IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal by way of Stated Case on a question of law for the opinion of the Court of Appeal under and in terms of Section 11A of the Tax Appeals Commission Act No. 23 of 2011 (as amended).

CA Case No. CA/TAX/40/2024
Tax Appeals Commission No.
TAC/IT/079/2019

Hayleys Advantis Limited,
Thurnbum Wing,
No. 400, Deans Road
Colombo 10.

APPELLANT

Vs.

Commissioner General of Inland Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

RESPONDENT

Before: M.C.B.S. Morais, J.

Dr. D. F. H. Gunawardhana, J.

Counsel:

Dr. Shivaji Felix, P.C. with Nivantha Satharasinghe and Sajith Nawaratne instructed by Abdeen Associates for the Appellant.

Chaya Sri Nammuni, D.S.G., for the Respondent.

Argued on: 03.06.2026

Delivered on: 31.07.2026

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Assessee-Appellant (hereinafter referred to as the "Appellant") is Hayleys Advantis Company Limited, a body corporate incorporated under the Companies Act, No. 7 of 2007, and it is capable of suing and being sued in its corporate name as it is treated as an entity and juristic person under the laws of Sri Lanka. It is a subsidiary of the large conglomerate called "Hayleys Lanka Limited".

This appeal arose on the determination made by the Tax Appeal Commission (hereinafter referred to as "the Commission" or "the TAC") dated 26.02.2024, and it relates to the assessment for the year 2014/2015.

The Appellant submitted the return before 30.11.2015 for the year 2014-2015, and the assessor had not accepted it, and the notice thereof has been given dated 30.05.2017; however, the same has been posted by registered post on 20.06.2017, and the Appellant had received it on 23.06.2017. Thereupon, the Appellant had made an appeal to the Respondent on 27.06.2017, contesting the Assessment on two grounds. Namely, that the Notice of Assessment is out of time, and that the dividends on which the Assessor decided to charge income tax is exempted from statutory income in terms of Section 63 of the Inland Revenue Act of 2006 and therefore, it should be exempted. However, the Respondent dismissed the Appellant's appeal by his determination dated 31.12.2019.

Thereafter, the Appellant appealed to the Commission on three grounds. Other than for the two grounds that it urged before the Respondent as mentioned above, the third ground was that the decision of the appeal by the Respondent is also out of time, and therefore, the Appellant's appeal should be tenable. However, the Commission by its order dated 30.01.2024, determined against the Appellant.

Then the Appellant, having given notice of appeal, moved the Commission for a case stated; accordingly, there is a case stated.

This was argued before my brother Justice Morais, and me on 03.06.2026; hence, this judgement.

Factual matrix

The Appellant is a company incorporated under the Companies Act, No. 7 of 2007, principally carrying on the business of investing in shares of other companies and Government securities. In addition to that, according to the facts stated, it is engaged in marketing activities of Tokyo Cement Limited as well.

The Respondent is the Commissioner General of the Inland Revenue, and the matter that has arisen before this Court is in relation to an assessment of income for the year 2014-2015 of the Appellant. According to the return submitted by the Appellant for the year 2014-2015, dated 30.11.2015, it has claimed that the income derived from the dividends has to be excluded from the taxable income. However, the Assessor has not accepted the same, and accordingly, the Assessor has assessed the income, and notice thereof dated 30.05.2017, has been sent to the Appellant; however, the Appellant alleges that it received the said notice only on 23.06.2017, since according to the day stamp on the envelope, it had been posted on 20.06.2017. In addition to the substantive claim that the income derived from the dividends does not fall within the assessable income, the Appellant further claims that the Notice of Assessment had been sent after the period contemplated by the Act of one and a half years from the due date of the submission of the returns (30.11.2015); therefore, it is time-barred.

On that, the Appellant had appealed to the Commissioner General of Inland Revenue (the Respondent) by its appeal dated 27.06.2017, the letter of acknowledgement is dated 25.08.2017. However, the Respondent had dismissed appeal, and was of the view that assessing and sending Notice of Assessment are not two different things; the only thing that is contemplated by the Act is the assessment, and the Assessor had assessed the income of the Appellant by his assessment on 23.05.2017, and the Notice of Assessment had been taken and signed on 30.05.2017; therefore, sending the Notice of Assessment is a separate action that does not fall within the contemplated Section, and thus, the Appellant had due notice of the said Assessment. As such, the appeal on the said ground had been rejected. In addition to that, even on the substantive matter, the Appellant's appeal had been rejected by the Respondent; his determination is dated 27.06.2019 and sent on 28.06.2019.

Being aggrieved by the said decision of the Respondent, the Appellant has appealed to the Tax Appeal Commission. Several grounds were taken up by the Appellant before the Commission, including that the Notice of Assessment is time-barred and on the substantive matter; however, the Tax Appeal Commission, by its decision dated 30.01.2024, as available at page 159-174 of the TAC Brief, on the question of time-bar was also rejected, and accordingly, its appeal was dismissed, affirming the Respondent's decision; the Commission was of the view that even on the substantive issue, whether the income the Appellant received as dividends falls within Section 3(a) of the Act. Thus, liable to be assessed.

Being aggrieved by the said decision of the Tax Appeal Commission, the Appellant has given notice under the Tax Appeal Commission Act to appeal to this Court, and accordingly, moved the Tax Appeal Commission (TAC) to cause a case stated. Accordingly, the case stated dated 26.03.2024 has been caused, and the same is file of record at pages 183-185 of the TAC Brief.

According to the case stated, the following questions of law have been raised by the TAC for the determination of this Court; hence, this judgement.

(i) Whether the assessment, as confirmed by the Commissioner General of Inland Revenue, is excessive and without lawful justification

(ii) Whether the assessment is bad in law in as much as it is time barred

(iii) Whether the determination of the Commissioner General of Inland Revenue is time barred

(iv) Whether the dividend income received by the Appellant is excluded from its total statutory income under and in terms of Section 63 of the Inland Revenue Act, No. 10 of 2006 (as amended)

(v) Whether the credit is not been granted for the tax losses, amounting to a sum of Rs. 325,011,049/-, brough forward from the year of assessment 2013/2014 up to a maximum limit of thirty-five per centum

(vi) Whether the credit is not been granted in respect of Withholding Tax, amounting to a sum of Rs. 109,114/-, and income tax refunds, amounting to a sum of Rs. 1,999,544/-

(vii) Whether in view of the facts and circumstances relating to the assessment, has the Commissioner General of Inland Revenue erred in law in coming to the conclusion that he did

(viii) Whether the TAC failed to answer all the issues raised by the Appellant

This matter came up for argument on 03.06.2026, and was argued before Justice Morais and myself.

At the forefront of the Appellant's arguments, the Appellant has again taken up the question of time-bar of the Notice of Assessment. The learned President's Council, Dr. Felix, heavily relies upon the latest judgement of the Supreme Court handed down by Justice Thurairaja in the case of *Fonterra Brands Lanka (Private) Limited v. Commissioner General of Inland Revenue*[1].

In addition to that, the following arguments were advanced on the substantive issue by way of oral submissions supplemented by the Written Submissions.

Arguments

Arguing on the time-bar question, Dr. Felix argues that the proposition of law enunciated in *Fonterra* case directly applies here. On the other hand, it is the argument of Ms. Nammuni, D.S.G., that the case of *Fonterra* does not apply here for the reason that the date of intimation should be treated as the date of Assessment. Therefore, the Assessment sent with the letter of intimation is within time.

The thrust of the main argument of Dr. Felix on the substative issue is that the Appellant's income derived as dividends from another subsidiary company of the Appellant is exempted from the income tax in terms of Section 63 of the Inland Revenue Act, No. 10 of 2006 (as amended). He argues that dividends is exempted in terms of Section 63 which clearly defines dividends derived as income from other residence or non-residence companies.

On the other hand, Ms. Nammuni, DSG, argued that the Appellant's income falls within Section 3(a) derived as profit since it has invested in shares in other companies since it is the main business of the holding company of the conglomerate that the Appellant engages in. Therefore, no exception can be given, except if at all, it has to be subject to at least ten percent (10%) taxation if it is brought as dividends.

[1] SC Appeal No. 187/2014 (SC Minutes 26.09.2025).

Question (ii) - On the question of 'time-bar'

In this case, the question of time-bar is based on the notice of assessment. To decide the question of 'time-bar', this Court has to consider the relevant provisions of the Inland Revenue Act, No. 10 of 2006 (hereinafter referred to as "the IR Act").

Section 163(3) of the IR Act reads as thus;

> *"(3) Where a person has furnished a return of income, the Assessor or Assistant Commissioner 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 assessable income of such person and assess him accordingly:***
>
> *Provided that where an Assessor or Assistant Commissioner 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."* [Emphasis is mine]

Section 164 is also reproduced below and reads thus;

> *"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:***
>
> *Provided that where such notice is given to an employer under the provisions of Chapter XIV, it shall be sufficient to state therein the amount of the tax charged."* [Emphasis is mine]

According to the provisions of the above two sections, now the Court is faced with the question whether, once an assessee is assessed by the assessor, when was that deemed to have been done. To ascertain this, Section 163(5) is also an important section and reads thus;

> *"(5) Subject to the provisions of section 72, no assessment of the income tax payable under this Act by any person or partnership -*
>
> *(a) who or which has made a return of his or its income on or before the thirtieth day of November of the year of assessment immediately succeeding that year of assessment,*
>
> > *(i) where such year of assessment is any year of assessment commencing prior to April 1, 2013, shall be made after the expiry of a period of two years from the thirtieth day of November of the immediately succeeding year of assessment; and*
> >
> > ***(ii) where such year of assessment is any year of assessment commencing on or after April 1, 2013, shall be made after the expiry of a period of eighteen months from the thirtieth day of November of the immediately succeeding year of assessment:"*** [Emphasis is mine]

Accordingly, if the Assessor does not accept the return submitted by the Assessee, he should make an assessment, and once he does so, he shall communicate that assessment to the Assessee by way of the Notice of Assessment in terms of Section 164.

The question of giving notice of assessment was the focal point of many a judgement.

Now, this process of considering the return, making an assessment, and communicating the assessment has been treated by the Court as one process of Assessment.

In the case of *Commissioner of Income Tax v. Chettinad Corporation Limited*[2], Justice Gratiaen drew a distinction between an estimate and an assessment. Thereafter, in the case of *D.M.S. Fernando v. Ismail*[3], Chief Justice Samarakoon, on behalf of the Supreme Court, also considered the same thing, and His Lordship is of the view that when notice is given, reasons must also be given along with it.

However, thereafter the question arose as to when he should officially give the Notice of Assessment, and the Courts have endeavoured to interpret the term "Notice of Assessment" in the judgements by the Appellate Courts, including the Supreme Court.

In *Illukkumbura Industrial Automation (Pvt) Ltd v. Commissioner General of Inland Revenue*[4], Justice Wjieratne in the Court of Appeal considered this question, and it is his view that the letter of intimation where reasons are given is sufficient compliance of Section 163(3). However, in the *Fonterra* case, this question came up again.

In the case of *Fonterra Brands Lanka (Private) Limited v. Commissioner General of Inland Revenue*, His Lordship Justice Thurairaja, having considered all the authorities, finally decided that there is a distinction between the 'intimation of assessment' and the 'notice of assessment' officially given. His Lordship was of the view that the estimate of the income, assessment of the income for the purpose of taxing, and intimating the assessee of such an assessment and reasons therefore, and **official notice of assessment** given to the assessee is part of the same process. His Lordship was further of the view that notice has to be given within the time period contemplated by the provisions of the Section, and if notice of assessment is not received by the assessee within the time period contemplated, it is fatal to the notice of assessment because

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[2] [1954] 55 NLR 553.
[3] [1982] 1 Sri L.R. 222.
[4] CA/TAX/5/2016 (CA Minutes 29.09.2022).

there should not be anything hanging on over the head of the assessee as he must exactly know the particulars as to his liability and that should not be hung over his head indefinitely.

For further clarity, the relevant section of the dicta of His Lordship Justice Thurairaja in the case of *Fonterra* is reproduced below and reads thus;

> *"64. ... Upon the perusal of the letter of intimation dated 25th March 2008, I find that although styled as an 'intimation', the said letter cannot by any measure be equated with a Notice of Assessment within the meaning of Section 134 of the Act. While it contains certain preliminary calculations, these workings cannot be framed as a final and binding determination of liability.*
>
> *65. The letter neither quantifies a conclusive sum payable nor calls upon the Appellant to discharge such liability; specifies a date by when the amount shall be settled; nor does it set out the statutory right of appeal, which is an essential feature of a Notice of Assessment under Section 136. The computations appear as tentative workings to support the Assessor's non-acceptance of the return, rather than as the imposition of a charge. To treat this document as an 'assessment' would strip the taxpayer of vital procedural safeguards and reduce the statutory right of appeal to an empty formality. Therefore, unlike in Illukkumbura, where the intimation itself embodied the assessment, the letter before us is no more than a preliminary communication – a step antecedent to assessment - and cannot be given the legal effect of a Notice of Assessment.*
>
> *66. These authorities, read together, I hold that an 'assessment' is not complete until it is communicated to the taxpayer by a notice of assessment served within the time limit. The statutory time bar applies to the assessment as a whole, including notice. letter of intimation is not an assessment, nor is it an internal departmental calculation.*

67. The Department's shifting positions, sometimes treating 'P4' as an intimation, sometimes as an assessment, sometimes asserting an internal making, only reveal the absence of a lawful assessment within time. To permit such evasions would be to drain Section 134(5) of meaning and to expose taxpayers to uncertainty and unfairness. Parliament has not given the Department an indefinite licence to assess at leisure. It has given three years, no more. The Department mut act, and must notify, within that time.

68. There is a wider principle at stake, as I noted earlier. Taxation is a compulsory exaction backed by the coercive power of the State. It is therefore imperative that the power to tax be exercised strictly in accordance with law, and within the boundaries the legislature has drawn. Time bars in tax law are not technical traps for the Department; they are jurisdictional limits imposed in the interests of certainty, fairness, and discipline.

69. To erode them by accepting secret assessments or delayed notices would be to unsettle commercial life and to undermine confidence in the rule of law. The letter dated 25th March 2008 was not an assessment. The notice dated 11th June 2008 was issued without jurisdiction. The power to assess expired on the 31st March 2008 and could not be revived thereafter."

Accordingly, it is my view that His Lordship Justice Thurairaja's judgement is the latest Supreme Court authority on the issue that has been cited before this Court. As such, it is my view that the above being the judgement of the Highest Court of the land, is binding on this Court, and this Court being a subordinate to the Supreme Court is bound by the said judgement[5].

[5] *Walker Sons & Co. (U.K.) Ltd v. Gunatilake and Others* [1978-79-80] 1 Sri L.R. 231.

Though it was strenuously and ably argued by Ms. Nammuni that in the case of *Fonterra* in that sense does not apply to the facts in hand, it is my view that I am bound by that judgement. It is a repetition of the same arguments advanced in the *Fonterra* case.

Now I will consider the issue before me.

According to the record of this case, the Appellant had submitted the return for the year 2014-2015 dated 27.11.2015; namely, before 30.11.2015. As per Section 163(5), the said income should be assessed within one and a half years from the date of the submission of the return. Therefore, one and a half years should commence from the 30th of November of the relevant tax year.

Since the return was submitted prior to the last date, namely the 30th of November 2015, the time period should commence with the last day. Accordingly, the last date of the assessment is the 30th of May 2015; however, the Assessor has rejected the return according to the letter of intimation on 23.05.2017. However, the Notice of Assessment is dated 30.05.2017, and according to the Appellant, the notice had been posted on 20.06.2017. As per the day stamp of the envelope on which it was posted, and the Appellant had received it on 23.06.2017, which is definitely after the due period of eighteen (18) months.

Then the question arises on when should be the assessment considered to have been done; whether it is at the time of the letter of intimation is sent or it is the receipt of the notice of assessment by the Appellant.

However, according to the decision of the TAC, where the same question had been raised in the forefront of the Appellant's case, and having considered the same, came to the conclusion that the 'Notice of Assessment' means only the date on which the assessor took the decision and intimated to the assessee and therefore, the posting of official notice need not be the date of notice sent to the Appellant. The TAC has followed the English case of *Honig and Others* *v. Sarsfield*[6], and in further support of its decision, it has referred to several Sri Lankan cases, but basically followed *Honig*.

The relevant section of the final decision of the TAC reads as thus;

> *"21. Pursuant to the above Section 164, there is no specific time limit for serving the notice of assessment to the taxpayer. As held in Honig & other vs Sarsfield (1986) BTC 205, giving of the notice of assessment was independent of the making of a valid and effective assessment. The contention given by the representative of the appellant as there is no application of the above case to the present case, it is not tenable and need to be highlighted that the legal principle is common for present case as well."*

Therefore, it is my view that in view of the decision taken by His Lordship Justice Thurairaja in the case of in the case of *Fonterra*, the TAC has clearly erred in law, and therefore, the determination of the TAC is liable to be set aside.

In this case, the **official Notice of Assessment is dated 30.05.2017**, **but sent on 20.06.2017**, and subsequently received on 23.06.2017, which has not been denied by the Respondents. Therefore, it is my view that it is given out of time as per the case of *Fonterra Brands Lanka (Private) Limited v. Commissioner General of Inland Revenue*[7].

In addition to that, I also wish to add that once the return is submitted by the assessee, the time given for the assessor is 18 months to either accept or assess it[8] . If he does not accept it and decides to assess it, then the assessor must estimate and then assess the income for taxes chargeable and send the letter of intimation to the assessee and must state his reasons as to why

[6] [1986] BTC 205.
[7] SC Appeal No. 187/2014 (SC Minutes 26.09.2025).
[8] Section 163(5) of the IR Act, No. 10 of 2006.

he was assessed by the assessor. However, that process does not stop there, as His Lordship Justice Wijeratne stated in the case of *Illukkumbura*.

Further, the assessor has to feed the data to the computer, and then with other additions and deductions, must get the final figure of assessment and then inform the assessee on how much he has to pay as tax. This has to be conveyed to the assessee and thereafter, only does his right (assessee's right) will arise to appeal against that figure. Therefore, the right to appeal is triggered with the final figure stated in the notice of assessment. Thus, notice of assessment should be given within 18 months and not beyond that because if it passes even one day, then the assessee, as the taxpayer, is kept in limbo without certainty forever. As His Lordship Justice Thurairaja pointed out, all taxes must be levied subject to the strict compliance of the law.

Accordingly, question (ii) is answered in the affirmative in favour of the Appellant.

Question (iii) - Determination of the Respondent and time-bar

After receiving the notice of assessment on 23.06.2017, the Appellant has appealed by his petition of appeal dated 27.06.2017, and the same was tendered to the Department of Inland Revenue on 29.06.2017 as the day stamp affixed to it establishes it. This was admitted by the Respondent; vide Page 57 of the TAC Brief.

The acknowledgement thereof is dated 25.08.2017 and was received by the Appellant on 29.06.2017 under the covering letter dated 28.06.2017; vide Page 11 of the TAC Brief.

According to Section 165(6) of the IR Act, the receipt of the appeal should be acknowledged within thirty days of its receipt. For further clarity, the said section is reproduced below and reads thus;

> *"165. (6) The receipt of every appeal shall be acknowledged within thirty days of its receipt and where so acknowledged, the date of the letter of acknowledgement shall for*

the purpose of this section, be deemed to be the date of receipt of such appeal. Where however the receipt of any appeal is not so acknowledged, such appeal shall be deemed to have been received by the Commissioner General on the day of which it is delivered to the Commissioner-General."

In those circumstances, the appeal should be determined within two years as the provisions of Section 165(14) of the Inland Revenue Act, No. 10 of 2006, requires and which reads thus;

"165. (14) Every petition of appeal preferred under this section, shall be agreed to or determined by the Commissioner- General, within a period of two years from the date on which such petition of appeal is received by the Commissioner- General, unless the agreement or determination or such appeal depends on—

(a) the decision of a competent court on any matter relating to or connected with or arising from such appeal and referred to it by the Commissioner- General or the appellant; or

(b) the furnishing of any document or the taking of any action–

(i) by the appellant, upon being required to do so by an Assessor or Assistant Commissioner or the Commissioner-General by notice given in writing to such appellant (such notice being given not later than six months prior to the expiry of two years from the date on which the petition of appeal is received by the Commissioner-General); or

(ii) by any other person, other than the Commissioner-General or an Assessor or Assistant Commissioner.

Where such appeal is not agreed to or determined within such period, the appeal shall be deemed to have been allowed and tax charged accordingly.*"* [Emphasis is mine]

Accordingly, it is my view that if the Respondent had not made a determination by 28.06.2019, namely, within two years of the receipt of the appeal; otherwise, it is deemed to have been determined in favour of the Appellant. In this case, apparently, the Respondent's determination dated 27.06.2019 was sent under the registered post on 28.06.2019, which should have been received at least after one day, namely on 29.06.2019 which is one day after the due date. Therefore, this is also time-barred.

Accordingly, question (iii) is answered in the affirmative in favour of the Appellant.

However, the TAC was of the view that the Objections raised on the receipt of the appeal is of technical nature; in addition to that, no prejudice is caused to the Appellant. Therefore, that was decided against the Appellant, which in my view is erroneously determined.

Question (iv) - The substantive issue

Now I will consider the argument on the substantive issue, where the Appellant claims that the taxes from the income that it derived during the 2014-2015 from the dividends that it had invested in other companies have already been deducted from the first company, who remitted the said dividends; therefore, the Appellant is not liable to pay any tax on the said income, and thus, the said income falls within Section 63 of the IR Act and as such, does not fall within the taxable income since it does not form a part of the statutory income.

However, on the other hand, Ms. Nammuni, D.S.G, argued that the said income falls within Section 3(a) of the IR Act as profit. In addition to that, she argued that since it is dividends, if it does not fall within Section 3(a), it should at least fall within Section 3(e). As such, if it is the dividends that is remitted becomes part of the income, and therefore, at least ten percent (10%) should be charged as income tax on that.

Income that is chargeable with tax is stipulated in Section 3. As argued by Ms. Nammuni, now I will consider whether the income derived from dividends by the Appellant falls within Section 3(a) or Section 3(e) or the exemption in Section 63 as claimed by Dr. Felix.

The statutory income that can be computed is stipulated in Section 28 of the IR Act, which reads thus;

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

Accordingly, what can be computed is only the statutory income of a person for the assessment is chargeable with tax. This is stipulated in Section 3.

For further clarity, the relevant part of Section 3 is reproduced below and reads thus;

> *"3. For the purpose of this Act, "profits and income" or "profits" or "income" means-*
>
> *(a) the profits from any trade, business, profession or vocation for however short a period carried on or exercised; ....*
>
> *(e) dividends, interest or discounts; ...."*

The Appellant heavily relies upon the principles enunciated in the Act which has some historical evolution as well, in his Written Submissions, in addition to his oral submissions advanced.

Now I will see whether dividends falls within this category.

Dividend is defined in Section 217 of the IR Act which reads thus;

"'dividend' includes–

(a) any distribution of profit by a company to its shareholders, in the form of–

(i) money or of an order to pay money;

(ii) shares in any other company; or

(iii) debentures in that company or in any other company; or

(iv) scrip dividend or dividend in specie ; or

(v) where a company buys back shares from its shareholders, the excess, if any, paid to any shareholder over the market price of such share quoted in the Colombo Stock Exchange or the market value of such share as the case may be, as at the date on which the shareholders of such company at a meeting approved such share buyback; and

(b) the amount of any capital returned or distributed to the extent of the paid up value of any shares distributed by the company to its shareholders within six years preceding the date of such return or distribution of capital, such paid-up value representing the capitalization of the whole or any part of the profits of the company;"

Then, we will have to consider Section 65 and Section 63 together, as well as Sections 3(a) and 3(e), as opposed to each other.

On a careful study of the above sections, I found that the income chargeable with tax is profits or income from any trade or business; as it is an admitted fact that the Appellant's main business is in investment in shares of other companies, it derives its income as profit or income from such a business of investment of money. Therefore, in that sense, it should fall within

Section 3(a); or if at all, Section 3(e), as the dividends received from such other companies in whose shares the Appellant has invested money in.

However, now I will consider whether, as argued on behalf of the Appellant, whether such dividends received from the investment of shares by the Appellant is exempted from Sections 3(a) and 3(e).

On a further perusal of the IR Act, Section 63 and 65 deals with dividends received by a company or individual to be treated as exempted from statutory income.

On a careful consideration of Section 63, one would understand that the said section has to read subjection to Section 65 as well. Section 65 deals with the taxable income of a resident company, and reads thus;

> *"**(1) Every resident company, other than a unit trust or mutual fund approved by the Securities and Exchange Commission of Sri Lanka, shall deduct from the amount of gross dividend payable to any shareholder, other than—***
>
> > *(a) any company or body of persons which is exempt from income tax under paragraph (a) or paragraph (c) of section 7;*
> >
> > *(b) any unit trust or mutual fund approved by the Securities and Exchange Commission of Sri Lanka;*
> >
> > *(c) the Api Wenuwen Api Fund established by the Api Wenuwen Api Fund Act, No. 6 of 2008;*
> >
> > *(d) any registered society referred to in paragraph (h) of section 7, during the period referred to in that paragraph :*
> >
> > *(e) any person who is exempt from income tax under section 10 in respect of any dividend received by such person as referred to in that section.*

in the form of money or an order to pay money, income tax equal to ten per centum of such gross dividend:

Provided that, in determining for the purposes of this subsection, the amount of gross dividend in relation to any dividend payable by any resident company, no account shall be taken of such part of that dividend, if any, as is paid by any other resident company and received by the first mentioned resident company, either directly or through one or more intermediary companies.

(2) Every person who issues a warrant, cheque or other order drawn or made in payment of any dividend which becomes payable by a resident company during any year of assessment, shall annex thereto a statement in such form as may be specified by the Commissioner-General setting out–

(a) the gross amount which after deduction of income tax thereon, corresponds to the net amount actually paid;

(b) the sum deducted as income tax;

(c) the net amount actually paid;

(d) the composition of the gross dividend indicating separately the amount paid out of—

(i) dividends received;

(ii) other dividends received;

(iii) income exempt from or not chargeable with income tax;

(iv) other profits and income.

(3) Where for any year of assessment the assessable income of a person other than a company includes a dividend from a resident company in the form of shares or debentures, he shall be entitled to deduct from the tax payable by him an amount equal to an amount which the company would have been entitled under subsection (1) to deduct as tax on such dividend, had such dividend been paid in the form of cash.

(4) The excess of the aggregate of the deductions made by any resident company under subsection (1), over the tax payable by such company under sub-paragraph (i) of paragraph (b) of subsection (1) of section 61, shall be remitted to the commissioner-General within a period of thirty days from the date on which the gross dividend referred to in that subsection, is paid." [Emphasis is mine]

According to the provisions of the above section, a resident company on which its income is paid out of dividends, 10% of such dividends has to be deducted from such dividends which is payable to the shareholders. Thus, in the first stage, the company who derives its income from its business is liable to deduct 10% of the dividends that it is liable to pay to the shareholders, and therefore, the deduction of 10% that is part of the income of the shareholders. Once that is deducted, the remaining income of 90% (10% deducted from the 100%) that goes as dividends to another company or individual falls within Section 63 which reads thus;

"63. Where a dividend is paid by any resident company to any resident or non-resident company, and either—

(a) a deduction has been made under section 65 in respect of that dividend by the first mentioned resident company;

(b) that dividend is exempt from income tax under section 10 ;

(c) such dividend consists of any part of the amount of a dividend received by the first-mentioned resident company from another resident company; or

(d) such dividend is a dividend declared by a quoted public company,

profits and income from such dividend shall, notwithstanding anything to the contrary in any other provision of this Act, be deemed not to form part of the total statutory income of the second mentioned company.

For the purpose of this section the profits and income from such dividends which form part of the profits under section 3(a) of this Act, means profits and income after deducting expenses in ascertaining the profits from such business of receiving dividends.*"* [Emphasis is mine]

On a careful consideration of the above two mentioned sections, it is very clear that once the first resident company which deducts the tax from the dividends that is payable by the said company to its shareholders, whether it is a company (resident or non-resident) or an individual, deducts the percentage of tax and sends it to the Income Tax Department as income tax deducted from the said dividends. Thus, at the first stage itself, the dividends is subjected to income tax.

If it is again subject to a similar income tax in terms of Section 3(a) or 3(e), it becomes chargeable again of at least 10%, and then it will become twenty percent (20%) of the chargeable income tax. Therefore, such double charge of income tax is not chargeable because it discourages investment and entrepreneurship and individuals who invest in shares of other companies. Therefore, the successive governments from 1979, as argued by the Appellant, have incorporated similar sections in the Inland Revenue Acts that prevailed at different times such as in 1979 and 2000, as part of liberalised economic policies to encourage investment.

As such, it is my view that such exemption is granted to the shareholders of the first resident company, or individuals or companies who invested in shares, from the dividends to encourage businesses, entrepreneurship, and investments, which is part of the rationale behind a liberalised economy as opposed to a closed economy which prevailed during 1970 to 1977.

The following chart illustrates the similarities and differences;

Section 35 of the Inland Revenue Act, No. 28 of 1979	**Section 58 of the Inland Revenue Act, No. 38 of 2000**	**Section 63 of the Inland Revenue Act, No. 10 of 2006**
"Where a dividend is paid by any resident company to any resident or non-resident company, and either— ... that dividend shall, notwithstanding anything to the contrary in any other provision of this Act, be deemed not to form part of assessable income of the second mentioned company."	*"Where a dividend is paid by any resident company to any resident or non-resident company, and either— ... such dividends shall, notwithstanding anything to the contrary in any other provision of this Act, be deemed not to form part of the assessable income of the second-mentioned company."*	*"Where a dividend is paid by any resident company to any resident or non-resident company, and either— ... profits and income from such dividend shall,* ***notwithstanding anything to the contrary in any other provision of this Act, be deemed not to form part of the total statutory income of the second mentioned company."***

Therefore, the arguments advanced on behalf of the Respondent cannot be accepted because of the double taxation. Similar views were proposed by Justice S.U.B. Karalliyadde in the case of *Colombo Fort Land and Building PLC v. Commissioner General of Inland Revenue*[9], Justice Sasi Mahendran in the case of *Carbotels (Private) Limited v. Commissioner General of Inland Revenue*[10], Justice D.N. Samarakoon in the case of *John Keells Holdings PLC v. Commissioner General of Inland Revenue*[11], and Justice Morais in the case of *Hayleys Advantis Limited v. Commissioner General of Inland Revenue*[12].

[9] CA/TAX/21/2022 (CA Minute 24.10.2024).
[10] CA/TAX/01/2016 (CA Minutes 25.05.2022).
[11] CA/TAX/26/2013 (CA Minutes 16.03.2022).
[12] CA/TAX/04/2023 (CA Minutes 14.05.2026).

The TAC was of the view that the Appellant Company has received the dividends as part of its simple investment pertinent to its business, and its principal business was investment in shares. Therefore, its income derived from dividends which falls within Section 3(a) of the IR Act and not Section 3(e).

Therefore, it is my view that the Members of the Commission have erred in fact and in law in deciding so for the reasons that I have adumbrated above.

Since the questions of law (ii), (iii), and (iv) in the case stated are answered in the affirmative, it is my view that the question Nos. (v) and (vi) will not arise to be answered as this Application of Appellant should succeed on those answers to those questions.

As such, in view of the answers to the questions (ii), (iii), and (iv) in the affirmative in favour of the Appellant, it is my view that the question (i) should be answered in the affirmative. Therefore, question (vii) should also be answered in the affirmative because the Commissioner General has erred in fact and in law when he decided that the time-bar question and the substantive question of statutory income against the Appellant. In those circumstances, question (viii) should also be answered in the affirmative, while questions (v) and (vi) does not arise for my consideration.

Accordingly, I answered the questions based in the case stated as follows;

Question (i) - Affirmative

Question (ii) - Affirmative

Question (iii) - Affirmative

Question (iv) - Affirmative

Question (v) - Does not arise

Question (vi) - Does not arise

Question (vii) - Affirmative

Question (viii) - Affirmative

Conclusion

For the reasons adumbrated above, Appeal is allowed without costs.

JUDGE OF THE COURT OF APPEAL

M.C.B.S. Morais, J.

I agree.

JUDGE OF THE COURT OF APPEAL