

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

In the matter of an application for Special Leave to Appeal under and in terms of Articles 127 and 128 of the Constitution read together with the Supreme Court Rules from the Judgment of the Court of Appeal dated 9<sup>th</sup> November 2009.

**SC. Appeal No. 40/2010**

SC. (Special) Leave to Appeal  
No: 296/2009

C.A. Writ Application  
No. 893/2007

Associated Motorways PLC,  
Registration No. PQ 16,  
No. 185, Union Place,  
Colombo 02.  
**Petitioner-Petitioner**

-Vs.-

1. The Commissioner General of  
Inland Revenue,  
Inland Revenue Building,  
P.O. Box No. 515,  
Sir Chittampalam A, Gardinier  
Mawatha,  
Colombo 02.

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2. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents-Respondents**

**BEFORE** : Tilakawardane, J.  
Marsoof, PC, J. &  
Dep, PC, J.

**COUNSEL** : K. Kanag-Iswaran, PC, with Nigel Bartholameusz,  
Shivan Kanag-Iswaran, L. Jeyakumar and Ms.  
Sankhitha Gunaratne for the Petitioner-Petitioner-  
Appellant.

Ms. S. Barrie, SSC, for the Respondents-  
Respondents-Respondents.

**ARGUED ON** : 05.09.2011, 23.09.2011, 27.09.2011, 22.11.2011,  
25.09.2012, 05.03.2013 and 25.06.2013.

**DECIDED ON** : 04.04.2014

**SHIRANEE TILAKAWARDANE, J**

Special Leave to Appeal was sought by the Petitioner-Petitioner [hereinafter referred to as the Petitioner] by way of Application No. 296/2009 in order to enable an Appeal against the judgment of the Court of Appeal dated 09.11.2009. Special Leave to Appeal was granted on 21.05.2010 on the following questions of law as enumerated in paragraph 47 (a) and (c) of the Petition dated 17.12.2009:

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- 1. Did the Court of Appeal err in law in failing to consider that Section 13 of the Stamp Duty (Special Provisions) Act No. 12 of 2006 mandates that where there is an inconsistency between it and the Stamp Duty Act No. 43 of 1982, the Stamp Duty (Special Provisions) Act No. 12 of 2006 prevails?**
- 2. Did the Court of Appeal err in law in ignoring the canons of interpretation of taxing statutes when it sought to apply the definition of “value” in the Stamp Duty Act No. 43 of 1982 when interpreting the “aggregate value of such number” of shares as appearing in the Gazette “P9” under the Stamp Duty Act No. 12 of 2006?**

The facts relevant to the present case are elucidated as follows:

The Board of Directors of the Petitioner [Company] at the Extraordinary General Meeting convened on 12.10.2006 passed an Ordinary Resolution which approved the issue of Bonus Shares, unanimously. The Resolution approved the issuance of bonus shares of 46, 373, 000 in the ratio of five (5) new shares for every one (1) share held. Subsequent to approval, Share Certificates dated 18.10.2006 were dispatched to the shareholders and these Certificates indicated the value of one share [par value] as Rs. 10/-.

On 28.11.2006, the Petitioner, acting on the advice given by the Tax Consultants of the Company, forwarded a cheque for Rs. 2, 318, 650/- to the Department of Inland Revenue as stamp duty payable on the issuance of bonus shares accompanied by a letter dated 05.12.2006 explaining the delay in payment of the sum. As clarified in the accompanying letter, this payment was forwarded with the intention of complying with Item No. 6 of Gazette No. 1465/19 of 05.10.2006 which declares as follows:

*“Any share certificate issued consequent to the issue, transfer or assignment*

*of any number of shares of any company –*

*For every Rs. 1000 or part thereof of the aggregate value of such number - Rs. 5.00”.*

The payment made by the Petitioner was 0.5 per cent of the aggregate value of the number of shares issued by the Company as bonus shares and calculated using the par value i.e. the value denoted on the face of the Share Certificate. Thus, the manner in which the sum was calculated can be elucidated as follows:

$$46,373,000 \times 10 \times 5/1000 = \text{Rs. } 2,318,650/-$$

On 06.12.2006, the Deputy Commissioner of the Inland Revenue responded by letter stating that in relation to No. 6 of Gazette No. 1465/19, the definition given to the word “Value” in the Stamp Duty Act No. 43 of 1982 should apply: the definition given is quoted below:

*“Value with reference*

- a) To any property (other than immovable properties which is gifted) and to any date, means the price which in the opinion of the Assessor, that any property would have fetched in the open market on that date.”*

The value of a share in the open market on 12.10.2006 as determined by the Colombo Stock Exchange was Rs. 170/-. Therefore, the stamp duty payable was revised by the Deputy Commissioner as follows:

$$46,373,000 \times 170 \times 5/1000 = \text{Rs. } 39,417,050/-$$

In addition to this revision, a penalty of 10% was imposed for the delay.

Aggrieved by this decision, the Petitioner lodged an Appeal with the Commissioner General of Inland Revenue on 01.01.2007 in accordance with **Section 40** of the **Stamp Duty Act No. 43 of 1982** as amended by the **Stamp Duty (Special**

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**Provision) Act No. 12 of 2006** and/or read with **Section 136** of the **Inland Revenue Act No. 38 of 2000**. Thereafter, subsequent to further discussions between the Petitioner and the Deputy Commissioner, the former informed the latter by telephone that the Company is not liable to pay stamp duty on the market value of the shares. The Petitioner then instituted proceedings challenging the imposition of stamp duty on the market value of the shares by the Petition dated 27.09.2007 in the Court of Appeal Writ Application No. 826/2007.

The Application was then withdrawn, with liberty to file a new application, subsequent to the Counsel for the 1<sup>st</sup> Respondent indicating that the letter from the Deputy Commissioner marked "P12" was not an 'assessment' and the Court of Appeal directed the 1<sup>st</sup> Respondent to issue a Notice in terms of **Section 10 of Stamp Duty [Special Provisions] Act No. 12 of 2006**. On 17.10.2007, the Petitioner was sent the Notice of Assessment and the attached Stamp Duty Assessment Sheet indicated an increase of the penalty on balance payable at Rs. 11, 129, 520/-, thereby increasing the total payable amount to Rs. 48, 227, 920/-.

Aggrieved by this assessment, the Petitioner instituted Writ Application No. 893/2007 in the Court of Appeal wherein, on 09.11.2009, the Court dismissed the application of the Petitioner stating that

*"The value of share cannot be interpreted anything other than the market value of the share as interpreted in the Stamp Duty Act..... Hence, there is no illegality or impropriety in the Stamp Duty Assessment sheet dated 12.10.2007".*

In order to effectively answer the questions of law that have been posed before this Court the Gazette bearing No. 1465/19 cannot be examined in isolation: it must be examined in the context of the **Stamp Duty Act No. 43 of 1982** and that of **Act No. 12 of 2006**. Thus, given that the more recent provisions have sought to amend the original Act, a detailed summary of the changes made to the legislative provisions is

called for.

The original Act which deals with the imposition of stamp duty remains the **Stamp Duty Act No.43 of 1982** which was certified on 14.12.1982 with the primary purpose of imposing stamp duty on 'instruments and documents' as set out in the Act. The imposition of stamp duty in this manner was temporarily discontinued by the **Finance Act No. 11 of 2002** wherein Section 15 stated the following:

*“No stamp duty shall be imposed or paid under the Stamp Duty Act, No. 43 of 1982 (hereinafter in this Part referred to as the "principal enactment") on any instrument executed or any document presented or filed on or after the date on which the provisions of this Part shall come into force”.*

It must be noted that the **Stamp Duty Act No. 43 of 1982** was not repealed and, while this Section was in operation for a period of four years, the **Stamp Duty [Special Provision] Act No. 12 of 2006**, which was certified on 31.03.2006, re-imposed stamp duty on the instruments set out in the Act. The long title of this Act reads as follows:

*“AN ACT TO PROVIDE FOR THE RE-IMPOSITION OF STAMP DUTY; TO PROVIDE FOR THE REPEAL OF PART III OF THE FINANCE ACT NO.11 OF 2002; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO”.*

Relevant to this case is **Section 13** of **Act No. 12 of 2006** which stated that the provisions of **Act No. 12 of 2006** will prevail over that of **Act No. 43 of 1982** if any inconsistencies arise between the two Acts.

*“From and after the date of the coming into operation of this Act, the provisions of the Stamp Duty Act No. 43 of 1982, relating to the imposition of Stamp Duty [other than any instrument relating to the transfer of immovable*

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*property, the transfer of motor vehicles or documents filed in Court], exemptions and any other provision in the aforesaid Act, shall, in so far as the same are inconsistent with the provisions of this Act, have no operation and the provisions of this Act shall prevail”.*

This Act, by **Section 3(1)**, also allows the duty to be charged as determined by the Minister, published in the Gazette on every instrument as specified in the Act:

*“From and after the date of the coming into operation of this Act, there shall be charged a duty [hereinafter to be called ‘stamp duty’] at such rate as the Minister may determine by Order published in the Gazette on every ‘specified instrument’..”*

Thus, Gazette notifications 1439/1 and 1465/19 are relevant in considering this issue as they were published under **Section 3** of **Act No. 12 of 2006**.

Firstly, given that the interpretation of specific legislative provisions is called for, an evaluation of the type of interpretation that can be exercised by the Court is in order. In **Halsbury’s Laws of England** [4<sup>th</sup> Edition, Volume 44] it is stated that

*“In construing the statutory provisions concerning stamp duty, many of which are to be construed as one, strict attention must be paid to the actual words used by the legislature....ambiguous words are construed in favour of the person liable to the duty.”*

In **‘Interpretation of Statutes’** by N. S. Bindra, 9<sup>th</sup> Edition, it is stated that

*“A taxing statute must be construed strictly; one must find words to impose the tax, and if words are not found which impose the tax, it is not imposed”.*

It is, thus, abundantly clear that in the interpretation of a fiscal statute, a strict

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outlook must be taken with specific regard to the words chosen and any ambiguity would benefit the Petitioner.

In this light, it must be noted that in this case there is a marked difference between the two relevant gazette notifications and the Counsel for the Petitioner has asserted that the wording used in these two notifications signify a change in legislative intention.

Item 6 of Gazette No. 1439/1 of 03.04.2006 states that stamp duty will be charged

*“On the issue, transfer or assignment of any share of a company, other than a quoted public company on the market value determined by the Commissioner General of Inland Revenue on the date of such issue, transfer or assignment of such share  
For each Rs. 1, 000 or part thereof of such market value of the value of shares Rs. 5. 00”*

While this Notification specifically excluded a quoted public company, thereby excluding the Petitioner Company [which is a quoted public company], the notification specifically refers to stamp duty being imposed on the market value of the shares concerned.

This Notification must be read in light of the more recent Gazette Notification No. 1465/19 of 05.10.2006 which effectively rescinded the Order made under **Section 3** and published in the Gazette Extraordinary No. 1439/1 of 03.04.2006. Item 6 of Gazette No. 1465/19 states that stamp duty will be charged on

*“Any share certificate issued consequent to the issue, transfer or assignment of any number of shares of any company  
For every Rs. 1, 000 or part thereof of the aggregate value of such number Rs. 5.00”*



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As the abovementioned item is the subject of the present case, clearly, the words used have given rise to a degree of ambiguity, especially with regard to what 'aggregate value' entails. As a result, it is necessary to consider this Item in conjunction with Gazette No. 1439/1.

A noteworthy difference between the words published in Gazette No. 1439/1 and Gazette No. 1465/19 is the inclusion of the phrase 'share certificate'. This Court feels that this inclusion is of paramount importance in the interpretation of the legislative provisions in question.

A share certificate is defined by **Section 71 of Act No. 43 of 1982** to mean

*“a certificate or other document evidencing the right or title of the holder thereof or any other person either to any shares, scrip, stock or debenture stock in or any incorporated company or other body corporate, or to become proprietor of shares, scrip, stock or debenture stock in, or of, any such company or body”.*

Thus, a share certificate is used as mere evidence of ownership of shares in a company. Furthermore, **Section 4 of the Stamp Duty [Special Provisions] Act No. 12 of 2006**, which defines the 'specified instruments' upon which duty is imposed expressly reads as follows:

*“For the purpose of Section 3, 'specified instruments' means*

*(f) A share certificate on new or additional issue or on transfer or assignment*

Thus, in the present case, the Petitioner Company issued additional shares in the form of bonus issues and dispatched share certificates evidencing the issue, upon which, under **Act No. 12 of 2006**, duty is applicable.

The primary issue arises due to the inclusion of 'share certificate' in Gazette No.

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1465/19. The share certificate is the specified instrument upon which duty can be imposed. This is of paramount importance for, given a literal interpretation, the Court cannot ignore the fact that the instrument specified by the legislature is the share *certificate*. Keeping this in mind, its inclusion in the Gazette must be analysed and this analysis must go hand in hand with the assessment of the change of wording from 'market value' to 'aggregate value'.

Firstly, it must be observed that the specified instrument defined by **Act No. 12 of 2006** is the 'share certificate'. It must be noted that **Act No. 12 of 2006** came into operation on 31.03.2006 and Gazette No. 1439/1 came into operation on 03.04.2006 while the latter included the provision that duty must be imposed based on the market value as determined by the Commissioner General of Inland Revenue. However, within a mere six months, it was varied into imposing duty on *share certificates* issued by any company. It must be noted that the imposition of duty on such a share certificate is undisputed.

This Court cannot, therefore, ignore the existence of the phrase *share certificate* in the notification and surmises that its inclusion means that the value on the face of the share certificate is paramount in the calculation of the stamp duty to be imposed. This summation is further supported by the exclusion of the words '*market value*' and inclusion of the words '*aggregate value*'. Relevant here is *N.S. Bindra* in '**Interpretation of Statutes**' 9<sup>th</sup> Edition wherein it is stated as follows:

*"When a legislature amends an Act by deleting something which was there, then in the absence of an intention to the contrary, the deletion must be taken to be deliberate".*

This Court cannot ignore the fact that the Legislature has failed to include 'market value' in the Item, which they would have done, had that been the intention. Instead, this phrase which was initially included, was deleted in the subsequent Gazette Notification and it would be remiss of this Court to not take this change into account

when interpreting Gazette No. 1465/19.

It is not a stretch of imagination or a purposive interpretation to interpret the Gazette Notification in this manner. The inclusion of share certificate renders the interpretation that the duty should be imposed on the certificate itself i.e. the value shown on the certificate. The absence of the term 'market value' further supports this contention. In adopting a literal interpretation of this notification, any other interpretation given to the notification would be uncalled for as the *specified instrument*, defined by **Act No. 12 of 2006** is the 'share certificate'; **not the share nor the market value of the share, but the certificate** and thus, the interpretation that the '*aggregate value*' of shares refers to the par value given on the certificate multiplied by the total number of shares is wholly justified.

In fact, it appears to this Court, that even if Gazette No. 1465/19 is considered in isolation, consideration of the market value of the shares would amount to an **inference** as the phrase *market value* is not mentioned in Item 6. In fact, such a construction appears untenable, especially given that the statute in question is a taxing statute and a liberal interpretation can easily result in an incorrect summation. This Court cannot possibly **imply** anything that has not been expressed in words by the legislature. There exists a sound reason behind the principle of employing a literal interpretation of taxing statutes and it would be extremely remiss of this Court to employ any other interpretation. Given this reality, and given the wording used, there is no doubt in the mind of this Court that the aggregate value in Item 6 refers to the total arrived at by multiplying the par value with the total number of shares, especially given that the phrase 'share certificate' [which is also the specified instrument according to **Act No. 12 of 2006**] is included in the Notification.

This Court must further assert that even if the change from market value to aggregate value creates any doubt, *it must be in favour of the Petitioner.*

Next, the usage of the word '*value*' in item 6 of Gazette No. 1465/19 has given rise

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to the argument of the Respondents that the definition given to the word 'value' by **Section 71 of Act No. 43 of 1982** which states that "*Value' with reference to any property [other than immovable property which is gifted] and to any date, means the price which in the opinion of the Assessor, that property would have fetched in the open market on that date*" must be applied to the phrase 'aggregate value'. Thus, the Respondents argued that shares, coming within the definition provided by **Section 71**, should mean that the market value of the share is considered when imposing duties and that 'aggregate value' of such shares would entail the total number of shares multiplied by the market value i.e. the amount for which something can be sold on a given market [as defined by the **Oxford Dictionary**].

Indeed a share is defined as 'movable property' under the **Companies Ordinance 1938** as well as the **Companies Act No. 7 of 2007** but reference must also be made to the judgment of Sharvananda C.J in **Ratwatte v Goonesekera (1987)** (2 SLR 260) where it was stated that although shares have been defined as such

*"...this is for the purposes of the provisions of the Companies Ordinance only and not for purposes outside the province of Company Law. A share is neither movable nor immovable property as known to the Roman or Roman-Dutch law. It is a bundle of rights and liabilities. It is an English law concept and a typical item of property of the modern commercial era in a distinct class of its own. It is a chose in action".*

The decision also quotes Lord Greene in **Re G. M. Holdings Limited** where it was stated that:

*"A share is a chose in action. A chose in action implies the existence of some person entitled to the rights which are rights in action as distinct from rights in possession..... A chose in action confers no right to possession of a physical thing... it is manifest that a share does not dovetail into the Roman or Roman-Dutch Law categorisation of movable and immovable.."*

In short, a share cannot be categorised strictly into a movable or immovable property and the distinction made in the Companies Act will apply to the domain of company law only. In the present case, it is abundantly clear to this Court that a *share* is a chose in action which cannot be categorised as *property* and thus, does not come within the definition of '*value*' as **Section 71** specifically concerns '*property*'.

Even if one were to consider shares as amounting to *property*, bonus share, specifically are different from the general understanding of property. The issuing of bonus shares by the Board of Directions was to capitalize part of the Company's reserves. In doing so, the shares were issued free of charge [bonus], without an agreement of sale, with a par value of Rs. 10/- and most importantly, without a knowledgeable and willing buyer and seller. The shares were not sold in the open market at market value either. Thus, one can draw a distinction between property and the issuance of bonus shares and this Court cannot, in good conscience, ignore this significant difference which makes bonus shares significantly distinct from property in the general sense. It would be truly illogical and impractical to classify bonus shares as property in the accepted sense of the word as a sale of property would entail the passage of consideration, an agreement to do so and of course, the presence of a knowledgeable and willing buyer and seller: qualities which are absent in bonus shares.

Therefore, this Court finds that the definition given by **Section 71** to the word '*value*' does not apply in the present case to bonus shares either way. Given this reality, one must consider the two Gazette notifications and the wording used to ascertain the intention of Parliament. Even then, one must take care not to imply meanings which are not included in the notification itself as this Court has reasoned above. Thus, for the reasons set forth above, I set aside the Court of Appeal judgment dated 09.11.2009 and allow the Appeal. No costs.

**Sgd.**  
**JUDGE OF THE SUPREME COURT**

**MARSOOF, PC, J.**

I agree.

**Sgd.**  
**JUDGE OF THE SUPREME COURT**

**DEP, PC, J.**

I agree.

**Sgd.**  
**JUDGE OF THE SUPREME COURT**