# Striking the Right Balance: Reinterpreting the Assessor's Powers in Sri Lanka in Light of Administrative Law Principles: A Comparative Analysis with India

**Chathurika Sisimali Gunasekera**
Undergraduate Student, General Sir John Kotelawala Defence University,Ratmalana, Sri Lanka

## Abstract

Income tax is generally regarded as one of the principal sources of government revenues. In the Sri Lankan context, income tax is imposed by the Inland Revenue Act No 10 of 2006 as amended. Accordingly, any person chargeable with income tax is required, under the self-assessment system that prevails in Sri Lanka, to furnish a return and pay the tax in compliance with the Inland Revenue Act. The assessor's power to make an income tax assessment commences when the tax payer fails to comply with this self-assessment system. Given the fact that the tax payer has to submit to the jurisdiction of the assessor when he exercises his discretionary powers, there is an unequal relationship between the assessor and the tax payer. The ultimate result would be an infringement and unlawful interference with the rights of the tax payer thereby placing him in a vulnerable position. Hence, it is of vital importance to strike a balance between the powers of the assessor and the right of the tax payer. In this backdrop, the objective of this study is to critically evaluate the assessor's powers in respect of tax assessment in the Sri Lankan context in light of Administrative Law principles and make recommendations for the further development of law in this field. A comparative analysis will be made to the Indian system. Hence, this research will be conducted as a qualitative research based on books with critical analysis, journal articles, statutes, case laws and also data collected from legal experts and relevant policy making authorities. The assessor being a public authority is required to act in compliance with substantive and procedural requirements when exercising his discretionary power. These principles of Administrative Law would thus demarcate the legal bounds within which the assessor should exercise his discretion. Hence, this research analysis will show how these Administrative Law principles have been incorporated in the domestic regime in terms of the statutory mechanism and judicial activism and recommendations for further improvement will be made in light of Indian jurisprudence. In the absence of much legal authority in this regard, this research will thus provide guidelines for professionals such as lawyers, policy makers and the assessors in Sri Lanka.

**KEYWORDS:** Sri Lankan Income Tax; Tax Assessor Role; Inland Revenue Act; Tax Assessment

## Introduction

Income tax is generally regarded as one of the principal sources of government revenues. In the Sri Lankan context, the legal authority to charge, levy and collect income tax is imposed by the Inland Revenue Act No. 10 of 2006 as amended. Accordingly, an obligation is imposed on any person chargeable with income tax, under the self-assessment system that prevails in Sri Lanka to furnish a return and pay

the tax in accordance with the manner laid down in the Inland Revenue Act.[1] The assumption is that the tax payer would act honestly and transparently while performing his duties.

However, where the tax payer fails to act in compliance with the self-assessment scheme as stipulated in the Act,[2] the Assessor is empowered to make an assessment or an additional assessment to enforce the payment of the correct amount of tax[3]. When exercising his discretion vested by the statute, often the assessor fails to give due concern for rights and liberties of the tax payer. The situation is further aggravated when the rights and liberties of the tax payer are infringed upon at the hands of the assessor due to the fact that the tax payer has to submit to the jurisdiction of the assessor and he is not in a position to bargain. Consequently, the tax payer is placed in vulnerable situation which is required to be duly addressed. In this backdrop, it is of vital importance to strike the balance between the powers of the assessor and the right of the tax payer.

The rule of law requires the discretionary powers vested with the public authorities to be exercised according to law, rationally and in compliance with the due procedure[4]. Hence, the good administration insists on substantive and procedural fairness[5]. That is to say, administrative authorities need to act reasonably and proportionally within their legal bounds and in compliance with the principles of natural justice which would otherwise render their decisions ultra-vires and subject to judicial review. Accordingly, the income tax assessor being an administrative authority is bound to give effect to these principles of Administrative Law. Therefore, the main argument put forward by this paper is the right balance between the assessor's powers and the tax payer's rights that can be struck in terms of Administrative Law principles. For the aforementioned purpose, this paper examines how the requirements of substantive and procedural fairness have been incorporated into the regime governing income tax assessor's powers in Sri Lanka. A comparative analysis will be made to the Indian jurisdiction. This paper is therefore structured as follows: firstly, the charge of income tax, secondly, the application of Administrative Law principles to the assessor, thirdly, the assessor's obligation to follow the substantive requirements, fourthly, his obligation to follow procedural requirements and ultimately the conclusion and recommendations.

## Charge of Income Tax

Income tax is among the principle forms of government revenues. Proponents contend income tax as the best form of tax to advance government's expenditure goals particularly, the goal of redistributing income and also a fairer tax, as it depends on the ability to pay[6]. In Sri Lanka, the charge of income tax is imposed by the Inland Revenue Act No 10 of 2006. Accordingly, the income tax is charged at appropriate rates specified for every year of assessment in respect of the profits and income of

[1] No 10 of 2006
[2] Id.
[3] S. 163 of the Inland Revenue Act No 10 of 2006
[4] H.W.R. WADE & C.F.FORSYTH,THE ADMINISTRATIVE LAW 20-33(9TH ed. 2004)
[5] Id.
[6] G. COOPER et al, INCOME TAXATION: COMMENTARY AND MATERIALS 21 (1989)

every person for that year of assessment.[7] Hence, any person chargeable with income tax is required under the self-assessment scheme to furnish the return and pay such tax in four quarterly instalments as prescribed in the Act.[8] The assessor's powers come into play when the tax payer fails to act in conformity with this self-assessment scheme. Then the Assessor is empowered to make an assessment or an additional assessment to enforce the payment of the correct amount of tax. Similarly, in India the Income Tax Act, 1963[9] provides for the reopening of the assessment proceedings where the tax payer has escaped the assessment.

**The application of the principles of Administrative Law to the Assessor**

Given the fact that the tax payer has to submit to the jurisdiction of the assessor when he exercises his discretionary powers, there is an unequal relationship between the assessor and the tax payer. The ultimate result would be the infringement and the unlawful interference with the rights of the tax payer. The proposition that the public authorities should not act outside the powers conferred by the empowering Act lies at the heart of Administrative Law[10]. The public authorities are thus bound by the principles of Administrative Law when dealing with the public thereby safeguarding the rights and liberties of citizens at the hands of public authorities. Then the issue arises as to whether the assessor is amenable to the principles of Administrative Law.

When determining whether a particular body is a public body for the purpose of judicial review earlier as it was held by Lord Diplock in *O'Reilly v. Mackman*[11], the sole focus was the source of power. It should have been statutorily created. This stance was upheld in the Sri Lankan context by the Court of Appeal in *Trade Exchange (Ceylon) Ltd v Asian Hotels Corporation Ltd.*[12] However, it is interesting to note that the scope of application of Administrative Law has expanded to the extent that it now applies to non-statutory bodies performing a public function. That is to say now the focus is on the nature of function rather than the source of power. Therefore, in *Harjani& Anr.v. Indian Overseas Bank and Ors.*[13], the Court of Appeal was of the opinion that although the respondent bank was not a statutory body, it is amenable to judicial review considering the fact that it performs a public function. Therefore, the Assessor by virtue of being statutorily empowered and further performing a public function is amenable to principles of Administrative Law. Therefore, the statutory powers of the assessor have to be read in light of Administrative Law principles so as to mitigate this power imbalance between the assessor and the tax payer and thereby to safeguard the rights of the tax payer.

**The Assessor's obligation to follow substantive requirements**

The tax payer's rights commence from the moment the assessor's powers end. Hence, it is required to keep the assessor within the legal bounds as provided by the statute so

[7] S.2(1)
[8] S.113
[9] S.147
[10] Approved in Boddington v British Transport Police [1999] 2 AC 143, 171 (Lord Steyn)
[11] [1983] 2 AC 237
[12] [1981] 1 Sri LR 67
[13] [2005] 1 Sri LR 167

as to safeguard the rights of the tax payer. This chapter therefore analyses how the substantive safeguards have been incorporated into the current regime in terms of the empowering Act and the judicial activism in both the Indian and Sri Lankan context.

**India**

In India, S.147 of the Income Tax Act, 1961 provides for the reopening of the assessment proceedings. The tax payer has an obligation to disclose all material facts in full and complete during the assessment proceedings. Then it is the duty of the assessor to draw inferences from the facts available before him.[14] It should be noted that the S. 147 grants wide discretion to the Assessor to reopen the assessment proceedings when he has a reason to believe that some part of the income has escaped the assessment. This is merely a blanket provision. Further, the subjective language used in this section has therefore left room for misinterpretation and arbitrary use of power by the assessor.

This lacuna has been addressed by judicial activism. It is interesting to examine how the judiciary has been instrumental in reinterpreting this section so as to mitigate the perils of having a blanket provision. Accordingly, an attempt to incorporate principles of administrative law to tax jurisprudence can be seen for the purpose of demarcating the legal bounds within which the assessor should exercise his discretion. *Hence, in Calcutta Discount Co. Ltd.* **v.** *ITO,*[15] *the Supreme Court of India laid down another condition to be satisfied in invoking S.147. Accordingly, the assessor must have reason to believe that such income has escaped the assessment owing to the tax payer's failure to disclose all material facts required for the assessment. This connotes that 'mere change in opinion' on the part of the assessor will not stand as a valid reason to reopen the assessment proceedings*[16]*. It was observed in Income Tax Officer v. LakhmaniMewalDass*[17]*,once the assessor has formed an opinion during the original assessment proceedings he cannot at a later point of time find it to be erroneous and reopen the assessment. Hence it has been held in a line of cases*[18] *that the discovery of new facts which have a material bearing on the assessment but not disclosed during the original assessment would only constitute 'a reason to believe that income has escaped assessment' as contemplated in S.147.*

*In further construing this section it has been held that the term 'reason to believe' cannot be interpreted to mean 'reason to suspect'*[19]*. For example in CIT v. Gupta Abhushan (P) Ltd*[20], the Court took up the position that the detection of undisclosed expenditure or excess stock on renovation of business in a subsequent year could not constitute a 'reason to believe' that such discrepancies existed in previous years also.

[14] Income Tax Officer v LakhmaniMewalDass[1976] 103 ITR 437.

[15] *[1961]*41 ITR 191 **(SC)**

[16] Jindal Photo Film Ltd Dy CIT [1998] 234 ITR 170,CIT v Kelvinator of India Ltd (2002) 256 ITR 1 (Del) (FB)

[17] [1976] AIR 1753

[18] *Sita World Travel (India) Ltd CIT [2004] 140 Taxman 381,Phool Chand BajrangLal v. ITO 203 ITR 456, 477, ALA Firm v. CIT 189 ITR 285, 298, Indian and Eastern Newspaper Society v. CIT 119 ITR 996, 1004; ITO v. LakhmaniMewal Dass 103 ITR 437, 445*

[19] ChhugmalRajpal v S. P. Chaliha [1971] 79 ITR 603, Calcutta Discount Co Ltd v ITO [ 1960] 41 ITR 191

[20] (2008) 16 DTR (Del) 76

Hence, the reopening of assessments on this ground was held to be invalid. *That means mere instinct on the part of the assessor that some income has escaped the assessment will not suffice and there has to be prima facie grounds based on 'fresh tangible material' to reasonably believe so.*

*For the lawful exercise of discretionary power, the Administrative Law demands it to be exercised solely by the authority upon whom it is conferred and by no one else*[21]*. Further, the proper authority upon whom the discretion is conferred should not surrender or abdicate, or allow someone else to dictate to it*[22]*. So long as the assessor's powers are concerned it can be observed that although the Act is silent as to these principles, the courts have incorporated them into the tax jurisprudence in India. For example in Hyoup Food and Oil Industries Ltd. vs. ACIT*[23], it was held that the successor assessing officer cannot issue notice under Section 148 based on the reasons recorded by his predecessor. Rationale is that the opinion formed by an assessing officer based on the opinion of another assessing officer was described as 'borrowed satisfaction'. Therefore, it is not a valid basis to reopen the assessment proceedings.[24]

**Sri Lanka**

S. 163 of the Inland Revenue Act[25]provides for the reopening of assessment proceedings by the assessor.

> *"Where any person who in the opinion of an Assessor is liable to any income tax for any year of assessment, has not paid such tax or has paid an amount less than the proper amount which he ought to have paid as such tax for such year of assessment, an Assessor may, subject to the provisions of subsection (3) and (5) and after the fifteenth day of November immediately succeeding that year of assessment, assess the amount which in the judgment of the Assessor ought to have been paid by such person, and shall by notice in writing require such person to pay forthwith-*
> *(a) the amount of tax so assessed, if such person has not paid any tax for that year of assessment; or(b) the difference between the amount of tax so assessed and the amount of tax paid by such person for that year of assessment, if such person has paid any amount as tax for that year of assessment"*

This is also a blanket provision which grants wide discretion on the assessor to reopen the assessment proceedings and make an assessment which in the judgment of the assessor ought to have been paid by the tax payer. Traditionally, the wide discretionary power was thought to be incompatible with the rule of law[26]. But in the

[21] This principle was upheld in a line of English cases such as Allingham v Minister of Agriculture and Fisheries [1948] 1 All ER 780; Barnard v National Dock Labour Board [1953] 2 QB 18; Vine v National Dock Labour Board [ 1957] AC 488

[22] Ellis v Dubowski [1921] 3 KB 621; Lavender and Sons Ltd v Minister of Housing and Local Govt [1970] 1 WLR 1231; R v Home Secretary , ex parte Walsh [1992] COD 240

[23] (2008) 307 ITR 115 (Guj.); CIT & Anr vs. AslamUllakhan (2010) 321 ITR 150 (Kar)

[24] ITO vs. Rajender Prasad Gupta (2010) 48 DTR 489 (JD) (Trib); CIT vs. Shree Rajasthan Syntex Ltd. (2009) 212 Taxation 275 (Raj.)

[25] No 10 of 2006

[26] DICEY, LAW OF THECONSTITUTON 202 ( 9TH edn)

modern context, what the rule of law imposes is not that wide discretionary powers should be eliminated but that they should be exercised within legal bounds. Hence, such discretion vested with administrative authorities has to be exercised reasonably and *bonafide*, solely for proper purposes after giving due concern for relevant considerations and in accordance with the legal limits set out by the empowering Act[27].

Given the subjective language used in the S.163, there is more room for this section being misinterpreted and abused. Hence, the phrase "in the judgment of the assessor" has often been subject to judicial scrutiny to demarcate the legal bounds depending on the facts of each case. In construing this provision, it has been established that the term "in the judgment of the assessor" does not connote the subjective satisfaction of the assessor. It is essential that the assessor must base his judgment on what he honestly believes after giving due consideration for all the relevant facts of the case. Hence in *Commissioner of Income United and Central Provinces v. BadridasRamari Shop*[28], the Privy Council was of the opinion that

> *"…. (the inspector) must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose he must be able to take into consideration all other matters which he thinks will assist him in arriving at a fair and proper estimate…."*

In this regard, a fair and proper assessment was held to be made so long as the judgment is properly arrived at depending on the facts available to the assessor. As observed by Justice Woolf in *Boeckel v Commissioner of Customs and Excise*[29]

> *"what the words "best of their judgment" envisage…. is that the Commissioner will fairly consider all material placed before them and, on that material, come to a decision which is one which is reasonable and not arbitrary as to the amount of tax which is due".*

Further it has to be noted that where the assessor is vested with very wide discretionary power, the courts have relied upon a narrow construction of the section. In this regard, Justice Weeramantry[30] upheld the assessments made in accordance with the principles of justice and fair play.[31] As it was noted by Lord Viscount Simon[32], though not explicitly expressed in the section, the bounds within which an Assessor may exercise his discretion should not be undermined.

Where an assessment has been made on the judgment of the assessor, the burden lies on the tax payer to challenge such assessment on the ground that it is excessive or the assessor has not acted *bonafide* or reasonably arriving at the judgment. Whether the Assessor has acted *bonafide*and reasonably in making the assessment is a question of fact which ought to be decided by the Court, considering the merits of each case[33].

---

[27] H.W.R. WADE & C.F.FORSYTH,THE ADMINISTRATIVE LAW 343 (9TH ed. 2004)

[28] 64 LR 102

[29] [1981] STC 290

[30]Jayanetti v Mitrasena3 CTC 337

[31] S. BALARATNAM, INCOME TAX IN SRI LANKA 646-647 (3rd ed. 2001)

[32]Gamini Bus Co. Ltd v CIT 1CTC p.438

[33] BALARATNAM, supra note 20, at p. 645

A comparative analysis depicts that in both jurisdictions, the assessor's powers have been granted in terms of a blanket provision. Even then it can be noticed that the tax jurisprudence in India has evolved to greater extent owing to Judicial Activism. The lacuna has been filled by judge made laws. Accordingly, the empowering Act is read in light of Administrative Law principles to construe and demarcate the legal bounds within which the discretion should be exercised. This is where Sri Lanka is lacking. Though some effort can be seen on the part of Sri Lankan courts to narrow down this wide discretionary power vested with the assessor, it has not proven to be that effective as in the Indian context.

**Assessor's obligation to follow Procedural Requirements-**

Not only the substantive requirements, but the Administrative authorities are also required to follow the procedural requirements as well, i.e. to act in compliance with the rules of natural justice. The basic rules of natural justice are *audialterampartem*; or right to a fair hearing and *nemo index in causasua;* that no person can be the judge in his own case[34]. The *audialterampartem* rule embodies a number of other procedural requisites within it. Accordingly, the right to have notice of charges[35], the right to be heard in answer to those charges[36], stating reasons for a decision, communication of such reasons for decision are among requisites of the *audi alterampartem* rule[37]. This chapter thus analyses how the procedural safeguards have been incorporated into the current regime in terms of the empowering Act and Judicial Activism in both the Indian and Sri Lankan context.

**India**

Most of the principles of Natural Justice seem to have found statutory recognition in the Indian context. In case of income escaping the assessment, S. 148 of the Income Tax Act, 1961 imposes an obligation on the assessor to give notice to the assessee before making the reassessment. Accordingly, the assessing officer is bound to furnish reasons for his decision[38]. Further, it can be observed that the rules of Natural Justice have found expression in the Constitution of India in terms of Art 14 and 21 which render an administrative decision, subject to judicial review if not complied with.

In addition, it can be noticed that though not statutorily expressed, courts have also incorporated most of the principles of Natural Justice as common law rules. S. 148(1) of the Act provides the assessing officer to serve the assessee a notice requiring him to file a return of his income before making the reassessment. On the other hand S. 149 (1) provides that no such notice to be issued after the lapse of four or six years. Hence, the issue arises whether the notice should be served or issued within the prescribed time period. In analysing this question, the High Court in ***Kanubhai M Patel HUF***[39], held that issuing of the notice is not merely signing the notice but the

[34] G. L. PEIRIS, ESSAYS ON ADMINISTRATIVE LAW IN SRI LANKA 170-173 ( 2nd edn 2005)
[35] Ridge v Baldwin (1964) A.C. 40
[36] Herat v Nugawela (1968) 70 N.L.R. 529
[37] PEIRIS, supra note 35, p. 171- 207
[38] S. 148 (2) of the Income Tax Act, 1961
[39] 2010-TIOL-531-HC-AHM-IT.

date on which it was handed over to the proper officer or the post office to be sent to the party concerned. *"Hence until the envelopes are properly stamped with adequate value of postal stamps, it cannot be stated that the process of issue is complete."*

*The courts have also insisted on Natural Justice Principles of right to a fair hearing and the obligation to furnish the reasons for a decision. In Allana Cold Storage v. ITO,*[40] it was held that reasonsfor notice must be given and objections of assessee must be considered. Accordingly, in *IOT Infrastructure and Eng. Services Ltd. v. ACIT,*[41] the court was on the opinion thatassessment made by the assessor without giving due concern for the primary objections raised by the tax payer is liable to be quashed.

Natural justice requires an adequate opportunity of hearing to be given. Hence, undue haste is against the principles of Natural Justice. Therefore, the tax payer deserves to receive an adequate opportunity of hearing.[42] To invoke an order under S.147, not only the recording of reasons but the communication of reasons is also mandatory[43]. Hence, the reassessment carried out without communicating reasons to the tax payer was held to be invalid[44].

**Sri Lanka**

The principles of natural justice have been statutorily voiced in the Sri Lankan context to a certain extent. S.163 (3) explicitly imposes a statutory duty on the assessor to furnish reasons where he does not accept the return of income. This is a mandatory obligation and any assessment made in contrary to this provision will be null and void[45].

The need and the scope of this requirement to furnish reasons have been brought into judicial attention in several Sri Lankan cases. Late Justice Mark Fernando in *Karunadasa v. Unique Gemstone*[46]equated the giving of reasons to protection of persons by law under Article 12 of the Constitution. At this point, it is worth analysing few key propositions laid down by Chief Justice Samarakoon in *Ismail v. Fernando*[47] which immensely enriched the tax jurisprudence in Sri Lanka. Accordingly, where the assessor is of the opinion for not accepting a return, he must necessarily communicate his reasons for non- acceptance of the return. This is a mandatory obligation and the communication of such reasons must be made at or about the time the assessor sends his assessment or an estimated assessment. Any later action would therefore defeat the remedial action intended by the provision.

[40](2006) 287 ITR 1 (Bom.)
[41](2010) 329 ITR 547 (Bom)
[42]Rameshwaram Paper Mills (P) Ltd. v. State of U.P. & others, (2009) 11VLJ 33 (All); Padam Traders & others v. State of U.P. & others, (2009) 47 STJ 392 (All).
[43]Gujarat Fluorochemicals Ltd vs. DCIT (2008) 15 DTR (Guj)
NandlalTejmal Kothari vs. Inspecting ACIT (1998) 230 ITR 943 (SC)
[44]CIT v. Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom.)
[45] BALARATNAM, supra, p. 650-651
[46](1997) 1 Sri LR 256
[47] 4 CTC 156

In interpreting this provision,[48] his Lordship had read some other requisites of Natural Justice which are integral to good administration into this provision. In the said case, the assessor informed the tax payer,*"According to the information available with me, the statement of account furnished by you in support of the return of the income…..does not reveal the correct profits"*. This statement made by the assessor was held to be a conclusion and not the reason for the conclusion. Hence, Chief Justice insisted that what the section requires is the reasons to be stated and not the conclusion he arrived at. In further analysing the scope of this section, his Lordship also took up the position that the reasons for rejection of such return must be adequate. Talking about the adequacy of reasons, Megaw J. once noted, " Parliament provided that reason should be given and in my view that must be read as meaning that proper, adequate reasons must be given. The reasons that are set out must be reasons which will not only be intelligible, but which deal with the substantial points that have been raised…."[49] Most importantly, the assessor cannot rely on "what has gone before" between the tax payer and him on matters pertaining to the assessment in the form of a discussion as a justification for his failure to communicate adequate reasons[50]. Hence, the implication is that reasons must be adequately intelligible enough for the tax payer to understand why an assessment or an additional assessment has been made on his income.

A comparative analysis between the two jurisdictions as to the procedural requisites depicts an attempt to statutorily incorporate principles of natural justice. However, more focus has been laid on the assessor's obligation to communicate reasons and related requirements. Even the courts seem to have immensely dealt with this topic. However, it should be noted that the principles of Natural Justice are not limited to the mere requisite of furnishing reasons. It is just one facet of Natural Justice. The lack of statutory recognition can be justified on the ground that the principles of Natural Justice are not necessarily required to be statutorily incorporated. They can be given expression as common law rules. However, it can be observed that even the courts have not properly and adequately addressed this issue.

Further, there are some other issues pertaining to the rights of the tax payer which have not been addressed in the Inland Revenue Act of Sri Lanka. The Act is silent whether tax payer who is being investigated for having omitted income is eligible to have access to information relied on by the Inland Revenue Department. Once when the assessment is made by the assessor, the burden falls upon the tax payer to establish that such assessment is excessive or it has not been made to the best of the assessor's judgment. For this purpose, it is essential for the tax payer to have access to the information held by the assessor. In a country where the Right to Information is yet to be constitutionally implemented, the issue arises whether the tax payer is entitled to such information and whether the courts can grant recognition upon such a right. Moreover, a fair hearing is against compelling the tax payer to give 'self-incriminating evidence'. Practically, the tax payer is not barred from accompanying his lawyer for the inquiry when called upon by the Inland Revenue Department. But there is no any legal provision giving effect to such a privilege.

[48]Section 115 (3) of the Inland Revenue Act, No 28 of 1979. This statutory obligation to give reasons was incorporatedin S. 134(3) of Inland Revenue Act, No 38 of 2000 as well.

[49] Re Poyser and Mills Arbitration (1964) QBD 467

[50] BALARATNAM, supra p. 653

## Conclusion

The power of the assessor to make an assessment in respect of the income of the tax payer commences from the moment the tax payer fails act in conformity with the self-assessment scheme. Given the fact that the tax payer has already made a default and he has to submit to the jurisdiction of the assessor who is statutorily empowered, he is obviously at the disadvantageous end. Owing to this power imbalance between these two parties, often the rights of the tax payer are infringed upon. Art 12(1) and (2) of the Constitution of Sri Lanka provides that all persons are equal before law and entitled to equal protection of law. Hence, this provision articulates that the tax payers should not be discriminated simply because they have a default at the first instance. Therefore, it is of vital importance to strike a balance between the rights of the tax payer and the powers of the assessor.

The assessor being an administrative authority is under an obligation to act in compliance with substantive and procedural requirements. It can be observed as in India, in the Sri Lankan context also these Administrative Law principles have been statutorily incorporated to a certain extent. However, in India the lacuna is filled by Judicial Activism which plays an active role in interpreting the statute in light of Administrative Law principles. Unfortunately, this is where Sri Lanka is lacking. Hence, empowering Judicial Activism to fill the loopholes in the legislations has become a need of the hour for Sri Lanka.

Although the aggrieved tax payer can resort to judicial recourse in Sri Lankan context, it is a very lengthy and time consuming process. On the other hand, a 'statutory duty' is a very powerful tool that can be utilized to regulate the conduct of administrative authorities. A breach of such a statutory duty would enable the tax payer to resort to judicial review or writ of certiorari on the ground of ultra-vires. Hence, it is also recommended to incorporate such Administrative Law principles into the empowering Act. Ultimately, it is also recommended to incorporate the provisions as to the tax payer's right to access the information held by the assessor, validity of compelling the tax payer to self-incriminating evidence and having legal assistance during inquiries. The laws should be designed to strike a balance between the rights of the citizens and powers of the enforcing authorities. The rights and liberties of citizens start from where the powers of the enforcing authorities end. Hence, this balance upholds good administration and rule of law in a democratic society.

## References

**Statutes**
Income Tax Act, 1961
Inland Revenue Act No 10 of 2006
**Case laws**
*ALA Firm v. CIT 189 ITR 285, 298*
Allana cold storage vs. ITO (2006) 287 ITR 1 (Bom.)
Allingham v Minister of Agriculture and Fisheries [1948] 1 All ER 780
Barnard v National Dock Labour Board [1953] 2 QB 18
Boeckel v Commissioner of Customs and Excise [1981] STC 290
*Calcutta Discount Co. Ltd.* **v** *ITO [1961]*41 ITR 191 **(SC)**
*Chand BajrangLal v. ITO 203 ITR 456, 477*

ChhugmalRajpal v S. P. Chaliha [1971] 79 ITR 603
CIT vs. Gupta Abhushan (P) Ltd (2008) 16 DTR (Del) 76
CIT v Kelvinator of India Ltd (2002) 256 ITR 1 (Del) (FB)
CIT vs. Shree Rajasthan Syntex Ltd. (2009) 212 Taxation 275 (Raj.)
CIT v. Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom.)
Commissioner of Income United and Central Provinces v BadridasRamari Shop64 LR 102
Ellis v Dubowski [1921] 3 KB 621
Gamini Bus Co. Ltd v CIT 1CTC p.438
Gujarat Fluorochemicals Ltd vs. DCIT (2008) 15 DTR (Guj)
Heart v Nugawela (1968) 70 N.L.R. 529
Harjani and another v Indian Overseas Bank and Others [2005] 1 Sri LR 167
Hyoup Food and Oil Industries Ltd. vs. ACIT (2008) 307 ITR 115 (Guj.);
Income Tax Officer v LakhmaniMewalDass [1976] 103 ITR 437
*Indian and Eastern Newspaper Society v. CIT 119 ITR 996, 1004*
IOT Infrastructure and Eng. Services Ltd. vs. ACIT (2010) 329 ITR 547 (Bom)
Ismail v Fernando4 CTC 156
ITO vs. Rajender Prasad Gupta (2010) 48 DTR 489 (JD) (Trib)
Jayanetti v Mitrasena3 CTC 337
Jindal Photo Film Ltd Dy CIT [1998] 234 ITR 170
Kanubhai M Patel HUF2010-TIOL-531-HC-AHM-IT.
Karunadasa v Unique Gemstone (1997) 1 Sri LR 256
Lavender and Sons Ltd v Minister of Housing and Local Govt [1970] 1 WLR 1231
NandlalTejmal Kothari vs. Inspecting ACIT (1998) 230 ITR 943 (SC)
O'Reilly v Mackman [1983] 2 AC 237
R v Home Secretary, ex parte Walsh [1992] COD 240
Rameshwaram Paper Mills (P) Ltd. v. State of U.P. & others, (2009) 11VLJ 33 (All)
Re Poyser and Mills Arbitration (1964) QBD 467
Ridge v Baldwin (1964) A.C. 40
*Sita World Travel (India) Ltd CIT [2004] 140 Taxman 381, Phool*
Trade Exchange (Ceylon) Ltd v Asian Hotels Corporation Ltd [1981] 1 Sri LR 67
Vine v National Dock Labour Board [1957] AC 488

**Secondary Sources**

Dicey, Law Of TheConstituton 202 (9$^{TH}$EDN)
G. Cooper Et Al, Income Taxation: Commentary and Materials 21 (1989)
G. L. Peiris, Essays On Administrative Law in Sri Lanka 170-173 (2$^{ND}$ Ed. 2005)
H.W.R. Wade & C.F.Forsyth, the Administrative Law 20-33(9$^{th}$ Ed. 2004)
S. Balaratnam, Income Tax in Sri Lanka 646-647 (3$^{RD}$ Ed. 2001)