

**THE ROLE OF A REVENUE COURT
SUCCESS STORIES AND LESSONS**

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The Role of a Revenue Court

Success Stories and Lessons

Pursuant to section 4(1) of the Judicature (Revenue Court) Act the Revenue court has jurisdiction to hear and determine any appeal, cause or matter brought to the Court pursuant to the various taxing legislations. The powers of the Court are usually invoked once the taxpayer has exhausted all the administrative avenues for appealing a decision.

The Court has the jurisdiction to hear appeals under the Customs Act, the Excise Duty Act, the Land Valuation Act, the Income Tax Act, the Transfer Tax Act, The Contractor's Levy Act, the General Consumption Tax Act and Property Tax Act.

In addition to appeals from taxpayers, the Revenue Court also hears applications for search warrants and production orders pursuant to the Revenue Administration Act.

Value of the Court

This court is staffed with a Puisne judge who is competent in the area of Revenue law and has an extensive accounting background. This is important since the area of taxation is so specialized and technical. This exclusive Court ensures that matters are dealt with expeditiously. While the judge sits in the Revenue court he also hears other matters which are outside the ambit of the Revenue Court.

There is value in having this forum as it affords the taxpayer a rehearing – the opportunity to have a second chance. In addition the judge is seized with the power to obtain the assistance of accountants, actuaries or other experts if he thinks fit.

The mandate of any taxing scheme is to encourage voluntary compliance and to have resolution of disputes by amicable means. This court does not inhibit the furtherance of such a mandate as even at this level the taxpayer is not estopped from obtaining seek settlements, without prejudice to the matter in dispute.

Lessons

The proceedings before this forum have highlighted the need for the legislature to be more proactive in bridging the lacunae in the various legislations. It illustrates that there is a need to legislate more carefully because the judge can only interpret what is in the legislation. This was made clear in the case of *Swept Away Resorts v. TAD*, where the issue was whether or not interest earned on sums held by the hotel in bank accounts is exempt from Income tax under section 9 of the Income Tax Act. The difficulty faced by the Revenue was seeking to read into the legislation words not included therein.

The process has also brought to the fore the need for the administrative actions been taken by the various arms of the Revenue to be done in a timely manner and that the basis for taking certain decisions be known.

Prior to this there was the decision of *Elaine Bolton v Stamp Commissioner* where based on that ruling there amendments to the Transfer Tax Act as it relates to entitlements to exemptions to the principal place of residents. Based on the interpretation of the Act, there was need to amend the legislation to alleviate hardship as it relates to the survivors on the death of certain family members.

Landmark Decisions

One of the most important and far reaching matters dealt with in the Revenue Court was the matter of the *Carreras Group Ltd v Stamp Commissioner*.

This was a matter involving the interpretation of section 3 of the Transfer Tax Act which allowed an exemption of transfer tax on Property, (in this case shares) where there was a reorganization of a company which was in this instance seeking to exchange the shares for a debenture. The taxpayer submitted documents to the revenue authorities purporting to be an exchange of shares for debentures.

The issue was whether the exchange was a genuine exchange or a sale of shares which would attract transfer tax on the transaction. The Revenue authorities ruled that it was a sale. The taxpayer objected and initiated a suit which started in the Revenue Court and ended in the Privy Council.

The Revenue Court took the view that based on the strict interpretation of the law, the court could not look behind the transaction and as such adjudged the transaction to be an exchange rather than a sale and thereby exempt from Transfer Tax.

On appeal the Court of Appeal and ultimately the Privy Council ruled that based on the modern approach to the interpretation of the law which is the purposive approach for which the landmark English case of *Ramsay (W.T.) Ltd v IRC* is the standard bearer; the court and the revenue authorities had a duty to examine the transaction in its entirety and to also consider the purpose of the legislation which was to exempt genuine cases of exchange rather than those which had as the main purpose avoidance of tax.

This has now become the approach used by the Revenue Court in interpreting tax law in Jamaica and was again used in favour of the Revenue in the recent case of *Cigarette Company of Jamaica Ltd v Commissioner of TAAD(2005)* which has been regarded as the largest tax matter in the Jamaican Courts.

The Revenue Court is therefore coming of age and continues to stride towards improvements in local jurisprudence. One can say that they do try to strike the balance between equity for the taxpayer while ensuring protection of the public purse.

Activity in Revenue Court

Approximately thirty five (35) matters were brought before the Revenue Court for the fiscal periods of April 2005 – March 2006, April 2006 – March 2007 and April 2007 – March 2008, which spans a three-year period.

For the period, seven (7) matters proceeded to trial with the Revenue being successful in six (6) of these matters; two of which are currently before the Court of Appeal. The single matter in which the Revenue was unsuccessful is also currently before the Court of Appeal.

Approximately ten (10) matters were settled amicably resulting in there withdrawal/discontinuance from the Court.

A number of interlocutory applications were made during the period requiring the Court to grant extension of time or other such acts.

The remaining matters are currently awaiting outcomes of fiscal/administrative reviews or awaiting hearing dates from the Court.

See the attached list of the cases that went to the Revenue Court for the period 2005-2008

MATTERS IN THE REVENUE COURT

	MATTERS	STATUS	REMARKS
1	Alpha Securities v TAD		Hearing date not set. Matter to be resolved at policy level.
2	Stewarts & Dominion v TAD (C.A)	In favour of Revenue at both Revenue Court and Court of Appeal	Appeal was made to PC but withdrawn as a result of Amnesty.
3	Swept Away Resorts v TAD (C.A.)	Revenue lost at Revenue court – on appeal at the Court of Appeal	Judgement reserved to July 31, 2008.
4	Monarch Homes v Commissioner Land Valuations	settled	
5	Trout Hall 1 & 2 v Commissioner Land Valuations	settled	
6	Reliance v TAD	In favour of the revenue	
7	Dennis Jones v TAD	In favour of the revenue	
8	Desnoes v TAD	In favour of the revenue	
9	Liberty Car Rentals v TAD	In favour of the revenue	
10	Poly Foods v TAD	Settled	
11	Service Zone v TAD	Withdrawn	Appellant discontinued matter as a result of criminal proceedings .
12	Joseph Lyn Kee Chow 1 & 2	Discontinued	Settlement negotiated.
13	RBTT v Commissioner Land Valuations 1&2	Discontinued	Settlement negotiated.

	MATTERS	STATUS	REMARKS
14	Dennis Murray v TAD	In favour of the revenue – Matter on Appeal at court of Appeal	
15	Andrew Willis v TAD	Stayed pending Application for leave for judicial review	
16	Brenzia Ltd v TAD	Awaiting hearing date	
17	D.R. Holdings v TAD	In favour of the revenue – Matter on Appeal at court of Appeal	
18	Cigarette Company	In favour of revenue	
19	R & K Limited	Settled	
20	Montego	Interlocutory Applications	
21	Hatfield Developers	Interlocutory Applications	
22	Llandovery Industrial Limited	Hearing date to be set	
23	John Larsen Limited	Hearing date to be set	
24	Marva Mathews v Transport Authority & Commissioner of Inland Revenue	Leave for Judicial review denied	
25	Carreras v TAD	In favour of Revenue and Privy Council	
26	Sheckles Limited v Commissioner of Land Valuations	Settled	
27	Beresford Pryce v TAD	Hearing date to be set	
28	Dorette Adams v TAAD	Interlocutory Applications matter -Settled	