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

In the matter of a Case Stated 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 by Act
No. 20 of 2013 of the Democratic
Socialist Republic of Sri Lanka.

**THE COMMISSIONER GENERAL
OF INLAND REVENUE**

Department of Inland Revenue,
Sir Chittampalam A. Gardiner
Mawatha, Colombo-

APPELLANT

C . A. Tax No.83/2024
TAC. Appeal No.TAC/IT/160/2018

-Vs-

JETWING TRAVELS (PVT) LTD,
Jetwing House,
No. 46/26, Nawam Mawatha,
Colombo 02.

RESPONDENT

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

Counsel: **Deputy Solicitor General, Manohara Jayasinghe,**
 with Ms. D. Jayanthakumar instructed by **Sithi**
 Rizni Firdous, State Attorney for **The Appellant.**

Lakshmanan Jeyakumar, Attorney at Law with
Ms. Bhagya Herath, Attorney at Law, Ms.
Sanjeevi Jayasinghe, Attorney at Law, Ms.
Abirami Balasubramaniam, Attorney at Law
instructed by **Madushi Cooray, Attorney at Law**
for **The Respondent.**

Written Submissions of The Appellant :- 26.09.2025,06.11.2025
Written Submissions of The Respondent :- 21.05.2025,06.11.2025
Argument :- 05.08.2025
Decided on :- 22.01.2026

JUDGEMENT

ANNALINGAM PREMASHANKER, J.

A. INTRODUCTION

A1. This is an appeal by **the Commissioner General of Inland Revenue** (Hereinafter sometimes referred to as **The Appellant/CGIR**) from the determination of the Tax Appeals

Commission dated 25.03.2024 made in TAC appeal no. TAC/IT/160/2018. The Respondent is **Jetwing Travels (Pvt) Ltd (Hereinafter sometimes referred to as The Respondent/Tax Payer)**.

A2. The Appellant being dissatisfied with the determination of Tax Appeals Commission (**Hereinafter sometimes referred to as TAC**) requested for an appeal by a case stated for the opinion of the Court of Appeal by their communication dated 25.04.2024.

A3. In this Appeal the issue before the court is whether the Respondent is eligible to claim the profit and income of Rs. 24,857,269/- as exempt from tax under Section 13(ddd) of the Inland Revenue Act No. 10 of 2006 (**Herein after sometimes referred to as IRA**).

B. ARGUMENT

On 5th August 2025, both parties agreed to conclude the argument by written submissions. It is found that the Appellant has furnished written submissions on 26.09.2025 and 06.11.2025. The Respondent has furnished the written submissions on 21.05.2025 and 06.11.2025.

C. ANALYSIS

C1. There were four questions of law presented for the opinion of the Court of Appeal, in the case stated dated 14. 05. 2024. They are:

“Has the Tax Appeals Commission erred in law in interpreting the section 13 (ddd) of the Inland Revenue Act, No. 10 of 2006 (as amended)?”

“Has the Tax Appeals Commission erred in law in determining applicability of the section 13(ddd) of the Inland Revenue Act, No. 10 of 2006 (as amended) without due consideration for the nature of income sources of the Appellant Company?”

“Has the Tax Appeals Commission erred in law in determining the Appellant Company is entitle to claim tax exemption under section 13 (ddd) of the Inland Revenue Act, No. 10 of 2006 (as amended)?”

“In view of the fact and circumstances of the case, did the Tax Appeals Commission err in law when it came to the conclusion that it did?”

The First, Second and Third Questions of law are similar and on the same point and the fourth is a consequential question. Hence, the first three questions will be dealt together.

C2. TAX RETURN

The tax payer submits its return for the year of 2013/2014 dated 15.09.2014, claiming an income tax exemption on profit and income under section 13 (ddd) of IRA No. 10 of 2006. This claim was rejected by the Assessor and the return is not accepted and issued an assessment.

C3. FIRST APPEAL

Having aggrieved by the said Assessment, the tax payer made an appeal to the CGIR. The Tax Payer made the same agitation before the CGIR. CGIR by his determination dated 02.07.2018 determined the appeal by confirming the assessment.

C4. SECOND APPEAL

The tax payer having not satisfied with the determination of the CGIR, made an appeal to the TAC. In the appeal before the TAC the tax payer raised the same issues. TAC by its determination dated 25.03.2024, determined that the tax payer is entitled to the tax exemption and allowed the appeal.

C5. AGREEMENT

There is an agreement between the Jetwing Travels (Pvt) Ltd and the Foreign Tour Operator (**Hereinafter sometimes referred to as FTO**), who is domiciled in a foreign country.

C6. SECTION 13 (ddd) OF IRA

“Section 13 – *There shall be exempt from Income Tax –*

13 (ddd) - the profits and income earned in foreign currency by any resident company, any resident individual or any partnership in Sri Lanka, from any service rendered in or outside Sri Lanka to any person or partnership outside Sri Lanka, other than any commission, discount or similar receipt for any such service rendered in Sri Lanka, if such profits and income (less such amount, if any, expended outside Sri Lanka as is considered by the Commissioner-General to be reasonable expenses) are remitted to Sri Lanka through a bank”

C7. REQUIREMENTS

The requirements for eligibility for tax exemption under Section 13 (ddd):

- (a) Income should be **in foreign currency**.
- (b) Tax Payer should be a resident company.
- (c) Service should be **rendered in or outside Sri Lanka**.
- (d) Service receiver should be a **person or partnership outside Sri Lanka**.
- (e) Other than any commission, discount or similar receipts for any such services rendered in Sri Lanka;
- (f) Should be remitted to Sri Lanka **through a bank**.

C8. SCOPE OF AGREEMENT

The Foreign Tour Operator enters into an agreement with the foreign tourist for providing vacation packages in Sri Lanka, for which consideration is **paid by the tourist to the Foreign Tour Operator**. The FTO obtains the services of the Respondent (local company) to provide the services undertaken by them to the tourist. The **Respondent receives the payment directly in foreign currency through a bank from the Foreign Tour Operator**.

For example, as per the request of the FTO, the Respondent would arrange the package with hotels, transport services and other excursions, etc, which will be sold by the FTO to the tourist arriving in Sri Lanka. In return, the **Respondent receives a payment from the Foreign Tour Operator** according to the terms of the agreement between FTO and the Respondent. The payment is received **in foreign currency** and is received via **the banking channels**. This is the Respondent's income.

C9. THE INCOME OF THE RESPONDENT COMPANY

The Foreign Tourist, the customer of FTO pays the consideration to the Foreign Tour Operator and not to the Respondent. This payment by the Foreign Tourist to the Foreign Tour Operator is made in the home country of the tourist. This shows that the Foreign Tour Operator is the supplier of the service and the tourist

is the recipient of the service. The Respondent receives payment according to the agreement between the Respondent and the Foreign Tour Operator not from the foreign tourist. The Respondent provides its services to the Foreign Tour Operator. The income is remitted to the respondent only by the FTO and not by the tourist. Thereby, the services enjoyed by the tourist are immaterial within the ambit of the Section 13 (ddd) of the IRA.

The Foreign Tourist **does not** make any **payments** or provide any **commission to the Respondent**. They **directly** deal with the Foreign Tour Operator **only**. Therefore, there is **no privity of contract** between the Foreign Tourist and the Respondent.

Therefore, it is clear that the payment is received from the Foreign Tour Operator and **not** from the tourist and the payment is made in **foreign currency** through **bank**.

The **contract** between **the Respondent** and **the FTO** is **quite apart and distinct** from **the contract** between the **FTO** and **The tourist**. **The Respondent has no contractual obligations** whatsoever **towards the tourist**. Therefore it is incorrect to allege **the Respondent** was **providing the services to the tourist**.

C10. APPELLANT'S POSITION

The appellant's only contention was that the Respondent provide service to a tourist who is not a person outside Sri Lanka [requirement (d)]. It is argued that the Jetwing Travels (Pvt) Limited provides travel service to the tourists who are in Sri Lanka as the recipient of the service. This **cannot be accepted as tourist is not making any payment to the Jetwing Travels (Pvt) Limited only acted as a local agent of the foreign Tour Operator**. The Respondent stressed that they had a privity of contract with the FTO and their services were rendered to the Foreign Tour Operator and not to the tourist.

C11. FIRST TIME IN APPEAL

Though the Appellant by his written submissions contends that **there is no proof of money being remitted by the FTO via an accepted banking channel**, such submission was **never been raised before the TAC or previously before the CGIR or the Assessor**. Similarly, though the Appellant submits in his written submission **that there is an absence of proof** by the Respondent, **that the relevant FTO did not have any branches in Sri Lanka**, this submission too has never been presented previously. Hence, we are not inclined to consider the same. Therefore, the only ground the Appellant has come before this court **appears to be on the requirement that the services rendered to the tourist who were**

present in Sri Lanka at that time and not to any person or parties outside Sri Lanka, which is set out in paragraph C7(d) above.

C12. CASE REFERENCE No. 1

In Court of Appeal Tax 01/2021 -- *The Commissioner General of Inland Revenue Vs Aikten Spence Travels Limited*, Court of Appeal held:

“...the income is remitted to the respondent only by the FTO and not by the foreign tourist, thereby the service provided to the foreign tourists is irrelevant and within the ambit of Section 13(ddd) of the IR Act, Furthermore, in arriving at this determination, this Court would like to emphasize the purpose of tax exemptions in an economy. Tax exemptions on foreign remittance are generally granted to incentivize resident entities to increase foreign activities, thereby, increasing the flow of foreign currency to the local economy. This can enhance the livelihood and the economy of a country. Further, this particular exemption encourages resident entities to use legal and legitimate means of remittance i.e. banks, without resorting to illegal and cheaper methods to remit foreign income. On one hand this supports the local banking system and on the other hand it helps with assessing and calculating the economic realities.”

In the above conclusion the court has dealt with section 13 (dddd), which is similar to section 13 (ddd), which is a subject matter of this appeal.

C13. CASE REFERENCE No. 2

Commissioner General of Inland Revenue Vs Lignocell and Another. S.C Appeal 145/2023 in which Supreme Court held;

“...The cardinal rule in interpreting a Statute is that the Rules of Interpretation should be followed, foremost, to preserve the intention of the Legislature. If the words are plain and unambiguous, and only indicate one meaning, then the literal meaning should be given. if not, a harmonious meaning should be given, for the Section to be construed, so that there maybe be no repugnancy or inconsistency. The duty of the court is to implement the provisions, without departing from the policy underlined in the law.

... if I may summarize, in interpreting a statute if the language is plain and unambiguous, a strict and a literal meaning should be given. It should be contextual in nature without departing from the intention of the Legislature and the Statute should be considered as a wholesome instrument.

...I do not think it is necessary to examine or distinguish the aforesaid judgments at the juncture, other than to- re-iterate, the established rule in interpreting fiscal statute, i.e., not to

extend the provisions of the Statutes by implication, beyond the clear language of the Statute.

...courts have clearly followed the rule that in taxation, you have to look simply at what is clearly said. You read nothing in; you imply nothing in; but you look fairly at what is said and at what is said clearly. That is the tax.

Hence, in fiscal Statutes, the first source is the words of the Statute. Where the meaning is manifest on the plain words of the Statute, there is no need for any interpretation process. Where there is an ambiguity or doubt regarding an exemption, only such ambiguity or doubt should be resolved having regard to the context and the language of the words of the Statute. In the appeal before this Court for determination, the words of the Statute are clear and precise. There is no ambiguity or about whatsoever.”

C14. FULFILLMENT OF REQUIREMENTS

In the case in hand, the income received by the Respondent is in **foreign currency through a bank** – Requirement (a) and (f).

The Respondent is a **Resident Company** – Requirement (b).

Render services in or outside Sri Lanka – Requirement (c).

Services rendered to **a person or partnership who is operating from outside Sri Lanka** – Requirement (d).

The **Income** earned by the Respondent **does not** include **any commission, discount or similar receipt** – Requirement (e).

Income should be remitted to Sri Lanka through a Bank – Requirement (f).

C15. VALUE ADDED TAX

The Appellant's position is that the Respondent had paid value added tax. Therefore, the claim of tax exemption is not *bona fide*. But this court considers the VAT payment is on a different basis, and the Tax payer genuinely made the payment. But in respect of Income Tax the tax payer's claim is reasonable and genuine.

C16. ANSWERS

For the reasons stated above, the first, second and third questions of law are answered in negative.

D. 4th QUESTION

The Fourth Question of Law is “*In view of the fact and circumstances of the case, did the Tax Appeals Commission err in law when it came to the conclusion that it did?*”

As this court answers the questions No. 1, 2, 3 in negative and as the 4th question of law is a consequential question, also answered in negative.

E. TAC’S DETERMINATION

In the determination of the TAC dated 25.03.2024, it is only mentioned that **it is clear that the Appellant is entitled to the Tax exemption claim. Accordingly, we allowed the appeal of the Appellant.** In the determination of the Commissioner General of Inland Revenue dated 02.07.2018, it has been concluded that to confirm the assessment issued by the Assistant Commissioner, without accepting the Returns for the year 2013|2014 dated 15. 09. 2014.

In the Appeal to the TAC dated 05.10. 2018, the Jetwing Travels (Pvt) Limited moved the TAC to grant;

- a. Set aside the determination of the Commissioner General
- b. Annul the assessment bearing the assessment No. ITA 16030600326VI dated 13. 05. 2016
- c. Hold the Return of income made by the appellant is in conformity of law

As the TAC allows the appeal, it should be interpreted that TAC has given all the reliefs.

F. ANSWERS TO THE QUESTIONS OF LAW

For the reasons adumbrated above, the questions of law are answered as follows;

Q.N.1. No.

Q.N.2. No.

Q.N.3. No.

Q.N.4. No.

G. CONCLUSION

As analyzed above and as the four questions raised in the case stated are answered in negative, the determination of the TAC dated 25. 03. 2024 is affirmed and the appeal is dismissed.

The Appeal is dismissed. But considering the circumstances of the case no cost is ordered.

The Registrar is directed to forward a copy of the judgment to the Tax appeal commission.

On this 22nd day of January 2026

JUDGE OF THE COURT OF APPEAL

M. C. B. S. MORAIS

I agree.

JUDGE OF THE COURT OF APPEAL