<u>IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA</u>

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/10/2022
Tax Appeals Commission No. TAC/IT/084/2017

CA Case No: CA/TAX/11/2022
Tax Appeals Commission No. TAC/IT/085/2017

South Asia Gateway Terminal (Private) Limited,
No.117,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

And also having its principal place of business at,
Port of Colombo,
P.O. Box 141,
Colombo 01.

Appellant

Vs.

Commissioner General of Inland Revenue,
Department of Inland Revenue,
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 instructed by Asoka Obeysekere for the Appellant.

Manohara Jayasinghe, DSG and Abigail Jayakody, SC for the Respondent.

Written Submissions:

CA/TAX/10/2022 By the Appellant – on 02.08.2023, 06.05.2026

By the Respondent – on 14.11.2023, 06.05.2026

CA/TAX/11/2022 By the Appellant - 02.08.2023, 06.05.2026

By the Respondent - 21.09.2023, 06.05.2026

Argued on: 27.01.2026

Decided On: **30.07.2026**

JUDGMENT

M.C.B.S. Morais J.

As reflected in the journal entry dated 28th of October 2025 and 27th of January 2026, the cases CA/TAX/10/2022 and CA/TAX/11/2022 are taken up together, as they involves the same parties and raise substantially identical issues of law. Therefore, both the cases will be disposed of by way of a common judgment. Accordingly, this judgment is delivered in respect of both appeals.

CA/TAX/10/2022

This is an appeal by way of case stated against the determination of the Tax Appeals Commission (TAC) dated 3rd of December 2020. This appeal is filed under Section 11A 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 issue is Rs. 11,658,416.00 with a penalty of Rs. 8,829,208.00.

FACTUAL BACKGROUND

The South Asia Gateway Terminal (Pvt) Ltd, (hereinafter will be referred to as the Appellant) is a limited company incorporated and domiciled in Sri Lanka. The Appellant is engaged in the business of port services at Queen Elizabeth Quay at the Port of Colombo carrying on insurance business in Sri Lanka. According to the Board of Investment of Sri Lanka (BOI) the Appellant is entitled to a tax holiday, for a period of 20 years and the assessment under dispute falls within the tax holiday period.

The Appellant has submitted the tax return for the taxable period 2012/2013, which was rejected by the Assistant Commissioner of Inland Revenue by the letter dated 7th of October 2015. Accordingly, the Assistant Commissioner has issued an assessment by the Notice of Assessment dated 11th of November 2015. 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 14th of November 2017 determined the appeal by upholding the assessment issued by the Assistant Commissioner. The Appellant being dissatisfied with the said determination of the Respondent, made an appeal to the Tax Appeals Commission (TAC). The TAC after considering the submissions made by both parties, dismissed the appeal by the determination dated 3rd of December 2020 and confirmed the determination made by 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. *"Did the Tax Appeals Commission err in law when it came to the conclusion that the total statutory income was a separate source of income?*

II. *Did the Tax Appeals Commission err in law when it concluded that the Appellant was not entitled to make a claim under and in terms of section 32 (5) of the Inland Revenue Act, No. 10 of 2006, in respect of royalty and ground rent?*

III. *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?"*

CA/TAX/11/2022

This is an appeal by way of case stated against the determination of the Tax Appeals Commission (TAC) dated 3rd of December 2020. This case is filed under section 11A 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 2013/2014 and the taxable amount in issue is Rs. 25,994,621.00 with a penalty of 12,997,311.00.

FACTUAL BACKGROUND

The Appellant has submitted the tax return for the taxable period 2013/2014, which was rejected by the Assistant Commissioner of the Department of Inland Revenue by the letter dated 7th of October 2015. Accordingly, the Assistant Commissioner has issued a new assessment by the Notice of Assessment dated 3rd of November 2015. 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 its determination dated 14th of November 2017 determined the appeal by upholding the assessment issued by the Assistant Commissioner. The Appellant being dissatisfied with the said determination of the Respondent, made an appeal to the Tax Appeals Commission (TAC). The TAC after considering the submissions made by both parties, dismissed the appeal by the determination dated 3rd of December 2020 and confirmed the determination made by the Respondent.

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III. *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

The questions of law raised by the Appellant in both appeals are identical in nature. Accordingly, I shall address them together.

Question of Law No. I concerns whether the Tax Appeals Commission erred in law in concluding that the total statutory income constitutes a separate source of income. As this issue requires an independent examination of the statutory framework under the Inland Revenue Act No. 10 of 2006 as amended (IRA 2006), I shall address it separately.

The Question of Law No. II concerns the applicability of the provisions of the IRA 2006, to the Appellant during the period in which it was enjoying a tax holiday under the BOI Agreement. This issue goes to the root of both appeals, as its determination is fundamental to the matters in dispute. I shall therefore address this question separately.

Having determined Questions of Law Nos. I and II, I shall then proceed to consider Question of Law No. III.

Question of Law I

I. *" Did the Tax Appeals Commission err in law when it came to the conclusion that the total statutory income was a separate source of income?*

It is the Appellant's contention that the TAC erred in law in concluding that the total statutory income of the Appellant constituted a separate source of income. It is the Appellant's position that the statutory income is not itself a source of income but merely the computational result derived from each source of income identified under section 3 of the IRA 2006. The Appellant further argues that treating the total statutory income as an independent source of income is contrary to the scheme of sections 3, 28 and 30 of the IRA 2006.

The taxable source of income is set out in section 3 of the IRA 2006. Section 3 is the charging provision, and it identifies the categories of profits and income that constitute the taxable sources of income. Those sources include profits from a trade, business, profession or vocation, employment income, dividends, interest, rents, royalties, premiums and other specified categories of income.

The section 3 of the IRA 2006 reads as follow;

"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."*

Accordingly, if the income/profit of an entity falls within the scope of the above provision then it shall be chargeable for tax.

The term statutory income is set out under section 28 of the IRA 2006. Section 28 provides for the computation of the statutory income derived from each of those sources under section 3 of the IRA 2006. It is evident from the language of section 28 that statutory income is calculated from every source of profits or income in respect of which tax is chargeable. Accordingly, statutory income is not itself a source of income; it is the amount of profits or income computed in respect of each source identified under section 3 of the IRA 2006.

The section 28 of the IRA 2006 reads in the following manner;

> *"28. (1) The statutory income of every person for each year of assessment from every source of his profits or income in respect of which tax is chargeable, shall be the full amount of the profits or income which was derived by him or arose or accrued to his benefit from such source during that year of assessment, notwithstanding that he may have ceased to possess such source or that such source may have ceased to produce income."*

The section 30 of the IRA 2006 discusses about the total statutory income in the following manner;

> *"30. The total statutory income of a person for any year of assessment shall be the aggregate of his statutory income for that year of assessment from every source of his profits or income in respect of which tax is charged."*

This distinction is significance in light of the fact that section 32 permits certain deductions from the total statutory income in determining the assessable income of a person. Among those deductions are the sums specified in section 32(5)(a) of IRA 2006, including certain ground rents, royalties, annuities and interest that are not deductible under section 25 of IRA 2006.

These deductions operate only in the process of determining assessable income under the Inland Revenue Act.

Section 32(5)(a) of the IRA 2006, which deals with the Deductions from total statutory Income in arriving at assessable income, reads in the following manner;

> *"(5) There shall be deducted from the total statutory income of a person for any year of assessment–*
>
> *(a) sums paid by such person for any year of assessment by way of:*
>
>> *(i) any ground rent or royalty payable for any period prior to April 1, 2014 and which is paid after April 1, 2014; or*
>>
>> *(ii) annuity or interest,*
>>
>> *which he is not entitled to deduct under section 25.*
>
> *For the purpose of this paragraph interest does not include the excess referred to in paragraph (x) or paragraph (y) of subsection (1) of section 26:"*

According to the above provision, there are certain payables which can be deducted in calculating the statutory income of a person. However, when considering the facts and circumstance of the case, the Appellant was granted a twenty-year tax holiday under the BOI Agreement, and the years of assessment in dispute fall within that exempt period. By virtue of the BOI Agreement, the Appellant's profits and income were not assessable to income tax under the Inland Revenue Act during the tax holiday. Consequently, the computation of assessable income under section 32, including the deductions contemplated by section 32(5)(a), does not arise during the exempt period. In those circumstances, the Appellant cannot rely upon section 32 to claim the benefit of deductions or to carry-forward the losses incurred during a period in which its profits were outside the charge to income tax.

However, it should be noted that total statutory income is not a separate source of income but the aggregate of the income derived from every source under section 3 of the IRA 2006. Therefore, I am of the view that the TAC has erred in law in determining that the total statutory income as a separate source of income.

Hence I answer the question of law I in the Affirmative.

Having answered the question of law I in the above manner, now I shall move towards the questions of law II and III.

<u>Question of Law II and III</u>

> *I. Did the Tax Appeals Commission err in law when it concluded that the Appellant was not entitled to make a claim under and in terms of section 32 (5) of the Inland Revenue Act, No. 10 of 2006, in respect of royalty and ground rent?*

> *III. 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?*

It is to be noted that the Appellant incurred expenditure on ground rents and royalties during the relevant years of assessment and contends that the resulting business losses are capable of being carried forward under section 32(5)(a) of the IRA 2006.

Accordingly the Appellant contends that it is entitled to claim deductions in respect of royalties and ground rent under section 25 of the Inland Revenue Act, No. 10 of 2006, as amended (IRA 2006). It is the Appellant's position that royalties and ground rent constitute outgoings and expenses incurred in the production of its profits or income and are therefore deductible in ascertaining its profits or income under section 25 of the IRA 2006, subject to the limitations set out in section 26.

The Appellant further submits that the deductions claimed relate to the years of assessment 2012/2013 and 2013/2014, which preceded the amendments introduced by the Inland Revenue (Amendment) Act, No. 8 of 2014, which came into operation in April 2014. Accordingly, it is argued that the Appellant was entitled to set off the royalties and ground rent against its statutory income and carry forward any expense/losses to the subsequent years of assessment in the same manner as trade losses.

The Respondent, on the other hand, contends that the royalties and ground rent were expenses incurred by the Appellant in generating profits and income that were exempt from income tax by virtue of the tax holiday granted under the BOI Agreement for a period of twenty years. Consequently, such expenses cannot be deducted under the IRA 2006. In support of this position, the Respondent places reliance on the decision in *Ceramics Lanka PLC v. Commissioner General of Inland Revenue* (CA/TAX/05/2008).

I shall first consider whether the provisions of the IRA 2006 are applicable to Appellant while the existing BOI agreement provides for a tax holiday.

Even though the alleged BOI agreement is not before this court, we were able to gather the contents of the section 10(i) of the said agreement through the intimation letter dated 7th of October 2015. The parties have not disputed whether the assessment in issue is outside the scope of the tax holiday period, therefore this court assumes that the assessments in issue is within the 20 year tax holiday period. Under the BOI agreement, the Appellant was granted a tax holiday in respect of its profits and income, and the parties have expressly agreed that the relevant provisions of the IRA 2006 governing the taxation of such profits and income would not apply during the period of the tax exemption. It was on this basis that the Assessor has rejected the tax returns furnished by the Appellant.

For the sake of convenience, I shall reproduce the relevant provisions of the intimation letter dated 7th of October 2015below.

> *"The Returns submitted for the above Years of Assessment have not been accepted due to following reasons.*
>
> *1. The Agreement with Board of Investment of Sri Lanka (BOI) and South Asia Gateway Terminals Pvt. Ltd. (SAGT) Section 10(i) reads as follows:*
>
>> *"For a period of twenty (20) years reckoned from the year of assessment as may be determined by the Board (herein after referred to as the "said tax exemption period")* ***the provisions of the Inland Revenue Act No. 28 of 1979 relating to the imposition, payment and recovery of income tax in respect of the profits and income of the Enterprise shall not apply to the profits and income of the Enterprise.****"*
>
> *During the tax exemption period, the Company is not required to make adjustments in accordance with Inland Revenue Act as the provisions of Inland Revenue Act relating to the imposition of Income Tax in respect of the profit and income of the enterprise is not applicable.*
>
> *2. This position has already been confirmed by the interpretation given by the Committee for Interpretation of Tax Laws of the Department of Inland Revenue for similar cases. (Pl. refer ACT/03/15)*
>
> *3. Since the Company being a BOI Registered Undertaking under the provision of the Strategic Development Project Act, is not required to prepare the adjusted profit for tax purposes as explained in paragraph (2) above. The deduction of payment for Royalty and Ground Rent cannot be allow against the interest income."*

Section 10(i) of the BOI Agreement provides that the provisions of the Inland Revenue Act No. 28 of 1979, relating to the imposition, payment, and recovery of income tax in respect of the profits and income of the enterprise shall not apply to the profits and income of the Enterprise during the period of the tax exemption.

The Appellant, by letter dated 23rd of March 1993, has sought clarification from the BOI regarding the interpretation of the phrase "the year in which the Enterprise commenced to make profit," and in particular, the meaning to be attributed to the term "profit" for the purposes of the BOI Agreement.

By its reply dated 7th of April 1999, the BOI has clarified that for the above purpose, the term "profit" refers to profits computed in accordance with the provisions of the Inland Revenue Act.

Section 3 of the IRA 2006 is the principal charging provision of the Act, setting out the categories of profits and income that are chargeable to income tax. Accordingly, any reference to "profits" in the Act must be construed in light of the charging provisions contained in section 3 of the IRA 2006.

However, in the present matter, the BOI Agreement expressly provides that the provisions of the Inland Revenue Act relating to the imposition, payment, and recovery of income tax shall not apply to the profits and income of the Enterprise during the agreed tax holiday period. Consequently, although the Appellant's profits arise from a trade or business within the meaning of section 3, those profits are removed from the charge to income tax by virtue of the tax exemption granted under the BOI Agreement read together with the Board of Investment Law.

Furthermore, the Appellant's business profits cannot be considered as taxable profits for the relevant years of assessment, since the profits themselves were exempt from tax.The machinery provisions of the Inland Revenue Act relating to the computation of taxable profits, including deductions allowable under section 25 and restrictions imposed by section 26 of the IRA 2006, cannot ordinarily be invoked for the purpose of creating or preserving deductions in respect of exempt income unless the statute expressly so provides.

The BOI's clarification by its letter dated 7th of April 1999 does not alter this position. The clarification merely states that the term "profit" should be computed in accordance with the Inland Revenue Act for the limited purpose of determining the commencement of the tax holiday. It does not incorporate the entire scheme of the Inland Revenue Act into the BOI Agreement or render the Appellant subject to all the provisions of the Act during the tax exemption period. The clarification is therefore confined to the method of computing profits for identifying the commencement of the tax holiday and cannot be construed as permitting deductions or losses arising during the exempt period to be carried forward and set off against taxable profits after the expiry of the tax holiday.

Furthermore it need to be noted that the BOI agreement under section 10(i) mentions that ‘’ ***the provisions of the Inland Revenue Act No. 28 of 1979 relating to the imposition, payment <u>and recovery of income tax in respect of the profits and income</u> of the Enterprise <u>shall not apply to the profits and income of the Enterprise</u>.***

The effect of this clause is that, during the period of the tax holiday, the Appellant's profits and income are excluded from the operation of the provisions of the Inland Revenue Act relating to the imposition, payment and recovery of income tax. Consequently, any profits earned by the Appellant during the tax holiday would not have been assessable to income tax.

This conclusion is significant in the context of section 32(5)(b) of the IRA 2006. The section 32(5)(b) of the IRA 2006 provision permits to carry-forward a loss **"which, if it had been a profit, would have been assessable under this Act."** Since the Appellant's profits during the tax holiday would not have been assessable by reason of the BOI Agreement, the losses incurred during that period likewise fall outside the scope of section 32(5)(b). The statutory condition precedent for carrying forward the loss is therefore not satisfied.

The purpose of granting a BOI tax holiday is to encourage investment by exempting an enterprise from the payment of income tax for a specified period. During that period, if the enterprise earns a profit, it is entitled to retain that profit without being liable to income tax. This is the benefit conferred by the BOI Agreement.

However, it does not specify that losses incurred during the tax holiday may be carried forward and deducted from taxable profits earned after the exemption period has expired. During the tax holiday, the Appellant's profits are not assessable under the Inland Revenue Act No. 10 of 2006. Consequently, the provisions of the Act governing the carry-forward of losses cannot apply unless there is an express statutory provision permitting such a benefit.

To allow losses incurred during the exempt period to be carried forward would effectively grant the Appellant an additional tax concession that is neither provided for in the BOI Agreement nor authorised by the Inland Revenue Act. Such an interpretation would extend the scope of the tax holiday beyond its intended purpose. The object of the tax holiday is to exempt profits from income tax during the concessionary period, and not to preserve losses incurred during that period for deduction against taxable income earned in subsequent years.

Therefore, in the absence of an express provision authorising to carry-forward the losses incurred during a period in which the Appellant was exempt from the imposition of income tax, I am unable to accept the Appellant's contention that such losses may be carried forward and deducted from its assessable income in a subsequent year of assessment.

The above position is consistent with the decision in ***Setmil Developers Lanka (Pvt.) Limited V. The Commissioner General of Inland Revenue*** **CA/TAX/27/2019 decided on 03.02.2022** by His Lordship Dr. Ruwan Fernando, J. The Court held that Since the profits earned during a BOI tax holiday period are exempt from assessment by virtue of the BOI Agreement, the losses arising during that period likewise fall outside the ambit of section 32(5)(b) and cannot be carried forward.

"[65] First, for the purpose of the application of Section 32 (5)(a), it must be speculated that the loss of Rs. 29,453,164/- incurred in the year of assessment 2008/2009 was in fact a profit made in the said year of assessment. Second, it must be satisfied that the said loss incurred in the year of assessment 2008/2009 would have been assessable under the Inland Revenue Act in the year of assessment 2008/2009 having regard to the year of assessment that had been determined by the BOI and specified in a certificate issued by the BOI.

[66] As described, the BOI has determined that the Appellant was entitled to the tax exemption period of 3 years commencing from 01.04.2009 to 31.03.2010 and thus, the year of assessment for the purpose of the tax exemption period shall commence from the year of assessment 2009/2010. ***The said loss which was in fact a profit made for the purpose of Section 32 (5) (b) had been incurred in the year of assessment 2008/2009. The said profit would not have been assessable under the Inland Revenue Act if that profit was made during the tax holiday period determined and specified by the certificate issued by the BOI as the Inland Revenue Act shall not apply to the profits and income of the Appellant during the said tax exemption period commencing from the year of assessment 2009/2010*** *[Clause 12 (i)]."*

When considering the above case authority, it is evident that an enterprise enjoying a tax holiday under a BOI Agreement is exempt from the operation of the provisions of the Inland Revenue Act relating to the imposition of income tax throughout the period of the tax holiday. Consequently, no liability to income tax arises in respect of the profits earned during that period.

In the present case, the Appellant was granted a twenty-year tax holiday under the BOI Agreement, and the years of assessment in dispute fall within that exempt period. Accordingly, any profits earned by the Appellant during those years would not have been assessable to income tax under the Inland Revenue Act.

Furthermore, the expenses, losses incurred during the same period cannot satisfy the requirement under section 32(5)(b) of the IRA 2006. Therefore, the losses incurred by the Appellant during the tax holiday are not capable of being carried forward under the Inland Revenue Act, since it does not constitute an assessable income.

Having concluded that the provisions of the IRA 2006 are not applicable to the Appellant during the tax holiday period, now I shall address whether the Appellant is entitled to carry forward the losses incurred in a previous year of assessment under section 32(5)(b) of the IRA 2006.

Section 32(5)(b) of the IRA 2006, which governs the deductions from total statutory income in arriving at assessable income, provides as follows:

"(b) the amount of a loss, other than a loss referred to in paragraph (c) or paragraph (d), incurred by such person in any trade, business, profession or vocation which if it had been a profit would have been assessable under this Act, including any such loss brought forward from a previous year which had not been deducted under this section previously, and any excess treated as a loss under paragraph (ii) of the proviso to paragraph (a), upto a maximum limit of thirty five per centum of the excess of the total statutory income for that year, over the aggregate of :—

I. *statutory income from interest and dividends referred to in subsection (1) ;*
II. *any interest income referred to in subsection (2); and*
III. *any reward, share of fine, any lottery winning and any interest on compensation payable, as referred to in subsection (3), for that year of assessment and any loss which cannot be deducted, may be carried forward to the next year of assessment and so on:*

…………"

A plain reading of section 32(5)(b) of IRA 2006 demonstrates that a taxpayer is entitled to carry forward losses incurred in a previous year of assessment only where such losses fall within the scope of that provision. The section expressly permits to carry-forward the loss incurred in a trade, business, profession or vocation **which, had it been a profit, would have been assessable under the Act**. Accordingly, the availability of the carry-forward mechanism is contingent upon the loss having arisen from a source, that is capable of giving rise to assessable profits under the IRA 2006. In deciding this aspect it should be noted if the specific provisions of the IRA 2006, in relation to taxation would apply to the Appellant.

Since it has been conclude that the provisions of the IRA 2006 is not applicable to the Appellant during the tax holiday period, this court is of the view that the losses incurred by the Appellant during the BOI tax holiday are not eligible to be carried forward under section 32(5)(b) of the IRA 2006.

Therefore, I answer the question of law II in the negative.

When considering the above analysis in respect of the question of law I and II, though I am unable to agree with the terminology used by the TAC in relation to question of Law No.I, I am of the view that the TAC has not erred in coming to the final conclusion that it did. Therefore, I answer the question of law III in the Negative.

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.

CA/TAX/10/2022

Question of law I – Affirmative

Question of law II – Negative

Question of law III – Negative

CA/TAX/11/2022

Question of law I – Affirmative

Question of law II – Negative

Question of law III – Negative

Accordingly, the appeals are dismissed.

The determinations of the Tax Appeals Commission dated 3rd of December 2020 in the cases of **CA/TAX/10/2022 and CA/TAX/11/2022** are sustained.

Judge of the Court of Appeal

Annalingam Premashanker J.

I agree

Judge of the Court of Appeal