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 under and in terms of section 11A(9) of the Tax Appeals Commission Act, No. 23 of 2011, as amended, read with the Constitution of the Democratic Socialist Republic of Sri Lanka.

Seylan Bank PLC,
No. 90, Galle Road,
Colombo 03.

Appellant

SC Appeal No. 46/2016
CA Case No. CA (tax) 23/2013

Vs.

The Commissioner General of Inland Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 2.

Respondent

AND NOW BETWEEN

Seylan Bank PLC,
No. 90, Galle Road,
Colombo 03.

Appellant-Appellant

Vs.

The Commissioner General of Inland Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 2.

Respondent-Respondent

Before	:	Priyantha Jayawardena PC, J Yasantha Kodagoda PC, J K. K. Wickramasinghe, J
Counsel	:	F. N. Goonewardena for the appellant-appellant Priyantha Nawana PC, Additional Solicitor-General, with I. Randeny, State Counsel, for the respondent-respondent
Argued on	:	10th February, 2021
Decided on	:	16th December, 2021

Priyantha Jayawardena PC, J

This is an appeal from a judgment of the Court of Appeal which affirmed the determination of the Tax Appeals Commission, established under the Tax Appeals Commission Act, No. 23 of 2011, as amended (hereinafter referred to as "Tax Appeals Commission").

Facts of the case

The appellant-appellant (hereinafter referred to as "appellant") is a licensed commercial bank under and in terms of the Banking Act, No. 30 of 1988, as amended. Further, the respondent-respondent (hereinafter referred to as "respondent") is the Commissioner-General of Inland Revenue.

In terms of section 106(1) of the Inland Revenue Act, No. 10 of 2006 (hereinafter referred to as "principal Act"), taxpayers were required to furnish a return of their income for any year of assessment, commencing on the 1st day of April of a given year and ending on the 31st day of March in the immediately succeeding year, on or before the 30th day of September immediately succeeding the end of that year of assessment.

Therefore, the appellant had furnished a return of its income for the year of assessment, commencing on the 1st of April, 2007 and ending on the 31st of March, 2008 (hereinafter referred to as the "year of assessment 2007/2008"), on the 30th of September, 2008, within the time period stipulated in section 106(1) of the principal Act.

Hence, the assessor of the Department of Inland Revenue (hereinafter referred to as "assessor") was required to either accept the said return of income, or if he does not accept the said return, estimate the amount of the assessable income of such taxpayer and make an assessment accordingly, under section 163(3) of the said principal Act.

Furthermore, where a taxpayer had furnished a return of his income for a given year of assessment within the time period stipulated in section 106(1) of the principal Act, the assessor was not permitted to make an assessment of income tax for such year of assessment (if any) after the expiry of eighteen months from the end of that year of assessment, in terms of section 163(5)(a) of the principal Act.

Therefore, since the appellant had furnished a return of its income for the year of assessment 2007/2008 within the time period stipulated in section 106(1) of the **principal Act**, the assessor was required to make an assessment of income tax for such year of assessment (if any) on or before the 30th of September, 2009, in terms of section 163(5)(a) of the **principal Act**.

However, while the said time period given to an assessor to make an assessment of income tax for the year of assessment 2007/2008 (if any) under the principal Act was still in operation, Inland Revenue (Amendment) Act, No. 19 of 2009 (hereinafter referred to as "amending Act") was enacted by Parliament and certified by the Speaker on the 31st of March, 2009.

By the said amending Act, *inter alia*, sections 106(1) and 163(5)(a) of the principal Act were amended to extend both the time periods given to a taxpayer to furnish a return of his income for a given year of assessment, and the assessor to make an assessment of income tax for such year of assessment (if any), by two months and six months respectively.

Thus, the assessor had made an assessment of income tax payable by the appellant for the year of assessment 2007/2008 on the 26th of March, 2010, on the basis that the amending Act extended the time period given to an the assessor to make an assessment of income tax for such year of assessment (if any) by six months, *i.e.*, from the 30th of September, 2009 to 31st of March, 2010.

Being aggrieved by the aforesaid assessment issued by the assessor on the 26th of March, 2010, the appellant had appealed to the respondent under section 165 of the Principal Act.

In the said appeal, the appellant had stated, *inter-alia*, that there was no express provision in the amending Act to give retrospective effect to the amendments made to sections 106(1) and 163(5) of the principal Act. Therefore, the said assessment of income tax issued by the assessor on the 26th of March, 2010 was time-barred under and in terms of section 163(5) of the principal Act.

Having considered the said appeal, the respondent had determined, *inter alia*, that the said assessment was made on the 9th of March, 2010 and served on the appellant on the 26th of March, 2010 in terms of sections 163 and 164 of the said Act, as amended. Accordingly, the said appeal was dismissed.

Being aggrieved by the said determination of the respondent, the appellant had appealed to the Tax Appeals Commission under the said Tax Appeals Commission Act.

Having heard the parties, the Tax Appeals Commission determined, *inter alia*, that the aforesaid assessment made by the assessor in respect of the year of assessment 2007/2008 was not time barred under and in terms of the amendment made to section 163(5) of the principal Act, as the said amendment altered procedural law and, therefore, does not violate the rule against retrospective legislation.

Further, the Tax Appeals Commission determined that the said amendment was enacted during the time period given to the assessor to make an assessment for the year of assessment 2007/2008 under section 163(5) of the principal Act. Therefore, since the appellant was aware of the said amendment which extended the time period given to the assessor to make an assessment, before the expiry of the time period stipulated by the principal Act, no prejudice had been caused to the appellant. Accordingly, the said appeal was dismissed.

Being aggrieved by the said determination of the Tax Appeals Commission, the appellant had made an application under section 170 of the said Act requesting the Tax Appeals Commission to

state a case for the opinion of the Court of Appeal. Accordingly, a case was stated for the opinion of the Court of Appeal on the following questions of law;

"1) Was the assessment for the year 2007/2008 dated 26th March, 2010 issued against the appellant time barred in terms of section 163(5)(a) of the Inland Revenue Act, as applicable to such year of assessment?

2) Does the appellant carry on more than one trade, business, profession or vocation in terms of section 106(11) of the Inland Revenue Act?

3) Does the banking business which is carried on by the appellant result in the appellant having more than one source of income as contemplated by the Inland Revenue Act?

4) Was the interest incurred by the appellant to the value of Rs. 292,849,172/= deductible in determining the profits from trade of the appellant for the year of assessment 2007/2008 in terms of section 25 of the Inland Revenue Act?

5) In the alternative, was the aforesaid interest incurred by the appellant to the value of Rs. 292,849,172/= deductible in determining the assessable income of the appellant for the year of assessment 2007/2008 in terms of section 32(5)(a) of the Inland Revenue Act?

6) Notwithstanding the above, was the basis used by the Commissioner General of Inland Revenue in arriving at the interest expenses attributable to the investments made by the appellant in Sri Lanka Development Bonds erroneous in law?"

At the hearing before the Court of Appeal, the court had decided to hear the parties on the first question of law stated above.

Having heard the parties on the above said question of law, the Court of Appeal held, *inter alia*, that the amendment of section 163(5)(a) of the principal Act operates prospectively from the 1st of April, 2009 in terms of section 27(6) of the amending Act. Thus, the deadline for the assessor to make an assessment of income tax for the year of assessment 2007/2008 was extended with prospective effect from the 30th of September, 2009 to the 31st of March, 2010, and the aforesaid assessment dated 26th March, 2010 was not time barred under and in terms of section 163(5)(a) of the principal Act, as amended. Accordingly, the said appeal was dismissed.

Being aggrieved by the aforesaid judgment of the Court of Appeal, the appellant filed an application for special leave to appeal to this court. Having considered the materials placed before this court, special leave to appeal was granted on the following questions of law;

"a) Did the learned Judges of the Court of Appeal fail to make a critical analysis of the submissions of the petitioner, and as such, is the said judgment vitiated by the failure to take into account relevant statutory provisions and circumstances?

b) Did the learned Judges of the Court of Appeal fail to appreciate the relevant provisions of the Inland Revenue Act, No. 10 of 2006, as amended, in particular those relating to the filing of returns and the making of assessments?

c) Did the learned Judges of the Court of Appeal misdirect itself on the law in relation to applicability of the Inland Revenue (Amendment) Act, No. 19 of 2009 to the year of assessment 2007/2008?

d) Did the learned Judges of the Court of Appeal err in holding that the time bar provisions in the Inland Revenue Act, No. 10 of 2006, as amended, were merely procedural and/or that they did not affect rights which had already been acquired by the petitioner with respect to the finality of its tax liability for the year of assessment 2007/2008?"

During the course of submissions, the parties agreed to re-frame the questions of law upon which this court had granted leave to appeal. Accordingly, the question of law is now framed as follows;

"Was the assessment for the year 2007/2008 dated 26.03.2010 issued by the Assessor of Inland Revenue against the Appellant in respect of the return filed on 30.09.2008, time barred in terms of section 163(5)(a) of the Inland Revenue Act as amended by Act No. 19 of 2009?"

Submissions of the appellant

At the hearing of the appeal, learned counsel for the appellant submitted that the amending Act was certified by the Speaker on the 31st of March, 2009. Thus, the Bill would generally become law from the said date, by operation of Article 80(1) of the Constitution.

However, he submitted that section 27 of the amending Act had specifically provided the operative dates of the amendments contained therein. Accordingly, the amendments referred to in section

27(1) to (5) of the amending Act would operate with retrospective effect from the specified dates. However, the amendments that were not referred to in section 27(1) to (5) of the amending Act would operate prospectively from the 1st of April, 2009.

In this regard, it was further submitted that the amendments made to sections 106(1) and 163(5)(a) of the principal Act were not referred to in sections 27(1) to (5) of the amending Act. Thus, the said amendments should operate prospectively from the 1st of April, 2009, in terms of section 27(6) of the amending Act.

Moreover, learned counsel submitted that the amendments made to section 163(5)(a) of the principal Act extended both the time period for the taxpayer to furnish a return of his income, and the time period for the assessor to make any assessment of income tax payable, by two and six months respectively. However, the appellant could not benefit from the extended time period given to the taxpayer to furnish a return of income, as the amending Act was only certified on the 31st of March, 2009, after the said time period extended to file tax returns had lapsed.

Therefore, it was submitted that the amendments made to section 163(5) of the principal Act cannot be interpreted to give the assessor the benefit of an extended deadline, when it was not possible for the appellant to benefit from the extended deadline provided under the said section.

Submissions of the respondent

In response, learned Additional Solicitor-General who appeared for the respondent submitted that time periods set by statute are procedural laws and not substantive laws. Further, he submitted that amendments to procedural laws apply with retrospective effect.

In support of his submission, learned Additional Solicitor-General cited *N. S. Bindra's Interpretation of Statutes*, 12th edition at 228, which cited *Gardner v Lucas* (1873) 3 AC 582 at 603 where the court had held as follows;

> *"…it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to show it, it might be retrospective. For instance, I think it is perfectly settled that if the legislature intended to frame a new procedure, that instead of proceedings in this form or that, you should proceed in another and a different way; clearly these bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not*

> *be... where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid- to make an instrument which had no effect at all, and from which the patty was at liberty to depart as long as he pleased, binding- I think the prima facie construction of the Act is that it is not to be retrospective, and that it would require strong reasons to show that is not the case."*
>
> [Emphasis added]

Further, he cited *Blyth v Blyth* (1966) 1 All ER 524 at 535 where the court held;

> *"[...] The rule that an Act of Parliament is not to be given retrospective effect only applies to statutes which affect vested rights. It does not apply to statutes which only alter the form of procedure, or the admissibility of evidence, or the effect which the courts give to evidence."*

Moreover, learned Additional Solicitor-General submitted that it is not necessary for the Legislature to make an express provision in the Act to state that procedural laws have a retrospective effect, due to the legal presumption that procedural laws operate with retrospective effect.

Thus, by section 27(1) to (5) of the amending Act, the Legislature had expressly given retrospective effect to only the amendments made to the substantive laws in the principal Act.

Was the assessment of income tax issued out of time?

The issue that needs to be considered in the instant appeal is whether the assessment of income tax payable by the appellant for the year of assessment 2007/2008 dated 26th of March, 2010 was time barred under and in terms of section 163(5)(a) of the said Act, as amended.

Section 163(5)(a) of the said Act, as amended-

(i) refers to the time period given to a taxpayer to furnish a return of his income under section 106(1) of the said Act; and

(ii) sets out the time period given to an assessor to make an assessment of income tax, if any.

A careful consideration of the said section shows that sections 106(1) and 163(5)(a) are interwoven with each other and thus, section 163(5)(a) of the said Act is not a standalone section. In fact, both these sections were amended by the said amending Act, and it is clear that it was necessary to amend both the sections in order to achieve the purpose of amending the principal Act.

Hence, it is necessary to consider both sections 106(1) and 163(5)(a) together, when considering the above question of law.

(i) Time period given to a taxpayer to furnish a return of income under the principal Act

Prior to the amendment of section 106(1) of the principal Act, taxpayers were required to furnish a return of their income for a given year of assessment, on or before the 30th day of September immediately succeeding the end of that year of assessment.

Section 106(1) of the principal Act stated;

> "Every person who is chargeable with income tax under this Act for any year of assessment shall, on or before the thirtieth day of September immediately succeeding the end of that year of assessment, furnish to an Assessor, either in writing or by electronic means, a return in such form and containing such particulars as may be specified by the Commissioner-General, of his income, and if he has a child, the income of such child:
>
> Provided however, the preceding provisions shall not apply to an individual whose income for any year of assessment comprises solely of one or a combination of the following–
>
> (a) profits from employment as specified in section 4 and chargeable with income tax does not exceed rupees four hundred and twenty thousand and income tax under Chapter XIV has been deducted by the employer on the gross amount of such profit and income;
> (b) dividends chargeable with tax on which tax at ten per centum has been deducted under subsection (1) of section 65;
> (c) income from interest chargeable with tax on which income tax at the rate of ten per centum has been deducted under section 133."
>
> [Emphasis added]

(ii) Time period given to an assessor to make an assessment of income tax under the principal Act

Where a taxpayer had furnished a return of income, the assessor was required to either accept the return of income, or if he does not accept the said return, estimate the amount of the assessable income of such taxpayer and make an assessment of income tax under section 163(3) of the said Act.

Further, section 163(5)(a) of the principal Act stated that where a taxpayer had furnished a return of income for a given year of assessment within the time period specified in section 106(1) of the principal Act, the assessor cannot make an assessment of income tax for such year of assessment after the expiry of eighteen months from the end of that year of assessment, subject to specified exceptions.

Section 163(5)(a) of the principal Act stated;

> "Subject to the provisions of section 72, no assessment of the income tax payable under this Act by any person or partnership –
>
> (a) who or which has made a return of his or its income on or before the thirtieth day of September of the year of assessment immediately succeeding that year of assessment, shall be made after the expiry of eighteen months from the end of that year of assessment; and
>
> (b) who has failed to make a return on or before such date as referred to in paragraph (a), shall be made after the expiry of a period of three years from the end of that year of assessment:
>
> Provided, that nothing in this subsection shall apply to the assessment of income tax payable by any person in respect of any year of assessment, consequent to the receipt by such person of any arrears relating to the profits from employment of that person for that year of assessment:
>
> Provided further that, where in the opinion of the Assessor, any fraud, evasion or willful default has been committed by or on behalf of, any person in relation to any income tax payable by such person for any year of assessment, it shall be lawful for the Assessor to make an assessment or an additional assessment on such person at any time after the end of that year of assessment." [Emphasis added]

However, after the time period given to a taxpayer to furnish a return of income for the year of assessment 2007/2008 had lapsed, and before the time period given to the assessor to make an assessment of income tax for such year of assessment had expired, the Inland Revenue (Amendment) Act, No. 19 of 2009, was enacted by Parliament on the 31st of March, 2009. By the said amending Act, both the sections 106(1) and 163(5)(a) of the principal Act were amended.

Effect of the amending Act

(i) Extension of time period given to a taxpayer to furnish a return of income

By the amendment made to section 106(1) of the principal Act, the deadline given to a taxpayer to furnish a return of income was extended from the 30th day of September to the 30th day of November immediately succeeding the end of that year of assessment.

Section 106(1) of the principal Act, **as amended**, states;

> "Every person who is chargeable with income tax under this Act for any year of assessment shall, on or before the ~~thirtieth day of September~~ thirtieth day of November immediately succeeding the end of that year of assessment, furnish to an Assessor, either in writing or by electronic means, a return in such from and containing such particulars as may be specified by the Commissioner-General, of his income, and if he has a child, the income of such child:
>
> Provided however, the preceding provisions shall not apply to an individual whose income for any year of assessment comprises solely of one or a combination of the following–
>
> (a) profits from employment as specified in section 4 and chargeable with income tax, does not exceed-
>
> (i) rupees four hundred and twenty thousand, where such year of assessment is any year of assessment ending on or before March 31, 2009; or
>
> (ii) rupees one million, where such year of assessment is any year of assessment commencing on or after April 1, 2009,
>
> and income tax under Chapter XIV has been deducted by the employer on such profits from employment;

(b) dividends chargeable with tax on which tax at ten per centum has been deducted under subsection (1) of section 65;

(c) income from interest chargeable with tax on which income tax at the rate of ten per centum has been deducted under section 133."

[Emphasis added]

(ii) Extension of time period given to an assessor to make an assessment of income tax

Further, the amendments made to section 163(5)(a) of the principal Act extended the time period given to an assessor to make an assessment of income tax (if any) from eighteen months to two years from the end of that year of assessment, and also reflected the extended time period granted to a taxpayer to furnish a return of income under the amendment made to section 106(1) of the principal Act.

Section 163(5)(a) of the principal Act, **as amended**, states;

"Subject to the provisions of section 72, no assessment of the income tax payable under this Act by any person or partnership –

(a) who or which has made a return of his or its income on or before the ~~thirtieth day of September~~ thirtieth day of November of the year of assessment immediately succeeding that year of assessment, shall be made after the expiry of ~~eighteen months~~ a period of two years from the end of that year of assessment; and

(b) who has failed to make a return on or before such date as referred to in paragraph (a), shall be made after the expiry of a period of ~~three years~~ four years from the end of that year of assessment:

Provided, that nothing in this subsection shall apply to the assessment of income tax payable by any person in respect of any year of assessment, consequent to the receipt by such person of any arrears relating to the profits from employment of that person for that year of assessment:

Provided further that, where in the opinion of the Assessor, any fraud, evasion or willful default has been committed by or on behalf of, any person in relation to any income tax payable by such person for any year of assessment, it shall be lawful for

the Assessor to make an assessment or an additional assessment on such person at any time after the end of that year of assessment."

[Emphasis added]

Hence, the question arises as to whether the amendment made to section 163(5)(a) of the principal Act extended the time period given to the taxpayer to furnish a return of income for the year of assessment 2007/2008, with **retrospective effect**, and extended the time period given to the assessor to make an assessment of income tax for such year of assessment, with **prospective effect.**

Retrospective operation of procedural laws

Article 75 of the Constitution confers power on the legislature to make laws, including laws having retrospective effect. The general principle of interpretation of statutes is described in the Latin maxim '*lex proscipit non respicit'* (the law looks forward, not backward). Thus, amendments made to substantive laws have a prospective effect, unless its effect has been made retrospective by express provision in the Act or by necessary implication. On the other hand, amendments made to procedural laws are presumed to have retrospective effect, unless its effect has been made prospective by express provision in the Act or by necessary implication, or such a construction is textually not possible.

A similar view was expressed in *Maxwell on Interpretation of Statutes*, 12th edition, at 222 which stated;

"*It is perfectly settled law that if the legislature intended to frame a new procedure that, instead of proceeding in this form or that, you should proceed in another and a different way, clearly then bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective*, ***unless there is some good reason or other why they should not be****."*

[Emphasis added]

Further, the Supreme Court of India in *Hitendra Vishnu Thakur & Others v State of Maharashtra & Others* (1994) 4 SCC 602 held;

"(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment,

*whereas a statute which merely affects procedure, **unless such a construction is textually impossible**, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits;*

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal, even though remedial, is substantive in nature;

(iii) Every litigant has a vested right in substantive law, but no such right exists in procedural law;

(iv) A procedural statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished; and
(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.

[Emphasis added]

A careful consideration of the amendments made to sections 106(1) and 163(5)(a) of the principal Act show that they are procedural in nature. Therefore, the said amendments are, ***prima facie,* presumed to have retrospective effect**. In the circumstances, it is necessary to consider whether the said presumption is in fact applicable to the said amendments made by the amending Act.

Effect of section 27 of the amending Act

The amending Act was certified by the Speaker on the 31st of March, 2009. Therefore, the Act should have come into force from the date that it was certified by the Speaker, by operation of Article 80(1) of the Constitution. However, section 27 of the amending Act has specifically set out the dates on which the amendments made by the said amending Act shall come into force.

Section 27 of the amending Act states;

"(1) The amendments made to paragraph (e) of subsection (2) of section 34, subsection (3) of section 78, subsection (4) of section 113, subsection (2) of section 153 and subsection (2) of section 173 of the principal enactment, by sections 10 (2),

section 15, section 17, section 19 and section 21 respectively, of this Act, shall be deemed for all purposes to have come into force on April 1, 2006.

(2) The amendment made to the Second Schedule to the principal enactment by section 25 of this Act, shall be deemed for all purposes to have come into force on April 1, 2007.

(3) The amendment made to section 8, section 40A and section 57 of the principal enactment, by section 3(1) and (2), section 11 and section 13 respectively, of this Act, shall be deemed for all purposes to have come into force on April 1, 2008.

(4) The amendment made to section 13 of the principal enactment by section 5(2) of this Act, shall be deemed for all purposes to have come into force on October 21, 2008.

(5) The amendment made to section 13 by section 5(4) of this Act, shall be deemed for all purposes to have come into force, on February 1, 2009.

(6) **The amendments made to the principal enactment by this Act**, other than the amendments specifically referred to in subsections (1), (2), (3), (4) and (5) of this section, **shall come into force on April 1, 2009**."

[Emphasis added]

Accordingly, the amendments referred to in section 27(1) to (5) of the amending Act are given a retrospective effect from the dates specified therein, in terms of Article 75 of the Constitution.

On the other hand, the amendments that are not referred to in section 27(1) to (5) of the amending Act operate with prospective effect from the 1st of April, 2009, in terms of section 27(6) of the amending Act.

It is pertinent to note that the amendments made to sections 106(1) and 163(5)(a) of the principal Act are not referred to in section 27(1) to (5) of the amending Act.

Further, although there is a general distinction between substantive law and procedural law, section 27(6) of the amending Act does not distinguish between the amendments made to the substantive law and procedural law of the principal Act.

Thus, in the absence of any reference to a segregation between the two branches of law in the said section, it is not possible to read words into the said section by a judicial interpretation, and segregate the amendments made to the substantive law and procedural law of the principal Act.

In the circumstances, I am of the view that section 27(6) of the amending Act was intended to give prospective effect to both the amendments made to the substantive law and procedural law of the principal Act, other than those expressly referred to in section 27(1) to (5) of the amending Act.

Therefore, although the amendments made to sections 106(1) and 163(5)(a) of the principal Act are procedural in nature, the express provision in section 27(6) of the amending Act excludes the applicability of the general presumption that procedural laws be given retrospective effect.

Hence, the amendments made to both sections 106(1) and 163(5)(a) of the principal Act will operate with prospective effect from the 1st of April, 2009, in terms of section 27(6) of the amending Act.

Literal interpretation of the said amendments

As stated above, the amendments made to section 163(5)(a) read with section 106(1) of the principal Act extended the time period given to an assessor to make an assessment of income tax (if any) by six months, if a taxpayer had furnished an income tax return on or before the **30th day of November** immediately succeeding that year of assessment.

However, a plain reading of the said sections show that it was not possible for a taxpayer to file a tax return for the year of assessment 2007/2008 on or before the 30th of November, 2008, as the said amending Act was passed by Parliament and certified by the Speaker on the 31st of March, 2009. Therefore, it is textually not possible to give retrospective effect to the amendments made to section 163(5)(a) read with section 106(1) of the principal Act, in relation to the extension of time given to the taxpayer to file a tax return.

Accordingly, the amendments made to both sections 106(1) and 163(5)(a) of the principal Act should be given prospective effect.

Purpose of the aforesaid amendments

Further, when interpreting the amendments made to section 163(5)(a) read with section 106(1) of the principal Act, it is necessary to give effect to the purpose of amending the said sections of the principal Act.

As stated above, the purpose of the amendments made to section 163(5)(a) read with section 106(1) of the principal Act was not only to grant additional time for an assessor to consider the return of income filed by the taxpayer and make an assessment (if necessary), but also to grant additional time for a taxpayer to prepare a return of income in compliance with the said Act. Particularly, the extension of time given to taxpayers to file income tax returns facilitates large companies and groups of companies to finalize their accounts for a given financial year.

If the amendments made to section 163(5)(a) read with section 106(1) of the principal Act are interpreted to apply to the year of assessment 2007/2008 with retrospective effect, the taxpayers are deprived of filing income tax returns for such year of assessment within the extended time period, as such extended time period had passed by the time the said amendments came into operation. Thus, such an interpretation defeats the purpose of the aforesaid amendments.

Accordingly, it is necessary to give prospective effect to both of the aforesaid amendments in order to give effect to the purpose of the legislation.

In the absence of express provision to the contrary, a section of an Act should not be interpreted to have retrospective effect in part and prospective effect in other part

It is common ground that the extension of the deadline given to an assessor to make an assessment of income tax for the year of assessment 2007/2008 has a prospective effect. Hence, the Court of Appeal held, *inter alia,* that the time period given to an assessor to make an assessment of income tax for the year of assessment 2007/2008 had been extended with prospective effect in terms of section 27(6) of the amending Act.

However, the Court of Appeal had not considered the effect of the said amendments in relation to the taxpayer. As stated above, not only the amendment made to section 106(1) of the principal Act, but the amendment made to section 163(5)(a) of the principal Act also extends the time period given to a taxpayer to furnish a return of income. According to the said interpretation, the time period given to a taxpayer to furnish a return of income for the year of assessment 2007/2008

would be extended from the 30th of September to the 30th of November, 2008. However, such an extended time period had passed by the time the said amendments came into operation. Thus, according to the said interpretation, such extension of time given to the taxpayer to file his tax return for the year of assessment 2007/2008 should be given retrospective effect.

In the absence of express provision to the contrary, therefore, it is not possible to give **retrospective effect** to part of the amendment which extended the time period given to the taxpayer to file the tax return for the year of assessment 2007/2008, and give **prospective effect** to the other part of the amendment which extended the time period given to the assessor to make an assessment of income tax for such year of assessment. Accordingly, both the amendments should be interpreted as having prospective effect. Therefore, I am of the view that the said amendments have no application to the year of assessment 2007/2008.

For the foregoing reason, I am further of the view that the learned Judges of the Court of Appeal had misdirected themselves on the law in relation to the applicability of the said amendments to the year of assessment 2007/2008.

Application of the Interpretation Ordinance

In any event, section 6(3) of the Interpretation Ordinance states that, in the absence of any express provision, a repeal of a written law either in whole or in part, shall not affect any right acquired under the law that is being repealed.

Section 6(3) of the Interpretation Ordinance states;

> "Whenever any written law repeals either in whole or part a former written law, such repeal shall not, **in the absence of any express provision to that effect**, affect or be deemed to have affected-
>
> (a) the past operation of or anything duly done or suffered under the repealed written law;
> (b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law;
> (c) any action, proceeding or thing pending or incomplete when the repealing written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal."
>
> [Emphasis added]

Thus, since the appellant had furnished the return of income in accordance with section 163(5)(a) of the principal Act, prior to the said section being amended, a right had accrued to the appellant under the said section to have an assessment of income tax made (if any) within eighteen months from the end of that year of assessment.

Further, in the absence of express provision to the contrary in the amending Act, the right acquired by the appellant to have the assessment made within a period of eighteen months, is not affected by the subsequent repeal and substitution of the said section by the amending Act.

Hence, the amendments made to sections 106(1) and 163(5)(a) of the principal Act have no application to a tax return filed under and in terms of section 106(1) of the principal Act for the year of assessment 2007/2008.

Article 12(1) of the Constitution

Moreover, interpreting the amendment made to section 163(5)(a) of the principal Act to state that the time limit given to an assessor to make an assessment of income tax for the year of assessment 2007/2008 is extended with prospective effect, and the time limit given to a taxpayer to furnish a return of his income for the said year of assessment is extended with retrospective effect, would only benefit an assessor and not the taxpayer, as a taxpayer is unable to file a tax return in terms of the amendment made to section 106(1) of the principal Act.

In the circumstances, the law should not be interpreted to give an advantage to an assessor and deprive a taxpayer. Article 12(1) of the Constitution states that 'all persons are equal before the law and are entitled to the equal protection of the law'. Hence, the amendments made to section 163(5)(a) read with section 106(1) of the principal Act should be interpreted to secure the rights of both taxpayers and assessors of the Department of Inland Revenue.

Further, although Article 15(7) of the Constitution restricts the operation of Article 12(1) of the Constitution when enacting legislation for the purpose of, *inter alia*, meeting the just requirements of the general welfare of a democratic society, the said restriction does not apply to enacting laws governing persons who are required to comply with revenue laws or officers who enforce revenue laws. Accordingly, Article 15(7) of the Constitution has no application to the amendments under consideration and, therefore, the aforesaid amendments made to the procedure governing the taxpayers and the officers who enforce the revenue laws must be interpreted in a manner consistent with Article 12(1) of the Constitution.

The above view was expressed in *Inland Revenue (Amendment) Bill*, S.C. (S.D.) Nos. 01/2021 to 03/2021, where the court observed;

> *"It is clear from the above observations made in the aforementioned determinations, that in revenue matters, the State has a wide discretion in selecting the persons or objects to impose tax on or grant concessions to, and such matters will not be inconsistent with Article 12(1) of the Constitution which provides for the equal protection of the law, unless they are manifestly unreasonable or discriminatory.* ***However, a classification shall not be made to exclude liability of persons who perform services to taxpayers. Thus, the exclusion of "a full-time employee of the taxpayer" from the applicability of section 126(5) of the principal enactment, will not be captured within the scope of the aforesaid principle, and is therefore inconsistent with Article 12(1) of the Constitution****."*
>
> [Emphasis added]

Thus, it is necessary to interpret both the said amendments to have prospective effect, to secure equality between the taxpayer and revenue officer in terms of Article 12(1) of the Constitution.

Conclusion

Due to the foregoing reasons, I am of the view that the amendments made to section 163(5)(a) read with section 106(1) of the principal Act have no application to the year of assessment 2007/2008. Accordingly, the assessment of income tax payable by the appellant for the year of assessment 2007/2008 dated 26th of March, 2010 is time barred under and in terms of section 163(5)(a) of the principal Act.

Thus, I answer the below stated question of law as follows;

> *"Was the assessment for the year 2007/2008 dated 26.03.2010 issued by the Assessor of Inland Revenue against the Appellant in respect of the return filed on 30.09.2008, time barred in terms of section 163(5)(a) of the Inland Revenue Act as amended by Act No. 19 of 2009?"*
>
> Yes.

In view of the reasons stated above, I set aside the judgment of the Court of Appeal dated 1st August, 2014 and the determination of the Tax Appeals Commission dated 28th June, 2013. The appeal is allowed.

I order no costs.

Judge of the Supreme Court

Yasantha Kodagoda PC, J

I agree.

Judge of the Supreme Court

K. K. Wickramasinghe, J

I agree.

Judge of the Supreme Court