

Docket: 2006-1318(IT)I

BETWEEN:

CARMINE DI FRUSCIA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 11, 2007, at Montreal Quebec.

Before: The Honourable Associate Chief Justice Gerald J. Rip

Appearances:

Counsel for the Appellant: Sophie Lauzon
Counsel for the Respondent: Marie-Aimée Cantin

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 1999 taxation year is allowed, without costs and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment to add the amounts of \$6,087.00, \$2,911.72 and \$1,000.00, that is, \$9,998.72, to the capital cost of the property in issue.

Signed at Ottawa, Canada, this 5th day of June 2007.

"Gerald J. Rip"

Rip A.C.J.

Citation: 2007TCC310
Date : 20070605
Docket: 2006-1318(IT)I

BETWEEN:

CARMINE DI FRUSCIA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Rip A.C.J.

[1] Carmine Di Fruscia appeals from an income tax assessment for 1999 in which the Minister of National Revenue ("Minister") denied his claim for a capital gain of \$10,000 on the disposition of a building on Jean Talon Est in Montreal. The Minister assessed on the basis that the appellant's capital gain on the disposition was \$42,480.

[2] The building had been used as a garage. It was built in the early 1960s and required substantial renovations when acquired by the appellant.

[3] The appellant and another person purchased the property for \$235,000 in 1995. While the purchase price was \$235,000, the City of Montreal valued the property at about \$450,000, according to Mr. Di Fruscia. He stated the building was in a bad state and that was the reason for the lower price. He calculated his capital gain by adding \$35,000 of "capital expenditures" to the cost and deducted the \$270,000 from his proceeds of sale, \$280,000. The Minister, on reassessing, allowed only \$513 as capital expenses and increased the capital gain to \$44,487. At the objection stage, the Minister allowed an additional amount of \$2,007 to capital cost and reduced the capital gain to \$42,480.

[4] The dispute between the parties is whether, prior to disposition, the appellant incurred expenses on account of income or capital.

[5] The expenditures in issue are the following:

Replacement of a furnace and burner	\$ 2,911.72
Garage floor repairs	\$ 3,304.70
Replace brick on exterior wall of building	\$19,324.00
Transfer tax on purchase of building	\$ 6,087.00
Notary expenses	not known

[6] The expenditure of \$6,087 was a "transfer fee", a tax payable by the purchaser of a building when title is transferred. This is surely a capital expenditure. Respondent's counsel conceded this in argument.

[7] My colleague Lamarre Proulx J. reviewed in depth the distinction between capital and current expenses when a building is being renovated: *Bergeron et al. c. M.R.N.*¹

[8] In *M.N.R. v. Vancouver Tug Boat Company Limited*,² the Exchequer Court held that the replacements of a boat engine and of the engine for a power shovel were capital expenditures. The Supreme Court of Canada held that the acquisition of stoves and refrigerators were not repairs but replacements and thus capital outlays: *M.N.R. v. Haddon Hall Realty Inc.*³ At the case at bar, the purchase of a new furnace was also the purchase of a capital asset. The new furnace replaced the old furnace, but without a new furnace the use and enjoyment of the building would be affected. A new asset was acquired.

[9] The repair of a floor is a current expense. There is no addition of an asset. An old asset, because of its use, has been repaired.⁴ Similarly, the replacement of bricks to the exterior wall of a building is a repair. No wall is being replaced. Old, damaged brick has been replaced by new bricks to make the building suitable for normal use.⁵

¹ 90 DTC 1505, at pp. 1508-1511.

² 57 DTC 1126.

³ 62 DTC 1001.

⁴ See *Canada Steamship Lines Limited v. M.N.R.*, 66 DTC 5205, at 5207, per Jackett P.

⁵ *Gold Bar Developments Ltd. v. Canada*, 87 DTC 5152 (FCJ).

[10] Unfortunately, there is no evidence as to what fees were charged by the notary on the appellant's acquisition of the property. The appellant estimates notarial fees to have been between \$2,000 and \$3,000. An amount, no doubt, was charged and such an amount would be a capital expense. There is no doubt that notarial fees were paid and I am inclined to allow notarial fees of \$1,000 as a capital expenditure.

[11] I shall therefore allow the appeal and refer the matter back to the Minister for reconsideration and reassessment to add the amounts of \$6,087.00, \$2,911.72 and \$1,000.00, that is, \$9,998.72, to the capital cost of the property. The appellant shall not be entitled to costs.

Signed at Ottawa, Canada, this 5th day of June 2007.

"Gerald J. Rip"

Rip A.C.J.

CITATION: 2007TCC310

COURT FILE NO.: 2006-1318(IT)I

STYLE OF CAUSE: CARMINE DI FRUSCIA v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Montreal Quebec

DATE OF HEARING: April 11, 2007

REASONS FOR JUDGMENT BY: The Honourable Associate Chief Justice
Gerald J. Rip

DATE OF JUDGMENT: June 5, 2007

APPEARANCES:

Counsel for the Appellant : Sophie Lauzon
Counsel for the Respondent: Marie-Aimée Cantin

COUNSEL OF RECORD:

For the Appellant:

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Firm:

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