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 Appeal's Commission Act No. 23 of 2011 (as amended).

Firstsource Dialog Solution
(Private) Limited,
Level 11, Access South Tower,
No. 278/4, Union Place,
Colombo 02.

APPELLANT

Court of Appeal Case No :
CA/TAX/74/24

Tax Appeals Commission
No: TAC/IT/034/2019

Vs.

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

RESPONDENT

Before: **Hon. Justice B. Sasi Mahendran, J.**
Hon. Justice Adithya Patabendige, J

Counsel : Dr. Shivaji Felix, PC with Nivantha Satharasinghe, Sajith Nawaratne and Asoka Obeysekara for the Appellant
Sehan Soysa, S.S.C. for the Respondent.

Written Submissions On : 17.07.2026 (by the Accused-Appellant)
17.07.2026 (by the Respondent)

Argued On: 02.06.2026

Judgment On: 31.07.2026

B. Sasi Mahendran,

The Appellant, First Source Dialog Solutions (Private) Limited, is a limited liability company incorporated in Sri Lanka engaged in business of providing information technology-enabled services to the international and local market. The Appellant entered into an agreement No. 109 attested by Notary Public, S.M. Medagama dated 07th March 2011 with the Board of Investment (hereinafter referred to as the 'BOI') in terms of Section 17 of the Board of Investment of Sri Lanka Act (hereinafter referred to as the "BOI Act").

The Appellant submitted its return of income for the year of assessment 2014/2015 claiming exemption granted to the enterprise under the terms of the agreement entered into with the BOI. The Assessor, by letter dated 20th of December 2016 issued under Section 163 (3) of the Inland Revenue Act No. 10 of 2006 (hereinafter referred to as the 'IR Act'), rejected the Appellant's return of income for the year of assessment 2014/2015, on the ground, *inter alia*, they had violated the clauses of the BOI agreement by that they can't claim the exemption under the said agreement. It is relevant to reproduce the said passage of the BOI.

> *"(3) The Enterprise shall be an entirely new enterprise and shall not involve the **reconstitution** of an existing business. However, transfer of assets shall be permitted subject to the condition that the value of assets transferred shall not be considered as part of the new investment. in this regard the Enterprise shall be required to forward a certified copy from the auditors for the value and the items which are transferred to the new Enterprise." [emphasis added]*

According to the Appellant, the Appellant received the Notice of Assessment dated 03rd March 2017 subsequently. Thereafter, the Appellant appealed to the Commissioner General of Inland Revenue (hereinafter referred to as the 'CGIR') against the said assessment by letter dated 03rd April 2017. The CGIR heard the appeal and confirmed the assessment made by the Assessor by his determination dated 27th March 2019.

The Appellant appealed to the Tax Appeals Commission (hereinafter referred to as the 'TAC') against the determination of the CGIR. The TAC confirmed the determination made by the CGIR and dismissed the appeal by determination dated 14.02.2024. The Appellant aggrieved by the TAC's determination moved to state a case to the Court of Appeal on 10.04.2024. Accordingly, the TAC stated a case to this Court on four questions of law.

The four questions of law in the case stated to the Court of Appeal are as follows;

1. Is the assessment of income tax and penalty as confirmed by the Commissioner General of Inland Revenue excessive, arbitrary, unreasonable and without lawful justification?
2. Is the Appellant, who has entered into a lawfully valid agreement with the Board of Investment of Sri Lanka on 7 March 2011, bearing No 109 attested by S M Medagama of Colombo, Notary Public, lawfully entitled to an income tax exemption for the relevant year of assessment? The Board of Investment of Sri Lanka has also confirmed that the company has met the required criteria specified in the agreement in order to be entitled to the tax concessions referred to in the agreement.
3. Is it correct that the Appellant's business does not comprise a reconstitution of an existing business?
4. In view of the facts and circumstances of the case has the Commissioner General of Inland Revenue erred in law in arriving at the conclusion that he/ she did?

On 2nd June 2026, the hearing of arguments was concluded, and this Court directed both parties to file their written submissions in the form of synopses. Both parties have complied with that direction.

The principal argument advanced by the parties were directed at Question of Law No. 2. Accordingly, I shall proceed to consider and determine Question of Law No. 2 referred to this Court.

> *"2. Appellant, who has entered into a lawfully valid agreement with the Board of Investment of Sri Lanka on 7 March 2011, bearing No 109 attested by S M Medagama of Colombo, Notary Public, lawfully entitled to an income tax exemption for the relevant year of assessment? The Board of Investment of Sri Lanka has also confirmed that the company has met the required criteria specified in the agreement in order to be entitled to the tax concessions referred to in the agreement."*

The question is whether the Appellant is exempt from the payment of tax by virtue of the agreement entered into between the Appellant Company and the BOI. According to the agreement, the Appellant was granted an exemption from the payment of tax for a period of seven years.

At this juncture I am mindful of the Section 17 (1) of the Board of Investment of Sri Lanka Law, No. 4 of 1978, as amended provides as follows;

> *"17 (1) the Commission shall have the power to enter into agreements with any enterprise in or outside the Area of Authority and to* ***grant exemptions from any law referred to in Schedule B hereto, or to modify or vary the application of any such laws,*** *to such enterprises in accordance with such regulations as may be made by the Minister.*
>
> *(2) Every such agreement shall be reduced to writing and shall upon registration with the Commission, constitute a valid and binding contract between the Commission and the enterprise. (emphasis added)"*

The Appellant's contention is that in terms of clause 14 (i) of the agreement with the BOI, the profits and income of the Appellant company are exempt from tax for a period of seven years. The BOI determined the seven-year period to reckon from the year of assessment 2011/2012.

The aforesaid clause has been included in the agreement pursuant to the Regulations made under Section 17 of the BOI Act and published in the Extraordinary Gazette No. 1469/35 dated 2nd November 2006.

The year of assessment relevant to the case at hand is 2014/2015, which falls within the seven-year tax holiday. The Appellant submitted its return of income for the above year of assessment and the Assessor rejected the return in his aforementioned letter dated 20th of December 2016 stating the reasons for rejection.

> *"•Article 03 of the said agreement read thus: "The Enterprise shall be an entirely new enterprise and shall not involve any reconstitution of an existing business."*
>
> *•A clarification obtained by this office from the company revealed that it was engaged in the business of carrying out a call center for Dialog Axiata PLC, a part of the business done by Dialog Axiata PLC itself prior to the forming of this company in the year of 2011.*
>
> *•Further it was noted that Firstsource Dialog Solutions (PVT) Ltd had paid gratuity to employees, whose period of service in both companies (Dialog Axiata PLC and Firstsource Dialog Solutions (PVT) Ltd) when taken together exceeded 05 years."*

Aggrieved by the Assessor's decision, the Appellant appealed to the CGIR, Respondent. In his determination, the Respondent set out the reasons for upholding the Assessor's decision as follows,

> *• After establishment of First Source Dialog Solutions, the call center which was handled by Dialog Axiata Ltd has been transferred to First Source Dialog Solutions Ltd.*
>
> *• Nature of business of First Source Dialog Solutions Ltd is providing IT enable services as a concept of business processing outsourcing (BPO) and 99% of the service of the assesse company had provided to the Dialog group.*
>
> *• It was noted that First Source Dialog Solutions (Pvt) Ltd had paid gratuity to employees whose aggregated period of services in both companies (Dialog Axiate PLC and First Source Dialog Solutions (Pvt) Ltd) exceeded five years.*
>
> *Accordingly, it is clear that the business of First Source Dialog Solutions (Pvt) Ltd) is not a new enterprise and only a reconstitution an existing business. Therefore, they have violated the terms and conditions stated under clause No (3) of the agreement dated 07.03.2011 between BOI and the company.*

Thereafter, the Respondent confirmed the Assessor's determination. Aggrieved by the said determination, the Appellant preferred an appeal to TAC. By its determination dated 14.02.2024, the TAC made the following observations:

(a) The Appellant had failed to make any counter-submissions in respect of the gratuity payment.

(b) The Appellant had paid gratuity to their employees by aggregating their period of service with that rendered at Dialog Axiata PLC, despite the fact that the Appellant company was incorporated only on 06.06.2011.

(c) *Further they have overruled the objection of appellant with regard ti jurisdiction*

The main argument put forward by the appellant was that IRA lacks the jurisdiction to review the scope of a tax exemption granted by the BOI. As reply to the argument the counsel for the respondent made following determinations,

> *"Another argument of the Appellant is that the IRD has no jurisdiction to review the scope of a tax exemption granted by the BOI. However, this argument is not accepted as correct by this Commission as the BOI Law does not supercede the provisions in the IRA. The Commission observes that in addition to the BOI Law, the IRA also has a separate Chapter as Chapter III detailing where exemptions have been granted from income tax to certain persons (other than individuals) on the whole or any part of their profits and income, identified based on priority sectors or categories based on the policy decisions of the government taken from to time. It is also observed by this Commission that there is neither any provision in the IRA nor in the BOI Law, where the authority of the Respondent has been restricted or curtailed on any verification or investigation in respect of any person or any category."*

In addition to the above, I am of the view that the Assessor has arrived at his conclusion upon a careful consideration of the documents submitted by the Appellant. Upon scrutinizing the documents produced by the Appellant and perusing the agreement entered into with Dialog Axiata PLC, the Assessor has concluded that, although the Appellant had established that it was a separate legal entity from Dialog Axiata PLC, in substance, the Appellant continued to provide the same services that were previously carried out by Dialog Axiata PLC.

Further, it was observed that the Appellant had paid gratuity to employees who had previously been employed by Dialog Axiata PLC. This was a significant factor taken into consideration by the Assessor, the CGIR and the TAC in determining the true nature of the Appellant's business and whether it constituted an entirely new enterprise within the meaning of Clause 3 of the BOI Agreement.

This factual position was not disputed by the Appellant at any stage of the proceedings. In terms of Section 2 of the Payment of Gratuity Act, an employee becomes entitled to gratuity upon the completion of not less than five years of continuous service with the employer. The audited financial statements of the Appellant disclose that gratuity had been paid to its employees by taking into account the period of service rendered at Dialog Axiata PLC. This is a significant indication that the employees who had previously served Dialog Axiata PLC continued their employment with the Appellant, thereby demonstrating a continuity of the workforce. It lends considerable support to the finding that the Appellant was not an entirely new enterprise but merely a reconstitution of an existing business.

It should be borne in mind that the tax exemption claimed by the appellant arose solely by virtue of the BOI Agreement. A perusal of the said Agreement reveals that the tax exemption was granted subject to the terms and conditions agreed upon by the parties. By entering into the Agreement, the appellant expressly undertook to comply with those conditions.

In particular, paragraph 3 of the BOI Agreement stipulates that the applicant company shall be an entirely new enterprise and shall not involve the reconstitution of an existing business. Accordingly, the appellant's entitlement to the tax exemption was conditional upon strict compliance with those requirements.

The question that arises is on what basis the appellant paid gratuity to its employees when the company was incorporated only on 6th June 2011.

Consequently, the Appellant failed to satisfy the requirement contained in Clause 3 of the BOI Agreement. Since the tax exemption granted under Clause 14 of the BOI Agreement was expressly made conditional upon compliance with the terms and conditions of the

Agreement, the Appellant was not entitled to claim the exemption for the relevant year of assessment.

Question of Law No 3 is "*Is it correct that the Appellant's business does not comprise a reconstitution of an existing business?*". According to the Appellant company in its written submissions by letter dated 15.06.2016, the Executive Director of BOI informed the Respondent that the Appellant company is a new company and it has fulfilled the relevant requirements as in the BOI agreement to be entered for the tax exemption and issued the tax exemption certificate for the year 2011/2012 and 2013/2014.

The question is whether, if the BOI determined that the Company qualified as a new enterprise and issued the relevant tax exemption certificate, the CGIR, Respondent, was precluded from revisiting that determination. The Appellant submits that, by independently concluding that the Company did not qualify for the exemption and consequently denying the tax exemption, the CGIR effectively substituted his own determination for that of the BOI. Accordingly, the Appellant argues that the impugned assessment is invalid and cannot be sustained in law.

My understanding is that the BOI determines eligibility for investment incentives under the BOI Law and sets some conditions for them to get the tax exemption. The CGIR is entrusted under the Inland Revenue Act with the administration of tax laws and the assessment of tax liability. Therefore, the BOI's certification does not automatically deprive the CGIR of his statutory duty to determine whether the conditions for exemption have been satisfied under the Inland Revenue Act.

The Respondent has set out the reasons for concluding that the Appellant Company does not qualify as a new enterprise but is, in substance, a reconstitution of an existing business. Significantly, this conclusion was reached on the basis of documents submitted by the Appellant itself.

Upon being informed of the Respondent's reasons for refusing to grant the claimed tax exemption, the Appellant bore the burden of rebutting those findings by producing credible evidence to the contrary. However, the Appellant has failed to discharge that burden.

In particular, I note that the gratuity payment records constitute official documents, of which the Respondent was entitled to take cognizance in the course of its assessment. These records support the Respondent's conclusion that the Appellant Company was not

a genuinely new enterprise. Despite having had the opportunity to do so, the Appellant has, to date, failed to adduce any evidence to refute or displace the Respondent's findings. In the absence of such evidence, there is no basis upon which this Court can reject the Respondent's conclusion.

Accordingly, I find that the decisions of the CGIR and the TAC that the Appellant's business constituted a reconstitution of an existing business were correct. The payment of gratuity to the employees, notwithstanding the recent incorporation of the Appellant company, constitutes cogent evidence that the business was a reconstitution of an existing business rather than an entirely new enterprise, as required by Clause 3 of the BOI Agreement.

The remaining three Questions of Law (No 1 and 4) are intrinsically connected with Question of Law No. 2. In view of my findings on Question of Law No. 1, namely that the Appellant is not entitled to the tax exemption claimed, the CGIR has correctly affirmed the decision of the Assessor. Further, Question of Law No. 4 has already been addressed in the course of answering Question of Law No. 2 and, therefore, requires no separate consideration.

For the reasons set out above, this court holds that TAC did not err in law when it arrived at the conclusion when it did. Accordingly, this court answers the questions of law in the case stated for the opinion of this court as follows,

1. *No.*
2. *No.*
3. *No.*
4. *No.*

In light of the answers given to the four questions of law, acting under Section 11A (6) of the Tax Appeal Commission Act No. 23 of 2011, as amended, I affirm the determinations made by the TAC and dismiss this appeal.

The Registrar is directed to send a certified copy of this judgment to the Secretary of the TAC.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Adithya Patabendige, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL