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 FINANCE PLC,
No. 100/1, Sri Jayawardenepura Mawatha, Rajagiriya
Successor to commercial Leasing and Finance PLC pursuant to amalgamation of commercial Leasing and Finance PLC with LOLC Finance in terms of part VIII of the Companies Act No.07 of 2007.

APPELLANT

Case No.: CA/TAX/31/2022
TAC/VAT/012/2016

-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 Wickramasinghe, President's Counsel, with Rakitha Jayathunga Attorney at Law, instructed by Jayantha Dhaarmapriya and others, Attorneys at Law for the APPELLANT**

Manohara Jayasinghe, Deputy Solicitor General for the RESPONDENT.

Written Submissions of the Appellant :- 27.06.2024, 15.12.2025
Written Submissions of the Respondent :- 31.07.2024
Argued on :- 28.10.2025
Judgment on :- 04.06.2026

JUDGEMENT

ANNALINGAM PREMASHANKER, J.

A. INTRODUCTION

A1. APPEAL

This is an appeal by **LOLC FINANCE PLC** (**Hereinafter sometimes referred to as The Tax Payer/ Appellant**) from the determination of the Tax Appeals Commission dated 10.03.2022 made in TAC appeal no.

TAC/VAT/012/2016. The Respondent is **The Commissioner General of Inland Revenue** (**Hereinafter sometimes referred to as The Respondent/CGIR**).

A2. REQUEST

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 21.04.2022.

A3. TAX RETURN

The tax payer submits its return for the year of 2011/2012. The claim was rejected by the Assessor and the return is not accepted and issued an assessment.

A4. APPEAL TO CGIR

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 14.06.2016 determined the appeal by confirming the assessment.

A5. APPEAL TO TAC

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

10.03.2022, upheld the determination of the Inland Revenue Department and dismissed the appeal. Thereafter, the Appellant being dissatisfied with the said determination of the TAC requested TAC by his communication dated 21.04.2022 to have a case stated for the opinion of the Court of Appeal.

A6. QUESTIONS OF LAW

In the case stated dated 07.06.2022 following question were raised for the opinion of the Court of Appeal:-

Q.N.1. ***Has the Tax Appeals Commission erred in law in determining the basis of computation of Value Added Tax charged on the Appellant in terms of Chapter IIIA of the VAT Act and/or the Value Added Tax charged on the Appellant in terms of Chapter IIIA of the VAT Act and/or failed to appreciate that the CIR erred in its basis of computation of Value Added Tax charged on the Appellant in terms of Chapter IIIA of the VAT Act and/ or the Value Added Tax charged on the Appellant in terms of Chapter IIIA of the VAT Act?***

Q.N.2. ***Has the Tax Appeals Commission erred in law in its interpretation of "financial services" for***

the purpose of Chapter IIIA of the VAT Act and/ or failed to appreciate that the CGIR computed the tax liability on an incorrect interpretation of "financial services" for the purpose of Chapter IIIA of the VAT Act?

Q.N.3. ***Has the Tax Appeals Commission erred in law in failing to appreciate and determine that the CGIR had erred in law in its interpretation of "supply of financial services" for the purpose of Chapter IIIA of the VAT Act?***

Q.N.4. ***Has the Tax Appeals Commission erred in law in determining the value addition attributable to Financial Services in terms of Chapter IIIA of the VAT Act?***

Q.N.5. ***Has the Tax Appeals Commission erred in law in determining the turnover attributable to Financial Services in terms of Chapter IIIA of the VAT Act?***

Q.N.6. ***Has the Tax Appeals Commission erred in law in failing to make any determination on the***

claim of the Appellant that the lease rental is deductible in calculating the turnover liable to Value Added Tax on supply of financial services under Part IIIA of the VAT Act?

Q.N.7. ***Has the Tax Appeals Commission erred in law in failing to determine that the CGIR has failed to make any determination on the claim of the Appellant that the lease rental is deductible in calculating the turnover liable to Value Added Tax on supply of financial services under Part IIIA of the VAT Act?***

Q.N.8. ***Has the Tax Appeals Commission erred in law in failing to make any determination on the claim of the Appellant that the profit on termination- leasing of overdue interest - leasing and factoring service charge are deductible in calculating the turnover liable to Value Added Tax on supply of financial services under Part IIIA of the VAT Act?***

Q.N.9. ***Has the Tax Appeals Commission erred in law in failing to determine that the basis of the***

CGIR is erroneous in determining that profit on termination- leasing, overdue interest - leasing and factoring service charge are not deductible in calculating the turnover liable to Value Added Tax on supply of financial services under Part IIIA of the VAT Act?

Q.N.10. ***Has the Tax Appeals Commission erred in law in dertmining that interest income on treasury bills was liable to Value Added Tax on supply of financial services under Part IIIA of the VAT Act?***

Q.N.11. ***Has the Tax Appeals Commission erred in law in affirming the determination made by the CIR which has confirmed the assessment inter alia the basis that interest income on treasury bills was liable to Value Added Tax on supply of financial services under Part IIIA of the VAT Act?***

Q.N.12. ***Has the Tax Appeals Commission erred in law in determining that the profit on the sale of subsidiary shares in Diriya Investment (Private)***

Limited was liable to Value Added Tax on supply of financial services under Part IIIA of the VAT Act?

Q.N.13. ***Has the Tax Appeals Commission erred in law in affirming the determination made by the CGIR which has confirmed the assessment inter alia the basis that the profit on the sale of subsidiary shares in Diriya Investment (Private) Limited was liable to Value Added Tax on supply of financial services under Part IIIA of the VAT Act?***

Q.N.14. ***Has the Tax Appeals Commission erred in law in determining that the profit on the sale of shares in Free Lanka Hydropower PLC was liable to Value Added Tax on supply of financial services under Part IIIA of the VAT Act?***

Q.N.15. ***Has the Tax Appeals Commission erred in law in affirming the determination made by the CGIR which has confirmed the assessment inter alia the basis that the profit on the sale of shares in Free Lanka Hydropower PLC was***

liable to Value Added Tax on supply of financial services under Part IIIA of the VAT Act?

Q.N.16. ***Has the Tax Appeals Commission erred in law (i) in failing to make any determination on the claim of the Appellant that (a) the exchange gain was not liable to Value Added Tax on supply of financial services under Part IIIA of the VAT Act, (b) that such income does not result from the supply of a financial service by the Appellant as contemplated in Section 25F of the VAT Act and/ or from the business of the supply of a financial service and/ or value addition? and/or (i) in affirming the determination made by the CGIR which has confirmed the assessment on the basis that inter alia on the exchange gain was liable to Value Added Tax on supply of financial services under Part IIIA of the VAT Act?***

Q.N.17. ***Has the Tax Appeals Commission erred in law in failing to determine that the exchange gain was not liable to Value Added Tax on supply of***

financial services under Part IIIA of the VAT Act?

Q.N.18. ***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?***

Q.N.19. ***Has the Tax Appeals Commission erred in law in failing to determine that the CGIR has considered 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?***

Q.N.20. ***Is there no valid assessment made on the Appellant under the provisions of the Value Added Tax No.14 of 2002 as amended?***

Q.N.21. ***Has the Tax Appeals Commission erred in law in failing to make any determination as to the validity and accuracy of the determination of the CGIR that the method of computation of the***

Appellant of Value Added Tax on supply of financial services under Part IIIA of the VAT Act was incorrect?

A7. ARGUMENT

On 2nd October 2025, both parties concluded the argument. It is found that the Appellant has furnished written submissions on 27.06.2024. The Respondent has furnished the written submissions on 31.07.2024. Appellant tendered their post argument written submission on 15.12.2025.

B. PART III A and PART III B OF THE VAT ACT

The relevant legal provisions in respect of VAT on financial services contained in Part III A of VAT Act. These provisions are as follows:

B.1.SECTION 25 A

25A (1) NOTWITHSTANDING THE PROVISIONS OF CHAPTER I, II, III AND ITEM (XI) OF THE FIRST SCHEDULE TO THIS ACT, A VALUE ADDED TAX (HEREINAFTER IN THIS CHAPTER REFERRED TO AS "THE TAX") SHALL BE CHARGED IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER WITH ON THE SUPPLY OF FINANCIAL SERVICES IN SRI LANKA

(i) BY ANY SPECIFIED INSTITUTION DURING THE PERIOD COMMENCING JANUARY 1, 2003 AND ENDING ON JUNE 30, 2003; AND CHARGE OF VALUE ADDED TAX ON THE SUPPLY OF

FINANCIAL SERVICES BY SPECIFIED INSTITUTIONS OR OTHER PERSON

(ii) *BY ANY PERSON ON OR AFTER JULY 1,2003 BUT PRIOR TO DECEMBER 31,2007;*

(iii) *BY ANY PERSON OTHER THAN A CO-OPERATIVE SOCIETY REGISTERED UNDER THE CO- OPERATIVE SOCIETIES LAW. NO 5 OF 1972, ON OR AFTER JANUARY 1, 2008; AND*

(iv) *BY ANY PERSON OTHER THAN A CO-OPERATIVE SOCIETY REGISTERED UNDER THE CO-OPERATIVE SOCIETIES LAW NO 5 OF 1972 OR LADY LOCHORE LOAN FUND ESTABLISHED UNDER THE ACT NO 38 OF 1951, COMMENCING ON OR AFTER JANUARY 1, 2009, OR THE CENTRAL BANK OF SRI LANKA ESTABLISHED BY THE MONETARY LAW ACT, (CHAPTER 422) (WITH EFFECT FROM JULY 1, 2003:*

WHEN SUCH SPECIFIED INSTITUTIONS OR PERSON CARRIES ON THE BUSINESS OF SUPPLY OF ANY FINANCIAL SERVICES.

PROVIDED HOWEVER, THE SUPPLY OF FINANCIAL SERVICES BY A UNIT TRUST OR A MUTUAL FUND SHALL NOT BE

TREATED AS A FINANCIAL SERVICE FOR THE PURPOSE OF THIS SECTION.

(2) EVERY SPECIFIED INSTITUTION OR OTHER PERSON, CARRYING ON THE BUSINESS OF SUPPLYING OF ANY FINANCIAL SERVICES IN SRI LANKA, SHALL BE REQUIRED TO BE REGISTERED :-

(A) WHERE THE VALUE OF SUCH SUPPLY FOR A PERIOD OF THREE MONTHS EXCEEDS FIVE HUNDRED THOUSAND RUPEES OR FOR A PERIOD OF TWELVE MONTHS ONE MILLION EIGHT HUNDRED THOUSAND RUPEES, AS THE CASE MAY BE, IF SUCH REGISTRATION HAS TAKEN PLACE FOR ANY PERIOD PRIOR TO JANUARY 1, 2013;

(B) WHERE THE VALUE OF SUCH SUPPLY FOR A PERIOD OF THREE MONTHS EXCEEDS THREE MILLION RUPEES OR FOR A PERIOD OF TWELVE MONTHS EXCEEDS TWELVE MILLION RUPEES, AS THE CASE MAY BE, IF SUCH REGISTRATION HAS TAKEN PLACE FOR ANY PERIOD ON OR AFTER JANUARY 1, 2013.

(3) EVERY SPECIFIED INSTITUTION OR OTHER PERSON REQUIRED TO BE REGISTERED UNDER SUBSECTION (2), SHALL MAKE AN APPLICATION FOR REGISTRATION IN THE SPECIFIED FORM TO THE COMMISSIONER-GENERAL NOT

LATER THAN THIRTY DAYS FROM THE DATE OF COMPLETION OF THE REQUIREMENTS SPECIFIED IN SUBSECTION (2):

PROVIDED THAT, ANY INSTITUTION REGISTERED UNDER THIS ACT AND WHICH IS ALSO A SPECIFIED INSTITUTION WITHIN THE MEANING OF THIS CHAPTER, SHALL BE DEEMED FOR ALL PURPOSES TO BE A SPECIFIED INSTITUTION REGISTERED UNDER THIS CHAPTER:

PROVIDED FURTHER, THE COMMISSIONER-GENERAL SHALL REGISTER ANY PERSON WHO HAS NOT MADE AN APPLICATION FOR REGISTRATION UNDER THIS CHAPTER IF THE COMMISSIONER- GENERAL HAVING REGARD TO THE NATURE OF THE ACTIVITIES CARRIED ON OR CARRIED OUT BY SUCH PERSON, IS OF OPINION THAT SUCH PERSON IS REQUIRED TO BE REGISTERED UNDER THIS CHAPTER. IN THE CIRCUMSTANCES SUCH PERSON SHALL BE AFFORDED AN OPPORTUNITY OF BEING HEARD PRIOR TO BEING REGISTERED UNDER THIS CHAPTER AND REGISTER SUCH PERSON ACCORDINGLY WITH EFFECT FROM SUCH DATE AS MAY BE DETERMINED BY THE COMMISSIONER-GENERAL.

(4) THE COMMISSIONER-GENERAL SHALL UPON SUCH REGISTRATION ISSUE, TO SUCH REGISTERED SPECIFIED INSTITUTION —

(A) A TAX REGISTRATION NUMBER ; AND

(B) A CERTIFICATE OF REGISTRATION : PROVIDED HOWEVER ANY INSTITUTION DEEMED TO BE REGISTERED UNDER THIS CHAPTER, SHALL NOT BE ISSUED WITH A TAX REGISTRATION NUMBER AND A CERTIFICATE OF REGISTRATION, UNDER THIS CHAPTER.

(5) EVERY REGISTERED PERSON SHALL NOTIFY THE COMMISSIONER-GENERAL IN WRITING OF ANY CHANGE-

(A) IN THE NAME, ADDRESS AND PLACE AT WHICH ANY TAXABLE ACTIVITY IS CARRIED ON OR CARRIED OUT BY SUCH PERSON;

(B) IN THE NATURE OF THE TAXABLE ACTIVITY CARRIED ON OR CARRIED OUT BY SUCH PERSON;

(C) IN THE PERSON AUTHORIZED TO SIGN RETURNS AND OTHER DOCUMENTS; AND

(D) IN OWNERSHIP OF THE TAXABLE ACTIVITY, NOT LATER THAN FOURTEEN DAYS AFTER THE OCCURRENCE OF SUCH CHANGE.

B.2.SECTION 25B

25B (1) THE TAXABLE PERIOD OF EVERY REGISTERED SPECIFIED INSTITUTION OR OTHER PERSON SHALL BE :-

(A) ONE MONTH FOR ANY TAXABLE PERIOD PRIOR TO JANUARY 1, 2011; AND

(B) SIX MONTHS FOR ANY TAXABLE PERIOD COMMENCING ON OR AFTER JANUARY 1, 2011:

PROVIDED THAT, IN THE CASE OF A SPECIFIED INSTITUTION OR ANY OTHER PERSON WHOSE ACCOUNTS ARE MADE UP FOR A TWELVE MONTHS PERIOD ENDING ON THE 31ST DAY OF MARCH THE SIX MONTHS PERIOD MAY BE COMMENCED ON THE 1ST DAY OF APRIL AND THE 1ST DAY OF SEPTEMBER FOR THAT PERIOD OF TWELVE MONTHS. IN SUCH EVENT A SEPARATE RETURN FOR THE PERIOD COMMENCING FROM THE 1ST DAY OF JANUARY TO THE 31ST DAY OF MARCH SHALL BE SUBMITTED AT THE TIME OF SUCH CHANGE WITH THE APPROVAL OF THE COMMISSIONER GENERAL.

(2) EVERY REGISTERED SPECIFIED INSTITUTION OR OTHER PERSON SHALL FURNISH A RETURN IN THE FORM SPECIFIED, IN RESPECT OF EACH TAXABLE PERIOD BEFORE THE END OF THE FOLLOWING MONTH OF THE TAXABLE PERIOD.

(3) (A) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF SECTION 26, TAX PAYABLE FOR ANY TAXABLE PERIOD BY EVERY REGISTERED SPECIFIED INSTITUTION OR OTHER PERSON SHALL BE PAID ON A MONTHLY BASIS ON OR BEFORE THE TWENTIETH DAY OF THE SUCCEEDING MONTH SUBJECT TO THE MAKING OF THE FINAL ADJUSTMENT, IF ANY, WITH THE SUBMISSION OF THE RETURN AS SPECIFIED IN THIS SECTION.

(B) ANY TAX WHICH IS NOT SO PAID AS SET OUT IN PARAGRAPH (A) SHALL BE DEEMED TO BE IN DEFAULT AND ANY REGISTERED SPECIFIED INSTITUTION OR OTHER PERSON TO WHOM THIS SUBSECTION APPLIES SHALL BE DEEMED TO BE A DEFAULTER WITHIN THE MEANING OF THIS ACT.

B.3. SECTION 25C

25C (1) EVERY REGISTERED SPECIFIED INSTITUTION UNDER THIS CHAPTER SHALL BE LIABLE TO TAX FOR EACH TAXABLE PERIOD ON ITS TOTAL VALUE ADDITION OF SUCH INSTITUTION WHICH INCLUDES THE NET PROFITS OR LOSS, AS THE CASE MAY BE, BEFORE PAYMENT OF INCOME TAX ON SUCH PROFIT COMPUTED IN ACCORDANCE WITH ACCEPTED ACCOUNTING STANDARDS, SUBJECT TO AN ADJUSTMENT FOR ECONOMIC DEPRECIATION ,DETERMINED BY THE MINISTER HAVING REGARD TO THE INTEREST OF ECONOMY BY ORDER PUBLISHED IN THE GAZETTE, AND THE EMOLUMENTS PAYABLE TO ALL THE EMPLOYEES OF SUCH INSTITUTION : -

PROVIDED HOWEVER WHERE THE AMOUNT OF PROFITS FOR EACH TAXABLE PERIOD CANNOT BE ACCURATELY ASCERTAINED, SUCH AMOUNT MAY BE ESTIMATED ON THE BASIS OF AVAILABLE INFORMATION. THE ESTIMATED AMOUNTS SHALL BE ADJUSTED TO REFLECT THE ACTUAL AMOUNTS WITH THE AUDITED STATEMENT OF ACCOUNTS ON YEARLY BASIS AND SUCH ADJUSTMENT SHALL BE SUBMITTED WITHIN SIX MONTHS AFTER THE CLOSING DATE OF THE RELEVANT ACCOUNTING PERIOD. EMOLUMENTS PAID TO ALL THE EMPLOYEES SHALL INCLUDE—

(A) IN THE CASE OF SPECIFIED EMPLOYEES UNDER CHAPTER XIV OF THE INLAND REVENUE ACT, NO.

10 OF 2006, THE GROSS REMUNERATION PAYABLE TO SUCH EMPLOYEES AND REFLECTED IN THE PAY SHEET MAINTAINED UNDER SECTION 119 OF THE INLAND REVENUE ACT, NO.10 OF 2006;" AND

(B) IN THE CASE OF AN EMPLOYEE OTHER THAN A "SPECIFIED EMPLOYEE" THE GROSS REMUNERATION PAID TO SUCH EMPLOYEE REFLECTED IN THE PAY SHEET MAINTAINED UNDER SUBSECTION (2).

FOR THE PURPOSE OF THIS CHAPTER THE VALUE ADDITION OF SUCH SPECIFIED INSTITUTION SHALL BE COMPUTED :-

(i) FOR ANY TAXABLE PERIOD COMMENCING PRIOR TO JANUARY 1, 2011, BASED ON THE NET PROFIT OR LOSS PRIOR TO THE DEDUCTION OF THE TAX PAYABLE UNDER THIS CHAPTER; AND

(ii) FOR ANY TAXABLE PERIOD COMMENCING ON OR AFTER JANUARY 1, 2011 VALUE ADDED TAX ACT - CONSOLIDATION 2014 43 2011, BASED ON THE NET PROFIT OR LOSS AFTER THE DEDUCTION OF THE TAX PAYABLE UNDER THIS CHAPTER.

FOR THE AVOIDANCE OF DOUBT IT IS HEREBY DECLARED THAT "ECONOMIC DEPRECIATION" REFERRED TO IN THIS SUBSECTION, SHALL NOT APPLY IN RELATION TO ANY ASSETS OF ANY PERSON REGISTERED UNDER THE FINANCE

LEASING ACT, NO. 56 OF 2000, BEING AN ASSET WHICH FORMS PART OF THE LEASING STOCKS OF SUCH PERSON;

FOR THE PURPOSE OF THIS CHAPTER THE VALUE ADDITION OF SUCH SPECIFIED INSTITUTION SHALL BE COMPUTED :-

(i) FOR ANY TAXABLE PERIOD COMMENCING PRIOR TO JANUARY 1, 2011, BASED ON THE NET PROFIT OR LOSS PRIOR TO THE DEDUCTION OF THE TAX PAYABLE UNDER THIS CHAPTER; AND

(ii) FOR ANY TAXABLE PERIOD COMMENCING ON OR AFTER JANUARY 1, 2011, BASED ON THE NET PROFIT OR LOSS AFTER THE DEDUCTION OF THE TAX PAYABLE UNDER THIS CHAPTER.";

(2) EVERY REGISTERED SPECIFIED INSTITUTION SHALL MAINTAIN A PAY SHEET IN RESPECT EVERY EMPLOYEE, OTHER THAN A SPECIFIED EMPLOYEE, IN THE MANNER SET OUT BY THE COMMISSIONER- GENERAL UNDER SECTION 119 OF THE INLAND REVENUE ACT, NO. 10 OF 2006.

(3) THE AMOUNT OF TAX PAYABLE FOR ANY TAXABLE PERIOD :-

(A) COMMENCING FROM JANUARY 1, 2003 BUT PRIOR TO JANUARY 1, 2004 SHALL BE TEN PERCENTUM;

(B) COMMENCING FROM JANUARY 1, 2004, BUT PRIOR TO JANUARY 1, 2005, SHALL BE FIFTEEN PER CENTUM;

(C) COMMENCING FROM JANUARY 1, 2005, BUT PRIOR TO JANUARY 1, 2011, SHALL BE TWENTY PER CENTUM; AND

(D) COMMENCING FROM JANUARY 1, 2011 SHALL BE TWELVE PER CENTUM; OF THE VALUE ADDITION SPECIFIED IN SUBSECTION (I)

(4) NOTWITHSTANDING ANYTHING CONTAINED IN SUBSECTION (1), ANY PERSON TO WHOM THIS CHAPTER APPLIES-

(A) MAY IN WRITING COMMUNICATE TO THE COMMISSIONER-GENERAL, HIS INTENTION TO CALCULATE SUBJECT TO THE PROVISIONS OF SUBSECTION (5), THE TAX TO WHICH HE IS LIABLE IN RESPECT OF ANY MONTH COMMENCING ON OR AFTER JULY 1, 2003 BUT FOR THE PERIOD PRIOR TO JANUARY 1, 2014. THE PROVISIONS OF SUBSECTION (5) SHALL HOWEVER BE APPLICABLE FOR THE PERIOD SUBSEQUENT TO THE COMMUNICATION IN WRITING TO THE COMMISSIONER-GENERAL WHICH COMMUNICATION SHALL NOT BE REVOCABLE.

(B) SHALL FOR ANY MONTH COMMENCING FROM JANUARY 1, 2014, BE SUBJECT TO THE PROVISIONS OF SUBSECTION (5).

(5) FOR THE PURPOSE OF CALCULATING THE TAX, THE VALUE ADDITION ATTRIBUTABLE TO—

(A) EXEMPT SUPPLIES, OTHER THAN THE EXEMPT SUPPLIES UNDER ITEM (X) OF PARAGRAPH (B) OF PART II OF THE FIRST SCHEDULE BUT TAXABLE UNDER THIS CHAPTER ;

(B) ZERO RATED SUPPLIES ;

(C) TAXABLE SUPPLIES ON WHICH TAX HAS BEEN PAID OR IS PAYABLE IN TERMS OF THIS ACT, OTHER THAN THE VALUE ADDITION IN RELATION TO SUPPLIES TAXABLE UNDER THIS CHAPTER ;

(D) THE PROFIT OR INCOME (NOT BEING PROFIT FROM A BUSINESS) ON INTEREST ARISING OR ACCRUED FROM INTER-COMPANY TRANSACTIONS OF A GROUP OF COMPANIES RELATING TO ANY LOAN, ADVANCE OR CREDIT, OTHER THAN ANY PROFIT OR INCOME ARISING TO A COMPANY IN THAT GROUP WHICH IS A "SPECIFIED INSTITUTION" WITHIN THE MEANING OF THIS CHAPTER OR A PERSON NOT REGISTERED WITH THE CENTRAL BANK OF SRI LANKA, BUT

PROVIDING SERVICES SIMILAR TO THE SERVICES PROVIDED BY A FINANCE COMPANY ;

(E) THE PROFIT OR INCOME ON INTEREST ARISING OR ACCRUED TO ANY APPROVED PROVIDENT FUND INCLUDING THE EMPLOYEES TRUST FUND OR A PENSION FUND OR ANY THRIFT, SAVINGS OR BUILDING SOCIETY OR WELFARE FUND TO WHICH CONTRIBUTIONS ARE MADE BY EMPLOYEES ONLY OR ANY APPROVED GRATUITY FUND, OR THE INTEREST INCOME (NOT BEING PROFITS FROM A BUSINESS) ARISING OR ACCRUING TO ANY PERSON OTHER THAN A "SPECIFIED INSTITUTION" WITHIN THE MEANING OF THIS CHAPTER OR A PERSON NOT REGISTERED WITH THE CENTRAL BANK OF SRI LANKA, BUT PROVIDING SERVICES SIMILAR TO THE SERVICES PROVIDED BY A FINANCE COMPANY ;

(F) THE DIVIDEND INCOME (NOT BEING PROFIT FROM A BUSINESS) ARISING TO ANY PERSON, OTHER THAN SUCH INCOME ARISING TO ANY "SPECIFIED INSTITUTION" WITHIN THE MEANING OF THIS CHAPTER OR TO A PERSON NOT REGISTERED WITH THE CENTRAL BANK OF SRI LANKA, BUT PROVIDING SERVICES SIMILAR TO

THE SERVICES PROVIDED BY A FINANCE COMPANY ;

(G) (I) DURING ANY TAXABLE PERIOD COMMENCING ON OR AFTER JULY 1, 2002 AND ENDING PRIOR TO JANUARY 1, 2004, THE PROFIT OR INCOME ARISING TO ANY PERSON FROM THE SALE OF COMPANY SHARES OWNED BY SUCH PERSON OR TO ANY PERSON WHO IS INSTRUMENTAL IN THE PURCHASE AND SALE OF SUCH SHARES BY OTHER PERSONS, OTHER THAN SUCH PROFITS AND INCOME ARISING TO ANY "SPECIFIED INSTITUTION" WITHIN THE MEANING OF THIS CHAPTER OR A PERSON NOT REGISTERED WITH THE CENTRAL BANK OF SRI LANKA, BUT PROVIDING SERVICES SIMILAR TO SUCH SERVICES PROVIDED BY A FINANCE COMPANY ;

(II) FOR ANY TAXABLE PERIOD COMMENCING ON OR AFTER JANUARY 1, 2004 ENDING PRIOR TO JANUARY 1, 2005 THE PROFITS OR INCOME ARISING TO ANY PERSON FROM THE SALE OF SHARES IN ANY COMPANY OWNED BY SUCH PERSON OR TO ANY PERSON WHO IS INSTRUMENTAL IN THE PURCHASE AND SALE OF SUCH SHARES BY PERSONS OTHER THAN STOCKBROKERS, OTHER THAN PROFITS AND

INCOME ARISING TO ANY "SPECIFIED INSTITUTION" WITHIN THE MEANING OF THIS CHAPTER OR A PERSON NOT REGISTERED WITH THE CENTRAL BANK OF SRI LANKA, BUT PROVIDING SERVICES SIMILAR TO SUCH SERVICES PROVIDED BY A FINANCE COMPANY ;

(GG) FOR THE TAXABLE PERIOD COMMENCING ON OR AFTER JANUARY 1, 2005, THE PROFITS OR INCOME ARISING TO ANY PERSON FROM THE SALE OF COMPANY SHARES OWNED BY SUCH PERSON OR TO ANY PERSON WHO IS INSTRUMENTAL IN THE PURCHASE AND SALE OF SUCH SHARES BY OTHER PERSONS, OTHER THAN SUCH PROFITS AND INCOME ARISING TO ANY "SPECIFIED INSTITUTION" WITHIN THE MEANING OF THIS CHAPTER OR A PERSON NOT REGISTERED WITH THE CENTRAL BANK OF SRI LANKA, BUT PROVIDING SERVICES SIMILAR TO SUCH SERVICES PROVIDED BY A FINANCE COMPANY.

(H) THE PROFITS OR INCOME (NOT BEING PROFITS FROM A BUSINESS) FROM THE EXCHANGE OF CURRENCY OTHER THAN SUCH PROFITS OR INCOME ARISING OR ACCRUING TO ANY PERSON PRIMARILY ENGAGED IN THE BUSINESS OR EXCHANGE OF CURRENCY OR ANY "SPECIFIED

INSTITUTION" WITHIN THE MEANING OF THIS CHAPTER OR A PERSON NOT REGISTERED WITH THE CENTRAL BANK OF SRI LANKA, BUT PROVIDING SERVICES SIMILAR TO SUCH SERVICES PROVIDED BY A FINANCE COMPANY,

INCLUDED IN THE PROFIT CALCULATED AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION SHALL BE TREATED AS ZERO.

(6) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF SECTION 25A, NO TAX SHALL BE CHARGED FROM ANY PERSON LIABLE TO SUCH TAX, IF THE VALUE ADDITION CALCULATED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION DOES NOT IN RESPECT OF ANY CALENDAR MONTH EXCEED SEVENTY FIVE THOUSAND RUPEES.

(7) FOR THE PURPOSES OF THIS SECTION "GROUP OF COMPANIES" MEANS A PARENT COMPANY AND ALL ITS SUBSIDIARIES WHERE THE PARENT COMPANY WHICH HAS ONE OR MORE SUBSIDIARIES, AND SUCH SUBSIDIARIES ARE CONTROLLED BY THE PARENT COMPANY EITHER BY CONTROLLING THE COMPOSITION OF THE BOARD OF DIRECTORS OF SUCH SUBSIDIARY OR BY HOLDING MORE THAN HALF IN NOMINAL VALUE OF THE EQUITY SHARE CAPITAL OF SUCH SUBSIDIARY.

(8) EVERY SPECIFIED INSTITUTION OR ANY OTHER PERSON SHALL FOR THE PURPOSE OF THE CALCULATION OF TAX, SUBMISSION OF RETURNS AND INFORMATION TO BE FURNISHED RELATING TO SUCH RETURN, PAYMENTS OF TAX, ISSUE OF ASSESSMENTS, IMPOSITION OF PENALTY FOR NON- SUBMISSION OF THE RETURNS OR THE INFORMATION REQUIRED FOR THE PURPOSE OF THIS CHAPTER, FOLLOW –

(A) THE GUIDELINES SPECIFIED BY THE COMMISSIONER-GENERAL; AND

(B) THE RELEVANT GUIDELINES SPECIFIED IN THE ORDER PUBLISHED IN THE GAZETTE, HAVING CONSIDERED THE UNIFORM APPLICATION OF THE CALCULATION OF THE LIABILITY AND ANY OTHER MATTER SPECIFIED IN THE GUIDELINE PROVISIONS OF THIS CHAPTER.

(9) EIGHT PER CENTUM OF THE VALUE ADDITION SPECIFIED IN SUBSECTION (1) OF SECTION 25C SHALL BE INVESTED IN THE FUND ESTABLISHED IN THE CENTRAL BANK OF SRI LANKA AS SPECIFIED IN THE GUIDELINES ISSUED FOR THIS PURPOSES WITH THE CONCURRENCE OF THE COMMISSIONER - GENERAL FOR THE PERIOD OF THREE YEARS COMMENCING FROM JANUARY 1, 2011 AND THE INVESTMENT SHALL BE MADE ON A MONTHLY BASIS ON OR BEFORE THE TWENTIETH DAY OF THE SUBSEQUENT MONTH.

B.4. SECTION 25D

25D WHERE ANY REGISTERED SPECIFIED INSTITUTION OR OTHER PERSON HAS PAID ANY TAX UNDER ANY OTHER PROVISION OF THIS ACT, OTHER THAN THIS CHAPTER, A TAX CREDIT SHALL BE ALLOWED FOR ANY TAXABLE PERIOD PRIOR TO JANUARY 1, 2014 ON AN AMOUNT EQUAL TO SUCH TAX PAID AGAINST THE TAX PAYABLE UNDER THIS CHAPTER, WHERE IN THE OPINION OF THE COMMISSIONER-GENERAL THERE IS NO MATERIAL DIFFERENCE IN THE RECOGNITION OF RECEIPTS OF SUCH INSTITUTION FOR THE CALCULATION OF PROFITS FOR THE PURPOSES OF THIS CHAPTER AND FOR THE PURPOSES OF THE CALCULATION OF TAXABLE SUPPLIES UNDER ANY OTHER PROVISIONS OF THIS ACT :

PROVIDED HOWEVER —

(I) FOR ANY TAXABLE PERIOD COMMENCING ON OR AFTER JANUARY 1, 2003 AND ENDING PRIOR TO JANUARY 1, 2004,—

(A) FIFTY PER CENTUM OF ANY SUCH TAX CALCULATED AT THE STANDARD RATE AND PAID TO THE COMMISSIONER-GENERAL AFTER DEDUCTING CREDIT FOR INPUT TAX BY ANY PERSON ; AND

(B) TWENTY FIVE PER CENTUM OF ANY SUCH TAX PAID, IN RESPECT OF THE SUPPLY OF LEASING FACILITIES BY ANY PERSON REGISTERED UNDER THE FINANCE LEASING ACT, NO. 56 OF 2000, UNDER ANY OTHER PROVISION OF THIS ACT, OTHER THAN THIS CHAPTER, IN RELATION TO TAX CALCULATED AS PROVIDED IN SECTION 22, SHALL BE DEDUCTED AGAINST THE TAX PAYABLE UNDER THIS CHAPTER; AND

(II) FOR ANY TAXABLE PERIOD COMMENCING ON OR AFTER JANUARY 1, 2004, THE TAX CALCULATED AND PAID TO THE COMMISSIONER-GENERAL AFTER DEDUCTING CREDIT FOR INPUT TAX BY ANY PERSON SUBJECT TO A LIMITATION OF TWENTY FIVE PER CENTUM OF ANY SUCH TAX, IN RESPECT OF THE SUPPLY OF LEASING FACILITIES BY ANY PERSON REGISTERED UNDER THE FINANCE LEASING ACT, NO. 56 OF 2000, UNDER ANY OTHER PROVISION OF THIS ACT, OTHER THAN THIS CHAPTER, IN RELATION TO TAX CALCULATED AS PROVIDED IN SECTION 22, SHALL BE DEDUCTED AGAINST THE TAX PAYABLE UNDER THIS CHAPTER.

PROVIDED FURTHER, THE PRECEDING PROVISIONS OF THIS SECTION SHALL NOT APPLY TO A REGISTERED PERSON WHERE THE TAX PAYABLE BY SUCH PERSON UNDER THIS CHAPTER, IS CALCULATED SUBJECT TO THE PROVISIONS OF SUBSECTION (5) OF SECTION 25C

FOR THE AVOIDANCE OF DOUBT IT IS HEREBY DECLARED THAT ANY REFERENCE IN THIS SECTION TO "TAX PAID" MEANS THE TAX CALCULATED AND PAID TO THE COMMISSIONER- GENERAL AFTER DEDUCTING CREDIT FOR INPUT TAX

B.5. SECTION 25E

25E THE PROVISIONS OF CHAPTERS IV TO XVI SHALL, MUTATIS MUTANDIS, BE APPLICABLE IN RESPECT OF THE TAX CHARGED UNDER THIS CHAPTER.

B.6. SECTION 25F

25F FOR THE PURPOSES OF THIS CHAPTER —

SUPPLY OF FINANCIAL SERVICES MEANS —

(A) THE OPERATION OF ANY CURRENT, DEPOSIT OR SAVINGS ACCOUNT;

(B) THE EXCHANGE OF CURRENCY ;

(C) THE ISSUE, PAYMENT, COLLECTION OR TRANSFER OF OWNERSHIP OF ANY NOTE, ORDER FOR PAYMENT, CHEQUE OR LETTER OF CREDIT ;

(D) THE ISSUE, ALLOTMENT, TRANSFER OF OWNERSHIP, DRAWING, ACCEPTANCE OR ENDORSEMENT OF ANY DEBT. SECURITY, BEING ANY INTEREST IN OR RIGHT TO BE PAID MONEY OWING BY ANY PERSON OTHER THAN THE TRANSFER OF NONPERFORMING LOANS OF A LICENSED COMMERCIAL BANK TO ANY OTHER PERSON IN TERMS OF A RE-STRUCTURING SCHEME OF SUCH BANK AS APPROVED BY THE CENTRAL BANK OF SRI LANKA WITH THE CONCURRENCE OF THE MINISTER;

(E) THE ISSUE, ALLOTMENT, TRANSFER OF OWNERSHIP OF ANY EQUITY SECURITY OR A PARTICIPATORY SECURITY ;

(F) ISSUE, UNDERWRITING, SUB-UNDERWRITING OR SUBSCRIBING OF ANY EQUITY SECURITY, DEBT SECURITY OR PARTICIPATORY SECURITY;

(G) THE PROVISION OF ANY LOAN, ADVANCE OR CREDIT;

(H) THE PROVISION —

(A) OF THE FACILITY OF INSTALMENT CREDIT FINANCE IN A HIRE PURCHASE CONDITIONAL SALE OR CREDIT SALE AGREEMENT FOR WHICH FACILITY A SEPARATE CHARGE IS MADE AND DISCLOSED TO THE PERSON TO WHOM THE SUPPLY IS MADE ;

(B) GOODS UNDER ANY HIRE PURCHASE AGREEMENT OR CONDITIONAL SALE OR HIRE PURCHASE AGREEMENT WHILE HAVE BEEN USED IN SRI LANKA FOR A PERIOD NOT LESS THAN TWELVE MONTHS AS AT THE DATE OF SUCH AGREEMENT

SPECIFIED INSTITUTION MEANS —

(A) A LICENCED COMMERCIAL BANK WITHIN THE MEANING OF THE BANKING ACT, NO. 30 OF 1988; VALUE ADDED TAX ACT - CONSOLIDATION 2014 48

(B) A FINANCE COMPANY REGISTERED UNDER THE FINANCE COMPANIES ACT, NO. 78 OF 1988 ;

(C) A LICENCED SPECIALIZED BANK WITHIN THE MEANING OF THE BANKING ACT, NO. 30 OF 1988. 25G WHERE ANY PERSON CARRIES ON THE BUSINESS OF SUPPLYING FINANCIAL SERVICES, THE PRECEDING PROVISIONS OF THIS CHAPTER, SHALL MUTATIS MUTANDIS APPLY, TO AND IN RELATION TO THE SUPPLY OF SUCH SERVICES MADE BY SUCH PERSON ON OR AFTER JULY 1, 2003.

B.7. SECTION 25G

25G WHERE ANY PERSON CARRIES ON THE BUSINESS OF SUPPLYING FINANCIAL SERVICES, THE PRECEDING PROVISIONS OF THIS CHAPTER, SHALL MUTATIS MUTANDIS APPLY, TO AND IN RELATION TO THE SUPPLY OF SUCH SERVICES MADE BY SUCH PERSON ON OR AFTER JULY 1, 2003.

B.8. SECTION 25H

25H (1) A TAX (HEREINAFTER REFERRED TO AS "OPTIONAL VALUE ADDED TAX") SHALL BE CHARGED ON THE AGGREGATE TURNOVER FROM EACH TAXABLE ACTIVITY CARRIED ON, OR CARRIED OUT, IN SRI LANKA BY A PERSON OR A PARTNERSHIP, IF SUCH PERSON OR PARTNERSHIP IS REGISTERED UNDER THIS CHAPTER IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER :-

(A) FOR EVERY QUARTER COMMENCING ON JANUARY 1, 2007 AND ENDING ON DECEMBER 31, 2010, AND FOR EVERY QUARTER COMMENCING FROM THE QUARTER IN WHICH THE REGISTRATION FALLS DUE, AT THE RATE OF FIVE PER CENTUM; AND

(B) EVERY QUARTER COMMENCING ON JANUARY 1, 2011 AND ENDING ON DECEMBER 31, 2012, IN THE FOLLOWING MANNER :-

(I) AT THE RATE OF TWO PER CENTUM, FOR EVERY QUARTER FALLING WITHIN THE THREE YEARS COMMENCING FROM THE BEGINNING OF THE QUARTER IN WHICH REGISTRATION FALLS DUE, BUT AFTER THE DECEMBER 31, 2010;

(II) AT THE RATE OF FOUR PER CENTUM, FOR EVERY QUARTER FALLING WITHIN THE THREE YEARS COMMENCING IMMEDIATELY AFTER THE END OF THE THREE YEARS REFERRED TO IN ITEM (I);

(2) AT THE RATE OF EIGHT PER CENTUM, FOR EVERY QUARTER FALLING WITHIN THE THREE YEARS COMMENCING IMMEDIATELY AFTER THE END OF THREE YEARS REFERRED TO IN ITEM (II); AND

(3) AT THE RATE OF TWELVE PER CENTUM, FOR EVERY QUARTER FALLING WITHIN THE THREE YEARS COMMENCING IMMEDIATELY AFTER THE END OF THREE YEARS REFERRED TO IN ITEM (III);

(2) FOR THE PURPOSES OF THIS CHAPTER "TURNOVER" IN RELATION TO ANY TAXABLE ACTIVITY MEANS THE TOTAL AMOUNT RECEIVED OR RECEIVABLE FROM TRANSACTIONS ENTERED INTO IN RESPECT OF THE TAXABLE ACTIVITIES CARRIED ON, OR CARRIED OUT, IN SRI LANKA, OTHER THAN ANY SUPPLY SPECIFIED IN THE FIRST SCHEDULE, OR ZERO RATED SUPPLIES REFERRED TO UNDER SECTION 7, OR SUPPLIES REFERRED TO IN SECTION 3 OF THE ACT OR TO THE SALE OF ANY CAPITAL ASSETS.

(3) IN THIS SUBSECTION —

"CAPITAL ASSETS" SHALL HAVE THE SAME MEANING AS IS GIVEN TO IT IN SECTION 25 OF THE INLAND REVENUE ACT, NO. 10 OF 2006.

"QUARTER' MEANS THE PERIOD OF THREE MONTHS COMMENCING ON THE FIRST DAY OF JANUARY, THE FIRST DAY OF APRIL, THE FIRST DAY OF JULY AND THE FIRST DAY OF OCTOBER OF EACH YEAR.

(4) EVERY PERSON OF PARTNERSHIP REGISTERED UNDER THIS CHAPTER SHALL FURNISH TO THE COMMISSIONER GENERAL OF INLAND REVENUE NOT LATER THAN THE TWENTIETH DAY OF THE MONTH IMMEDIATELY FOLLOWING THE EXPIRY OF THE RELEVANT QUARTER, A RETURN IN SUCH FORM AND CONTAINING SUCH PARTICULARS AS MAY BE SPECIFIED BY THE COMMISSIONER GENERAL.

B.9. SECTION 25I

25 I (1) A PERSON OR A PARTNERSHIP REFERRED TO IN SUBSECTION (2), MAY PRIOR TO DECEMBER 31, 2012, APPLY FOR REGISTRATION UNDER THIS CHAPTER AND—

(A) THE COMMISSIONER GENERAL SHALL, IF HE IS SATISFIED THAT THE CONDITIONS SPECIFIED IN SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (A) OF SUBSECTION (2) ARE COMPLIED WITH, REGISTER SUCH PERSON OR PARTNERSHIP ON A REQUEST MADE FOR REGISTRATION AND SHALL FORTHWITH ASSIGN A REGISTRATION NUMBER TO SUCH PERSON OR PARTNERSHIP;

(B) SUCH REGISTRATION SHALL BE VALID FOR ANY QUARTER ENDING PRIOR TO JANUARY 1, 2013 FROM THE DATE OF COMMENCEMENT OF THE QUARTER IN WHICH THE REGISTRATION IS OBTAINED BY SUCH PERSON OR PARTNERSHIP.

(C) ANY REGISTRATION OBTAINED UNDER THIS CHAPTER SHALL BE TREATED AS CANCELLED WITH EFFECT FROM THE PERIOD COMMENCING FROM JANUARY 1, 2013:

PROVIDED THAT, ANY PERSON OR PARTNERSHIP REGISTERED UNDER THIS CHAPTER WHOSE TURNOVER EXCEEDS RUPEES TWELVE MILLION PER YEAR AND FULFILS

THE CRITERIA FOR REGISTRATION UNDER SECTION 10 SHALL OBTAIN A REGISTRATION ACCORDINGLY.

(2) (A) THE PROVISIONS OF SUBSECTION (1) SHALL APPLY TO ANY PERSON OR PARTNERSHIP—

(I) WHOSE AGGREGATE TURNOVER FROM EVERY TAXABLE ACTIVITY CARRIED ON OR CARRIED OUT, DOES NOT EXCEED

(A) RUPEES TWO MILLION AND FIVE HUNDRED THOUSAND PER YEAR OR SIX HUNDRED AND TWENTY FIVE THOUSAND PER QUARTER FOR ANY PERIOD PRIOR TO JANUARY 1,2009; AND

(B) RUPEES THREE MILLION PER YEAR OR SEVEN HUNDRED AND FIFTY THOUSAND PER QUARTER FOR ANY PERIOD COMMENCING ON OR AFTER JANUARY 1,2009; AND

(II) WHO OR WHICH IS NOT REGISTERED UNDER CHAPTER II.

(B) ANY PERSON OR PARTNERSHIP REGISTERED UNDER THIS CHAPTER MAY APPLY TO THE COMMISSIONER-GENERAL TO CANCEL SUCH REGISTRATION AND FURTHER REQUEST THE COMMISSIONER-GENERAL TO REGISTER HIM UNDER CHAPTER II, AT ANY TIME DURING THE

PERIOD IN WHICH REGISTRATION UNDER THIS CHAPTER SUBSISTS.

(C) THE PROVISIONS OF CHAPTERS I, II, III OR IIIA SHALL NOT APPLY TO A PERSON OR PARTNERSHIP WHOSE REGISTRATION DURING THE PERIOD IS SUBSISTING UNDER THIS CHAPTER

B.10. SECTION 25J

25J (1) THE VALUES OF SUPPLIES FROM ANY ISLAMIC FINANCIAL TRANSACTION SHALL BE CHARGEABLE TO TAX IN TERMS OF THE PROVISIONS OF THIS ACT.

(2) THE COMMISSIONER-GENERAL OF INLAND REVENUE SHALL IN ORDER TO DETERMINE THE EXTENT OF LIABILITY TO TAX OF ANY PARTICULAR ISLAMIC FINANCIAL TRANSACTION, ISSUE, FROM TIME TO TIME, SUCH RULES AND GUIDELINES AS MAY BE REQUIRED FOR THE PURPOSE OF—

(A) IDENTIFYING THE CIRCUMSTANCES WHICH WOULD AMOUNT TO AN ISLAMIC FINANCIAL TRANSACTION ; AND

(B) ASCERTAINING THE VALUE OF SUPPLIES ARISING OUT OF ANY ISLAMIC FINANCIAL TRANSACTION.

C. ANALYSIS

C1. IDENTIFICATION OF THE APPELLANT COMPANY

Originally tax return on Value Added Tax was submitted by Commercial Leasing Co Ltd for the year ended April 2011 to March 2012. The claim was not accepted by the assessor and assessment issued. Subsequent to the assessment in the year 2015 or so, Commercial Leasing Company Ltd had become Commercial Leasing and Finance PLC. Originally, a Leasing company later turned as a finance company. The said Commercial Leasing and Finance PLC have been amalgamated with LOLC Finance PLC on 13.03.2022 and thereafter continue as LOLC Finance PLC Ltd. Therefore LOLC Finance PLC, Commercial Leasing and Finance PLC or Commercial Leasing Company Ltd all referred to one and the same that is the Appellant in this case.

Commercial leasing Company was incorporated as a private limited company in 1988 and converted into a public limited company in 1992. The Company is domiciled in Sri Lanka and the registered address is No. 68, Bauddhaloka Mawatha, Colombo 4. The principal activities of the Company comprise of Leasing & Hire purchase of plant, Machinery, Equipment & Vehicles. Factoring and Vehicle Hiring.

C2. MATTER IN ISSUE

There is no dispute, the documents forming part of the record of the TAC clearly indicate, and it is the finding of the CGIR that

(a) the Appellant at all times relevant to the assessment was Commercial Leasing Co.Limited.

(b) the relevant period of assessment was the period 1.4.2011 to 31.3.2012.

(C) The business carried on by the Appellant applicable to the assessment during the period of assessment 1.4.2011 to 31.3.2012 was leasing & hire purchase facilities purchase of plant, machinery, equipment & vehicles, factoring and vehicle hiring, not supply of financial services.

(d) The applicable law that applies to the assessment is the law that applied during the period 1.4.2011 to 31.3.2012.

(e) All transactions relevant to this appeal are transactions of Commercial Leasing Company Ltd during the period 1.4.2011 to 31.3.2012.

(f) The applicable law must be applied on the basis of matters set out above.

C3. CORE ISSUE

The complaints of the Appellant include inter alia the following :-

(a) Commercial Leasing Co. Ltd on which it is sought to be levied

(i) is a financial service company as defined in section 25F;

(ii) such financial service is provided in Sri Lanka and

(iii) Commercial Leasing Co. Ltd was in the business of providing that financial service. The assessor in making the assessment, the CGIR in confirming the assessment and the TAC in their determination failed to apply the provisions of the section 25A(1) and charged Value Added Tax on Financial Services on transactions which were not liable for the said tax under section 25A(1).

(b) Even if transaction falls within section 25A(1) the value addition of transactions set out in section 25C(5) is zero. The assessor, the CGIR and the TAC failed to apply zero value addition to transactions that are covered by section 25C(5).The assessor in making the assessment, the CGIR in confirming the assessment and the TAC in their determination failed to apply the provisions of the said section 25C(5).

(c) Section 29 of the Value Added Tax Act No. 14 of 2002, that applied at the relevant time, required an assessor who does not accept a return and makes an assessment or an additional assessment to communicate the reasons why he is not accepting the return. The assessor addressed to Commercial Leasing Co. Ltd the letter dated 2.6.2014 an intimation under section 29. The letter did not contain the reasons for not accepting the return.

Accordingly, the CGIR has determined in relation to the assessment that (a) the determination was in relation to an

assessment made on Commercial Leasing Company: (b) the principal activities of the company were Leasing & Hire purchase of plant. Machinery. Equipment & Vehicles, Factoring and Vehicle Hiring. This was because the evidence before the assessor and the CGIR clearly established that the company during the period relating to the assessment was a leasing company and not a finance company and that the business was the business that could be carried on by a leasing company.

C4. CHARGING SECTION

The pivotal provision of a taxing statute is the charging section. If a transaction does not fall within the charging section, there is no liability for tax in respect of that transaction. In order that a person becomes liable for Value Added Tax Financial Services, he must be chargeable for VATFS under Chapter IIIA of the VAT Act, section 25A(1) must apply. It is only if the charging section applies that there is liability. If section 25A does not apply, there is no liability for VATFS. Section 25A of the VAT Act, which applied at the relevant time provided as follows.

> "Notwithstanding the provisions of Chapters I, II, III and item (xi) of the First Schedule to this Act, a Value Added Tax (hereinafter in this Chapter referred to as "the tax") shall be charged in accordance with the provisions of this Chapter on the **supply** of **financial services in Sri Lanka**-

(i) by any specified institution during the period commencing January 1, 2003 and ending on June 30, 2003; and

(ii) by any person on or after July 1, 2003 but prior to December 31. 2007; and

(iii) by any person other than a Co-operative Society registered under the Co-operative Societies Law No. 5 of 1972 on or after January 1, 2008 but prior to January 1, 2009; and

(iv) by any person other than a Co-operative Society registered under the Co-operative Societies Law No. 5 of 1972 or Lady Lochore Loan Fund established under the Act No. 38 of 1951, commencing on or after January 1, 2009: Provided however, the supply of financial services by a Unit Trust or a Mutual Fund shall not be treated as a financial service for the purpose of this section."

where such specified institution or person **carries on the business of supplying such financial services**."

C5. FINANCIAL SERVICES

The first condition that must be satisfied for a transaction to fall within section 25A(1) is that the transaction must be a supply of financial services. Financial services are defined in section 25F of the VAT Act. Section 25F enumerates from (a) to (h) what

constitutes supply of financial services for the purposes of Chapter IIIA of the VAT Act. It is only if the transaction on which VATFS is sought to be levied falls within section 25F is such transaction a supply of financial services for the purposes of Chapter IIIA of the VAT Ac. If a transaction does not fall within the provision of services of any of the activities set out in section 25F, it does not fall within section 25A(1), and there is no liability for VATFS arising from such activity. Moreover, it is the supply of Financial Services and not the receipt of Financial Services that is referred.

The second condition that must be satisfied is that the **supply** of financial services should take place within Sri Lanka. If the supply of financial services does not take place in Sri Lanka, then the transaction does not fall within section 25 A(1) and there is no liability for VATFS arising from such activity.

The third condition that must be satisfied is that the person sought to be taxed should be **in the business of the supply of such financial services.** ie. **in the business of the supply of the financial services sought to be taxed.**

C6. REQUIREMENT

Section 10 of the Finance Business Act No. 42 of 2011 stipulates that a finance company is required to have the word 'finance', 'financing' or 'financial' as part of its name and no company other than a finance company can have the word 'finance', 'financing' or 'financial' as part of its name.

Accordingly, there is no doubt that that the Appellant, Commercial Leasing Co. Ltd, at all times relevant to the assessment was not a finance company and, as determined by the CGIR, was carrying on the business of "leasing and hire purchase of plant, machinery, equipment and vehicles, factoring and vehicle hiring.

C7. RELEVANT IDEAS

The following principles emerge from the aforesaid provisions of Chapter IIIA of the VAT Act.

(a) A transaction to be liable to VATFS must be (i) a supply of financial services by a person, (ii) in Sri Lanka (iii) in the business of supplying such financial services. It must be a supply not a receipt.

(b) The financial services must be one defined in section 25F.

(c) If any of the requirements of (a) or the requirements of (b) is not satisfied the transaction does not attract VATFS and there is no chargeability of the transaction for VATFS.

(d) The value addition attributable to a transaction must be determined in accordance with section 25C(1) of the VAT Act.

(e) A transaction which is liable to VATFS must pay VATFS at the specified rate on the value addition of such transaction. The rate of VATFS specified for the taxable period was 12% per annum.

(f) The value addition for computing VATFS on a transaction liable to VATES is zero if the transaction falls within section 25C(5) of the VAT Act. No VATFS is therefore payable on such transactions that fall within section 25C(5).

C8. LEASING AND FINANCIAL SERVICES

The assessor, the CGIR and the TAC have charged VATFS on leasing and factoring. The assessor and the CGIR have included the profit on termination; leasing overdue interest and factoring services charges as financial services for the purpose of VATFS and has charged VATFS on the same. The VAT Act as it applied in respect of the year of assessment 2011/2012 did not include leasing or factoring as a financial service in section 25F of the VAT Act. As such, value addition on leasing services or factoring services were not liable to VATFS in the year of assessment 2011/2012.

Leasing and factoring are not financial services as defined in section 25F of the VAT Act. It is only if a person is in the business of supplying financial services as defined in section 25F of the VAT Act that there is liability for VATFS in respect of that financial service. Leasing and factoring were not part of the definition of Financial

Services in the period under review. In the circumstances, as a matter of law, the CGIR could not have imposed VATFS on profit on termination of leases, overdue interest on leasing and factoring service charge.

C9. INTRODUCTION IN 2015

In fact, leasing services were included in the definition of supply of financial services in section 25F of the VAT Act only in year 2015. The notice of assessment relates to the year 1.4.2011 to 31.3.2012. Section 15(2) of the Value Added Tax (Amendment) No. 11 of 2015 introduced an amendment to section 25F(h) as section 25F(h)(c). 25F(h)(c) after the said amendment, which came into effect on January 1, 2015 provided as follows.

> 25F(h) "(C) of leasing facilities under any finance lease agreement or operating leasing agreement on any asset other than any land or building, if such agreement is entered into on or after October 25. 2014 and not being an agreement for re-schedule of any agreement entered into prior to October 25. 2014."

C10. CONTRARY ACTION

This amendment did not apply in the year of assessment relating to the assessment. It applied to agreements entered into on or after October 25, 2014. In fact, the relevant amendment introduced by Value Added Tax (Amendment) No. I1 of 2015 was not even in force

in the period 1.4.2011 to 31.3.2012 that related to the assessment on the review. **The Respondent was not entitled to charge VATFS on value addition relating to leasing in the year of assessment 2011/2012 when leasing was not included in the definition of financial services in section 25F of the VAT Act at the relevant time.**

In the circumstances, the assessment of VATFS made on the Commercial Leasing Company Limited by including the value addition from leasing services and factoring services is contrary to Chapter IIIA of the VAT Act.

C11. INTEREST ON TREASURY BILLS

The assessor, the CGIR and the TAC have assessed and charged VATFS from the Commercial Leasing Company Limited for interest on Treasury Bills contrary to the VAT Act. In the first place, there is no liability for interest on Treasury Bills in terms of section 25A of the VAT Act. In any event, even if there was liability the value addition is zero in terms of section 25C(5)(e) of the VAT Act and no VATFS can be charged. The record before the TAC clearly indicates that at all times relevant to the assessment, the Appellant was Commercial Leasing Company Limited. That is to say, during the period of assessment, the Company was a leasing company. This is the evidence before the assessor, the Respondent and the TAC.

C12. LEASING COMPANY

The record clearly indicates that at the time of the return, the Appellant was Commercial Leasing Company Limited, a leasing company and was not a finance company. The applicable law is the law that applies, and the status of the company had at the time of the return in the period of assessment 1.4.2011 to 31.3.2012, the assessment relates to Commercial Leasing Company Limited, a leasing company and not a finance company. Indeed, even at the time of assessment, the notice of assessment dated 6.6.2014 and the letter of intimation dated 2.6.2014 refer to the Appellant as Commercial Leasing Company Limited, a leasing company.

C13. LEASING COMPANY TO FINANCE COMPANY

It is conceded that at the time of the appeal to the CGIR, after the assessment, Commercial Leasing Company Limited had become Commercial Leasing and Finance PLC, a finance Company. However, the record before the TAC indicates that during the relevant period of assessment and indeed at the time of the assessment, the Appellant was not a finance company but a leasing company. However, at the time the appeal to the CGIR after the period of assessment, it became a finance company and accordingly changed its name from Commercial Leasing Company Limited to Commercial Leasing and Finance PLC. As the appeal to CGIR was made by Commercial Leasing and Finance PLC, the reasons for determination of the appeal was also addressed to Commercial Leasing and Finance Company PLC. However, the Respondent in

his reasons for determination clearly states that it is aware that the Company at the relevant time was not a finance company by stating the following at the beginning of the reasons for determination of the appeal by the Respondent.

C14. BUSINESS OF FINANCE

The CGIR, confirms that the Company at the relevant time was Commercial Leasing Company and the activities of the Company do not include the business of a finance company of taking deposits and lending money. Accordingly, there is no doubt that at all times relevant to the assessment, the Appellant was not a finance company. There is absolutely no evidence that at the time of the period of assessment, the appellant was a finance company registered under the Finance Companies Act No. 78 of 1988 or a company carrying on business like a finance company. On the contrary, the CGIR itself has confirmed that the company at the relevant time was a leasing company by the GIR categorically stating in the reasons for determination that the business of the company was "Leasing & Hire purchase of plant, Machinery. Equipment & Vehicles. Factoring and Vehicle Hiring" Neither the assessor nor the CGIR have even alleged that the appellant at the relevant time was carrying on the business of accepting deposits and lending money, which is the business of a finance company, whether registered or otherwise.

C15. SPECIFIED INSTITUTION

It is respectfully submitted that the TAC made a fundamental error when it applied provisions of the VAT Act applicable to the specified institutions to the Appellant on the basis that it was a finance company. A specified institution is referred to in section 25F to mean

a) a licenced commercial bank within the meaning of the Banking Act No.30 of 1988;

b) a finance company registered under the Finance Companies Act No. 78 of 1988;

c) a licensed specialised bank within the meaning of the Banking Act No.30 of 1988.

C16. INTEREST ON TREASURY BILL

In order for interest earned on Treasury Bills to be liable, it should be a service which is a Financial Service as defined in section 25F, and the Appellant should be providing that service in the course of providing such service as its business. This is specifically required by section 25A. The only financial service which relates to Treasury Bills referred to in section 25F is 25F(d) its states as follows;

> **Supply of financial services** means - the issue, allotment, transfer of ownership, drawing, acceptance or endorsement of any debt security, being any interest in or right to be paid

money owing by any person other than the transfer of non-performing loan of a licensed commercial bank to any other person in terms of a restructuring scheme of such bank as approved by the Central Bank of Sri Lanka with the concurrence of the Minister

The assessor, the CGIR and the TAC have assessed and charged VATFS from the Commercial Leasing Company Limited on the sale of shares. In the first place, there is no liability under section 25A for VATFS on sale of shares.

Secondly, even if there was liability (which is not the case), the value addition attributable to the sale of shares is zero in terms of section 25C(5)(gg) of the VAT Act and no VATFS can be charged. The liability for VATFS can only arise in respect of a transaction which falls within the definition of Financial Services in section 25F. If the Commercial Leasing Company Limited is in the business of the supply of such Financial Services. The CGIR and the TAC fail to consider that the Commercial Leasing Company Limited is not in the business of trading in shares and the sale of shares of its subsidiary Diriya Investment (Private) Limited, and the shares in Free Lanka Hydro Power PLC do not fall within a transaction liable to VATFS in terms of section 25A(1). The CGIR has categorically determined that the Commercial Leasing Company Limited is in the business of "Leasing & Hire purchase of plant, Machinery, Equipment & Vehicles, Factoring and Vehicle Hiring." There is no allegation by the CGIR or a finding by the TAC that the Commercial

Leasing Company Limited is in any other business. On the contrary, there is a specific finding by the CGIR that the business of the Commercial Leasing Company Limited is Leasing & Hire purchase of plant, Machinery, Equipment & Vehicles, Factoring and Vehicle Hiring." The only reason as to why VATFS was levied on the sale of shares of Diriya Investment (Private) Limited (a subsidiary of the Commercial Leasing Company Limited) and the transfer of shares in Free Lanka Hydro Power PLC was because the issue allotment and transfer of shares is a financial service as defined in section 25F(e).

There are two reasons as to why the assessment on this matter is contrary to Chapter IIIA of the VAT Act. In the first place, the only financial service that may come close to the definition set out in section 25F is that in 25F(e) which refers "issue, allotment, transfer of ownership of equity security or a participatory security." In order that the Commercial Leasing Company Limited be liable to VATFS on the transfer of shares of Diriya Investment (Private) Limited (a subsidiary of the Commercial Leasing Company Limited) and in Free Lanka Hydro Power PLC is if (a) the Appellant is in the business of "issue, allotment, transfer of ownership of equity security or a participatory security" and (b) is supplying those services. The institutions to which the definition in 25F (c) applies are those in the business of the supply of the services of "issue, allotment, transfer of ownership of equity security or a participatory security" such as share broking companies, Registrars of share

issues and Merchant Banks, share underwriting companies and investment companies. Just because a person or a company may sell shares that it owns or buys shares, it is not and cannot be in the business of the supply of financial services as defined in section 25F (e).

C17. **CASE REFERENCE**

In fact, in ***Bank of Ceylon v CGIR:***

> **'Therefore, it is established that section 25A can only be applied to an institution which carried on the business of supplying 'such' financial services. The TAC has held that the Appellant provides Financial Services and trading in shares is also a Financial Service. Hence, the Appellant is liable to pay VAT on this occasion.'**
>
> **I regret that I cannot agree with the above, as the Appellant is a banker and have not engaged in share trading other than on this occasion, and the law requires the entity to be engaged in such Financial Services, as a business. In my view both the regular business and one - off transaction simply being Financial Service is insufficient to hold that the bank as dispose of shares in the course of its regular business."**

The decision ***in People's Leasing and Finance PLC V. The Commissioner General of Inland Revenue, (2021) CA (TAX)***

21/2019, CA Minutes 20.07.2021, Dr. Ruwan Fernando, J where he held

> **"While the mere acquisition, holding and sale of shares does not by itself constitute "supply of services" within the meaning of Section 25F of the VAT Act as supply of financial services, if the purpose of consideration of payment provided was to finance its business activities only and raise capital for its activities, such activities will not constitute a supply of services consideration within the meaning of Section 25F. It is totally different where the sale of shares was to obtain income on a continuing basis that goes beyond the compass of the simple acquisition and sale of shares in the course of a business or trading in securities. Such transactions, would constitute a supply of a financial services within the meaning of section 25F of the VAT Act."**

C18. UNREALISED EXCHANGE GAIN

The assessor and the CGIR have assessed and charged VATFS from the Commercial Leasing Company Limited on unrealised exchange gain contrary to the VAT Act. Exchange gain is a book entry which is a notional and unrealised gain. It is not a gain, and there are no funds in the hands of the Commercial Leasing Company Limited. There is no value addition in an exchange gain.

The Commercial Leasing Company Limited is in the business of "Leasing & Hire purchase of plant, Machinery, Equipment & Vehicles, Factoring and Vehicle Hiring. The Commercial Leasing Company Limited is not in the business of "the exchange of currency". There is no such allegation, much less an allegation that Commercial Leasing Company is in the business of "the exchange of currency" as required by section 25A read with section 25F(b) for there to be liability for VATFS. There is no liability for VATFS on exchange gain. The Commercial Leasing Company Limited is not in the business of the exchange of currency, in terms of section 25F(b) of the VAT Act, for there to be liability under section 25A.

Plant, Machinery, Equipment & Vehicles, Factoring and Vehicle Hiring" and not even alleged to be in the business of exchange currency for an unrealised and notional exchange gain in the books of the Company. In fact, the TAC fails to make any determination that the Appellant is liable for VATFS on the exchange gain. The TAC has affirmed the assessment without any finding on this matter.

C19. **REASONS**

An Assessor who does not accept the return filed under the VAT Act and makes an assessment is mandatorily required by section 29 of the VAT Act to give reasons why he is not accepting the return. Section 29 of the VAT Act provides as follows.

> "Where the Assessor does not accept a return furnished by any person under section 21 for any taxable period and makes an assessment or an additional assessment on such person for such taxable period under section 28 or under section 31, as the case may be, the Assessor shall communicate to such person by registered letter sent through the post why he is not accepting the return."

It is this communication that has been made by the assessor by letter dated 02.06.2014 purportedly in terms of section 29 was addressed to Commercial Leasing Company Limited. The letter gives absolutely no reasons as to why the return is not accepted, gives no reasons why

a) profit on termination of leases/overdue interest on leasing/factoring service charge of Commercial Leasing Company Limited was included in the computation of VATES.

b) interest income from treasury bills held by Commercial Leasing Company Limited was included in the computation of VATFS

c) profit on the sale of the shares in the subsidiary Diriya Investment (Private) Limited and Free Lanka Hydro Power PLC was included in the computation of VATFS.

d) the unrealised book entry of an exchange gain was included in the computation of VATFS.

Accordingly, the requirement of communicating in writing by the assessor of the reasons for not accepting the return if he wishes to

exercise the power not to accept the return and to issue an assessment was first introduced into the law in respect of the Inland Revenue Act. This provision provided for the duty to communicate the reasons in writing. It is the same requirement that is contained in section 29 of the VAT Act. Interpreting section 34 of the Inland Revenue (Amendment) Law No. 30 of 1978 which amended section 93(2) of the Inland Revenue Act No. 4 of 1963 and required the assessor to give reasons.

C20. ANSWERS TO THE QUESTIONS OF LAW

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. Yes.

Q.N.08. Yes.

Q.N.09. Yes.

Q.N.10. Yes.

Q.N.11. Yes.

Q.N.12. Yes.

Q.N.13. Yes.

Q.N.14. Yes.

Q.N.15. Yes.

Q.N.16. Yes.

Q.N.17. Yes.

Q.N.18. Yes.

Q.N.19. Yes.

Q.N.20. Yes.

Q.N.21. Yes.

D. CONCLUSION

As analyzed above and as the twenty one questions raised in the case stated are answered in affirmative, the determination of the TAC dated 10. 03. 2022 is set aside, the assessment on VAT on FS for the taxable period 1st April 2011 to 31st March 2012 is annulled. The appeal is allowed, but considering the circumstances of the case no cost is ordered.

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

On this 4th day of June 2026

JUDGE OF THE COURT OF APPEAL

M. C. B. S. MORAIS

I agree.

JUDGE OF THE COURT OF APPEAL