



[2025] JMRC 02

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

REVENUE COURT

APPEAL NO. 2023 RV 00007

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| BETWEEN | KISHAN SHARMA T/A JAMAICA'S GIFTS & MORE | APPLICANT |
| AND | THE COMMISSIONER GENERAL OF TAX ADMINISTRATION JAMAICA | RESPONDENT |

IN OPEN COURT

Karen O. Russell, Attorney-at-Law for Applicant.

Gabrielle Warren and Eavean Hylton, Attorneys-at-law for the Respondent.

Heard: 12th and 13th November 2024, and 28th March 2025

Revenue Procedure - Revenue Court Rules 1972 - Rule 32 - Consolidated application to extend time to appeal and the appeal - Consideration on applications to extend time to appeal.

General Consumption Tax Act - Section 40 (4) (b) - Whether decision handed down after six months of receipt of objection is attributable to the taxpayer - Whether the additional assessment to GCT is wrong in principle and/or excessive in amount and therefore erroneous.

C. BARNABY, J

INTRODUCTION

[1] The Applicant taxpayer, Kishan Sharma, was a sole trader trading as Jamaica's Gifts & More, which had the retail sale of bond goods and other retail sale in

specialized stores as its concern. The business commenced operations in February 2013 and was selected for Income Tax Audit for the 2014 Year of Assessment under the fiscal incentive programme. Adjustments were made to the Applicant's GCT returns relative to additional supplies and output tax for the periods January 2014 to December 2014 as a result of the audit findings. Consequently, a net tax adjustment of **Two Million Four Hundred and Thirty-nine Thousand Eight Hundred and Ninety-eight dollars (\$2,439,898.00)** was raised against the Applicant.

- [2] Being aggrieved by the additional assessment, a letter of objection dated 31st December 2019 was submitted to the Respondent on 10th January 2020 (hereinafter called "the Objection"). In summary, the grounds relied upon are that the assessment is excessive and does not reflect transactions for the period under review, the auditor ignored input GCT on purchases and other legitimate business expenses, the taxpayer was not allowed due process during the course of the audit as his duly appointed representative was not permitted or allowed to attend the closing conference and be present when findings were discussed and explained; and that prior to the expiration of the objection period, the tax adjustments were posted to the tax system where it incurs interest charges on a daily basis contrary to normal practice.
- [3] The Objection was accepted, and the case was assigned to Ms. Baker, a tax auditor of the Respondent on 7th February 2020. Some two years and nine months after the Objection was received, the Applicant was advised by Notice of Decision dated 23rd September 2022 (hereinafter called "the Objection Decision"), that a decision was taken to confirm the assessment raised .
- [4] The Applicant appealed Objection Decision to the Revenue Appeals Division (hereinafter called "the RAD") which confirmed the additional assessment in its Notice of Decision dated 18th May 2023 (hereinafter called "the RAD Decision", and advised the Applicant of his right to appeal to this court within thirty (30) days of receipt of the said decision, or such longer period as may be permitted by or

pursuant to rules of court as prescribed by section 14(1) of the **Revenue Appeals Division Act, 2015** (hereinafter called “the RAD Act”).

[5] On the 7th September 2023 the Applicant filed a Notice of Application for Court Orders seeking an extension of the time to file his appeal, and a Notice of Appeal which challenges the following “conclusions” of the RAD:

(a) that General Consumption Tax (hereinafter “GCT”) objection was dealt with within the time specified by law.

*(b) that the assessed additional GCT liability of **Two Million Four Hundred and Thirty-nine Thousand Eight Hundred and Ninety-eight dollars (\$2,439,898.00)** (hereinafter referred to as ‘the deposit’) along with all attendant interest, penalties and surcharge payable by the Appellant **SHOULD NOT BE** vacated or removed from the records of the Respondent. (Sic)*

[6] During the management of the matter, factual issues appear to have been joined in respect of the date of receipt of the RAD Decision by the Applicant; and whether the Applicant or Ms. Baker supplied a letter seeking an extension of the time within which the taxpayer should produce records in support of his objection. These issues had implications for whether the GCT objection was dealt with in the time specified by law, and concerned both the application for extension of the time to appeal and the appeal itself. It was determined that the issues should properly be resolved by the cross examination of witnesses. In consequence, the parties were advised of the court’s intention to consolidate the processes and treat the hearing of the application for extension of time as the hearing of the appeal.¹ The Respondent having filed a Statement of Case on 11th October 2024, and with a view to save costs and time for the parties and ensure efficient use of the court’s resources, it was so directed.

¹In addition to abridging or extending the time for doing any act or taking any proceedings under rules governing their jurisdiction, rule 32 of the **Revenue Court Rules, 1972** permits the Court or Judge, to direct departure from court rules in any other way, where the interest of justice requires.

[7] In light of the consolidation, although some evidence by affidavit was then filed, the parties were permitted to file and serve any additional evidence, submissions and authorities on which they intended to rely in pursuit or opposition of the application for extension of time and the appeal.

[8] The hearing into the consolidated processes was held over two (2) days on the 12th and 13th November 2024. Following cross examination and the close of the parties' case on the latter date, there being non-compliance by the Applicant with the order for the filing and service of written submissions and authorities, the following orders, so far relevant, were made.

1. *The Applicant is permitted to file and serve written submissions and authorities on or before 21st November 2024 by 4:00 p.m.*
2. *The Applicant is to file responses to the authorities relied on by the respondent on or before the 25th November 2024 by 4:00 p.m.*
3. *The Respondent is to file his response to the authorities relied upon by the Applicant in written submissions and supplemental submissions, in respect of matters which may have arisen as a result of cross examination, on or before 19th December 2024.*
4. *Where a party fails to file documents as required by orders 1 to 3 herein, the court will not consider those submissions.*
5. ...

[9] Two bundles titled *Index to Respondent's Submissions to the Applicant's Notice of Application for Extension of Time* and *Index to Respondent's Submissions* were filed on 6th November 2024. They contain the *Respondent's Submissions in Opposition to the Applicant's Notice of Application for Extension of Time* and *Respondent's Submissions* filed on the said 6th November 2024, and the authorities cited in the respective submissions. The court was advised at the hearing that the submissions and authorities were served on the Attorney-at-law for the Applicant.

[10] *Written Submissions of Kishan Sharma* were filed on 21st November 2024. Copies of the authorities referenced were not attached or separately filed, and it does not contain responses to the authorities relied on by the Respondent, nor have responses to the Respondent's authorities been filed. I am advised by the *Respondent's Response to Appellant's Authorities* filed 19th December 2024 that

written submissions were received but that no copies of the authorities referenced, nor an index of the authorities was served. The Respondent indicates that of the four (4) cases referenced, two (2) bore no citation, one (1) could not be found at the citation provided and another was not located to facilitate a response to it. The *Respondent's Supplemental Submissions* in respect of matters which may have arisen as a result of cross examination were also filed on 19th December 2024 as ordered.

[11] On the 13th November 2024 decisions on the application and on the appeal were reserved to 28th March 2025, they and the reasons for them are set out below.

ISSUES AND SUMMARY DETERMINATION

[12] The following broadly stated issue and sub issues are dispositive of the application for extension of the time to appeal the RAD Decision as well as the Notice of Appeal.

1. Whether the court should permit the Applicant to file his Notice of Appeal out of time and allow the appeal.
 - (a) Whether the RAD misdirected itself in fact and law by confirming the additional GCT assessment levied against the Applicant.
 - (b) Whether the additional assessment was levied by the Respondent through illegitimate or unjust treatment of the Applicant.
 - (c) Whether the additional assessment levied on the Applicant is erroneous and unsupported by trading activities or accounting records.

[13] For the reasons set out below, I find that the grounds pursued in the Notice of Appeal are without merit and that the appeal must accordingly fail. The application

to extend time to file the Notice of Appeal and the appeal having been consolidated, the application must necessarily be refused on the question of arguability. In so concluding I have duly considered all the authorities cited in submissions and received by the court, but have not found it necessary to refer to each of them.

DISCUSSION

1.

Whether the court should permit the Applicant to file his Notice of Appeal out of time and allow the appeal.

The Application for Extension of Time

[14] The grounds on which the application for extension of time to file the appeal are pursued are that:

1. *The application is being made as soon as practicable after the time within which the Appellant should have filed his Notice of Appeal (sic)*
2. *The Appellant's failure to file his Notice of Appeal in time was not intentional and there are good reasons for failing to do so (sic)*
3. *The Appellant is worthy of a grant of extension of time as he has an arguable case for an appeal against the Respondent (sic)*
4. *The Respondent will not suffer any real prejudice if the time within which the Appellant shall file his Notice of Appeal is extended (sic)*

[15] Pursuant to section 14(1) of the RAD Act, a person aggrieved by the decision of that tribunal may appeal to this court within thirty (30) days of receipt of the decision or such longer period as may be permitted by or pursuant to rules of court. The Applicant was so advised in the RAD Decision. It is beyond dispute that this court

has the discretion to extend the time for the filing of notices of appeal, even after the time for filing of an appeal has expired.²

[16] The decision of the Court of Appeal in **Leymon Strachan v Gleaner Company Ltd and Dudley Stokes** (unreported), Court of Appeal, Jamaica, Motion No 12/1999, Supreme Court Civil Appeal, Motion No. 12/99, (6 December 1999) continues to provide good guidance to the court confronted with an application for extension of the time within which to appeal. The court is required to consider and be satisfied that:

- (a) the length of the delay is not inordinate;
- (b) there are good reasons for the delay;
- (c) there is an arguable case for an appeal; and
- (d) if the application is allowed, the degree of prejudice to the other parties is not oppressive.

[17] This authority and others demonstrate that delay or the absence of good reason for the delay in appealing a decision - although some reason must be given - do not prevent the favourable exercise of the court's discretion to extend the time to appeal. Ensuring that justice is done is a fundamental consideration for the court. In that regard, questions of prejudice as to the arguability of the appeal assume greater significance.

[18] The date on which the Applicant received the RAD Decision is disputed. In the Affidavit of Kishan Sharma in Support of Notice of Application for Court Orders sworn and filed on 5th and 7th September 2023 respectively (hereinafter called "the First Affidavit of Kishan Sharma), he initially avers that he was served with the said decision on the 20th July 2023. After referencing a request made of his accountant, Mr. Reid, for documents said to be in his position, however, Mr. Sharma goes on to say, "[t]hat once [he] obtained the documents from Mr. Reid, it was extremely

² Supra.

close to the 19th day of July 2023, the deadline for filing the Notice of Appeal”.
[Emphasis added].

- [19] Mr. Sharma was not challenged on the inconsistency in cross examination and I am unable to reconcile the deadline of the 19th July 2023 for the filing of the appeal and receipt of the RAD Decision a day after, on the 20th July 2023. Both things cannot be true, and I am constrained to regard Mr. Sharma’s evidence in these regards as unreliable.
- [20] It is the evidence of the Respondent, on the Affidavit of Ewan Harvey sworn and filed 12th September 2023, that he emailed a copy of the RAD Decision to the Applicant, and his accountant and representative before the RAD, Mr. Reid on 19th May 2023. The email addresses were those provided to the RAD and previously used to communicate with Mr. Sharma and his representative. There was no inherent inconsistency in Mr. Harvey’s evidence in this regard and it being unchallenged, it is accepted. Accordingly, the thirty (30) days for appealing the RAD Decision to this court would have expired on the 19th June 2023.
- [21] The Applicant did not file his Notice of Appeal until the 7th September 2023. There was therefore a delay of some eighty (80) days or two (2) months and eighteen (18) days. While delay of any length ought to be frowned upon, I do not believe the period under consideration would properly be characterised as inordinate as submitted by the Respondent.
- [22] Mr. Sharma’s reason for the delay is that upon being served with the RAD Decision he immediately sought to meet with Mr. Reid, but that due to the latter’s schedule it took a few days for the meeting to take place and for a discussion to be had about the contents of the decision. He goes on to say he was “subsequently” advised by Mr. Reid that he needed to engage an attorney-at-law as the matter had to be placed before this court for resolution. Acting on this advice he says he approached a number of attorneys-at-law but the matter being outside of their speciality, they refused the engagement. He was eventually referred to Ms. Russell and was not immediately given an appointment. He eventually consulted with Ms. Russell who asked him to request relevant documentation which were

pertinent to her understanding of the matter, but which were in Mr. Reid's possession. Receipt of the documents took some time he says, and once the documents were obtained it was extremely close to the 19th July 2023. Ms. Russell also required a retainer which he could only afford to pay in part.

- [23] The dates of attempted contact with Mr. Reid and Ms. Russell, eventual meetings with them, the specific date of receipt of relevant documentation from Mr. Reid or the date on which the Applicant was able to effectively engage Ms. Russell have not been stated. The court is therefore unable to determine for itself the reasonableness of the efforts made between receipt of the RAD Decision and the filing of the appeal and to conclude that there is good reason for the delay.
- [24] In consideration of the foregoing, while there is merit to the Respondent's submission that there is no good reason for the delay, the very decision of **Leymon Strachan** relied upon by the Respondent is authority for the principle that the absence of a good reason does not prevent the exercise of the discretion to extend time.
- [25] As it relates to prejudice, the Respondent submits that there is no evidence before the court for the instant case to be designated as "*special*" and in need of saving, which is to be "*gleaned from the Applicant's uninspiring posture in advancing [the] appeal*"; and that an award of costs will not compensate the Respondent. The decision of Anderson K., J in **Hugh Bennett & Jacqueline Bennett v Michael Williams** [2013] JMSC Civ 194 at [36] to [39], [44] and [49] was cited in aid.
- [26] Among other things the **Bennett case** was concerned with an application to file a defence out of time. The principles relied upon by the learned judge - in concluding that there would, at most, only be minimal prejudice to the defendants if the claimants' application was granted by the court in light of what he found was a compelling claim by the applicants/claimants, and their strong defence to the defendant's counterclaim - recommend themselves to the court. As rightly observed at [39] after referencing a number of authorities, "... *[t]he objective of [the] court always must be, not to punish a party in default, but rather, to ensure that justice be done as between the respective parties.*"

[27] A court confronted with an application to extend the time to appeal has the same objective of ensuring that justice is done between the parties. This is evident on the decision in **Leymon Strachan**.

[28] As observed by the Respondent in submissions, the Applicant does not indicate the prejudice he would suffer if his application to extend the time to appeal is refused by the court. That notwithstanding, inherent in the refusal of an application for leave to pursue an appeal, is that a taxpayer may be made to pay taxes levied upon him which are erroneous.

[29] The Respondent submits that it has been prejudiced as follows:

(a) numerous delays caused by the Applicant's inaction and failure to provide records and documents for the assessment period which has hindered its ability to efficiently and effectively carry out its mandate in respect of tax administration and collection, for the delivery of public services; and

(b) being deprived of certainty as to when a debt due and outstanding for many years can be collected.

Those are valid considerations for the Revenue.

[30] As I observed in **Gregory Chung v The Commissioner General (Tax Administration Jamaica)** [2024] JMRC 1 where a delay of over six (6) years in pursuing an appeal was found to be inordinate, prejudicial and not allowed,

[69] ... the court must also be mindful of prejudice to the Commissioner and proper revenue administration generally, where appeals against assessments are not pursued timely and with due diligence.

[70] In the like manner that a litigant who is successful in a court below is entitled to regard a decision in his favour as being final, the Commissioner who has made and communicated to the Taxpayer his decision on the notice of assessment is entitled to rely on and seek to recover the sums assessed, where his decision remains unchallenged... Recovery of an outstanding tax liability is not always assured and is itself time bound.

[71] Further, judicial notice may be taken of the purposes for which public revenue is raised, and the negative impact which delay in settling what may or

may not be collectible by a relevant revenue authority may have on the provision of essential public services. When regard is so had, delays in pursuing revenue appeals ... must be regarded as inimical to good revenue administration generally and prejudicial to the Commissioner...

- [31] That being said, I am of the view that where the delay is not inordinate, those broad considerations of prejudice alone should not operate to prevent an applicant from pursuing an arguable appeal which the court regards as having a real prospect of success. If the appellant is unsuccessful in the substantive appeal, the tax liability remains, and an order for recovery of costs of the appeal can be made in favour of the Revenue.
- [32] The decision having been made to consolidate the processes, the enquiry into arguability is appropriately subsumed in the discussion of the merits or otherwise of the grounds of appeal.

The Appeal

- [33] As previously indicated, the Applicant challenges two (2) conclusions by the RAD:
- (a) *that General Consumption Tax (hereinafter "GCT") objection was dealt with within the time specified by law.*
 - (b) *that the assessed additional GCT liability of **Two Million Four Hundred and Thirty-nine Thousand Eight Hundred and Ninety-eight dollars (\$2,439,898.00)** (hereinafter referred to as 'the deposit') along with all attendant interest, penalties and surcharge payable by the Appellant **SHOULD NOT BE** vacated or removed from the records of the Respondent. (Sic)*
- [34] These are the grounds relied upon.
- (a) *The Revenue Appeal Division misdirected itself in fact and law by confirming the Respondent's GCT assessment levied on the Appellant on the 23rd day September 2022 having surpassed the limitation period.*

- (b) The additional GCT liability assessed by the Respondent is erroneous and not supported by the Appellant's trading activities and/or accounting records thus making it arbitrary and baseless.*
- (c) The Respondent by her employee(s), agent(s) and/or servant(s) acted maliciously, dishonestly and by preparing and filing the letter dated the 15th day of June 2020 in a manner which exceeds her authority and was prejudicial to the Appellant.*
- (d) the Respondent through duress, manipulation, coercion and in breach of natural justice failed to acknowledge the Appellant's professional representative on record and exploited the Appellant's fear, panic and ignorance which resulted in an unjust treatment of the Appellant.*
- (e) The letter relied on by the Respondent as her authority for extension cannot suffice to extend the time pass (sic) the limitation period.*

[35] The Applicant seeks the following nine (9) reliefs:

- (a) a declaration that the decision contained in the Notice of Decision of the Revenue Appeal Division delivered on the 19th day of June 2023 that the Appellant's objection to the Respondent's assessment for GCT for the period January to December 2014 levied on the Appellant was in fact not made in the time stipulated by Section 40(4)(a) of the GCT Act.*
- (b) a declaration that the failure of the Respondent to hand down the decision under was not attributable.*
- (c) a declaration that there was misrepresentation, mishandling and breach of good ethical practice by the employee(s), servant(s) or agent(s) of the Respondent who acted on their own and prepared, produced and filed with the Respondent a letter dated the 15th day of June 2020 to extend the time beyond that stipulated by Section 40(4)(a) of the GCT Act (hereinafter referred to as "the letter").*
- (d) a declaration that the letter as mentioned in (c) herein, though executed by the Appellant, was prepared in a manner and under*

circumstances that breached natural justice as the Respondent disregarded the Appellant's representative on record being a registered Public Accountant without reasonable justification and thus thereby exploited the ignorance of the Appellant.

(e) a declaration that the letter executed by the appellant was so done under overt or likely duress, coercion and/or intimidation by the Respondent's employee(s), servant(s) or agent(s).

(f) a declaration that the Respondent, at the time of issuing the decision, was barred from so doing when she delivered the assessment in September 2022 with or without the voluntary or involuntary co-operation of the Appellant; this being so as the assessment levied was for the period January to December 2014.

(g) an Order that the GCT assessed in the sum of Two Million Four Hundred and Thirty-Nine Thousand Eight Hundred and Ninety-Eight Dollars (\$2,439,898), all attendant interest, penalty and surcharge be discharged or set aside.

(h) an Order for cost to be awarded to the Appellant herein.

(i) any such other relief as this Honourable Court sees fit.

[36] The Statement of Case for the Respondent was filed on 11th October 2023 where the delay in determining the Objection is attributed to the Applicant in failing to produce records requested by the Respondent, and in requesting by letter dated 15th June 2020, additional time to submit outstanding documents. It is accordingly contended that the additional assessment was validly made within the period prescribed by the GCT Act and that the Applicant having failed to pay the principal sum raised by the assessment, interest and penalties ought to apply. The Respondent asks that the appeal be dismissed, and the decision of the RAD be confirmed. It was also prayed that the Applicant pays the costs of and incidental to the appeal and such further and other relief the court deems fit.

[37] Appeals to this court being by way of rehearing, ahead of specifically addressing the issues raised on the appeal, I find it necessary to briefly reference the

legislative context within which the dispute arises, the findings of the RAD and provide a summary of the competing submissions.

Context of the dispute

[38] Section 40 of the GCT Act makes provisions for objections. There is no dispute that the Applicant submitted his Objection in respect of additional GCT assessment to the Respondent on 10th January 2020. Equally settled is that the Objection was accepted and the Applicant was requested by letter dated 12th February 2012 under the hand of Ms. Baker to *“kindly have available for examination, all original documents that [he] has to substantiate [his] grounds of objection ... within thirty (30) days of receipt of this Notice”*. The Applicant was also advised that *“pursuant to Section 40(3) of the General Consumption Tax Act, failure to produce books or documents within the prescribed period will result in the Notice of Objection ceasing to have effect and the assessment as made, being final and conclusive.”* There is also no dispute that by the Objection Decision dated 23rd September 2022 the Applicant was advised that *“... [his] objection to the assessment ... has been reviewed. Having considered carefully all matters, as required under section 40 of the General Consumption Tax Act, a decision was taken to confirm the assessment raised.”*

[39] Pursuant to section 40(4) of the GCT Act,

Where a person has objected to an assessment made upon him -

- (a) in the event of his agreeing with the Commissioner General as to the amount at which he is liable to be assessed, the assessment shall be confirmed or amended accordingly;*
- (b) in any other event the Commissioner shall give notice in writing to that person of his decision in respect of the objection, so, however, that **where that Commissioner fails to hand down his decisions within six months of the receipt by him of the***

objection and the delay is not attributable to the person's omission or default, the assessment shall be null and void.

[Emphasis added.]

- [40] The Applicant did not agree with the amount at which he was assessed. Section 40(4)(a) is accordingly inapplicable notwithstanding its reference in the Applicant's prayer for relief in the Notice of Appeal.
- [41] The time limit of six (6) months imposed on the Respondent for the handing down of a decision on objection is prescribed at section 40(4)(b), which provides that where there is non-compliance with the limitation period, the assessment to GCT which is the subject of the objection is null and void. This is the result of any delay - however long or short - in handing down a decision after the expiration of the six (6) months, unless the delay is attributable to the omission or default of the objector.

The findings of the RAD

- [42] The Objection Decision was handed down well beyond the prescribed six (6) month limitation period. The RAD so concluded at paragraph 56 of its decision. It nevertheless went on to find *"that the Respondent's decision is not null and void as the delay was attributable to the Appellant [and that the] decision is valid and therefore stands as it is not in breach of **Section 40(4)(b) GCT Act.**"* [Emphasis in original.]
- [43] In so doing, the RAD considered the letter below which was signed by Mr. Sharma (hereinafter called "the Extension Letter").

*June 15, 2020
Montego Bay Revenue Service Center
18b Howard Cooke Boulevard,
St. James*

Dear Sir/Madam:

Re: Kishan Sharma T/a Jamaica Gifts and More - TRN ... Extension of Time to Produce Documents

I am requesting additional time as it relates to concluding the objection process. This is due to the fact that I am having challenges in gathering all the documents necessary to prove my case.

I look forward to hearing from you acknowledging this request.

Yours truly

Kishan Sharma

Proprietor

[44] Mr. Reid, the Applicant's representative contended before the RAD that the Applicant did not write the letter and that it was written by Ms. Baker who persuaded the Applicant to sign under duress and coercion.

[45] On a careful reading of the RAD Decision however, it is clear that the tribunal made no finding in respect of the writing of the Extension Letter. The tribunal concluded at paragraph 42 that the "letter dated June 15, 2020, requesting added time to submit evidence pertinent to his objection, was properly executed by the Appellant and is valid in nature." As to the effect of the referenced request, the RAD says this at paragraph 55.

*.. The due date for the Respondent to hand down its decision would have been **July 10, 2020**. Therefore, the timing of the Appellant's request to the Respondent for more time to produce records would have made it impossible for the Respondent to issue his decision by **July 10, 2020**. Notable also was the fact that the time in which the records would have been submitted was not specified in the Appellant's letter. This was an indication that after six months of filing the relevant Notice of Objection, the Appellant did "not have his house in order," in respect to presenting the requisite evidence to substantiate his grounds of objection within the timeframe allowed by the statute.*

[Emphasis in the original]

[46] The conclusion on the validity of the Extension Letter follows the earlier indication at paragraph 41 of the said decision that the original letter was presented for examination by Mr. Sharma and his representative, and Mr. Sharma *“indicated that he did not write the letter, however, he read the letter, understood it, and signed it”*; and at paragraph 42 that:

... the question of who prepared the letter is still unanswered. Notwithstanding, this question is rendered immaterial in light of the fact that the Appellant has admitted that he read the letter, understood its content, and signed it. Therefore, even if he did not prepare the letter, he understood its meaning and accepted its intent, and therefore endorsed it with his signature. By signing the letter and presenting it to the Respondent, the Appellant sought to extend to (sic) life of the Objection process.

[47] As to the allegation of coercion and duress, the Commissioner of the RAD also determined at paragraph 42 that *“... no evidence has been submitted at appeal to substantiate the Appellant’s claim that he was forced to sign the letter against his free will, that is, by coercion. His words at appeal are clear and unambiguous, he read it, he understood it, and he signed it. In my view, these words settle the contention and seemingly absolve the Respondent from the malpractice claim.”*

[48] In concluding that the delay was attributable to Mr. Sharma, the RAD also considered whether a letter dated 13th August 2020 was served on him, issue having been raised in that regard by correspondence from his representative dated 2nd December 2022 and at the appeal hearing meeting. The tribunal found at paragraph 43 that the letter, which references request for more time by Mr. Sharma to produce documents within thirty (30) days of the letter’s receipt, was duly served on 25th August 2020; and that Mr. Sharma’s final request for more time was made on 13th August 2020 after the expiration of the statutory six (6) months period for the handing down of an objection decision , as stated at paragraph 54 of the RAD Decision. No issue was taken in these proceedings with the findings of the RAD in these regards.

[49] In determining attribution the RAD also considered, as evidenced at paragraph 54 of the its decision, that there was non-compliance with the several requests by the

Respondent for the submission of records pursuant to section 40(2) of the GCT Act, and that there were delays in the scheduling of the objection hearing to which Mr. Sharma and his representative contributed.

The Applicant's submissions in these proceedings

[50] The *Written Submission of Kishan Sharma* filed 21st November 2024 are undated and unsigned. They were nevertheless filed by Ms. Russell, and I accordingly attribute its contents to her. It is urged upon the court that that there were grave breaches of procedure and of the Applicant's right to natural justice which should move the court to quash and declare void the Respondent's decision.

[51] As to procedural impropriety, it was submitted that this court should not fall into the alleged error of the RAD in regarding resolution of the dispute as to the composition of the Extension Letter as immaterial or in Ms. Russel's words, "*that what mattered most was the fact that Mr. Sharma, the Appellant read, understood and signed the letter...*" She went on to say that duress and threat are not necessarily physical, and while difficult to assess, allowing the Applicant to deal with the challenges of the matter without regard for his representative of choice can amount to duress and coercion. As to the Applicant's understanding of the contents of the letter she remarks and asks as follows.

Understanding the contents is one issue but what of the implications. Did he understand that this could possibly mean to agree to time for the Respondent to return later, which simply means significantly larger add-ons in the forms of interest and penalties and surcharge, compounded? Would a reasonable man where there is no evidence to support a promise of addition records beyond June 3, 2020 was and who insists that he told Ms. Baker that he had nothing more, put himself in this disadvantageous position because he understood well? On the balance of probability, no.
(sic)

[52] Ms. Russell also submits that there was a breach of the Applicant's right to natural justice, specifically the right to fair treatment. In this regard she suggests that the

procedure of the Respondent in arriving at its decision was unfair and procedurally improper. While conceding that there is no absolute right to a representative and that it is not in all instances that the denial of a representative operates to invalidate a decision, she contends that:

... a representative who is not communicated to and with, is a representative who is pushed aside and further amplified by a deal direct with the person are actions synonymous to denial of right of representative. (Sic)

[53] Ms. Russell contends at paragraph 19 of her submissions that there were inconsistencies in the evidence of Applicant and Ms. Baker and that there were anomalies in Ms. Baker's evidence that are sufficiently material to discredit her. She promised to address them later in the submissions but they were not addressed. At paragraph 28 she indicates that having embarked on a full trial it was unclear whether the submissions ought to include conduct of the parties in the witness box and stated that if required, she asks that consideration be given to her submission under the subheading "*credibility of the witnesses*". No such subheading appears in the submissions.

The Respondent's submissions in these proceedings

[54] With the exception of the *Respondent's Supplemental Submissions* filed 19th December 2024, which are undated and unsigned, submissions on his behalf were settled by Ms. Warren. The Respondent's submissions are accordingly attributed to her in these reasons for decision. She submits as follows.

- i. The burden of proof lies with the Applicant to not merely make declarations about the incorrectness of the assessment but to go further to show what is required to be done to correct it, and in that regard provide evidence which would aid in the displacement of the assessment.
- ii. The Applicant has failed to produce any credible evidence that it was Ms. Baker who composed the Extension Letter.

- iii. The Extension Letter was one of many acts by the Applicant to cause the delay of the Respondent's decision.
- iv. The Respondent's inability to hand down his decision within six (6) months of receipt of the objection was due entirely to the Applicant's omission or default.
- v. The Applicant was disingenuous in his requests for additional time as he well knew at all material times that he had no additional books or records.
- vi. The delay in the handing down of the Respondent's decision within six (6) months of receipt of the Objection was due to the Applicant's neglect to perform what was required by section 40(2)(a) of the GCT Act; and further or alternatively, the Applicant having failed to produce requested books or original documents within the time stipulated by section 40(2) of the said Act, his notice of objection ceased to have effect as early as March 25, 2020 and as such the additional assessment on audit became final and conclusive on that date.
- vii. The Applicant is being disingenuous when he says he was afraid, intimidated and quite stressed by Ms. Baker; and that at all times during the Objection and RAD appeals processes the Applicant was treated with utmost fairness, respect and courtesy.
- viii. There is no evidence of any reasonable motive for Ms. Baker to coerce the Applicant into requesting an extension to consider the objection and that on the evidence, the only person who stood to benefit was the Applicant.
- ix. The Applicant has not provided any adequate evidence to this Court to corroborate his assertions that the assessment is erroneous, as no affidavit evidence has been filed in support of the appeal to this court.
- x. There is no evidence of unfair procedure, procedural impropriety or breach of the Applicant's right to natural justice in the conduct of the objection process, particularly when the Applicant's conduct of both

initiating communication with and receiving communication from the Respondent's representative directly is considered.

- xi. There is nothing legislatively, procedurally or otherwise which places an obligation on the Respondent or his representatives to communicate with or contact the representative of a taxpayer; and that the duty to communicate, at all times, is principally with the taxpayer. Communication with the representative is a matter of courtesy.
- xii. The duty to ensure the presence or involvement of the Applicant's representative fell solely to the Applicant and it is he who has failed himself.
- xiii. That at all material times, the Applicant was given every opportunity to present his case and any documents in support thereof.
- xiv. That at all material times, the Applicant's representative was invited, included and heard in the Objection and RAD appeals processes, even when he appeared too occupied otherwise.
- xv. On consideration of all the evidence before the court and in applying the applicable laws, the court can only conclude that the Applicant has failed to substantiate his appeal, and entitlement to the orders and declarations sought.

[55] In respect of the credibility of the witnesses, the Respondent generally contends that the Applicant's evidence is filled with significant inconsistencies sufficient for this court to find that he is not a witness of truth. In the result, it is submitted that no weight or no substantial weight should be given to his affidavit evidence except where corroborated by other evidence. Of Mr. Harvey, it is submitted that under cross examination he withstood Ms. Russell's suggestions that he or RAD, failed to carry out the required due diligence and consider all the relevant factors to arrive at a decision. Of Ms. Baker, the general submission is that she maintained her composure and responded truthfully to questions and suggestions posed by Ms. Russell. The court was asked to accept Ms. Baker as a witness of truth and that the relevant weight be given to her evidence.

[56] In these circumstances Ms. Warren asks that the court finds in favour of the Respondent and refuse the application for extension of time to file the appeal and/or dismiss the appeal, confirm the decision of the Commissioner of the RAD, order the Applicant to pay the Respondent's costs of and incidental to the appeal, and such other relief as the court deems fit

The Burden of Proof

[57] As submitted by Ms. Warren the burden of proof lies on the Applicant who is required to satisfy this court that the assessment by the Respondent is "*erroneous*" within the meaning of section 41(4) of the GCT Act, which Morrison JA (as he then was) in **D.R. Holdings Ltd. v the Commissioner of Taxpayer Appeals** (JMCA, 31 October 2008), [25] said was "... *wide enough to embrace both a complaint that the assessment is wrong in principle and that it is excessive in amount.*" The Applicant must show that the sum assessed is not taxable and the reasons why that is so. The burden is not discharged by mere allegations but must be supported by evidence. The applicable standard is that which obtains in civil proceedings, that is, on a balance of probabilities.

[58] Save as expressly stated in the discussion of the two (2) sub issues below, I find the Respondent's submissions to be largely meritorious and determinative of the application and appeal in his favour.

(a) ***Whether the RAD misdirected itself in fact and law by confirming the additional GCT assessment levied against the Applicant.***

[59] The discussion here treats with grounds (a), (c) and (e) of the grounds of appeal. They concern the circumstances under which the Extension Letter came to be filed and whether it operated to extend the six (6) months statutory period for the handing down of the decision on the Objection by the Respondent.

[60] Save that an objection decision is required to be handed down “*within six months*” of receipt of a written objection, there is no prescription in the GCT Act for calculating the period for the handing down of an objection decision. The RAD determined that the Objection Letter having been received by the Respondent on 10th January 2020, an objection decision was statutorily due by the 10th July 2020. In this respect, the RAD and the Respondent in these proceedings rely on section 3 of the **Interpretation Act** which prescribes that in legislation and other instruments of a public character, the word “*month*” is “*a month reckoned according to the British Calendar*”; and the decision in **Dodds v Walker** [1981] 2 All ER 609. I can find no error with the period calculated by the RAD and submitted.

The Extension Letter

[61] It is clear on a reading of the RAD Decision that a dispute arose before it as to the composition, preparation or authorship if you will, of the Extension Letter. While there is no evidence that the RAD made enquiries of Ms. Baker in respect of the dispute, which it could certainly have done pursuant to powers given to it under its enabling legislation, the tribunal determined that its resolution was immaterial to determining the appeal in light of the Applicant’s admission that he read the letter, understood its contents and signed it. The RAD also concluded that there was no evidence before it that the Applicant was coerced into signing the letter.

[62] It appears from the RAD Decision that the grounds on which the Applicant appealed to the tribunal did not include any allegation of Ms. Baker writing the Extension Letter or of persuading the Applicant to sign it under duress and coercion. The Applicant’s representative having raised it in correspondence and at the hearing however, and the RAD being sufficiently concerned to require presentation of the letter in original form, it appears to me that the tribunal assumed an obligation to enquire into and determine the issue. The RAD made enquires of the Applicant but there is no evidence of any enquiries being made of and being responded to by Ms. Baker.

- [63]** While the Commissioner of the RAD in paragraph 40 of the decision states “... *In her Memorandum dated December 6, 2022, the Respondent’s Representative, Ms. Corina Baker, has denied writing the letter*”, Ms. Baker is not listed among the representatives for the Respondent before the RAD. Bobette Christie was a representative however, and exhibited to Mr. Harvey’s affidavit is a letter dated 6th December 2022 under her hand. Mr. Harvey avers that this was the response to correspondence from the RAD restating the position of the Respondent relative to allegation of coercion and expounding on the interaction between Ms. Baker and a Jenieve Gaynor who was purporting to be the new representative of Mr. Sharma at a point in the objection process. On my reading of the correspondence, there is no reference to the writing, preparation or authorship of the Extension Letter or any denial by Ms. Baker that she was its writer.
- [64]** The RAD did not rely on the purported denial however, it simply determined that resolution of that particular dispute was immaterial. Ordinarily, I would be inclined to agree with assessment of the RAD but in the face of the Applicant’s allegation that he was under duress and was coerced by Ms. Baker in applying for an extension of the time for the determination of the objection process, I find that the RAD failed to properly enquire into and determine the circumstances under which the statutory period for the handing down of a decision on objection by the Commissioner came to be extended. The appeal to this court being by way of rehearing however, the defect is curable here.
- [65]** The Applicant’s Objection was received 10th January 2020, and just over a month thereafter on the 12th February 2020, the Respondent through Ms. Baker wrote to him with a view to arranging a hearing to assist in the settlement of the Objection. The date of 1st April 2020 was proposed, and the Applicant was asked to have all original documents which he had to substantiate his Objection. The documents were to be made available within thirty (30) days of receipt of the letter.
- [66]** It is Mr. Sharma’s own evidence that records which were available “*at such time*” were presented to the Respondent’s representatives during the audit process. This suggested that he had not supplied all records during the audit process. He

admitted on cross examination that purchase invoices were missing. He also admitted that no receipts were produced for expenses and sales, and he submitted expense and sales books handwritten by him, during the audit process. He said he also produced bank statements and answered in the affirmative that after he had presented his documents to the auditors, they had requested more documents. As to whether he was able to give them additional documents he disclosed that he had found a few more invoices which he gave to them, such as for equipment for the store. Air conditioning was specifically referenced. The auditors he said asked whether he could find more purchase invoices and he had indicated that he would try to find them and if he did, he would bring them in. It suffices to say that no additional documents were supplied, that the audit process was concluded, and an additional assessment levied.

- [67]** Ms. Baker's evidence is that her letter dated 12th February 2020 was sent on or about the same date on which it was written. The Applicant admitted in cross examination that he received a letter in February 2020 from Ms. Baker asking him to produce books and documents to support his Objection to the additional GCT assessment. When he was asked if he had provided her these books and documents, he answered "*just one invoice from ATL with an air conditioner purchase.*"
- [68]** Recalling that the adjustment on the GCT Assessment related to additional supplies and output tax, Ms. Baker's request to produce original documents to support the Applicant's Objection was entirely appropriate.
- [69]** Mr. Sharma admitted in cross-examination that he met with Ms. Baker in June 2020 in relation to the GCT objection only, and that during the meeting he asked her for more time to find additional documents. This request was made notwithstanding the fact that the Applicant knew - having so admitted in cross examination - that he had no original documents relating to sales and purchases, even at the point of conclusion of the audit process. I find that Mr. Sharma's conduct in this regard is demonstrative of an earnest and disingenuous effort to delay the determination of his Objection.

[70] When asked if the request for additional time at the meeting in June 2020 was made after he gave Ms. Baker the one ATL invoice the witness said “yes”. When asked, he indicated that Ms. Baker did agree at the meeting to give him more time. On the Applicant’s own account, in June 2020, the same month of the Extension Letter he orally sought an extension of time to produce original documents which he knew from the audit stage that he did not have.

[71] This exchange followed Mr. Sharma’s admission that he was given more time after the meeting in June 2020.

Q *Did Ms. Baker follow up with you about the additional documents?*

A *Yes, she did.*

Q *And when she followed up with you, you asked for more time?*

A *I told her Miss I have been trying. Two (2) to three (3) times. I told her I cannot find the invoices and then she made up a letter for me to sign that I need more time to find the invoices.*

Q *When you told her you tried, two or three times, was that the first follow up?*

A *When she called two or three times.*

Q *The first time she called to follow up what did you tell her?*

A *I told her that I am trying to find the invoices, and then when she called again, I told her the same thing. Miss, I am trying to find the invoices.*

Q *And when she followed up with you the third time?*

A *I said the same thing. I cannot find the invoices. She printed a letter and made me sign it.*

[72] When it was put to him that it was he or his representative who prepared the letter of 15th June 2020, Mr. Sharma stated on each occasion that he did not agree with the suggestions which he said were totally wrong. He also disagreed with the suggestion that he had the letter done to avoid the consequence of the objection being closed without change. He admitted however that he read the letter before signing it and agreed that he understood what it meant when he read it.

[73] Ms. Baker exhibited a document titled “*Contact Sheet*” to her affidavit and on it is an entry dated 4th June 2020 which reads “*telephone contact was made by Mr. Sharma. He requested a meeting on May 5, 2020 with this auditor...*” Ms. Rusell

read these words to Ms. Baker in cross examination and stated, *“I suspect that is an error”*, Ms. Baker agreed with Russell and indicated that the date should have been *“June 5”*. When she was asked if there was a meeting on the date, she said yes. When asked if that was two (2) days after Mr. Sharma should have provided her with other records, she answered affirmatively. She went further during the exchange to say that Mr. Sharma’s representative was not at the meeting because Mr. Sharma had arranged the meeting.

[74] In cross examination Ms. Baker admitted that the meeting of 5th June as well as contact with Mr. Sharma on 12th June 2020 did not appear in the *Contact Sheet*. The subject of recording of contact with a taxpayer was again raised as evidenced in the following extract from Ms. Russell’s cross examination of the witness.

Q *As part of your routine, let’s call it “paperwork” for now, you would keep a contact register or log?*

A *Yes, that’s correct.*

Q *Is this contact register or log to make note of every time you contact the taxpayer or his representative. Is that so?*

A *That is so.*

Q *Look at your affidavit of 1st May. CB-5 “Contact Sheet”. That represents log of activities in the matter?*

A *Log of communication and contact with the taxpayer and his representative.*

...

Q *If and when you give the taxpayer anything to sign, that is one of the things you make a log of?*

A *I make a log of correspondence to the taxpayer.*

S *I also suggest to you that you also log events that occur on the Contact Sheet.*

A *I was talking about a log that the taxpayer signs when a correspondence is delivered to him or her.*

Q *On your affidavit filed September 12, 2024 at page 13. That’s an example of the log?*

A *Yes.*

- [75] From this exchange it appears that Ms. Baker is saying that correspondence comprised in documents delivered to the taxpayer is not logged in the *Contact Sheet*. The court is not left to speculate however as the witness stated twice, later in cross examination, that she does not record correspondence on the *Contact Sheet* when questioned on receipt of the Extension Letter.
- [76] On a review of the entries in the named document, it is clear that it records telephone contact with the Applicant and Mr. Reid, his representative. This is distinct from the log made of delivery of correspondence, an example of which is exhibited at page 13 of Ms. Baker's affidavit filed 12th September 2024. I accept the witness' evidence in this regard and find that the absence of the 5th and 12th June 2020 contact with Mr. Sharma from the *Contact Sheet* has been sufficiently explained by the witness.
- [77] Ms. Baker said she took notes of the meeting of 5th June 2020, which was signed by her on the said date in what is labelled *Interim Interview*. The document is exhibited to her Supplemental Affidavit.
- [78] Ms. Russell took the witness through the entries in the *Interim Interview*, the first of which indicates that Mr. Sharma visited the office to present figures of expenses and stated that they were not considered during the audit but had been incurred. The witness confirmed that as reflected in the note in this regard that Mr. Sharma told her that the accountant who had filed the return had migrated and had not returned the documents before doing so; and that the notation related to any document Mr. Sharma wished to present in support of the Objection. The witness also confirmed by responses to questions asked that the notation of correspondence promised by Mr. Sharma in respect of an agreement with his landlord for furniture and fixtures to be kept in lieu of rent was referable to both Income Tax and GCT, that they spoke about commissions and transportation which related to income tax and that the discussions which Mr. Sharma had with her were primarily related to income tax. She also indicated that he was asked to provide evidence to support his assertions.

[79] Mr. Sharma admits in his Second Affidavit that he signed the document on 12th June 2020. He says this was done at a meeting with Ms. Baker in St. Ann, when the Extension Letter is alleged to have been produced by her for his signature.

[80] Ms. Baker admitted familiarity with the Extension Letter of 15th June 2020 in cross examination but responded to suggestions put to her in respect of its authorship thus.

S *I am also going to suggest to you that Mr. Sharma, following the 5th of June did not ask you for any extension of time as it relates to GCT.*

A *Mr. Sharma produced letter dated June 15 requesting an extension of time to produce documents for GCT.*

...

S *I am going to suggest to you that you took the opportunity to draft a letter of extension for Mr. Sharma despite him telling you he had no more records for GCT.*

A *I did not draft a letter for Mr. Sharma.*

...

S *I am going to suggest to you that because of the cases you said you were working on, you needed more time.*

A *That's not so.*

[81] Ms. Russell then asked, *"You would agree that a request for extension by Mr. Sharma would allow you some time to do something else?"* to which Ms. Baker responded, *"the extension for Mr. Sharma does not hinge on my job. I manage a number of cases concurrently."* When asked what she meant by *"hinge"*, the witness said, *"it does not affect the other cases, the work that I have to do for my other cases."* I accept the witness' evidence in this regard.

[82] There is nothing on the evidence presented which demonstrates that Ms. Baker stood to derive any benefit from permitting the Applicant more time to produce the documents to support his Objection. In fact, Mr. Sharma not having produced the documents within thirty (30) days of receipt of the 12th February 2020 request, Ms. Baker was at liberty to avail herself of the statutory provision which permits an objection to cease, and the assessment regarded as final and conclusive for failure to produce the requested documents. That would be a very quick resolution of any

objection received by the Respondent. On the contrary, it is Mr. Sharma's evidence, elicited during cross examination, that he did not want Ms. Baker to close the Objection without change to the sum assessed. Of the two, it is Mr. Sharma who stood to benefit from any requests for extension to produce documents.

[83] In response to Mr. Sharma's allegation in his Second Affidavit that she met him in at a shopping plaza in St. Ann on the 12th June 2020 and delivered documents for his signature, and in explaining how certain documents including the Extension Letter came to bear a receipt date of 19th June 2020, Ms. Baker states in paragraph 12 of her Supplemental Affidavit that between 12th and 19th June 2020 she had only seen Mr. Sharma on the 12th when he attended the Montego Bay RSC as he wanted to speak with her and also sign documents he had refused to sign previously; and on the 19th at the same revenue service center when he was dropping off the Extension Letter.

[84] Mr. Sharma did not file a reply to the Respondent's evidence although an order had been made permitting him to do so. In cross examination when Ms. Baker was asked whether she had seen Mr. Sharma on the 19th June 2020 she said she did not. While this is inconsistent with her affidavit evidence, she was not confronted with the inconsistency which is clearly material as it relates to the date and place of receipt of the Extension Letter by Ms. Baker, both of which are in dispute. Accordingly, the witness was not afforded an opportunity to explain the inconsistency. In the absence of that confrontation, the court is not placed to make an adverse conclusion as to the impact of this inconsistency on Ms. Baker's credibility in respect of the date or place of receipt of the Extension Letter. In these circumstances, the date of the letter, the place at which the letter was received and the date of receipt which appear on its face being 15th June 2020, the Montego Bay RSC, and 19th June 2020 respectively are accordingly accepted in proof of those facts.

[85] It is also Ms. Baker's evidence that in the course of conversation with Mr. Shama on 12th June 2020 he again expressed that he was having difficulty providing additional documentation requested. She again advised him that if he was unable

to provide the additional documentation, the case would be closed and the Assessment confirmed on that basis. This evidence was unchallenged in cross examination.

[86] In consideration of:

- (a) the basis upon which adjustments were made to the Applicant's GCT returns, that is, additional supplies and output tax for the periods January 2014 to December 2014;
- (b) the Applicant's own evidence that he was asked to supply purchase and sales documents during the Audit process, including receipts, and that Ms. Baker also requested that such documents be produced in support of the Objection;
- (c) the Applicant having been advised many times that if the documents were not produced the Objection would be closed;
- (d) the Applicant's admission that he sought an extension of time to provide original documents in support of his objection at the June 2020 meeting with Ms. Baker, even though he knew that he did not have the additional original documents relative to sales and receipts from the time of the Audit process, which I earlier regarded as demonstrative of an earnest and disingenuous effort by him to delay the determination of the Objection;
- (e) the Applicant's admission in cross examination that he did not want Ms. Baker to close the Objection without any change to the assessment sum;
- (f) the Applicant's failure to produce the requested documents and records;
and
- (g) the date of the Extension Letter, the place at which it was received and the date of receipt which appear on its face,

I find it to be more probable than not that it was Mr. Sharma or someone on his behalf who wrote the Extension letter signed by him, and that it was not written by Ms. Baker or produced by her for the Applicant's signature.

- [87]** Further and in any event, as he did in proceedings before the RAD, Mr. Sharma admitted that he read the Extension Letter, understood its contents and signed it. The letter is brief and simply worded. I have no doubt that Mr. Sharma understood that in signing it and delivering it to Ms. Baker, he would receive additional time to locate and produce the documents if the request was granted. On Mr. Sharma's own evidence, Ms. Baker had told him many times that if he did not produce the requested documents the Objection would be determined without change to the assessment. He had also been advised of this consequence by the letter of 12th February 2020 in which Ms. Baker sought to make arrangements for the Objection meeting which eventually took place with the Applicant, his representative and Ms. Baker. I also harbour no doubt that Mr. Sharma knew that if the request for extension was granted, it would delay the conclusion of the Objection.
- [88]** Ms. Russell in submissions questions whether Mr. Sharma's understanding of the contents of the letter also meant he had an understanding of its implications relative to the accrual of penalties and interests on sums assessed which remain unpaid. That is a basic aspect of tax law and is provided by statute. Ignorance of it does not operate to benefit a taxpayer, more so this Applicant who is a registered taxpayer under the GCT Act, engaged in the operation of businesses in the island over many years.
- [89]** In all these circumstances I can find no error on the part of the RAD in concluding that Mr. Sharma read, signed and understood the contents of the Extension Letter, which I earlier found was received by the Respondent on 19th June 2020.

Attribution of delay

- [90]** Ms. Baker's *Contact Sheet* shows that telephone contact was made with Mr. Sharma on 13th and 18th August 2020 to request records. She was advised that further search would be made, and that attempt was being made to procure some invoices for lighting purchased for the shop which would be supplied shortly. In the latter conversation, Mr. Sharma was also advised that a letter had been written

to formalise telephone conversation relative to request for documents. Mr. Sharma is said to have indicated his availability to receive the letter on 20th August 2020. On 24th August 2020 Mr. Sharma was again contacted to be advised that the letter would be delivered on the 25th August 2020, to which he is said to have agreed.

[91] As earlier indicated in the summary of the RAD's findings, in attributing the delay in the handing down of the Objection Decision to the Applicant, the tribunal also considered whether a letter dated 13th August 2020 was served on the Applicant. The tribunal found at paragraph 43 that the letter was duly served on 25th August 2020, and that Mr. Sharma had made a final request for more time on 13th August 2020 after the expiration of the statutory six (6) months period for the handing down of an objection decision.

[92] The letter dated 13th August 2020 is attached to the Respondent's Statement of Case. It references a telephone call between Ms. Baker and Mr. Sharma on August 13, 2020 and as referenced in paragraph 43 of the RAD Decision, indicates that Mr. Sharma gave an assurance that he would conduct another search for records and communicate his feedback on 17th August 2020, which was agreed to. Mr. Sharma was directed in the correspondence to make all records and documents relevant to proving his grounds of objection within thirty (30) days of receipt of the letter. The determination of an objection to income tax assessment also being outstanding, Mr. Sharma was advised that:

Pursuant to Section 75(5)(c) of the Income Tax Act, and Section 40(3) of the General Consumption Tax Act, failure to produce these books or documents will result in the Notice of Objection ceasing to have effect and the assessment as made, being final and conclusive.

[93] A decision on an objection being required within six (6) months of receipt of an objection in writing, it is my view that the relevant conduct for consideration in attributing delay under section 40(4)(b) of the GCT Act is that which occurred between receipt of an objection and the expiration of the statutory six (6) month period for a decision. Later conduct is not irrelevant however as it may provide evidence confirmatory of relevant attributable conduct, which I find to be the case here. Mr. Sharma, consistent with his conduct in the six months following the

service of his Objection, continued thereafter to request time to produce documents to avoid its conclusion without change to the assessed sum.

- [94] The RAD also found that there was conduct on the part of the Applicant and his representative which contributed to the delay in the handing down of an objection decision within the prescribed period. I find no error in this conclusion.
- [95] As earlier indicated, the first request to the Applicant for original documents to support his Objection was made by letter dated 12th February 2020, which the Applicant acknowledges receiving in the said month. An objection hearing was proposed for April 1, 2020 and the request made for production of original documents in support of the objection within thirty (30) days of receipt the letter.
- [96] By letter dated 28th February 2020 the Applicant's representative, Mr. Reid wrote to indicate that the date proposed was inconvenient, citing the 15th March tax filing deadline and events immediately thereafter. The alternative date of 8th May 2020 was proposed.
- [97] Ms. Baker's *Contact Sheet* shows that a telephone call was made to Mr. Reid on 16th March 2020 in respect of the request to defer the objection hearing date. She was not able to speak with Mr. Reid, but a message was left for him advising that the proposed alternative date was inconvenient as it was too close to the expiration date for the Objection. He was asked to call Ms. Baker to make suitable arrangements. Another call was made to Mr. Reid on 16th April 2020 when an appointment date of 23rd April 2020 by telephone was made.
- [98] Neither the Applicant nor his representative appeared on the agreed appointment date, calls to one of Mr. Reid's number went unanswered, a call to another was answered by his office and a message left for him to call Ms. Baker. Two additional calls were made on the same date by way of follow up. Ms. Baker was advised that Mr. Reid had left without his telephone. An email address was requested and supplied for Mr. Reid to which a fourteen (14) day request for records was emailed. On 27th April 2020 telephone call was again made to Mr. Reid who was not in office and a message left for him to acknowledge receipt of a letter sent to him relative

to a new hearing date and the supply of records. On April 30, 2020 another call was made to Mr. Reid and a message left with his office for him to call Ms. Baker.

[99] Contact was then made with Mr. Sharma on 1st May 2020. He advised that he had been in contact with his accountant, and he had been made aware that he will need to submit documents. He was advised in the call that his accountant had not been available for the hearing and that the hearing would be on 13th May 2020. The objection hearing proceeded on that date by telephone with the Applicant and Mr. Reid in attendance.

[100] On the evidence, some three (3) of the six (6) months limited for a decision was due to the unavailability of the Applicant's representative for the objective hearing.

[101] I observe here that if Ms. Baker who was assigned to deal with the Applicant's Objection regarded the 8th May 2020 as being too close to the expiration date for an objection meeting, it could not be expected that a request for more time to provide original documents in support of the Objection, less than one (1) month before the expiration date for handing down of a decision would be sufficient to return a decision on it, in the event the documents were produced. The documents were not in fact produced however and is constitutive of an omission or default, which is exclusively attributable to the Applicant who is required by the GCT Act to keep proper books and records and produce the same when requested.

[102] I find that the operative reasons for the Respondent's failure to deliver a decision within the statutory period was the Applicant's request for more time to produce documents in June 2020 and his default and failure to produce the records to support his Objection in time, or at all.

[103] In what appears to be reliance on the notice to produce contained in Ms. Baker's letter dated 12th February 2020, the Respondent submits to this court that further or in the alternative, the Applicant having failed to produce the original documents within the time stipulated by section 40(2) of the GCT Act, the Objection ceased to have effect as early as March 25, 2020 and the assessment became final and conclusive at that date. I am unable to agree with the submission. While it was open for the Objection to be determined as submitted in reliance on section 40 (3)

of the Act, in acceding to the Applicant's request for an extension of the time within which to produce documents and records after the period limited had passed, it is clear that the Respondent did not regard the Objection as one which "*ceased to have effect and the assessment as made ... final and conclusive.*"

[104] In attributing the delay in the handing down of the Objection Decision to the Applicant, the RAD also relied on the fact that little time was left between the request made in the Extension Letter and the 10th July 2020 - less than one (1) month - to enable the Respondent to determine the Objection within the period prescribed by the GCT Act. I can find no error with the RAD's conclusion in this regard.

(b) Whether the additional assessment was levied by the Respondent through illegitimate or unjust treatment of the Applicant.

[105] Ground (d) of the Notice of Appeal is conveniently dealt with under this head, the gravamen of which is that there were breaches of procedure and of the Applicant's right to natural justice. I am unable to find merit in the complaint.

[106] It is stated in the RAD Decision that no evidence was submitted in proceedings before it to substantiate the Appellant's claim that he was coerced into signing the Extension Letter. I have found that it was Mr. Sharma or someone on his behalf who wrote the letter. Even if I am wrong in so finding, it is his evidence that he read the letter, understood its contents, and signed it. He accordingly adopted its contents.

[107] The evidence before the court is that Ms. Baker often reminded Mr. Sharma that if he failed to produce documents in support of the Objection, it would be determined on that basis and the additional assessment deemed final and conclusive. While Mr. Sharma may have subjectively felt afraid, intimidated and "quite stressed" at these consequences, they are results which apply as a matter of law and are accordingly legitimate. It was the Applicant's own evidence on cross examination that Ms. Baker was professional in her interactions with him during the objection

process, and I would add, extremely accommodating. There is also no evidence of Ms. Baker, or any other representative of the Respondent departing from Standard Operating Procedures in dealing with the Applicant's objection. Advising of the statutory consequences for failure to produce the requested records does not, in my judgment, constitute coercion or duress.

[108] Ms. Russell submitted that in permitting the Applicant to deal directly with the matter without his representative, the Respondent's actions amounted to duress and coercion, was procedurally improper, and in breach of the Applicant's right to natural justice. The submissions in these regards are unmeritorious.

[109] As submitted by the Respondent, there is no evidence of any legal or procedural obligation imposed on him to communicate solely with the Applicant's representative. Where there are those contacts, whether initiated by the Applicant - which was done on a number of occasions - or the Respondent, the Applicant as the registered taxpayer has an obligation to himself to advise of those contacts and seek the advice or intervention of his representative if he so chooses.

[110] It is accepted by the Respondent through Ms. Baker that Mr. Reid was the Applicant's duly appointed representative during the objection process. There is no evidence of his being excluded or otherwise restricted by the Respondent in representing or providing advice or assistance to Mr. Sharma if he so wished it. In the event I have wrongly found that Mr. Sharma or someone on his behalf wrote the Extension Letter, in respect of Mr. Sharma's averment that he harboured discomfort about it and wished to discuss its contents with Mr. Reid before signing it, there is no evidence of his being prevented by Ms. Baker or any representative of the Respondent from doing so.

[111] In all these circumstances, and those which are addressed in the preceding sub-issue I find that the complaint in Ground (d) of the Notice of Appeal is without merit.

(c) **Whether the additional assessment levied on the Applicant is erroneous and unsupported by trading activities or accounting records.**

[112] The Applicant contends at ground (b) of the Notice of Appeal that the additional GCT assessment levied on him is erroneous and unsupported by his trading activities and/or accounting records thus making it arbitrary and baseless.

[113] The Respondent is empowered by section 38 of the GCT Act to raise an assessment against a taxpayer where he is not satisfied with calculations on any return furnished by a registered taxpayer of the basis on which the return is prepared. He is permitted to make an assessment of the amount he thinks ought to have been stated on the return. It is well settled, that in so doing the Respondent makes a best judgment assessment

[114] As earlier indicated, an appellant bears the burden of proving that an assessment is erroneous on the basis of being wrong in principle or excessive in amount. This he does on a balance of probabilities. Under the GCT Act, appeals to the RAD and this court both proceed pursuant to section 41. Appeals to this court being by way of rehearing, the Applicant is required to provide evidence to prove the error of which he complains.

[115] Section 36 of the GCT Act places an obligation on a registered taxpayer like Mr. Sharma, to keep prescribed accounts, books and records and to produce at the time and place specified by an authorised person like Ms. Baker, such documents related to his taxable activities. Regulation 21 of the **General Consumption Tax Regulations, 1991** goes further to specify where and for how long (not less than six (6) years after the last taxable period) the documents related to the taxable activity are to be kept. It also specifies the books of accounts, records and documents which are to be kept which include not only purchase and sales books but invoices relating to purchases and sales, tax invoices, debit and credit notes, records of income and expenditure and bank statements, cash register tapes and import entries, among other documents and records.

[116] Section 36(6) specifically prescribes that:

Where a person serves a notice of objection under section 40 of this Act or lodges an appeal under section 41 of the Act, that person shall keep all records relating to the objection or appeal until the objection of appeal is determined.

[117] The Applicant in a bare boned averment says that he is advised by his attorney-at-law and verily believes that the assessment levied on him for GCT is flawed. He has failed however to produce any evidence of the books of accounts, records and documents related to his taxable activities to enable this court to assess and conclude for itself that the additional assessment is erroneous, unsupported by his trading activities and/or accounting records, and therefore is arbitrary and baseless. The Applicant has failed to discharge the burden placed upon him to prove that the assessment is erroneous, and this ground of appeal fails as a result.

ORDER:

1. The application for extension of time to file the Notice of Appeal against the decision of the Commissioner of the Revenue Appeals Division dated 18th May 2023 is refused.
2. Further and in any event, the appeal is dismissed.
3. The decision of the Commissioner of the Revenue Appeals Division dated 18th May 2023 is confirmed.
4. The Applicant/Appellant is to pay the costs of the application and the appeal to the Respondent, which costs are to be taxed, if not sooner agreed.
5. The Attorneys-at-law for the Respondent are to prepare, file and serve this order.

Carole S. Barnaby
Puisne Judge and
Judge of the Revenue Court