[2016] JMCA Civ 16

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 141/2011

BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE DUKHARAN JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA (AG)

BETWEEN	**WILLIAM ANDREW CHANG**	**APPELLANT**
AND	**THE COMMISSIONER OF TAXPAYER APPEALS (INCOME TAX)**	**RESPONDENT**

Herbert A Hamilton for the appellant

Mrs Cecelia Chapman Daley, Mrs Suesette Harriott-Rogers and Miss Maxine Johnson for the respondent

27, 28, 29 April 2015 and 18 March 2016

MORRISON JA

Introduction

[1] This is an appeal from a judgment of R Anderson J given in the Revenue Court on 14 October 2011.

[2] The appellant is a taxpayer. The respondent is the Commissioner of Taxpayer Appeals (the CTA), appointed under section 11B of the Revenue Administration Act (the

RAA). Pursuant to section 11C of the RAA, the CTA is responsible for the general administration of the Taxpayer Appeals Department (the TAD), "and shall have such other functions ... as may be assigned to him by this or any other enactment". The TAD was established by section 11A, which provides that it shall be the duty of the TAD to provide for, among other things, "the hearing of appeals by taxpayers against decisions ... in relation to assessments made under the relevant laws relating to revenue..."[1]

[3] Under the provisions of the Income Tax Act (the ITA), the CTA is the public officer responsible for hearing such appeals from, among others, the Commissioner of Taxpayer Audit and Assessment (the CTAA). The CTAA is the public officer responsible for the general administration of the Taxpayer Audit and Assessment Department (the TAAD), established under section 11D of the RAA.

[4] By a notice of decision issued on 26 June 2009, the CTA confirmed additional assessments to income tax raised by the CTAA against the appellant for the years of assessment 2005 and 2006. The amount of tax payable by the appellant in each of these years was assessed at $12,125,393.75 and $8,136,090.94, respectively. In each

[1] It should be noted that the structure described above has in some respects been altered by the provisions of the Revenue Administration (Amendment) Act 2011 (Act No 11/2011), which came into force on 1 May 2011. However, this appeal and the proceedings which led up to it were conducted on the basis of the RAA as it stood before the amendments and this judgment proceeds on the same basis. It might also be noted that the RAA has since been amended again (in respects that are not relevant for present purposes) by the Revenue Administration (Amendment) Act 2015 (Act No 19/2015).

case, the assessment was stated by the CTAA to represent "the estimated Jamaican dollar value of investment gains made with a non-licenced financial institution."[2]

[5] By notice of appeal filed on 24 July 2009, the appellant appealed to the Revenue Court against the decision of the CTA. In a written judgment given on 14 October 2011, R Anderson J, the then judge of that court, dismissed the appellant's appeal and confirmed the assessment. This is an appeal from the decision of the learned judge.

[6] Perhaps unusually for an income tax appeal, the appellant does not challenge the quantum of the assessment. However, he strongly challenged his liability to pay it on a variety of grounds, engaging questions of law, procedure and, on one possible view, constitutional rights. Before coming to the detailed background to the appeal, it may first be helpful to indicate briefly the statutory and regulatory provisions which govern the assessment and appeals process under the ITA.

[7] The starting point in this case is section 72(4) of the ITA, pursuant to which the CTAA is empowered to make additional assessments to tax, where it apppears to her that the taxpayer "has not been assessed or has been assessed to a less amount than that which ought to have been charged … within the year of assessment or within six years after the expiration thereof …". Section 75(1) provides for service of notices of assessment on the taxpayer. Section 75(4) establishes the mechanism whereby such an assessment may be disputed, within 30 days of the service of the notice of assessment,

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[2] See notices of additional assessments for the years of assessment ending 31 December 2005 and 31 December 2006 respectively.

by way of notice of objection stating the grounds of the objection. Section 75(4A) provides that "[t]he onus of proving that the assessment complained of is erroneous shall be on the person making the objection". Section 75(6) provides that, save where the person making the objection agrees with the CTAA as to the amount at which he is liable to be assessed, in which event the assessment will be amended accordingly, the CTAA is required to give written notice to the person making the objection of her decision on the objection. Section 75(6A) provides that, if dissatisfied with the CTAA's decision, the objector may next, within 30 days, appeal against it to the CTA. Finally, section 76(1) provides that, if dissatisfied with the decision of the CTA, the objector may then appeal to the Revenue Court within 30 days, or such longer period permitted by rules of court. In the event of such an appeal, section 76(2) again allocates the onus of proving that the assessment is erroneous to the objector.

[8] As a final preliminary, I should mention the Revenue Administration (Appeals and Disputes Settlement) Regulations, 2002 (the regulations), made pursuant to the provisions of the RAA. Once a notice of appeal is filed in respect of the decision of a revenue commissioner, such as the CTAA, regulation 6 requires the CTA to serve a copy on the relevant revenue commissioner. Regulation 7 provides that, within 21 days of being served with the notice of appeal, the relevant revenue commissioner shall furnish the CTA with "(a) all files relating to the relevant decision; [and] (b) a written statement of the reasons for the relevant decision". And regulation 8(2) provides that, "[i]f the [CTA] requires any evidence or further evidence for the investigation of the decision

appealed or disputed, he shall give the appellant or the disputant ... fourteen days notice in writing specifying what evidence or further evidence is requred".

The additional assessments

[9] In or about January 2008, based on information that the appellant was in receipt of additional income from investments, the TAAD selected him for an investigation. The findings of the investigation revealed that the appellant had investments with an entity known as Olint Investment Club (Olint)[3] and that as at 30 April 2005 his accounts contained a balance of US$319,423.96. Over the period 2005-2006, the appellant's investments with Olint credited him with significant monthly "trading gains" (averaging well over 10% per month). In addition, the TAAD's information indicated that in 2007 the appellant had received a loan of $6,500,000.00 from the Bank of Nova Scotia Jamaica Ltd (BNS), for the purchase of a motor car valued at approximately $7,000,000.00. Further, that the appellant had also purchased two properties valued in excess of $32,000,000.00.

[10] Based on her review of the information in the TAAD's possession, the CTAA served the appellant with notices of additional income tax assessments dated 10 March 2008 for the taxable period 2004-2006. The grand total of the assessment was $97,443,744.46, being $565,250.00 for 2004; $15,282,086.33 for 2005; and $81,596,486.13 for 2006. By letter dated 15 May 2008, the appellant's accountant, Mr

[3] The actual statements issued to the appellant described the entity as 'Overseas Locket International Corp'.

Henry Parkes[4] (Mr Parkes), whom he would in due course designate as his agent "in respect of all income tax matters", objected to the additional assessments on the appellant's behalf. The stated grounds of objection were that the assessment was (i) excessive, in that it did not reflect the earnings of the appellant; and (ii) arbitrary, in that no explanation of its basis had been provided.

[11] As a result, the appellant and Mr Parkes met with officers of the TAAD and, by letter dated 21 July 2008, Mr Parkes confirmed the appellant's position as follows:

> "Further to our meeting of Tuesday July 8th 2008, we have outlined below an explanation of the business activity conducted between our above mentioned client and Olint Investment Club between January 2005 and March 2006. Mr Chang ended his investment with Olint in April 2006. The funds were paid out in May 2006 and was [sic] invested in his JMMB fund account (statement attached).
>
> Our client commenced relations with Olint in January 2005 with US$20,000. He operated two investment accounts in his name. Account #40A and 188B was funded with cash received by leverageing his ESOP shares received upon his departure from JMMB in 2004. Account # 40A was operated on behalf of a third party Mr. Andrew Stewart. The funds were subsequently merged into account 188B in November 2005.
>
> Upon reviewing the monthly statements we have determined that our client is liable for tax on the investment income from Olint of J$4,506,101 for Y/A 2005 and J$4,087,798.75 for Y/A 2006. We have outlined a detail monthly analysis of the earnings and the tax thereon which is enclosed."

[4] Trading as 'Henry Parkes & Partners'.

[12] Among other things, Mr Parkes' letter enclosed an undated statement by the appellant, in which he sought to confirm the investment said to have been made on behalf of the third party, Mr Andrew Stewart:

> "**STATEMENT OF WILLIAM ANDREW CHANG**
>
> **I do hereby state that the proceeds used to invest in the Olint Account Number 40A, were not of my own, but were instead invested on behalf of Andrew Stewart of 539 Northfield Avenue, #21 West Orange New Jersey 07052.**
>
> **July 16, 2008**
>
> **Signed_____**
>
> **WILLIAM ANDREW CHANG**
>
> **Signed_____**
>
> **DELROSE A.M.CAMPBELL**
>
> **Attorney-at-Law**"

[13] By letter also dated 21 July 2008, the CTAA issued her notice of decision on the appellant's objection to the additional assessment. The amount in respect of 2004 was confirmed, but the amounts in respect of 2005 and 2006 were reduced to $18,188,090.63 and $12,204,136.41, respectively. Included in the amounts for 2005 and 2006 were penalties of $6,062,696.88 and $4,068,045.47, respectively.

The appeal to the CTA

[14] By letter dated 30 September 2008, the appellant appealed against the CTAA's assessment for 2005 and 2006. The grounds of the appeal were that (i) "[t]he final assessment includes tax on income earned from investments on behalf of a foreign national"; and (ii) "[n]o remittance of the earnings has been made to-date hence [the appellant] has no liability to tax on this sum". In addition, the appellant appealed against the imposition of "all interest and penalties".

[15] On 19 May 2009, the CTA convened a meeting to hear the appellant's appeal. Present were the appellant and Mr Parkes, two representatives of the TAAD and Mr Ralston Johnson, a senior appeals officer attached to the TAD. The meeting was chaired by Mr Johnson and both sides restated their respective positions. Among the matters explored in some detail was the question of the investment which the appellant claimed to have made with Olint on Mr Stewart's behalf. In answer to Mr Johnson's specific question whether any documentary evidence was available "to substantiate your argument that Mr. Stewart gave you funds which you invested in the said account", Mr Parkes asked for a period of one month, to "look and see what additional information we could provide for you".

[16] As a result, in a letter dated the following day (20 May 2009) and dispatched over the signature of Mr Johnson, the CTA required the appellant, pursuant to regulation 8(2) of the regulations, "… to submit documentary evidence in support of

your argument, that funds were invested on behalf of a foreign national namely Mr Andrew Stewart within fourteen (14) days from the date of this letter".

[17] Responding on the appellant's behalf by letter dated 8 June 2009, Mr Parkes sent in the same undated statement by the appellant which he had earlier submitted to the TAAD (see paragraph [12] above). Mr Parkes then went on to add this:

> "We would also like to state the following in response to your request for evidence.
>
> (a) We do not have any proof of payment to Mr. Andrew Stewart as no payments were requested by Mr. Stewart or made to him;
>
> (b) There are no receipts for funds from Mr. Stewart as the initial investments were settlements of an outstanding obligation based on services performed for Mr. Chang by Mr. Stewart;
>
> (c) Mr. Chang and Mr. Stewart are friends and all arrangements was [sic] informal without the traditional form of evidence (receipts, formal agreements, etc.)"

[18] I have already referred to the CTA's notice of decision dated 26 June 2009. Of particular relevance, for present purposes, is the fact that it was signed by Mr Winston Lawson, the then CTA. The CTA's conclusion, after a full review of all the available evidence, was as follows:

> "It is therefore my view that the appellant has failed to provide credible evidence in support of his argument that funds were received from a Mr Andrew Stewart which he invested in his Olint Investment accounts. The appellant has also failed to provide proof in respect to funds paid out to

> the third party investor during the time when the accounts were held at Olint Investment Club."

[19] However, as regards the penalty, the CTA considered that there was "some degree of doubt" as to whether the notice of intention to impose a penalty required by section 72(6)(a) of the Act had been properly served on the appellant. Accordingly, the CTA determined that the penalty charge should be removed in respect of the years 2005-2006. It is by this means, therefore, that the CTA came to the overall conclusion that the balance of additional income tax which the appellant should pay for the years of assessment 2005 and 2006 was $12,125,393.75 and $8,136,090.94, respectively.

The appeal to the Revenue Court

[20] The notice of appeal was originally filed on 24 July 2009, but it was eventually superseded by a document headed "Further Supplementary Notice of Appeal", filed on 29 March 2010. The grounds of appeal are set out below in full:

> "That the Respondent erred and/or misdirected himself in fact and law –
>
> (a) by not being present at the hearing of the appeal but none-the-less purporting to make a decision on issues canvassed in his absence.
>
> (b) The respondent has mandatory statutory access to all the files of the Commissioner relating to the decision prior to the hearing, whether they contain material prejudicial to the Appellant or not, by virtue of Paragraph 7(a) of the Revenue Administration (Appeals and Disputes Settlement) Regs (2002) (The Regs). The Appellant was not, in the circumstances, afforded 'a fair hearing before

an independent and impartial authority' as required by the Constitution of Jamaica.

(c) by ignoring the uncontradicted evidence of the Appellant that the funds which he invested in (The Club) on behalf of Andrew Stewart (the 3rd party) represented payments due to Stewart from the Appellant, for services rendered on his behalf.

(d) by failing to conduct a careful or any enquiry into –

(1) the modus by which 'the Club' acquired investment funds;

(2) the nature of the gains made by 'the Club' and the distributions to its members; and

(3) application of the mutuality principle in determining whether such distributions were exigible to tax.

(e) by treating the Appellant's gains on his contribution(s) to 'the Club' as income which fell within the provisions of the Income Tax Act.

(f) by basing his decision on findings of fact which were incorrect: for example, the alleged failure of the Appellant to provide –

(1) 'credible evidence in support of his argument that funds were received from a Mr Andrew Stewart which he invested in his Olint Investment Account' and

(2) that funds were 'paid out to the third party investor during the time when the accounts were held at Olint Investment Club'.

A review of the evidence will confirm that the findings (supra) misrepresent the Appellant's evidence.

(g) by issuing letter dated May 20, 2009 – that is after the hearing of the appeal – requiring the Appellant to furnish additional documentary evidence.

This was not only in breach of Regulation 8(2) of the Revenue Administration (Appeals and Disputes Settlement) Regs 2002 which contemplates that such a request should be made and complied with during the hearing of the appeal but also in breach of the principle of 'fairness' since the other party would have been unaware of the request and response, if any.

(h) by accepting as fact without enquiry the allegation that the Appellant made a cash purchase of two properties at a total cost of $33,500,000 in his name presumably from gains earned from 'the Club' and regarding this as confirmatory of the view that he was the sole owner of the funds invested in 'the Club'.

(i) by confirming assessments which ex facie did not disclose either the legal or factual basis on which they were made."

[21] For the purposes of the appeal to the Revenue Court, affidavit evidence was received from the appellant, Mr Clarence Villiers, the Director of Objections and Quality Review at the TAAD, and Mr Johnson.

[22] In his account of the background to the appeal, the appellant summarised (at paragraph 9) the issues which were before the CTA for consideration as, firstly "the [CTAA's] rejection of my claim regarding ownership of funds in 'the Club' by a foreign national"; and, secondly, "the nature of the return(s) on my investment in 'the Club' – that is whether capital or income".

[23] Mr Villiers for his part stated the basis of the TAAD's interest in the appellant as follows:

> "4. In or about January of 2008 based on information received that the Appellant was receiving additional income from investments, he was selected for an investigation. Our information revealed that Mr. Chang had investments with The Olint Investment Club totaling US $319,423.96 as at April 30, 2005 which credited him with gains netting US$746,410.16 for year ended December 31, 2006. Additionally, the Appellant received a loan from Bank of Nova Scotia (BNS) in the sum of $6,500,000 in 2007 for the purchase of a motor vehicle valued at approximately $7,000,000.00. The Appellant also purchased two properties valued in excess of $32,000.000.00. [sic]
>
> 5. Based on a review of the information received the Appellant was served with Notice of Additional Income Tax assessments dated March 10, 2008 for the taxable period 2004-2006 totaling $97,443,744.46 broken down as follows:
>
> - 2004 - $565,250;
> - 2005 - $15,282,086.33;
> - 2006 - $81,596,486.13
>
> A copy of the additional assessments and explanation of items dated March 10, 2008 is attached hereto and marked **'CV-1'** for identification."

[24] Mr Johnson spoke to the process by which the CTA's hearing on the appellant's appeal on 19 May 2009 had been convened and conducted. He stated that, at that hearing, "I represented the [CTA] and a Stenographer was present to take verbatim notes".

[25] R Anderson J dismissed the appeal on all grounds. In summary, the learned judge held that: (i) the CTA did not act in breach of statutory duty by delegating the hearing of the appellant's appeal to a subordinate officer in his department; (ii) there was nothing wrong with the CTA having access to all the files and documents pertaining to the appellant in the possession of the TAAD prior to the hearing of the appellant's appeal and that, in any event, the Revenue Court was not the proper forum in which to determine whether such disclosures breached his constitutional right to a fair hearing before an impartial tribunal; (iii) the proceedings before the CTA were not invalidated by the various procedural defects of which the appellant complained; (iv) in any event, an appeal to the Revenue Court is a trial *de novo* and it is accordingly possible for procedural defects in the proceedings before the CTA to be cured by the court; (v) whether the issue raised is one of liability or quantum, the onus of showing that the CTA's decision is erroneous always rests with the taxpayer; (vi) the gains derived by the appellant from his participation in the "non-licenced financial institution" were "income" within the meaning of the ITA; (vii) the evidence provided by the appellant in support of his assertion that the funds invested by him in Olint were held on behalf of a third party was "gratutitously self-serving"; and (viii) the validity of the assessments was not affected by the TAAD and the CTA's "failure" to invoke their own statutory investigatory procedures to determine the correctness of the assessments and any information provided by the appellant himself.

The grounds of appeal to this court

[26] In his notice of appeal filed on 24 November 2011, the appellant challenged the learned judge's decision on the following grounds:

> "(a) The Learned Judge erred in holding that the Respondent breached no law and/or Regulation in delegating his statutory duty to hear the appeal 'since there is no provision either in the Income Tax Act (ITA), or Revenue Administration Act (RAA) or in the Regulations (the Regs) which mandates the Respondent himself to hear an appeal.
>
> (b) The Learned Judge erred in concluding that –
>
> (1) it was critical for the Respondent in his role as adjudicator to be given access to <u>all</u> the files and documents of the 'CTAA' relating to the decision <u>prior</u> to his hearing of the Appeal, otherwise the integrity of his decision would inevitably be compromised.
>
> (2) the Revenue Court (the Court) was not the proper forum to consider and determine whether the ex parte disclosures mandated at (b)(1) (supra) breached the Appellant's constitutional right to a <u>fair</u> hearing before an <u>independent an [sic] impartial authority</u>
>
> (c) The Learned Judge erred in holding that the Respondent's failure to follow the statutory procedure mandated for obtaining additional evidence – did not invalidate his decision.
>
> (d) The Learned Judge erred in holding that an appeal from the 'CTA' to this Court is a trial <u>de novo</u>: in consequence, any procedural defects in the hearing before the CTA may be cured by this Court, and any decision by the CTA may be ignored or discarded.

(e) The Learned Judge erred in holding that whether the issue raised is one of liability or quantum the onus of showing that the Respondent's decision/assessment is erroneous always rests on the Appellant.

(f) The Learned Judge erred or misdirected himself in fact and law in holding that the gains derived by the Appellant from his contribution to the Olint Investment Club was [sic] income which fell within the provisions of the 'ITA'.

(g) The Learned Judge erred in holding that the failure of the Respondent and 'CTAA' to discharge their statutory duty to invoke the requisite investigatory procedures to determine the correctness of the 'CTAA's assessment as well as the information and/or documentary evidence provided by the Appellant did not affect the validity of the decision and/or assessment made.

(h) The Learned Judge erred in holding that the respondent in filing an Affidavit containing material which ex facie contravened the rules of this 'Court' did not breach any law, regulations or rules.

(i) The Learned Judge erred in holding that assessments which ex facie did not disclose either the legal or factual basis on which they were made, none-the-less met the relevant statutory requirement."
(Underlining as in original)

The issues

[27] I hope that I do no injustice to the obvious care with which these grounds were formulated by Mr Hamilton for the appellant by subsuming them under the following broad headings:

i. The improper delegation issue (ground (a))

ii. The fair hearing issue (ground (b))

iii. The improper use of procedure issue (ground (c))

iv. The *de novo* issue (ground (d))

v. The onus of proof issue (ground (e))

vi. The exigibility to income tax issue (ground (f))

vii. The TAAD/CTA's duty to investigate issue (ground (g))

viii. The role of the CTA on an appeal from the Revenue Court issue (ground (h))

ix. The improper assessment issue (ground (i))

i. The improper delegation issue

[28] R Anderson J dealt quite shortly with the appellant's contention that the CTA acted in breach of the principle of *delegatus non potest delegare*, by delegating to Mr Johnson the responsibility of hearing the evidence and the submissions advanced in support of the appeal. This was what the learned judge said (at paragraph [27]):

> "This challenge on the basis of unfairness is, in my view, entirely without merit. In the first place, there is no provision either in the ITA or RAA or in the Regulations cited by the Appellant which ***mandates the* [*CTA*] *himself*** to hear an appeal. In fact, in paragraph (b) of section 11A(2), the department is given specific power to 'establish procedures in relation to matters referred to in paragraph (a)'. There is no evidence of any breach of such procedures which could be the subject of sanction by this or a Judicial Review Court." (Emphasis as in the original.)

[29] Mr Hamilton submitted that a review of the relevant provisions of the ITA, the RAA, the regulations and the Interpretation Act establishes clearly that the duty to hear and decide taxpayer appeals rests solely on the incumbent CTA during the relevant period. The duty is quasi-judicial and therefore, in accordance with the principle embodied in the maxim *delegatus non potest delegare*, cannot be delegated. Accordingly, the hearing of the appellant's appeal in this case by Mr Johnson was a nullity and, in consequence, the proceedings were void *ab initio* and the CTA's decision invalid.

[30] In support of this submission, in addition to the provisions of the ITA and the RAA to which I have already referred (see paras [1]-[7] above), Mr Hamilton relied on section 34(2) of the Interpretation Act, which provides as follows:

> "Where any Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office or by a person appointed to act for him."

[31] Mr Hamilton also referred us to a number of well-known decisions on the ambit of the rule *delegatus non potest delegare*. In **Barnard and others v National Dock Labour Board and another** [1953] 1 All ER 1113, 1121, Romer LJ referred to "...the well-established principle of law that, prima facie, a person to whom powers or duties are delegated cannot themselves delegate their performance to someone else". In the same case, Denning LJ also observed (at page 1118) that "[w]hile an administrative function can often be delegated, a judicial function rarely can be". To similar effect, in

R v Governor of Brixton Prison and Another, Ex parte Enahoro [1963] 2 QB 455, 465, Lord Parker CJ treated it as "well settled that certainly no person made responsible for a judicial decision can delegate his responsibility". And in **Selvarajan v Race Relations Board** [1976] 1 All ER 12, 20 Lord Denning MR reiterated that -

> "The maxim delegatus non potest delegare applies strictly to judicial functions. But it is different with a body which is exercising administrative functions or which is making an investigation or conducting preliminary enquiries, especially when it is a numerous body."

[32] The authorities therefore support a clear distinction between an administrative function, which may, depending on the circumstances, be delegated, and a judicial function, which is generally regarded as, as Romer LJ put it in **Barnard** (at page 1121), "incapable of being delegated". In the instant case, there is no dispute that the function performed by the CTA in considering taxpayer appeals was, as Mr Hamilton characterised it, quasi-judicial; that is to say, "a function that resembles a judicial function in that it involves deciding a dispute and ascertaining the facts and any relevant law" (Oxford Dictionary of Law, 4th edn, page 376). I would therefore accept that the CTA's statutory duty to consider and determine taxpayer appeals must be non-delegable.

[33] Responding for the CTA, Mrs Chapman Daley took no issue with the general principle against non-delegation of a judicial function. However, she contended strongly that there was in fact no delegation of the CTA's responsibility to hear the appellant's appeal in this case. What actually happened, it was submitted, was that, although some

preparatory work was done by others, the decision on the appeal was made by the CTA himself. In any event, Mrs Chapman Daley submitted further, a hearing for these purposes is not limited to an oral hearing; and, although the CTA himself did not preside over the oral hearings, he had the benefit of the verbatim notes of the hearing, which included the submissions on both sides as well as the discussions on the evidence presented. In support of her submissions, Mrs Chapman Daley referred us to the decision of the Privy Council on appeal from the Court of Appeal of New Zealand in **Jeffs and Others v New Zealand Dairy Production and Marketing Board and Others** [1966] AC 551; the decisions of this court in **Nyoka Segree v Police Service Commission** (SCCA No 142/2001, judgment delivered 11 March 2005) and **Llandovery Investments Ltd v The Commissioner of Taxpayer Appeals (Income Tax)** [2012] JMCA Civ 19.

[34] In **Jeffs**, the respondent board was established by statute and was concerned with the production and marketing of dairy products. One of its powers was to define areas from which particular factories could get cream and milk. The board set up a committee, which included three of its members, to investigate questions relating to the zoning of farmers for the supply of dairy products and the committee held a public inquiry into the matter. Written statements having been received, evidence having been given and submissions having been made at the inquiry, the committee made a written report to the board containing certain recommendations. Based on that report, the board accepted the committee's recommendations without alteration and made zoning orders accordingly.

[35] Certain farmers affected by the board's decision succeeded in obtaining a writ of certiorari quashing the zoning orders and all proceedings connected with the committee's hearing. Among the submissions made on their behalf was that the board had improperly delegated its judicial task of hearing and considering all the evidence and submissions which were before the committee. It was held by the Privy Council that, on the evidence, the board did not delegate its statutory duty of deciding on zoning applications to the committee. However, it did have a duty to act judicially, by 'hearing' the interested parties themselves, and this they had failed to do. As Viscount Dilhorne observed (at page 567) –

> "... the board did not hear the persons interested orally nor did it see their written statements. It did not see the written statements produced by witnessess at the hearing. Its members, other than the members of the committee, were not informed of the evidence given. The report stated what submissions were made at the hearing but did not state what evidence was given nor did it contain a summary of the evidence. The members of the board other than the members of the committee did not see the written submissions sent in in response to the chairman of the committee's statement at the hearing."

[36] But Viscount Dilhorne also added this (at pages 568-569):

> "On the facts of this case it does not appear that the board asked the committee to hold the public hearing or delegated to the committee any part of its duties. Subject to the provisions of the Act and of any regulations thereunder, the board can regulate its procedure in such manner as it thinks fit (s 12(10) of the Act of 1961). Whether the board heard the interested parties orally or by receiving written statements from them is … a matter of procedure. Equally it would have been a matter of procedure if the board had

> appointed a person or persons to hear and receive evidence and submissions from interested parties for the purpose of informing the board of the evidence and submissions … This procedure may be convenient when the credibility of witnesses is not involved, and if it had been followed in this case and as a result the board, before it reached a decision, was fully informed of the evidence given and the submissions made and had considered them, then it could not have been said that the board had not heard the interested parties and had acted contrary to the principles of natural justice. In some circumstances it may suffice for the board to have before it and to consider an accurate summary of the relevant evidence and submissions if the summary adequately discloses the evidence and submissions to the board.
>
> Unfortunately no such procedure was followed in this case. The committee was not appointed by the board, nor was it asked by the board to receive evidence for transmission to it. The committee's report did not state what the evidence was and the board reached its decision without consideration of and in ignorance of the evidence.
>
> The board thus failed to hear the interested parties as it was under an obligation to do in order to discharge its duty to act judicially in the determination of zoning applications."

[37] Mrs Chapman Daley also relied on **Nyoka Segree**, in which the appellant was a police officer, for the short point that the right to a hearing does not necessarily require a *viva voce* hearing. In that case, acting on reports of misconduct on the part of the appellant, the Commissioner of Police initiated proceedings pursuant to regulation 26 of the Police Service Regulations (the PSR) with a view to her retirement in the public interest. Regulation 26(1) of the PSR requires the Commissioner to submit a full report to the Police Service Commission (the PSC) on the matter; and regulation 26(2) provides that the member should be given an opportunity to reply to the grounds on

which her retirement is being sought. When invited to respond in writing to the report made against her, the appellant did so through her attorneys-at-law.

[38] The PSC having decided to retire the appellant in the public interest, her application to the full court for an order of certiorari to quash that decision failed, as did her subsequent appeal to this court. In both courts, the appellant complained, among other things, that she had not been afforded a fair hearing by the PSC. Giving his reasons for concurring in the unanimous decicsion of this court to dismiss the appeal, Panton JA (as he then was) said this (at page 25):

> "It is obvious that the appellant is of the view that unless there is a viva voce hearing, there has not been a hearing ...
>
> It is surprising that at this stage of our jurisprudential development, it is being thought that to be heard means that evidence has to be taken viva voce. This Court has said on several occasions ... that the right to be heard is not confined or restricted to a viva voce hearing. The management of public affairs in this regard would be too hamstrung if all proceedings of this nature had to be done completely viva voce. The unbridled fact is that the appellant was given ample information as to what was being alleged, and was given generous opportunities to respond."

[39] Both **Jeffs** and **Nyoka Segree** therefore appear to me to provide strong arguments against the position contended for by the appellant in this case. So, for instance, **Jeffs** suggests explicitly that, even if Mr Johnson had been appointed by the CTA to take oral evidence and to hear submissions on his behalf, there could have been no cause for complaint once the CTA was thereafter fully apprised of the evidence and the submissions and took them into consideration before he reached his decision.

Nyoka Segree invites a similar conclusion, albeit from a different angle: given that, as this court held in that case, the concept of a 'hearing' does not necessarily connote an oral hearing, the fact that the appellant was not afforded such a hearing before the CTA personally would be of no moment, once it was established that the CTA had taken into account all the material upon which the appellant wished to rely.

[40] But perhaps even closer to the point is **Llandovery**, a decision of this court handed down (also in an appeal from R Anderson J) after the decision in the instant case. In **Llandovery**, as in this case, the CTA was not present at the appeal hearing, but was represented by two members of the TAD. However, the confirmation of the TAAD's assessment of the tax due from the taxpayer was signed by the CTA. The taxpayer's subsequent appeal to the Revenue Court failed and a further appeal was brought to this court. Among the grounds advanced on the taxpayer's behalf was that the CTA did not hear the appeal and, "in contravention of the statutory requirements, delegated this function to some other Officer".

[41] Harris JA delivered the leading judgment on the appeal. The learned judge reviewed some of the relevant authorities, including those to which I have already referred, before turning to the statutory provisions and the regulations. Specific reference was made (at paras [27]-[28]) to section 11A of the RAA, which establishes the TAD and states its duties; section 11B, which provides for the appointment of the CTA, Deputy CTAs, Assistant CTAs and "such and so many officers as may be necessary for the efficient operation of the [TAD]" (section 11B(d)); and regulation 8 of the

regulations, which gives certain powers to the CTA in relation to the hearing of appeals. Based on this review, Harris JA concluded (at para. [31]) that the taxpayer's contention was "unsustainable". It may be helpful to set out the learned judge's reasoning (at paras [29]-[31]) in full:

> "[29] From these provisions, it may therefore be said that while the respondent has been fixed with the duty of determining the appeals, the Taxpayer Appeals Department has the power to determine the procedure governing the appeals process and this process would, as a matter of course, include the participation of those officers appointed in the department.
>
> [30] There is no dispute that an officer of the Taxpayer Appeals Department, other than the respondent, presided over the hearing of the appeal. The issue which therefore arises is whether this action was permissible. It is not a sufficient answer to say that it is impracticable or impossible for the respondent to carry out his duties personally. In determining whether this was permissible, it is necessary to consider the nature of the duty in question as well as the object and scheme of the Income Tax Act, the Revenue Administration Act and the regulations. As earlier stated, and as shown by judicial authority, the principle of delegatus non potest delegare is not inflexible. Although the language of section 75(6B) [sic] of the Income Tax Act is clear as to the role of the respondent, the court, in its interpretation of the section, must seek to achieve a result which does not operate manifestly unjustly. The duties outlined in the Revenue Administration Regulations are clearly investigative. The objective of section 11A of the Revenue Administration Act is for the carrying out of some administrative action, that is, determining whether the assessment imposed by the relevant commissioner should be confirmed or reduced or set aside. It is of significance that regulation 8(2) allows for the respondent to obtain further evidence 'for the investigation of the decision appealed' after appropriate

notice specifying 'what evidence or further evidence is required'. This was in fact done in this case.

[31] In light of the nature of the powers in question conferred under the Revenue Administration Act, the fact that it envisages that other officers will be appointed for the efficient functioning of the department and the fact that the respondent is allowed to requisition further evidence, it is my view that, in construing the relevant provisions of the Act and the regulations thereunder, it would have been the legislative intent to allow for the appeal hearing to be conducted by an officer of the Taxpayer Appeals Department who is not the respondent. Further, having obtained the notes from the hearing, the respondent was perfectly entitled to consider those notes in making his decision. Indeed, if he had not done so, Mr Hamilton would no doubt have taken issue with that. It may therefore be said that the appellant was afforded a hearing by the respondent who gave his decision in the matter by way of his letter of 11 April 2007. In these circumstances, it may be said that appointing an officer of the Taxpayer Appeals Department to hear the evidence and submissions of the parties can be regarded as being part of the procedure and that the respondent, having had all the requisite information before him, in making his decision, had retained the power to determine the appeal.

This gound is unsustainable."

[42] On the face of it, therefore, **Llandovery** is clear authority, binding on this court, for saying that the statutory provisions and the regulations underpinning the taxpayer appeals regime do not preclude the involvement of officers of the TAD, other than the CTA himself, in the investigative process (including the hearing of evidence and submissions) leading up to the making of a decision by the CTA on the appeal. Accordingly, as might be expected, Mrs Chapman Daley placed full reliance on this case.

[43] But, Mr Hamilton submitted, **Llandovery** was decided *per incuriam* and therefore should not be treated as authority for this conclusion. He pointed out that, despite having referred to sections 11A and 11B of the RAA in her analysis, Harris JA omitted any reference to section 11C, which, he maintained, was "the critical section for these purposes". In order to appreciate the point, it is necessary to quote the short section in full:

> "The [CTAD] shall be responsible for the general administration of the [TAD] and shall have such other functions relating to taxpayer appeals as may be assigned to him by this or any other enactment."

[44] Mr Hamilton submitted that this section makes a "clear demarcation" between the administrative and judicial functions of the CTA, the latter falling within the umbrella words, "such other functions as may be assigned to him by this or any other enactment". The "other functions" assigned to the CTA, so the argument ran, are to hear and determine taxpayer appeals in accordance with the procedures detailed in the regulations. And, because such functions are quasi-judicial in nature, they are non-delegable. Harris JA was therefore led into error, Mr Hamilton concluded, because of her failure to appreciate the true significance of section 11C.

[45] As can be seen, this submission depends for its efficacy on the proposition that section 11C of the RAA is the foundation of the CTA's jurisdiction to hear and determine taxpayer appeals. But it is, in my view, necessary to take the section in the wider context of the legislative scheme for hearing and determining taxpayer appeals

established by the combination of sections 75(6A) of the ITA, sections 11A, 11B and 11C of the RAA and the regulations. Thus, the CTA is one of several revenue commissioners; section 11A of the RAA provides for the estabishment of the TAD, which is charged with the responsibility of providing for, inter alia, the hearing of appeals by taxpayers from the decisions of revenue commissioners, including the CTA; section 11B provides for the appointment of, among other officers of the TAD, the CTA; section 11C provides, as we have just seen, that the CTA shall be responsible for the general administration of the TAD, "and shall have such other functions relating to taxpayer appeals as may be assigned to him by this or any other enactment"; section 75(6A) of the ITA provides that a person dissatisfied with a decision of the CTAA may appeal to the CTA within 30 days of receipt of the decision; and regulations 3 and 5 respectively provide for the time within which an appeal to the CTA must be brought, and the form and content of a notice of appeal to the CTA.

[46] So there is in fact no provision, either in the ITA or the RAA, which in so many words invests the CTA with the power to hear and determine taxpayer appeals. Rather, it seems to me, the power of the CTA to hear and determine taxpayer appeals derives from cumulative effect derived from a reading of the relevant provisions of the two statutes (including section 11C) as a whole. Indeed, Harris JA said as much when, after doing her own analysis of the various provisions, she observed that "... the respondent has been fixed with the duty of determining the appeals". In my view, therefore, notwithstanding Mr Hamilton's characteristically energetic submissions on the point, the suggestion that Harris JA's conclusion was *per incuriam* because she did not make

speciific reference to section 11C overstates the sigificance of that section in the wider context of the taxpayer appeals scheme as a whole. It seems to me to be clear that the specific inclusion of section 11C in the learned judge's analysis would inevitably have driven her to the same conclusion.

[47] As R Anderson J pointed out, in my view correctly (see paragraph [28] above), section 11A(2)(b) of the RAA specifically empowers the TAD to establish procedures in relation to the hearing of taxpayer appeals. In this case, as has been seen, in keeping with what appears to have been an established procedure, the meeting at which oral evidence was taken and submissions were made in support of the appellant's appeal was presided over by a senior member of the TAD. However, the notice of decision refusing the appeal was in fact issued over the signature of the CTA, after a full and accurate rehearsal of all the material and the evidence which Mr Johnson had before him. It is therefore difficult to see in what respect there would have been any breach of natural justice in the hearing of the appeal. On this issue, therefore, my conclusion is that, once the actual decision on the appeal was made by the CTA, as the law requires, no question of a breach of the principle of non-delegation of a quasi-judicial function could possibly arise.

i. The fair hearing issue

[48] In the court below, the appellant complained that regulation 7, by allowing prior access by the CTA to "all files relating to the relevant decision", as well as "a written statement of the reasons for the relevant decision", breached "the principle(s) of

fairness, natural justice and the Appellant's consitutional entitlement to 'a fair hearing before an independent and impartial Authority'". R Anderson J was not impressed by the point. Were it otherwise, the learned judge observed (at paragraph [28]) –

> "... the [CTAA] or the objector would be entitled to withhold such parts of the files or information upon which an appealed decision was being dealt with. This would, inevitably, compromise the integrity of any decision arrived at by [CTA]. In any event, there is here, no averment or evidence of any kind, that there was any prejudicial material placed before the [CTA]."

[49] And, as regards the issues of procedural impropriety and unconstitutionality, the learned judge went on to say this (at paragraph [30]):

> "... The process to challenge a decision of a public official on the basis of procedural impropriety is well set out in the Civil Procedure Rules 2002 (the CPR) ... [and] ...if the Appellant is seeking a declaration as to the constitutionality of the regulation, that relief is provided for in the same CPR."

[50] Before us, Mr Hamilton renewed his submission that regulation 7 breached the appellant's entitlement to the benefit of the common law principles relating to fairness and natural justice and his constitutional right to a fair hearing by an independent and impartial authority in accordance with section 16(2) of the Constitution of Jamaica (the Constitution).

[51] In support of this submission, Mr Hamilton referred us to a number of authorities. First, there is **Kanda v Government of the Federation of Malaya** [1962] UKPC 10, [1962] AC 322. The appellant in that case, who was an Inspector of

Police, was dismissed by the Commissioner of Police. He complained that the dismissal was void and of no effect because, among other things, a report containing material which was highly prejudicial to him had, unknown to him, been sent to and read beforehand by the adjudicating officer who conducted the inquiry into the charge against him. The result of this, he contended, was that his constitutional right, not to be dismissed "… without being given a reasonable opportunity of being heard", had been breached.

[52] The appellant's challenge to his dismissal succeeded at first instance, but was rejected on appeal to the Court of Appeal of the Federation of Malaya. On his appeal to the Privy Council, it was held that the appellant had not been given a reasonable opportunity of being heard. Delivering the advice of the Board, Lord Denning said this (at pages 337-338):

> "If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them … It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will not go into the likelihood of prejudice. The risk of it is enough. No one who has lost a case will believe he has been fairly treated if the other side has had access to the judge without his knowing..."

[53] Next, Mr Hamilton referred us to **Errington and Others v Minister of Health** [1935] 1 KB 249, which concerned the appropriate procedure to be adopted following on from objections by owners of property to a clearance order made by the Minister of Health under the provisions of the Housing Act 1930. It was common ground that, in deciding whether to confirm the clearance order in the face of the objections, the minister exercised a quasi-judicial function. In these circumstances, the Court of Appeal considered that if the minister held a private inquiry, to which the owners were not invited, or took into consideration *ex parte* statements with which the owners had no opportunity of dealing, he was not acting in accordance with the correct principle of justice. Accordingly, the minister's confirmation of the clearance order was quashed.

[54] And finally, to emphasise the importance of the constitutional dimension of the appellant's complaint on this point, Mr Hamilton referred us to Lord Steyn's observation in **Mohammed v The State** [1998] UKPC 49 para. 29, 2 AC 111, 123, a criminal appeal to the Privy Council from Trinidad and Tobago, that "[t]he stamp of constitutionality on a citizen's rights is not meaningless: it is clear testimony that an added value is attached to the protection of the right".

[55] In the light of these decisions, Mr Hamilton concluded, the CTA's decision in this case was vitiated by the likelihood or risk of prejudice to the appellant. In response, Mrs Chapman Daley was content to refer us to **Llandovery**, in which virtually the identical submission was made to this court on behalf of the appellant taxpayer (as it happens,

also by Mr Hamilton). This is how Harris JA dealt with the issue in that case (at paragraph [35]):

> "In considering the proceedings, the [CTA] is a decision-maker fixed with the task of considering the taxpayer's appeal. As with all appeals, in dealing with this appeal, the respondent is required to review the material that was before the relevant commissioner in order to decide whether to 'confirm', 'reduce the amount' or 'vacate the decision'. As Mrs Chapman Daley has correctly submitted, the intention of the rules, in requiring that all files relating to the decision be submitted to the [CTA], is to ensure that the respondent is fully seized of all the relevant information, whether or not it is prejudicial. In the interest of good administration and in keeping with the prescription of section 7(a) of the Revenue Administration Regulations all information which was before the relevant commissioner, must be placed before the [CTA]. Logic dictates that the [CTA] would have been unable to carry out a valid assessment of the relevant commissioner's decision if such information was not before him. In light of the nature of the [CTA's] role, it is my view that it cannot be seriously argued that the receipt of the reasons and the relevant files prior to the hearing renders [him] biased. An allegation of bias can only be substantiated where there is proof that a fair-minded observer being cognizant of all the relevant circumstances would be of the view that there was a real possibility of bias – see ***Porter v Magill*** [2001] UKHL 67 [2002] 2 AC 357. In all the circumstances, I cannot say that there would have been any danger that having had the material before him prior to the hearing, this would have influenced the [CTA's] judgment and had undermined his impartiality."

[56] I cannot possibly improve, and accordingly gratefully adopt, the reasoning of both R Anderson J and Harris JA on this point. I would only add that I find it impossible to see how the CTA could properly – and, above all, fairly - carry out his duty to hear a taxpayer's appeal from a decision of the CTAA without being able to see and consider

all the material that was before the CTAA, as well as the CTAA's reasons for his decision. In my view, the cases cited by Mr Hamilton, while confirming some important aspects of the obligation of fairness, are easily distinguishable from this case: the real problem in both **Kanda** and **Errington** was that the affected parties were not given an opportunity to comment on or contradict the *ex parte* material which had come to the attention of the decision maker. In essence, therefore, the decision maker in both cases took into account material of which the affected parties were not aware. In this case, on the other hand, the appellant had a full opportunity at the hearing conducted by Mr Johnson on behalf of the CTA to respond to whatever was put forward on behalf of the TAAD. Further, there is no evidence that there was any other material which was either concealed from or not brought to the attention of the appellant.

[57] As for the constitutional dimension, I fully accept, as I must, that the supremacy of the Constitution naturally dictates especial vigilance from any court called upon to consider an alleged breach of a constitutional right. However, I am completely unable to discern any such breach in this case. In my view, there was absolutely nothing before the learned judge to suggest that, in carrying out his statutory duty to hear and determine the appellant's appeal, there was either actual bias or anything capable of giving rise to an appearance of bias on the part of the CTAD. Nor was there anything to suggest that, in carrying out that duty, the CTA lacked independence in any respect. I would therefore conclude that R Anderson J was entirely correct in his decision on this issue.

iii. The improper procedure issue

[58] It will be recalled that, the day after the hearing over which Mr Johnson presided on 19 May 2009, the CTA wrote to the appellant requiring him "… to submit documentary evidence in support of your argument, that funds were invested on behalf of a foreign national namely Mr Andrew Stewart within fourteen (14) days from the date of this letter" (see paragraph [16] above). In writing that letter, the CTA purported to act pursuant to regulation 8(2), the full text of which is as follows:

> "If the Commissioner requires any evidence or further evidence for the investigation of the decision appealed or disputed, he shall give the appellant or disputant or the relevant Revenue Commissioner fourteen days notice in writing specifying what evidence or further evidence is required."

[59] Before R Anderson J, it was contended on behalf of the appellant that, by issuing the letter requiring him to submit documentary evidence in support of his case after the hearing of the appeal, the CTA acted in breach of this regulation, which, it was said, "contemplates that such a request should be made and complied with during the hearing" (see paragraph 4(g) of the appellant's further supplemental notice of appeal to the Revenue Court dated 29 March 2010). The learned judge was equally unimpressed by this submission and, in dismissing it, he said this (at paragraph [29]):

> "The suggestion that the [CTA] flouted Regulation 8(2) is also misconceived. There is nothing in the regulation which requires the [CTA] to conclude his hearing in one sitting. To suggest that where a matter is raised, particularly by the taxpayer, which could benefit from additional information, the [CTA] is not empowered to have it provided so it can be

> considered in the context of the dispute is plainly wrong and is to be given short shrift here."

[60] In challenging this conclusion before us, Mr Hamilton submitted that "[regulation] 8(2) is couched in mandatory terms and requires that the CTA, inter alia, specify what evidence or further evidence he requires for the investigation of the decision appealed". On this basis, it was submitted, given the appellant's repeatedly stated position that he had no documentary evidence or other kind of proof, other than the declaration which he had submitted, in support of his contention that the money invested in Olint in his name was in fact the property of another, the CTA's letter dated 20 May 2009 "is nothing but a clear charade, lacks the specificity contemplated by [regulation 8(2)] and it is clear there was no real intent/expectation to obtain the evidence sought". In these circumstances, the submission concluded, the CTA's letter "represents a clear misuse of [the regulation]".

[61] For her part, Mrs Chapman Daley pointed out that reliance by the CTA on regulation 8 is not mandatory, but that, in this case, the question of the need for further information arose out of the meeting of 19 May 2009.

[62] I think that Mrs Chapman Daley is plainly correct on this point. It is clear from the verbatim notes of the hearing held on 19 May 2009 that the letter of 20 May 2009 followed on directly from an indication by Mr Parkes on behalf of the appellant that, given more time, it might be possible for the appellant to locate and supply evidence in support of his assertion that he had invested funds in Olint on behalf of a third party. I

have already given a summary of what took place at that meeting (see paras [15]-[17] above), but it may be helpful to set out an extract from the notes on this point:

> "CHAIRMAN: Mr. Parkes, Mr. Chang, let us deal with the issue regarding the third party. Are you able to provide or were you or are you still able to provide any documentary evidence to this hearing to substantiate your argument that Mr. Stewart gave you funds which you invested in the said account? Are you able to provide any tangible evidence, apart from that declaration that was referred to earlier? In other words, when the third party handed you the funds or wired you the funds – I mean, if I am giving you $10, I really should get a receipt from you because anything can happen – so do you have any documentary evidence?
>
> MR. PARKES: The issue in terms of evidence is what is acceptable to TAD, what alternative. It is like you are doing accounting and you have income break off, so you have to apply alternative techniques. When we were going through the process and we were asked to provide the declaration, we thought that was sufficient evidence. So now that the decision has come to say that is not sufficient evidence and Mr. Villiers has put forward some points why he still has concern, we would have to look at that, given the nature of how Mr. Chang's obligation arose to the third party to see what alternative could be provided that would be reasonable proof in the absence of the traditional wire which was not involved in this case or the traditional receipt which was not involved.
>
> So as I say, that is one of the things I am not prepared for this meeting but given time, we will definitely look and see what additional information we could provide for you.
>
> CHAIRMAN: How much time would you need for that?
>
> MR. PARKES: I would say a month."

[63] Accordingly, just before he brought the hearing to a close, Mr Johnson, in his capacity as chairman of the meeting, said this:

> "... All right. We are at the point where you are requesting time, certainly not a month, you are requesting time to provide the verification that Mr. Chang received these funds. **Fourteen days is what we will want to give you, so we are agreeing on that now and I will formalise it to you in a letter**." (Emphasis mine)

[64] So, as these extracts from the verbatim record plainly demonstrate, the CTA's letter of 20 May 2009 of which Mr Hamilton now complains was merely confirmatory of the indulgence which had been given to the appellant, at his request, to allow him to supply such further evidence as he might be able to find. In these circumstances, it seems to me that the learned judge's last word on this issue (at paragraph [48]) was entirely justified:

> "... To characterize the attempt to give such an additional opportunity, albeit after it was determined at the hearing that the taxpayer needed time to provide such information and the letter of May 20, 2008 was merely formally recording the request already made as being 'unfair' either to the taxpayer or the Revenue (CTAA), is disingenuous. It is a wholly misconceived submission."

[65] Therefore, in agreement with the learned judge, essentially for the reasons given by him, I would conclude that the appellant cannot succeed on this issue.

iv. The *de novo* issue

[66] R Anderson J accepted (at paragraph [32]) the CTA's submission that "a trial before the Revenue Court is for all practical purposes a trial *de novo*". Accordingly, the learned judge went on to observe, "[i]t is the logic of this proposition that even if there were procedural defects in the hearing before the [CTA], they may be cured on the hearing before this court". In arriving at this conclusion, the learned judge treated as authoritative the decision of Thorson P in **Goldman v Minister of National Revenue** [1951] CTC 241, a case heard in the Exchequer Court of Canada.

[67] In challenging this conclusion, Mr Hamilton submitted that a hearing before the Revenue Court is a rehearing confined to the material that was before the CTA and that the judge of that court is therefore not at large. Mr Hamilton further submitted that, because the decision in **Goldman** was based on a different statutory scheme governing tax appeals in Canada, R Anderson J had been led into error as a result of his "uncritical acceptance" of the CTA's submissions based on that case.

[68] Mrs Chapman Daley, on the other hand, reiterated the applicability of **Goldman** and also relied on **Llandovery** for the *de novo* point. She also referred us to the decision of the Supreme Court of New Zealand in **Tannadyce Investments Limited v Commissioner of Inland Revenue** [2011] NZSC 158, to ground her submission that prior breaches of natural justice can be cured by a hearing before the Revenue Court; and to rule 30 of the Revenue Court Rules, to demonstrate the breadth of the power invested in the judge of the Revenue Court.

[69] It is first necessary to consider **Goldman**, particularly in the light of Mr Hamilton's contention that the statutory provisions underpinning that decision are distinctly different from our provisions. The appellant taxpayer in that case challenged a decision of the Income Tax Appeal Board (the Board), whereby his appeal from his income tax assessment for the year of assessment in issue was dismissed. One of the questions that arose on the appeal was whether the parties, that is, either the appellant taxpayer or the Revenue, were restricted in the presentation of an appeal to the court to the issues either of fact or of law that were before the Board; or whether they were free to raise whatever issues they wished to raise before the court. In concluding in favour of the latter position, Thorson P said this (at paragraph 6):

> "6. There are, I think, several reasons for accepting the submission of counsel for the appellant that the appeal to this Court from a decision of the Income Tax Appeal Board, whether by the taxpayer or the Minister, is a trial *de nova* of the issues involved therein. While there are several descriptions of the proceedings as an appeal and while it is true that on the appeal the Registrar of the Income Tax Appeal Board is required by section 91(1) of the *Income Tax Act* to transmit to the Registrar of this Court 'all papers filed with the Board on the appeal thereto together with a transcript of the record of the proceedings before the Board' there is no provision that the appeal must be based on such record. On the contrary, section 89(3) requires the appellant to set out in the notice of appeal a statement of the allegations of fact, the statutory provisions and reasons which he intends to submit in support of his appeal and section 90(1) calls upon the respondent to serve and file a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he intends to rely on. There is nothing in these provisions to restrict the parties to the allegations of fact made before the Board. Additional facts or even different

> facts may be alleged. Then section 91(2) provides that upon the filing of the material referred to in section 91(1) or 91A and of the reply required by section 90, 'the matter shall be deemed to be an action in the court and, unless the Court otherwise orders ready for hearing.' This section is almost identical with section 63(2) of the *Income War Tax Act.* Its purpose is to give the parties the benefits of the proceedings in an action to establish their respective allegations which would not be available in an ordinary appeal. There would be no purpose in these provisions if Parliament intended that the appeal should be heard on the basis of the record before the Income Tax Appeal Board. They contemplate that the issues as defined by the statement of facts and the reply should be tried by this Court according to the processes of an action in this Court. This necessitates a trial *de novo.* While this view lends itself to the possibility that the taxpayer or the Minister may make a different case or defence in this Court from that made before the Board and it may seen anomalous that Parliament should permit this there is nothing in the Act to bar it. The freedom of the Court to deal with the issues raised before it, without regard to the proceedings before the Board, is further indicated by the provision in section 91(3) that any fact or statutory provision not set out in the notice of appeal or reply may be pleaded or referred to in such manner and upon such terms as the court may direct and by the power given to the court by section 91(4) of disposing of the appeal by dismissing it, vacating or varying the assessment or referring it back to the Minister."

[70] This court also dealt with the question whether an appeal to the Revenue Court was in the nature of a trial *de novo* in **Llandovery**. Harris JA referred (at para. [13]) to 76(1) of the ITA, which provides for an appeal to the Revenue Court by a taxpayer who disputes the CTA's assessment may appeal to the Revenue Court. The learned judge also referred to section 76(2A), which provides that "[a]n appeal shall be limited to the grounds stated in the notice of objection but the Revenue Court may in its discretion

permit the grounds of appeal to be amended". The learned judge next drew attention to the Revenue Court Rules 1972, which provide for the filing by the appellant of a notice of appeal (rule 5); by the respondent of a statement of case (rule 10(1)); by the appellant of a reply (rule 11(1)); and that both parties are entitled to tender evidence orally or by affidavit at the hearing before the Revenue Court (rule 24).

[71] Against this background, Harris JA concluded as follows (at paras [15]):

> "[15] It seems to me that it is clear from these rules that the parties are not circumscribed by the evidence that was presented before the respondent. Both parties are allowed to include in their documents 'other reasons' upon which they intend to rely, which clearly indicates that the respondent may give reasons other than those which he had delivered at the time of his decision. Therefore, it could be said that the proceeding before the Revenue Court, although stated to be an appeal, is in the nature of a fresh proceeding, the parameters of which are set by the information contained in the documents which have been filed in that court. This was the view of this court in ***Shoucair v The Commissioner of Income Tax,*** where the issue to be considered was whether a taxpayer was allowed to raise before the Revenue Court issues that were not raised before the Commissioner of Taxpayer Appeals. Kerr JA expressed the view that 'the trial judge [in the Revenue Court] was not limited to a consideration of matters raised before the Commissioner provided there was compliance with Rule 13'. At page 22, Carey JA said this:
>
> > '… the Judge of the Revenue Court exercises an original jurisdiction at these hearings called 'appeals'. He is entitled to make findings of fact which are not impeachable in this court. While the proceedings before him are wholly judicial, those before the Commissioner are largely administrative, albeit quasi-judicial, as well. I would point

> out that the proceedings before the Judge of the Revenue Court are circumscribed by the issues raised in the pleadings filed.'"

[72] I think it is quite clear that in the passage quoted above, just as in **Goldman**, Harris JA based her conclusion on the proper characterisation of the hearing before the Revenue Court on the provisions of the relevant statutes and the rules. And, although the learned judge did not mention rule 30 of the Revenue Court Rules in her analysis (perhaps because it was not cited to her), she might well have been fortified in her conclusion that a hearing before the Revenue Court is a hearing *de novo* by a consideration of that rule, which provides as follows:

> "The Court shall have power to draw inferences of fact and to give any decision and make any order which ought to have been given or made, and to make such further or other order as the case may require, including the power to refer the matter back to the [CTA] for re-consideration."

[73] In my respectful view, therefore, the fact that the decision in **Goldman** was based on Canadian statutory provisions is really of no moment on this point. What the case shows is that, as in **Llandovery**, the court was guided by the general scheme of the legislation in that jurisdiction to the same conclusion; that is, that a hearing of the nature of the one conducted by R Anderson J in this case is a hearing *de novo*.

[74] But, in addition to the statutory provisions themselves, there may yet be another dimension to the jurisdiction of the judge of the Revenue Court on the hearing of an appeal from the decision of the CTA. Mrs Chapman Daley directed our attention to an

editorial annotation to the report of **Goldman** (at page 2), in which the decision of the court that an appeal was a hearing *de novo* was further explained on the basis that, because the Income Tax Appeal Board, by its very nature, lacked the formality of a court, "any adequate appeal therefrom would seem to require some opportunity to review the facts as well as the law". Albeit put somewhat differently, it seems to me that this observation finds a ready echo in the extract from Carey JA's judgment in **Shoucair v The Commissioner of Income Tax** (SCCA No 58/1979, judgment delivered 31 March 1982) quoted by Harris JA in her judgment in **Llandovery** (see paragraph [71] above). There, having observed that the judge of the Revenue Court enjoys an original jurisdiction, Carey JA went on to point out that, "[w]hile the proceedings before him are wholly judicial, those before the [CTA] are largely administrative, albeit quasi-judicial, as well". I take this observation to mean that, in a proper case, an appeal to the Revenue Court, which exercises an original *de novo* jurisdiction, may provide recourse to the taxpayer for any procedural or other deficiencies in the proceedings before the CTA.

[75] This view derives some support from **Tannadyce**, a decision of the Supreme Court of New Zealand to which Mrs Chapman Daley referred us. At issue in that case was whether the appellant taxpayer should be allowed to maintain a challenge by way of judicial review to assessments to tax raised against it by the Commissioner of Inland Revenue; or whether it should be obliged to access the statutory regime for challenging tax assessments. Although there was some disagreement among the members of the five member court as to the limits of availability of judicial review in such

circumstances, there was unanimous agreement that the decision of the Court of Appeal, which had struck out the judicial review proceedings initiated by the appellant as an abuse of process, should be affirmed. In the course of their joint concurring judgment, Elias CJ and McGrath J said this (at para. [6]):

> "[6] The courts nevertheless recognise that statutory challenge and appellate processes can provide a better means of judicial supervision of government decision-making than judicial review. In the context of rights of appeal and their effect on claims of breach of rights to natural justice, as an Australian leading text on judicial review argues[5]:
>
> > 'If there is an appeal on the merits by way of *de novo* hearing, to a person who is unlikely to be influenced by what occurred at first instance, the appeal may be able to provide all that procedural fairness requires. If so, it is a far superior remedy for breach of natural justice than judicial review, since it will not only redress the initial unfairness more effectively and quickly than judicial review can, but also, replace the initial decision with a fresh decision on the merits. This provides a strong justification for courts allowing such appeals to cure defects and requiring those complaining of breach of natural justice to exercise their rights of appeal instead of seeking judicial review'."

[76] I would therefore conclude on this issue that R Anderson J was entirely correct in thinking that procedural defects in a hearing before the CTAD may be cured on an appeal to the Revenue Court.

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[5] Mark Aronson, Bruce Dyer and Matthew Groves, Judicial Review of Administrative Action (4th ed, Lawbook Company, Pyrmont, 2009) at 496.

v. The onus of proof

[77] R Anderson J considered (at paragraph [37]) that, under the ITA, the burden of proof is placed "squarely on the taxpayer to show that the assessment of the Commissioner is erroneous in law or in fact". While Mr Hamilton accepted that section 76(2) of the ITA does place the onus of proving that the assessment is erroneous on the taxpayer, he nevertheless submitted that there is an evidential burden on the CTA to show the basis on which the taxpayer is said to be liable to tax. For her part, Mrs Chapman Daley relied on Section 76(2) and directed attention to this court's decision in **D R Holdings Ltd v The Commissioner of Taxpayer Appeals (Income Tax)** (SCCA No 71/2007, judgment delivered 31 October 2008).

[78] In **D R Holdings Ltd**, this court held that the provisions of the ITA make "a clear and unequivocal allocation to the taxpayer of the burden of proving that the assessment is erroneous, both from the standpoint of liability and quantum" (per Morrison JA, at paragraph 28). However, the court confirmed that, upon a challenge to an assessment on appeal, there may, in a proper case, be an evidential burden on the CTA to show "the grounds on which he formed the opinion that a liability to tax arose" (per Morrison JA, at paragraph 30, echoing this court's earlier decision in **Karl Evans Brown v Commissioner of Income Tax** (1987) 24 JLR 277).

[79] Mrs Chapman Daley accepted that this was the law. However, she directed us to the evidence of Mr Villiers (see paragraph [23] above) and submitted that that evidence sufficed to meet the CTA's evidential burden. I agree. Section 5(1)(b) of the ITA brings into the charge to tax gains arising out of a number of circumstances. As will be

recalled, Mr Villiers' evidence spoke to the "gains" received by the appellant from his investment in Olint. Mr Villiers also exhibited the notices of additional assessment for 2005 and 2006. And, on the second page of each of them, under the rubric, "Explanation of Items", there was a note that, "The additional amounts assessed represents [sic] the estimated dollar value of investment gains made with a non-licenced financial institution". And, as it turned out, the appellant did not in the end deny having received significant amounts of money from Olint, although he maintained that the moneys in question belonged to a third party. In these circumstances, it seems to me, there can be no question that Mr Villiers' evidence amply satisfied the CTA's duty to show the grounds upon which he formed the opinion that the appellant had incurred a greater liability to tax than that which the returns filed by him reflected. Once this was done, the burden of proving that the assessment was erroneous lay with the appellant.

[80] In his attempt to satisfy this burden, the appellant relied entirely on his assertion, unsupported by anything other than his own signed statement (see paragraph [12] above) that the funds invested by him with Olint belonged to Mr Andrew Stewart. R Anderson J declined to characterise this statement as evidence. Rather, he said (at paragraph [39]), "... it is a gratuitously self-serving document with nothing to suggest credibility". In my respectful view, it is impossible to contend otherwise. As the learned judge observed, it surely ought to have been possible for the appellant to provide some evidence of his arrangement with Mr Stewart, including an "affidavit or notarized letter ... confirming the existence of such an obligation and the

amount due thereunder". So, as the learned judge found, the appellant's efforts to satisfy the burden of proving that the assessment was erroneous was "patently lacking in plausibility".

vi. The exigibility to income tax issue

[81] In his affidavit sworn to in the Revenue Court proceedings, the appellant had stated (at paragraph 8) that "I regarded the returns received on my investment 'in the club' as of a capital nature and, consequently, not taxable". Rejecting a submission to this effect, R Anderson J said this:

> "... It is difficult to see what [sic] else one could categorise the accretions on a fixed sum which pays a 'dividend' monthly except as 'interest'. The question then becomes: 'Does the ITA tax interest'? Section 5 of the [ITA] is clear. It should also be noted, en passant, that it did not matter how the Club characterized the sums it paid to its members. That would not be determinative of its true character under the ITA."

[82] Mr Hamilton submitted that, because of the CTA's failure to show the basis upon which the additional assessments were made in this case, there was no factual or legal basis upon which the learned judge could properly conclude that the appellant's Olint gains were income and not capital. In response, Mrs Chapman Daley submitted that the court is duty bound to look at the substance of the transaction, regardless of how it is characterised by the taxpayer. She pointed out that the appellant has not denied making investments in, or receiving certain sums from, Olint. She therefore submitted that the sums received from Olint fell within the charge to tax in section 5 of the ITA.

[83] The first point to be noted about Mr Hamilton's submissions on this issue is that, as the learned judge observed (at paragraph [37]), "the very accountants who represented the Appellant described the accretions as 'income on his investment' at [Olint]" (see Mr Parkes' letter dated 21 July 2008 at paragraph [11] above). But Mrs Chapman Daley's point that the court must consider the substance of the matter is equally applicable in this context and the question whether the Olint gains fall to be classified as income or capital is, of course, purely a matter of law.

[84] There is no definition of 'income' in the ITA[6]. But section 5(1) provides that income tax shall be payable "... in respect of all income, profits or gains ..." Section 5 goes on to provide that, among other things, these will include the annual profits or gains arising from any property, trade, business or vocation (section 5(1)(a)(i) and (ii)), from dividends or from interest (section 5(1)(b)(i)). In my view, the amplitude of these provisions plainly suggest that the appellant's monthly "trading gains" from Olint, however characterised, fell under the umbrella of "income, profits or gains", and were therefore exigible to tax, under the ITA.

[85] Once this evidential burden had been satisfied, it then became the duty of the appellant to make good his contention that the returns received by him from Olint were of "a capital nature", and that the CTAA's assessment was therefore erroneous.

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[6] This absence of definition reflects the common law: as Lord Macnaghten said, famously, in **London County Council v Attorney-General** [1901] AC 26, 35, "Income tax, if I may be pardoned for saying so, is a tax on income …"

vii. The TAAD/CTA's duty to investigate issue

[86] The learned judge dismissed (at paragraph [37]) the appellant's submission that the TAAD/CTA had failed to conduct any or any careful enquiry into the operations of Olint so as to determine how it acquired and distributed funds to its members as "a weak attempt to turn on its head the burden of proof that the ITA has placed squarely on the taxpayer …" Undeterred, Mr Hamilton renewed the submission before us. Referring to what he described as the "extensive investigative powers" available to the CTA under the ITA and the regulations, he submitted that the CTA had a duty to satisfy himself that the evidence presented by the CTAA raised at the very minimum a presumption of liability to tax on the part of the appellant. In response, Mrs Chapman Daley reiterated her earlier submission that the onus of proving that the assessment was erroneous rests squarely on the appellant. In any event, she submitted, the information to which the appellant referred would have been within the appellant's knowledge and could have been provided by him to the CTA and the court for their consideration.

[87] I entirely agree with the learned judge and Mrs Chapman Daley that the appellant's contention on this issue is no more than a restatement of his previous complaint on the onus of proof issue. While it is true that regulation 8(2), for instance, upon which Mr Hamilton relied, gives power to the CTA to require further evidence "for the investigation of the decision appealed or disputed", this cannot be taken, in my view, to have overridden the clear allocation of the onus of proof to the taxpayer by section 76(2). As I have already sought to explain, once the CTA satisfied the evidential

burden as regards the basis of the assessment, which the learned judge held that he had done in this case, the ITA places the onus of proving that the assessment was erroneous on the taxpayer. As has been seen, the two principal points raised by the appellant in objection to the TAAD's assessment related to, firstly, the beneficial ownership of the funds invested in Olint in his name and, secondly, whether the gains received by him from Olint were taxable. It was therefore for the appellant to adduce evidence and argument in support of both points of objection, as indeed he attempted to do, albeit unsuccessfully.

viii. The role of the CTA on an appeal from the Revenue Court

[88] This issue arises from Mr Hamilton's renewal of his submission to the learned judge that it was not competent for the CTA to file an affidavit in those proceedings exhibiting the transcript of the proceedings before the CTA. The learned judge held (at paragraph [53]) that, "in the light of the *de novo* nature of proceedings before this court, there has been no breach which affects the validity of the decision of he [sic] [CTA]".

[89] Expanding the submission somewhat before us, Mr Hamilton submitted that the statutory duty of the CTA is to hear appeals from decisions of the CTAA. Accordingly, once an appeal has been heard and completed, the CTA is *functus officio* and therefore not competent to file affidavit evidence in the Revenue Court proceedings. And, going still further, Mr Hamilton submitted that the proper respondent to an appeal from a decision of the CTA is in fact the CTAA, and not the CTA, with the result that the wrong

respondent was before the Revenue Court and the appeal should therefore be allowed on that ground alone.

[90] In response, Mrs Chapman Daley, recalling her earlier submissions on the *de novo* issue, reiterated that the CTA is for that reason entitled to place evidence before the court. But in any event, she pointed out, in this case the CTA had done no more than to produce the verbatim record of the proceedings from which the appeal to the Revenue Court was brought and had introduced no new facts. In this regard, Mrs Chapman Daley again referred us to **Llandovery**, in which, in response to a similar submission from Mr Hamilton, Harris JA observed (at paragraph [16]) that –

> "… there is nothing in the Revenue Court Rules to suggest that the [CTA's] entitlement to adduce evidence is more limited than that of the taxpayer. Further, there is no restriction in relation to the entitlement to file affidavits. Mr Hamilton did not point to any specific section of [the CTA's] affidavit as being objectionable but objected only to the fact of it being filed. A perusal of the affidavit demonstrates that it merely chronicled the events leading up to [the CTA's] decision … It cannot be said that the affidavit contained prejudicial or objectionable material."

[91] In my view, Harris JA's conclusion is equally apposite in this case. In an affidavit consisting of nine paragraphs only, all that Mr Johnson did was recount the history of the proceedings, culminating in the issuance of the CTA's notice of decision, and exhibit the verbatim notes of the hearing conducted by him. The affidavit discloses absolutely nothing that could even vaguely be construed as prejudicial or damaging to the appellant. The provision by the CTA of an affidavit setting out the history of the matter

and exhibiting the verbatim notes of what took place at the hearing before him cannot possibly, in my view, involve any reopening of the matter so as to offend the principle of *functus officio*.

[92] As to Mr Hamilton's further point that the CTA was not the proper respondent in the proceedings in the court below, I would note three things. Firstly, section 75(6B) of the ITA provides that, on the hearing of an appeal from the decision of the CTAA under section 75(6A), the CTA "may confirm, reduce the amount under or vacate the decision concerned". Secondly, section 75(7) provides that where the amount of a taxpayer's chargeable income has been determined on appeal, "the assessment as … determined on appeal … shall be final and conclusive for all purposes of this Act as regards the amount of such chargeable income". And thirdly, section 76(1) provides that any person who is dissatisfied with the decision of the CTA on appeal "may appeal to the Revenue Court …".

[93] Taken together, the upshot of these provisions is plainly that, upon the determination of an appeal by the CTA, it is the CTA's determination which becomes the operative decision for all purposes of the ITA. Accordingly, any further appeal by the taxpayer to the Revenue Court is an appeal against that decision and no other. Following on from this, it is therefore not surprising to find that rule 2 of the Revenue Court Rules puts the matter beyond doubt by defining 'Appellant' as "the party appealing from a decision of the Respondent", and 'Respondent' as "the person in respect of whose decision the appeal is brought to the Court".

[94] There can therefore be no doubt, in my view, that the CTA was the proper respondent to the appellant's appeal to the Revenue Court in this matter. This is consonant with the provisions of the ITA and the Revenue Court Rules, as well as with what appears to have been the general practice, though not without exception, since the establishment of the TAD[7].

[95] I therefore agree with R Anderson J's conclusion on this issue.

ix. The improper assessment issue

[96] Section 75(1) of the ITA provides that the notice of assessment served by the CTAA on a taxpayer must state "the amount at which he is assessed and the amount of tax payable by him". Section 75(3) goes on to provide that in such cases the notice "shall state the basis on which the assessment is made".

[97] The appellant contended in the court below that the notices of assessment served on him did not conform with section 75(1), in that they "ex facie did not disclose either the legal or factual basis on which they were made". R Anderson J considered (at paragraph [51]) that this submission was completely answered by the decision of this court in **Dennis Murray v The Commissioner of Taxpayer Appeals (Income**

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[7] See, for example, **Dennis Murray v Commissioner of Taxpayer Appeals (Income Tax)** (SCCA No 70/2007, judgment delivered 2 October 2009); **D R Holdings Limited v Commissioner of Taxpayer Appeals (Income Tax)** ; **Llandovery Investments Limited v Commissioner of Taxpayer Appeals (Income Tax)** ; and now **Advantage General Insurance Company Limited v Commissioner of Taxpayer Appeals** [2016] UKPC 8. In the first three cases, as a matter of interest, Mr Hamilton appeared for the appellant/taxpayer. But cf **Cigarette Company of Jamaica Ltd (In Voluntary Liquidation) v Commissioner of Taxpayer Audit and Assessment** [2010] JMCA Civ 3, in which the CTAA was named as the respondent, without comment or objection from the judge of the Revenue Court, this court or the Privy Council.

Tax) (SCCA No 70/2007, judgment delivered 2 October 2009). In that case, in response to a similar submission, Dukharan JA (Ag), as he then was, (with the concurrence of Panton P and K Harrison JA) said this (at paragraph 30):

> "… where the Commissioner states the particular years of assessment, the quantum of the Commissioner's assessment of the taxpayer's income and the source of such income even if the source of the income is not precisely defined, [sic] is a sufficient basis of assessment to necessarily put the taxpayer on notice of the tax levied against him."

[98] Before us, Mr Hamilton submitted that Dukharan JA (Ag) and, by extension, the court, had fallen into error in **Dennis Murray** and that this court should revisit the issue, if only "for the purposes of clarification". Hardly surprisingly, Mrs Chapman Daley submitted that Dukharan JA (Ag) was correct and that, in this case, the notices of assessment, by stating the particular years of assessment, the quantum of the tax payable by the appellant and, in the explanatory note, the basis of the assessment, were fully compliant with section 75(3) of the ITA.

[99] Again, I agree with Mrs Chapman Daley. In the first place, I should point out that, unless it were shown to have been arrived at *per incuriam,* this court is bound by the decision in **Dennis Murray**. But, that apart, I am in any event completely satisfied that the decision was entirely correct. The question in any case must be whether the notice of assessment served on the taxpayer provides him with sufficient information as to the amount of tax which he has been assessed to be liable to pay and the basis of the assessment. In my view, the notices served on the appellant fully satisfied these

criteria, stating specific figures for each of the two years of assessment with which we are now concerned and, in the explanatory note, informing the appellant that the additional amounts assessed related to "the estimated Jamaican dollar value of the investment gains made with a non-licenced institution". In my view, therefore, R Anderson J was correct in his conclusion on this point. As a footnote to this discussion, I would only add that at the end of the day, as the learned judge also noted (at paragraph [50]), neither the quantum of the assessments nor the source of the funds to which they relate is now in dispute.

Conclusion and disposal of the appeal

[100] On virtually every issue raised by the appellant in this appeal, the court has been asked to revisit matters that have already been covered, in some instances copiously, by judgments of this court, most notably by the magisterial judgment of Harris JA in **Llandovery**. Although that important decision was issued after R Anderson J had given his judgment in this case, it is entirely to his credit that the conclusions at which he arrived on issues (i) (improper delegation), (ii) (fair hearing), (iv) (*de novo* hearing) and (viii) (the role of the CTA on appeal) were all subsequently validated by **Llandovery** (which was itself an unsuccessful appeal from a decision of his). Despite the great energy and, if I may say so, ingenuity of Mr Hamilton's submissions, I consider that, in these, and in all other respects, the learned judge was correct in his decision to confirm the decision of the CTA. I would therefore dismiss this appeal, with costs to the respondent to be taxed if not agreed.

DUKHARAN JA

[101] I have read in draft the judgment of my brother Morrison JA and agree with his reasoning and conclusion. There is nothing that I wish to add.

SINCLAIR-HAYNES JA (AG)

[102] I too have read the draft judgment of Morrison JA. I agree with his reasoning and conclusion and have nothing to add.

MORRISON JA

ORDER

Appeal dismissed. Costs to the respondent to be taxed if not agreed.