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

In the matter of an Application of a case stated under section 11A of the Tax Appeals Commission Act, No. 23 of 2011 as amended by Act, No. 20 of 2013.

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

Appellant

Case No. CA/TAX/0025/2018
Tax Appeals Commission
No. TAC/IT/039/2016

Vs.

United Motors Lanka PLC,
No. 100, Hyde Park Corner,
Colombo 02.

Respondent

Before : Dr. Ruwan Fernando J. &

M. Sampath K.B. Wijeratne J.

: Manohara Jayasinghe, D.S.G. for the Appellant

Neomal Goonewardana with Nisali Pieris for the Respondent.

Argued on : 01.08.2022

Written Submissions filed on
: 22.09.2022 & 03.11.2021 (by the Appellant)

22.09.2022 & 03.03.2022, 05.3.2021 (by the Respondent)

Decided on : 25.05.2023

Dr. Ruwan Fernando, J.

Introduction

[1] When this appeal by way of case stated was taken up for hearing, the Respondent raised a preliminary objection to the maintainability of this case stated, which is more fully set out in Paragraph 11 of the Written Submissions filed by the Respondent on 05.05.2021, as follows:

> "11. In terms of the judgment given by your Lordship's Court in the *The Commissioner General of Inland Revenue v. Koggala Garments (Pvt) Ltd,* CA. Application No. Tax/01/2008, decided on 05.04.2017, Your Lordships' Court does not have the jurisdiction to hear this matter by way of Case Stated for the following amongst other reasons which may be adduced by Counsel during the course of arguments:-
>
> (a) The Tax Appeals Commission has never gone into the assessments, and it only considered the jurisdictional objection and made its decision;
>
> (b) The determination of the Tax Appeals Commission did not deal with the assessments that were before it;
>
> (c) None of the questions of law which have been re-formulated by the Appellant (with the permission of Court) pertain to the assessments in the case;
>
> (d) Section 11A(6) of the Tax Appeals Commission Act, No. 23 of 2011 (as amended) only permits Your Lordships' Court to hear and determine a Case Stated on a question impacting the assessment".

[2] Now the argument very strongly pressed before us by Mr. Neomal Goonewardene, the learned Counsel for the Respondent, in support of the preliminary objection, is that the Court of Appeal has no jurisdiction whatsoever, to determine the questions of law based on the provisions of section 11A(6) of the Tax Appeals Commission Act, No. 23 of 2011 (as amended), since these questions of law do not arise or impinge on the substantive matters of the assessment determined by the Tax Appeals Commission (hereinafter referred to as the "TAC").

[3] Mr. Goonewardene strenuously argued that (i) the TAC has made its determination solely on the validity of the acknowledgement of the appeal and the Tax Appeals Commission has not inquired into the substantive matters of the assessment at any stage of this appeal; (ii) therefore, the Court of Appeal cannot make any judgment on the merits of the assessment; (iii) the words "confirm, reduce, increase or annul the assessment determined by the Commission" in section 11A(6) of the Tax Appeals Commission Act (hereinafter referred to as the "TAC Act") restrict the jurisdiction of the Court of Appeal; (iv) it is only the questions of law that may result in the confirmation, reduction, increasing, or annulment of the assessment as determined by the TAC that can be the subject of an appeal by way of a case stated in terms of section 11A(6) of the TAC Act; (v) as no question of law has been raised on the substantive issues, the Case cannot be remitted to the TAC with the opinion of the Court of Appeal for a further finding; (vi) Court is bound to annul, confirm, increase or remit a case back to the TAC only on substantive matters of the assessment; (vii) the TAC would not be able to make a new decision on the matter without a rehearing and the TAC cannot rehear a case as the TAC Act does not provide for a rehearing; (viii) since the time period prescribed by section 10 for the determination of an appeal has lapsed, the appeal must be deemed to have been allowed and the TAC is functus officio and has no further official authority to consider the merits of the assessment now. Mr. Goonewardena put heavy reliance on the decision of this Court in *The Commissioner General of Inland Revenue v. Koggala Garments (Pvt) Ltd, (supra).*

[4] On the other hand, Mr. Manohara Jayasinghe, the D.S.G., the learned Counsel for the Appellant submitted that the decision of the Court of Appeal in *The Commissioner General of Inland Revenue v. Koggala Garments (Pvt) Ltd, (supra)* can be distinguished from the facts of this case, as (i) the Board of Review in that case did not consider anything with respect to the assessments; (ii) the Board only upheld the objection that the appeal before it had not been decided within the time prescribed by law and concluded that it did not have the jurisdiction to determine the appeal; (iii) the Court of Appeal is required to answer all the questions of law contained in the case stated or any question of law arising from the case stated and the use of the word "may" does not mean that the Court can arbitrarily refuse to answer proper and relevant questions of law; (iv) even if the TAC did not consider the substantive matters of the assessment, and the Court decides to exercise to remit the case to the TAC, the TAC must revise the

assessment in accordance with the opinion of the Court; (v) the expression "shall revise" does not necessarily mean to change or vary, but only means review i.e. review the matter with view to changing it if the circumstances warrant such a charge or variation; (vi) the specific powers of the Court of Appeal to hear and determine an appeal againt the determination of the TAC is contained in section 11A(6) of the TAC Act, but the general appellate jurisdiction of the Court of Appeal is the Constitution and the special powers the Constitution confers upon it when exercising its appellate jurisdiction; (vii) Article 138 (1) read with Article 139(1) provides the general powers of the Court of Appeal to be exercised "according to law"; (viii) even in the absence of a specific provision in the TAC Act, the Court of Appeal can exercise its constitutional powers and remit the case to the TAC with its opinion and order a further hearing to determine the appeal on the assessment.

Issues

[5] In view of the arguments advanced by the respective parties, this case raises the following interesting questions:

1. First, whether case stated is the appropriate remedy when the nullification of the assessment is made by the TAC without going into the substantive matters of the relevant assessment, namely, the imposition of the tax issue;

2. Second, if so, whether the Court of Appeal has jurisdiction to look into the correctness of such nullification of assessment made by the TAC, in terms of section 11A(1) of the TAC Act, and if not, whether the jurisdiction of the Court of Appeal is governed by section 11A(6) of the TAC Act, and if so, whether the Court of Appeal can exercise its jurisdiction and look into the correctness of such nullification of assessment made by the TAC, in terms of section 11A(6) of the TAC Act;

3. Third, if the annulment of the assessment is found to be erroneous, whether the Court of Appeal has power to remit the case back to the TAC with its opinion thereon;

4. Finally, if so, what is the role to be played by the TAC, when the case is remitted back to the TAC with the opinion of the Court of Appeal, in terms of the TAC Act.

Factual Background

[6] Before dealing with the respective arguments, it is appropriate to understand the background of the case, and identify the questions of law submitted by the TAC to the Court of Appeal for its opinion. The Respondent, the United Motors Lanka PLC submitted its return of income for the assessment year 2010/2011 but the assessor by letter dated 04.11.2013 did not accept the returns of income, estimated the amount of the assessable income and assessed the Respondent accordingly. The notice of assessment dated 29.11.2013 was issued in respect of the year of assessment 2010/2011. The Respondent appealed to the Commissioner-General of Inland Revenue against the said assessment. The Commissioner-General of Inland Revenue by its determination dated 19.01.2016 confirmed the assessment and dismissed the appeal.

Appeal to the Tax Appeals Commission

[7] Being dissatisfied with the said determination of the Commissioner-General of Inland Revenue, the Respondent appealed to the TAC. At the hearing of the appeal before the TAC, the Respondent United Motors Lanka PLC raised a preliminary objection stating that the determination of the Commissioner-General was time barred due to the reason that the acknowledgement of the appeal received from the assessor does not constitute a statutorily valid acknowledgement in terms of the provisions of the Inland Revenue Act, No. 10 of 2006. The preliminary objection is two-fold:

1. There was no valid acknowledgement of the receipt of the appeal within thirty days of the receipt of such appeal as required by section 165(6) of the Inland Revenue Act, No. 10 of 2006. The determination of the Commissioner-General has not been made within a period of 2 years from the date of the receipt of the appeal by the Commisssioner-General in violation of the provisions of section 165(14) of the Inland Revenue Act, No. 10 of 2006;

2. the statutory duty of acknowledging an appeal can only be performed by a Deputy Commissioner or such higher officer who has been specially delegated with the power by the Commissioner-General, and the acknowledgement of the appeal was signed by the assessor without any legal authority. Accordingly, there was no legally valid acknowledgement of the appeal.

[8] The TAC proceeded to decide the said preliminary objection before going into the substantive matters of the assessment, and by its determination dated 12.06.2018, upheld the said preliminary objection and annulled the assessment.

Questions of Law for the Opinion of the Court of Appeal

[9] Being dissatisfied with the said determination of the TAC, the Appellant Commissioner-General of Inland Revenue made an application to the TAC requiring the TAC to state a case on a question of law. The TAC submitted the following questions of law in the case stated for the opinion of the Court of Appeal.

(1) Has the TAC erred in interpreting the section 165(6) of the Inland Revenue Act, No. 10 of 2006?

TAC has allowed the appeal in favour of the Appellant on the preliminary issue raised by the Appellant that the acknowledgement of the appeal addressed to CGIR by an assessor is not legally valid as the assessor is not statutorily empowered to acknowledge the appeal of the CGIR. Further, the definition given to the expression to CGIR in section 217 of the Act does not include an Assessor. Therefore, the date of acknowledgement should have been deemed to be the date of the appeal, not the purported date of acknowledgement. Accordingly, the determination of the CGIR after two years from the date of the letter of appeal but within two years from the date of acknowledgement by the assessor became void in terms of section 165(14) of the Act.

It appears that the TAC has misread the relevant section of 165(6) of the Act as it does not stipulate anywhere that the appeal should be acknowledged by the CGIR.

2. Without prejudice to the above, an assumption that it is the legal requirement which is not that the appeal should be acknowledged by the CGIR, whether it is mandatory or directory especially since there was any grievance caused to the Appellant by the acknowledgement of the appeal by the assessor instead of the CGIR?

Amended Questions of Law

[10] The Appellant however, by motion dated 09.10.2019 sought to amend the questions of law set out in the case stated, and the Respondent did not object to the amended questions of law to be accepted for the opinion of the Court of Appeal. Accordingly, the Court accepted the amended questions of law submitted to Court by motion dated 09.10.2019, and decided that the following questions shall become the questions of law in the case stated for the opinion of the Court of Appeal:

i. By failing to controvert the validity of the acknowledgement of their appeal at the appeal hearing before the Commissioner General, was the Respondent estopped from raising this matter as a preliminary objection before the Tax Appeals Commission:

ii. By failing to controvert the correctness of the statement in the acknowledgement of the appeal that the period of two years within which the appeal is to be determined will end on 23.01.2016, is the Respondent estopped from raising this matter as a preliminary objection before the Tax Appeals Commission?

iii. Did the Tax Appeals Commission err in holding that section 208(4) of the Inland Revenue Act prohibits any other person that the Commissioner-General from acknowledging an appeal?

iv. Without prejudice to the above, did the Tax Appeals Commission err in failing to hold that, in terms of section 195(1) of the Inland Revenue Act, a letter of acknowledgement cannot be deemed to be invalid on account of a mistake, defect or omission when the same is in substance in conformity with the intent and meaning of the Act?

v. Has the issue in this case already been decided by Lanka Ashok Leyland v. Commissioner General of Inland Revenue (CA Tax 14/2017) decided on 14th December 2018?

Analysis

The case stated regime

[11] An appeal by way of case stated is an appeal to a superior court to make a decision on the question of law arising on the stated case. It identifies the facts

in issue, the relevant contentions of the parties, the findings of facts and ground for the determination, and, and questions of law which the opinion of the Court of Appeal for resolution is sought. This type of appeal is known as an Appeal by way of Case Stated, meaning that an application is made by a party aggrieved by the decision to the same tribunal or court that made the decision to state a case for the opinion of the Court of Appeal on a question of law. The appeal by way of case stated constitutes a distinct route of appeal and must be distinguished from any ordinary appeal or a judicial review.

What should be set out in the case stated?

[12] This is an appeal by way of case stated and the case stated is formulated by the TAC and not an Appellant. In what constitutes a case stated, LORD SUMNER in *Usher's Wiltshire Brewery, Limited Appellants v. Bruce Respondent* [1915] A.C. 433, at p. 466 stated:

> *"My Lords, the question which arises at the outset of this case is, What facts have the Commissioners found? The jurisdiction of the High Court, and on appeals from it, is by s. 59, sub-s. 2 (b), of the Taxes Management Act, 1880 , to "hear and determine the question or questions of law arising on a case transmitted under this Act." 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; but the findings of fact, as such, when ascertained are final...."***

[13] The Appellant who is aggrieved by the decision of the TAC can, however, make an application requiring the TAC to state a case on the question of law for the opinion of the Court of Appeal. The TAC must independently formulate the questions of law in the case stated and transmit to the Court of Appeal. As noted, a case stated made by the TAC on a question of law under section 11A(2) of the TAC Act shall specify:

(1) the facts of the case (but not usually the evidence);

(2) the decision of the TAC (the particular findings of facts and law);

(3) the questions of law upon which the opinion of the Court of Appeal is sought;

(4) the amount of the tax in dispute.

[14] It is crystal clear that any finding of fact with law made by the TAC, constitutes a case stated, and hence, it does not necessarily confine to the substantive matters of the assessment determined by the TAC.

What constitutes a question of law?

[15] The next question is what constitutes a question of law. An appeal on a question of law is intended to be a beneficial remedy, and therefore, it is necessary to ascertain, first what constitutes a question of law in relation to an appeal on a question law. The Supreme Court in *Collettes Ltd v. Bank of Ceylon*, (1982) 2 Sri LR, 514 considered the question: what constitutes a "question of law" within the meaning of the provisions of Article 128 (1) of the Constitution. In *Collettes Ltd v. Bank of Ceylon* (supra), their Lordships of the Supreme Court considered the following questions as "questions of law":

(a) The proper legal effect of a proved fact is necessarily a question of law;

(b) Inferences from the primary facts found are matters of law;

(c) The question whether the tribunal has misdirected itself on the law or the facts or misunderstood them or has taken into account irrelevant considerations or has failed to take into account relevant considerations or has reached a conclusion which no reasonable tribunal directing itself properly on law could have reached or that it has gone fundamentally wrong in certain other respects is a question of law. Given the primary facts, the question whether the tribunal rightly exercised its discretion is a question of law;

(d) Whether the evidence is in the legal sense sufficient to-support a determination of fact is a question of law;

(e) If in order to arrive at a conclusion on the facts, it is necessary to construe a document of title or correspondence, then the construction of the document or correspondence becomes a question of law;

(f) Every question of legal interpretation which arises after the primary facts have been established is a question of law;

(g) Whether there is or is not evidence to support a finding, is a question of law;

(h) Whether the provisions of a statute apply to the facts; what is the proper interpretation of a statutory provision; what is the scope and effect, of such provision are all questions of law;

(i) Whether the evidence had been properly admitted or excluded or there is misdirection as to the burden of proof are all questions of law.

[16] The Court of Appeal in *Amarasinghe v. Acquiring Officer, Kegalle*, (2008) 1 Sri LR 120, applied the tests adopted by the Supreme Court in *Collettes Ltd v. Bank of Ceylon* (supra), to an appeal filed under section 28 of the Land Acquisition Act and observed that it would be sufficient for the question or questions of law to be stated in the averments in the Petition of Appeal which would be easily discernable and apparent on the face of the Petition.

[17] It is any question of law arising on the stated case that may be heard and determined by the Court of Appeal. But the power of the Court of Appeal is not confined to the questions identified in the case stated but the Court of Appeal is not precluded from considering any point upon which the actual decision of the TAC might be upheld, no matter what might have been their reasons for arriving at that decision (See- the first part of section 11A(6) & *Commissioner General of Income Tax v Saverimuttu Retty* (Reports of Ceylon Tax Cases, Vol. 1, p. 103 at p. 109).

Jurisdiction of the Court of Appeal to hear and determine an appeal by way of case stated

[18] In view of the argument advanced by Mr. Goonewardena that section 11(6) of the TAC Act only permits this Court to hear and determine a case stated on a question of law impacting the assessment, and the amended questions of law do not relate to the assessment, it is useful to consider the jurisdiction of the Court of Appeal by way of case stated under the provisions of the TAC Act. The legal scope of the appeal by way of case stated is set out in section 11A (1) of the TAC Act. The marginal note of section 11A(1) states "Appeals on a question of law to the Court of Appeal", clearly referring to an appeal by way of law on a question of law to the Court of Appeal. Section 11A(1) provides that either party who preferred an appeal to the TAC or the CGIR, may make an application requiring the TAC to state a case on a question of law for the opinion of the Court of Appeal. Section 11A(1) of the TAC Act states:

(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;

[19] This section has the following two limbs:

1. **Any party who preferred an appeal** against the decision of the TAC may make an application requiring the TAC to state a case on a question of law for the opinion of the Court of Appeal (substantive right of appeal by way of case stated);
2. Such application shall be 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. (procedural conditions for the exercise of such statutory right).

[20] The second part of section 11A(1) is a conditional one, that consists of a mandatory requirement of entertaining and making the application to the TAC, but that is a piece of procedural legislation, and it does not fall within the realm of substantive law set out in the first part of section 11A(1). The TAC Act, in the second part of section 11A(1) sets out the following procedural 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, and such application for a statutory right of appeal by way of case may not be transmitted to the Court of Appeal. The requisites are:

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.

Procedure to be followed by the TAC upon the receipt of the application

[21] Section 11A(2) lays down the procedure to be followed by the TAC upon the application is made by a party to state a case 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".*

Appeal by way of case stated is a statutory remedy

[22] In the instant case, there is no complaint whatsoever, about the procedural part of that section, and the issue is about the substantive part of section 11A(1). An appeal is a statutory right and must be expressly created and it confers jurisdiction to a court of tribunal to hear and determine appeals. It is section 11A(1) that has expressly granted a statutory right of appeal by case stated to the Appellant. Section 11A(1) clearly grants a substantive right of appeal by way of a case stated to any person who is aggrieved by the decision of the TAC to prefer an appeal and make an application requiring the TAC to state a case on a question of law for the opinion of the Court of Appeal. The words "**Either the person who preferred an appeal** to the Commission under paragraph (a) of subsection (1) of section 7 of this Act……..of the Commissioner General **may make an application requiring the Commissiomn to state a case on the question of law for the opinion of the Court of Appeal**" clearly define the right of appeal of any Appellant to invoke the appellate jurisdiction of the Court of Appeal.

[23] There is nothing to indicate in section 11A(1) either expressly or impliedly that the remedy by way of case stated is limited to the determination made by the TAC on the tax issue. In the course of the argument, Mr. Goonewardena failed to convince us that the right of an Appellant to make an application requiring the Commission to state a case on a question of law for the opinion of this Court is limited to the substantive matters of the assessment.

[24] The Respondent's argument is, however, based only on section 11A(6) disregarding the statutory right of appeal given to an aggrieved party to invoke the appellate jurisdiction of the Court of Appeal by way of case stated specified in section 11A(1). The Respondent, however, argues that it is not necessary to state in the TAC Act, that section 11A(1) is subject to the provisions of section

11A(6), but the words that the nexus between the questions of law and the substantive matters of the assessment must be implied by this Court. The Respondent invites us to interpret the words that the legislature has not used in section 11A(1) and travel outside the statutory provisions on a voyage of discovery, to fill in the gap, which the legislature in its wisdom thought otherwise. If the legislature intended to confine the case stated to a question of law in relation to the substantive matters of the assessment, it could have stated so in express words.

[25] It is settled law that courts cannot usurp legislative function under the disguise of interpretation, and rewrite, recast, reframe and redesign a statutory provision, because this is exclusively in the domain of the legislature. This proposition was lucidly explained by Lord Simonds in *Magor and St Mellons Rural District Council v. Newport Corporation* [1952] AC 189, HL. Referring to the speech of Lord Denning MR, Lord Simonds said at page 191: "

> *"The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and the duty of the court to travel outside them on a voyage of discovery are strictly limited.."*

[26] MR, Lord Simonds further said at page 192:

> *"It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation and it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act".*

[27] The same proposition was echoed by Arijit Pasayat, J. in the Indian Supreme Court case of *Padmasundara Rao and Ors. v. State of Tamil Nadu and Ors.* AIR (2002) SC 1334, at paragraph 14 as follows:

> *"14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary".*

[28] The only requirement to make an application to state case on a question of law is that there must be a nexus between the question of law and the case stated (facts and law placed before the TAC). In other words, a question of law must arise on the case stated determined by the TAC, and a question of law is not restricted to substantive matters of an assessment. I am not inclined to take

the view that the questions of law must relate to any question of facts and law decided by the TAC and therefore, it is not limited to the substantive matters determined by the TAC as submitted by the Respondent.

[29] The Court of Appeal in *The Commissioner General v. Koggala Garments (Pvt) Ltd* (supra), has heavily relied on section 112(6) of the Inland Revenue Act, No. 28 of 1979, which is identical to section 11A(6) of the TAC Act, in holding that unless the question of law impinges on an assessment, no case stated procedure under section 112(1) can be invoked by the Appellant. Section 112(1) of the Inland Revenue Act, No. 28 of 1979 states:

> *"The decision of the Board shall be final:*
>
> *Provided that either the appellant or the Commissioner-General may make an application requiring the Board 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 Board, together with a fee of one thousand and five hundred rupees, within one month of the date in which the decision of the Board was notified in writing to the Commissioner General or the appellant, as the case may be."*

[30] It seems to me that the attention of the Court of Appeal has not been adequately drawn to the scope of section 112(1) of the Inland Revenue Act, No. 28 of 1979, which is identical to section 11A(1) of the TAC Act. The Court of Appeal in *The Commissioner General v. Koggala Garments (Pvt) Ltd* (supra), has paid little attention to section 112(1), which allows any person aggrieved by the BOR decision to invoke the appellate jurisdiction of the Court of Appeal. I am of the view that it is section 11A(1) that has granted the Appellant to invoke the appellate jurisdiction of the Court of Appeal by way of case stated on a question of law unless that right is expressly taken away by a subsequent enactment or by the Constitution, that right exists.

[31] At this stage, it is relevant to note that the right of appeal by way of a case stated is a substantive right given to any person aggrieved by the decision of the TAC in terms of section 11A(1) of the TAC Act. When that right has already vested with the parties on the date the *lis* (proceedings) commenced in the TAC, that right cannot be denied to such party who seeks remedies to violated rights, unless that right has been taken away by a subsequent enactment, if it so provided expressly and not otherwise. The only condition is that the Appellant must fulfill the procedural requirements set out in the second part of section 11A(1).

[32] The meanings of substantive law and procedural law as stated in Black's Law Dictionary, 9th Edition, are as under:

> *"Substantive law (Seb-sten-tive) (18c). The part of the law that creates, defines and regulates the rights, duties and powers of the parties. 'so far as the administration of justice is concerned with the application of remedies to violated rights, we may say that the substantive law defines the remedy and right, while the law of procedure defines the modes and conditions of the application of the one to the other. John Salmond, Jurisprudence 476 (Glanville L. Williams ed., 10th ed. 1947)"*
>
> *Procedural law: The rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves-Also termed adjective law.*
>
> *(b) The law of procedure or adjective law may be defined as that breach of the law, which governs the process of litigation. It is the law of actions-jus quod ad actionee pertinet-using the term action on a wide sense to include all legal proceedings, civil or criminal. All the residue is substantive law, and relates, not to the process of litigation, but to the purposes and subject matter. In other words, substantive law is concerned with the ends which the administration of justice seeks; procedural law deals with the means and instruments by which those ends are to be attained. The latter regulates the conduct and relation of courts and litigants in respect of the litigation itself; the formal determines their conduct and relations in respect of the matters litigated. What facts constitute a wrong is determined by the substantive law; what facts constitute proof of a wrong is a question of procedure. The first relates to the subject matter of the litigation, the second relates to the process merely".*

[33] In the privy council in *Colonial Sugar Refining Company v. Irving* (1905) AC 369 (PC), the Privy Council considered a situation where the right to file an appeal from a Supreme Court of Australia to the Privy Council given by the Order in Council of 1860 was taken away and the only appeal therefrom was directed to lie to the High Court of Australia. In that case, it was held, to deprive a suitor in a pending action of an appeal to a Superior Tribunal, which belonged to him as of right, is a very different thing from regulating procedure. The Privy Council held that the right to file an appeal was a substantive right and not a mere matter of procedure such as the conditions accompanying the filing of an appeal, which is in the realm of procedure. An appeal by way of case stated is also a substantive right, but exercised in a different route. An appeal is a vested right in a party from the commencement of the action and such a right cannot be taken away except by an express provision in any subsequent statute.

[34] Let me turn to *Garikapati Veerayya*: v. N. *Subbiah Choudhry* , AIR 1957 SC 540, wherein a suit was instituted on April 22, 1949, and the right of appeal vested in the parties thereto on that date was to be governed by the law as it prevailed on that date. That is, on that date, the parties acquired the right, if unsuccessful, to go on in an appeal from the Special Court to the High Court and from the High Court to the Federal Court, provided the conditions thereof were satisfied in that case. It was held that **unless that right had been taken away only by a subsequent enactment**, if it so provided expressly or by necessary intendment, and not otherwise.

[35] In *Hoosein Kasam Dada (India) Ltd. v. The State of Madhya Pradesh and Others* ([1953] S.C.R. 987), it was held that (i) a right of appeal is a substantive right which vests in a litigant at the date of the filing of the suit, and cannot be taken away unless the legislature expressly or by necessary intendment says so; (ii) an appeal is a continuation of the suit, and it is not merely that a right of appeal cannot be taken away by a procedural enactment which is not made retrospective, but the right cannot be impaired or imperilled nor can new conditions be attached to the filing of the appeal; (iii) nor can a condition already existing be made more onerous or more stringent so as to affect the right of appeal arising out of a suit instituted prior to the enactment. This is because the **right to file an appeal is crystallized on the institution of the application of the suit in the first instance**.

[36] From the decisions cited above, the following principles clearly emerge:

1. The legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding;

2. The right of appeal is not a mere matter of procedure but is a substantive right;

3. The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit;

4. The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced;

5. Such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal;

6. This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise (Emphasis added) (see-*Satya Nand Jha and Ors. v. Union of India and Ors.*, the High Court of Jharkhand, decided on 05.07. 2016/

Scope of section 11A(6) of the TAC Act-Powers in Appeal by way of Case Stated

[37] The fundamental argument of the Respondent is that this Court does not have jurisdiction to set aside or quash the determination of the TAC on a question of law, which does not relate to the substantive matters of the assessment under section 11A(6) of the TAC Act. The Respondent in support of the argument, heavily rely on the statement of His Lordship Nawaz, J. referring to section 112(6) of the Inland Revenue Act, No. 28 of 1979 in *The Commissioner General of Inland Revenue v Koggala Garments (Pvt) Ltd* (supra), that the case stated jurisdiction of the Court of Appeal is provided by the legislature in section 11A(6) of the TAC Act. Section 112(6) of the Inland Revenue Act, No. 28 of 1979 is identical to section 11A(6) of the TAC Act, reads as follows:

> *"122(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 Board with the opinion of the Court thereon. Where a case is so remitted by the Court, the Board shall revise the assessment in accordance with the opinion of the court".*

[38] His Lordship Nawaz, J. referring to section 112(6) of the Inland Revenue Act, No. 28 of 1979 in *The Commissioner General of Inland Revenue v. Koggala Garments (Pvt) Ltd* (supra) at pp.10-12 stated:

> *"No nexus between the Questions of Law and the Assessments*
>
> *Upon a careful perusal of section 112(6) of the Inland Revenue Act, No. 28 of 1979, it becomes patently clear that if the question of law stated to this Court does not arise on the assessments, this Court is denuded of jurisdiction to hear and determine that question of law. The appellant power needs encapituation.*

"section 111(6).....

The above provision makes it clear that upon the question of law stated to this Court, this Court is required to confirm, reduce, increase or annul the assessment determined by the Board, or remit the case to the Board with the opinion of the Court thereon.

In other words, the Board of Review must have gone into the assessment in the first instance and thereafter the Board must state questions of law that arise or impinge on the assessment. The question of law must relate to the assessment. Thereafter, this Court, in accordance with a decision of Court upon such question, confirm, reduces, increases, or annuls the assessment determined by the Board, or remits the case to the Board with the opinion of the Court thereon.

In this case, it needs recalling that the Board never went into the assessments. It only considered a jurisdictional objection and made its decision. So none of the eight questions of law that have been stated to this Court impacts on the assessments. Section 112(6) of the Inland revenue Act, No. 28 of 1979 mandates a question of law arising on the assessment to be stated to this Court for an opinion. Only then this Court can finally confirm, reduce or annul the assessment determined by the Board, or remit the case to the Board with the opinion of the Court thereon.

It is not any question of law that this Court can go into in a case stated. It is only a question of law impacting on the assessment that this Court can hear and determine on a case stated. I am fortified in this interpretation of the words in section 112(6) ".....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...". This conjunction "and" connotes that the words any questions of law have to be read conjunctively with the requirement to confirm, reduce, increase or annul the assessment upon such question of law. This shows that the question of law has to pertain to the assessment. In the case before us, none of the questions pertain to the assessments which went up in appeal before the Board of review. The questions of law pertain only to a decision on jurisdiction which is susceptible to a challenge by way of judicial review".

Powers of the Court of Appeal in an Appeal by way of Case Stated

[39] Section 11A(6) of the TAC Act sets out the powers of the Court of Appeal in relation to an appeal by way of case stated in the exercise of jurisdiction conferred on it by section 11A(1) of the TAC Act. Section 11A (6) of the TAC Act provides:

*"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".*

[40] It is relevant to note that section 11A(6) defines the **powers of the Court of Appeal** in exercising jurisdiction under section 11A(1) when the questions of law arising on the stated case are submitted by the TAC in terms of section 11A(2) of the TAC Act.

Decision made by the TAC

[41] Now, it is relevant to consider the nature of the questions raised by the Respondent by way of a preliminary objection before the TAC and the decision made by the TAC on such questions. A perusal of the TAC determination reveals that the taxpayer (the Respondent in the present appeal) raised a preliminary objection stating that the determination of the Commissioner-General was time barred for two reasons:

1. No valid acknowledgement of the receipt of the appeal in terms of section 165(6) of the TAC Act and that the determination of the Commissioner-General has not been made within a period of 2 years from the date of the receipt of the appeal;

2. The assessor had no legal authority to sign the acknowledgement of the appeal and therefore, the determination of the Commissioner-General is time barred.

[42] In view of the said preliminary objection, the TAC proceeded to decide the question whether the determination of the Commissioner General is time barred in terms of section 165(14) read with section 165(6) of the Inland Revenue Act. The Appellant Commissioner-General of Inland Revenue in this case contested the position taken by the taxpayer and argued that (i) the assessor is empowered with delegated authority to sign the receipt of the acknowledgement letter; (ii) the receipt of the appeal has been properly acknowledged as per section 165(6) and the appeal has been determined within a person of 2 years from the date of the receipt of the acknowledgement as required by section 165(14) of the Inland Revenue Act,

No. 10 of 2006; and (iii) the validity of the notice shall not be quashed or deemed void or voidable for want of form in terms of section 195(1) of the Inland Revenue Act. The TAC however, decided that the assessor had no legal authority to sign the acknowledgement letter and that the determination of the appeal by the Commissioner-General is time barred. The TAC upheld the preliminary objection and annulled the assessment.

Case Stated formulated by the TAC for the opinion of the Court of Appeal

[43] A perusal of the questions of law transmitted to the Court of Appeal by the TAC reveals that all the questions that were raised by the Respondent and decided by the TAC. The same questions of law arise on the cases stated and submitted to this Court by way of a case stated for its opinion by the TAC. (See- paragraph 10 of this judgment). They all directly related to (i) the validity of the acknowledgement of the appeal; (ii) person who is entitled to sign the acknowledgement of the appeal; (iii) the time bar of the determination of the appeal made by the Commissioner-General, and (ii) the effect of any omission or mistake in the acknowledgement of the appeal on the validity of the acknowledgement of appeal in terms of the Inland Revenue Act.

[44] Accordingly, the Appellant who was aggrieved by the TAC decision is entitled to invoke the appellate jurisdiction of the Court of Appeal under section 11A(1) of the TAC Act, and the Court of Appeal has powers to hear and determine such appeal by way of case on a question of law arising from such decision in terms of section 11A(6) of the TAC Act.

[45] The Respondent's argument that the jurisdiction of the Court of Appeal is exclusively laid down in section 11A(6) is based on the words in section 11A(6) "….**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…**". The Respondent argues that those words show that the question of law shall pertain to the substantive matters of the assessment. The Respondent's argument is that the words "confirm, reduce, increase or annul the assessment determined by the commission" necessarily restricts the jurisdiction of the Court of Appeal to the determination of substantive matters of the assessment. I am not inclined to agree with this argument of the Respondent.

[46] First, the words in the first part of section 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****",* is consistent with position in section 11A(1) that the questions of law arise on a **case stated,** and the Court of Appeal can answer any question of law arising on the case stated. If the jurisdiction of the Court of Appeal is restricted to the substantive matters of the assessment as contended by the Respondent, there was no need for the legislature to use the words that the Court of Appeal "**may hear and determine any question of law arising on the stated case**", and it could have easily used the words "..."any question of law arising **on the assessment determined by the Commission**".

[47] Second, the Respondent contended that the use of the words ""and" in the second line of section 11A(6) restrict the meaning of the words "any question of law" and thus, "any question" in section 11A(6) is restricted to the words "confirm, reduce, increase or annul of the assessment determined by the commission", and nothing more. The Respondent fails to understand however, that section 11A(6) only refers to **the appellate powers of the Court of Appeal** to determine any question of law arsing **on the stated case,** and the use of the word "and" in the second line of section 11A(6), does not restrict the words "any question of law" to the determination of the substantive matters of the assessment.

[48] On the other hand, the word **"may"** after the word "and" in the second line and the word "or" in the fifth line, after the words "confirm, reduce, increase, or annul the assessment determined by the Commission" confirm the position that the legislature has intended to provide two distinct powers to the Court of Appeal in appeal by way of case stated in the determination of the questions of law.

[49] In my view, the second part of section 11A(6) is not restricted to the words "confirm, reduce, increase, or annul the assessment" unless the legislature has expressly provided that the right of any aggrieved party to invoke the appellate jurisdiction of this Court under section 11A(1) is restricted to the determination of the substantive matters of the assessment determined by the TAC. On the contrary, the legislature has granted a substantive right of appeal by way of case stated to the Appellant to invoke the appellate jurisdiction of this Court on any question of law arising on the case stated (facts and law determined by the TAC) for the opinion of the Court of Appeal. As noted, in the present case, the assessment was annulled on the ground

that the notice of assessment is invalid because it was not in conformity with the mandatory requirements under section 194(1) of the Inland Revenue Act.

[50] Aggrieved by the said annulment of the assessment, the Appellant preferred an appeal by way of case stated and the questions of law submitted to the Court of Appeal relate to the validity of the acknowledgement of appeal and the time bar of the determination made by the Commissioner General, which are all questions of law that arise on the case stated under section 11A(1). That annulment of assessment is a decision that is part and parcel of the case stated (see- section 11A(2) and thus, all the questions of law that pertain to that decision arise on the stated case for the opinion of this Court. In addition, the legislature has clearly provided in section 11A(6) that the Court of Appeal has powers to hear and determine "any question of law" arise on the stated case submitted to the Court for its opinion under section 11A(2), which includes almost all the questions of law submitted by the TAC for the opinion of this Court.

[51] In view of the aforesaid decisions referred to in paragraphs 33-35 of this judgment, the right of appeal is a vested right in the first instance, but, the legislature by express words can always change the nature of right to prefer an appeal. In the instant case, the right of appeal by way of a case stated, is a substantive right granted under Section 11A (1) of the TAC Act. That right is exercised by the Court of Appeal in terms of the powers conferred on this Court under section 11A(6) of the TAC Act.

[52] On the other hand, the judicial authorities support the view that the questions of law are not restricted to the stated case, or to the question formulated by the TAC and therefore, the Court of Appeal is not precluded from considering **any point upon** which the actual decision of the TAC might be upheld or annulled.

[53] I am fortified with my view by the judicial pronouncement made in the case of *R.M. Fernando v Commissioner of Income Tax* (Reports of Ceylon Tax Cases Vol 1 p. 571, at 577, where Basnayake, C.J. at p. 577 held:

> *"The statute does not require the Board to formulate in catechistic form 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 in 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 has 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",

[54] In *Commissioner of Income Tax v. Saverimuttu Reddy* (Reports of Ceylon Tax Cases, Vol. 1, p. 103, Abrahams C.J. stated that although a fresh point was not included in the stated case by the Board of Review, it did not preclude the Court from considering any point upon which the actual decision of the Board might be upheld. His Lordship stated at p 109:

"Mr. Nadarajah, for the assessee, raises a fresh point on the meaning of section 65.....Incidentally, there was no reference to us on this point by the Board of Review, since that point was not out to the Board when they were called upon to adjudicate in appeal, ***but we are not, of course, 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".***

[55] A similar view was taken by Janak de Silva, J. in *CGIR v S.S.I. Perera* CA/Tax/03/2017, referring to the interpretation made by Basnayajake, C.J. in *R.M. Fernando v Commissioner of Income Tax (supra) at p. 5 as follows:*

"The next question is whether this Court is bound to answer only the questions of law referred in the case stated by the TAC. Section 11A(6) of the TAC Act reads: "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." (emphasis added). The words £hear and determine any question of law arising on the stated case" appeared in section 74(5) of the Income Tax Ordinance, No. 2 of 1932 and was interpreted by Basnayake CJ, in R.M.Fernando v Commissioner of Income Tax (Supra, at 577) to mean that it 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. Previously in M.P. Silva v Commissioner of Income Tax (Reports of Ceylon Tax Cases, Vol. 1, page 336 at 338) Canekeratne J., having considered section 74(5) of the Income Tax Ordinance, No. 2 of 1932 held that "all questions that could be raised on the whole case was intended to be left open". The learned Judge chose to follow the dicta in Ushers Wilshire Brewery v Bruce [(1915) A.C.. 433 at 465,466]. In Commissioner of Income Tax v. Saverinmuttu Retty {Reports of Ceylon Tax Cases, Vol. 1. Page 103 at 109) Abrahams CJ did make a similar statement by stating "incidentally there was no reference*

to us on the 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 course 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".

[56] In my view any finding of fact (and law) determined by the TAC constitutes a case stated and any question of law can arise on such case stated and, therefore, the Court of Appeal is entitled to "hear and determine the question or questions of law arising on such a case transmitted under this Act. On the other hand, the Court of Appeal can hear any question of law that is not set set out in the case stated, if the determination of such point will either confirm or annul the actual decision of the TAC, irrespective whether or not the whether reasons to arrive at such question were considered by the TAC, provided that it was a matter for consideration before the TAC.

[57] Accordingly, it is absolutely clear that the jurisdiction of the Court of Appeal is not limited only to a question of law that relates to the substantive matters determined by the TAC, but the jurisdiction extends to any question of law that arise on the case stated in respect of which the appellant has chosen to invoke the appellate jurisdiction of this Court of Appeal in terms of section 11A(1) of the TAC Act.

[58] In the light of the express statutory provisions in section 11A(1), that grants a right of appeal by way of case stated and in section 11A(6) that grants power to the Court of Appeal to hear and determine any question of law, the argument of the Respondent that, unless the questions of law relate to substantive matters of the assessment, the Court of Appeal is denuded of jurisdiction is fallacious, and is liable to be rejected.

Janashakthi Insurance v Commissioner General of Inland Revenue

[59] The Respondent referred to the decision of the Supreme Court *in Janashakthi Insurance v. Commissioner General of Inland Revenue,* SC Appeal No. 114/2019 decided on 26.06.2020, and argued that the said judgment supported the decision in Koggala Garments case. The Respondent relies on the following passage of the said judgment at p. 13 wherein the Supreme Court stated:

"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"

[60] It is to be noted that the Supreme Court determined in The SC Appeal No. 114/2019 relates to the Court of Appeal case of the *Commissioner-General of Inland Revenue v. Janashkthi Insurance Co. Ltd* No. CA Tax No. 10/ 2013 decided on 08.06.2018, which related to the two preliminary objections raised before the TAC. The first preliminary objection was that the notice of assessment has not been signed or does not bear the name and the designation of the person making the assessment. The second preliminary objection related to the time bar of the assessment.. The TAC upheld the first preliminary objection and overruled the second preliminary objection. There were seven questions of law before the Court of Appeal, and the Court of Appeal did not answer the questions of law Nos. 1, 2, 4 and 5 on the ground that the opinion on such questions depends on the facts of each case. The Court of Appeal answered only the questions of law Nos. 3, 6, 7, The Court of Appeal accordingly, remitted the case back to the TAC. The questions of law before the Supreme Court were:

A. Did the Court of Appeal err in law by failing to answer the case stated?

B. Did the Court of Appeal err in law by applying the provisions of the Electronic Transactions Act, No. 19 of 2006?

C. Did the Court of Appeal err in law by not deciding the case and sending it to the Tax Appeals Commission with its opinion?

D. If one or more questions of law are answered in affirmative, should this appeal be sent back to the Court of Appeal to answer the questions referred to in the said case?

[61] The Supreme Court answered the 1st, 2nd and the 4th questions of law in the affirmative, but did not answer the 3rd question of law as it did not arise. On that basis, the judgment of the Court of Appeal was set aside and the Court of Appeal was directed to answer all the questions that have been raised in the case stated, if answering the said question may result in the confirmation, reduction, increasing or annulling the assessment determined by the Commission. The Supreme Court, referring to the ***Commissioner of Income Tax v. Saverimuttu Reddy*** (supra), which held that the Court is not precluded from considering any point upon which the actual decision of the Board might be

upheld, (see- p. 10), held that the Court of Appeal has failed to answer all the questions of law raised in the case stated, and directed the Court of Appeal to answer all the questions of law, if answering the said question may result in the confirmation, reduction, increasing or annulling the assessment determined by the Commission.

[62] The Respondent solely relies on the above passage of the SC judgment referring to the passage "the Court of Appeal must answer all the questions of law, if answering the said questions may result in confirmation, reduction, increasing or annulling the assessment determined by the commission.". The Respondent, however, disregards the **Supreme Court's own reliance on the judgment in** ***Commissioner of Income Tax v. Saverimuttu Reddy*** (supra), which held **that the Court is not precluded from considering any point upon which the actual decision of the Board might be upheld**. It is a clear statement by the judges in *Commissioner of Income Tax v. Saverimuttu Reddy* (supra) that the Court of Appeal has jurisdiction to hear and determine any question of law, not even raised before the TAC, upon which the actual decision of the TAC might be either upheld, no matter what might have been their reasons for arriving aat that decision.

[63] It is crystal clear that the Supreme Court having relied on the decision in *Commissioner of Income Tax v. Saverimuttu Reddy* (supra) accepted the position that the powers of the Court of Appeal are not precluded from considering any point upon which the actual decision of the TAC might be upheld, no matter what might have been the reasons for arriving at that decision. In fact, the following questions of law raised before the Court of Appeal, in particular, clearly arise on the case stated (see- pp. 5-7) :

1. Whether the Tax Appeals Commission has the 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 the computer, without signature of the issuing officer, is an error covered by 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 Appeal at the Appeals Commission.

5. Whether 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 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 a discretionary power or ministerial act.

7. Whether the name of the Commissioner General, Deputy Commissioner or Assessor duly printed or signed on the assessment

[64] The Court of Appeal refused to answer the said questions (Nos. 1, 2, 4 & 5) but the Supreme Court directed the Court of Appeal to answer all the said questions, if answering the said questions may result in confirmation, reduction, increasing or annulling the assessment determined by the Commission.

[65] It is clear that the Supreme Court only considered the first part of section 11A(6) of the TAC Act but it did not consider either the second part of section 11A(6) or section11A(1), which grants the Appellant the right of appeal to invoke the appellate jurisdiction of the Court of Appeal. The reason is obvious. There was no issue raised with regard to the jurisdiction of the Court of Appeal to decide any question of law raised in the case stated, or the powers of the Court of Appeal to remit the case back to the TAC. The real issue here is whether the Court of Appeal has jurisdiction to hear and determine the questions of law that arise on the case stated under section 11A(1) and if not, whether it is section 11A(6) which governs the jurisdiction. The Supreme Court case never determined the jurisdiction of the Court of Appeal under section 11A(1) or the powers of the Court of Appeal under section 11A(6). No determination was made by the Supreme Court on the jurisdiction of the Court of Appeal to hear and determine a question of law when the TAC fails to decide the substantive matters of the assessment.

[66] On the other hand, the Supreme Court answered the 1st, question of law and held that the Court of Appeal erred in law by failing to answer the questions that arise on the case stated (questions of law Nos. 1, 2, 4 and 5). It answered

the 3rd question and held that the Court of Appeal erred in not deciding the those questions and sending the case back to the TAC with its opinion. The questions of law Nos. 1, 2, 3, 4, 6, and 7 in the Court of Appeal case, similar to the present case, clearly arise on the case stated, and the Supreme Court held that the Court of Appeal erred in not answering the questions of law which arise on the case stated. Thus, the Respondent's argument in the present case, that the Court of Appeal has no jurisdiction to decide the matters arise in the present case clearly contradicts the position of the Respondent in the present case, that Court of Appeal has no jurisdiction to hear and determine the questions of law since the questions of law do not relate to the substantive matters of the assessment determined by the TAC. In my view, the decision of the Supreme Court which clearly accepts the position in *Commissioner of Income Tax v. Saverimuttu Reddy* (supra) that the powers of the Court of Appeal are not precluded from considering any point upon which the actual decision of the TAC might be upheld, does not support the Respondent's own preliminary objection.

Distinct Powers of the Court of Appeal under section 11A(6)

[67] Significantly, section 11A(6) has two limbs, and the word "or" in the third line separates the first limb from the second limb of section 11A(6). In the exercise of the appellate jurisdiction of the Court of Appeal under section 11A(1), it has wide powers to act either under the first limb or the second limb of section 11A(6). After hearing and determining any question of law arising on the case stated, the Court of Appeal may, do one of the following things:

1. confirm, reduce, increase or annul the assessment determined by the Commission in respect of which the case was stated (first limb), or

2. remit the case case to the TAC for a decision only in accordance with the opinion on the question of law (second limb).

[68] The first limb may generally apply where the question of law on the stated case relates to the substantive matters of the assessment determined by the TAC, and the Court decides to confirm, reduce, increase or annul the assessment determined by the TAC. If the Court of Appeal decides to confirm or annul the assessment determined by the TAC, the case ends there subject to any appeal to the Supreme Court. The second limb is the alternative option to the first limb and if the Court decides to remit the case to the TAC, with its opinion in two different situations, it may send the case back to the TAC and

the TAC is required to revise the assessment in accordance with the opinion of the Court.

Opinion of the Court of Appeal under two different situations

[69] The case be sent back to the TAC with the opinion of the Court of Appeal under two different situations:

1. If the Court of Appeal is of the opinion that the amount of the assessment determined by the TAC must be either increased or reduced, the second limb may apply, and the case may be sent back to the TAC. The is required to revise the assessment made by the assessor in accordance with such opinion;

2. If the Court of Appeal is of the opinion that the annulment of the assessment made by the TAC on questions other than substantive matters of the assessment is erroneous, the case may be sent back to the TAC with its opinion. The TAC is required to revise the annulment of assessment in accordance with such opinion, and consider the substantive matters of the assessment.

[70] Either way, the assessment made by the assessor or the annulment of the assessment made by the TAC will be revised to give effect to the intention of the legislature.

[71] It was contended on behalf of the Respondent, that the question of revision does not arise where the TAC has already annulled the assessment made by the assessor, and thus, there is nothing that the TAC or the Court of Appeal can do, in remitting the case back to the TAC. Mr. Goonewardena cited the decision in *Bradshaw v. Blunden (Inspector of Taxes) (No. 2)* (1960) 39 Tax Cas. 73, which, he said, sets out the conditions to be satisfied for a case to be remitted to the TAC. He referred to the following passage from the judgment at p. 80:

> *"It is well-established and salutary rule that the parties to an appeal to the Court should not, in the absence of special circumstances, be enabled to go back to the Commissioners and call fresh evidence on issues which were raised in the original proceedings and as to which they had full opportunity of calling such evidence as they might be advised".*

[72] The second case cited by Mr. Goonewardena was *Moriaty (Inspector of Taxes) v Evans Medical Suppliers Ltd (*1957) 3 All ER 718 which stated:

"The court has, of course, power to remit a case to the commissioners for further findings when such are necessary to determine the point of law which is raised in the case…But I do not know of any power to remit it for a finding on new point which has not been raised before. The general rule of every appellate court is not to allow a new point to be raised except on a question of law which no evidence could alter".

[73] He further referrerd to the decision in *Yull v. Wilson (Inspector of Taxes* (1908) 3 All ER 7, which called for a "cautious approach" in exercising the power of remittal. His submission was that since no question of law has been raised on the substantive issues, the case cannot be remitted to the TAC as it does not provide a rehearing. His second submission was that since the Court of Appeal has not inquired into the substantive matters of the assessment, no judgment on the merits of the assessments can be made, and therefore, the jurisdiction of this Court is limited to the confirmation, reduction, increasing, or annulment of the assessment.

[74] The issue in *Bradshaw v. Blunden (Inspector of Taxes) (No. 2)* was whether a party who had full opportunity of calling for evidence before the Commissioners, but failed to do so, should be allowed go back to the Commissioner and call for fresh evidence. The Court held that in the absence of any special circumstances, it cannot be allowed. Here, the TAC has not so far considered the substantive matters of the assessment and no application has been made here, to decide a fresh point which was not raised before the TAC. The second issue here is whether the TAC erred in law in annulling the assessment on wrong reasons, and if so, whether the Court can remit the case back to the TAC with its opinion under the second part of the section 11A(6) of the TAC Act. It may be different where the TAC considered all substantive matters of the assessment, and any party before the Court of Appeal sought a direction remitting the case back to the TAC for the purpose of calling for fresh evidence on matters that such party had opportunity to raise. In my view the cases cited by Mr. cannot apply here.

[75] Mr. Gonnewardena cited the case in *Vestey's Executors v. Inland Revenue Comrs* (1949) 1 All ER 1108 submitted that after the lapse of time, it is not justified in remitting the case to the TAC. He was referring to section 10 of the TAC Act, which required the TAC hear all appeals and make its determination within two hundred and seventy days from the date of the commencement of its sittings for the hearing of such appeal. His submission was that the time

period given to the TAC to hear and determine the appeal has lapsed, the case cannot be remitted to the TAC. In my view, this submission has no substance. The period specified in section 10 applies to the hearing of appeals received by the TAC from the determination of the Commissioner General of Inland Revenue. The powers of the Court of Appeal to remit a case to the TAC under the second part of section 11A(6) are not curtailed by section 10 of the TAC Act.

[76] The Respondent is inviting us to abdicate our statutory powers conferred on us under the second part of section 11A(6) every time the TAC wrongly annulled an assessment without going into the substantive matters of the assessment. I do not think that the legislature in enacting the TAC Act intended to restrict the statutory powers conferred on us by section 11A(6) of the TAC Act where the TAC erroneously annulled the assessment without going into the merits of the assessment.

[77] Article 138(1) of the Constitution refers to the "jurisdiction of the Court of Appeal! In the marginal note and provides that the Court of Appeal shall have and exercise **subject to the provisions of the Constitution or of any law**, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any Court of First Instance, tribunal or other institution.

[78] The powers of the Court of Appeal in appeal are set out in Article 139 of the Constitution and the Court of Appeal may exercise its jurisdiction **according to law.** Article 139(1) reads as follows:

> *"139. (1) The Court of Appeal may in the exercise of its jurisdiction, affirm, reverse, correct or modify any order, judgment, decree or sentence* ***according to law or it may give directions to such Court of First Instance, tribunal or other institution or order a new trial or further hearing upon such terms as the Court of Appeal shall think fit".***

[79] The jurisdiction of the Court of Appeal is subject to the provisions of the Constitution or any law, which means that it is subject to any specific law in order for the Court of Appeal to exercise its jurisdiction over any such matter specified in Article 138(1). The specific legislation in the present case obviously is the TAC Act, which confers the appellate jurisdiction on the Court of Appeal in respect of any appeal by way of case stated under section 11A(1). In terms of section 11A(6), the Court of Appeal has powers to hear and determine any question of law arising on the stated case. In addition to constitutional provisions, the TAC Act clearly provides that the Court of Appeal is entitled to

send the case back to the TAC with its opinion, and the TAC shall act according to such opinion and revive the assessment (see-the second part of section 11A(6) and paragraph 71 of this judgment.

[80] In *Commissioner General of Inland Revenue v. Janashakthi General Insurance Company Limited* CA Tax 14/2013, Janak de Silva took the similar view and held:

> *"Thirdly, even if it is assumed that the decision of this Court has to be connected to an assessment, the reversal of an annulment done by the TAC as in this case directly connected to the assessment. If this Court so decides, and remains its opinion to the TAC, the TAC will have to reverse the annulment of the assessment it made and thereafter decide the substantive issue. Such a course of action is covered by the words "reverse the assessment" in section 11A(6) of the TAC Act. There is no basis to say that the phrase "reverse the assessment" is limited to arithmetic revisions".*

[81] The dictionary meaning of the word "revise" has many meanings: (1) (v) examine and alter; reconsider and change (an opinion), reread previous work in order to prepare for an examination; and (2) adapt, alter, change, correct, edit, amend, improve, modify, overhall, reconsider, rectify, redo, rephrase, revamp, rework, rewrite, update (Compact Oxford Dictionary Thesaurus, Indian Ed. 2001, p. 770). Accordingly, the word "revise" is broad enough to cover the words "revise the assessment" specified in section 11A(6) of the TAC Act where the Court is of the opinion that the annulment of assessment is erroneous and thus, the TAC is required to revise its annulment of assessment and decide the substantive matters.

[82] The decision of *The Commissioner General of Inland Revenue* v. *Koggala Garments (Pvt) Ltd.* (supra) is based entirely on the analysis of section 11A(6) (identical section 112(6) of the Inland Revenue Act, No. 28 of 1979). It that case, the Court of Appeal has not been invited to consider the scope of section 112(1) (identical to section11A(1) or the second limb of section 112(6) (identical to s. 11A(6) of the TAC Act. It has further not been invited to consider the question whether or not the Court of Appeal has powers to remit the case back to the TAC, with its opinion in situations, where the Board of Review erred in making the annulment of the assessment. On that ground as well, the decision of The *The Commissioner General of Inland Revenue* v. *Koggala Garments (Pvt) Ltd.* (supra) can be distinguished from the present case.

[83] The Respondent relied on the decision of the Supreme Court in refusing to grant special leave (SC Spl LA Application No. 114/2017, decided on 04.05.2018 against the decision of The *Commissioner General of Inland Revenue* v. *Koggala Garments (Pvt) Ltd.* (supra). The Respondent argued that the refusal to grant leave to appeal amounts to an affirmation of the judgment of the Court of Appeal by the Supreme Court. On that basis, the Respondent argued that this Court is bound to follow the decision of the Court of Appeal in *The Commissioner General of Inland Revenue* v. *Koggala Garments (Pvt) Ltd.* (supra).

[84] The Appellant relies on the decision in *W. R. Kulatunga Bandara, Assistant Commissioner of Labour v. W. Balasuriya, Sports of Kings* CA (PHC) APN 97/2010, Court of Appeal Minutes Dated 17.07.2013, wherein Salam J., (with Rajapakse J., agreeing) held that it is a misconception to come to the conclusion that the refusal of leave by the Supreme Court constitutes the affirmation of the judgment of the lower Court and that it cannot be considered as creating a precedent. However, this Court need not go into that matter in the present case, as the decision of the Court of Appeal in *The Commissioner General of Inland Revenue* v. *Koggala Garments (Pvt) Ltd.* (supra), can be clearly distinguished from the present case, for non-consideration of the crucial jurisdictional provision (section 11A(1) and powers of the Court of Appeal as specified in the second limb of section 11A(6) of the TAC Act.

[85] On the other, hand, that decision of *The Commissioner General of Inland Revenue* v. *Koggala Garments (Pvt) Ltd.* (supra), can also be distinguished from the nature of the questions of law submitted to the Court of Appeal by the Board of Review. The facts of the Koggala Garments case reveal that the majority of the questions of law before the Court of Appeal related to the-

> *"character or grounds on which judicial review is sought. For instance (h) is virtually a complaint that the Board acted ultra virus. The question (g) complains of illegality in that the question connotes the import that Board committed an illegality by interpreting the relevant law, thus harking back that the Board cannot even consider the question of time bar and rule on its jurisdiction (p. 7).*

[86] In the present case, all the questions in the case stated arise on the facts and the law decided by the TAC, and related to the annulment of the assessment made by the TAC. Accordingly, the Appellant has lawfully invoked

the jurisdiction of the Court of Appeal under section 11A(1) of the TAC Act. On that ground as well, the decision of the Koggala Garments Ltd can be distinguished from this case. The determination of the Supreme Court in granting leave is based on the matters that are involved in that particular case, and when that case can be distinguishable from this case, I am of the view that refusal to grant leave to appeal by the Supreme Court does not set out a binding precedent of this Court on the issue in the present case.

[87] On the other hand, there is another judicial decision on the question whether the Court of Appeal is denuded of jurisdiction when the TAC did not make a determination relating to the substantive matters of the assessment, but invalidated the notice of the assessment on technical grounds such as this case, without considering the substantive matters. In the Court of Appeal case of *The Commissioner General of Inland Revenue v. First Media Solutions (Pvt)* decided on 05.12.2019, the Respondent argued that the jurisdiction of the Court of Appeal is limited to the questions that pertain to the assessment determined by the commission, since the commission did not make any determination relating to the assessment, but invalidated the notices of assessment on a technical ground. Samayawardena J. Interpreted section 11A(6) and rejected the argument of the Respondent. His Lordship held at p. 11:

> *"It will be a travesty of justice if this Court is to hold that if the Commissioner's assessment is reduced by the Tax Appeals Commission, the Commissioner can appeal to the Court of Appeal, but if the Commissioner's assessment is quashed by the Tax Appeals Commission, the Commissioner cannot appeal against such order. I reject that argument unhesitatingly".*

[88] His Lordship further stated at p. 12:

> *"In terms of section 11A(6) of the tax Appeals Commission Act, the Court of Appeal can determine any question of law arising on the stated case and can remit the case to the Commission with the opinion of the Court thereon.*
>
> *For those reasons, I hold that, in the facts and circumstances of this case, the Tax Appeals Commission erred in law when it decided to allow the appeal of the respondent taxpayer, on the ground that the notice of assessment is invalid as it bears neither the name nor the signature of the Assessor, as mandated by section 60(1) of the Valie Added tax Act. In view of the said conclusion, there is no necessity to address the other questions of law in the case stated. I direct the tax Appeals Commission to accept the notice of assessment and decide the appeal on merits".*

[89] That case was appealed to the Supreme Court, and the Supreme Court in SC (Spl) L.A. No. 15/20, decided on 15.03.2023 refused to grant leave to appeal (Vide SC Minutes dated 15.93.2023).

[90] Recently, D. N. Samarakoon J., (Sasi Mahendran J., agreeing) held in *Cargills Agrifoods Limited v. Commissioner General of Inland Revenue* CA Tax 41/2014, decided on 28.02.2023, that there can be a case stated on a question of law other than the determination of the TAC on the assessment. The same position was taken by the Court of Appeal in *Commissioner General of Inland Revenue v. M/S Lanka Marine Services* CA Tax 30/2014, Court of Appeal Minutes dated 31.03.2023.

Remedy of Judicial Review

[91] The Respondent heavily argued that the proper remedy for the Appellant was to change the decision of the TAC by way of a writ, and not the case stated. The Respondent relied on the observations made by His Lordship Samarakoon C.J., in *D.M.S. Fernando v. Mohideen Ismail,* (1982) 1 SLR 222 and argued that the appropriate remedy should be to challenge the TAC decision by way of writ. The Respondent relies on the following statement made by His Lordship at p. 234:

> "*There was another matter that was raised incidentally. It was contended by the Deputy Solicitor-General that the Respondent was not entitled to maintain this application for Writ because an alternative remedy by way of appeal was available to him under the Inland Revenue Act. Those provisions confine him to an appeal against the quantum of assessment. The Commissioner has not been given power to order the Assessor to communicate reasons. He may, or may not, do so as an administrative act. The Assessor may, or may not, obey. The Assessee is powerless to enforce the execution of such administrative acts. The present objection goes to the very root of the matter and is independent of the quantum. It concerns the very exercise of power and is a fit matter for Writ jurisdiction. An application for Writ of Certiorari is the proper remedy.'*

[92] It is to be noted that that was a case where the taxpayer applied to the Court of Appeal by way of a writ to quash the assessment on the ground that the assessor did not give written reasons for rejecting the return. The Court of Appeal granted the writ of certiorari quashing the notice of assessment and the CGIR appealed to the Supreme Court. In that case, the taxpayer exercised his right of appeal to the CGIR and raised the time bar objection and thereafter the taxpayer appealed to the TAC. Thereafter, the CGIR appealed to the Court of

Appeal therefrom. The principal issue, in that case, was the duty of the assessor to give reasons in terms of the mandatory provisions of the Inland revenue Act. The Supreme Court has only considered the duty on the part of the assessor to communicate the reasons to the taxpayer and it did not consider (i) the jurisdiction of the Court of Appeal to hear and determine any question of law that was decided by the Board; and (ii) the validity of any annulment of the assessment without considering the substantive matters. Hence, the Supreme Court stated that "*An application for Writ of Certiorari is the proper remedy",* but it did not say that it is the only remedy. Hence, it is not binding on us in the present case.

[93] It is not in dispute that the TAC has got authority to rule on its own jurisdiction, including ruling on any objection with respect to the existence or validity of the assessment, in addition to substantive matters of the assessment. If a jurisdictional question or the extent thereof is disputed before a tribunal, the tribunal must necessarily decide it unless the statute provides otherwise. (See Judicial Review of Administrative Law by H.W.R. Wade & C.F. Forsyth, page No. 260). In *Union of India and Anr. v. Paras Laminates (P) Ltd.* [1990]186ITR722 (SC), it was held as follows:

> *"The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes (11th edn.) "Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution".*

[94] Only when a question of law or mixed question of facts and law is decided by the TAC, the Court of Appeal can exercise its power, either of appeal by way of case stated, or in an appropriate case, by way of judicial review. The TAC, having regard to the scheme of the TAC Act, has jurisdiction to rule on the facts and law, including whether reasons were given and communicated to the assessee or whether the assessment is time barred or not, unless the TAC Act provides otherwise.

[95] In the present, the TAC determined the preliminary objections and annulled the assessment in favour of the Respondent on erroneous grounds, without giving due consideration to the substantive matters of the assessment. In my view, in the present case, the TAC should have heard and determined all the questions raised before the TAC, including the substantive matters of the assessment, without confining itself to the preliminary matters raised by the Respondent.

[96] It is relevant to note that a party has no absolute right in a judicial remedy where an inferior tribunal exceeds its jurisdiction, and where the absence or excess of jurisdiction is not apparent on the face of the proceedings. It is only discretionary, and depends on various other circumstances, such as laches, or misconduct, misrepresentation or non-disclosure of facts and acquiescence etc. The grant of a writ is always discretionary and is never demandable of right like in a case stated in terms of section 11A(1).

[97] For purposes of this case it is enough to state that the remedy provided for in 141 of the Constitution is a discretionary remedy and the Court of Appeal has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. Of course, in appropriate cases, the prerogative writ under the Constitution may also exist, as an alternative remedy which the aggrieved party may, in his discretion resort to, in addition to the case stated under the TAC Act. H.W.R. Wade & C.F. Forsyth on Administrative Law, 9th Ed. At p. 949-950 dealing with the distinction between an appeal and review stated:

> *"Appeal and review are in principle two distinct proceedings, the appeal being concerned with merits and review being concerned with legality. But in practice an appellate will often wish to raise questions which strictly are questions of legality, such as violation of natural justice or some objection to the tribunal's jurisdiction. It is important that this should be freely allowed, since otherwise many cases could not be fully disposed of on appeal"*

.

[98] It is for the Legislature to determine what categories it would embrace within the scope of the legislation and use the word which reflects its intention, and though the canons of statutory interpretation vary on what factors should be considered, all approaches start with the language used by the legislature and structure of the statute itself. So that the Court would follow the principle

that a statute be read as a harmonious whole whenever reasonable, to reflect the legislative intent with separate parts being interpreted within their broader statutory context.

No express provision in the TAC Act ousting the jurisdiction of the Court of Appeal

[99] I am not inclined to take the view that the mere annulment of the assessment without going into the substantive matters is sufficient to oust the jurisdiction of the Court of Appeal in the exercise of its jurisdiction under section 11A(1) and its powers under section 11A(6) of the TAC Act, unless an express provision is provided in the Act itself ousting the jurisdiction of the Court of Appeal.

[100] The unsatisfactory nature of this preliminary objection in practical terms is that when the TAC decides any question of law that does not relate to the substantive matters of the assessment against the taxpayer, the taxpayer can come by way of case stated. However, when the same question of law is decided by the TAC against the Revenue without going into the substantive matters, it is said that the Revenue must resort to the remedy by way of judicial review. Where a party appears before Court and complains that the TAC has wrongly annulled the assessment, and the Court of Appeal takes the view that the TAC was manifestly wrong, this Court would not helplessly watch and allow that wrong to remain intact, disregarding its statutory powers conferred on it by the TAC Act.

[101] In *Pooja Pal vs. Union of India (UOI*) and Others, decided on 22.01.2016, the Supreme Court of India stated at paragraph 94:

> *"A court of law, to reiterate has to be an involved participant in the quest for truth and justice and is not expected only to officiate a formal ritual in a proceeding farseeing an inevitable end signaling travesty of justice and mission justice so expectantly and reverently entrusted to the judiciary would then be reduced to a teasing illusion and a sovereign and premier constitutional institution would be rendered a suspect for its existence in public estimation. Considering the live purpose for which judiciary exists, this would indeed be a price which it cannot afford to bear under any circumstance".*

[102] It is a clear miscarriage of justice if the Court of Appeal is to abdicate its statutory powers conferred on it under the provisions of the TAC Act and simply pronounce that it cannot decide the correctness of the annulment of the assessment made by the TAC on the mere ground that the TAC did not go into the merits of the tax issue. I venture to think that the true measure and scope of the exercise of this jurisdiction of the Court of Appeal is laid down in section 11A(1) of the TAC Act, which does not expressly oust the jurisdiction of the Court of Appeal to decide any question of law arising on the case stated, irrespective whether the substantive matters were not considered by the TAC. In my view, the power of the Court of Appeal, either to act under the first part or the second part of section 11A (6) in a case stated, is in no case taken away by the existence of any alternative remedy.

[103] Where an appeal can properly be pursued by way of case stated, like in this case, in my view, then, that is the route which should be followed. To hold that the judicial review is the only remedy where the annulment of the assessment is made without going into the substantive matters of the assessment would restrict the right of appeal of an appellant to invoke the appellate jurisdiction of the Court of Appeal under section 11A(1) of the Tac Act. On the other hand, to restrict the right of appeal for purely technical reasons would make unnecessary difficulties for appellants wishing to appeal both on the merits and on the question of jurisdiction, resulting in multiple litigations, in different divisions of the Court of Appeal. If this happens, the appeal by way of case stated provided by the TAC Act under section 11A(1) would be futile and unworkable.

[104] For those reasons, I am inclined to follow the decisions of this Court in *Commissioner General of Inland Revenue v. Janashakthi General Insurance Co. Ltd (C.A. (Tax) 14/2013), Commissioner General of Inland Revenue v. First Media Solutions (Pvt) Ltd, Cargills Agrifoods Limited v. Commissioner General of Inland Revenue, Commissioner General of Inland Revenue v. M/S Lanka Marine Services, Commissioner of Income Tax v. Saverimuttu Reddy* (supra), *R.M. Fernando v. Commissioner of Income Tax* (supra). With greatest respect, I am not inclined to follow the decision of *The Commissioner General of Inland Revenue* v. *Koggala Garments (Pvt) Ltd* (supra) in the present case.

Conclusion

[105] For those reasons, I am of the view that the Court of Appeal has jurisdiction to hear and determine the amended questions of law in the case stated, and decide the correctness of the annulment of the assessment made by the TAC, even if they do not relate to substantive matters of the assessment.

[106] This matter is fixed for argument for the purpose of determining the amended questions of law, and the correctness of the annulment of assessment made by the TAC by its determination dated 12.06.2018.

[107] The preliminary objection raised on behalf of the Respondent is overruled.

JUDGE OF THE COURT OF APPEAL

M. Sampath K.B. Wijeratne, J.

I agree.

JUDGE OF THE COURT OF APPEAL