

**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 No. CA/TAX/24/2019
Tax Appeals Commission
No. TAC/IT/0021/2015

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

APPELLANT

Vs.

Ceylon Cold Stores PLC,
Vauxhall Street,
Colombo 02.

RESPONDENT

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

Dr. D. F. H. Gunawardhana, J.

Counsel:

Pulina Jayasuriya, S.C., for the Appellant.

Dr. Shivaji Felix, P.C., with Nivantha Satharasighe, Sajith Nawaratne and Asoka Obesekere for the Respondents.

Supported on: 02.04.2026

Order delivered on: 18.09.2026

Order

Introduction

The Appellant is the Commissioner General of Inland Revenue (CGIR), whilst the Respondent (Assessee) is Ceylon Cold Stores PLC. This Appeal relates to the assessments for the taxable periods of 2009/2010.

The Assessee-Respondent submitted its tax returns on 29.11.2010. Thereafter, the Assessor raised assessments without accepting the said return. Thereafter, the Assessee-Respondent appealed to the CGIR, who, by his determination communicated on 11.11.2014, affirmed the said assessments.

Being aggrieved by the said determination, the Assessee-Respondent lodged an appeal before the Tax Appeals Commission (hereinafter referred to as the “TAC”) on 10.04.2015.

The Assessee-Respondent appealed to the TAC on the following questions;

- I. Whether the assessment made by the Assessor for the year of assessment 2009/2010 is time-barred in terms of Section 163(5) of the Inland Revenue Act, No. 22 of 2012?
- II. Whether the assessment is invalid by reason of non-compliance with Section 194(2) of the Inland Revenue Act, in that the notice of assessment was not served by registered post?
- III. Whether the sum of Rs. 60,105,422/- (Sixty Million One Hundred Five Thousand Four Hundred and Twenty-Two Rupees), representing forfeited deposits of distributors in respect of bottles not returned, is of a capital nature or a revenue nature?

By its decision dated 14.05.2019, the TAC overturned the decisions of the Assessor and the Commissioner General.

The Tax Appeal Commission determined against the Appellant and in favour of Ceylon Cold Stores PLC on the Question (III), while Questions (I) and (II) were determined against the Assessee.

Thereafter, the Appellant Commissioner General, being dissatisfied with the said determination, caused a Case Stated to be filed, and the following questions were raised for determination of this Court;

- (i) Whether the Tax Appeals Commission erred in determining that the cessation of the glass bottles and crates used for the business activities of the Appellant company which have been claimed allowance for depreciation as not a disposal pursuant to the Section 25(7)(d) of the Inland Revenue Act, No. 10 of 2006 (as amended)?
- (ii) Whether the TAC has erred in determining the amount recovered from the forfeited deposits of distributors for the bottles not returned is capital nature receipt?
- (iii) Whether the assessment made by the Assessor is time barred and if so, whether the appeal ought to be dismissed?

Arguments

Although several questions have been raised for our consideration by the Tax Appeals Commission, the parties agreed to determine Question (iii), which is the issue relating to the time bar applicable to the assessment, as a preliminary issue.

For further clarity, Question (iii) is reproduced below and reads thus;

"Whether the assessment made by the Assessor is time barred and if so, whether the appeal ought to be dismissed?"

It was argued on behalf of the Appellant, by Mr. Jayasuriya, S.C., that the assessment and the notice of assessment are not time-barred, according to the facts of the case. It is his submission

that it is undisputed fact that the Assessee-Respondent submitted its return on 29.11.2010; however, the Assessor did not accept the return, and the letter of intimation was sent on 08.02.2011, pending the notice of assessment which was sent on 12.10.2012.

As such, Mr. Jayasuriya argued that the assessment is made in three stages:

- a. Accepting the return, and where the return is not accepted, estimating the amount of assessable income;
- b. Assessing the taxpayer accordingly;
- c. Issuance of the notice of assessment.

Further, Mr. Jayasuriya's argument is that once a letter of intimation is issued setting out the reasons for not accepting the return, it is sufficient for the taxpayer to make an appeal. Therefore, the notice of assessment is merely administrative in nature when compared with the letter of intimation.

Therefore, it is argued that the letter of intimation is sufficient, and Counsel heavily relies upon the decisions in *Stafford Motor Company (Pvt) Ltd v. Commissioner General of Inland Revenue*,¹ *Lalan Rubber (Pvt) Ltd v. Commissioner General of Inland Revenue*,² *CEI Plastics (Pvt) Ltd. v. Commissioner General of Inland Revenue*,³ and *Richard Pieris Rubber Compounds Ltd v. Commissioner General of Inland Revenue*.⁴

¹ CA/TAX/0017/2017 (CA Minutes 15.03.2019).

² CA/TAX/0005/2017 (CA Minutes 04.09.2018).

³ CA/TAX/0003/2013 (CA Minutes 01.02.2019).

⁴ CA/TAX/0015/2017 (CA Minutes 01.04.2021).

However, he distinguishes the case of *Seylan Bank PLC v. Commissioner General of Inland Revenue*⁵ from the other authorities and submits that the principles laid down in the said case do not apply to the facts of the present case.

He argued that the Tax Appeals Commission has gone on the basis that, since the amendment brought to the Inland Revenue Act in 2011, Section 163(5) was amended, and thereby the period of assessment was extended from eighteen months to two years. Therefore, he argued that the notice of assessment is within the prescribed period; as such, the Assessee-Respondent cannot be heard to say that the notice of assessment is time-barred, despite the fact that the decision in the *Seylan Bank* case was brought to the notice of the TAC; since the *Seylan Bank* case was pending in the Supreme Court and there was no finality, it was the view of the TAC that they were bound by the Court of Appeal judgment in the *Seylan Bank* case. As such, it was held that, on the said question of time bar, the notice of assessment against the Assessee-Respondent was well within the prescribed time.

However, on the other hand, it was argued before us for and on behalf of the Assessee-Respondent that the notice of assessment given on behalf of the 1st Respondent was time-barred, since it was dated 12.10.2012 and received by the Appellant on 06.12.2012.

In addition to that, it is common ground that the letter of intimation was also received by the Assessee on 08.02.2012, but the notice of assessment was given several months thereafter, on 12.10.2012, and received by the Appellant only on 06.12.2012. Therefore, it is time-barred.

⁵ CA/TAX/0023/2013 (CA Minutes 25.05.2015) overruled by the Supreme Court in Application No. 46/2016 (SC Minutes 16.12.2021).

It is also further argued that Act No. 22 of 2011 is not with retrospective in effect. It has been introduced particularly in respect of Section 163, and the two-year period was introduced only with prospective effect.

In reply, it was argued by Mr. Jayasuriya before us that the *Seylan Bank* Supreme Court judgment does not apply and has no application here, since the letter of intimation was well within eighteen months (18).

Now I will consider all the arguments.

It is common ground that the return was filed by the Assessee-Respondent on 29.11.2010 for the assessment year 2009/2010.

The letter of intimation was also received by the Assessee-Respondent on 08.02.2012, with the reasons thereof, and the notice of assessment was dated 12.10.2012 and received on 06.12.2012, and clearly not within eighteen months. The original Section 163(5) of the Inland Revenue Act 2006 stood when the return was filed (due date is 30.11.2010), 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 September of the year of assessment** immediately succeeding that year of assessment, shall be made after the **expiry of eighteen months** from the end of that 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 **three years** from the end of that 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 the receipt by such person of any arrears relating to the profit from employment of that person for that year of assessment:

Provided further that, where in the opinion of the Assessor, any fraud, evasion or wilful 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.

Therefore, the assessment must be made on or before 31.05.2012.

However, Section 163 was amended by Act No. 10 of 2006 and by Act No. 22 of 2011. Accordingly, Section 163(5) after Act No. 10 of 2006 was amended by the Inland Revenue (Amendment) Act No. 19 of 2009, 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, shall be made after the **expiry of two years** from the end of that 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 end of that 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 the receipt by such person of any arrears relating to the profit from employment of that person for that year of assessment:

Provided further that, where in the opinion of the Assessor, any fraud, evasion or wilful 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.

Therefore, it is very clear that Section 163(5) has been amended and provides that if there is any assessment after a return is submitted, it has to be done within two years, which according to the original section, should have been done within eighteen months, which applies to the case in hand.

In addition to that, it was further amended by Act No. 22 of 2011, which 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-

*(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 the receipt

by such person of any arrears relating to the profit from employment of that person for that year of assessment:

Provided further that, where in the opinion of the Assessor, any fraud, evasion or wilful 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.

In addition to the amendment effected to the Clause (a) of Section 163(5) which now extends the time to the end of the succeeding year, Clause (b) is also amended, and extended the late submission period to four years.

The above provision of Section 163(5) stands amended, and provides that the assessment should be done within two years from 30th November of the immediately succeeding year of assessment; in addition to that, it is also amended that late submission of the return should be made within four years, whereas the original section only stipulated that it should have been done within three years.

In those circumstances, Mr. Jayasuriya's argument is that once the Section stands amended when the assessment was raised, it can be done within two years, and not necessarily be limited to eighteen months, as the original section stands.

However, on the other hand, Dr. Felix, P.C.'s argument is that the amendment came into effect in 2011, and the return was submitted 29.11.2010. Therefore, an amendment to the Act introduced and promulgated in 2011 cannot be operative retrospectively to an assessment submitted long prior to the promulgation of the said amendment.

In that background, he relies heavily on the provisions of the Amending Act No. 22 of 2011 which was brought into operation by amending Section 56 with retrospective effect, which reads thus;

56. The amendments made to the principal enactment by the provisions of this Act, shall be deemed for all purposes to have come into force on April 1, 2011:

Provided that: -

(i) the amendments made to section 7 of the principal enactment by subsection (2) of section 3 of this Act, shall be deemed for all purposes to have come into force on April 1, 2008;

(ii) the amendment made to sections 20, 21, and 21A of the principal enactment by section 10, section 11 and section 12 respectively of this Act, shall be deemed for all purposes to have come into force on April 1, 2009.

Therefore, it should be noted that no provision is made to bring the provisions amended by the Amending Act No. 22 of 2011, introduced to amend Section 163(5) with retrospective effect.

Thus, it is my view that the argument advanced by Dr. Felix should prevail, since no similar provisions was introduced by Amending Act No. 22 of 2011, for Section 163(5) to be operative retrospectively, similar to that of Section 56. As such, it is my view that the time period within which, if there is any assessment to be raised by the Assessor, it has to be done within eighteen months from the due date of submission of return, namely, 30.11.2010.

The application of the above amendment, whether retrospectively or prospectively, was considered in the light of the fact that the said amendment was brought to substantive law and procedural law by His Lordship Justice Jayawardene in the *Seylan Bank* case. Since Section 56

was substantive law, the application thereof was effected to be retrospective, whereas Section 163(5) is procedural law, the Legislature made it to be effective prospectively. Therefore, Mr. Jayasuriya's argument should fail.

For further clarity, I reproduce the relevant section of the said Supreme Court judgement of the *Seylan Bank*, where His Lordship Justice Priyantha Jayawardene held thus;

Accordingly, the amendments referred to in section 27(1) to (5) of the amending Act are given a retrospective effect from the date specified therein, in terms of Article 75 of the Constitution.

On the other hand, the amendments that are not referred to in section 27(1) to (5) of the amending Act operate with prospective effect from the 1st April, 2009, in terms of section 27(6) of the amending Act.

It is pertinent to note that the amendments made to section 106(1) and 163(5)(a) of the principal Act are not referred to in section 27(1) to (5) of the amending Act.

Further, although there is a general distinction between substantive law and procedural law, section 27(6) of the amending Act does not distinguish between the amendments made to the substantive law and procedural law of the principal Act.

Thus, in the absence of any reference to a segregation between the two branches of law in the said section, it is not possible to read words into the said section by a judicial interpretation, and segregate the amendments made to the substantive law and procedural law of the principal Act.

In the circumstances, I am of the view that section 27(6) of the amending Act was intended to give prospective effect to both the amendments made to the substantive law

and procedural law of the principal Act, other than those expressly referred to in section 27(1) to (5) of the amending Act.

Therefore, although the amendments made to sections 106(1) and 163(5)(a) of the principal Act are procedural in nature, the express provision in section 27(6) of the amending Act excludes the applicability of the general presumption that procedural laws be given retrospective effect.

Hence, the amendments made to both sections 106(1) and 163(5)(a) of the principal Act will operate with prospective effect from the 1st of April, 2009, in terms of section 27(6) of the amending Act (at pages 15 – 16).

Now I will consider the other part of the argument, where at least the letter of intimation was well within the time (of eighteen months from 30.11.2010), mainly before 31.05.2012. Therefore, though the notice of assessment was given after eighteen months, the letter of appointment is also sufficient proof of intimating the Assessee that he is going to be assessed as the assessment is performed in three stages.

For that purpose, I have to first consider the relevant statutory provisions, as stipulated in Section 163(1) of the IR Act, which reads thus;

163. (1) Where any person who in the opinion of an Assessor or Assistant Commissioner is liable to any income tax for any year of assessment, has not paid such tax or has paid an amount less than the proper amount which he ought to have paid as such tax for such year of assessment, an Assessor Assistant Commissioner may, subject to the provisions of subsection (3) and (5) and after the fifteenth day of November immediately succeeding that year of assessment, assess the amount which in the judgment of the Assessor Assistant Commissioner ought to have been paid by

such person, and shall by notice in writing require such person to pay forthwith–

[Emphasis is mine]

Therefore, it is very clear that the opinion formed by the Assessor or the Assistant Commissioner to raise an assessment in respect of a return submitted for any financial year, such notice must be given in writing, and should be done subject to subsection (3) and (5), where it they deal with the intimation of the reasons for not accepting the return and the time limit within which it must be done, respectively. As such, it is my view that, although it is argued by Mr. Jayasuriya that it is done in three stages, it is actually one process, culminating in giving notice of assessment.

Therefore, Mr. Jayasuriya's argument that the assessment and notice of assessment are given in three stages cannot be accepted. The same moot point has been the focal point in the case of *Fonterra Brands Lanka (Private) Limited v. Commissioner General of Inland Revenue*,⁶ where it is His Lordship Justice Thurairaja's view that the notice of assessment and the letter of intimation, although given as two stages, constitute one process, and unless and until the notice of assessment is officially given, the Assessee is not certain whether he is assessed or not properly. Therefore, the final act which completes the entire act of assessing is the notice of assessment.

Though it is performed in several stages, namely, firstly, ascertaining the income and estimating the income; secondly, assessing the Assessee; and thirdly, the notice of intimation is given with the reasons for assessment, and thereafter the notice of assessment is given, after, as argued by counsel for the Respondent, feeding the same into the computer with the necessary

⁶ SC Appeal No. 187/2014 (SC Minutes 26.09.2025).

amendments, and notice is given as to how much he should pay. With that official act being performed, the assessment is completed; that is how an assessment is raised.

Therefore, I cannot accept the argument of Mr. Jayasuriya that it should be in three stages. Thus, I am bound to follow the view taken by His Lordship Justice Thurairaja in the case of *Fonterra*, that the three stages as argued by Mr. Jayasuriya, namely, estimation, assessing, and sending the letter of intimation and notice of assessment, constitute one and the same action of raising an assessment.⁷

Therefore, it is my view in this case that, as the notice of assessment was sent to the Assessee-Respondent later, on 12.10.2012, and the same has been undisputedly received on 06.12.2012 by the Assessee in the same year, it is definitely out of time.

Accordingly, I decide Question (iii) in favour the Respondent-Assessee, and answer the same in the affirmative.

As a result of Question of Law No. (iii) being answered in the affirmative, the self-assessment would prevail and the rest of the Questions of Law raised herein would not arise.

⁷ *Walker Sons & Co. (U.K.) Ltd v. Gunatilake and Others* [1978-79-80] 1 Sri L.R. 231.

Conclusion

For the reasons adumbrated above, Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL