

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.

LOLC FACTORS LTD,
No. 100/1, Sri Jayawardenapura
Mawatha,
Rajagiriya.

APPELLANT

Case No.: CA/TAX/018/2021
TAC/IT/010/2017

-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 instructed by Sithumini Wijeyarathne, Attorney – at – Law for the APPELLANT.

Chaya Sri Nammuni, Deputy Solicitor General, with Medhaka Fernando, State Counsel, instructed by R Firdouz, Senior State Attorney for the RESPONDENT.

Written Submissions of the Appellant :- 04.09.2023, 11.03.2026

Written Submissions of the Respondent :- 03.06.2025

Argued on :- 02.02.2026

Judgment on :- 24.09.2026

JUDGEMENT

ANNALINGAM PREMASHANKER, J.

This is an appeal by LOLC FACTORS LTD (Hereinafter sometimes referred to as the Tax Payer/Appellant) from the determination of the Tax Appeals Commission dated 20.08.2020 made in TAC appeal no. TAC/IT/010/2017. The Respondent is the Commissioner General of Inland Revenue (Hereinafter sometimes referred to as the CGIR/ Respondent).

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 05.03.2021.

In the case stated dated 14.10.2021 following questions were raised for the opinion of the Court of Appeal:-

- 1. Whether there has been a valid assessment made by the Assessor on the Appellant for the year of Assessment 2011/2012?**
- 2. Has the Tax Appeals Commission erred in law in its interpretation of Sections 163 and 164 of the Inland Revenue Act, No. 10 of 2006 (as amended)?**
- 3. Has the Tax Appeals Commission erred in law in failing to determine that the Assessor had not made an assessment of income tax on the Appellant for the year of Assessment 2011/2012 in accordance with the provisions of the Inland Revenue Act, No 10 of 2006 (as amended) and/ or within the period permitted by the Inland Revenue Act, No. 10 of 2006 as amended to make an assessment on the Appellant under the said Act?**
- 4. Has the Tax Appeals Commission erred in law in failing to determine that the assessment bearing reference No. ITA 14281100011 VI was not an assessment that could have**

been made by the Assessor in view of the provisions of the Inland Revenue Act, No.10 of 2006 (as amended)?

- 5. Has the Tax Appeals Commission erred in law in failing to determine that there is no valid assessment made on the Appellant by Commissioner General of Inland Revenue under the provisions of the Inland Revenue Act, No. 10 of 2006 (as amended)?**
- 6. Has the Tax Appeals Commission erred in law in failing to determine that the assessment bearing reference No. ITA 14281100011 VI was not a valid assessment under the provisions of the Inland Revenue Act, No. 10 of 2006 (as amended)?**
- 7. Whether the Appellant for the purpose of ascertaining its profits or income was entitled to deduct a sum equal to one tenth of the cost of acquisition of the brand name acquired by the Appellant?**
- 8. Whether the Tax Appeals Commission erred in law in its interpretation of section 25(1)(b)(ii) of the Inland Revenue Act, No. 10 of 2006 (as amended)?**
- 9. Has the Tax Appeals Commission erred in law in failing to determine that the Rs. 500,000,000.00 admittedly paid by the Appellant for the acquisition of the brand name was the cost of acquisition of an intangible asset other than goodwill by the Appellant for the purpose of Section**

25(1)(b)(ii) of the Inland Revenue Act, No. 10 of 2006 (as amended)?

- 10. Has the Tax Appeals Commission erred in law in failing to determine that in terms of Section 25 (1)(b)(ii) of the Inland Revenue Act, No. 10 of 2006 (as amended), the Appellant for the purpose of ascertaining its profits or income was entitled to deduct Rs. 50,000,000.00 being one tenth of the cost of the acquisition of the brand name?**
- 11. Has the Tax Appeals Commission erred in law in failing to appreciate that the Commissioner General of Inland Revenue has determined in the year of assessment 2014/2015 that the Appellant for the purpose of ascertaining its profits or income was entitled to deduct Rs. 50,000,000.00 being one tenth of the cost of acquisition of the said brand name?**
- 12. Whether the interest paid by the Appellant to Lanka Orix Leasing Company PLC could be deducted for the purpose of ascertaining the profits or income of the Appellant in terms of the Inland Revenue Act, No. 10 of 2006 (as amended)?**
- 13. Whether the Tax Appeals Commission erred in law in its interpretation application of Sections 25 and 26 of the Inland Revenue Act, No. 10 of 2006 (as amended) to the Appellant in the year of assessment 2011/2012?**

- 14. Has the Tax Appeals Commission erred in law in failing to appreciate and determine that the Commissioner General of Inland Revenue had erred in law in disallowing the interest paid by the Appellant to Lanka Orix Leasing Company PLC (and on which interest Lanka Orix Leasing Company PLC has paid income tax) in determining the profits or income of the Appellant?**
- 15. Has the Tax Appeals Commission erred in law in failing to appreciate and determine that the Assessment No. ITA 14281100011 VI issued for the Year of Assessment 2011/2012 is arbitrary, exaggerated and a protective assessment not valid in law?**
- 16. Has the Tax Appeals Commission erred in law in considering reasons other than the reasons set out by the Assessor in his communication of the purported reasons for not accepting the return of the Appellant?**

The tax payer submits its income tax return for the taxable period 2011/2012 with a claim of amortization in respect of Brand name and interest paid to Lanka Orix PLC Ltd. The claims were rejected by the Assessor and that the Tax Payer was not entitled for exemption. The return is not accepted and issued an assessment disallowing the exemptions claimed.

Having aggrieved by the said Assessment, the tax payer made an appeal to the CGIR. The Tax Payer made the same agitation before

the CGIR. CGIR by his determination dated 28.11.2016 determined the appeal by confirming the assessment. 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 20.08.2020, 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 05.03.2021 to have a case stated for the opinion of the Court of Appeal.

When the matter was taken up for argument on 02.02.2026, both parties agreed that the issue on the time bar could be adjudicated first. Since the time bar of the Assessment goes to the root of the case, the Court should address the Questions of Law No. 1, 2, 3 first. If those Questions of Law answered in the affirmative, little purpose is served in addressing the other Questions of Law No. 4 to 16. As the assessment is time barred and invalid, the self assessment submitted by the Appellant is prevailed. Therefore, the rest of the questions of law will not arise for consideration.

Return for the year of Assessment 2011/2012 submitted on 26.11.2012. Intimation letter dated 24.11.2014, Assessment was printed on 30.11.2014. Notice of Assessment posted on 04.12.2014 and received by the Tax Payer on 05.12.2014.

The CGIR in his determination dated 07.02.2017 held the Assessment was well before 30.11.2014 and is within the statutory period. Throughout the proceeding even at the TAC, the Appellant have contended that the assessment was posted on 04.12.2014 and received by them on 05.12.2014. This position was never been challenged or contradicted by the Respondent.

TAC, having gone through the matter has held that the Assessment was made on 24.11.2014 before the expiry of the time bar period allowed under Section 163(5) of IRA No 10 of 2006 ie 30.11.2014. The Notice of Assessment was sent to the Tax Payer on 04.12.2014 and received on 05.12.2014. TAC is of the view that since the Assessment was made within the time bar period, few days delay in serving the Notice of Assessment has not caused serious prejudice to the Tax Payer. Hence there is no merit in the submissions that the assessment was time barred.

“Section 163. (1) *Where any person who in the opinion of an Assessor is liable to any income tax for any year of assessment, has not paid such tax or has paid an amount less than the proper amount which he ought to have paid as such tax for such year of assessment, an **Assessor may**, subject to the provisions of subsection (3) and (5) and **after the fifteenth day of November immediately succeeding that year of assessment, assess the amount which in the judgment of the Assessor ought to have been paid by such person, and***

shall **by notice in writing require** such person to pay forthwith—

(a) the amount of tax so assessed, if such person has not paid any tax for that year of assessment; or

(b) the difference between the amount of tax so assessed and the amount of tax paid by such person for that year of assessment, if such person has paid any amount as tax for that year of assessment: Provided that an Assessor may, subject to the provisions of subsections (3) and (5), assess any person for any year of assessment at any time prior to the fifteenth day of November immediately succeeding that year of assessment, if he is of opinion that such person is about to leave Sri Lanka or that it is expedient to do so for the protection of revenue, and require such person to pay such tax to the Commissioner-General earlier than as required under subsection (1) of section 113:

Provided further that any assessment in relation to the tax payable by a company under paragraph (b) of subsection (1) of section 65 or paragraph (c) of subsection (2) of section 62, shall be made after the expiry of thirty days from the due date for payment of such tax.

(2) Where it appears to an Assessor that any person liable to income tax for any year of assessment, has been assessed at less than the proper amount, the Assessor may, subject to the provisions of subsection (3) and subsection (5), assess such person at the additional amount at which according to his opinion such person ought to have been assessed, and the provisions of this Act as to notice of assessment, appeal and other proceedings shall apply to such additional assessment and to the tax charged there under.

(3) Where a person has furnished a return of income, the Assessor 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 assemble income of such person and assess him accordingly:

Provided that where an Assessor 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.

(4) Where a person has not furnished a return of income and the Assessor is of the opinion that such person is liable to pay

income tax, the Assessor may, in making an assessment on such person under subsection (1) or subsection (2), estimate the amount of the assemble income of such person and assess him accordingly, but such assessment shall not affect the liability of such person to a penalty under this Act for failure or neglect to furnish a 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 September of the year of assessment immediately succeeding that year of assessment, shall be made after the expiry of eighteen months from the end of that year of assessment; and

(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 three years from the end of that year of assessment:

Provided, that nothing in this subsection shall apply to the assessment of income tax payable by any person in respect of any year of assessment, consequent to the receipt by such

person of any arrears relating to the profits from employment of that person for that year of assessment:

Provided further that, where in the opinion of the Assessor, any fraud, evasion or wilful default has been committed by or on behalf of, any person in relation to any income tax payable by such person for any year of assessment, it shall be lawful for the Assessor to make an assessment or an additional assessment on such person at any time after the end of that year of assessment.

(6) Notwithstanding the provisions of subsection (5), where the Court annuls any assessment on the ground that the provisions of the proviso to subsection (3) have not been complied with, it shall be lawful for an Assessor to make, where necessary, a further assessment in place of the assessment so annulled:

Provided that such further assessment shall be limited to only one assessment in place of the assessment so annulled, and no further assessment or additional assessment shall be made.

(7) An assessment under subsection (1) or an additional assessment under subsection (2) on any person for any year of assessment, shall not affect the liability of such person to the penalty specified in subsection (2) of section 173 and for the

purposes of that section, the amount so assessed shall be deemed to be the income tax which such person ought to have paid for that year of assessment.

(8) Where any individual has for any year of assessment (hereinafter in this subsection referred to as the “firstmentioned year of assessment”) furnished a return of his income and has, in relation to each year of assessment within the period of three years of assessment immediately preceding the first-mentioned year of assessment, complied with the requirements of subsection (1) of section 106 and of subsection (1) of section 113, and has –

(a) (i) paid as income tax, on the basis of the return so furnished for the first-mentioned year of assessment, a sum not less than one hundred and twenty per centum of the income tax for the year of assessment immediately preceding the first mentioned year of assessment; or

(ii) specified as assessable income, in the return so furnished for the first mentioned year of assessment, a sum not less than one hundred and twenty five per centum of the assessable income for the year of assessment immediately preceding the first mentioned year of assessment, and (b) sworn an affidavit that no fraud, evasion or willful default as

been committed in relation to the income tax payable for the first mentioned year of assessment,

then such return shall be accepted and no assessment or additional assessment shall be made on such individual.

(9) Where any individual whose assessable income for any year of assessment does not exceed one million rupees, and who has

—

(a) not been given notice by a Deputy Commissioner under subsection (7) of section 106 in relation to that year of assessment or any previous year of assessment; or

(b) not furnished a return of his income, and if he has a child, the income of such child for any previous year of assessment, furnishes for that year of assessment, under subsection (1), a return of his income and if he has a child the income of such child, and pays the tax on the basis of such return together with any penalty due under Chapter XXV, such return shall be accepted and no assessment or additional assessment shall be made on such individual for that year of assessment, notwithstanding that such return is not accompanied by a statement of accounts.”

“Section 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....”

Accordingly, the letter of intimation under Section 163 is not an assessment. Merely issuing assessment is not considered as a full assessment. It has to be notified to the Tax Payer. It is the common sense that once you notice, the Assessment get the full status of Assessment. One making an assessment and keeping it in the drawer, will not be an Assessment. Only once it is notified the Tax Payer, the same would get the full status of an Assessment.

In ***Fonterra Brands Lanka (PVT) Ltd Vs CGIR, et al, SC Appeal 187/2014***, it was held that the assessment is completed only when the notice of Assessment is received. His Lordship Justice S Thuraiajah held:

“I hold that an “assessment” is not complete until it is communicated to the taxpayer by notice of assessment served within the time limit. The statutory bar applies to the assessment as a whole, including notice. A letter of intimation is not an assessment, nor is it an internal department calculation.”

In **Commissioner General of Inland Revenue Vs Commercial Leasing and Finance Ltd, CA/TAX/13/2021**. This bench has held:

“Accordingly, it must be emphasized that the assessment process is completed only upon communication of the assessment to the specific taxpayer. A mere internal computation or documentation by the Assessor is insufficient and only the delivery of the formal notice fulfils legal requirement of the assessment under the VAT Act.

Furthermore, considering the nature of this statute without the notice of assessment being provided to the Tax Payer, the Tax Payer will be precluded from exercising their statutory rights thereafter. Moreover, restricting the time limits under Section 33 (1) of the VAT Act solely to the “making” of the assessment would grant the Appellant an unreasonable advantage, enabling them to issue the Notice of Assessment at any time of their choosing. In my view, this contravenes the true purpose of the statutory time limit under Section 33(1) which must govern both the making of the Assessment and issuance of notice to the Tax Payer.”

There are no materials shown to Court for us to deviate from the above judgment. By considering the above materials, this court conclude that the Assessment has been communicated on 05.12.2014, which is well beyond the last date of which the assessment could have been made in terms of Section 163(1) and 163(5) and hence the assessment is time barred and invalid.

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

Q.N.01. No

Q.N.02. Yes

Q.N.03. Yes

Q.N.04. Need not be considered

Q.N.05. Need not be considered

Q.N.06. Need not be considered

Q.N.07. Need not be considered

Q.N.08. Need not be considered

Q.N.09. Need not be considered

Q.N.10. Need not be considered

Q.N.11. Need not be considered

Q.N.12. Need not be considered

Q.N.13. Need not be considered

Q.N.14. Need not be considered

Q.N.15. Need not be considered

Q.N.16. Need not be considered

As analyzed above and as the three questions of law raised in the case stated are answered as above, the determination of the TAC dated 20.08.2020 and the CGIR dated 28.11.2016 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 24th day of September 2026

JUDGE OF THE COURT OF APPEAL

M. C. B. S. MORAIS

I agree.

JUDGE OF THE COURT OF APPEAL