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

In the matter of an application of a case stated under Section 11A of the Tax Appeals Commission Act No. 23 of 2011 as amended by Act No. 20 of 2013.

The Commissioner General of Inland Revenue,

The Department of Inland Revenue,

Sri Chittampalam A. Gardiner Mawatha,

Colombo 2.

APPELLANT

S.C. Appeal No. 47/2023
S.C. (Spl.L.A) 304/2022
C.A. Tax 05/2020
TAC IT 007/2016

Vs.

LOLC Micro Credit Limited Ltd.

No. 100/1, Sri Jayawardenapura Mawatha,

Rajagiriya.

RESPONDENT

AND NOW BETWEEN

In the matter of an application for Special Leave to Appeal in terms of Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

LOLC Finance PLC.

No. 100/1, Sri Jayawardenapura Mawatha,

Rajagiriya, successor to LOLC Micro Credit Limited pursuant to the amalgamation of

LOLC Micro Credit Limited with LOLC Finance PLC in terms of Part VIII of the Companies Act No. 07 of 2007.

RESPONDENT – APPELLANT

Vs.

The Commissioner General of Inland Revenue,

The Department of Inland Revenue,

Sri Chittampalam A. Gardiner Mawatha,

Colombo 2.

APPELLANT – RESPONDENT

Before	:	**Hon. Kumudini Wickremasinghe, J.** **Hon. Janak De Silva, J.** **Hon. Dr. Sobhitha Rajakaruna, J.**
Counsel	:	Maithri Wickremasinghe, P.C. with Rakitha Jayathunga for the Respondent – Petitioner - Appellant Manohara Jayasinghe, DSG with Sabrina Ahamed, SSC for the Appellant – Respondent - Respondent
Written submissions	:	03.05.2023 by Respondent – Petitioner - Appellant 03.10.2023 and 05.12.2025 by the Appellant – Respondent - Respondent
Argued on	:	03.10.2025
Decided on	:	20.03.2026

Janak De Silva, J.

The Respondent-Appellant (Appellant) is a public limited liability company incorporated in 2008. It has been registered with the Central Bank of Sri Lanka as a leasing company under the provisions of the Finance Leasing Act No. 56 of 2000. Its principal activities are leasing, hire purchase and providing other microloans to customers.

The Appellant filed its return of income for the year of assessment 2010/2011, claiming certain deductions and exemptions. The assessor rejected the return and issued an assessment without granting the deductions and exemptions claimed.

The Appellant appealed against this assessment to the Appellant-Respondent (Respondent) who confirmed it. Aggrieved by the determination of the Respondent, the Appellant appealed to the Tax Appeals Commission (Commission).

The Commission confirmed the determination of the Respondent subject to the qualification that bad debts amounting to Rs. 138,222,745/= claimed by the Appellant should be allowed.

The Respondent appealed to the Court of Appeal and parties submitted the following questions of law for the opinion of Court:

1. Did the Commission err in law in holding that the Appellant does not fall within the definition of a bank or financial services as defined in Section 147 of the Inland Revenue Act?
2. Did the Commission err in law in applying Section 25(1)(ee) of the Inland Revenue Act as opposed to Section 25(1)(eee)?
3. If either of the questions of law are answered in favour of the Respondent, would the Commission have erred in law in allowing the deduction of bad debts amounting to Rs. 138,222,745/= in arriving at the taxable profit of the Appellant?

4. Is the Respondent entitled to support or refuse to accept the return of the Appellant or to support an additional assessment made on the Appellant for reasons other than Section 25(1)(e) of the Inland Revenue Act No. 10 of 2006, or as set out by the assessor in its communication made in terms of Section 163(3) of the Inland Revenue Act No. 10 of 2006?
5. Did the determination of the Respondent which was appealed by the Appellant to the Commission expressly refer to the distinction between Section 25(1)(ee) and Section 25(1)(eee)?

The Court of Appeal answered these questions as follows:

1. No.
2. No.
3. The assessor or the Respondent or the Commission is not obliged to deduct the amount claimed by the tax payer as bad debts, in full merely on the basis of the amount stated in the statement of accounts. The Commission has not indicated in its determination as to how the entirety of the sum of Rs. 138,222,245/= was determined as bad debts. The Commission has blindly held that the entirety of the bad debts amounting to Rs. 138,222,245/= claimed by the Appellant should be allowed.

   As Section 25(1)(ee) applies, the entirety of bad debts may be deducted during the period for which the profits are being ascertained. The entirety of bad debts can only be allowed however, where the tax payer is able to provide sufficient evidence to show that reasonable steps, based on sound commercial considerations were taken by the tax payer to recover the amount of the bad debts started in the statement of accounts.
4. Yes.
5. No.

Hence questions 1, 2 and 5 were answered in favour of the Appellant and question 4 was answered in favour of the Respondent. The Appellant accepts the findings of the Court of Appeal on questions 1, 2 and 5.

Nevertheless, aggrieved by the opinion of the Court of Appeal on questions 3 and 4, the Appellant sought and obtained special leave to appeal on the following questions of law:

1. Did the Court of Appeal err in law in its answer to question of law No. 3 posed to the Court of Appeal?
2. Did the Court of Appeal err in law in failing to answer in favour of the Appellant question of law No. 4 posed to the Court of Appeal?
3. Did the Court of Appeal err in law failing to hold that the Respondent giving reasons different to the reasons given by the assessor necessarily makes the assessment void?
4. Did the Court of Appeal err in law in remitting the case to the Commission with the direction to calculate and determine the amount of bad debts?

Question of Law No. 1

The Appellant submits that having answered questions 1 and 2 in favour of the Appellant, the Court of Appeal could not have answered question 3 in the way it did. In particular, it is contended that the Respondent never challenged the decision of the Commission that the quantum of bad debts was Rs. 138,222,745/=.

It was further contended that the questions posed to the Court of Appeal were specific and the Court was required to answer only those questions. The assessor claimed that the applicable provision was Section 25(1)(e) whereas on appeal the Respondent decided that it was Section 25(1)(eee). The Appellant submitted that having answered questions of law Nos. 1 and 2 in favour of the Appellant, the only recourse open to the Court of Appeal was to answer question 3 in the negative in favour of the Appellant.

Furthermore, the Appellant drew our attention to the decisions in ***Guillain v. Commissioner of Income Tax*** **[51 N.L.R.241],** ***Dias v. Commissioner of Income Tax*** **[45 N.L.R. 361],** ***R.M. Fernando v. Commissioner of Income Tax*** **[61 N.L.R. 313], D.S. *Mahawithana v. Commissioner of Inland Revenue* [64 N.L.R. 217],** ***Hakim Bhai v. Commissioner of Income Tax*** **[35 N.L.R. 291],** ***H.V. Ram Iswara v. Commissioner of Inland Revenue*** **[65 N.L.R. 393],** ***Squire Mech Engineering v. Commissioner General of Inland Revenue*** **[C.A. (Tax) 11 /2017, C.A.M. 12.02.2019],** ***CEI Plastics Limited v. Commissioner of Inland Revenue*** **[C.A. (Tax) 03/2013, C.A.M. 01.02.2019]** and submitted that the jurisdiction of the Court of Appeal relating to a determination of the Commission on a Case Stated is limited to questions of law.

The Court of Appeal held that although the bad debts must be calculated under Section 25(1)(ee) without subjecting to the 1% rule contained in Section 25(1)(eee), the entirety of bad debts may however be determined only where the tax payer is able to provide sufficient information to the assessor or the Respondent to show that reasonable steps, based on sound commercial considerations were taken by the Appellant to recover bad debts.

In particular, it held that the assessor or the Respondent cannot be guided by the mere amount set out in the profit and loss accounts of the Appellant and blindly deduct the entirety of the amount set out in the statement of accounts.

The reasoning of the Court of Appeal has much merit and is supported by judicial precedent.

In ***Dailunnie-Talisker Distilleries Ltd. v. The Commissioners of Inland Revenue*** **[15 T.C. 620]** it was held that it is elementary that a profit and loss account is not an account of receipts and expenditure in cash only; its purpose is to show how the business stands, for better or worse, on the operations of the year.

In re The Spanish Prospecting Company Limited **[(1911) 1 Ch. 92]** it was held that the actual profit and loss accounts of the assess will not bind the Crown in arriving at the income tax to be paid.

In ***The Commissioner of Income Tax v. R.M.A.R.A.R.R.M. Arunachalam Chettiar*** **[I C.TC. 37, 37 N.L.R. 145]** it was held that:

(a) The practice of the assessing authorities for the purposes of practical convenience of accepting the system of accounting adopted by the assess, is not binding on the Courts.
(b) If the tax was to depend on the choice of the assessee in regard to the method of accounting, he could so adjust his accounts as to escape liability to be taxed.

In ***Chellappah v. Commissioner of Income Tax*** **[I C.T.C. 382]** it was held that the system of book-keeping adopted by an assessee does not bind the taxing authorities and the assessee cannot escape tax by adopting a peculiar method of book-keeping.

Accepting the assessee's own system of accounts as the basis of making an assessment for the purposes of calculating the income tax payable under law will probably allow the assessee to adjust his accounts as to evade liability to pay any tax whatsoever.

I hold that whenever an issue arises on the income tax that must be payable by an assessee, he must be assessed and the income tax levied on principles to be deducted from the provisions of the law regulating the imposition and levying of income tax and not based on the statement of accounts of the assessee.

The assessor by letter dated 25.11.2013 intimated to the Appellant that the return of income was not accepted for the reasons set out therein and explicitly stated that the details requested by his letter dated 14.10.2013 have not been provided.

The Appellant in his letter dated 24.12.2013 claims that it had submitted the relevant documents and details requested by the assessor. However this letter and documents were not available in the Commission brief. Moreover, the list setting out the details of the list of debtors is also not available in the Commission brief although the Appellant has claimed to have annexed it to the said letter.

In ***Collettes Ltd. v. Bank of Ceylon*** **[(1982) 2 Sri. L.R. 514 at 515]** it was held that whether there is or is not evidence to support a finding, is a question of law.

Previously, this principle has been expounded as being applicable in revenue matters. In ***D. S. Mahawithana v. Commissioner of Inland Revenue*** **[64 N.L.R. 217]** it was held that in a case stated under Section 78 of the Income Tax Ordinance, the Supreme Court could consider the correctness of the inference drawn by the Board of Review as to the assessee's intention, only (a) if that inference had been drawn on a consideration of inadmissible evidence, or after excluding admissible and relevant evidence, (b) *if the inference was a conclusion of fact drawn by the Board but unsupported by legal evidence*, or c) *if the conclusion drawn from relevant facts was not rationally possible, and was perverse*.

It is in this context that the Court of Appeal answered question 3 in the way it did. I cannot fault the Court of Appeal for holding that the Commission has blindly held that the entirety of the bad debts amounting to Rs. 138,222,245/= claimed by the Appellant should be allowed. There was no sufficient evidence before the Commission to show that despite reasonable steps, based on sound commercial considerations, being taken by the Appellant to recover the amount of the bad debts stated in the statement of accounts they could not be recovered during the period for which the profits are ascertained.

Moreover, I do not agree with the contention of the Appellant that the Court of Appeal should have answered question 3 in its favour merely because the answers to questions 1 and 2 were in its favour. From the outset, it was clear that the Appellant was put on notice

that the evidence tendered was insufficient to support the existence of bad debts. Question 3 is wide enough to cover the issue of sufficiency of evidence.

Furthermore, the Appellant is not substantially prejudiced by the direction made by the Court of Appeal to the Commission that it must determine the amount of the bad debts claimed by the Appellant in its profit and loss accounts in accordance with the opinion of the Court as set out in paragraphs 51-66 of the judgment. The Appellant has been given a further chance to provide the evidence required when in fact the Court of Appeal should have in my view held against the Appellant on the lack of evidence.

I answer question of law no. 1 in the negative.

Question of law Nos. 2 and 3

These two questions are interconnected.

The assessor by letter dated 25.11.2013 gave reasons for rejecting the return of income tax submitted by the Appellant. Admittedly this is an intimation made in terms of Section 163(3) of the Inland Revenue Act No. 10 of 2006 as amended (IRA 2006) which reads as follows:

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

assessment, he shall communicate to such person in writing his reasons for not accepting the return."

In his letter the Assessor has identified four sub-headings. The one relevant to this appeal is titled *Provision for Doubtful Debts* and reads as follows:

"As per detailed Profit & Loss account submitted by the company on 8th November 2013, the company has claimed the provision for doubtful debts amounting to Rs. 138,222,745/=.

According to section 25(1)(e) of the Inland Revenue Act, No. 10 of 2006 state as follows:

"a sum equal to the bad debts incurred by such person in any trade, business, profession, vocation or employment which have become bad debts during the period for which the profits are being ascertained, and such sum as the Commissioner-General considers reasonable for doubtful debts to the extent that they are estimated to have become bad during the period, notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period"

As quoted above, specific provision could be deducted subject to the satisfaction of the Commissioner General of Inland Revenue who consider as reasonable"

Since the company has not submitted the details requested by me, under item No. 03 of the letter dated 14.10.2013, I am not in a position to ascertain the relationship of the above provision to the business and therefore, it will be added back to the Adjusted Business Profit."

By letter dated 24.12.2013, the Appellant appealed to the Respondent. In relation to *Provision for Doubtful Debts*, it makes the following points:

(a) Provision for doubtful debts represents the specific debtors and it is deductible expense under the Inland Revenue Act. A detailed list of the debtors was attached.
(b) Based on the above grounds of appeal, it is clear that the computation of additional profit given in the letter dated November 25, 2013 is incorrect.
(c) Based on the above grounds of appeal, it is clear that the assessment is incorrect and as such penalty too is incorrect and hence should be revised.

By letter dated 27.11.2015 the Respondent confirmed the notice of assessment and by letter dated 30.11.2015 gave the reasons for determination of appeal determined under Section 165(8) of the IRA 2006. The reasons given for the rejection of provision for *Doubtful Debts* are as follows:

(a) The relevant section for doubtful debts is section 25(1)(eee) of the IRA 2006,
(b) This requires the Respondent to consider whether the doubtful debt claimed is reasonable in all aspects and to limit the provision to the extent that they are estimated to have become bad during the period for which the profits are being ascertained.
(c) It is the commercial practice in the leasing and higher purchase industry for the asset on which the leasing or higher purchase facility is provided to be seized and sold or leased to another person in case of default. Hence it cannot be said that there is a possibility of becoming bad until the asset is seized. No reasons can be seen for making of doubt of recovering until they become actually bad. As such it is not possible to consider those debts as doubtful prior to the failure of recovery actions.

The Commission, in allowing the deductibles, concluded that the applicable Section is 25(1)(ee) of IRA 2006. The Appellant did not appeal against this finding.

The Respondent by letter dated 13.02.2020 requested the Commission to state a case for the opinion of the Court of Appeal on the following questions of law:

(a) Has the Commission erred in allowing deduct doubtful debts amounting to Rs. 138,222,745/= in arriving at the taxable profit of the Appellant?
(b) Does the Appellant not fall within the definition of a bank or financial services as defined in Section 147 of the IRA 2006?

The Commission duly formulated these questions for the opinion of the Court of Appeal and the Respondent transmitted the Case Stated to the Court on 03.06.2020. Argument was fixed for 07.10.2021.

On that day the Appellant informed Court that the questions of law formulated by the Respondent as reflected in paragraph 12 of the Case Stated, cannot stand as they are not questions of law and that he wishes to raise an additional question of law. The learned Senior State Counsel moved for time to consult the Respondent.

On 25.10.2021, the learned Senior State Counsel raised the following questions of law:

(1) Did the Commission err in law in holding that the Appellant does not fall within the definition of a bank or financial services as defined in Section 147 of the Inland Revenue Act?
(2) Did the Commission err in law in applying Section 25(1)(ee) of the Inland Revenue Act as opposed to Section 25(1)(eee)?
(3) If either of the questions of law are answered in favour of the Respondent, would the Commission have erred in law in allowing the deduction of bad debts amounting to Rs. 138,222,745/= in arriving at the taxable profit of the Appellant?

The learned President's Counsel for the Appellant then raised the following question of law:

(4) Is the Respondent entitled to support or refuse to accept the return of the Appellant or to support an additional assessment made on the Appellant for reasons other than Section 25(1)(e) of the Inland Revenue Act No. 10 of 2006, or as set out by the Assessor in its communication made in terms of Section 163(3) of the Inland Revenue Act No. 10 of 2006?

The learned Senior Strate Counsel raised the following supplementary question of law:

(5) Did the determination of the Respondent which was appealed by the Appellant to the Commission expressly refer to the distinction between Section 25(1)(ee) and Section 25(1)(eee)?

This is how finally the five questions of law were formulated for the opinion of the Court of Appeal.

Section 11A(6) of the Tax Appeals Commission Act No. 23 of 2011 as amended states that any two or more Judges of the Court of Appeal may *hear and determine any question of law arising on the stated case* and may in accordance with the decision of Court upon such question, *confirm, reduce, increase or annul the assessment determined by the Commission, or may remit the case to the Commission with the opinion of the Court, thereon*. Where a case is so remitted by the Court, the Commission shall revise the assessment in accordance with the opinion of the Court.

The words *"hear and determine any question of law arising on the Case Stated"* appeared in Section 74(5) of the Income Tax Ordinance No 2 of 1932. In ***M.P. Silva v. Commissioner of Income Tax*** **[1 C.T.C. 336 at 338]** Canekeratne J. having considered this provision held that "all questions that could be raised on the whole case were intended to be left open".

The learned judge chose to follow the dicta in ***Ushers Wiltshire Brewery v. Bruce*** **[(1915) A.C. 433 at 465,466]**.

In ***R.M. Fernando v. Commissioner of Income Tax*** **[1 C.T.C. 571 at 577]** Basnayake C.J. interpreted these words to mean that it requires the Court to hear and determine any questions of law arising on the Case Stated and not any question or questions formulated by the Board.

It is an established rule of interpretation that the legislature is presumed to know the law, judicial decisions and general principles of law. *Bindra's Interpretation of Statutes* [10th ed., page 235] states as follows:

> *"The legislature must be presumed to know the course of the legislation, as well as the course of judicial decisions in the country, a fortiori of the superior courts of the country. It is a well-settled rule of construction that when a statute is repealed and re-enacted, and words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which had been judicially put on them in the repealed Act, because the legislature is presumed to be acquainted with the construction which courts have put upon the words, when they repeat the same words, they must be taken to have accepted the interpretation put on them by the court as correctly reflecting the legislative mind."*

In ***Nilamdeen v. Nanayakkara*** **[76 N.L.R. 16]** it was held that it is a well-known rule of construction that where the legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted. There is also another rule of construction that where the words of an old statute are made part of a new statute, the legal interpretation which has been put upon the former by courts of law is applicable to those same words in the new statute.

Therefore, Section 11A(6) of the Tax Appeals Commission Act No. 23 of 2011 as amended must be read to mean that the Court of Appeal can frame *any question of law arising on the stated case* and is not bound by the questions of law referred to it by the Commission. However, the questions of law framed by the Court of Appeal must necessarily lead to the confirmation, reduction, increasing or annulling the assessment determined by the Commission, or remitting the case to the Commission with the opinion of the Court, thereon.

I must add a further note of caution. The questions of law framed by the Court must be capable of being determined on the available evidence in the record.

Hence the procedure adopted by the Court of Appeal in framing new questions of law is correct.

In addressing question 3, the Appellant submitted that an assessment is void where the Respondent gives reasons different to the reasons given by the Assessor. In support of this position, reliance was placed upon the legislative history of Section 163(3) of IRA 2006.

Income tax was first introduced into the country in 1932 by the Income Tax Ordinance and Section 68(2) gave the power to an Assessor to make an assessment which included the right to refuse to accept a return and to estimate the amount assessable. However the exercise of this power was not subject to giving reasons for refusing to accept a return.

When this law was replaced by the Inland Revenue act No. 4 of 1963, the legislature once again did not introduce a duty to give reasons. The duty to give reasons was first introduced in 1978 by an amendment to the Inland Revenue Act No. 4 of 1963. This was by Section 34 of the Inland Revenue (Amendment) Law No. 30 of 1978 which amended Section 93(2) of the Inland Revenue act No. 4 of 1963. It required the assessor to communicate the reasons to the assessee where the assessor does not accept the return estimate.

Section 115(3) of the Inland Revenue Act No. 28 of 1979 further strengthened this requirement by specifically requiring the communication of the reasons to be in writing. Section 115(3) went into the Inland Revenue Act No. 38 of 2000 as Section 134(3) and is found in IRA 2006 as Section 163(3) which applies to the present appeal. It reads as follows:

> *"(3) Where a person has furnished a return of income, the Assessor or Assistant Commissioner may in making an assessment on such person under subsection (1) or under subsection (2), either –*
>
> *(a) accept the return made by such person; or*
>
> *(b) if he does not accept the return made by that person, estimate the amount of the assessable income of such person and assess him accordingly:*
>
> *Provided that where an Assessor or Assistant Commissioner does not accept a return made by any person for any year assessment and makes an assessment or additional assessment on such person for that year of assessment, he shall communicate to such person in writing his reasons for not accepting the return."*

Having traced the legislative history, the Appellant cited the decision in ***D.M.S. Fernando and Another v. Mohideen Ismail*** **[(1982) 1 Sri.L.R. 222 at 225]** where the Supreme Court examined the effect of the Inland Revenue act No. 4 of 1963 as amended by Law No. 17 of 1972 and Law No. 30 of 1978 which read as follows:

> *"93(1) Every person who is, in the opinion of an Assessor, chargeable for any year of assessment commencing on or before April 1, 1971, with income tax, wealth tax or gifts tax shall be assessed by him as soon as may be after the expiration of the time specified in the notice requiring him to furnish a return of income, wealth or gifts under section 82."; and*

“(1A) For any year of assessment commencing on or after April 1, 1972, an Assessor may, notwithstanding anything to the contrary in subsection (1), assess any person at any time, whether or not such time is before the commencement of the year of assessment to which the assessment relates, if he is of the opinion that such person is about to leave Sri Lanka, or that for any other reason it is expedient to do so."

"(2) Where a person has furnished a return of income, wealth, or gifts, the Assessor may -

(a) either accept the return and make an assessment accordingly; or

(b) if he does not accept the return, estimate the amount of the assessable income, taxable wealth or taxable gifts of such person and assess him accordingly and communicate to such person in writing the reasons for not accepting the return."

Samarakoon, C.J. broke down the provisions in Section 93(2) [at pages 232-233] as follows:

1. *There is first a decision made not to accept a return. This is indeed an important decision which could entail serious consequences for the assessee.*
2. *There is next the requirement of making an estimate. This must necessarily be done, otherwise no tax could be collected and the State would suffer. There is no doubt that this is a mandatory provision. For the imposition of tax this is a sine qua non. Without it an imposition of a tax will be illegal.*
3. *The third is a requirement to communicate reasons for the non-acceptance of the return. This is a duty coupled to the power of making an estimate and taxing thereon. It is a direction of Parliament contained in its legislation requiring obedience of a kind. This provision is a mandatory one.*

Samarakoon, C.J. further held [at page 234] that it is therefore essential that an assessor who rejects a return should state his reasons and communicate them. *His reasons must be communicated at or about the time he sends his assessment on an estimated income*. Any later communication would defeat the remedial action intended by the amendment.

Having expounded the reasons for the change in legislation, Samarakoon, C.J. held that failure to communicate the reasons for rejecting the return will result in the notice of assessment being null and void. Weeraratne, J. and Wanasundera, J. agreed with him.

Sharvananda, J. (as he was then) held that the requirement of communicating reasons for rejecting the return was directory and failure to do so will not result in the notice of assessment being null and void. Wimalaratne, J. agreed with this view.

Accordingly, the majority view in ***D.M.S. Fernando*** **[supra.]** is that the reasons for ***rejecting the return of income submitted by the tax payer must be communicated at or about the time the Assessor sends his assessment on an estimated income***. As Sharvananda, J. correctly pointed out (at page 242), ***what the tax payer should be informed of are only the reasons in writing for non-acceptance of his return, but not the ground or basis of the estimate of the assessable income made by the assessor***. The same legal principles apply in the interpretation of the proviso to Section 163(3) of IRA 2006. All what the Appellant should have been notified in writing are the reasons for rejecting the return of income.

By his letter dated 25.11.2013, the assessor informed the Appellant that the provision for doubtful debts in the return of income cannot be accepted. The assessor stated that he was not in a position to ascertain the relationship of Section 25(1)(e) IRA 2006 to the business since the Appellant has not submitted the details requested by him under item No. 03 of the letter dated 14.10.2013. Clearly the main reason for rejecting the return of income is the failure on the part of the Appellant to provide the necessary evidence in support of the claim for deductions made.

Therefore, the Assessor has plainly given reasons in writing for rejecting the return of income submitted by the Appellant. I observe that the Appellant has, in the written submissions filed before the Court of Appeal, at paragraph 9.8 submitted as follows:

> *"As Your Lordships are aware and as decided by a Divisional bench of the Supreme Court consisting of Samarakoon, Q.C., C.J., Weeraratne, J., Sharvananda, J., Wanasundera, J. and Wimalaratne, J. in D.M.S. Fernando v Mohideeen Ismail an* ***assessor must give reasons for the assessment*** *and those reasons cannot be changed. The said judgment has held that an assessment without reasons under the proviso to section 163(1) of the IRA 2006 is invalid.* ***A fortiorari when the CGIR confirms an assessment for reasons other than that given by the assessor there are no reasons for the assessment and/or the reasons given by the assessor are not valid.*** *The very fact that the CGIR has rejected the reasons given by the assessor and set out reasons different to that of the assessor is grounds for annulling the assessment."* (emphasis added)

This contention does not reflect the correct position in law. The majority in ***D.M.S. Fernando*** **[supra.]** only held that where the assessor *fails to communicate the reasons for rejecting the return of income* to the taxpayer, the notice of assessment is null and void. There is in my view a clear distinction between the assessor rejecting the return of income and the assessor making an assessment.

Samarakoon, C.J., in ***D.M.S. Fernando*** **[supra.]** explained that the primary purpose of the amending legislation was to ensure that the assessor will bring his mind to bear on the return and come to a definite determination whether or not to accept it. Under the amendment when an assessor does not accept a return, it must mean that at the relevant point of time he has brought his mind to bear on the return and has come to a decision rejecting the return. Consequent to this rejection, the reasons must be communicated to

the assessee. The new procedure would also have the effect of fixing the assessor to a definite position and not give him latitude to chop and change thereafter. It

No doubt the rejection of the return of income, communicating the reasons for such rejection to the tax payer and then proceeding to make an assessment are all part of one exercise as explained by Samarakoon, C.J., in ***D.M.S. Fernando*** **[supra. at page 227]**. Nevertheless, he did not hold that a notice of assessment, which has to be given after the Assessor makes an assessment, is null and void where the Respondent, in determining an appeal against the decision of the assessor, provides reasons different to those provided by the assessor.

The notice of rejection of the return of income in this appeal notified the basis on which the assessor rejected the return of income and proceeded to estimate the amount of the assessable income of the Appellant. This provided a reasonable opportunity to the Appellant to formulate his grounds of appeal to the Respondent against the notice of assessment.

The Appellant did so by appeal dated 24.12.2013. Therein, the Appellant contends that doubtful debts is a deductible expense under the Inland Revenue act. The appeal did not commit to any specific provision by which doubtful debts are considered as deductibles.

Upon an examination of the appeal report dated 26.12.2014 (page 9), it is clear that it was the Appellant who had, in the course of the submissions made during the consideration of the appeal, claimed that it acted according to the law in respect of bad debts provisions claimable under 1% rule in terms of Section 25(1)(eee) of the IRA 2006 when the assessor had referred to Section 25(1)(e) therein.

If we are to hold that the Respondent cannot in appeal consider any other provision than the provisions referred to by the assessor in rejecting the return of income, the taxpayer will be deprived of resorting to any other provision in the law to justify the course of action adopted by him.

In ***Commissioner of Income Tax v. Saverimuttu Retty*** **[1 C.T.C. 103 at 109]** Abrahams C.J. stated:

> *"Incidentally there was no reference to us on this point by the Board of Review, since that point was not put to the Board when they were called upon to adjudicate in appeal, but* ***we are not, of course, precluded from considering any point upon which the actual decision of the Board might be upheld****, no matter what might have been their reasons for arriving at that decision".* (emphasis added)

The rationale applies with equal force where the Respondent considers an appeal against the assessment made by the assessor.

In ***Thornhill v. The Commissioner of Income Tax*** **[1 C.T.C. 160],** the appellant who was the owner of tea and rubber estates received tea and rubber coupons to which he was entitled in respect of his estates under the Tea and Rubber Control Ordinances. The question was whether the sum of money realized by the sale of these coupons constituted profit or income within the meaning of section 6(1)(a) or 6(1)(b) of the Income Tax Ordinance or whether the said sum represented a realization of capital.

The appellant contended that inasmuch as the assessor has described this amount as agricultural profits he must either stand or fall by that description, and that if, in point of fact, that is not "agricultural income", the assessment is null and void notwithstanding the fact that the assessment of tax might properly have been made under some other category of Section 6(1). It was also contended that the assessor was wrong in describing and assessing the amount in question as agricultural income.

It was held that if the assessment of tax might have been made under some other category of Section 6(1), then the assessment will not be null and void merely because the assessor had described this as an agricultural income. As Soertsz, J. held (at page 165):

> *"[…] to the Income Tax Commissioner it is the thing and not the name that matters. To him the thing that is "income" is like the fragrant rose: it smells as sweet by any name."*

Similarly, in ***L. C. H. Peiris v. The Commissioner of Inland Revenue*** **[65 N.L.R. 457]**, having accepted an assessee's return and made an assessment in terms of Section 64 (2) (a) of the Income Tax Ordinance (Cap. 188), the Commissioner subsequently purported to make additional assessments under Section 64 (2) (6) when the correct procedure was to make them under section 65. In examining the effect of this error, Sansoni, J. (at page 458) held that:

> ***"****It is well-settled that an exercise of a power will be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory. This principle has been applied even to cases where a Statute which confers no power has been quoted as authority for a particular act, and there was in force another Statute which conferred that power. See Mohamed Dastagiar Sahib v. Third Additional Income Tax Officer[(1961) 74 L. W. 540.]. Further, section 68 (1) of the Ordinance provides that " no notice, assessment, certificate, or other proceeding purporting to be in accordance with the provisions of this Ordinance shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Ordinance … " The error made by the Assistant Commissioner is covered by this provision."*

The principle expounded in ***Peiris*** **[ibid.]** has been cited and adopted with approval in ***Kumaranatunga v. Samarasinghe and Others*** **[(1983) 2 Sri LR 63 at 73]**, ***K.P.K.L.P. Maduwanthi v. S.M.G.K. Perera, District Secretary, Matale and Others*** **[SC(FR) Application No. 23/2021; S.C.M. 18.11.2022]** and ***Secretary, Ministry of Education and Another v. Weragoda Kapuge Priyantha and Others*** **[SC Appeal No. 52/2020, S.C.M. 13.01.2023]**.

For the foregoing reasons, I hold that the notice of assessment served on the Appellant is not null and void even if we assume that the Respondent, in determining the appeal, provided reasons different to those provided by the assessor.

Question of law Nos. 2 and 3 are answered in the negative.

Question of Law No. 4

Section 11A(6) of the Tax Appeals Commission Act No. 23 of 2011 as amended states that any two or more Judges of the Court of Appeal may hear and determine any question of law arising on the stated case and may in accordance with the decision of Court upon such question, confirm, reduce, increase or annul the assessment determined by the Commission, or may remit the case to the Commission with the opinion of the Court, thereon.

I am in complete agreement with the conclusion of the Court of Appeal that the Commission has blindly held that the entirety of the bad debts amounting to Rs. 138,222,245 claimed by the Appellant should be allowed.

Accordingly, the Court of Appeal was empowered to remit the matter to the Commission with the direction that the amount of the bad debts claimed by the Appellant in its profits and loss accounts should be determined by the Commission in accordance with the opinion of the Court as set out in paragraphs 51-66 of the judgment.

For all the foregoing reasons, I affirm the judgment of the Court of Appeal dated 07.10.2022 and dismiss the appeal.

Parties shall bear their costs.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J.

I agree.

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE SUPREME COURT