

**M R Rasheed v. Department of Inland Revenue**

*RTIC Appeal(In-Person)/911/19 - Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure) adopted on 14.01.2020– heard as part of a formal meeting of the Commission on 20.05.2019, 24.10.2019 and 14.01.2020*

**Commission Members:** Mr. Mahinda Gammampila (Chairperson)  
Ms. Kishali- Pinto Jayawardena  
Justice Rohini Welgama

**Appellant:** M R Rasheed  
**Notice Issued to:** Designated Officer, Department of Inland Revenue

**Appearance**

**Appellant:** M R Rasheed, Dr Shivaji Felix Counsel for the Appellant

**PA:** D.J.M..Devapriya- Senior Commissioner/ Information Officer

<b>RTI Request filed on</b>	13.09.2017
<b>IO responded on</b>	25.10.2017
<b>First Appeal to DO filed on</b>	07.06.2018
<b>DO responded on</b>	24.08.2018
<b>Appeal to RTIC filed on</b>	23.10.2018

**Brief Factual Background:**

The Appellant had requested the following information by an information request dated 13.09.2017.

*Certified copy of Income Tax Notice of Assessment for the Year of Assessment 2013/2014*

The IO had responded on 25.10.2017 stating that s/he was not in a position to obtain requested information on the basis the requested information is exempted in terms of Section 5 (1) (c) (iii) of the RTI Act. Thereafter the Appellant lodged an appeal with the DO on 07.06.2018 who in response by letter dated 24.08.2018 reiterated the response of the IO. Dissatisfied with this response the Appellant preferred an appeal to the Commission on 23.10.2018.

**Matters Arising During the Course of the Hearing:**

Both parties were directed to file written submissions on 24.10.2019. While the Appellant had filed written submissions the PA had failed to do so.

It was submitted on behalf of the Appellant that the Company of which he is the Director had made an appeal against an assessment on the basis that a refund claim had been reduced. It was further submitted that thereafter the appeal to the Commissioner General of the PA disputing the above reduction of the refund was rejected on the basis that there was no assessment number provided.

Counsel for the Appellant submitted that there should, in fact, be an assessment recorded in the system however the document pertaining to the said assessment, containing an assessment number had not been served on the Appellant. Counsel submitted that therefore the taxpayer is deprived of the opportunity to appeal as he is unable to do so without citing the assessment number. He further submitted that in terms of Section 118 of the Inland Revenue Act No 24 of 2017 the taxpayer's right to information is recognized and as such is entitled to the provision of this information. Section 118 of the Inland Revenue Act states that;

*Upon request by a taxpayer, an authorized officer of the Department shall –*

*(a) inform the taxpayer of the status of the taxpayer's account with respect to tax;*

*(b) provide a copy of a tax return filed by the taxpayer; and*

*(c) provide a copy of any written agreement entered into with the Commissioner-General.*

Explaining the context of the Appeal it was submitted on behalf of the Appellant that when the appeal was lodged against the reduction of the tax refund without the assessment number, the Commissioner General rejected the appeal on the basis that no notice of assessment has been issued for the Appellant to appeal (vide letter dated 17.07.2018 marked A3 and annexed to the written submissions of the Appellant).

It was submitted on behalf of the PA that once the taxpayer submitted his returns and claimed the tax refund, an interview was held with the relevant party and the tax refund was reduced. The PA submitted that the relevant notification was sent to the Appellant which contained the computation carried out and which resulted in the tax refund and that certain figures were adjusted due to the absence of evidence on the part of the taxpayer to permit the said refunds. Furthermore the final refund notice was sent to the Appellant. The PA submitted that the reasons for rejection/ reduction of the tax refund had been communicated, in terms of the law.

The Appellant maintained that nevertheless the Company was unable to appeal this decision due to the absence of an assessment number issued by the Public Authority to the Appellant.

On being queried as to the process adopted in situations such as these, the PA submitted that in the last 8 years there has not been an instance where an appeal from a reduction of a tax refund has been rejected and as a practice, the PA does not conduct assessments of reduction of refunds. Furthermore, it was contended that appeals have been allowed only in instances where there has been an increase in the taxed amount (tax payable).

In counter, Counsel for the Appellant took the position that the PA's position in this regard cannot be accepted as in terms of the law, there has to be a right of appeal against the decision to reduce the tax refund and the mere fact that the PA has no recorded instances of appeals against reductions in tax refunds does not mean that the law does not provide for the same. Furthermore in relation to the information request, the RTI Act as well as the Inland Revenue Act No 24 of 2017 must permit access to the information requested as a right of the tax payer.

The Appellant also submitted that the PA was taking contradictory stances given that, in letter marked A3 it is rejecting the appeal because no notice has been issued and on the other hand, it is

not serving the Appellant with an assessment notice. The Appellant also drew the attention of the Commission to the response of the IO which stated that it is not in a position to obtain the tax assessment notice for the relevant year at this point in time and provided print outs from the system which indicate the revision but which, the Appellant maintains does not constitute the Assessment Notice being requested by the Commissioner General. As such, the Appellant is still prevent from lodging an appeal.

The PA was queried as to whether this is an indication that the Assessment notices are in fact in the possession of the PA to which the PA responded stating that there is certain documentation maintained in the record room.

**Order:**

The representative of the PA is directed to ascertain from the Commissioner General of the PA, by the next date of hearing, as to the following;

1. The circumstances in which appeals are filed against reductions in a tax refund if the tax payer still continues to dispute the amount of the refund, on the principle that an appeal against decisions made affecting rights of taxpayers by the Public Authority should be subject to appeal;.
2. The legal basis on which the letter of the Commissioner General rejecting the appeal filed by the Appellant citing the fact that no notice of assessment has been referred to (vide letter marked A3 in the written submissions of the Appellant), had been issued by the Public Authority in a context where, the Public Authority itself is responsible for not providing the said notice of assessment;

Order is hereby conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

Next Date: 03.03.2020

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