
**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/44/2019
TAC/NBT/010/2016

-Vs-

**HEDGES COURT RESIDENCIES
(PRIVATE) LIMITED,**

No. 270, Vauxhall Street,
Colombo 2.

RESPONDENT

Commission dated 31.07.2019 made in TAC appeal no. TAC/NBT/010/2016. The Respondent is **HEDGES COURT RESIDENCIES (PRIVATE) LIMITED (Hereinafter sometimes referred to as The Respondent)**.

A2. REQUEST

The Appellant being dissatisfied with the Determination of Tax Appeals 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 21.08.2019.

B. ARGUMENT

On 19th December 2025, 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. QUESTION OF LAW

In the case stated dated 21.10.2019 following question was raised for the opinion of the Court of Appeal:-

1. Whether the assessments issued on the taxable periods for 1106 and 1109 are time barred, and not valid in law?

C2. TAX RETURN

When the tax payer submitted its return for the quarterly taxable periods ending from 30th June 2011 (1106) and 30th September 2011 (1109), the claim was rejected by the Assessor on the basis that the Tax Payer was not entitled for exemption from NBT Liability for the relevant taxable periods. The return is not accepted and issued an assessment.

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 21.07.2016 determined the appeal by confirming the assessments.

C4. SECOND APPEAL

The tax payer being dissatisfied 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. TAC by its determination dated 10.03.2022, upheld the decision of the Inland Revenue

Department and dismissed the appeal subject to the qualification that the tax liability on the assessments issued in respect of the taxable periods, ending June 2011 and September 2011 should be excluded as the assessments were time barred. Thereafter, the CGIR being dissatisfied with the said determination of the TAC requested TAC by his communication dated 21.04.2022 to have a case stated for the opinion of the Court of Appeal.

C5. NATION BUILDING TAX

The substantial dispute relates to the non-deductibility of the Nation Building Tax by the Tax Payer. The Assessor rejected the nil returns of the Respondent submitted for the taxable quarterly periods of 30th June 2009 (0906) to 31st March 2012 (1203). By the letter dated 12.11.2013, the Assessor informed the Tax Payer that although it had submitted nil returns on the basis that they are not liable for NBT tax, that they were in fact liable under section 2 of the NBT Act as they were carrying out a business and issued assessments. These assessments were later confirmed by the Commissioner General by his Determination.

C6. APPLICATION OF INLAND REVENUE ACT

Section 8 of the Nation Building Act No 9 of 2009 (Hereinafter sometimes referred to as the NBT Act) is as follows:

“The provisions in sections 106, 107, 108 and 112 of Chapter XII relating to Returns etc,

Chapter XXII relating to Assessments,

Chapter XXIII relating to Appeals,

Chapter XXIV relating to Finality of Assessments and Penalty for Incorrect Returns,

Chapter XXV relating to Tax in Default and Sums Added Thereto,

Chapter XXVI relating to Recovery of Tax,

Chapter XXVII relating to Miscellaneous,

Chapter XXIX relating to Penalties and Offences, Section 209 of Chapter XXX relating to Administration (and)

Chapter XXXI on General matters,

of the Inland Revenue Act, shall mutatis mutandis apply to the furnishing of returns, assessments, appeal against assessments, finality of assessments and penalty for incorrect returns, tax in default and sums added thereto, recovery of tax, miscellaneous, penalties and offences, administration and general matters under this Act subject to the following modifications:—

(a) every reference to the year of assessment in any such provision of the Inland Revenue Act, shall be deemed to be a reference to the “relevant quarter” in this Act;

(b) every reference to assessable income or taxable income in any such provision of the Inland Revenue Act, shall be deemed to be a reference to the “liable turnover” in this Act; and

(c) every reference to income tax in any such provision of the Inland Revenue Act, shall be deemed to be a reference to the tax charged and levied in terms of the provisions of this Act.”

C7. TIME BAR

Section 8 of the NBT Act states that the time bar provisions of the Inland Revenue Act shall apply for NBT subject to the changes made therein with regard to the taxable period and the taxable amount to be read as liable turnover instead of income. Therefore Section 163(5) of the Inland Revenue Act No 10 of 2006 states that when a person submits his return before the 30th of November in the year succeeding the year of assessment, the assessment if any should be made within 2 years after the end of that year of assessment. However, the

section states that if the return has been filed late, the assessment has only to be made within 4 years from the 30th of November of the succeeding year.

C8. TWO ASSESSMENTS

Being aggrieved by the said assessments, the Tax Payer appealed to the Tax Appeals Commission (TAC), which affirmed the assessments made. Although the TAC held in favour of the Appellant, it held that two of the assessments for June 2011 and September 2011 were time barred as both the Intimation letter and the Notice were sent beyond the time bar period.

Period of Assessment	Date of Notice of Assessment	Date of Receipt of Notice of Assessment
09060	27 June 2014	3 July 2014
09090	27 June 2014	3 July 2014
09120	27 June 2014	3 July 2014
10030	27 June 2014	3 July 2014
10060	27 June 2014	3 July 2014
10090	27 June 2014	3 July 2014
10120	27 June 2014	3 July 2014
11030	27 June 2014	3 July 2014
11060	27 June 2014	3 July 2014
11090	27 June 2014	3 July 2014
11120	27 June 2014	3 July 2014
12030	27 June 2014	3 July 2014

C9. SECTION 163 (5) OF THE INLAND REVENUE ACT

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; 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: and

(b) who has failed to make a return on or before such date as referred to in paragraph (a), shall be made after the expiry of a period of four years from the thirtieth day of

November of the immediately succeeding year of assessment:

Provided, that nothing in this subsection shall apply to the assessment of income tax payable by any person in respect of any year of assessment, consequent to-

(i) the receipt by such person of any arrears relating to the profits from employment of that person for that year of assessment;

(ii) any adjustment made in line with the adoption of the Sri Lanka Financial Reporting Standards for the year of assessment in which such adoption was made; or

Provided further that, where in the opinion of the Assessor or Assistant Commissioner, any fraud, evasion or willful default has been committed by or on behalf of, any person in relation to any income tax payable by such person for any year of assessment, it shall be lawful for the Assessor or Assistant Commissioner to make an assessment or an additional assessment on such person at any time after the end of that year of assessment.

C10. PROCEDURE

Section 163 states that it is the assessment that has to be made within the time bar, and that the assessor needs to communicate the reasons for the rejection of the return. Thus it is clear that a return cannot be rejected before the assessor gives his mind to the return and makes a computation as to whether the amounts stated as taxable are accurate or not. If it is not, the assessor needs to calculate and estimate the amount of tax that has in fact to be legally paid by the tax payer, and then only can he send the reasons rejecting the return and stating the amount of tax to be paid. Thus, the assessment has been made and is reflected in the Letter of Intimation sent rejecting the return.

Further, it is clear upon a reading of section 164, that the Notice of Assessment, which is to be sent and which includes the calculation of the tax and the penalty, can be sent later as long as the assessment is made within the time bar stipulated in the Act.

C11. ANNULLED ASSESSMENTS

The Tax Appeals Commission, by its determination dated 31 July 2019, forwarded under covering letter dated 6 August 2019, allowed the appeals in respect of

the period 09060 bearing assessment No 7186237,
the period 09090 bearing assessment No. 7186238,
the period 11060 bearing assessment No. 7186245 and
the period 11090 bearing assessment No 7186246 and
confirmed the other eight assessments.

Being aggrieved by the aforesaid determination relating to two of the periods of assessment where the assessment was annulled by the Tax Appeals Commission, the Appellant, Commissioner General of Inland Revenue, appealed to this Court by way of a Stated Case under and in terms of section 11A of the Tax Appeals Commission Act, No 23 of 2011.

C12. ASSESSMENT NO FORCE

In each of the two disputed assessments, where the preliminary objection relating to the time bar for making an assessment is engaged, the notice of assessment has been generated and has also been served on the taxpayer after the expiry of the time bar.

The Tax Appeals Commission, has come to the conclusion that both the notice of assessment and the letter of intimation have been prepared after the expiry of the statutory time bar for

doing so. Therefore, the assessment is of no force or avail in law.

C13. CONCLUSION

The Tax Appeals Commission, at its determination states as follows:

However, in respect of the taxable periods, ending June 2011 and September 2011, both the intimation letter and assessments have been made after the statutory time bar period. Therefore, we are of the view that the Assessments issued in respect of the taxable periods ending June 2011 and September 2011 are not valid in law.

In view of the fact that the assessment has been generated and the notice of assessment has been served after the expiry of the statutory time bar for doing so the assessment is of no force or avail in law and the Tax Appeals Commission was right in arriving at the conclusion that it did.

C14. CASE REFERENCE 1

In ***Wijewardene v Kathirgamar, (1991) IV Sri Lanka Tax Cases 3/3***, the Court of Appeal held that ***“the notice of assessment must be sent at or about the time the***

assessments were made. However, where a date for the making of an assessment is prescribed by law the relevant notice of assessment must be served on the taxpayer within the statutorily prescribed period for making an assessment. No valid assessment can be made without serving it on the taxpayer and an unserved assessment is no assessment in law. Consequently, the assessment process is complete only when notice of same is served on the taxpayer”

C15. CASE REFERENCE 2

In the Court of Appeal the case is referred to as ***A M Ismail v Commissioner General of Inland Revenue, (1980) IV Sri Lanka Tax Cases 156***. Victor Perera J refers to the time period involved in sending a notice of assessment, at p. 182, of his judgment. Perera J stated as follows:

It is necessary that the respondents should realise that the specific duties imposed on them as these provisions have been repeated in the Inland Revenue Act, No 28 of 1979, which is the Law now in operation in the year commencing Is April, 1978, so that the Inland Revenue

Department could recover the tax found to be due from tax payers with expenditure as provided in this law without jeopardizing the rights of the State to collect the revenue due to it. The law gives an Assessor a period of 3 years to examine and investigate a return while an assessee keeps on paying the tax installment on the specified dates.

In regard to the date of the notice of assessment, it was conceded that the relevant date is the date of posting as a notice sent by post shall be deemed to have been served on the day succeeding the day on which it would have been received in the ordinary course of business. In this case the notice was admittedly posted on 21st April, 1979, long after the effective date referred to in section 96 (C) (3), namely 31st March 1979. In this case it cannot be considered a valid notice under section 96 (C)(3) or even a valid notice under section 95 as there has been an absolute noncompliance with the mandatory provisions of section 93 (2) even if the assessment was made on 30.03.1979.

C16. FONTERRA BRANDS CASE

This position was confirmed by the Supreme Court in ***Fonterra Brands Lanka (Private) Limited v The Commissioner General, Department of Inland Revenue, et al***, SC Appeal 187/2014 (CA Writ Application No 663/2010). The Supreme Court delivering the judgment of His Lordship Justice S Thurairaja PC J indicated that the act of making an assessment is only complete when the taxpayer is both assessed and required to pay. The assessment cannot be made without the taxpayer knowing about it. This decision relates to income tax under and in terms of the Inland Revenue Act, No 38 of 2000 (as amended). The same principle would apply to the Inland Revenue Act, No 10 of 2006 (as amended).

The following important aspects of the judgment of His Lordship Justice S Thurairaja PC J states as follows:

The Respondent's position is that the time limit prescribed by Section 134(5) for an assessment applies only to the internal" act of making the assessment and not the external act of giving a notice of that assessment. It is their contention that the Act intentionally separates these two steps and provides a time limit only for the first.

Therefore, as long as the tax authority completes the internal "assessment" within the statutory period, it is free to send the notice to the taxpayer at any time thereafter. The Appellant contends this to be an artificial distinction, and that under our law an assessment is not complete, nor binding, until it is notified to the taxpayer within the statutory period.

If this notion were to be accepted, it would mean that under the Inland Revenue Act, No 38 of 2000, the Assessor is only required to make the internal computation within the stipulated three years, while being free to indefinitely delay the issuance of the Notice of Assessment.

But this is not the scheme of the 2000 Act. Section 134 (1) specifically provides that an Assessor may "assess the amountand shall by notice in writing require such person to pay forthwith." The use of the word "shall" makes it clear that the duty to compute tax liability and the duty to issue notice are inseparably linked. The section treats them as a single statutory act, not as two independent steps.

More importantly, section 134 (1) is expressly made "subject to the provisions of subsection (3) and (5)." Section (5) imposes a strict limitation:

134 "(5) Subject to the provisions of section 67 no assessment shall be made, of the income tax payable under this Act for any year of assessment by any person who has made a return of his income,

a) on or before the thirtieth day of November of the year of assessment immediately succeeding that year of assessment, after the expiry of three years from the end of that year of assessment:

b) after the thirtieth days of November but on or before the thirty first day of March, after the expiry of six years from the end of that year of assessment."

Read together, these provisions establish that both the computation and the notice must occur within the statutory time bar.

One must appreciate that the law's requirement for timely and proper notification of tax

assessments if not just a formality; it protects the trust between the State and its citizens. Taxes must be fair and not imposed arbitrarily, so that the rights and security of taxpayers are respected. This idea, that power should be balanced with fairness, is one that has guided just governance for centuries.

C17. SERVICE OF ASSESSMENTS

In each relevant disputed assessment, it is the Respondent's position that no lawfully valid assessment can be made without serving a valid notice of assessment. Serving a notice of assessment is a necessary precondition that must be satisfied to confer validity on the assessment. The notice of assessment must be served on the taxpayer prior to the expiry of the time bar.

Section 194 (2) of the Inland Revenue Act, No 10 of 2006 (as amended), provides as follows:

194 (2) Every notice given by virtue of this Act may be served on a person either personally or by being delivered at, or sent by post to, his last known place of abode or any place at

which he is, or was during the year to which the notice relates, carrying on business: Provided that a notice of assessment under section 163 shall be served personally or by registered letter sent through the post to any such place as aforesaid.

Section 194 (3) of the Inland Revenue Act, No 10 of 2006 (as amended), provides as follows:

194 (3) Any notice sent by post shall be deemed to have been served on the day succeeding the day on which it would have been received in the ordinary course by post.

Item 3 of the Assessing Instructions issued by the Commissioner General of Inland Revenue, bearing reference No SEC 2010/04, dated 22 March 2010, provides as follows;

Time bar/ Validity of assessments

Representations were made that there are instances where significant delays are occurred between the date of assessment and the date of serving the assessment to the taxpayer. Further, there have been instances where the

notice of assessment has been dated after the lapse of time bar (for making the respective assessments).

Ensure that under normal circumstances, no assessment is made after the lapse of the time bar period (stipulated under respective enactments).

Further, after making an assessment, every effort should be made to deliver (by registered post) the notice of assessment thereof within a few days from the date of making such assessment.

In any case, the respective notice of assessment should reach the assessee not later than 10 working days (after the date of the notice of assessment).

D. ANSWER TO THE QUESTION OF LAW

For the reasons adumbrated above, the question of law is answered as follows:

Q.N.1. Yes

E. CONCLUSION

As analyzed above and as the one question of law raised in the case stated is answered in affirmative, the determination of the TAC dated 31. 07. 2019 is affirmed, the appeal is dismissed.

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

On this 18th day of June 2026

JUDGE OF THE COURT OF APPEAL

M. C. B. S. MORAIS

I agree.

JUDGE OF THE COURT OF APPEAL