

**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 and 2011 (as amended).*

CA/TAX/09/2021

Tax Appeal Commission No.
TAC/IT/108/2017

South Asian Investment (Private)
Limited,
No. 752/1, Baseline Road,
Colombo 09.

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: 08.10.2026

Judgement

Introduction

The Assessee-Appellant company, is a body corporate incorporated under the laws of Sri Lanka and is capable of suing and being sued in its corporate name, carrying on its main business of investments.

It has tendered its tax return for the year of 2012/2013 on 29.11.2013, and thereafter, the Assessor had not accepted the return; consequently, an assessment was raised.

After receiving the assessment, the Assessee-Appellant submitted an appeal to the Commissioner General of Inland Revenue (hereinafter sometimes referred to as the "Commissioner General" or "CGIR") on 05.01.2016. There is an acknowledgement to the receipt thereof by the Department of Inland Revenue; however, by the determination dated 04.12.2017, which the Assessee claims was posted to it under the covering letter dated 15.12.2017, the CGIR had confirmed the assessment. Thereafter, the Assessee-Appellant asserts that it received reasons for such determination made by the delegation of the Inland Revenue Department, as mandated by Section 7(3) of the Tax Appeals Commission Act, No. 23 of 2011 (as amended), which was posted to it under the covering letter dated 26.01.2018. This also included the statement setting out the reasons for the determination dated 04.12.2017. Being aggrieved by the said determination of the CGIR, the Assessee-Appellant had appealed to the Tax Appeals Commission (TAC) on five questions of law, which are as follows;

- (I) The determination of the CGIR is time barred.
- (II) The assessment has been issued after the expiry of the statutory time bar for making such an assessment.

(III) The assessment, as confirmed by CGIR, is still excessive and without lawful justification.

(IV) The delegate of the CGIR has erred in fact and in law when he regarded the dividend income received by the Appellant as constituting part of the Appellant's total statutory income despite an express statutory provision to the contrary (vide Section 63 of the Inland Revenue Act, No. 10 of 2006 (as amended)). Irrespective of whether the dividend received by the Appellant is treated as business income under Section 3(a) or dividend income under Section 3(e) of the Inland Revenue Act, No. 10 of 2006 (as amended), such dividend is excluded from the total statutory income. Total statutory income is defined in Section 30 of the Inland Revenue Act, No. 10 of 2006 (as amended), as the aggregate of that person's statutory income for that year of assessment from every source of his profits or income in respect of which tax is charged. When the statutory income is aggregated the source of such income/profits does not matter. Section 63 provides that dividends, in the circumstances enumerated, are excluded from the total statutory income of a person. This express statutory provision has been ignored by the delegate of the CGIR.

(V) In view of the fact and circumstances relating to the assessment, the CGIR has erred in law in coming to the conclusion that she did.

However, the TAC had confirmed the determination of the CGIR by its decision dated 02.02.2021 and forwarded the same to the Assessee-Appellant under the covering letter dated 02.02.2021.

Being aggrieved by the said decision of the TAC, the Appellant has made an application by letter dated 15.02.2021, for a case stated, and the TAC has set out the following six Questions of Law for the opinion of this Court;

- (i) Did the TAC err in law when it came to the conclusion that the determination of the CGIR was not time barred?
- (ii) Did the TAC err in law when it came to the conclusion that the assessment was not time barred?
- (iii) Is the assessment and the communication of the imposition of a penalty after the expiry of the statutory time bar for making an assessment lawfully justified?
- (iv) Did the TAC err in law when it came to the conclusion that the assessment, as confirmed by the CGIR, was not excessive and lawfully justified?
- (v) Did the TAC err in law when it regarded the dividend income received by the Appellant as constituting part of the Appellant's total statutory income despite an express statutory provision to the contrary (vide Section 63 of the Inland Revenue Act, No. 10 of 2006 (as amended))?
- (vi) In view of the fact and circumstances of the case did the TAC err in law when it came to the conclusion that it did?

This was argued before my brother Justice Morais and me on 03.06.2026. After making oral submissions, the parties were invited to file their Consolidated Written Submissions; accordingly, the Consolidated Written submissions were filed by the Assessee-Appellant. Hence, this judgement.

The Assessee-Appellant is serious only about Questions (ii) and (iii); accordingly, I will deal with Questions (ii) and (iii), which are on whether the assessment and imposition of the penalty after the expiry of the statutory time-bar for making any assessment, lawfully justified.

Questions (ii) and (iii)

It is argued on behalf of the Assessee-Appellant that the Assessee-Appellant had filed its return for the year 2012/2013 on 29.11.2013.

According to Section 163(5)(a)(i) of the Inland Revenue Act, No. 10 of 2006 (as amended) (hereinafter referred to as the "IR Act"), if there is any assessment to be raised, it has to be raised within two years from the date of the self-assessed return (return where a self-assessment is contained). Accordingly, the last date of the return due is 30.11.2013, and according to the said Section, if there is any assessment to be raised by the Assessor of the CGIR, it must be done before the expiration of two years, namely, 29.11.2015.

Though the notice of assessment is dated 30.11.2015, the Assessee-Appellant asserts that it received the same by registered post on 30.12.2015, which is thirty days out of the timeframe contemplated in Section 163(5)(a)(i).

Now I will consider the effect of Section 163(5)(a)(i), relating to the notice of assessment.

For further clarity, Section 163(5)(a)(i) of the IR Act is reproduced below and reads thus;

163. (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;

However, according to the Written Submissions of the Appellant, it further asserts that though the Respondent alluded to that fact in various communications and submissions, this position is confirmed by the TAC by its decision at pages 159 to 160 of the Brief. Accordingly, it is the Assessee-Appellant's contention that on 29.11.2015, the time period to raise an assessment expired.

On a perusal of the record, I found that the Appellant has relied upon the judgment of the Court of Appeal and its Supreme Court judgement in the case of *D.M.S. Fernando v. Ismail*,¹ where His Lordship Chief Justice Samarakoon had affirmed the same.

In addition to that, the Appellant relied upon *ACL Cables Limited v. Commissioner General of Inland Revenue*,² as well as *John Keells Holdings PLC v. Commissioner General of Inland Revenue*,³ where it is held that the principles laid down in the case of *Honig and Others v. Sarsfield*⁴ does not apply since under the English Law there is a register for the assessee to check whether it has been assessed; however, in our country, there is no such mechanism, and instead, there is a procedure laid down in the Act itself where notice of assessment is required. With the notice of assessment, the entire process of assessment is over, and the assessee should receive such notice within the time stipulated in the Act. This has been the focal point of many previous cases.

Finally, the Appellant also relied upon the case of *Fonterra Brands Lanka (Private) Limited v. Commissioner General of Inland Revenue*,⁵ where His Lordship Justice Thurairaja settled the law, having considered all the relevant previous cases, and was of the view that once the assessment is done and when the assessor or deputy commissioner general first estimates the income, assesses the income, and then if he decides to raise an assessment, he must send a letter of intimation to the assessee. However, the final act of the process of assessment is over once the notice of assessment is sent to the assessee and is received within the time stipulated in Section 163(5) of the IR Act; thus, until then, the act of assessment remains alive.

¹ [1982] 1 Sri L.R. 222.

² CA/TAX/0028/2019 (CA Minutes 31.03.2023).

³ CA/TAX/26/2013 (CA Minutes 16.03.2022).

⁴ [1986] BTC 205.

⁵ SC Appeal No. 187/2014 (SC Minutes 26.09.2025).

Therefore, although His Lordship Justice Wijeratne held in the case of *Illukkumbura Industrial Automation (Pvt) Ltd v. Commissioner General of Inland Revenue*,⁶ that the letter of intimation is sufficient for the assessee to become aware that he has been assessed, if the grounds and the calculation of the tax liability is mentioned in the same; nevertheless, until the notice of assessment is received by the assessee, there is room for adjustments to be made still. Thus, the final notice for the assessee to pay the relevant amount, if there is a penalty so imposed, has to be done according to Section 163(5) of the IR Act. Therefore, it is the view of the Supreme Court in the *Fonterra* case, that the entire course of action is only one action of assessment, though there are several steps at different stages of the assessment process; thus, once the notice is given to the assessee, the process of assessing the assessee is completed.

This Court is bound by this; in fact, in several cases, this Court has also followed the same. Hence, it is my view that the Court of Appeal, being a subordinate court to the Court by which the *Fonterra* principles were handed down, and thus, we are bound by it.

Accordingly, having followed His Lordship Justice Thurairaja in the judgement of *Fonterra*, I wish to state that in this case, the Appellant had received the notice admittedly on 30.12.2015, after 30.11.2015; therefore, the assessment is out of time, and as such, the Appellant is entitled to an answer in his favour for the Question of Law (ii).

Next, I will decide the Question of Law (v), which reads thus;

"Did the TAC err in law when it regarded the dividend income received by the Appellant as constituting part of the Appellant's total statutory income despite an express statutory provision to the contrary (vide Section 63 of the Inland Revenue Act, No. 10 of 2006 (as amended))?"

⁶ CA/TAX/5/2016 (CA Minutes 29.09.2022).

Question (v)

It is the view of the TAC, having examined Sections 3, 25, 26, and 32 of the IR Act, Section 63 of the IR Act applies where a source of income is treated as a separate source of income other than the main source of income of the business; therefore, Section 63 does not have any bearing on the facts of this case. As such, the members of the TAC were of the view that the Assessee-Appellant is liable to pay income tax in terms of Section 3(a) of the IR Act, since the tax exemption accorded in terms of Section 63 does not absolve the Assessee-Appellant of this case.

It is further of the view that the Appellant, being an investment company, has invested in shares; therefore, its main source of income is the dividends received from the other companies it invests in, and as such, the Appellant is liable to pay the income tax as it is a part of its statutory income.

Now I will consider the relevant statutory provisions.

Statutory income is defined in Section 30 of the IR Act, which reads thus;

30. The total statutory income of a person for any year of assessment shall be the aggregate of his statutory income for that year of assessment from every source of his profits or income in respect of which tax is charged.

In addition to that, according to Section 3, a person's income is liable to pay income tax if his income is derived *inter alia* from "the profits from any trade, business, profession or vocation for however short a period carried on or exercised" and "dividends, interest or discounts"; therefore, it appears that Section 3 falls within Section 30 as statutory income. As such, if it is considered and treated as so, as held by the TAC, it is liable to pay the said income tax.

For further clarity, Sections 3(a) and 3(e) of the IR Act 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;

However, there is an exemption made, if the Assessee-Appellant is a company who receives the dividends as its income from any other company in which it has invested had already paid the income tax on the dividends in terms of Section 65 before the dividends was deducted from its income; then, Section 63 of the IR Act applies in such a situation, to the dividend so received.

For further clarity, Section 63 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.

Additionally, Section 65 of the IR Act reads thus;

65. (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]

Accordingly, the said income received as dividend from another resident company on the investment in shares, is so exempted from taxation to avoid double taxation, which I have held in a previous case,⁷ following the judgements of His Lordships Justice Sasi Mahendran,⁸ Justice S.U.B. Karalliyadde,⁹ and Justice Morais.¹⁰ Therefore, it is my view that since the Assessee-Appellant has received its income from the resident company, who has already paid the income tax upon the said dividends; thus, if the Assessee-Appellant is also required to pay the income tax on the dividends received by it on the basis that it falls within Section 3(a) or 3(e), read with Section 30, as its statutory income and main source of income, there will be double taxation, which is not accepted or required by the IR Act to charge or levy on such resident company who receives such dividend from another resident company.

Therefore, in this case, the Assessee-Appellant, a resident company, has invested in shares of another local resident company and consequently received dividends based upon those shares. Prior to the Appellant receiving such dividends, the other local resident company had already deducted the relevant income tax payable on the said dividends.

Suppose the Appellant receives Rs. 100 as income, and 10% has to be deducted in terms of Section 65, as dividend income tax payable by the company in whose shares the Assessee-Appellant had invested; once it is deducted and paid, only the balance 90% is paid to the Assessee-Appellant. Thus, if the Assessee-Appellant is again subjected to income tax on the

⁷ *Hayleys Advantis Limited v. Commissioner General of Inland Revenue* CA/TAX/40/2024 (CA Minutes 31.07.2026).

⁸ *Carbotels (Private) Limited v. Commissioner General of Inland Revenue* CA/TAX/01/2016 (CA Minutes 25.05.2022).

⁹ *Colombo Fort Land and Building PLC v. Commissioner General of Inland Revenue* CA/TAX/21/2022 (CA Minute 24.10.2024).

¹⁰ *Hayleys Advantis Limited v. Commissioner General of Inland Revenue* CA/TAX/04/2023 (CA Minutes 14.05.2026).

basis that it falls within Section 3(a) or 3(e), read with Section 30, without any exemption been awarded to the Assessee-Appellant, it amounts to double taxation. Then again, that 90% income received will be subjected to another 10% dividend income tax. In this scenario, the Assessee-Appellant will only receive 81% of the income actually received by the company in whose shares it invested in.

Therefore, such double taxation is not encouraged by the IR Act, as the essence of the IR Act is to encourage companies to invest in other companies and the share market; without investments, no country's economy can survive, particularly in Sri Lanka, where private investments are encouraged in public or private companies. As such, it is my view that TAC has erred in law when deciding that the income derived from the dividends received from other companies in whose shares the Assessee-Appellant has invested.

Accordingly, the Question of Law (v) is also answered in the affirmative, in favour of the Appellant.

Question of Law (vi) automatically has to be answered in favour of the Appellant.

Based on the answers given in favour of the Appellant by me to the Questions of Law (ii), (iii), (v), and (vi), the Appellant should succeed in this Appeal.

Conclusion

Accordingly, this Appeal is allowed.

Registrar is directed to send a copy of this judgement to the Secretary of the Tax Appeals Commission for necessary action.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL