

**Date: 20080915**

**Dockets: A-16-08  
A-17-08**

**Citation: 2008 FCA 264**

**CORAM: NADON J.A.  
SEXTON J.A.  
PELLETIER J.A.**

**BETWEEN:**

**JOSE PEREIRA**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on September 15, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on September 15, 2008.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NADON J.A.**

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**BETWEEN:**

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**Appellant**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario, on September 15, 2008)**

**NADON J.A.**

[1] Notwithstanding Mr. Klug's forceful arguments, we have not been persuaded that Bowie J. erred in dismissing the appellant's application for an extension of time to file a Notice of Objection to the assessment made by the Minister under section 227.1 of the *Income Tax Act* and subsection 323(4) of the *Excise Tax Act* for the liabilities of United Growth Inc., in his capacity of Director thereof, for income tax withholdings, GST, interests and penalties.

[2] Bowie J. concluded as he did because, in his view, the appellant had neither filed a Notice of Objection within 90 days of the mailing of the assessment, as required by section 165 of the *Income Tax Act* and subsection 301.1 of the *Excise Tax Act*, nor had he filed an application for an extension of time to do so within 1 year after the expiry of the 90-day period provided to file a Notice of Objection, as required by section 166.1 of the *Income Tax Act* and section 303 of the *Excise Tax Act*.

[3] In our view, on the record before him, the conclusion reached by Bowie J. was unavoidable and, as a result, the appeals will be dismissed with costs.

[4] In concluding, we wish to make it absolutely clear that, in our view, *Haight v. Canada*, [2000] 4 C.T.C. 2546 was wrongly decided and ought not to be followed.

“M. Nadon”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** A-16-08  
A-17-08

**(FILE NO. A-16-08, APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE BOWIE OF THE TAX COURT OF CANADA DATED JANUARY 8, 2008, FILE NO. 2007-3137 (IT) APP.**

**FILE NO. A-17-08, APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE BOWIE OF THE TAX COURT OF CANADA DATED DECEMBER 10, 2008, FILE NO. 2007-3139 (GST) APP.)**

**STYLE OF CAUSE:** JOSE PEREIRA v. HER MAJESTY THE QUEEN

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 15, 2008

**REASONS FOR JUDGMENT OF THE COURT BY:** (NADON, SEXTON & PELLETIER JJ.A.)

**DELIVERED FROM THE BENCH BY:** NADON J.A.

**APPEARANCES:**

LEO KLUG FOR THE APPELLANT

BRIANNA CARYLL FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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