

Docket: 2006-3873(IT)I

BETWEEN:

NINE TEN ST. CLAIR AVE. W. LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on August 29, 2007, at Toronto, Ontario

Before: The Honourable Justice L.M. Little

Appearances:

Agent for the Appellant: Mike Lombardi

Counsel for the Respondent: Laurent Bartleman

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**JUDGMENT**

The appeals from the assessments made under the *Income Tax Act* for the 2001, 2002, 2003, 2004 and 2005 taxation years are dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Toronto, Ontario, this 17th day of October 2007.

“L.M. Little”

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Little J.

Citation: 2007TCC624  
Date: 20071017  
Docket: 2006-3873(IT)I

BETWEEN:

NINE TEN ST. CLAIR AVE. W. LIMITED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Little J.

A. Facts

[1] The Appellant is a Company incorporated under the laws of the Province of Ontario.

[2] The Appellant owned property located at 908-916 St. Clair Avenue West in the City of Toronto.

[3] The Appellant requested to have its 2000 taxation year reassessed in order to allow a claim of \$83,819.00 as an additional deduction against net income.

[4] The Minister of National Revenue (the “Minister”) determined that the Appellant incurred a non-capital loss of no greater than \$8,288.00 in its 2000 year.

[5] The Minister reassessed the Appellant’s 2001 taxation year and determined that the Appellant had net income of \$31,471.00.

[6] After the Minister assessed the Appellant for its 2001 year the Appellant claimed that the amount of \$92,107.00 which it had reported as a terminal loss was a non-capital loss.

[7] The Minister refused the request made by the Appellant to treat the amount of \$92,107.00 as a non-capital loss.

[8] The Minister determined that the Appellant had net business income of \$2,049.00 in its 2002 taxation year.

[9] The Appellant also requested that the Minister reassess its income for the 2003 and 2004 taxation years. The Appellant does not agree with the position adopted by the Minister in the 2003 and 2004 taxation years.

B. Issues

[10] The issues are whether the Minister properly:

- a) denied the Appellant's requested adjustments to its 2000 taxation year in order to allow it to claim \$83,819.00 as an additional deduction against net income, resulting in a non-capital loss of \$92,107.00 in its 2000 taxation year to be carried forward to its 2001 taxation year;
- b) reassessed the Appellant's 2003 income to include \$234,199.00 in taxable capital gains and \$270,371.00 to recapture capital cost allowances in its 2003 taxation year income; and
- c) reassessed the Appellant's 2004 income to reduce the amount of taxable capital gains reported by \$35,633.00.

C. Analysis and Decision

[11] Canadian courts have said on numerous occasions that the Appellant has the onus or burden of establishing that the assessments or reassessments issued by the Minister are incorrect. Based on the evidence and argument presented by the agent for the Appellant, I have not been persuaded that the assessments and reassessments issued by the Minister were incorrect.

[12] The appeals are dismissed without costs.

Signed at Toronto, Ontario, this 17th day of October 2007.

“L.M. Little”

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Little J.

CITATION: 2007TCC624

COURT FILE NO.: 2006-3873(IT)I

STYLE OF CAUSE: Nine Ten St. Clair Ave. W. Limited  
and Her Majesty the Queen

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 29, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: October 17, 2007

APPEARANCES:

Agent for the Appellant: Mike Lombardi

Counsel for the Respondent: Laurent Bartleman

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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