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

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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 amended by Act No. 20 of  
2013 of the Democratic Socialist  
Republic of Sri Lanka.

**C . A. Tax No.29/2022**  
**TAC. Appeal No.TAC/IT/037/2019**

**APL LANKA (PRIVATE) LIMITED**

IWS Centre  
No. 451, Kandy Road,  
Kelaniya

**APPELLANT**

**-Vs-**

**THE COMMISSIONER GENERAL  
OF INLAND REVENUE**

14<sup>th</sup> Floor, Secretarial branch,  
Department of Inland Revenue,  
Sir Chittampalam A. Gardiner  
Mawatha, Colombo-02.

**RESPONDENT**

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**Before :**           **JUSTICE M.CHAMATH.B.S. MORAIS**  
**JUSTICE ANNALINGAM PREMASHANKER**

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**Counsel:**           **Sanjeeewa Jayawardane, P.C.** with **Lakmini Warusavithana AAL, Ranmalee Meepagala AAL** instructed by **M/S Sarravanan Neelakandan Law Associates** for the Appellant.

**Ms. Chaya Sri Nammuni**, Deputy Solicitor General, **Ms. D. Jayanthakumar** State Counsel for the Respondent.

Written Submissions of the Appellant       :- 20.10.2023  
Written Submissions of the Respondent   :-       --  
Argument                                       :- 03.06.2025  
Decided on                                       :- 12.11.2025

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**JUDGEMENT**

**ANNALINGAM PREMASHANKER, J.**

**A.    **INTRODUCTION****

**A1.** This is an appeal by APL Lanka (Pvt) Limited (**Hereinafter sometimes referred to as THE APPELLANT/Tax payer**) against the determination of the Tax Appeals Commission (**Hereinafter sometimes referred to as ‘TAC’**) dated 15.03.2022 made in TAC appeal no. TAC/IT/037/2019.

**A2.** The Appellant being dissatisfied with the Determination of TAC requested for an appeal by a case stated to the Court of Appeal for an opinion by their communication dated 17.05.2022.

**A3.** In the case stated dated 31.05.2022 following questions were raised for the opinion of the Court of Appeal.

**Q.N.1. Did the Tax Appeals Commission fall into serious error, by holding that in terms of the Front-Line Office Agreement, dated 01.02.1998, entered into by and between APL CO. PTE LTD and the Appellant, that the Appellant only receives a commission-based income, by referring merely to Articles 3 and 4 of the Front-Line Agreement?**

**Q.N.2. Did the Tax Appeals Commission err in holding that the Appellant had several sources of income and that its income was not confined to Commission income?**

**Q.N.3. More specifically, did the Tax Appeals Commission err, by failing to duly appreciate that, in terms of the Front-Line Office Agreement dated 01.02. 1998, entered between APL CO. PTE LTD and the Appellant: -**

**a)the Appellant's income principally consists of (i) Commission on Outward Freight; (ii) Commission on Inward Freight (iii) Transshipment Agency Fees, and (iv) Services fee, in terms of Article 3, 4 and 6 of the said Agreement;**

**Q.N.4. Without prejudice to the immediately foregoing, did the Tax Appeals Commission grievously err by overlooking the important fact that a substantial portion of the Appellant's income was transshipment agency fee income?**

**Q.N.5. Whether Did the Tax Appeals Commission fall into grave error by the non-consideration of other relevant and important Articles contained in the said Agreement, especially, Article 6 thereof, read with the Schedule thereto, and by its failure to construct the said agreement, compositely and holistically?**

**Q.N.6. By erroneously holding that the Appellant Company received only 'commission' income, did the Tax Appeals Commission grievously err by denying the Appellant, the benefit of the due application of Section 13(ddd) of the Inland Revenue Act No.10 of 2006 in respect of the return of income submitted for the years of assessment 2014/2015?**

**Q.N.7. Should the Appellant be duly entitled to claim the exemption on the income received by the Appellant as 'Transshipment Agency Fees', amounting to Rs. 112,929,661/-, in as much as in law, the aforesaid section 13(ddd), excludes**

*only "any commission, discount or similar receipt for any such service rendered in Sri Lanka and does not?*

**Q.N.8. *Did the Commission fail to appreciate the true nature of the agreement and the schedule thereto, as well as the transactions, together with the calculation methodology referred to by CASA, where it is stated that an agency fee is fixed rated, as opposed to a commission which is a variable figure (i.e., different freight rate from different country to country), which is the intrinsic characteristic of a 'commission'?***

**Q.N.9. *More specifically, did the Commission fail to appreciate that in terms of Article 6 of the said Front-Line Office Agreement, read with Schedule I and II, that governs the relationship between the parties, it is expressly stipulated that the Transshipment Agency Fee is paid in terms of a fixed monetary value per container transferred as approved and in terms of the rates determined and published by the Ceylon Association of Ships' Agent's, which in turn, clearly establishes the fact that the transshipment agency fee is a fixed fee per container and NOT a commission on account of being calculated by reference to a percentage?;***

**Q.N.10. Did the Tax Appeals Commission fail to appreciate that the consideration for transshipment service was paid as a fixed monetary figure, calculated based on each container transferred, as opposed to a set percentage of the value involved, which is a variable figure, the latter being the intrinsic characteristic of a 'commission'?**

**Q.N.11. Whether the Tax Appeals Commission failed to appreciate;**

**a) the transshipment agency fee is a fixed monetary consideration for each container transferred and not a "commission", and therefore, it is legitimate to recognize the same as a "fee" and not as a "commission" in the year of Assessment 2014/2015?**

**b) the intrinsic nature and characteristics of a "commission" as opposed to the "transshipment agency fees" payable, under the Agreement, along with the nature of the operations engaged by the Appellant?;**

**Q.N.12. Whether the Tax Appeals Commission grievously erred in law, by failing to appreciate that the term "fee" or "commission" is not defined in the**

***Inland Revenue Act No.10 of 2006, and thus in terms ( of the rules of interpretation of statute, where no definition is provided, the ordinary dictionary meaning should be used in the interpretation of the term "Commission"?***

***Q.N.13. Whether the Tax Appeals Commission subverted and/or distorted and/or altered and/or undermined the plain meaning of the word "commission" as contained in Section 13(ddd) of the Inland Revenue Act No.10 of 2006?***

***Q.N.14. Whether the tax appeal commission erred in law, by misconstruing the provisions of Section 13(ddd) of the Inland Revenue Act No 10 of 2006, as amended, by overlooking the fact that the said section was introduced with the specific objective of granting tax exemptions/ concessions, to business undertakings, in order to encourage stimulate the influx of foreign currency income earnings into the country?***

***Q.N.15. Whether the Tax Appeals Commission failed to appreciate that, the reference to the Appellant's Company financial controller's letter dated on or around 24.04.2015, which states as "the company does not have sales invoice since Appellant is receiving their income as***

*commission income only" as well as the notations contained in the financial statements of year 2012/2013, cannot be construed as conclusive evidence that the company receives only commission income, without holistically scrutinizing the terms and conditions of the Front line Agreement and also examining the actual and true nature and characteristics of the payment transactions and the method of calculation of the said income?*

*Q.N.16. Whether If the true and real nature of the payment transactions were agency fees and not commissions, can this crucial nature, be subjugated, obliterated and ignored, by mere, in vacuo reference to the aforesaid letter only?*

*Q.N.17. In any event, strictly without prejudice to all of the foregoing, whether the Tax Appeals Commission erred by failing to appreciate the entirety of the ingredients in section 13(ddd) of Act No.10 of 2006, as amended?*

*Q.N.18. If the aforesaid question of law is answered in the affirmative, whether the Appellant is therefore, duly entitled, to the exemption from income tax, as provided for by Section 13(ddd) of the Inland Revenue Act?*

- Q.N.19. *In the alternative, in the event the aforesaid question of law is answered in the negative, whether the Appellant is entitled to claim the concessionary rate provided for, under and in terms of Section 59B of the Inland Revenue Act?***
- Q.N.20. *Did the Tax Appeals Commission err by failing to consider that the specific shareholding of the Appellant constituted as; A) 60% local individual partners; and 40% APL Company (Pte) Ltd, in the light of the specific definitions for the terms "subsidiary" and "Associate company" in Companies No. 07 of 2007?***
- Q.N.21. *Whether the Tax Appeals Commission erred by purporting to hold that the Appellant Company is an Associated Company and also a subsidiary company of a group of companies, and that hence, the Appellant is not entitled to the concessionary rate of income tax, set out in Section 59B of the Inland Revenue Act No. 10 of 2006?***
- Q.N.22. *Did the Tax Appeals Commission fall into serious error by concluding that the Appellant is a subsidiary of APL CO. PTE LTD, without considering the express definitions contained in***

***both the Companies Act No. 07 of 2007 and Inland Revenue Act No. 10 of 2006?***

***Q.N.23. Whether the Tax Appeals Commission failed to appreciate that the terms 'holding company' and 'subsidiary company', as defined in Part B(d)(B) of the Second Schedule to the Inland Revenue Act, which states that "for the purpose of item (B) of paragraph (b), paragraph (c) and paragraph (d), the expressions "holding company", "subsidiary company", and "group of companies" shall have the same respective meanings which they have in the Companies Act No. 07 of 2007, and according to the interpretations in both Companies Act No. 07 of 2007 and Inland Revenue Act No. 10 of 2006, the Appellant company does not fall under any category of holding company, a subsidiary company, or an associate company, of a group of company?***

***Q.N.24. Whether the Tax Appeals Commission erred by holding that the Appellant Company is not entitled to claim the concessionary rate set out under Section 59(1) of the Inland Revenue Act?***

***Q.N.25. Whether the Tax Appeals Commission erred by holding that the Appellant failed to prove with***

*relevant documentation, that the purported undeclared income of Rs.46,500,174/= was a reimbursement expense and a non-revenue transaction, which does not clearly fall within the definition of revenue?*

**Q.N.26.** *Whether the Tax Appeal commission failed to appreciate that the Agreement dated 1.08.2001, entered into between APL Logistics Ltd and the Appellant, which clearly establishes that the Inter Company Operations expenses, is a Reimbursement, which read in conjunction with the Bank statements, justifies the categorization of the said sum of Rs. 46,500,174/- as a reimbursement expense and not a revenue?*

**Q.N.27.** *In the totality of the said legal and factual positions enumerated and as will be morefully detailed at the hearing of this case stated, can the Order of the Tax Appeals Commission dated 08/03/2022, stand in law?*

**A4.** In this appeal following matters to be decided:

- a) The appellant is eligible to claim the profit and income of Rs.112,929,661/- as exempt for tax under Section 13(ddd) of the Inland Revenue Act no.

10 of 2006 (**Herein after sometimes referred to as IRA**)

**b)** Appellant Company is qualified to apply the roots of income tax applicable to the profit and income as per the appropriate rates specified in the fifth schedule in the Act under section 59B of the IRA

**c)** Undeclared income of Rs. 46,500,174/-

**B. DEFAULT**

In this appeal, the Respondent, Commissioner General of Inland Revenue, entered appearance through a State Counsel, on the 8<sup>th</sup> September 2022. But the Respondent failed to submit appointment of Attorney-at-Law in writing, commonly known as Proxy at that time. Thereafter on 14.11.2022 only, the appointment is tendered on behalf of the Respondent. On 3<sup>rd</sup> June 2025, both parties agreed to conclude the argument by written submissions and thus argument concluded. When glanced the record, it is found that the Appellant has furnished written submissions on 31.08.2023. The Respondent has furnished the written submissions on 28.03.2024.

**C. ANALYSIS**

**C1.** The tax payer submits its return for the year of 2014/2015, claiming an income tax exemption on profit and income under section 13 (ddd) of IRA no. 10 of 2006. The tax payer further

claimed that as it is an independent undertaking eligible to apply for appropriate rate under section 59B of the IRA. This claim was rejected by the Assessor and the return is not accepted and issued an assessment.

**C2.** Having aggrieved by the said Assessment, the tax payer made an appeal to the CGIR. The appellant made the same agitation before the CGIR. CGIR by his determination dated 19.06.2018 determined the appeal by confirming the assessment.

**C3.** The tax payer having not satisfied with the determination of the CGIR, made an appeal to the TAC. In the appeal before the TAC the appellant raised the same issues. TAC by its determination dated 15. 03. 2022 affirmed the determination of the CGIR and dismissed the appeal.

**C4.** In the determination of the TAC, the commission has concluded that the APL LANKA (Pvt) Limited only receiving commission as its profit and income as per the agreement marked as annexure 1. The TAC has accepted the several materials shown by the CGIR to the effect that the tax payer only receiving commission income.

**C5.** In respect of the qualification to claim tax exemption under section 59 B of IRA, the TAC has accepted the CGIR's position that the APL LANKA (Pvt) Limited is a subsidiary by its name and ownership of shares and etc.

**C6.** Questions of law no.1, 2, 3 (a), 4, 5,6, 7, 8, 9,10, 11(a), 11(b), 12, 13, 14, 15,16, 17,and 18 are all in respect of profits and income, commission and Section 13 (ddd) of IRA. Therefore, all these questions are taken together for analysis and the analysis as follows;

**C7.** The Tax payer submits its return for the assessment year 2014/ 2015 and claim tax exemption of Rs. 112,929,661/- under section 13 (ddd) of IRA, appropriate rates of tax under section 59 (B) of the IRA. In the return profits and income of the tax payer are identified as

- I. Commission on outward freight
- II. Commission on inward freight, and
- III. Transshipment agency fee

**But it is noted that, when the tax payer submits its return for 2012/2013, had identified, its profits and income as commission only.**

## **C8** **AGREEMENT**

The frontline office agreement between the APL LANKA (Pvt) Limited and its principal APL Co. PTE LTD. dated 01/02/1998 is a vital material to solve the issues.

The scope of work is designed is Article 1 of the said agreement.

**SCOPE OF WORK**

*APL hereby appoints the Frontline Office to perform the work in this Article ("Work). The Frontline Office accepts such appointment and agrees to perform the Work within the Territory pursuant to the terms and conditions as set out in this Agreement. For purposes of this Agreement, "Territory" shall be and include the area formed by, and included within, the continental and political boundaries of Sri Lanka, as well as other countries as shall be agreed by APL and the Frontline Office in writing from time-to-time; and "Port" shall be any Ports in Sri Lanka, as well as Ports in other countries as shall be agreed by APL and the frontline office in writing from time-to-time.*

*The Front-line Office shall not subsequent to the effective date of this Agreement, and through the term and term thereof, contract with, , act for, nor accept by any other water carrier or transporting company in competition with APL for the same or similar work regarding cargo moving to or from the Territory unless agreed to in advance in writing by APL. APL expressly reserves the right to perform or assist in performing at anytime with its own personnel any of the duties or obligations of the Frontline Office under this*

***Agreement. Any such activity by APL shall not be as a breach of this Agreement by APL.***

***For purpose of proving services to APL under this agreement, "APL" SHALL INCLUDE THE Frontline Offices' provision of service for, and the handling and movement of cargoes carried under bills of lading issued by APL Co. Pte Ltd's affiliate, American Lines, Ltd.***

***The Office shall provide with due diligence, care, skill and dispatch such services as will from time to time be by APL in the manner and subject to such limits or as may be directed by APL, and such services shall include, but not be limited to the following activities.***

**C8(b). ARTICLE 3**

### **REMITANCE OF FREIGHT AND INSPECTION OF ACCOUNTS**

- 1. APL maintains and operates local currency and/ or US dollar bank account (s) in the territory, details of which APL shall provide to the Frontline Office. The Frontline Office shall be required to bank in all cheques directly to APL's bank account and report to APL as per the requirement laid down on APL's Direct Freight Banking System. Should the frontline Office***

*shall deposit the said monies into that account within two (2) working days after receipt thereof.*

- 2. The Frontline Office shall ensure that all inward and outward Bills of Lading issued for the territory have adequate and appropriate clause proving that cheques in payment of freight and other charges collectable in the territory are paid to the order of APL Co. Pte Ltd.*
- 3. The Frontline Office shall direct all shippers, consignees and other debtors to credit directly to APL's local currency and/ or US dollar bank account (s) in the territory all outward and inward freight and other charges received in the territory immediately after the departure of each of the vessels.*
- 4. The Frontline Office shall collect immediately after the departure of each of the vessel all of the outward and inward freight, ancillary recoveries and other charges receivable in the territory, requiring that all payments are drawn in favor of APL. Where written authority has been given by APL to extend credit after departure of the vessel, the Frontline Office is allowed to remit money collected over the extended period but not beyond the authorized credit period. In the event that freight has not been collected immediately after departure of the vessel or within the authorized collection period and Frontline Office has exercised*

*due diligence in attempting to do so, APL shall be advised and Frontline Office shall be instructed as to how to proceed. The Frontline Office shall forthwith deposit all such payments into APL's bank account (s) and shall submit, by telex, to APL in Singapore, a daily report of the aforesaid deposits including particulars such as each vessel, voyage, Bill of lading, bank and cheque number, amount of freight and other charges.*

- 5. Subject to clause 1), 2), 3) and 4) above, in the event that APL is prohibited from maintaining and operating local currency and/ or US dollar bank account (s) in the territory, the frontline office shall upon the request of APL open, maintain and operate the same for and on behalf of APL in accordance with instructions received from APL from time to time (the exclusive account"). In this connection, the frontline Office shall ensure that all payments due under clause 2), 3), AND 4) above shall be paid directly into the exclusive account and render to APL a statement reconciling the general account to Bank Statement balances on a monthly basis.*

*The Frontline Office hereby agrees that the monies held in the exclusive account is held in absolute trust for APL and shall immediately be paid to APL. The Frontline Office shall under no circumstances hold the monies in the exclusive account as security on account*

*of nay obligations directly or indirectly due to the Frontline Office by APL. Frontline Office further waives any and all rights to exercise or claim any rights of self-off or counterclaim or otherwise over the monies of the exclusive account.*

- 6. The Frontline Office shall be responsible for the control, monitoring and recovery of all uncollected freight and other charges, designed to be collected in the territory, and shall submit to APL a monthly report on the status of the outstanding freight and charges.*
- 7. The Frontline Office shall maintain separate books for accounts for all monies collected and disburse on behalf of APL and allow the representatives of APL at all reasonable times to have access to the Frontline Office's premises for the purpose of audit and inspection of all such separate banking accounts and books of accounts and render such assistance in the examination thereof as APL may require.*
- 8. The Frontline Office hereby undertakes that its sub-Frontline Offices shall adhere to and comply with the procedure for remittance of freight and inspection of accounts as contained in this Article and to do all acts and things necessary to ensure compliance by its sub-Frontline Offices with the said procedure.*

**9. *The Frontline Office hereby undertakes that it and its sub-Frontline Offices shall abide by the procedures set out on APL's freight and disbursement accounting.***

**C8(c). ARTICLE 4**

**SUBMISSION OF ACCOUNTS RECEIVABLE AND DISBURSEMENTS ACCOUNTS RECEIVABLES**

- 1. *The Frontline office hereby undertakes the following:***
  - (a) That it shall operate the principal accounts in the financial system, i.e. the Walker System provided by APL, in compliance with the rules, regulations and procedures governing the operation of the same***
  - (b) That it shall update the Walker System on a constant basis of all freight and recovery items, whether collected from the shippers/ consignees or not, as long as such amounts are to be collected by the Frontline Office. In the event APL does not receive any freight or recovery items so credited to it, whether collected from the shippers/ consignees or not, APL shall have the sole discretion to deduct such amounts from the Frontline Office's Commission payable hereunder.***
- 2. *All forms/reports submitted, where applicable, are to be stamped with the Frontline Office's company stamp and duly endorsed.***

**C8(d). DISBURSEMENTS**

- 1. The Frontline Office undertakes to do the following:**
  - (a) Submit promptly to APL all relevant disbursements via the APL Walker System**
  - (b) Submit to APL, in support of its monthly commission claim, the relevant APL Commission Reports**
  - (c) Comply with all the rules, regulations and procedures governing the maintaining and updating of data in the Walker System;**
  - (d) Maintain a proper and adequate internal control system to ensure that there are no mis-billings or duplicated billings by APL's creditors (contractors/ subcontractors, etc)**
  - (e) Reimburse/ credit APL the exact invoice amount wrongly billed or duplicated immediately upon confirmation of such an error. APL reserves the sole discretion to claim for such immediate credits even prior to the Frontline Office having received full reimbursement of the amount from the defaulting party;**
  - (f) The Frontline Office shall be responsible in ensuring that any form, statement or other document submitted, including those incidental to the calculation of the commission, is accurate and correct. APL shall have the right to make such adjustments as may be necessary to any payment or remuneration due to the Frontline Office in the event there is any error in such form, statement or**

*document submitted by the Frontline Office which affects the amount payable to the Frontline Office;*

- 2. APL may at its discretion make direct payment to its major creditors in which event APL will notify the Frontline Office:*
  
- 3. The Walker Accounts Payable Systems shall replace the previous Disbursement Account Forms and Statement of Monthly General Accounts. All other reports generated are to be submitted to APL in accordance with instructions received from APL from time to time.*
  
- 4. Upon implementation of the Walker Accounts Payable System, a new bank account is to be opened for the sole purpose of disbursement of relevant expenses incurred for APL's operations. The new bank account (the "APL" bank account") shall be opened by the Frontline Office on behalf of ALP. The Frontline Office shall be responsible for the maintenance, operation and all payments made from this bank account. The Frontline Office shall submit to APL a copy of the Bank Reconciliation Report generated by the Walker Accounts Payable system together with a copy of the bank statement on a monthly basis; and*

**5. All forms/ reports submitted, where applicable, are to be stamped with the frontline Office's company stamp and duly endorsed.**

By analyzing the above articles one can come to the conclusion that the income of the APL Lanka (Pvt) Limited is only commission. Article 3 and 4 have been taken into consideration by the TAC. The conclusion is that the profit and income of the frontline office is commission.

C8(e). **ARTICLE 6**

### **REMUNERATION**

***In consideration for its services to APL in pursuance of this Agreement, the Frontline Office shall be remunerated by APL as provided in Schedule 1 and 2 hereto. The Frontline Office shall be paid in its local currency based on APL's in-house exchange rate determined on a monthly basis.***

In the above article 6 there is a reference to schedule 1 and 2 of the agreement.

C8(f). **SCHEDULES**

***1. The remuneration of the frontline office pursuant to article 6 of this agreement shall be as per the TARIFF OF MINIMUM AGENCY FEES/COMMISSIONS FOR VESSELS CALLING AT PORTS OF SRI LANKA as***

*approved by the controller of exchange in Sri Lanka and published by CASA.*

*2. Principals shall remit adequate funds to his agent to meet all expenses for the services to be rendered by the SLPA before the arrival of the vessel in port, in terms of the Sri Lanka exchange control law.*

*In the event of the failure of the agent to meet legitimate charges to the port, for lack of funds from his principal, the ports authority may retain or arrest the vessel until these charges are paid, in terms of section 40 of the SLPA Act no. 51 of 1979.*

Article 6 speaks about the remuneration. In consideration of the services rendered by the APL, the principal pays remuneration as provided in Schedule 1, 2 of the agreement. According to the clause 1 of Schedule 1, the remuneration is **tariff of agency fees /commissions for vessels.**

Above wording and the pattern of the words in the agreement confirm that the tariff of agency fees and the commission for vessels are same and used in the same sense. Both the tariff of agency fees and commission for vessels are same and used in different situation. **Tariff of Agency fees received by the frontline office like/ as commission.**

**C8(g).** In Article 6, there is no reference to commission. But in the said article it has been mentioned that the remuneration is payable as provided in schedule 1 and 2. When one take the

article 6 and the schedule 1 and 2 Intoto, it can be concluded **that the profits and income of the APL Lanka (Pvt) Limited is commission only.**

**C9. SECTION 13 (ddd) OF IRA**

**“Section 13 – There shall be exempt from Income Tax –**

***13 (ddd) - the profits and income earned in foreign currency by any resident company, any resident individual or any partnership in Sri Lanka, from any service rendered in or outside Sri Lanka to any person or partnership outside Sri Lanka, other than any commission, discount or similar receipt for any such service rendered in Sri Lanka, if such profits and income (less such amount, if any, expended outside Sri Lanka as is considered by the Commissioner-General to be reasonable expenses) are remitted to Sri Lanka through a bank”***

**C9(a).**The requirements for eligibility for tax exemption under Section 13 (ddd):

- (a) Should be profit and income.
- (b) Should be in foreign currency.
- (c) Should be a resident company.
- (d) Service should be rendered in or outside Sri Lanka.
- (e) Should be a person or partnership outside Sri Lanka.
- (f) Should be remitted to Sri Lanka through a bank and,
- (g) Should **not be commission**, discount or **receipt similar to commission.**

**C9(b).**Further, section 13 (ddd) of IRA grant exemptions to the profit and income other than commission discount or similar receipt. Some of the income received by APL (Lanka) PVT are agency fees which can be considered as similar receipts to commission. Therefore, that income as agency fee can be excluded for tax exemptions.

**C9(c).**Department of Inland Revenue (**Herein after sometimes referred to as IRD**) sought clarification from the tax payer and call for documentary evidence to prove that they have received agency fees/ transshipment fees. The tax payer by the letter of the financial controller of the APL Lanka (Pvt) Limited dated 24/04/2015 informed **that they have no invoices as they are receiving commission only.**

**C9(d).**The tax payer has no documentary evidence to show that they have received different categories of profit and income other than the commission. **(This is at the Inland Revenue level)**

**Guillain Vs Commissioner of Income Tax 51 NLR 241**

***This case clearly states that the burden of proof of an assessee to prove that the assessment is incorrect is on the assessee. Section 140(5) of the Income Tax Act of 2000 states this clearly, the said case states that the assessee “took grave responsibility in not producing (like this instant Appellant) materials which would undoubtedly have been of great value for the purpose of forming the assessor’s opinion. In the circumstances***

***the assessor was not bound by the strict rules of evidence and was entitled to make an assessment according to his judgment.”***

Short of materials also press the Inland Revenue to decide negatively.

**Therefore, the conclusion that the tax payer is not entitled to the tax exemption is correct.**

**C10.** Questions of law No.19, 20, 21, 22, 23, and 24 are all in respect of status of the company, section 59 (B) of IRA. Therefore, all these questions are taken together for analysis and the analysis as follows;

**C10(a).** **SECTION 59 (B) OF IRA**

Section 59B of the Inland Revenue Act No.10 of 2006 reads as follows;

***59(B)(1) – The profits and income of any person (not being the holding company, a subsidiary company, or an associate company of a group of companies) for any year of assessment commencing on or after April 1, 2011, from any undertaking referred to in subsection (2) shall, notwithstanding anything to the contrary in any other provisions of this Act, be chargeable with income tax at the appropriate rate specified in the fifth schedule to this Act.***

**59(B)(2) – For the purpose of this section “undertaking” in relation to any year of assessment means any undertaking-**

**(a) Engaged in the manufacture of any article or in the provision of any service and**

**(b) The turnover of such undertaking (other than from the sale of any capital asset) for that year of assessment-**

**(i) being any year of assessment commencing on or after April 1, 2011 but prior to April 1, 2013, does not exceed three hundred million rupees;**

**(ii) being any year of assessment commencing on or after April 1, 2013, does not exceed five hundred million rupees;**

**C10(b). DEFINITION**

The companies Act as defined companies in several categories.

**Holding company** is defined as a company deemed to be another company’s holding company if an only other company is its subsidiary.

**Subsidiary** is defined if the other companies either

- I. controls the compositions of its board of directors

- II. Is in a position to exercise or control the exercise of more than half the maximum number of votes that can be exercised at a meeting of the company.
- III. Hold more than half of the issued shares of the company other than shares that carry no right to participate beyond a specified amount in a distribution of profit or capital
- IV. Is entitle to receive more than half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond the specified amount in a distribution of profit or capital.

**Associates Company** is a company over which an investing company has a significant influence and which neither a subsidiary of the investing company no is a joint venture of which the investing company is a partner.

**C10(c).** **APPROPRIATE RATE**

The second point is that what is the status of the APL Lanka (Pvt) Limited? It has been admitted that APL Lanka (Pvt) Limited has declared that they own 40% of the APL Singapore. A company that has significant interest is an associate company. In the financial statements, APL Lanka (Pvt) Limited is identified as investor of APL Logistics. **The Appellant failed to produce material to show their eligibility to claim appropriate rates.**

**Therefore, it is clear that the APL Lanka (Pvt) Limited is an associates company and not entitled for appropriate rates under section 59(B) of IRA.**

**C11.** Questions of law 25, 26, and 27 are all in respect of undeclared income. Therefore, all these questions are taken together for analysis and the analysis as follows;

**C11 (a). UNDECLARED INCOME**

The TAC has held that the tax payer has failed to declare certain income amount to Rs. 46,500, 174/-. The contention of the tax payer is that those are operation expenses. But the position of the TAC is that the tax payer failed to furnished materials to prove their claim before the CGIR. Accordingly, the said amount has been considered as undeclared income.

**D. ANSWERS TO THE QUESTIONS OF LAW**

For the reasons adumbrated above, the questions of law are answered as follows;

1. No.
2. No.
3. (a) No.
4. No.
5. No.
  
6. No.
7. No.

8. No.

9. No.

10. No

11. (a)No.

(b)No.

12. No.

13. No.

14. No.

15. No.

16. No.

17. No.

18. No.

19. No.

20. No.

21. No.

22. No.

23. No.

24. No.

25. No.

26. No.

27. Yes.

**E. CONCLUSION**

**As analyzed above and as the twenty seven questions raised in the case stated are answered in negative, the determination of the TAC dated 15. 03. 2022 is affirmed and the appeal is dismissed.**

**The Appeal is dismissed. But considering the circumstances of the case no cost is ordered.**

The registrar is directed to forward a copy of the judgment to the tax appeal commission.

On this 12<sup>th</sup> day of November 2025

**JUDGE OF THE COURT OF APPEAL**

**M. C. B. S. MORAIS**

I agree.

**JUDGE OF THE COURT OF APPEAL**