Docket: 2011-1434(IT)I

BETWEEN:

MARIA SICURELLA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on January 21, 2013, at Montréal, Quebec.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Agent for the appellant:	Stéphane Coutlee
Counsel for the respondent:	Christina Ham

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2007 and 2008 taxation years are dismissed, in accordance with attached Reasons for Judgment.

Signed at Kingston, Ontario, this 11th day of March 2013.

"Rommel G. Masse"

Masse D.J.

Translation certified true
on this 26th day of April 2013
Daniela Guglietta, Translator

Citation: 2013 TCC 79
Date: 20130311
Docket: 2011-1434(IT)I

BETWEEN:

MARIA SICURELLA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Masse D.J.

[1] This is an appeal from two assessments made under the *Income Tax Act*, R.S.C., 1985, 5th Supp., c. 1, as amended (the Act) against the appellant, for the 2007 and 2008 taxation years. The assessments were confirmed by a decision on the objection rendered on March 2, 2011. Hence this appeal.

Factual background

[2] The appellant is a widow residing at 7385 Cartier Street, in Montréal. Her husband, Francesco Sicurella, passed away in 1993. On February 28, 1968, the appellant's husband purchased the building located at 7385 Cartier Street in Montréal for $85,000. The building was a multiresidential rental property consisting of seven units. Following the death of Mr. Sicurella in 1993, the appellant became the sole owner of the building. She lives in one of the units as her principal residence. That building is the subject of this dispute. The issue is whether the Minister of National

Revenue (the Minister) properly calculated the *Capital Cost Allowance* (CCA) of the building for the relevant years.

[3] The appellant claimed $11,065 as a CCA for 2007 and the same amount for 2008. The Minister issued assessments in respect of those two years disallowing a deduction of $6,398 for 2007 and $6,585 for 2008. Those two amounts were added to the appellant's income for those two years. The appellant challenges the Minister's decision to disallow the capital cost allowances.

[4] This dispute originated in 1994. In April 1995, the appellant elected to report a capital gain on property owned at the end of February 22, 1994, and to that end, she completed Form T664 (see Exhibit I-2). This enabled the appellant to maximize her capital gain exemption before the federal government abolished the exemption. The appellant was entitled to designate as proceeds of disposition any amount between the acquisition cost of the property and the *fair market value* (FMV) of the property. By the T664 election, the appellant designated the amount of $262,500 as the FMV of the property and as the designated proceeds of disposition. Also, she designated the amount of $131,250 as *adjusted cost base* (ACB). Unfortunately, the amounts indicated by the appellant in her T664 election would have unexpected consequences in respect of the capital cost allowance of the property.

[5] Giovanni Sicurella, age 46, is the appellant's son. He testified that his father purchased the building in 1968 for $85,000. From 1968 to 1994, the father did significant renovations and improvements to the building. According to Mr. Sicurella, those capital expenditures were in the tens of thousands of dollars. Unfortunately, he was unable to find any documentation to establish the amount of those expenses. Therefore, he hired a construction contractor to provide an estimate of the capital costs that may have been incurred during that period of time. Exhibit A-2, dated April 17, 2011, is the estimate prepared for Mr. Sicurella. According to him, that document shows that, between 1968 and 1994, significant renovations valued at approximately $140,300 were made to the building, and therefore, the FMV and the ACB of the building in 1994 should reflect the capital cost expenses. However, those estimates were not accepted by the Minister. Therefore, Mr. Sicurella decided to hire an accredited appraiser, Nicholas St-Cyr, to determine the FMV of the building in 1994.

[6] Mr. St-Cyr, a very seasoned appraiser, described to us the appraisal methods he used to reach his conclusions. He prepared a very detailed report, which was filed with the Court as Exhibit A-1. Mr. St-Cyr used three appraisal methods: the cost method, the comparison method and the income method. Mr. St-Cyr established the

FMV of the building on July 1, 1994, at $332,000 using the cost method, at $301,000 using the comparison method and at $244,000 using the income method. He is of the view that in this case, the comparison method is the most reliable, and therefore, that the building's most probable market value as of July 1, 1994, was $301,000. He is of the view that the land value at the time was $80,455 using a unit cost rate of $18 per square foot and a land area of 4,470 square metres. Thus, the building's value at the time would have been $220,545.

[7] According to Mr. Sicurella, when the appellant made her T664 election, the ACB of the building should have been $262,500 and the FMV should have been $301,000 instead of the amounts indicated in Exhibit I-2. Today, he is attempting to correct those errors and re-establish the FMV and the ACB to their real values.

[8] Dorothy Sanon works for the Canada Revenue Agency as an appeals officer. She handled the file when the appellant objected to the assessment disallowing the capital cost allowance for 2007 and 2008. Ms. Sanon testified that in order to determine the amount of the capital cost allowance, one must start with the *undepreciated capital cost* (UCC). However, there was a dearth of information in that regard for the building prior to 2003. Thus, Ms. Sanon decided that it would be reasonable to use the amount that the appellant herself had reported in her T664 election. Ms. Sanon assumed that when the appellant made her T664 election in 1994, all work and capital expenses prior to 1994 had already been included. Ms. Sanon therefore calculated the UCC of the building to be $84,164 in 2003. In making that calculation, she took as a starting point the ACB of $131,250 as indicated by the appellant in her T664 election. From that amount, she subtracted the amount of $19,031, representing the land value as established using the appraisal of the City of Montréal for 1971 ($131,250 x 14.5 % = $19,031) as well as the amount of $28,055, which represents 25% for use as the appellant's principal residence ($131,250 - $19,031) x 25% = $28,055). The result of that calculation is an UCC of $84,164. The CCA for 2007 and 2008 is based on the UCC, the property class and the rate applicable to that class (Class 1 — 4% for a building).

[9] The calculations supporting the assessments are found in Exhibits I-3 and I-4, which are reproduced as Annex "A" and "B", respectively.

The appellant's position

[10] The appellant submits that the assessment made against her should be vacated as the ACB of the building used by the Minister to calculate the capital cost

allowance is too low and does not reflect either the real UCC or the real ACB of the building. When the appellant filled out Form T664, a few errors occurred as to the amounts indicated despite the fact that said amounts were provided by the appellant. The appellant only wishes to correct the errors she made in 1994 with respect to the FMV and the ACB despite the fact that 13 years have elapsed. The appellant took the time to hire an accredited appraiser who provided insight through his professional opinion that the FMV of the building in 1994 was $301,000 and not $262,500. The appellant submits that the ACB indicated in the T664 election should have been $262,500 instead of $131,250, which would have given a result of $168,328 as the UCC instead of $84,164. Significant improvements were made to the building, and therefore, it is just and equitable that the ACB and the UCC reflect said improvements.

The respondent's position

[11] The respondent submits that the FMV of the building and the appraisal that was prepared by Mr. St-Cyr have no bearing on this matter. In the case at bar, the issue is merely the calculation of the CCA, which is obtained from the calculation of the UCC and not the FMV of the property. The Minister claims that he was correct in relying on the ACB indicated in the appellant's T664 election (Exhibit I-2) as the starting point for the calculation of the capital cost allowance. There was a lack of data prior to 2003 which made it impossible to verify the capital expenses that were incurred prior to 2003. Neither the respondent nor the appellant was able to provide information about the various tax attributes of the building. Thus, a starting point was necessary, and the most reliable that was made available to the respondent by the appellant herself was the ACB indicated in the T664 election. It is the appellant who chose the ACB in her T664 election and the Minister was justified in relying on that amount and calculate the capital cost allowance based on that amount.

[12] In the circumstances of this case, the Minister can rightfully rely on the amounts indicated in the appellant's T664 election to establish the UCC of the building. The respondent therefore submits that the assessments are well-founded and, accordingly, the appeal must be dismissed.

Statutory provisions

[13] The relevant provisions involving paragraph 13(7)(*e*) and subsection 110.6(19) of the Act are as follows:

. . .

(*e*) notwithstanding any other provision of this Act except subsection 70(13), where at a particular time a person or partnership (in this paragraph referred to as the "taxpayer") has, directly or indirectly, in any manner whatever, acquired (otherwise than as a consequence of the death of the transferor) a depreciable property (other than a timber resource property) of a prescribed class from a person or partnership with whom the taxpayer did not deal at arm's length (in this paragraph referred to as the "transferor") and, immediately before the transfer, the property was a capital property of the transferor,

(i) where the transferor was an individual resident in Canada or a partnership any member of which was either an individual resident in Canada or another partnership and the cost of the property to the taxpayer at the particular time determined without reference to this paragraph exceeds the cost, or where the property was depreciable property, the capital cost of the property to the transferor immediately before the transferor disposed of it, the capital cost of the property to the taxpayer at the particular time shall be deemed to be the amount that is equal to the total of

(A) the cost or capital cost, as the case may be, of the property to the transferor immediately before the particular time, and

(B) 1/2 of the amount, if any, by which

(I) the transferor's proceeds of disposition of the property

exceed the total of

(II) the cost or capital cost, as the case may be, to the transferor immediately before the particular time,

(III) twice the amount deducted by any person under section 110.6 in respect of the amount, if any, by which the amount determined under subclause 13(7)(*e*)(i)(B)(I) exceeds the amount determined under subclause 13(7)(*e*)(i)(B)(II), and

(IV) the amount, if any, required by subsection 110.6(21) to be deducted in computing the capital cost to the taxpayer of the property at that time

and for the purposes of paragraph 13(7)(b) and subparagraph 13(7)(d)(i), the cost of the property to the taxpayer shall be deemed to be the same amount,

. . .

(iii) where the cost or capital cost, as the case may be, of the property to the transferor immediately before the transferor disposed of it exceeds the capital cost of the property to the taxpayer at that time determined without reference to this paragraph, the capital cost of the property to the taxpayer at that time shall be deemed to be the amount that was the cost or capital cost, as the case may be, of the property to the transferor immediately before the transferor disposed of it and the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph 20(1)(*a*) in computing the taxpayer's income for taxation years ending before the acquisition of the property by the taxpayer;

(*e.1*) where a taxpayer is deemed by paragraph 110.6(19)(*a*) to have disposed of and reacquired a property that immediately before the disposition was a depreciable property, the taxpayer shall be deemed to have acquired the property from himself, herself or itself and, in so having acquired the property, not to have been dealing with himself, herself or itself at arm's length;

Election for property owned on February 22, 1994

110.6(19) Subject to subsection 110.6(20), where an individual (other than a trust) or a personal trust (each of which is referred to in this subsection and subsections 110.6(20) to 110.6(29) as the "elector"), elects in prescribed form to have the provisions of this subsection apply in respect of

(*a*) a capital property … owned at the end of February 22, 1994 by the elector… the property shall be deemed … :

(i) to have been disposed of by the elector at that time for proceeds of disposition equal to the greater of

(A) the amount determined by the formula

A – B

where

A
is the amount designated in respect of the property in the election, and
B
is the amount, if any, that would, if the disposition were a disposition for the purpose of section 7 or 35, be included under that section as a result of the disposition in computing the income of the elector, and

(B) the adjusted cost base to the elector of the property immediately before the disposition, and

(ii) to have been reacquired by the elector immediately after that time at a cost equal to

. . .

(C) in any other case, the lesser of

(I) the designated amount, and

. . .

(24) An election made under subsection 110.6(19) shall be filed with the Minister

(*a*) where the elector is an individual (other than a trust),

(i) if the election is in respect of a business of the elector, on or before the individual's filing-due date for the taxation year in which the fiscal period of the business that includes February 22, 1994 ends, and

(ii) in any other case, on or before the individual's balance-due day for the 1994 taxation year; and

. . .

(25) Subject to subsection 110.6(28), an elector may revoke an election made under subsection 110.6(19) by filing a written notice of the revocation with the Minister before 1998.

(26) Where an election made under subsection 110.6(19) is filed with the Minister after the day (referred to in this subsection and subsections 110.6(27) and 110.6(29) as the "election filing date") on or before which the election is required by subsection 110.6(24) to have been filed and on or before the day that is 2 years after the election filing date, the election shall be deemed for the purposes of this section (other than subsection 110.6(29)) to have been filed on the election filing date if an estimate of the penalty in respect of the election is paid by the elector when the election is filed with the Minister.

(27) Subject to subsection 110.6(28), an election under subsection 110.6(19) in respect of a property or a business is deemed to be amended and the election, as amended, is deemed for the purpose of this section (other than subsection 110.6(29)) to have been filed on the election filing date if

(*a*) an amended election in prescribed form in respect of the property or the business is filed with the Minister before 1998; and

(*b*) an estimate of the penalty, if any, in respect of the amended election is paid by the elector when the amended election is filed with the Minister.

(28) [Election that cannot be revoked or amended in certain cases]

(29) [Penalty in respect of an election to which subsection 110.6(26) or 110.6(27) applies]

The *Income Tax Regulations*, C.R.C., 1978, c. 945, stipulate as follows:

PART XI
CAPITAL COST ALLOWANCES

Section I
Deductions allowed

1100. (1) For the purposes of paragraphs 8(1)(*j*) and (*p*) and 20(1)(*a*) of the Act, the following deductions are allowed in computing a taxpayer's income for each taxation year:

(*a*) subject to subsection (2), such amount as the taxpayer may claim in respect of property of each of the following classes in Schedule II not exceeding in respect of property

(i) of Class 1, 4 per cent,

. . .

DIVISION III
PROPERTY RULES

Property Not Included

1102. (1) The classes of property described in this Part and in Schedule II shall be deemed not to include property

. . .

Land

(2) The classes of property described in Schedule II shall be deemed not to include the land upon which a property described therein was constructed or is situated.

SCHEDULE II

(ss. 215, 700, 700(1), 1100 to 1105, 1205, 1206, 1700, 1704, 3900, 4600, 4601, 5202 and 5204)

Capital Cost Allowances

CLASS 1
(4 per cent)

Property not included in any other class that is

. . .

(*q*) a building or other structure, or a part of it, including any component parts such as electric wiring, plumbing, sprinkler systems, air-conditioning equipment, heating equipment, lighting fixtures, elevators and escalators …

Analysis

[14] It is clear that the statutory provisions that apply in this case are very complex sand difficult to interpret. In ruling on the merits of this case, it is important not to confuse the principles that apply to the capital gains exemption with the principles governing the capital cost allowance calculation.

Capital gains exemption

[15] With respect to the capital gains exemption, as provided for in section 110.6, it is appropriate to learn a bit about the history of capital gains taxation. Judge Lamarre-Proulx provided us with a very brief overview in her reasons for decision in *Foisy v. The Queen*, 2000 CanLII 431 (TCC). She stated as follows in paragraphs 17 et seq.:

> [17] Before 1972, capital gains were not subject to income tax. In 1967, the report of the Royal Commission on Taxation, known as the Carter Commission, recommended that such gains be taxable in the same way as business earnings. In 1969, the White Paper on Taxation recommended the full taxation of capital gains with the exception of those on shares of Canadian public corporations, which would be taxed at 50 percent. The *Income Tax Act* that came into force on January 1, 1972, provided for a 50 percent tax rate for capital gains.

> [18] In 1985, the Act was amended to give individuals a cumulative capital gains exemption that could progressively reach $500,000. That exemption increased gradually: thus, the limit was $20,000 in 1985, $50,000 in 1986 and $100,000 in 1987. It was then supposed to increase by $100,000 each year until it reached a final limit of $500,000 in 1990.
>
> [19] The exemption was said to be cumulative because it was necessary to accumulate the exemptions taken throughout an individual's life. Any exemption amount used in a previous year reduced the available exemption limit.
>
> [20] The increase in the exemption limit stopped at $100,000 in 1987 with the tax reform of that year. The same reform provided that the taxable portion of capital gains would rise to 66 2/3 percent in 1988 and 75 percent starting in 1990. The $100,000 exemption ended in 1994. (The federal budget of February 28, 2000, contains a proposal to bring the inclusion rate for capital gains realized after February 27, 2000, down to two thirds.)
>
> [21] The end to the increase in the tax exemption limit that occurred in 1988 did not apply to qualified farm property or qualified small business corporation shares. For them, the exemption reached its final limit in 1990 and did not end in 1994.
>
> [22] When the $100,000 exemption was repealed in 1994, subsection 110.6(19) of the Act enabled individuals to make an election by which capital property would be deemed to be disposed of on February 22, 1994, and repurchased at its fair market value or some lower value. The elected value became the property's adjusted cost base. The election had to be made within the time set out in subsection 110.6(24) of the Act.

[16] Subsection 110.6(19) of the Act makes it possible for a taxpayer to elect to use the amount remaining from the cumulative capital gains exemption to prevent the exemption from being lost forever. The taxpayer, through the T664 election, designates a capital property and elects a value for said property. According to the statutory provisions, the taxpayer is deemed to have disposed of the designated property and to have reacquired it for the elected value. Any gain on the deemed disposition will result in a taxable capital gain that could be offset by the amount remaining to the taxpayer as cumulative exemption. In future, when there is a disposition of or sale the property, the gain at that time will be offset against the elected amount, rather than the original cost and the future gain. This will result in a reduction of tax payable from the eventual sale of the property.

[17] In the present case, the appellant had could elect as designated proceeds of disposition any amount that did not exceed the FMV of the building. That allowed her to report a capital gain in order to benefit from the $100,000 capital gains exemption before the federal government abolished the exemption. The appellant’s

election had the effect of maximizing the benefit of the exemption. It cannot be said that she made a bad choice in that regard.

[18] It is important to note that these statutory provisions affect only the capital gains calculation and not the depreciation of the property. The amount designated by the taxpayer as proceeds of disposition (and therefore the new cost of acquisition of the property) in the T664 election is very important in calculating the capital gain when the property is sold at a later date, but that amount is not significant when calculating the capital cost allowance of the property.

Capital cost allowance calculation

[19] With respect to capital cost allowances of a property, various considerations apply. By the application of subsection 110.6(11), the appellant is deemed to have dealt with herself, meaning that the transaction is considered as having been carried out with a person who is not at arm's length to the appellant. Paragraphs 13(7)(*e*) and (*e.1*) determine the capital cost for a taxpayer of the property acquired from a related person. By application of those provisions, the purchaser's cost corresponds to the seller's cost increased by the non-exempt taxable capital gain. Thus, the cost for the appellant is the ACB of the depreciable property, which she indicated in her T664 election as being $131,250. For these very reasons, the UCC before the deemed transfer is the same as the UCC following the deemed transfer. The Minister's calculation was based on the appellant's election and on the information provided by her.

[20] I am of the view that the Minister was correct in relying on the ACB as indicated in the appellant's T664 election. The ACB is a very important piece of information. It is up to the taxpayer to ensure that the capital costs attributable to a depreciable property are properly accounted for. As stated by Justice Campbell in *Estate of Lily Bullard v. The Queen*, 2004 TCC 294 (CanLII):

> [34] … The taxpayer's choice of the ACB figure is a vital piece of information on this form. This is information that the taxpayer has, not the Minister, and it is up to the taxpayer to ensure that the correct amount is obtained and included on the form.
>
> [35] … a taxpayer is electing a capital gain against which a capital gain's deduction may be applied. … It is simply a logical deduction to conclude that a taxpayer must be vigilant that the correct ACB is included on the form so that the Minister is not left to second-guess the tax treatment chosen by the taxpayer.

[21] Accordingly, the Minister was justified in considering the ACB indicated by the appellant in her T664 election as the starting point for calculating the UCC and, therefore, the CCA of the property for 2007 and 2008.

Conclusion

[22] I am of the view that the Minister was correct in taking the ACB indicated by the appellant in her T664 election as a starting point to calculate the capital cost allowance for 2007 and 2008. Furthermore, given the lack of information as to the various tax attributes of the building between 1994 and 2003, the Minister acted reasonably in ignoring all the capital cost allowance that may have been taken during that period of time, which is to the appellant's benefit. The capital cost allowance calculations for 2007 and 2008, which are included in Exhibits I-3 and I-4, are therefore reasonable and fair, and the appellant did not show on a balance of probabilities that the Minister erred in taking the ACB indicated by the appellant in her T664 election as a starting point.

[23] For these reasons, the appeal is dismissed.

Signed at Kingston, Ontario, this 11th day of March 2013.

"Rommel G. Masse"

Masse D.J.

Translation certified true
on this 26th day of April 2013
Daniela Guglietta, Translator

I-3
I-3

TAX COURT OF CANADA
COUR CANADIENNE DE L'IMPÔT

NAME / NOM	Maria C. Sicurella SMR	EXHIBIT / PIÈCE
		I-4
DATE:	21 Janvier 2013	
	Pierre Pimagis	
COURT REGISTRAR - GREFFIER DE LA COUR		
N°	2011 - 1434 (IT) I	

Maria Sicurella
building located to: 7385 rue Cartier, Montreal, Qc

CAPITAL COST ALLOWANCE SCHEDULE
(BUILDING)

CLASS 1

Taxation year	2 Undepreciated capital cost at the beginning of the year	3 Cost of acquisitions during the year	4 Proceeds of disposition during the year	5 Undepreciated capital cost after acquisitions and dispositions (Col. 2 + 3 - 4)	6 Adjustments for current-year acquisitions ½x(Col. 3 - 4), if negative, write nil	7 Base amount for capital cost allowance claim (Col. 5 - 6)	8 Rate %	9 Capital cost allowance for the year (Col. 7 x 8, or a lesser amount)	10 Undepreciated capital cost at the end of the year (Col. 5 - 9)	Deducted	Difference	Cumul changes
2003	84 164			84 164		84 164	4%	10 502	73 662	10 502		
2004	73 662			73 662		73 662	4%	10 082	63 580	10 082		
2005	63 580			63 580		63 580	4%	9 679	53 901	9 679		
2006	53 901	60 026		113 927	30 013	83 914	4%	11 693	102 234	11 693		
2007	102 234	14 441		116 675	7 221	109 455	4%	4 667	112 008	11 065	**6 398**	
2008	112 008			112 008		112 008	4%	4 480	107 528	11 065	**6 585**	**12983**
2009	**107 528**						4%					

Reference :

1) As available information, our file shows that you did not deduct the land in your calculation of the capital cost allowance as it is specified in the Reglement 1102(2) of the Revenue income law.
You can also see the information in the Rental income guide on page 17 "land" where it is mentioned
"Land is not depreciable property. Therefore, you cannot claim CCA on its cost. If you acquire a rental property that includes both land and a building, enter in Column 3 of Area C on the cost of the building."

The amount of 107 528 $ is the new UCC you will have to use in the future.

ANNEX A

ANNEX B

Table – CCA used versus CCA allowable
Your property located at 7385 Cartier Street, Montréal, Quebec

The document that you provided, the City of Montréal's assessment for 1971, was used to determine the percentage of land and building.
Since you state that you do not have all the information from the time of acquisition of the property to the time of the election in 1994, it is deemed reasonable to use the value of the ACB reported in 1994 to determine the breakdown between land and building. Therefore, the starting point is $131,250 rather than the purchase price of $85,000.
Also, please note that the adjusted cost base (for CCA) is always calculated on the building's value at the time of purchase of the property and not on the value identified in the municipal assessment.

land:	$19,031	14.5%
building:	$112,219	85.5%
Total:	$131,250	100%

Part of the building eligible for CCA: $112,219 less 25% principal residence
$112,219 - $28,055 = **$84,164**

	YOUR DATA	**CANADA REVENUE AGENCY DATA**	**DIFFERENCE**	**NOTE**
UCC at the beginning of 2003	$262,550	$84,164		(1)
Less CCA 2003	$10,502	$10,502		
UCC as of 31-12-2003	$252,048	$73,622		
Less CCA 2004	$10,082	$10,082		
UCC as of 31-12-2004	$241,966	$63,580		
Less CCA 2005	$9,679	$9,679		
UCC as of 31-12-2005	$232,287	$53,901		
Plus acquisitions 2006	$60,026	$60,026		
	$292,313	$113,927		
Less CCA 2006	$11,693	$11,693		
UCC as of 31-12-2006	$280,620	$102,234		
Plus acquisitions 2007	$14,441	$14,441		
	$295,061	$116,675		
Less CCA 2007	$11,065	$4,667	$6,398	(2)
UCC as of 31-12-2007	$283,996	$112,008		
Less CCA 2008	$11,065	$4,480	$6,585	(2)
UCC as of 31-12-2008	$272,931	$107,528		(3)

(1) The corrected amount is based on the value of the UCC at the beginning of 2003 (as per the information provided) less the value of the land (14.5%) based on the assessment of the City available for 1971 less the portion of 25% as the principal residence. The land is not a depreciable property in accordance with section 1102(2) of the Income Tax Regulations.

(2) The capital cost allowance has been revised based on the UCC available and the class and the rate applicable to said class. The 2007 and 2008 tax returns will be amended to take into account the CCA allowable. The overclaimed amount for the CCA will be added to your net rental income of the year concerned.

(3) $107,528 is the UCC that you should use in future years for all CCA calculations. Please refer to the attached Schedule for details.

Rental Expenses
Revised Net Rental Income Schedule

Year	CCA reported in your income tax returns	CCA allowed Class 1 4% rate	Difference Addition to your net rental income	Note
2007	$11,065	$4,667	$6,398	1
2008	$11,065	$4,480	$4,585	1

Note 1:

Please refer to the attached Schedule for the allowable CCA calculation.

CITATION:	2013 TCC 79
COURT FILE NO.:	2011-1434(IT)I
STYLE OF CAUSE:	MARIA SICURELLA v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	January 21, 2013
REASONS FOR JUDGMENT BY:	The Honourable Rommel G. Masse, Deputy Judge
DATE OF JUDGMENT:	March 11, 2013

APPEARANCES:

Agent for the appellant:	Stéphane Coutlee
Counsel for the respondent:	Christina Ham

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada