

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/030/2018 by the Tax Appeals Commission under Section 170 of the Inland Revenue Act No. 10 of 2006 read together with Section 11A of the Tax Appeals Commission Act No. 23 of 2011 (as amended).

CA Case No: TAX 27/2024

Tax Appeals Commission Case No.

TAC/IT/030/2018

LOLC Finance PLC,

No. 100/1,

Sri Jayawardenepura Mawatha,

Rajagiriya.

Successor to Commercial Leasing and Finance PLC pursuant to amalgamation of Commercial Leasing and Finance PLC with LOLC Finance PLC in terms of Part VIII of the Companies Act No.07 of 2007.

Appellant

Vs.

The Commissioner General of Inland Revenue,

Department of Inland Revenue,

Sir Chittampalam A. Gardiner Mawatha,

Colombo 02.

Respondent

Before: **M.C.B.S. Morais J.**

&

Dr. D.F.H. Gunawardhana J.

Counsel: Maithri Wickramasinghe, PC with Rakitha Jayathunga
instructed by Sithumini Wijayarathne for the Appellant.

Nayomi Kahawita, SSC for the Respondent.

Written Submissions: By the Appellant – on 19.05.2025, 10.09.2026
By the Respondent – on 15.07.2025, 06.10.2026

Argued on: 14.07.2026

Decided On: **09.10.2026**

JUDGMENT

M.C.B.S. Morais J.

This is an appeal by way of case stated against the determination of the Tax Appeals Commission (TAC) dated 13th of November 2023, in the case of TAC/IT/030/2018.

This appeal is filed under Section 170 of the Inland Revenue Act No. 10 of 2006 read together with section 11A(1) of the Tax Appeals Commission Act No. 23 of 2011 (as amended).

The tax in dispute is against the assessment made for the taxable period 2012/2013 and the taxable amount in dispute is Rs. 261,905,572.00 with a penalty of Rs. 130,952,786.00.

FACTUAL BACKGROUND

The Commercial Leasing and Finance PLC (hereinafter will be referred to as the Appellant) is a Public limited liability company incorporated and domiciled in Sri Lanka as a registered Finance Company. The principal activities of the Appellant are leasing, hire purchase, term loans, operating leases, vehicle hiring, loans, and other financial services.

The Appellant has submitted the return for the taxable period 2012/2013 and the Senior Deputy Commissioner of Department of Inland Revenue (sometimes will be referred to as the Assessor) has rejected the said return by disallowing the claim made by the Appellant in the intimation letter dated 23rd of November 2015. Accordingly, the Assessor has issued the Notice of Assessment dated 27th of November 2015 based on the reasons set out in the intimation letter.

The Appellant being aggrieved by the decision of the Assessor, made an appeal to the Commissioner General of Inland Revenue (hereinafter will be referred to as the Respondent). The Respondent in his determination dated 20th of December 2017 determined the appeal by reducing the assessment issued by the Assessor. The Appellant being dissatisfied with the said determination of the Respondent, made an appeal to the Tax Appeals Commission (TAC) on the basis that the assessment issued by the Senior Deputy Commissioner of the Department of Inland Revenue is time barred. The TAC after considering the submissions made by both parties made the determination dated 13th of November 2023 in favor of the Respondent.

Being dissatisfied with the said determination, the Appellant has requested the TAC to cause a Case Stated to the Court of Appeal on the following Questions of Law.

- I. *“ Has there been no valid assessment made on the Appellant for the Year of Assessment 2012/2013 in accordance with the provisions of the Inland Revenue Act No. 10 of 2006 as amended?*
- II. *Has the Tax Appeal Commission erred in law in failing to determine that the Deputy Commissioner had not made an assessment of income tax on the Appellant for the Year of Assessment 2012/2013 in accordance with the provisions of the Inland Revenue Act No.10 of 2006 as amended and/or within the period permitted by the Inland Revenue Act No.10 of 2006 as amended to make an assessment on the Appellant under the said Act?*
- III. *Has the Tax Appeals Commission erred in law in failing to determine that the CGIR has given reasons different to that given in the document said to be an intimation under section 163(3) of the Inland Revenue Act and the assessment is invalid and/or the appeal should have been allowed for this reason alone?*
- IV. *Has the Tax Appeals Commission erred in law in failing to determine that the Deputy Commissioner has not provided reasons as required under the provisions of the Inland Revenue Act No.10 of 2006 as amended in the document said to be an intimation under section 163(3) of the Inland Revenue Act?*
- V. *Has the Tax Appeals Commission erred in law in determining that the CGIR disallowing bad debt provision for leasing debtors of Rs. 203,472,672/- in his reasons for determination was valid under the provisions of the Inland Revenue Act No. 10 of 2006 as amended?*
- VI. *Has the Tax Appeals Commission erred in law in disallowing bad debt provision for leasing debtors of Rs. 203,472,672/-?*
- VII. *Has the Tax Appeal Commission erred in law in failing to determine that the Appellant is entitled to deduct the interest paid by the Appellant to Ishara Traders under section 25(1)(f) of the Inland Revenue Act No.10 of 2006 as amended?*

- VIII. *Has the Tax Appeal Commission erred in law in failing to determine that the CGIR had erred in law in disallowing the interest paid by the Appellant to Ishara Traders under sections 25(4) and 32(5)(a) (iv) of the Inland Revenue Act No. 10 of 2006 as amended?*
- IX. *Has the Tax Appeals Commission erred in law in failing to determine that the reasons provided by the Deputy Commissioner and the CGIR in disallowing the interest paid by the Appellant to Ishara Traders are not valid reasons in view of the provisions of the Inland Revenue Act No.10 of 2006 as amended?*
- X. *Has the Tax Appeals Commission erred in law in determining "distributable profits" in terms of Section 61(1) of the Inland Revenue Act No. 10 of 2006 by failing to reduce from the book profits of the Appellant the cost of capital assets purchased by the Appellant for its leasing business?*
- XI. *Has the Tax Appeals Commission erred in law in determining the distributable profits and the deemed dividend tax in terms of Section 61(1) of the Inland Revenue ACT No 10 of 2006?*
- XII. *Has the Tax Appeals Commission erred in law in considering reasons other than the reasons set out by the Deputy Commissioner in his communication of the purported reasons for not accepting the return of the Appellant?"*

The Questions of law No. I, II, III, and IV are in relation to the validity of the assessment issued by the Assessor under the Inland Revenue Act No. 10 of 2006 as amended (IRA 2006). Since this matter strikes the root of the case, I shall initially address these questions together. If it is answered in the Affirmative, little purpose is served in addressing the other Questions of law raised by the Appellant.

However, the parties have agreed to consider the Question of Law No. II which is in relation to the time limitation in issuing an assessment by the Assessor, as the preliminary issue. Hence, this court will confine its determination on the preliminary issue raised.

Question of Law No. II

II. *Has the Tax Appeal Commission erred in law in failing to determine that the Deputy Commissioner had not made an assessment of income tax on the Appellant for the Year of Assessment 2012/2013 in accordance with the provisions of the Inland Revenue Act No.10 of 2006 as amended and/or within the period permitted by the Inland Revenue Act No.10 of 2006 as amended to make an assessment on the Appellant under the said Act?*

It is the contention of the Appellant that the taxable return for the period of 2012/2013 was made by the Appellant on 28th of October 2013 and it was rejected by the Assessor for the reasons set out in the intimation letter dated 23rd of November 2015. Accordingly, the notice of assessment dated 27th of November 2015 is posted by the Respondent on 10th of December 2015 which was received thereafter. Thereby it is the contention of the Appellant that the assessment issued by the Assessor is time barred under section 163(5) of the IRA 2006.

However, it is the Respondent's position that the said intimation letter is dated 23rd of November 2015, which is received by the Appellant within the time period under the IRA 2006. On this basis, the Respondent argues that the time limitation mentioned under section 163(5) is only for the purpose of 'making an assessment' and it does not refer to the subsequent action of notifying the tax payer by way of the Notice of Assessment.

Accordingly, the Respondent contends that the said time period under section 163(5) does not apply to the notice of assessment dated 27th of November 2015 and therefore, the assessment is within the time period prescribed by law. In supporting their position, the Respondent relies on the position adopted in the cases of *Commissioner General of Income Tax V. Chettinnad Corporation Limited*¹, *D.M.S. Fernando V. Mohideen Ismail*² and also the approach taken in *Stafford Motor Company (Private) Limited V. Commissioner General of*

¹ (1954) 55 N.L.R. 553.

² (1982) 1 Sri. L.R. 222.

*Inland Revenue*³ which ultimately relied on the English case of *Honig and Others V. Starsfield*.⁴

The TAC in agreement with the arguments made by the Respondent, held in the following manner in the determination dated 13th of November 2023.

“According to section 164 of the Act, the 'Notice of Assessment included the amount of tax that has already been assessed. Hence, the Notice of Assessment would be sent after making an Assessment, therefore the time bar provision which is indicated in section 163(5) does not depend on the serving of the Notice of Assessment. But the Notice of Assessment should be sent within a reasonable time period or has to be "at or about the time" of an Assessment is made on.

This position was well established in the decided case of Honig & Others Vs. Sarasfield (TC Vol 30 page 337) by Fox L.J. with following observation;

...

The Section again draws a clear distinction between the assessment and the notice of assessment, and shows that they are different, the assessment being in no way dependent upon the service of the notice. In the lights of the above, it is clear that the making an Assessment is an independent act covered by section 163 of the IR Act and the IRD has clearly complied with that. Further, serving of the notice of assessment which is covered by section 164 of the IR Act is an activity which is independent from making an assessment. IRD has complied with the act of serving the assessment in terms of section 164.

As such, the Assessment had been made on time and valid in law.

Therefore, I observed that, the Appellant has pointed out the fact that, the dates of posting and receiving the Assessment were made after the time bar of 30.11.2015 and the time bar issue has been raised along with supportive case descriptions in favour of the Appellants' arguments. The Respondent argued that, the time bar issue does not

³ CA/TAX/17/2017 (CA Minutes 15.03.2018).

⁴ (Tax Cases Vol. 30 page 337), (1986) BTC 205.

arise according to sections 163 (5) and 164 of the Act, and it is in a more descriptive manner explained along with case laws supportive in favour of his arguments. Therefore, I agree with the counter arguments and facts concluded by the Respondent and, revealed that the time bar issue does not arise in the present case.”

The TAC having considered the view taken up in the case of **Honig**, has interpreted the section 163(5) of the IRA 2006 by making a distinction between the action of ‘making the assessment’ and the subsequent action of ‘notice of assessment’.

The section 163(5) of the IRA 2006 clearly establishes that for a year of assessment made prior to 1st of April 2013, the Assessor shall be required to issue an assessment for the said taxable period on or before two years from the 30th day of November of the immediately succeeding year of Assessment.

For ease of reference, I shall reproduce the section 163(5) of the IRA 2006 below;

“(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.”

When considering the facts and circumstances of the case, the year of assessment for the taxable period 2012/2013 commences prior to 1st of April 2013, therefore, the Assessor is required by law under section 163(5) of IRA 2006, to issue an assessment within two years of time period from the 30th day of November of the immediately succeeding year of assessment. Hence, the Assessor is required to issue an assessment on or before 29th of November 2015.

Before I delve into the application of law to the facts of the case, I will initially set out the timeline of the events below;

Taxable return made by the Appellant for the period 2012/2013	28 th of October 2013
The return received by the Respondent	30 th of November 2013
Time bar for the Assessment to be issued	29 th of November 2015
Letter of Intimation	23 rd of November 2015
Notice of Assessment dated	27 th of November 2015
Notice of Assessment posted	10 th of December 2015
Notice of Assessment received	11 th of December 2015

When considering the above timeline, it can be observed that although the notice of assessment was dated 27th November 2015, it was posted and received by the Appellant only after the expiry of the time period prescribed by law. Further, the dates in relation to the posting the Notice of Assessment (10th of December 2015) and the Date in which it was received by the Appellant (11th of December 2015) has never been challenged.

Further, in interpreting the time limitation under section 163 of IRA 2006, it needs to be understood that the subsequent section 164 requires every assessment made to be communicated to the taxpayer by way of a notice of assessment.

When considering the facts and circumstances of the present case, the tax liability referred to in the letter of intimation differs from the amount stated in the notice of assessment, as the notice of assessment also includes the penalty for late payment. In such circumstances, it would be unreasonable to expect the taxpayer to exercise their rights or take further action solely on the basis of the letter of intimation, before receiving the final computation of the tax liability by way of a notice of assessment. Therefore, it is my view that until the final computation of the tax liability is communicated by way of a notice of assessment, the process of assessment remains incomplete.

This position is also considered and established in the case of ***Fonterra Brands Lanka (Private) Limited V. The Commissioner General of Department of Inland Revenue and others*** (2025) SC Appeal 187/2014. and this judicial pronouncement being the latest position taken up by the Supreme Court, this court is bound by it. His Lordship Thuraiaraja, PC, J having considered the previous judgments in *Commissioner General of Income Tax V. Chettinnad Corporation Limited* , *D.M.S. Fernando V. Mohideen Ismail* , *Stafford Motor Company (Private) Limited V. Commissioner General of Inland Revenue* and also the English case *Honig and Others V. Starsfield*, arrived at a ruling that the time limitation under section 163(5) applies not only to the act of ‘making the assessment’ by the Assessor, but it applies to the communication to the tax payer by way of notice of assessment, as such communication completes the process of assessment.

This court having relied in the case of ***Fonterra Brands*** in many previous instances have held that the notice of assessment being the ultimate communication given to the tax payer regarding the tax liability, needs to be given within the time period under section 163(5) of IRA 2006 as the said action completes the process of the assessment. Nevertheless in the present circumstance I do not find any exceptional circumstances to deviate from the previous approach taken by this court. Therefore, I am of the view that the TAC has erred in holding that the assessment issued by the Assessor is within the time period.

Hence, for the foregoing reasons, I answer the Question of Law No. II in the Affirmative.

In view of the preliminary question raised by the Appellant being upheld, the assessment issued by the Assessor is rendered null and void, and the self-assessment made by the Appellant shall stand. Consequently, the remaining questions raised by the Appellant do not arise for determination by this Court.

CONCLUSION

When considering the facts and the circumstances of the case, in line with the materials presented before this court, I am of the considered view that the Questions of law formulated by the Appellant should be answered as set out below.

Question of law No. I – Need not be answered

Question of law No. II – Affirmative

Question of law No. III – Need not be answered

Question of law No. IV – Need not be answered

Question of law No. V – Need not be answered

Question of law No. VI – Need not be answered

Question of law No. VII – Need not be answered

Question of law No. VIII - Need not be answered

Question of law No. XI - Need not be answered

Question of law No. X - Need not be answered

Question of law No. XI - Need not be answered

Question of law No. XII - Need not be answered

This appeal is allowed.

Accordingly, the determination of the TAC dated 13th of November 2023, and the determination of the Respondent dated 20th of December 2017 are hereby set aside and the assessment dated 27th of November 2015 issued by the Deputy Commissioner of the Department of Inland Revenue is null and void.

The Registrar is directed to issue a copy of this judgment to the Secretary of the Tax Appeals Commission for necessary actions.

Judge of the Court of Appeal

Dr. D.F.H. Gunawardhana J.

I agree

Judge of the Court of Appeal