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).

Jetwing Zinc Journeys Lanka (Pvt) Ltd,
"Jetwing House", 46/26,
Navam Mawatha,
Colombo 02.

APPELLANT

CA No. CA/TAX/0001/2023
Tax Appeals Commission
No. TAC/IT/022/2018

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	:	Avindra Rodrigo, PC with Aruna De Silva and Oshani Wijewardena for the Appellant. M. Jayasinghe, DSG for the Respondent.
ARGUED ON	:	27.03.2024
WRITTEN SUBMISSIONS	:	18.08.2023 and 09.05.2024 (by the Appellant) 19.04.2024 (by the Respondent)
DECIDED ON	:	14.06.2024

M. Sampath K. B. Wijeratne J.

Introduction

Jetwing Zinc Journeys Lanka (Pvt) Ltd, the Appellant, is a limited liability company incorporated in Sri Lanka. The primary business of the Appellant was to provide services to Royal Heritage Hotels (Pvt) Ltd and Seashells Hotels (Pvt) Ltd. The Appellant filed its income tax return for the assessment year 2012/2013 with the Inland Revenue Department[1] on 26th November, 2013. The Assessor rejected this return in a letter dated 23rd November, 2015, citing reasons under Section 163 (3)[2] of the Inland Revenue Act No. 10 of 2006, as amended (hereinafter referred as the 'IR Act'). Consequently, the Assessor issued a Notice of Assessment dated 27th November 2015[3], which the Appellant allegedly received around 15th December 2015[4].

[1] At pp. 152 to 159 of the appeal brief.
[2] At pp. 149 to 151 of the appeal brief.
[3] At pp. 92/148 of the appeal brief.
[4] *Vide* pp. 90 and 91 of the appeal brief.

Being aggrieved by the said assessment, the Appellant appealed to the Commissioner General of Inland Revenue (hereinafter referred as the 'CGIR') on 22nd December 2015[5], in accordance with Section 165 of the IR Act. The CGIR acknowledged the appeal by a letter dated 6th January 2016[6]. After hearing the appeal, the CGIR decided on 21st December 2017[7], under Section 165 (13) of the IR Act, upholding the Assessor's assessment. The reasons for this determination were communicated to the Appellant in a letter dated 27th December 2017[8].

The aggrieved Appellant lodged an appeal with the Tax Appeals Commission (hereinafter referred to as the 'TAC') against the decision of the CGIR[9]. Following the hearing of the appeal, the TAC rendered its decision on 25th October 2022, upholding the CGIR's decision and dismissing the Appellant's appeal.

Being aggrieved by the said determination of the TAC, the Appellant moved the TAC to state a case to this Court on eleven questions of law[10] for the opinion of this Court, in accordance with Section 11A of the Tax Appeals Commission Act.

The eleven questions of law are;

(1) Did the Commission err in law in holding that the Appellant was an "associate company" for purpose of Section 59B (1) of the Inland Revenue Act No. 10 of 2006 (as amended)?

(2) Did the Commission err in law in failing to consider that the Appellant was a joint venture and therefore did not fall within the definition of an "associate company" under Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended)?

[5] *Vide* appeal at pp. 146 and 147 of the appeal brief.
[6] At page 145 of the appeal brief.
[7] *Vide* page 127 of the appeal brief.
[8] At pp. 122 to 126 and 128 of the appeal brief.
[9] *Vide* page 3 of the appeal brief.
[10] *Vide* 'X4' annexed to the stated case dated 23rd November 2022.

(3) Did the Commission err in failing and/or neglecting to consider the Appellant's submission that the Appellant company is a joint venture?

(4) Did the Commission err in law in arriving at the conclusion that holding of 50% shareholding can be considered to be having "significant influence" within the definition of "associate company" under Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended)?

(5) Did the Commission err in law in failing to consider that the Appellant's investing companies had joint control over the Appellant, and thereby did not exercise significant influence over the Appellant?

(6) Did the Commission err in failing and/or neglecting to consider that by virtue of the conjunctive "and" being used by the legislature in the definition of "associate company", any company which is a joint venture falls outside the definition of an "associate company" under Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended)?

(7) Did the Commission err in failing and/or neglecting to consider that taxing statutes such as the Inland Revenue Act No. 10 of 2006 (as amended) must be strictly interpreted in light of what is clearly express, without resource to any extraneous material and/or assumption and/or theories not based on the statute itself?

(8) Did the Commission err in law and/or misdirect itself in misapplying and/or misconstruing the provisions under Section 59B read with Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended)?

(9) Did the Commission err in law in arriving at the conclusion that the Appellant company was not entitled to apply the concessionary rate of 10% on its profits and income under Section 59B read with Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended)?

(10) Did the Commission misdirect itself and/or err in finding that the Appellant and the respondent agreed to adopt the proceedings to far held before the Commission and that the Appellant made oral submissions and/or that the appeal was taken up for hearing on 21st September 2022?

(11) In view of the facts and circumstances of the case, did the Commission err in law in arriving at the conclusion that it did?

Analysis

Questions of law No. 1, 2, 3, 4, 5, 6, 8 and 9

The primary legal question at hand centres on whether the Appellant company qualifies for the concessional income tax rate of 10% as outlined in the Fifth Schedule of the IR Act, which is provided under Section 59B of the Act.

Section 59B (1) of the IR Act reads as follows;

> **'59B (1).** *The profits and income of any person (not being the holding company, a subsidiary company, or an associate company of a group of companies) for any year of assessment commencing on or after April 1, 2011, from any undertaking referred to in subsection (2) shall, notwithstanding anything to the contrary in any other provisions of this Act, but subject to provisions of section 59F be chargeable with income tax at the appropriate rate specified in the Fifth Schedule to this Act.*'

The Appellant company argued that their profits and income derived from an undertaking stipulated in Section 59B (2) of the IR Act, thus making them eligible for the concessionary income tax rate specified in Section 59B (1). However, the TAC, in their impugned determination, upheld the CGIR's determination, holding that the Appellant company is an *associate company* in

terms of Section 217 of the IR Act, and consequently, ineligible for the concessional tax rate.

As previously mentioned in this judgment, the Assessor categorized the Appellant company as an *associate company*. However, the Appellant company contested this classification, asserting that it operates as a *joint venture* and thus should not be considered an *associate company*. It is important to note that the Appellant did not claim that the company functions as a holding company or a subsidiary within a group of companies.

Therefore, the determination of whether the Appellant is a holding company or a subsidiary is not relevant to the questions of law that this Court is tasked with resolving.

Associate company

According to Section 217, the interpretation Section of the IR Act, an *associate company* means, *'a company over which an investing company has a* ***significant influence*** *and which is neither a subsidiary of the investing company nor a* ***joint venture*** *of which the investing company is a partner'.* (Emphasis added)

It is noteworthy to highlight that while the TAC acknowledged the necessity of *significant influence* for a company to be categorized as an *'associate company'*, it overlooked the second requirement crucial for such classification. This requirement mandates that the company should neither be a subsidiary of the investing entity nor a partner in a *joint venture* with the investing company.

The Respondent argues that the Appellant is deemed an *associate company* of the investing companies. It was further contended that these investing companies exercise significant influence over the Appellant but do not hold subsidiary status nor partake in a *joint venture*. The Respondent asserted that among the five Directors of the Appellant, two are appointed by Jewing Hotels Management Services (Private) Limited, which undoubtedly grants Jewing Hotels Management Services (Private) Limited the ability to 'participate' in the policy-making process, thus exerting *significant influence*, yet falls short of *control* or

joint control. However, it is worth noting that, according to the joint venture agreement[11], Innovation INC, the other investing company, also appoints two directors, and both investing companies jointly nominate the fifth director. I will examine the implications of this aspect in the subsequent sections of this judgment.

It was further submitted that Jewing Hotels Management Services (Private) Limited holds 50% of the total shareholding in the Appellant company. The Respondent compared this shareholding with the 98% shares held by the investing company in another company named Jetwing Hotels, arguing that the 50% shareholding demonstrates *significant influence* without having *control* or *joint control*. The TAC also determined that '*holding 50% shareholding can be considered as to have significant influence.[12]'.* However, controlling interest is not a strict and automatic consequence of shareholding. A variety of mechanism that are available to companies for exercising effective control. Control can be exercise by legal forms or influence through the wide range of resources[13].

Significant influence

While the term "*significant influence*" is used in Section 217 of the IR Act, it remains undefined within the Act. However, it cannot be subject to arbitrary, capricious, and self-serving interpretations, as these terms are not susceptible to pure literal interpretation. Therefore, it warrants a logical interpretation with the assistance of external aids. N. S. Bindra, in his treatise 'Interpretation of Statutes,' provides guidance on obtaining external aid in interpreting fiscal statutes.

N. S. Bindra's in his treatise *'Interpretation of Statutes'* states the following regarding obtaining external aid in interpreting fiscal statutes;

'*The principle that fiscal statutes should be strictly construed does not rule out the application of the principles of reasonable construction to give effect to the*

[11] At pp. 13-68 and 205-260 of the appeal brief.
[12] At page 10 of the TAC determination/page 15 of the appeal brief.
[13] Wolfgang Friademan, *'Joint International Business Ventures in Developing*', Columbia University Press, New York (1971).

purposes or intention of any particular provision as apparent from the scheme of the Act, with the assistance of such external aids as are permissible under the law.'

'We must also, of course, have regard to the subject-matter with which the Legislature is dealing and the first thing to be done is, having regard to that subject-matter, to find out what the Legislature has said as a matter of English, that is, to discover the grammatical construction of the words used, of course giving to words of art their technical meaning.'[14]

N.S. Bindra further states[15],

'*The technical words and phrases of the law presumed to have been used in their proper technical signification when used in statutes, unless it plainly appears that a different meaning was intended by the legislature…….* ***similarly terms of art should be understood according to their usage in the art to which they belong***.'

'***the general rule with respect to terms used in trade or commerce, is that in the absence of evidence of a contrary legislative intent, words of commerce or trade, when used in a statute relating to those subjects, are presumed to have been used by the legislature in their trade or commercial meaning*** *(…) words and expressions in a sales tax should be construed as understood in the trade by the dealer and the consumer*'

(Emphasis added)

The learned President's Counsel for the Appellant cited from the case of *United Offset Process Pvt Ltd v. Asst Collector of Customs, Bombay and others*[16]

*'There is no specific technical definition as such provided in the Customs Tariff Act or in the notification****. If there is no meaning attributed to the expressions used in the particular enacted statute then the items in the customs entries***

[14] N. S. Bindra, *Interpretation of Statutes*, Eighth Edition, 1997. pp. 674-675; *Annapurna Biscuit Manufacturing Co., Kanpur v. C.I.T., U.P., Lucknow*, 1981 All L J 906 (SC).
[15] N. S. Bindra, *Interpretation of Statutes*, Tenth Edition., page 231-233.
[16] [1989] AIR 622.

should be judged and analysed on the basis of how these expressions are used in the trade or industry or in the market or in other words, how these are dealt with by the people who deal in them*'*

(Emphasis added)

In the case of *Ramavatar Budhaiprasad ETC v. The Assistant Sales Tax Officer Akola and another LNIND*[17] cited on behalf of the Appellant it was observed that;

'*Reliance was placed on the dictionary meaning of the word 'vegetable' as given in Shorter Oxford Dictionary where the word is defined as "of or pertaining to, comprised or consisting of, or derived, or obtained from plants or their parts." But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance.* ***It has not been defined in the Act and being a word of everyday use, it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it.***'

(Emphasis added)

Although the IR Act does not provide a definition for the term "*significant influence*," such a definition can be found in the Sri Lanka Accounting Standards[18]. The TAC also relied on this definition. According to LKAS 31 Sri Lanka Accounting Standards, "*significant influence*" is defined as '*is the power to participate in the financial and operating policy decisions of an economic activity but is* ***not control*** *or* ***joint control*** *over those policies'*

Accordingly, for an investing company to have *significant influence* over another company, the investing company shall,

i. Have the power to participate in the financial and operating policy decisions of the other company; and,

[17] [1961] SC 107.
[18] Annexed to the Written submission of the Appellant marked 'WS1'.

ii. Shall not be in *control* or *joint control* over financial and operating policy decisions.

Therefore, in accordance with LKAS 31 of the Sri Lanka Accounting Standards, an investing company that exercises *control* or *joint control* over the financial and operational policy decisions cannot be regarded as having *significant influence* over a company[19].

Furthermore, it is evident that possessing *significant influence* entails a position below having outright *control* or *joint control* over operational policy decisions, but it still involves the ability to participate in such decisions.

Control/Joint control

LKAS 31 of the Sri Lanka Accounting Standards defines '*control*' and '*joint control*' as follows;

Control '*Is the power to govern the financial and operating policies of an economic activity so as to obtain benefits from it.'*

Joint control '*The contractually agreed sharing of control over an economic activity, and exists only when the strategic financial and operating decisions relating to the activity require the unanimous consent of the parties sharing control (the ventures).*'

The Appellant cited the following extracts from the joint venture agreement[20] and Articles of Association[21] , arguing that the Appellant company's financial and operating policy decisions are jointly controlled by the two investing companies. Therefore, the Appellant company cannot be considered as a company over which either of the two investing companies has *significant influence*.

The provisions cited by the Appellant are;

[19] At paragraphs 31 and 32 of the Appellant's Written submissions is not added below.
[20] *Supra* note 11.
[21] At pp. 166 to 199 of the appeal brief.

1) No business shall be transacted at any general meeting of shareholders **unless a quorum consisting of two authorized representatives representing each investing company shall be present**[22];
2) The Appellant company shall be managed by a board of directors consisting five directors. **Each investing company is entitled to appoint two directors each and the 5th director shall be nominated by both investing companies jointly who shall be the chairperson and shall not have a casting vote**[23];
3) The investing companies by giving a written notice jointly signed by them may remove the jointly nominated director[24];
4) Any resolution on, *inter alia*, the following,
    i. carrying on of any business other than the main object for which the Appellant company was established,
    ii. approval and/or amendment of the annual finance budget and all financing matters of the Appellant company,
    iii. the exercise of the borrowing powers of the Appellant company or the directors,
    iv. the recommendation of dividends,
    v. the creation of reserves, capitalization of reserves and surplus money by the directors,
    vi. the approval of transfer of shares,
    vii. **the creation of any Bank Guarantees or any other form of security or change**,
    viii. any capital expenditure in excess of Rs. 100,000/-,
    ix. the grant of power of attorney or delegation of directors' powers,
    x. **the change of the registered office of the Company**

[22] Article 15 (1) and (2) of the Articles of Association, at pp. 166 to 199.
[23] Article 26 (2) and (3), 35 (1) and 39 (2) of the Articles of Association, at pp. 166 to 199.
[24] Article 26 (7) of the Articles of Association, at pp. 166 to 199.

shall be deemed to be passed **only if the votes case in favour consists of at least one nominee director representing each investing company**[25].

Upon careful consideration of the above extracts from the Articles of Association[26] and joint venture agreement[27] reproduced by the Appellant, I observe that the two investing companies have contractually agreed to share control over the economic activities of the Appellant company. The unanimous consent of the two investing companies, each holding equal shares, is required for the implementation of the economic activities. Consequently, the power to govern the financial and operating policies of the economic activity rests with the two investing companies.

Significant influence* or *joint control

In light of the analysis provided above in this judgment, I conclude that the role of the two investing companies is not merely one of participation exercising influence, but rather one of *joint control* over the Appellant company.

Joint venture

In light of Section 217 of the IR Act and Sri Lanka Accounting Standards LKAS 31, if the investing companies exercise only *significant influence* over the company by participating in the financial and operating policy decisions of the company's economic activities, but do not have *control* or *joint control*, then the latter is considered an *associate company*. In the case at hand, the Appellant asserts that it is a *joint venture*.

The general definition of a *joint venture* is that Business entity created by two or more firms through an agreement that typically includes shared governance, resources, profits, losses and expenses for a particular project. It is a strategic partnership where two or more companies develop a new entity in order to collaborate on a specific project or venture. This agreement allows each

[25] *Vide* Article 27(4) of the Articles of Association of the Appellant company, at p. 168-199 of the appeal brief and Clause 2.1.11 of the Joint Venture Agreement, at. pp. 13-68 and 205-260.
[26] *Supra* note 21.
[27] *Supra* note 11.

company to pool their resources expertise and capital to achieve of a common objective and share the risk and rewards.

As previously mentioned in this judgment, for a company to meet the definition of an *associate company* under Section 217 of the IR Act, two requirements must be fulfilled: the investing company **must have** *significant influence*, and the company **must not** be a subsidiary or a joint venture of the investing companies. In the instant case, the Appellant does not claim to be a subsidiary of the investing companies but asserts that it is a joint venture in which the investing companies are partners. The term "*joint venture*" is also defined in LKAS 31 of the Sri Lanka Accounting Standards, which reads as follows:

'*A contractual arrangement whereby two or parties undertake and economic activity that is subject to joint control*'

Black's Law Dictionary[28] defines a term *joint venture* as follows;

'*A business undertaking by two or more persons engaged in a single defined project. The necessary elements are (1) an express or implied agreement; (2) a common purpose that the group intends to carry out; (3) share profits and losses; and (4) each member's equal voice in controlling the project'.*

The Oxfords Advanced Learner's Dictionary[29] defines *joint venture* as follows;

'*A business project or activity that is begun by two or more companies, etc., which remain separate organizations.*'

A corporate *joint venture* is established when two or more entities form a corporation. The partners become shareholders in the *joint venture* incorporated.

The Appellant cited the judgment in the case of the Northen Irland Court of Appeal *Sweeney v. Lagan Development limited and others*[30] wherein it was observed that '*joint ventures may take the form of a partnership, contractual alliance or a corporate joint venture.*'

[28] B. A. Garner, *Black's Law Dictionary*, Eleventh Edition, at p. 431.
[29] Oxford Advanced Learner's Dictionary, Ninth Edition, at p. 846.
[30] 2007 [NICA]11 -Copy annexed to the Written submission marked 'WS3'.

The Appellant also cited the following extract from the judgement of Girvan L.J. in the above case,

'*As Hewitt's 'Joint Venture' 3rd Ed at para 1.11 makes clear it refers to a range of collaborative business arrangements, the fundamental characteristic of a joint venture being collaboration between the participants involving a significant degree of integration between the joint venturers.* ***The key element to be considered and agreed by the joint venturers is the degree and nature of that collaboration. Joint ventures may take the form of a contractual alliance, a partnership or a corporate joint venture (…)*** *There are clear legal differences between running a joint venture as a company and running it as a loose contractual alliance. These include the management framework, the decision-making arrangements, the funding arrangements and the financial powers of the entity (a company, for example, having powers to raise money by way of floating charges). Clearly there will be different exist strategies and issued relating to the division of profits.' (Emphasis added)*

There are two known types of joint ventures. One is agreeing to co-operate with another business in a limited and specific way. The two partners could agree to a contract setting out the terms and conditions how the business would work. Alternatively, a separate joint venture business, like in this instance, could be set up. The above options are alternatives to having a formal business partnership or merge the two businesses. In this instance, it is a newly incorporated company designated to manage a specific business endeavor. Each partner owns shares in the company and agreed how the company should be managed by entering into a joint venture agreement.

The Appellant, citing the Articles of Association[31] of the Appellant company and the joint venture agreement[32] dated 2nd January 2010, submitted that the total shareholding of the Appellant company is equally divided between the two investing companies. It was also submitted that Clause 1.5 of the joint venture

[31] *Supra* note 21.
[32] *Supra* note 11.

agreement clearly stipulates that both investing companies shall, unequivocally and for all purposes, be considered entitled to equal rights in respect of the Appellant company.

The Appellant submitted that it is a *corporate joint venture* set up by and between Jetwing Hotels Management Services (Private) Limited and Cinnovation INC, the two investing companies. The Appellant company is not a party to the joint venture agreement. Consequently, the Respondent argued that the Appellant is not a joint venture where the Appellant and the investing companies are partners[33]. However, Clause 1.6 of the joint venture agreement provides that immediately upon the incorporation of the joint venture company, the Appellant, the parties shall cause the joint venture company to accept and adopt the agreement and become bound by the same thereby adding the Appellant into the joint venture.

Based on the analysis provided above in this judgment, I conclude that the Appellant Company is not an *associate company* but rather a *joint venture*.

Consequently, questions of law Nos. 1, 2, 3, 4, 5, 6, 8, and 9 are answered affirmatively in favour of the Appellant.

Questions of law No. 7

In contrast to the arguments presented by the Appellant regarding previous questions of law No. 1 to 6, 8, and 9, the Appellant contends for question of law No. 7 that taxing statutes must be strictly interpreted based on their explicit language, **without recourse to any extraneous material** or assumption and theories not based on the statute itself[34].

The Appellant cited *Vallibel Lanka Pvt Ltd v. Director general of Customs and others*[35]

[33] Page 4 of the Respondent's 1st Written submission.
[34] At paragraph 46 of the appeal brief
[35] [2008] 1 SLR 219.

'*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.*' (emphasis added)

It was also cited from the case of *The Cape Brandy Syndicate v. The Commissioners of Inland Revenue*[36], which reads as follows;

'*In taxation you have to look simply at what is clearly said. There is no room for any intendment;* ***there is no equity about a tax: there is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and at what is said clearly and that is the tax.***' (Emphasis added)

Further, cited the case of *Charles James Partington Plaintiff In Error; and The Attorney-General Defendant In Error*[37], wherein it is stated as follows;

'*If the person sought to be taxed comes within the letter or 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, however, apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.***'

(Emphasis added)

Consequently, the Appellant sought to have question of law No. 7 answered in their Favour. In its determination, the TAC relied on the Sri Lanka Accounting Standards LKAS 31 to interpret the term '*significant influence'* as it is used in the definition of '*associate company'* in Section 217 of the IR Act.

[36] 12 TC 358.
[37] [1869] L.R. 4 H.L. 100.

The Appellant relied on the same accounting standards as the TAC to interpret the term *'significant influence*,' but formulated the seventh question of law to argue against using extraneous material to interpret the IR Act, which should be strictly construed. In my opinion, the Appellant should not be allowed to approbate and reprobate; to blow hot and cold.

Consequently, I answer the seventh questions as follows; '*The TAC did not err in interpreting the IR Act with external aid; the Sri Lanka Accounting Standards LKAS 31'*

Question of law No. 10

The Appellant base the above question on the following observation made by the TAC in its determination. '*Hence, the appeal was taken for further hearing on 21.09.2022 with Mr. S. W. Wickramarachchi, Mr. B. J. Jayaratne in the membership. Appellant and Respondent agreed to adopt the proceedings so far held and made certain oral submissions before the new panel'*.

The Appellant contends that when the appeal was taken up for further hearing on 21st September 2022, the Appellant's Attorney informed the TAC that the date was inconvenient for their Counsel and requested a new hearing date before a new panel. Consequently, the Appellant did not make any oral submissions, and the appeal was not heard on 21st September 2022, but was adjourned to a later date. Upon receiving the TAC's determination, the Appellant's Attorney submitted a letter dated 4th November 2022, to the TAC, requesting the proceedings from the hearing on 21st September 2022, as well as from two other dates. The Appellant claims that in response, they were verbally informed that the TAC does not maintain records of any hearings.

Consequently, other than the bare statement of the Appellant and the aforementioned statement in the determination of TAC, which are contradictory to each other, there is no other material before this Court to arrive at a conclusion on question of law No. 10.

Therefore, I answer the question of law No. 10 as '*not substantiated*'.

As submitted by the learned President's Counsel for the Appellant, whether the Appellant's income in question was from any undertaking referred to in Subsection (2) of Section 59B of the IR Act was not an issue at the TAC or before the CGIR. At the argument, the learned Deputy Solicitor General for the Respondent submitted that, although the return was not rejected on the ground, it should not be construed as an admission by the Respondent that the income in question is from an undertaking referred to in that subsection. Consequently, the learned President's Counsel for the Respondent addressed this matter in his final written submission.

It is important to note that no question of law was stated to this Court on the question as to whether the Appellant's income in issue was from an undertaking referred to above or not. Nevertheless, Section 11A (6) of the TAC Act No. 23 of 2011, (as amended), provides that '*any two or more judges of the Court of Appeal may hear and determine* ***any question of law arising on the stated case****, (...)*'

(Emphasis added)

In the case of *The Commissioner General of Inland Revenue v. Dr. S.S.L. Perera*[38] His Lordship Janak De Silva J., sitting in the Court of Appeal (as His Lordship was then) having considered an application to submit additional questions of law to the Court of Appeal observed 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'.*

In *The Commissioner General of Inland Revenue v. Janashakthi General Insurance Col. Ltd*[39] His Lordship Janak De Silva J., made a similar observation.

[38] CA Tax 03/2107 decided on the 11th January 2019.
[39] CA Tax 14/2013 decided on the 20th May 2020.

Illukkumbura Industrial Automation (Private) Limited v. Commissioner General of Inland Revenue[40] is a case where His Lordship A.H.M.D. Nawaz J., (P/CA) sitting in the Court of Appeal (as His Lordship was then) dealt with the question of law sought to be raised in the Court of Appeal and held that *'additional question of law that surfaces to the fore and alleged failure to comply with a statutory requirement of the Inland revenue Act No. 10 of 2006 must be permitted to be raised, as this question of law impacts or impinges on the assessment made in this case'.*

Although the learned Deputy Solicitor General simply stated in his written submission that he does not concede that the Appellant is an undertaking, and made the above statement during oral submissions, he did not raise a new question of law nor did he seek permission from the Court to do so.

Hence, I am of the view that this Court need not labour on the aforementioned matter.

However, for completeness, I will proceed to consider the submissions made by the learned President's Counsel in that regard.

In the case of *V. A. Muttiah v. The Commissioner General of Inland Revenue*[41] presided over by His Lordship Ruwan Fernando J., with whom I concurred, held that '***The term 'undertaking' has to be understood as an economically independent and self-sustaining entity taken as a whole and in the context in which it occurs***.'

'(…) *and profits and income earned by an individual or company as one economically independent and self-sustaining invisible entity, as long as such individual or company in the nature of an undertaking carried on business or trading activities as a whole, from which profits and income arise for the purpose and activity referred…*'

[40] CA Tax 05/2016 decided on the 30th November 2020.
[41] CA Tax 01/2022 decided on the 31st March 2022.

As previously observed in this judgment, the Appellant company is a self-sustaining separate entity, established as a corporate joint venture in which two investing companies hold equal shares. It has been incorporated according to the terms outlined in the joint venture agreement. As per the Articles of Association of the Appellant company[42], its purposes include the operation of resorts, hotels, guest houses, and related infrastructure to provide comfort, relaxation, leisure, and entertainment for vacationers, tourists, and travellers. Specifically, it manages hotels named Jetwing Viluyana and Jetwing Seashells. Therefore, the learned President's Counsel argued that the Appellant is economically independent and self-sustaining.

Upon considering the contents of the joint venture agreement and the Articles of Association, I am inclined to accept the submission of the learned President's Counsel, that the Appellant is an undertaking in terms of Section 59B (1) of the IR Act.

Question of law No.11

In view of the answers given to questions of law Nos. 1, 2, 3, 4, 5, 6, 8, and 9, I answer the eleventh question of law as well in the affirmative, in favour of the Appellant.

Accordingly, for the purpose of this case I answer the eleven questions of law in following manner.

1. ***Yes.***
2. ***Yes.***
3. ***Yes.***
4. ***Yes.***
5. ***Yes.***
6. ***Yes.***

[42] *Supra* note 21.

7. ***The TAC did not err in interpreting the IR Act with external aid; the Sri Lanka Accounting Standards LKAS 31'***
8. ***Yes.***
9. ***Yes***
10. **'*Not substantiated*'**
11. ***Yes.***

In light of the answers given to the above questions of law, acting Under Section 11 A (6) of the TAC Act, I annul the assessment determined by the TAC.

The Registrar is directed to send a certified copy of this judgement 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