IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Mandates in the nature of *Writs of Certiorari,* and *Mandamus* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application

No: 0341/2015

Usui Lanka (Pvt.) Ltd,
Spur Road 2A,
KEPZ,
Katunayake.

PETITONER

Vs.

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

Respondent (Ceased to Hold Office)

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

RESPONDENT

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Shamalie Jayathunga with Nishika Fonseka instructed by M.J.S. Fonseka for the Petitioner.
Nayomi Kahavita SSC for the AG.

Argued on : 12.01.2026

Written Submission
Tendered on : 23.03.2026 by the Petitioner
26.03.2026 by the Respondent

Decided on : 27.03.2026

Adithya Patabendige, J.

The Petitioner has invoked the jurisdiction of this Court under Article 140 of the Constitution, seeking a *writ of certiorari* to quash the decision of the Commissioner General of Inland Revenue (CGIR) dated 02nd July 2014, marked **P6**, by which the Respondent refused the Petitioner's claim for a refund of dividend tax allegedly paid in excess of its lawful liability. The Petitioner further seeks a *writ of mandamus* compelling the Respondent to refund the said sums.

Factual Backgrounds

The Petitioner is a company incorporated in Sri Lanka and operating as an enterprise approved by the Board of Investment under an agreement entered into pursuant to Section 17 of the Board of Investment Law No. 4 of 1978. The Petitioner has engaged in the business of manufacturing, processing, and exporting brushes, including paint brushes and cosmetic brushes.

The Respondent is the Commissioner General of Inland Revenue, charged with the administration of the Inland Revenue Act No. 10 of 2006.

The initial name of the Petitioner was "WERU LANKA BRUSH LIMITED" (WLBL), and it was changed to "USUI LANKA (PRIVATE) LIMITED" as per the document marked **P1**. WLBL entered into an agreement with the Greater Colombo Economic Commission, the predecessor of the Board of Investment (BOI), on 17th November 1980, marked **P3**. This agreement was executed under Section 17 of the BOI Law.

The Petitioner asserts that its entire shareholding was held by non-resident persons resident in Japan, namely, K. Usui & Co., holding 7,000 shares, and Mr. Usui Kazumi, holding 650 shares.

Subsequently, additional agreements were entered into between the Petitioner and the BOI, including an agreement dated 10th December 1996 marked **P7**. The Petitioner contends that **P7** was supplementary and did not extinguish the rights granted under **P3**.

From the years of assessment 2007/2008 to 2013/2014, the Petitioner paid dividend tax on dividends declared to its shareholders. The copies of the tax returns are marked as **P2(a)** to **P2(e)**. Thereafter, the Petitioner sought a refund under Section 200(1) of the Inland Revenue Act (IRA), contending that such payments were made in error in view of the exemption available under **P3** and Section 10(1)(a) of the IRA.

By letter dated 02nd July 2014 marked **P6**, the Respondent rejected the claim, stating that the relevant BOI agreement was entered into on 10th December 1996 and therefore did not qualify for exemption under Section 10(1)(a), which applies only to agreements entered into prior to 31st December 1994.

Position of the Respondent

The Respondent contends that the operative agreement for tax purposes is **P7** and not the original agreement marked **P3**. It is submitted that the latter agreement introduced new terms and conditions and must be regarded as a fresh agreement, thereby placing the Petitioner outside the scope of Section 10(1)(a) of the IRA.

The Respondent further disputes the Petitioner's entitlement to a refund under Section 200(1) and asserts that the taxes were voluntarily paid. Issues relating to prescription and mistake were also raised.

Issues to be Determined

Considering the pleadings and the submissions made by the learned Counsel at the stage of argument, I am of the view that the following are the main issues to be addressed in the instant writ application.

- whether the decision marked **P6** is liable to be quashed,
- whether the subsequent BOI agreement marked **P7** constituted a novation of the original agreement or was merely a supplement to the initial agreement marked **P3**,
- whether the Respondent properly applied Section 10(1)(a) of the Inland Revenue Act,
- whether the Petitioner is entitled to a *writ of mandamus* compelling the refund of the dividend tax paid.

Analysis

Scope of Judicial Review

In an application under Article 140, this Court exercises supervisory jurisdiction over administrative decisions. The Court does not substitute its own view on the merits but examines whether the decision-making process is *ultra vires,* irrational, or procedurally improper.

A decision is liable to be quashed where the authority has misdirected itself in law, failed to consider relevant matters, taken into account irrelevant matters, or reached a conclusion that is unreasonable.

Legal Effect of BOI Agreements under Section 17(1) of the BOI Law

For clarity, attention is drawn to Section 17 of the BOI Law.

(1) The Board shall have the power to enter into agreements with any enterprise in or outside the Area of Authority and to grant exemptions from any law referred to in

Schedule B hereto, or to modify or vary the application of any such laws, to such enterprises in accordance with such regulations as may be made by the Minister.

(2) *Every such agreement shall be reduced to writing and shall, upon registration with the Board, constitute a valid and binding contract between the Board and the enterprise.*

IRA comes under Schedule B of the BOI Law.

P3 was executed under Section 17 of the BOI Law. These agreements are statutory contracts that grant fiscal privileges to enterprises as part of the national investment policy (see preamble and Section 3 of the BOI Law). Rights granted under such agreements cannot be disregarded unless they are lawfully varied, terminated, or replaced.

The Respondent was therefore required to determine whether **P3** remained operative.

Whether P7 Constituted a Novation

The Respondent's decision proceeds on the assumption that the agreement dated 10th December 1996, marked **P7,** superseded the earlier agreement for all purposes.

For ease of reference, the relevant paragraphs of **P6** are stated as follows.

It is revealed that the new agreement No.174 was signed on 10th December 1996. However, it is not possible to accept the new agreement as amended or extended agreement due to new conditions and clauses. Even if it is considered as extended or amended agreement it is to be created as a new agreement for tax purpose.

Hence, the agreement is reached after 31st December 1994 and is not entitled to exempt dividend from dividend tax.

In view of this, if dividend is declared even to a non-resident person the exemption is not applicable.

Under Roman-Dutch law, novation requires the extinguishment of an existing obligation and the substitution of a new obligation in its place. Novation is not presumed and must be established by clear intention.

C.G. Weeramanthri, in his work on THE LAW OF CONTRACTS VOL.2, pages 751 to 772, discusses the components of the Novation of Contract.

Upon considering **P7,** it didn't create new obligations. There is no delegation of liabilities of the enterprise. Cession or the contractual rights have not been transferred. It doesn't indicate the assignment or transfer of rights and obligations.

A careful examination of **P7** reveals no clause indicating that **P3** was cancelled, rescinded, or replaced. Nor is there evidence that the parties intended to relinquish the concessions granted under **P3**. The latter agreement appears to regulate continued or expanded operations rather than to extinguish prior rights.

Attention is drawn to Clause 8 of the **P7**, which states as follows:

This Agreement shall be supplemental to the said Agreement, and the said Agreement, as modified aforesaid shall continue to be in full force and effect and binding between the parties hereto.

Accordingly, my considered view is that **P7** cannot be construed as a novation of **P3**. At most, it constitutes a supplementary agreement operating alongside the earlier agreement.

A decision based on an erroneous identification of the relevant agreement constitutes an error of law.

Interpretation of Section 10(1)(a) of the Inland Revenue Act

Section 10(1)(a) exempts from income tax any dividend paid by a company with which an agreement has been entered into by the BOI under Section 17 prior to 31st December 1994.

Section 10 (1) (a) states as follows.

1)There shall be exempt from income tax –

(a) any dividend paid by a company with which an agreement has been entered into by the Board of Investment of Sri Lanka under section 17 of the Board of Investment of Sri Lanka Law, No. 4 of 1978, being an agreement which has been entered into prior to December 31, 1994, on an application made in that behalf prior to November 11, 1993 -

(i) to any person, during the period for which the profits and income of that company are exempt from income tax under the terms of that agreement or within one year thereafter, out of the profits and income of the company which are exempt from income tax;

(ii) to any person, who is not resident in Sri Lanka notwithstanding anything to the contrary in subsection (1) of section 53;

When the agreements marked **P3** and **P7** were executed, IRA No. 10 of 2006 had not yet been enacted, and the applicable law was the Inland Revenue Act No. 28 of 1979. The tax holiday granted to the Petitioner under the BOI agreement was therefore framed within the statutory regime then prevailing.

Although none of the parties specifically drew the attention of the Court to Section 218(3) of the IRA No.10 of 2006, I find it necessary, for the completeness of this judgment, to examine the effect of that provision.

The application of Act No. 28 of 1979 and subsequent laws is set out in Section 218(3) of the IRA No. 10 of 2006.

Section 218(3) states as follows.

Where the Board of Investment of Sri Lanka has entered into an agreement with an enterprise under section 17 of the Board of Investment of Sri Lanka Law No. 4 of 1978 prior to April 1, 2006 providing for the exemption of the whole or a part of the profits and income of that enterprise from income tax payable under the Inland Revenue Act No. 28 of 1979 or under the Inland Revenue Act, No. 38 of 2000, as the case may be, for a specified period, and there remains on March 31, 2006 an unexpired part of such specified period, the whole or part as the case may be, of the profits and income of that enterprise which but for the provisions of subsection (1) would have been exempt from income tax, shall be exempt from income tax payable under this Act, for such unexpired part of the specified period.

Section 218 contains a transitional mechanism intended to preserve fiscal concessions granted under earlier Inland Revenue Statutes.

Section 218(3), specifically provides, in substance, that where the BOI has entered into an agreement with an enterprise prior to 01st April 2006 providing for exemption of profits and

income from income tax under the IRA No.28 of 1979 or IRA No. 38 of 2000 for a specified period, and their remained as at 31st March 2006 an unexpired portion of that period. Such profits and income shall continue to be exempt from income tax for the remaining period, notwithstanding the repeal of the earlier Act.

Therefore, Section 10(1)(a) of the current Act shall be read together with Section 218(3) and not in isolation.

In the present application, the agreement marked **P3** was entered into prior to 01st April 2006 and granted specified tax concessions to the Petitioner.

Accordingly, any determination as to the liability of the Petitioner to dividend tax in respect of the relevant years of assessment must be considered in light of this transitional provision.

Hence, the Respondent's conclusion that the exemption is unavailable rests entirely on the incorrect application of Section 10 (1)(a) of the IRA in isolation.

A decision based on an erroneous identification of the relevant law constitutes an error of law.

Failure to Consider Non-Resident Shareholder Status

The exemption claimed also depends on whether dividends were paid to non-resident shareholders. The Petitioner produced documentary evidence indicating that its shareholders were residents of Japan and that dividends were remitted abroad.

P6 contains no finding on this issue. The Respondent did not determine whether the statutory condition relating to non-resident shareholders was satisfied.

This omission is fatal. A public authority must consider all matters that the statute requires to be considered. Failure to do so renders the decision unlawful.

Effect of Alleged Mistake of Law

The learned Senior State Counsel contended, both in oral and written submissions, that excess tax paid under a mistake of law does not entitle the Petitioner to a refund, and cited a few authorities in support of that proposition. ***(Vide. AG V J.L.D. Peiris 70 NLR 447, Sebel Products Ltd. V Commissioner of Customs and Excise (1949) 1A.E.R. 731, Kiriri Cotton Company Limited v Dewani (1960) 1A.E.R. 177).***

However, it is abundantly clear that the governing law on claims for refund of income tax in Sri Lanka is statutory.

The Inland Revenue Act No. 10 of 2006 provides a specific mechanism for the recovery of excess tax paid. Section 200 prescribes the conditions upon which a refund may be granted, including the requirement that a written claim be made within the prescribed period and that it be proved to the satisfaction of the Commissioner-General that tax has been paid in excess of the amount legally payable. The statute, therefore, constitutes a complete legal mechanism governing the refund of tax, and any entitlement must arise strictly within its terms.

In that context, whether the payment was made under a mistake of fact, a mistake of law, or otherwise is not determinative of the issue before this Court. What is material is whether the statutory conditions for refund have been satisfied. Even if the payments were made under an erroneous belief regarding legal liability, the availability of a refund depends on compliance with the requirements imposed by the IRA, including limitation provisions and proof of excess payment.

Accordingly, the submission of the learned Senior State Counsel that the claim must fail because the payments were allegedly made under a mistake of law cannot be accepted as the correct legal position in respect of the Petitioner's claim. The correct position is whether the Petitioner has established its entitlement to a refund within the statutory framework. Since the impugned decision does not demonstrate that the Respondent addressed this issue in accordance with Section 200 0f the IRA, that submission does not sustain the legality of the decision.

Can a *Mandamus* Compelling a Refund be issued?

Dividend Tax Exemption under Clause 9(iv) of P3 and Refund Claim

Clause 9(iv) of the agreement marked **P3** provides that dividends paid to non-resident shareholders of the enterprise shall not be liable to tax even after the expiration of the tax holiday period. This clause forms part of the fiscal concessions granted to the Petitioner under the BOI agreement executed pursuant to Section 17 of the Board of Investment Law No. 4 of 1978 and constitutes a binding contractual undertaking between the State and the enterprise.

The legal effect of this clause is that the exemption from dividend tax is not confined to the period during which the profits of the enterprise are exempt from income tax, but extends thereafter in respect of dividends paid to non-resident shareholders. Accordingly, the applicability of the exemption depends fundamentally on the continued operation of the agreement **P3** and the residency status of the shareholders to whom dividends were paid.

The Petitioner has pleaded, and produced documents marked **P4(a)** to **P4(f)**, that dividend tax was remitted to the Inland Revenue Department on several occasions between 2007 and 2013 in respect of dividends declared during the relevant years of assessment. The Respondent, in the statement of objections, has admitted receipt of those sums as dividend tax (vide. Paragraph 5 of the Statement of Objections).

The Petitioner further asserts that all shareholders of the enterprise are non-resident persons. A corporate entity incorporated in Japan, namely K.Usui and Co. Ltd., held the majority of the shares, and an individual shareholder, namely Usui Kazumi, was also resident in Japan. In the objections, the Respondent disputes the non-resident status of the individual shareholder but does not specifically traverse the position of the corporate shareholder. Notwithstanding the centrality of this issue to the operation of Clause 9(iv) and Section 10(1)(a)(ii) of the Inland Revenue Act, the impugned decision **P6** does not demonstrate that the Respondent examined or made any determination regarding the residency status of the shareholders.

Under the statutory regime applicable to the relevant years, dividend tax is, in substance, a tax on the shareholder's income, with the company required to deduct and remit it on behalf of the recipient. The liability to tax, therefore, arises, if at all, by reference to the status of the shareholder rather than that of the company. If dividends are paid to non-resident shareholders who are exempt from tax under a BOI agreement, the obligation to deduct and remit dividend tax may not arise. Conversely, whether the Petitioner, having remitted such tax, is entitled to recover it depends on the provisions governing refunds.

Any claim for refund must be considered within the framework of Section 200 of the Inland Revenue Act No. 10 of 2006, which requires that a written claim be made within the prescribed period and that it be proved to the satisfaction of the Commissioner-General that tax was paid in excess of the amount legally payable. The Petitioner has produced documents marked **P5(a)**, **P5(b)**, and **P5(c)**, which indicate that written requests for refund were made on several occasions between 2011 and 2014. Whether those claims satisfy the statutory

requirements, including compliance with limitation periods and proof of excess payment, is a matter within the competence of the CGIR and requires a factual determination.

Accordingly, Clause 9(iv), the admitted payments, and the pleadings regarding shareholder residency provide a substantial basis for reconsideration of the Petitioner's claim. The impugned decision is vitiated because the Respondent failed to address matters essential to determining entitlement.

Therefore, it is a statutory duty of the 1st Respondent to properly reassess the Petitioner's application for a refund of dividend tax and arrive at a correct conclusion.

Limitations of the Scope of Reassessment

In light of the findings of this Court, the reassessment must proceed on the basis that:

The BOI agreement marked **P3** remains relevant and operative for the purposes of determining the Petitioner's claim, there being no basis to treat the subsequent agreement **P7** as having extinguished the earlier concessions.

Clause 9(iv) of **P3** constitutes a material contractual provision requiring consideration in determining liability to dividend tax in respect of payments made to non-resident shareholders.

The fact of payment of dividend tax by the Petitioner and receipt thereof by the Inland Revenue Department is not in dispute.

The applicability of Section 10(1)(a) of the Inland Revenue Act must be considered together with the transitional provisions of Section 218(3) and the terms of the BOI agreement.

The reassessment shall therefore be confined to the determination of,

- whether the shareholders receiving dividends were non-resident persons under the IRA,
- whether the Petitioner has complied with the statutory requirements for refund under Section 200, including limitation and procedural conditions,
- whether the Petitioner is the proper claimant entitled to receive any refund on behalf of the shareholders, and

- the amount, if any, refundable in accordance with the law.

Conclusion and Order

For the reasons set out above, this Court is satisfied that the decision dated 02nd July 2014 marked **P6** was reached on an erroneous legal basis and without consideration of matters that were directly relevant to the exercise of the Respondent's statutory powers.

In particular, the Respondent failed to determine whether the original BOI agreement **P3** remained operative and whether the dividends in question were paid to non-resident shareholders.

Accordingly, the decision marked **P6** cannot be sustained and therefore, quashed by way of a *Writ of Certiorari*.

However, this Court makes no ruling as to the Petitioner's entitlement to a refund of the dividend tax that was paid. Those matters fall within the statutory competence of the Respondent and must be decided in accordance with the law.

The prayer for a *Writ of Mandamus* compelling the refund of the tax paid is refused.

The CGIR, the 1st Respondent, is directed to reassess the application of the Petitioner, according to the guidelines set out earlier in this judgment.

Subject to the above, the application is partly allowed. No order is made as to costs.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL