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

In the matter of an Application for Special Leave to Appeal to the Supreme Court of the Democratic Socialist Republic of Sri Lanka under and in terms of Article 128 (2) of the Constitution read with the Supreme Court Rules of 1990

Case No. SC APPEAL 187/2014

CA Writ Application No: 663/2010

Fonterra Brands Lanka (Private) Limited
(formerly known as New Zealand
Milk Lanka Ltd), of
No. 100, Delgoda Road,
Biyagama.

PETITIONER

-Vs-

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

2. Mr. S.H.P.C.S. Perera, Assessor,
   Unit 6B, Department of Inland Revenue,
   Sir Chittampalam A. Gardiner Mawatha,
   Colombo 02.

3. Ms. R.K.C. Chitralatha, Senior Assessor,

Unit 6B, Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

4. Mr. J. M. Jayawardena, Commissioner-Appeals,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

RESPONDENTS

AND NOW BETWEEN

Fonterra Brands Lanka (Private) Limited
(formerly known as New Zealand
Milk Lanka Ltd), of
No. 100, Delgoda Road,
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PETITIONER-APPELLANT

-Vs-

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

RESPONDENTS-RESPONDENTS

BEFORE: **S. THURAIRAJA, PC, J.**
KUMUDINI WICKREMASINGHE, J AND
PRIYANTHA FERNANDO, J

COUNSEL: Mr. Manoj Bandara with Ms. Prabhani Erandika instructed by Sudath Perera Associates for the Petitioner-Appellant

Ms. Chaya Sri Nammuni, DSG for the Respondents-Respondents

WRITTEN SUBMISSIONS: Petitioner-Appellant on 15th December 2014
Respondents-Respondents on 27th January 2015

ARGUED ON: 22nd October 2024

DECIDED ON: 26th September 2025

THURAIRAJA, PC, J.

1. In order to avoid any confusion regarding the identification of the parties, this Court wishes to note at the outset that it has taken the liberty of correcting the caption to accurately reflect the Appellant party, who had been incorrectly referred to as the 'Petitioner' in the written submissions filed by the registered attorney.

2. This appeal arises from an application challenging the judgment of the Court of Appeal delivered on 18th July 2014 in CA (Writ) Application No. 663/2010. The Petitioner–Appellant, Fonterra Brands Lanka (Private) Limited, a company duly incorporated under the Companies Act No. 07 of 2007 and engaged in the importation, manufacture, and distribution of dairy products within Sri Lanka, is the Appellant before this Court (hereinafter referred to as "the Appellant").

3. The 1st Respondent–Respondent is the Commissioner General of Inland Revenue, the 2nd and 3rd Respondent–Respondents are Assessors attached to the Department of Inland Revenue, whilst the 4th Respondent is the Commissioner-Appeals of the Department of Inland Revenue (hereinafter collectively referred to as "the Respondents").

4. The appeal before the Supreme Court arises from proceedings under the *Inland Revenue Act, No. 38 of 2000* (hereinafter referred to as "the Act"), in respect of an assessment of income tax for the Year of Assessment 2004/2005, and the subsequent dismissal of the Appellant's application for a Writ of Certiorari by the Court of Appeal.

FACTS OF THE MATTER

5. The Appellant furnished its Return of Income for the Year of Assessment 2004/2005 on or about 29th November 2005 in terms of Section 98 of the Act, declaring the assessable income for that year.

6. Contemporaneously, and in compliance with the statutory requirements, the Appellant remitted the sum of Rs. 47,434,433.50 being the self-assessed tax payable for the said year, in quarterly instalments in terms of section 105(1) read with proviso (i) to Section 144(3) of the Act. The said return and the acknowledgement of payment are evidenced by documents marked **P2** and **P3** in the record before the Court of Appeal, later produced before this Court as **X1**.

7. Under Section 134(5)(a) of the Act, where a taxpayer furnishes a return of income on or before the thirtieth day of November of the succeeding year of assessment, no assessment may lawfully be made after the expiry of three years from the end of that year, save and except in instances where the Assessor forms the opinion that the taxpayer has been guilty of fraud, evasion, or wilful default.

8. For the Year of Assessment 2004/2005, the period of three years expired on 31st March 2008. It is not in dispute that no allegation of fraud, evasion, or wilful default was levelled against the Appellant by the Respondents.

9. On 28th March 2008, a few days before the expiration of the statutory time bar, the Appellant received a letter dated 25th March 2008 issued by the 2nd Respondent, an Assessor of Inland Revenue, which is marked **P4** in the record. This letter stated that the return submitted by the Appellant had not been accepted, and expressly requested that it be treated as an "intimation" issued under Section 134(3) of the Act.

10. The said letter, however, did not quantify any income or tax liability, nor did it specify the computation of taxable income, nor call upon the Appellant to make payment of any sum. It was described only as an "intimation," and did not bear the hallmarks of an "assessment" in terms of law.

11. Subsequently, on 12th June 2008, more than two months after the expiry of the statutory time bar, the Appellant received a 'Notice of Assessment' dated 11th June 2008, marked **P6**, purporting to assess the Appellant to additional income tax for the Year of Assessment 2004/2005. This Notice specified the income assessed, provided reasons for the non-acceptance of the return, and advised the Appellant of its right of appeal under Section 136 of the Act. The departmental record marked **1R2** also bears the same date, confirming the making of this assessment on 11th June 2008.

12. The Appellant, being dissatisfied, lodged an appeal by letter dated 9th July 2008, marked **P7** in the brief, addressed to the Commissioner General of Inland Revenue under Section 136 of the Act, challenging *inter alia* that the Notice of Assessment had been issued outside the statutory time limit and was therefore null and void. Several further objections were taken by the Appellant, including that the mandatory statutory requirement to communicate reasons for not accepting the return had not been complied with prior to the making of the assessment.

13. The appeal was thereafter taken up for hearing before the Department. The Appellant, by its written submissions dated 8th February 2010, marked **P8** in the brief, set out in detail the objections to the assessment. The Respondents, by their written submissions dated 26th February 2010, asserted that the assessment had in fact been made within time, contending that the document marked **P4** in the brief constituted an assessment in terms of Section 134, and that the Notice dated 11th June 2008 was only the formal communication of an assessment already made.

14. The Appellant, by way of reply submissions dated 23rd March 2010, vehemently disputed this position, maintaining that **P4** could not in law be construed as an assessment, and reiterating that the assessment was made only on 11th June 2008, well beyond the period of three years.

15. On 1st July 2010, a determination was issued under the delegated authority of the Commissioner General of Inland Revenue, which reduced the taxable income but did not address the time-bar objection.

16. By letter dated 6th July 2010, the Appellant communicated its dissatisfaction with this determination, as required under Section 138(1) of the Act. On 14th July 2010, by a letter, the Commissioner General communicated the reasons for the determination, indicating expressly that questions concerning the legal validity of the assessment—including the issue of time bar—would not be considered by him, as such matters were for judicial determination.

17. Pursuant to the said determination, the Appellant lodged a further appeal to the Board of Review under the Act, which appeal concerned the merits and quantum of the assessment. This appeal was pending at the time the Appellant invoked the Writ jurisdiction of the Court of Appeal.

18. Accordingly, the Appellant filed CA (Writ) Application No. 663/2010 in the Court of Appeal seeking Writs of Certiorari to quash the Notice of Assessment dated 11th June 2008 and the determination dated 1st July 2010, on the grounds, *inter alia*, that the assessment was issued outside the statutory time limit and was therefore a nullity, and that the Commissioner General had failed to properly determine the appeal lodged by the Appellant.

19. The Court of Appeal, upon consideration of the pleadings and submissions, by its judgment dated 18th July 2014, dismissed the application. The Court of Appeal held that the Appellant, having invoked the appellate procedure before the Commissioner General and the Board of Review, was not entitled to simultaneously invoke the extraordinary jurisdiction of the Court of Appeal.

20. It further held that no illegality or jurisdictional defect was apparent on the face of the record which warranted intervention by way of writ, that the plea of time bar was not raised at the earliest opportunity but was introduced belatedly, and that the determination of the Commissioner General reducing the assessment of the taxable income did not disclose any error of law on its face that would justify the issuance of an order in the nature of a writ.

21. Being aggrieved by the dismissal of its application by the Court of Appeal, the Appellant sought Special Leave to Appeal to the Supreme Court. Upon consideration, this Court, by order dated 16th October 2014, granted Special Leave to Appeal on the following questions of law:

> *"(i) whether the Court of Appeal erred in holding that the writ jurisdiction of the Court of Appeal could not have been invoked in the facts and circumstances of the present case; and*
>
> *(ii) whether the Notice of Assessment marked P6 was time-barred."*

22. This Court also permitted the Respondents to raise three additional questions of law, namely:

> *"(iii) whether the time bar under section 134(5) read with section 134(3) of the Act applies only to the making of an assessment;*

(iv) whether the making of an assessment in law is separate and distinct from the giving of notice of such assessment in terms of section 134(3); and

(v) whether the Appellant is estopped from invoking the jurisdiction of the Court of Appeal having invoked the appellate procedure provided in the Act."

23. Accordingly, Special Leave to Appeal has been granted on five questions of law, two at the instance of the Appellant and three at the instance of the Respondents, which are reproduced herein in full.

ANALYSIS

24. At the outset, I consider it appropriate to deal first with Questions of Law 2, 3, and 4, which directly concern the validity of the assessment in issue. These questions go to the root of the matter, for if the assessment itself is not validly made, little purpose is served in examining the further objections. Thereafter, I shall turn to Questions of Law 1 and 5, which relate to the jurisdiction of the Court of Appeal and the question of estoppel raised by the Respondents.

Was the assessment validly made within the meaning of the *Inland Revenue Act No. 38 of 2000*?

25. I shall now proceed to consider Questions of Law 3 and 4 together, for they both turn on the core issue of when, in law, an "assessment" is to be regarded as having been made within the meaning of Section 134 of the *Inland Revenue Act, No. 38 of 2000*.

26. Some of the questions of law presented to this Court go to the very heart of the social contract between a State and its taxpayers. They ask us to define the precise moment a tax liability is legally imposed and whether a public authority, vested with the power to enforce tax policies, can disregard a clear statutory deadline.

27. The *Inland Revenue Act* provides the statutory framework governing the submission of returns, the making of assessments, and the limitation period within which such assessments may lawfully be made. Section 98(1) of the Act provides as follows:

> *"Every person who is chargeable with income tax under this Act for any year of assessment shall furnish to an Assessor, on or before the thirtieth day of November immediately succeeding the end of that year of assessment, a return in such form and containing such particulars as may be specified by the Commissioner-General, of his income…"*

28. Section 134(3) thereafter provides that where a return has been furnished,

> *"(3) Where a person has furnished a return of income, the Assessor may in making an assessment on such person under subsection (1) or under subsection (2), either"*
>
> *(a) accept the return made by such person; or*
>
> *(b) if he does not accept the return made by that person estimate the amount of the assessable income, of such person and assess him accordingly:"*

29. Most crucially, section 134(5)(a) imposes a mandatory limitation,

> *"(5) Subject to the provisions of section 67. **no assessment shall be made**, of the income tax payable under this Act. for any year of assessment by any person who has made a return of his income,*
>
> *(a) on or before the thirtieth day of November of the year of assessment immediately succeeding that year of assessment, **after the expiry of three years from the end of that year of assessment:**"*

30. The Respondent's position is that the time limit prescribed by Section 134(5) for an assessment applies only to the "internal" act of making the assessment and not to the

external act of giving a notice of that assessment. It is their contention that the Act intentionally separates these two steps and provides a time limit only for the first. Therefore, as long as the tax authority completes the internal "assessment" within the statutory period, it is free to send the notice to the taxpayer at any time thereafter. The Appellant contends this to be an artificial distinction, and that under our law an assessment is not complete, nor binding, until it is notified to the taxpayer within the statutory period.

31. I find this position of the Respondent to be untenable and a fundamental misinterpretation of both the plain language of the statute and the foundational principles of Sri Lankan tax jurisprudence.

32. The legal authority to charge, levy and collect tax is a creature of statute, and when the legislature, in its wisdom, imposes a time-bar, it does so to provide certainty, finality, and a vested right to the taxpayer. The Respondent's defence, which hinges on the claim that an assessment can be secretly completed and then notified at its convenience, is a direct assault on these core principles.

33. It is a fundamental precept of a just legal system that a public authority must act not only within its statutory mandate but also with transparency and accountability. To allow the state to hold taxpaying entities in a state of perpetual uncertainty, to keep a tax liability in a secret departmental file, and to issue a demand at its leisure would be to subvert the very purpose of the law.

34. The questions that fall to be determined on this branch of the case are whether the impugned assessment was validly made within the period of three years prescribed by Section 134(5) of the *Inland Revenue Act, No. 38 of 2000*, and to that end, whether the letter dated 25th March 2008 styled as an "intimation" could, in law, constitute an assessment so as to save the assessment from being time-barred.

35. It is appropriate to begin by examining the manner in which our courts, and those whose jurisprudence we have inherited, have understood the concepts of "assessment" and "notice of assessment."

36. One of the earliest authorities in this jurisdiction is ***Commissioner of Income Tax v Chettinad Corporation Ltd. (1954)***[1] where Gratiaen J. drew attention to the linguistic distinction between an "assessment" and a "notice of assessment". Gratiaen J. explained the position in the following terms:

> "*The distinction between an 'assessment' and a 'notice of assessment' is thus made clear: the former is the departmental computation of the amount of tax with which a particular assessee is considered to be chargeable and the* ***latter is the formal intimation to him of the fact that such an assessment has been made****."*[2]

37. If this notion were to be accepted, it would mean that under the *Inland Revenue Act No. 38 of 2000*, the Assessor is only required to make the internal computation within the stipulated three years, while being free to indefinitely delay the issuance of the Notice of Assessment.

38. But this is not the scheme of the 2000 Act. Section 134(1) specifically provides that an Assessor may *"assess the amount … and* ***shall*** *by notice in writing require such person to pay forthwith."* The use of the word "shall" makes it clear that the duty to compute tax liability and the duty to issue notice are inseparably linked. The section treats them as a single statutory act, not as two independent steps.

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[1] 55 NLR 553

[2] ibid, at p. 556 (emphasis added)

39. More importantly, section 134(1) is expressly made ***"subject to the provisions of subsection (3) and (5)."*** Subsection (5) imposes a strict limitation:

> *"(5) Subject to the provisions of section 67.* ***no assessment shall be made,*** *of the income tax payable under this Act. for any year of assessment by any person who has made a return of his income,*
>
> > *(a) on or before the thirtieth day of November of the year of assessment immediately succeeding that year of assessment,* ***after the expiry of three years*** *from the end of that year of assessment:*
> >
> > *(b) after the thirtieth days of November but on or before the thirty first day of March, after the expiry of six years from the end of that year of assessment:"*

40. Read together, these provisions establish that both the computation and the notice must occur within the statutory time bar.

41. Before proceeding further, I wish to clarify some misconceptions that may arise from the passage quoted from ***Chettinad***[3]**.** Gratiaen J. observed that the "*… latter is the formal intimation to him of the fact that such an assessment has been made.*" The word "intimation" in that passage was used as a common noun, describing the act of communicating the assessment to the taxpayer. Gratiaen J.'s use of the term was plainly descriptive of that process of communication. In my view, it does not for a moment suggest that a so-called "letter of intimation" or any informal communication could be treated as a "notice of assessment" within the meaning of the Act. In my view, only a notice of assessment issued in the manner prescribed by law can complete the act of assessment.

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[3] *Commissioner of Income Tax v. Chettinad Corporation Ltd.* (1954) 55 NLR 553

42. In ***D.M.S. Fernando and Another v. Mohideen Ismail***,[4] the majority opinion of the five-judge bench, led by Samarakoon, C.J., makes it clear that the notice of assessment, including the mandatory reasons, must be communicated to the taxpayer within the statutory deadline for the assessment to be valid. The internal act of preparing an assessment alone is insufficient to satisfy the legal requirement.

43. Samarakoon C.J. emphasized that the purpose of requiring reasons, was to ensure that the Assessor genuinely applied their mind to the taxpayer's return and reached a definite determination. His Lordship stated:

> *"The primary purpose of the amending legislation is to ensure that the Assessor will bring his mind to bear on the return and come to a definite determination whether or not to accept it. It was intended to prevent arbitrary and grossly unfair assessments which many Assessors had been making as "a protective measure". An unfortunate practice had developed where some Assessors, due to pressure of work and other reasons, tended to delay looking at a return till the last moment and then without a proper scrutiny of the return, made a grossly exaggerated assessment. Under the amendment when an Assessor does not accept a return, it must mean that at the relevant point of time he has brought his mind to bear on the return and has come to a decision rejecting the return. Consequent to this rejection, the reasons must be communicated to the Assessee… His reasons must be communicated at or about the time he sends his* ***assessment*** *on an estimated income. Any later communication would defeat the remedial action intended by the amendment."*[5]

[4] 1982 (1) Sri LR 222

[5] ibid, at p.273, 274

44. It may be noted that when the learned Chief Justice said, "[h]is reasons must be communicated at or about the time he sends his assessment on an estimated income", His Lordship referred to the "sending of the notice of assessment", since the internal assessment document, which remains in the possession of the Assessor, is only an "estimate" and is not sent to the taxpayer. Thus, the act of sending the notice of assessment, with the reasons, is what completes the legal process.

45. This passage highlights two critical principles. First, the giving of reasons is not a mere procedural formality; it is a substantive requirement ensuring that the assessment reflects a genuine, considered decision by the Assessor. Second, the timing of the communication is essential; reasons must accompany the notice of assessment at the moment the assessment is sent; failing which, the remedial purpose of the legislation is defeated. It is noted that in the case at hand, it was also the Appellant's position at the stage of appeal to the CGIR that sufficient reasons were not communicated for the rejection.

46. The dissenting opinion, notably that of Sharvananda J. (as His Lordship was then), treated the communication of reasons as a "directory" step, suggesting that an internal assessment could stand even if the reasons were communicated later. However, this view did not carry the force of binding precedent, while the majority's reasoning is binding on this Court.

47. As E. Gooneratne clearly sets out in his book 'Income Tax in Sri Lanka',

> *"Making an assessment culminates in the notice on the person assessed.* ***An assessment is made when the assessment is sent.***" [6]

[6] E. Gooneratne, *Income Tax in Sri Lanka* (1st edn, Stamford Lake 2001) 393.

48. This principle strikes at the very root of the Respondents' contention that once an internal computation is made, the Notice of Assessment can lawfully be served at any later time. If such an argument were to prevail, the Assessor could, long after the statutory deadline of 31st March 2008, generate or even backdate a document and present it as an "assessment," thereby reducing the time bar in Section 134(5) of the 2000 Act to a hollow formality. The law cannot permit taxpayers to be held in such perpetual suspense.

49. The Respondents rely on the English decision of ***Honig and Others (administrators of Emmanuel Honig) v Sarsfield (H M Inspector of Taxes)***,[7] first decided in the Chancery Division and affirmed in the Court of Appeal.[8] In that case, the issue was whether assessments were "made" within the statutory time limit prescribed by Sections 34 and 40(1) of the *United Kingdom Taxes Management Act of 1970*. The Inspector of Taxes had signed a certificate in the official assessment book on 16th March 1970, but the notices were only served after 7th April 1970. The court held that the assessments were nevertheless in time, because they were "made" when the Inspector signed the book, and not when the notices were served. The court's reasoning rested squarely on the specific statutory framework of the *Taxes Management Act*, which expressly distinguished between the act of "making" an assessment (by entry in the register) and the subsequent requirement to give notice.

50. It is evident that the English procedure was markedly different from the scheme under the *Inland Revenue Act No. 38 of 2000*. Under the UK legislation, the Inspector was statutorily obliged to maintain an assessment register, and the act of signing the

[7] *Honig and Others (administrators of Emmanuel Honig) v Sarsfield (H M Inspector of Taxes)* [1985] STC 31 (Ch D), affd [1986] STC 246 (CA).

[8] 1986 STC 246

register itself was deemed to constitute the making of an assessment.[9] Service of notice was a separate obligation governed by other provisions.

51. By contrast, under our law, Section 134(1) of the 2000 Act contains no equivalent concept of a separate "assessment register." On the contrary, it couples together the computation of tax with the requirement that the Assessor "shall by notice in writing require such person to pay forthwith." Section 134(5) subjects that entire process to a strict time limit of three years (in cases where a return was filed before 30th November). In other words, the Sri Lankan statute does not treat "making" and "notifying" as distinct steps.

52. Therefore, I am of the view that the act of assessment is only complete when the taxpayer is both assessed and required to pay. To import the reasoning of ***Honig***[10] into the Sri Lankan context would therefore be to disregard the words and structure of our own legislation.

53. Furthermore, in ***ACL Cables vs. The Commissioner General of Inland Revenue***,[11] the Court stated that an assessment becomes a valid and enforceable assessment only upon the issuance and communication of the notice of assessment within the prescribed time.

54. The Court held as follows:

> *"The lucidity in the aforequoted passage is characteristic of the age in which it was written. The taxpayer could have instituted a suit and recovered the tax paid because there was no "assessment". There was no "assessment" because there is*

[9] Taxes Management Act 1970, ss 29, 34, 40(1), 114 (UK).

[10] *Honig and Others (administrators of Emmanuel Honig) v. Sarsfield (H M Inspector of Taxes)* [1985] STC 31 (Ch D), affd [1986] STC 246 (CA).

[11] C.A. Tax 07/2013, CA Minutes of 16th March 2022

no notice, a demand, a charge within the limited period. This shows that ***"assessment becomes a valid assessment" only when notice of assessment is given.*** *For the application of the time limit, what must be there is a valid assessment. Such an assessment cannot come into being without there being notice of assessment" [Emphasis added]."*[12]

55. In ***John Keels Holdings PLC v. Commissioner General of Inland Revenue***,[13] D.N. Samarakoon J. held that the operation of the time bar runs from the sending of the notice of assessment, and not from the mere making of the assessment, unless a proper book or register is maintained to show clearly the date on which the assessment was made. His Lordship therefore underscored that the notice of assessment itself must be issued within the statutory period of limitation.

56. His Lordship stated:

> *"Hence, the argument of the Tax Appeals Commission in the present case that the effective date for the commencement of the time bar is the date of "making "the assessment not the date of sending the notice could have been accepted if there was a book or a register maintained by the Commissioner of Inland Revenue which will be evidence of the date of making of assessment".*

57. One must appreciate that the law's requirement for timely and proper notification of tax assessments is not just a formality; it protects the trust between the State and its citizens. Taxes must be fair and not imposed arbitrarily, so that the rights and security of taxpayers are respected. This idea, that power should be balanced with fairness, is one that has guided just governance for centuries.

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[12] ibid, at p.30, 31

[13] CA Tax 26/2013, CA Minutes of 16th March 2022

58. It is in this context the teachings of the *Arthashastra*[14], an ancient treatise on statecraft and economic policy by Kautilya (Chanakya), carry wisdom. Kautilya famously said:

> *"The King shall collect taxes from his subjects just as a bee collects honey from a flower, without disturbing its petals."*

59. The act of taxation, then, must reflect the touch of the honeybee—light, measured, and never destructive. Just as the bee draws only what it needs, leaving the flower unharmed to bloom again, so too must the State collect revenue in a manner that secures its due without crippling the people who provide it. Taxation must be restrained, imposed "gently and without inflicting pain or hardship," so that both the government and its citizens may endure and prosper together. The lesson is timeless, but perhaps never more important than today.

60. In today's economy, taxation is not merely a means for the State to raise revenue; it functions like the framework of a bridge that supports commerce and livelihoods. Businesses, investors, and individuals build their plans upon it, expecting stability and predictability. When taxes are imposed arbitrarily, or assessments are issued without proper notice, the bridge wobbles, plans are disrupted and unnecessary burdens fall on those who rely on it. In a modern, interconnected economy, the law must ensure that this framework remains steady. I then repeat, once again, that taxation must be fair, measured, and applied in a manner that allows both the State and its citizens to flourish together.

61. I wish to make a further observation with regard to deriving guidance from authorities of other jurisdictions. Authorities such as ***Honig***[15] were decided in a bygone era of

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[14] Kautilya, *The Arthasastra* (R Shamasastry tr, Government Press 1915) bk 5, ch 2.

[15] *Honig and Others (administrators of Emmanuel Honig) v. Sarsfield (H M Inspector of Taxes)* [1985] STC 31 (Ch D), affd [1986] STC 246 (CA).

ledgers, ink signatures, and manual registers, a world that has long passed. Today, with computerised systems, electronic records, and instant communication, issuing an assessment takes only moments. In this modern context, there is no justification for outdated formalistic distinctions that once excused delay or uncertainty. Technology now makes it possible to act with precision, speed, and transparency, yet taxpayers are still entitled to prompt and clear communication of their obligations. It is evident in this instance that not every possible effort has been taken to ensure assessments are issued in a timely manner, and one is compelled to observe that the seriousness of promptly communicating assessments to taxpayers has not been fully appreciated by a Department that is fully capacitated to do so, given the e-Services and digital platforms it has adopted.

62. I now move on to examining the decision in ***Illukkumbura Industrial Automation (Pvt) Ltd v. Commissioner General of Inland Revenue***[16] where the Court of Appeal had dealt with the question as to whether a letter of intimation issued under Section 163(3) of the *Inland Revenue Act, No. 10 of 2006*, could constitute evidence of an assessment.

63. The Court, through Wijeratne J., held that, because the letter in that case contained both a statement of reasons for rejecting the return and a quantified computation of estimated income, it satisfied the statutory requirements and therefore amounted to an assessment made within time. The Court's reasoning turned on the fact that the intimation was not a bare notification but a document that in substance, combined two indispensable elements—reasons for rejection and an explicit computation of income tax liability.

[16] CA Tax 5/2016, CA minutes of 29th September 2022

64. The present case is materially different. Upon the perusal of the letter of intimation dated 25th March 2008, I find that although styled as an "intimation," the said letter cannot by any measure be equated with a Notice of Assessment within the meaning of Section 134 of the Act. While it contains certain preliminary calculations, these workings cannot be framed as a final and binding determination of liability.

65. The letter neither quantifies a conclusive sum payable nor calls upon the Appellant to discharge such liability; specifies a date by when the amount shall be settled; nor does it set out the statutory right of appeal, which is an essential feature of a Notice of Assessment under Section 136. The computations appear as tentative workings to support the Assessor's non-acceptance of the return, rather than as the imposition of a charge. To treat this document as an "assessment" would strip the taxpayer of vital procedural safeguards and reduce the statutory right of appeal to an empty formality. Therefore, unlike in ***Illukkumbura***, where the intimation itself embodied the assessment, the letter before us is no more than a preliminary communication—a step antecedent to assessment—and cannot be given the legal effect of a Notice of Assessment.

66. These authorities, read together, I hold that an "assessment" is not complete until it is communicated to the taxpayer by a notice of assessment served within the time limit. The statutory time bar applies to the assessment as a whole, including notice. A letter of intimation is not an assessment, nor is it an internal departmental calculation.

67. The Department's shifting positions, sometimes treating '**P4**' as an intimation, sometimes as an assessment, sometimes asserting an internal making, only reveal the absence of a lawful assessment within time. To permit such evasions would be to drain Section 134(5) of meaning and to expose taxpayers to uncertainty and unfairness.

Parliament has not given the Department an indefinite licence to assess at leisure. It has given three years, no more. The Department must act, and must notify, within that time.

68. There is a wider principle at stake, as I noted earlier. Taxation is a compulsory exaction backed by the coercive power of the State. It is therefore imperative that the power to tax be exercised strictly in accordance with law, and within the boundaries the legislature has drawn. Time bars in tax law are not technical traps for the Department; they are jurisdictional limits imposed in the interests of certainty, fairness, and discipline.

69. To erode them by accepting secret assessments or delayed notices would be to unsettle commercial life and to undermine confidence in the rule of law. The letter dated 25th March 2008 was not an assessment. The notice dated 11th June 2008 was issued without jurisdiction. The power to assess expired on the 31st March 2008 and could not be revived thereafter.

70. For reasons above, I answer Questions 3 and 4 in the negative, holding that an assessment is not validly "made" unless it is notified to the taxpayer within the statutory time limit, and that a letter of intimation does not amount to such notification.

71. Consequently, I answer Question 2 in the affirmative, holding that the assessment in this case, served only in June 2008, was issued after the expiry of the three-year period prescribed by section 134(5), and is therefore a nullity.

Was the Appellant precluded from invoking the Writ jurisdiction of the Court of Appeal by reason of the statutory appeal process or by the doctrine of estoppel?

72. The question for consideration here is whether the Court of Appeal was correct in holding that the Appellant could not invoke its Writ jurisdiction simply because a statutory appeal had been filed to the Board of Review under the *Inland Revenue Act*.

73. At its core, this question concerns the proper role of the Court of Appeal in supervising administrative action and ensuring that public authorities act within the limits of their legal powers. The Constitution, under Article 140, clearly empowers the Court of Appeal to issue Writs of Certiorari as a safeguard to enforce the rule of law. The mere existence of a statutory appeal, which ordinarily addresses errors made within the lawful scope of authority, does not limit or displace this constitutional power.

74. I find the distinction between **acts committed within jurisdiction and acts wholly without jurisdiction is fundamental.** Appeals are designed to correct mistakes made within the authority granted by law, but acts performed outside the authority conferred by statute are nullities. No appeal can cure an action taken without legal power. As held in ***D.M.S. Fernando and Another v. Mohideen Ismail,*** where a similar contention was raised by the Deputy Solicitor-General, the Court held that:

> *"There was another matter that was raised incidentally. It was contended by the Deputy Solicitor-General that the Respondent was not entitled to maintain this application for Writ because an alternative remedy by way of appeal was available to him under the Inland Revenue Act. Those provisions confine him to an appeal against the quantum of assessment. The Commissioner has not been given power to order the Assessor to communicate reasons. He may, or may not, do so as an administrative act. The Assessor may, or may not, obey. The Assessee is powerless to enforce the execution of such administrative acts. The present objection goes to the very root of the matter and is independent of quantum. It concerns the very exercise of power and is a fit matter for Writ jurisdiction. An application for Writ of Certiorari is the proper remedy."*[17]

[17] 1982 (1) Sri LR 222 at p.234

75. I am of the same view that where the legality or authority of an administrative act itself is in question, rather than merely the correctness of its outcome, the constitutional writ jurisdiction remains available, and no statutory appeal can preclude its exercise.

76. I find that in determining whether judicial review is available in the present circumstances, it is necessary to consider the principles established by the courts regarding the interplay between statutory remedies and writ jurisdiction. As Aluwihare, J observed in the case of ***Classic Travels (Pvt) Ltd v. Commissioner General of Inland Revenue***,[18]

> *"However, judicial review may be granted in exceptional circumstances such as where the* ***alternative statutory remedy is nowhere near so convenient, beneficial and effectual or where there is no other equally effective and convenient remedy.*** *This is particularly so where the decision in question is liable to be upset as a matter of law because it is clearly made without jurisdiction or in consequence of an error of law."*[19]

77. His Lordship further explained:

> *"As judicial review is a collateral challenge and not an appeal, it will only be in exceptional circumstances that the courts will allow the collateral process of judicial review to be used to attack an appealable decision, when Parliament has expressly provided by statute an appellate procedure. But exceptional circumstances may arise when it would be unjust for the taxpayer to appeal a decision of the Commissioner – General. For example, if the Commissioner – General during the hearing acted illegally or ultra vires, then exceptional circumstances may arise where judicial review is appropriate to challenge the*

[18] SC Appeal No.158/2018, SC Minutes of 14th November 2023

[19] ibid, at pp. 14-15

alleged abuse at its inception. Otherwise, the taxpayer would be expected to proceed with the allegedly illegal hearing until the determination is issued by the Commissioner- General to appeal the Commissioner-General's assessment to the TAC."[20]

78. In aligning with these observations, I, too, am of the view that judicial review is not a substitute for statutory appeal, but serves as a necessary safeguard where the statutory process cannot adequately address the question of legality or jurisdiction. In the present case, the Appellant challenged an assessment issued on 11th June 2008, after the statutory deadline of 31st March 2008 under Section 134(5) of the *Inland Revenue Act*, 2000. The challenge was primarily not to the quantum of tax, but to the very authority of the Commissioner General to issue the assessment, which had expired by operation of law.

79. The statutory appeal mechanism is limited to correcting errors made within the Commissioner's lawful authority and cannot provide relief where the assessment itself is *ultra vires* or time-barred. Requiring the Appellant to proceed and to confine themselves to the statutory appeal would have compelled it to participate in a process incapable of addressing the legal defect, **even after the CGIR explicitly refused to consider the time-bar in their reasons for determination marked 'P15' in the brief**. In such circumstances, where the statutory remedy would not have been practically effective for the Appellant, the requirements identified by Justice Aluwihare are met.

80. I also find guidance in ***Ex p Waldron***, where it was observed:

"Whether the alternative statutory remedy will resolve questions at issue fully and directly; whether the statutory procedure would be quicker or slower than procedure by way of judicial review; whether the matter depends on some

[20] ibid at pp. 16-17

particular or technical knowledge which is more readily available to the alternative appellate body, these are amongst the matters which a court should take into account when deciding whether to grant relief by judicial review where an alternative remedy is available."[21]

81. In the present case, the statutory appeal could not have resolved the real question—whether the assessment, issued after the statutory deadline, had any legal validity. That issue did not require technical expertise but turned on legality. Nor would the appeal have been more convenient or effectual; it would merely have prolonged a process incapable of curing the defect. Judicial review was therefore the appropriate remedy and the Court of Appeal in its judgment has erred in holding that the writ jurisdiction of the Court of Appeal could not have been invoked in the facts and circumstances of the present case

82. I now turn to the fifth and final question of law, namely, whether the Appellant was estopped from maintaining the writ application by reason of having filed an appeal to the Board of Review. It is the contention of the Respondents that the act of appealing amounts to an admission of the validity of the assessment and that the Appellant is therefore precluded from thereafter denying its legality, which has been accepted by the Court of Appeal.

83. It is of my view that the Appellant's resort to the appellate procedure does not amount to an abandonment or waiver of its right to seek judicial review of a jurisdictional defect. On the contrary, the Appellant expressly and consistently raised the objection of time-bar in its appeal to the Commissioner-General and reiterated the same in subsequent proceedings. That objection was not only recorded but was expressly acknowledged by the Commissioner-General, who stated in his determination that the

[21] [1985] 3 WLR 1090 at p. 1108

issue of legal validity was a matter for the courts. This demonstrates that the Appellant never accepted the validity of the assessment and preserved its right to seek judicial review from the outset.

84. The Respondents' claim of estoppel cannot stand. Estoppel requires two things: a clear promise or admission by one party, and the other party relying on it to their detriment. Neither is present here. The Appellant never accepted that the assessment was valid, and the Respondents never changed their position because of anything the Appellant did. From the beginning, the Respondents insisted the assessment was within time, and the Appellant consistently disputed that. There was never any conduct by the Appellant that could be taken as an admission.

85. More importantly, the plea of estoppel clashes with the very structure of the law. The statute gives taxpayers a strict time-limit as a safeguard against late assessments. That protection is substantive, not optional. To say it can be lost just because a taxpayer files an appeal would make the safeguard meaningless. It would mean that by using the remedies the law itself provides, a taxpayer could unintentionally breathe life into an otherwise invalid assessment. Such a result would defeat the purpose of the limitation, and this Court cannot endorse it.

86. For these reasons, I hold that the Appellant was not estopped from maintaining the writ application.

87. Accordingly, I answer the first question of law in the affirmative and the fifth question of law in the negative.

CONCLUSION

88. For the foregoing reasons, I answer the first and second questions of law in the affirmative, and the third, fourth and fifth questions of law in the negative.

89. Accordingly, the appeal is allowed. The judgment of the Court of Appeal dated 18th July 2014 is set aside, and the impugned Notice of Assessment dated 11th June 2008 and the determination dated 1st July 2010 are quashed.

Appeal Allowed.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE J.

I agree.

JUDGE OF THE SUPREME COURT

PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE SUPREME COURT