Vancouver 1967 Apr. 28, May 1

BETWEEN:

GATEWAY LODGE LIMITED ..... APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE ..... RESPONDENT.

Income tax—Capital cost allowances—Terminal allowance—Recapture—Lodge operated on leasehold—Surrender of leasehold to Crown—Basis of valuing assets—Ascertainment of "undepreciated capital cost"—Income Tax Act, ss. 20(1), 20(5)(b),(c),(d).(e), 30(6)(g)—Income Tax Regulations s. 1100(1) and (2).

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In 1949 appellant acquired a lodge on land leased from the Crown in Kootenay National Park and up to 1962 incurred a capital cost of $52,129 on the buildings and $37,936 on the contents and was allowed capital cost allowances of $29,689 on the buildings and $28,911 on the contents. In April 1962 it surrendered to the Crown its lease (which was perpetually renewable) together with the buildings and contents for $155,000 and claimed a terminal allowance of the undepreciated capital cost of the buildings and contents under s. 1100(2) of the *Income Tax Regulations*. The Minister disallowed this claim and assessed appellant under s. 20(1) of the *Income Tax Act* on the footing that the capital cost allowances previously allowed had been recaptured. Appellant appealed. The parties agreed for the purposes of the appeal that to a prospective purchaser entitled to continue the existing business the buildings had a value of not less than $52,129 and the contents not less than $9,025.

Held, affirming the assessment (1) appellant was not entitled to the terminal allowance claimed on either the buildings (class 13 assets) or the contents (class 8 assets) since on application of the formula in s 20(5)(*e*) of the *Income Tax Act*, and valuing the assets as those of a going concern, there was no undepreciated capital cost for either class; and (2) $52,129 of the $155,000 received on the surrender could, valuing the assets as those of a going concern, reasonably be regarded (see s 20(6)(*g*) of the *Income Tax Act*) as consideration for the leasehold property, which in any event was assumed by the Minister and not disputed, and accordingly the recapture provisions applied.

APPEAL from Tax Appeal Board.

David A. Freeman for appellant.

L. R. Olsson and *S. A. Hynes* for respondent.

JACKETT P. (orally):—This is an appeal from a decision of the Tax Appeal Board dismissing the appellant's appeal from its income tax assessment for the 1962 taxation year. The appeal involves a question as to whether, by virtue of subsection (1) of section 20 of the *Income Tax Act*, an amount has to be included in computing the appellant's income for the year by way of what is commonly referred to as recapture of capital cost allowance. It also involves a question as to whether certain amounts are deductible in computing the appellant's income for the year, by virtue of subsection (2) of section 1100 of the *Income Tax Regulations*, as what is commonly referred to as terminal allowances.

At all material times, Rinaldo A. Wassman was the sole beneficial shareholder and managing director of the appellant.

In 1949 Wassman personally agreed to purchase from one Williams a property known as Gateway Lodge at

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Radium Hot Springs in Kootenay National Park in the Province of British Columbia. At that time, the property consisted of a hotel or lodge building and two smaller buildings, all of which were furnished and equipped, and were located on land in the Park that was held under lease from the Crown in right of Canada. Two features of the leases of some importance are (a) that the rent was nominal but subject to adjustment on stated occasions by reference only to the bare land value of the demised property; and (b) that the lease was renewable from time to time in perpetuity at the option of the tenant. Wassman agreed to pay Williams for the property $65,000 plus the value of stock in trade on hand at the time of purchase.

Wassman assigned to the appellant his interest under the purchase agreement with Williams.

In its books of account, the appellant allocated, of the purchase price, $40,000 as being the capital cost of "buildings" and $25,000 as being the capital cost of "equipment".

Upon payment of the purchase price, Williams assigned the leases to the appellant. The appellant then surrendered the leases to the Crown and received new leases dated August 25, 1955 in lieu thereof.

During the period prior to 1962, the appellant expended, in addition to the aforesaid $40,000, which it had allocated to buildings, an additional $12,129.83 by way of capital improvements or additions to the buildings in question, making a total capital cost to it of such interest as it had in the buildings of $52,129.83. In the same period, the appellant claimed capital cost allowances with respect thereto in amounts totalling $29,689.64. These amounts were allowed by the Minister by his assessments for the various taxation years in the period. There was, therefore, at the beginning of the 1962 taxation year, on the appellant's books, a capital cost in respect of these buildings in respect of which no capital cost allowance had been made under the *Income Tax Act* of $22,440.19.

With reference to the furniture and equipment in the buildings, there was a parallel situation. The appellant, as already indicated, had allocated, of the original cost of the total property, $25,000 to the contents. It had made capital improvements and additions to the contents during the period prior to 1962, according to its books, of

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$12,936.60. It had claimed, and been allowed, under the *Income Tax Act*, in respect of the furniture and equipment constituting the contents, capital cost allowance in amounts aggregating $28,911.39. There was therefore on the appellant's books, at the beginning of the 1962 taxation year, capital cost in respect of such furniture and equipment in respect of which no capital cost allowance had been made under the *Income Tax Act* of $9,025.21.

In 1960, the Department of Northern Affairs and National Resources advised the appellant that they required the land upon which his hotel was located for road and related purposes. The Crown therefore negotiated with the appellant for a surrender of his leases with a view to removing the buildings as well as their contents. It seems clear that neither the buildings nor the contents had any value except where they were and as an integral part of the appellant's hotel business on that location as a going concern.

The appellant fixed its original asking price for the surrender of its leasehold property on the basis of the profits it had been making in recent years from the carrying on of its business and ultimately entered into an agreement pursuant to which it accepted a somewhat lower amount—$155,000—therefor. There is no information as to the basis upon which the departmental officials justified seeking authority to pay that amount for a surrender to the Crown of the appellant's leases. There is a copy of an appraisal report made for the Department in evidence, but no evidence as to whether it was accepted by the Minister.

It is established that the departmental officials indicated that they were prepared to recommend a settlement on the basis of the appellant being entitled to remove and use or sell both the buildings and their contents; but the appellant refused to bargain except on the basis that the Crown would accept a surrender of the leasehold land with the buildings on it and their contents in them.

The actual agreement is contained in an offer made by the appellant to the Minister of Northern Affairs and National Resources by a document dated October 2, 1961, and reading as follows:

> I, the Lessee of Villa Lots 6, 7 and 7A in Radium Hot Springs Townsite, in Kootenay National Park, in the Province of British Columbia,

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agree to sell to Her Majesty the Queen in right of Canada, free from all encumbrances, my interest in the said lots, including buildings and contents, and improvements thereon, for the sum of One Hundred and Fifty-five thousand dollars ($155,000.00).

This agreement was implemented in part by formal surrender documents dated April 2, 1962, whereby the appellant surrendered to the Crown the lands comprised in the leases "to the intent that" the unexpired terms "may be merged and extinguished in the reversion and inheritance of the said lands" and whereby the appellant also granted, conveyed, released etc., to the Crown "all its right, title and interest in the building and improvements" situate on such lands. It was also implemented in part by the execution by the appellant in favour of the Crown of a bill of sale of the contents bearing date April 2, 1962.

By its 1962 Income Tax Return, the appellant claimed terminal allowance under subsection (2) of section 1100 of the *Income Tax Regulations* in the sum of $31,465.40, which was, apparently, made up as follows:

Buildings	$22,440 19
Furniture and equipment	9,025 21
	$31,465 40

By the re-assessment that is the subject matter of this appeal, the respondent disallowed this claim. By the same re-assessment, the respondent added to the appellant's declared income an amount of "Capital cost allowance recaptured" in the sum of $29,689.64.

By this appeal the appellant maintains its right to the terminal allowance so disallowed in the sum of $31,465.40 and attacks the assessment by the respondent in so far as it adds the amount of $29,689.64, or any amount, to his income for 1962 by way of capital cost allowance recaptured.

It is well to bear in mind, in considering capital cost allowance problems under the *Income Tax Act*, that, while the general rule in computing profit from a business for the purposes of Part I of the Act is that it is to be computed in accordance with business or commercial principles, section 12(1)(*a*) of the Act expressly excludes any deduction in respect of depreciation or obsolescence. In place of any such allowance, there is what is provided for by section 11(1)(*a*) when it authorizes as a deduction, in computing

the income of a taxpayer for a taxation year, "such part of the capital cost to the taxpayer of property . . ., if any, as is allowed by regulation". What we have to deal with is therefore a purely statutory scheme of deductions and not a businessman's concept of an allowance for depreciation.

While the statute leaves to regulations the actual definition of the amounts that may be deducted, there is to be found in subsection (5) of section 20 of the statute a series of definitions of arbitrarily selected concepts that are to be used in the Regulations as well as the statute.[1] So we

[1] Subsection (5) of section 20 reads as follows.

(5) In this section and regulations made under paragraph (*a*) of subsection (1) of section 11,

(*a*) "depreciable property" of a taxpayer as of any time in a taxation year means property in respect of which the taxpayer has been allowed, or is entitled to, a deduction under regulations made under paragraph (*a*) of subsection (1) of section 11 in computing income for that or a previous taxation year;

(*b*) "disposition of property" includes any transaction or event entitling a taxpayer to proceeds of disposition of property;

(*c*) "proceeds of disposition" of property include

(i) the sale price of property that has been sold,

(ii) compensation for property damaged, destroyed, taken or injuriously affected, either lawfully or unlawfully, or under statutory authority or otherwise,

(iii) an amount payable under a policy of insurance in respect of loss or destruction of property, and

(iv) an amount payable under a policy of insurance in respect of damage to property except to the extent that the amount has, within a reasonable time after the damage, been expended on repairing the damage,

(*d*) "total depreciation" allowed to a taxpayer before any time for property of a prescribed class means the aggregate of all amounts allowed to the taxpayer in respect of property of that class under regulations made under paragraph (*a*) of subsection (1) of section 11 in computing income for taxation years before that time; and

(*e*) "undepreciated capital cost" to a taxpayer of depreciable property of a prescribed class as of any time means the capital cost to the taxpayer of depreciable property of that class acquired before that time minus the aggregate of

(i) the total depreciation allowed to the taxpayer for property of that class before that time,

(ii) for each disposition before that time of property of the taxpayer of that class, the least of

(A) the proceeds of disposition thereof,

(B) the capital cost to him thereof, or

(C) the undepreciated capital cost to him of property of that class immediately before the disposition, and

(iii) each amount by which the undepreciated capital cost to the taxpayer of depreciable property of that class as of the end of a previous year was reduced by virtue of subsection (2).

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find that, in this context "depreciable property" means property in respect of which the taxpayer has been allowed, or is entitled to, a deduction under regulations made under section 11(1)(*a*); and we find that "proceeds of disposition" include such things as the price of property that has been sold, the compensation for property that has been expropriated, and the insurance monies for property lost or destroyed; and further that "disposition of property" includes any transaction or event entitling a taxpayer to "proceeds of disposition" in this enlarged sense. Furthermore, by virtue of these arbitrary definitions, we find that "total depreciation" allowed to a taxpayer for property of a class means all the amounts allowed under the section 11(1)(*a*) regulations (commonly called capital cost allowance) in respect of property of that class, and that the expression "undepreciated capital cost" of property of a particular class is defined in very detailed and precise terms.

The overall scheme of capital cost allowances is to be found on the one hand in the regulations made under section 11(1)(*a*) of the Act, which provide for the deductions that may be made, and, on the other hand, in section 20(1) of the Act, which provides for the "recapture" of allowances previously made when it turns out that the actual overall capital cost of property to the taxpayer was less than the total of the allowances that were made under section 11(1)(*a*) in the years during which the property was held for income-earning purposes.

The parts of the Regulations that are relevant here include the following:

> 1100. (1) Under paragraph (*a*) of subsection (1) of section 11 of the Act, there is hereby allowed to a taxpayer, in computing his income from a business or property, as the case may be, deductions for each taxation year equal to
>
> (*a*) such amounts as he may claim in respect of property of each of the following classes in Schedule B not exceeding in respect of property
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> * * *
>
> (vi) of class 6, 10%
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> * * *
>
> (viii) of class 8, 20%
>
> * * *
>
> of the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

(*b*) where a taxpayer has property of class 13 in Schedule B which was acquired by him for the purpose of gaining or producing income, such amount as he may claim not exceeding, in respect of each item of the capital cost thereof to him, the lesser of

(i) one-fifth of the capital cost thereof to him, or

(ii) the amount for the year obtained by apportioning the capital cost thereof to him equally over the period of the lease unexpired at the time the cost was incurred,

but the total of the amounts allowed under this paragraph shall not exceed the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;[1]

The parts of section 1100(1) of the Regulations to which I have just referred must be read with the definitions of Class 6, Class 8 and Class 13 as set out in Schedule B to the Regulations. These classes are defined, so far as is relevant for present purposes, as follows:

Class 6 (10%)

Property, not included in any other class that is

(*a*) a building of

(i) frame,

* * *

Class 8 (20%)

Property that is a tangible asset that is not included in any other class in this Schedule except . . .

Class 13

Property that is a leasehold interest except . . .

The only other part of the Regulations to which I should refer is section 1100(2), which provides for terminal allowances as follows:

(2) Where, in a taxation year, otherwise than on death, all property of a prescribed class that had not previously been disposed of or transferred to another class has been disposed of or transferred to another class and the taxpayer has no property of that class at the end of the taxation year, the taxpayer is hereby allowed a deduction for the year equal to the amount that would otherwise be the undepreciated capital cost to him of property of that class at the expiration of the taxation year.

As already indicated, the other part of the capital cost allowance scheme is the recapture provision which is to be found in section 20(1) of the *Income Tax Act*, which reads as follows:

20. (1) Where depreciable property of a taxpayer of a prescribed class has, in a taxation year, been disposed of and the proceeds of disposition

[1] I have set out in this judgment the Regulations as they were for the 1962 taxation year as nearly as I can ascertain them.

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exceed the undepreciated capital cost to him of depreciable property of that class immediately before the disposition, the lesser of

(a) the amount of the excess, or

(b) the amount that the excess would be if the property had been disposed of for the capital cost thereof to the taxpayer,

shall be included in computing his income for the year.

I propose to consider first the two questions that arise in respect of the "buildings".

In the first place, having regard to the definition of the relevant classes, it seems clear that the appellant's leasehold interest in the land, of which the buildings formed, in the view of the law, a part, falls within prescribed class 13 and not within prescribed class 6. Class 6 extends only to property "not included in any other class" that is a building and the appellant's leasehold interest clearly falls within class 13.

Coming then to the appellant's right to deduct a terminal allowance in respect of "buildings", the requirement that it must have fulfilled to be entitled to an allowance under section 1100(2) of the Regulations is that all of its class 13 leasehold property had been disposed of (or transferred to another class) in the 1962 taxation year and that it had no property of that class at the end of that year. This requirement appears to have been met.

The further question is, however, as to the amount of the deduction to which it was entitled. The subsection defines that to be "the amount that would otherwise be the undepreciated capital cost to him of property of that class at the expiration of the taxation year". This brings me to the definition of "undepreciated capital cost" to a taxpayer of depreciable property of a prescribed class as of any time, which, as I have already indicated, is to be found in section 20(5) of the *Income Tax Act*, paragraph (*e*) of which reads, in part:

(*e*) "undepreciated capital cost" to a taxpayer of depreciable property of a prescribed class as of any time means the capital cost to the taxpayer of depreciable property of that class acquired before that time minus the aggregate of

(i) the total depreciation allowed to the taxpayer for property of that class before that time,

(ii) for each disposition before that time of property of the taxpayer of that class, the least of

(A) the proceeds of disposition thereof,

(B) the capital cost to him thereof, or

(C) the undepreciated capital cost to him of property of that class immediately before the disposition, and

* * *

What we have to ascertain in order to determine the deduction permitted by section 1100(2) of the Regulations is what would "otherwise be the undepreciated capital cost" to the appellant of class 13 leaseholds as of the end of its 1962 taxation year. As I read the definition in section 20(5)(*e*), this would be

(*a*) the capital cost to the appellant of its leasehold interests,

minus the total of

(*b*) the total depreciation allowed to the appellant for class 13 leasehold interest property before that time, and

(*c*) for the sole disposition of leasehold interests, being that in 1962, the least of

(A) the proceeds of disposition,

(B) the capital cost of the property disposed of, or

(C) the undepreciated capital cost to the appellant of class 13 leaseholds immediately before the disposition.

As far as the evidence reveals, the only capital cost that can be attributed to the appellant's class 13 leasehold interests is what is shown on its books for "buildings", namely, $52,129.83.

Coming to the amounts that must be deducted from that capital cost of $52,129.83 to get the permitted terminal allowance, the "depreciation allowed" for class 13 leasehold property before the 1962 taxation year seems to me to be clearly the amount that was claimed and allowed for "buildings". Such amount could only validly be allowed as a class 13 allowance. I know that it was allowed; and I have nothing before me to show that it was allowed in any

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way that compels me to treat it as having been unlawfully allowed as a class 6 allowance. The amount so allowed was $29,689.64.

With reference to the 1962 "proceeds of disposition" of leasehold interests, it is necessary to turn to section 20(5)(*c*), which defines "proceeds of disposition" to include, *inter alia,*

> (i) the sale price of property that has been sold,
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> (ii) compensation for property damaged, destroyed, taken or injuriously affected, either lawfully or unlawfully, or under statutory authority or otherwise,
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> * * *

and to section 20(5)(*b*) which defines "disposition of property" to include any transaction or event entitling the taxpayer to proceeds of disposition of property.

I should have no doubt myself that a transaction whereby a lessee, for a consideration, surrenders his leasehold interest so that it merges in the landlord's reversion and is entirely lost to him falls within the ordinary meaning of the expression "disposition of property". Indeed, the only basis upon which the appellant can bring itself within section 1100(2) in order to claim a terminal allowance is that it had "disposed of" all property in the prescribed class. If it disposed of its class 13 leaseholds so as to be in the position of claiming a terminal allowance, the same disposition must be treated as a disposition for the purpose of determining the amount of the allowance. It follows that the "consideration" for the surrender is "proceeds of disposition" within the meaning of that expression as defined for the purpose of the statute. If, however, the facts of this case are open to the view that the department concerned, or the Crown, by their acts or decisions, either wrongfully or legally, took or injuriously affected the appellant's leasehold interests, then the compensation for such act, which is clearly contained in the $155,000 paid by the Crown to the appellant, is equally proceeds of disposition of leasehold interests within the definition of the expression "proceeds of disposition" to which I have just referred. On the admitted facts, the amount thereof must be regarded as being much more than the total capital cost of class 13 leaseholds, which is only $52,129.83.

My reason for reaching the latter conclusion is that the appellant received $155,000 for its leasehold interests (in-

cluding buildings) and for the contents. Section 20(6)(*g*)[1] provides, in effect, that, where an amount can reasonably be regarded as being in part consideration for disposition of depreciable property 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". Paragraph 15 of the agreement as to facts (Exhibit 1) reads:

> 15. For the purposes of this appeal the parties admit that to a prospective purchaser entitled to continue the existing business the buildings had a value of not less than $52,129.83, the furniture and equipment a value of not less than $9,025.21, and the lessee's interest in the said leases, Exhibits A-7 and A-8, a value (excluding buildings and improvements) of not more than $93,845.04. The parties also admit that the buildings had no value to a purchaser required to remove them from Lots 6, 7, and 7A.

There is no doubt in my mind that what the appellant was bargaining about was the surrender of a leasehold interest in property that had a value as part of his business enterprise. That is what he was selling. He had a right to continue operating the business indefinitely. It was a profitable business. He valued his leasehold interest on that basis and it was because that was the nature of the asset that he had and that the Crown wanted that the Crown paid him $155,000. Had there been nothing but bare land, he could not have claimed, and the Crown could not have paid, any such amount. Once it is accepted that that was the subject matter of the bargain, then there can be no doubt on the above facts that more than $52,129.83

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[1] Section 20(6)(*g*) reads:

(6) 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;

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out of the $155,000 can reasonably be regarded as being consideration for the leasehold interest. In any event, this fact was assumed by the respondent and has not been disproved. The decision of this Court in *Minister of National Revenue v. Steen Realty Limited*[1] was on quite different facts and has no application to the facts of this case. In that case, the highest and best use of the land, and the basis on which it was bought and sold, was as land with the buildings removed.

As, however, the undepreciated capital cost of the leasehold interests is, by definition, equal to or less than the capital cost thereof, it is the amount that, with the total depreciation allowed, must be deducted from capital cost to obtain the amount of the terminal allowance. The result is as follows:

Capital cost		$52,129.83
Depreciation allowed	$29,689.64	
Plus undepreciated capital cost immediately before the disposition[2]	22,440.19	52,129.83
Terminal allowance for buildings or for class XIII leaseholds		NIL

I turn now to the amount added by the respondent to the appellant's income for 1962 by way of recapture under section 20(1) of the Act. That subsection reads as follows:

> 20.(1) Where depreciable property of a taxpayer of a prescribed class has, in a taxation year, been disposed of and the proceeds of disposition exceed the undepreciated capital cost to him of depreciable property of that class immediately before the disposition, the lesser of
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> (*a*) the amount of the excess, or
>
> (*b*) the amount that the excess would be if the property had been disposed of for the capital cost thereof to the taxpayer,
>
> shall be included in computing his income for the year.

I have already reached the conclusion that the appellant's class 13 leaseholds had been "disposed of" in the 1962 taxation year and that the proceeds of that disposition exceed the capital cost of the property of that class, within the meaning of those concepts in the statute. It

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[1] [1964] Ex. C.R. 543.

[2] This amount is found by an application of section 20(5)(*e*) immediately before the surrender of the leases to be: capital cost minus depreciation previously allowed, or $52,129.83 minus $29,689.64, equals $22,440.19.

follows that the proceeds of disposition exceed the undepreciated capital cost immediately before the disposition because undepreciated capital cost must always be less than capital cost if any capital cost allowance has been taken. The subsection therefore applies to the facts of this case. The remaining question is as to the amount that must be included in computing the appellant's income for the 1962 taxation year by virtue of that subsection.

As I read the subsection, this amount is, on the facts of this case,

(*a*) the capital cost of the class 13 leaseholds to the appellant, which was $52,129.83,[1]

minus

(*b*) the undepreciated capital cost to the appellant of class 13 leaseholds immediately before the disposition, which was $22,440.19,[2]

which is $52,129.83 minus $22,440.19, or $29,689.64. This is the amount added to the appellant's income for the 1962 taxation year by the respondent. It follows that I have reached the conclusion that the appellant fails in its appeal as far as the recapture question is concerned.

The final question is as to the right of the appellant to deduct a terminal allowance in respect of "furniture and equipment" for the 1962 taxation year.

The requirement that it must have fulfilled to be entitled to an allowance under section 1100(2) is that all of its class 8 property had been disposed of (or transferred to another class) in the 1962 taxation year, and that it had no property of that class at the end of that year. This requirement appears to have been met.

The further question is as to the amount of the deduction to which it was entitled. As noted above, the subsection defines the amount to be "the amount that would otherwise be the undepreciated capital cost to him of property of that class at the expiration of the taxation year". Applying the definition of "undepreciated capital cost" to a taxpayer of depreciable property of a prescribed

[1] This is so because paragraph (*b*) of section 20(1) applies on the facts of this case as being less than paragraph (*a*).

[2] See footnote on page 18.

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class as of any time to be found in section 20(5)(*e*), which I have already discussed, what we have to find is the amount by which

(*a*) the capital cost to the taxpayer of the furniture and equipment, which was $37,936.60,

exceeds

(*b*) the total depreciation allowed for property of that class, which was $28,911.39,

plus

(*c*) for the sole disposition of assets of that class, being that in 1962, the least of

(A) the proceeds of disposition thereof, (which amount is in dispute),

(B) the capital cost thereof ($37,936.60), or

(C) the undepreciated capital cost of property of that class immediately before that disposition which, on the facts, was capital cost minus total depreciation previously allowed or $37,936.60 minus $28,911.39, being $9,025.21.

It follows that, unless the proceeds of disposition of the furniture and equipment was less than $9,025.21, the allowance is

Capital cost		$37,936 60
less		
total depreciation	$28,911.39	
plus		
undepreciated capital cost just before the disposition	9,025 21	
	$37,936.60	$37,936.60
		NIL

That raises the question as to whether the proceeds of disposition of the furniture and equipment in 1962 was less than $9,025.21. As appears from the paragraph from the Agreed Facts quoted above, to "a prospective purchaser entitled to continue the existing business" the furniture and equipment had a value of not less than $9,025.21. For the reasons already given, I am of opinion that the

proper approach to the application of section 20(6)(*g*) to the facts of this case is to view the property sold as property whose value existed in its being the assets of a business as a going concern. That being so, it seems clear that at least $9,025.21 of the $155,000 can reasonably be regarded as being consideration for the disposition of the furniture and equipment.

Even if I am wrong in reaching this conclusion on the evidence before me, just as I indicated with reference to "buildings", this fact was assumed by the respondent in making the assessment appealed from and I am satisfied that it has not been disproved by the evidence before me.

That being so, by virtue of paragraph (*g*) of section 20(6), at least that amount is deemed to be the proceeds of disposition of the appellant's class 8 property (the furniture and equipment; and, as indicated above, the terminal allowance under section 1100(2) of the Regulations for furniture and equipment is nil.

The appeal is dismissed with costs.