Docket: 2004-4624(GST)G

BETWEEN:

MERCHANT LAW GROUP,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Reasons for Order with respect to Appellant's Motion for an Order that Respondent provide answers or productions to Undertakings and determining whether Appellant is to file an Amended Notice of Appeal or new Notice of Appeal, delivered orally by telephone conference call on January 9, 2008 at Ottawa, Canada

Before: The Honourable Justice E. P. Rossiter

Appearances:

Counsel for the Appellant	Anthony Merchant
Counsel for the Respondent:	Lyle Bouvier

ORDER

Upon rendering Judgment with respect to a motion by the Appellant for compelling productions or answers to Undertakings provided by the Respondent in Examination for Discovery and determining whether the Appellant is to file an Amended Notice of Appeal or new Notice of Appeal on this matter;

IT IS ORDERED that the Order of October 17, 2007 be and is hereby amended as follows:

1. Paragraph 4 of the Order shall be amended to read as follows:

   The Appellant shall file an Amended Notice of Appeal pursuant to the *Tax Court of Canada Rules* (*General Procedure*) within 5 working days of January 9, 2008;

2. Paragraph 5 of the Order shall be amended to read as follows:

   The Respondent shall file, if any, a Reply to the Amended Notice of Appeal within 5 working days of receiving the Amended Notice of Appeal from the Appellant;

3. Paragraph 6 of the Order shall be amended to read as follows:

   The parties shall prepare a list of documents pursuant to the *Tax Court of Canada Rules (General Procedure)* and shall file and serve the list on the opposing party on or before February 15, 2008;

The Order in all other aspects is confirmed.

AND IT IS FURTHER ORDERED that the Motion to compel additional productions and answers pursuant to the Undertakings given by the Respondent at the Discovery in this matter shall be and is hereby dismissed save and except the Respondent shall fulfill Undertaking Three within 30 days of January 9, 2008 and shall fulfill Undertakings Twenty-Six and Twenty-Seven within 30 days of January 9, 2008.

IT IS FURTHER ORDERED that the Respondent shall have its costs in this matter fixed in the amount of $1,500 payable forthwith which means payable on or before 5:00 p.m., Ottawa time, on January 11, 2008:

all in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 28th day of January, 2008.

"E. P. Rossiter"

Rossiter, J.

Citation: 2008TCC49
Date: 20080128
Docket: 2004-4624(GST)G

BETWEEN:

MERCHANT LAW GROUP,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

(Edited from Reasons for Order delivered orally
by telephone conference call
on January 9, 2008 at Ottawa, Canada)

Rossiter, J.

BACKGROUND:

[1] The Appellant has filed a Motion in writing relating to an Examination for Discovery asking that the Respondent answer Undertakings given during the Examination for Discovery.

[2] The Appellant appeals a GST assessment relating to 2000, 2001, 2002 and January 1st through to April 30th, 2003 assessment periods. The main issue in the appeal is whether certain legal disbursements are taxable supplies pursuant to the *Excise Tax Act* (the "*Act*"). The appeal was initiated on December 1st, 2004.

FACTS:

[3] The following are some relevant activities in relation to this motion:

1. On July 24, 2007, the Appellant conducted an Examination for Discovery of a representative of the Minister and during the Examination for Discovery a number of Undertakings were given by the Respondent.

2. On August 2, 2007, the Appellant filed a Motion seeking that the

Respondent provide answers to all Undertakings indicated at the Examination for Discovery and that the trial, then scheduled for November 5, 6, and 7, 2007, be adjourned.

3. On August 31, 2007, the Respondent, by letter, attempted to provide answers to 28 Undertakings given at the Examination for Discovery.

4. On September 14, 2007, the Respondent, by letter, advised that the Minister opposed the trial being adjourned.

5. On September 28, 2007, the Appellant, by letter, further argued that the Respondent was obliged to provide answers to the Undertakings left at issue.

6. In early October 2007, it came to the Court's attention that the Appellant had been reassessed twice on July 28, 2004 and once on March 8, 2005 and as a result of this new information, the Respondent later agreed that the trial would be adjourned.

7. On October 3, 2007, the Appellant by letter informed the Court that the Respondent now agreed to the adjournment of the trial and the Appellant further sought to file a new appeal since there was an additional reassessment.

8. On October 10, 2007, the Motion for adjournment was heard by the Court by conference call. A new timetable was set out and the hearing had been rescheduled with agreement of counsel.

ISSUES:

[4] The issue left to be decided from this motion was whether the Respondent satisfied the Undertakings given during the Examination for Discovery. Certain Undertakings had been dealt with during the conference call hearing and are now moot.

[5] There is also the issue as to whether or not the Appellant files an Amended Notice of Appeal or a new Notice of Appeal given the additional assessment.

RELEVANT LAW

[6] In dealing with the motion, several procedural rules must be considered. In particular, reference should be made to the *Tax Court of Canada Rules (General Procedure)* (Rule 95) - Scope of Examination.

Reference should also be made to Rule 116 of the Tax *Court of Canada Rules (General Procedure)* – Failure to Answer - which deals specifically with Examination for Discovery by written questions and might be of help to understand the overall meaning of an Undertaking and the consequences of failing to respect it.

> **Failure to Answer**
>
> **116.**(1) Where the examining party is not satisfied with an answer or where an answer suggests a new line of questioning, the examining party may, within fifteen days after receiving the answer, serve a further list of written questions which shall be answered within thirty days after service.
>
> (2) Where the person being examined refuses or fails to answer a proper question or where the answer to a question is insufficient, the Court may direct the person to answer or give a further answer to the question or to answer any other question either by affidavit or on oral examination.
>
> (3) Where the Court is satisfied, on reading all the answers to the written questions, that some or all of them are evasive, unresponsive or otherwise unsatisfactory, the Court may direct the person examined to submit to oral examination on such terms respecting costs and other matters as are just.
>
> (4) Where a person refuses or fails to answer a proper question on a written examination or to produce a document which that person is required to produce, the Court may, in addition to imposing the sanctions provided in subsections (2) and (3),
> *(a)* if the person is a party or a person examined on behalf of or in place of a party, dismiss the appeal or allow the appeal as the case may be,
>
> (*b*) strike out all or part of the person's evidence, and
>
> (*c*) give such other direction as is just.

[7] There is no specific Rule for Undertakings in *the Tax Court of Canada Rules*

(General Procedure) and as such it is necessary to look to the local rules of Civil Procedure to see how Undertakings are handled. The Appellant referred to Rule 231 of the *Queen's Bench Rules* and the *Saskatchewan Civil Procedure Rules* which state as follows:

Refusal or Neglect to answer:

Penalties

> 231 Anyone refusing or neglecting to attend at the time and place appointed for his examination or refusing to be sworn or to answer any lawful question put to him by any party entitled to do so or his counsel or solicitor or having undertaken at the examination to answer at a later date any lawful question put to him fails to do so within a reasonable time after the examination shall be deemed guilty of a contempt of court and proceedings may be taken forthwith to commit him for contempt. He shall be liable if a plaintiff to have his action dismissed, and if a defendant to have his defence, if any, struck out and to be placed in the same position as if he had not defended. If the party so neglecting to refusing is an officer or servant of a corporation, the corporation itself shall be liable if a plaintiff to have its action dismissed, and if a defendant to have its defence, if any, struck out and to be placed in the same position as if it had not defended; and in either case the party examining may apply to the court to that effect and an order may be made accordingly.

[8] The *Ontario Rules of Civil Procedure* mention the following regarding Undertakings given by a party, and I refer specifically to Rule 31.07(1), 31.07(2) and 31.07(3):

> **31.07**(1) Where a party, or a person examined for discovery on behalf of or in place of a party, has refused to answer a proper question or to answer a question on the ground of privilege, and has failed to furnish the information in writing not later than 60 days before the trial begins, the party may not introduce the information at trial except with leave of the trial judge.
>
> **Effect of Failure to Answer in accordance with undertaking**
>
> (2) Where a party, or person examined for discovery on behalf of or in place of a party, has undertaken to answer a question but has failed to furnish the information in writing not later than 60 days before the trial begins, the party may not introduce the information at trial except with leave of the trial judge.
>
> **Additional Sanction**

> (3) The sanction provided by subrule (1) and (2) is in addition to the sanctions provided by Rule 34.15 (sanctions for default in examination).

[9] These Rules give a fairly strict approach to Undertakings given and when those Rules apply, a party that has given Undertakings at an Examination for Discovery cannot later change its mind and will be bound by its original promise. A refusal to give answers to an Undertaking can have detrimental consequences for the party at fault.

[10] It is necessary to examine how the case law has dealt with Undertaking issues especially relating to proceedings at the Tax Court of Canada level.

[11] The Tax Court of Canada has been confronted with questions relating to Undertakings on many occasions. Procedural rules in provincial Courts, have been used as a comparison. In *Union Industries Inc. v. Beckett Packaging Ltd.*, [1988] O.J. No. 115, Master Donkin of the Ontario Superior Court of Justice defined an Undertaking as follows:

> It seems to me that an undertaking is a form of contract. It is a promise to produce certain information, and the consideration may well be the fact that no further questions are asked about the document at the time of the examination. At any rate it is a promise which the courts have always enforced.

[12] Furthermore, in *Towne et al. v. Miller et al.*, [2001] O.J. No. 4241, the Ontario Superior Court of Justice explains that:

> … An undertaking is an acknowledgment that the question is proper and that the subject-matter of the undertaking is relevant. Put crudely, should counsel be permitted to renege on a production-undertaking when he or she subsequently comes to the belief that a document or part thereof is not relevant in the action? This question invades the sanctity of a solicitor's undertaking.
>
> An undertaking is an unequivocal promise to perform a certain act. I do not see any material difference between, for example, an undertaking given in the context of a real estate transaction (when lawyers undertake to do, or obtain, something necessary to complete the transaction) and an undertaking given on an examination for discovery. Each involves a promise. In an examination for discovery, the undertaking may be given by the litigant been examined or it may come from his or her counsel. Both are equally binding.
>
> And even if the undertaking is couched in language such as, "On behalf of my client I will obtain such and such" (which here is not the case), it, nonetheless, is a personal responsibility of the lawyer: see Ontario Rules of Professional Conduct,

> Rule 14, commentary 6. An undertaking given by a lawyer renders the lawyer personally liable even where the consent of the client to the undertaking is lacking (again, not the case here).
>
> Undertakings given by lawyers are matters of the utmost good faith and must receive scrupulous attention.
>
> An undertaking which may be beyond the ability of the lawyer to fulfill should be given as a "best efforts" undertaking, thereby transforming it into a qualified promise.

[13] This approach has been followed within the Tax Court of Canada, by Mr. Justice Bowie in *Bathurst Machine Shop Ltd. v. R.*, [2006] 5 C.T.C. 2167 at paragraph 1. In that case, counsel for the Respondent had given certain Undertakings but later took the position that the questions were irrelevant to the issue of the Appeal and therefore the Minister refused to fulfill the Undertakings originally given. To that effect, Justice Bowie explained that:

> … once an unqualified undertaking has been given, it is too late to refuse to provide an answer on grounds of relevance: …

[14] While the approach in *Bathurst Machine Shop Ltd. v. R.*, *supra*, dictates a fairly strict approach, some case law seems to indicate that relevancy of the Undertaking remains important and has to be taken into consideration. It should be noted, that the Examination for Discovery does not occur in a vacuum; it is part of the entire appeal process and its purpose is to gather information that helps solving the entire appeal. In *Cimolai v. R.*, [2005] 2 C.T.C. 2026, Justice Hershfield in paragraph 16 indicated the purpose of the Discoveries is:

> … to gather information related in a relevant way to the issues under appeal. …

In that case the Court was dealing specifically with Examinations for Discovery by way of written questions, notwithstanding the same, the general principle is nonetheless applicable here.

[15] One criteria to consider in the Undertaking is whether the issue is relevant to the determination of the appeal. It would be illogical and it would unduly prolong the process if a party was required to provide an answer to the Undertaking that is of no relevance to the issue in the appeal. In *Fortunato v. Toronto Sun*, [2001] O.J. No. 3383, Master Birnbaum stated in paragraph 9 that if an Undertaking is no longer relevant it does not have to be answered. He further states:

> 11 … Clearly to require the production of material that is no longer relevant to an action creates an unnecessary cost to both the plaintiff and the defendants and this is to be avoided.

[16] It is important to examine the language used by the party who has given the Undertaking. Was the Undertaking unconditional or was the Undertaking subject to certain conditions or restrictions? In *Patex Snowmobiles Ltd. v. Bombardier Ltd. et al.*, (1986) 10 C.P.R. (3d) 424, Justice Strayer of the Federal Court of Canada considered the wording used with regards to the Undertakings given by the party being examined. In that case, the Appellant did not contest the relevancy of the questions; he rather denied that an Undertaking had been given. Justice Strayer made a variety of comments at paragraphs 1 to 4. At paragraph 3, he stated:

> … He cited to me several cases in which it has been said that undertakings given by solicitors, to be enforceable, must be clear and unequivocal.
>
> While I accept that as a general principle, one must look at the particular context of an examination for discovery and try to see what counsel should reasonably understand as to whether undertakings have been given. In such examinations, it is very common practice for counsel to put questions to the examinee and, where the examinee is unable to answer the question, to ask him or his counsel to see if the answer can be provided. In reviewing the portions of the examination for discovery in question, it appears to me that that is generally what happened in this case. While it may not be necessary for counsel to make a specific objection to a question in order to be able to argue later before a judge that such a question is not relevant or is otherwise objectionable (a matter which I need not and do not decide here), it appears to me that it is legitimate for examining counsel to assume that an answer will be sought and if possible provided by the examinee, where so requested, unless there is a specific refusal to do so.
>
> Based on this approach, I am taking all the answers which counsel for the defendants (appellants) characterized as equivalent to "we'll consider it" or "we'll look into that" as being commitments to look and see if an answer can be found. As such, I have no difficulty in finding these to be undertakings to provide some kind of a response to the questions in issue …
>
> <u>This of course does not mean the defendants must give answers where no answers are possible. The undertakings must be read in the form in which the question was put, as further qualified by the discussion which ensued. In many cases a proper response would simply involve a search for the information and a report to counsel for the plaintiff as to whether the information is available or not and if so what it is.</u> [Emphasis added]
>
> The Determination whether an undertaking has been answerable will have to pass a two step test. First, it has to be determined whether an unconditional

> undertaking has been given by a party, or whether the undertaking is conditional. At this stage one needs to look at the wording used during the examination for discovery. Secondly, if an undertaking has been given, the Court has to determine whether or not it is relevant to the determination of the Appeal. Based upon the foregoing, one can deal with each undertaking, will have to be decided.

ANALYSIS:

Given the background facts and the relevant law, I will now deal with the Undertakings in dispute in this particular matter.

[17] The following Undertakings were originally given by the Respondent during the course of the Examination for Discovery.

Undertaking One. Provide the date that the audit of Merchant Law Group began. This Undertaking has been satisfied.

Undertaking Two. Provide a copy of the GST returns for May 2000, March 2001, January 2001, and April 2001.

The Respondent argues that this Undertaking has been answered. More precisely, the Minister affirms that the GST returns are no longer available and further mentions that a copy of the posted data could be provided to the Appellant. The Appellant is not satisfied with the answer provided by the Respondent and seems to suggest that the Respondent has not diligently searched for the set of documents. The Appellant seeks further explanation from the Respondent regarding this Undertaking and wants some sort of reassurance that the Respondent has actually searched for the asked documents. The Appellant argues that the answer provided by the Respondent does not indicate whether the Minister searched for the documents or not. It is somewhat difficult to follow this argument. The Minister stated the documents are no longer available and it seems logical that the Minister had to search for the documents to determine they are no longer available, or else he could not say otherwise. Since the documents are no longer available it becomes impossible for the Minister to produce them and therefore the Respondent has fulfilled its obligations for this particular Undertaking.

Undertaking Three. If possible, itemize each of the disbursements in the working papers. For example, advise what amounts, or if a marriage contract is to be discovered or a doctor’s reports, et cetera.

This Undertaking was initially refused but was later given as Undertaking Twenty-

Eight. I will not refer to the specific wording of the Undertaking at the Discovery, or the relevancy of the Undertaking as it has been dealt with in the telephone conference call in this matter where Counsel for the Respondent indicated that the Minister will be able to produce the documents. Furthermore, in the Respondent's written answer to this motion he confirmed that the Minister will produce this material provided he is allowed six days to do so. Given a timeline, with respect to how this matter has progressed, and the fact that the trial in this matter is scheduled for April 2008, the Minister will be allowed 30 days from January 9, 2008 to fulfill this Undertaking.

Undertaking Four. Advise why two assessments were done in July 28, 2004 and March 8, 2005. This Undertaking has been addressed in the letter from the Respondent dated October 13, 2007 and has also been further explained by the Respondent during the teleconference and as a result there is no need for it to be considered any further and that the Undertaking has been fulfilled by the Respondent.

Undertaking Five to Eleven and Thirteen to Twenty-One. The Appellant asked advice regarding the applicability of the GST on some specific legal disbursements. For example, the Appellant asked if bank charges, bills of cost, civil claim fees accepted are subject to GST. The Minister has given general answers to those questions and rightfully argues that it is difficult to provide more specific answers although unless there is a clear factual background. These Undertakings have been answered by the Respondent.

Undertaking Twenty-Two. Advise if fees for Tax Certificates for the city are subject to GST.

It appears from the transcripts, that no Undertaking was given by the Respondent in respect to the above-mentioned question. The Minister is under no obligation to provide an answer to this question.

Undertaking Twenty-Three. Advise if the Court transfer fees are subject to GST. The same answer for Undertaking Twenty-Two applies here, that the Minister did not give an Undertaking and the question need not be answered.

Undertaking Twenty-Five. If possible, provide a copy of the Reciprocal Taxation Agreement and refer to the relevant provisions, rule out the portions.

The Respondent has provided the Appellant with the relevant documentation but

has not referred to the relevant portions. The Undertaking was given conditionally, that is “if possible”. The relevant portions applicable might vary depending on the circumstances and it might at this time simply not be possible for the Minister to refer to the relevant portions. The purpose of the Undertaking is not for the Appellant to received legal advice but simply provide him with the relevant Reciprocal Taxation Agreement.

Undertaking Twenty-Six. If possible provide a copy of the Agreements in place in Saskatchewan between the provincial and federal governments that the province will not charge tax with respect to legal matters.

The Respondent has indicated that “no such agreement was found”. Additionally, the Undertaking uses the words “if possible”. Furthermore, during examination, Counsel for the Respondent said regarding this Undertaking:

> Yes, no, we can undertake to try to obtain and research to see if they exist.

It seems clear that the Respondent only undertook to try to search for the document. He could not find an answer, consequently, the Minister’s answer does not say whether or not the subject document exists. The Minister’s response should indicate whether or not the documents exist within 30 days of January 9, 2008.

Undertaking Twenty-Seven. If possible, provide a copy of the Agreements in place in all provinces and territories of Canada between provincial and federal governments, that the provinces/territories will not charge tax with respect to legal matters. The same answer as provided in Undertaking Twenty-Six is applicable to this Undertaking.

Undertaking Twenty-Eight. Attempt to provide a detailed account summary with respect to the amounts in issue. This is the same Undertaking as Undertaking Three and has already been dealt with.

[18] On the issue of costs, it should be noted, that the results on this motion were somewhat mixed to say the least. I should also note, that when the teleconference initially occurred in this matter, directions were given by the Court and agreed to by both counsel, with respect to timelines for the parties to give submissions on the issue of costs. The Appellant was directed and ordered by the Court to file its submissions on costs by October 18, 2007. The letter, enclosed over their submissions on costs was dated October 26, 2007, sent by courier November 5, 2007 and received by the Court, on November 5, 2007 without any explanation as

to it having been outside the timeline agreed to and ordered by the Court and without any motion to the Court to extend the deadline. The Court will not comment on the dating of the letter, the date it was couriered or the date it was received, suffice it to say, the dating of the correspondence is totally irrelevant. The date sent by courier is totally irrelevant. It is the day it is received by the Court that is important. It was received some 18 days after it was supposed to be filed without an explanation. The rules of Court are there for a purpose and that is to provide for the administration and flow of litigation. When parties agree to particular timelines and agree to an Order on these timelines and then do not comply with the timelines without providing a satisfactory explanation, it shows disrespect for opposing counsel, the Court and either ignorance of the purpose of Rules of Court or arrogance with respect to their application. Counsel for the Appellant is an experienced counsel and is familiar with the Tax Court of Canada. Counsel ignored the Order and the rules of Court and put his client at risk on costs and he should know better. I will not tolerate such disrespect for the Court. If you do not agree with the timelines when given, say it. It looks like correspondence was somewhat conveniently dated and later couriered to make it look like it was not as late as it really was. We have already set the schedule for this litigation and trial, and those dates are not and will not be delayed or altered by these tactics. The trial is scheduled for April and it will proceed in April.

[19] There is another issue to be dealt with and that is, that there is an additional assessment. The Appellant claims that it should be allowed to file a new Notice of Appeal as opposed to an Amended Notice of Appeal because the reassessment has been sent out while an appeal was pending and ongoing in the same matter. This, in my view, contradicts section 302 of the *Excise Tax Act*. That section specifically was drafted for instances like the present situation and indicates that the proper form in which to proceed is by Amended Notice of Appeal. Additionally, the Appellant had previously agreed to file an Amended Notice of Appeal in this Court and made an Order accordingly. Rule 55 of the *Tax Court of Canada Rules (General Procedure)* is applicable and the Appellant must comply with it.

[20] The Appellant filed its Notice of Appeal on November 19, 2007 and shortly thereafter the Respondent forwarded correspondence to the Court in which the Minister states that the Notice of Appeal fails to comply with the procedural rules which require that amendments be underlined so as to distinguish the amended wording from the original. Whether or not the Appellant is correct to file a new Notice of Appeal and not an Amended Notice of Appeal, the re-draft of the Amended Notice of Appeal is not in proper form and does not comply with Rule 55. The Appellant takes the position that it is not an Amended Notice of Appeal

but a new Notice of Appeal, but nonetheless the Appellant submitted an Amended Notice of Appeal, filed on November 26, 2007. This Amended Notice of Appeal is not even in compliance with Rule 55.

[21] The crux of the Appellant's argument is that Rule 55 of the *Tax Court of Canada Rules (General Procedure)* is not applicable because this is a new appeal resulting in a new assessment. Rule 54 and 55 respectively of the *Tax Court of Canada Rules (General Procedure)* reads as follows:

> 54. A plea may be amended by the party filing it, at any time before the close of pleadings, and thereafter either on filing the consent of all other parties, or with leave of the Court, and the Court in granting leave may impose such terms as are just.
>
> 55. (1) An amendment to a pleading shall be made by filing a fresh copy of the original pleading as amended, bearing the date of the amendment and of the original pleading, and the title of the pleading, proceeded by the word "amended".
>
> (2) An amendment to a pleading shall be underlined so as to distinguish the amended wording from the original.

[22] The real question remains as to whether or not the Appellant is entitled to file a new Notice of Appeal or whether it shall file an Amended Notice of Appeal.

[23] By correspondence dated October 3, 2007 in relation to the motion concerning the Undertakings, the Appellant also sought additional relief, namely to file a new Notice of Appeal. During the teleconference of October 10, 2007, a particular issue was raised and discussed with the parties and in the transcript it is clearly noted that the Appellant unequivocally agreed to file an Amended Notice of Appeal. As a result, therefore this Court ordered the Appellant to file an Amended Notice of Appeal pursuant to *Tax Court of Canada Rules (General Procedure)* on or before November 19, 2007. Now for some strange reason, the Appellant later claims that it should be considered as a new Notice of Appeal.

[24] Section 306 of the *Act* sets out the requirement to file an appeal to the Tax Court of Canada and this section applies to cases where the Minister has confirmed the assessment. In this case, however, the Appellant was allowed additional courtesy by way of a Notice of Reassessment dated March 8, 2005 and since it is not a Notice of Confirmation but Notice of Reassessment, section 302 of the *Act* becomes applicable and not section 306. Section 302 states:

> Where a person files a notice of objection to an assessment and the Minister sends to the person the Notice of a reassessment or an additional assessment, in respect of any matter dealt with in the notice of objection, the person may, within ninety days after the day the notice of reassessment or additional assessment was sent by the Minister,
>
> (a) appeal therefrom to the Tax Court; or
>
> (b) where an appeal has already been instituted in respect of the matter, amend the appeal by joining thereto an appeal in respect of the reassessment or additional assessment in such manner and on such terms as the Tax Court directs. [Emphasis added]

[25] This section, in my view, resolves the issue. It clearly deals with cases where a reassessment or additional assessment is sent to a person where an objection is outstanding. There is no doubt that it is applicable, in the case at bar and it is appropriate for the Appellant to file an Amended Notice of Appeal. Author David Sherman in his analysis of section 302 of *the Act* sums it up quite properly:

> Section 306 is the normal route for appeals to the Tax Court, when the Minister confirms an assessment to which an objection has been filed.

> Section 302 deals with the unusual case where a reassessment or additional assessment is sent to a person *while an objection is outstanding*. This may happen, for example, if separate assessments have been issued by different offices at CCRA. (This is more common in income tax reassessments than under the GST, where there is rarely more than one audit group examining a particular person's affairs for all years that are open for an assessment.)

[26] Also, section 302 of the *Act* gives the Court its discretionary powers and this Court has clearly directed the Appellant to file an Amended Notice of Appeal by an Order dated October 17, 2007. Unless the Court otherwise orders, Rule 55 of the *Tax Court of Canada Rules (General Procedure)* becomes applicable and the Appellant ought to comply with this Rule on a timely basis.

[27] This Court also uses its discretionary power to dispense the compliance of certain rules that it deems in the interest of justice. To this effect, I refer to Rule 9 of the *Tax Court of Canada Rules (General Procedure).* The Court will not be exercising its discretionary power, and will not be giving any additional directions, otherwise than to state quite clearly that the Appellant has to file an Amended Notice of Appeal. It is a continuation to the proceeding initially started by the original Notice of Appeal. The Appellant is ordered to file an Amended Notice of Appeal, within five (5) working days of January 9, 2008 and the Respondent is to file an Amended Reply, if any, within five (5) working days of the receipt of the Amended Notice of Appeal.

[28] The Respondent shall have their costs in these applications, fixed in the amount of $1,500 payable forthwith, which means payable by 5:00 p.m., Ottawa time, on January 11, 2008.

Signed at Ottawa, Canada, this 28th day of January, 2008.

"E. P. Rossiter"

Rossiter, J.

CITATION:	2008TCC49
COURT FILE NO.:	2004-4624(GST)G
STYLE OF CAUSE:	MERCHANT LAW GROUP AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Ottawa, Canada
DATE OF HEARING:	January 9, 2008
REASONS FOR ORDER BY:	The Honourable Justice E. P. Rossiter
DATE OF ORDER:	January 28, 2008

APPEARANCES:

Counsel for the Appellant	Anthony Merchant
Counsel for the Respondent:	Lyle Bouvier

COUNSEL OF RECORD:

For the Appellant:

Name:	Anthony Merchant
Firm:	Merchant Law Group

For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada