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

In the matter of an appeal by way of Stated Case on a question of law for the opinion of the Court of Appeal under and in terms of Section 11A of the Tax Appeals Commission Act, No. 23 of 2011 (as amended).

**D.Y. Jayasuriya,**
No.16, Queens Road,
Colombo 03.

**APPELLANT**

**CA No. CA/TAX/0023/2014**
**Tax Appeals Commission**
**No. TAC/OLD/IT/045**

v.

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

**RESPONDENT**

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

**COUNSEL** : Faiz Musthapha P.C., with Thushani Machado for the Appellant.

Chaya Sri Nammuni, DSG with R. Aluwihara for the Respondent.

**WRITTEN SUBMISSIONS** : 2023.11.13 & 2023.03.03 (by the Appellant)

2018.11.12 (by the Respondent)

**ARGUED ON** : 03.08.2022, 30.09.2022, 31.10.2022 & 27.01.2023

**DECIDED ON** : 04.04.2023

**M. Sampath K. B. Wijeratne J.**

**Introduction**

The Appellant is an individual, a dual citizen of United States of America (hereinafter referred to as 'USA') and Sri Lanka. According to the Appellant, he was in business in the USA from 1974 to 2002 and then moved to Sri Lanka in 2003. The Appellant has declared himself as a tax payer in Sri Lanka and has submitted his return of income for the year of assessment 2003/2004[1]. The Assessor rejected the said return by his letter dated 9th March 2007[2] issued in terms of Section 134 (3) of the Inland Revenue Act No.38 of 2000 (hereinafter referred to as the 'IR Act'), on the grounds stated thereon. Thereafter, the Assessor proceeded to issue the Notice of Assessment[3] dated 16th March 2007. The Appellant argued that the assessment exceeded the three-year statutory time limit and that this issue would be dealt with in this judgment under a separate heading.

The aggrieved Appellant appealed to the Respondent, Commissioner General of Inland Revenue (hereinafter referred to as the 'CGIR') against the said

[1] At pp. 334-340 of the appeal brief.
[2] At pp. 86 & 87 of the appeal brief.
[3] At p. 88 of the appeal brief.

assessment[4]. The CGIR heard the appeal and made his determination on the 20th August 2009 confirming the assessment[5].

The Appellant preferred an appeal to the Board of Review (hereinafter referred to as the 'BOR') against the said determination and the Tax Appeals Commission (hereinafter referred to as the 'TAC'), the successor of the BOR, heard the appeal and made its determination on the 23rd May 2014 confirming the determination of the Respondent and dismissed the appeal[6]. The Appellant being aggrieved by the said determination, moved the TAC to state a case to this Court and the TAC stated a case on the following nine questions of law. Since the tax in dispute was not stated in the original case stated to this Court, it was added subsequently on the direction of this Court.[7]

The nine questions of law read as follows;

1. ***Does the said determination of the Commissioner contravene the rules of natural justice (more particularly the rule that "he who hears must decide") in as much as the said determination was given by a set of members of the Commission who never heard the Appellant?***

2. ***Did the sum of Rs. 164 million received by the Appellant from Deutsche Bank of Singapore constitute income derived during the year of assessment 2003/2004?***

3. ***Was the inference that the sum of Rs. 164 million constitute income of the Appellant during year of assessment 2003/2004 drawn after excluding admissible and relevant evidence, namely, the letter dated 13th February 2007 issued by Deutsche Bank of Singapore?***

4. ***Is the conclusion that the sum of Rs. 164 million constitute income of the Appellant during the year of assessment 2003/2004 not rationally possible and perverse?***

[4] At p. 131 of the appeal brief.
[5] At pp. 219 to 225 of the appeal brief.
[6] At pp. 10 to 16 of the appeal brief.
[7] Minutes of this Court dated 06.07.2015.

5. ***(a) Did the Respondent accept the position of the Appellant that the aforesaid sum of Rs. 164 million was held by the Appellant in Deutsche Bank of Singapore prior to the year of assessment 2003/2004 by agreeing to accept and settle income tax liability of the appellant in relation to interest earned from Deutsche Bank of Singapore in respect of the said sum for the period 1st April 2000 to 3rd September 2003?***
   ***(b) If, so was the Respondent estopped from assessing income tax liability by treating the receipt of the sum of Rs. 164 million as income of the Appellant earned during the year of assessment 2003/2004?***

6. ***Was the impugned assessment made within the time period stipulated by law?***

7. ***Did the Commission err in law in failing to appreciate that the assessment has not been made at or about the time of rejecting the return as required by law?***

8. ***Did the Commissioner err in law in failing to appreciate that the same Assessor who rejected the return of the appellant was also obliged to make the assessment and issue the notice of assessment?***

9. ***Did the Commission err in law or misdirect itself in law by holding that the reason for rejecting the return had been communicated to the Appellant as required by law?***

**Factual matrix**

The disputed assessment arises from the remittance of USD 1.7 million to the account of the Appellant in the Hatton National Bank, Homagama Branch, from Deutsche Bank, Singapore. Both parties have conceded that USD 1.7 million represents the approximate value of Sri Lankan Rs. 164 million[8]. According to the Appellant, the aforementioned money was remitted from and out of his foreign earnings deposited in the Deutsche Bank, Singapore. The Appellant submitted the letter dated 20th October 2006 issued by Hatton

[8] At pp. 161 & 185 of the appeal brief.

National Bank which affirms the fact that the bank received a foreign remittance of USD 1.7 Million to the Appellant's account from the Deutsche Bank, Singapore, on the 1st October 2003.

According to the Appellant, the Appellant wound up his business in the USA by the end of the year 2002 and had become a resident in Sri Lanka from the year 2003. It was submitted that he did not earn any income in foreign currency thereafter and any foreign currency in his account was an income earned prior to the year of assessment 2003/2004.

**Analysis**

I will start by considering the argument advanced by the learned Presidents Counsel for the Appellant that the burden is on the Assessor to prove that the Assessor has the right to make an assessment and that the onus of proving that questionable income is taxable under the IR Act is also on the Assessor. I do agree that an Assessor, before making an assessment under Chapter XVIII of the IR Act has to form an opinion that an assessee is liable to be assessed. Yet, the IR Act does not place any onus as such to prove an assessment. In fact, under our law, in terms of Section 9 (5) of the Tax Appeals Commission Act No. 23 of 2011, as amended, the onus of proving an assessment as determined by the CGIR is excessive or erroneous is on the Appellant, the tax payer.

The learned Counsel for the Appellant cited the foreign judgment *Hunt & Company v Joly (H.M. Inspector of Taxes)*[9] in support of his contention that the onus is on the Assessor to prove that he had the right to make an assessment. Accordingly, it was argued that the Respondent did not discharge the burden of proving that the remittance was an income of the Appellant.

Further, he quoted the following extract from the judgment in the case of *Gurumuk Singh v C.I. T*[10].

> *'(...) (b) if the Assessor proposes to make an estimated assessment, in disregard of the evidence, oral or documentary, produced by the assessee, he should in fairness disclosed to the latter the material on which he is going to found his assessment.'*

[9] 14 TC 165.

[10] 1944 AIR 31 Lahore 361.

On the other hand, S. Balaratnam, in his work titled *Income Tax in Sri Lanka*, citing several foreign judgements states that:[11]

'*When an Assessor, on the basis of his judgement makes an assessment, the burden of showing that such an assessment is excessive is on the taxpayer. It is for the taxpayer to substantiate that the Assessor had not made an assessment to the best of his judgement. An Assessor is presumed to act in good faith and reasonably, in arriving at a judgement of the profits and income. Whether the Assessor has acted in good faith in the exercise of his judgement is a question of fact and generally courts will not interfere with such conclusions on questions of fact unless the conclusions arrived are at variance with facts.*

*The judgement of the Assessor must be based on what he honestly believes to be the proper estimate of the assessment after consideration of all factors pertaining to the case.*'

He further states that:[12]

'*The challenge of an assessment made on the judgement of the Assessor must be on the basis of facts and reasonable inference that would dislodge the conclusions reached by facts or inference*.

*So long as the assessment made on the basis of judgement is properly arrived at from the facts available to an Assessor, the requirement that the assessment is properly made will be fulfilled*.

Be that as it may, as I have already stated above, TAC Act, the statute, itself has placed the onus of proving that an assessment is excessive or erroneous on the assessee. Therefore, the views expressed in foreign judgements are not material to the issue at hand.

In the instant case the Assessor has rejected the documents produced by the assessee and proceeded to make an assessment on the ground that the assessee has failed to disclose the deposit in the Deutsche Bank, Singapore either in his declaration of assets and liabilities or in the declaration made under the Inland Revenue (Special Provisions) Act. Therefore, I am of the view that the

[11] S. Balaratnam, *Income Tax in Sri Lanka*, Third Edition, 2001. at pp.645-646.

[12] Ibid at pp.647-649.

Assessor, although on an erroneous basis, disclosed the facts on which he based his assessment and the reasons why he rejected the return. Therefore, in my view the TAC did not err in law or misdirect itself by holding that the reasons for rejecting the return had been communicated to the Appellant.

Accordingly, I am of the view that the aforementioned submission of the learned Counsel for the Appellant that the onus is on the Assessor to prove the validity of the assessment is on the Assessor has no merit.

In view of the above analysis, I answer the ninth questions of law in the negative, in favour of the Respondent.

I will next consider whether the Appellant, the taxpayer, has discharged the *onus* of proving the assessment is erroneous.

***Whether the remittance of USD 1.7 million to the Hatton National Bank of Sri Lanka from the Appellant's account at Deutsche Bank of Singapore subject to income tax?***

The following analysis is in respect of the second, third, fourth, 5 (a) and 5 (b) questions of law.

The Appellant's contention is that USD 1.7 million remitted to his account was already capital in the hands of the Appellant in the year of assessment 2003/2004. In support of the above contention the Appellant submitted the letter of the Managing Director of the Deutsche Bank, Singapore, dated 13th February 2007 which reads thus[13]; '*We hereby confirm based on your written instruction, we had remitted USD 1.7 million to Hatton National Bank, Homagama Branch, Sri Lanka on the 30th September 2003 out of the funds held in your bank account maintained at Deutsche Bank A. G. Singapore prior to 1st April 2002.*'

It was also submitted that there is no evidence whatsoever for concluding that the foreign currency at issue was earned abroad during the year of assessment 2003/2004. Accordingly, it was submitted that the CGIR's finding that Rs. 164 million was an income earned by the Appellant during the period 1/4/2003 to 31/3/2004 is unfounded.

[13] At p. 83 of the appeal brief.

Moreover, without conceding, the Appellant argued that even if it is assumed that the aforementioned sum was earned abroad during the year of assessment 2003/2004, the Appellant is entitled to claim the tax exemption under Section 15 (a) of the IR Act. Nevertheless, as the Appellant has not made such a claim, this Court need not consider the Appellant's eligibility for the above exemption.

The Appellant admitted that he inadvertently failed to declare the aforementioned amount in the assets and liabilities list or in his returns of income. However, the Appellant stated that he declared and disclosed the remittance of Deutsche Bank of Singapore in the statement of receipts and disbursements for the year of assessment 2003/2004[14]. According to the Appellant, this was not a deliberate act but an omission as evidenced by the disclosure already made in the statement of receipts and disbursements.

The Appellant had written to the CGIR that he had a savings deposit in Deutsche Bank of Singapore from 1998 and there has been no increase in the deposit since then other than the accumulated interest[15]. Furthermore, the Appellant has informed that he earned USD 34000, equivalent to Sri Lankan Rs. 3.4 million as interest from 1st April 2000 to 3rd September 2003 and has agreed to pay tax on the said amount[16]. The Commissioner (Investigation Branch) responded to the aforementioned letter acknowledging the income tax paid on the interest, in his own understanding. Relying on the above letter, the Appellant argued that the CGIR has accepted the position of the Appellant and that the above sum was held by the Appellant in the Deutsche Bank of Singapore prior to the year of assessment 2003/2004. As it was stated by the Appellant, Mr. K. M. S. Kandegedara, Deputy Commissioner, and Mr. Anton Fernando, Assessor, considered the issue of the impugned assessment[17] and reached a settlement not to treat the remittance as income of the Appellant and the Appellant was directed to pay income tax on the interest earned within the period from 1/4/2000 to 3/9/2003. Consequently, on the 18th January 2007[18] the Appellant paid a sum of Rs. 1,020,000.00 as income tax on the interest. Accordingly, it was also submitted that the CGIR was estopped from assessing

[14] At p.166 of the appeal brief.
[15] Letter dated18th January 2007 (P 11) at p. 181 of the appeal brief.
[16] *Ibid*.
[17] Letter dated 26th June 2007 (P 1) at p. 167 of the appeal brief.
[18] At p. 168 of the appeal brief.

the Appellant for the disputed remittance during the year of assessment 2003/2004. However, I observe that the letter dated 19th January 2007 issued by the Inland Revenue Department does not absolve the Appellant of his income tax liability up to the year of assessment 2005/2006. In the said letter, while acknowledging the amount paid as interest, the CGIR has advised the Appellant to settle his income tax liability with the Assessor up to the year of assessment 2005/2006. Therefore, I am unable to agree with the above submission of the Appellant. Yet, the fact remains that this amounts to an acknowledgement by the CGIR to the effect that the Appellant held the questionable amount in his account at Deutsche Bank, Singapore, and earned interest prior to the year of assessment 2003/2004. Moreover, it is important to note that in the aforementioned letter, the Commissioner (Investigation Branch) did not reject the claim of the Appellant that the monies in his account in Singapore were not income earned within the year of assessment 2003/2004.

The TAC observed that the onus is on the Appellant to prove by documentary evidence that the income in question was earned abroad. and paid income tax abroad on the income, by submitting a certificate from the tax authority concerned[19]. However, in my view, it is not incumbent upon the appellant to prove that he paid tax abroad. All the Appellant has to prove is that the remittance in question is not income earned within the year of assessment 2003/2004 and the Appellant has discharged the aforesaid burden by submitting a letter from Deutsche Bank[20] of Singapore which confirms that the funds were held in his bank account even prior to 1st April 2002. The TAC, although referred to the above letter in its determination, did not give due credit to the said letter.

The TAC citing Section 115 of the Evidence Ordinance observed that since the Appellant has made the Respondent believe that by an oversight, money lying to the credit of the Appellant was not intimated to the Respondent, the principle of estoppel has no application in the instant case. However, since the Appellant has not denied his previous stand subsequently, I am of the view that Section 115 has no application at this instance.

[19] At p. 5 of the TAC determination.
[20] R 2 at p. 83 of the appeal brief.

In light of the above analysis, I am inclined to accept the Appellant's contention that his failure to declare the deposit in his assets and liabilities list was due to inadvertence and the USD 1.7 million remitted to the Hatton National Bank of Sri Lanka from Deutsche Bank of Singapore by the Appellant was not income earned within the year of assessment 2003/2004, except the interest income for which the Appellant has paid income tax.

Accordingly, I answer the second question of law in the negative and the third, fourth, 5 (a), and 5 (b) questions of law in the affirmative, in favour of the Appellant.

***Whether one and the same Assessor should reject the return, make the assessment and issue the Notice of Assessment.***

Another argument put forth by the Appellant is that the same Assessor who rejected the return was required to proceed with the assessment and issue the Notice of Assessment[21].

The Appellant's argument above is based on the fact that the Assessor who signed the intimation letter is not the Assessor who signed the Notice of Assessment. The Appellant's argument was founded on the words, '*(...) where an **Assessor** (...) does not accept a return (...) and makes an assessment (...), **he** shall communicate (...) **his** reasons for not accepting the return*', in the proviso of Section 134 (3) of the IR Act. Consequently, the Appellant submitted that in the case at hand the assessment has been rejected by the Assessor Mr. Prabath Pushpakumara and the Notice of Assessment has been issued by Senior Assessor Mr. E. Bandara. However, Section 134 (3) does not stipulate that the *Notice of Assessment* should be issued by the *same* Assessor who made the assessment. All that is set out in the proviso of Section 134 (3) is that the Assessor who makes the assessment should communicate. the reasons for not accepting the return to the taxpayer, in writing.

The requirement for issuing a Notice of Assessment is specified in Section 135 of the IR Act. Section 135 also does not require the Assessor who made the assessment and communicated the reasons for not accepting the return to issue the Notice of Assessment.

[21] *Ibid* at paragraph 12.

The Appellant also relied on the judgement in the case of *D. M. S. Fernando v Mohideen Ismail*[22] in support of this argument.

Although the Appellant has not specifically stated as such, it appears to me that the Appellant has relied on the following observations made by His Lordship Chief Justice Neville Samarakoon in the aforementioned case which read thus '*it was, therefore, essential that* ***an Assessor who rejects a return should state his reasons and communicate them. His reasons must be communicated at or about the time he sends his assessment on an estimated income.***[23] (Emphasis added)

The Appellant argued that if the return is rejected by an Assessor, the same Assessor must give the reasons for the rejection, and communicate them to the assessee. In my view, the mere use of the word *'his'* by His Lordship in the above sentence is not intended to cause the same evaluator to reject the statement, make the assessment, and issue the Notice of Assessment.

Above all, . IR Act does not require that the same Assessor who made the assessment and communicated reasons for not accepting the return issue the Notice of Assessment. Such an interpretation is impossible unless this Court read words into the statute.

On reading words into a statute, N.S. Bindra states as follows[24];
'*It is not open to add to the words of the statute or to read more in the words than is meant, for that would be Legislating and not interpreting a legislature. If the language of a statutory provision is plain the Court is not entitled to read something in it which is not there, or to add any words or to subtract anything from it'*.

Furthermore, the Court's duty is not to legislate, but to interpret the laws. Legislation is the prerogative of the Legislature. If the Legislature so wished, it would have passed it into law.

Above all, I do not see the need for interpretation of sections 134 and/or 135 so strictly to introduce a condition. that the same Assessor who made the assessment and communicated the reasons for the refusal of the return should give the Notice of Assessment. The interpretation of Sections, as suggested by

[22] (1982) 1 SLR 222.
[23] At pp. 193, 194.
[24] N.S. Bindra, *Interpretation of Statutes*, Eighth Edition, 1997. At p. 452.

the Appellant, would create an absurdity in situations such as the retirement or death of an Assessor, after making an assessment and before the Notice of Assessment is signed and dispatched. Although tax laws must be interpreted strictly, I do not believe that such strict interpretations are justified when there is no advantage or disadvantage for either party.

Accordingly, it is my considered view that there is no statutory requirement under the IR Act for the Assessor who made the assessment and rejected the return to issue the Notice of Assessment.

In light of the above analysis, I answer the eighth question of law in the negative, in favour of the Respondent.

***Whether the assessment is time barred?***

The Appellant submitted his return of income for the year of assessment 2003/2004 on the 5th October 2004. A return must be submitted on or before 30th November of the year of assessment immediately succeeding that year of assessment. Section 134 (5) (a) of the IR Act requires that an assessment must be made not later than three years after the end of the year of assessment. Accordingly, the three-year time period for making an assessment ends on the 31st March 2007. The foregoing facts are not in dispute[25]. The date of the Notice of Assessment is 16th March 2007[26]. The Appellant stated that although the Notice of Assessment is dated 16th march 2007, it is evident from the letter dated 12th July 2007 written to the Appellant by Mr. R. M. Jayasinghe, Deputy Commissioner, that the Notice of Assessment posted was not delivered to the Appellant as of 12th July 2007[27]. According to the Appellant, the Notice of Assessment was received by him only on the 12th July 2007. Consequently, the Appellant submitted that the assessment exceeded the three-year statutory time limit.

It appears that the Appellant has made the above submission on the basis that an assessment is made in terms of Chapter XVIII of the IR Act only upon service of the Notice of Assessment on the assessee.

[25] At p. 4 of the written submissions tendered to the TAC by the Respondent. (At p. 75 of the appeal brief.).
[26] X 1, at p. 311 of the appeal brief.
[27] P 39, at p.213 of the appeal brief.

In our own judgment in the case of *Illukkumbura Industrial Automation (Private) Limited v. Commissioner General of Inland Revenue*[28] (Dr. Ruwan Fernando J. aggreging) I addressed the question of time limit provided in Section 163 (5) of IR Act No. 10 of 2006 and held that time bar applies only to the making of an assessment and not to the service of the Notice of Assessment. The relevant provision of the aforementioned Section that sets a time limit for making an assessment is almost identical to the Section 134 (5) of IR Act No. 38 of 2000. The only material difference is that the time limit in IR Act No. 38 of 2000 is three years while it is two years in IR Act No. 10 of 2006. Further, no time limit for the issuance of the Notice of Assessment is set out in the relevant Section in both statutes. If the intention of the legislature was to set up a time bar for the issuing of Notice of Assessment, the legislature could have enacted that '*no notice of assessment should be given*' after the expiry of the prescribed time limit, instead of enacting that '*no assessment shall be made*' after the expiry of the prescribed time limit.

Focusing on the issue at hand, in the aforementioned letter dated 12th July 2007[29] Mr. R. M. Jayasinghe, Deputy Commissioner, stated that an assessment was made on 16th March 2007. Be that as it may, the Appellant unequivocally admitted that the impugned assessment was made by Mr. Prabath Pushpakumara, Assessor, and reference was made to the letter communicating reasons for not accepting the return (commonly called as the letter of intimation) dated 9th March 2007[30].

Accordingly, by the Appellant's own admission, the date of the assessment is 9th March 2007, the date of the letter in which he communicated the reasons for not accepting the return. Hence, the assessment had been made within the three-year time frame, before the 31st March 2007. Therefore, the argument of the Appellant that the TAC erred in failing to appreciate that the assessment was not made *at or about* the time of rejecting the return cannot hold water.

The Appellant made extensive submissions[31] on proof of fraud, evasion or wilful default of taxes with reference to the second proviso of Section 134 (5)

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[28] C.A. Tax 0005/2016, C.A. minutes dated 29.09.2022.
[29] P 39.
[30] Paragraphs 11 & 13 of the of the Appellant's consolidated written submissions filed on the 3rd March 2023.
[31] Paragraphs 32, 33 & 58 of the Appellant's consolidated written submissions filed on the 3rd March 2023.

of the IR Act. However, in the circumstances that this Court holds that the assessment was made prior to the 31st of March 2007, before the expiry of the time limit, the question of application of the above proviso will not arise.

Hence, I answer the sixth question of law in the affirmative and the seventh question of law in the negative, in favour of the Respondent.

***Whether the TAC breach the principles of Natural Justice?***

The Appellant argued that the TAC breached the principle of natural justice by making the determination by a three members panel who never heard the appeal.

It is evident from the brief that this matter had been taken up before the TAC on the 24th May 2012[32], 29th of October 2013[33], 28th of January 2014[34] and 6th February 2014[35]. The letter dated 28th March 2012 written to the Appellant by the secretary to the TAC confirms that the matter had been fixed for 24th May 2012 in order to list the appeal for hearing before the TAC[36]. According to the proceedings before the TAC, on 24th May 2012[37] matter had been fixed for the first hearing on 25th October 2012. However, the letter dated 22nd August 2012 confirms that the matter had not been taken up for hearing on 25th October 2012 since a jurisdictional issue had been raised[38] and thereafter, the hearing had been fixed for 29th October 2013[39]. On all the aforementioned dates this matter had been taken up before the panel Justice H. Yapa (Chairman), Mr. M. Somasundram (Member) and Mr. P. A. Premathilaka (Member). However, the determination had been made by a panel comprising of Justice Nissanka Udalagama (Chairman), Mr. M. N. Junaid (Member) and Mr. S. Swarnajothi (Member). Section 9 (10) of the Tax Appeals Commission Act No. 23 of 2011, provides that *after hearing evidence*, the commission shall on appeal make an appropriate order as specified in the Section. According to Section 10 (8) of the TAC Act, the Appellant is not entitled to produce any documents which were not produced before the CGIR or to adduce evidence of a witness who

[32] At p. 235.
[33] At p. 105.
[34] At p. 95.
[35] At p. 93.
[36] At p.241.
[37] *Supra* note 18.
[38] At p. 231.
[39] Letters at pp. 227 to 230.

has already given evidence before the CGIR or any new witness, without the consent of the TAC. Hence, it is apparent that no evidence can be adduced unless the TAC permits such evidence to be produced.

However, as I have already stated above Section 9 (10) provides that the TAC has to make its determination after hearing evidence.

According to *Black's Law Dictionary*[40] 'evidentiary hearing' means '*A hearing at which evidence is presented, as opposed to a hearing at which only legal argument is presented'*.

Hence, it is apparent that the term '*after hearing the evidence*' in Section 8 (10) means a hearing at which evidence is presented and it is not on mere hearing of legal arguments presented by the parties. However, as I have already stated above, in terms of Section 9 (8) of the TAC Act, oral or documentary evidence or even the evidence of witnesses who have already given evidence before the CGIR can only be presented with the consent of the TAC. Therefore, at the hearing of an appeal before the TAC, the hearing of evidence is entirely at the discretion of the TAC.

However, it appears to me that none of the dates of hearing that, I have referred to above the TAC has allowed the parties to adduce either documentary or oral evidence other than the evidence already led before the CGIR. Accordingly, hearing of the appeal had been limited to the oral and/or documentary evidence already presented to the CGIR.

Hence, it appears to me that the panel of members who delivered the order has considered the evidence already on record and arrived at their determination. In the circumstance I am of the view that no prejudice had been caused to the Appellant by the order being delivered by a panel of members before whom the matter was not taken up on the dates fixed for hearing.

Accordingly, I answer the first question of law in the negative, in favour of the Respondent.

**Conclusion**

Thus, having considered all the arguments presented to this Court by both parties, I hold that the TAC erred in arriving at its final determination.

[40] *B. A. Garner, Black's Law Dictionary*, Eleventh Edition, at p. 886.

I answer the nine questions of law forward to this Court in the following manner.

1. ***No.***
2. ***No.***
3. ***Yes.***
4. ***Yes.***
5. ***(a) Yes.***

   ***(b) No. But the assessment has to be on a valid basis.***
6. ***Yes.***
7. ***No.***
8. ***No.***
9. ***No.***

In light of the answers given to the nine questions of law, acting under Section 11 A (6) of the TAC Act, I annul the assessment determined by the TAC.

The Registrar of this Court is directed to send a copy of this judgement to the Secretary of the Tax Appeal Commission.

**JUDGE OF THE COURT OF APPEAL**

**<u>Dr. Ruwan Fernando J.</u>**

I Agree.

**JUDGE OF THE COURT OF APPEAL**