Docket: 2024-2622(GST)APP

BETWEEN:

TWISTED LEAVES LTD.,

Applicant,

and

HIS MAJESTY THE KING,

Respondent.

Application heard on December 16 and 17, 2025 at Toronto, Canada
Before: The Honourable Deputy Gilles Renaud

Appearances:

Agent for the Applicant:	Ehsan Movasaghi
Counsel for the Respondent:	Kelvin Lau

ORDER

IN ACCORDANCE with the reasons for Order delivered herein, the Application for a declaration by the Court that a Notice of Objection by the representative of the Applicant corporation was, factually and legally, effective as of August 20, 2024, is allowed, without costs.

Signed at Canada, this 25th day of February 2026.

"Gilles Renaud"

Renaud D.J.

Citation: 2026 TCC 38
Date: 20260225
Docket: 2024-2622(GST)APP

BETWEEN:

TWISTED LEAVES LTD.,

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REASONS FOR ORDER

Renaud D.J.

I. INTRODUCTION

[1] This case involves a determination whether a claim by the representative of a corporation who was credible in his testimony as to the transmission of a Notice of Objection (or of its functional equivalent) was also reliable in this respect, in light of the relative paucity of documentation supporting his solemn affirmation that he had communicated with the Tax Court of Canada.

[2] After anxious consideration, and a thorough review of the authorities suggesting that a positive finding that a communication was sent, notwithstanding the absence of supporting information that should be relatively easy to produce, ought not to be reached as a matter of routine weighing of the evidence on a balance of probabilities, the Court finds as a fact that the sole witness was reliable in his assertion and that he did forward the appropriate document within the time limits.

[3] Accordingly, for the reasons set out below, the Application is allowed. In the circumstances, however, no costs are to be awarded as the Applicant brought about the need for a contested hearing due to the failure to provide sufficient supporting documentation.

II. BACKGROUND

[4] The facts set out below were not contested by the Respondent or are found by the Court to be established by compelling testimony.

[5] Twisted Leaves Ltd, represented by its owner, Ehsan Movasaghi, is a corporation that sells tea. Refer to the Transcript, December 16, 2025, p. 32, line 13. Tea is a zero-rated supply, as set out in the *Excise Tax Act*, s 123(1), Schedule 4, Part III:1.

[6] [3] While zero-rated supplies are subject to GST at 0%, suppliers of zero-rated supplies are entitled to claim full input tax credits on their expenses. The Appellant was registered for GST for this purpose and was an annual filer, as set out in the Application for an extension of time to object, at page12, an assertion that was not challenged.

[7] In 2020, the Applicant experienced considerable financial difficulties due to the COVID pandemic, as Mr. Movasaghi related in his testimony of December 16, 2025, at page 32. All of its stores were closed, and it lost all of its employees, including its accountant. Consequently, the Appellant did not file its annual GST return for the period ending December 31, 2020.

[8] On September 16, 2021, the Minister of National Revenue assessed the Appellant for the 2020 reporting period, determining net GST payable of $23,204.43, exclusive of interest and penalties. This information is found in the Application for an extension of time to object, at page 12, a statement that was also not challenged with success.

[9] In issuing the assessment, the Minister may well have estimated the Applicant's sales and ITCs by reference to the prior year. And, the Minister may well have assumed that the Applicant's sales are subject to GST at the full rate, notwithstanding that it sold tea, a zero-rated supply. At all events, Twisted Leaves Ltd. was the object of an assessed net GST liability.

[10] The relevant chronology is as follows:

Date	Event
2021-09-16	Notice of assessment for the 2020 period issued[1]
Unknown	Appellant erroneously filed an adjustment request instead of a NOO[2]
2021-12-15	Deadline to file a NOO under s 301(1.1)
2022-09-09	MNR denied the adjustment request[3]
2022-12-15	Deadline to ask the MNR for an extension of time to object under s 303
2024-06-25	Appellant filed a NOO[4]
2024-07-30	MNR refused to accept the NOO and denied an extension of time[5]
2024-08-29	Deadline to apply to the TCC for an extension of time to object under s 304
2024-11-12	Date stamped by the TCC Registry on the application for an extension of time[6]

[11] A brief word on the subject of adjournments is required. On the first day of the hearings, Mr. Movasaghi was asked whether he wished to adjourn the matter for several days. He declined, explaining that he had another commitment and that an adjournment was unnecessary. On the second day of the hearings, however, the Appellant changed his mind, requesting an adjournment to hire a lawyer. This request was denied and the reason is that the Applicant ought to have addressed the need for legal representation earlier.

III. POSITIONS OF THE PARTIES

[1] Refer to the Application for an extension of time to object, p. 12.
[2] *Ibid*, pg 16.
[3] *Ibid*.
[4] *Ibid*, pg 6.
[5] *Ibid*, pg 11.
[6] *Ibid*, pg 1.

[12] The Applicant submits that its application for an extension of time to object should be granted as the required document was communicated electronically on time.

[13] The Respondent submits that the application must be dismissed because it was filed after the statutory deadline in s. 304.

IV. ISSUE

[14] Did the Appellant file a suitable Notice of Objection before the deadline?

V. REVIEW OF THE FACTS AND LAW

A. Notice of Objection

[15] In *Schneidmiller v R*, 2009 TCC 354, the taxpayer erroneously submitted a "T1 Adjustment Request" instead of a Notice of Objection. See paras. 9 to 11. This Court held that the adjustment request constituted a timely Notice since it was submitted before the deadline to file a Notice expired.

[16] Here, the Applicant likewise filed an adjustment request instead of a Notice of Objection. However, the evidence does not disclose when that request was submitted. The Applicant did not specify the filing date in its pleadings or testimony, and the Respondent's documentation did not assist in any material fashion as it disclosed when the adjustment request was denied but not when it was received by the Agency.

B. Extension of Time to Object

[17] S. 304 of the *Excise Tax Act* provides that an application to this Court for an extension of time to file a Notice of Objection must be made no later than 30 days after the Minister mails notice of its decision refusing to grant an extension.

[18] Pursuant to rule 4.2 of the Tax Court of Canada rules:[7]

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[7] *Tax Court of Canada Rules of Procedure Respecting the Excise Tax Act (Informal Procedure)*, SOR/92-42 [rules].

> 4.2 Except as otherwise provided in these rules and unless otherwise directed by the Court, the date of filing of a document is deemed to be
>
> (a) in the case of a document filed with the Registry or sent by mail or by fax, the date shown by the date received stamp placed on the document by the Registry at the time it is received; or
>
> (b) in the case of a document filed by electronic filing, the date shown on the acknowledgment of receipt issued by the Court. [Emphasis added]

[19] The rule contains the word "deemed" as opposed to "presumed" A presumed date can be rebutted by evidence to the contrary, while a deemed date is conclusive and cannot be rebutted.

[20] An identical rule was applied in *Popovich v R*, 2024 TCC 44. Refer to paras. 3 and 21 to 24 in particular. In that case, Justice Bocock observed:

> 3 … The Applicant asserts that the extension application was faxed on September 20, 2023 at 20:24 … Sometime the next morning, court registry staff date stamped the extension application as filed, when next in the office, on September 21, 2023.
>
> 21 The Rules are clear that the filing date can only be deemed through two forms of evidence depending on the mode of transmission: (i) the stamp of the registry office for mail or fax, or (ii) the acknowledgment receipt issued by the Court for e-filed documents. Neither the Applicant nor his agent received from the Court either of these forms of evidence with a date that would have been within the filing deadline for the extension application. …
>
> 22 Lastly, the words "unless otherwise directed by the Court" in the preamble of the Rules s. 4.1 and 4.2, appear at first glance to give the Court broad powers to override the deeming provisions which follow in the sections, if this Court sees fit. …
>
> 23 … the exception states "except as otherwise provided in these Rules and unless otherwise directed by the Court, the date of filing... is deemed to be..." This wording is clearly conjunctive. The Rules must "otherwise provide" so that the Court may apply its discretion and otherwise direct. To be succinct, the Rules do not "otherwise provide" and therefore the Court may not "otherwise direct".
>
> 24 On this basis, the filing date for the extension application was, as indicated by the TCC court registry, September 21, 2023.

[21] In this case, the Minister refused to accept the Notice of Objection and refused to grant an extension of time to object on July 30, 2024. Refer to the Application for an extension of time to object, page 11.

[22] Accordingly, the deadline to apply to the Tax Court of Canada for an extension of time under s 304(1) was August 29, 2024.

[23] In *Popovich*, supra, the application for an extension of time was filed through fax, so rule 4.2(a) was engaged, and the filing date was deemed to be the date on the stamp placed on the document by the Registry of the Tax Court of Canada. In the current case, the Registry stamp indicates that the Appellant's application was filed on November 12, 2024. However, unlike *Popovich*, the present application was filed electronically, engaging rule 4.2(b), thereby deeming the filing date to be the date on the acknowledgement of receipt that was emailed by the Registry to the Appellant, not the date on the stamp placed by the Registry on the documents.

[24] The Applicant was unable to produce the acknowledgment of receipt. It did, however, tender an email from its accountant dated August 20, 2024, indicating that the application for an extension of time had been prepared on that date. Refer to the Transcript of December 16, 2025, at pages 34, and 30 to 40.

[25] In *Abramson v MNR*, [1992] T.C.J. No. 786, this Court held at para. 32 that when a document is unavailable, credible and compelling oral evidence can prove a fact on the balance of probabilities. As we read:

> 32 Counsel's plea to this Court was to the effect that if documents cannot be provided, then the Tax Court of Canada is there to hear viva voce evidence. I totally agree. However, the evidence must, on the balance of probabilities, be credible, clear and strong to show that the assessment was wrong. In this case, the Court concludes that there may have been expenditures, but the Court, without stronger evidence, has no way of determining what the expenditures were, when they were expended, and how they related to the matters before the Court.

[26] It is also useful to refer to *Benjamin v R*, 2006 TCC 69, and the guidance found therein to the effect that it is not the policy of the Court, unless the taxing statute specifically requires it (as in the case of charitable donations), to require documentation to support an expense, a payment or a deduction. If a taxpayer can demonstrate in court through credible oral testimony that a payment was made or an expense incurred, the court must make a finding based on that evidence and give

effect to it. If the taxpayer makes out a prima facie case and it is unrefuted by the Crown, the taxpayer should win.

[27] Noteworthy as well are the comments of Justice O'Connor in *Ebbinghaus v. R.*, 2003 TCC 483:

> [11] In a self-assessing system the burden of proof to establish income and expenses is on the taxpayer and in the present case that burden of proof has not been met. It is acknowledged that verbal testimony with respect to expenses is permitted but that verbal testimony must be clear and unambiguous. As was stated in the case of *Abramson v. Canada (Minister of National Revenue)*, [1992] T.C.J. No. 786:
>
> The burden of proof rests on the taxpayer to establish the incorrectness of any tax assessment he opposes. The Act requires taxpayers to keep appropriate accounting records to support the computation of the taxes that they must pay.
>
> ...
>
> The Appellant comes to Court with Exhibits ..., and little else, no records, bank statements, cheque stubs, vouchers, receipts, disbursements, ledgers, corporate books, shareholder loan documentation, or anything that would support his contention.
>
> ...
>
> Counsel's plea to this Court was to the effect that if documents cannot be provided, then the Tax Court of Canada is there to hear viva voce evidence. I totally agree. However, the evidence, must, on the balance of probabilities, be credible, clear and strong to show that the assessment was wrong. In this case, the Court concludes that there may have been expenditures, but the Court, without stronger evidence, has no way of determining what the expenditures were, when they were expended, and how they related to the matters before the Court.

[28] Further, according to Lesnick v R, 2008 TCC 522, at para. 16, a highly probable event can be proven with weaker evidence than an improbable event. As we read: "… In analyzing the proof or evidence that has been presented, the probability or improbability of the event that is in issue is a factor that can be taken into account in this analysis. The more improbable the event the stronger the evidence that would be required. Conversely it would also seem to me that a person may be able to establish, on a balance of probabilities, that a highly probable event occurred based on weaker evidence than would be required to establish that an improbable event had occurred."

[29] Given that the Application had been prepared on August 20, 2024 – nine days before the statutory deadline – it is more likely than not that it was electronically filed on or shortly after this date. Indeed, the Applicant's owner was impressive in his belief that no such financial penalty might arise given the rules. Whether he is correct or not is irrelevant to the finding that it is far more likely, as the Court finds, that his indignant perspective led him to act on the very day he received material from his accountant.

[30] To avoid any misunderstanding, I find as a fact that the Applicant's owner did transmit to the Court Registry the necessary documentation to justify its day in Court on August 20, 2024.

[31] In any event, the Court wishes to record these further findings of fact and statements of law:

C. Rule 19(3): In the Interests of Justice

[32] For rule 4.2 not to be triggered, two conditions must be met: the Court directs that the rule does not apply, and it must be "otherwise provided in these rules." The rules do provide otherwise in rule 19(3):

> The Court may, where and as necessary in the interests of justice, dispense with compliance with any rule at any time.

[33] There is no case law where this rule was used to extend a missed deadline. To the contrary, the Federal Court of Appeal held that a rule permitting a court to dispense with compliance with any rule where necessary in the interests of justice cannot be used to enlarge a statutory limitation period. Refer to Dawe v. R., [1994] F.C.J. No. 1327, 175 N.R. 1 (C.A.).

[34] On the other hand, the Federal Court of Appeal acknowledged that "the interests of justice" has been interpreted broadly, and that Court stated that it entails a consideration of the integrity of the judicial process, not merely the interests of the party. Refer to Hutton v. Sayat, 2023 FCA 22, at para. 6 wherein we read: "… As noted by Justice Fothergill, the interest of justice has been interpreted broadly, and is not limited to the interests of the party but rather includes a consideration of the integrity of the judicial process …"

[35] The Court wishes to add that reaching a correct conclusion as to what is in the interests of justice often calls for a comparative inquiry, considering things like cost, speed of procedure, the availability of evidence, and proportionality. Authority is found in the well-known case of *Hryniak v Mauldin*, 2014 SCC 7, at para 58 in particular:

> [58] This inquiry into the interest of justice is, by its nature, comparative. Proportionality is assessed in relation to the full trial. It may require the motion judge to assess the relative efficiencies of proceeding by way of summary judgment, as opposed to trial. This would involve a comparison of, among other things, the cost and speed of both procedures. (Although summary judgment may be expensive and time consuming, as in this case, a trial may be even more expensive and slower.) It may also involve a comparison of the evidence that will be available at trial and on the motion as well as the opportunity to fairly evaluate it. (Even if the evidence available on the motion is limited, there may be no reason to think better evidence would be available at trial.)

[36] In this case, the interests of justice are engaged in determining whether compliance with rule 4.2 can be dispensed with. The Applicant faced extraordinary circumstances arising from the pandemic; the underlying assessment appears to rest on an arguably incorrect assumption regarding the tax status of zero-rated supplies; and there is highly credible and reliable evidence suggesting timely electronic filing. Insisting on formal proof of an acknowledgment of receipt, in these circumstances, will undermine public confidence in the fairness of the adjudicative process. Indeed, taken to its logical conclusion, strict adherence with the interpretation given in some cases would bring about a result that is contrary to law, from the analytical perspective of imagining an absurd but not impossible factual scenario: if a public official refused capriciously to provide a stamp or receipt of filing, then the Applicant would be denied access to the Court, a result that is inconceivable as the Court is the source of ultimate justice. In any event, a remedy pursuant to s. 24(1) of the Charter would then be sought.

[37] In the final analysis, the Application is granted, without costs.

Signed at Canada, this 25th day of February 2026.

"Gilles Renaud"

Renaud D.J.

CITATION:	2026 TCC 38
COURT FILE NO.:	2024-2622(GST)APP
STYLE OF CAUSE:	TWISTED LEAVES LTD. AND HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Canada
DATE OF HEARING:	December 16, 2025
REASONS FOR ORDER BY:	The Honourable Deputy Judge G. Renaud
DATE OF ORDER:	February 25, 2026

APPEARANCES:

Agent for the Applicant:	Ehsan Movasaghi
Counsel for the Respondent:	Kelvin Lau

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