

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.*

LANKA TILES PLC,
215, Nawala Road,
Narahenpita,
Colombo 05.

APPELLANT

Case No.: CA/TAX/153/2024
TAC/IT/054/2019

-Vs-

THE COMMISSIONER GENERAL OF
INLAND REVENUE,
Department of Inland Revenue,
Inland Revenue Building,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 2.

RESPONDENT

Before : JUSTICE M.CHAMATH.B.S. MORAIS
JUSTICE ANNALINGAM PREMASHANKER

Counsel: Maithri Wickremasinghe, President's Counsel with
Rakitha Jayatunga, Attorney – at – Law and S P S
Perera, Attonry – at Law instructed by Sithumini
Wijeyarathne, Attorney – at – Law for the APPELLANT.

Yuresha Fernando, Deputy Solicitor General with Sehan
Soyso, Senior State Counsel for the RESPONDENT.

Written Submissions of the Appellant :- 29.01.2026

Written Submissions of the Respondent :- 23.02.2026

Argued on :- 08.06.2026, 16.06.2026

Judgment on :- 08.10.2026

JUDGEMENT

ANNALINGAM PREMASHANKER, J.

This is an appeal by LANKA TILES PLC (Hereinafter sometimes referred to as the Tax Payer/Appellant) from the determination of the Tax Appeals Commission dated 20.02.2024 made in TAC appeal no. TAC/IT/054/2019. The Respondent is the Commissioner General of Inland Revenue (Hereinafter sometimes referred to as the CGIR/Respondent). The Appellant is a company incorporated and domiciled in Sri Lanka and is engaged in the manufacture and sale of glazed ceramic

and porcelain floor tiles. The Tax in dispute 94,625, 255.00, penalty 47,312,627.00

The Appellant being dissatisfied with the Determination of Tax Appeals Commission (Hereinafter sometimes referred to as TAC) requested for an appeal by a case stated for the opinion of the Court of Appeal by their communication dated 26.06.2024.

The tax payer submits its income tax return for the taxable period 2014/2015 with a claim of qualifying payment for the expansion of undertaking. The claim was rejected by the Assessor and that the Tax Payer was not entitled for qualifying payment. The return is not accepted and issued an assessment disallowing the claim. Having aggrieved by the said Assessments, the tax payer made an appeal to the CGIR. The Tax Payer made the same agitation before the CGIR. CGIR by his determination dated 23.05.2019 determined the appeal by confirming the assessments. The tax payer having not satisfied with the determination of the CGIR, made an appeal to the TAC. In the appeal before the TAC the tax payer raised the same issues. TAC by its determination dated 20.02.2024, upheld the determination of the Inland Revenue Department and dismissed the appeal. Thereafter, the Tax Payer being dissatisfied with the said determination of the TAC requested TAC by his communication dated 26.06.2024 to have a case stated for the opinion of the Court of Appeal.

In the case stated dated 22.07.2024 following questions were raised for the opinion of the Court of Appeal:-

- 1.Has the Tax Appeals Commission erred in law in its determination of the grounds of appeal of the Appellant?**
- 2.Has the Tax Appeals Commission erred in law in failing to apply or follow binding decisions of the Supreme Court and the Court of Appeal of Sri Lanka?**
- 3.Whether the Tax Appeals Commission erred in law in determining that the investment of Rs. 779,425,304/- in the acquisition of fixed assets by the Appellant is not an expansion of any undertaking within the meaning of section 34(2) (s) of the Inland Revenue Act No. 2006 as amended and/ or is not a qualifying payment as defined in Section 34(2) (s) of the Inland Revenue Act No. 10 of 2006 as amended?**
- 4.Whether the Tax Appeals Commission erred in law in determining that there was merely a replacement of an old machine rather than an expansion of an undertaking?**
- 5.Has the Tax Appeals Commission erred in law in its interpretation of Section 34(2)(s) of the Inland Revenue Act No.10 of 2006 as amended in relation to allowance in respect of the qualifying payment claimed by the Appellant?**

6.Has the Tax Appeals Commission erred in law in considering reasons other than the reasons set out by the Assistant Commissioner in his communication of the purported reasons for not accepting the return of the Appellant?

7.Without prejudice to the position that the Tax Appeals Commission is not entitled consider reasons other than those communicated by the Assistant Commissioner in writing to the Appellant in terms of the proviso to section 163(3) for not accepting the return, has the Tax Appeals Commission erred in law

a) In relying on decisions of the Committee of Interpretation of Tax Law of the Inland Revenue Department in the determination of the IRD?

b) In its interpretation of a new undertaking?

c) In its interpretation of section 16C or 17A in relation to the qualifying payment claimed by the Appellant?

Questions of Law No. 3, 4, 5 and 7

The above Questions of Law 3, 4, 5, and 7 are on the investment, expansion of undertaking and on qualifying payment which are related to each other. Hence, all the above questions of law are dealt together.

The Tax Payer after the end of ethnic conflict in May 2009, decided to expand its business and thus a total of Rs. 779,425,304 was invested in the expansion of certain undertaking. In this background for the taxable period 2014/2015, a claim of Rs. 194,856,326 as a qualifying payment under section 34(1) and 34(2) of IRA No.10 of 2006 was made.

Tax Payer received an intimation dated 13.05.2016 and also Notice of Assessment 30.05.2016 relating to the return of income for the year of Assessment 2014/2015. The Tax Payer made an appeal to the CGIR. CGIR confirmed the Assessment by his determination dated 23.05.2019. The Tax Payer made an appeal to the TAC. TAC confirmed the Assessment by its determination dated 20.02.2024.

The dispute before this Court arises from the Appellant's claim for a qualifying payment under section 34(2)(s) of the Inland Revenue Act No. 10 of 2006, as amended. The Appellant had made substantial investments in fixed assets and claimed a qualifying payment in respect of such investment. The total investment relied upon by the Appellant was approximately Rs. 779,425,304/-, and the qualifying payment claimed was approximately Rs. 194,856,326/-

It is necessary at the outset to consider the statutory provision upon which the Appellant relies.

Section 34 (1). Subject to the provisions of subsection (4), there shall be deducted, for the purposes of section 33, from the assessable income of a person for any year of assessment in respect of every qualifying payment made by him or deemed to

have been made by him in that year of assessment, an allowance equal to the amount of such qualifying payment.

(1) In this section, “qualifying payment” means–

(a) a donation made by any person in money to an approved charity;

(b) a donation made in money or otherwise to–

(i) the Government of Sri Lanka;

(ii) a local authority;

(iii) any Higher Educational Institution established or deemed to be established under the Universities Act, No. 16 of 1978;

(iv) the Buddhist and Pali University or any Higher Educational Institution established by or under the Buddhist and Pali University Act, No. 74 of 1981;

(v) a fund established by the Government of Sri Lanka,

(vi) a fund established by a local authority and approved by the Minister ;

(vii) the Sevana Fund created and administered by the National Housing Development Authority established by

the National Housing Development Authority Act, No. 17 of 1979.

(viii) a fund established by a Provincial Council and approved by the Minister:

(ix) the Api Wenuwen Api Fund established by Api Wenuwen Api Fund Act, No. 6 of 2008, (x) National Kidney Fund established under the National Kidney Foundation of Sri Lanka (Incorporation) Act, No. 34 of 2006

Provided where the fund referred to in sub-paragraph

(v) of this paragraph is the President's Fund established by the President's Fund Act, No.7 of 1978 and any public corporation is required in terms of the law by or under which such corporation is established to remit any profits of such corporation to the President's Fund, the profits so remitted shall be deemed for the purpose of this paragraph, to be donations made to such Fund;

Provided that such part, if any as is in excess of two million rupees of any donation made otherwise than in

money, shall be deemed not to comprise a qualifying payment.

.....

(s) investment of not less than fifty million rupees in the acquisition of fixed assets made by any person on or after April 1, 2011 but before April 1, 2014 in the expansion of any undertaking which would have been qualified for exemption under section 16C or section 17A had such undertaking commenced to carry on business on or after April 1, 2011;”

Section 34 of the Inland Revenue Act deals with allowances in respect of qualifying payments. Paragraph (s) of subsection (2), in the form applicable to the relevant period, provides for an investment of not less than fifty million rupees in the acquisition of fixed assets made on or after 1 April 2011 but before 1 April 2015 in the expansion of an undertaking which would have been qualified for exemption under section 16C or section 17A had such undertaking commenced to carry on business on or after 1 April 2011. The provision further contains a proviso concerning certain high technology plant, machinery or equipment acquired for specified purposes, including energy efficiency, technology upgrading, introduction of new technology or power

generation using renewable energy resources, and extending the relevant period in the circumstances specified therein.

It is therefore clear that section 34(2)(s) has not provided that every investment in fixed assets exceeding fifty million rupees automatically constitutes a qualifying payment. The investment must be an investment in the acquisition of fixed assets, must satisfy the monetary and temporal requirements of the provision, and, importantly for the present appeal, must be an investment “in the expansion of any undertaking” which satisfies the statutory provision incorporated by reference to sections 16C or 17A.

There are four requirements of section 34(2)(s) of IRA for a claim of “qualifying payment”. The investment must;

- I. Be not less than fifty million rupees,
- II. Be made in the course of an acquisition of fixed assets,
- III. Be on or after 1st April 2011 but before 1st April 2015,
- IV. Be done in the expansion of undertakings.

The investment made in this case is 450 million which is more than fifty million rupees, this satisfies the first requirement of the fifty million limit. Then, the investment of 450 million was made for acquisition of a fixed machinery, this satisfies the second requirement of acquiring fixed asset. The investment was made in the year of assessment 2014/2015, this satisfies the third requirement of time period. Therefore, it can be considered that the payment in this case must satisfy the 4 limbs under Section 34(2)(s). Since the first three limbs have been satisfied, the fourth limb of expansion will be discussed further in this case.

Section 34 (2)(s) proviso reads as:

“....

Provided however, where such investment is made in any high tech plant, machinery or equipment which is acquired for energy efficiency purposes or for technology upgrading purposes or introducing any new technology or for power generation using renewable energy resources in the expansion of such undertaking on or after April 1, 2011 but prior to April 1, 2015 such investment shall comprise a qualifying payment”

The word expansion is not defined in IRA. The Oxford dictionary meaning is:

“EXPAND – an act of increasing or making something increase in size, amount or importance”

“The company is expanding growth.”

The word “expansion” is not defined in section 34(2)(s). The ordinary meaning of the word is enlargement, extension or increase in the size, or extent of something already existing. The Court must therefore determine whether, on the facts established before the tax authorities, the investment made by the Appellant amounted to an enlargement or extension of its undertaking. In the present case the word which assumes importance is expansion. The statutory requirement of expansion is found in the provision itself.

In this case, the Respondent do not challenge or deny that new Kiln is more efficient and contain new technology and thereby amount to an upgrading. It will mean that the company that demolished an old factory and built a new factory will not qualify, as it is a replacement of one factory with another. The whole objective of the section is to encourage undertakings to expand their operations, to modernize equipment. This requirement has been satisfied.

Having granted total exemption to companies which commenced business operations after April 1, 2011, in the areas of activities referred to in section 16C(2) and 17A(2) and satisfies the exemption of section 16C or 17A as the case may be, they sought to encourage businesses which had commenced carrying on such activities prior April 1, 2011 to expand their existing business undertakings. The legislature, to promote and develop the activities specified in section 16C(2) and 17A(2), decided to grant qualifying payments to persons engaging in the referred to in section 16C or section 17A if they satisfied the requirements of such sections but had commenced business before 1 April, 2011.

A company which had invested not less than fifty million rupees in fixed assets made by any person on or after April 1, 2011 but before April 1, 2015 in the expansion of any undertaking who would have been qualified for exemption under section 16C or section 17A had such undertaking commenced to carry on business on or after April 1, 2011 was granted a qualifying payment.

The Appellant submitted that the Tax Appeals Commission erred in law in determining that the investment of Rs. 779,425,304/- in the acquisition of fixed assets by the Appellant is not an expansion of any

undertaking within the meaning of section 34(2) (s) of the Inland Revenue Act No. 10 of 2006 as amended.

It is further submitted by the Appellant that the Tax Appeals Commission erred in law in determining that the investment of Rs. 779,425,304/- in the acquisition of fixed assets by the Appellant is not a qualifying payment as defined in section 34(2) (s) of the Inland Revenue Act No. 10 of 2006 as amended. The TAC erred in law in its interpretation of Section 34(2) (s) of IRA No.10 of 2006 as amended in relation to allowance in respect of the qualifying payment claimed by the Appellant.

The Tax Payer in its factory, a Kiln – 01 was demolished and a modern Kiln 04 was installed. The company has invested a lot of sum in the said project as it is an expansion of the undertaking; they claim to be a qualifying payment. There is no doubt that the undertaking of the Appellant has become larger. There is no dispute that turnover of the Appellant has dramatically increased. There is no dispute installed capacity of tile production has increased exponentially.

Therefore, the increase in the scope of the activity or the scale of the operation of the company can be considered as expansion. In this instance by installing Kiln - 04, the company has increased its products and etc. Therefore, the company had expansion of undertaking and entitled for qualifying payment.

As explained above, the Court is answering the Questions of Law No.

3, 4, 5 and 7 (a,b,c) in affirmative.

Questions of Law No. 1, 2, and 6

The above Questions of Law are dealt with reasoning and grounds of appeal which are related to each other. Hence, the above questions are dealt together.

In the determination of the CGIR, they have considered the amount of investment, expansion of undertaking and the increase of the turnover. From the said determination an appeal was preferred to the TAC. The grounds of appeal are amount of investment, expansion of undertaking and the increase of turnover. But in the TAC determination it has been said that the grounds of appeal are; Amount of investment, Expansion of undertaking, Increase in turnover and Eligibility of claim of qualifying payment.

Accordingly, TAC has considered additional grounds of appeal which is in respect of claim of qualifying payment.

TAC sat on appeal. The appeal is from the determination of the CGIR. TAC cannot consider new materials which were not before the CGIR for its determination. These are rules of appeal. Appeal should be considered within the four corners of the appeal. New materials cannot be introduced at the stage of appeal.

In ***Seylan Bank Ltd v. Samdo Macky Sportswear (Pvt.) Ltd. and Others (2008) 1 SLR 96***, the Supreme Court held that a taxing statute that imposes a pecuniary burden must be subject to strict construction. The Supreme Court held:

“There is no room for intention, construction or equity about duties or taxations. The explicit language of the Statute must be the yard stick

which guides the imposition of the stamp duty and assumption and presumptions must be strictly excluded. If the imposition of duty upon a particular instrument is not expressly contemplated by the simple reading of the language of the Statute, then the benefit of the exclusion must necessarily be afforded.

The Supreme Court in the above case outframes the interpreter of taxing statute. Statute must be interpreted with simple ready of the language of statute. The TAC, interprets of Section 34 has named the interpretation. Hence, the TAC has failed to apply the Supreme Court decisions previously to the root of the case.

As explained above, the Court is answering the Questions of Law No. 1, 2, and 6 in the affirmative.

Conclusion

For the reasons adumbrated above, the questions of law are answered as follows:

Q. N. 01. Yes

Q. N. 02. Yes

Q. N. 03. Yes

Q. N. 04. Yes

Q. N. 05. Yes

Q. N. 06. Yes

Q. N. 07. (a) Yes

(b) Yes

(c) Yes

As analyzed above and as the seven questions raised in the case stated are answered in affirmative, the determination of the TAC dated 22.02.2024 and the CGIR dated 23.05.2019 are set aside. The Assessment is annulled and the appeal is allowed.

The Registrar is directed to forward a copy of the judgment to the Tax appeal commission.

On this 8th day of October 2026.

JUDGE OF THE COURT OF APPEAL

M. C. B. S. MORAIS

I agree.

JUDGE OF THE COURT OF APPEAL