
Toronto 1969 Jan. 16 — Ottawa Feb. 18

BETWEEN:

LEA-DON CANADA LIMITED ....APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE .... RESPONDENT.

Income tax—Capital cost allowances—Non arm's length sale of asset below undepreciated capital cost to company not resident or carrying on business in Canada—Whether vendor deemed to have received market price of asset—Income Tax Act, secs. 17(2) and (7), 20(4).

A subsidiary company in the business of leasing out an aircraft which it owned sold the aircraft in 1963 to its parent company for $615,500 which was less than its undepreciated capital cost of $676,000. The parent company which neither resided nor carried on business in Canada leased the aircraft out for a few months, paid withholding tax on the rent received, and then sold the aircraft for $892,000.

Held, in the assessment of the subsidiary for 1963 capital cost allowance must be dealt with on the assumption that the subsidiary received the fair market value of the aircraft, as provided by s. 17(2) of the *Income Tax Act*. The sale to the parent was not within the application of s. 20(4).

SPECIAL CASE.

S. E. Edwards, Q.C. for appellant.

M. A. Mogan and *J. M. Halley* for respondent.

CATTANACH J.:—This is an appeal from the assessment to income tax by the Minister for the 1963 taxation year of Nassau Leasings Limited, a company incorporated pursuant to the laws of the Province of Ontario by letters patent dated January 25, 1960, with head office situate at Toronto, Ontario.

By order dated September 29, 1964, the Provincial Secretary of the Province of Ontario accepted an application for the surrender of the charter of Nassau Leasings Limited and declared it to be dissolved as of November 16, 1964.

By order of the Supreme Court of Ontario dated November 9, 1966, under the *Trustee Act,* R.S.O. 1960, c. 408, it was ordered that the right to appeal from this assessment by the Minister with respect to Nassau Leasings Limited should be vested in Lea-Don Canada Limited, named as appellant in the style of cause, which at the date of the order was known as Geo. W. Crothers Limited but which corporate name was changed by supplementary letters patent dated November 10, 1966, to Lea-Don Canada Limited.

Therefore, to all intents and purposes, Nassau Leasings Limited, the charter of which is surrendered, is, in actuality, the taxpayer and the appellant herein, although the proceedings are being carried on by and in the name of Lea-Don Canada Limited in lieu and stead of Nassau Leasings Limited.

In the pleadings the validity of the order of the Supreme Court of Ontario dated November 9, 1966, and the consequences which flowed therefrom as well as from the fact

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that Nassau Leasings Limited was dissolved as at November 16, 1964, by order of the Provincial Secretary dated September 29, 1964, were put in issue.

However the parties agreed to a question of law being raised for the opinion of the court by special case pursuant to Rule 151 in which the validity of the order and the effect of the dissolution of Nassau Leasings Limited were not put in issue.

The special case, stated by consent of the parties, reads as follows:

A. STATEMENT OF FACTS

1 The Appellant was incorporated under the name "Geo. W. Crothers Limited" on the 14th day of June, 1934, by Letters Patent pursuant to the provisions of The Companies Act, R.S.C. 1927, Chapter 27. By Supplementary Letters Patent dated the 10th day of November, 1966, the Appellant's name was changed to "Lea-Don Canada Limited".

2 Nassau Leasings Limited (hereinafter referred to as "Nassau") was incorporated on the 25th day of January, 1960, by Letters Patent pursuant to the provisions of The Corporations Act, 1953, Statutes of Ontario, Chapter 19. At all times material to this appeal, (a) the issued shares of both the Appellant and Nassau were beneficially owned by Lea-Don Corporation Limited (hereinafter referred to as the "Parent"), a corporation incorporated under the laws of the Bahama Islands; and (b) the Appellant, Nassau and the Parent were corporations which did not deal with each other at arm's length.

3. In 1960, Nassau purchased in an arm's length transaction an aircraft manufactured by Grumman Aircraft Engineering Corporation, and known as "Model G-159 Gulfstream" (hereinafter referred to as "the aircraft"). The purchase price of the aircraft was $786,232.17 and during 1961 and 1962, Nassau modified the interior and installed new radio and electronic equipment at an additional cost of approximately $218,500.00. This additional cost was "capitalized" and entered in the books of Nassau as an increase in the capital cost of the aircraft.

4. The principal business of Nassau in the period from 1960 to May 31, 1963, consisted of leasing the aircraft at a monthly rental of $14,000 00 to the Appellant and, at all times material to this appeal, Nassau was resident in Canada.

5 On June 12, 1963, Nassau sold the aircraft to the Parent for a price of $615,500 00. This was the only aircraft ever owned by Nassau and, at the time of the sale, the undepreciated capital cost of the aircraft on the books of Nassau was $676,088.32. In computing its income for the fiscal period January 1, 1963, to June 28, 1963, Nassau deducted from its revenue the sum of $60,588 32 (being the difference between $676,088.32 and $615,500.00) as a "terminal loss" on the disposition of the aircraft. Attached hereto and marked as Exhibit 1

is a copy of the T2 Corporation Income Tax Return and accompanying financial statements of Nassau for the fiscal period ending June 28, 1963.

6. Following the sale of the aircraft by Nassau to the Parent on June 12, 1963, the Appellant continued to lease the aircraft at a monthly rental of $14,000 00 until the 1st day of November, 1963, the lessor after June 12, 1963, being the Parent. During that period in 1963 from June to October inclusive, the Appellant paid to the Parent the sum of $70,000 00 as rental for the aircraft. Because the rental payments were directed to a non-resident, the Appellant deducted withholding tax from those payments and remitted that tax to the Respondent under Part III of the Income Tax Act.

7. By an Agreement dated the 24th day of September, 1963, the Parent agreed to sell to Denison Mines Limited for a price of $892,000 00 the aircraft which the Parent had purchased from Nassau and the actual sale of the aircraft was completed on the 1st day of November, 1963. The Parent and Denison Mines Limited are corporations which deal with each other at arm's length. Attached hereto as Exhibit 2 is a copy of the Agreement between the Parent and Denison Mines Limited dated the 24th day of September, 1963, and attached as Exhibit 3 is a copy of an Indenture dated the 1st day of November, 1963, between the same two parties.

8. At all times material to this appeal, the Parent was not resident in Canada and the Parent did not carry on business in Canada.

9. By Notice of Assessment dated January 29, 1965, the Respondent assessed tax with respect to Nassau's 1963 taxation year; disallowed the "terminal loss" in the amount of $60,588 32; and added recaptured capital cost allowance in the amount of $239,411.68. Attached hereto as Exhibit 4 is a copy of the Notice of Assessment together with the form T7W-C and a Capital Cost Allowance Schedule for Nassau.

10. By an Order dated the 29th day of September, 1964, the Provincial Secretary and the Minister of Citizenship for the Province of Ontario accepted the surrender of the charter of Nassau and declared that Nassau was to be dissolved on the 16th day of November, 1964. Attached hereto as Exhibit 5 is a copy of the said Order of the Provincial Secretary and Minister of Citizenship.

11. By an Order dated the 9th day of November, 1966, the Supreme Court of Ontario vested in the Appellant (under its original name) the right to appeal from any assessment made against Nassau. Attached hereto as Exhibit 6 is a copy of the said Order of the Ontario Supreme Court.

B. STATEMENT OF ISSUE AND STATUTORY PROVISIONS

12. When preparing its financial statements for the fiscal period January 1 to June 28, 1963, and when filing its T2 Corporation Income Tax Return for that fiscal period (Exhibit 1), Nassau assumed that the aircraft had been disposed of under such circumstances that

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subsection (4) of Section 20 of the Income Tax Act was applicable to determine the capital cost of the aircraft to the Parent for the purpose of Section 11(1)(a).

13. In making the assessment on January 29, 1965 (Exhibit 4) the Respondent assumed that subsection (2) of Section 17 of the Income Tax Act was applicable with respect to the disposition of the aircraft by Nassau to the Parent.

14. The relevant provisions of the Income Tax Act include the following:

> 11. (1) Notwithstanding paragraphs (*a*), (*b*) and (*h*) of subsection (1) of section 12, the following amounts may be deducted in computing the income of a taxpayer for a taxation year:
>
> (*a*) such part of the capital cost to the taxpayer of property, or such amount in respect of the capital cost to the taxpayer of property, if any, as is allowed by regulation;
>
> 17. (2) Where a taxpayer carrying on business in Canada has sold anything to a person with whom he was not dealing at arm's length at a price less than the fair market value, the fair market value thereof shall, for the purpose of computing the taxpayer's income from the business, be deemed to have been received or to be receivable therefor.
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> 17. (7) Where depreciable property of a taxpayer as defined for the purpose of section 20 has been disposed of under such circumstances that subsection (4) of section 20 is applicable to determine, for the purpose of paragraph (*a*) of subsection (1) of section 11, the capital cost of the property to the person by whom the property was acquired, subsections (2), (5) and (6) are not applicable in respect of the disposition.
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> 20. (4) Where depreciable property did, at any time after the commencement of 1949, belong to a person (hereinafter referred to as the original owner) and has, by one or more transactions between persons not dealing at arm's length, become vested in a taxpayer, the following rules are, notwithstanding section 17, applicable for the purposes of this section and regulations made under paragraph (*a*) of subsection (1) of section 11:
>
> (*a*) the capital cost of the property to the taxpayer shall be deemed to be the amount that was the capital cost of the property to the original owner;
>
> (*b*) where the capital cost of the property to the original owner exceeds the actual capital cost of the property to the taxpayer the excess shall be deemed to have been allowed to the taxpayer in respect of the property under regulations made under paragraph (*a*) of subsection (1) of section 11 in computing income for taxation years before the acquisition thereof by the taxpayer.
>
> 20. (5) In this section and regulations made under paragraph (*a*) of subsection (1) of section 11,
>
> (*a*) 'depreciable property' of a taxpayer as of any time in a taxation year means property in respect of which the tax-

payer has been allowed, or is entitled to, a deduction under regulations made under paragraph (*a*) of subsection (1) of section 11 in computing income for that or a previous taxation year;

139. (1) In this Act,

(*av*) 'taxpayer' includes any person whether or not liable to pay tax;

C. QUESTION FOR THE COURT

15. With reference to the sale of the aircraft by Nassau to the Parent, and with reference to the provisions of subsection (7) of section 17 of the Income Tax Act, was depreciable property of a taxpayer as defined for the purpose of section 20 "disposed of under such circumstances that subsection (4) of section 20 is applicable to determine, for the purpose of paragraph (*a*) of subsection (1) of section 11, the capital cost of the property" to the Parent?

D. DISPOSITION OF SPECIAL CASE

16. If the Court should answer the question in paragraph 15 in the affirmative, then the appeal shall be allowed with costs and the assessment (Exhibit 4) shall be varied by reducing the tax assessed from $123,396.76 to $396.74, and the said assessment shall be further varied by reducing the interest proportionately.

17. If the Court should answer the question in paragraph 15 in the negative, then the appeal shall be adjourned to a later date when the Court will be asked to determine the fair market value of the aircraft at the time of its sale from Nassau to the Parent; but the Respondent shall be entitled to his costs in respect of this special case.

The parties hereto concur in stating in the form of a special case the above question of law for the opinion of the Court.

DATED this 26th day of November A.D. 1968.

The issue, as outlined in paragraph 15 of the special case, thus turns upon a narrow point of law involving the interpretation of the pertinent sections of the *Income Tax Act*.

That issue can best be brought into sharp relief by summarizing the facts set forth in the special case and considering the pertinent provisions of the *Income Tax Act* in connection therewith.

Nassau Leasings Limited, hereinafter called Nassau, was resident in Canada. In 1960 it bought an aircraft, in an arm's length transaction, at a cost of $786,232.17 and made alterations to it costing $218,500. The aircraft was carried on the books of Nassau at a capital cost of $1,004,732.17.

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Nassau carried on business in Canada, its business being to lease the aircraft to Lea-Don Canada Limited, the nominal appellant herein, at a monthly rental of $14,000. This Nassau did from 1960 to May 1963.

On June 12, 1963, Nassau sold the aircraft to Lea-Don Corporation Limited, its parent company incorporated and resident in the Bahamas, for $615,500. At that time the undepreciated capital cost of the aircraft on the books of Nassau was $676,088.32. In computing its income for the taxation year Nassau deducted the amount of $60,588.32 as a terminal loss on the sale of the aircraft to its parent under section 1100 (2) of the *Income Tax Regulations.*

Nassau then distributed its assets and surrendered its charter.

The purchaser of the aircraft, Lea-Don Corporation Limited, the parent company, resident in the Bahamas, then leased the aircraft to Lea-Don Canada Limited, resident in Canada and also a wholly owned subsidiary of Lea-Don Corporation Limited, as was Nassau. Lea-Don Canada Limited, because the rental payments were made to a non-resident, deducted the withholding tax under Part III of the Act and remitted it to the Minister.

On November 1, 1963, Lea-Don Corporation Limited, the parent, sold the aircraft in an arm's length transaction to Denison Mines Limited for $892,000.

At all material times, Nassau, Lea-Don Corporation Limited, the parent, and Lea-Don Canada Limited were corporations which did not deal with each other at arm's length within the meaning of that term as defined in section 139(5) and (5a) of the *Income Tax Act.*

The Minister then assessed Nassau for its taxation year by adding back $300,000 to its declared income, being (1) by disallowance of $60,558.32 terminal loss claimed by Nassau and (2) by adding back the recapture of capital cost allowance of $239,411.68 which the Minister says was recaptured by Nassau.

The appellant takes the position that in June 1963 when Nassau sold the aircraft to Lea-Don Corporation Limited, its parent, the fair market value of the aircraft was $615,500, whereas the Minister takes the position that the fair market value of the aircraft at that time was $915,500. However Nassau says that the fair market value is immaterial.

In so assessing Nassau the Minister did so for the following reasons.

The cost of the aircraft to Nassau was $1,004,732.17.

Under section 11(1)(*a*) a taxpayer in computing his income is entitled to that part of the capital cost of property (here the aircraft) as is allowed by regulation.

Under Regulation 1100(1)(a) a taxpayer in computing his income may claim and deduct, for each taxation year, up to 40% of the undepreciated capital cost to him as of the end of the taxation year of property in class 16 in schedule "B" to the *Income Tax Regulations,* which makes specific mention of aircraft.

This Nassau had done in the taxation years prior to 1963. Nassau had so deducted $328,643.85 leaving an undepreciated cost of $676,088.32 being the capital cost of $1,004,732.17 less the depreciation claimed and allowed of $328,643.85.

By section 20(5)(*e*) "undepreciated capital cost" of property in a prescribed class means capital cost of all property in that class minus the aggregate of

(1) depreciation previously claimed and allowed and,

(2) proceeds of disposition from any sale of property in the class (up to but not exceeding the undepreciated capital cost of property in the class immediately before the sale).

On June 12, 1963, Nassau sold the aircraft to Lea-Don Corporation Limited, its parent, for $615,500.

Applying the formula in section 20(5)(*e*) Nassau determined the "undepreciated capital cost" as follows:

Cost of Aircraft		$1,004,732.17
Less (i) depreciation claimed & allowed	$328,643.85	
(ii) proceeds of disposition	615,500.00	
		944,143.85
Undepreciated capital cost after sale		$ 60,588.32

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By Regulation 1100(2) where, in a taxation year, all property of a prescribed class has been disposed of, a taxpayer is allowed a deduction for the year equal to the amount that would otherwise be the undepreciated capital cost to him of property in that class which is frequently termed the "terminal loss" provision.

Nassau therefore deducted the amount of $60,588.32, computed as above, as a terminal loss in computing its income for the fiscal period ending June 28, 1963, and in doing so relied on the provisions of Regulation 1100(2).

However section 17(2) provides that where a taxpayer has sold property to a person with whom he was not dealing at arm's length at a price less than the fair market value, the fair market value shall be deemed to have been received by the vendor.

Because Nassau and its parent, Lea-Don Corporation Limited were not dealing at arm's length and because Lea-Don Corporation Limited sold the aircraft in an arm's length transaction on November 1, 1963, for $892,000 the Minister assumed that,

(1) the fair market value of the aircraft on June 12, 1963, the date of its sale by Nassau to its parent was $915,500 and

(2) that Nassau, pursuant to section 17(2) had received the sum of $915,500 as proceeds of disposition upon the sale of its property.

The Minister, therefore, applied the "recapture of capital cost" provisions of section 20(1) to the effect that where property of a taxpayer in a prescribed class has been sold and the proceeds of disposition exceed the undepreciated capital cost of the property immediately prior to the sale, then the excess (up to the original capital cost) shall be included in computing the taxpayer's income. This resulted in the Minister including in Nassau's income for 1963 the sum of $239,114.68. This sum was arrived at by taking the capital cost of the aircraft, $1,004,732.17 and deducting therefrom the capital cost claimed and allowed in the sum of $328,643.85 thereby giving an undepreciated capital cost of $676,088.32. The undepreciated capital cost of $676,088.32 was then deducted from $915,500 assumed by the Minister to have been the fair market value and deemed to have been received by Nassau by virtue of section 17(2) resulting in the above sum of $239,411.68. When the amount of $60,588.32 claimed by Nassau as a "terminal loss" and disallowed by the Minister is added to the sum of $239,411.68 added to Nassau's income as recaptured capital cost allowance, the net result is that Nassau's income was increased by $300,000 and it was assessed accordingly.

The appellant submitted that the provisions of section 17(2) are not applicable in respect of the disposition of the aircraft by Nassau because by section 17(7), section 17(2) is made not applicable to a transaction to which section 20(4) applies. As might be expected the appellant contended that section 20(4) was applicable to determine the capital cost of the aircraft to Lea-Don Corporation Limited, the parent of Nassau.

On the other hand, as also might be expected, the Minister contended that section 20(4) was not applicable to determine for the purposes of the regulations made under section 11(1)(*a*) the capital cost of the aircraft to Nassau's parent, Lea-Don Corporation Limited, and accordingly the provisions of section 17(7) do not apply to exclude the operation of section 17(2) by virtue of which the Minister assessed Nassau as he did.

Therefore whether section 17(7) applies is dependent on whether or not the circumstances contemplated by section 20(4) are existing in the circumstances of the present case.

This, in turn, gives rise to the question posed for the court in paragraph 15 of the stated special case which for the purpose of convenience I repeat here:

15. With reference to the sale of the aircraft by Nassau to the Parent, and with reference to the provisions of subsection (7) of section 17 of the Income Tax Act, was depreciable property of a taxpayer as defined for the purpose of section 20 "disposed of under such circumstances that subsection (4) of section 20 is applicable to determine,

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for the purpose of paragraph (*a*) of subsection (1) of section 11, the capital cost of the property" to the Parent?

The purpose of section 20(4) is two-fold:

(1) to ensure that the depreciable base of capital assets cannot be raised upon the transfer by one taxpayer to another in a transaction not at arm's length, and

(2) to ensure that the recapture of capital cost allowance cannot be avoided, the recapture is merely postponed until the property is sold to a stranger, presumably at the fair market value to the transferee. The effect of section 20(4) by stating that,

in a non-arm's length transaction, the capital cost of depreciable property to a new owner cannot exceed what was the previous owner's capital cost, despite the fact that the fair market value of the property may be greater, is the opposite to section 17(2) when the fair market value must be taken as the capital cost to the vendor and his income computed accordingly.

This conflict is resolved by section 17(7) which provides that when section 20(4) applies then section 17(2) does not apply and this gives rise to the dispute in the present case.

Whether section 20(4) applies gives rise to two crucial questions:

(1) is the purchaser of the aircraft, Lea-Don Corporation Limited, the parent of the vendor, a taxpayer, and

(2) was the property depreciable property in the hands of the parent?

As I understood the argument by counsel for the appellant it was that,

(1) the parent was clearly a "taxpayer" which word is defined in section 139(1)(av) as including "any person whether or not liable to pay tax". In any event the parent was a taxpayer because it paid the withholding tax of 15% on the amount that

Nassau paid to it as rent for the use of property in Canada, in accordance with section 106(1)(*d*) which was remitted to the Minister by Nassau;

(2) that the parent had income from rent even though it was a non-resident. He pointed out that section 2(2) provides that income tax shall be paid upon the income of a non-resident employed or carrying on business in Canada and that under section 31(1) a non-resident may have sources of income from outside Canada and inside Canada. He argued that revenue earned inside Canada is subject to those deductions as are applicable thereto. He also referred to section 110 by which a non-resident may elect to file an income tax return under Part I of the Act as prescribed for residents and be taxed as a resident subject to the conditions set forth in the section.

Sections 2(2) and 31(1) are applicable to income of a non-resident employed in Canada or carrying on business in Canada.

The parent was not employed in Canada, nor was it carrying on business in Canada. Its income was derived from property situate in Canada.

With respect to the parent being able to elect under section 110, that section is only applicable to income from rent on real property or a timber royalty situate in Canada. The aircraft is not realty.

However he referred to Regulation 1102(3) to the effect that where the taxpayer is non-resident the classes of property described in Part XI and Schedule "B" shall be deemed not to include property that is situate outside Canada. He, therefore concluded that the converse is that such property situated within Canada is subject to allowances in respect of capital cost. Therefore he said the test is not whether the taxpayer is carrying on business in Canada, but that it is whether the non-resident taxpayer owns property situate in Canada.

Accordingly he submitted that capital cost allowance is deductible in computing the income and that there is no distinction between a resident and non-resident taxpayer in computing income except as to property owned by a non-resident situated outside Canada and that if a non-resident has property in Canada which falls within Schedule "B" (as the aircraft here involved does) then it is depreciable property within the definition of those words in section 20(5)(*a*) for the purposes of section 20 and the regulations under section 11(1)(*a*).

"Depreciable property" of a taxpayer is defined under section 20(5)(*a*) as meaning property in respect of which the taxpayer has been allowed, or is entitled to be allowed a deduction under the regulations under section 11(1)(*a*) in computing income.

For these reasons he contended that the aircraft is depreciable property in the hands of the parent company, Lea-Don Corporation Limited and if that be so then section 20(4) applies as does section 17(7) and section 17(2) does not, so that the question posed for the court in paragraph 15 of the special case must be answered in the affirmative.

As I understood the argument of counsel for the appellant it is based on two propositions.

His first proposition is that if a non-resident has income, that income is to be computed under the *Income Tax Act*. With this proposition I fully agree if the computation of a non-resident's income is necessary to compute the tax.

Here, however, the parent company was paying a tax under Part III of the Act, on a gross amount and accordingly the tax payable is not computed under Division B of Part I of the Act because there is no need to do so.

The clear inference from section 2(2) is that for a non-resident to be taxable under Part I he must be employed in Canada or carrying on business in Canada neither of which apply to the parent company.

Under section 3 the income of a taxpayer is for the purpose of Part I that from all sources inside or outside

Canada including that from business, property and employment, but section 31 is a special provision restricting a non-resident's income to that earned in Canada from employment or business subject to the appropriate deductions attributable thereto.

In section 1100(1) of the Regulations there is allowed to a taxpayer in respect of capital cost in computing income from property, but section 110 makes it clear that a non-resident taxpayer may only elect to file a return and pay tax under Part I with respect to rent on a real property or a timber royalty.

Therefore, the complete answer to the appellant's first proposition is a computation of the parent's Canadian income is neither necessary, nor relevant to assess tax under Part III for which the parent was liable.

The second proposition of the appellant, as I understood it, was that the parent company was entitled to a deduction under the Regulations under section 11(1)(*a*). Counsel placed particular reliance on Regulation 1102(3) to the effect that where the taxpayer is a non-resident person the classes of property set forth are deemed not to include property outside Canada.

Here the non-resident parent's property, the aircraft, is situate in Canada and it is depreciable property in the sense that it depreciates but the question is, is it property with respect to which the parent is entitled to claim deductions of a capital cost allowance in accordance with the Regulation under section 11(1)(*a*).

By Regulation 1100(1) allowances in respect of capital cost are deductible in computing income from property at the rates of the classes set out in Schedule "B".

Under Regulation 1102(3) for non-residents the classes of property are deemed not to include property situate outside Canada.

The reason is readily apparent because a non-resident taxpayer is not taxed on world income but only on income in Canada. Therefore a non-resident's property situate

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outside Canada is excluded from any class, but for a Canadian resident his outside property is included in a class.

I think the inference that, because a non-resident's property in Canada is not excluded from classes, the property is "depreciable property" is an unwarranted one. In my opinion the regulation means that a class is available for such non-resident owned property situated in Canada if the non-resident taxpayer is otherwise entitled to claim a capital cost allowance by reason of carrying on business in Canada or if the income from property in Canada brings the non-resident taxpayer within section 110 of the Act and allows him to elect to file a return under Part I and compute his taxable income accordingly.

In my opinion, therefore, the parent is not entitled to a deduction under regulations made under section 11(1)(*a*) of the Act in computing its income.

It follows that I answer the question posed for the Court in paragraph 15 of the special case in the negative and dispose of the matter as indicated in paragraph 17 thereof, that is to say, the appeal shall be adjourned to a later date when the Court will be asked to determine the fair market value of the aircraft at the time of its sale from Nassau to the parent and the Minister shall be entitled to his costs in respect of this special case.