

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

In the matter of an appeal made in terms of Article 128 (2) of the Constitution of the Democratic Socialist Republic of Sri Lanka with Section 11A (9) of the Tax Appeals Commission Act, No. 23 of 2011 (as amended).

SC / APPEAL / 93 / 2020

SC / SPL / LA / 124 / 2019

CA / Tax / 25 / 2014

Tax Appeals Commission:

TAC / OLD / IT / 007

**The Young Men's Buddhist
Association Colombo,**

70, D.S. Senanayake Mawatha,
Colombo 08.

APPELLANT

-Vs-

**Commissioner General of Inland
Revenue,**

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

RESPONDENT

AND NOW BETWEEN

**The Young Men's Buddhist
Association Colombo,**
70, D.S. Senanayake Mawatha,
Colombo 08.

APPELLANT - APPELLANT

-Vs-

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

RESPONDENT - RESPONDENT

Before: A.H.M.D. Nawaz, J.
A.L. Shiran Gooneratne, J. &
K. Priyantha Fernando, J.

Counsel: Dr. Sivaji Felix with Gamini Balasooriya for the Appellant – Appellant.
Manohara Jayasinghe, DSG for the Respondent – Respondent.

Argued on: 30.11.2023

Decided on: 29.04.2026

A.H.M.D. Nawaz, J.

1. This is an appeal by the Young Men's Buddhist Association, Colombo (hereinafter "the Appellant" or "the YMBA") against the judgment of the Court of Appeal dated 8 March 2019, delivered in case No. CA/TAX/25/2014. The Court of Appeal dismissed the Appellant's appeal against the determination of the Tax Appeals Commission (hereinafter "the TAC") dated 8 July 2014. This Court granted special leave to appeal on 16 September 2020 on the following specific questions of law;

(a) Did the Court of Appeal err in law when it concluded that the Petitioner was not a company within the contemplation of section 186 of the Inland Revenue Act, No. 38 of 2000 (as amended) and section 217 of the Inland Revenue Act, No. 10 of 2006 (as amended)?

(b) Did the Court of Appeal err in law when it came to the conclusion that the Petitioner's rental income could not be classified as business income?

2. In order to answer both questions of law it becomes necessary to disentangle the facts and law surrounding the issues.

The Chronology of Events

3. The YMBA is a Buddhist charitable institution founded in 1926 and subsequently incorporated by Colombo Young Men's Buddhist Association Ordinance No. 11 of 1927 (hereinafter "the 1927 Ordinance") the Appellant submitted income tax returns for the years of assessment 2004/2005, 2005/2006 and 2006/2007 on the basis that it is a company for income tax purposes and that its rental income from

premises owned by it constitutes business income that is exempt from income tax. The assessor rejected these returns on the ground that the YMBA cannot be treated as a company and assessed the rental income under Section 3 (g) of the Inland Revenue Act No. 38 of 2000 (as amended) and the Inland Revenue Act No. 10 of 2006 (as amended) as income from rent.

4. The Appellant appealed to the Respondent Commissioner General of Inland Revenue (hereinafter “the Respondent”). A delegate of the Commissioner General, by determination dated 12 March 2010, disallowed the appeal and confirmed the assessments. The Appellant then appealed to the Board of Review which transferred the appeal to the Tax Appeals Commission by operation of law under Section 10 of the Tax Appeals Commission Act No. 23 of 2011. The TAC, by determination dated 8 July 2014, confirmed the determination of the Commissioner General subject to the qualification that the rental income should be taxed at the rate of 10% applicable to charitable institutions.
5. Aggrieved by the determination of the TAC, the Appellant applied for a case to be stated to the Court of Appeal under Section 11A of the Tax Appeals Commission Act No. 23 of 2011 (as amended). The Court of Appeal answered all questions of law in favour of the Commissioner General of Inland Revenue (the Respondent) and confirmed the TAC's determination. This appeal to the Supreme Court followed.
6. The years of assessment 2004/2005 and 2005/2006 are governed by the Inland Revenue Act No. 38 of 2000 (as amended). The year of assessment 2006/2007 is governed by the Inland Revenue Act No. 10 of 2006 (as amended). The relevant statutory provisions in both Acts are identical in import. For convenience I shall refer principally to the provisions of the Inland Revenue Act No. 38 of 2000 and indicate where the corresponding provisions of the Inland Revenue Act No. 10 of 2006 diverge if at all.

The Statutory Framework

7. In order to appreciate the legal questions that arise in this appeal it is necessary to set out the relevant statutory provisions with some scrutiny.

8. Section 3 of the Inland Revenue Act No. 38 of 2000 (as amended) provides that for the purposes of the Act "*profits and income*" or "*profits*" or "*income*" means;

*"(a) the profits from any trade, **business**, profession or vocation for however short a period carried on or exercised,*

...

(g) rents, royalties or premiums."

9. The critical question in this appeal is whether the Appellant's rental income falls within Section 3 (a) as business income or within Section 3 (g) as income from rent. The answer to that question turns on whether the Appellant is a "**company**" for the purposes of the Act. This is because Section 186 of the Inland Revenue Act No. 38 of 2000 (as amended) defines the term "business" as follows;

*"**Business**" includes an agricultural undertaking, the racing of horses and the letting of any premises for commercial purposes by a company."*

10. Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended) defines "business" in substantially the same terms;

"Business" includes an agricultural undertaking, the racing of horses, the letting or leasing of any premises, including any land by a company and the forestry."

11. The definition of "company" in Section 186 of the Inland Revenue Act No. 38 of 2000 (as amended) and in Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended) is in identical terms;

"Company" means any company incorporated or registered under any law in force in Sri Lanka or elsewhere and includes a public corporation."

12. The same sections define "charitable institution" and "charitable purpose" in the following terms;

"Charitable institution" means the trustee or trustees of a trust, or corporation or an unincorporated body of persons established for a charitable purpose only or engaged solely in carrying out a charitable purpose."

"Charitable purpose" means a purpose for the benefit of the public or any section of the public in or outside Sri Lanka of any of the following categories: (a) the relief of poverty; (b) the advancement of education or knowledge; (c) the advancement of religion or the maintenance of religious rites and practices or the administration of a place of public worship; (d) any other purpose beneficial or of interest to mankind not falling within any of the preceding categories."

Exemptions

13. Section 8 (d) (i) (a) of the Inland Revenue Act No. 38 of 2000 (as amended) provides the exemption that the Appellant seeks to invoke;

"8. There shall be exempt from income tax:

...

(d) the profits and income of a charitable institution, being:

(i) the profits of a business carried on by that institution if such profits are applied solely to a charitable purpose of that institution and:

(a) either the business is carried on in the course of the actual carrying out of a primary purpose of that institution or the work in connection with the business is mainly performed by beneficiaries of that institution."

14. The corresponding provision in the Inland Revenue Act No. 10 of 2006 (as amended) is Section 7 (e) (i) (A) which is in identical terms.

15. Taking a synoptic view of the aforesaid provisions of the relevant revenue legislation, I would set forth the qualification for exemption from income tax, which the YMBA must possess. It must be a company which must carry on business at a profit and these profits must be disbursed for charitable purposes. Once these elements are satisfied Section 8 (d) (i) (a) of the Inland Revenue Act No. 38 of 2000 (as amended) would kick in so as to exempt YMBA from income tax on the profits of its business. The business must be carried on in the course of the actual carrying out of a primary purpose of the YMBA or its work in connection with the business is mainly performed by beneficiaries of that institution. The

inquiry before me is whether the YMBA (the Appellant) satisfies these requisites having regard to the fact the exemption is provided on the profits and income of the charitable institution. In order to embark on this inquiry, it is apposite to begin with the incorporation statute of the YMBA.

16. A trawling of the important provisions of the Colombo Young Men's Buddhist Association Ordinance No. 11 of 1927 is quite material. Section 2 of the 1927 Ordinance provides that the president, vice-presidents and members of the committee of management "*shall be and become a corporation with continuance forever under the style and name of 'The Young Men's Buddhist Association, Colombo' and by that name shall and may sue and be sued in all courts, with full power and authority to have and use a common seal.*" Section 3 sets out the objects of the corporation which include the propagation of the Buddha Dhamma, the advancement of religion and the promotion of the interests of Buddhism. Section 11 provides that the corporation "*shall be able and capable in law to take and hold any property, movable or immovable*" and that it shall have "*full power to sell, mortgage, lease, exchange or otherwise dispose of the same.*" Thus, letting of property is within the objects of the YMBA - a corporation incorporated under Section 2 of the 1927 Ordinance. The status of the YMBA as a charitable institution is put beyond doubt upon a perusal of the aforesaid provisions.

17. In this arc of statutory provenance, it becomes pertinent to ascertain as to how the Commissioner General of Inland Revenue and the TAC have understood the law. In this process it has to be examined as to how the Court of Appeal came to its finding having regard to the fact that it concurred with the determinations of the Commissioner General of Inland Revenue and the TAC.

The Determinations Below

18. As I said before, a delegate of the Commissioner General concluded that the YMBA does not fall within the definition of "company" for income tax purposes. The delegate took the view that the term "company" in the relevant Inland Revenue Acts refers exclusively to a limited liability company incorporated under the Companies Acts in Sri Lanka. Having concluded that the YMBA was not a company, the delegate held that the income from the letting of premises must be assessed as rental income under Section 3 (g). In consequence the claim for exemption under Section 8 (d) (i) (a) did not arise.
19. The TAC confirmed the determination of the delegate. The TAC reasoned from general dictionary definitions that a company is an entity formed as a business establishment for the purpose of carrying on a commercial or industrial undertaking and that the YMBA, being incorporated for purely charitable objects, could not be considered a company. The TAC further held that the term "company" in the Inland Revenue Acts refers specifically to an entity incorporated under the Companies Act No. 17 of 1982 or the Companies Act No. 7 of 2007. Since the YMBA was incorporated under the 1927 Ordinance and not under the Companies Acts the TAC held it could not be treated as a company for tax purposes. The TAC also placed reliance on the circumstance that the YMBA had signed lease agreements through its secretary and not as a company, from which it inferred that the YMBA had not held itself out to the outside world as a company. The TAC taxed the rental income at the rate of 10% applicable to charitable institutions.
20. The Court of Appeal, in a carefully reasoned judgment, accepted that the YMBA had progressed from an association to a corporation by virtue of the 1927 Ordinance. The Court further accepted that a company can be incorporated in Sri Lanka under an enactment other than the Companies Act No. 7 of 2007. Notwithstanding these concessions the Court of Appeal held that every corporation is not a company. The Court held that the definition of "company" in

the relevant Acts which uses the words "means...and includes" first limits the meaning of the word "company" to any company incorporated or registered under any law in force in Sri Lanka and then extends it by adding "public corporation" as a species that does not naturally belong to the genus. The Court concluded that the YMBA is a corporation but not a company and that its rental income therefore cannot be classified as business income. The Court drew support from the circumstance that if every corporation were a company there would have been no need to add "public corporation" by the inclusive limb of the definition.

21. Let me hasten to add that one has to look at the definition of the word "company" in the relevant Inland Revenue Acts not with a view to identify a corporate structure *per se* in the traditional corporate law sense but for the purpose of ascertaining its tax liability and exemptions, if its profits qualify for such an exemption. In this context, it is appropriate to look at the questions of law.

Question of Law (a): Is the YMBA a "Company" within the Contemplation of the Inland Revenue Acts?

22. The central issue on question (a) is whether the YMBA which was incorporated by Parliament under the 1927 Ordinance qualifies as a "company" within the meaning of Section 186 of the Inland Revenue Act No. 38 of 2000 (as amended) and Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended). I have no hesitation in holding it does. My reasons follow.

23. The starting point must be the language of the statute. Section 186 and Section 217 of the respective Acts define "company" to mean "*any company incorporated or registered under any law in force in Sri Lanka or elsewhere*" and to include "*a public corporation*". The language is clear and unambiguous. A company for the purposes of the Inland Revenue Acts is any company incorporated or registered

under any law in force in Sri Lanka. The phrase "*any law in force in Sri Lanka*" is of the widest amplitude. It is not confined or cabined to the Companies Act No. 17 of 1982 or the Companies Act No. 7 of 2007. It encompasses any law whether a general statute or a special statute such as the 1927 Ordinance by which corporate status is conferred. Parliament has deliberately cast the net as wide as possible and this Court has no warrant to narrow its scope by judicial fiat.

24. The YMBA was incorporated by an Act of Parliament. Section 2 of the 1927 Ordinance expressly declares that the YMBA "*shall be and become a corporation with continuance forever.*" The classic indicia of incorporation are all present: perpetual succession, a distinctive name, power to sue and be sued in its own name, a common seal and the capacity to hold property. These are the hallmarks of a corporation and it is beyond controversy that the YMBA possesses each of them. The YMBA is therefore unquestionably a juristic person incorporated under a law in force in Sri Lanka. It follows directly from the statutory definition that it is a "company" for the purposes of the Inland Revenue Acts. One need not confine the definition to mean only a company under the Companies Act.

25. The Court of Appeal acknowledged that the YMBA is a corporation and acknowledged that a company need not be incorporated exclusively under the Companies Act. Yet the Court drew a distinction between a corporation and a company and held that not every corporation is a company. With the greatest respect to the learned Judges of the Court of Appeal I am unable to accept this reasoning. It introduces a distinction that the statute itself does not draw. The relevant Acts define "company" by reference to the fact of incorporation or registration under any law in force in Sri Lanka. They do not require that the incorporation be effected specifically under the Companies Act. They do not draw any distinction between a corporation created by a general statute and a corporation created by a special statute. They simply say "any company incorporated or registered under any law in force in Sri Lanka." The YMBA having

been incorporated under the 1927 Ordinance which is a law in force in Sri Lanka falls squarely within those words.

26. I now turn to the **means/includes** argument. The Court of Appeal held that the use of the word "*means*" in the first limb of the definition followed by the word "*includes*" in the second limb suggests that the word "means" exhausts the primary meaning by confining "company" to a specific category and that the word "includes" then adds "public corporation" as something outside that category. The Court reasoned that if every corporation were already a company within the first limb there would have been no need to add "public corporation" by the inclusive limb. I must respectfully disagree with this reasoning for the following reasons.

27. The definition of "public corporation" in Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended) is not any corporation but a specific and narrow category of corporation. It means "any corporation, board or other body which was or is established by or under any written law other than the Companies Act No. 7 of 2007, with capital wholly or partly provided by the Government by way of grant, loan or other form." A public corporation in this defined sense is therefore a State-owned or State-funded entity established by statute. The YMBA is not a public corporation in this sense because it does not have capital provided by the Government. The inclusive extension of the definition to cover "public corporation" was therefore a specific and deliberate act of the legislature to bring within the meaning of "company" those State-owned statutory bodies that might otherwise not qualify under the first limb. This does not in any way imply that other types of corporations incorporated under special statutes such as the YMBA are excluded from the first limb of the definition. The addition of "public corporation" by the inclusive limb is simply the legislature's way of ensuring that State-funded statutory bodies are captured for income tax purposes as companies. It says nothing about whether a privately incorporated special statutory corporation such as the YMBA is already within the first limb.

28. The argument of the Court of Appeal rests on the premise that "any company incorporated or registered under any law in force in Sri Lanka" in the first limb of the definition refers only to companies incorporated under the Companies Acts. But that premise is directly contradicted by the plain and natural meaning of the words. The phrase "*any law in force in Sri Lanka*" admits no such restriction. If the legislature had intended to confine the definition to companies incorporated under the Companies Acts it would have said so. It manifestly did not. As Maxwell on the Interpretation of Statutes states; "*the words of a statute must be construed so as to give a sensible meaning to them.*"¹ There is no sensible basis for reading "any law in force in Sri Lanka" as meaning only the Companies Acts when Parliament has chosen to say "*any law*".

29. In any event the use of the word "includes" in the second limb of the definition leaves room for even a privately funded corporation to be included within the category and so even under the second limb of the definition the YMBA would become an entity which could be construed as a company for purposes of the Inland Revenue Act. In my view, this reasoning should conclude the issue whether the YMBA is a company for purposes of the Inland Revenue Act No. 38 of 2000 (as amended).

30. The TAC sought support from the proposition that in every chapter of the Inland Revenue Acts where the term "company" is used it is used for a limited liability company. With respect that is not a sound basis for statutory interpretation. The relevant question is not how the word "company" is commonly used in the business world but what meaning the legislature has assigned to it in the interpretation section of the statute. It is trite law that a word defined in the interpretation section of a statute bears its defined meaning throughout the statute. The legislature having defined "company" in expansive terms cannot have that

¹ See P. St. J. Langan, *Maxwell on The Interpretation of Statutes* (12th edn, Sweet & Maxwell 1969) 36.

definition displaced by reference to the colloquial usage of the word in commercial life.

31. The TAC also relied on the circumstance that the YMBA signed its lease agreements through its secretary and not in terms that identified it as a company. This consideration is wholly irrelevant to the legal question of whether the YMBA is a company within the statutory definition. The manner in which the YMBA chose to describe itself in its commercial transactions cannot alter its legal character as determined by its incorporating statute and by the definition section of the Inland Revenue Acts. An entity is what the law says it is. The mode of execution of a document is a matter of form. It cannot govern the substance of the legal question.
32. It was contended on behalf of the Respondent that a business and a charity are fundamentally antithetical. A business is driven by profit motive while a charity is driven by a sense of service. This contention misconceives the legal question. The Inland Revenue Acts themselves contemplate the possibility that a charitable institution may carry on a business. Section 8 (d) (i) (a) of the Inland Revenue Act No. 38 of 2000 specifically provides for the exemption of "the profits of a business carried on by" a charitable institution when those profits are applied solely to a charitable purpose. If Parliament had regarded a charitable institution as inherently incapable of carrying on a business there would have been no occasion to enact this exemption provision at all. The very existence of the exemption provision presupposes that a charitable institution can have business income. The Respondent's argument that a charitable organization cannot be a company because it has no profit motive is therefore directly contradicted by the Act itself.
33. The Appellant drew the attention of this Court to Section 34 of the Companies Act No. 7 of 2007 which expressly provides for the incorporation of a company limited by guarantee for the purpose of promoting "commerce, art, science, religion,

charity, sport or any other useful object" and which is required to apply its profits to its objects without distributing dividends to members. The Appellant further drew attention to Section 519 (1) of the Companies Act No. 7 of 2007 which recognizes that a company can be incorporated "under some other enactment." These provisions put it beyond doubt that a company incorporated for purely charitable purposes is a known and recognized legal entity in Sri Lanka and that the Companies Acts themselves contemplate incorporation of companies under enactments other than the Companies Acts. The Respondent's argument that charity and company are mutually exclusive categories is untenable in the face of these provisions.

34. The Appellant also drew attention to Section 195 of the Inland Revenue Act No. 24 of 2017 which has widened the definition of "company" even further to include *"a corporation, unincorporated association or other body of persons."* This subsequent legislative development is consistent with and confirms the broad interpretation of "company" in the earlier Acts. Parliament has consistently demonstrated an intention to give an expansive meaning to the term in the income tax context.

35. I am therefore of the opinion that the YMBA is a company within the contemplation of Section 186 of the Inland Revenue Act No. 38 of 2000 (as amended) and Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended). The Court of Appeal erred in law in concluding otherwise. Question of law (a) must be answered in favour of the Appellant.

Question of Law (b): Is the Appellant's Rental Income Business Income?

36. Once it is established that the YMBA is a company for the purposes of the Inland Revenue Acts the answer to question (b) follows as a matter of statutory compulsion. Section 186 of the Inland Revenue Act No. 38 of 2000 (as amended)

defines "business" to include "the letting of any premises for commercial purposes by a company." Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended) defines "business" to include "the letting or leasing of any premises, including any land by a company." By operation of these definitions the letting or leasing of premises by a company is a business. It is a business by force of statute and not merely because it may have the characteristics of commercial activity in the ordinary sense.

37. The YMBA is a company. The YMBA lets out its premises. The income so derived is therefore income from a business within the meaning of Section 3 (a) of the relevant Acts. It cannot be income from rent within Section 3 (g). The two limbs are mutually exclusive in this context because the legislature has by express statutory definition taken the letting of premises by a company out of the category of mere rental income and placed it within the category of business income. This is not a matter of discretion or impression. It is the plain consequence of reading the relevant definitions together in accordance with well-established principles of statutory interpretation.

38. The Court of Appeal having erred on question (a) necessarily erred on question (b) as well. The Court dismissed question (b) on the short ground that it had already concluded that the Appellant was not a company. That reasoning falls away once question (a) is answered in favour of the Appellant.

39. An alternative argument was advanced on behalf of the Respondent. Even if the YMBA is a company the definition sections are prefaced by the words "unless the context otherwise requires" and that in the context of the YMBA which is a charitable organization the context otherwise requires. I reject this argument. The "context otherwise requires" proviso operates to displace a statutory definition only where applying the defined meaning would produce an absurdity or an evident inconsistency with the rest of the statute. No such absurdity or

inconsistency arises here. The statute itself in Section 8 (d) (i) (a) contemplates that a charitable institution will have business income and provides specifically for its exemption. The context of the statute therefore supports and reinforces rather than displaces the defined meanings. The Respondent's invocation of the contextual proviso in this case amounts to no more than a submission that a charitable institution should not be treated as a company. But Parliament has made its position clear. Parliament has defined the company in broad terms. Parliament has provided an exemption for business profits of charitable institutions. To invoke the contextual proviso in order to deny the Appellant the benefit of these provisions would be to substitute this Court's view for that of Parliament.

The Approbation and Reprobation Argument

40. The Court of Appeal raised an additional ground for dismissing the appeal. The Court held that the Appellant was seeking to approbate and reprobate by claiming to be a charitable institution for the purpose of the lower tax rate while also claiming to be a company carrying on a business for the purpose of full expense deductions under Section 25 of the Inland Revenue Act No. 10 of 2006.

41. With respect the Court of Appeal has misapplied the doctrine of approbation and reprobation in this context. That doctrine as explained in *Ranasinghe v. Premadharm and Others*² applies where a person has a choice between two rights and having elected to take one cannot thereafter assert the other. The doctrine applies to a choice between inconsistent legal rights.

42. The difficulty in applying the doctrine to the facts of this case is that the Appellant is not choosing between two inconsistent legal rights. Being a charitable institution for the purposes of the tax rate and being a company carrying on a

² (1985) 1 Sri.L.R. 63

business for the purposes of income classification and expense deduction are not mutually exclusive positions. They are entirely consistent with each other and they are both contemplated and indeed required by the statute. Section 8 (d) (i) (a) of the Inland Revenue Act No. 38 of 2000 presupposes that a charitable institution can have business income. The Third Schedule to the relevant Acts specifically prescribes a lower rate of tax for charitable institutions. Parliament has therefore specifically recognized that a charitable institution can carry on a business and can be taxed at a concessionary rate on such business income unless the income qualifies for full exemption.

43. Furthermore, the doctrine of approbation and reprobation requires a prior election made with full knowledge. There is nothing in the record to show that the Appellant made any such election. The Appellant has throughout maintained a consistent position: that it is a company carrying on a business of letting premises and that its rental income is therefore business income. This is not a case where the Appellant claimed the benefit of one position and then sought to claim an inconsistent benefit. The Court of Appeal's invocation of the doctrine was therefore misplaced.

The *Grove v. YMCA Point*

44. The TAC and the Court of Appeal both placed reliance on the English case of *Grove v. Young Men's Christian Association*³. In that case the YMCA in England was carrying on a restaurant on a commercial basis and it was held that the profits of the restaurant were not exempt from income tax because the running of the restaurant was not in furtherance of the primary objects for which the YMCA was established.

³ [1903] 67 J.P. 279; 88 L.T. 696; 19 T.L.R. 491

45. I do not find this authority of any assistance in the present case for two reasons. First the applicable law in that case was English tax law and the statutory context was entirely different from that of the Inland Revenue Acts applicable in Sri Lanka. The question before this Court is one of statutory construction under Sri Lankan law. English decisions are of persuasive value only and only to the extent that the statutory provisions and factual contexts are comparable. They are not comparable here.
46. Second and more fundamentally the *Grove case* was decided on the question of whether the business was carried on in furtherance of the primary objects of the YMCA for the purposes of the relevant English exemption provision. That is a question that arises under Question 3 of the stated case which concerned the conditions for exemption under Section 8 (d) (i) (a). This Court has not been asked to decide that question because the special leave granted was confined to questions (a) and (b). The *Grove case* therefore has no bearing on the questions before this Court.
47. In any event the exemption provision in the Sri Lankan context Section 8 (d) (i) (a) of the Inland Revenue Act No. 38 of 2000 (as amended) makes it quite clear that in order to qualify for the tax relief the profits must be applied solely to the charitable purpose of the YMBA and the business (the leasing of its properties) must be carried out in the course of the actual carrying out of the primary purpose. There is no gainsaying in this case that the profits earned by the YMBA by the letting out of its premises are used for charitable purposes. In other words, they are not distributed as dividends so to speak. In the course of the propagation of the charitable purposes of the YMBA it carries on business to earn the profits and use them for its purposes. Profits must have a source which is unambiguously the business of leasing on the part of the YMBA. It is a principle of corporate law that in order to achieve its stated objects, a company can exercise any ancillary powers and that is not what I see in this case. What I observe unmistakably is the

fulfillment of the qualifying requirements as stipulated in Section 8 (d) (i) (a) of the Inland Revenue Act No. 38 of 2000 (as amended) and therefore, the case of *Grove v. YMCA* (supra) is otiose and irrelevant.

48. I now turn to a discussion of charitable institutions, which, in my view, should put paid to the *lis* before this Court.

The Definition of "Charitable Institution" and its Significance

49. This is a further and independent pathway to the conclusion I have reached which the Court of Appeal and the TAC both overlooked. The definition of "charitable institution" in Section 186 of the Inland Revenue Act No. 38 of 2000 (as amended) is; *"the trustee or trustees of a trust, or corporation or an unincorporated body of persons established for a charitable purpose only or engaged solely in carrying out a charitable purpose."*

50. This definition is significant in two respects. First it expressly includes a "corporation" as a charitable institution. A corporation is therefore in the legislature's own language a recognized form that a charitable institution may take. It is not something alien to charitable status. Second and critically the statutory definition of "charitable institution" uses the word "corporation" and the statutory definition of "company" includes a public corporation and by the inclusive amplitude would contemplate even a corporation such as the YMBA. The legislature therefore used the words "corporation" and "company" in proximate definitions in the same section of the same statute and it would be extraordinary if "corporation" in the charitable institution definition meant something entirely different from "company" in the company definition. These definitions must be read harmoniously. Reading them together a corporation established for a charitable purpose is a charitable institution. That same corporation when it comes to being taxed is a company. There is no inconsistency in this. The two

definitions serve different purposes but they speak consistently about the same legal entity: a body corporate established by law.

51. This reading of the statutory definitions disposes of the Respondent's central argument that a charitable institution cannot be a company. The statute itself recognizes that a corporation can be a charitable institution and recognizes that a corporation is a company. Both propositions are embedded in the same definitional provisions of the same statutes.
52. For all the foregoing reasons I hold as follows. The YMBA having been incorporated under the Colombo Young Men's Buddhist Association Ordinance No. 11 of 1927 is a corporation and as such is a "*company*" within the meaning of Section 186 of the Inland Revenue Act No. 38 of 2000 (as amended) and Section 217 of the Inland Revenue Act No. 10 of 2006 (as amended). The Court of Appeal erred in law in concluding that it was not.
53. The letting or leasing of premises by the YMBA which is a company constitutes a "*business*" within the statutory definitions in the relevant Acts. The income derived from that activity is accordingly income from a business within Section 3 (a) of the relevant Acts and not income from rent within Section 3 (g). The Court of Appeal erred in law in holding otherwise.
54. Both questions of law are answered in favour of the Appellant-Appellant. The judgment of the Court of Appeal dated 8 March 2019 in Case No. CA/TAX/25/2014 is set aside. The determination of the Tax Appeals Commission dated 8 July 2014 in Case No. TAC/OLD/IT/007 is reversed.

55. The assessments made on the Appellant for the years of assessment 2004/2005, 2005/2006 and 2006/2007 under charge numbers 10/26/07/748, 10/26/07/749 and 10/26/07/750 are annulled.

56. The questions of law raised in this case are answered in favour of the Appellant – Appellant and in the circumstances, appeal of the Appellant – Appellant is allowed. The Registrar is directed to send a certified copy of this judgment to the Tax Appeals Commission.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

Judge of the Supreme Court

I agree.

K. Priyantha Fernando, J.

Judge of the Supreme Court

I agree.