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BETWEEN:

THE MINISTER OF NATIONAL }  
 REVENUE ..... } APPELLANT;

AND

COSMOS INC. .... RESPONDENT.

*Revenue—Income tax—Income Tax Act, R S C. 1952, c. 148, ss. 3, 4 and 139(1)(e)—Investment company—Sale of real estate—Income or capital gain—Trading transaction.*

The respondent, an investment company incorporated under the laws of the province of Quebec, purchased in 1949, the year of its incorporation, part of lots Nos. 100 and 101 in the official plan and book of reference of the Incorporated Village of Côte des Neiges for \$235,960 08, which land was in the same general area as the land in issue in *The Minister of National Revenue v. Valclair Investment Company Limited, ante, p. 466*. This was farm property and was rented for \$500 per annum to the man who had operated it as a farm for many years and who continued to do so until part of it was sold in 1954. The company did no advertising, subdividing or promotion of the land, nor was it listed for sale prior to receipt of an unsolicited offer to purchase lot No 100 for \$470,000. The offer was accepted and the deed of sale was executed in the company's 1954 taxation year. The company retained the balance of the land and still owned it at the date of trial.

The company's balance sheet indicated that in 1950 it had total funds of \$710,000, of which over \$450,000 were invested in stocks, bonds and loans, and \$235,000 in the lands in issue, leaving a balance in cash of about \$7,000.

*Held:* That the purchase of the land was an isolated transaction and a conscious attempt by the directors of the company to diversify its investments and acquire a long-term investment.

- 2 That the facts in this case are not essentially different from those in the *Valclair* case and the arguments raised by counsel were the same in both cases.
- 3 That the appeal is dismissed.

APPEAL from a decision of the Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice Kearney at Montreal.

*Paul Boivin, Q.C.* and *Paul Ollivier* for appellant.

*P. N. Thorsteinsson* and *Philippe Guay* for respondent.

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

KEARNEY J. now (December 31, 1963) delivered the following judgment:

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This is an appeal from a decision of the Tax Appeal Board dated November 28, 1961<sup>1</sup>, wherein it was held that an assessment made by the appellant, which added \$335,477.22 to the respondent's previously declared income for its taxation year 1954, was annulled and the latter's appeal therefrom was maintained.

In its income tax return for the year 1954 the respondent claimed as a capital gain the amount of \$335,477.22 which it realized on the sale of a farm which it had acquired on October 5, 1949.

I have had occasion to make reference to the instant case in *Minister of National Revenue v. Valclair Investment Co. Ltd.* ante p. 466 in which I rendered judgment earlier today. The facts and principals involved are, *mutatis mutandis*, substantially the same in both cases. The properties in the *Cosmos* and *Valclair* cases, though not contiguous, were in the same general area behind Mount Royal.

The respondent, admittedly a Canadian investment company duly incorporated in 1949 under the laws of the province of Quebec, in the same year purchased the property in question, which was known and described as part of Lots 100 and 101 in the official plan and book of reference of the Incorporated Village of Côte des Neiges, measuring 1,224,546 and 138,083 sq. ft. respectively, for \$235,960.08 (Ex. A-1), or approximately 17¢ per square foot.

In 1953 the respondent received an unsolicited offer of \$470,000 for lot No. 100, which it accepted, and the deed of sale was executed in the respondent's taxation year 1954. There was a farm house and accessory buildings located on the farm, both of which were rented for some \$500 per annum to a tenant farmer who had operated the farm for many years prior to its acquisition by the respondent and who continued to do so until it was sold in 1954. The financial statements of the Company for the years 1950 to 1959, inclusive, were filed as a single exhibit (A-2).

As appears by its statement for 1950, the Company's authorized capital-stock consisted of 10,000 four percent (4%) cumulative preferred shares of \$100 each, 7,000 of

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which were fully paid up, and 10,000 common shares, 5,003 of which were issued for \$2 per share.

As appears by its balance sheet for 1950, with its available funds, amounting to \$710,000, the Company invested over \$450,000 in stocks, bonds and loans, and, after investing \$235,000 in the aforesaid lands, had a cash balance of about \$7,000.

The Company never paid any dividend. It retained possession of that part of Lot 101 which it had acquired and was still in possession of it at the date of trial. The gains realized on the sale of Lot 100 in 1954 were reinvested in well-recognized stocks and bonds and which in 1959 amounted to approximately \$900,000.

Fifty percent of the Company's capital stock was held by Canadian interests and the other half by French interests, but who were not the same parties as those interested in Valclair Investment. At the time of acquisition and sale of the property, Mr. Joseph Blain, Q.C., who was the main witness to testify, was a director of the Company and a member of its Administrative Committee; Mr. Marius Doye was its president. Mr. Blain held one qualifying share in his own right and 50% of the issued capital in trust for the owners thereof.

The evidence discloses that the purchase of the land was an isolated transaction and a conscious attempt by the directors of the Company to diversify its investments and acquire a long-term investment. The property was sold exactly as it was bought—for cash. There was no advertising, no subdivision, no promotion of the land for sale, neither was it listed with a real estate agent. Following a marked rise in land values in 1953 the Company accepted the aforesaid unsolicited offer for the property in 1954 or about five years after its acquisition.

The facts in this case are not essentially different from those in the *Valclair* case and the arguments raised by the respective counsel for the parties were the same in both cases.

I consider, for the reasons given in the case of *Minister of National Revenue v. Valclair Investment Co. Ltd.*, ante p. 466, that the present appeal should be dismissed with costs.

*Judgment accordingly.*