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

In the matter of an Application for a Mandate in the nature of a Writ of Certiorari in terms of Article 140 of the Constitution.

Abidally Sons (Pvt) Limited
111, Attampola Watte,
Mabole, Wattala.

Petitioner

Vs.

Case No.632/2010

1. M.D.H. Herath
   Member, Board of Review 68,
   Raja Maha Vihara Mawatha,
   Mirihana, Nugegoda.

2. W.H.E. Ranasinghe
   Member, Board of Review
   C/o, Secretary, Board of Review, Inland Revenue Department,Sir Chittampalam A. Gardiner Mawatha,
   Colombo 02.

3. Dr. G.C.B. Wijesinghe
   Member, Board of Review
   8A, Gregory's Avenue,
   Colombo 07.

Respondents

4. The Commissioner General of
Inland Revenue,
Inland Revenue Building
Sir Chittampalam A. Gardiner
Mawatha,
P.O.Box 515, Colombo 02.

Added Respondent

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**

DEEPALI WIJESUNDARA, J

COUNSEL : Dr.Shivaji Filix with Buddhika Jayasinghe

for the Petitioner,

A.Samaranayake SSC

for the 1st to 3rd Respondents

Argued on : 19.07.2012

Decided on : 29.01.2013

S.Sriskandarajah, J,

The Petitioner is a limited liability company incorporated under the Companies Law of Sri Lanka. The Petitioner submitted that it had forwarded returns of income tax for years of assessment 2002/2003 and 2003/2004. The Assessor of the relevant unit, in his assessment for the tax payable for the said years 2002/2003 and 2003/2004, assessed the taxes payable at Rs.6,741,622/- for 2002/2003 and Rs.25,013,395/- for 2003/2004. The Petitioner contended that the Assessor disallowed the claims for capital allowance claimed under Section 23 of the Inland Revenue Act No.38 of 2000 for machines purchased during the income tax years 2002/2003 and 2003/2004, and tax exemption claimed under Section 21 of the Inland Revenue Act. The Senior Assessor, in

disallowing the claim for capital allowance stated that the company is not entitled to tax exemptions under Section 21A of the Inland revenue Act No.12 of 2004 as the company had not fulfilled the following relevant requirements specified in the above sections:

1) The Company has not used the machinery to export goods and not exported goods during the year of assessment 2002/2003 and 2003/2004.

2) Profit and income from such export activity has not been specifically identified and ascertained in the tax computation, and these reasons were given by the Senior Assessor by acting under Section 134(3) of the Inland Revenue Act No.38 of 2000.

The Petitioner, being aggrieved by the disallowance of the capital allowance for year 2002/2003 and 2003/2004 and tax exemption claim, appealed to the Commissioner General of Inland Revenue in terms of Section 136 of Inland Revenue Act No.38 of 2000. After oral and written submissions made to the Deputy Commissioner of Inland Revenue who had been assigned by the Commissioner General of Inland Revenue to hear the appeal, by his letter dated 5th February 2008, confirmed the assessment made by the Assessor. The Secretary to the Commissioner General, at the request of the Assessor, forwarded a letter dated 11th March 2008 to the Managing Director of the Petitioner, enclosing a copy of the reasons for the determination dated 7th March 2008. The Petitioner's authorized representative forwarded an appeal to the Board of Review on the 7th of April 2008 against the determination of the appeal by the Deputy Commissioner of Inland Revenue. The Petitioner submitted that the Board of Review that heard the appeal was comprised of the 1st Respondent, the 2nd Respondent and Dr. G.C.B. Wijesinghe. The Petitioner submitted that the 1st Respondent and Dr. G.C.B. Wijesinghe were present at all the meetings of the Board of Review and the 2nd Respondent also attended all the meetings, save and except the meeting on the 22nd September 2009. The Board of Review met on 18/03/2010 for their deliberations, and

the Secretary of the Board of Review forwarded the decision of the Board of Review by a letter dated 12th August 2010.

The Petitioner contended that the decision dated 12/08/2010 was signed only by the 1st and 2nd Respondents; that only the 1st and 2nd Respondents have signed the decision shows that it is only the 1st and 2nd Respondents who have made this decision. The Petitioner contended that the 1st, 2nd and 3rd Respondents who are Members of the Board of Review, should have jointly made this decision in terms of Section 169(1) of the Inland Revenue Act No.10 of 2006. The Petitioner further contended that the 1st and 2nd Respondents have no right or authority in law to state that this is the decision of the Board of Review without proof that it is the decision of all 3 Members and, in so making this statement, have acted illegally and unlawfully. In these circumstances the Petitioner seeks a Writ of Certiorari to quash the decision dated 12th August 2010.

It is an admitted fact that all 3 Respondents participated in the preparation of the determination as Members of the Board, and the determination reflects their common consensus in respect of the appeal submitted by the Petitioner. The determination had been signed by the 1st and 2nd Respondents who, in law, constitute the quorum of the Board. The Petitioner submitted that it is entitled to have recourse to arguments and views of all the Members, and as this decision could be referred to the Court of Appeal on questions of law, that the Petitioner has been denied this opportunity. It has been held in R.M. Fernando Vs. Commissioner of Income Tax, Ceylon Tax Cases Volume I, page 652, that when the Board is divided in its opinion, there is no provision for expression of first opinion by a descending Member; there can be only one opinion namly that the case under Section 73(8) to the Commissioner, and that is the opinion of the majority whether there is a division of opinion.

In this instant case it appears that the decision is unanimous, but even if one argues, as the decision was signed by 2 of the Members of the Board consisting of 3 Members, one of the Members would have dissented. Even in that event, the majority decision is communicated and as there is no provision for the expression of the opinion by a dissenting Member, the decision communicated by the said letter dated 12th August 2010 is lawful.

In relation to the merits of the application the Petitioner has sought a statutorily prescribed special remedy by way of an appeal to the Court of Appeal. In these circumstances the Petitioner is not entitled to any relief prayed for in this writ application and, therefore, this court dismisses this application without cost.

President of the Court of Appeal

Deepali Wijesundara, J

I agree,

Judge of the Court of Appeal