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

In the matter of a case stated for the opinion of the Court of Appeal under Section 141(1) of the Inland Revenue Act No. 38 of 2000 read together with Section 36(1) of the Value Added Tax Act No.14 of 2002.

CA Case No: CA/TAX/01/2010

Board of Review of the Department of Inland Revenue Appeal No.BRA/VAT-06

Hatton National Bank PLC,
No. 479,
T.B. Jayah Mawatha,
Colombo 10.

Appellant

Vs.

The Commissioner - General of Inland Revenue,
14th Floor, Secretarial Branch,
Department of Inland Revenue
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

Respondent

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

&

Annalingam Premashanker J.

Counsel: N.R. Sivendran and P. Bavanthy instructed by Sarasi Dissanayake for the Appellant.

Chaya Sri Nammuni, DSG for the Respondent.

Written Submissions: By the Appellant – on 20.05.2022, 06.09.2022, 27.04.2026

By the Respondent – on 06.04.2022, 09.12.2022, 04.05.2026

Argued on: 22.09.2025 By way of written submissions

Decided On: **30.07.2026**

ORDER

M.C.B.S. Morais J.

This is an appeal by way of case stated against the determination of the Board of Review dated 16th of June 2009 in the case of BRA/VAT/06.

This appeal is filed under and in terms of section 141(1) of the Inland Revenue Act No.38 of 2000 as amended (hereinafter will be referred to as the IRA 2000), read together with section 36(1) of the Value Added Tax Act No.14 of 2002 (hereinafter will be referred to as the VAT Act).

The tax in dispute is related to the taxable period 1st of January 2003 to 31st of December 2003 and the taxable amount in dispute is Rs. 136,091,686.00.

According to the argument dated 22nd of September 2025, the parties have agreed that the questions of law No.4 (b)(c) and (d) which was set out in the order of this court dated 3rd of June 2022, to be tried as the preliminary questions of law.

Accordingly, the questions of law to be determined as the preliminary questions of law are set out below;

> *"4. Has the Board of Review failed to consider that the notice of assessment dated 12.08.2004 being charge No. VAT/FS/06/0312/06 is erroneous, invalid and bad in law in that:*
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> *(b) as it is one (a single) notice of assessment issued for the whole of the calendar year 2003 and as a separate assessment has not been made for each taxable periods in the calendar year 2003 and a separate notice of assessment has not been issued for each of the taxable periods (taxable period is a calendar month as specified in section 25B of the Value Added Tax Act, No. 14 of 2002 (as amended), in the calendar year 2003, as required in terms of section 28 and section 31 of the Value Added Tax Act, No. 14 of 2002 (as amended) and/or*
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> *(c) as the reasons have not been given separately for each of the taxable periods for not accepting the Returns furnished for each of the taxable periods (taxable period is a calendar month as specified in section 25B of the Value Added Tax Act, No. 14 of 2002 (as amended), in the year 2003, and thus, contravenes the mandatory requirement of section 29 of the Value Added Tax Act, No. 14 of 2002 (as amended); and/or;*
>
> *(d) as the letter of intimation dated 12.08.2004 does not satisfy the mandatory requirement as found in section 29 of the Value Added Tax Act, No. 14 of 2002 (as amended), which mandates the Assessor to give reasons for not accepting a Return furnished."*

ANALYSIS

It is the contention of the Appellant that the Notice of Assessment dated 12th of August 2004 is invalid and bad in law since the Assessor has issued a single notice of assessment for the whole of the calendar year and failed to provide reasons for rejecting the returns for each of the monthly VAT returns that the Appellant has submitted. Thereby, the Appellant contends that the notice of assessment is bad in law for the above three reasons as set out in the questions of law No. 4(b),(c) and (d).

The question of law No. No.4(b) is in relation to the issuance of a single assessment referring to more than one taxable period. Therefore, I shall deal with it separately. The question of law No.4(c) and (d) are in relation to the reasons for the rejection of the return furnished by the Appellant. Hence, I shall deal with these two questions together in the following manner.

Power of the Assessor to issue a Single Assessment for multiple taxable returns.

It is the contention of the Appellant that, in terms of section 25B of the VAT Act, the taxable period is one month, and that there is no provision under the VAT Act empowering the Assessor to issue an assessment in respect of more than one taxable period. Accordingly, the Appellant contends that an assessment covering more than one taxable period is invalid in law.

The Respondent, however, contends that the Assessor is empowered under section 33(2) of the VAT Act to issue a notice of assessment in respect of more than one taxable period. Accordingly, the Respondent submits that the notice of assessment issued in the present case is valid in law.

Section 28(1) of the VAT Act, which deals with the power of the Assessor to make an assessment, provides as follows:

> *"the Assessor or Assistant Commissioner shall assess the amount of the tax, which such person, in the judgment of the Assessor or Assistant Commissioner, ought to have paid for that taxable period and shall, by notice in writing or by electronic means, require such person to pay such amount forthwith. The amount so assessed in respect of any person for a taxable period shall be deemed to be the amount of the tax payable by him for that taxable period.*
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> *For the purpose of this section the notice given under this section may refer to one or more taxable periods."*

Further, the section 33(2) of the VAT Act which deals with the Limitation of time for assessment or additional assessment, reads as follows in the later part;

> *"For the purposes of this Chapter any notice of assessment may refer to one or more taxable periods. "*

A plain reading of Chapter V of the VAT Act, which deals with the assessment of tax, makes it evident that the Assessor is expressly empowered to issue a notice of assessment in respect of one or more taxable periods.

While section 28(1) of the VAT Act confers the power to make an assessment and expressly provides that a notice of assessment may refer to one or more taxable periods. Section 33(2) of the VAT Act reiterates the same position in the context of the limitation period for assessments. Accordingly, the VAT Act has expressly permitted the Assessor to issue a single notice of assessment covering multiple taxable periods.

Further, it should also be noted that there exist a discrepancy between the aggregate turnover disclosed in the monthly VAT returns and the audited financial statements furnished, which cannot be denied by the Appellant. In such circumstances, it would be unreasonable to expect the Assessor to identify the particular monthly return in which the discrepancy first arose, as the audited financial statements are prepared and submitted on an annual basis. However, it is best known to the taxpayer where the discrepancy has arisen.

In the present case, the discrepancy is related to the taxable period as a whole rather than to any particular monthly return. Accordingly, the Assessor was justified in issuing a single notice of assessment addressing the discrepancy for the relevant taxable period, instead of splitting it among the individual monthly returns.

This interpretation is supported by the decision in ***People's Leasing and Finance PLC V. The Commissioner General of Inland Revenue*** **CA/TAX/0021/2019 decided on 20.07.2021** by His Lordship Dr. Ruwan Fernando, J., where the Court held:

> *"[42] I do not think that it would be necessary to produce a separate piece of paper showing a separate and distinct assessment for each taxable period where the assessor cannot split up and determine the income for each taxable period due to failure of the taxpayer to disclose all the material facts necessary to determine the amount of tax for each taxable period.*
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> *[43] The assessor is entitled in case where it is impossible and impracticable to determine and split the assessment up into several taxable periods and calculating the amount due on each period separately, to issue one notice of assessment aggregating several taxable periods, (be it 1, 6 or 12 months) and calculate one total amount of tax due for that particular single taxable period.*
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> *……………………………..*
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> *[54] Can the Appellant be prejudiced? No prejudice will be suffered by the Appellant when the assessor makes a single global assessment for a period which aggregates a number of taxable periods based on the annual adjustment submitted by the Appellant and where it is impossible for the assessor to make an assessment for each taxable period separately.*
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> *[55] Under such circumstances, I hold that subject to the limitation period, the assessor was justified, to the best of his judgment, in issuing one assessment comprising nine taxable periods from 01.04.2010 to 31.12.2010 and the second assessment, comprising three taxable periods from 01.01.2011 to 31.03.2011, without calculating the amount of tax due for each taxable period separately. "*

When considering the express provisions of sections 28(1) and 33(2) of the VAT Act, together with the above judicial authority, I am of the view that the Assessor is empowered by law to issue a single notice of assessment referring to one or more taxable periods. Accordingly, the contention of the Appellant that an assessment covering more than one taxable period is invalid in law cannot be accepted.

Therefore, I answer the question of law No. 4(b) in the negative.

Having reached the above conclusion, now I shall address the second aspect of the questions of law No. 4 raised by the Appellant. The Questions of Law Nos. 4(c) and 4(d) relate to the same issue and, therefore, I shall consider them together.

Non- Compliance with Section 29 of the VAT Act

It is the contention of the Appellant that the Assessor has failed to provide separate reasons for rejecting the returns furnished by the Appellant in respect of each taxable period. Accordingly, the Appellant submits that the Assessor has failed to comply with the requirements of section 29 of the VAT Act.

The Respondent, on the other hand, contends that, since the Act expressly permits the Assessor to issue a notice of assessment covering one or more taxable periods, there is no legal requirement to provide separate reasons for each taxable period where the basis for rejecting the returns is common to all such periods. The Respondent submits that, where the same ground applies to multiple taxable periods, the Assessor is entitled to provide a single common reason applicable to all those periods.

The Respondent further contends that the purpose of section 29 is to ensure that the taxpayer is informed of the basis upon which the returns have been rejected, thereby enabling the taxpayer to understand the assessment and, if aggrieved, to exercise the right of appeal. In the present case, the Respondent submits that the reasons set out by the Assessor were sufficient to inform the Appellant of the basis upon which the returns were rejected.

The section 29 of the VAT Act which requires the Assessor to state reasons for not accepting a return, reads as follows;

> *"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."***

A plain reading of section 29 makes it clear that, where the Assessor does not accept a return furnished by a taxpayer and proceeds to make an assessment or an additional assessment, the Assessor is under a statutory duty to communicate the reasons for rejecting that return. The purpose of this requirement is not merely to inform the taxpayer that the return has been rejected, but to disclose the basis upon which the Assessor has reached that conclusion.

Accordingly, I am of the view that the reasons communicated by the Assessor must adequately explain the basis upon which the return has been rejected and the assessment has been made. Such reasons should be sufficiently clear and intelligible to enable the taxpayer to understand the rationale underlying the assessment and, where the taxpayer is aggrieved by the decision, to effectively exercise the statutory right of appeal.

Upon a careful consideration of the intimation letter dated 11th of August 2004, it can be seen that the Senior Assessor has clearly stated the reasons for rejecting the returns furnished by the Appellant. The intimation letter also sets out the basis upon which the revised VAT liability was determined and specifies the quantum of tax payable.

Further, the 'Annexure I' to the intimation letter demonstrates that the monthly VAT returns furnished by the Appellant for the period from January 2003 to December 2003 were duly considered by the Assessor. It is evident from the said Annexure that the final VAT liability was determined on the basis of the audited financial statements furnished by the Appellant.

The importance of providing the reasons can also be seen in the case of ***D.M.S. Fernando and Another V. Mohideen Ismail (1982)*** **1 SLR 242** where His Lordship Sharvananda J. has held in the following manner;

> *"An obligation has now been cast on the Assessor to communicate to the taxpayer in writing the reasons for not accepting the return made by him. The object of this Amendment appears to be to make a taxpayer who has, according to him, made a correct return and is therefore reasonably entitled to expect his return to be accepted, aware,* ***if the Assessor does not accept his return, of the reasons for the non-acceptance of his return so as to enable him to demonstrate the untenability of the said reasons at the hearing of any appeal that may be preferred by him against the assessment.*** *The return referred to is the return required by section 82 of the Inland Revenue Act. Under the Amendment,* ***what the taxpayer should be informed of are only the reasons in writing for non-acceptance of his return, but not the ground or basis of the estimate of the assessable income made by the Assessor****."*

The above position makes it clear that the purpose of requiring the Assessor to communicate reasons is to ensure that the taxpayer is informed of the basis upon which the return has been rejected, thereby enabling the taxpayer to effectively exercise the statutory right of appeal. The statutory obligation is to communicate the reasons for rejecting the return and it does not extend to providing a detailed explanation of the methodology adopted in arriving at the assessment.

Accordingly, I am of the view that section 29 of the VAT Act does not require the Assessor to provide separate reasons in respect of each taxable period where the assessment is founded upon the same factual and legal basis.

Where a common basis exists for rejecting the returns relating to several taxable periods, the communication of common reasons is sufficient, provided that those reasons are clear, intelligible, and adequate to enable the taxpayer to understand the basis of the assessment and to challenge it, if necessary, by way of appeal.

In the present case, the reasons communicated by the Senior Assessor, read together with Annexure I to the intimation letter, adequately explains why the returns were rejected and how the revised VAT liability was determined. Therefore, it can be considered that the reasons provided by the Assessor is sufficient enough for the Appellant to understand the basis on which the returns were rejected. Furthermore, the Appellant has failed to establish that it suffered any prejudice as a result of the Assessor communicating the reasons for the rejection of the monthly VAT returns through a single intimation letter containing common grounds applicable to all the relevant taxable periods, as opposed to issuing separate reasons for each taxable period.

For the foregoing reasons, I am satisfied that the Assessor has duly complied with the requirements of section 29 of the VAT Act. Accordingly, I find no merit in the Appellant's contention that the assessment is invalid for want of separate reasons in respect of each taxable period.

Therefore, I answer the questions of law No. 4(c) and 4(d) in the negative.

Since the questions of law No. 4(b), 4(c) and 4(d) is answered in the negative, this court is of the view that the notice of assessment dated 12th of August 2004 is valid in law. Accordingly, the determination of the Board of Review in relation to Question of Law No. 4 is hereby affirmed.

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 preliminary questions of law formulated by the Appellant should be answered as set out below.

Question of law IV(b) – Negative

Question of law IV(c)– Negative

Question of law IV(d) – Negative

The matter is fixed for argument on the rest of the questions of law.

Judge of the Court of Appeal

Annalingam Premashanker J.

I agree

Judge of the Court of Appeal