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/55/2023

Tax Appeals Commission No.

TAC/VAT/086/2021

Shangri-La Hotels Lanka (Pvt) Ltd.,
Level 05,
No.1A,
Centre Road, Galle Face,
Colombo 02.

Appellant

Vs.

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

Respondent

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

&

Annalingam Premashanker J.

Counsel: Laknath Peiris with Isuri Peiris instructed by Abdeen Associates for the Appellant.

Chaya Sri Nammuni, DSG for the Respondent.

Written Submissions: By the Appellant – on 25.11.2025, 13.02.2026

By the Respondent – on 23.07.2025

Argued on: 16.12.2025

Decided On: **23.07.2026**

JUDGMENT

M.C.B.S. Morais J.

This is an appeal by way of case stated against the determination of the Tax Appeals Commission (TAC) dated 26th of April 2023, in the case of TAC/VAT/086/2021.

This appeal is filed under Section 11A of the Tax Appeals Commission Act No. 23 of 2011 (as amended).

The tax in dispute is against the assessment made for the taxable period 1632 (1st of August 2016 to 31st of August 2016) and the taxable amount in dispute is Rs. 122,779,366.00. with a penalty of Rs. 122,779,366.00.

FACTUAL BACKGROUND

The Shangri-La Hotels Lanka (Pvt) Limited (hereinafter will be referred to as the Appellant) is a limited liability company incorporated and domiciled in Sri Lanka and carrying on development projects. The Appellant has entered into an agreement with the Board of

Investment of Sri Lanka (BOI) to construct and operate a mixed development project inclusive of a luxury hotel, high quality residencies and shopping mall in Colombo. Accordingly, the BOI has identified this project as a strategic development project and has granted tax concessions under section 2 of the Strategic Development Act No. 14 of 2008. Further, in terms of section 3(4) of the Strategic Development Act No. 14 of 2008, the Minister of Economic Development has published an order via gazette to declare the said project as a strategic development project and thereby the project is identified as 'project to construct a luxury hotel as a mixed-use complex including high quality residencies and high-end shopping mall in Fort.'

The Appellant has submitted the return for the above taxable period claiming deduction in terms of the supply of residential apartments constructed by the Appellant. The said claim was rejected by the Assessor by the intimation letter dated 29th of August 2019.

The said letter contains the reasons for the exception not being provided to the Appellant and the final amount to be paid as the Value Added Tax (VAT). However, it has failed to provide the computation of the taxable income. Accordingly, the Assessor has issued assessment without granting those deductions by the Notice of Assessment dated 3rd of September 2019 for the reasons based on the intimation letter.

The Appellant being aggrieved by the decision of the Assessor, made an appeal to the Commissioner General of Inland Revenue (hereinafter will be referred to as the Respondent). The Respondent in his determination dated 12th of October 2021 determined the appeal by upholding the assessment issued by the Assessor. The Appellant being dissatisfied with the said determination of the Respondent, made an appeal to the Tax Appeals Commission (TAC). The TAC after considering the submissions made by both parties, dismissed the appeal by the determination dated 26th of April 2023 and confirmed the determination made by the Respondent.

Being dissatisfied with the said determination, the Appellant has requested the TAC to cause a Case Stated to the Court of Appeal on the following Questions of Law.

I. *" Did the Tax Appeals Commission err in law when it confirmed the assessment of Value Added Tax and penalty, as determined by the Commissioner General of Inland Revenue?*

II. *Did the Tax Appeals Commission err in law when it failed to consider whether the assessment was time barred?*

III. *Is the Determination Tax Appeals Commission contrary to section 33 of Value Added Tax Act, No. 14 of 2002 (as amended) read together with section 2 and section 28 of Value Added Tax Act, No. 14 of 2002 (as amended)?*

IV. *Is the Determination Tax Appeals Commission contrary to section 61 of Value Added Tax Act, No. 14 of 2002 (as amended)?*

V. *Whether Tax Appeals Commission has the jurisdiction to confirm the Assessment under section 9 (10) of Tax Appeals Commission Act, No. 23 of 2011 (as amended)*

VI. *Did the Tax Appeals Commission err in law when it decided that section 16(2)(b) of Value Added Tax Act No.20 of 2016 was not retrospective?*

VII. *In view of the facts and circumstances of the case, did the Tax Appeals Commission err in law when it arrived at the conclusion that it did?"*

The question of law No. II raised by the Appellant is in relation to the time limitation in issuing an assessment under section 33(1) Value Added Tax Act No. 14 of 2002 as amended (VAT Act). Since this matter goes to the root of the case, I shall initially address this question first. If it is answered positively, little purpose is served in addressing the rest of the questions raised by the Appellant.

ANALYSIS

ii) Did the Tax Appeals Commission err in law when it failed to consider whether the assessment was time barred?

It is the contention of the Appellant that the assessment issued by the Deputy Commissioner of Inland Revenue is timed barred.

The Appellant contends that the assessment for the taxable period 1632 was made on 27th of September 2016. Accordingly, the assessment was rejected by the Deputy Commissioner by the intimation letter dated 29th of August 2019 and subsequently the Notice of the Assessment was issued on 3rd of September 2019. On this basis, the Appellant contends that the assessment issued by the Deputy Commissioner is time barred under section 33(1) of the VAT Act.

The Appellant further contends that according to the statutory time limitation under section 33(1) of the VAT Act, the assessor is required by law to make an assessment or an additional assessment before the expiration of the three-year time period from the end of the relevant taxable period. Therefore, it is the position of the Appellant that the taxable period in issue has ended on 31st of August 2016 and hence the statutory time bar shall be engaged on 31st of August 2019. Therefore, the Appellant contends that the assessment issued by the Deputy Commissioner of Inland Revenue is time barred under section 33(1) of the VAT Act.

The section 33(1) of the VAT Act, which deals with the limitation of time for assessment or additional assessment, reads in the following manner;

> *"33. (1) Where any registered person has furnished a return under sub section (1) of section 21 in respect of a taxable period or has been assessed for tax in respect of any period,* ***<u>it shall not be lawful</u> for the Assessor where an assessment*** *– (a) has not been made, to make an assessment; or (b) has been made,* ***to make an additional assessment; <u>after the expiration of three years from the end of the taxable period</u> in respect of which the return is furnished or the assessment was made as the case may be****. "*

According to the above provision of law, where a registered person has furnished a return under section 21(1) or has already been assessed for a taxable period, the Assessor is required to make any assessment or additional assessment within **three years from the end of that taxable period**. Upon the expiry of that period, the Assessor has no authority to issue a fresh assessment or an additional assessment, unless it falls within the exception of fraud under section 33(2) of the VAT Act.

Upon consideration of the facts and circumstances of this case, it is apparent that the relevant taxable period in issue is expired on 31th of August 2019. Consequently, in terms of section 33(1) of the VAT Act, the Assessor was required to make any assessment on or before 31st of August 2019 which is the expiry of the statutory period of limitation.

However, the Respondent contends that the letter of intimation was issued to the Appellant on 29th of August 2019, which is prior to the expiry of the prescribed limitation period. Accordingly, the Respondent submits that the Deputy Commissioner had communicated the decision to the Appellant within the statutory time limit and that the assessment is therefore valid in law.

The Respondent further argues that the making of an assessment and the service of a Notice of Assessment are two separate and distinct statutory acts. It is the Respondent's position that the limitation prescribed under section 33(1) of the VAT Act governs only the making of the assessment and does not extend to the subsequent issuance or service of the Notice of Assessment upon the taxpayer. On that basis, the Respondent maintains that the assessment made by the Commissioner-General was made within the statutory period and is not barred by limitation, and is therefore valid in law.

The Respondent has further relied on allegation of fraud, evasion, or willful default under section 33(2). However, due to the lack of evidence by the Respondent, the TAC has dismissed such claim.

In addressing the question related to the time bar, the TAC in its determination dated 26th of April 2023 has held in the following manner by relying on the cases of *Illukkumbura Industrial Automation (Private) Limited V. Commissioner General of Inland Revenue* CA Tax 05/2016 decided on 29.09.2022 and *Stafford Motor Company (Pvt) Ltd V. Commissioner General of Inland Revenue* CA Tax 17/2017 decided on 15.03.2019;

> *"Therefore, it is quite clear, with regard of the 'time bar in an assessment raised by an Assessor', has to be taken in to consideration only whether the Assessor was able to raise the Assessment prior to the deadline, and not the date of 'Notice of Assessment*

sent to the Appellant. Making an assessment and raising a notice of assessment have been considered as two actions, not as one action.

Further, even though, the above judgements have referred to Section 163 and Section 164 of the IR Act No 10 of 2006, the Section 163 of IRA and VATA Section 33(1) speaks about 'making an assessment' by an Assessor within a given period. Therefore, it has to be taken as similarity process.

Further, the computation of Value Added Tax liability for the taxable period 1632, has been made and intimated to the Appellant with giving reasons by the intimation letter, saying, 'thus, the returns of the Value Added Tax submitted by the Company for the above taxable period have not been accepted due to the reasons mentioned above. 'Further has mentioned that, 'please treat this letter as an intimation issued under Section 29 of the VATA.

Therefore, the Appellant cannot say that he did not receive or he was unaware of the assessment made for the taxable period 1632.

It is also seen as the VATA is silent not only on any prescribed time limit in the issuance of the 'Notice of Assessment', but also of a 'Notice of Assessment. Therefore, it is not lawful to introduce a 'time bar period' on a Notice of Assessment by any person other than the legislature.

Considering the above, this Commission cannot see, any merits on the argument of the Appellant saying 'raising of the notice of assessment' was not made on time and thereof the additional assessment is bad in law. Accordingly, this Commission rejects the said argument and decides that said Assessment is valid in Law."

The reasoning adopted by the TAC proceeds on the basis that the statutory limitation prescribed under section 33(1) of the VAT Act applies only to the Assessor's act of making the assessment and does not extend to the subsequent issuance of the Notice of Assessment. The TAC further held that, as the VAT Act does not prescribe a specific time limit for the issuance of a Notice of Assessment the Court cannot read such a requirement into the statute.

In order to determine the correctness of the TAC determination, it is necessary to examine the statutory framework governing assessments under the VAT Act. In particular, the provisions contained in **Chapter V** of the VAT Act must be construed as a whole, as they collectively prescribe the procedure to be followed by the Assessor in making and communicating an assessment.

The section 29 and 31(1) of the VAT Act under chapter V, mentions the requirement of providing and intimation letter and the Notice of assessment in terms of additional assessment.

> *"29. 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.*
>
> ………………………..
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> *31. (1) Where it appears to an Assessor that a person chargeable with tax has for any taxable period paid as tax an amount less than the proper amount of the tax payable by him for that taxable period, or chargeable from him for that taxable period, the Assessor may, at any time, assess such person at the additional amount at which, according to the judgement of such Assessor, tax ought to have been paid by such person.* ***<u>The Assessor shall give such person notice of the assessment</u>****. "*

The provisions contained under **Chapter V** of the VAT Act is in relation to the statutory scheme governing the assessment of VAT. The provisions of the Chapter are intended to regulate the entire assessment process from the rejection of a return to the issuance of the final assessment.

According to Section 29 of the VAT Act, when a return is furnished by a registered person, the Assessor is empowered to reject the assessment if it amounts of tax is less than the actual tax payable. Thereby, the Assessor is required to communicate the rejection to the taxpayer by issuing a letter of intimation setting out the reasons for the rejection.

Further, section 31(1) requires the Assessor to issue a Notice of Assessment specifying the amount of tax assessed and payable. These provisions are not isolated from one another; instead they form successive stages of a single statutory process.

When reading Chapter V as a whole, it is evident that the issuance of the letter of intimation and the subsequent Notice of Assessment are mandatory procedural requirements prescribed by the Act. Therefore, it can be reasonably construed that the assessment process cannot be regarded as complete merely because the Assessor has internally determined the taxpayer's liability. It is completed only when the taxpayer is informed of the reasons for the rejection of the return and is subsequently notified of the quantified tax liability through the Notice of Assessment.

Accordingly, the limitation period prescribed under section 33(1) of the VAT Act must be interpreted in the context of the statutory procedure set out in Chapter V. In my view, the expression of "assessment" cannot be confined merely to the Assessor's internal determination alone while excluding the statutory steps required to communicate that assessment to the taxpayer. Such an interpretation would undermine the purpose of the Act and render the procedural safeguards contained in sections 29 and 31 ineffective.

Therefore, I am of the view that the limitation period prescribed under section 33(1) of the VAT Act applies to the assessment process in its entirety. Consequently, both the letter of intimation issued under section 29 and the Notice of Assessment issued under section 31 must be communicated to the taxpayer within the prescribed period for the assessment to be regarded as having been made in accordance with the Act.

Therefore, in the present matter, the intimation letter alone could not constitute a valid assessment in the absence of the Notice of Assessment.

Accordingly, this Court is of the view that the TAC arrived at its decision without giving due consideration to the facts and circumstances of the present case. Furthermore, although the TAC relied on previous decisions of this Court, it is important to note that the Supreme Court has since adopted a more comprehensive approach to this issue.

When considering the provisions governing the limitation period for the making of assessments under the Inland Revenue Act No. 10 of 2006 and the Value Added Tax Act No.14 of 2002, it is apparent that both statutes employ substantially similar language and embody the same legislative intention. In both enactments, the Parliament has prescribed a statutory time limit within which the tax authority must make an assessment, thereby ensuring certainty and finality in tax administration.

In those circumstances, the interpretation placed by the Supreme Court upon the corresponding provisions of the Inland Revenue Act is of considerable significance in construing section 33(1) of the Value Added Tax Act. In this regard, the decision in *Fonterra Brands Lanka (Private) Limited v. Commissioner General of Inland Revenue*, being the latest pronouncement of the Supreme Court on the issue, is binding upon this Court. Accordingly, this Court is bound to apply the principles enunciated therein in interpreting the limitation period prescribed under section 33(1) of the Value Added Tax Act.

In the case of ***Fonterra Brands Lanka (Private) Limited V. The Commissioner General of Inland Revenue,*** **SC Appeal 187/2014, decided on 26th September 2025**, His Lordship Thurairaja PC, J. considered the meaning of an "assessment" and the stage at which the assessment process is completed. His Lordship held that an assessment is not confined to the internal act of making the assessment by the Assessor. Rather, the assessment process includes the communication of the reasons for the assessment to the taxpayer through the letter of intimation, followed by the issuance of the Notice of Assessment containing the computation of the tax payable. In that regard, His Lordship has observed:

> *"It may be noted that when the learned Chief Justice said, "[h]is reasons must be communicated at or about the time he sends his assessment on an estimated income", His Lordship referred to the "sending of the notice of assessment", since the internal assessment document, which remains in the possession of the Assessor, is only an "estimate" and is not sent to the taxpayer.* ***Thus, the act of sending the notice of assessment, with the reasons, is what completes the legal process.***

45. This passage highlights two critical principles. First, the giving of reasons is not a mere procedural formality; it is a substantive requirement ensuring that the assessment reflects a genuine, considered decision by the Assessor. ***Second, the timing of the communication is essential; reasons must accompany the notice of assessment at the moment the assessment is sent; failing which, the remedial purpose of the legislation is defeated.***

…………………………

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

In the above case, the court having considered the circumstances of the case in *Illukkumbura Industrial Automation (Private) Limited V. Commissioner General of Inland Revenue* CA Tax 05/2016, has come to the conclusion that the assessment process is completed only when the assessment is communicated to the taxpayer. Accordingly, the making of an assessment and the issuance of the Notice of Assessment are not two separate and independent acts. They form part of a single statutory process by which the taxpayer is informed of the Assessor's decision, the reasons for that decision, and the amount of tax assessed. Further, in the case of *Stafford Motor Company (Pvt) Ltd V. Commissioner General of Inland Revenue* CA Tax 17/2017, this Court, relying on the English decision in *Honig and Others v. Sarsfield (Inspector of Taxes)* (1986) BTC 205, held that the effective date for the commencement of the limitation period for the issuance of an assessment by the Assessor is the date on which the assessment is made**.** However, that position has subsequently been overruled by the Supreme Court in the case of *Fonterra Brands Lanka (Private) Limited V. The Commissioner General of Inland Revenue,* SC Appeal 187/2014.

Furthermore, his lordship has considered that the communication of the assessment to the taxpayer is an essential part of the assessment itself. Accordingly, for an assessment to be regarded as having been made within the period prescribed by law, the internal process of making of the assessment by the Assessor is not sufficient. The assessment must also be communicated to the taxpayer, in the manner required by the Act, before the expiry of the statutory time limit.

This position has also been adopted by E. Gooneratne in his book *'Income Tax in Sri Lanka' (1st edn, Stamford Lake 2001) Pg 393,*

> *"**Making an assessment culminates in the notice on the person assessed. An assessment is made when the assessment is sent."***

The above aspect of law clearly undermines the Respondent's contention that the making of an assessment is completed upon the Assessor's internal process of making an assessment. On the contrary, the above authorities make it clear that an assessment is made only when it is communicated to the taxpayer through the issuance of the Notice of Assessment.

Therefore, I am of the view that the Notice of assessment dated 3rd of September 2019 issued by the Deputy Commissioner is time barred under section 33(1) of the VAT Act. Thereby, the Tax Appeals Commission has erred in law when it failed to consider that the assessment was time barred.

Therefore, I answer the question of law II in the affirmative.

In view of the determination reached in respect of Question of Law II, this Court holds that the notice of assessment and the intimation letter issued by the Deputy Commissioner are null and void and of no effect in law.

In light of the foregoing, the remaining questions of law raised by the Appellant need not be answered.

CONCLUSION

When considering the facts and the circumstances of the case, in line with the materials presented before this court, I am of the considered view that the questions of law formulated by the Appellant should be answered as set out below.

Question of law I – Need not be addressed

Question of law II – Affirmative

Question of law III –Need not be addressed

Question of law IV – Need not be addressed

Question of law V – Need not be addressed

Question of law VI - Need not be addressed

Question of law VII -Need not be addressed

Accordingly, the appeal is allowed.

The determination of the TAC dated 26th of April 2023, determination of the Respondent dated 12th of October 2021 is overturned and the assessment dated 3rd of September 2019 issued by the Deputy Commissioner of the Department of Inland Revenue is annulled.

The Registrar is directed to serve a copy of this judgment to the Secretary of the Tax Appeals Commission for necessary action.

Judge of the Court of Appeal

Annalingam Premashanker J.

I agree

Judge of the Court of Appeal