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INCOME TAX

ASSESSMENT AND REASSESSMENT

Appeal from Tax Court of Canada decision (2022 TCC 134) allowing certain proposed amendments to reply filed by Crown to include following alternative argument or basis: if appellant is successful in challenging denial of capital cost allowance (CCA), appellant's appeal to Tax Court should still be dismissed on basis that appellant should not have been allowed to claim full amount of cost of goods sold that was allowed by Minister of National Revenue (Minister) — In its 2015 income tax return, appellant TPine Leasing Capital Corporation claimed deduction for cost of goods sold, deduction for CCA — Initial assessment issued by Minister was based on both deductions being allowed — Appellant was subsequently reassessed to deny deduction for CCA, penalty under *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1, s. 163(2) also assessed — In Minister's view, assets included in Class 10, Class 16 (trucks, trailers) on which CCA was claimed included same equipment that appellant had sold (cost of which was deducted as cost of goods sold) — Appellant is in business of loan, equipment financing, also in sale of lease receivables, equipment — In initially assessing appellant's 2015 taxation year in June 2016, Minister allowed deduction for CCA claimed in amount of $5,887,282, based on assumption that certain assets were owned by appellant at end of its taxation year — Additional deduction of $17,604,192 for cost of goods sold (in relation to same equipment on which Minister alleged CCA was claimed) was also allowed — Appellant was subsequently reassessed in June 2019 — While number of adjustments were made, only relevant adjustment in present matter was denial of CCA deduction; no adjustment made to cost of goods sold claimed by appellant — It was Minister's view that these two amounts were claimed in relation to same assets — Whether amount claimed for cost of goods sold was for same assets on which amount was claimed for CCA was matter to be determined by Tax Court — Appellant filed appeal with Tax Court, was subsequently reassessed in November 2020 — Filed amended notice of appeal, and Crown filed reply — Crown then brought motion to amend reply — Tax Court Judge found that proposed amendments to some paragraphs of reply simply clarified assessing history, that new paragraph 40(c.1) of reply corrected amount that Minister had allowed as cost of goods sold — Paragraph 42 was revised to include additional references to statutory provisions — Also allowed were new paragraphs setting out alternative argument that if appellant continued to own equipment in issue, its appeal should still be dismissed because amount allowed as deduction for cost of goods sold exceeded amount denied as deduction for CCA — Act, s. 152(9), which was in issue in this appeal, allows Minister to advance alternative argument or basis in support of assessment — S. 152(9) was added to Act in 1999, was amended in 2016 — Issue was whether Act, s. 152(9) allows Minister to rely on following alternative argument or basis: if appellant is successful in challenging denial of amount claimed as CCA, its appeal should still be dismissed because amount that was allowed as deduction for cost of goods sold exceeded amount that was denied as deduction for CCA — There was no basis to challenge Tax Court Judge's decision to allow amendments made to paragraphs in question of Crown's reply — Proposed new paragraphs meant that if appellant successful in establishing that it was entitled to claim CCA that was denied, and if amount allowed as deduction for cost of goods sold was deduction for same equipment on which CCA was claimed, appellant's appeal would be dismissed — Amount of CCA deduction that was denied was $5,887,282 while amount that was allowed as deduction for cost of goods sold was $17,604,192 — If appellant was entitled to deduction of $5,887,282 for CCA, to keep appellant's tax

liability at same amount that was reassessed (hence dismiss appellant's appeal), it would be as if amount allowed for cost of goods sold was reduced by $5,887,282 — Minister would face two obstacles if she were to reassess appellant now to reduce appellant's amount allowed for cost of goods sold by $5,887,282 — First, Act, s. 152(5) imposing limitation on reassessments after expiration of normal reassessment period — Since appellant's 2015 taxation year was originally assessed on June 23, 2016, normal reassessment period had expired — Second, reassessment to reduce cost of goods sold by $5,887,282 would still leave deduction of $11,716,910 ($17,604,192 - $5,887,282) for cost of goods sold — Questionable whether such reduction would be defensible based on facts, law — However, Minister not seeking to reassess appellant to reduce cost of goods sold but rather to ask Tax Court to dismiss appellant's appeal in relation to CCA claimed if appellant is successful in establishing that it was entitled to deduct CCA that was denied, and if amount for cost of goods sold was claimed in relation to same assets — Changes made to Act, s. 152(9) in 2016 — Such changes would not result in any alternative argument that could have been raised, based on prior version of s. 152(9), now being unavailable — Several decisions that addressed prior version of s. 152(9) examined to determine if proposed amendments to Minister's reply would have been allowed under prior version of s. 152(9) — If so, then since the amended version of s. 152(9) of the Act does not impose any further restrictions on what alternative argument may be raised, there would be no need to consider what additional argument or basis would be permitted based on amended version of s. 152(9) — In interpreting, applying s. 152(9), Tax Court, Federal Court of Appeal have balanced Minister's right to raise alternative argument against principles that Minister cannot appeal an assessment, Minister cannot reassess after expiration of normal reassessment period, absent misstatement as contemplated by Act, s. 152(4)(a)(i) or waiver as contemplated by s. 152(4)(a)(ii) — Federal Court of Appeal has not allowed Minister to raise new argument based on transaction that did not form basis on which taxpayer was assessed — In this matter, issue was whether appellant sold particular assets on which CCA was claimed — Consequences that would flow from finding that appellant had not sold these assets are finding that claim for CCA was valid claim, that no amount should have been claimed for cost of goods sold (if it was same equipment) — Both consequences flowed from same "transaction" (retention, not sale) of same assets — Allowance of deduction for cost of goods sold in this case would not preclude Minister from making argument that no amount should have been allowed as deduction for cost of goods sold for same equipment for which claim for CCA had been denied, subject to general restriction that appellant's tax liability cannot be increased from amount as assessed — As a result, Minister would have been allowed to make this alternative argument based on prior version of s. 152(9); since amendments would not restrict Minister from making this argument, proposed amendments to reply should be allowed — Appeal dismissed.

TPINE LEASING CAPITAL CORPORATION V. CANADA (A-243-22, 2024 FCA 83, Webb J.A., reasons for judgment dated April 30, 2024, 35 pp.)