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

In the matter of an appeal by way of Stated Case on a question of law 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).

CA Case No: CA/TAX/04/2023
Tax Appeals Commission No.
TAC/IT/023/2018
CA Case No: CA/TAX/05/2023
Tax Appeals Commission No.
TAC/IT/024/2018

Hayleys Advantis Limited,
Thurburn Wing,
No.400, Deans Road,
Colombo 10.

Appellant

Vs.

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

Respondent

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

&

Annalingam Premashanker J.

Counsel:	Dr. Shivaji Felix, PC with Nivantha Satharasinghe, Sajith Nawaratne and Asoka Obeysekara instructed by Abdeen Associates for the Appellant. Chaya Sri Nammuni, DSG with Mihiri de Alwis, SSC for the Respondent.
Written Submissions:	By the Appellant – on 19.09.2023, 15.01.2025, 14.01.2026 By the Respondent – on 31.10.2023
Argued on:	29.07.2025
Decided On:	**14.05.2026**

JUDGMENT

M.C.B.S. Morais J.

These appeals are by way of case stated against the determination of the Tax Appeals Commission dated 09th of November 2022 in the case of TAC/IT/023/2018 and the determination dated 31st of October 2022 in the case of TAC/IT/024/2018.

These appeals are filed under and in terms of section 11A of the Tax Appeals Commission Act No. 23 of 2011 (as amended). The matter is primarily under the provisions of the Inland Revenue Act No.10 of 2006 (hereinafter will be referred to as the IRA 2006). Since the matters in CA/TAX/04/2023 and CA/TAX/05/2023, deal with the same substantial issue in relation to the year of assessment 2012/2013 and 2013/2014, both cases are addressed together.

The tax in dispute under CA/TAX/04/2023 is against the assessment for the year of assessment 2012/2013 and the taxable amount in issue is Rs. 76,319,461 with a penalty of Rs.38,159,731.

The tax in dispute under CA/TAX/05/2023 is against the assessment for the year of assessment 2013/2014 and the taxable amount in issue is Rs. 66,150,751 with a penalty of Rs.33,075,376.

FACTUAL BACKGROUND

CA/TAX/04/2023

The Hayleys Advantis Limited (hereinafter sometimes will be referred to as the Appellant) is a public limited company incorporated under the Companies Act No 07 of 2007. The Appellant has submitted the assessment for the taxable period 2012/2013 on 15th of November 2013, which was rejected by the Assistant Commissioner of Inland Revenue by the letter of intimation dated 20th of November 2015. Accordingly, the notice of assessment dated 30th of November 2015 was issued. The said notice of assessment was posted under registered cover on 22nd of December 2015 which has been received by the Appellant on 28th of December 2015 (X3).

Being aggrieved by the said assessment, the Appellant has appealed to the Commissioner General of Inland Revenue (hereinafter will be referred as the Respondent), and by the determination dated 13th of December 2017 the Respondent has confirmed the said assessment. Being dissatisfied with the said determination, the Appellant has appealed to the Tax Appeals Commission (TAC), which after considering both parties confirmed the decision of the Respondent by the determination dated 09th of November 2022. The Appellant being aggrieved by the said determination has requested the TAC to cause a case stated for the opinion of this Court.

CA/TAX/05/2023

The Appellant has submitted the assessment for the taxable period 2013/2014 on 26th of November 2014, which was rejected by the Assistant Commissioner of Inland Revenue by the letter of intimation dated 20th of November 2015. Accordingly, the notice of assessment dated 30th of November 2015 was issued to the Appellant.

Being aggrieved by the said assessment, the Appellant has appealed to the Respondent, and by the determination dated 13th of December 2017 the Respondent has confirmed the said assessment. Being dissatisfied with the said determination, the Appellant has appealed to the Tax Appeals Commission (TAC), which after considering both parties confirmed the decision of the Respondent by the determination dated 31st of October 2022. The Appellant being aggrieved by the said determination has requested the TAC to cause a case stated for the opinion of the Court of Appeal.

Accordingly, the following questions of law have been raised by the Appellant.

"CA/TAX/04/2023

I. *Has the assessment been served on the Appellant after the expiry of the statutory time period for doing so and is therefore of no force or avail in law?*

II. *Is the assessment, as confirmed by the Commissioner General of Inland Revenue, is excessive and without lawful justification?*

III. *Is the determination of the delegate of the Commissioner General of Inland Revenue bad in law inasmuch as it is contrary to the principles of natural justice?*

IV. *In any event is the notice of assessment bad in law in view of the fact that the amount of tax assessed is incorrect?*

V. *Does the dividend income of the Appellant not form part of its total statutory income under and in terms of section 63 of the Inland Revenue Act, No 10 of 2006 (as amended)?*

VI. *In view of the facts and circumstances relating to the assessment has Commissioner General of Inland Revenue erred in law in coming to the conclusion that he did?*

CA/TAX/05/2023

I. *Is the assessment, as confirmed by the Commissioner General of Inland Revenue, excessive and without lawful justification?*

II. *Is the determination of the delegate of the Commissioner General of Inland Revenue bad in law inasmuch as it is contrary to the principles of natural justice?*

III. *Is the notice of assessment bad in law in view of the fact that the amount of tax assessed is incorrect?*

IV. *Does the dividend income of the Appellant not form part of its total statutory income under and in terms of section 63 of the Inland Revenue Act, No 10 of 2006 (as amended)?*

V. *In view of the facts and circumstances of the case did the Tax Appeals Commission err in law when it came to the conclusion that it did?"*

ANALYSIS

In relation to the case CA/TAX/04/2023, I consider it is appropriate to address the Question of Law I initially, as it relates directly to the validity of the assessment in issue. This question goes to the heart of the matter, because if the assessment has not been lawfully made, there is little necessity in considering the remaining questions made by the Appellant.

Has the assessment been served on the Appellant after the expiry of the statutory time period for doing so and is therefore of no force or avail in law?

It is the contention of the Appellant in the case *CA/TAX/04/2023,*that the notice of assessment dated 30th of November 2015 is time barred, as it has been served on the Appellant well after the time period stipulated under section 163(5)(a) of IRA 2006.

However, the TAC in its determination dated 9th of November 2022 has taken up the view that the statutory time bar imposed under section 163(5)(a) is only applicable to the internal process of making the assessment and does not apply to the notice of assessment, which is a formal indication to the taxpayer.

The section 163(5)(a) of IRA 2006, which deals with the issuance of Assessments and Additional assessments reads as follows;

"(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:"*

According to the above provision, if a taxpayer or partnership files its income tax return on or before 30th of November of the year immediately following the relevant year of assessment, the tax authority is allowed only a certain time period to issue an assessment for that year. For

years of assessment commencing before 1st of April 2013, the authority may issue an assessment only within two years from 30th of November of the immediately succeeding year of assessment. For years of assessment commencing on or after 1st of April 2013, the authority may issue an assessment only within eighteen months from 30th of November of the immediately succeeding year of assessment. Once this period has expired, the authority is time barred from issuing an assessment for that year.

Since the Appellant has submitted the income tax return for the year of assessment 2012/2013 before 30th of November of the specific year, the time limit stipulated by the law to issue a additional assessment shall be engaged upon the expiry of a period of two years from the 30th of November 2013.

On this basis, the Appellant contends that the Appellant has submitted the assessment for taxable period 2012/2013 dated 9th of September 2013, which was rejected by Assistant Commissioner of Inland Revenue by the letter of intimation dated 20th of November 2015. Accordingly, the notice of assessment dated 30th of November 2015 was issued. The said notice of assessment is posted under the registered cover on 22nd of December 2015 which has been received by the Appellant on 28th of December 2015.

According to the two year time bar mentioned under section 165(5)(a), the time period to issue an assessment by the Respondent shall be engaged on 30th of November 2015. However, in the current matter the notice of assessment has been received by the Appellant on 28th of December 2015, which is well after a delay of four weeks time period.

Even though the notice of assessment is made on 30th of November 2015, it is settled rule that the process of assessment is incomplete until the notice is served on the taxpayer. Thereby it is evident that the Respondent has failed to produce the notice of assessment within the statutory time frame established under section 163(5)(a) of IRA 2006.

This principle has also been established by E. Gooneratne in his book *'Income Tax in Sri Lanka'* (2nd edn 2009 p412) which clearly sets out what constitutes a valid assessment.

> *"**Making an assessment culminates in a notice on the person assessed. An assessment is made when the notice is sent."***

A more holistic approach was taken up in the recent judgment of ***Fonterra Brands Lanka (Private) Limited V. Commissioner General of Inland Revenue and others, SC Appeal 187/2014***, decided on 26.09.2025 by His Lordship Justice Thurairaja, PC. This clearly establishes, what constitutes a valid assessment.

> *"Taxation is a compulsory exaction backed by the coercive power of the State. It is therefore imperative that the power to tax be exercised strictly in accordance with law, and within the boundaries the legislature has drawn. Time bars in tax law are not technical traps for the Department; they are jurisdictional limits imposed in the interests of certainty, fairness, and discipline.*
>
> *69. To erode them by accepting secret assessments or delayed notices would be to unsettle commercial life and to undermine confidence in the rule of law. The letter dated 25th March 2008 was not an assessment. The notice dated 11th June 2008wasissued without jurisdiction. The power to assess expired on the 3st March 2008 and could not be revived thereafter.*
>
> *70. For reasons above, I answer Questions 3 and 4 in the negative, holding* ***that an assessment is not validly "made" unless it is notified to the taxpayer within the statutory time limit, and that a letter of intimation does not amount to such notification****"*

In consideration of the facts and circumstances of the case, the Respondent's position that the making of an assessment and the sending of the notice of assessment are two independent activities is unacceptable. Accordingly, it is my view that the notice of assessment dated 30th of November 2015, which was received by the Appellant on 28th of December 2015 is time barred and therefore not a valid assessment. Hence, I answer the question of law I in the affirmative.

Since the Question of law I is answered in the above manner, the notice of assessment issued by the assessor dated 30th of November 2015 is considered *void ab initio*. Therefore, the rest of the questions of law raised by the Appellant need not be discussed.

Now I shall move to the issues raised under the case *CA/TAX/05/2023*.

Since the primary issue raised by the Appellant is in relation to the substantive issue under question of law IV, I shall address it initially.

Does the dividend income of the Appellant not form part of its total statutory income under and in terms of section 63 of the Inland Revenue Act, No 10 of 2006 (as amended)?

The Appellant is a public limited liability company incorporated and domiciled in Sri Lanka. The principal activity of the Appellant is investing in subsidiary and associate companies constituting the Group Company and providing services to the group companies.

It is the contention of the Appellant that the dividend income of the Appellant does not form part of the statutory income under section 63 of the IRA 2006.

The section 63 of the IRA 2006, which was in operation at the relevant time, reads as follows,

> *"Where a dividend is paid by any resident company to any resident or non-resident company, and either—*
>
> *(a) a deduction has been made under section 65 in respect of that dividend by the first mentioned resident company ;*
> *(b) that dividend is exempt from income tax under section 10 ;*
> *(c) such dividend consists of any part of the amount of a dividend received by the first-mentioned resident company from another resident company; or*
> *(d) such dividend is a dividend declared by a quoted public company,*
>
> ***such dividend shall, notwithstanding anything to the contrary in any other provision of this Act, be deemed not to form part of the total statutory income of the second mentioned company."***

The above provision creates a targeted exemption for certain inter-company dividends received by a resident or non-resident company from a resident company, ensuring they are excluded from the recipient company's total statutory income despite other provisions in the

Act. Specifically, the dividend qualifies for this treatment if it meets either of the following conditions: (a) the paying company has already deducted it under section 65; (b) it is exempt under section 10; (c) it derives from a dividend the paying company received from another resident company; or (d) it comes from a quoted public company.

Further, according to the Inland Revenue (Amendment) Act, No. 8 of 2014, the term 'the profits and income of from such dividend shall' has been replaced by the term '***such dividend shall***'. Thereby the dividend which satisfies section 63 is deem not to form part of the total statutory income of the second company, by preventing double taxation or already-taxed corporate dividends.

Moreover, even if the said dividend constitutes business profits under section 3(a) of IRA 2006, the said dividend will not be excluded from the exception under section 63 of IRA 2006.

It is the contention of the Appellant that the Appellant is entitled to the exception provided under section 63 of IRA 2006, considering the profits of the business is solely on the dividend income received. However, the Respondent in its reasons for the determination of appeal dated 15th of January 2018 has provided the reasoning as follows;

> *"Based on the above facts, it is clear that the dividend referred to in section 63 are meant to be the "source" dividend 3(e) and therefore, when dividend income falls under section 3(a) of IR Act, it would become part of statutory income and therefore the appellant's argument is not correct"*

The section 3 of the IRA 2006, clearly mentions the income chargeable with tax.

"For the purpose of this Act, "profits and income" or "profits" or "income" means

(a) the profits from any trade, business, profession or vocation for however short a period carried on or exercised;

(b) the profits from any employment;

(c) the net annual value of any land and improvements thereon occupied by or on behalf of the owner, in so far as it is not so occupied for the purposes of a trade, business, profession or vocation;

(d) the net annual value of any land and improvements thereon used rent-free by the occupier, if such net annual value is not taken into account in ascertaining profits and income under paragraphs (a), (b) or (c) of this section, or where the rent paid for such land and improvements is less than the net annual value, the excess of such net annual value over the rent to be deemed in each case the income of the occupier;

(e) dividends, interest or discounts;

(f) charges or annuities;

(g) rents, royalties or premiums;

(h) Winnings from a lottery, betting or gambling ;

(i) In the case of a non -governmental organization, any sum received by such organization by way of grant, donation or contribution or any other manner; and

(j) Income from any other source whatsoever, not including profits of a casual and non-recurring nature."

Section 3(a) of IRA 2006 states that the '*the profits from any trade, business, profession or vocation for however short a period carried on or exercised'* constitute a profit and income under the law. Further the section 3(e) states that the '*dividends, interest or discounts;*' is also considered as profits or income.

It should be noted that the purpose of section 3 of IRA 2006 is to identify the income chargeable with tax, and despite the income falling under the category of section 3(a) or 3(e), it is considered as an income chargeable with tax. However, when the source of income is dividend, it is specifically mentioned in section 3(e).

Section 3(e) distinctly identifies "dividend" as a separate category of profits and income. The Latin maxim '***lex specialis derogat legi generali'***, meaning "special law overrides general law" dictates that a specific provision prevails over a broader general clause. Accordingly,

section 3(e) of the IRA 2006, as the specific provision governing dividends, takes precedence over the general category of business profits under section 3(a).

Nevertheless, it needs to be noted that the above categorization is not necessarily required since the profits and income under section 3 shall be considered as income chargeable with tax.

Therefore, the next issue to be considered is whether the dividends chargeable with tax falls under the exception provided by law, which is governed by section 63 of the Inland Revenue Act.

With regard to the exemption provided under section 63 of the IRA 2006, profits and income arising from dividends paid by any resident company to a resident or non-resident company shall not be included in the statutory income of such company and are accordingly eligible for the said exemption under section 63. Thereby, if the dividend income satisfies the criteria set out in section 63 of the IRA 2006, such income is treated as exempt from tax.

Accordingly, it is my view that irrespective of whether an income falls under section 3(a) or 3(e), if the income in question is dividend income, the next issue that must be addressed is whether such dividend income is exempt under section 63 of the IRA 2006.

There is nothing in section 63 which indicates that dividend falling under section 3(e) is specifically treated as dividend income, or that the exemption under section 63 applies exclusively to such income.

The latter part of section 63 of IRA 2006, clearly mentions that the dividends which satisfies the conditions under section 63 shall be deemed not to form part of the statutory income of the second mention company, notwithstanding anything to the contrary in any other provision of the Act. Hence, it is apparent that the Assessors and the Respondent has overlooked the clear import of the provision and misapplied it.

Furthermore, where a dividend satisfies the conditions under section 63 of the IRA 2006, non-payment of tax thereon is not merely lawful but expressly contemplated by statute. Notably, tax evasion being illegal and involving deliberate concealment or misrepresentation

differs fundamentally from permissible tax avoidance, which leverages explicit statutory exemptions like section 63 to prevent double taxation.

In consideration of the above, I am of the view that the profits and income of the Appellant, received by the dividend shall fall within the exception provided under section 63 of the IRA 2006. Therefore, I answer the question of law IV in the Affirmative: the said dividend income of the Appellant should not be treated as total statutory income under section 3 of IRA 2006.

Since, the question of law IV is answered in the above manner; the notice of assessment dated 30th of November 2015 is considered nullified. Hence, the rest of the questions raised by the Appellant need not be discussed.

CONCLUSION

When considering the facts and the circumstances of the case, in line with the materials presented before this court, I am of the view that the questions of law raised by the Appellant in the above two cases need be answered in the following manner.

CA/TAX/04/2023

Question of law I – Affirmative

CA/TAX/05/2023

Question of law IV – Affirmative

Accordingly, the appeals are allowed.

In the case CA/TAX/04/2023, the notice of assessment dated 30th of November 2015 is time barred. Hence, the determination of the Respondent dated 13th of December 2017 and the determination of the TAC dated 09th of November 2022 are null and void.

Further, in the case of CA/TAX/05/2023, the Appellant is entitled to the exception under section 63 of IRA 2006. Hence, the assessment dated 30th of November 2015 is quashed, and the determination of the Respondent dated 13th of December 2017 and the determination of the TAC dated 31st of October 2022 are null and void.

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

Judge of the Court of Appeal

Annalingam Premashanker J.

I agree

Judge of the Court of Appeal