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

In the matter of an application of a case stated under Section 141 of the Inland Revenue Act No.38 of the 2000 and presently Section 170 of the said Act No.10 of 2006.

CA Case No: CA/TAX/07/2009

BRA/VAT-02

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

Appellant

Vs.

Mercantile Leasing Limited,
Level 9,
Millenium House,
45/58, Nawam Mawatha,
Colombo 02.

Respondent

Nations Trust Bank PLC,
(Successor to Mercantile Leasing Limited),
Level 9,
Millenium House,
45/58, Nawam Mawatha,
Colombo 02.

Substituted- Respondent

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

&

Annalingam Premashanker J.

Counsel: Nirmalan Wigneswaran, D.S.G. with Chaya Sri Nammuni, DSG for the Appellant.

Dr. Shivaji Felix, PC with N. Satharasinghe, S. Nawaratne for the Respondent.

Written Submissions: By the Appellant – on 10.03.2026, 08.10.2025, 05.09.2022, 29.06.2020, 04.03.2020, 08.10.2018, 11.06.2018

By the Respondent –on 07.11.2025, 12.07.2022, 13.01.2020, 28.09.2018, 11.06.2018

Argued on: 29.01.2026

Decided On: **04.06.2026**

JUDGMENT

M.C.B.S. Morais J.

This is an appeal by way of case stated against the determination of the Board of Review dated 5th of May 2009 in the case of BRA/VAT-02.

This appeal is filed under Section 141 of the Inland Revenue Act No.38 of the 2000 and presently Section 170 of the Inland Revenue Act No.10 of 2006.

The tax in dispute is against the assessment of Value Added Tax for the taxable periods ended on 31st of August 2002 and 30th of June 2003.

FACTUAL BACKGROUND

The Mercantile Leasing Limited is a limited liability company, incorporated under the laws of Sri Lanka and engaged in the business of leasing. The Mercantile Leasing Limited was succeeded by the Nations Trust Bank PLC consequent to an amalgamation. Therefore, Nations Trust Bank PLC (hereinafter will be referred to as the Respondent) is now, by operation of law, is the Respondent in the present appeal.

The Respondent has made the assessment for the taxable periods above, which was rejected by the Assessor on the basis that the overdue interest charged by the Respondent from its customers, is liable to Value Added Tax (VAT) on overdue interest. Being aggrieved by the said assessment the Respondent appealed to the Commissioner General of Inland Revenue (hereinafter will be referred to as the Appellant) by the appeal dated 6th of October 2004. The Appellant dismissed the said appeal by the determination dated 5th of July 2005.

The Respondent being dissatisfied with the said determination, appealed to the Board of Review under section 35 of the Value Added Tax No.14 of 2002 (hereinafter will be referred to as 'VAT Act'). The board of Review after hearing the submissions from both the parties, determined that the appeal is time barred under section 140 of IRA 2000, by the determination dated 5th of May 2009. Dissatisfied with the said determination, the Appellant has requested the Board to have a case stated for the opinion of Court of Appeal.

The following questions of law were raised by the Appellant;

I. *"Whether the Board has erred in law to determine the appeal on the matters raised as preliminary objections by the appellant's counsel.*

II. *Whether the Board was empowered by the Hon. Minister of Finance who appointed it to hear and determine the appeal preferred by the appellant to give it's determination without hearing the matters raised in the appeal.*

III. *Whether the Board misdirected itself in law on deciding on the meaning to be given to the words "within two years from the date of commencement of hearing of such appeal" of sub section (10) of section 169 of the Inland Revenue Act No. 10 of 2006.*

IV. *Whether the Board has erred in law in determining that the period of two years given statutorily to the Board to determine an appeal commenced from the date of acknowledgement of the appeal by the Secretary of the Board.*

V. *Whether the Board has erred in law in determining a question of law and failed to give due consideration to the judgment of the case A.M. Ismail Vs.CIR (SLTC-Vol vi Page 156) as questions of law have to be decided by Court and not the Board can decide on question of law.*

VI. *Whether the Board has taken into consideration the time involved and or the procedures and or the role of the Secretary of the Board who is tasked with the fixing of the date for an appeal to be heard under Section 35(2) of the VAT Act."*

ANALYSIS

The Respondent has made an appeal to the Board of Review on 29th of August 2005. Accordingly, the matter was taken up for hearing on the 13th of February 2008, and on the 5th of May 2009, the Board of Review held that the appeal was time-barred. However, the Board remained entirely silent on the consequences of the appeal being time-barred, specifically as to whether the determination of the Appellant against which the appeal was sought ought to be upheld or whether the Respondent's appeal ought to be allowed.

It is the Respondent's argument that a question of law cannot be raised by way of case stated against the preliminary objection determined by the Board of Review, since section 141 of the IRA 2000, and Section 11A of the Tax Appeals Commission Act No. 23 of 2011 only allows a case stated to be submitted to the Court of Appeal on questions of law against the final determination of the Board of Review. Further, the Respondents contends that, should the Appellant need to appeal against the preliminary determination of the Board of Review, they should have followed the process of judicial review against such determination to obtain a fresh hearing or to quash the determination of the Board of Review. Therefore, it is position of the Respondent that this Court lacks jurisdiction to hear the questions of law raised by the Appellant.

However, the Appellant contends such argument on the basis that the section 141(6) of the Inland Revenue Act No. 38 of 2000 (IRA 2000) provides that '*the Court of Appeal may hear and determine any questions of law arising on the stated case'* ; Which empowers the court to decide any questions of law which shall arise in the case stated.

As it is apparent that section 141 of the IRA 2000, does not confine the jurisdiction of this court only to the final determination of the Board of Review, I am of the view that this court is empowered by law to look into the cases stated from the preliminary determination of the Board of Review.

It is the Respondent's position that the section 140(10) of the Inland Revenue Act No. 38 of 2000 (as amended), currently section 169(10) of the Inland Revenue Act No.10 of 2006, read together with the section 35 of the Value Added Tax Act No.14 of 2002 (as amended), requires the Board of Review to determine the appeal made within two years from the commencement of the hearing of such appeal.

The section 169(10) of the Inland Revenue Act No.10 of 2006 reads as follows;

> *"After hearing the appeal, the Board shall confirm, reduce, increase or annul the assessment as determined by the Commissioner General on appeal, or as referred by him under section139, as the case may be, or may remit the case to the Commissioner General with the opinion of the Board thereon. Where a case is so remitted by the*

Board, the Commissioner General shall revise the assessment as the opinion of the Board may require. The decision of the Board shall be notified to the appellant and the Commissioner General in writing:

Provided, however, ***the Board shall make its determination or express its opinion as the case may be, within two years from the date of commencement of the hearing of such appeal:***

Provided further where the hearing of any appeal has commenced at the date of commencement of this Act, the appeal shall be determined or an opinion shall be expressed within two years from the commencement of this Act."

Further section 35(2) of the VAT Act, which is similar in scope, provides as follows;

"(2) Notwithstanding anything to the contrary in any other law, an appeal to the Board of Review or any Commission which may be constituted by any written law for the ***purpose of hearing appeals in terms of this Act under subsection (1) shall be determined by the Board within a period of two years from the date of commencement of the hearing of such appeal by the Board****"*

According to the proviso to section 140(10) of the Inland Revenue Act, No. 38 of 2000, a time limit is imposed on the Board to determine the appeal. Once the hearing of an appeal has commenced, the Board is required either to make its determination or to express its opinion, as the case may be, within a period of two years from the date on which the hearing first commenced. According to the clear wording of the above provision, the time bar runs from the commencement of the hearing.

A similar approach is reflected in section 35(2) of the VAT Act, where the Board of Review, or any Commission constituted for that purpose, is required to determine an appeal within a period of two years from the date of commencement of the hearing of such appeal by the Board.

For the sake of argument, even if the Board of Review is correct in holding that the appeal must be determined within two years from the commencement of the hearing, it has, in interpreting the relevant provision, erroneously treated the time limit as running from the date of filing the appeal. This construction is contrary to the clear wording of the statute, which expressly fixes the commencement of the hearing as the starting point of the time bar. As the consequence of this misinterpretation, the substantive merits of the case have not been heard.

Furthermore, as the result of the determination made by the Board of Review, it remains uncertain whether the Appellant's assessment or the taxpayer's self-assessment continues to stay operative.

In general practice, when an appeal is time-barred, the previous decision shall be upheld. However, in the present matter, the Board of Review has upheld the objection raised by the Respondent, and held that it is time barred under section 140(10) of IRA 2000, but have failed to provide the effect of such determination.

It is pertinent to note that the IRA 2000 provides specific provisions governing the dismissal of an appeal made to the Commissioner-General of Inland Revenue. However, the Act is silent with regard to the consequences of an appeal being time-barred when preferred to the Board of Review. In the absence of an express statutory provision to that effect, it would be inappropriate to conclude that any exception operates automatically.

This can also be seen in the case of ***Stafford Motor Company (Private) Limited V. The Commissioner General of Inland Revenue SC Appeal No. 120/2021***, His Lordship P. Padman Surasena J. held that;

> *"In Visuvalingam v. Liyanage (1983) 1 Sri LR 203, a nine judge bench of this Court, having considered a similar issue that arose for determination pertaining to the time limit stipulated in Article 126(5) of the Constitution, proceeded to hold that the adherence of the time limit in Article 126(5) of the Constitution would be directory and not mandatory.*

In Jayanetti v. Land Reform Commission (1984) 2 Sri LR 172, and in Ramalingam v. Thangaraja (1982) 2 Sri LR 693, ***this Court having considered similar issues, proceeded to hold that in the absence of any consequence stipulated in the Act for the failure to adhere to the time limits relevant to those cases in the relevant statutes, there is no basis to hold that such process is a nullity in those circumstances****."*

Thereby, it is evident that where the specific Act itself fails to prescribe the consequences for non-compliance with the time limits stipulated by the said Act, the courts cannot infer the repercussions of such non-compliance.

Further, if the legislature intended strict compliance with the time limit as a condition precedent to the validity of the act or proceeding, it would have expressly provided for the consequences of non-compliance; such as deemed invalidity, automatic dismissal or the appeal being deemed allowed. Where such express provision is lacking, the time limit is generally construed as directory rather than mandatory.

Therefore, after careful consideration of the facts and circumstances of the case, I am of the view that the determination of the Board of Review is erroneous, and the matter ought to be proceeded to be heard on its substantive merits.

In view of the foregoing disposition, the questions of law raised by the Appellant need not be answered separately.

CONCLUSION

Hence, we are compelled to determine that the determination of the Board of Review is inaccurate and misconceived in law. Accordingly, we are obliged to set aside the determination dated 5th of May 2009.

Therefore, this matter is referred to the Tax Appeals Commission to hear the substantive merits of this application expeditiously.

This appeal is allowed.

Judge of the Court of Appeal

Annalingam Premashanker J.

I agree

Judge of the Court of Appeal