional Office,  
No.46, Kandy Road, Yakkala.

7. Mr.S.M.N.B.Manchanayake,  
Deputy Commissioner, Department of  
Inland Revenue,  
Gampaha Regional Office,  
No.46, Kandy Road, Yakkala.

8. Hon. Attorney General,  
Attorney General Department,  
Hulftsdorf Street, Colombo 12.

**RESPONDENTS**

Before: M. T. MOHAMMED LAFFAR, J.

Counsel:

Dr. Sunil Cooray for the Petitioner

A. Gajadeera, SC for the Respondent

Argued on: 25.01.2023

Written Submissions on:

08.03.2023 (by the Respondents)

17.03.2023 (by the Petitioner)

Decided on: 23.03.2022

**MOHAMMED LAFFAR, J.**

The Petitioner in this Application by petition dated 10.09.2019 is seeking an Order in the nature of a Writ of *Mandamus* to order the 1<sup>st</sup> Respondent to 'acknowledge the valid INCOME TAX appeal in terms of section 165(6) of the Inland Revenue Act No 10 of 2006 which was submitted on 29.06.2018 by the authorized representative of M H MUDALIGE WAREHOUSING'.

The Petitioner has in the first instance sought to issue notices of this Application on the Respondents. The learned Counsel for the Petitioner was heard in support of this Application. The court also heard the learned State Counsel.

The 1<sup>st</sup> to 7<sup>th</sup> Respondents have filed their Limited Statement of Objections on 11.02.2020 and the Petitioner has tendered the Statement of Counter Objections on 18.03.2020. This matter is now considered on whether the Petitioners are entitled to the issue of notices.

The return filed by the Petitioner for the Year of Assessment 2015/2016 has been rejected by the Respondent on the basis that the Petitioner had failed to declare an income of Rs. 202,638,938. Thereafter an inquiry has been held for the Petitioner to establish the reasons for non-declaration of said amount of income. The Assessor had made an assessment and the reasons to reject return has been informed to the Petitioner by letter dated 23.05.2018 (marked '2R5')

Thereafter the Notice of Assessment dated 30.05.2018 has been served on the Petitioner later. The Petitioner preferred a purported appeal dated 29.06.2018 (marked 'P2') against the said Notice of Assessment to the 1<sup>st</sup> Respondent.

The 2<sup>nd</sup> Respondent by his letter dated 18.07.2018 (marked 'P4') rejected the purported appeal citing the following reasons:

- (1) The purported appeal was not received within the stipulated period of 30 days from the Notice of Assessment.
- (2) The Petitioner has not paid the tax on the basis of his own return and penalty there on accrued up to the date of the Notice of Assessment.

However, later the Respondent has not considered the Petitioner's delay in lodging the appeal within 30 days but as the Petitioner had failed to comply with the mandatory provisions of Section 165(4) of the Inland Revenue Act No. 10 of 2006, to pay the amount of tax based on the Petitioner's own return, the Respondents had refused to accept the appeal of the Petitioner (marked 'P9').

It is submitted by the Respondents that thereafter the Respondents proceeded to recover the default in terms of sections 176 and 177 of the Act. The Petitioner had participated in an inquiry on 25.02.2019 (marked '2R7') and 26.06.2019 (marked '2R8') whereby the Petitioner was afforded an opportunity to raise objections under Section 177(3) against recovery of tax. It is also submitted that the 1<sup>st</sup> Respondent by entry dated 20.08.2020 (marked '2R9') had granted approval to recover the tax in terms of the assessment.

The primary matter for consideration by this Court is the validity of the Respondent's refusal to accept the Petitioner's appeal for non-payment of the amount of tax payable by the Petitioner on the basis of the return furnished by him prior to seeking the said appeal.

Section 165 of the Inland Revenue Act, No. 10 of 2006 with regard to Appeals to the Commissioner-General states as follows:

“

*(1) Any person who is aggrieved by the amount of an assessment made under this Act or by the amount of any valuation for the purposes of this Act may, within a period of thirty days after the date of the notice of assessment, appeal to the Commissioner-General against such assessment or valuation:*

*Provided that the Commissioner-General, upon being satisfied that owing to absence from Sri Lanka, sickness or other reasonable cause, the appellant was prevented from appealing within such period, shall grant an extension of time for preferring the appeal.*

*(2) Every appeal shall be preferred by a petition in Writing addressed to the Commissioner-General and shall state precisely the grounds of such appeal.*

*(3) Where the assessment appealed against has been made in the absence of a return, the petition of appeal shall be sent together with a return duly made.*

*(4) Every person preferring an appeal under subsection (1) against the amount of an assessment for any year of assessment **shall**, (unless such person has done so already), **pay to the Commissioner-General the amount of tax payable by such person on the basis of the return furnished by him for that year of assessment, together with any penalty thereon accrued up to the date of such notice of***

**assessment and shall attach, to the petition of appeal, a receipt in proof of such payment:**

*Provided that the Commissioner-General, upon being satisfied that owing to serious financial hardship suffered by the appellant at or about the time of such notice of assessment or, owing to other reasonable cause, the appellant was prevented from paying such tax and such penalty, may grant an extension of time for the payment of such tax and penalty thereon accrued up to the date of payment, and accordingly a receipt in proof of payment of such tax and penalty thereon accrued up to the date of payment, furnished within such extended time shall, for the purposes of this subsection, be deemed to have been attached to the petition of appeal.*

**(5) Every petition of appeal, which does not conform to the provisions of subsections (2), (3) and (4), shall not be valid.**

*(6) The receipt of every appeal shall be acknowledged within thirty days of its receipt and where so acknowledged, the date of the letter of acknowledgement shall for the purpose of this section, be deemed to be the date of receipt of such appeal. Where however the receipt of any appeal is not so acknowledged, such appeal shall be deemed to have been received by the Commissioner General on the day on which it is delivered to the Commissioner-General. ”*

The period of assessment in issue is from 01.04.2015 to 31.03.2016 (i.e. the Year of Assessment 2015/2016). This Court observes that the Petitioner's appeal with regard to the said assessment is dated 29.06.2018 (marked 'P2'). Despite claiming that the Petitioner had complied with section 165(4) of the Act, the Petitioner had only made such payment on 17.07.2018 (marked 'P6(a)'). Thus, the Petitioner's appeal dated 29.06.2018 is *prima facie* non-compliant with Section 165(4) of the Act as he had not made the requisite payment at the time of appeal and is therefore not valid. It is abundantly clear that the Petitioner has only made the payment after the appeal, on 17.07.2018 based on the Petitioner's own documents (Vide: paragraph 15 of the Petition).

The Petitioner has also drawn the attention of Court towards the discretionary power granted to the Respondent in terms of the proviso to Section 165(4). In this regard attention of court is drawn towards *Abeyratne v Minister of Lands and Others* (S.C.(Spl)LA No. 197/08, SC Minutes dated 01.06.2009) wherein Sarath N. Silva C.J. quoted *Administrative Law by Wade and Forsyth (Ninth Edition)* as follows:

*“obligatory duties must be distinguished from discretionary powers. With the latter, mandamus has nothing to do”.*

This court observes that it is established law that a Writ of *Mandamus* does not lie against discretionary powers and therefore this court cannot impose itself against the discretionary power vested upon the Respondent in terms of section 165(4).

Further, I also observe that The Petitioner is seeking a Writ of *Mandamus* compelling a specific performance without moving to quash the determination of the Respondents. The Petitioner has not sought to quash the documents marked ‘P4’ and ‘P9’ and the said decisions had not been impugned. Hence, I observe that the Petitioner’s prayer is bad in law as presented.

Further, this Court also discerns that the Petitioner does not seek to quash the document marked ‘P11’ which has been issued in terms of Section 171 wherein it established finality to the assessment when no valid appeal has been lodged in terms of Section 165(1) or where the said appeal has been dismissed under Section 165(9) or where an agreement has been reached under Section 165(7).

Therefore, I hold that the decision challenged by the Petitioner is in line with the Inland Revenue Act No. 10 of 2006 and established principles of law. The Petitioner is not entitled for a Writ of *Mandamus* in terms of Article 140.

For the above reasons, I refuse to issue notice. I dismiss the Application of the Petitioners and make no Order as to the costs of this Application.

*Application dismissed.*

JUDGE OF THE COURT OF APPEAL