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

In the matter of a Case Stated under Reference No. TAC/IT/055/2016 by the Tax Appeals Commission under Section 170 of the Inland Revenue Act No.0 of 2006 read together with Sec 11A of the Tax Appeals Commission Act No. 23 of 2011 (as amended)

**Browns Hotels and Resorts
Limited**, (formerly Known as "LOLC"
Leisure Limited),
No. 100/1,
Sri Jayawardenapura Mawatha,
Rajagiriya.

APPELLANT

**Court of Appeal No. CA/ Tax/
074/2023
Tax Appeal Commission
No.TAC/IT/055/2016**

-Vs-

**The Commissioner General of
Inland Revenue**,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 2.

RESPONDENT

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

Counsel: **Maithree Wickremasinghe, President’s Counsel with Rakitha Jayatunga, Attorney at Law instructed by Sithuminee Wijeratne, Attorney at Law for the APPELLANT**

Maithri Amarasinghe, Senior State Counsel with R. Gooneratne, State Counsel instructed by Rizni Firdouz, Senior State Attorney for the RESPONDENT.

Written Submissions of the Appellant :- 11.11.2025
Written Submissions of the Respondent :- 08.12.2025
Argued on :- 19.12.2025
Order on :- 26.02.2026

ORDER

ANNALINGAM PREMASHANKER, J.

INTRODUCTION

This order is in respect of the Appellant’s application seeks to add a question of law to the case stated, which was objected by the Respondent.

Originally, the Appellant, by the case stated in the case stated dated 28.08.2023, had submitted seventeen (17) questions of law for the opinion of the Court.

ADDITIONAL QUESTIONS OF LAW

On 18.07.2024, the learned President's Counsel for the Appellant submits an additional question of law, which is as follows:

“Is the Commissioner General of Inland Revenue not entitled to increase the penalty in the notice of assessment in a determination on an appeal by an assessee against an assessment?”

QUESTIONS OF LAW

The seventeen questions of law in the case stated dated 28.08.2023 are as follows:

1. Was the purported assessment No. ITA 14070300035V1 made without jurisdiction?
2. Has there been no valid assessment made on the Appellant for the year of assessment 2011/2012?
3. Is the said purported assessment contrary to the provisions of Sections 163 and 164 of the Inland Revenue?
4. Do the provisions of section 25(4) of the Inland Revenue Act No. 10 of 2006 as amended have no application to the investment income of Rs. 158,645,740 of the Appellant?

5. Are the profits and income of the Appellant chargeable with income tax in terms of Section 59B of the Inland Revenue Act No. 10 of 2006 as amended?
6. Are the profits and income of the Appellant chargeable with income tax at the rate of 10%?
7. Has the Tax Appeals Commission erred in law in failing to determine that the Appellant should be taxed at the rate of 10% under Section 59B of the Inland Revenue Act No. 10 of 2006 as amended?
8. Has the Tax Appeals Commission erred in law in its interpretation of Section 59B of the Inland Revenue Act No.10 of 2006 as amended?
9. Has the Tax Appeals Commission erred in law in confirming the determination of the Respondent that the profits and income of the Appellant should be taxed at the rate of 28%?
10. Has the Tax Appeals Commission erred in law by failing to reduce from the book profits of the Appellant the investment in shares by the Appellant for its business of investing in the leisure industry in determining "distributable profits" of the Appellant under section 61(1) of the Inland Revenue Act No. 10 of 2006?
11. Has the Tax Appeals Commission erred in law in determining that the investment in shares by the Appellant for its business of investing in leisure industry is not a "capital asset" in calculating "distributable profits" in terms of section 61(1) of the Inland Revenue Act No. 10 of 2006?

12. Has the Tax Appeals Commission erred in law in its interpretation of Section 61(1) of the Inland Revenue Act No.10 of 2006 as amended determining the distributable profits and the deemed dividend tax of the Appellant?
13. Has the Tax Appeals Commission erred in law in failing to consider that the Appellant was in any event restrained from distributing in order to comply with the requirements imposed by the Companies Act No. 07 of 2007?
14. Has the Tax Appeals Commission erred law in failing to determine that CGIR has not made the determination within the time period as required by Section 165 (14) of the Inland Revenue Act No. 10 of 2006 as amended?
15. Has the Tax Appeals Commission erred in law in considering reasons other than the reasons set out by the Assessor in his communication of the purported reasons for not accepting the return of the Appellant?
16. Has the Tax Appeals Commission erred in law in failing to determine that the GIR has given reasons other than the reasons set out by the Assessor in his communication of the purported reasons for not accepting the return of the Appellant?
17. Has the Tax Appeals commission erred in law in failing to determine that the CIR has failed to provide sufficient reasons as required by Section 7(3) of the Tax Appeals Commission Act No. 23 of 2011 as amended?

OBJECTION TO THE ADDITION

Respondent's contention is that the imposition of the penalty is made under Section 173(3) of the Inland Revenue Act (Herein after sometimes referred to as IRA), which cannot be construed as an increase of the Assessment. The imposition of penalty was made as a result of non payment of tax on the due date, which is a default and the penalties are to be paid on such default. Thus, there is no legal basis or merit in the application to add the above question of law.

CALCULATION

Originally the Appellant received a notice of Assessment

Dated 18.03.2024 setting out the Tax Payable	- 15, 062, 247
The penalty	- 4, 217, 429

The Appellant appeal to the Commissioner General of Inland Revenue (Herein after sometimes referred to as CGIR), the same

is dismissed confirming the assessment. There, the CGIR indicated that the Tax Payable

	- 15, 062, 247
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The Penalty	- 7, 531, 124
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Finally, in the Assessment, the increased penalty	- 3, 313, 695
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TAC ACT

Section 11 A (6) of the TAC Act is as follows:

“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 questions, 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, there on. Where a case is so remitted by the court, the commission shall revise the assessment in accordance with the opinion of the court”

ACTION OF THE CGIR

Originally, the Assessment as set out in the notice of assessment is - 19, 279, 676

(consisting Tax Payable 15,062,247+

The Penalty 4,217,429)

End of the Appeal, the CGIR’s assessment - 22, 593, 371

(consisting Tax Payable 15,062,247+ the

Penalty 7,531,124)

It is confirmed that the CGIR has increased the Penalty in the Appeal made to him. The Appellant's contention is that the CGIR is not entitled to increase the Penalty and thus increase the assessment. This has been raised as a question of law and the answer to this question of law would result in the increase, reduction, confirmation or annulment of the assessment as contemplated by Section 11A (6) of the TAC Act.

CASE REFERENCE 01

CGIR Vs Janashakthi Insurance Company Ltd

SC Appeal 114/2019 | SCM.S.C.M.26.06.2020

Held “ ***in addition to the statutory provisions found in the TAC Act, our appellate courts to 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 answer to the new questions of law may result in the confirmation, reduction, increasing or annulling the assessment determined by the commission.***”

CASE REFERENCE 02

Orient Finance PLC Vs CGIR CA/TAX/008/2019 | COURT OF APPEAL MINUTE 16.06.2022

CASE REFERENCE 03

CGIR Vs Dr.SSL Perera

CA/TAX/03/2017

Held ***“it is open for the 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. Questions of law which are purely of academic interest cannot be raised.”***

RESULT

Ultimately, questions of law which were necessary for the confirmation, reduction, increasing or annulling the assessment can be added to the case stated. The Respondent must satisfy the court, the prejudice caused to him by the addition of questions of law. In this instance, The Respondent fail to satisfy this court that there is prejudice caused to the him by adding the requested questions of law to the case stated.

CONCLUSION

Having considered all the submissions made to this court, this court is allowing the application of the appellant to add the questions of law to the case stated. The question of law is added as the 18th question of law.

On this 26th day of February 2026

JUDGE OF THE COURT OF APPEAL

M. C. B. S. MORAIS

I agree.

JUDGE OF THE COURT OF APPEAL