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 and in terms of 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.

CONFAB STEEL (PVT) LTD,

5-9, East Tower, 5th Floor,
World Trade Centre,
Echelon Square,
Colombo 01

APPELLANT

C . A. Tax No.11/2023
TAC. Appeal No.TAC/IT/013/2019

-Vs-

THE COMMISSIONER GENERAL OF INLAND REVENUE

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

RESPONDENT

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

Counsel: **Laknath Jayawickrema, Attorney at Law, with Thamali Somaratne, Attorney at Law, Nethmi Ramawickrama, Attorney at Law** instructed by **Marian Chambers, Attorneys at Law** for the Appellant.

Rajika Aluwihare, State Counsel for the Respondent.

Written Submissions of the Appellant	}	01.11.2023, 15.10.2025
Written Submissions of the Respondent	}	18.01.2024, 08.12.2025
Argument	}	11.06.2025, 30.06.2025, 31.07.2025, 01.09.2025
Decided on	:	12.03.2026

JUDGEMENT

ANNALINGAM PREMASHANKER, J.

A. INTRODUCTION

A1. This is an appeal by **Confab Steel (Pvt) Ltd** (**Hereinafter sometimes referred to as The Tax Payer/ Appellant**) from

the determination of the Tax Appeals Commission dated 29.11.2022 made in TAC appeal no. TAC/IT/013/2019. The Respondent is **The Commissioner General of Inland Revenue** (**Hereinafter sometimes referred to as The Respondent/CGIR**).

A2. The Appellant being dissatisfied with the Determination of Tax Appeals Commission (**Hereinafter sometimes referred to as TAC**) requested for an appeal by a case stated for the opinion of the Court of Appeal by their communication dated 29.12.2022.

A3. In the case stated dated 15.03.2023 following questions were raised for the opinion of the Court of Appeal:-

Q.N.1. ***Did the Tax Appeal Commission err in law in failing to consider the documentary evidene submitted at the hearing on 1st November 2022 in respect of the spare parts stock of Rs. 54,930,044?***

Q.N.2. ***Did the Tax Appeal Commission err in law in arriving at a conclusion in dissallowing consumable spare parts purchase expenses of Rs. 9,888,831/- being a part of the spare parts stock of 54,930,044?***

Q.N.3. ***Did the Tax Appeals Commission err in law in failing to recognize that receiving an interest income of Rs.26,846,301/- was incidental to the rest of the trade or business of the Appellant and cannot be isolated from the rest of the trade or business?***

Q.N.4. ***Did the Tax Appeals Commission err in law in recognizing interest income of Rs.26,846,301/- as separate from the business profits?***

Q.N.5. ***Did the Tax Appeal Commission err in law in failing to recognize interest income as part of the profits & income under the Agreement No. 26 dated 18th March 2004 with the Board of Investments of Sri Lanka?***

Q.N.6. ***Did the Tax Appeals Commission err in law in affirming the Determination of the Commissioner General of Inland Revenue (CGIR) with double taxing the interest income of Rs. 26,846,301/-?***

B. ARGUMENT

On 1st September 2025, both parties agreed to conclude the argument and undertake to file written submissions. It is found

that the Appellant has furnished written submissions on 15.10.2025. The Respondent has furnished the written submissions on 08.12.2025.

C. ANANLYSIS

C1. QUESTIONS OF LAW

There were six questions of law presented for the opinion of the Court of Appeal, in this Appeal. **The first and second questions of law are on the disallowance of the consumable spare parts as an expense. The remaining third, fourth, fifth and the sixth questions of law are on interest income**.

C2. TAX RETURN

The tax payer submits its return for the year of 2014/2015, claiming consumable spare parts expense of Rs. 54,930,044. This claim was rejected by the Assessor and the return is not accepted and issued an assessment.

C3. FIRST APPEAL

Having aggrieved by the said Assessment, the tax payer made an appeal to the CGIR. The Tax Payer made the same agitation before the CGIR. CGIR by his determination dated 13.03.2019 determined the appeal by confirming the assessment.

C4. SECOND APPEAL

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 tax payer raised the same issues. TAC by its determination dated 29.11.2022, upheld the decision of the Inland Revenue Department and dismissed the appeal. Thereafter, the Appellant being dissatisfied with the said determination of the TAC requested TAC by his communication dated 29.12.2022 to have a case stated for the opinion of the Court of Appeal.

C5. QUESTIONS 1 & 2

Q.1	Q.2
Did the Tax Appeal Commission err in law in failing to consider the documentary evidence submitted at the hearing on 1st November 2022 in respect of the spare parts stock of Rs. 54,930,044?	***Did the Tax Appeal Commission err in law in arriving at a conclusion in dissallowing consumable spare parts purchase expenses of Rs. 9,888,831/- being a part of the spare parts stock of 54,930,044?***

C6. BOARD OF INVESTEMENT AGREEMENT

Confab Steel (Private) Limited is the limited liability company incorporated in Sri Lanka engaged in the business of manufacture and marketing of rolled steel products under the

agreement No. 28 dated 18th March 2004 with the Board of Investment (hereinafter referred to as the 'BOI') in terms of Section 17 of the Board Of Investment of Sri Lanka Act. In terms of the above BOI agreement, the Appellant is entitled for a concessionary corporate tax rate of 20% for the year of assessment 2014/ 2015.

C7. NO DOCUMENTS

Appellant in its return, show an amount of Rs. 54,930,044 as spare parts purchase expenses. This was rejected by the CGIR as the same cannot be allowed as outgoing expenses, as per Section 25 of Inland Revenue Act (Hereinafter sometime referred to as IRA), as the Tax Payer did not submit any documents for audit purposes. CGIR decided that due to lack of documentary evidence that the expense of Rs.54,930,044, cannot be allowed as outgoing expenses.

C8. FIRST APPEAL

The Appellant appealed against the said assessment on following grounds:

- The amount referred to as the spare part expenses of RS. 54,930,004 is in fact the closing inventory of spare parts which has not been deducted in arriving at the profit from trade, business and therefore, should not be added back.

- Additional interest income of Rs. 26,845,301 is derived from fixed deposits kept as a security/ collateral to import raw materials and therefore, should be considered as part of the business income taxable at 20%.
- Interest income has been taxed twice in issuing the assessment

C9. CHANGE OF AMOUNT

The Respondent rejected the appeal and the Appellant appealed to the Tax Appeal Commission (TAC). TAC determined that the disallowance of spare part expenses should be limited to RS. 9,888,831 and affirmed the remainder of the assessment. The Respondent requested the case to be stated for the Honorable Court of Appeal.

C10. APPEAL BEFORE THIS COURT

During the argument, the Respondent acknowledged that interest income has been taxed twice and expressed its willingness to make appropriate adjustments to eliminate the double counting effect. This adjustment was informed to court by the Respondent's document marked "A6" and annex to the Appellant written submission tendered on 16. 10. 2025. Accordingly, there are three major contentions remained before this court:

- Disallowing consumable spare parts purchase of Rs. 9,888,831

- Tax appeal Commission err in law in failing to consider the documentary evidence submitted at the hearing on 1st November 2022 in respect of the spare parts stock of Rs. 54, 930,044
- Taxation of interest income of Rs. 26,846,301 at the rate of 28% as opposed to the 20% stated in the BOI agreement.

C11. FAILURE TO SUBMIT DOCUMENTS

When reviewing the Appellant's return, the assessor observed the absence of supporting documents relating to the consumable spare parts expense, as well as the fact that no such document had been provided to the auditor resulting in a qualified opinion. Since the expense could not be verified, the Assessor correctly disallowed it. This failure to substantiate the expense was one of the reasons for rejecting the Appellant's return. When the matter was appealed to the CGIR, the Appellant was granted an opportunity to submit the necessary supporting documents. The Appellant's representatives agreed to furnish these documents by 31. 12. 2018 but failed to do so

C12. DOCUMENTARY DETAILS

The Appellant has granted an opportunity to furnish documentary details of Rs. 54,930,044 by the CGIR, which were not adhered.

This issue came up before the TAC. The Appellant attempted to furnish Documentary details which was not allowed by the TAC as fresh evidence cannot be presented in appeal. In the appeal before TAC, TAC has observed that the Assessor has mistakenly disallowed the sum of Rs. 54,930,044, which is the closing stock of spare parts and correctly brought it down to Rs. 9,888,831 as consumable spare parts expenses.

C13. FRESH EVIDENCE

It is common ground that the Appellant failed to produce necessary corroborative documents, either before the Assessor or before the CGIR, despite being expressly afforded an opportunity to do so. The Appellant even undertook to furnish the relevant documents but ultimately failed to comply. However, the appellant now contends that it attempted to tender documentarily evidence relating to the spare parts stocks before the TAC, but the TAC sought the respondent's consent to accept the documents, and because the respondent objected, the documents were not accepted.

C14. SECTION 9

Section 9 (8) of the Tax Appeals Commission Act, No. 23 of 2011, expressly restricts the submission of new documents at the TAC hearing. Section 9(8) provides as follows:

'*Except with the consent of the Commission and on such terms as the Commission may determine, the appellant shall not at the hearing, be allowed to produce any document which was not produced before the Commissioner-General or the Director-General, as the case may be, or to adduce the evidence of any witness whose evidence was not led before the commissioner-General or the Director-General, as the case maybe, or adduce evidence of a witness whose evidence has already been recorded at the hearing before the Commissioner-General or the Director-General, as the case may be'* The provision states that an appellant may not produce documents or led evidence presented before the Commissioner-General unless the Commission consents. The default position, therefore, is exclusion (not admission) of new evidence.

C15. FAILURE

When the CGIR was reviewing, he observed the non- production of the supporting documents related to the expense. Due to this, the CGIR could not verify the expense and gave time for the Appellant to submit necessary documents. The Appellant agreed and had failed to do so. Then the Appellant undertook to provide the necessary documentary evidence. However, since the Appellant did not produce the required document, CGIR upheld the assessor's position and affirmed the disallowance of the consumable spare parts expense.

C16. TAX APPEALS COMMISSION

The TAC observed that the Assessor had mistakenly disallowed the sum of Rs. 54,930,044, which represented the closing stock and not the consumable spare parts expense. TAC had identified that the correct amount of spare parts expense that had been claimed is Rs. 9,888,831. The TAC confirmed the assessment made by CGIR subject to recalculation adjustment of the tax on consumable spare parts purchase expense and dismissed the appeal.

C17. ERROR IN CALCULATIONS

When the appellant submit its return, the assessor disallow whole of Rs. 54,930,044 as consumable spare parts expenses. But detailed analysis confirms that the Rs. 54,930,044 is closing stock of spare parts. The TAC having found the error on the part of the assessor had a calculation and found Rs. 9,888,831 is the consumable spare parts expenses and grand allowances.

C18. ANSWER

According to the above analysis, this court is compelled to answer questions of law No.1 and 2 in negative.

C19. QUESTIONS 3,4,5 & 6

Q.3	Q.4
Did the Tax Appeals Commission err in law in failing to recognize that receiving an interest income of Rs.26,846,301/- was incidental to the rest of the trade or business of the Appellant and cannot be isolated from the rest of the trade or business?	***Did the Tax Appeals Commission err in law in recognizing interest income of Rs.26,846,301/- as separate from the business profits?***
Q.5	**Q.6**
Did the Tax Appeal Commission err in law in failing to recognize interest income as part of the profits & income under the Agreement No. 26 dated 18th March 2004 with the Board of Investments of Sri Lanka?	***Did the Tax Appeals Commission err in law in affirming the Determination of the Commissioner General of Inland Revenue (CGIR) with double taxing the interest income of Rs. 26,846,301/-?***

All the above questions are related to the interest income of the appellant. This interest income came into play as per board of investment agreement. Interest income from the fixed deposit held as a security against imports of raw materials, tax at 20% rate in terms of BOI agreement.

C20. CLAUSE 10 OF THE BOI AGREEMENT

The clause 10 of the BOI agreement, stated as follows;

"*in accordance with and subject to the powers conferred on the Board under Section 17 of the said law No.04 of 1978 and regulations that may be applicable there to the following benefit and/or exemptions and/ or privileges are hereby granted to the enterprise in connection with and/or in relation to the business.*" The word "business" has been defined in the BOI agreement as follows ***"to setup/ conduct and operate am industry/ business to set up a steel re-rolling mill to manufacture of steel products"***

Therefore, any benefit and/ or exemptions and/or privileges accrues to the Appellant only to the extent it is in connection with and/or in relation to the business.

The Clause 10 (iii) of the BOI agreements states that the profits are income of the Enterprise shall be charged at the rate of twenty per Centum (20%) which is the rate applicable for the year of assessment 2024/2015. Thus, tax rate of 20% would be applicable to profits and ***in connection with and/or in relation***

to the conduct and operate an industry/business of steel re-rolling mill to manufacture of steel products.

C21. INTEREST

Though the income is derived from the fixed deposits with the bank, in consideration of the circumstance of the case, the income cannot be treated as interest income in substance. That deposits are not investment of excess funds available with the company but mostly out of borrowed funds from the same or another bank from which the company had to pay interest on such borrowing.

The company is compelled to place such deposits prior to the released of the pledge raw material stocks under an undertaking given to the bank. The income derived from those deposits are to compensate the interest charged by the foreign suppliers in relation to the credit terms allowed.

The deposits are mandatory in carrying out the business operations and interest accrued on those special deposits are unavoidable, such income derived from those special deposits should be treated as business income under Section 3 (a) of the Inland Revenue Act and not as interest derived from excess funds invested in deposits.

C22. **CASE REFERRENCE**

The above question has already been conclusively answered by this Court **in Gabo Travels (Pvt) Ltd v. Commissioner General of Inland Revenue, CA/TAX/12/2014, decided on 05.12.2019.**

"***The principal question of law referred for the opinion of the Court is whether the monies received by the appellant, during the year assessment 2008/2009, as interest on fixed deposits, shall be treated as business income in terms of section 3(a) of the Inland Revenue Act, No. 10 of the 2006, as amended, in which event, the appellant has to pay a lower rate of tax, or as separate interest income in terms of section 3(e) of the Act, which event, the appellant has to pay a higher rate tax.***"

C23. **APPLICATION OF PRINCIPLES**

Applying the principles of Gabo Travels to the present case, it evident that:

- The Appellant's BOI concession applies only to income arising from the business of **manufacturing steel products;**
- Interest earned on fixed deposits are not generated by that business, nor is it an integral part of its manufacturing activity

- The fixed deposits, though used as collateral for supplier credit terms, remain passive investments, and the interest derived from them is a separate source of income; and
- Therefore, such interest cannot fall within Clause 10 of the BOI agreement and cannot attract the concessionary rate of 20%.
- Thus consistent with the reasoning in Gabo Travels, the Appellant's interest income must be taxed at the normal rate of 28%, as correctly determined by the Respondent.

As such, the interest income received from fixed deposits is not an integral part of the business of manufacturing steel products and therefore cannot be considered as business income.

C24. ANSWER

According to the above analysis, this court is compelled to answer questions of law No.3, 4 and 5 in negative. The question of law No.6 is answered in affirmative.

D. ANSWERS TO THE QUESTIONS OF LAW

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

Q.N.1. No.

Q.N.2. No.

Q.N.3. No.

Q.N.4. No.

Q.N.5. No.

Q.N.6. Yes.

E. CONCLUSION

As analyzed above and as the six questions raised in the case stated are answered as above, the determination of the TAC dated 29. 11. 2022 is affirmed, subject to the adjustment agreed upon by the Respondent and 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 12th day of March 2026

JUDGE OF THE COURT OF APPEAL

M. C. B. S. MORAIS

I agree.

JUDGE OF THE COURT OF APPEAL