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).

WNS Global Services (Private) Limited,
HNB Towers, Level 12,
479, T. B. Jayah Mawatha,
Colombo 10.

APPELLANT

CA No. CA/TAX/0043/2023
Tax Appeals Commission
No. TAC/IT/036/2017

v.

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

RESPONDENT

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

COUNSEL : Dr. Shivaji Felix, P.C., with Nivantha

Satharasinghe for the Appellant.

Nayomi Kahawita, SSC for the Respondent.

WRITTEN SUBMISSIONS : 10.01.2024 & 22.08.2024 (by the Appellant)

12.02.2024 (by the Respondent)

ARGUED ON : 13.06.2024 & 26.06.2024

DECIDED ON : 30.08.2024

M. Sampath K. B. Wijeratne J.

Introduction

WNS Global Services (Private) Limited, the Appellant, is a limited liability company incorporated and domiciled in Sri Lanka. The company's primary business activities include operating domestic and international back-office customer operations, call centres, data processing services, and customer support centres.

The Respondent is the Commissioner General of Inland Revenue (hereinafter referred to as the 'CGIR')

Factual background

The Appellant filed its income tax return with the Inland Revenue Department (hereinafter referred to as the 'IRD') for the year of assessment 2011/2012. However, the Assessor rejected the return through a letter dated 23rd October 2014, issued under Section 163(3) of the Inland Revenue Act No. 10 of 2006 (hereinafter referred to as the 'IR Act'). In the same letter, the Assessor outlined

the reasons for not accepting the return. Following this, the Assessor proceeded to issue a Notice of Assessment[1].

Dissatisfied with the assessment, the Appellant filed an appeal with the CGIR under Section 165 of the IR Act. On 27th December 2016, the CGIR upheld the Assessor's assessment[2], and the Appellant was notified of the reasons for his determination in a letter dated 2nd March 2017[3]. The Appellant, still aggrieved, then appealed to the Tax Appeal Commission (hereinafter referred to as the 'TAC') under Section 7 of the Tax Appeal Commission Act No. 23 of 2011, as amended. On 27th January 2023, the TAC confirmed the CGIR's determination and dismissed the appeal. The Appellant, dissatisfied with this outcome, requested the TAC to state a case to this Court based on the following five questions of law.

1. **Is the Appellant fully entitled to the tax exemption conferred under and in terms of Section 13(ddd) of the Inland Revenue Act No. 10 of 2006 (as amended), in respect of its business income?**
2. **Is the Appellant's interest income, which is less than 5 million, is liable to income tax at the rate of 12% under and in terms of Part B of the Second Schedule of the Inland Revenue Act, No. 10 of 2006 (as amended)?**
3. **Is the assessment excessive and without lawful justification?**
4. **Is the determination of the Commissioner General of Inland Revenue time barred?**
5. **In view of the facts and circumstances relating to the case has the Commissioner General of Inland Revenue erred in law in coming to the conclusion that he did?**

[1] At page 87 of the Appeal.
[2] Letter dated 2nd March 2017 at page 14 of the Appeal brief.
[3] At pp. 9-13 of the Appeal brief.

Both parties submitted their initial written submissions, and the case advanced to the argument stage. Upon the conclusion of the arguments, both parties sought permission to file additional written submissions, which the court allowed. However, only the Appellant filed a final written submission, and it was also submitted after the due date. The Respondent, on the other hand, did not file a final written submission.

Analysis

I will now move on to address the questions of law presented to this Court.

(i) Is the Appellant fully entitled to the tax exemption conferred under and in terms of Section 13(ddd) of the Inland Revenue Act No. 10 of 2006 (as amended), in respect of its business income?

The learned President's Counsel for the Appellant argued that the Appellant company is entitled to an income tax exemption under Section 13(ddd) of the IR Act for the year of assessment 2011/2012. However, whether the Appellant met the requirements of this section was not an issue before the CGIR, the TAC, or this Court. Therefore, this Court need not deliberate on the matter. The issue is whether the tax liability of Appellant's business income is governed by Section 13(ddd) of the IR Act or by the agreement between the Appellant Company and the Board of Investment of Sri Lanka (hereinafter referred to as the 'BOI').

The agreement between the Appellant company and the BOI[4] stipulates that the provisions of the IR Act No. 38 of 2000 regarding the imposition, payment, and recovery of income tax on the company's profits and income shall not apply for a period of five years[5]. This period begins from the year of assessment as determined by the Board. The year of assessment is defined as either the year in which the company starts to generate profits or any year of assessment not later

[4] At pages 54 to 63 of the appeal brief.
[5] IR Act No.38 of 2000 was replaced by IR Act No. 10 of 2006 with effect from 1st April 2006. Nevertheless, income tax exemption granted under the BOI agreement is validated under Section 218(3) of the latter Act.

than two years from the commencement of commercial operations, whichever occurs first, as specified in a certificate issued by the Board.

After the expiration of the aforementioned tax exemption period, the company's profits and income will be taxed at a rate of ten percent (10%) for the two years immediately following the end of the exemption period. After this two-year period, the tax rate will increase to fifteen percent (15%). The CGIR concluded that since the agreement between the company and the BOI remains in effect, the Appellant company cannot deviate from the agreement's conditions without altering or terminating the agreement.

The central issue before this Court is whether the agreement between the Appellant company and the BOI can override the provisions of the IR Act, specifically Section 13(ddd). The Appellant is a limited liability company incorporated and domiciled in Sri Lanka. The BOI entered into an agreement with the Appellant company following an application made by the foreign company M/s WNS (Mauritius) Ltd., located at 10, Free Felix De Valois Street, Port Louis, Mauritius, on behalf of the Appellant, in accordance with BOI law[6]. The Appellant began its commercial operations in the 2004/2005 assessment year but did not generate profits during the first two years. Consequently, the Appellant benefited from a tax exemption under the BOI agreement for five years, starting from the 2006/2007 assessment year under and in terms of IR Act No. 10 of 2006[7]. After this period, the Appellant diverged from the agreement and claimed entitlement to a tax exemption under Section 13(ddd) of the IR Act. As previously stated in this judgment, the BOI agreement specifies that after the five-year tax exemption period, the company must pay income tax at ten percent (10%) for the following two years and fifteen percent (15%) thereafter. Therefore, as stated above, the fundamental question is whether the conditions of the agreement between the Appellant company and the BOI take precedence over the provisions of the IR Act.

[6] Page 1 of the BOI Agreement at p. 63 of the appeal brief.
[7] *Vide* Section 218(3) of the IR Act No. 10 of 2006.

Section 17 (1) of the Board of Investment of Sri Lanka Law, No. 4 of 1978, as amended provides as follows;

17 *(1) the Commission shall have the power to enter into agreements with any enterprise in or outside the Area of Authority and to* ***grant exemptions from any law referred to in Schedule B*** *hereto, or* ***to modify or vary the application of any such laws,*** *to such enterprises in accordance with such regulations as may be made by the Minister.*

(2) Every such agreement shall be reduced to writing and shall upon registration with the Commission, constitute a valid and binding contract between the Commission and the enterprise. (emphasis added)

The Inland Revenue Act No. 10 of 2006[8], which is pertinent to this case, is listed together with Inland Revenue Act No. 28 of 1979, the Inland Revenue Act No. 38 of 2000, in the schedule of the Board of Investment of Sri Lanka Law No. 4 of 1978, as amended.

The learned President's Counsel for the Appellant argued that Clause 12 of the agreement between the Appellant and the BOI mentions benefits, exemptions, and privileges but does not address the imposition of a tax burden. It was contended that the 10% tax rate would only apply in circumstances where the Appellant has taxable income from the specified activity where the standard tax rate is higher. The core of the argument is that, similar to the five-year exemption granted under the same agreement, the BOI intended to offer a 10% concessionary tax rate for the two-year period following the end of the five-year tax holiday, and a 15% concessionary rate thereafter.

In contrast, the CGIR, the Respondent, argued that the BOI's intention was to provide a complete tax exemption for the initial five years to allow the company to generate profits. After this period, the CGIR contended, that the BOI aimed to offer a concessionary tax rate of 10% and 15% compared to higher tax rates

[8] Listed as item 5 by the amendment Act No. 36 of 2009.

otherwise the Appellant company has to pay[9] and/or to provide a grace period for the company to establish its business before it begins paying income tax.

The learned President's Counsel for the Appellant company argued that when the agreement with the BOI was made, the income tax rate for companies, according to the Inland Revenue Act No. 38 of 2000 (as amended), was 35%[10]. Therefore, the 10% and 15% rates specified in the agreement were concessionary. He contended that the agreement should be interpreted to align with the parties' intentions. While he acknowledged that the intent was for the Appellant company to benefit from a concessionary tax rate after the tax holiday, he asserted that once the tax holiday concludes, the tax exemption provided by the applicable law should apply. In this context, the concessionary rates granted by the agreement would be irrelevant, as the Appellant would be entitled to a tax exemption under Section 13(ddd) of the IR Act by virtue of the law.

Accordingly, it was argued that the 10% and 15% rate is no longer a concessionary rate. Consequently, he submitted that the Clauses in the BOI agreement regarding exemption from income tax and the concessionary rates are now redundant. However, he acknowledged that even the IR Act No. 10 of 2006 has a provision similar to the aforementioned provision in the Inland Revenue Act No. 38 of 2000, as amended, where the applicable tax rate is 35% prior to the 1st April 2011 and 28% after the 1st April 2011[11].

The learned President's Counsel acknowledged in his written submissions that when an agreement is entered into with the BOI of Sri Lanka, the provisions of that agreement supersede the relevant provisions of the IR Act[12]. However, he

[9] Section 3 of Part – B of the Second Schedule of the IR Act.
[10] Schedule 2 of IR Act No 38 of 2000.
[11] Item 3 (a) and (b) of Part B of the Second Schedule of the IR Act No. 10 of 2006, At paragraph 32 of the preliminary Written submissions filed by the Appellant. (At paragraph 36 of the final Written submissions filed by the Appellant).
[12] At paragraph 26 of the preliminary Written submissions filed by the Appellant. (At paragraph 30 of the final Written Submission filed by the Appellant).

argued that, despite this, the provisions of the IR Act should take precedence over the agreement. The Counsel strongly contended that tax impositions can only be established by the relevant fiscal statutes and that the BOI of Sri Lanka cannot impose fiscal liabilities but can only grant privileges and concessions.

I will now move on to address the argument outlined above.

Clause (1) of the agreement states that;

(1) *'**The enterprise shall** be entitled to and shall **set up/conduct, and operate the business in accordance with** the undertakings, representations, commitments, and proposals made by the enterprise and set out in the said application and set out in **this agreement**' (...)* (emphasis added).

Consequently, the Appellant company is required to conduct its business in accordance with the terms of its agreement with the BOI.

Under Section 17(1) of the Board of Investment of Sri Lanka Law No. 4 of 1978, as amended, the BOI is empowered not only to grant exemptions but also to *'modify or vary the application of any such laws'* specified in Schedule 'B'. It is admitted that the IR Act No. 10 of 2006 is included in Schedule B of the Act. Furthermore, as the BOI Act is a special law, it is generally understood to take precedence over the general law, the IR Act No. 10 of 2006. Accordingly, it is clear that the BOI has the authority to modify or vary the application of the IR Act No. 10 of 2006 in regard to matters within their domain.

The learned President's Counsel for the Appellant also referred to Section 48C of the IR Act No. 10 of 2006, as amended, to support his argument. This section stipulates that the tax imposed after the end of a tax exemption period under the BOI agreement should not be more burdensome than the tax under the IR Act. However, the term *'taxation under such agreement'* in Section 48C undermines the Appellant's argument that tax liability cannot be imposed by the BOI agreement, as the IR Act itself allows for such a scenario.

Moreover, although the learned President's Counsel cited Section 48C in his written submission[13], it is important to note that this provision was introduced by Amendment Act No. 18 of 2013, effective from 1st April 2013. The year of assessment in issue is 2011/2012, covering 1st April 2011 to 31st March 2012. Consequently, Section 48C is not applicable to the issue at hand and I am displeased and completely puzzled why it was cited.

Additionally, the introduction of this provision through an amendment indicates that a more burdensome tax than that under the IR Act could have been imposed by an agreement, prior to the amendment. Nonetheless, these arguments hold only if the Appellant is eligible for the concessionary tax rate under Section 13 (ddd) of the IR Act.

The Appellant also brought forth the following arguments.

The learned President's Counsel for the Appellant submitted in his written submissions the following extract form the judgement of His Lordship Sripavan J., (as His Lordship then was) in *Vallibel Lanka (Pvt) Limited v. Director - General of Customs*[14]*;*

'It is the established rule in the interpretation of statutes levying taxes and duties, not to extend the provisions of the statute by implication, beyond the clear import of the language used or to enlarge their operation in order to embrace matters not specifically pointed out. In case of doubt, the provisions are construed most strongly against the state and in favour of the citizen thus, the intention to impose duties and/or taxes on imported goods must be shown by clear and ambiguous words. (....) One must have regard to the strict letter of the law and cannot import provisions in the Customs Ordinance so as to supply any assumed deficiency.'

[13] At paragraph 42 of the final Written Submission filed by the Appellant.
[14] [2008]SC Appeal 26/2008.

The learned President's Counsel for the Appellant also cited several judgments[15] and a reference from Maxwell on the *'Interpretation of Statutes*[16]*,*' arguing that in matters of taxation, it has to be looked simply at what is clearly said and there is no room for any intendment; there is no equity about a tax. If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free.

It was also argued that if a provision is reasonably capable of two alternative interpretations, Courts will prefer the interpretation that is more favourable to the taxpayer[17].

However, in this case, there are no such alternative meanings to consider in interpreting Section 13(ddd) and the provisions of the agreement. Similarly, there is no ambiguity in either the statutory provision or the agreement. The task before this Court is to determine whether the Appellant is entitled to the tax exemption under Section 13(ddd) of the IR Act or whether the Appellant is liable to pay tax according to the relevant provisions of the agreement.

Based on the above analysis, I conclude that the Appellant is not eligible for the tax exemption under Section 13(ddd) of the IR Act and is required to pay taxes as stipulated in the agreement with the BOI.

(ii) Is the Appellant's interest income, which is less than 5 million, is liable to income tax at the rate of 12% under and in terms of Part B of the Second Schedule of the Inland Revenue Act, No. 10 of 2006 (as amended)?

[15] *W.T. Ramsay v. CIR*, [1981] 1 All Er 865, *Cape Brandy Syndicate v. Inland Revenue Commissioners*, [1921]12 TC 358, *Partington v. Attorney General*, [1869] LR 4 HL 100, *Sampanthan v. Attorney General*, SC FR 351/2018.
[16] London: Sweet & Maxwell, 12th Edn, 1969, at p.256.
[17] *Inland Revenue Commissioner v. Ross and Coulter*, [1948]1 All ER 616.

Part – B (d) of the Second Schedule of the IR Act No. 10 of 2006, as amended reads as follows;

PART – B

(a) *(...)*

(b) *(...)*

(c) *(...)*

(d) For any year of assessment commencing on or after April 1, 2011, but prior to April 1, 2014-

Any company engaged in the manufacture of any article or in the provision of any service-

(A) (i) of which the taxable income does not exceed Rs. 5,000,000/-;

(ii) which is not a company referred to in PART - A; and

(B) which is not the holding company, a subsidiary company, or an associate company of a group of companies,

on the taxable income

For the purpose of item (B) of paragraph *(b),* paragraph *(c)* and paragraph *(d),* the expressions "holding company", "subsidiary company", and "group of companies" shall have the same respective meanings which they have in the Companies Act, No.7 of 2007 and includes a holding company or a subsidiary of any company incorporated or registered outside Sri Lanka.

The Appellant claimed the 12% concessionary tax rate under Part B(d) of the Second Schedule of the IR Act, arguing that the business profits were exempt from income tax under Section 13(ddd) of the Act. Based on this claim, the Appellant submitted its income tax return[18], declaring a taxable income of Rs. 1,929,476/-, which is less than Rs. 5,000,000/-. However, the Assessor determined that the Appellant's business profits were not exempt under Section 13(ddd) of the Act. Consequently, the Notice of Assessment issued to the Appellant indicated a taxable income of Rs. 220,300,661/-, significantly exceeding Rs. 5,000,000/-.

[18] At pp. 70 to 77 of the appeal brief.

This Court has already determined that the Appellant is not entitled to the tax exemption under Section 13(ddd) of the IR Act and answered Question of Law No. 1 in the negative. Consequently, the Appellant's taxable income exceeds 5,000,000/-, making the Appellant ineligible for the concessionary tax rate under Part B (d) of the Second Schedule of the Act.

Therefore, I answer Question of Law No. 2 in the negative, in favour of the Respondent.

(iii) Is the assessment excessive and without lawful justification?

The Appellant's claim that the assessment is excessive and without lawful justification is based on the premise that the Appellant's business profits are exempt from income tax under Section 13(ddd) of the IR Act. Accordingly, the Appellant argues that the interest income should also be subject to the concessionary rate specified in Part B (d) of the Second Schedule of the IR Act. However, this Court has already determined that both of the Appellant's claims are flawed, rendering the assessment lawful and justified.

Consequently, I answer the third question of law in the negative, in favour of the Respondent.

(iv) Is the determination of the Commissioner General of Inland Revenue time barred?

The learned President's Counsel for the Appellant argues that the CGIR's determination is time-barred, and as a result, the appeal should be considered as having been allowed.

It is undisputed that the Appellant's petition of appeal against the assessment was served on the IRD on 22nd December 2014[19]. The CGIR's determination, dated 27th December 2016, was communicated to the Appellant by letter on 28th December 2016[20].

[19] *Vide* pp. 88 and 89 of the appeal brief.
[20] At pp. 3 and 13 of the appeal brief.

Appeals to the Commissioner General of Inland Revenue

Section 165 (14) of the IR Act No. 10 of 2006 as amended provides as follows;

> ***165*** *(1)-(13) (...).*
>
> *(14) Every* ***petition of appeal*** *preferred under this section,* ***shall be*** *agreed to or* ***determined*** *by the Commissioner- General,* ***within*** *a period of* ***two years from the date*** *on which such* ***petition of appeal is received by the Commissioner- General****, unless the agreement or determination or such appeal depends on—*
>
> > *(a) the decision of a competent court on any matter relating to or connected with or arising from such appeal and referred to it by the Commissioner- General or the appellant; or*
> >
> > *(b) the furnishing of any document or the taking of any action–*
> >
> > > *(i) by the appellant, upon being required to do so by an Assessor or Assistant Commissioner or the Commissioner-General by notice given in writing to such appellant (such notice being given not later than six months prior to the expiry of two years from the date on which the petition of appeal is received by the Commissioner-General); or*
> > >
> > > *(ii) by any other person, other than the Commissioner-General or an Assessor or Assistant Commissioner.*
>
> *Where such appeal is not agreed to or determined within such period, the appeal shall be deemed to have been allowed and tax charged accordingly.*
>
> *(15) (...)* (emphasis added)

However, the IRD acknowledged the Appellant's appeal in a communication dated 5th January 2015[21], stating that the official date of acknowledgment of the appeal would be 5th January 2015.

Section 165 (6) of the IR Act states the following;

> ***165*** *(1)-(5) (…)*
>
> > *(6) The receipt of* ***every appeal shall be acknowledged within thirty days of its receipt and where so acknowledged, the date of the letter of acknowledgement shall*** *for the purpose of this section,* ***be deemed to be the date of receipt*** *of such appeal. Where however the receipt of any* ***appeal*** *is* ***not so acknowledged****, such appeal shall* ***be deemed to have been received*** *by the Commissioner General* ***on the day of which it is delivered to the Commissioner-General****.*
>
> *(7)-(15) (…)* (emphasis added)

Based on the aforementioned communication, the appeal was acknowledged within thirty days of its receipt.

However, the learned President's Counsel for the Appellant argued that the Assistant Commissioner who acknowledged the appeal was not legally authorized to do so for an appeal made to the CGIR, rendering the acknowledgment invalid. Consequently, it was argued that the appeal should be considered as having been received by the CGIR on the actual day it was delivered to the CGIR.

Under Section 165(14) of the IR Act, the CGIR is required to determine every appeal within two years from the date of its receipt.

Acknowledging the appeal

I will now address the question of whether the acknowledgment of the appeal by Assistant Commissioner K.K.J.C. Deshapriya is legally flawed.

[21] At page 90 of the appeal brief.

The learned President's Counsel referred to the definition of the term *'Commissioner General'* provided in Section 217 of the IR Act, which is the interpretation section of the Act, which reads as follows:

> '217. *"Commissioner- General" means the Commissioner-General of Inland Revenue appointed or deemed to be appointed under this Act, and: -*
>
> *a) In relation to any provision of this Act,* ***includes*** *the Senior Deputy Commissioner-General, a Deputy Commissioner General, Senior Commissioner, a Senior Commissioner and Commissioner who is specially authorized by the Commissioner- General either generally or for some specific purpose, to act on behalf of the Commissioner-General;*
>
> *In relation to Chapter XXIII, includes an adjudicator appointed by the Minister and authorized by the Commissioner-General under that Chapter;'*

It was argued in light of the interpretation that under the Act, the Commissioner General could only grant special authorization to a Senior Deputy Commissioner General, a Deputy Commissioner General, a Senior Commissioner, or a Deputy Commissioner.

The learned President's Counsel for the Appellant also cited relevant parts of Section 208 which reads thus;

> *208 (1) (...).*
>
> *(2) A Senior Deputy Commissioner-General or a Deputy Commissioner-General or a Senior Commissioner or Commissioner or a Commissioner exercising or performing or discharging* ***any power, duty or function conferred or imposed on or assigned to the Commissioner-General by any provision of this Act****, shall be deemed for all purposes to be authorized to exercise, perform or discharge that power, duty or function until the contrary is proved.*

(3) (...).

(4) Notwithstanding anything to the contrary in any other provisions of this Act, a Senior Assessor or Assistant Commissioner of Inland Revenue or an Assessor or Assistant Commissioner of Inland Revenue shall not-

a) Act under Section 163; or

b) Reach any agreement or make any adjustment to any assessment made under subsection (7) of Section 165.

Except with the written approval of the Commissioner-General or any Commissioner.

(5) (...). [emphasis added]

Citing Section 208 (2), the Appellant's learned President's Counsel argued that the implied delegation under the Act is also limited to a Senior Deputy Commissioner-General or a Deputy Commissioner-General or a Senior Commissioner or a Commissioner. Accordingly, it was argued that acknowledging an appeal is a statutory duty that can only be delegated to someone who is legally authorized to act on behalf of the CGIR. Essentially, the argument is that the deeming provision in Section 208(2) does not allow an Assistant Commissioner or Assessor to act on behalf of the Commissioner General in acknowledging an appeal submitted to the Commissioner General.

Section 208(4) explicitly states that an Assistant Commissioner or Assessor may not act under Section 163(3) or reach any agreement or make adjustments to any assessment made under Section 165(7) without the written approval of the Commissioner-General or any Commissioner. Since acknowledging an appeal falls under Section 165(6) of the IR Act, it is clear that this act does not require the written approval of the Commissioner-General or any Commissioner.

Section 165(7) allows the CGIR to direct an Assessor or Assistant Commissioner, who was not involved in the original assessment, to conduct further inquiries, upon receiving a valid petition of appeal. This indicates that the Legislature's intent in enacting the provisions of Sections 208 and 217 was not

to restrict the CGIR's authority to have an Assistant Commissioner or an Assessor perform any acts required under the Inland Revenue Act.

Another argument advanced by the learned President's Counsel is that the name printed on the acknowledgment form should be judicially noticed as the person authorized to acknowledge an appeal.

The learned President's Counsel cited section 213 and 194(5) of the IR Act No 10 of 2006, (as amended), which provides as follows;

213. *The Commissioner-General may from time to time specify the forms to be used for all or any of the purposes of this Act, and any form so specified may from time to time be amended or varied by the Commissioner-General or some other form may be substituted by the Commissioner-General, in place of any form so specified. Any form so specified by the Commissioner-General may be published in the Gazette.*

194 *(1)-(4) (…)*

(5) *Every name printed or signed on any notice or signed on any certificate given or issued for the purposes of this Act, which purports to be the name of the person authorized to give or issue the same, shall be judicially noticed.*

In contrast to the argument presented by the learned President's Counsel for the Appellant, who contended that the Commissioner General is not statutorily authorized to permit an Assistant Commissioner or Assessor[22] to acknowledge an appeal, it was argued that the name printed on the designated acknowledgment form represents the individual authorized to acknowledge the appeal. Interestingly, the designation printed on the form is 'Assessor.'

This contention contradicts the Appellant's own submission that an Assessor is not statutorily empowered to acknowledge an appeal[23].

[22] At paragraphs 62 (viii) and 65 of the preliminary written submissions filed by the Appellant.

[23] *Ibid.*

Relevance of the *Carltona* doctrine

Carltona Ltd. v. Commissioner of works is the case where the famous doctrine known as '*Carltona Principle*' on delegation of authority was set out. Lord Green, M. R. delivering the judgment explained the principle as follows;

"In the administration of government in this country, the functions which are given to ministers (and constitutionally properly given to ministers, because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them. To make the example of the present case, no doubt there have been thousands of requisitions in this country by individual ministries. It cannot be supposed that this regulation meant that in each case, the minister in person should direct his mind to the matter. ***The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister.*** *The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament. The whole system of departmental organisation and administration is based on the view that ministers, being responsible to Parliament, will see that important duties are committed to experienced officials. If they do not do that, Parliament is the place where complaint must be made against them".* [emphasis added]."

The *"Carltona doctrine"* applies when a statute grants a power to a Minister, and it is impractical for the Minister to exercise this power personally. In such cases, the Minister may generally act through a duly authorized officer without requiring a formal delegation of power. Under this doctrine, the officer is

considered an *"alter ego"* of the Minister, and the officer's decisions are treated as if they were made by the Minister himself.

This principle was applied in the case of *Kuruppu v. Keerthi Rajapakse, Conservator of Forests*,[24] wherein Rodrigo, J. quoted the following passage from De Smith's Judicial Review of Administrative Action[25].

"*Special considerations arise where a statutory power vested in a Minister or a department of State is exercised by a department official. The official is the alter ego of the Minister or the Department and since he is subject of as to the fullest control by his superior, he is not usually spoken of as a delegate… The Courts have recognized that duties imposed on Ministers and the powers given to Ministers are normally exercised under the authority of the Ministers by responsible officials of the department……. In general, therefore, a Minister is not obliged to bring his own mind to bear upon a matter entrusted to him by statutes, but act through a duly authorized officer of his department."*

In the recent past Courts have further extended the doctrine '*Carltona principle'.* In the case of *R. (Chief Constable of West Midlands Police) v. Birmingham Justices.*[26] Sedley LJ. held that;

"There was a distinction to be drawn between 'those offices which are the apex of an organisation itself composed of office-holders or otherwise hierarchically structured, and those offices designated by Parliament because of the personal qualifications of the individual holder'[27]*. In the former case the subordinate officers could act on behalf of their superior to whom Parliament had granted the power and who would take legal responsibility for its exercise. In the latter only the officer actually empowered could act."*

The CGIR's role is defined by the hierarchical structure established by the statute, rather than by his personal qualifications. Given the many significant

[24] (1982) 1 Sri. L.R. p. 163 at pp.168 and 169.
[25] 2nd Edition, at pp. 290 and 291.
[26] [2002] E. W. H. C. 1087 (Admin); H. W. R. Wade and C. F. Forsyth 11th Edition at p. 268.
[27] Sedley LJ in R (Chief Constable of West Midlands Police) v. Birmingham Justices.

responsibilities assigned to the CGIR by the statute, it seems inevitable that minor functions, such as acknowledging appeals, would be delegated. Furthermore, acknowledging an appeal does not require specialized knowledge or discretionary judgment; it is simply an administrative task.

In the case of *Director of Public Prosecutions v. Haw* [28] the concern was whether in the absence of express statutory authorisation the power could be delegated by a superior officer to a subordinate officer. Lord Phillips C. J., held;

"Where a statutory power is conferred on an officer who is himself the creature of statute, whether that officer has the power to delegate must depend upon the interpretation of the relevant statute or statutes. Whether the responsibilities of the office created by statute are such that delegation is inevitable, there will be an implied power to delegate. In such circumstances there will be a presumption, where additional statutory powers and duties are conferred, that there is a power to delegate unless the statute conferring them, expressly or by implication, provides to the contrary."

Dr. Sunil F. A. Coorey, in his scholarly work titled *Administrative Law in Sri Lanka*[29] made the following observations.

"There can be cases where statute requires that the exercise of power by one officer or authority be authenticated certified or communicated by some particular official, and such authentication, certification or communication has been in fact done by a different official. Here, the situation is that actual exercise of power has been by the proper person., but the wrong person has authenticated, certified, or communicated such exercise of power. In this type of situation, the law seems to be that as the proper person has in fact exercised the power in question, its authentication, certification, or communication by the wrong person does not, for that reason alone, affect the validity of such exercise of power."

[28] [2007] E. W. H. C. 1931; H. W. R. Wade and C. F. Forsyth 11th Edition at p. 268.
[29] 4th Edition Vol. I at p. 643.

In the case of *Lanka Ashok Leyland PLC v. The Commissioner General of Inland Revenue*[30] the question as to whether an appeal should be acknowledged by the CGIR himself was considered and it was held by the numerically equal bench of this Court that although the statute provides that the appeal has to be submitted to the CGIR, there is no requirement that the acknowledgement also should be made by the CGIR himself. His Lordship Janak De Siva, J., having also considered the application of the *Carltona* principle, stated on page 6 as follows:

"Court is of the view that there is no merit in the submission of the Appellant that the acknowledgement must be signed by the Respondent. The functions of the Inland Revenue Department are so multifarious that no Commissioner-General of Inland Revenue could ever personally attend to all of them. In particular, Court will be slow to impose such requirements unless there is unequivocal language in the IR Act. It is true that the appeal has to be submitted to the respondent. However, that does not mean that the acknowledgement to be made by the respondent. Similar approach has been taken by our Courts in applying the Carltona principle in relation to administrative functions to be performed by Ministers (M.S.Perera v. Forest Department and another [(1982) 1 Sri. L.R. 187] and Kuruppu v. Keerthir Rajapakse, Conservator of Forests [(1982) 1 Sri. L.R. 163]".

At this point, it is also relevant to determine whether acknowledging an appeal is a statutory duty that falls directly on the CGIR himself.

The issue of acknowledging an appeal arises from Section 165(6) of the Act. This section specifies the timeframe within which an appeal must be acknowledged and states that if acknowledgment does not occur within this period, the appeal is deemed to have been acknowledged on the day it was delivered to the CGIR. However, Section 165(6) does not explicitly state that the acknowledgment must be carried out by the CGIR personally. In contrast, the proviso to Section 165 (1), 165 (4) and Sections 165 (7), 165 (8), 165 (9), 165

[30] CA TAX 14/2017.

(10), 165 (11), 165 (12), 165 (13), 165 (14) and 165 (15) specifically outline functions that the CGIR must perform.

It is well-established law that a Court cannot add or read words into a statute. As previously mentioned in this judgment, the role of the Courts is to interpret the law, not to create legislation. Such legislative functions are solely within the prerogative of the legislature.

On reading words into a statute, Bindra states that:[31]

'*It is not open to add to the words of the statute or to read more in the words than is meant, for that would be legislating and not interpreting a legislation. If the language of a statutory provision is plain, the Court is not entitled to read something in it which is not there, or to add any word or to subtract anything from it.*'

Therefore, I am unable to conclude that acknowledging an appeal is a function of the CGIR himself or only by an officer authorized under the IR Act, without reading additional words into Section 165 of the IR Act.

Another argument advanced by the learned President's Counsel for the Appellant is that the *Carltona* principle, a principle of English constitutional law, has no application where there is a statutory power of delegation[32]. He cited the following statement of Lord Woolf, Sir Jeffrey Jowell, Catherine Donnelly and Ivan Hare(eds), in *De Smith's Judicial Review* [London: Sweet & Maxwell,8th edn.,2018], at p.36,

The Carltona principal may be expressly excluded by legislation, but whether it may in addition be excluded by statutory implication remains uncertain. Two situations should be distinguished. Where a power of delegation is expressly conferred by Parliament on a minister, it may compel the inference that Parliament intended to restrict the devolution of power to the statutory method, thus impliedly excluding the Carltona principle. Commonwealth authority,

[31] N. S. Bindra, *Interpretation of Statutes*, Eighth Edition, 1997. at p.452.
[32] At paragraph 66 of the preliminary written submissions filed by the Appellant.

however, suggests that such an implication will not readily be drawn. It has also been suggested that the principle may be impliedly excluded where it appears inconsistent with the intention of Parliament as evinced by a statutory framework of power and responsibilities.

However, in this instance, the statute does not explicitly provide for such an exclusion. Section 165(1) and (2) states that an appeal should be preferred to the CGIR, and Section 165(6) does not stipulate that the appeal must be acknowledged by the CGIR personally. If the Legislature intended this requirement, it would have explicitly included it. Therefore, in my view, inferring such an implication would involve adding words to the statute, which is not permissible. Furthermore, as previously stated, Section 208(4) excludes an Assessor only from performing functions under Sections 163 and 165(7), without written approval. This means that the statutory exclusion without written approval applies solely to these specific functions and not to others. Section 208(8) pertains to the *powers, duties, or functions conferred or imposed on the Commissioner-General by any provision of the IR Act*. As mentioned earlier, the acknowledgment of an appeal is not a function assigned to the Commissioner-General by the IR Act. Consequently, the definition of 'Commissioner-General' in Section 217 too is also not relevant to the issue at hand. Moreover, the definition uses the word *'includes'* to expand the term 'Commissioner General' to encompass the named officers within the Act, indicating that the interpretation is not restrictive.

On the above issue in our own judgment in *Polycrome Electrical Industries (Pvt) Ltd v. The Commissioner General of Inland Revenue*[33] Dr. Ruwan Fernando J. (with whom I concurred) dealing with delegation of authority cited the following extract from the Indian Supreme Court decision in the case of *Sidhartha Sarawagi v. Board of trustees for the Port of Kolkata and others*[34]

[33] CA. TAX 0049/2019.
[34] [2014] 16 SCC 248.

*"Delegation is the act of making or commissioning a delegate. It generally means of powers by the person who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself. Delegation is defined in Black's Law Dictionary as the act of entrusting another with authority by empowering another to act as an agent or representative. …**Delegation generally means parting of powers by the person who grants the delegation, but it also means conferring of an authority to do things which otherwise that person would have to do himself**."* (emphasis added)

In light of the above analysis, I am of the view that the acknowledgment of an appeal is not necessarily an act that must be performed personally by the CGIR or require formal delegation to another officer for this purpose. Given the large number of taxpayers in Sri Lanka, it would be impractical for the CGIR to personally acknowledge each appeal.

Moreover, in the acknowledgment signed by Assistant Commissioner K.K.J.C. Deshapriya[35], he states that he was directed by the CGIR, pursuant to Section 165(7) of the Inland Revenue Act, to conduct further inquiries into the appeal. Without causing prejudice to the conclusion above, I would state that acknowledging an appeal is a procedural step in the process of *making further inquiries into the appeal* made to the CGIR.

Therefore, I conclude that an Assistant Commissioner who acknowledges an appeal based on directions from the CGIR under Section 165(7) of the Inland Revenue Act is acting within legal bounds. Since acknowledgment is essentially an administrative task, the most reasonable inference is that the Assistant Commissioner acted under an implied delegation of authority from the CGIR.

The learned President's Counsel for the Appellant also argued that the letter of acknowledgment[36] clearly indicates that the date of acknowledgment is 22nd December 2014[37]. He relied on the first paragraph of the letter, which states, "*I*

[35] At page 90 of the appeal brief.
[36] At page 90 of the appeal brief.
[37] At paragraphs 68,69, and 70 of the final Written submissions filed by the Appellant.

hereby acknowledge the receipt of your appeal made by the letter of 22/12/2014 against the income tax assessment issued for the year of assessment 2011/2012." However, I am not inclined to accept this submission on behalf of the Appellant. The letter merely acknowledges the "*receipt*" of the appeal on 22nd December 2014. It cannot be considered the date of acknowledgment as per Section 165(6) of the IR Act.

The Appellant contends that, due to the lack of a proper acknowledgment of the appeal, the appeal should be considered as having been received by the CGIR on 22nd December 2014, which is the date it was delivered to the CGIR.

However, based on the above analysis, I find that the appeal was properly acknowledged by the Assistant Commissioner's letter dated 5thJanuary 2015. The CGIR made his determination on 27th December 2016, which is within the required two-year period.

The Appellant contended that they only received the CGIR's determination on the 30th December 2016[38]. Section 165(6) stipulates that if an appeal is acknowledged within thirty days of its receipt, the date on the acknowledgment letter shall be considered the date of receipt of the appeal. Section 165 (14) states that the CGIR must determine every Petition of appeal within two years from the date of its receipt. Therefore, the actual date on which the Appellant received the determination is irrelevant.

Therefore, I conclude that the CGIR's determination is not time-barred under Section 165(14) of the Inland Revenue Act and answer the fourth question of law in the negative, in favour of the Respondent.

(v) In view of the facts and circumstances relating to the case has the Commissioner General of Inland Revenue erred in law in coming to the conclusion that he did?

[38] At paragraph 60 of the preliminary written submissions filed by the Appellant. (At paragraph 66 of the final Written Submissions filed by the Appellant).

In view of the answers provided to Questions (i) to (iv), I answer this question in the negative, in favour of the Respondent.

Conclusion

Based on the preceding analysis of the facts and applicable law in this case, I conclude that the TAC did not err in determining that the Appellant failed to qualify for the income tax exemption under Section 13(ddd) of the IR Act. Additionally, the determination by the CGIR is not time-barred.

Accordingly, I answer all five questions of law in the negative, in favor of the Respondent.

1. ***No***
2. ***No***
3. ***No***
4. ***No***
5. ***No***

In light of the answers given to the five questions of law, acting under Section 11 A (6) of the Tax Appeals Commission Act No. 23 of 2011, as amended, I affirm the determination made by 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