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).

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

APPELLANT

CA No. CA/TAX/0003/2017
Tax Appeals Commission
No. TAC/IT/044/2015

v.

Dr. S.S.L Perera,
No. 7, Manel Perera,
Sirimal Uyana,
Ratmalana.

RESPONDENT

BEFORE : M. Sampath K. B. Wijeratne J. &
M. Ahsan. R. Marikar J.

COUNSEL : Manohara Jayasinghe D.S.G.
for the Appellant.

Riad Ameen with Rushitha Rodrigo
instructed by Paul Rathnayake
Associates for the Respondent.

WRITTEN SUBMISSIONS	:	25.09.2018, 21.05.2019 & 18.05.2023 (by the Appellant) 26.09.2018, 21.05.2019, 18.05.2023 & 05.02.2024 (by the Respondent)
ARGUED ON	:	Parties agreed to dispose the argument through written submissions.
DECIDED ON	:	28.03.2024

M. Sampath K. B. Wijeratne J.

Introduction

The Respondent, taxpayer is a medical practitioner. The Respondent submitted his return of income for the year of assessment 2011/2012[1] calculating his income tax at the rate of 10% as per Section 59B of the Inland Revenue Act No. 10 of 2006, as amended (hereinafter referred to as the 'IR Act'). However, the Assessor did not accept the return and proceeded to make an assessment. Subsequently, the Notice of Assessment dated 26th November 2013 was issued to the taxpayer.[2].

The taxpayer then lodged an appeal with the Commissioner General of Inland Revenue (hereinafter referred to as the 'CGIR') against the assessment. On the 9th November 2015, the CGIR made his determination dismissing the appeal. The Respondent received the reasons for the determination and therefrom appealed to the Tax Appeals Commission (hereinafter referred to as the 'TAC'). In the TAC, the Respondent raised the following two preliminary objections.

i. The Respondent was not informed of the reasons for the non-acceptance of his return of income.

ii. CGIR made his determination on the appeal without granting the Respondent a hearing.

The TAC upheld both the preliminary objections and made its determination on the 1st of December 2016 nullifying the assessment. The TAC ruled that due to its findings on the preliminary matters, it was

[1] At pp. 79-86 of the appeal brief.
[2] At p. 78/104 of the appeal brief.

unnecessary to address the substantive issues raised in the appeal. The CGIR, in terms of Section 11 A of the TAC Act, moved the TAC to state a case on four questions of law for the opinion of this Court.

Afterward, the Appellant CGIR sought permission from this Court to include three additional questions of law. By its Order dated 11th January 2019, the Court granted permission for the inclusion of the three new questions of law. Consequently, the Court is now tasked with determining the following seven questions of law.

(1) Whether the Tax Appeals Commission has erred in law to determine the appeal on the matters raised as preliminary objections by the Appellant?

(2) Whether the Tax Appeals Commission acted in excess of its limited jurisdiction as it cannot assume jurisdiction it does not possess to decide question of law?

(3) Whether the Tax Appeals Commission has failed to give due consideration to the finding of the Supreme Court case (D.M.S. Fernando and another v. A.M. Ismail (SC No. 22/1981) that "writ of certiorari is the proper remedy" when the assessor fails to give reasons for the rejection of the return?

(4) Whether the "audi alteram partem" principle is applicable to a person who was not comply with the request to be presented for an interview (to be heard)?

(5) Did the Tax Appeals Commission err in law when it held that reasons for the assessment had to be given, in the circumstances of this case?

(6) Did the Tax Appeals Commission err in law when it held that reasons for not accepting the return of the Respondent has not been communicated to the Respondent?

(7) Did the Tax Appeals Commission err in law when it held that the assessment was confirmed by the Appellant without affording the Respondent a hearing?

On 19th September 2023, both parties moved to resolve the argument through written submissions. The Deputy Solicitor General for the

Appellant informed the Court that he would stand by the previously submitted written submissions. The Counsel for the Respondent moved to file an additional written submission, which was duly filed. Following this, the case was fixed for judgment.

Should the Appellant have invoked writ jurisdiction?

The learned Counsel for the Respondent contended that this Court lacks jurisdiction to decide on the questions of law outlined in the case stated.

The crux of the argument is that the Court of Appeal lacks jurisdiction to decide on a case stated when the TAC has not reached a determination on the assessment determined by the CGIR. The Court identified the above argument as much the same as the decision of this Court in the case of *Commissioner General of Inland Revenue v. Koggala Garments (Pvt) Ltd*[3].

The Respondent, relying on the majority judgement in the case of *D.M.S. Fernado and another v. A.M. Ismail*[4] (S.C.) argued that the Appellant ought to have invoked writ jurisdiction in terms of Article 140 of the Constitution. The above was a case where the taxpayer applied to the Court of Appeal for a writ to quash the assessment on the ground that the Assessor did not give written reasons for rejecting the return. The Court of Appeal granted the writ and the CGIR appealed to the Supreme Court. In the majority judgment, His Lordship Samarakoon C.J. observed that it is a fit matter for writ jurisdiction; writ of *certiorari.* However, this was not a case like the one at hand where the taxpayer exercised his right of appeal to the CGIR, then appealed to the TAC, and subsequently the CGIR appealed to the Court of Appeal against the order of the TAC. The Supreme Court did not consider the provisions regarding appeals such as those in the TAC Act. As such, there are material differences between the facts of the said case and the case at hand. Moreover, it is important to note that His Lordship did not hold that writ is the only remedy. All that His Lordship observed was that writ of *certiorari* is the appropriate remedy. It was just a passing remark made in response to a submission made in the case and was an *obiter* statement.

This Court considered the above argument of the Respondent as a preliminary question of law and held on the 25th May 2023 that this Court has jurisdiction to make a determination on a case stated even in the

[3] CA/TAX/01/2008, (Court of Appeal minutes dated 05/04/2017).
[4] (1982) 1 Sri L.R. 222.

absence of a determination made by the TAC on the quantum of the assessment.

Can the TAC make rulings on issues that might typically fall under the purview of public law?

The Appellant, argued that the TAC is not competent to make pronouncements on matters falling under the purview of public law such as *audi alteram partem.* It was submitted that the TAC is a specialised tribunal equipped with the expertise to address issues concerning taxation. The Tax Appeals Commission consists of nine members, three of whom are retired Judges of the Supreme Court and the Court of Appeal. The remaining six members are persons with knowledge in taxation, finance, and law.

However, the issue in this matter is not the non-observance of *audi alteram partem* rule itself, but failure to adhere to a mandatory statutory provision. Therefore, I am of the view that the members of the TAC are competent to decide as to whether the Assessor communicated the reasons to the Respondent for rejecting the return and also whether the CGIR provided a hearing to the Respondent.

Be that as it may, in the recent case of *The Commissioner General of Inland Revenue v. Classic Travels (Pvt) Limited*[5] (S.C.) His Lordship Aluwihare P.C. J., (Vijth K. Malalgoda P.C. J., and Arjuna Obeyesekere J., agreeing) considered the question whether the Tax Appeals Commission could dispose of a matter on a preliminary objection. The issue was failure of the CGIR to abide by rule of natural justice; *audi alteram partem*.

His Lordship having analysed Section 8 (1) (a) and Section 9 (10) of the Tax Appeals Commission Act[6], expressed the opinion that the legislature never intended to oust and limit the jurisdiction of the TAC to the substantive matter of the assessment. If the legislature intended to limit the jurisdiction of the TAC to decide only the substantive matters of the assessment, then such intention should be expressly provided.

Commenting on preliminary objections His Lordship observed that '*the advantage of the preliminary objections is to prevent unnecessary litigation. Hence, the purpose of preliminary objections is not to stifle legitimate adjudication but to dispose a matter expeditiously when it is apparent that the action cannot be maintained.'* In conclusion, His

[5] SC Appeal No. 158/2018 (Supreme Court minutes dated 14/11/2023).
[6] No. 23 of 2011 as amended.

Lordship held that if the taxpayer was not provided with a fair hearing, the assessment made by the CGIR is defective and the TAC is not required to further consider the defective assessment.

His Lordship Janak De Silva J., sitting in Court of Appeal (as His Lordship then was) (N. Bandula Karunarathna J., agreeing) in the case of *Convenience Foods (Lanka) PLC v. Commissioner General of Inland Revenue*[7] (C.A.) citing several English authorities[8] categorically held that ***'breach of the common law principle of natural justice can be dealt with by the appellate system in the tax field…'*** (Emphasis added)

Based on the analysis provided above and following the precedent set by the Supreme Court in the case of *The Commissioner General of Inland Revenue v. Classic Travels (Pvt) Limited*[9], I answer the questions of law 1, 2, and 3 in the negative, in favour of the Respondent.

The principle of natural justice.

The principle of natural justice is one of the fundamental principles of law. It ensures that justice is done impartially and fairly. The term natural justice is derived from the Latin word '*jus natural'*[10]. It is also commonly known as substantial justice, fundamental justice, universal justice or fair play in action. In other words, it is a natural law that is unrelated to any statute or constitution. The principle of natural justice is based on the concepts of fairness and equity. This necessitates that every individual is entitled to a fair hearing before any decision is rendered against them. Upholding this principle is crucial to guaranteeing the administration of justice and safeguarding the rights of individuals.

In this instance, the Respondent alleged a breach of the principles of natural justice due to the Assessor's failure to provide reasons for rejecting the Respondent's income tax return. The Respondent also alleged a breach of the rule of *audi alteram partem* by the CGIR by failing to provide a hearing. However, the alleged breaches are not violations of principles of natural justice *per se* but rather a breach of a mandatory statutory provision.

Was the Respondent informed of the reasons for rejecting the return?

[7] CA/TAX 07/2010 (Court of Appeal minutes dated 27/05/2020.), at p. 6.
[8] *R. v. Brentford General Commissioners Ex. p. Chan* (1986) S.T.C. 65; *R. v. Commissioner for the Special Purposes of the Income Tax Acts Ex. p. Napier* (1988) 3 All E.R. 166; *Bonin v. Mackinlay (Inspector of Taxes)* (1985) 1 All E.R. 842.
[9] *Supra* note 5.
[10] Black's Law Dictionary,11th Edn.

I will proceed to examine the facts and relevant statutory provisions pertaining to the above issue. There is a consensus that the Respondent's income tax return for the year of assessment 2011/2012 was submitted on 13th December 2012. Upon submitting a return, Section 163(3) of the Inland Revenue Act comes into effect. The wording of Section 163 (3) is as follows,

> ***'163 (1) (…)***
>
> ***(2) (…)***
>
> ***(3)*** *Where a person has furnished a return of income, the Assessor or Assistant Commissioner may in making an assessment on such person under subsection (1) or under subsection (2), either–*
>
> > *(a) accept the return made by such person; or*
> >
> > *(b) if he does not accept the return made by that person, estimate the amount of the assessable income of such person and assess him accordingly:*
> >
> > *Provided that where an Assessor or Assistant Commissioner does not accept a return made by any person for any year of assessment and makes an assessment or additional assessment on such person for that year of assessment, he shall communicate to such person in writing his reasons for not accepting the return.*
>
> *(4) (…)*

Accordingly, under Section 163 (3), the Assessor could either accept the return or reject it. The Appellant strenuously argued that the Assessor is required to communicate his reasons to the taxpayer for not accepting the return only when the assessable income in a return is not accepted.

To buttress the above argument, the Appellant relied on the decision of Samarakoon C.J. in the case of *D.M.S. Fernando and another v. A.M. Ismail*[11] wherein His Lordship commenting on Section 93 (2) of the IR Act No. 04 of 1963, as amended, which is identical to Section 163 (3) of the IR Act No. 10 of 2006, as amended, observed as follows;

[11] *Supra* note 4, at p. 227.

'*Section 93 (2) is an empowering Section. It empowers the Assessor to do one of two things. He may accept the return in which event he makes the assessment accordingly. Or else he may not accept the return. In such an event he is obliged to do two things-*

1. *Estimate the assessable income, taxable income or taxable gifts and assess him accordingly and*
2. ***He must communicate to the Assessee in writing the reason for not accepting the return.***

In light of the aforementioned observations made by His Lordship Samarakoon C.J., the Appellant argued that the obligation to provide reasons arises only when there is an estimation of assessable income, taxable income, or taxable gifts. Thus, it was contended that since the Assessor accepted the *assessable income* in this instance, there was no requirement to communicate reasons.

However, as stipulated in Section 163 (3) (b), the requirement to estimate the assessable income arises when the Assessor declines to accept the *return* submitted by the taxpayer.

In the income tax return, the Respondent calculated the amount of income tax owed and found it to match the sum already paid through self-assessment. However, the Assessor disputed the Respondent's eligibility for the 10% rate specified in Section 59B of the IR Act, upon which the taxpayer based his income tax calculation. Consequently, the Assessor proceeded to assess the amount ought to have been paid by the Respondent and issued a Notice of Assessment. Notably, the reasons for rejecting the return were not conveyed to the Respondent. The Respondent argued that without communication from the Assessor regarding the reasons for the rejection, the taxpayer is unable to formulate grounds for appealing against the assessment.

The Respondent reproduced the following excerpt from the aforementioned judgment of the Supreme Court in the case of *D.M.S Fernando and another v. A.M. Ismail*[12] to bolster the aforementioned argument.

'*...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***

[12] *Supra* note 4.

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.*'

(Emphasis Added)

The Appellant's contention is that, in this instance the Assessor accepted the assessable income in the return but, did not agree with the applicable tax rate. Accordingly, the Appellant argued that rejection of the return arises only when the assessable income is not accepted. The Appellant's argument stems from the structure of Section 163 (3) (b) of the IR Act. The Appellant asserted that the rejection under Section 163 (3) (b) is succeeded by the estimation of assessable income.

I am disinclined to agree with the argument put forth by the Appellant. The income tax return encompasses more than just the assessable income. It encompasses not only the assessable income but also the taxable income and the income tax payable based on the taxpayer's self-assessment. The income tax payable is calculated in accordance with the applicable rate. In such a scenario, if the Assessor rejects the tax rate and proceeds to assess and impose a different income tax, it becomes apparent that the Assessor rejects the taxpayer's return. The requirement of giving reasons for not accepting the return is contained in the proviso to Section 163 (3) (b). The proviso refers to the *return* and not to the *assessable income*. Whenever, a return is not accepted by an Assessor, the Assessor has a duty to give reasons.

Further, under Section 163 (3) (b) of the IR Act the Assessor should estimate the amount of the *assessable income* and *assess* the taxpayer. As outlined in Section 163 (1), it is the amount of tax payable by the taxpayer that should be assessed. Section 163 (1) reads thus, '***assess the amount*** *which in the judgment of the Assessor or Assistant Commissioner* ***ought to have been paid*** *by such person'.* Sub Sections 163 (a) and (b) also refers to '*amount of* ***tax*** *so assessed'*. Hence, it is clear that the estimation of the assessable income is the initial step of making an assessment, followed by ascertaining the taxable income and computation of income tax payable in accordance with the applicable tax rate.

In light of the above analysis, I hold that when an Assessor rejects the return of a taxpayer and proceed to make an assessment, the Assessor has a duty to communicate his reasons in writing to the taxpayer.

In the majority judgement in the case of *D.M.S. Fernado and another v. A.M. Ismail*[13] (S.C.) His Lordship Samarakoon C.J., held that rejecting the return without communicating reasons goes to the very root of the matter and is *ultra-vires.*

The question of law No. 5 is formulated on the basis that the TAC held that reasons for the assessment had to be given. However, I am unable to observe any such finding by the TAC. All that the TAC held was that the Assessor should communicate to the taxpayer in writing his reasons for not accepting the return. Accordingly, I answer the question of law No. 5 that '*the TAC did not err in holding that reasons for not accepting the return had to be communicated to the taxpayer'.*

In consideration of the above analysis, I affirmatively conclude that question of law No. 6 is answered in the negative, thereby supporting the stance advocated by the Respondent.

Was a hearing afforded to the Respondent?

As per Section 165(7) of the IR Act, upon receiving a valid Petition of appeal, the CGIR is obligated to conduct additional inquiries into the issue and endeavour to come to an agreement with the taxpayer. In this instance the CGIR has acknowledged the Respondent's appeal by letter dated 26th December 2013[14]. The acknowledgment indicates the CGIR's recognition of the appeal as a valid Petition of appeal. It is worth noting that in the internal communication forwarded to the Deputy Commissioner General of Inland Revenue (DCGIR) by the Deputy Commissioner General of Tax Policy (DCG (TP)) on 2nd January 2015, the latter addressed the primary concerns raised by the Respondent's representative. The communication emphasised the importance of issuing a notification letter in the event of any alteration in the amount of tax payable, as the taxpayer has a basic entitlement to be informed of the reasons for such adjustments.

Accordingly, issuing an internal circular to the assessing branches/units was also recommended to minimise the number of unnecessary appeals. Ultimately, after addressing the concerns raised by the Respondent's representative, it was advised to proceed with registering the

[13] *Supra* note 4.
[14] At pp. 34, 38 of the appeal brief.

Respondent's appeal and granting them a hearing. Therefore, it is apparent that although the CGIR has continuously maintained the stance that reasons need not be communicated to the taxpayer in this instance, the opinion of the Deputy Commissioner General of Tax Policy was to the contrary.

The reasons for the determination of the Respondent's appeal transmitted to the TAC by the CGIR[15] signify that the appeal was registered only on the 10th January 2015. Therefore, it is evident that the appeal was registered after an inordinate delay of one year and fifteen days from the date of receipt of the appeal.

Thereafter, the Senior Deputy Commissioner, Mr. M.L.J.G. Chandrasiri, in his letter dated 6th August 2015, following an additional delay of almost seven months, requested permission from the Senior Commissioner (Appeals) to refer the matter to the CGIR without attempting to reach an agreement within the appeal branch. This request was made because there were only four months and twenty days left within the prescribed time frame[16]. However, the Senior Commissioner advised the Senior Deputy Commissioner to schedule a meeting with the taxpayer promptly and attempt to reach a settlement. Only if unable to settle, should the matter then be referred to the higher authority[17]. It was contended by the Appellant that a letter was sent to the Respondent summoning him for an interview on the 20th August 2015[18]. The letter requesting the Respondent for an '*interview*' was counter signed on 13th August 2015, seven days before the date fixed for the interview. Thereafter, the Senior Deputy Commissioner (Appeals), in his report dated 11th September 2015, counter signed by Commissioner (Appeals) L.M. Chandrika Weerakoon, submitted the appeal to the CGIR for determination. It is important to observe that the appeal report had been prepared by the same Senior Deputy Commissioner who signed the aforementioned letter said to have been sent to the Respondent[19]. Therefore, if a letter was in fact sent to the Respondent by the Senior Deputy Commissioner, undoubtedly, he would have mentioned about the letter in his own appeal report prepared on the 11th September 2015. As correctly argued by the learned Counsel for the Respondent, the letter calling the Respondent for an interview, which was sent in between the

[15] At p. 52 of the appeal brief.
[16] At p. 42 of the appeal brief.
[17] *Vide* minute made by the Senior Commissioner on the same letter.
[18] At pp. 43/57 of the appeal brief.
[19] *Ibid*.

direction from the Senior Commissioner (Appeals) and the appeal report, cannot be considered as a notification for the hearing of the appeal before the CGIR. Consequently, there is no material that the Respondent failed to attend the hearing before the CGIR as required by Section 165(9) of the IR Act. The CGIR communicated his determination to the Respondent on the 9th November 2015[20].

Notably, there exists another appeal report dated 28th July 2015, in the brief. However, this was not a report submitted to the CGIR, but rather to the Commissioner (Appeal Branch) by a Senior Deputy Commissioner, countersigned by a Commissioner.

Additionally, it's worth noting that the aforementioned letter is undated. However, there is an indication on the letter that it was countersigned on 13th August 2015. Therefore, it's evident that the letter was in possession of the relevant branch even on 13th August 2015. The Respondent was summoned for an interview on 20th August 2015[21]. The Respondent claimed that the letter allowed only five working days for him to attend the interview. In total, there were only seven days, including the time required for postal delivery. Importantly, the Respondent contested receiving the said letter. During the hearing, the appellant presented a copy of the postal article dated 14th August 2015, as evidence that the letter was dispatched to the Respondent's address. The Respondent also submitted the same registered postal article and a letter dated 14th October 2020, from the Postal Department stating that they dispose of registered postal article receipts after two years, hence unable to provide information regarding the mentioned letter. However, in a letter dated 22nd January 2020, submitted by the Appellant, the Postal Department provided information regarding the letter posted on 14th August 2015, five years later. Notably, in the registered postal article receipt provided by both parties, the name and address of the addressee are not specified. It's mentioned that the names and addresses are as per the attached list. However, the list attached to the postal article receipt does not include the receipt numbers provided in the registered postal article receipts. The receipt accounts for 415 letters, but the list only contains the name and address of the Respondent. Consequently, the registered postal article does not align with the attached list, which purportedly includes the letter sent to the Respondent. While there is a presumption that a properly addressed letter sent via registered post would reach the addressee, as

[20] At pp.1,2 of the appeal brief.
[21] *Supra* note 18.

established in the case of *B.W. Podisingho v. P.A.W. Perera*[22], for this presumption to hold, there must be evidence that the letter was appropriately addressed and dispatched, which is lacking in this scenario.

Given the circumstances presented, I am inclined to agree with the stance of the Respondent that the letter in question was not dispatched. Moreover, as I have already analysed in this judgment, it can never be considered a notification calling for the hearing of the appeal before the CGIR.

On the other hand, despite the Respondent presenting the aforementioned letter from the Postal Department, indicating the disposal of postal registration documents after two years, the learned Counsel for the Respondent argued that new evidence cannot be introduced in the Court of Appeal during a case stated. The jurisdiction of the Court of Appeal is specifically to address and resolve any legal questions arising from the case stated[23], not issues of fact. While under limited circumstances[24], a new legal question may be introduced for the first time in the Court of Appeal, matters of fact cannot be revisited. Consequently, this court is not empowered to entertain new factual evidence presented here and determine whether the notice in question was indeed served to the Respondent or not.

The Respondent's argument is that he was never summoned for an interview. Furthermore, the Respondent asserted that there was no evidence whatsoever indicating that Respondent fixed the matter for a 'hearing 'in terms of Section 165(8) of the IR Act. The above Section also stipulates that if no agreement is reached between the Appellant and the Assessor or Assistant Commissioner, the matter should be fixed for a hearing. In this case, the Appellant argues that the Respondent failed to appear for an interview following the letter sent by the Senior Deputy Commissioner. Consequently, the issue of scheduling the matter for a hearing did not arise.

[22] 75 N.L.R. 333

[23] Section 11A (6) of the Tax Appeals Commission Act. At No. 23 of 2011, as amended.

[24] *The Commissioner General of Inland Revenue v. Dr. S.S.L. Perera*, CA Tax 03/2017 decided on the 11th January 2019, *The Commissioner General of Inland Revenue v. Janashakthi General Insurance Col. Ltd*, CA Tax 14/2013 decided on the 20th May 2020, *Illukkumbura Industrial Automation (Private) Limited v. Commissioner General of Inland Revenue*, CA Tax 05/2016 decided on the 30th November 2020.

As previously stated in this judgment, the Notice of Assessment was issued on the 26th November 2013[25]. The Respondent appealed against the assessment[26]. The Appellant, at first did not accept it as an appeal on the ground that the Respondent's return was not rejected by the Appellant. This stance is documented in a minute regarding the Respondent's appeal[27]. Additionally, the same position was reiterated in the appeal report drafted by a Senior Deputy Commissioner and endorsed by a Commissioner[28]. However, it's significant to highlight that there is another minute dated 8th January 2014, contrary to the aforementioned minute, which confirms the validity of the appeal.

Be that as it may, the Respondent, in response to the Appellant's contention, provided clarification in his reply letter dated 18th November 2014, explaining why the letter dated 24th December 2013[29], should be regarded as an appeal. The Appellant explicitly stated in the letter that it constituted an appeal against the assessment.

According to Section 165 of the IR Act, any individual aggrieved by the *amount* of assessment has the right to appeal to the CGIR. No specific format for the appeal is mandated; all that is necessary is a written Petition addressed to the CGIR outlining the grounds of appeal. In the letter dated 24th December 2014, directed to the CGIR, the Respondent explicitly stated, among other things, that he had not been informed of the reasons for the assessment, as required by Section 163(3) of the IR Act. Furthermore, the Respondent outlined the grounds of appeal in a general manner. It's worth noting that the Notice of Assessment was issued on 26th November 2013, while the Respondent's appeal was submitted on 24th December 2013. Thus, the appeal was lodged within the thirty-day timeframe stipulated by Section 165(1) of the IR Act following the Notice of Assessment.

According to the Respondent, no communication regarding the appeal was received until 30th April 2014[30]. On this date, the Respondent received a letter outlining the position that communication of reasons was not necessary in this instance. This letter referenced a previous letter sent on 21st March 2014. However, the Respondent denied receiving such a letter. Despite this, the Appellant did not present the letter even during the

[25] At p.78 of the appeal brief.
[26] Letter dated 24th December 2013, at pp.27,28/76,77.
[27] At p. 28 of the appeal brief.
[28] At p. 47- paragraph 4. I.
[29] At p. 74 of the appeal brief.
[30] At pp. 17, 17 I of the Appeal Brief

hearing. Additionally, the appeal report submitted for record only mentions the letters sent on 30th April 2014[31].

According to Section 165 (6) of the IR Act an appeal has to be acknowledge within thirty days of its receipt. If not, such appeal shall be deemed to have been received on the day of which it is delivered to the CGIR.

According to the Respondent, his appeal dated 24th December 2013 was acknowledged only on the 10th July 2015[32]. The Appellant did not deny this position. According to Section 165(14) of the IR Act, the Respondent's appeal would be time barred by the 25th December 2015. The Appellant accepted this fact in the letter of acknowledgment.

The TAC, upon analyzing the relevant facts, observed that the CGIR, having noted that the two-year period to make their determination was to expire on 24th December 2015, proceeded to make their determination without giving a hearing to the Appellant, thereby violating the principle of natural justice; the Rule of *audi alteram partem*. Consequently, the TAC noted that apart from not offering a fair hearing, the taxpayer was given no hearing at all.

Considering the facts stated above, I concur with the above view expressed by the TAC.

In light of the above analysis, I answer the question of law No. 7 in the negative in favour of the Respondent. I answer the question of law No. 4 as '*there is no failure on the part of the Respondent to present himself for a hearing. The rule audi alteram partem is applicable to the Respondent'.*

Accordingly, the answers to the seven questions of law are as follows;

1. ***No.***

2. ***No.***

3. ***No.***

4. ***There is no failure on the part of the Respondent to present himself for a hearing. The rule audi alteram partem is applicable to the Respondent.***

[31] At p. 47-paragraph 2.
[32] Paragraph 85 of the Respondent's Written submission-letter at p. 58 of the appeal brief.

5. ***The TAC did not err in holding that reasons for not accepting the return had to be communicated to the taxpayer.***

6. ***No.***

7. ***No.***

Conclusion

Based on the answers provided to the preceding questions of law, there is no need to remit the case back to the TAC to decide the substantive issue.

Accordingly, acting under Section 11A (6) of the TAC Act, I affirm the decision of the TAC and dismiss this appeal.

The Registrar is directed to send a certified copy of this judgment to the Secretary of the TAC.

JUDGE OF THE COURT OF APPEAL

M. Ahsan. R. Marikar J.

I Agree.

JUDGE OF THE COURT OF APPEAL