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

In the matter of an appeal by the way of Stated Case on a question of law 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).

THE COMMISSIONER GENERAL OF INLAND REVENUE,
14th Floor, Secretarial Branch,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha, Colombo 2.

APPELLANT

CA / Tax/ 075/2023
Tax Appeal Commission No.TAC/NBT/024/2020

-Vs-

ASIA CAPITAL PLC,
No. 102, Bauddhaloka Mawatha,
Colombo - 04.

RESPONDENT

Before :	**JUSTICE M.CHAMATH.B.S. MORAIS**
	JUSTICE ANNALINGAM PREMASHANKER

Counsel:	**Chaya Sri Nammuni, Deputy Solicitor General, with Maithri Amarasinghe, Senior State Counsel, instructed by Rizni Firdouz, Senior State Attorney for the APPELLANT.**
	Johann Corera, Attorney- at Law, with Shiyara De Livera, Janathri Weeratunga, Attorneys- at Law, instructed by Sarravanan Neelakandan Law Associate for the RESPONDENT.

Written Submissions of the Appellant	:- 16.03.2026
Written Submissions of the Respondent	:- 25.05.2026
Inquiry on	:- 16.03.2026
Order on	:- 23.07.2026

ORDER

ANNALINGAM PREMASHANKER, J.

INTRODUCTION

01. This order is in respect of the Respondent's preliminary objection to the 1st and 2nd Questions of Law of the case Stated.

02. This case is in respect of Nation Building Tax on Financial Services for the taxable period of 01.01. 2016 to 31.03.2016 of the taxpayer Asia Capital PLC.

03. The Appellant, Commissioner General of Inland Revenue (**Herein after referred to as CGIR/Appellant**) by the case stated dated 29.08.2023, had submitted following five (5) questions of law for the opinion of the Court of Appeal.

1. **Has the Tax Appeals Commission erred in law in determining the Respondent Company has not been engaged in carrying on a business of providing financial services during the taxable period of 01.01.2016 to 31.03..2016 under Section 3 of Nation Building Tax Act No.09 of 2009 (as amended) read with section 25 of the Value Added Tax Act No.14 of 2002 (as amended)?**

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5. **Has the Tax Appeals Commission erred in law in determining to annul the issued assessments relevant to the taxable period of 01.01.2016 to 31.03.2016?**

04. However, the Respondent, Asia Capital PLC (**Herein after referred to as Asia Capital/ Respondent/ Taxpayer**). By two motions dated 16.07.2025 raised objections to Question No. 01 and 02 and move to strike the said questions from the case stated. Respondent further states that the first two questions of law **cannot be raised in the case stated for the opinion of the Court of Appeal since they are questions of fact and not questions of law.**

05. Appellant objects the **said motion as there was no provisions in law to raise preliminary objections**. The Respondent must take his objection at the Argument. Thus, the Appellant vecumently rejects attempt to create a new procedure.

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07. The Section 11 A (6) of the Tax Appeals Commission.
Act No 23 of 2011 (as amended) is as follows;

> ***11 A (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 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***

08. Thus, the Court of Appeal **may consider and determine any Questions of Law arising on the stated case**, upon which the Court may confirm reduce, increase or annual the assessment.

Thus, it is clear that **the Court of Appeal does not in any manner have the jurisdiction to deal with the pure finding of fact of the TAC.**

09. However, wrong analysis of the Question of fact is a Question of Law. In ***Collects Limited Vs. Bank Of Ceylon 2SLR 574***, *it has been held that the improper analysis of fact is a Question of Law and thus, the Appellant asserts that the Question No.01 and 02 are mixed Questions of fact and law.*

10. This Court, having considered the submissions of the Respondent and the Appellant, **decide to overrule the objections of the Appellant** and analyse the objections of the Respondent.

11. Questions No. 01 and 02 are in respect of the status of the Taxpayer. Whether the Respondent Company engaging in carrying on business of providing financial services or not. There is not a point of law involved in the two questions as those were framed.

12. The findings of the TAC are of pure fact. Precondition to being chargeable of NBT of Financial Services is providing Financial Services to other people. When one is investing own money, it cannot be said that one to be providing a financial service. Question No. 01 and 02 are queries of the Respondent's Business, which is strongly pure fact alone.

13. The findings of the TAC on the business of the Respondent Company are only of pure facts nothing connected to Questions of Law. Hence the Question No.01 and 02 are clearly not Question of Law.

CONCLUSION

Having considered all the submissions made to this court, this court conclude to allow the application of the Respondent to strike Question No. 01 and 02 from the case stated. The rest of the Questions of Law are renumbered as 01, 02, and 03 respectively.

On this 23rd day of July 2026

JUDGE OF THE COURT OF APPEAL

M. C. B. S. MORAIS

I agree.

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10. This Court, having considered the submissions of the Respondent and the Appellant, **decide to overrule the objections of the Appellant** and analyse the objections of the Respondent.

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