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

*In the matter of An Application of a case
stated under section 11A of the Tax Appeals
Commission Act No. 23 of 2011 as amended
by Act No. 20 of 2013.*

**THE COMMISSIONER GENERAL OF
INLAND REVENUE,**

Department of Inland Revenue,
Inland Revenue Building,
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 2.

APPELLANT

Case No.: CA/TAX/38/2019
TAC/IT/037/2015

-Vs-

VARNERS LANKA LAW OFFICE,

Level 14, West Tower,
World Trade Center, Echelon Square,
Colombo 01.

RESPONDENT

JUDGEMENT

ANNALINGAM PREMASHANKER, J.

A. INTRODUCTION

A1. APPEAL

This is an appeal by **The Commissioner General of Inland Revenue (Hereinafter sometimes referred to as CGIR/ Appellant)** from the determination of the Tax Appeals Commission dated 30.08.2019 made in TAC appeal no. TAC/IT/037/2015. The Respondent is **VARNERS LANKA LAW OFFICE (Hereinafter sometimes referred to as Taxpayer, The Respondent)**.

A2. REQUEST

The Appellant being dissatisfied with the Determination of Tax Appeal Commission (**Hereinafter sometimes referred to as TAC**) requested for an appeal by a case stated for the opinion of the Court of Appeal by their communication dated 24.09.2019.

B. ARGUMENT

On 03.07.2026, both parties concluded the argument. It is found that the Appellant has furnished written submissions on

21.10.2021. The Respondent has furnished the written submissions on 08.06.2020 and 30.03.2026.

C. ANALYSIS

C1. QUESTIONS OF LAW

In the case stated dated 15.10.2019 following questions were raised for the opinion of the Court of Appeal:-

- 1. Whether Natural Justice Principles have been violated at the Stage of the appeal heard by the Commissioner General of Inland Revenue?**
- 2. Whether the TAC has erred in law that coming into conclusion without considering the substantive issues?**

C2. TAX RETURN

The tax payer submits its income tax return for the taxable periods 2010/2011 and 2011/2012. The claim was rejected by the Assessor and that the Tax Payer was not entitled for exemption under section 13 (ddd) for the relevant taxable periods. The return is not accepted and issued an assessment disallowing some of the exemptions and expenses claimed.

C3. FIRST APPEAL

Having aggrieved by the said Assessments, the tax payer made an appeal to the CGIR. The Tax Payer made the same agitation before the CGIR. CGIR by his determination dated 29.09.2015 determined the appeal by confirming the assessments

C4. SECOND APPEAL

The tax payer having not satisfied with the determination of the CGIR, made an appeal to the TAC. In the appeal before the TAC the tax payer raised the same issues. After hearing the Appeal, the Tax Appeals Commission, by determination dated 30 August 2019, annulled the assessment previously confirmed by the Commissioner General of Inland Revenue and allowed the taxpayer's appeal. Being aggrieved by the aforesaid determination of the Tax Appeals Commission the Appellant, Commissioner General of Inland Revenue, made an application by letter dated 24 September 2019 for a Stated Case, for the opinion of Court of Appeal on the questions of law enumerated therein. In the case stated, the Appellant has submit two issues for the opinion of the Court of Appeal, that is whether the Natural Justice Principles have been violated when the appeal was heard by CGIR and whether the TAC can determine the appeal without considering the substantial issues.

C5. VITAL ISSUE

It is contended by the Respondent that, the two questions **cannot be raised in the case stated for the opinion of the Court of Appeal since they are questions of fact and not questions of law.** The objections relates to the jurisdiction of the Court. It is mandatory duty of the Court to consider the jurisdictional issue of the earliest possible opportunity and clear the jurisdictional defects.

P. Beatrice perera Vs. The commissioner of National Housing and 3 others 77 NLR 361

Kekul Kotuwage Don Aruna Chaminda Vs. Janashakthi General Insurance Limited (SC/Appeal No. 134/2018)

We had the opportunity of hearing the full argument on the merits of the matter. However, as the questions submitted in the case stated for the opinion of the Court, turned as non questions of law, the Court called for written submissions from the parties on the jurisdictional issue. Although both parties tendered its written submissions belatedly, the same did not deal with the jurisdictional issue at all.

C6. SECTION 11 OF TAC ACT

The Section 11 A (6) of the Tax Appeals Commission Act No 23 of 2011 (as amended) is as follows;

“11 A (6) Any two or more Judges of the Court of Appeal may hear and determine any question of law arising on the stated case and may in accordance with the decision of Court upon such question, confirm, reduce, increase or annul the assessment determined by the Commission, or may remit the case to the Commission with the opinion of the Court, thereon. Where a case is so remitted by the Court, the Commission shall revise”

C7. SECTION 170 OF THE IRA No. 10 of 2006

“170 (1) – The decision of the Board shall be final:

Provided that either the Appellant or the Commissioner General may make an application requiring the Board to state a case on a question of

law for the opinion of the Court of Appeal. Such application shall not be entertained unless it is made in writing and delivered to the Secretary to the Board, together with a fee of one thousand and five hundred rupees, within one month of the date on which the decision of the Board was notified in writing to the Commissioner General or the Appellant, as the case may be.

(2)....

(3)....

(4)....

(5)....

(6) Any two or more Judges of the Court of Appeal may hear and determine any question of law arising on the stated case and may in accordance with the decision of Court upon such question, confirm, reduce, increase or annul the assessment determined by the Board, or may remit the case to the Board with the opinion of the

Court, thereon. Where a case is so remitted by the Court, the Board shall revise the assessment in accordance with the opinion of the Court.

(7)....

(8)....

(9)....”

C8. RESTRICTION

Accordingly, the Court of Appeal **may consider and determine any Questions of Law arising on the stated case**, upon which the Court may confirm reduce, increase or annual the assessment. Thus, it is clear that **the Court of Appeal does not in any manner have the jurisdiction to deal with the pure finding of fact of the TAC**. However, wrong analysis of the Question of fact is a Question of Law.

In *Collects Limited Vs. Bank Of Ceylon 2SLR 574*, it has been held that the improper analysis of fact is a Question of Law.

In this case before the Court, we do not have sufficient materials to conclude that the TAC has come to an incorrect finding on this pure question of fact. **Therefore, the questions raised by the Appellant will not amount to questions of law, granting jurisdiction to become triable by this Court.**

C9. PURE QUESTION OF FACT

Question No 1 is in respect of observance of principle of natural justice at the hearing before the CGIR. Question No 2 is in respect of TAC's conclusion on preliminary issue. There is not a point of law involved in the two questions as those were framed. As the questions raised in the case stated are not questions of law and as per Section 11A of the TAC Act and Section 170 (1) proviso and 170 (6) of IRA No. 10 of 2006, this Court has no jurisdiction to try the stated case.

D. CONCLUSION

As analyzed above and as the two questions raised in the case stated are not questions of law, this Court has no jurisdiction to try the stated case_and the same is **REJECTED**.

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

On this 18th day of September 2026

JUDGE OF THE COURT OF APPEAL

M. C. B. S. MORAIS

I agree.

JUDGE OF THE COURT OF APPEAL