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

In the matter of a case stated for the opinion of the Court of Appeal under section 11A of the Tax Appeals Commission Act No. 23 of 2011 as last amended by Act No. 20 of 2013. Tax Appeals Commission Appeal

C. A. Tax 06/2014

TAC/OLD/IT/004

THE COMMISSIONER GENERAL OF INLAND REVENUE, 14th Floor, Secretarial Branch, Department of Inland Revenue, Sir Chitthampalam A. Gardiner Mawatha, Colombo 02. **APPELLANT**

Vs.

M/S Lanka Marine Services., No. 4, Leyden Bastian Road, Colombo 1 **RESPONDENT**

Before: Hon. D.N. Samarakoon, J.

Hon. Sasi Mahendran J.

Counsel: Mr. Nirmalan Wigneswaran, Deputy Solicitor General, for the Appellant.

Dr. Sivaji Felix, with Niwantha Satharasinghe, for the Respondent.

Argued on: On 05.04.2022.

Written submission tendered on: 02.11.2018. and 18.12.2019 by the Appellant.

19.10.2018, 28.11.2019 and 31.05.2022 by the Respondent.

Decided on: 31st March 2023

(1) Introduction:-

When this matter was called before the then President, Court of Appeal His Lordship, Arjuna Obeysekera J., on 09.02.2021, it was sent to this Court to take up for argument and conclude.

However, when the case was mentioned before this Court on 24.02.2021, on the application of both parties it was fixed for inquiry, not for argument.

The inquiry in respect of which it was so fixed, is in respect of a preliminary objection to jurisdiction on the basis of the judgment **Commissioner General of Inland Revenue vs. Koggala Garments Limited, C. A. Tax 1/2008** decided in 2017.

On 05.04.2022 learned counsel have made oral submissions in respect of the said preliminary objection. Written submissions have been filed by 24.05.2022.

Hence this order refers only to the preliminary jurisdictional objection. The "Case Stated" on merit have not been argued.

(2) Preliminary jurisdictional objection:-

In the **Commissioner General of Inland Revenue vs. Koggala Garments (Pvt) Limited, C. A. Tax 1/2008**, Nawaz J., explains the applicable law, at page 8 – 9 of his judgment in the following terms:-

> "The argument is that the Board of Review could not have considered the jurisdictional objection…
>
> I hasten to point out that the law is to the contrary. H. W. R. Wade and C. F. Forsyth in their well known tome, Administrative Law [Oxford:- Oxford University Press, 11th Edition 2014] explain that a statutory tribunal is

lawfully entitled to examine a jurisdictional issue that has been raised before it. They state at page 210, as follows,

"Where a jurisdictional question is disputed before a tribunal, the tribunal must necessarily decide it. If it refuses to do so, it is wrongfully declining jurisdiction and the court will order it to act properly. Otherwise the tribunal or other authority would be able to weild an absolute despotic power, which the legislature never intended that it should exercise. It follows that the question is within the tribunal's own jurisdiction, but with this difference, that the tribunal's decision about it cannot be conclusive".

Wade and Forsyth clearly support the proposition that a tribunal is fully entitled to decide a jurisdictional question that has been raised before it. However, if the tribunal has got its answer to the jurisdictional question wrong, it is open to the aggrieved party to canvass the wrong answer on jurisdiction by way of judicial review".

It may be noted, that, Wade does not say that judicial review is the only way of canvassing the order. This question will be examined in due course.

The judgment of the Court of Appeal was affirmed by the Supreme Court on 04th May 2018 in **Commissioner General of Inland Revenue vs. Koggala Garments (Private) Limited, C. A. Application S. C. Spl L. A. 114/2017**, when the Supreme Court refused the petitioner, Commissioner General of Inland Revenue, Special Leave to Appeal against the judgment of the Court of Appeal.

In Commissioner General of Inland Revenue vs. Koggala Garments (Private) Limited., C. A. Tax 01/2008, decided by the Court of Appeal on 05th April 2017, another division of this Court held 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". (per Nawaz J., with Malalgoda P/CA agreeing, at page 10 of the judgment)".

The question arises, that, if the Court of Appeal being a superior court of record has no jurisdiction to hear and determine the preliminary objection, in respect of its jurisdiction, how could the TAC being an inferior tribunal could have heard and determined the same. The tribunal of the Tax Appeals Commission doing this was supported by citing Wade in paragraph 13 above that it is a must and if the tribunal refuses to do so the court will order to act properly. Will not the same logic apply to the Court of Appeal, when the Court of Appeal is confronted with the same preliminary objection? If not, it will be an anomaly of law, to say the least.

Assuming that the appellant, Commissioner General of Inland Revenue succeeds in his appeal by having the questions of law answered in his favour, this would not result in the amount of tax assessed being confirmed since the substantive issues raised in the taxpayer's appeal have not been considered by the Tax Appeals Commission.

It is the respondent's position that the questions of law raised by the appellant have no logical nexus or connection with the assessment. It is further submitted that even if both the questions of law are answered in favour of the appellant, it would have absolutely no bearing on the assessment.

Article 138 of the Constitution provides as follows:-

> "138(1) The Court of Appeal shall have and exercise subject to the provisions of the constitution or any other 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 and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things of which such Court of First Instance, tribunal or other institution may have taken cognizance:-

Provided that no judgment, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not 1prejudiced the substantial rights of the parties or occasioned a failure of justice.

(2)The Court of Appeal shall also have and exercise all such powers and jurisdiction, appellate and original, as Parliament may by law vest and ordain".

Then it is cited the case of Martin vs. Wijewardane, [1989] 2 SLR 409, decided under the Agrarian Services Act to say that Article 138(1) will not grant a right of appeal.

(3)Commissioner General of Inland Revenue vs. Koggala Garments Limited:-

At this stage, it is pertinent to examine as to what the Koggala Garments Limited case says.

It said, "The determination of the Board of Review does not deal with the assessments that were before the Board and it was fairly and squarely a decision on time bar".

..... "Koggala Garments (Private) Limited, the Appellant before the Board of Review raised the following objections in limine when its appeal was taken up.....

(li) The first proviso to Section 140(10) of the Inland Revenue Act, No 38 of2000 (as amended by Section 52 of Inland Revenue (Amendment) Act, No 37 of 2003), makes it imperative that the Board of Review arrives at its determination within two years from the commencement of the hearing of the appeal. Consequently, since this two year period has lapsed the appeal must be deemed to have been allowed and the Board of Review is functus officio as far as the appeal made by this Appellant is concerned".

…… ” The Board of Review upheld the second preliminary objection and allowed the taxpayer's appeal”.

…… “In fact the argument is to the effect that the Board cannot even consider the question of time bar and rule on its jurisdiction. If one looks at the question of law (h), it suggests that questions of law cannot be gone into at all by the Board of Review. The words in the question of law (h) " …... it cannot assume jurisdiction it does not possess to decide on questions of law .. " are also supplemented by the written submissions of the Appellant dated 20.02.2017 wherein it is stated in paragraph 21 that "it is respectfully submitted that the jurisdiction of the Board of Review is limited to confirming, reducing, increasing or annulling the assessment as determined by the Commissioner-General on appeal or else, to remit it to the Commissioner General for the revision of the assessment. It is therefore respectfully submitted that the 7 Board of Review does not have the power to entertain and/or deal with questions of law challenging the jurisdiction of the Board of Review itself on the basis of a time bar which the Appellant alleges denudes the jurisdiction of the Board."

Hence, in Koggala Garments Limited, itself, in 2017, the argument was raised, that even the Board of Review cannot consider the question of time bar.

(4) Jurisdiction of the Board of Review, Tax Appeals Commission and the Court of Appeal:-

The Board of Review, as it appears to this court, had the same limitations as the respondent now argues, that, this court has. Both the Board of Review and this court, under relevant sections could confirm, reduce, increase or annul the assessment or else remit the case to the Commissioner General of Inland Revenue for the revision of the assessment. Hence the argument of this court is that if the Board of Review [the tribunal] could have considered a question of time bar, notwithstanding the above section, this court too can hear the said

jurisdictional objection in a stated case under section 11(A) (6) of the Tax Appeals Commission Act, which is similar in import.

What is the jurisdiction of the Board of Review in an appeal that comes from the Commissioner General of Inland Revenue?

The Board of Review was established by section 98 of the Inland Revenue Act No. 4 of 1963.

Section 99 said,

"99. Any appellant, or the authorized representative of any appellant, who is dissatisfied with the determination of an appeal under section 97, may, by petition in writing addressed to the Board, appeal from that determination within one month from the date of the notice of the determination.".

Section 97 was appeals to the Commissioner. Hence from an appeal to the Commissioner of Inland Revenue, the taxpayer could appeal to the Board of Review.

What could the Board of Review do with such an appeal?

Section 101(9) said,

"(9) After hearing the appeal, the Board shall ***confirm, reduce, increase, or annul the assessment*** *as determined by the Commissioner on appeal, or as referred by him under section 100, as the case may be,* ***or may remit the case to the Commissioner with the opinion of the Board thereon.*** *Where a case is so remitted by the Board, the Commissioner shall revise the assessment as the opinion of the Board may require"*.

The Board of Review was replaced by the Tax Appeals Commission Act No. 23 of 2011. Section 7 provides for an appeal to the TAC from the determination of the Commissioner General of Inland Revenue.

What can the TAC do with such an appeal?

In section 9(10) of the TAC Act it is provided,

"After hearing the evidence, the Commission shall on appeal **confirm, reduce, increase or annul, as the case may be, the assessment** as determined by the Commissioner General **or may remit the case to the Commissioner General with the decision of the Commission on such appeal**. Where a case is so remitted by the Commission, the Commissioner General shall revise the assessment in order that it is in conformity with such amount as stated in the decision of the Commission".

This is the same thing the Court of Appeal is empowered to do when it hears a case stated on questions of law. Section 11(A) (6) of the Tax Appeals Commission Act says,

"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 the Court upon such question, **confirm, reduce, increase and 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".

So, on an appeal, the Board of Review, the Tax Appeals Commission and the Court of Appeal have been asked to do the same thing.

The respondent to support its contention that the Board of Review can, nay that it must, hear the jurisdictional question of time bar, the court in Koggala Garments Limited cited Wade, quoted under paragraph 13 of the said written submissions quoted above. The argument of this court is that if Wade in that paragraph is applicable to an inferior tribunal why not it apply, with the same, or even more force to this court? "What is good for the Goose is good for the Gander".

(5) The characteristics of a "Case Stated":-

This court is aware of the fact that what come from the Commissioner General to the Board of Review [or Tax Appeals Commission] is an appeal whereas what comes to this court is a case stated. But the side note of section 7 of Tax Appeals Commission Act says "Right to appeal to the Commission…"The side note in section 11(A) is "Appeals on a question of law to the Court of Appeal".

In deciding upon the question, what is a case stated, it is pertinent to refer to the following material, which includes decided cases from this country as well as other jurisdictions and professional articles.

First we shall consider a case from New Zealand. The case is **IN THE MATTER OF An appeal by way of case stated from the determination of the Social Security Appeal Authority at Wellington, DAVID OWEN CREQUER Appellant vs. THE CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT Respondent,** decided on 09th July 2015.

The High Court of New Zealand at Christchurch said, under the topic "**The case stated regime"**,

> "The law is always guided by context. It is therefore useful to contextualise the concept of cases stated. I think it valuable to first traverse the genesis of cases stated. In this respect, Gordon's article provides an invaluable starting point.10 In introducing the topic, Gordon provides the following resume of the procedure's history:11
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> Judges have been given to asserting that a stated case, i.e one stated by a magistrate or magistrates, is a purely statutory remedy. That statement seems to be seriously misleading. It is true that the type of stated case now invariably used is of statutory origin. But the assertion as usually made implies that stated cases were unknown to the common law, which is decidedly wrong. …

In the past, not only did justices state cases for several centuries at common law, but for a short time after statutory stated cases were created by the Summary Jurisdiction Act 1857, both statutory and common law cases were in use at the same time. The common law stated case was in no sense an appeal; it operated through the machinery of certiorari proceedings to quash. A case stated under the Act of 1857 began to take on the properties of an appeal, since the Act dispensed with the need for a certiorari to bring the case before the superior court.

As to these common law species of cases stated, Gordon divides them into two categories. Helpfully, the latter bears resemblance to the procedure currently before the Court:12

It should be mentioned that two types of cases were stated by justices at common law. Justices stated one type of case during the course of a hearing before them; they set out the facts that raised a legal problem, and that statement was sent before the Assize judges for solution. The judges' opinion was returned to the justices, who then completed their hearing and adjudicated in the light of that opinion.

The other type of stated case was stated after the justices had made their conviction or order. If a legal problem had arisen on which they had felt difficulty, they could state the facts and the problem in the form of an appendix to their conviction or order, and it was then brought up as part of the record by a certiorari. Then the Queen's Bench quashed or affirmed the adjudication brought up, according as they agreed or disagreed with the justices' legal rulings.

As to the purpose of such a mechanism, it is quite straight forward. It stems from a desire to ensure that the legal interpretation of inferior Courts and tribunals is correct. As Beck remarks:13

> Sometimes a point of law arises in proceedings not before the High Court where it would be wasteful to go through the whole process of appeal of review. Part 21 HCR makes provision for the court to be consulted on a point of law where this is authorised by a statute. The empowering statute governs the nature and purpose of cases that may be stated for the court's opinion; the rules determine the procedure to be adopted.
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> Informed by this history, I think today it is safe to say that the case stated procedure is simply a species of appeal that is narrow in compass. However, it has been said that:14
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> In theory, a case stated appeal is not an appeal in the ordinary sense of the word but a form of consultation by a tribunal with the Court in order to obtain an answer on a point of law.
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> Ordinarily the ability to state a case will be confined to questions of law. That is not a panoptic statement, of course; as with many facets of our law, there are exceptions. But, the general position is accurately captured in Conroy v Patterson, where Henry J stated:15
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> On an appeal by way of case stated on a point of law only the Court is concerned with the relevant facts as found and the grounds for determining the particular question of law, which question itself must be properly stated. The Supreme Court is not further or otherwise concerned with the evidence or the other findings which were made. In my respectful opinion, the position is correctly stated by Paull J. in McGee v George (1964) 108 S.J. 119, where the learned Judge says that the object of appeal by way of case stated is that the Court should look only at the case as stated and the facts as found.

Hence, although the New Zealand High Court said it is a "species of appeal that is narrow in compass", it asserted that it is a form of "consultation", not only at the end of the determination by the lower tribunal, but also "during the course

of a hearing before them". Since the Tax Appeals Commission has not, in the present case, decided on the assessment, but only on a preliminary point, it can be considered as "during the course of a hearing before them". The dicta of the New Zealand case therefore shows, that, there is no jurisprudential objection for a "Case Stated" to come to this Court on such a question of law.

Vijith K. Malalgoda J., [*with Justices Murdu N. B. Fernando and E. A. G. R. Amerasekera agreeing*] also had the occasion to pronounce upon a "Case Stated" in Commissioner General of Inland Revenue vs. Janashakthi Insurance Company Limited, SC. Appeal No. 114/2019, C.A (Tax) Appeal No. 10/2013.

His Lordship said at page 09 and 10 of the judgment,

> "In addition to the statutory provisions found in the TAC Act, our Appellate Courts too have considered the process before the Court of Appeal in a case stated and opined that the Court of Appeal's power in considering the questions of law **is not restricted to the questions identified in the case stated**, but the Court is permitted to consider new questions of law agreed upon by the court, if the answers to new questions of law may result in the confirmation, reduction, increasing or annulling the assessment determined by the Commission.
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> In this regard I am mindful of the dicta of Abrahams C.J., in **Commissioner of Income Tax Vs. Sarverimuttu Ratty (Report of Ceylon Tax Case, Vol 1 page 103 at 109** to the effect,
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> > "Incidentally there was no reference to us on this point by the Board of Review, since that point was not put to the Board when they were called upon to adjudicate in appeal, **but we are not, of cause precluded from considering any point upon which the actual decision of the Board might be upheld, no matter what might have been their reasons for arriving at that decision**"

Although Justice Malalgoda has referred to the "confirmation, reduction, increasing or annulling the assessment", the authority His Lordship refers to, of **Sir Sydney Abrahams, the Chief Justice** proves the wider scope of a "Case Stated", which the learned Chief Justice made, in respect of a "Case Stated" from the Board of Review similar to in this case. Hence this Court has power to consider about the question of time bar, considered by the Board of Review or the Tax Appeals Commission, in this "Case Stated".

In The Commissioner General of Inland Revenue vs. Dr. S.S.L. Perera CA/TAX/03/2017 Justice Janak de Silva referring to the question of a "Case Stated" said at page 05 and 06,

> "Section 11A (6) of the TAC Act reads:
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> "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 e.J. 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. I, 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 Wiltshire Brewery v. Bruce [(1915) A.C. 433 at 465,466]".

Since his lordship said at page 07,

> "Accordingly, I hold that it is open for this Court to consider questions of law other than what is set out in the case stated. However, I wish to state that such a course of action is permissible only if the answers to the new questions of law may result in the confirmation, reduction, increasing or annulling the assessment determined by the Commission, or requires the remitting of the case to the TAC with the opinion of the Court",

it shows that if the considering of the question results in remitting of the case to the Tax Appeals Commission too, the question can be considered.

As the New Zealand High Court decision of 2015 clearly shows that in a "Case Stated" the superior court can consider interim questions, such as time bar questions and also final determinations on facts, which is akin to a "consultation", if this Court cannot decide the jurisdictional issue on a "Case Stated" it is like consulting a higher court and say, "**you may only speak about this and no other**". In that way, it is not the "Case Stated" but the writ, which can only quash or not to quash is limited.

In deciding this question, in respect of the self same Koggala Garments Limited case, in **The Commissioner General of Inland Revenue vs. Janashakthi General Insurance Co. Ltd., C. A. Tax 14/2013 decided on 20th May 2020**, Justice Janak de Silva, [Justice N. Bandula Karunarathne agreeing] said at page 09, that,

> "Furthermore, given that the established position is that a tribunal exceeds its jurisdiction if it makes any error of law [Anisminic Ltd v. Foreign Compensation Commission (1969) 2 A.C. 147], statutory appeal procedure will be made redundant in the event it is held that jurisdictional questions cannot be raised in such appeal procedure".

The Court of Appeal said at page 10,

> "Let me give an example. A case before the TAC raises the question of whether the assessment is time barred in addition to substantive issues. The TAC decides to take up the time bar issue as a preliminary objection as raised by the taxpayer. If the TAC overrules [This should be "upholds"] the preliminary objection then we are told, by the second part quoted from Koggala Garment case (supra), that the taxpayer must resort to judicial review as the TAC has not looked at the substantive issues. Yet if the taxpayer [This should be "Commissioner General of Inland Revenue"] succeeds in its challenge on time bar of assessment, then it is in relation to a matter arising on the assessment and, we are told by the first part of the quotation in Koggala Garment case (supra), the Commissioner General of Inland Revenue can move for a Case Stated to be referred to this Court".

Dr. Sivaji Felix at the oral argument said that the above passage is contradictory. But it gives meaning, when the confusion between "overrules the preliminary objection" is corrected as "upholding the preliminary objection" and "if the taxpayer succeeds is corrected as "if the Commissioner General of Inland Revenue" succeeds.

The Court of Appeal also said at page 11,

> "As explained above, applying the ratio in Koggala Garment case (supra) creates situations where if a preliminary issue is answered in favour of one party, the aggrieved party must resort to judicial review, which is discretionary, whereas if it is answered in favour of the other party, the aggrieved party may submit a Case Stated which is available as of right. Secondly, such a situation is in any event contrary to public policy since it results in two different procedures for two types of parties arising from the same decision".

Hence, with the greatest of the respect, this court is unable to agree with the reasoning of the Koggala Garments Limited case, that, the appropriate procedure

for a party aggrieved by a decision of the Board of Review or Tax Appeals Commission on a time bar question, is to prefer an application on judicial review.

In the above written submissions, the respondent, has analysed section 11A (6) which grants jurisdiction to the Court of Appeal, which will be considered later.

In the case of **R. M. Fernando vs. Commissioner of Income Tax (1959) Reports of Ceylon Tax cases (1960 edition) 652 at 660,** Basnayake C. J., has said that the Board of Review should not state abstract or hypothetical questions. But the question of time bar arises in this case is neither.

A case cited in the said written submissions is **Navaratnam vs. Commissioner of Income Tax (1949) Reports of Ceylon Tax cases (1960 edition) 431,** in which, it was said that where there is no tax in dispute the question of law was one of pure academic interest and there is no right of appeal. But in the present case, the questions of law raised by the appellant decide the question whether the Board of Review has come to the correct decision with regard to the judgment dated 27.07.2008 and subsequent order dated 13.10.2009 in the John Keels Case Nos. 1 and 2, which is not academic.

What the respondent cites, **Thomas vs. Ingram (Inspector of Taxes) [1979] STC 1,** says, among other things,

> "It would in my view be quite impossible for me to resolve any such questions as the taxpayer has now raised as to the propriety of the conduct of the proceedings before the commissioners without full evidence as to what transpired. The leading of evidence of that sort is plainly not appropriate to the procedure by way of case stated: it is a matter for prerogative order".

The question of time bar which was considered by the Board of Review is not a question that requires the leading of evidence and the above case does not apply.

(6) Reasoning on section 11(A) (6) of Tax Appeals Commission Act:-

The argument in respect of the analysis of jurisdiction of this court under section 11(A) (6) of Tax Appeals Commission Act was already decided by this court in Cargills Agrifoods Limited vs. The Commissioner General of Inland Revenue, C. A. Tax 41/2014 decided on 28th February 2023[1].

In that case, the respondent Commissioner General of Inland Revenue, took up a jurisdictional objection based on Koggala Garment Limited case, in 2018. But later in December 2022, the respondent relinquished that argument in favour of jurisdiction of this court. But in that case, this court, considered the said objection to jurisdiction in respect of section 11(A) (6), on the basis that parties cannot by agreement cloth the court with jurisdiction. This court said in that case,

> *"This was the position of the Respondent in September 2018. By December 2022, the Respondent has abandoned this argument in favour of the jurisdiction of this Court in a Case Stated in a matter which there is no determination by the Tax Appeals Commission on the substantial question.*
>
> *Perhaps, from 2018 to 2022 a number of Respondents apart from the Commissioner General of Inland Revenue, taking up the above objection based on the Koggala Garments case, must have changed the mind of the present Respondent.*
>
> *But, it is a basic rule of law that if a tribunal or a Court has no jurisdiction, the parties cannot by consent cloth it with jurisdiction.*
>
> *.....*
>
> *What shall the Court of Appeal do when it receives such a case stated? Section 11A.(6) says,*

[1] Justice Sasi Mahendran and myself.

"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 the 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".

Hence, any two or more Judges of the Court of Appeal may,

(i) determine any question of law arising on the stated case, It does not say may determine the "determination" of the Commission.

(ii) (ii) confirm, reduce, increase or annul the assessment determined by the Commission,

(iii) (iii) or may remit the case to the Commission with the opinion of the Court, thereon.

This may or may not be on the "determination" of the Commission, because the term "thereon" refers to "any question of law arising on the stated case".

What does the next sentence mean?

"Where a case is so remitted by the Court, the Commission shall revise the assessment in accordance with the opinion of the Court".

If the question of law arose was not with regard to the "assessment determined by the Commission", how shall the Commission "revise the assessment"?

The answer is, that, the "assessment", referred to in the last sentence is, the "assessment" made by the assessor.

This is why, the previous sentence refers to the "assessment determined by the Commission" but the last sentence just say "assessment".

The legislature will not waste words as well as it will not use words without a meaning.

Hence it is clear that,

(a) there can be a case stated on a question of law other than the determination of the Commission on tax,

(b) the Court has power to remit the case to the Commission, with its opinion on the question of law so arose and

(c) the Commission shall, on receiving such an opinion of the Court, revise the assessment of the assessor.

Hence, this Court has jurisdiction to go into the questions in the present case stated".

That is the answer of this court to the question raised on the language of section 11(A) (6).

Therefore this Court decides that it has jurisdiction to go into the questions in a "Case Stated" even if they do not impinge upon the tax assessment, i.e., based on other preliminary objection.

Hence, the preliminary jurisdictional objection is overruled.

There is no order on costs.

Judge of the Court of Appeal.

Hon. Sasi Mahendran J.,

I agree.

Judge of the Court of Appeal