

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 11A of the Tax
Appeals Commission Act No. 23 of 2011
as amended by Act No. 20 of 2013.

CA Case No: TAX/09/2020
Tax Appeals Commission Case No.
TAC/IT/041/2017

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

Appellant

Vs.

First Capital Ltd.,
No. 02,
Deal Place,
Colombo 03.

Respondent

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

&

Annalingam Premashanker J.

Counsel: Chaya Sri Nammuni, DSG for the Appellant.

Pulasthi Rupasinghe with Nayanthi Wanninayake instructed
by Thamila D. Perera for the Respondent.

Written Submissions: By the Appellant – on 19.01.2024

By the Respondent – on 19.06.2026, 08.11.2023, 17.08.2021

Argued on: By way of Written Submissions

Decided On: 15.10.2026

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 31st of January 2020, in the case of TAC/IT/041/2017.

This appeal is filed under Section 170 of the Inland Revenue Act No. 10 of 2006 as amended (IRA 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 2011/2012 and the taxable amount in dispute is Rs. 12,188,159.00 with a penalty of Rs. 6,094,079.00.

According to the Journal entry dated 24th of October 2025, both parties have agreed that the argument shall be concluded by way of written submissions.

FACTUAL BACKGROUND

The First Capital Limited (hereinafter will be referred to as the Respondent) is a limited liability company incorporated and domiciled in Sri Lanka. The Respondent is engaged in the business of debt structuring and investment activities.

The Respondent has submitted the return for the taxable period 2011/2012, claiming certain deductions as bad debts, the Assistant Commissioner of the Department of Inland Revenue has not accepted the said return (sometimes will be referred to as the Assessor) and has rejected the said return for the reasons set out in the intimation letter dated 25th of November 2014. Accordingly, the Assessor has issued the Notice of Assessment dated 28th of November 2014 based on the reasons set out in the intimation letter.

The Respondent 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 Appellant). The Appellant in his determination dated 8th of December 2016 determined the appeal by upholding the decision of the Assessor. The Respondent being dissatisfied with the said determination of the Appellant, made an appeal to the Tax Appeals Commission (TAC) on the basis that the assessment issued by the Assessor is time barred and invalid in law. The TAC after considering the submissions made by both parties made the determination dated 31st of January 2020 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 the TAC erred in determining the assessment is time barred? Section 164 of the Inland Revenue Act does not specify a time limit to the send notice of assessment.*

Therefore, sending of assessment by post after 22 days from the date of notice of assessment is deemed to be done "at or about time".

- II. *Does the Appellant company entitle to deduct Rs.43,529,139.67 (fraudulently taken out money by Assistant General Manager) in arriving at the taxable income as provision for bad debts under Section 25 (1) of the Inland Revenue Act."*

ANALYSIS

The Question of Law No. I is in relation to the validity of the assessment in question. Therefore, I will initially answer this question first. If it is answered in the Negative, little purpose is served in answering the substantive question.

Question of Law No. I

1. Has the TAC erred in determining the assessment is time barred? Section 164 of the Inland Revenue Act does not specify a time limit to the send notice of assessment. Therefore, sending of assessment by post after 22 days from the date of notice of assessment is deemed to be done "at or about time".

It is the contention of the Appellant that the section 164 of the IRA 2006 does not specify a time limit in sending a notice of assessment. Therefore, in the present matter, the notice of assessment which has been posted to the taxpayer after 22 days from the two year time period under section 163(5) is not applicable to the Appellant, since it has been deem to be done 'at or about time'.

However, it is the contention of the Respondent that the time limitation specified under section 163(5) of IRA 2006 applies broadly to the letter of intimation as well as the subsequent notice issued to the taxpayer. Therefore, the letter of intimation as well as the notice issued thereafter is time barred.

For ease of reference I shall reproduce below the relevant statutory provisions governing the question at hand;

“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:

...

164.

An Assessor or Assistant Commissioner shall give notice of assessment to each person and each partnership who or which has been assessed, stating the amount of income assessed and the amount of tax charged:

...” [emphasis added]

Chapter XXII of the IRA 2006 elaborates the procedure in relation to issuing an assessment by the Assessor. Accordingly, under section 163(3) of IRA 2006, when a return has been furnished for a specific taxable period, then the Assessor is required to assess and accept it if he thinks it is in accordance with the law or if he thinks it contains certain discrepancies, he is empowered to reject the said return by issuing an intimation letter stating out the reasons for his rejection.

The section 163(5)(a) of the IRA 2006 sets out the time limitation for issuing an assessment, thereby if the taxable return in issue has been commenced before 1st of April 2013, then the Assessor is required to issue an assessment on or before two years from the thirtieth November of the immediately succeeding year of assessment.

Thereafter the section 164 requires that whenever an assessment is made by the Assessor, a notice of assessment needs to issue to the tax payer with regard to the income tax assessed and the amount of tax charged.

When understanding the process of assessment under Chapter XXII of IRA 2006, it is pertinent to note that the time limitation under section 163(5) does not restrict itself for the said intimation letter issued under section 163(3) or the notice of assessment issued under section 164, nevertheless it applies to the entire process of assessment as a whole. If the said time limitation is required to be applied to a specific step of the assessment process it will only undermine the entire process and the intention of the legislature.

In applying the above statutory procedure to the current issue, I shall initially set down the time line relevant to the issue at hand.

Taxable return made for the period 2011/2012	Dated 29 th of November 2012	Received on 30 th of November 2012
Intimation letter	Dated 25 th of November 2014	Received on 2 nd of December 2014
Notice of assessment	Dated 28 th of November 2014	Posted on 22 nd of December 2014, and Received on 23 rd of December 2014
Assessment time barred	29 th of November 2014	

When considering the time line of the case at hand, it is the contention of the Respondent that the Assessor is required by law to issue an assessment on or before 29th of November 2014. However, in the present matter, the letter of intimation as well as the notice of assessment has been received by the Respondent after the two years of time period prescribed by law. On this basis, the Respondent argues that the assessment is time barred.

However, it is the position of the Appellant that the time limitation mentioned under section 163(5) applies only to the act of 'making an assessment' and not for the subsequent notice issued. Accordingly, it is the Appellant's argument that the assessment has been made on time under the law and the section 164 does not hold a time limit to issue a notice, therefore the notice is deemed to have been served in due course.

The issue before this court hinders on two main questions to be answered;

- 1) Does the section 164 contain a time limitation in issuing an assessment?
- 2) Does serving a notice after 22 days of the time period mentioned under section 163(5) is considered to be done "at or about time".

Time limitation in issuing a notice of assessment

It is the position of the Appellant that section 164 of the Inland Revenue Act No. 10 of 2006 does not prescribe a time limit for the issuance of a notice of assessment.

However, it must be noted that the procedure for making an assessment is set out in sections 163 and 164 of the IRA 2006, and those provisions must be read together, having regard to the assessment process as a whole.

The purpose of section 163(3) is to ensure that the Assessor communicates the reasons for rejecting a taxpayer's return. The issuance of the notice of assessment is the final stage of that process, as it informs the taxpayer of the tax liability determined by the Assessor. Without such notice, the taxpayer may be aware of the reasons for rejecting the return, but would not know the amount of tax ultimately payable.

Moreover, if the Appellant's contention that the time limit applies only to the act of making an assessment is accepted, the assessment process could be regarded as complete even where the resulting tax liability has not been communicated to the taxpayer. In my view, the purpose of an assessment is not merely to arrive at a computation of the tax payable within the Department, but also to communicate that liability to the taxpayer so that the taxpayer is made aware of the amount due and can take the necessary steps accordingly.

In this regard, E. Gooneratne, in his book *Income Tax in Sri Lanka* (p. 412), states:

“Making an assessment culminates in a notice on the person assessed. An assessment is made when the notice is sent.” [emphasis added]

This observation supports the view that the making of an assessment cannot be separated from the communication of that assessment to the taxpayer. Unless the taxpayer is duly notified, the purpose of making the assessment is not fully achieved.

Further, in *Fonterra Brands Lanka (Private) Limited V. Commissioner General of the Department of Inland Revenue and Others (2025)*, SC Appeal No. 187/2014, the Supreme Court held that the time limit prescribed by section 163(5) applies not merely to the act of making an assessment by the Assessor, but also to the communication of that assessment to the taxpayer by way of a notice of assessment, as such communication completes the assessment process. Furthermore, as in the above case, the notice of assessment have been printed on 28th of November 2014 and kept in the Appellant's drawer for more than three weeks and posted on 22nd of December 20214. Hence, if the Appellant's notion has to be accepted, then the Department of Inland Revenue will only require to make the internal computation within the time and will have the liberty to keep the printed document with them indefinitely. This will only expose the taxpayer to uncertainty and make the entire process of assessment untenable.

In view of the foregoing, I am of the opinion that the time limit prescribed by section 163(5) applies to the assessment process as a whole, including the communication of the assessment to the taxpayer. Accordingly, although section 164 does not expressly prescribe a separate time limit for issuing a notice of assessment, that provision must be read together with the relevant provisions governing the assessment procedure under IRA 2006.

The section 163(5) contained in Chapter XXII of the Inland Revenue Act No. 10 of 2006, is a machinery provision which outlines the procedure for quantification and enforcement of a tax liability, must be interpreted in a manner that gives effect to the legislative intention rather than defeats it as in accordance with the principle of *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void).¹

Time Limitation

According to section 163(5) of the IRA 2006, the Assessor is required to issue an assessment within two years from the thirtieth day of November of the immediately succeeding year of assessment. Accordingly, in the present case, the assessment ought to have been issued on or

¹ *JMC Jayasekara Management Centre (Pvt) Limited V. JMC Jayasekara Management Centre (Pvt) Limited*, SC/APPEAL/5/2021, decided on 05.03.2025 .

before 29th of November 2014. However, the letter of intimation was served on 2nd of December 2014, after the expiry of the prescribed period and the notice of assessment was received much thereafter.

In considering whether the delay in serving the assessment renders it invalid, it is pertinent to consider the decision of the three-judge bench in *A.M. Ismail V. Commissioner of Inland Revenue*, SLTC Vol. IV, p. 182. His Lordship Victor Perera J. held that a notice of assessment served after the prescribed date could not be regarded as valid where the mandatory statutory provisions had not been complied with.

His Lordship observed as follows:

“In regard to the date of the notice of assessment, it was conceded that the relevant date is the date of posting as a notice sent by post shall be deemed to have been served on the day succeeding the day on which it would have been received in the ordinary course of business. In this case the notice was admittedly posted on 21st April, 1979, long after the effective date referred to in section 96 (C) (3), namely 31st March 1979. In this case it cannot be considered a valid notice under section 96 (C) (3) or even a valid notice under section 95 as there has been an absolute non-compliance with the mandatory provisions of section 93 (2) even if the assessment was made on 30.03.1979.” [emphasis added]

The principle laid down in the above decision is relevant to the present matter. In the instant case, the letter of intimation was served two days after the expiry of the prescribed period under section 163(5) while the notice of assessment was issued and communicated after 22 days.

In these circumstances, I am of the view that the delay in issuing and communicating the notice of assessment cannot be regarded as a matter of mere formality or as compliance within a reasonable time. Where the law expressly prescribes a time limit for serving an assessment, that requirement must be observed. Accordingly, the notice of assessment issued

after the expiry of the prescribed period cannot be treated as valid merely because the delay was only 22 days.

For the foregoing reasons, I answer the Question of law No. I in the Negative.

In consequence of the above, this court holds that the TAC has not erred in arriving at its determination; hence the determination of TAC shall stand. The assessment issued by the Assistant Commissioner of Department of Inland Revenue is considered null and void. Accordingly, the self assessment of the Respondent shall prevail.

Since the Question of Law No. I has been answered in the above manner, the substantive issue shall not arise for the consideration of 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 – Negative

Question of law No. II – shall not arise

This appeal is dismissed.

Accordingly, the determination of the TAC dated 31st of January 2020 shall sustain.

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

Judge of the Court of Appeal

Annalingam Premashanker J.

I agree

Judge of the Court of Appeal