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 of 2011 (as amended).

CA Case No: CA/TAX/19/2023

Tax Appeals Commission No.

TAC/IT/032/2018

Amana Takaful PLC,
No.98, Bauddhaloka Mawatha,
Colombo 04.

Appellant

Vs.

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

Respondent

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

&

Annalingam Premashanker J.

Counsel:	Dr. Shivaji Felix, PC with Nivantha Satharasinghe, Sajith Nawaratne and Asoka Obeysekera instructed by Abdeen Associates for the Appellant.
	Chaya Sri Nammuni, DSG with A. Jayakody, SC for the Respondent.
Written Submissions:	By the Appellant – on 17.11.2025, 12.01.2024
	By the Respondent – on 12.01.2024
Argued on:	17.09.2025
Decided On:	**10.09.2026**

JUDGMENT

M.C.B.S. Morais J.

This is an appeal by way of case stated against the determination of the Tax Appeals Commission (TAC) dated 28th of November 2022, in the case of TAC/IT/032/2018.

This appeal is filed under Section 11A(1) of the Tax Appeals Commission Act No. 23 of 2011 (as amended).

The tax in dispute is against the assessment made for the taxable period 2012/2013 and the disputed income in issue is Rs. 45,552,100.00.

FACTUAL BACKGROUND

The Amana Takaful PLC (hereinafter will be referred to as the Appellant) is a Public limited liability company incorporated and domiciled in Sri Lanka. The principal business activity of the Appellant is engaging in the family (life) insurance and General Takaful Insurance business. The Appellant's parent undertaking is Amana investments Limited.

The Appellant has submitted the return for the taxable period 2012/2013 claiming certain deduction, which was rejected by the Commissioner, Bank and Financial Services unit of the Department of Inland Revenue (hereinafter sometimes will be referred to as the Assessor) by the intimation letter dated 13th of November 2015. Accordingly, the Assessor has issued the Notice of Assessment dated 30th of November 2015 for the reasons set out in the intimation letter.

The Appellant being aggrieved by the decision of the Assessor, made an appeal to the Commissioner General of Inland Revenue (hereinafter will be referred to as the Respondent). The Respondent in his determination dated 9th of January 2018 determined the appeal by upholding the assessment issued by the Assessor. The Appellant being dissatisfied with the said determination of the Respondent, made an appeal to the Tax Appeals Commission (TAC) on the basis that the assessment issued by the Senior Deputy Commissioner of the Department of Inland Revenue is time barred. The TAC after considering the submissions made by both parties made the determination dated 28th of November 2022 in favor of the Respondent.

Being dissatisfied with the said determination, the Appellant has requested the TAC to cause a Case Stated to the Court of Appeal on the following Questions of Law.

I. *" Is the determination of the CGIR is time barred under an in terms of Section 165(14) of the Inland Revenue Act, No. 10 of 2006 (as amended)?*

II. *In any event, is the assessment time barred by operation of law under and in terms of section 163 (5) of the Inland Revenue Act, No. 10 of 2006 (as amended)?*

III. *Is the computation of the profit from the life insurance business, as determined by the Commissioner General of Inland Revenue, incorrect, excessive, arbitrary and unreasonable?*

IV. *Has the respondent erred in fact an in law when determining the permissible management expenses within the contemplation of Section 92 (1) of the Inland Revenue Act, No. 10 of 2006 (as amended)?*

V. *Is the computation of the carried forward loss for the life insurance business incorrect? The losses brought forward from the life insurance business is Rs. 242,500,924/- and not Rs. 37,687,791/-as stated by the Assistant Commissioner and confirmed by the Commissioner General of Inland Revenue?*

VI. *Is the losses carried forward from the general insurance business amounting to a sum of Rs. 556,309,727/- and not Rs. 416,302,322/-as stated by the Assistant Commissioner and confirmed by the Commissioner General of Inland Revenue?*

VII. *In view of the facts and circumstances of the case did the Tax Appeals Commission err in law when it arrived at the conclusion that it did?"*

ANALYSIS

The Question of law No. I raised by the Appellant is in relation to the time limitation for the determination made by the Respondent. However, according to the Written Submission dated 17th of November 2025, the Appellant has informed this court that the question of law No. I shall not be pursued. Therefore, the rest of the questions shall be taken into account by this court.

The Question of law No. II is in relation to the time limitation in issuing an assessment under the Inland Revenue Act No. 10 of 2006 as amended (IRA 2006) by the Assessor. Since this matter goes to the root of the case, I shall initially address this question first. If it is answered in the Affirmative, little purpose is served in addressing the other questions of law raised by the Appellant.

Question of law No. II

II. *In any event, is the assessment time barred by operation of law under and in terms of section 163 (5) of the Inland Revenue Act, No. 10 of 2006 (as amended)?*

It is the contention of the Appellant that the assessment for the taxable year 2012/2013 was made by the Respondent on 30th of November 2013 and it was rejected by the Assessor. The reasons for the said rejection have been communicated to the Appellant by the intimation letter dated 13th of November 2015. Subsequently, the Notice of assessment dated 30th of November 2015 was issued to the Appellant, which is claimed to have been received thereafter. Therefore, it is the Appellant's position that the Assessment issued by the Assessor is time barred under section 163(5) of the IRA 2006.

However, it is the Respondent's position that the said intimation letter is dated 13th of November 2015 and the Notice of Assessment dated 30th of November 2015 are made well before the two year time period prescribed by law. The Respondent further contends that the two year time period under section 163 of the IRA 2006 is only applicable to the 'making of the assessment' and not applicable for the subsequent 'notice of assessment' issued to the tax payer.

The TAC in agreement with the arguments made by the Respondent has held in the following manner in the determination dated 28th of November 2022.

"The Appellant takes up the position that it is the notice of assessment which gives validity to the assessment and that the failure to send a notice of assessment within the statutorily contemplated period would result in the assessment being devoid of legal effect.

In this regard the Appellant seeks to distinguish between the Fox LJ's findings in Honig vs. Sarsfield, (1986) STC 246, at p 249, in which it is stated that;

"In my view the result of these provisions is that the court is not concerned here with the question of the date when the notices were served. The court is concerned with a totally different question, namely: when were the assessments made? The giving of notice has nothing to do with the making of a valid and effective assessment. The statute clearly distinguishes between the assessment and notice of it and contains no provision which makes the validity of the assessment in any way conditional on the notice."

The Appellant invites our attention to the cases Fernando Vs. Ismail, (1982) IV Sri Lankan Tax Cases 184, A.M. Ismail Vs. Commissioner General of Inland Revenue, (1980) IV Sri Lanka Tax Cases 156, Seylan Bank Vs. Commissioner General of Inland Revenue, CA (tax) 23/2013 decided on 25.05.2015.

However, <u>I am of the view that making an assessment and issuing of notice of assessment are two different functions although they are intrinsically linked to each other.</u>

Therefore, I determine that the only time bar that is applicable to an assessment is contained in Section 163 (5) of the Inland Revenue Act, No. 10 of 2006 (as amended) and that it is independent to the notice of assessment sent as per Section 164 of the Inland Revenue Act, No. 10 of 2006 (as amended).

For these reasons, with regard to the 2nd ground of Appeal of the Appellant, I am of the view that the assessment made by the Respondent on 30.11.2015 is within time and conforms to the requirements stipulated under Section 163 (5) of the Inland Revenue Act, *No. 10 of 2006 (as amended) even though the notice of assessment under Section 164 of the Act was only received by the Appellants on 21.12.2015."*

The TAC having decided that the 'making of an assessment' and 'notice of assessment' are two distinct facts, has determined in the above manner.

According to the time limitation stipulated under section 163(5) of IRA 2006, for a tax return made prior to 1st of April 2013, the Assessor is required to issue the assessment within two years from 30th day of November of the immediately succeeding year of Assessment. Therefore, when considering the facts of the case, the Assessor is required by law to issue the assessment on or before 30th of November 2015.

The section 163(5) of the IRA 2006, which deals with the time limitation for the assessment issued by the Assessor reads in the following manner;

"(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, <u>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;</u> 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:"

When considering the time limits mentioned above, the Assessor is required by law to furnish the intimation letter and the Notice of Assessment on or before 30th of November 2015. However, it is the contention of the Appellant that the said notice of assessment is received by the Appellant on 21st of December 2015, which is well after two years of time required by law. However, there is no evidence presented before this court, to prove such stance by the Appellant.

Nevertheless, when analyzing the time frame of the events it can be reasonably construed that the notice of assessment is received by the Appellant after 30th of November 2015.

The Notice of assessment issued by the Respondent is dated 30th of November 2015. Therefore, this court takes the view that the assessment is printed on the date of 30th of November 2015. Accordingly, the said Notice of assessment has to be communicated to the taxpayer, by hand or in registered post.

Since the materials presented before this court has failed to establish the date when the Notice of assessment has been received by the Appellant, it is significant to consider the section 194 of the IRA 2006, which deals with 'Signature and service of notices'. Accordingly, section 194 reads as follows;

> *"194.*
>
> *(1) Every notice to be given by the Commissioner- General, a Deputy Commissioner, or an Assessor or Assistant Commissioner under this Act, shall bear the name of the Commissioner-General or Commissioner or Assessor or Assistant Commissioner, as the case may be, and every such notice shall be valid if the name of the Commissioner-General, Deputy Commissioner, or Assessor or Assistant Commissioner is duly printed or signed thereon.*
>
> *(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.

(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.

(4) In proving service by post, it shall be sufficient to prove that the letter containing the notice was duly addressed and posted."

According to section 194 of IRA 2006, the notice has to be issued in subsequent to the reasons set out in the letter of intimation for rejecting the tax returns. The fact that the notice of assessment has been sent to the Appellant by way of post is not contested by either parties. Therefore, this court considers that the Notice of assessment dated 30th of November 2015 has been issued to the Appellant by way of post. Moreover, in determining the time line for the notices sent to the Appellant, section 194(3) of the IRA 2006 has to be taken into account.

According to section 194(3) of the IRA 2006, the notice sent by way of post shall be deemed to have been received on the day succeeding the day on which it would have been received in ordinary course of post. Therefore, even if the notice of assessment would have been posted on the same date on which it was generated, namely 30th of November 2015, the earliest date on which the Appellant could have received it would have been two days thereafter. This is on the assumption that delivery through the ordinary course of post would have taken only one day. Accordingly, the notice of assessment can only be received by the Appellant on 02nd of December 2015, which is well after the time period required by law.

Moreover, the Respondent has failed to establish by way of any material evidence before this court if the notice of assessment has been sent to the Appellant by any other means. Therefore, this court is of the view that the notice of assessment is received by the Appellant after the two year time period prescribed by law under section 163(5) of IRA 2006.

Further, proviso to section 194(2) emphasizes that the notice of assessment shall be sent through the post or by person in line with section 163 of IRA 2006. This clearly illustrates that the time limit mentioned under section 163(5) shall be applicable to both the letter of intimation and the subsequent 'notice of assessment' issued by the Assessor. Therefore, the contention of the Respondent and the TAC that the "making of an assessment" and the "notice of assessment" constitute two distinct matters cannot be accepted.

Furthermore, it is a settled principle that the assessment process includes both the issuance of the intimation letter, setting out the reasons for rejecting the taxpayer's self-assessment, and the subsequent issuance of the Notice of Assessment. These steps form part of the same statutory process of assessment as a whole and should not be considered separately. The Assessor is required to duly communicate the decision and the basis of the assessment to the taxpayer within the prescribed statutory framework, so that the taxpayer is able to understand the grounds upon which the assessment has been made and, where necessary, exercise the statutory rights available under the law.

A holistic approach in relation to the above aspect has been taken by His Lordship Thurairaja PC, J. in the case of ***Fonterra Brands Lanka (Private) Limited V. The Commissioner General of Inland Revenue***, SC Appeal 187/2014, decided on 26th September 2025. His Lordship having considered the previous judgments in the case of ***D.M.S. Fernando and Another V. Mohideen Ismail*** [1982] 1 Sri LR 222, has disagreed the approach taken by applying the same principles of the English case ***Honig and Others (administrators of Emmanuel Honig) V. Sarsfield (H M Inspector of Taxes)*** [1985] STC31(Ch D) and decided otherwise. Accordingly, His Lordship held that the process of assessment include the communication of the reasons for rejection of the assessment by the letter of intimation and the subsequent issuance of the Notice of Assessment containing the computation of the tax payable by the tax payer.

> *"25. Therefore, I am of the view that the act of assessment is only complete when the taxpayer is both assessed and required to pay. To import the reasoning of Honig into the*

Sri Lankan context would therefore be to disregard the words and structure of our own legislation.

...

41. ...

Gratiaen J.'s use of the term was plainly descriptive of that process of communication. In my view, it does not for a moment suggest that a so-called "letter of intimation" or any informal communication could be treated as a "notice of assessment" within the meaning of the Act. ***In my view, only a notice of assessment issued in the manner prescribed by law can complete the act of assessment.***

42. In D.M.S. Fernando and Another v. Mohideen Ismail, the majority opinion of the five-judge bench, led by Samarakoon, C.J., makes it clear that the notice of assessment, including the mandatory reasons, must be communicated to the taxpayer within the statutory deadline for the assessment to be valid. The internal act of preparing an assessment alone is insufficient to satisfy the legal requirement.

...

43. It may be noted that when the learned Chief Justice said, "[h]is reasons must be communicated at or about the time he sends his assessment on an estimated income", His Lordship referred to the "sending of the notice of assessment", since the internal assessment document, which remains in the possession of the Assessor, is only an "estimate" and is not sent to the taxpayer. Thus, the act of sending the notice of assessment, with the reasons, is what completes the legal process.

61. .....

In this modern context, there is no justification for outdated formalistic distinctions that once excused delay or uncertainty. Technology now makes it possible to act with precision, speed, and transparency, yet ***taxpayers are still entitled to prompt and clear communication of their obligations.*** *It is evident in this instance that not every possible effort has been taken to ensure assessments are issued in a timely manner, and one is compelled to observe that the seriousness of promptly communicating assessments to* *taxpayers has not been fully appreciated by a Department that is fully capacitated to do so, given the e-Services and digital platforms it has adopted.*

85. This principle strikes at the very root of the Respondents' contention that once an internal computation is made, the Notice of Assessment can lawfully be served at any later time. If such an argument were to prevail, the Assessor could, long after the statutory deadline of 31st March 2008, generate or even backdate a document and present it as an "assessment," thereby reducing the time bar in Section 134(5) of the2000 Act to a hollow formality. The law cannot permit taxpayers to be held in such perpetual suspense."

It was held in the above case, that the intimation letter issued by the Assessor and the subsequent notice of assessment containing the quantum of the tax payable by the tax payer are important aspects of assessment and the notice of assessment need to be communicated to the taxpayer within the time limit. Accordingly, it was established that the "making of an assessment" and the issuance of the "Notice of Assessment" are not separate acts. Further, the issuance of the Notice of Assessment constitute part and parcel of the single assessment process.

Therefore, I am of the view that the Notice of Assessment dated 30th of November 2015 which has been posted and received by the Appellant subsequently, is time barred under section 163(5) of the IRA 2006, on the basis that that the Assessor has failed to communicate the assessment to the tax payer within the two years of time period as required by the law.

Therefore, I answer the Question of law No. II in the Affirmative.

In view of the conclusion reached in respect of Question of Law No. II, this Court holds that the TAC has erred in law in determining that the assessment issued by the Assessor is not time barred. Therefore, the determination of the TAC dated 28th of November 2022 shall be set aside.

In light of the foregoing conclusion reached in the Question of Law No. II, I am of the view that the remaining Questions of law raised by the Appellant will not arise and need not be answered as the assessment dated 30th of November 2015 is set aside and the self assessment would prevail.

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

Question of law I – Not Pursued

Question of law II – Affirmative

Question of law III – Need not be answered

Question of law IV – Need not be answered

Question of law V – Need not be answered

Question of law VI – Need not be answered

Question of law VII – Need not be answered

This appeal is allowed.

Accordingly, the determination of the TAC dated 28th of November 2022, and the determination of the Respondent dated 9th of January 2018 are hereby set aside and the assessment dated 30th of November 2015 issued by the Assistant Commissioner of the Department of Inland Revenue is null and void.

The Registrar is directed to issue a copy of this judgment to the Secretary of the Tax Appeals Commission for necessary actions.

Judge of the Court of Appeal

Annalingam Premashanker J.

I agree

Judge of the Court of Appeal