

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

*In the matter of an application under
and in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka for mandates in
the nature of Writs of Certiorari and
Prohibition.*

Application No. CA/WRT/0491/2022

Melstacorp PLC,
No 110, Norris Canal Road,
Colombo 10.

PETITIONER

Vs.

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

RESPONDENT

*In the matter of an application under
and in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka for mandates in
the nature of Writs of Certiorari and
Prohibition.*

Application No. CA/WRT/0492/2022

Distilleries Company of Sri Lanka PLC,
No 110, Norris Canal Road,
Colombo 10.

PETITIONER

Vs.

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

RESPONDENT

Before: Mayadunne Corea, J.
Mahen Gopallawa, J.

Counsel: Dr. K. Kanag-Isvaran, PC with Shivaan Kanag-Isvaran instructed by K. U. Gunasekara for the Petitioner in CA/WRT/0491/2022 and CA/WRT/0492/2022.

Ms. Chaya Sri Nammuni, Deputy Solicitor General for the Respondent in CA/WRT/0491/2022 and CA/WRT/0492/2022.

Argued on: 05.05.2026

Written Submissions: Petitioner on 16.06.2023 and 20.06.2026 in both Applications.
Respondent on 16.06.2023 in both Applications and 13.08.2026 in CA/WRT/0491/2022.

Decided on: 09.10.2026

Mahen Gopallawa, J.

Introduction

The Petitioners in both applications are public companies listed in the Colombo Stock Exchange. The Petitioner in Application No. CA/WRT/0491/2022 (Melstacorp) is the holding company of several subsidiaries in diversified sectors, including the Petitioner in CA/WRT/0492/2022 (DCSL), which is a company engaged in the business of distilling, manufacturing and distributing liquor. The petitions in both Applications disclose, *inter alia*, that Melstacorp became the ultimate investment and holding company and the owner of DCSL by virtue of an Arrangement under section 256 of the Companies Act No. 7 of 2007 (as amended) with the sanction of the Commercial High Court of Colombo in proceedings No. CHC/34/2016/CO and with the approval of the Securities and Exchange Commission of Sri Lanka.

In both applications, the Petitioners have impugned the letters of intimation dated 29.06.2022 (P3), Notice of Assessment dated 09.08.2022 (P4), Penalty Notice dated 09.08.2022 (P5) and the Tax in Default Notice dated 01.12.2022 issued in respect of the Year of Assessment 2016/2017 (Y/A 2016/2017) issued by the Respondent (IRD) (collectively sometimes referred to as “the impugned Notices”).

The substantive reliefs sought by the Petitioners in both applications are identical and the relevant paragraphs of the prayer to the said petitions are as follows;

(b) Grant and Issue a mandate in the nature of a Writ of Certiorari, quashing the Letter of Intimation dated 29th June 2022 (dated 04th July 2022 in CA/WRT/0492/2022) marked P3 as being null and void and ultra vires the powers of the Respondent.

- (c) Grant and Issue a mandate in the nature of a Writ of Certiorari, quashing the Notice of Assessment dated 9th August 2022 marked P4 as being null and void and ultra vires the powers of the Respondent.*
- (d) Grant and Issue a mandate in the nature of a Writ of Certiorari, quashing the Penalty Notice dated 9th August 2022 marked P5 as being null and void and ultra vires the powers of the Respondent.*
- (e) Grant and Issue a mandate in the nature of a Writ of Certiorari, quashing the Tax in Default Notice dated 1st December 2022 marked P8 as being null and void and ultra vires the powers of the Respondent.*
- (f) Grant and Issue a mandate in the nature of a Writ of Prohibition restraining the Respondent his successors and/or any one or more of the Respondent and/or his servants and/or agents whomsoever in any manner whatsoever or howsoever from proceeding to take any steps whatsoever pursuant to the Letter of Intimation (P3), the Notice of Assessment (P4), the Penalty Notice (P5) and the Tax in Default Notice (P8).*

The Respondent has filed statements of objections objecting to the grant of the aforementioned reliefs and accordingly the applications were taken up together for argument. The parties have also filed written submissions at pre-notice and post-hearing stages. It was also agreed that both applications would be determined by a single judgment.

Factual Background

The salient facts of these applications, as extracted from the pleadings, may be presented as follows. The identification of documents refers to their markings in the respective applications.

According to the petitions, the Petitioners had undertaken an “Arrangement” in terms of section 256 of the Companies Act¹ to re-organize its shares and to position Melstacorp as the ultimate holding company of the Group and the Commercial High Court of Colombo in proceedings No. CHC/34/2016/CO had granted its sanction for same in terms of section 257 of the Act by order dated 07.09.2016 (P2).

It is common ground between the parties that the Petitioners had filed their Returns of Income (Returns) for the Y/A 2016/2017 (YA 2016/2017) on 27.11.2017 (Melstacorp) and 22.11.2017 (DCSL) respectively. They have further submitted that such Returns had been tendered on a self- assessment basis in terms of section 113 of the Inland Revenue Act No. 10 of 2006 (as amended), it being the applicable law relating to income tax at the time.²

¹ An “arrangement” is defined in section 255 of the Companies Act in the following terms: “arrangement” includes a re-organisation, of the shares and the stated capital of the company.

² vide paragraph 4 of the Final Consolidated Written Submissions of the Petitioner.

The Inland Revenue Act No 10 of 2006 (IRA 2006) was repealed and replaced by the Inland Revenue Act No. 24 of 2017 (IRA 2017), which was certified by the Speaker on 24.10.2017 and came in to operation on 01.04.2018 in terms of section 1 of the said Act.

The dispute between the parties has arisen in view of the action taken by the IRD in respect of the said Returns submitted by the Petitioners. In the first instance, the IRD has proceeded not to accept the Return submitted by Melstacorp by letter dated 29.06.2022 (P3) and the return submitted by DCSL by letter dated 04.07.2022 (P3). It is observed that the said letters (P3), which have been referred to as “letters of intimation” in the petitions have been issued in terms of section 163(3) of the IRA 2006 by two Senior Deputy Commissioners of the Large Taxpayer Unit-3 of the IRD, and, *inter alia*, set out the fact of non-acceptance of the Return, reasons for same and a computation of the estimated assessable income.

Whilst in my view it is not necessary to examine the grounds for non-acceptance of the Returns set out in P3 in detail as in a tax appeal, it is nevertheless necessary to have an understanding of such reasons since the Petitioners have impugned such decision and as the Respondent has sought to rely on same in the instant applications.

In respect of Melstacorp, the letter of intimation (P3) has, *inter alia*, concluded as follows;

10. *The principal activity of MC is to invest and manage a portfolio of diverse business. MC manages a portfolio of holding consisting of a range of divers[sic] business operations, which together constitute the company and provides function based services to its subsidiaries and associates.*
11. ***The group structure arrangement carried out by the MC was an integral part of trade or business of invest and manage a portfolio of diverse business. Trade includes every trade and manufacture and every adventure and concern in the nature of trade. The group restructuring arrangement has been carried out by the MC with the profit making motive and it was a concern in the nature of trade. The trade or business profit amounting to Rs 40,779,250,000 made through the restructuring arrangement has not been taken for computation of income tax liability of the MC for the above year of assessment and not disclosed in the Return of Income submitted.***

12.

It is evident that the whole restructuring process leads to complex scheme of tax avoidance and most of the transactions are commercially artificial and carried out with the intention of avoid the income tax liability.

Further, I would like to state the generally accepted “Ramsay Principles” in respect of tax avoidance scheme adopted as “ready made” in tax planning.

Hence, it is clear that the series of transactions which are pre-ordained, have been carried out during the restructuring process with the inserted steps not only for commercial purpose and for the purpose of tax avoidance as well. In the above context, I am of the opinion that the MC has committed fraud, evasion or willful default in relation to income tax payable for the year of assessment under review.

In the Letter of Intimation addressed to DCSL (P3), *inter alia*, the following conclusions have been drawn;

9.

The increase of MC's investment in DCSL has been made through the arrangement of transferring DCSL retained earnings to MC. It appears that the intention of this arrangement is to avoid the dividend tax liability. If DCSL revenue reserves were transferred to MC and former DCSL shareholders by way of formal dividend distribution, 10% dividend tax liability was arose [sic] under section 61 of the Inland Revenue Act. ...

10.

It is evident that the whole restructuring process was a complex scheme of tax avoidance and most of the transactions were commercially artificial and carried out with the intention of avoid the dividend tax liability.

Further, I would like to draw your attention for generally accepted "Ramsay Principles" in respect of tax avoidance scheme adopted as "ready made" in tax planning. In this regard the whole restructuring process has been carried out on the following manner;

- a) DCSL has entered into the series of transactions, some are commercially artificial and preordained in order to produce a given result.*
- b) MC has used Rs. 48.32 billion own funds to acquire DCSL shares and at the end of the scheme MC's stated share capita increased to Rs. 89.1 billion.*
- c) The purpose of this complex restructuring arrangement was the avoidance of the dividend tax liability.*

In this regard it is clear that, the series of transactions which are pre-ordained have been carried out during the restructuring process with the inserted steps not only commercial purpose but also for the purpose of tax avoidance. In the above context, I am of the opinion that the DCSL has committed fraud, evasion or willful default in relation to income tax (dividend tax) payable for the year of assessment under review.

Therefore it is informed that the Return of Income submitted for the above year of assessment has not been accepted due to the above reasons in terms of Section 103 and 163(5) of the Inland Revenue Act No. 10 of 2006.

Thereafter, Notices of Assessment (P4) and Penalty Notices on Non-Payment (P5) were issued by the IRD to both Petitioners dated 09.08.2022, assessing the tax liabilities of the Petitioners in respect of the Y/A 2016/2017 as follows;

Company	Tax	Penalty	Total
Melstacorp	11,424,302,356.68	5,834,088,236.70	17,258,390,593.38
DCSL	4,078,151,004.14	2,099,187,114.29	6,177,338,118.43

Both Petitioners had preferred separate appeals in respect of the aforementioned Notices of Assessment (P6) and Penalty Notices (P7) and the said appeals are all dated 07.09.2022. It is observed that in the said appeals, apart from substantive grounds of appeal, both Petitioners have also taken up the lack of jurisdiction to issue an assessment, the Notices of Assessment being time barred, lack of evidence to prove fraud, evasion or willful default, and the lack of proper reasons for the rejection of the Returns as preliminary grounds of appeal.

However, the IRD had proceeded to issue Tax in Default Notices under section 177(1) of the IRA 2006 against the Petitioners dated 01.12.2022 (P8) and the tax in default and the penalty payable thereon were indicated as follows;

Company	Tax	Penalty	Total
Melstacorp	11,418,190,000.00	5,739,029,152.48	17,157,219,152.48
DCSL	4,077,925,000.00	2,038,962,495.54	6,116,887,495.54

The Tax in Default Notices (P8) further states that, if an appeal against the assessment has not been tendered, the party in default may make an objection against the assessment within 30 days of the notice, and, that, if no such objection is received, legal action will be taken to recover the total tax in default.

The Petitioners have instituted the instant applications impugning the aforementioned Letters of Intimation of the non-acceptance of their Returns (P3), Notices of Assessments (P4), Penalty Notices (P5) and the Notices of Tax in Default (P8).

Grounds of Review and Analysis

As submitted in the Petitioners' final consolidated written submissions, the central issue in the instant applications is whether the IRD could have lawfully invoked and exercised the power of rejecting the aforementioned returns submitted by the Petitioners (P3) and issuing Notices of Assessment (P4) in terms of section 163(3) of the IRA 2006 in the year 2022, nearly five years after the said IRA 2006 had been repealed by the IRA 2017. The Petitioners contend that the IRD could not have done so, and as such, the decisions reflected in P3, P4, P5 and consequently P8 are illegal and *ultra vires*.

Prior to delving into a detailed analysis, it would be helpful to provide an overview of the cases presented by the parties. In their pleadings and submissions, the Petitioners state that they had made a self-assessment of their tax liability as provided in section 113 of the IRA 2006 in respect of the Y/A 2016/2017 after the Court-sanctioned arrangement and submitted their Returns of Income before the prescribed date. They contend that by filing their self-assessment Returns and paying the tax due thereunder, they had discharged their tax liability for the said year of assessment, and, also that their substantive tax liability became discharged and extinguished as a matter of law, at that point in time.

The Petitioners further contend that, it was open for the IRD to accept or reject the returns submitted by them and to issue Assessments in terms of section 163(3) of the IRA 2006

ordinarily within 18 months after the expiry of a period of 18 months from the 30th day of November of the immediately succeeding year of assessment as provided for in section 163(5) thereof. They point out that, in the instant case, the period of 18 months should be calculated from 30th November 2017 and would end on 30th May 2019, and, that, no Notices of Assessments relating to the Year of Assessment 2016/2017 had been issued to the Petitioners during such period.

In fact, it is also common ground, that the only assessments made in respect of the Petitioners for the relevant year of assessment are those reflected in the Letters of Intimation dated 29.06.2022 (P3) and the Notices of Assessment dated 09.08.2022(P4), which has been issued after the expiry of such period and after the IRA 2006 had been repealed and replaced by the IRA 2017.

For ease of reference, the provisions of the aforementioned sections 163(3) and 163(5) of the IRA 2006 that are relevant to the instant applications are set out below;

163.

(3) Where a person has furnished a return of income, the Assessor or Assistant Commissioner may in making an assessment on such person under subsection (1) or under subsection (2), either—

(a) accept the return made by such person; or

(b) if he does not accept the return made by that person, estimate the amount of the assessable income of such person and assess him accordingly:

Provided that where an Assessor or Assistant Commissioner does not accept a return made by any person for any year of assessment and makes an assessment or additional assessment on such person for that year of assessment, he shall communicate to such person in writing his reasons for not accepting the return.

.....

(5) Subject to the provisions of section 72, no assessment of the income tax payable under this Act by any person or partnership –

(a) who or which has made a return of his or its income on or before the thirtieth day of November of the year of assessment immediately succeeding that year of assessment,

(i) where such year of assessment is any year of assessment commencing prior to April 1, 2013, shall be made after the expiry of a period of two years from the thirtieth day of November of the immediately succeeding year of assessment; and

(ii) where such year of assessment is any year of assessment commencing on or after April 1, 2013, shall be made after the expiry of a period of eighteen months from the thirtieth day of November of the immediately succeeding year of assessment:

(b) who has failed to make a return on or before such date as referred to in paragraph (a), shall be made after the expiry of a period of four years from the thirtieth day of November of the immediately succeeding year of assessment:

.....

Provided further that, where in the opinion of the Assessor or Assistant Commissioner, any fraud, evasion or willful default has been committed by or on behalf of, any person in relation to any income tax payable by such person for any year of assessment, it shall be lawful for the Assessor or Assistant Commissioner to make an assessment or an additional assessment on such person at any time after the end of that year of assessment.

.....

In such circumstances, the learned President's Counsel for the Petitioners sought to impugn the assessments made and issued and consequential steps taken under the IRA 2006 on two alternative bases. His first argument was that the IRA 2006 was inapplicable to the Letters of Intimation (P3), Notices of Assessment (P4), Penalty Notices (P5) and the Notices of Tax in Default (P8) in as much as they constituted an "act and event," which created "a fresh, new and independent liability" in 2022, after the repeal of IRA 2006. His second alternative argument was that, even if the IRA 2006 was applicable, the Notices P3, P4, P5 and P8 were yet time barred by virtue of section 163(5) of the said Act.

Both arguments presented by the Petitioners above were contested by the learned Deputy Solicitor General for the Respondent. In the first instance, she submitted that the impugned Notices relate to tax liabilities of the Petitioners in respect of the Years of Assessment 2016/2017 that occurred whilst the IRA 2006 was in operation, and, that they did not constitute an "act and event" that created "a fresh, new and independent liability" in 2022. Secondly, the learned Deputy Solicitor General submitted that, by virtue of sections 202 and 203 of the IRA 2017, the provisions of the IRA 2006 continued to apply to the impugned Notices even subsequent to its repeal. Her third argument was that the impugned Notices were not time barred in terms of section 163(5) of the IRA 2006 since the assessor was of the opinion that the conduct of the Petitioners demonstrated fraud, evasion or willful default. Thus, the learned Deputy Solicitor General concluded that the Respondent had not acted *ultra vires*, as alleged by the Petitioners, and moved for a dismissal of the applications.

Taking cognizance of the respective positions of the parties as stated above, I now wish to address the issues arising therefrom and provide my observations and findings. In this regard, I have identified 03 main issues that warrant consideration;

- a. When did the tax liability of the Petitioners arise in respect of the impugned Notices arise and does it continue?
- b. Whether the tax liability in respect of the impugned Notices is governed by the IRA 2006 or the IRA 2017?
- c. Are the impugned Notices in compliance with the legal regime applicable to them?

a. The Accrual and Duration of the Petitioners' Tax Liability

It is recalled that the position taken up by the Petitioners is that their tax liability in respect of the Y/A 2016/2017 was discharged when they filed their returns and paid the tax due thereunder, and, that the issuance of the impugned Notices (P4), (P5) and (P8) constituted an "act and event," which created "a fresh, new and independent liability" in 2022, after the repeal of IRA 2006.³ The issuance of such Notices were distinct juridical acts which altered the Petitioners' legal rights in a fundamental manner by exposing them to much greater liabilities, triggering rights of objection and appeal and enabled coercive recovery mechanisms.

However, it is observed that, although certain preliminary grounds relating to jurisdiction and time bar have been taken up in their appeals (P6), this objection has not been articulated therein in specifically in the same manner.

Nevertheless, the Respondent has contested the said position taken up by the Petitioner.⁴ The response of the Respondent is that the "year of assessment" is the only basis on which income tax is calculated, and recovered under IRA 2006 and IRA 2017 as well. In such circumstances, the only "event" which occurred in the instant applications was the submission of the returns in respect of such year of assessment by the Petitioners on 27.11.2017 (Melstacorp) and 22.11.2017 (DCSL) respectively in relation to their tax liability for the Y/A 2016/2017. The Petitioners in turn has rejected such construction submitting that it was "wholly untenable in law and specious in the background of the self-assessment statutory scheme."⁵

A convenient starting point to examine the respective arguments presented by the parties would be examine how income tax liability arises. On this issue, the Respondents drew the attention of this Court the early English case *W H Cockerline & Company v. Commissioners of Inland Revenue*,⁶ wherein the explanation made by Lord Dunedin in *Whitney v. Commissioners of Inland Revenue*⁷ was cited with approval by Lord Hanworth MR in the following terms;

*Now, there are three stages in the imposition of a tax: There is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. **Liability does not depend upon assessment. That, ex hypothesi, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay.** Lastly, come the methods of recovery if the person taxed does not voluntarily pay. (emphasis added)*

Lord Hanworth further observed that:

*'...but the charge is made, in consequence of the Act, upon the subject; **the assessment is only for the purpose of quantifying it.** (emphasis added)*

³ vide paragraphs 15 to 22 of the Petitioners' written submissions.

⁴ vide paragraphs 10-16 and 52-55 of the Respondent's written submission.

⁵ Ibid, paragraphs 35-39.

⁶ (1930) 16 TC 1.

⁷ [1926] AC 37.

Accordingly, the learned Deputy Solicitor General for the Respondent submitted that the position taken up by the Petitioners that a new and independent tax liability accrues from an assessment made in relation to the returns submitted by the Petitioners is contrary and repugnant to such established position of the law.⁸

The structure of the law becomes more evident from the provisions governing the submission of returns contained in section 106 of IRA 2006, which are as follows;

106.(1) Every person who is chargeable with income tax under this Act for any year of assessment shall, on or before the thirtieth day of November immediately succeeding the end of that year of assessment, furnish to an Assessor or Assistant Commissioner, either in writing or by electronic means, a return in such form and containing such particulars as may be specified by the Commissioner-General, of his income, and if he has a child, the income of such child: (emphasis added)

The aforementioned section 106(1) imposes an obligation upon “every person who is chargeable with income tax” to submit a Return of Income on or before 30th November immediately succeeding the end of the year of assessment, and, it appears that the Petitioners have submitted their Returns in respect of Y/A 2016/2017 in compliance with such provision. It is evident from the text of section 106(1), *inter alia*, that “chargeability” or “accrual” of the tax liability has arisen prior to the submission of the return, and, in fact, is it such fact that necessitates the submission of the return.

In the instant case, it is observed that the Letters of Intimation (P3) by the IRD make specific reference to the returns submitted by the Petitioners and contain reasons for the inability to accept the same. Thus, it is evident that the Letters of Intimation (P3) and the consequent Notice of Assessment (P4) and the Penalty Notices (P5) have been issued in respect of and in response to the aforementioned returns submitted by the Petitioners.

In fact, the Respondent has taken up the position that, if the Petitioners’ argument is to be accepted, the “event” should be the return and the year of assessment for the tax payable and not the assessment since all Assessments are based and generated on the taxable amount for the year of assessment and based on the return, where one has been filed as in the instant case.⁹ Considering the statutory scheme set out in set out in IRA 2006 (and even IRA 2017) relating to the collection of taxes initiated by self-assessment, I am inclined to accept such position taken up by the Respondents.

I am also unable to accept the Petitioners’ contention that their tax liability in respect of the Y/A 2016/2017 was discharged when they filed their returns and paid the tax due thereunder. This is because, as conceded by the Petitioners themselves, it is open for the IRD to either accept or reject the said return and to issue an assessment in instances where the return is rejected. Such fact alone is adequate to demonstrate that the filing of a return is neither the starting point of tax liability or its point of discharge and that there is no finality attached to

⁸ In their written submissions, the Respondent has further cited the Indian case ***HP Mineral and Industrial Corporation v. CIT*** (2008) 302 ITR 120 (HP) in support of the proposition that tax liability is attracted not only when the income is actually received but also when it accrues.

⁹ vide paragraph 53 of the Respondent’s written submissions

it. In such context, the filing of a return can be best described as an intermediate point where the tax payer notifies the IRD of his/her self-assessed tax liability in respect of a particular year of assessment, whereupon the IRD has the discretion to either accept or reject same and proceed to make an assessment. Thus, in my view the filing of a return of income by the taxpayer and the issuance of an assessment by the IRD where such return is not accepted are sequential phases or steps within a single statutory scheme for the collection of income tax initiated by self-assessment in IRA 2006, which is continued in IRA 2017 as well.

In view of the foregoing, I am inclined to accept the submission made by the learned Deputy Solicitor General that such acts constitute sequential phases or steps within a single process initiated by the submission of the Return and are not independent or stand-alone processes. As such, I am unable to accept the contention of the Petitioners that the issuance of the impugned Notices constituted and established a fresh and new liability in 2022 that was independent of the Returns submitted by the Petitioners in November 2017.

b. Legal Regime governing the Petitioners' Tax Liability

Based on their characterization of the issuance of the impugned Notices as an “event” that occurred after the repeal of IRA 2006, are not governed by the said Act and the issuance of same thereunder is *ultra vires*. Whilst I have determined above that the issuance of the impugned Notices did not constitute or establish “a fresh, and new and independent liability” in 2022, it is nevertheless necessary to ascertain whether the issuance of the impugned Notices and the action contemplated thereunder are valid in law.

On this issue, the broad position of the Petitioners is that, since the impugned Notices were issued after the repeal of IRA 2006, and, are not saved by the repealing IRA 2017, the latter Act is applicable. On the contrary, the Respondent has taken up the position that, since the dispute related to the tax chargeable for Y/A 2016/2017 and the Returns in respect of same were filed whilst IRA 2006 was in operation, the provisions of the said Act are applicable to the impugned Notices by virtue of the savings made in the repealing IRA 2017.

Central to the arguments presented by both parties are sections 202, which relates to “repeal and savings” and 203(1), which sets out transitional provisions, of IRA 2017. For purposes of convenience, the aforementioned provisions are set out below;

202.(1) The Inland Revenue Act, No. 10 of 2006 is hereby repealed.

(2) The repealed Act shall continue to apply in respect of events occurring prior to the date of commencement of this Act.

(3) All appointments and delegations made under the repealed Act and subsisting at the date of commencement of this Act shall be deemed to be as appointments and delegations made under this Act.

(4) All forms and documents used in relation to the repealed Act shall continue to be used under this Act, and all references in those forms and documents to provisions of

and expressions appropriate to the repealed Act shall deem to refer to the corresponding provisions and expressions of this Act.

(5) Appeals, prosecutions and other proceedings commenced before the commencement date of this Act shall continue and shall be disposed of as if this Act had not come into force.

(6) Tax liabilities that arose before the commencement date of this Act may be recovered by fresh proceedings under this Act, but without prejudice to an action already taken for the recovery of the tax.

(7) When the law concerning tax administration and procedure in effect prior to the commencement of this Act is silent with respect to a matter addressed in this Act, the relevant provision in this Act shall apply with retroactive effect to matters that are not closed under the period of limitations.

203. (1) The repealed Act shall continue to apply for years of assessment commencing prior to the date on which this Act comes into effect. ...(emphasis added)

According to the Petitioners, what was saved by section 202(2) of IRA 2017 were only “events occurring prior to the to the date of commencement of this Act, ” and, referring to section 202(1) thereof, submits that the statutory language is clear and significant that the Parliament did not intend the repealed IRA 2006 to continue to apply in respect of prior taxable periods, prior years of assessment, or liabilities arising before commencement of the Act of 2017.¹⁰ They further submit that the Parliament also did not provide that all future reassessment proceedings relating to historical tax years (i.e. prior to 1st April 2018) may continue indefinitely under the repealed IRA 2006, as it deliberately adopted a narrower language preserving the said Act to only “in respect of events occurring prior” to the commencement of IRA 2017.¹¹ They also submit that a “plain reading” of sections 202(3), 202(3), 202(4), 202(5), 202(6) and 202(7) clearly indicate that it is delineating savings in respect of specific “events” occurring prior to the repeal of IRA 2006.¹² Based on the position that the impugned Notices were issued nearly five years after the repeal of IRA 2006 and created new tax liability, the Petitioners have drawn the conclusion that they are *ultra vires* the powers of the Respondent and should be quashed as null and void and of no force or avail in law.¹³

It is conspicuous that no reference is made by the Petitioners to section 203(1) of IRA 2017, which specifically provides that “[t]he repealed Act shall continue to apply for years of assessment commencing prior to the date on which this Act comes into effect.” The Respondent has specifically referred to the said section 203(1) and submitted that, along with section 202(2), make it abundantly clear that, even though repealed, IRA 2006 continues to apply for;

¹⁰ vide paragraphs 23-27 of the Petitioners’ written submissions

¹¹ Ibid, paragraphs 28-29

¹² Ibid, paragraphs 32 and 40-48

¹³ Ibid, paragraph 34

- a. *events occurring prior to the date of commencement of this Act (section 202(2)); and*
- b. *assessment which would be prior to 1st April 2018 (section 203(1)).*¹⁴

The Respondent has further submitted that the language in such sections is plain, concise and clear and does not require any further statutory interpretation. I am inclined to accept the above position taken up by the Respondent. In my view the said section 202(2) read with section 203(1) of IRA 2017 unequivocally and unambiguously expresses the intention of Parliament to permit the continued application of IRA 2006 in respect of “years of assessment” commencing prior to 01.04.2018, which was the date on which IRA 2017 came into effect.

In the circumstances, I am of the view that, notwithstanding its repeal, the tax liability of the Petitioners in respect of Y/A 2016/2017 have to be determined in terms of IRA 2006, and, as such, the Respondent has correctly issued the impugned Notices in terms of IRA 2006.

Citing sections 202(5) and 202(6) of IRA 2017, the Petitioners have also advanced the argument that the express preservation of proceedings already commenced prior to repeal necessarily excludes the commencement of new proceedings under the repealed enactment after its repeal.¹⁵ However, in view of the determination that the issuance of the impugned Notices did not constitute or establish a fresh and new liability in 2022 that was independent of the Returns submitted by the Petitioners in November 2017, such argument would not be applicable to the facts and circumstances of the instant case.

The same Division of this Court was confronted with fairly similar factual circumstances in ***Oru Mix Asphalt Pvt Ltd v. W.A. Sepalika Chandrasekera, Commissioner General of Inland Revenue and another.***¹⁶ The said application also dealt with tax liability in respect of Y/A 2016/2017 and the petitioner sought to impugn the issuance of a Certificate of Tax in Default and the institution recovery proceedings instituted in the Magistrate’s Court of Colombo in June 2024 relying on the provisions of IRA 2006. The petitioner had failed to submit a return within the stipulated period, although a belated return had been submitted on 22.04.2021. As in the instant case, the assessment, the notice of tax in default and the Certificate of Tax in Default had been issued and the recovery proceedings instituted under the provisions of IRA 2006, after the repeal of the said Act. The argument presented by the petitioner was that the Certificate of Tax in Default was issued and recovery action instituted under the repealed IRA 2006 was bad in law, and, that, action, if any, should have been taken under IRA 2017 which had repealed and replaced the said Act by the time the impugned action by the IRD was taken. Although the petitioner in the said case and the Petitioners in the instant case may have invoked the jurisdiction of this Court at different stages of the revenue collection process, the central issue and the matter for determination in both applications was the legality of action taken by the IRD under IRA 2006 after its repeal and replacement by IRA 2017. Thus, I am unable to accept the position taken up by the Petitioners that the facts of the aforementioned ***Oru Mix Asphalt case*** are clearly distinguishable from the instant case.

¹⁴ vide paragraphs 46 to 50 of the Respondent’s written submission.

¹⁵ vide paragraphs 47-50 of the Petitioners’ written submissions.

¹⁶ CA (Writ) Application No. 820/2024, decided on 30.04.2025.

The Court accepted the position that the petitioner's tax liability in respect of Y/A 2016/2017 was governed by IRA 2006 made the following observations on sections 202 and 203 of IRA 2017, which have been referred to by the parties in the instant applications as well (per Corea, J.);

However, the learned DSG brought our attention to sections 202 and 203 of Act, No. 24 of 2017 which is the savings and the transitional provisions. The said sections have marginal notes titled "repeal and savings" and "transitional provisions" respectively. Now we will consider the said provisions.

Section 202(2) clearly states that "the repealed Act shall continue to apply in respect of events occurring prior to the date of commencement of this Act". Hence, the tax liability and the default of tax is encompassed under section 202(2) which specifically states that Act No. 10 of 2006 will apply. Further, section 202(5) states as follows:

"202. ...

(5) Appeals, prosecutions and other proceedings commenced before the commencement date of this Act shall continue and shall be disposed of as if this Act had not come into force."

Section 203 which is a transitional provision states as follows:

"203.

(1) The repealed Act shall continue to apply for years of assessment commencing prior to the date on which this Act comes into effect."

Hence, it is clear the law that applies to the years of assessment commencing prior to the date of this Act coming into operation is Act, No. 10 of 2006. Both Counsel relied heavily on section 202(6) which states as follows:

"202.

(6) Tax liabilities that arose before the commencement date of this Act may be recovered by fresh proceedings under this Act, but without prejudice to an action already taken for the recovery of the tax."

*The said subsection deals with the recovery process. **However, before commenting on this subsection, this Court wishes to make the observation that as stated elsewhere the Petitioner's liability arose under Act, No. 10 of 2006 as per material tendered by the Petitioner, notice of default had been issued under Act, No. 10 of 2006, which in our view is permitted under section 203(1) of Act No. 24 of 2017.***

The Petitioner's contention is that under section 202(6) of the new Act, tax liabilities that arose before the commencement date of Act, No. 24 of 2017 should be recovered by recovery proceedings resorting to Act, No. 24 of 2017. However, this Court observes that section 202(6) does not impose a condition that all new recovery proceedings pertaining to tax liabilities under Act, No. 10 of 2006 should be subjected to Act, No. 24 of 2017. What is contemplated by the Legislature is clear by the words

used. The words used are “may be recovered” which allows the Inland Revenue Department to use the mechanism stated under Act, No. 10 of 2006 or Act, No. 24 of 2017 to commence recovery proceedings. In our view subsection (6) does not prevent the institution of recovery proceedings under the provisions of Act, No. 10 of 2006, if the tax liability had arisen before the commencement of Act, No. 24 of 2017. As stated above the tax liability in this case is for a period before Act, No. 24 of 2017 coming into operation. Further, as per the arguments of the learned Counsel for the Petitioner, if any action filed under the provisions of the Act, No. 10 of 2006, that is filed subsequent to Act, No. 24 of 2017 coming into operation is bad in law, then the Legislature would have specifically stated so. The Act does not state so. Also, if that was the intention of the Legislature under subsection (6), the option to file under the new Act or the old Act would not have been given to the Inland Revenue Department. The said provision does not expressly preclude the Respondents from filing the recovery action as they have done in this instance. Hence, if the liability arose before the commencement of the new Act coming into operation, the Respondents can institute recovery action pursuant to the provisions of the old Act. This is further buttressed by the provisions in section 203(1) which states as follows;

“203

(1) The Repealed Act shall continue to apply for years of assessment commencing prior to the date on which this Act comes into effect”

It is clearly evident that the old Act would continue pertaining to the years of assessments prior to the new Act coming in to operation.

*The Court has considered the judgment **Access International Pvt LTD v. Ivan Dissanayake and others in CA/Tax 10/2018 decided on 12.02.2019**. Where the Court held that an appeal commenced before the new Act came in to operation has to be disposed of under the old Act.*

I wish to be guided by the aforementioned reasoning in the **Oru Mix Asphalt case** in arriving at the same conclusion in the instant applications.

c. Compliance with Legal Regime governing the Petitioners’ Tax Liability

Having determined that the tax liabilities of the Petitioners under the impugned Notices are governed by IRA 2006, the issue that remains to be considered and determined is whether the said Notices have been issued in compliance with the applicable provisions in the said Act. In this regard, the specific issue which has been presented before this Court is whether or not the said Notices have been issued in compliance with the provisions of section 163(5) of IRA. Whilst the response of the Respondent is in the affirmative, as set out in section 1.2 of their appeals (P6), the position of the Petitioners is that the impugned Notice of Assessment (P4) is time barred.

Section 163(5)(a)(ii) of IRA 2006 provides that, where the tax payer, in respect of a year of assessment commencing after 01.04.2013, has submitted a return of income or before the

30th of November of the year of assessment immediately succeeding that year of assessment, no assessment of the income tax payable under the Act shall be made after the expiry of a period of 18 months from the 30th day of November of the immediately succeeding year of assessment.

It is common ground that the 18-month period contemplated in the aforementioned section 163(5)(a)(ii) for the issuance of an assessment in respect of the Y/A 2016/2017 came to an end on 30.05.2019. It is also not in dispute that the impugned Notices, including the Notices of Assessment dated 09.08.2022 (P4), have all been issued in the year 2022, which is well after the expiry of such 18-month period.

In their appeals to the Notices of Assessment (P6), the Petitioners have raised the time bar objection and set out the consequences thereof in the following terms;

The statutory time bar period for the Year of Assessment 2016/17 lapsed on 30 May 2019. The Notice of Assessment was dated 09 August 2022 which was received by the company on 17 August 2022.

The Commissioner's duty to comply with the time bar provision is mandatory and the above Assessment is statutorily time barred. Hence, the Assessment in relation to the Year of Assessment 2016/17 are bad in law and hence invalid.

The violation of the time bar provision by the Commissioner result in the Assessment being invalid.

Against this backdrop, the Respondent has sought to rely on the second proviso to the said section 163(5) to justify the validity of the Assessments,¹⁷ and, for purposes of convenience, the said proviso is reproduced below;

Provided further that, where in the opinion of the Assessor or Assistant Commissioner, any fraud, evasion or willful default has been committed by or on behalf of, any person in relation to any income tax payable by such person for any year of assessment, it shall be lawful for the Assessor or Assistant Commissioner to make an assessment or an additional assessment on such person at any time after the end of that year of assessment.

In interpreting the above proviso, the Respondent has submitted that the text of the aforementioned proviso has conferred a wide discretion upon the assessor in determining whether a tax payer has committed fraud, evasion or willful default, and, that the existence of such an opinion is sufficient for the assessor to issue an assessment.

In the instant case, the officers of the IRD who had assessed the returns submitted by the Petitioners had proceeded to reject them on the basis that they had committed fraud, evasion or willful default" in relation to the "Arrangement" entered into by them. As referred to in the factual narrative above, they have set out their findings in detail in the Letters of Intimation (P3). In arriving at their findings in relation to both Petitioners, it appears that the assessors

¹⁷ vide paragraph 57 of the Respondent's written submissions

have sought to rely on the “Ramsay Principles” of statutory interpretation in relation to taxation matters set down by the House of Lords in ***WT Ramsay Ltd v. Inland Revenue Commissioners***,¹⁸ which permitted a court to consider a series of pre-planned transactions as a single composite whole rather than to examine each individual step in isolation in determining whether there was tax avoidance.

It is also observed that the Petitioners have responded to and denied such allegations of fraud, evasion or willful default in their appeals (P6). Thus, the truth or otherwise of such allegations remains a disputed fact, which this Court sitting in judicial review would be ill-equipped to determine.

However, it is not in dispute and *ex facie* evident in the Letters of Intimation (P3) that the officers who considered the Petitioners’ Returns had formed an opinion that the Petitioners had committed fraud, evasion or willful default in relation to their tax liabilities and set out the grounds upon which such an opinion was founded. Although I do not wish to pre-judge the merits or otherwise of the opinion formed by the assessors, I wish to observe that their reliance upon judicially accepted principles of statutory interpretation (i.e. “Ramsay Principles”) *prima facie* indicates that the discretion vested in them has been exercised in a rational and reasonable manner. Thus, I am of the view that the Respondent has been successful in meeting the threshold to invoke the aforementioned second proviso to section 163(5) in the instant case.

Legal Objection: Availability of an Alternative Statutory Remedy

Apart from its objections on the merits, the Respondent has also raised a legal objection to the effect that this Court should not grant prerogative relief to the Petitioners in view of their failure have recourse to the statutory right of appeal provided under IRA 2006 itself. The Respondent has alleged that the Petitioners have sought to circumvent the appellate procedure by misusing the judicial process. Whilst I am of the view that it would not be necessary to consider the said legal objection in view of the findings on the merits made by me above, I wish to briefly address it and provide my views thereon, for the sake of completeness.

I consider it imperative to set out the factual background in the instant case salient to the objection raised by the Respondent particularly in order to determine the relevance or otherwise of the significant number of authorities cited by the parties in support of their respective positions on the issue. Firstly, it is observed that the documents marked as P6 in both applications have been lodged as “appeals” denoted by the use of the text “we hereby lodge an Appeal.” Secondly, the grounds of review relied upon by the Petitioners in the instant applications, namely, the lack of jurisdiction to issue an assessment under IRA 2006 and the Notice of Assessment being time barred, have been urged under “preliminary grounds” in the said appeals as well. Thirdly, the said appeals contain submissions or explanations on substantive issues raised in the Notices of Assessment (P4), which not canvassed in the instant applications.

¹⁸ [1982] AC 300.

The Respondent, referring to the fact that the Petitioners have submitted appeals (P6) in response to the Notices of Assessment (P4) issued against them, has submitted that the Petitioners, by their conduct, have unequivocally submitted to and acquiesced in the appellate procedure set out in IRA 2006.¹⁹ The Respondent further submits that the inclusion of the same grounds for review as urged in the instant applications in the said appeals (P6) constitute an acknowledgement and acceptance on the part of the Petitioners that the appellate bodies under the IRA have jurisdiction over such matters and the such grounds are capable of being determined under the said statutory procedure.

The Respondent has further submitted that, by instituting the instant applications and obtaining interim relief, the Petitioners have sought to collaterally challenge the assessment reflected in the Notices of Assessment (P4), abandoned their appeals and effectively prevented the appellate process from proceeding. Thus, the Respondent has characterized the position taken up by the Petitioners in the instant applications as “approbation and reprobation.”

The Respondent has submitted that a multi-tiered process has been statutorily established to address any grievance of a tax payer by bodies equipped to hear and determine issues relating to taxation and has outlined the steps in such process as follows;²⁰

- a. The tax payer tenders his/her tax returns.
- b. If the assessor rejects such return, the assessor shall give reasons for rejecting such return and would thereby issue the notice of assessment.
- c. If the tax payer is not satisfied with the reasons tendered by the assessor and if he/she wishes to challenge the notice of assessment, the tax payer can prefer an appeal to the Commissioner General of Inland Revenue (CGIR).
- d. The CGIR shall hear the appeal and shall make an order pertaining to the notice of assessment by giving reasons.
- e. If the tax payer is still not satisfied with the order of the CGIR, the tax payer can prefer an appeal to the Tax Appeals Commission (TAC), which is a special statutory body created only for the purpose of hearing appeals against the decision of the CGIR.²¹
- f. If the tax payer intends to challenge such determination of the TAC, it could be done by way of a case stated for the opinion of the Court of Appeal.
- g. Such judgment of the Court of Appeal could be appealed to the Supreme Court by the tax payer if he/she so wishes to, which shall be final.

The Respondent adverted to several local and foreign authorities emphasizing the special nature of the statutory tax appellate procedure and the inadequacy of judicial review proceedings to deal with issues arising from assessments.²² One such case cited is the decision

¹⁹ vide paragraphs 4, 12 and 13 of the Respondent’s statement of objections

²⁰ vide paragraph 5 of the Respondent’s written submissions

²¹ It is observed that in terms of section 2 (1) of the Tax Appeals Commission Act No. 23 of 2011, the Commission is “charged with the responsibility of hearing all appeals in respect of matters relating to imposition of any tax, levy, charge, duty or penalty.” In terms of section 7(1)(b) of the Act, persons aggrieved by any determination of the Director General of Customs are also allowed to prefer an appeal to the TAC, apart from orders of the CGIR.

²² The cases cited include **Commissioners of Inland Revenue v. Sneath** (1932) 17 Tax Cases 149; **L.C.H. Peiris v. Commissioner of Inland Revenue** 65 NLR 457; **Mrs. Kanta P. Mehta v. Union of India** (1989) 177 ITR 284;

of the Supreme Court of India in **Assistant Collector of Central Excise v. Dunlop India Ltd**,²³ wherein the Court observed as follows;

*Article 226 is **not meant to shortcircuit or circumvent statutory procedures**. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as, for instance, where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the court must have good and sufficient reason to by-pass the alternative remedy provided by statute. **Surely matters involving the revenue where statutory remedies are available, are not such matters**. The court can also take judicial notice of the fact that the vast majority of the Petitions under Article 226 of the Constitution **are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other**. The practice certainly **needs to be strongly discouraged**.* (emphasis added).

Accordingly, the Respondent contends that all the questions law and fact raised by the Petitioners can be canvassed at the very first appeal before the CGIR and, if aggrieved, they have three more opportunities of appeal, and, that no prejudice will be caused to the Petitioners in following the aforementioned statutory appellate procedure.

The Respondent further submit that, it is clearly evident from the Petitioners' appeals (P6) that certain facts relating to their tax liabilities for the Y/A 2016/2017, are in dispute, particularly in respect of the "Arrangement" between the Petitioners. Thus, it is contended that the dispute between the involves disputed facts which cannot be considered in these judicial review proceedings and can only be properly determined in appellate proceedings.

The Petitioners have responded to the objection on the availability of an alternative remedy on two bases.²⁴ In the first instance, they submit that no constitutional limitation or restraint has been placed on the power to issue prerogative writs under Article 140 of the Constitution and that declining to grant relief due to the availability of an effective and efficacious alternative remedy is a self-imposed restriction that is observed as a rule of policy, convenience and discretion rather than as a rule of law. In support of such position, they have adverted to the decision of the Supreme Court in **Somasundaram Vanniasingham v. Forbes and another**²⁵ where the Court observed as follows (per Bandaranayake, J.);

As I have said there is no rule requiring alternative administrative remedies to be first exhausted without which access to review is denied. A Court is expected to satisfy itself

Laxmikant Revchand Bhojwani v. Pratapsingh, JT (1995) 7 SC 400; and **Gee Vee Enterprises v. Addl. CIT** (1975) 99 ITR 375.

²³ (1985) 154 ITR 172 (SC).

²⁴ vide paragraphs 71-80 of the Petitioners' written submissions.

²⁵ [1993] 2 Sri L.R 362.

that any administrative relief provided for by a statute is a satisfactory substitute to review before withholding relief by way relief.²⁶

In principle, I am in agreement with the position taken up by the Petitioners and elucidated in the aforementioned decision of the Supreme Court.

The second basis of the Petitioners' response to the objection and one which was strenuously argued by the learned President's Counsel was that, where the dispute is a purely legal one that does not involve disputed questions of fact but only questions of law, judicial review is the proper remedy and that the Court should not decline jurisdiction merely on the ground of the availability of an alternative remedy.²⁷ In particular, the Petitioners sought to rely on the decision of the Supreme Court in **Fonterra Brands Lanka (Private) Limited v. Commissioner General of Inland Revenue and others, (Fonterra case)**²⁸ wherein the Court opined as follows (per Thurairaja, J.);

I am of the same view that where the legality or authority of an administrative act itself is in question, rather than merely the correctness of its outcome, the constitutional writ jurisdiction remains available, and no statutory appeal can preclude its exercise.

*I find that in determining whether judicial review is available in the present circumstances, it is necessary to consider the principles established by the courts regarding the interplay between statutory remedies and writ jurisdiction. As Aluwihare, J observed in the case of **Classic Travels (Pvt) Ltd v. Commissioner General of Inland Revenue,***

*"However, judicial review may be granted in exceptional circumstances such as where the **alternative statutory remedy is nowhere near so convenient, beneficial and effectual or where there is no other equally effective and convenient remedy.** This is particularly so where the decision in question is liable to be upset as a matter of law because it is clearly made without jurisdiction or in consequence of an error of law."*

His Lordship further explained:

"As judicial review is a collateral challenge and not an appeal, it will only be in exceptional circumstances that the courts will allow the collateral process of judicial review to be used to attack an appealable decision, when Parliament has expressly provided by statute an appellate procedure. But exceptional circumstances may arise when it would be unjust for the taxpayer to appeal a decision of the Commissioner General. For example, if the Commissioner General during the hearing acted illegally or ultra vires, then exceptional circumstances may arise where judicial review is appropriate to challenge the alleged abuse at its inception. Otherwise, the taxpayer would be expected to proceed with the allegedly illegal hearing until the determination is issued by the Commissioner- General to appeal the Commissioner- General's assessment to the TAC."

²⁶ Ibid at p 370.

²⁷ vide paragraph 75 of the Petitioners' written submissions.

²⁸ SC Appeal No. 187/2014, SC Minutes dated 26.09.2025.

In aligning with these observations, I, too, am of the view that judicial review is not a substitute for statutory appeal, but serves as a necessary safeguard where the statutory process cannot adequately address the question of legality or jurisdiction. In the present case, the Appellant challenged an assessment issued on 11th June 2008, after the statutory deadline of 31st March 2008 under Section 134(5) of the Inland Revenue Act, 2000. The challenge was primarily not to the quantum of tax, but to the very authority of the Commissioner General to issue the assessment, which had expired by operation of law.

*The statutory appeal mechanism is limited to correcting errors made within the Commissioner's lawful authority and cannot provide relief where the assessment itself is ultra vires or time-barred. Requiring the Appellant to proceed and to confine themselves to the statutory appeal would have compelled it to participate in a process incapable of addressing the legal defect, **even after the CGIR explicitly refused to consider the time-bar in their reasons for determination marked 'P15' in the brief.** In such circumstances, where the statutory remedy would not have been practically effective for the Appellant, the requirements identified by Justice Aluwihare are met.*

.....
***In the present case, the statutory appeal could not have resolved the real question - whether the assessment, issued after the statutory deadline, had any legal validity. That issue did not require technical expertise but turned on legality. Nor would the appeal have been more convenient or effectual; it would merely have prolonged a process incapable of curing the defect. Judicial review was therefore the appropriate remedy and the Court of Appeal in its judgment has erred in holding that the writ jurisdiction of the Court of Appeal could not have been invoked in the facts and circumstances of the present case"** (emphasis added)²⁹*

In their written submissions, the Petitioners have also cited decisions of the Indian Supreme Court in ***Whirlpool Corporation v. Registrar of Trademarks*³⁰, *Harbansal Sahnia and Another v. Indian Oil Corporation Limited*³¹, *Radha Krishan Industries v. The State of Himachal Pradesh and Others*³² and *Godrej Sara Lee Ltd v. The Excise and Taxation Officer Cum Assessing Authority and Others*³³ in support of the above position.**

The learned Deputy Solicitor General for the Respondent sought to point out that the factual circumstances in the ***Fonterra case*** were substantially different from the instant case. She pointed out, that unlike in the instant case, there was no allegation of fraud, evasion, or willful default levelled against the Petitioners, which is a material consideration in determining the application of the time bar. Thus, she submitted that the determination that the assessment was time barred had been made in the said case without considering the applicability of the proviso relating to fraud, evasion, or willful default. Considering the findings made by me that

²⁹ Ibid, pp 24-26

³⁰ (1998) 8 SCC 1

³¹ AIR 2003 S.C. 2120

³² S.C. Civil Appeal No. 1155/2021, decided on 20.04.2021

³³ SC Civil Appeal No. 5393/2010, decided on 01.02.2023

the said proviso is applicable and that the assessment and subsequent steps are not time barred in the instant cases, I am inclined to accept the submissions made by the learned Deputy Solicitor.

The learned Deputy Solicitor General also sought to distinguish the decision of this Court in ***Commissioner General of Inland Revenue v. Koggala Garments (Pvt) Ltd***³⁴ on the facts, as unlike in the said case where the Court held that the case stated procedure could not be invoked as the questions of law did not relate to the assessment, the appeals submitted by the Petitioners (P6) in the instant case clearly contain submissions on substantive grounds or merits of the assessment. Upon careful perusal of the said judgment, I am inclined to accept the position taken up by the Respondent.

In addition, the learned Deputy Solicitor General also submitted that, unlike the approach taken in the ***Fonterra case***, there have been instances where objections relating to time bar had been considered and determined in tax appeals. Such position appears to be well founded and supported by the decisions in ***Commissioner General of Inland Revenue v. Stafford Motor Company (Private) Ltd***,³⁵ ***Central Finance Company PLC v. Commissioner General of Inland Revenue***,³⁶ ***Lanka Marine Services (Private) Limited v. Commissioner General of Inland Revenue***,³⁷ ***D.Y. Jayasuriya v. Commissioner General of Inland Revenue***,³⁸ and ***Commissioner General of Inland Revenue v. Ceylon Shell Flour Limited***.³⁹

As that dispute between the Petitioners and the Respondent in the instant applications clearly involve both questions of law as well as questions of fact, particularly relating to the “Arrangement” entered into by the Petitioners, the statutory appellate process, as set out above, appears to offer the most effective and efficacious remedy to the Petitioners. In fact, by preferring the appeals (P6) and taking up the same grounds of review, they could be said to have submitted to and acquiesced in such appellate process. However, their conduct thereafter, as alleged by the Respondent, amounts to “approbation and reprobation,” which is repugnant to the law; vide ***Visuvalingam v. Liyanage (No. 1)***.⁴⁰ Considering all such circumstances, I am inclined to uphold the preliminary objection raised by the Respondent and not to grant prerogative relief to the Petitioners in the instant applications.

Conclusion and Orders of Court

In view of the foregoing, I am of the view that the tax liability of the Petitioners in respect of the Y/A 2016/2017 is governed by the Inland Revenue Act No. 10 of 2006 (as amended) and that the issuance of the Letters of Intimation (P3), Notices of Assessment (P4), Penalty Notices (P5) and the Notices of Tax in Default (P8) in terms thereof by the Respondent are valid in law, notwithstanding the fact that the said Act had been repealed and replaced by the Inland

³⁴ CA Tax No. 01/2008, decided on 05.04.2017.

³⁵ SC Appeal No. 55/2024, SC Minutes dated 07.07.2025 and SC Appeal No. 120/2021, SC Minutes dated 07.07.2025.

³⁶ CA Tax No. 08/2018, decided on 19.05.2023.

³⁷ CA Tax No. 04/2018, decided on 12.05.2023.

³⁸ CA Tax No. 23/2014, decided on 04.04.2023.

³⁹ CA Tax No. 20/2014, decided on 29.05.2020.

⁴⁰ [1983] 1 Sri L.R. 203 at 230.

Revenue Act No. 24 of 2017 (as amended) at the time of the issuance of the said Notices. Therefore, I hold that the Petitioners have failed to establish their entitlement to the reliefs prayed for their petition and I proceed to dismiss both applications. The availability of an equally effective and efficacious alternative remedy in the form of a statutory appeal too militates against the grant of prerogative relief to the Petitioners.

Since the Petitioners have not been successful in establishing their entitlement to the reliefs prayed for, I order the Petitioners to pay a sum of Rupees Five Hundred Thousand (Rs. 500,000/=) each to the Respondent. In making such order for costs, I have especially considered the following circumstances;

- a. The conduct of the Petitioners, especially in their failure to comply with section 173(6) of IRA 2006 to settle the tax, as assessed, and, as there is no evidence before this Court that an extension of time has been granted by the Respondent to settle same thereunder;⁴¹
- b. The conduct of the Petitioners in submitting to and acquiescing in the statutory appellate process but thereafter taking a contrary position before this Court and abandoning and/or effectively preventing such process from proceedings; and
- c. The significant delay and detriment caused in the recovery of the very substantial taxes in default due from the Petitioners to the State.

The said costs are to be paid to the Respondent within 03 months of the date of this judgment.

Applications are dismissed subject to costs.

Judge of the Court of Appeal

Mayadunne Corea, J.

I agree.

Judge of the Court of Appeal

⁴¹ Section 173(6) of IRA 2006 provides as follows; *Tax shall be paid notwithstanding any appeal against the assessment, unless the Commissioner-General orders that payment of tax or any part thereof be held over pending the determination of such appeal, and the amount of the tax or part thereof so held over shall not be deemed to be in default.* Section 142 is the comparable provision in IRA 2017 and makes specific reference to a “request of administrative review.”