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 Appeal Commission Act No. 23 of 2011 (as amended).

NDB Capital Holdings Limited,
Level 1, NDB Capital Building,
135, Bauddhaloka Mawatha,
Colombo 04.

APPELLANT

CA Case No: CA/TAX/90/2024

Tax Appeals Commission
No.TAC/VAT/016/2017

Vs.

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

RESPONDENT

Before: Hon. Justice B. Sasi Mahendran
Hon. Justice Adithya Patabendige

Counsel: Dr Kanag-Isvaran, PC with Shivaan Kanag - Isvaran for the Appellant
Sehan Soysa, SSC for the Respondent.

Written Submissions On: 14.03.2025 (by the Appellant)
01.07.2025 (by the Respondent)

Supported On: 16.07.2026

Order On: 25.08.2026

B. Sasi Mahendran,

A Case Stated under section 11A of the Tax Appeals Commission Act, No. 23 of 2011(as amended) was transmitted to this Court by the Appellant by letter dated 19.06.2024. It contained the following seven questions of law for the opinion of the Court of Appeal:

1) Is the purported decision of the TAC dated 17.10.2023 said to be relative to taxable period 01.01.2012 to 31.12.2012 null and void and of no force or effect in law insofar as the notification of the Determination of the appeal in terms of Section 9(11) of the Tax Appeal Commission Act No. 23 of 2011 (as amended) refers to a "Determination of Value Added Tax Appeal of NDB Capital holdings Ltd (Capital development Investment Co. Ltd) bearing No. TAC/VAT/ 016/2017" which relates to the Appellant's appeal to the TAC in respect of the Taxable Period 01.01.2013 to 31.12.2013?
2) Is it mandatory for the CGIR to give a hearing in terms of Section 25A (3) Proviso of the VAT Act before a forced registration for VAT on Financial Services is affected?

3) Was the Appellant not given a hearing in terms of Section 25A(3) Proviso aforesaid prior to the forced registration of the Appellant by the CGIR for VAT on Financial Services under Section 25F (g) of the VATA?
4) Did the Tax Appeals Commission misdirect itself in law in holding that the Appellant was given a hearing in terms of Section 25A (3) Proviso of the VAT Act prior to the forced registration of the Appellant by CGIR for VAT on Financial services under Section 25F (g) of the VATA?
5) Is the Letter of Intimation dated 13th May 2015 a nullity in law in failing to indicate as to which limb of Section 25 f of the VATA relating to the definition of financial services the Appellant is alleged engaged in for it to be liable for VAT on financial Services?
6) Did the Tax Appeals Commission misdirect itself in law when it come to the conclusion that the investment activity engaged in by the Appellant constituted carrying on the business of financial services within the meaning of the provisions of the VATA?
7) Is the determination of the Tax Appeals Commission vitiated by the Tax Appeals Commission's complete failure to address and pronounce upon the Appellant's specific ground of appeal namely that the Assistant Commissioner who subscribed to the Letter of Intimation dated May 13th 2015 is not the same as the Commissioner who raised the Notice of Assessment, dated June 26th 2015?

When the matter was mentioned on 11.11.2024, this Court directed both parties to file their written submissions and fixed the matter for argument on 28.05.2025. Thereafter, the matter was re-fixed for argument on 31.01.2025. When the matter was taken up for argument on 29.10.2025, learned President's Counsel for the Appellant brought to the notice of this Court that additional questions of law had been raised in paragraph 23 of the Appellant's written submissions filed on 14.03.2025.

Accordingly, this Court directed the party seeking to raise the additional questions of law to file a motion setting out the proposed additional questions of law and further directed the Respondent to file its response thereto.

When the matter was taken up on 08.12.2025, the counsel for the Respondent informed the Court that the Respondent is objecting to the proposed additional questions of law. This Court directed the Respondent to file written objections and fixed the matter for inquiry on 12.03.2026.

An inquiry on the proposed additional questions of law was held on 16.07.2026. Upon hearing the submissions of learned Counsel, this Court reserved its order on the issue of whether the additional questions of law could be raised at that stage of the proceedings.

At this juncture, it would be useful to set out the additional questions of law sought to be raised by the Appellant.

1. Can VAT on the supply of financial services be imposed and charged by the assessor only after an assessee has been duly registered under the provisions of the VATA and not before such registration?
2. Is the forced registration of the Appellant on 12th May 2015, without an opportunity of being heard in opposition thereto, obligating the Appellant in law to charge VAT on its consumers with effect from 1st January 2012 illegal and therefore null and void and of no force or effect in law?
3. In the circumstances is the Notice of Assessment dated 25th June 2015, under the provisions of the VATA null and void and of no force or effect in law?

The principal issue that arises for determination is whether this Court has jurisdiction to permit the additional questions of law sought to be raised by the Appellant at this stage of the proceedings.

It is well settled that an additional question of law may, in appropriate circumstances, be entertained as part of a case stated, provided that the determination of such question is capable of resulting in the confirmation, reduction, increase, or annulment of the assessment determined by the Tax Appeals Commission or necessitates remitting the case to the Tax Appeals Commission together with the opinion of this Court. In such an event, the Tax

Appeals Commission would be empowered to revise the assessment in accordance with the opinion expressed by this Court.

This proposition is consistent with the provisions of Section 11A(6) of the Tax Appeals Commission Act (hereinafter referred to as "the Act"). Under the procedure prescribed by the Act, Section 11A(1) provides that either party who is dissatisfied with a decision of the Tax Appeals Commission (hereinafter referred to as the "TAC") may apply to the TAC to state a case on a question of law for the opinion of the Court of Appeal. The courts have consistently held that it is the TAC that must state the case on the question of law for the opinion of the Court of Appeal.

What is a "case stated"? According to Section 11A (2) of the said Act, the case stated should include all the facts and the decision of the commission and the amount of the tax in dispute. A similar section was embodied in section 78(2) of the Income Tax Ordinance No. 2 of 1932 (hereinafter referred to as the Ordinance), which reads as follows.

> *"(2) The stated case shall set forth the facts, the decision of the board, and the amount of the tax in dispute where such amount exceeds five thousand rupees, and the party requiring it shall transmit the case, when stated and signed, to the Supreme Court within fourteen days after receiving the same."*

This section was interpreted by Dias J in the case of ***Navarathnam V. Commissioner of Income Tax*** *(Reports of Ceylon Tax Cases, Vol. I, page 378 at 381).* Dias J held that,

> *'The assessee preferred an appeal to the Board of Review against his assessment. The Board of Review heard the case, decided a of law which the assessee raised, but held that the assessee point was not liable to pay any income tax because his assessable income was less than the taxable limit.*

> *Section 74 (2) of the Income Tax Ordinance provides; "The stated case shall be set forth the facts, the decision of the Board and the amount of the tax in dispute". There is no tax in dispute. Therefore it seems to us that the question of law which we are asked to consider is one of pure academic interest and does not arise in regard to any state of facts which merit consideration. We, therefore, think that this appeal should be dismissed, ...'It is clear that the case stated must relate to the decision of the TAC concerning the amount of tax in dispute. In other words, the opinion of the Court of Appeal on the question of law must have a bearing on the assessment or the amount of tax in dispute.*

It is clear that the case stated must relate to the decision of the TAC concerning the amount of tax in dispute. In other words, the opinion of the Court of Appeal on the question of law must have a bearing on the assessment or the amount of tax in dispute.

Once the case stated has been transmitted to the Court of Appeal in terms of Section 11A(6) of the Act, the law vests a bench of two or more Judges of the Court of Appeal with the jurisdiction to consider and determine the questions of law arising from the case stated submitted by the Tax Appeals Commission.

The question that arises for determination is whether this Court is confined to answering only the questions of law set out in the case stated, or whether it is empowered to entertain and determine a new question of law raised by either party at this stage of the proceedings.

At this juncture I am mindful of Section 11A(6) of the Act which reads as follows,

> *"(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 the 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 the assessment in accordance with the opinion of the Court."

The section prescribes the procedure to be followed by this Court. It provides that the Court of Appeal may hear and determine "***any"*** question of law arising from the stated case. Significantly, the Legislature has not confined the jurisdiction of this Court to determining the questions of law set out in the stated case. Instead, it has deliberately employed the expression ***"any question of law arising from the stated case."***

The use of the word ***"any"*** is of considerable significance. It raises the question whether the jurisdiction of this Court is restricted solely to the questions of law expressly formulated by the TAC in the stated case, or whether it extends to any question of law that arises from the facts and proceedings embodied in the stated case, including a question of law proposed by either party during the hearing before this Court.

A similar section which was provided in the said Ordinance was considered by Basnayake C.J. in ***R.M. Fernando V. Commissioner of Income Tax*** (Reports of Ceylon Tax Cases, Vol. I, page 571 at 577) which reads as follows,

> *'The statute does not require the Board to formulate in catechistic form the questions which this Court has to decide. Sub-section (5) of section 74 requires the Court to hear and determine* ***any*** *questions of law arising on the stated case and not* ***any question or questions formulated by the Board.*** *The function of the Board is to set forth the facts and the decision of the Board....."*

A similar view was expressed in the following cases.

In the case of ***The Commissioner General of Inland Revenue v. Dr S.S.L. Perera***, CA/TAX/03/2017, decided on 11th January 2019, His Lordship Janak De Silva J held that,

> *'Accordingly, I hold that it is open for this Court to consider questions of law other than what is set out in the case stated. However, I wish to state*

that such a course of action is permissible only if the answers to the new questions of law may result in the Confirmation, reduction, increasing or annulling the assessment determined by the Commission, or requires the remitting of the case to the TAC with the opinion of the Court. Questions of law which are purely of academic interest cannot be raised [Navaratnam v. Commissioner of Income Tax (Reports of Ceylon Tax cases, Vol. I, page 378 at 381] the same test applies to the two questions of law to be formulated by the TAC for reference to this Court.

For the reasons set out above, I am of the view that the additional questions of law proposed by the appellant should be accepted as they fulfil the requirements set out above.'

In the case of ***The Commissioner General of Inland Revenue v. Janashakthi General Insurance Col. Ltd.,*** CA/TAX/14/2013, Decided On: 20th May 2020, His Lordship Janak De Silva, J. held that,

"In Nilamdeen v. Nanayakkara (76 N.L.R. 169) It was held that it is a well-known rule of construction that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which has been judicially interpreted. There is also another rule of construction that where the words of an old statute are made part of a new statute, the legal interpretation which has been put upon the former by courts of law is applicable to those same words in the new statute.

Therefore, this Court can hear and determine any question of law arising on the Case Stated. This provides the opportunity to either party to propose a new question of law or to amend a question of law to this Court. Where the Court is of the view that it arises from the case Stated they can be accepted as part of the Case Stated provided that the answers to the new or amended questions of law may result in the confirmation, reduction, increasing or annulling the assessment determined by the TAC, or requires *the remitting of the case to the TAC with the opinion of the Court so that the TAC can revise the assessment in accordance with the opinion of the Court."*

In ***The Commissioner General of Inland Revenue v. Ceylon Cold Stores PLC***, CA/TAX/0024/2019, decided on 05th August 2022, Dr Ruwan Fernando, J held that,

'15. Now it is the duty of this Court, first to identify the question of law in the stated case for the opinion of the Court of Appeal, and then, if necessary, either to cause a stated case to be sent back to the TAC for necessary amendment or to add the new question of law. Accordingly, there is no restriction whatsoever, on the Court of Appeal to reconsider the question of law submitted by the TAC and formulate an additional question of law proposed by any party, if the answers to new questions of law may result in the confirmation, reduction, increasing or annulling the assessment determined by the TAC as contemplated by section 11A (6) of the TAC Act.

16. The words "any question of law arising on the stated case" in section 11A (6) clearly signify that it is open to the Court of Appeal to consider any question of law arising on the stated case and it may result in the confirmation, reduction, increasing, or annulment of the assessment determined by the TAC, or the remitting the case to the TAC with the opinion of the Court, thereon. For this purpose, the words "hear and determine any question of law arising on the case stated" signify that the Court must hear the parties, identify and consider any question of law arising on the stated case. This process permits any party, either the Appellant or the Respondent, to propose to the Court of Appeal, any question of law arising on the stated case. But it is solely a matter for the Court of Appeal to decide whether or not any such proposed new question of law is arising on the stated case.'

In the case of ***The Commissioner General of Inland Revenue v. Janashakthi Insurance Co. Ltd.,*** SC. Appeal No. 114/2019, decided on 26th June 2020, Vijith K. Malalgoda PC J. held that,

> *'As already observed by me, there are specific provisions in the TAC Act which governs the process before the TAC as well as a case stated before the Court of Appeal. In the said process, much importance has been given for identification of the questions of law that is to be considered in the case stated by making provisions for the TAC to reconsider the question that are submitted by the Appellant and two Judges to consider them once again and referred it back to TAC to reconsider them.*
>
> *In these circumstances, it is clear that once a case stated is fixed for hearing it only contain the questions that are to be considered by court and/or nothing else.*
>
> *However, this does not restrict the Court of Appeal considering an additional question of law if the court is of the view that the said question or questions may result in the confirmation, reduction, increasing or annulling the assessment determined by the Commission."*

Commissioner General of Inland Revenue v. Cargills Quality Dairies (Pvt) Ltd., SC/SPL LA/No.82/2022, decided on 28th May 2025, His Lordship Janak De Silva held that'

> *'Section 11A(6) of the Tax Appeals Commission Act as amended empowers two or more Judges of the Court of Appeal to hear and determine any questions of law that can be arising on the Case Stated. Accordingly, it is clear that the questions of law that can be argued before the Court of Appeal is not limited to the questions of law sent by the Tax Appeals Commission but can include questions of law arising from the Case Stated which the Court may frame before the argument is taken up ex motu or on the application of any one of the parties.'*

The above judicial authorities make it clear that a question of law may be raised at any stage, provided that it bears upon the confirmation, reduction, increase, or annulment of the assessment determined by the TAC, or necessitates the remittal of the case to the TAC with the opinion of this Court so that the assessment may be revised in accordance with that opinion.

I have given careful consideration to the questions of law set out in the Appellant's motion dated 03rd November 2025. If answered in the affirmative, those questions would have a material impact on the assessment under appeal.

For the reasons set out above, I am of the view that the additional questions of law proposed by the Appellant are accepted.

JUDGE OF THE COURT OF APPEAL

Adithya Patabendige, J.
I AGREE.

JUDGE OF THE COURT OF APPEAL