

BETWEEN:

THE MINISTER OF NATIONAL
REVENUE

APPELLANT;

1961
} Jun. 20
1964
} Mar. 4

AND

STEEN REALTY LIMITEDRESPONDENT.

Revenue—Income tax—Income Tax Act, R.S.C. 1952, c. 148, ss. 11(1)(a), 20(6)(g) and 144(1); Income Tax Regulations, Schedule B—Sale of real estate—Capital cost allowance in year of sale—Whether sale price paid for land and buildings or land alone.

When the respondent company purchased certain lands and buildings in the City of Toronto in 1946 at a cost of \$132,000, it allocated \$32,112 of the purchase price to the land and the balance thereof to the buildings, an allocation which the appellant accepted at that time. The said lands and buildings were sold by the respondent during the 1955 taxation year for \$395,000. The appellant accepted the respondent's calculation of the net capital cost value of the buildings on January 1, 1955 in the amount of \$91,403.35 but deducted therefrom the sum of \$39,309.77 as having been realized by the appellant during the taxation year by the sale of the buildings, and he calculated the allowable capital cost allowance on the difference whereas the respondent had claimed a capital cost allowance of 5% of the whole \$91,403.35.

Held: That the evidence established that at the time of the sale in 1955, the buildings in question had no value and that the purchaser paid

1964
 MINISTER OF
 NATIONAL
 REVENUE
 v.
 STEEN
 REALTY
 LIMITED

the price of \$395,000 for the land alone, so that it is not reasonable to regard any part of the \$395,000 sale price as being the consideration for the disposition of the buildings.

2. Appeal dismissed.

APPEAL from a decision of the Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice Ritchie, Deputy Judge of the Court, at Toronto.

G. D. Watson, Q.C. and *T. E. Jackson* for appellant.

W. D. Goodman for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

RITCHIE D. J. now (March 4, 1964) delivered the following judgment:

The Minister of National Revenue has appealed from the allowance by the Tax Appeal Board of an appeal of Steen Realty Limited in respect of a re-assessment dated April 24, 1957 by which \$4,465.49 was added to its 1955 taxable income. For convenience of reference, the Minister of National Revenue and Steen Realty Limited hereinafter sometimes shall be referred to respectively as "the Minister" and "the company".

As of January 1, 1955, the company owned land with three buildings thereon situate in the King Street and University Avenue area of Toronto. One building was known as 25 Emily Street and the other is 177 King Street West, Emily Street, which is one block west of University Avenue, runs north and south.

The land on which the three buildings stood had street frontages of 217 feet on University Avenue, 56.4 feet on King Street and 76.10 feet on Emily Street. It had been acquired by the company in 1946 at a cost of \$132,000. At the time of acquisition the company allocated \$32,112 of the purchase price to the land, the remainder of the purchase price was allocated to the buildings. The Minister accepted those allocations.

The entire property, land and buildings, was sold during the 1955 taxation year for a price of \$395,000. The issue between the parties is what, if any, portion of the sale price should, reasonably, be attributed to the depreciated

value of the buildings standing on the land as of the date of the sale.

Section 11(1)(a) of the *Income Tax Act* permits deduction from gross income of such part of the capital cost of property as is allowed by regulation. Under schedule B of the *Income Tax Regulations* the buildings involved herein were classified in 1955 as class 3 and so, under regulation (1), an allowance of 5% of their depreciated capital cost might be deducted by the owner in computing taxable income. Other land with class 3 buildings thereon was owned by the company.

1964
MINISTER OF
NATIONAL
REVENUE
v.
STEEN
REALTY
LIMITED
Ritchie D.J.

In its income tax return for the 1955 taxation year, the company deducted from its gross income a cost allowance of \$4,570.17, being five percent of the amount of \$91,403.35 shown on the return as the net capital cost value, for income tax purposes, of class 3 schedule B property owned by it as of December 31, 1955. The Minister accepted \$91,403.35 as the value of that class of property owned by the company as of January 1, 1955 but, for the purpose of determining value as of December 31, 1955, deducted therefrom the sum of \$89,309.77 which he ruled had been realized during the taxation year by the sale of the three buildings. The balance of \$2,093.58 is the capital cost value on which, in making the re-assessment, the Minister computed \$104.68 as the proper capital cost allowance.

Counsel for the Minister explained that \$89,309.77 was the undepreciated value of the buildings in 1949, the year in which the present system of capital cost recovery became effective. As justification for the adoption of that value, he relied on the formula contained in section 144(1) of the Act.

The computation of 1955 taxable income of the company as determined by the re-assessment is:

Taxable income declared by company	\$ 789.76
Capital cost allowance claimed by company \$4,570.17	
Capital cost allowance as determined by the Minister	104.68
Add to income as declared	<u>4,465 49</u>
Taxable income as revised and as assessed	<u>\$5,255 25</u>

Benjamin Richard Steen, the president of the company, testified respecting the 1946 acquisition of the property. The oldest building, 177 King Street, was four stories in height,

1964
 MINISTER OF
 NATIONAL
 REVENUE
 v.
 STEEN
 REALTY
 LIMITED
 Ritchie D.J.

had a basement and was 130 feet in depth, and was then reputed to have been standing for sixty, perhaps seventy-five years. At the rear of this building was an addition thereto, two stories in height. This addition, which was the second of the three buildings standing on the land at the time of the sale, had been built twenty-five or thirty years before the company acquired the property. The second building connected with another four storey and basement building which fronted on Emily Street. The main purpose in acquiring the property was to provide a home for Zenith Electric Supplies, a wholesale merchandising company, which Mr. Steen controlled. The space not required by Zenith was rented to other tenants. At the time of the sale the rentals being derived from the buildings were:

Zenith Electric Supply	\$2,000.00	per month
Herbert A. Watts Limited	855 00	" "
Stephen Sales Limited	541.66	" "
Trevelyan Manufacturing Co.	225 00	" "
	<u>3,621 66</u>	

The annual gross income approximated \$44,000.00 and the annual net income, before administration expense, was in the vicinity of \$22,000. Fire insurance in the amount of \$250,000 was carried on the buildings.

On October 4, 1955 one Rudolf Peter offered to purchase the property for the price of \$395,000. The offer was conditional on:

- (a) permission being obtained for the erection of a building, at least twelve stories in height, to house wholesale and commercial outlets and offices;
- (b) the proposed building being permitted to occupy the total area of the land; and
- (c) the issue of building permits for the contemplated building.

The Peter offer, which was accepted by the company on October 6, 1955, called for vacant possession not later than May 15, 1956. To secure vacant possession the company paid \$3,000 to Stephen Sales and \$4,500 to Herbert A. Watts Limited in consideration of their leases being surrendered. The transaction was closed on November 15, 1955. The morning after vacant possession was delivered demolition of the buildings commenced. Erection of the new office building commenced immediately.

Irwin Armstrong, an employee of The Chartered Trust Company, gave evidence on behalf of the company as an expert on real estate values. He has been dealing with commercial and industrial properties for twenty-five years and had been appraising that type of property for ten years. Mr. Armstrong testified the value of the property sold by the company to Peter was in the land rather than in the buildings; that there was not sufficient income from the buildings to make the property attractive as an investment proposition; that in the 1955-57 period the University Avenue area was becoming active, land values were rising; that office buildings then were either in course of construction or being planned and at least one hotel was looking for a site in that area; that the price for which the company sold its property was the equivalent of \$21.24 per square foot; that he knew of twelve other properties in the immediate area which in the same period had sold respectively for prices equivalent to \$32.04, \$22.17, \$23.26, \$27.04, \$39.31, \$45.35, \$42.80, \$32.95, \$22.16, \$18.11, \$29.12 and \$13.93 per square foot; that because of the value inherent in the land and the conditions under which the company was using the property, he did not attribute any value to the buildings; that the property would have sold for as much without the buildings as it did with them; and that, because of the cost of demolishing the buildings, the land would have been more desirable if vacant.

No witnesses were called on behalf of the Minister.

A section of the Act which, in my opinion, has particular application to the issue is section 20 which applies where depreciable property of a taxpayer has, in a taxation year, been disposed of. Subsection 6 clause (g) of that section is:

For the purpose of this section and regulations made under paragraph (a) of subsection (1) of section 11, the following rules apply:

- (g) where an amount can reasonably be regarded as being in part the consideration for disposition of depreciable property of a taxpayer of a prescribed class and as being in part consideration for something else, the part of the amount that can reasonably be regarded as being the consideration for such disposition shall be deemed to be the proceeds of disposition of depreciable property of that class irrespective of the form or legal effect of the contract or agreement; and the person to whom the depreciable property was disposed of shall be deemed to have acquired the property at a capital cost to him equal to the same part of that amount.

1964

MINISTER OF
NATIONAL
REVENUE
v.
STEEN
REALTY
LIMITED

Ritchie D.J.

1964

MINISTER OF
NATIONAL
REVENUE
v.
STEEN
REALTY
LIMITED

Ritchie D.J.

The company contends that in 1955, the market value of the property (land and buildings) was confined to what could be realized for the land as the buildings had no market value. It, however, does concede the buildings had some value to it as Zenith Electric, a related company, was the major tenant. I use the term "related company" loosely. The parking problem had caused wholesalers to move from the King Street-University Avenue area. The value of the location as a home for Zenith Electric in 1955 had, in my view, decreased to a point where it no longer justified retention of the property by the company. The parking problem was bound to become progressively worse.

The buildings were old. They had no attraction to an investor seeking income. According to Mr. Armstrong anyone desirous of acquiring the property as an investment would not have paid more than \$210,500 for it. I am satisfied the company, in fixing the price at which it was willing to sell, had regard only to the land value. I also am satisfied Mr. Peter regarded the buildings on the land as of no value to him and that his offer of \$395,000 was based solely on the value of the land as a site for the modern twelve story office building he had in mind. The cost of demolition increased his acquisition cost.

In the circumstances surrounding the sale of the property to Peter, it is not reasonable to regard any part of the \$395,000 sale price as being the consideration for the disposition of the buildings. See *Ben's Limited v. The Minister of National Revenue*¹.

The appeal is dismissed, with costs.

Judgment accordingly.

¹ [1955] Ex. C.R. 289.