BETWEEN:

NORALTA HOTEL LIMITED ..... APPELLANT;

1954

Mar. 30, 31

April 1

AND

THE MINISTER OF NATIONAL REVENUE ..... } RESPONDENT.

Revenue—Income Tax—The Income Tax Act, S. of C. 1948, c. 52, s. 11(1)(a)—Capital cost allowances—Capital cost a question of fact—Onus on taxpayer to prove assessment erroneous in fact.

The appellant claimed capital cost allowances on its furniture and equipment based on the alleged cost of the assets at $100,000. The Minister allowed claims based on a capital cost of $35,000 and in assessing the

1954

NORALTA HOTEL LIMITED v. MINISTER OF NATIONAL REVENUE

appellant added the disallowed amounts of its claims to the amounts of taxable income reported by it. The appellant appealed from the assessment directly to this Court.

Held: That the assessments carry a statutory presumption of their validity and stand until they have been shown to be erroneous either in fact or in law. To succeed in the appeal from them the appellant must prove that the finding of the Minister on the capital cost of the depreciable property in question was erroneous. If it fails to discharge the onus of proof that the law casts on it its appeal must be dismissed.

2. That the appellant was not entitled to a larger amount on which to base its capital cost allowances than that found by the Minister.

APPEAL under The Income Tax Act.

The appeal was heard before the President of the Court at Edmonton.

E. W. Sully for appellant.

D. B. MacKenzie Q.C. and *J. D. C. Boland* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT, on the conclusion of the hearing, delivered the following judgment:

The appellant appeals directly to this Court from its income tax assessments for the taxation years ending September 30, 1950, and September 30, 1951.

In its income tax returns for these years the appellant claimed capital cost allowances on its furniture and equipment in the amounts of $11,633.98 for 1950 and $9,823.96 for 1951. The Minister allowed claims of only $5,058.15 for 1950 and $4,563.29 for 1951. He disallowed $6,578.83 for 1950 and $5,260.67 for 1951 and in re-assessing the appellant for the said years added the disallowed amounts to the amounts of taxable income reported by it in its returns.

The appellant objected to the assessments on the ground that the cost of the furniture and equipment had been $100,000 and that it was entitled to capital cost allowances based on this amount and gave notices of objection accordingly. The Minister had determined that the capital cost of the depreciable property had been $35,000 instead of

$100,000, as claimed, and disallowed the appellant's claims accordingly. In reply to its objections to the assessments he notified it as follows:

> The Honourable the Minister of National Revenue having reconsidered the assessments and having considered the facts and reasons set forth in the Notices of Objection hereby confirms the said assessments as having been made in accordance with the provisions of the Act and in particular on the ground that for the purposes of paragraph (*a*) of subsection (1) of section 11 of the Act and The Income Tax Regulations made thereunder, of the assets acquired by the taxpayer from St. Regis Hotel, Edmonton, Limited, the capital cost of the depreciable property has been correctly determined to be $35,000 at the time of purchase.

The appellant then brought its appeal to this Court.

The issue in the appeal is thus entirely one of fact. Here there is no question of a transaction not at arms length and no exercise of discretion was involved. The only matter for consideration is what was the amount of the capital cost of the depreciable property in respect of which the claims for capital cost allowances were made. The appellant alleges that it was $100,000. The Minister found that it was $35,000.

The assessments carry a statutory presumption of their validity and stand until they have been shown to be erroneous either in fact or in law. To succeed in the appeal from them the appellant must prove that the finding of the Minister that the capital cost of the depreciable property in question was $35,000 was erroneous. If it fails to discharge the onus of proof that the law casts on it its appeal must be dismissed: *vide Dezura* v. *Minister of National Revenue* (1); *Johnston* v. *Minister of National Revenue* (2); *Goldman* v. *Minister of National Revenue* (3).

In support of its contention that the capital cost of the furniture and equipment was $100,000 the appellant relied upon a conditional sale agreement between St. Regis Hotel Edmonton Limited and the appellant, dated September 17, 1946, by which it acquired the furniture and equipment in question. Prior to that date there had been negotiations between the persons who subsequently became shareholders of the appellant and St. Regis Hotel Edmonton Limited for the purchase of the contents of the St. Regis Hotel and a lease of the hotel premises. After the appellant had been

(1) [1948] Ex. C.R. 10 at 15.
(2) [1947] Ex. C.R. 483; [1948] S.C.R. 486 at 489.
(3) [1951] Ex. C.R. 274 at 281; [1953] S.C.R. 211.

1954

NORALTA HOTEL LIMITED v. MINISTER OF NATIONAL REVENUE

Thorson P.

incorporated and it had been ascertained that it would be likely to get the desired beer license the agreement was signed and subsequently it took possession of the St. Regis Hotel premises. But while the purchase price in the agreement is stated as $100,000 it is plain from the agreement itself and the evidence of Earl Cooper, the appellant's vice-president, and Peter Sachkiw, its managing director, both of whom were called as witnesses for the appellant, that this price of $100,000 covered not only the goods and chattels specified in the agreement but also a lease of the St. Regis Hotel premises for a period of five years with an option of renewal for a further three years. Both Mr. Cooper and Mr. Sachkiw admitted that the lease of the hotel premises was worth more than the goods and chattels. Under the circumstances, the agreement is not proof that the capital cost of the furniture and equipment in question was $100,000, as alleged by the appellant, and it does not prove that its capital cost was more than $35,000, as found by the Minister. On this ground alone, since the appellant has not proved that the Minister's finding was erroneous in fact, its appeal would have had to be dismissed.

But the evidence does not stop with the agreement. It was established to the satisfaction of the Court that the capital cost of the furniture and equipment to St. Regis Hotel Edmonton Limited, from which the appellant acquired it on September 17, 1946, was $27,500 and that since then the appellant had bought replacements to the extent of $10,278.58. It was also shown that when the appellant had to leave the hotel premises in 1951 after it had failed to exercise its option to renew the lease, it sold the furniture and equipment for $38,750. By that time prices were higher than they had been in 1946. There was also the evidence of Mr. A. R. Lily, an insurance adjuster of long experience, who made an appraisal of the equipment and contents of the St. Regis Hotel building on September 18, 1946. He put their value at $34,500 after taking into consideration the usual depreciation for the length of time the property had been in use. While Mr. Lily's valuation was made for insurance purposes he expressed the opinion that the amount of his valuation was the cash value of the property at the time. I am satisfied that it was not greater than this amount.

I pass over the opinion evidence of Mr. P. Herring, with which I was not impressed, and refer to the information given by Mr. P. A. Fairbrother. He had ascertained that the original cost of the furniture and equipment to St. Regis Hotel Edmonton Limited had been $27,525.08, some of it going back to the 1930's, and that its book value at the time of the sale and lease to the appellant was $5,962.16.

Under the circumstances, I am satisfied that the appellant was not entitled to a larger amount on which to base its capital cost allowances than that of $35,000 found by the Minister. It was more than ample.

That being so, there was no error in the assessments appealed against and the appeal herein must be dismissed with costs.

Judgment accordingly.