

BETWEEN :

WEST YORK COACH LINES LIM-
ITED

APPELLANT;

AND

THE MINISTER OF NATIONAL
REVENUE

RESPONDENT.

1960
} May 31
1962
} Apr. 26
May 28

*Revenue—Income—Income Tax Act, R.S.C. 1952, c. 148, s. 20(1) & (6)(g)—
Bulk sale of assets—Proceeds of sale of depreciable property held tax-
able in virtue of s. 20(6)(g) of the Income Tax Act—Appeal dismissed.*

Appellant disposed of its business assets and good-will to the Toronto Transit Commission for the sum of \$450,000 without allocating any portion of the total purchase price to the fixed assets, buses, equipment and goodwill respectively. It contended that only \$65,187.53 could be considered as paid for the buses, the depreciable assets of the business.

The respondent assessed the appellant for \$172,300 of the purchase price relying on the evidence of two expert valuers who had advised the Toronto Transit Commission that in their opinion the buses were worth \$172,300. An appeal to the Tax Appeal Board was dismissed and appellant now appeals to this Court.

Held: That \$172,300 is that part of the total consideration of \$450,000 that can reasonably be regarded as being the consideration for the disposition of the buses and this amount is deemed to be the proceeds of the disposition of the appellant's depreciable property within the meaning

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of s. 20(1) of the Act "irrespective of the form or legal effect of the contract or agreement" between appellant and the Toronto Transit Commission.

2. That the respondent was right in assessing appellant as he did and the appeal must be dismissed.

APPEAL under the *Income Tax Act*.

The appeal was heard before the Honourable Mr. Justice Cattanach at Ottawa.

Stuart Thom, Q.C. for appellant.

E. A. Goodman, Q.C. and *D. Andison* for respondent.

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

CATTANACH J. now (May 28, 1962) delivered the following judgment:

This is an appeal from the decision of the Income Tax Appeal Board¹ dated June 19, 1959, dismissing the appellant's appeal from its income tax assessment for its taxation year ending January 31, 1955.

The appellant, West York Coach Lines Limited, operated bus services in the suburban areas of the City of Toronto, as well as a charter bus business. The real property used in connection with the bus operations was owned by an affiliated company, West York Motors Limited. In 1953 the Ontario Municipal Board concurred in an application for the amalgamation of the City of Toronto with surrounding municipalities and the recommendations of the said Board were enacted into law by c. 73 of the *Statutes of Ontario*, 1953. The sections of the said statute relating to public transportation include the following:

102. On and after the 1st day of January, 1954, there shall be a commission to be known as Toronto Transit Commission, with the powers, rights, authorities and privileges vested in it by this Act.

109. (2) Except in accordance with an agreement made under subsection 3, no person other than the Commission shall, after the 1st day of July, 1954, operate a local public passenger transportation service within the Metropolitan Area, with the exception of steam railways and taxis.

(3) An agreement may be entered into between the Commission and any person legally operating a local public passenger transportation service wholly within or partly within and partly without the Metropolitan Area on the 1st day of January, 1954, under which such person may continue to operate such service or any part thereof for such time and upon such terms and conditions as such agreement provides.

¹(1959) 22 Tax A.B.C. 171.

(5) Where a local public passenger transportation service is legally operating partly within and partly without the Metropolitan Area on the 1st day of April, 1953, and continues in operation, and will be required by subsection 2 to cease to operate within the Metropolitan Area on the 1st day of July, 1954, or upon the termination of an agreement made under subsection 3,

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(a) the Commission may agree with the owner of the service, not later than one month before the date upon which the service will be required to cease to operate within the Metropolitan Area, to purchase the assets and undertaking used in providing the entire service or to purchase the portion thereof that is allocated to the provision of the service within the Metropolitan Area;

Negotiations were begun by the Toronto Transit Commission for the acquisition of the business and undertaking carried on by the appellant, plus the real estate owned by West York Motors Limited, used in conjunction with its bus operation. An offer of \$250,000 was made by the Toronto Transit Commission during the first part of June, 1954, which was refused by the appellant. A subsequent offer of \$450,000 was made on or about June 15, 1954, which was acceptable to the appellant (this amount being suggested by the appellant as the proper amount) and culminated in an agreement of sale dated June 21, 1954, between the appellant and West York Motors Limited as vendors and the Toronto Transit Commission. The agreement provided for the payment of \$450,000 for all the assets, together with all goodwill in respect of the bus services, including charter services, the take-over date being July 1, 1954. It was not recorded how much of the total purchase price was to be allocated to the fixed assets, buses, equipment and goodwill respectively.

Prior to entering into the agreement dated June 21, 1954, the Toronto Transit Commission employed two persons to evaluate the buses owned by the appellant. The first was E. M. Hurst, president of Bus Sales of Canada, Limited, and eastern representative of Motor Coach Industries, Limited, manufacturers of highway buses; and the second was G. S. Gray, who was Transit Controller for Canada during the war years and subsequently vice-president in charge of sales for a bus manufacturing company. On March 23, 1954, these two appraisers placed a valuation of \$172,300 on the appellant's buses.

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In compiling its income tax return for the fiscal period ending January 31, 1955, the appellant reported the sum of \$65,187.53 as the proceeds of the disposition of the buses, being the amount at which the buses were carried in its books.

When re-assessing the appellant, the notice of re-assessment being dated January 28, 1957, the Minister took the sum of \$172,300 as representing the amount paid to the appellant for the buses, instead of \$65,187.53, and applied the recapture of capital cost allowance provisions of the *Income Tax Act* accordingly.

The appellant filed a notice of objection to the aforesaid re-assessment and by notice dated November 29, 1957, the Minister confirmed the assessment on the ground that under the provisions of paragraph (g) to subsection (6) of section 20 of the Act it has been determined that \$172,300 of the amount received by the taxpayer from Toronto Transit Commission pursuant to an agreement dated 21st June, 1954 was for buses and therefore the amount added to the taxpayer's income under subsection (1) of section 20 of the Act has been correctly determined.

The appellant appealed to the Income Tax Appeal Board which dismissed its appeal. It is from that decision that the appeal to this Court is brought.

The relevant provisions of the *Income Tax Act*, R.S.C. 1952, c. 148, are as follows:

20. (1) Where depreciable property of a taxpayer of a prescribed class has, in a taxation year, been disposed of and the proceeds of disposition exceed the undepreciated capital cost to him of depreciable property of that class immediately before the disposition, the lesser of

(a) the amount of the excess, or

(b) the amount that the excess would be if the property had been disposed of for the capital cost thereof to the taxpayer, shall be included in computing his income for the year.

20. (6) For the purpose of this section and regulations made under paragraph (a) of subsection (1) of section 11, the following rules apply:

(g) Where an amount can reasonably be regarded as being in part the consideration for disposition of depreciable property of a taxpayer of a prescribed class and as being in part consideration for something else, the part of the amount that can reasonably be regarded as being the consideration for such disposition shall be deemed to be the proceeds of disposition of depreciable property of that class irrespective of the form or legal effect of the contract or agreement; and the person to whom the depreciable property was disposed of shall be deemed to have acquired the property at a capital cost to him equal to the same part of that amount; . . .

The issue in the appeal is whether the amount of \$172,300 is that part of the total amount of \$450,000, which the appellant received from the Toronto Transit Commission, that can reasonably be regarded as being the consideration for the disposition of the appellant's buses which were its depreciable property. If it can be so regarded, the amount shall be deemed to be the proceeds of the disposition of its depreciable property, within the meaning of s. 20(1) of the Act.

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In my opinion, the amount of \$172,300 can reasonably be regarded as being the consideration for the disposition of the buses, within the meaning of s. 20(6)(g) of the Act.

There are ample grounds for this conclusion. The Toronto Transit Commission employed two independent and qualified appraisers to make an evaluation of the buses before they made their offer of \$450,000 for the appellant's whole enterprise. Their valuation of \$172,300 was the amount at which the buses were taken into the books of the Toronto Transit Commission at the time of the purchase.

According to Mr. J. H. Kearns, the treasurer of the Commission, this amount was so entered because it was the amount of the appraisal, and Mr. Kearns also stated that out of the purchase price of \$450,000, \$172,300 was allocated to the buses.

In view of the conclusion that \$172,300 is that part of the total amount of \$450,000 that can reasonably be regarded as being the consideration for the disposition of the buses, it follows that this amount is deemed to be the proceeds of the disposition of the appellant's depreciable property, within the meaning of s. 20(1) of the Act "irrespective of the form or legal effect of the contract or agreement between the appellant and the Toronto Transit Commission". The Minister was, therefore, right in reassessing the appellant as he did, and its appeal herein must be dismissed with costs.

Judgment accordingly.