

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/14/2023
Tax Appeals Commission No.
TAC/IT/155/2018

Oriental Consultants Company Limited,
Level 08,
East Tower,
World Trade Center,
Echelon Square, 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 N. Satharasinghe, S. Nawarathna instructed by Abdeen Associates for the Appellant.

Chaya Sri Nammuni, DSG for the Respondent.

Written Submissions: By the Appellant – on 21.09.2023, 18.12.2025

By the Respondent – on 09.02.2024

Argued on: 30.10.2025

Decided On: 30.04.2026

JUDGMENT

M.C.B.S. Morais J.

This is an appeal by way of case stated against the determination of the Tax Appeals Commission dated 10th of January 2023 in the case of TAC/IT/155/2018.

This appeal is filed under and in terms of section 11A of the Tax Appeals Commission Act No. 23 of 2011 (as amended). The matter primarily deals with the substantial issue of the application of Section 59B of the Inland Revenue Act No. 10 of 2006 (hereinafter sometimes will be referred to as 'IRA 2006').

The amount of tax in dispute is Rs. 5,110,988 with a penalty of Rs. 2,351,054 and the taxable period for the Income Tax return for the year of assessment in issue is 2013/2014.

Factual Background

The Oriental Consultants Company Ltd, (hereinafter sometimes will be referred to as the Appellant) is a company registered in Sri Lanka, whose principal activity is to provide consultancy services. The Head office of the Appellant Company is located in Japan. The Appellant has submitted the income tax return for the year 2013/2014 dated 14th of November 2014, which was rejected by the Assistant Commissioner of income tax by the letter dated 26th of May 2016 and a notice of assessment dated 30th of May 2016 was issued. Being dissatisfied with the said assessment, the Appellant has lodged an appeal to the Commissioner General of Inland Revenue (hereinafter will be referred to as the Respondent). The Respondent after hearing the appeal has confirmed the assessment of the Assistant Commissioner of income tax by the determination dated 9th of July 2018. Being dissatisfied with the determination of the Respondent, the Appellant has preferred an appeal to the Tax Appeals Commission (TAC), which after considering both parties, made the determination dated 10th of January 2023, upholding the decision of the Respondent. The Appellant being aggrieved by the said determination has requested the TAC to cause a case stated for the opinion of the Honorable Court of Appeal. Accordingly, the following question of law has been raised by the Appellant.

- I. Should the appeal be allowed by operation of law in view of the fact that the determination of the appeal by the Commissioner General of Inland Revenue is time barred under and in terms of section 165 (14) of the Inland Revenue Act, No 10 of 2006 (as amended) ?*

- II. Has the Assessor erred in law for not provided reasons sufficient in law for making the assessment?*

- III. Is the Appellant entitled to the benefit of the concessionary tax rate contemplated by section 59 B of the Inland Revenue Act, No 10 of 2006 (as amended), read with the Fifth Schedule to the said Act?*

IV. *Is the assessment of income tax payable and the penalty imposed thereon is arbitrary and grossly excessive?*

V. *In view of the facts and circumstances of the case has the Commissioner General of Inland Revenue misdirected himself in fact and in law when confirming the assessment?"*

There are five main questions of Law raised by the Appellant, which I will be dealing in the following manner.

According to the written submission dated 18th of December 2025, the Appellant has informed the court that they are not willing to pursue questions of law I and II. Therefore, I shall analyze the question of law III, which is related to concessions under section 59B separately. The question of law IV need not be discussed at this stage and the question of law V, which is related to the notice of assessment, will be dealt separately.

ANALYSIS

Questions of Law III

Is the Appellant entitled to the benefit of the concessionary tax rate contemplated by section 59 B of the Inland Revenue Act, No 10 of 2006 (as amended), read with the Fifth Schedule to the said Act?

It is the contention of the Appellant that they are entitled to be taxed under the concessionary rate provide under section 59B of IRA 2006.

The Appellant contends that the Appellant Company is registered as an overseas company under section 488 of the Companies Act of Sri Lanka and therefore, the section 59B of IRA 2006 is applicable.

The section 59B of the IRA 2006 reads as follows;

“59B. (1) The profits and income of any person (not being the holding company, a subsidiary company, or an associate company of a group of companies) for any year of assessment commencing on or after April 1, 2011, from any undertaking referred to in subsection (2) shall, notwithstanding anything to the contrary in any other provisions of this Act, but subject to provisions of section 59F be chargeable with income tax at the appropriate rate specified in the Fifth Schedule to this Act.

(2) For the purpose of this section “undertaking” in relation to any year of assessment means any undertaking-

(a) engaged in the manufacture of any article or in the provision of any service; and

(b) the turnover of such undertaking (other than from the sale of any capital asset) for that year of assessment- ”

Section 59B(1) of the Inland Revenue Act provides a concessional income tax regime for qualifying undertakings, effective for years of assessment from 1st of April 2011. Specifically, profits and income from such undertakings, excluding those of holding, subsidiary, or associate companies within a group are taxed at the rates specified in the Fifth Schedule, overriding other provisions of the Act (subject to section 59F). Subsection (2) further defines an "undertaking" as one engaged in manufacturing articles or providing services, where the turnover (excluding capital asset sales) meets criteria detailed in paragraphs (b) onwards are aimed at incentivizing standalone manufacturing or service operations with favorable tax treatment. It needs to be noted that the main purpose of the above section is to provide concession to the Small and Medium Enterprises (SME).

The Appellant states that they neither qualifies as a holding company, subsidiary, nor associated company within any group of companies, and further notes that the they maintains a permanent establishment in Sri Lanka, thereby rendering its operations subject to the section 59B of the IRA 2006, which shall be classified under ‘any persons’.

The Appellant further contends that, as a company subject to the double taxation avoidance agreement between Japan and Sri Lanka, its tax treatment is governed thereby under the said treaty, which prevails over the Inland Revenue Act No. 10 of 2006 by virtue of section 97.

Article III of the *Japan-Sri Lanka Income Tax Treaty* (1967) reads as follows;

“Article III

*1. The industrial or commercial profits of an enterprise of one of the territories shall not be subject to tax in the other territory unless the enterprise carries on a trade or business in that other territory through a permanent establishment situated therein. **If it carries on a trade or business in that other territory through a permanent establishment situated therein, tax may be imposed on those profits in that other territory but only on so much of them as is attributable to that permanent establishment;** provided that nothing in this paragraph shall affect the ascertainment of profits from the business of insurance in accordance with the provisions of the law in Ceylon at the date of signature of the present Convention.*

2. Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment; provided that nothing in this paragraph shall affect the computation of the profits derived by a Japanese enterprise from the production of tea or other agricultural product in Ceylon in accordance with the provisions of the law of Ceylon at the date of signature of the present Convention.

3. No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise”

The Article III establishes a fundamental rule to prevent double taxation by ensuring that a company is only taxed on its business profits in a foreign country if it maintains a significant physical presence there. Known as a "permanent establishment" (PE) requirement, this threshold ensures that a country cannot tax the profits of a foreign business unless that business is operating through a fixed place of business situated within its borders. If a foreign enterprise meets this threshold, the host country is permitted to tax only the portion of the company's profits directly attributable to the activities of that specific establishment, thereby preventing the taxation of the enterprise's total global income and limiting the host country's authority to business conducted locally.

It is the position of the Appellant that it cannot be considered as a Holding company, subsidiary, or an associated company of a group of company but it is an overseas company incorporated with a permanent establishment in Sri Lanka, and therefore it has to be categorized as "any person" under section 59B of IRA 2006. Hence, the income made within the company overseas, should not be considered for the taxation purposes and also be treated as any other Small and Medium-sized Enterprises (SME) in Sri Lanka.

However, the Respondent contends that the directors and shareholders of the Appellant Company form a part of the Japanese parent entity, thereby characterizing the Appellant as an associated company of Oriental Consultants Ltd in Japan. Furthermore, the Respondent asserts that the provisions of the Double Taxation Avoidance Agreement do not apply to the present circumstances, given the absence of any issue related to double taxation.

The current question at hand is whether the concessionary rate provided under section 59B of the IRA 2006 is applicable to the Appellant Company to receive the concessions under the fifth schedule of the Act. In considering the application of the section 59B, it is apparent that the concessions provided are not applicable to the below mentioned category of companies;

1. *holding company*
2. *subsidiary company, or*
3. *associate company of a group of companies*

According to section 217 of the IRA 2006 amended by Act, No. 19 of 2009, it interprets the term ‘associated company’ in the following manner;

“ ‘associate company’ means a company over which an investing company has a significant influence and which is neither a subsidiary of the investing company nor is a joint venture of which the investing company is a partner.”

The definition of ‘associate company’ under Section 217 of IRA 2006, describes a company over which an investing company exercises significant influence yet excludes cases where it is either a subsidiary with full control (over 50% shares or director appointments under Companies Act) or a joint venture involving contractual equal partnership.

It is noteworthy that there are two elements to be considered in establishing a company as an associated company.

1. The Investing company should have a significant influence, and
2. It should neither be a subsidiary of the investing company nor is a joint venture of which the investing company is a partner.

When examining the materials submitted to this court, it becomes evident that several directors of the Appellant Company simultaneously hold directorships in the parent company, creating a clear nexus of management overlap. This common directorship arrangement enables the parent company to exert substantial control over the Appellant's strategic decisions, financial policies, and operational direction which can be considered as "significant influence" as contemplated under the definition of "associate company" in Section 217 of the IRA 2006. Furthermore, while the Appellant has repeatedly mentioned that it is not formally a subsidiary company of the holding company, nor a joint venture involving contractual equal partnership, establishing the Appellant to be considered as an associated company.

Moreover, while the treaty submitted by the Appellant may be considered in the context of the double taxation regime, it does not supersede the Appellant's fundamental obligation to discharge its tax liabilities in accordance with the prevailing Sri Lankan taxation framework.

Furthermore, since the Appellant is an overseas entity with its head office located in Japan, it cannot be categorized as a standalone operation, particularly given that the parent company derives income from various other global entities. In view of this, I concur with the determination of the Commissioner General of Inland Revenue (CGIR) and the Tax Appeals Commission (TAC) that the Appellant qualifies as an associated or subsidiary company of the Japanese parent. In addition, this structural classification is specifically relevant to the application of Section 59B rather than to the provisions governing double taxation. Consequently, the referenced treaty is not relevant to the specific circumstances of this matter.

In light of this, I answer the question of law III in negative.

Questions of Law IV and V

Questions of Law IV

Is the assessment of income tax payable and the penalty imposed thereon is arbitrary and grossly excessive?

Questions of Law V

In view of the facts and circumstances of the case has the Commissioner General of Inland Revenue misdirected himself in fact and in law when confirming the assessment?

In view of the submissions presented above, the Appellant contends that the assessment of the income tax return for the year 2013/2014 and the penalty imposed thereafter is arbitrary and excessive.

When considering the question of law V, it is the contention of the Appellant that the assessment made by the Assistant Commissioner, is time barred.

It is the position of the Appellant that the process of making an assessment is completed only when the Notice of Assessment is served, within the time limit stipulated by law. The Appellant contends that the income tax return for the year 2013/2014 was filed on 14th of November 2014. Thereby, the argument advanced by the Appellant is that intimation letter dated 26th of May 2016 was received by the Appellant and the notice of assessment dated 30th of May 2016, was served by the Assistant Commissioner thereafter. Accordingly, the Petitioner claims that the time bar for making the assessment would be engaged on 30th of May 2016 under section 163(5) (a)(ii) of the IRA 2006.

It is on this basis that the Appellant seeks to argue that the notice of assessment is time barred, even when the notice of assessment is taken to be made on 30th of May 2016, and served on the Appellant on a subsequent date.

Section 163 (5) (a)(ii) of IRA 2006 as amended reads as follows;

“163. Assessments and Additional assessments.

(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.**”*

Section 163(5)(a) of the Inland Revenue Act limits the time for tax authorities to issue an income tax assessment after a person or partnership files their return by 30th of November of the year following the tax year. For tax years commencing before 1st of April 2013, authorities have two years from that 30th of November and for those commencing on or after 1st of April 2013, they have 18 months.

The Appellant has submitted its return for the taxable year 2013/2014 on 14th of November 2014. Therefore, the Year of Assessment 2013/2014 is a year of assessment which commences subsequent to 1st of April 2013 for the purpose of Section 163(5) (a) of the IRA.

Accordingly, by operation of section 163(5)(a)(ii) of the IRA 2006, the statutory time bar constituting eighteen months is computed from 30th of November of the year of assessment immediately succeeding that year. Hence, the assessment stands engaged upon the Appellant's timely submission of its return by 30th of November 2014 for the relevant year. This limitation period thus lapses on 30th of May 2016. The Appellant accordingly submits that the Respondent's notice of assessment, formally made on 30th of May 2016 and served on the Appellant thereafter, falls foul of the statutory prohibition and is consequently time-barred, and void.

The judgment of His Lordship Chief Justice Samarakoon Q.C. in the case of *D.M.S. Fernando and Another V. Mohideen Ismail (1982) S.C. Appeal No. 22 of 1981*, clearly establishes that the notice of assessment, including the reasons for such notice shall be communicated to the taxpayer within the stipulated time frame in the Act. Furthermore, it is also clearly established that the mere making of an assessment does not constitute a valid assessment unless the notice has been duly served on the taxpayer and he becomes aware of it.

A similar approach has also been taken in the recent case of *Fonterra Brands Lanka (Private) Limited V. The Commissioner General of Inland Revenue, (2024) SC Appeal 187/2014* decided by His Lordship Justice Thurairaja, PC, which signifies the importance of adhering to the time bar stipulated under the IRA 2006.

“By contrast, under our law, Section 134(1) of the 2000 Act contains no equivalent concept of a separate “assessment register.” On the contrary, it couples together the computation of tax with the requirement that the Assessor “shall by notice in writing require such person to pay forthwith.” Section 134(5) subjects that entire process to a strict time limit of three years (in cases where a return was filed before 30th November). In other words, the Sri Lankan statute does not treat “making” and “notifying” as distinct steps.

*52. Therefore, I am of the view **that the act of assessment is only complete when the taxpayer is both assessed and required to pay.** To import the reasoning of Honig in to the Sri Lankan context would therefore be to disregard the words and structure of our own legislation.*

*53. Furthermore, in **ACL Cables vs. The Commissioner General of Inland Revenue**, the Court stated that an assessment becomes a valid and enforceable assessment only upon the issuance and communication of the notice of assessment within the prescribed time..”*

Moreover, the Law provides under Section 194 of IRA 2006, that the notice of assessment under section 163 shall be served on the taxpayer personally or by post and when such notice is served by way of post, it is considered that the notice is served to the taxpayer on the day following the date which it would normally have been received.

*“(2) Every notice given by virtue of this Act may be served on a person either personally or by being delivered at, or sent by post to, his last known place of abode or any place at which he is, or was during the year to which the notice relates, carrying on business: Provided that a notice of assessment under section 163 **shall be served personally or by registered letter** sent through the post to any such place as aforesaid.*

*(3) Any 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 by post.**”*

The above provision establishes that a notice sent by post is officially considered delivered on the day immediately following its expected arrival date. It defines the "date of service" as the day immediately after the document would have normally arrived through the postal system. In consideration of the above, it is apparent that, the notice of assessment is printed on 30th of May 2016 and even assuming that it was posted on the same day, it can only be received by the Appellant thereafter on 1st of June 2016, which is well outside the statutory time bar stipulated by law.

Hence, it is my view that the notice of assessment dated 30th of May 2016 is time barred, and therefore, null and void.

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 need be answered in the following manner.

Question of law I – Not pursued

Question of law II – Not pursued

Question of law III – Negative

Question of law IV – Need not be considered as the question of law V is answered in the Affirmative.

Question of law V – Affirmative

Accordingly, the appeal is allowed and the notice of assessment dated 30th of May 2016 is time barred. Hence, the determination of the TAC dated 10th of January 2023 and the determination of the Commissioner General of Inland Revenue dated 9th of July 2018 is 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