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).

D. Samson and & Sons (Pvt) Ltd,
110, Kumaran Rathnam Road,
P.O. Box 778,
Colombo 02.

APPELLANT

CA No. CA/TAX/0009/2014
Tax Appeals Commission
No. TAC/OLD/IT/010

v.

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

RESPONDENT

BEFORE : Dr. Ruwan Fernando J. &
M. Sampath K. B. Wijeratne J.

COUNSEL : Riad Ameen with Rushitha Rodigo & Kavishan Dissanayake for the Appellant.

Ms. M. Amarasinghe, SC for the Respondent.

WRITTEN SUBMISSIONS	:	12.09.2018 (by the Appellant) 06.09.2018 & 30.01.2023 (by the Respondent)
ARGUED ON	:	26.10.2022 & 13.12.2022
DECIDED ON	:	24.02.2023

M. Sampath K. B. Wijeratne J.

Introduction

The Appellant, Samson and Sons (Pvt) Ltd is a limited liability company incorporated in Sri Lanka. According to the Respondent, the Commissioner General of Inland Revenue, (hereinafter referred to as 'the CGIR') the Appellant has purchased 3,000,000M shares out of 6,221,140M shares of Kelani Valley Canneries Ltd (hereinafter referred to as 'KVC Ltd')[1]. Admittedly, the number of shares purchased by the Appellant is 48 % of issued share capital of KVC Ltd.

The Appellant submitted its return of income for the year of assessment 2004/2005 and 2005/2006 claiming an exemption from tax under Section 21 E of the Inland Revenue Act No. 38 of 2000, as amended (hereinafter referred to as 'the IR Act') Section 21 E was introduced by the Inland Revenue (Amendment) Act No. 19 of 2003 which was brought into operation with effect from 1st April 2003[2]. The Assessor rejected the return of income submitted by the Appellant by his letter dated 5th March 2008, issued in terms of Section 134 (3) of the IR Act, on the grounds stated thereof. Thereafter, the Assessor proceeded to issue Notice of Assessment.

The Appellant company lodged an appeal with the CGIR against the assessment. The CGIR heard the appeal and made his determination on the

[1] Written submissions filed by the Respondent in the TAC, marked 'X 5a'.

[2] The Inland Revenue (Amendment) Act No.19 of 2003 was certified on the 9th May 2003 but, in terms of Section 24 of the said amendment, Section 21 E was given retrospective effect from 1st April 2003.

22nd June 2010[3] holding that the Appellant company is not exempted under Section 21 E of the IR Act.

The aggrieved Appellant appealed to the Board of Review on the 15th July 2010[4](hereinafter referred to as 'the BOR') against the determination of the CGIR. The Tax Appeals Commission (hereinafter referred to as the 'TAC'), the successor of BOR, made its determination on the 27th December 2013 confirming the determination made by the CGIR.

Being aggrieved by the said determination of the TAC, the Appellant moved the TAC to state a case to this Court on seven questions of law[5]. However, in the course of argument both parties agreed that the case stated can be concluded on the following two questions of law which reads as follows;

i. ***Whether there is an acquisition of the shares of Kelani Valley (Pvt) Ltd. within the meaning of Section 21 (E) (2) (i) of the Inland Revenue Act No. 38/2000 as amended by Act No. 19/2003 and Act No. 12/2004.***

ii. ***Whether there is an acquisition of Kelani Valley (Pvt) Ltd. within the meaning of Section 21 (E) (2) (ii) of the Inland Revenue Act. No. 38 of 2000 as amended by Act No. 19/2003 and Act No. 12/2004.***

Factual background

Briefly, the facts of relevance to this case stated are as follows.

It is apparent that the legislature has enacted Section 21 E of the IR Act as an initiative of reviving non-performing and underperforming business enterprises. A tax exemption for a limited period had been granted as an incentive for rehabilitating such enterprises by the investors.

As stated above, the Appellant purchased 48% of shares of KVC Ltd, a non-performing or underperforming enterprise. The Assessor rejected the Appellant's claim for income tax exemption under Section 21 E and an

[3] 'X 3', (In the petition appeal to the BOR by the Appellant, the date of the determination is mentioned as 25th March 2010).

[4] *Vide* 'X 2'.

[5] *Vide* 'X 4'.

assessment was made. On appeal, CGIR and TAC confirmed the assessment.

The fundamental question of law to be decided in this case is whether the Appellant's acquisition of shares of KVC Ltd falls within the scope of Section 21 E (i) or 21 E (ii).

Both parties agreed that the findings of the judgement in CA/Tax/0009/2014 are binding on cases CA/Tax/0007/2014, CA/Tax/0008/2014[6]. Even in the written submissions filed by the Appellant in CA/Tax/0009/2014, the Appellant conceded that the judgement in the aforementioned case would apply to connected cases since all three cases concern the same issue as to whether the Appellant is entitled to claim the three years tax exemption on profit and income under Section 21 E[7].

At the argument, both parties made a common oral submission in respect of the three cases CA/Tax/0007/2014, CA/Tax/0008/2014 and CA/Tax/0009/2014 and relied on the written submission filed in CA/Tax/0009/2014.

Statutory provisions

In the interest of clarity, I will reproduce Section 21 E of the IR Act which is subject to scrutinization by both parties.

> ***'21 E.*** *(1) The profits and income within the meaning of paragraph (a) of section 3 (other than any profits from the sale of capital assets) of a company which acquires a non-performing or underperforming business enterprise engaged in a specific area of activity, to rehabilitate such enterprise subject to terms approved by the Minister and subject to adequate provision being made to meet the statutory liabilities outstanding at the time of acquisition of such enterprise, shall be exempt from income tax, for a period of three years, where the acquisition has been completed and commercial operations have commenced on or before March 31, 2004.*

[6] *Vide* journal entry dated 5th July 2918.

[7] Paragraphs 199 & 200 of the Appellant's written submissions.

(2) The period of three years referred to in subsection (1). Shall be reckoned from the year of assessment in which the acquired enterprise commences to make profits or any year of assessment. Not later than two years reckoned from the date on which each enterprise commences commercial operations whichever is earlier.

For the purpose of this section –

"acquires" means acquiring ownership of enterprise by becoming the owner, partner or a joint venturer;

"rehabilitation" means the recommencement of commercial operations of the enterprise on a sustainable basis;

"specific area" means the manufacture of textiles, poultry, farming, fish rearing or any other area as may be determined by the Minister by Order published in the Gazette;

"non-performing" means the failure to carry out commercial operations:

"under performing" means the incurring of operational losses for a period not less than two consecutive years of assessment.'

The Section 21 E (2) which came into operation with effect from 1st April 2003 was thereafter amended by Inland Revenue (Amendment) Act No. 12 of 2004 to read as follows;

'(2) The period of three years referred to in subsection (1) shall be reckoned from: -

a) the year of assessment in which the business that is acquired commences to make profits; or

b) *any year of assessment not later than two years reckoned from the date on which the business that is acquired commenced commercial operations, whichever is earlier."*

Also substituted the original definition of the word 'acquires' to read as follows;

"acquires" means-

i. *acquiring the ownership of the enterprise as an owner.*

ii. *acquiring not less than fifty-one per centum of the ownership of the enterprise with management rights or as partner or a joint venture partner; or*

acquiring the business (including the assets, liabilities and employees) other than by way of acquiring the shares of such enterprise, by way of a Deed.".

Interpreting the provisions providing for tax exemptions.

Next, I will consider how an exemption provision in a fiscal statute should be interpreted.

The Indian Supreme Court observed in the case of *Novapan India Ltd. v. Collector of Central Excise and Customs*[8] that;

'(...) a person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he was covered by the said provision.'

In *Commissioner of Central Excise v. Hari Chand Shri Gopal*[9], it was observed that:

'A person who claims exemption or concession has to establish that he is entitled to that exemption or concession... A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved.'

[8] (1994 Supp (3) SCC 606).

[9] Civil Appeal Nos. 1878-1880 of 2004.

N.S. Bindra's *'Interpretation of Statutes'* clarifies the purpose of a tax exemption as follows:

'It is advantageous to quote from Union of India v. (M/s.) Wood Papers Ltd[10] *the exposition of principle of interpretation about exemption from tax the passage runs thus: 'Literally exemption is freedom from Liability, tax or duty. Fiscally it may assume varying shapes, especially in a growing economy. For instance, tax holding to new units, concessional rate of tax to goods or persons for limited period or with specific objective etc. That is why its construction, unlike charging provision, is like an exception and on normal principle of construction or interpretation of statutes, it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue.*'[11]

It was also quoted the following extract from Crawford[12]:

'Provision providing for an exemption may be properly construed strictly against the person who makes the claim of an exemption. In other words, before an exemption can be recognized, the person or property claimed to be exempt must come clearly within the language apparently granting the exemption… Moreover, exemption laws are in derogation of equal rights, and this is an equally important reason for construing them strictly…'

The Appellant advanced an argument based on the judgement of this Court in the case of *Nanayakkara v University of Peradeniya*[13] and argued that no restrictions should be imposed on Section 21 E by way of interpretation that would defeat the purpose of the exemption. Whilst concurring with the views expressed by their Lordships, I observe that the facts of the above case demonstrate that the Court has strictly interpreted the language of the Section that was subject to scrutiny in the case and observed that the argument of the Respondent in that case is tenable only if the specified words are introduced at the end of the Section.

Hence, the judgement of the above case endorses the view that provisions granting exemptions should be strictly interpreted and words should not be read into it.

[10] AIR 1991 SC 2049: 1991 (1) JT 151: (1990) 4 SCC 256.
[11] N. S. Bindra, *Interpretation of Statutes*, Eighth Edition, 1997, at p.693.
[12] Crawford, Statutory Construction, at p. 506-08.
[13] (1991) 1 SLR 97 at p. 102.

On reading words into a statute, Bindra states that:[14]

'*It is not open to add to the words of the statute or to read more in the words than is meant, for that would be legislating and not interpreting a legislation. If the language of a statutory provision is plain, the Court is not entitled to read something in it which is not there, or to add any word or to subtract anything from it.*'

Analysis of the case under review

There was no dispute between the parties that the acquisition had been completed and the commercial operations of non-performing or underperforming enterprise had been commenced by the Appellant on or before 31st March 2004.

The Appellant's argument before the CGIR and the TAC was that the amendment Act No. 12 of 2004 does not apply to the case under appeal[15]. Accordingly, it was argued that acquiring a minimum threshold of 51% of shares is not a requirement to prove that the Appellant has acquired KVC Ltd, a non-performing or underperforming enterprise. The Appellant's argument was that since Section 11, by which amendments were made to Section 21 E, is not included in Section 61 (5) (a) of the (Amendment) Act No. 12 of 2004, said amendments cannot be given retrospective effect. The Appellant argued that by the time amendments made to Section 21 E came into operation on 18th November 2004, the day of certification of the amendment, the Appellant had already completed the acquisition of KVC Ltd, prior to 31st March 2004. Although the Appellant has submitted as above in respect of both years of assessment, it is clear that this argument can only be valid for the year of assessment 2004/2005 and not for the year of assessment 2005/2006.

The Respondent countered the above argument by stating that although Section 11 is omitted in Section 61 (5) (a) of the amendment Act, Section 21 E is clearly mentioned in the same Section and therefore, it should be given retrospective effect. Accordingly, it was submitted that these amendments should have come into force on 1st April 2003.

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[14] *Supra* note 11. at p.452.

[15] Written submissions of the Appellant; to the CGIR dated 15th February 2010 and 18th March 2010; to the Board of Review dated 15th July 2010 ('X 2'/ 'X 4'); to the TAC dated 12th September 2013 ('X 5b').

The TAC considered the arguments of both parties and, having reasoned out comprehensively, held with the Respondent.

Be that as it may, the Appellant did not pursue the above argument in this appeal to the Court of Appeal[16]. Therefore, consideration of the main issue determined by the TAC in its impugned determination is not a question that should be decided by this Court.

The Appellant submitted that the definition of the term *acquires* in clause (i) of the (Amendment) Act No. 12 of 2004 is the same as it was in (Amendment) Act No. 19 of 2003, by which the definition was introduced[17]. However, the Appellant's above submissions are inaccurate. The original definition of the term *acquires* reads as *'acquiring ownership of enterprise by becoming the owner, partner or a joint venturer'* and the amended definition in clause (i) reads as *'acquiring the ownership of the enterprise as an owner'*. Accordingly, the words *'partner or a joint venturer'* had been left out and added to clause (ii) of the definition, with an additional requirement of acquiring not less than 51% of the ownership. Further, a new scenario was added having ownership as above with management rights. The Appellant conceded that having not less than 51% of the ownership is common to all three aforementioned scenarios in Section 21 E (2) (ii)[18]. Accordingly, the term *acquires,* for the purposes of the case under appeal, should mean:

(i) acquiring ownership of the enterprise as an owner.

(ii) acquiring 51% ownership with management rights; or
acquiring 51% ownership with a joint venture partner; or
acquiring 51% ownership with a partner.

(iii) acquiring the business (including the assets, liabilities and employees) other than by way of acquiring the shares of such enterprise, by way of a Deed.

In order to qualify for the income tax exemption, the Appellant must establish that the Appellant falls within the definition of any one of the three sub-paragraphs of Section 21 E (2). However, the Appellant did not make a claim under clause (iii) above. The Appellant's claim was limited

[16] Paragraphs 36-38 of the Appellant's written submissions.
[17] Paragraphs 44 & 98 of the Appellant's written submissions.
[18] Paragraph 129 of the Appellant's written submissions.

to clause (i) and, without prejudice to the above, to a claim under clause (ii).

Black's Law Dictionary[19] defines the terms 'owner' and 'ownership' as follows;

Owner: '*Someone who has the right to possess, use, and convey something; a person in whom one or more interests are vested.'*

Ownership: *'The bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent, and heritable'.*

The foregoing definitions appear to be based on the aspect of property ownership and not on corporate ownership.

Be that as it may, ownership is a combination of rights and responsibilities with respect to a specific asset. In formal terms, ownership is the legal acquisition of assets. It is normally defined in terms of three fundamental rights which are, the right to possess an asset and/or its financial value, the right to exercise the influence over the use of the asset, and the right to information about the status of the assets[20]. Other rights are to transfer assets and to receive an income or return from them. The traditional concept of property involves two aspects: the right to determine the use of the assets and the right to benefit from its use. When the two aspects of property are dissociated, it is possible to distinguish *nominal ownership* which is the right to receive revenue as a return for risking one's wealth by investing in the company, from *effective ownership*, which is the ability to control the corporate assets[21].

The aforementioned distinction can be extended to joint ventures as well. The parent companies are the legal owners of joint ventures. Joint ventures are established by the partners and may at with some degree of independence. The legal ownership and effective control in joint ventures

[19] B. A. Garner, *Black's Law Dictionary*, Eleventh Edition, at p. 1332.
[20] Pierce, *'Employee Ownership: A Conceptual Model of Process and Effects',* Academy of Management Review, (1991).
[21] Yanni Yan, *'International Joint Ventures in China: Ownership, Control and Performance',* St. Matin's Press, Inc., New York (2000).

can be separated. Even in equally owned joint ventures, the management need not be equally shared[22].

In a joint venture, the parent companies contribute not only the capital, but also the non-capital resources such as material, management, and technologies. These are normally stipulated in formal contracts and agreements among the partners. In addition, there are also some other resources provided by the partners without contracts, such as the knowledge and skills embodied in the managers, expertise or staff employed by the partners.

The Appellant cited the judgment of the House of Lords in the case of *Barclays Bank Ltd v Inland Revenue Commissioners*[23] wherein it was observed that *controlling interest* should mean '*either the power to cast a majority of votes according to the register or a power to cast a majority taking into account vote of other shareholder*s' and argued that in determining whether or not have a *controlling interest*, the shareholding of other shareholders voting together has also to be considered.

Further, the Appellant cited *Game Group PLC v Electronic Boutique Incorporated and Another*[24] where consideration was given to the possibility that there could be instances where the holder of more than 50% of the shares does not have control. Accordingly, it was argued that shareholding is never looked at in isolation in order to ascertain whether a shareholder has a *controlling interest* and an individual shareholder can still have a *controlling interest* with less than 50% shareholding, provided collectively has more than 50% shareholding.[25]

Be that as it may, having 51% shareholding is a threshold requirement for all three scenarios under clause (ii). Therefore, to succeed in a claim under clause (ii), acquiring a minimum of 51% ownership of the enterprise must be proven with management rights; or as a partner or partner in a joint venture.

Black's Law Dictionary[26] defines the term 'joint venture' as follows;

'*A business undertaking by two or more persons engaged in a single defined project. The necessary elements are (1) an express or implied*

[22] Peter Killing, *'Strategies for Joint Venture Success'*, Routledge, London (1983).
[23] [1960] 2 All ER 817.
[24] [2002] EWHC 2117 (Ch).
[25] At paragraph 66 of the Appellant's written submissions.
[26] *Supra* note 19, page 1003.

agreement; (2) a common purpose that the group intends to carry out; (3) share profits and losses; and (4) each member's equal voice in controlling the project'.

The term 'joint venture corporation' is defined as follows[27];

'a corporation that has joined with one or more individuals or corporations to accomplish some specific project.'

The term 'partner' is defined as follows[28];

'*Someone who shares or takes part with another, esp. in a venture with shared benefits and shared risk; One of two or more person who jointly own and carry on a business for profit'.*

In view of the above definitions, the Appellant argued that the acquisition of more than 51% shares of KVC Ltd by the Appellant company, together with its associate company, with the objective of reviving KVC Ltd is a joint venture[29]. The Appellant also contended that the Appellant and its associate company can even be regarded as partners[30].

It was submitted that although the TAC has observed that there was no evidence of a joint venture or partnership, a joint venture or a partnership does not have to be in written form. The Appellant argued that the joint venture is established whenever companies jointly undertake some commercial enterprise[31].

The Appellant's contention is that the Appellant together with its associate company DSI Samson Group (Pvt) Ltd (hereinafter referred to as 'DSI Ltd.'), acquired more than 51% shares of KVC Ltd. However, the respondent disputed the aforementioned position. Further, the Respondent submitted that there is no evidence to establish that the Appellant acquired management rights of KVC Ltd. In response, the Appellant submitted that without acquiring management rights, the operations of KVC Ltd could never have been recommenced.

The TAC was of the view that the Appellant has only 48% shares and the associate company has 31% shares; as such, the Appellant has neither

[27] *Ibid* page 431.
[28] *Ibid* page 1348.
[29] Paragraph 134 of the Appellant's written submissions.
[30] Paragraph 137 of the Appellant's written submissions.
[31] Paragraph 141 of the Appellant's written submissions.

controlling interest nor management rights of KVC Ltd[32]. The TAC was also of the view that to acquire ownership, the Appellant should have the controlling interest or in the alternative, management rights. The Appellant contended that in determining whether a party has a controlling interest, shareholdings of other shareholders voting together have to be considered. Accordingly, it was argued that the TAC should have considered the shareholding of the Appellant's associate company as well. However, control is not the only test of ownership. *Friedman* advocates that control is not a strict and automatic consequence of ownership, but a variety of mechanisms that are available to firms for exercising effective control. Control can be exercised by legal forms or influenced through the wide range of resources...[33]"

May be DSI Ltd is an associate company of the Appellant. However, it remains a distinct entity. Therefore, to succeed in its claim, the Appellant must establish that the Appellant and its associate company were involved in the joint venture of rehabilitating KVC Ltd as partners. However, there is no partnership agreement or a joint venture partnership agreement produced as evidence. Not even board resolutions in place to establish this course. On the other hand, no evidence was adduced to establish that the joint venture partner provided any other resources. Above all, there is no share certificate in the brief to prove that DSI Ltd owned 31% shares of KVC Ltd. In the case of *RPC Plantation Management Services Pvt. Ltd. v. Commissioner General of Inland Revenue*[34] this Court observed that a Court dealing with a case stated referred by the TAC will be guided by the facts as reflected in the record before Court, in determining the questions of law before it. Accordingly, the Court must decide the matters at issue based on the available evidence.

It is trite law that consideration of whether the available facts are sufficient to arrive at a conclusion, constitutes a question of law[35].

In the volume titled *Income Tax in Sri Lanka,* Gooneratne states that:[36]

[32] At p. 6 of the TAC determination.
[33] Wolfgang G. Friedman, '*Joint International Business Ventures in Developing' Countries'*, Columbia University Press, New York (1971).
[34] CA Tax 0003/2012 (C.A. minutes dated 26.10.2018).
[35] *D. S. Mahawithana v. Commissioner of Inland Revenue,* 64 N.L.R. 217.
[36] 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].

'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.'*

Accordingly, in my view, the TAC has acknowledged that DSI Ltd acquired 31% of the shares of KVC Ltd without proof and solely on the Appellant's submissions.

From the above overall analysis, it is my considered view that the Appellant is not entitled to the income tax exemption under Section 21 E (2) (ii) of the IR Act.

Next, I will consider whether the Appellant is entitled to the income tax exemption under Section 21 E (2) (i).

The TAC observed that the Appellant has only 48% shares of KVC Ltd and the associate company has 31% shares and as such neither company has controlling interest or management rights. Therefore, cannot be said to have acquired ownership of KVC Ltd as an owner.

The Appellant submitted that although acquiring management rights is a requirement under clause (ii), it is not a requirement under clause (i). I do concede that acquiring management rights is not required under clause (i). The requirement under clause (i) is acquiring ownership of the enterprise as an owner.

It was submitted that the Appellant is the single largest shareholder having 48% of shares and, together with the associate company having 79% of the shareholding. Therefore, it was argued that the other shareholders having only 21% of the shares can never be regarded as the owner of KVC Ltd. It was submitted that even in the ordinary sense it is offensive to the English language to ascribe ownership to anyone else other than the Appellant.

Nevertheless, it is important to note that no threshold shareholding is prescribed in paragraph (i). Acquiring ownership of the enterprise is the

express requirement and no percentage of shareholding is prescribed. As I have already stated above in this judgment, by amendment Act No. 12 of 2004, the Legislature removed the term *'partner or a joint venturer'* from the existing definition of the term *acquires* and added it to clause (ii), leaving acquiring ownership of the enterprise as an owner in clause (i). The issue of ownership percentage arises when acquiring ownership of an enterprise as a partner or joint venture partner. Therefore, in my view, clause (i) applies to a single shareholder company.

Accordingly, I hold that the Appellant cannot succeed its claim under clause (i) as well.

Another argument advanced by the Appellant is that under Section 21 E of the IR Act, the Ministry of Finance has to approve the terms of every acquisition and therefore, it is the Ministry of Finance that decides the availability of the exemption. It is true that by letter dated 19th June 2006 Director General (Fiscal Policy) of the Ministry of Finance and Planning has confirmed that the Appellant, Samson and Sons (Pvt) Ltd has complied with the conditions set out in Section 21 E of the IR Act and consequently qualified for the three years tax holiday. Yet, all that Section 21 E provides is that the rehabilitation of the enterprise has to be done subject to the terms approved by the Ministry and not that the Ministry of Finance has to decide on the availability of the income tax exemption. Therefore, in my view, the Ministry of Finance may have confirmed that the rehabilitation has been done according to the approved terms enabling the party being entitled to claim the exemption but, the decision on the entitlement under the IR Act is a matter to be decided by the Inland Revenue Department.

In light of the preceding analysis of facts and law relevant to this case, I am of the view that the TAC did not err in holding that the Appellant has failed to satisfy the entitlement to the income tax exemption, and therefore, not entitled to the reliefs claimed under Section 21 E of the IR Act.

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

1. ***No.***
2. ***No.***

In light of the answers given to the two questions of law, acting under Section 11 A (6) of the Tax Appeals Commission Act No. 23 of 2011, as

amended, I affirm the determination made by the TAC and dismiss this appeal.

The registrar is directed to send a certified copy of this judgment to the secretary of the TAC.

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando J.

I Agree.

JUDGE OF THE COURT OF APPEAL