Citation: 2008TCC8
Date: 20080115
Docket: 2004-2638(IT)G

BETWEEN:

SASKATCHEWAN WHEAT POOL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bowman, C.J.

[1] This appeal is from an assessment made under the *Income Tax Act* for the 1997 taxation year whereby the Minister of National Revenue disallowed a loss claimed by the appellant of $30,149,842 on the sale of a 636 acre parcel of land. The issue is whether the loss is on revenue or capital account. A number of other issues raised in the pleadings were settled and the settlement will be reflected in the formal judgment.

[2] The parties entered into an Agreed Statement of Facts and Issues ("ASF") and it is attached as Appendix A to these reasons. Oral evidence was given on behalf of the appellant by three witnesses whose testimony was not challenged on cross-examination or otherwise contradicted.

[3] In the 1960s and later, Western Co-operative Fertilizer Ltd. ("WCFL") was in the business of manufacturing and selling fertilizer. It was owned equally by the appellant, sometimes referred to as SWP, Alberta Wheat Pool ("AWP") and Manitoba Pool Elevators ("MPE"), (collectively the "Pools"). In the 1960s and 1970s it acquired a 530 acre parcel of land located in the southeast quadrant of Calgary (the "section 15 property"), a 636 acre parcel of land located just outside Calgary (the "section 26 property") and some other property in Calgary and Medicine Hat.

[4] By 1983, WCFL was having financial difficulties and was being pressed by its bankers to reduce its bank indebtedness. As of January 31, 1983, the section 15 property was appraised at a value of $24,000,000 and the section 26 property was appraised at a value of $11,000,000.

[5] In 1982, the Pools incorporated MAALSA Investments Ltd. (“MAALSA”). Its outstanding common shares were owned 40% by AWP, 40% by SWP and 20% by MPE. The purpose was for MAALSA to acquire for $40,000,000 the section 15 property and the section 26 property and an option to acquire other properties in Calgary and Medicine Hat. The intent was that WCFL use the proceeds from the sale of lands to pay down its bank indebtedness.

[6] The Pools arranged for the financing needed to enable MAALSA to acquire the lands in 1983. The Pools guaranteed MAALSA’s obligations under the financing and advanced funds to MAALSA to satisfy its obligations under the financing arrangements and other costs related to the lands. In 1993 the appellant advanced an additional $16,000,000 to MAALSA to pay off the indebtedness under the financing and in 1993 and 1994 MPE and AWP advanced funds for the same purposes. MAALSA recognized these advances as indebtedness to the respective shareholders.

[7] Paragraph 5 of the ASF sets out the activity with respect to the section 15 property. It is of less concern to us than the section 26 property. The section 15 property was sold by MAALSA back to WCFL.

[8] Section 6 of the ASF describes the fluctuations in the valuation of the section 26 property. In June of 1996 it had an appraised value of $2.52 million.

[9] In November 1996, each of the Pools demanded repayment from MAALSA of the amount owed to them. It could not do so. Its only assets were the section 26 property, a small amount of cash and a lease[1] on the section 26 property. MAALSA offered to quit claim its assets to the Pools in satisfaction of its indebtedness to them. On December 17, 1996, the board of directors of the appellant resolved that the appellant accept the quit claim and that the section 26 property once acquired be immediately sold. On December 20, 1996, the Pools

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[1] The property was leased out to a farmer. The rent was used to pay the taxes. I do not think the existence of the lease is relevant to the question whether the property was held on revenue or capital account by either MAALSA or the appellant. The lease was simply an insignificant incident of the ownership of the land. It indicates nothing about the purpose for which the land was held.

retained a real estate agent to market and sell the section 26 property. On December 23, 1996, the appellant acquired a 40% interest in the section 26 property.

[10] The parties agree that at that time the property had a fair market value of $2.5 million and that MAALSA was indebted to the appellant in the amount of $30,970.624.

[11] The section 26 property was actively marketed by the agent. A number of offers were received and rejected but finally an offer from Hopewell Enterprises Ltd. was accepted and the property was sold for net proceeds of $2,045,724. The appellant's share was 40% of that amount or $818,110.

[12] The appellant claimed a loss for 1997 of $30,149,842 being the difference between the deemed cost of the property ($30,967,952) and the net proceeds payable to the appellant of $818,110. The parties agree that the loss is $30,149,842 and that the deemed cost of the property under subsection 79.1(6) was $30,967,952.

[13] One point should be noted. The loss was substantially greater than it would otherwise have been because the *Income Tax Act* deems the cost of the property acquired to be (subject to some qualifications that do not apply here) the cost of the debt. The debt surrendered when the section 26 property was taken over was $30,967,952. If there appears to be some artificiality in this result it is an artificiality that arises from a clear provision of the *Income Tax Act*. In fact, the commercial gain (or perhaps more accurately, the accounting gain) was $438,926 (Joint Book of Documents, Tab 49).

[14] One thing is clear: when the Pools acquired the section 26 property from MAALSA they intended to sell it as soon as possible at the best price they could get. Does this in itself turn the acquisition and sale into an adventure in the nature of trade? If an intention, at the time of acquisition of a property, to sell it is all that is required to turn a transaction into an adventure in the nature of trade then that intention is clearly present.

[15] The respondent argues that a mere intention at the date of acquisition to sell property does not in itself turn the transaction into an adventure in the nature of trade and that there must be a commercial animus — an intent to realize a profit. The tests are well known. The classic analysis of the term "adventure in the nature of trade" is found in the decision of Thorson P. of the Exchequer Court of Canada

in the leading case *M.N.R. v. Taylor*, 56 DTC 1125. The tests set out in *Taylor* were approved by the Supreme Court of Canada in *Irrigation Industries Ltd. v. M.N.R.*, 62 DTC 1131 and were followed in the well known case of *Happy Valley Farms Ltd. v. M.N.R.*, [1986] 2 C.T.C. 259.

[16] In *Racine, Demers and Nolin v. M.N.R.*, [1965] DTC 5098, Noël J. said at 5103:

> In examining this question whether the appellants had, at the time of the purchase, what has sometimes been called a 'secondary intention' of reselling the commercial enterprise if circumstances made that desirable, it is important to consider what this idea involves. It is not, in fact, sufficient to find merely that if a purchaser had stopped to think at the moment of the purchase, he would be obliged to admit that if at the conclusion of the purchase an attractive offer were made to him he would resell it, for every person buying a house for his family, a painting for his house, machinery for his business or a building for his factory would be obliged to admit, if this person were honest and if the transaction were not based exclusively on a sentimental attachment, that if he were offered a sufficiently high price a moment after the purchase, he would resell. Thus, it appears that the fact alone that a person buying a property with the aim of using it as capital could be induced to resell it if a sufficiently high price were offered to him, is not sufficient to change an acquisition of capital into an adventure in the nature of trade. In fact, this is not what must be understood by a “secondary intention” if one wants to utilize this term.
>
> To give to a transaction which involves the acquisition of capital the double character of also being at the same time an adventure in the nature of trade, the purchaser must have in his mind, at the moment of the purchase, the possibility of reselling as an operating motivation for the acquisition; that is to say that he must have had in mind that upon a certain type of circumstances arising he had hopes of being able to resell it at a profit instead of using the thing purchased for purposes of capital. Generally speaking, a decision that such a motivation exists will have to be based on inferences flowing from circumstances surrounding the transaction rather than on direct evidence of what the purchaser had in mind.

[17] We are, of course, not dealing here with a so-called “secondary intention”. We are dealing with an uncontradicted assertion that the Pools intended to sell the section 26 property as soon as possible after it was surrendered to them. At no time was it ever the intention of MAALSA or the Pools to hold the section 26 property for any purpose other than resale.

[18] The respondent’s position is that since the appellant’s cost of the property as fixed by subsection 79.1(6) of the *Income Tax Act* was about $30,000,000 it was inconceivable that, at the time of the quit claim transaction, they could have expected to realize a profit. A loss was a certainty.

[19] In fact the appellant realized an accounting profit. It is only because of the high cost attributed to the property under subsection 79.1(6) that a loss for income tax purposes was realized. If an intention to realize a profit on the disposition of property is an essential ingredient in determining whether a transaction is an adventure in the nature of trade, I think the contemplated profit must be a commercial profit, not one that is distorted by a provision of the *Income Tax Act.*

[20] Nonetheless I find it somewhat unsatisfying to approach the question of the deductibility of the loss by focussing solely on the intention at the moment of acquisition. It is true that when the section 26 property was acquired by the appellant and the other two shareholders of MAALSA they intended to dispose of it as soon as possible at the best price they could get. They obviously had competent legal and accounting advice and must have known that because of the operation of subsection 79.1(6) the loss for income tax purposes would be substantially different from any gain or loss they might realize for accounting purposes. I do not think that it can fairly be said on the evidence that their purpose was to sustain a loss. Nor do I find it useful to speculate about what the tax consequences might have been had MAALSA and the Pools dealt with the matter in a different way. A variety of alternatives come to mind: MAALSA might have sold the section 26 property; the Pools might have sold the debt or the shares of MAALSA; the debt might have been written off; MAALSA might have been wound up and lands distributed to the Pools. All of these might have yielded different tax results but the simple fact of the matter is that it is not what happened. The enquiry is what the tax consequences are of what they did do, not of what they might have done.

[21] Two very different approaches are advocated by counsel for the parties. If one approaches the transaction using the language customarily employed when one speaks of an adventure in the nature of trade the suggestion is that one must focus only on the last transaction — the acquisition and sale and ignore the overall commerciality of the series of transactions leading up to the acquisition and sale. There is some support for the view that one must ignore the preceding sequence of events and the overall commercial reality of the matter:[2] If I am to follow the position of the majority in *Singleton* I can look only at the final transaction – the acquisition of the section 26 property with a view to its immediate resale and its subsequent sale. On this basis, I am forced inexorably to the conclusion that the section 26 property was acquired with the intention of selling it as soon as possible

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[2] *Singleton v. The Queen*, 99 DTC 5362 (aff'd S.C.C. 2001 DTC 5533).

and since it was sold at an accounting profit it may be inferred that the purpose was to realize that profit. The fact that for income tax purposes there was a loss is simply because the *Income Tax Act* requires that there be included in the cost of property acquired in satisfaction of a debt the amount of the debt.

[22] Counsel for the appellant argued that I should look at the entire sequence of events. He said:

> "The Appellant respectfully submits that the determination whether the Appellant engaged in "an adventure or concern in the nature of trade" should only be made by considering all of the events and all actions of the Appellant leading up to disposition of the section 26 property from the time that the Appellant acquired its interest in MAALSA in 1983.

[23] Whether I am entitled to take this approach may be open to question but let us assume that I may do so and see where it gets us.

[24] MAALSA was created in 1982 by the three Pools essentially as a vehicle to assist WCFL out of its financial difficulties by acquiring the lands from WCFL. There is no basis to conclude that the section 26 and section 15 properties sold by WCFL to MAALSA were capital in MAALSA's hands. Clearly they were not. The evidence is uncontradicted that they were never intended to be held as capital assets by MAALSA. They were vacant and produced minimal rent. The only thing that could be done with them was to sell them or develop and sell them. The section 15 property had environmental problems and was ultimately sold back to WCFL.

[25] There is a strong evidentiary basis for saying that MAALSA was an agent of the Pools. Nonetheless, there is authority that it is only in rare circumstances that one corporation can be seen as an agent of another. The matter was fully discussed by Cattanach J. in *Denison Mines Limited v. M.N.R.*, 71 DTC 5375, (aff'd 72 DTC 6444 (F.C.A.); aff'd 74 DTC 6525 (S.C.C.)), at 5388). Generally speaking, the business of a subsidiary is not the business of the parent or the controlling shareholder: *Odhams Press, Ltd. v. Cook*, [1940], 3 All E.R. 15. One point that might distinguish MAALSA from the *Denison* case and the *Odhams* case and indeed from the myriad of cases following *Salomon v. Salomon & Co.*, [1897] A.C. 22, is that it does not appear that MAALSA carried on any business at all in any meaningful sense. It was merely a passive repository of the lands held for resale, received the minimal rent and was financed by the Pools to cover its expenses. The financing of the purchase of the lands from WCFL was guaranteed by the Pools. AWP on behalf of the Pools administered MAALSA's affairs, to the

extent that there were any. If there ever were a case for saying that a company held property for its shareholders it is this one. Whatever analysis one adopts the lands remained inventory from the time they were acquired by MAALSA until they were sold by the Pools.

[26] It follows therefore that whether I consider, as urged by counsel for the appellant, all of the circumstances leading up to the sale or whether I consider only the final step, I come to the same conclusion: the loss did not result from a sale by the appellant of a capital property. It was on revenue account.

[27] Numerous authorities were referred to by counsel for both parties and lengthy written arguments were filed. I do not think any purpose would be served by an extensive reference to those authorities. Counsel for the appellant referred to a decision of Justice Campbell Miller of this Court in *Laramee v. The Queen*, 2007 TCC 635 in which he referred with approval to the following passage from *Truscan Realty Ltd. v. The Queen*, 96 DTC 1513:

> The determination here is essentially one of fact and no purpose would be served by a lengthy citation of authorities. The conclusion that I have reached here, is in my view, consistent with that reached by Walsh, J. in *Her Majesty the Queen v. Lavigueur*, 73 DTC 5538, the Supreme Court of Canada in *M.N.R. v. Freud*, 68 DTC 5279, and by Kempo, J. in *Panda Realty Limited v. M.N.R.*, 86 DTC 1266. The conclusion must be based upon "a commonsense appreciation of all the guiding features. . ." (*M.N.R. v. Algoma Central Railway*, 68 DTC 5096), and upon "the practical and commercial aspects" [of the transaction] (*Her Majesty the Queen v. F.H. Jones Tobacco Sales Co. Ltd.*), 73 DTC 5577, and upon "what the expenditure is calculated to effect from a practical and business point of view rather than upon the juristic classification of the legal rights, if any, secured, employed or exhausted in the process". (*Hallstroms Pty Ltd. v. Federal Commissioner of Taxation* (1946), 72 C.L.R. 634).

[28] I am aware that one might argue that advances by a shareholder to a company are *prima facie* capital and that when an asset of the company is surrendered to the shareholder in satisfaction of the debt the asset is capital in the hands of the shareholder. This argument was not made but in any event I would regard such an analysis in the context of this case as unrealistic and mechanical. It is difficult to see the advances to MAALSA as capital investments by the Pools in any ordinary sense. Although it is not necessarily determinative, I note that there is no evidence that interest was ever charged and even if interest did accrue there was no possibility that it would ever be paid. On any commonsense and realistic analysis of the matter the loss on the section 26 property was a loss on revenue account. In determining whether a loss or an expenditure is on revenue or capital account one must not permit one factor to dominate all other considerations. To let

this case turn on the fact that there were advances to a company owned by the Pools and to ignore all other factors would be inconsistent with what the Supreme Court of Canada said in *Algoma* (*supra*):

> Parliament did not define the expressions "outlay . . . of capital" or "payment on account of capital". There being no statutory criterion, the application or non-application of these expressions to any particular expenditures must depend upon the facts of the particular case. We do not think that any single test applies in making that determination and agree with the view expressed, in a recent decision of the Privy Council, *B.P. Australia Ltd. v. Commissioner of Taxation of the Commonwealth of Australia*, (1966) A.C. 224, by Lord Pearce. In referring to the matter of determining whether an expenditure was of a capital or an income nature, he said, at p. 264:
>
> > The solution to the problem is not to be found by any rigid test or description. It has to be derived from many aspects of the whole set of circumstances some of which may point in one direction, some in the other. One consideration may point so clearly that it dominates other and vaguer indications in the contrary direction. It is a commonsense appreciation of all the guiding features which must provide the ultimate answer.

[29] One cannot remain oblivious to the fact that the lands were inventory in MAALSA's hands, were on any realistic view of the matter held for the Pools, and from the outset were intended to be disposed of whether by MAALSA or by the Pools.

[30] The determination of this type of question in these cases is not an easy one. It is an exercise in judgement, common sense and an assignment of weight to a variety of factors. Although as I mentioned in footnote 1 to paragraph 21 of *Imperial Tobacco Canada Ltd. v. The Queen*, [2007] T.C.J. No. 482 (QL) I have learned to be somewhat wary of placing too much reliance upon my own common sense in this type of question, nonetheless I propose once again, to rely on my own common sense and to conclude that, taking all of the factors into account, the sale of the section 26 property here was on revenue account.

[31] The appeal should therefore be allowed and the assessment referred back to the Minister of National Revenue for reconsideration and reassessment to allow the appellant in computing its income to deduct the loss of $30,149,842 sustained on the sale of the section 26 property.

[32] The appeal is also allowed to give effect to the settlement of the other issues reached by the parties.

[33] The appellant is entitled to its costs in accordance with the tariff. I see no reason for any extraordinary or additional award of costs, as requested by appellant's counsel, simply because counsel for the respondent asked for time to file written arguments. Her request was entirely justified.

[34] Counsel for the appellant is directed to prepare a draft judgment reflecting the conclusion I have reached with respect with the loss and also implementing the settlement reached with respect to the other issues as set out in paragraph 8 of the appellant's opening statement. If the issue with respect to non-capital losses for other years as set out in paragraph 9 of the appellant's opening statement can be appropriately included in the judgment this should be done. If not, the parties should communicate with the court to arrange a conference call. At all events, if counsel for the respondent approves the form of the draft judgment it should be sent to the court and if I agree with it I will sign the formal judgment accordingly.

Signed at Ottawa, Canada, this 15th day of January 2008.

"D.G.H. Bowman"

Bowman C.J.

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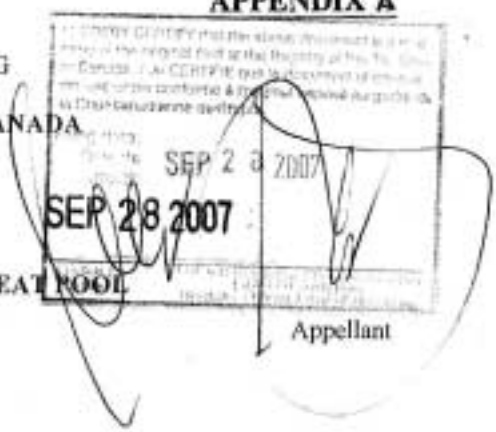
APPENDIX A

2004-2638(IT)G

TAX COURT OF CANADA



BETWEEN:

SASKATCHEWAN WHEAT POOL

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

AGREED STATEMENT OF FACTS and ISSUES

The parties hereto by their respective solicitors agree on the following facts, provided that this agreement is made for the purpose of this appeal only and may not be used against either party on any other occasion, and provided that the parties may add further and other evidence relevant to the issues and not inconsistent with this agreement.

All references to the Joint Book of Documents are to the document which is to form part of the Agreed Statement of Facts and together with the Agreed Statement of Facts are to be marked as exhibits 1 and 2 at the commencement of the hearing of this appeal. The parties agree as to the authenticity (as provided in section 129 of the *Tax Court of Canada Rules (General Procedure)*) of the documents in the Joint Book of Documents.

1 OVERVIEW

1.1 The Appellant is and was, at all material times relevant to this appeal, a resident of Canada for the purposes of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.) as amended (the "*Act*").

1.2 The Appellant's taxation year end was July 31.

1.3 On December 23, 1996, the Appellant acquired a 40% interest in a parcel of land (the "Section 26 Property") as a consequence of a quit claim.

1.4 On June 30, 1997, the Appellant sold its 40% interest in the Section 26 Property to Hopewell Enterprises Ltd.

1.5 In computing its income for its 1997 taxation year, the Appellant deducted a loss (the "Loss") in the amount of $30,149,842 (computed as the difference between the Appellant's deemed cost of the Section 26 Property pursuant to subsection 79.1(6) of the *Act* of $30,967,952 and net proceeds on sale of the Section 26 Property of $818,110).

1.6 By Notice of Reassessment dated May 14, 2003 (Joint Book of Documents, Tab 58), the Minister of National Revenue reassessed the Appellant's 1997 taxation year to recharacterize the Loss as a capital loss, to disallow the claimed business loss and to include the Loss in the computation of the net capital losses incurred in the year.

2 WESTERN CO-OPERATIVE FERTILIZER LTD.

2.1 At all material times, Western Co-operative Fertilizer Ltd. ("WCFL") was in the business of manufacturing and selling fertilizer. In the mid 1960's and early 1970's, WCFL acquired:

(a) A 530 acre parcel of land located in the southeast quadrant of Calgary, legally described as part of section 15-23-29-W4 (the "Section 15 Property");

(b) A 636 acre parcel of land located just outside of Calgary's south eastern boundary on the south side of Highway 22, legally described as part of section 26-22-29-W4M (the "Section 26 Property"); and

(The Section 15 Property and the Section 26 Property are collectively referred to as the "Lands")

(c) Other property (the "Other Property") in Calgary and Medicine Hat, Alberta.

2.2 By 1983, WCFL was experiencing financial difficulties because of operating losses and was being pressured by its bankers to reduce its bank indebtedness.

2.3 At the relevant time, the Appellant, Alberta Wheat Pool ("AWP"), Manitoba Pool Elevators ("MPE") (collectively the "Pools") equally owned all the outstanding shares of WCFL.

2.4 As of January 31, 1983, the Section 15 Property was appraised at a value of $24,000,000 (Joint Book of Documents, Tab 2) and the Section 26 Property was appraised for a value of $11,000,000 (Joint Book of Documents, Tab 3).

3 MAALSA INVESTMENTS LTD. AND THE PLAN

3.1 In 1982, the Pools incorporated MAALSA Investments Ltd. ("MAALSA") (originally 120507 Canada Ltd.). The outstanding common shares of MAALSA were owned 40% by AWP, 40% by the Appellant and 20% by MPE.

3.2 The Pools, MAALSA and WCFL developed the following plan:

(a) MAALSA would acquire the Lands and an option to purchase the Other Property from WCFL for $40 million; and

(b) WCFL would use the proceeds from the sale of the Lands to pay down its bank indebtedness.

3.3 The Pools arranged for financing (the "Financing") in the amount of $40 million to enable MAALSA to acquire the Lands in 1983. The Pools fully guaranteed the Financing.

4 MAALSA'S ACTIVITIES- GENERALLY

4.1 At all times, AWP, on behalf of the Pools, administered MAALSA's activities. At all material times the Lands were vacant and agriculturally zoned. The Lands produced minimal rental income.

4.2 During the time MAALSA owned the Lands, it received offers to purchase the Lands.

4.3 Over the term of the Financing, the Pools advanced funds, in proportion to their shareholdings, to MAALSA to meet MAALSA's obligations under the Financing and to pay the other costs related to the Lands. The advanced funds were recognized by MAALSA as indebtedness owed to the Pools.

4.4 In 1993, the Appellant advanced additional funds in the amount of $16 million to MAALSA and MAALSA used the advance to repay the portion of the Financing guaranteed by the Appellant. The additional funds were recognized by MAALSA as indebtedness owed to the Appellant.

4.5 In 1993 and 1994, MPE and AWP also advanced further funds to MAALSA, in proportion to their shareholdings, to discharge the Financing. The further funds were recognized by MAALSA as indebtedness owed to MPE and AWP.

5 MAALSA'S ACTIVITIES- THE SECTION 15 PROPERTY

5.1 In 1986, Terraventure Developments Ltd. proposed a joint venture with MAALSA to develop the Section 15 Property (Joint Book of Documents, Tab 4). MAALSA and the Pools considered the proposal and approved marketing and feasibility studies. However, the parties did not proceed with the joint venture.

5.2 In September 1987, the Section 15 Property was appraised at a value of $3.7 million (Joint Book of Documents, Tab 12).

5.3 Effective April 24, 1992, the Section 15 Property was appraised at a value of $2.65 million (Joint Book of Documents, Tab 18).

5.4 In December 1992, MAALSA sold 8 acres of the Section 15 Property for $300,000.

5.5 In the early 1990's it was determined that the Section 15 Property had environmental problems.

5.6 In July 1994, a restricted appraisal report appraised the Section 15 Property at $2.65 million (Joint Book of Documents, Tab 20).

5.7 In 1996, MAALSA sold the Section 15 Property to WCFL for proceeds equal to $5.312 million. The sale proceeds of the Section 15 Property were applied as partial repayment of the indebtedness owed to the Pools.

6 MAALSA'S ACTIVITIES- THE SECTION 26 PROPERTY

6.1 In September 1987, the Section 26 Property was appraised at a value of $950,000 (Joint Book of Documents, Tab 12).

6.2 In February 1991, MAALSA sold 12,100 square feet of the Section 26 Property to the City of Calgary for $6,950.

6.3 Effective April 24, 1992, the Section 26 Property was appraised at a fair market value of $1.9 million (Joint Book of Documents, Tab 17).

6.4 In 1994, MAALSA leased out (the "Lease") the Section 26 Property.

6.5 In June 1996, the Section 26 Property was appraised at a fair market value of $2.52 million.

7 QUIT CLAIM OF THE SECTION 26 PROPERTY

7.1 On November 5, 1996, each of the Pools demanded repayment from MAALSA of the indebtedness owing to each the Pools (Joint Book of Documents, Tab 30).

7.2 As of October 15, 1996, MAALSA's only assets (the "Assets") were the Section 26 Property, the Lease and cash in the amount of $76,711.34.

7.3 MAALSA was unable to repay the indebtedness owing to the Pools. MAALSA offered to quit claim (the "Quit Claim") the Assets to the Pools in full and final satisfaction of the indebtedness owing to the Pools (Joint Book of Documents, Tab 32).

7.4 On December 17, 1996, the Board of Directors of the Appellant resolved that the Appellant accept the Quit Claim and that the Section 26 Property, once acquired pursuant to the Quit Claim, be immediately sold (Joint Book of Documents, Tab 31).

7.5 On December 19, 1996, MAALSA and the Pools entered into an agreement whereby the Pools accepted the Quit Claim of the Assets in full and final satisfaction of the indebtedness owing the Pools (Joint Book of Documents, Tab 33).

7.6 At the time of the Quit Claim, the fair market value of the Section 26 Property was $2.5 million.

8 THE APPELLANT'S ACQUISITION AND DISPOSITION OF THE SECTION 26 PROPERTY

8.1 On December 20, 1996 the Pools retained the services of Citicore Associates Real Estate Inc. (subsequently, Gordon Commercial Realty Ltd.) ("Gordon") to market and sell the Section 26 Property (Joint Book of Documents, Tab 34).

8.2 On December 23, 1996, the Appellant acquired a 40% interest in the Section 26 Property from MAALSA pursuant to the Agreement. At the time of the Quit Claim, MAALSA was indebted to the Appellant in the amount of $30,970,624.

8.3 The Section 26 Property was recorded on the financial accounts of the Appellant as inventory.

8.4 Gordon actively marketed the Section 26 Property. The Pools monitored the progress of the marketing and sales activities.

8.5 Effective January 10, 1997, the Section 26 Property was appraised at $3.95 million (Joint Book of Documents, Tab 36).

8.6 The Pools received and considered offers for the purchase of the Section 26 Property but the terms and conditions of the offers were not acceptable to the Pools.

8.7 On May 23, 1997, the Pools offered to sell the Section 26 Property to Hopewell Enterprises Ltd. ("Hopewell") (Joint Book of Documents, Tab 47). Hopewell previously made an offer to purchase the Section 26 Property. The Pools sold the Property to Hopewell on June 30, 1997. The net proceeds on the sale were $2,045,724, of which the Appellant's share was 40% or $818,110.

8.8 The disposition of the Appellant's interest in the Section 26 Property resulted in an accounting gain which was recorded in the books and records of the Appellant.

9 SOLE ISSUE TO BE CONSIDERED BY THIS HONOURABLE COURT

9.1 Was the Loss from the disposition of the Section 26 Property during the Appellant's 1997 taxation year a loss from business, pursuant to subsection 9(2) of the *Act*, or a capital loss, for the purposes of subdivision c of Part I of the *Act*?

DATED at Vancouver, British Columbia, this 28th day of September, 2007.

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DATED at Winnipeg, Manitoba, this 21st day of September, 2007.

John H. Sims, Q.C.
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CITATION:	2008TCC8
COURT FILE NO.:	2004-2638(IT)G
STYLE OF CAUSE:	SASKATCHEWAN WHEAT POOL v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Vancouver, B.C.
DATES OF HEARING:	October 24, 2007
REASONS FOR JUDGMENT BY:	The Honourable D.G.H. Bowman, Chief Justice
DATE OF JUDGMENT:	January 15, 2008

APPEARANCES:

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Counsel for the Respondent:	Tracey Telford

COUNSEL OF RECORD:

For the Appellant:	
Name:	
Firm:	
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