Docket: 96-2936(IT)I

BETWEEN:

CLAUDE MÉNARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Marcel Beauregard* (2004-181(IT)I), *Jean-Pierre Gamache* (2002-2520(IT)I), *Manon Chartré* (96-3516(IT)I), *Succession Jean Nadeau* (96-3127(IT)I), *Jean St-Pierre* (96-3142(IT)I), *Paul Lafontaine* (96-3144(IT)I), *Selim Toutounji* (96-3489(IT)I), *Marion Sahapoglu-Forest* (97-98(IT)I, 96-3056(IT)I) and *Gilles Brassard* (96-3289(IT)I, 96-3257(IT)I), from September 4 to September 21, 2007, at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Pierre Cossette Philippe Dupuis

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 1989 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 13th day of July 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 8th day of October 2009.

Brian McCordick, Translator

Docket: 2004-181(IT)I

BETWEEN:

MARCEL BEAUREGARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Claude Ménard* (96-2936(IT)I), *Jean-Pierre Gamache* (2002-2520(IT)I), *Manon Chartré* (96-3516(IT)I), *Succession Jean Nadeau* (96-3127(IT)I), *Jean St-Pierre* (96-3142(IT)I), *Paul Lafontaine* (96-3144(IT)I), *Selim Toutounji* (96-3489(IT)I), *Marion Sahapoglu-Forest* (97-98(IT)I, 96-3056(IT)I) and *Gilles Brassard* (96-3289(IT)I, 96-3257(IT)I), from September 4 to September 21, 2007, at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Pierre Cossette
	Philippe Dupuis

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 1990 and 1991 taxation years is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 13th day of July 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 8th day of October 2009.

Brian McCordick, Translator

Docket: 2002-2520(IT)I

BETWEEN:

JEAN-PIERRE GAMACHE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Claude Ménard (96-2936(IT)I), *Marcel Beauregard* (2004-181(IT)I),
Manon Chartré (96-3516(IT)I), *Succession Jean Nadeau* (96-3127(IT)I),
Jean St-Pierre (96-3142(IT)I), *Paul Lafontaine* (96-3144(IT)I),
Selim Toutounji (96-3489(IT)I), *Marion Sahapoglu-Forest* (97-98(IT)I,
96-3056(IT)I) and *Gilles Brassard* (96-3289(IT)I, 96-3257(IT)I),
from September 4 to September 21, 2007, at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Pierre Cossette
	Philippe Dupuis

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 1989, 1990 and 1991 taxation years is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 13th day of July 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 8th day of October 2009.

Brian McCordick, Translator

Docket: 96-3516(IT)I

BETWEEN:

MANON CHARTRÉ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Claude Ménard (96-2936(IT)I), *Marcel Beauregard* (2004-181(IT)I),
Jean-Pierre Gamache (2002-2520(IT)I), *Succession Jean Nadeau* (96-3127(IT)I),
Jean St-Pierre (96-3142(IT)I), *Paul Lafontaine* (96-3144(IT)I),
Selim Toutounji (96-3489(IT)I), *Marion Sahapoglu-Forest* (97-98(IT)I,
96-3056(IT)I) and *Gilles Brassard* (96-3289(IT)I, 96-3257(IT)I),
from September 4 to September 21, 2007, at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Pierre Cossette
	Philippe Dupuis

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 1992 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 13th day of July 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 8th day of October 2009.

Brian McCordick, Translator

Docket: 96-3127(IT)I

BETWEEN:

SUCCESSION JEAN NADEAU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Claude Ménard* (96-2936(IT)I), *Marcel Beauregard* (2004-181(IT)I), *Jean-Pierre Gamache* (2002-2520(IT)I), *Manon Chartré* (96-3516(IT)I), *Jean St-Pierre* (96-3142(IT)I), *Paul Lafontaine* (96-3144(IT)I), *Selim Toutounji* (96-3489(IT)I), *Marion Sahapoglu-Forest* (97-98(IT)I, 96-3056(IT)I) and *Gilles Brassard* (96-3289(IT)I, 96-3257(IT)I), from September 4 to September 21, 2007, at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

Agent for the Appellant:	Richard Pagé
Counsel for the Respondent:	Pierre Cossette
	Philippe Dupuis

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 1989 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 13th day of July 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 8th day of October 2009.

Brian McCordick, Translator

Docket: 96-3142(IT)I

BETWEEN:

JEAN ST-PIERRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of
Claude Ménard (96-2936(IT)I), *Marcel Beauregard* (2004-181(IT)I),
Jean-Pierre Gamache (2002-2520(IT)I), *Manon Chartré* (96-3516(IT)I),
Succession Jean Nadeau (96-3127(IT)I), *Paul Lafontaine* (96-3144(IT)I),
Selim Toutounji (96-3489(IT)I), *Marion Sahapoglu-Forest* (97-98(IT)I,
96-3056(IT)I) and *Gilles Brassard* (96-3289(IT)I, 96-3257(IT)I),
from September 4 to September 21, 2007, at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Pierre Cossette
	Philippe Dupuis

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 1989 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 13th day of July 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 8th day of October 2009.

Brian McCordick, Translator

Docket: 96-3144(IT)I

BETWEEN:

PAUL LAFONTAINE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Claude Ménard* (96-2936(IT)I), *Marcel Beauregard* (2004-181(IT)I), *Jean-Pierre Gamache* (2002-2520(IT)I), *Manon Chartré* (96-3516(IT)I), *Succession Jean Nadeau* (96-3127(IT)I), *Jean St-Pierre* (96-3142(IT)I), *Selim Toutounji* (96-3489(IT)I), *Marion Sahapoglu-Forest* (97-98(IT)I, 96-3056(IT)I) and *Gilles Brassard* (96-3289(IT)I, 96-3257(IT)I), from September 4 to September 21, 2007, at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Pierre Cossette
	Philippe Dupuis

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 1989 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 13th day of July 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 8th day of October 2009.

Brian McCordick, Translator

Docket: 96-3489(IT)I

BETWEEN:

SELIM TOUTOUNJI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeals of *Claude Ménard* (96-2936(IT)I), *Marcel Beauregard* (2004-181(IT)I), *Jean-Pierre Gamache* (2002-2520(IT)I), *Manon Chartré* (96-3516(IT)I), *Succession Jean Nadeau* (96-3127(IT)I), *Jean St-Pierre* (96-3142(IT)I), *Paul Lafontaine* (96-3144(IT)I), *Marion Sahapoglu-Forest* (97-98(IT)I), 96-3056(IT)I) and *Gilles Brassard* (96-3289(IT)I, 96-3257(IT)I), from September 4 to September 21, 2007, at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Pierre Cossette
	Philippe Dupuis

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 1992 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 13th day of July 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 8th day of October 2009.

Brian McCordick, Translator

Dockets: 97-98(IT)I
96-3056(IT)I

BETWEEN:

MARION SAHAPOGLU-FOREST,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on common evidence with the appeals of
Claude Ménard (96-2936(IT)I), *Marcel Beauregard* (2004-181(IT)I),
Jean-Pierre Gamache (2002-2520(IT)I), *Manon Chartré* (96-3516(IT)I),
Succession Jean Nadeau (96-3127(IT)I), *Jean St-Pierre* (96-3142(IT)I),
Paul Lafontaine (96-3144(IT)I), *Selim Toutounji* (96-3489(IT)I) and
Gilles Brassard (96-3289(IT)I, 96-3257(IT)I),
from September 4 to September 21, 2007, at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Pierre Cossette
	Philippe Dupuis

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 1989 and 1992 taxation years are dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 13th day of July 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 8th day of October 2009.

Brian McCordick, Translator

Dockets: 96-3289(IT)I
96-3257(IT)I

BETWEEN:

GILLES BRASSARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on common evidence with the appeals of
Claude Ménard (96-2936(IT)I), *Marcel Beauregard* (2004-181(IT)I),
Jean-Pierre Gamache (2002-2520(IT)I), *Manon Chartré* (96-3516(IT)I),
Succession Jean Nadeau (96-3127(IT)I), *Jean St-Pierre* (96-3142(IT)I),
Paul Lafontaine (96-3144(IT)I), *Selim Toutounji* (96-3489(IT)I) and
Marion Sahapoglu-Forest (97-98(IT)I, 96-3056(IT)I),
from September 4 to September 21, 2007, at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Pierre Cossette Philippe Dupuis

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 1990 and 1991 taxation years are dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 13th day of July 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 8th day of October 2009.

Brian McCordick, Translator

Citation: 2009 TCC 363
Date: 20090713
Dockets: 96-2936(IT)I, 2004-181(IT)I
2002-2520(IT)I, 96-3516(IT)I
96-3127(IT)I, 96-3142(IT)I
96-3144(IT)I, 96-3489(IT)I
97-98(IT)I, 96-3056(IT)I
96-3289(IT)I, 96-3257(IT)I

BETWEEN:

CLAUDE MÉNARD, MARCEL BEAUREGARD,
JEAN-PIERRE GAMACHE, MANON CHARTRÉ,
SUCCESSION JEAN NADEAU, JEAN ST-PIERRE,
PAUL LAFONTAINE, SELIM TOUTOUNJI, MARION SAHAPOGLU-FOREST
and GILLES BRASSARD,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Jorré J.

I. Introduction

[1] These appeals pertain to ten Appellants who invested in Société de recherches expérimentales en télématique enr. ("SRET" or "Télématique") or in Société en nom collectif R&D Mini-Robots enr. ("Mini-Robots"). Both partnerships were set up by a promoter named N. Lassonde. The table in Appendix A of these Reasons for Judgment sets out the amount that each Appellant invested and the year in which the investment was made.

[2] Although the Minister of National Revenue ("the Minister") acknowledges that the partnerships carried out research, to some extent, he nonetheless reassessed the Appellants and disallowed the loss deductions and investment tax credits that they had claimed.

[3] The Minister's position is that

(a) the Appellants were not members of genuine partnerships;
(b) in the alternative, the partnerships did not carry on a business;
(c) in the further alternative, the Appellants were "specified members" who were "limited partners";
(d) in the further alternative, the Appellants were passive "specified members";
(e) in the further alternative, the Appellants were not members of the partnerships in question at the end of the fiscal year in issue; and
(f) the research expenditures were greatly exaggerated, and the partnerships did not incur all the expenditures claimed,

and accordingly, the Minister submits that the Appellants were not entitled to deduct the business losses and investment tax credits claimed.[1]

[4] Although several of the Appellants' Notices of Appeal take the position that the loss deductions and tax credits were justified in fact and in law, the arguments that the Appellants raised at the hearing were mainly subsidiary: for example, the Appellants submitted that they had a legitimate expectation that the deductions and credits were valid since the partnerships had a proper tax shelter identification number; that the deductions or credits were allowed in the initial assessments; or that the Minister should have noticed that there were problems earlier and should have disallowed the deductions in the initial assessment.

[5] While each Appellant's case is somewhat different, the following example describes the structure of a typical transaction proposed to the Appellants:

(a) The potential investor is asked to invest roughly $10,000 in the fall.
(b) The investor is also promised that X will provide financing for half that amount, i.e. $5,000 (but sometimes for 100% of the investment).

[1] Although the Respondent's position during this trial was that the Appellants are not entitled to any tax credit or to any deduction for losses related to the projects in question, the Respondent informed me that, depending on the year, the project, and other circumstances, some Appellants' reassessments did permit them to deduct some of the losses for which they had claimed a deduction. If the Respondent's submissions are correct, the Minister should not have allowed those deductions, but the Respondent says that she is not seeking the outcome that would result from such a finding, since she acknowledges that this Court cannot increase the amount of an assessment.

(c) It is explained to the investor that he or she will
  (i) borrow $5,000 from X,
  (ii) purchase a $10,000 interest in the partnership, and
  (iii) grant a right of first refusal to another third party, Y, entitling Y to purchase the investor's partnership interest for 50% of the amount of his or her investment, that is to say, $5,000. (Sometimes X and Y are the same partnership.)

d) It is also explained to the investor that
  (i) in a few weeks or months, the investor will receive $5,000 from Y, who will purchase the investor's partnership interest, thereby enabling the investor to repay the loan made by X (or, if the investor borrowed 100% of the investment, half the loan amount), and
  (ii) the investor will get a tax reduction of roughly $7,000, consisting of
  - the deduction for his share of the partnership loss, which is approximately $10,000 and will have the effect of reducing his or her income tax by approximately $5,000, and
  - a tax credit of approximately $2,000,[2]

  and that, consequently, the investor will make a profit of approximately $2,000.

[6] For the following reasons, the appeals will be dismissed.[3]

II. The validity of the reassessments

Facts[4]

The Appellants' testimony

Testimony of Gilles Brassard

[2] These numbers are rounded off and include the federal and provincial tax consequences. If an individual originally had $5,000 to invest in November, and received a notice of assessment in May, he would make a $2,000 profit — a 40% gain — a mere six months later.

[3] A hearing was initially scheduled for 25 appeals instituted by 18 individuals who had invested in the projects. Eight individuals dropped a total of 12 of those appeals before the hearing began or on the first two days of the hearing. Another appeal was dismissed by the Court before the hearing: see *Lassonde v. The Queen*, 2007 TCC 487. These are the Reasons for Judgment in 12 appeals by 10 individuals.

[4] A great deal of the evidence is about the incidental arguments and the question of what amounts were actually spent on research. For the reasons set out in paragraph 139 and Part III of this judgment, it is not necessary to examine these points in order to dispose of these appeals. Thus, aside from a few comments, I will not examine the evidence regarding those questions in this judgment.

[7] Mr. Brassard invested in Mini-Robots in 1990, and again in 1991. He was an assistant business manager at the Caisse populaire du Complexe Desjardins at the time.

[8] Mr. Brassard said that his aim was twofold: to benefit from a tax shelter, and to invest in research and development (R&D). He believed that his investment in Mini-Robots was not speculative.

[9] He also confirmed that the following financial arrangement was proposed to him. He was to invest $10,000, of which $5,000 would be borrowed from a financing source recommended to him. Later, $5,000 would be returned to him, and this, combined with a tax reduction worth $6,000 to $7,000, would result in a net profit of $1,000 to $2,000. He does not recall who was supposed to return the $5,000 to him.

[10] In 1989, he invested in another project, ECT, and the financial aspect unfolded as I have just described. As we shall see, the events unfolded somewhat differently with Mini-Robots. The assessment of Mr. Brassard for 1989 is not before the Court in this case.

[11] When Mr. Brassard was asked whether he recalled that the $5,000 that was to be returned to him was in consideration of the purchase of his interest in Mini-Robots from him, he said that he did not. However, he did agree that once the amount related to his 1991 investment was returned to him, he no longer held an interest in Mini-Robots.

[12] Although Mr. Brassard has only a limited recollection of what happened financially with his investment in Mini-Robots, I find that, in 1990, instead of borrowing $5,000, he borrowed $10,000 on his own and invested it in order to purchase an interest in SRET. At the time that the $5,000 was to have been returned to him (for 1990) he was told that, for certain reasons, this could not be done at the moment.[5] It was proposed that the $5,000 that he should have received be used to purchase a $10,000 partnership interest in Mini-Robots in 1991.[6] He agreed.[7] In 1992, money was returned to him. He invested a total of $20,000 for the two years, and $10,000 was returned to him.

[13] The 1990 investment was made in December.[8]

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[5] See the transcript for September 6, 2007, at page 123, questions 533 and 534.

[6] Mr. Brassard did not make any outlay in 1991, and there must have been a loan from a third party, because Mr. Brassard reported a $10,000 investment in 1991 in his income tax return. See Exhibit I-33, tab 7.

[7] The $5,000 interest in Mini-Robots in 1991, in lieu of the expected sum of money, is a benefit.

[8] See Exhibit I-33, tab 2, page 1.

[14] Mr. Brassard's participation was very limited. He says that he attended two or three meetings of Mini-Robots per year.[9] At those meetings, the partners saw the premises and equipment, but the employees were not working at the time. The partners in attendance were asked questions about the Mini-Robot (an automatic vacuum cleaner) under development, and Mr. Brassard recalls that some people made suggestions. Most of these suggestions could have been solicited from any potential consumer.

[15] Mr. Brassard took no part in management decisions (regarding matters such as budgets, the appointment of principals, research or the future of the business) and was not consulted about such decisions.

[16] He recalls that 50 or 100 partners attended the meetings. He knew only some of those people. Most people who attended the meetings during the second year had not attended the meetings in the first year.

[17] Mr. Brassard's participation was limited: he did what he was told, and nothing more.

[18] His decision to invest was individual, and was never made jointly with other partners. The only person with whom he spoke about his investments was Mr. Sawodny, the person who suggested the investment to him. Once he acquired an interest in Mini-Robots, if he had questions, he asked Mr. Sawodny and not the other Mini-Robots partners.[10]

Testimony of Richard Pagé

The Nadeau Succession

[19] Mr. Pagé is not an Appellant; he is the testamentary executor of Jean Nadeau.

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[9] It would have been difficult to attend more than one meeting in 1990: Mr. Brassard invested only in December, and, moreover, the first partners' meeting of 1990 was held on December 28, 1990. See Exhibit I-12, tabs 450 and 451.

[10] Here are some of the assumptions of fact on which the Minister relied:

- The Partnership generated no income in the course of its existence.
- The activities of the Partnership do not, under the circumstances, involve any expectation of profit, so in this regard the Partnership does not carry on a business.
- The members of the Partnership do not actively work within the Partnership; they merely attend certain meetings and fill out questionnaires that have no serious effect on the Partnership's research activities.
- The Appellant is a partner who, on a regular, continuous and substantial basis throughout that the year in issue during which the business of the Partnership is purported to be carried on, is not actively engaged in the activities of the Partnership business and does not carry on a business similar to that purportedly carried on by the Partnership during that year.

[20] He was familiar only with certain facts about Mr. Nadeau. He prepared Mr. Nadeau's 1989 income tax return. He noticed that Mr. Nadeau had invested in SRET in April 1989 and on November 19, 1989. Mr. Nadeau died the week after November 19, and, as his executor, Mr. Pagé noticed that the 50% was returned to Mr. Nadeau two or three weeks after the November 19 investment.

[21] Mr. Pagé was not sure whether Mr. Nadeau had already sold his interest in SRET when the 50% was returned to him.

[22] Here are some of the factual assumptions on which the Minister relied in reassessing the Nadeau Succession:

- The members of the Partnership do not work actively within the Partnership; they merely filled out questionnaires which had no serious effect on the Partnership's research activities.
- The Appellant is a partner who, on a regular, continuous and substantial basis throughout the year in issue during which the Partnership usually carries on its business, is not actively engaged in the activities of the Partnership business and does not carry on a business similar to that carried on by the Partnership during that year.
- Before the end of 1989, Tecktel acquired the Appellant's interest for an amount equal to 50% of his total investment in the Partnership.
- The Appellant was no longer a member of the Partnership as at December 31, 1989.

[23] I find that Mr. Nadeau was not a member of SRET as at December 31, 1989.

Mr. Pagé's personal investment in Mini-Robots

[24] Although he was not one of the Appellants, Mr. Pagé invested $10,000 in Mini-Robots as well, in 1992. He financed half that amount though a loan from a *caisse populaire*. It was the advisor who proposed the investment in Mini-Robots who suggested he take out a loan from the *caisse populaire*. Mr. Pagé subsequently received the return of $5,000, in consideration of which he sold his interest in Mini-Robots.

[25] Mr. Pagé was then expecting to realize a net profit of roughly $1,200 as a result of the deductible loss and the tax credit. He expected nothing else from Mini-Robots.

[26] He did not carry on business with others for the purpose of conducting scientific research. He was not engaged in the business of Mini-Robots, and he attended no meetings.

[27] After making his investment, he discovered that he knew some of the other investors.

Testimony of Manon Chartré

[28] Ms. Chartré invested in Mini-Robots in December 1992 and claimed a loss deduction and tax credits based on a $10,000 investment.

[29] She recalls that she was granted a loan for 50% of the investment amount. She also recalls that the 50% was returned quickly to her, one or two months later. She had been told that, by the end of 1992, everything would be finished, apart from the profit that she would make through her income tax return.

[30] Ms. Chartré's involvement was limited to attending one meeting that lasted an hour and a half to two hours. She was told that it was important to attend.

[31] The first part of the meeting was an information session in which some people showed the prototype and discussed research. In the second part, participants exchanged comments about the prototype.

[32] Ms. Chartré knew a few friends who had also invested in Mini-Robots that same year. She and her friends did business with the same person, who advised them to make the investment.

[33] She had no intention of doing business with others for the purpose of conducting scientific research. As far as she was concerned, she was investing in a going concern managed by others — specifically, the promoter and the people around him. She attended the meeting as instructed. Soon afterwards, her interest was bought back for $5,000 as planned and that was the end of it.

Testimony of Claude Ménard

[34] Mr. Ménard claimed business losses and tax credits based on a $15,000 investment in SRET.

[35] On November 6, 1989, according to the documentation adduced in evidence, Mr. Ménard purchased a "qualifying share" in SRET for $1.00. One the same date,

he also signed a document entitled [TRANSLATION] "Research Mandate" under which he purportedly entrusted Geyser Informatique Inc. with [TRANSLATION] "the performance of this computer research contract . . . upon payment of the amount of $15,000." He also paid the $15,000 by cheque to Geyser on that date.[11]

[36] On that same November 6, Mr. Ménard gave Gestion Tecktel Inc. a right of first refusal in respect of the [TRANSLATION] "property resulting from the research contract." Fifteen days later, on November 21, 1989, Gestion Tecktel exercised that right, and, by cheque dated November 21, 1989 and signed by the SRET promoter, Gestion Tecktel paid $7,500, 50% of the research contract amount, to Mr. Ménard.

[37] There is no way, based on these documents, to determine how Mr. Ménard could have had more than a $1 interest in SRET as at November 6 or December 31, 1989; [12] consequently, his share of any loss or credit would be $1 or less. However, I must take note of the fact that the Minister assumed that the November 6 research mandate did not reflect reality and that Mr. Ménard actually acquired a $15,000 interest in SRET.

[38] Mr. Ménard concedes that when the investment was proposed to him, he was explained that 50% of it would be returned to him.

[39] He was told that it was very important to invest in SRET and that a terminal would be used.

[40] Mr. Ménard's participation was limited to a meeting at which a telecommunications terminal was demonstrated and participants were offered the opportunity to use the terminal. He filled out a questionnaire about the terminal's use. The questions were of the kind that potential users could be asked.

[41] He was not involved in SRET in any other way, and he did not really know how SRET operated. He took no part in management decisions.

[42] Mr. Ménard knew only one other SRET investor, and never met with other partners except during the single meeting which he attended.

[43] Other than the returned money and the tax benefit, it was never suggested to Mr. Ménard that there would be any profit from SRET. Mr. Ménard agreed that,

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[11] See the documents forming Exhibit I-40.

[12] Nothing in the evidence could explain how the amount of $15,000 paid for the research mandate would have become a $15,000 interest in SRET. There is no way that Mr. Ménard transferred the research mandate to SRET, since he could not then have sold that to Gestion Tecktel.

without tax advantages, he would never have invested in the SRET. He agreed that he had no intention of carrying on a business in cooperation with the other SRET partners.

[44] Although Mr. Ménard asserted that he continued to be an SRET member as at December 31, 1989, he appears not to have concerned himself much with what was happening with SRET after that date.

[45] I find that Mr. Ménard was no longer a member of SRET as at December 31, 1989.[13]

Testimony of Jean St-Pierre

[46] Mr. St-Pierre's situation is as follows:[14]

(a) On December 12, 1989, he signed a document in which Infotique Tyra Inc. submitted a bid to him for the supply of formatted laser discs. In the document, he accepted the bid and purchased a formatted disk with a 125-megabyte capacity for $25,000.
(b) On the same day, he signed a subscription contract under which he acquired a "qualifying share" in SRET for $1.[15]
(c) On December 15, 1989, he wrote a $25,000 cheque payable to Infotique Tyra Inc.
(d) He signed a document entitled [TRANSLATION] "Assignment", dated January 10, 1990, by which, in his capacity as a partner in SRET and owner of a personal-library laser disc prototype, he sold his entire interest in the laser disc prototype to Infotique Tyra Inc. In his testimony, Mr. St-Pierre expressed the belief that he signed that document on December 12, 1989.[16]

[47] Mr. St-Pierre claimed a loss deduction and an income tax credit based on having invested $25,000 in SRET in December 1989.[17]

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[13] I would note that, if the research mandate were genuine, the consequence would be practically identical, because Mr. Ménard's partnership interest, as at December 31, 1989, was a mere $1.
[14] See the four pages of Exhibit A-1.
[15] It should be noted that the "SRET subscription form contains the mention [TRANSLATION] "To: Infotique Tyra Inc." It is difficult to see a purpose other than investor deception in this. Similarly, the SRET subscription form in Mr. Ménard's case bears the mention [TRANSLATION] "To: Geyser Informatics Inc.".
[16] See the transcript for September 7, 2007, questions 82 to 84.
[17] See Exhibit I-36, tab 1, page 17.

[48] He borrowed $25,000, and was told that 50% of that would be returned to him. Under the initial assessment, he had enough federal and Quebec tax advantages to come out $5,000 ahead.

[49] In view of the documents signed on December 12, I find that Mr. St-Pierre cannot have acquired more than a $1 share in SRET.[18]

[50] Mr. St-Pierre received the 50% repayment on or about January 10, 1990.

[51] Mr. St-Pierre did not attend any meetings. His only involvement was this: the advisor who had recommended that he make the investment read him questions from a questionnaire and filled out the questionnaire for him. Mr. St-Pierre testified that he believed the questions were related to libraries.

[52] He never intended to carry on a business with the other partners.

Testimony of Paul Lafontaine

[53] In his 1989 income tax return, Mr. Lafontaine claimed the loss deduction and tax credits based on a $10,000 investment in SRET.

[54] However, his situation resembles Mr. St-Pierre's. He testified that he purchased a laser disc from Infotique Tyra Inc. for $10,000 and a $1 interest in SRET.[19]

[55] Consequently, I find that Mr. Lafontaine, like Mr. St-Pierre, invested only $1 in SRET.

[56] Mr. Lafontaine made his investment on or about December 14, 1989. It was explained to him that he would get 50% of his investment back in roughly one month, and that, apart from that and the tax advantages, there would be no income from the investment. The 50% was returned to him in February 1990.

[57] Mr. Lafontaine attended no meetings and filled out no questionnaires, though he did receive one.

[58] He considered the questionnaire nonsense.[20]

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[18] In Mr. St-Pierre's case, the Minister made no factual assumption to the effect that the bid and acceptance were not genuine.

[19] The Minister made no factual assumption to the effect that the bid and acceptance were not genuine.

[20] The questions contained in the questionnaire are reproduced in Appendix B. See Exhibit I-6, tab 177, pages 5-8, and the transcript for September 7, 2007, questions 571 and 572.

[59] He did not intend to carry on a business with the other partners.

Testimony of Marcel Beauregard

[60] In his 1990 and 1991 income tax returns, Mr. Beauregard claimed the loss deduction as well as tax credits based on a first investment of $10,000 in Mini-Robots in 1990 and a second investment of $10,000 in 1991.

[61] It was his financial advisor who suggested these investments, and who obtained a $10,000 loan from Société nationale de fiducie for him.

[62] Mr. Beauregard's case is somewhat similar to Mr. Brassard's. In 1990, Mr. Beauregard invested $10,000 using the proceeds of a loan he obtained from Société nationale de fiducie. On December 10, 1991, he borrowed $10,000 from Gestion N.L. Technik Inc.[21] to make his 1991 investment. In November 1992, he transferred all his shares in Mini-Robots to Gestion N.L. Technik, which, in consideration of the transfer, cancelled the loan and the interest thereon.

[63] Mr. Beauregard only remembered certain things, and we do not know the details of what happened during the two years in issue.

[64] Since he testified that he expected to make a profit thanks to the tax advantages, but those advantages could not mathematically be greater than his investment; since he believed the risk was minimal; and since there is no suggestion that he could expect other income from Mini-Robots, I find that the return, by Gestion N.L. Technik, of $10,000 to him (that is to say, 50% of his $20,000 investment) in consideration of the purchase of his interest in the partnership, had been planned from the start.[22]

[65] Mr. Beauregard may have attended three meetings. He vaguely recalls a questionnaire, but does not think that he filled one out. There was no other participation on his part. He was not involved in the management of the business and he did not carry on a business with the other members of the partnership.

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[21] A company that had a non-arm's length relationship with SRET's promoter.
[22] See the transcript for September 11, 2007, questions 145-150.

Testimony of Jean-Pierre Gamache

[66] In his 1989 income tax return, Mr. Gamache claimed tax credits and the loss deduction based on a $10,000 investment in SRET.

[67] It was a broker who had suggested the investment to him. The broker told him that it was a tax shelter and that there was no risk because the government was involved.

[68] Mr. Gamache recalls few details of the transaction.

[69] He knows that he borrowed $10,000 to make the investment and that once everything was said and done he made a net gain of $1,500 or $2,500.

[70] On cross-examination, he conceded that he must have had 50% returned to him. He believes that, prior to investing, he received a document resembling the one which is discussed in paragraph 12 of the Reply to the Notice of Appeal, and which provided the example of a $10,000 investment.[23]

[71] One of the Minister's assumptions of fact is that the Appellant was not a member of the partnership as at December 31, 1989.

[72] In his evidence, Mr. Gamache did not show otherwise.[24] I find that he was not a member of SRET as at December 31, 1989.

[73] Mr. Gamache agreed that there was no risk.

[74] He was not active within SRET. He did not attend any meetings.

[75] He agreed that he did not carry on business with the other partners.

[76] He considers himself a victim in this story.

Testimony of Marion Sahapoglu-Forest

[77] Ms. Sahapoglu-Forest invested $10,000 in SRET in 1989, and $10,000 in Mini-Robots in 1992.

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[23] The document guarantees that 50% will be returned.
[24] See the transcript for September 10, 2007, question 108.

[78] In both cases, from a financial standpoint, she received 50% back in consideration of the purchase of her partnership interest. With Mini-Robots, she invested in November 1992, got the 50% back, and transferred her interest to Gestion N.L. Technik in May 1993. That return of 50% of her investment cancelled the $5,000 loan (including interest) that Gestion N.L. Technik had made to Ms. Sahapoglu-Forest to cover half her $5,000 investment in November 1992.

[79] Although she does not remember the dates, Ms. Sahapoglu-Forest concedes that the return from SRET was received more quickly than the return from Mini-Robots.

[80] In both years, the return of 50% was planned in advance and guaranteed her. Despite this guarantee, Ms. Sahapoglu-Forest had some concerns.

[81] For the SRET investment, she borrowed the full $10,000 from Central Guaranty Trust Company. The advisor who had suggested she invest in SRET is the same one who suggested she take out a loan from Central Guaranty Trust.

[82] Although the Minister relied on the factual assumption that Ms. Sahapoglu-Forest was no longer a member of SRET as at December 31, 1989, she asserted that she was still a member on that date.

[83] Apart from the return of 50% and the tax advantages, she did not expect any income from SRET or Mini-Robots.

[84] Ms. Sahapoglu-Forest had been told that her involvement in the partnerships was necessary, and when a representative of one of the partnerships would tell her to do something, she did it. She contributed in the following way: she went to all meetings except one, gave her opinion on various matters, filled out questionnaires, and tried out an SRET terminal.

[85] Although Ms. Sahapoglu-Forest attended the meetings and although she voted (for example when those assembled were asked to approve budgets) her participation was guided by what she was told she had to do.

[86] It is also clear that she did not carry on business with the other partners. Rather, she made an investment.

Testimony of Selim Toutounji

[87] Mr. Toutounji invested $10,000 in Mini-Robots in 1992 and claimed the loss deduction and tax credits accordingly.

[88] Mr. Toutounji made his investment in November 1992, probably on the evening of November 13. He went with Ms. Sahapoglu-Forest that evening to meet the promoter, and everything was done in less than 30 minutes. He signed a cheque for $5,000 and got $5,000 in financing, for a total investment of $10,000.[25] He was told that $5,000 would be returned to him.

[89] In Mr. Toutounji's case, this return was made on June 1, 1993, and was in consideration of the transfer, by Mr. Toutounji, of his interest in Mini-Robots. It served to cancel the loan that Mr. Toutounji had taken out on November 13.

[90] Mr. Toutounji testified as follows: [TRANSLATION] ". . . I took an active part in the way I was asked to, at the meetings we were told to attend . . ."[26] However, he was disappointed because he was a scientist by training and was hoping to contribute to developing the sensors necessary for the Mini-Robot. He was never able to make such a contribution at the meetings.

[91] There was never any question of Mr. Toutounji meeting with the other partners and making business decisions.

[92] Mr. Toutounji agrees that if the project had succeeded, the promoter and others working with the promoter would have made money, and he says that his role was to help out at the beginning by investing money to enable someone else to operate a business.[27]

Other testimony

Testimony of Simon Beauregard

[93] Simon Beauregard, an auditor at the Canada Revenue Agency (CRA), testified about the audit of SRET.

[25] The financing was from Gestion N.L. Technik, which had a non-arm's length relationship with the promoter.
[26] See the transcript for September 12, 2007, question 49. In addition, see question 102.
[27] See the transcript for September 12, 2007, questions 318 to 325.

[94] He discovered, among other things, that SRET had no bank account or accounting books. All the cheques from investors were deposited into the accounts of Geyser Informatics or Infotique Tyra.[28]

[95] He made the following discovery as well. SRET's promoter registered the entity's business name on June 29, 1988.[29] In the registration declaration, the promoter said that he had no partners. On November 27, 1989, the promoter filed a dissolution document, stating that he had ceased doing business on November 27, 1989, and that he was the only person who had been carrying on business.[30] On the same day, the promoter's brother-in-law registered a business name for SRET and declared that he was the only person carrying on business.[31]

[96] He testified about the work that he and others did, examining the numerous related partnerships, their accounts, and the CRA's conclusion that more than half of SRET's expenditures should be disallowed, including the expenditures claimed in relation to payments made to CATK in Moscow and Challenge SA in France. He also testified about the money (an amount equal to 50% of each investor's investment) used to buy the investors' interests in SRET.

Testimony of Christian Dion

[97] Christian Dion, a team leader at the Canada Revenue Agency (CRA), testified about the audit of Mini-Robots. He explained the work that was done in order to examine a large number of related partnerships, their accounts, the expenditures claimed, and how the CRA came to the conclusion that more than one-half of the expenditures claimed in 1990 and 1991 should be disallowed, including, among other things, expenditures claimed for supplies by CATK in Moscow and Pacific Master Trading Ltd. in Asia. There are certain other expenditures which the CERA concluded were not in the nature of research expenditures.

Testimony of Jean St-Pierre (expert)

[98] Jean St-Pierre is an engineer with the CRA. He was qualified as an expert witness, and he testified about his report on the research done by Mini-Robots.

[99] While he did find that there was valid experimental development, he also found that the dollar amount of the expenditures claimed was unrealistic.

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[28] See the transcript for September 13, 2007, question 226.
[29] See Exhibit I-3, tab 116.
[30] See Exhibit I-3, tab 118.
[31] See Exhibit I-3, tab 119.

[100] He testified about the CATK invoices and explained why he had doubts about the invoices, which seemed completely unrealistic to him.[32]

[101] He also explained why he doubted other research expenditures that were claimed.

[102] His report was limited to the years 1990 and 1991.

Testimony of Gabriel Caponi

[103] Mr. Caponi is a senior advisor with the office of the Deputy Commissioner for the CRA's Regional Office. In 1993, he was assigned to the R&D sector of the CRA, and was part of a team of auditors that examined the partnerships used as R&D tax shelters.

[104] He was assigned to the Department of Justice Canada in 1995-1996 for roughly one year so that, among other things, he could help examine the SRET and Mini-Robots files.

[105] He examined those files and prepared the diagrams at tab 104 of Exhibit I-3 (SRET) and tab 304 of Exhibit I-9 (Mini-Robots, 1990 and 1991). The diagrams summarize the very complex movements of funds among several partnerships.

[106] Mr. Caponi explained how he prepared the two diagrams.

[107] He also testified about information obtained from the French tax authorities in September 1993 further to a request under the tax agreement between Canada and France. The information was related to the fact that Challenge SA had not supplied any software or electronic equipment.

[32] He explained his conclusions at length. For example, he said that even though a diode could be obtained for $0.59 in 1990, CATK billed $1,610 for one. As another example, he pointed out that CATK billed $4.25 for a component one day, and $930 for the identical component another day.

The last three witnesses

[108] The Respondent called three other witnesses, whose testimony was primarily related to the ancillary arguments. The witnesses were Jean-Marc Boucher, the manager of the scientific research audit section in Montréal; Normand Bergeron, a financial analyst who was an investigator with the Commission des valeurs mobilières du Québec [Quebec securities commission] from 1985 to 1995, and Serge Huppé, an appeals officer who was at the CRA's Ottawa headquarters when he was involved with these files.

Analysis

Were the Appellants specified members by virtue of being limited partners?[33]

[109] Paragraph 96(1)(*g*) of the *Income Tax Act* ("the ITA") provides:

> 96.(1) **General rules.** Where a taxpayer is a member of a partnership, the taxpayer's income, non-capital loss, net capital loss, restricted farm loss and farm loss, if any, for a taxation year, or the taxpayer's taxable income earned in Canada for a taxation year, as the case may be, shall be computed as if
>
> . . .
>
> (*g*) the amount, if any, by which
>
> (i) the loss of the partnership for a taxation year from any source or sources in a particular place,
>
> exceeds
>
> (ii) in the case of a specified member (within the meaning of the definition "specified member" in subsection 248(1) if that definition were read without reference to paragraph (*b*) thereof) of the partnership in the year, the amount, if any, deducted by the partnership by virtue of section 37 in calculating its income for the taxation year from that source or sources in the particular place, as the case may be . . .
>
> . . .
>
> were the loss of the taxpayer from that source or from sources in that particular place, as the case may be, for the taxation year of the taxpayer in which the partnership's taxation year ends, to the extent of the taxpayer's share thereof.

[33] According to the ITA as it read during the years in issue.

[Emphasis added.]

[110] The definition of "specified member" in subsection 248(1) of the ITA, read without reference to paragraph (*b*) of that subsection, is as follows:

> 248. (1) In this Act,
>
> "specified member" of a partnership in a fiscal period or taxation year of the partnership, as the case may be, means
>
> (*a*) any member of the partnership who is a limited partner (within the meaning assigned by subsection 96(2.4)) of the partnership at any time in the period or year . . .
>
> [Emphasis added.]

[111] Subsection 96(2.4) of the ITA provides as follows:

> 96(2.4) **[Limited partners].** For the purposes of this section and sections 111 and 127, a taxpayer who is a member of a partnership at a particular time is a limited partner of that partnership at that time if the taxpayer's partnership interest is not an exempt interest at that time (within the meaning assigned by subsection 2.5)) and if, at that time or within three years after that time,
>
> (*a*) by operation of any law which governs the partnership arrangement, the liability of the taxpayer in the taxpayer's capacity as a member of the partnership, is limited;
>
> (*b*) the taxpayer or a person with whom the taxpayer does not deal at arm's length is entitled to receive an amount or obtain a benefit that would be described in paragraph (2.2)(*d*) if it were read without reference to subparagraphs (2.2)(d)(ii) and (vi);
>
> (*c*) one of the reasons for the existence of the taxpayer who owns the interest
>
> (i) may reasonably be considered to be to limit the liability of any other person with respect to that interest, and
>
> (ii) may not reasonably be considered to be to permit any person who has an interest in the taxpayer to carry on that person's business (other than an investment business) in the most effective manner; or
>
> (*d*) there is an agreement or other arrangement for the disposition of an interest in the partnership and one of the main reasons for the agreement or arrangement may reasonably be considered to be to attempt to avoid the application of this subsection to the taxpayer.
>
> [Emphasis added.]

[112] Lastly, paragraph 96(2.2)(*d*), read without reference to subparagraphs 96(2.2)(*d*)(ii) and (vi), states:

> . . .
>
> (*d*) where the taxpayer or a person with whom the taxpayer does not deal at arm's length is entitled, either immediately or in the future and either absolutely or contingently, to receive or obtain any amount or benefit, whether by way of reimbursement, compensation, revenue guarantee or proceeds of disposition or in any other form or manner whatever, granted or to be granted for the purpose of reducing the impact, in whole or in part, of any loss that the taxpayer may sustain by reason of being a member of the partnership or by reason of holding or disposing of an interest in the partnership, the amount or benefit, as the case may be, that the taxpayer or the person is or will be so entitled to receive or obtain, except to the extent that the amount or benefit is included under subparagraph 66.1(6)(*b*)(ix), 66.2(5)(*b*)(xi) or 66.4(5)(*b*)(viii) in respect of the taxpayer or the entitlement arises
>
> (i) by virtue of a contract of insurance with an insurance corporation dealing at arm's length with each member of the partnership under which the taxpayer is insured against any claim arising as a result of a liability incurred in the ordinary course of carrying on the partnership business,
>
> . . .
>
> (iii) as a consequence of the death of the taxpayer,
>
> (iv) by virtue of an agreement under which the taxpayer may dispose of the partnership interest for an amount not exceeding its fair market value, determined without reference to the agreement, at the time of the disposition.
>
> (v) by virtue of a revenue guarantee or other agreement in respect of which gross revenue is earned by the partnership except to the extent that the revenue guarantee or other agreement may reasonably be considered to ensure that the taxpayer or person will receive a return of a portion of the taxpayer's investment,
>
> . . . or
>
> (vii) because of an excluded obligation (as defined in subsection 6202.15(b) of the *Income Tax Regulations*) in relation to a share issued to the partnership by a corporation,
>
> . . .
>
> [Emphasis added.]

[113] The consequence of these provisions is that if an Appellant is a specified member at any time in the fiscal year in issue, that Appellant cannot deduct his or her share of the losses of SRET or Mini-Robots.

[114] He or she will, among other things, be a specified member at a time of the year if, at that time or within three years after that time, he or she is entitled to receive or obtain any amount or benefit ". . . whether by way of reimbursement, compensation, revenue guarantee or proceeds of disposition or in any other form . . . granted . . . for the purpose of reducing the impact, in whole or in part, of any loss that the taxpayer may sustain by reason of . . . holding or disposing of an interest in the partnership, except to the extent that the amount or benefit . . . arises by virtue of an agreement under which the taxpayer may dispose of the partnership interest for an amount not exceeding its fair market value, determined without reference to the agreement, at the time of the disposition."

[115] I have no doubt that, in every case, except those of Mr. St-Pierre and Mr. Lafontaine,[34] there was, at the very moment that the investment was made, an agreement under which each Appellant would receive an amount equal to 50% of his or her investment, a few weeks or months after the date of the investment,[35] in consideration of the transfer of the interest that they held in SRET or Mini-Robots.

[116] Since the Appellants could not expect to receive any other amount from SRET or Mini-Robots, the only conceivable purpose of returning the 50% was to reduce the impact, in whole or in part, of the loss that they would necessarily sustain by investing in SRET or Mini-Robots (were that 50% not returned to them).

[117] The amount equal to 50% of the investment could not reflect the fair market value of the interest at the time of its disposition because the 50% was fixed at the time the interest was acquired. The success of a research project cannot be known in advance.

[118] Consequently, the Appellants, except Mr. St-Pierre and Mr. Lafontaine, were specified members who could not deduct the losses.[36]

[119] A specified member cannot claim his or her share of the investment tax credits related to the scientific research and experimental development expenditures. This results from paragraph 127(8)(*a*) and the definition of "investment tax credit" in subsection127(9) of the ITA.

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[34] See below.
[35] Even though this return was delayed by a year in two cases.
[36] Moreover, Mr. Gamache, Mr. Nadeau and Mr. Ménard were not members of SRET as at December 31, 1989.

[120] Consequently, the Appellants, except Mr. St-Pierre and Mr. Lafontaine, cannot claim the investment tax credits.

[121] For somewhat different reasons, the same result applies to Mr. St-Pierre and Mr. Lafontaine; they are not entitled to the losses and income tax credits claimed.[37]

Were the Appellants passive specified members?[38]

[122] I have already established that the Appellants come within paragraph (*a*) of the definition of "specified member" in subsection 248(1) of the ITA. Do they also come within paragraph (*b*) of that definition? Paragraph 248(1)(*b*) reads:

> 248(1) In this Act,
>
> "specified member" of a partnership in a fiscal period or taxation year of the partnership, as the case may be, means
>
> . . .
>
> (*b*) any member of the partnership, other than a member who is
>
> (i) actively engaged in those activities of the partnership business that are other than the financing of the partnership business, or
>
> (ii) carrying on a similar business as that carried on by the partnership in its taxation year, otherwise than as a member of the partnership,
>
> on a regular, continuous and substantial basis throughout that part of the period or year during which the business of the partnership is ordinarily carried on and during which the member is a member of the partnership;

[123] Several Appellants were not engaged at all. The most active ones attended a few meetings, but their involvement was limited and was merely reactive to what they were asked to do.

[124] This does not constitute active engagement in one or more of the partnerships in question on a regular, continuous and substantial basis.[39]

---

[37] First, the other reasons below apply to them.
Second, I have no doubt that there was an agreement on the same financial scheme (purchase, return of 50% within a few weeks or months in consideration of their interest), but, for unknown reasons, Mr. St-Pierre and Mr. Lafontaine acquired only a $1 interest in SRET, and used most of their investment to purchase something else.
As such, they were entitled to a minimal loss of $1 or less, and a tax credit of $1 or less. Since the other reasons for this judgment apply to them, they are entitled to no loss and no investment tax credit related to SRET.

[38] Under the ITA as it read during the years in issue.

[39] See *Brillon v. The Queen*, 2006 TCC 76, at paragraphs 68 to 81.

[125] Consequently, the Appellants come within paragraph (*b*) of the definition of "specified member" in subsection 248(1) of the Act. Thus, they cannot claim the investment tax credits under paragraph 127(8)(*a*) and the definition of "investment tax credit" in subsection 127(9).

Were the Appellants members of genuine partnerships?

[126] In *Backman v. Canada*, 2001 SCC 10, [2001] 1 S.C.R. 367, the Supreme Court of Canada held as follows:

> 17 The term "partnership" is not defined in the Act. . . .We are of the view that, where a taxpayer seeks to deduct Canadian partnership losses through s. 96 of the Act, the taxpayer must satisfy the definition of partnership that exists under the relevant provincial or territorial law. . . . It follows that even in respect of foreign partnerships, for the purposes of s. 96 of the Act, the essential elements of a partnership that exist under Canadian law must be present . . .
>
> 25 . . . In other words, to ascertain the existence of a partnership the courts must inquire into whether the objective, documentary evidence and the surrounding facts, including what the parties actually did, are consistent with a subjective intention to carry on business in common with a view to profit.

[127] The law applicable to partnerships is the law of the province in which the partnership was created. In this case, that province is Quebec.

[128] The law in force at the time of the events in issue is set out in the *Civil Code of Lower Canada*, specifically article 1830:

> It is essential to the contract of partnership that it should be for the common profit of the partners, each of whom must contribute to it property, credit, skill, or industry.

[129] A partnership can only exist if three conditions are met:

(a) a spirit of cooperation;
(b) the contribution, that is to say, a combining of property, knowledge or activities; and
(c) a sharing of pecuniary profits resulting from this combining.

[130] The Quebec Court of Appeal examined these conditions in *Cimon v. Arès*, 2005 QCCA 9:

> [TRANSLATION]
>
> 49 Article 2186 of the *Civil Code of Québec* distinguishes between a contract of partnership and a contract of association:
>
> > A contract of partnership is a contract by which the parties, in a spirit of cooperation, agree to carry on an activity, including the operation of an enterprise, to contribute thereto by combining property, knowledge or activities and to share any resulting pecuniary profits.
> >
> > A contract of association is a contract by which the parties agree to pursue a common goal other than the making of pecuniary profits to be shared between the members of the association.
> >
> > (Emphasis added.)
>
> 50 The first paragraph of that article essentially restates the substance of article 1830 C.C.L.C. and specifies, like the prior cases and scholarly writing, that the profits sought must be pecuniary. The following essential conditions must be met in order for a partnership to be formed:
>
> - a spirit of cooperation;
> - the contribution, that is to say, a combining of property, knowledge or activities; and
> - a sharing of pecuniary profits resulting from this combining.
>
> SPIRIT OF COOPERATION
>
> 51 The parties must have a common intention to form a partnership. The *affectio societatis* is often the criterion that distinguishes the contract of partnership from other forms of association that might at first appear similar. In the absence of a written contract, courts had to glean this intent from what the parties actually did and from the circumstances surrounding their professional relationships.
>
> 52 The intention to form a partnership or the spirit of cooperation is a subjective element, and Justice Lamer, in *Beaudoin-Daigneault*, specified the analytical framework for assessing this crucial element:
>
> > [T]o determine whether there was an *affectio societatis*, [the Court must] establish whether from the facts it could be said that there was [TRANSLATION] "a collection of presumptions precluding any serious objection, even though each one of them taken separately might give rise to some doubt."
>
> . . .

> SHARING OF PECUNIARY PROFITS RESULTING FROM THE COMBINING
>
> 65 Article 2186 C.C.Q. requires that the partners share the pecuniary benefits resulting from the cooperative activity or enterprise. It must be specified that mere savings do not constitute a profit; a profit is [TRANSLATION] "a gain, of money or assets, which increases a person's fortune."[40]

[131] Are the elements of a true partnership present?

[132] Whether it was SRET, or Mini-Robots in 1990, 1991 or 1992, it is clear that the Appellants had no cooperative intention to carry on an R&D business in common and share the profits from that business.

[133] Although some of the Appellants might incidentally have wanted to help with research, all the Appellants made their investments with a view to obtaining the tax advantages, which, combined with a return of 50% of their investment to them, would yield them a profit.[41] I am satisfied that all the Appellants considered their investment quite safe, even though some of them expressed some worry that the 50% might not be returned to them.

[134] They did not expect SRET or Mini-Robots to produce profits to which they would be entitled as partners.

[135] They expected to enter and leave the partnership within a few weeks or months.

[136] Apart from the investment money, the Appellants provided little or no cooperation, since the individuals who participated most in the partnerships merely attended a few meetings or did what the organizers asked them to do. This is well reflected in the testimony of Mr. Toutounji, who conceded that he offered start-up assistance that enabled someone else to carry on a business.[42]

[137] These were not contracts where the parties agreed, in a spirit of cooperation, to carry on an activity together.

[138] There was no true legal partnership, and, consequently, the Minister properly disallowed the loss deductions and investment tax credits.[43]

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[40] See also *Bourboin v. Savard* (1926), 40 B.R. 68 (Que. K.B.).
[41] In the form of an income tax reduction.
[42] In the case of Mr. Nadeau, since the return of 50% was received two or three weeks after his investment of November 19, 1989, there cannot have been a cooperative intention to carry on a business in common.
[43] See *Boudreault v. The Queen*, 2005 TCC 660, at paragraph 56; *McKeown v. The Queen*, 2001 DTC 511 (TCC), at paragraphs 380 to 382 and 389 to 393.

Which R&D expenditures were truly incurred?

[139] Given my findings regarding the other arguments, it is unnecessary for me to determine the amount of R&D expenditures actually incurred. However, given the Respondent's extensive evidence on this point, I will summarize a few findings.

[140] For the following reasons, it is clear to me that much less than half the amounts claimed was spent on R&D. First, to use the example from paragraph 5, the evidence shows that, of the $10,000 received from an investor to fund $10,000 in research, the amount truly invested was not $10,000, since the money returned to the investor came from the partnerships themselves. In reality, the partnerships never really got more than $5,000 in available funds based on the example. Thus, the partnerships had access to only 50% of the amounts invested.

[141] In addition, a 10% commission — $1,000 in the typical example — was generally paid to the sellers of the partnership interests in question.[44] The amounts spent on this commission could not have been used for research.

[142] Looking at the situation from yet another angle, the Respondent submitted ample evidence showing that some of the R&D expenditures were not actually incurred in 1989, 1990 or 1991. For example, I am satisfied that the following alleged expenditures were never incurred:[45]

(a) roughly $2,500,000 paid to Challenge SA in France in 1989;
(b) more than $1,500,000 paid to CATK in Russia in 1989;
(c) more than $700,000 paid by Mini-Robots to CATK in 1990; and
(d) more than $1,200,000 in purchases made through Pacific Master in Asia in 1991.

[143] In light of the evidence, there is no doubt that other expenditures were not R&D expenditures either.

[144] The Minister's evidence with respect to the R&D expenditures was not challenged.

[145] It is unnecessary for me to analyze the Respondent's other arguments.

---

[44] In 1989 and 1990.

[45] Without going into details, it should be noted that, in three of these four examples, the amounts claimed were apparently paid by other partnerships with which SRET or Mini-Robots had entered into contracts, directly or indirectly. These other partnerships, which claimed the expenditures in question, belonged to the promoter or his brother-in-law.

III. The ancillary arguments

[146] A great deal of evidence was submitted concerning the Minister's conduct and the parties' expectations. This Court's jurisdiction in an appeal from an assessment is limited to the question: "Does the assessment comply with the ITA?" It is therefore unnecessary for me to examine this aspect of this case.[46]

[147] However, given all the evidence submitted with regard to the Minister's conduct and the parties' expectations, I will simply make the following comments.

[148] Several of the Appellants testified that they obtained information from the CRA or the Ministère du Revenu du Québec in order to ensure that the investment was valid. However, their statements on this subject were very general. Nothing in this aspect of the evidence would lead me to conclude that the tax authorities assured the Appellants that the specific projects in question in these appeals were valid. It is possible, as one of the Appellants acknowledged, that someone told them very generally that there could be R&D investment projects giving rise to deductible losses and tax credits. This is very different from an assurance regarding the specific investments.

[149] Nothing in the evidence has satisfied me that the ancillary arguments were justified in fact or in law.[47] I would add that the evidence shows that the Respondent made determined and reasonable efforts to settle the disputes.

IV. Conclusion

[150] I have a lot of sympathy for the Appellants. I have no doubt that, at the time that they invested, they believed these were valid tax shelters. Their situation is regrettable, but the Minister is not the source of their problems.

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[46] See *Lassonde v. Canada*, 2005 FCA 323, at paragraph 3:

> This appeal must certainly be dismissed, if only on the basis of a lack of jurisdiction. A few weeks before the decision by Lamarre Proulx J. and in the months that followed, our Court pointed out on a number of occasions that the jurisdiction of the Tax Court of Canada, in the context of the appeal of an assessment, is limited to deciding whether the assessment complies with the law, based on the facts and the applicable legislation (see *Milliron v. Canada*, 2003 FCA 283; *Sinclair v. Canada*, 2003 FCA 348; *Webster v. Canada*, 2003 FCA 388 and *Main Rehabilitation Co. v. Canada*, 2004 FCA 403.)

See also *Simard v. The Queen*, 2007 TCC 540, at paragraphs 294-344.

[47] In particular, I would note that nothing in the evidence warrants a finding that the issuance of a tax shelter identification number guarantees that the investor is entitled to the loss deduction and credits in question. It is very clear that the number is for administrative purposes only, as stated on certain forms.

[151] For the above reasons, the appeals will be dismissed, without costs.

Signed at Ottawa, Canada, this 13th day of July 2009.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 8th day of October 2009.

Brian McCordick, Translator

APPENDIX A

Appellant	Year of investment in issue	Partnership
Brassard	1990 and 1991	Mini-Robots
Succession Nadeau	1989	SRET
Chartré	1992	Mini-Robots
St-Pierre	1989	SRET
Lafontaine	1989	SRET
Gamache*	1989	SRET
Ménard	1989	SRET
Beauregard	1990 and 1991	Mini-Robots
Sahapoglu-Forest	1989	SRET
Sahapoglu-Forest	1992	Mini-Robots
Toutounji	1992	Mini-Robots

*The appeal also pertains to the years 1990 and 1991 because Mr. Gamache's reassessment affected his 1990 and 1991 taxation years.

APPENDIX B

. . .

[TRANSLATION]

You must participate in the preparation of your personal-library laser disc in the same way you would guide a contractor who builds your house by giving him your advice, suggestions and plans.

Please answer these questions as precisely as possible. Your answers will make it possible to plan and arrange the available space on the disc, place your information as methodically as possible, and to create a computerized system that will locate and call up the relevant information as quickly as possible.

DOES YOUR LIBRARY CONTAIN BOOKS IN THE FOLLOWING LANGUAGE?

(A) FRENCH
(B) ENGLISH
(C) SPANISH
(D) OTHER (PLEASE SPECIFY) ……..

HOW MANY PAGES DOES YOUR AVERAGE BOOK CONTAIN?

(A) 150 PAGES
(B) 200 PAGES
(C) 250 PAGES
(D) 300 PAGES
(E) 350 PAGES
(F) 400 PAGES
(G) 450 PAGES

DO YOUR BOOKS HAVE ILLUSTRATIONS, DRAWINGS OR PHOTOGRAPHS?

(A) 10% OF MY BOOKS CONTAIN ILLUSTRATIONS
(B) 20%
(C) 30%
(D) 40%
(E) 50%
(F) 60%
(G) 70%
(H) 80%
(I) 90%
(J) 100%

DO YOUR BOOKS HAVE COLOUR ILLUSTRATIONS?

(A) 10% ARE IN COLOUR
(B) 20%
(C) 30%
(D) 40%
(E) 50%
(F) 60%
(G) 70%
(H) 80%
(I) 90%
(J) 100%

WHAT PERCENTAGE OF YOUR BOOKS ARE...

(A) Small (less than 5 inches high) ……...%
(B) Medium-sized (5-10 inches high) ……...%
(C) Large (more than 10 inches high) ……...%

WHAT PERCENTAGE OF YOUR BOOKS ARE...

(A) Novels ……%
(B) Educational (history, arts, literature) ……%
(C) Specialized (law, fishing, cookbooks, etc.) ……%

OF THE CATEGORIES YOU MENTIONED, PLEASE STATE, IN PERCENTAGE TERMS, WHICH ONES YOU CONSULT MOST FREQUENTLY AND LEAST FREQUENTLY.

(A) I read novels ……...% of the time.
(B) I read educational books ……...% of the time.
(C) I read specialized books ……...% of the time.

DO YOU HAVE DICTIONARIES OR ENCYCLOPEDIAS?

(A) DICTIONARY. Number of pages: ……...
(B) ENCYCLOPEDIA. Number of pages: ……...

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CITATION:	2009 TCC 363
COURT FILE NOS.:	96-2936(IT)I, 2004-181(IT)I, 2002-2520(IT)I, 96-3516(IT)I, 96-3127(IT)I, 96-3142(IT)I, 96-3144(IT)I, 96-3489(IT)I, 97-98(IT)I and 96-3056(IT)I, 96-3289(IT)I and 96-3257(IT)I
STYLES OF CAUSE:	CLAUDE MÉNARD, MARCEL BEAUREGARD, JEAN-PIERRE GAMACHE, MANON CHARTRÉ, SUCCESSION JEAN NADEAU, JEAN ST-PIERRE, PAUL LAFONTAINE, SELIM TOUTOUNJI, MARION SAHAPOGLU-FOREST and GILLES BRASSARD v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montréal, Quebec
DATES OF HEARING:	September 4 to September 21, 2007
REASONS FOR JUDGMENT BY:	The Honourable Justice Gaston Jorré
DATE OF JUDGMENT:	July 13, 2009

APPEARANCES:

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COUNSEL OF RECORD:

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