



[2015] JMRC 3

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE REVENUE COURT

REVENUE COURT APPEAL NO. 2 OF 2015

REVENUE COURT APPEAL NO. 3 OF 2015

BETWEEN	MILTON BROWN t/a KARNACK HARDWARE	APPELLANT
AND	THE COMMISSIONER GENERAL (formerly The Commissioner of Taxpayer Appeals)	RESPONDENT

Karen O Russell for the Appellants

Cecelia Chapman-Daley & Suesette Rogers for the Respondent

ORAL JUDGMENT

Revenue Appeal – Time within which to bring appeal expired- Whether extension of time to file appeal should be granted- Principles to be considered for such a grant

Heard: 23rd June, 2015

Cor: Rattray, J.

[1] There are two matters before the Court filed in Revenue Court Appeals No. 2 and 3 of 2015, by the Appellant Milton Brown. In both matters, the Appellant is seeking an extension of time within which to appeal decisions of the Commissioner General made in November, 2009, as regards additional income tax and additional general consumption tax for the year 2007. Although a separate application was filed in each action, the issues and the time frames in both matters are almost identical. The parties also are the same, although

the areas for which tax liability were imposed differed. I therefore found it advisable that Counsel address both applications at one time and this approach was adopted.

[2] The main issue prompting these applications is the Notice of Decision of the Taxpayer Appeals Department in both matters decided on the 30th December 2011, which confirmed the assessments made against the taxpayer Milton Brown. The last paragraph of both those decisions advised the Appellant of his right to appeal to the Revenue Court within thirty (30) days of the receipt of the Notices.

[3] The Appellant contended that on the 19th January, 2012 Notice of Decision was delivered to his accountant, who referred him to attorney-at-law and chartered accountant, Ethlin Norton Coke. That individual requested the tax authorities by letter dated 20th February, 2012, to review the decision and also pointed out that the Appellant did not receive a complete copy of those decisions. This was remedied by the said authorities under cover of their letter of the 21st February, 2012 addressed to the Appellant, which enclosed copies of the decisions.

[4] Shortly thereafter, by letter of the 2nd March, 2012, the Taxpayer Appeals Department forwarded copies of the decisions to Mrs. Norton Coke and also indicated that the Appellant had thirty (30) days from receiving the Notices of Decision to appeal same in the Revenue Court. They went on thereafter to advise that, "That is his next option". They also pointed out that the Commissioner of Taxpayer Appeals had no jurisdiction to review an appeal decision once issued to the parties and indicated that if her client was still dissatisfied, he must now appeal to the Revenue Court.

[5] The Appellant in his affidavit stated that, as there was no meaningful settlement, nor any decision as to the way forward agreed on, the Appellant's

accountant wrote to the Minister of Finance by letter dated 31st July, 2013 seeking their assistance. In the meantime, the Appellant was served with summonses to appear before the Resident Magistrate's Court for the parish of St Ann, as regards the collection of taxes with respect to these matters.

[6] Having received no response to the correspondence, a further letter dated 16th September, 2013 was written by that accountant to the Honourable Horace Dalley at the Ministry of Finance and Planning, requesting assistance and seeking his intervention with respect to the Appellant's tax issues. By letter dated 19th August, 2014, the Minister of Finance responded to the Appellant's accountant. He advised that the Appellant utilise the provisions of the General Consumption Tax Act and Income Tax Act, appeal to the Revenue Court, and seek the Court's discretion to hear the application, even though the time for appealing may have expired.

[7] Counsel for the Appellant argued that her client always intended to defend and to appeal the decisions and that he obtained the services of a new attorney-at-law to whom he gave instructions. The Court records indicate that the Notice of Application to Extend Time to file Appeal was lodged on the 21st January, 2015. The affidavit evidence revealed that by the very latest, the Appellant would have received the Notices of Decision on or about the 2nd March, 2012.

[8] The Revenue Court Rules provide a thirty (30) day period from that date to file any Notice of Appeal. Counsel for the Appellant has frankly admitted that the delay was inordinate, but asked the Court to exercise its powers to extend the time. She also argued that in the circumstances, the intention of her client was always to appeal. However, he faced certain challenges, not the least of which was the illness of Mrs. Norton Coke, his attorney-at-law/chartered accountant and the difficulty in obtaining of obtaining papers from another of his accountants.

[9] Counsel urged the Court to refer to the common law principles applied in civil cases when considering the grant of extension of time. She cited the Court of Appeal decision in the **Attorney General of Jamaica, Western Regional Health Authority v Rashaka Brooks Jnr (A Minor) By Rashaka Brooks Snr (His father and next friend) [2013] JMCA 16**. There, Brooks JA referred to Rule 1.2 of the Civil Procedure Rules (CPR), which states:

“The Court must seek to give effect to the overriding objective when interpreting these rules or exercising any power under these rules”.

He went on to state that:

“The result of applying that principle is that there should not be an inflexible stance where the Court is given a discretion. Generally, each case has to be decided on its own facts.”

[10] The learned Judge of Appeal also referred to the Judgment of Lightman J in the case of **Commissioner of Customs and Excise v Eastwood Care Homes (Ilkeston) Ltd and Ors** in which Lightman J stated at paragraph 8:

“The position, however, it seems to me, has been fundamentally changed, in this regard, as it has in so many areas, by the new rules laid down in the CPR which are a new procedural code. The overriding objective of the new rules is now set out in Pt 1, namely to enable the Court to deal with cases justly, and there are set out thereafter a series of factors which are to be born in mind in construing the rules, and exercising any power given by the rules. **It seems to me that it is no longer sufficient to apply some rigid formula in deciding whether an extension is to be granted. The position today is that each application must be viewed by reference to the criterion of justice and in applying that criterion there are a number of other factors (some specified in the rules and some not) which must be taken into account.** In particular, regard must be given, firstly, to the length of the delay; secondly, the explanation of the delay; thirdly, the prejudice occasioned by the delay to the other party; fourthly, the merits of the appeal; fifthly, the effect of the delay on public administration; sixthly, the importance of compliance with time limits, bearing in mind that they are there to be observed; ...”

[11] Counsel Mrs. Chapman Daley had no difficulty accepting the principles set out in the judgment of Lightman J. She referred to what can only be described as the frank concession by Counsel for the Appellant that the delay was inordinate. However, she also argued that no credible explanation had been given for the delay. She highlighted the prejudice to the tax authorities, due to their failure to collect the revenue assessed, as the collection process had been thwarted. She mentioned the fact that according to the Appellant's affidavit evidence, he was still not in a position to proceed with the appeal, due to the absence of documents. Counsel also referred to the delay in public administration caused by the failure of the authorities to collect revenue, despite proceedings in the Resident Magistrate's Court, presumably as a result of this application. She contended that based on the facts of this case, no extension of time ought to be granted.

[12] I am satisfied that on the material before me, the delay in making the application for an extension of time within which to appeal is inordinate, as conceded by the Appellant's counsel. But that by itself is not enough to warrant the refusal of the grant of the Order sought. Any discretion to be exercised by the Court must be applied based on the particular circumstances of each case.

[13] This Appellant was advised on several occasions of his right to appeal the decisions made. By letter dated 21st February, 2012, he was sent complete copies of the Notices of Decision which advised of his right of appeal within thirty (30) days. Additionally, the Notices of Decision were sent to his attorney-at-law under cover of letter dated 2nd March, 2012. Those Notices both alerted him of his right to appeal to the Revenue Court within thirty (30) days of the date of the receipt of the decisions, that is, by the first week in April, 2012.

[14] In correspondence received by the Appellant from the Ministry of Finance, having decided to pursue some form of administrative relief, he was advised, this time by letter dated 14th August, 2014, under cover of the signature of the Minister of Finance, to apply to the Revenue Court to extend the time to appeal, and that such appeal ought to have been done within thirty (30) days of receipt of the decision. Despite this advice, the Appellant's application for leave to extend time to file appeal was not in fact filed until some five months later on the 21st January, 2015. No attempt was ever made by the Appellant to explain this delay.

[15] One of the considerations I accept that this Court must bear in mind is the importance of compliance with time limits, as they are there to be observed as stated by Lightman J. I am satisfied after considering all the evidence before me, that no credible explanation has been given for the delay in filing an appeal between March, 2012 and January, 2015. The Appellant, despite several notices and correspondence advising of the steps available to him with respect to appealing these decisions, embarked on a frolic of his own, seemingly blind to the proper available procedures. He did so at his own peril.

[16] I am not satisfied on the evidence that he had a genuine, continuing intention to pursue this appeal. If he had, he would have taken the obvious steps pointed out in the correspondence and notices referred to. It may well be that he was wrongly advised. However, there is no evidence of this. In balancing the respective contentions raised, I am not satisfied on the material before me that the time within which the Appellant may appeal from the decisions ought to be extended.

[17] The applications are therefore refused.