

Date: 20030128
Docket: 2002-2505(IT)I

BETWEEN:

CHAKRAWARTIE SINGH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on January 22, 2003 at Toronto, Ontario.

Before: The Honourable D.G.H. Bowman, Associate Chief Judge

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: A'Amer Ather, Esq.

JUDGMENT

It is ordered that the appeals from assessments made under the *Income Tax Act* for the 1998, 1999 and 2000 taxation years be allowed and the assessments be referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached transcript of the reasons for judgment given orally in court on January 22, 2003 to permit the deduction of losses claimed as set out in paragraph 8 of the reply subject to the following adjustments.

1998

- (a) The \$3,821 shown as utilities to be treated as maintenance and repairs of a capital nature and not deductible.
- (b) The property taxes deduction to be reduced to \$800.

- (c) The maintenance and repairs of \$4,006 to be treated as condo fees and be deductible.

1999

The \$4,880 shown as maintenance and repairs to be disallowed and in its place the amount of \$4,085.64 be deductible as condo fees.

2000

- (a) The sum of \$4,600 shown as maintenance and repairs should be treated as a non-deductible capital amount.
- (b) The \$4,165.08 shown as management and administration fees to be treated as condo fees and adjusted to \$4,166.28.

The capitalized and non-deductible amounts of \$3,821 and \$4,600 can be subject to capital cost allowance if the appellant realizes a profit on the operation before capital cost allowance and to the extent that the capital cost is not claimed it can form part of his adjusted cost base if the condo is sold.

Signed at Ottawa, Canada, this 28th day of January 2003.

"D.G.H. Bowman"

A.C.J.

TAX COURT OF CANADA

IN RE: The Income Tax Act

B E T W E E N:

CHAKRAWARTIE SINGH

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

--- Held before The Honourable Associate Chief Judge Bowman of The Tax Court of Canada, in Courtroom Number 1, 9th Floor, 200 King Street West, Toronto, Ontario, on the 22nd day of January, 2003.

REASONS FOR JUDGMENT
(Delivered orally from the Bench
at Toronto on January 22, 2003.)

APPEARANCES:

Chakrawartie Singh The Appellant in person

A'Amer Ather For the Respondent

William O'Brien - Registrar

Per: Penny Stewart, CSR (Reporter)

--- Upon commencing at 11:40 a.m.

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HIS HONOUR: These are appeals from assessments for the 1998, 1999 and 2000 taxation years.

There is a fundamental error in the assessments. The fundamental error is that the tax department assumed that the property in respect of which the expenses were claimed was for an apartment at 320 Dixon Road. I accept that the error stemmed from the appellant's own income tax returns.

The fact is the appellant lived at the apartment at 320 Dixon Road. The property in respect of which the losses were claimed was apartment 1702 at 370 Dixon Road in Etobicoke. The CCRA assumed that this was a personal property where the appellant lived. In fact it was not, it was an investment property purchased by the appellant with cash. He did not have a mortgage.

In the years 1998, 1999 and 2000 the property was not rented, the appellant says. And I accept that he advertised once a month. He does not appear to have been too vigorous in his attempts to rent the property but that is not something upon which I have any right to make any comment, and I am not going to.

The Minister said these are personal and living expenses. They are not. I think we may assume that the doctrine of reasonable expectation of profit has been given a decent burial by the Supreme Court in Stewart and Walls, so I accept that the property was purchased for the

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purpose of gaining or producing income as an investment property, and there is no personal element.

The appellant claimed expenses, which also happen to be losses, in these years, totalling \$8,939.92, \$5,668.91 and \$9,543.08 in each of the three years. These were totally disallowed.

The appellant apparently hired somebody to do his income tax returns. I do not think they were done terribly competently and I must say I think the tax department and perhaps the tax preparer may have had some difficulties getting accurate information from the appellant.

Be that as it may, however, I am allowing the appeals and referring the assessments back to the Minister of National Revenue for reconsideration and reassessment on the basis that the amounts claimed by the appellant are deductible in computing his income subject to the following adjustments.

First, that the amounts of \$4,006.92, \$4,085.64 and \$4,166.28 are the amounts deductible as condominium fees. I am not allowing the \$4,880.00 shown as maintenance and repairs; the figure should be \$4,085.64.

So far as property taxes are concerned I think that the appellant has claimed an excessive amount. The property taxes in 1998 should be \$800.00 rather than \$1,052.00.

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The figures shown under utilities for 1998 of \$3,821.00 and the figures shown as maintenance and repairs in 2000 of \$4,600.00, both of these are in my view, on the evidence, maintenance and repairs, but the appellant's own evidence appears to be that these involved the installation of new tiles and a dishwasher, and I think on the balance of probabilities these expenses are capital expenditures and are not deductible in computing income for the year. They are of course deductible to the extent permitted by section 20 of the Income Tax Act as a capital cost allowance, if the appellant has any income, because this is of course a rental property and there are restrictions on the amount of the capital cost allowance one can claim. You can claim it only to the extent that the property produces income otherwise. Also if the appellant ever sells the apartment these amounts of \$3,821.00 and \$4,600.00 should, to the extent that he has not claimed capital cost allowance on them, form part of his adjusted cost base.

I intend to ask Madam Reporter to prepare a transcript of these reasons so that we all know exactly what figures I am talking about.

The appeals are therefore allowed in accordance with the Reasons for Judgment which I have just delivered.

--- Whereupon concluding at 11:50 a.m.

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I HEREBY CERTIFY THE FOREGOING
to be a true and accurate
transcription of my shorthand notes
to the best of my skill and ability.

Penny Stewart, CSR
Chartered Shorthand Reporter

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