Docket: 2018-1799(IT)APP

BETWEEN:

ALEX IHAMA-ANTHONY,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on October 10, 2018, at Toronto, Ontario

By: The Honourable Justice Don R. Sommerfeldt

Appearances:

For the Applicant:	The Applicant himself
Counsel for the Respondent:	Priya Bains, Lesley L'Heureux

JUDGMENT

Upon hearing the Application by the Applicant for an Order extending the time within which to serve Notices of Objection from the reassessments made under the *Income Tax Act* for the 2011 and 2012 taxation years;

The Application is dismissed, without costs.

Signed at Edmonton, Alberta, this 20th day of December 2018.

"Don R. Sommerfeldt"

Sommerfeldt J.

Citation: 2018 TCC 262
Date: 20181220
Docket: 2018-1799(IT)APP

BETWEEN:

ALEX IHAMA-ANTHONY,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sommerfeldt J.

I. INTRODUCTION

[1] These Reasons pertain to an Application brought by Alex Ihama-Anthony, under section 166.2 of the *Income Tax Act* (the "*ITA*"), for an extension of time within which to serve notices of objection for the 2011 and 2012 taxation years.

II. BACKGROUND

[2] The initial notices of assessment issued by the Canada Revenue Agency (the "CRA") on behalf of the Minister of National Revenue (the "Minister") for 2011 and 2012 were issued on July 10, 2012 and December 9, 2013 respectively.[1] Sometime in late 2014, the CRA undertook a review of Mr. Ihama-Anthony's 2011 and 2012 income tax returns. As part of that review, Jason Vieglais, a CRA auditor, sent a letter dated December 8, 2014 to Mr. Ihama-Anthony, requesting that he provide the CRA with copies of the receipts and documents to support the expenses that he had deducted in computing his business income.[2] In response to that letter, Mr. Ihama-Anthony collected his documents and sent them to the CRA, only to have the same envelope and the same documents returned to him a few weeks later.

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1 Exhibits A-1 and A-2 respectively.

2 Exhibit A-4.

[3] Shortly after Mr. Ihama-Anthony received the envelope and documents that the CRA had returned to him, he also received a letter dated March 23, 2015 from Allison Thompson,[3] an auditor with the CRA's International and Ottawa Tax Services Office. He then called the Ottawa Tax Services Office and spoke with Ms. Thompson, who explained to him that he had not categorized his documents properly. She instructed him to recategorize the documents and to prepare a spreadsheet itemizing the expenses. She also told him that her office was in the process of moving from Ottawa to Sudbury, raising the possibility that any mail sent to her might inadvertently be misdirected. Therefore, Mr. Ihama-Anthony decided to send the documents to Ms. Thompson by fax, rather than by mail.[4] The documents that were faxed to Ms. Thompson (Exhibit A-6) apparently consisted of 16 pages, including a fax cover sheet, a full-page letter explaining the expenses pertaining to his business, various schedules and tables itemizing the expenses incurred in 2011 and 2012, and a photocopy of the envelope that he had previously mailed to Ms. Thompson on April 27, 2015, by Xpresspost showing that it had been received in the CRA's NCR Mailroom #92 on April 29, 2015.

[4] I have difficulty following the dates shown on some of the documents in Exhibit A-6. The fax cover sheet and the letter are both dated April 27, 2015, which is also the date of the Canada-Post postmark on the envelope, a photocopy of which is included in Exhibit A-6. That envelope also bears a received date stamp, showing that it was received on April 29, 2015. Therefore, I am unsure as to how a photocopy of this envelope could have been faxed to Ms. Thompson on April 27, 2015. However, as the fax transmission to Ms. Thompson is not critical to this application, I will not concern myself further with this ambiguity.

[5] On May 11, 2015, Jason Payne, an auditor with the CRA, sent a letter to Mr. Ihama-Anthony, advising that the examination of his 2011 and 2012 income tax returns had been completed and that the CRA would be reassessing him so as to disallow $26,922 of business expenses deducted in 2011 and $21,877 of business expenses deducted in 2012.[5] That letter also contained the following statements:

> The reassessment of the changes outlined above will result in a charge for interest, at a prescribed rate, which will accrue not from the date of reassessment, but from the date on which the return being adjusted was due. Depending on your circumstances, you may want to pay an estimated amount before reassessment in

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3 Exhibit A-5.
4 Exhibit A-6.
5 Exhibit A-16.

> order to minimize the interest charge. Paying before reassessment is an option and is not required by law.
>
> We will send you a notice of reassessment to tell you the amounts of taxes owing, with the interest accrued to the date of reassessment.
>
> If you disagree with the above-noted changes, you can file an objection after you receive your notice(s) of reassessment. For more information, see *Brochure P148, Resolving Your Dispute: Objection and Appeal Rights Under the Income Tax Act* at http://www.cra-arc.gc.ca/resolvingdisputes. To file an objection, you have 90 days from the date on your notice of reassessment.[6]

[6] During his testimony, Mr. Ihama-Anthony made several statements as to when he received the letter of May 11, 2015. During his evidence-in-chief, Mr. Ihama-Anthony indicated that he did not remember the precise date on which he received the letter of May 11, 2015. During cross-examination, he acknowledged that he may have received the letter of May 11, 2015 before May 19, 2015, which was the date on which the notices of reassessment for 2011 and 2012 were issued by the CRA. In response to a subsequent question by me, he stated that it was possible that the mail may have been slow and that he may have received the letter of May 11, 2015 on or after May 19, 2015.

[7] In any event, regardless of the day on which the letter of May 11, 2015 was received, Mr. Ihama-Anthony telephoned Mr. Payne the same day that the letter was received and explained to Mr. Payne that he had recently faxed various documents to Ms. Thompson. Mr. Payne said that he had no indication of any documents having been received by the CRA; therefore, he requested that Mr. Ihama-Anthony refax the documents, this time to him (i.e, to Mr. Payne). Mr. Ihama-Anthony did so on the same day as his conversation with Mr. Payne.

[8] In sending the fax to Mr. Payne, Mr. Ihama-Anthony merely took the bundle of documents that he had previously faxed to Ms. Thompson, and, near the top of the original fax cover sheet, wrote the name "Jason Payne," and, near the middle of the original fax cover sheet, wrote "Case # 60968001," which was the case number assigned by the CRA.[7] Mr. Ihama-Anthony then sent the fax to Mr. Payne, without making any other changes to the bundle of documents.

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6 *Ibid.*

7 Exhibit A-7.

[9] On May 19, 2015 the CRA issued the notices of reassessment for 2011 and 2012.[8] Curiously, during his examination-in-chief, Mr. Ihama-Anthony did not provide copies of the notices of reassessment to the Court, nor did he make any specific statements about the receipt or non-receipt of the notices of reassessment. However, copies of the notices of reassessment were attached to the application for an extension of time that Mr. Ihama-Anthony filed with the Court on May 17, 2018. During cross-examination, Mr. Ihama-Anthony acknowledged that he had received both notices of reassessment, sometime after sending the fax to Mr. Payne.

[10] In January or February 2018, in a telephone conversation that Mr. Ihama-Anthony had with Sharon Upshall, a CRA Collections Officer, she advised him that she had reviewed his file and had realized that he had not served notices of objection on the Minister for 2011 and 2012. She explained to him the need to do so. Mr. Ihama-Anthony subsequently prepared and sent notices of objection for 2011 and 2012 to the CRA.[9] He attached, to the notices of objection, copies of the notices of reassessment for 2011 and 2012, as well as a copy of the first page of the CRA's letter of May 11, 2015. Mr. Ihama-Anthony subsequently received from the CRA a letter dated April 19, 2018, advising him that the notices of objection could not be accepted as they had not been mailed within 90 days from the date of the notices of reassessment.[10] The letter also indicated that the CRA had treated Mr. Ihama-Anthony's composite document as an application for an extension of time under section 166.1 of the *ITA*; however, as that application had been received more than one year and 90 days after the date of the notices of reassessment, an extension of time could not be granted.

[11] On May 17, 2018 Mr. Ihama-Anthony filed his application for an extension of time with the Court.

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8 Exhibits R-1 and R-2.

9 Exhibits R-3 and R-4.

10 Exhibit A-9.

III. ISSUES

[12] Mr. Ihama-Anthony stated, during cross-examination, that the notices of objection, in Form T400A, filed on March 16, 2018 were the only notices of objection that he filed. If that statement is correct, paragraph 166.2(5)(*a*) of the *ITA* requires that Mr. Ihama-Anthony's application must be dismissed. However, before reaching that conclusion, I would like to explore the following issues:

a) May the 16-page fax sent by Mr. Ihama-Anthony to Mr. Payne in mid-May 2015 be treated as a notice of objection?

b) If so, on what day was that fax sent by Mr. Ihama-Anthony to Mr. Payne?

c) May a taxpayer, upon learning of a pending reassessment, object to the reassessment before the reassessment is issued?

IV. ANALYSIS

A. Issue a): Was the fax a notice of objection?

(1) What are the requirements for an objection?

[13] The statutory requirements in respect of an objection are set out in section 165 of the *ITA*. The Federal Court of Appeal has stated the following in respect of those requirements:

> The statutory requirements for the filing of a valid Notice of Objection are minimal but must nevertheless be complied with. It must be addressed to the Chief of Appeal [*sic*] of the relevant district (subsection 165(2)) and subsection 165(1) merely requires that the objection, in addition to being in writing, set out the reasons for the objection and the relevant facts.[11]

Although not mentioned in the above statement, it should be noted that subsection 165(6) of the *ITA* provides that the Minister may accept a notice of objection that was served under section 165 but that was not served in the manner required by subsection 165(2).

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[11] *870 Holdings Ltd v The Queen*, 2003 FCA 460, ¶2.

(2) Must there be words of objection?

[14] Ample jurisprudence supports the proposition that, for the purposes of subsection 165(1) of the *ITA*, a notice of objection may be in the form of a letter (or a similar document), and need not use the CRA's suggested form, i.e., Form T400A.[12]

[15] As noted by the Federal Court of Appeal in *870 Holdings*, an objection must set out the reasons for the objection. This would seem to imply that there should be language describing or referring to the objection that is the subject of those reasons. In other words, it seems that a document purporting to be a notice of objection should express an objection to, a complaint in respect of, or a disagreement with, an assessment.

[16] In determining whether there is language of objection, the following statement by Justice Beaubier in *Schneidmiller* is instructive:

> An "Objection" or a "Notice of Objection" is not defined or described in either Section 165 or 248 of the Act. Nor should it be. It is a matter of substance, not form. The Shorter Oxford Dictionary, 3rd Edition, defines "Objection" as:
>
> > "The action of starting [*sic*] something in opposition to a person or thing… an adverse reason, argument or contention. Now often merely: An expression, or feeling, of disapproval, disagreement or dislike…"[13]

[17] Thus, to be a notice of objection, a document "must include an actual objection to an assessment,"[14] or at least some indication that the particular taxpayer is objecting to an assessment.[15]

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12 For instance, see *Randall v The Queen*, 2008 TCC 621, ¶5-7; and *Natarajan v The Queen*, 2010 TCC 582, ¶35. While Form T400A may be a prescribed form, there is nothing in subsection 165(1) of the *ITA* to indicate that it is prescribed for the purposes of that provision. For examples of statutory language referring to a prescribed form, see subsection 22(1), subsection 83(2) and subsection 85(1) of the *ITA*.

13 *Schneidmiller v The Queen*, 2009 TCC 354, ¶9. I think that the word "starting" in the above quotation should be "stating," as *The New Shorter Oxford English Dictionary* (Oxford: Oxford University Press, 1993), p. 1964, defines "objection" as meaning "The action or an act stating something in opposition or protest…."

14 *Natarajan*, *supra* note 12, ¶35.

15 *Dionne v The Queen*, 2012 TCC 197, ¶6 & 8.

[18] I have read and reread Mr. Ihama-Anthony's letter of April 27, 2015,[16] which was faxed to Ms. Thompson in late April 2015 and which was subsequently faxed to Mr. Payne in mid-May 2015. That letter explained the steps taken by Mr. Ihama-Anthony to recategorize the expenses that he had deducted in computing his business income, and then explained certain aspects of those expenses. The letter does not contain any statement taking issue with the CRA's categorization of those expenses. The style and content of the letter were extremely polite and demonstrated a cooperative desire to categorize and report the expenses in the appropriate manner. Regrettably, the letter did not indicate that Mr. Ihama-Anthony disagreed with the CRA's categorization of the expenses, nor is there anything in the letter to suggest that Mr. Ihama-Anthony was aware that the CRA was contemplating a reassessment that would deny the deductibility of many of those expenses. Unfortunately, I have been unable to find anything in the letter to indicate that Mr. Ihama-Anthony was objecting to a reassessment.

[19] The chronological context of the sending of the fax to Mr. Payne certainly suggests that Mr. Ihama-Anthony was concerned about the pending reassessment that was the subject of Mr. Payne's letter of May 11, 2015, the receipt of which prompted Mr. Ihama-Anthony to telephone Mr. Payne and then to fax to Mr. Payne the same documents that Mr. Ihama-Anthony had recently faxed to Ms. Thompson. However, in listening to Mr. Ihama-Anthony's summary of his telephone conversation with Mr. Payne, it seemed that Mr. Ihama-Anthony, when he spoke with Mr. Payne, was primarily concerned about the non-receipt or misplacement by the CRA of the documents that he had previously faxed to Ms. Thompson. In summarizing that telephone conversation, Mr. Ihama-Anthony did not focus on any efforts to dispute or object to the pending reassessment.

[20] Subsection 165(6) of the *ITA* does grant the Minister a limited relieving discretion, but that discretion is confined to the requirements of subsection 165(2), and not subsection 165(1), of the *ITA*, as explained in *Jones*:

> Thus, while the Minister may accept a notice of objection that does not comply with the requirements set out in subsection 165(2) of the *Act*, namely, service by registered mail to the Deputy Minister [now delivery or mail addressed to the Chief of Appeals in a District Office or a Taxation Centre of the CRA], subsection 165(6) is silent with respect to subsection 165(1). It can be assumed,

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[16] Exhibit A-6.

> therefore, that the condition contained in subsection 165(1) is mandatory and the Minister has no discretion under subsection 165(6) to waive it.[17]

(3) Must an objection be addressed to a Chief of Appeals?

[21] Subsection 165(2) of the *ITA* states that a notice of objection shall be served by being addressed to the Chief of Appeals in a district office or a taxation centre of the CRA and delivered or mailed to that office or centre. This is one of the statutory requirements identified by the Federal Court of Appeal in *870 Holdings*.[18]

[22] This provision has received mixed treatment in other decisions of this Court. Two decisions held that there was acceptable service of a notice of objection where a letter (which met the requirements of a notice of objection) was served by a bailiff on the CRA's office in Saguenay,[19] and where a notice of objection was delivered to the Halifax District Taxation Office but was not addressed to the Chief of Appeals.[20] Two other decisions of this Court went the other way, each noting that the language of subsection 165(2) of the *ITA* is mandatory, and holding that a notice of objection mailed to the Ottawa Technology Centre of the CRA[21] or to the Surrey Tax Centre, without being addressed to the Chief of Appeals,[22] was not validly served.

[23] In brief reasons for judgment delivered from the bench by Justice Sexton in *McClelland*, he considered a situation in which the taxpayer had sent a letter to a CRA Collection Enforcement Officer, and stated:

> The *Income Tax Act* required that a Notice of Objection must be sent to the Chief of Appeals. Therefore a letter sent to the Collection Enforcement Officer would not suffice.[23]

[24] While Justice Sexton did not elaborate on the requirement that a notice of objection be addressed to a Chief of Appeals, I consider his decision to be

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17 *Jones v MNR*, 2004 FC 382, ¶12.

18 *870 Holdings*, *supra* note 11, ¶2. See paragraph 13 above.

19 *Lester v The Queen*, 2004 TCC 179, ¶3 & 8. At that time the CRA was known as the Canada Customs and Revenue Agency (the "CCRA"). It is not clear from the reasons in that case whether the letter was served on a district taxation office, a taxation centre or some other office of the CCRA.

20 *Hoffman v The Queen*, 2010 TCC 267, ¶ 24.

21 *Fidelity Global Opportunities Fund v The Queen*, 2010 TCC 108, ¶10-11.

22 *Mohammed v The Queen*, 2006 TCC 265, ¶26-28.

23 *McClelland v The Queen*, 2004 FCA 315, ¶5.

sufficient authority for me to conclude that the fax sent by Mr. Ihama-Anthony to Mr. Payne in May 2015 was not validly served.

[25] As noted above, subsection 165(6) of the *ITA* states that the Minister may accept a notice of objection that was not served in the manner required by subsection 165(2). However, that is a discretion conferred on the Minister and not on this Court.[24] I would not be concerned or opposed if the Minister were to decide to exercise her discretion favourably on behalf of Mr. Ihama-Anthony.[25]

B. Issue b): When was the fax sent?

[26] During the submissions phase of the hearing of this Appeal, counsel for the Crown strongly urged me to find that Mr. Ihama-Anthony sent his fax to Mr. Payne sometime before the CRA issued the notices of reassessment on May 19, 2015, and therefore, the fax could not be treated as a notice of objection. Given the conclusion that I have come to in respect of the next issue, it is not necessary for me to make a decision in respect of this issue.

C. Issue c): May a taxpayer object to a reassessment before it is issued?

[27] Subsection 165(1) of the *ITA* states:

> A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts….

The subsection goes on to specify various deadlines, depending on the circumstances, for the serving of a notice of objection.

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[24] *Mohammed*, *supra* note 22, ¶27; and *Fidelity Global*, *supra* note 21, ¶12.

[25] It is my understanding that the discretion under subsection 165(6) of the *ITA* is limited to the service requirement in subsection 165(2) of the *ITA*. Accordingly, for the Minister's favourable exercise of discretion to benefit Mr. Ihama-Anthony, the Minister would also need to conclude that Mr. Ihama-Anthony's fax to Mr. Payne (or perhaps some other document that was not brought to my attention) constituted a notice of objection. In this regard, I note that Justice Hershfield stated that "the CRA has a tremendous amount of power to act according to what it feels might be appropriate in any particular case. It could have treated the [T1 Adjustment] Requests as Notices of Objection. The form of the document does not always have to dictate how it must or should be treated." See *Petratos v The Queen*, 2013 TCC 240, ¶18.

[28] It is noteworthy that subsection 165(1) of the *ITA* refers to a taxpayer who objects to an assessment, not to a taxpayer who objects to a notice of assessment. As the word "assessment" includes a reassessment,[26] it follows that a taxpayer who objects to a reassessment may serve a notice of objection. There is no requirement in subsection 165(1) that the taxpayer must have received the notice of reassessment before objecting to the reassessment.

[29] The Crown takes the position that a taxpayer cannot object to a reassessment before the reassessment is issued. While I do not accept the Crown's submission that the evidence conclusively shows that Mr. Ihama-Anthony sent his fax to Mr. Payne before the notices of reassessment dated May 19, 2015 were issued, I will, for the purposes of this portion of my Reasons, accept that proposition and consider whether a taxpayer may object to a reassessment before it is issued.[27]

[30] I am aware of two decisions which suggested that a notice of objection served before the issuance of a notice of reassessment was not valid. In *Jablonski*, on October 22, 2007 the CRA sent a proposal letter (proposing to disallow certain charitable donation credits) to Mr. Jablonski in respect of his 2005 taxation year. In a second letter, dated March 6, 2008, the CRA informed Mr. Jablonski that the charitable donation credits that he had claimed on his 2005 income tax return would be disallowed and that he could object to the reassessment within 90 days after the date thereof. On March 28, 2008, Mr. Jablonski prepared a notice of objection and hand delivered it to a tax services office on April 11, 2008. On April 29, 2008, the CRA sent a letter to him informing him that his objection was not valid because it was an objection to a decision to reassess his tax return and that a notice of reassessment had not yet been issued. The notice of reassessment was issued on July 31, 2008.[28] Mr. Jablonski subsequently brought an application for an extension of time within which to object, but, in pursuing that application, it appears that he did not argue that the notice of objection filed on April 11, 2008

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[26] Subsection 248(1) of the *ITA*.

[27] Simply by reason of the way the mail system works, it is likely that the notices of reassessment were received by Mr. Ihama-Anthony after he received Mr. Payne's letter of May 11, 2015. Mr. Ihama-Anthony's testimony (see paragraph 9 above) supports this view. Nevertheless, it is possible that the notices of reassessment were issued and put in the mail (but not received) before Mr. Payne's letter was received by Mr. Ihama-Anthony. However, for the purposes of this portion of my Reasons, I will assume that Mr. Ihama-Anthony received Mr. Payne's letter, telephoned Mr. Payne and sent the fax to Mr. Payne (all of which happened on the same day) sometime before May 19, 2015, which was the date of the notices of reassessment.

[28] *Jablonski v The Queen*, 2012 TCC 29, ¶11-15.

was valid. Without being asked to consider the issue of whether a notice of objection could validly predate a notice of reassessment, the Court stated that, in the circumstances of the case, no notice of objection had been served on the Minister, no application for an extension of time had been made under section 166.1 and the application for an extension of time made under section 166.2 of the *ITA* was filed beyond the one year and 90 days allowed by the *ITA*.[29]

[31] In *Dionne*, Mr. Dionne took the position that a letter dated October 15, 2009 from his representative to the CRA constituted a notice of objection in respect of the 2004 through 2010 taxation years. The 2004, 2005 and 2006 taxation years had been assessed in 2005, 2006 and 2007 respectively, i.e., before the letter of October 15, 2009 had been sent. The other taxation years were assessed after the letter was sent. In particular, the 2007 and 2008 taxation years were assessed on November 30, 2009, the 2009 taxation year was assessed on May 24, 2011 and the 2010 taxation year was assessed on May 9, 2011. Here the Court stated, "For the taxation years 2007, 2008, 2009 and 2010, the letter of October 15, 2009 could not have been an objection to any assessment of any of these years as the Appellant had not been assessed for any of these years by that date."[30] There was no suggestion that Mr. Dionne or his representative had been advised before October 15, 2009 that threatened reassessments were pending, although the primary purpose of the letter of October 15, 2009 was to request that adjustments be made to Mr. Dionne's income tax returns for 2002 through 2008.[31]

[32] In *Persaud*, by a letter dated September 15, 2010, the CRA advised Mr. Persaud that a particular charitable gift would be disallowed. Upon receiving that letter, and having objected to a similar disallowance of a previous gift in the preceding taxation year, Mr. Persaud decided to file a notice of objection for 2007 similar to that which he had filed for 2006. The notice of objection for 2007 was dated September 30, 2010 and referenced a reassessment dated September 15, 2010, which was actually the date of the CRA's letter advising of the disallowance of the gift. The notice of reassessment was issued on January 24, 2011, but appears not to have been received by Mr. Persaud. The CRA never acknowledged receipt of the notice of objection dated September 30, 2010.[32] In analyzing this situation, Justice Woods stated:

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29 *Ibid.*, ¶30.

30 *Dionne*, *supra* note 15, ¶9.

31 *Ibid.*, ¶3.

32 *Persaud v The Queen*, 2013 TCC 405, ¶5-8.

> 11. Counsel for the Crown submits that this document [the notice of objection dated September 30, 2010] is not a notice of objection to the reassessment issued by notice dated January 24, 2011 because the objection did not refer to this reassessment.
>
> 12. In my view, this is too narrow an interpretation of subsection 165(1) of the *Income Tax Act*, which is the provision which permits the filing of a notice of objection….
>
> 14. The document sent by Mr. Persaud refers to a reassessment dated September 15, 2010. This is the date of the letter that precedes the reassessment and which informs Mr. Persaud that the charitable gift is disallowed. It is clear that Mr. Persaud intends to object with respect to this issue. A reasonable interpretation of the document is that Mr. Persaud was objecting to the reassessment that implemented the disallowance.
>
> 15. Where does that leave us? I would conclude as follows:
>
> > … The notice of objection dated September 30, 2010 is, in my view, a validly-served notice of objection to the reassessment that was subsequently issued by notice dated January 24, 2011.[33]

[33] In my view, the decisions in *Jablonski* and *Dionne* may be distinguished. In *Jablonski*, the Court was not asked to consider whether a notice of objection could predate a notice of reassessment. In *Dionne*, the event that prompted the taxpayer's representative to send the letter that was later claimed to be a notice of objection was something other than the recent receipt of correspondence from the CRA indicating that it was about to reassess the taxpayer. Accordingly, I prefer the reasoning in *Persaud*, which specifically addressed the issue of whether a notice of objection may predate a pending notice of reassessment.

[34] Like Justice Woods in *Persaud*, I am of the view that a notice of objection prepared in response to a proposal letter, which informs a taxpayer that a reassessment is about to be issued, may, if validly served on a Chief of Appeals,[34] constitute a valid notice of objection in respect of the reassessment when it is subsequently issued.

[35] The statement in the preceding paragraph is to be narrowly construed and applied. It is limited to the situation where the CRA has advised a taxpayer in

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33 *Ibid.*, ¶11-12 & 14-15.

34 Or if the Minister exercises her discretion favourably on behalf of the taxpayer under subsection 165(6) of the *ITA*.

writing that a notice of reassessment is about to be issued, and the taxpayer serves a notice of objection before the pending notice of reassessment is actually issued.[35]

V. CONCLUSION

[36] By reason of the decision that I have regretfully reached in respect of issue a), I must unfortunately dismiss this Application, without costs.

[37] This is a distressing result because the evidence clearly established that on several occasions Mr. Ihama-Anthony sent to the CRA the documents which it had requested from him during the course of its audit, only to have those documents returned to him, without having been considered by the CRA. Had the CRA considered those documents before finalizing its audit, the results of the audit and the nature of the resultant reassessments may well have been more favourable from the perspective of Mr. Ihama-Anthony.[36]

Signed at Edmonton, Alberta, this 20th day of December 2018.

"Don R. Sommerfeldt"

Sommerfeldt J.

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35 It is generally advisable, before objecting, to wait until the notice of reassessment is received, so that its date and serial number (if any) may be stated in the notice of objection.

36 Mr. Ihama-Anthony may wish to consider whether it would be advisable for him to apply to the Minister, as represented by the CRA, for taxpayer relief under subsection 152(4.2) of the *ITA* (formerly known as the "fairness package").

CITATION:	2018 TCC 262
COURT FILE NO.:	2018-1799(IT)APP
STYLE OF CAUSE:	ALEX IHAMA-ANTHONY AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 10, 2018
REASONS FOR JUDGMENT BY:	The Honourable Justice Don R. Sommerfeldt
DATE OF JUDGMENT:	December 20, 2018

APPEARANCES:

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COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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