BETWEEN:

1961
Feb. 6, 7
Feb. 22

ANCASTER DEVELOPMENT COMPANY LIMITED .... APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE .... RESPONDENT.

Revenue—Income—Income Tax Act, R.S.C. 1952, c. 148, ss. 17(2), 139(5)—Transactions between persons not dealing at arm's length—Transaction between a corporation and a director—Fair market value—Appeal allowed in part.

Appellant company was incorporated in 1952 for the purpose, *inter alia,* of purchasing and selling real estate. Its issued capital stock consisted of 1,000 shares of which Y (the President) and R (Secretary-Treasurer) each held 450 shares and A (Vice-President) 100 shares. In April, 1952, Y sold 88 lots to the appellant company and at the same Directors' Meeting it was agreed to sell 26 of the lots to R at cost. At a Directors'

1961

ANCASTER DEVELOPMENT CO. LTD. v. MINISTER OF NATIONAL REVENUE

Meeting on September 25, 1952, R abandoned his right to purchase the lots and Y agreed to purchase them at cost fixed at $500 each. In 1953, the appellant conveyed 16 lots to Y, the latter at once sold them to Nelmar Realty at $1,200 each, and that company then sold them at $1,500 each to Rolmac Construction Company, which company was solely owned by R. There was evidence that Y had made substantial gifts in money or bonds to R.

The Minister of National Revenue re-assessed appellant by adding to its declared income for 1953 the difference between what he considered a fair market value of the lots ($1,500 each) and the price paid for them by Y ($500 each). An appeal to the Tax Appeal Board was dismissed and from that dismissal a further appeal was taken to the Exchequer Court.

The Income Tax Act, s. 139(5) provides that a corporation and a person or one of several persons by whom it is directly or indirectly controlled shall . . . be deemed not to deal with each other at arm's length.

Held: That Y and R, holding sufficient shares in the appellant company to control it, were acting in concert in the transactions outlined; that they were not dealing with the appellant at arm's length; and that as the fair market value of the lots sold at wholesale in 1953 was $875 each, the appeal should be allowed in part by reducing from $16,000 to $6,000 the amount added in the re-assessment.

2. That the appeal from re-assessment for the taxation year 1954 should be dismissed, there being no "loss" in 1953 to carry forward to 1954.

APPEAL under the *Income Tax Act.*

The appeal was heard before the Honourable Mr. Justice Cameron at Hamilton.

E. D. Hickey and *D. M. Mann* for appellant.

W. D. Parker, Q.C. and *J. D. C. Boland* for respondent.

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

CAMERON J. now (February 22, 1961) delivered the following judgment:

This is an appeal by the taxpayer from a decision of the Income Tax Appeal Board dated June 13, 1960[1] which dismissed its appeals from assessments made upon it for its taxation years ending December 31, 1953 and 1954. In 1953 the appellant sold 16 lots to John H. Young—then the president of the appellant company—for $8,000, and it is that transaction which gave rise to the dispute between the parties. Invoking the provisions of s. 17(2) of the *Income Tax Act,* the Minister, being of the opinion that the transaction was not one at arm's length and that the fair

[1] 24 Tax A.B.C. 353.

market value of the lots was $24,000, added to the declared income of the appellant the difference—namely, $16,000—thus turning what had been declared as a year of loss into one of substantial profit. The appeal for the year 1954 is taken because the re-assessment for the year 1953 prevented the appellant from deducting from its 1954 taxable income the "loss" which it claimed to have sustained in 1953.

In the Notice of Appeal it is alleged that the appellant and Young were dealing at arm's length in entering into and carrying out the transaction of purchase and sale; and, alternatively, if that is not so, that the fair market value of the lots sold was $8,000—the price paid by Young for them. The applicable provisions of the *Income Tax Act* in 1953 were as follows:

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.

139.(5) For the purposes of this Act,

(*a*) a corporation and a person or one of several persons by whom it is directly or indirectly controlled,

(*b*) —not applicable—

(*c*) —not applicable

shall, without extending the meaning of the expression "to deal with each other at arm's length", be deemed not to deal with each other at arm's length.

The following facts are clearly established. The appellant company was incorporated as a private company under the *Ontario Companies Act* on February 27, 1952, the instructions for its incorporation being given to Messrs. Martin and Martin, solicitors of Hamilton, Ontario, by Richard C. W. Rolka and John H. Young. Its authorized capital was divided into 4,000 shares without nominal or par value, but at all relevant times only 1,000 shares were issued, all at one dollar per share. Included in its purposes and objects was that of purchasing and selling real estate. Following the resignation of the provisional directors at a meeting on April 2, 1952 (Exhibit 4), Young owned 450 shares and was appointed a director and president, which offices he held until his death in August, 1953. Rolka had a similar number of shares and was appointed a director and secretary-treasurer, which offices he continued to hold at all relevant times; and M. G. Atkinson became the owner

1961
ANCASTER DEVELOPMENT CO. LTD.
v.
MINISTER OF NATIONAL REVENUE
Cameron J.

of 100 shares and was appointed a director and vice-president, which offices he retained until December 11, 1953, when his shares were transferred to Mr. Hubert Martin, the company's solicitor. At all relevant times, Rolka, Young and Atkinson were the only three shareholders and directors of the company and in that period their shareholdings were as follows:

Young	450	shares
Rolka	450	"
Atkinson	100	"
	1,000	"

I now turn to the evidence relating to the acquisition of the lots by the appellant company and the manner in which they were dealt with. As shown by the Minutes of the Directors' Meeting held on April 9, 1952 (Exhibit 10), Mr. Young stated that he was prepared to sell to the company "approximately 80 lots in Ancaster Heights Survey" for $25,000, of which $9,000 was to be paid by assuming two registered mortgages, and the balance by giving to Young a third mortgage bearing interest at 5 per cent. and payable five years thereafter. There were also certain provisions as to discharging the mortgages as to any lot sold by the appellant company. That offer was duly accepted, Mr. Young abstaining from voting because of his interest. At the same meeting, Mr. Atkinson was given the exclusive right to sell the lots and to receive a commission of 10 per cent. on such sales.

The following is an extract from these Minutes:

Mr. Rolka announced to the meeting that he would like to purchase from the Company between twenty and twenty-six lots in Ancaster Heights Survey. The said lots in which Mr. Rolka was interested front on Haig Road and Newburn Road, and the situation of these lots was discussed. Mr. Rolka stated that he was prepared to pay for these lots the full cost price to the Company of the said lots, being a proportionate share of the total purchase price of all the lots to be purchased by the Company from Mr. Young for $25,000.00, plus a proportionate share of the cost of providing roads and water to the survey, plus a proportionate share of overhead of the Company.

Mr. Rolka having disclosed his interest in the proposed purchased from the Company, he announced that he would not vote on the necessary resolution to authorize the sale of these lots to him by the Company.

Mr. Young and Mr. Atkinson fully discussed the proposed sale of lots, taking into consideration the value to the Company of a rapid development of a building programme on these lots by Mr. Rolka. Upon Motion duly made, seconded, and unanimously carried by the votes of Messrs. Young and Atkinson it was resolved that the Company sell to Mr. Rolka the

vacant lots referred to in these Minutes at cost price to the Company as defined in the said Minutes, and that the President and Secretary-Treasurer be directed and authorized to execute the necessary Conveyance of land from the Company to Mr. Rolka.

There followed a full discussion of a proposed Agreement between the Company and The Township of Ancaster for roads and providing the supply of water to the Survey. Mr. Rolka explained his negotiations with The Township of Ancaster officials, and a proposed draft of the Agreement was discussed and some alternative changes discussed. It was obviously in the interest of the Company that this Agreement be brought to a conclusion at the earliest possible date, and Mr. Rolka was authorized to carry on the negotiations and press for some satisfactory conclusion.

Exhibit 9 contains the Minutes of the Directors' Meeting held September 25, 1952. It was at that meeting that the company agreed to sell certain lots to Young and it is therefore advisable to set out the relevant parts in full.

All the Directors being present in person the meeting was declared duly constituted, and upon motion Mr. Young acted as Chairman and Mr. Rolka as Secretary of the Meeting.

Mr. Rolka referred to a previous meeting of Directors held on the 9th day of April, 1952 when it was agreed that the Company would sell to Mr. Rolka at cost price between 20 and 26 lots in Ancaster Heights Survey. Mr. Rolka advised the meeting that he did not want to exercise his rights to purchase these lots, and that he was satisfied to have Mr. Young purchase the said lots from the Company upon the same basis of cost price. Mr. Young confirmed that he was prepared to purchase the lots from the Company.

There followed a full discussion of the sale of these lots by the Company to Mr. Young. It was agreed by all present that taking into consideration money spent for bringing water services to the property, and roadway construction, the cost to the Company of the said lots was $500.00 per lot. Mr. Young stated that he was prepared to buy eight lots at once and arrange to have the same used at once for building purposes, and that he was prepared to buy the remainder of the lots by not later than 1st April, 1953.

Mr. Young having disclosed his interest in the proposed purchase from the Company, he announced that he would not vote on the necessary resolution to authorize the sale of these lots to him by the Company.

Mr. Rolka and Mr. Atkinson further discussed the proposed sale, and agreed on the sale price and the lots to be sold to Mr. Young.

Upon motion duly made, seconded and unanimously carried by the votes of Messrs. Rolka and Atkinson it was resolved that the Company sell to Mr. Young Lots 100, 101, 102, 103, 111, 112, 113 and 114 at a price of $500.00 per lot forthwith and that the Company sell to Mr. Young at the same price of $500.00 per lot, Lots 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 108, 109, 115, 116, 117, and 118, to be paid for against delivery of the appropriate Deeds at any time up to 1st April, 1953.

Upon motion duly made, seconded and unanimously carried it was resolved that the Vice-President and Secretary-Treasurer be authorized to execute the necessary Conveyances of land from the Company to Mr. Young, or his nominee.

A large number of certified copies of registered deeds were put in evidence relating to 24 of the 25 lots which the appellant company had agreed to sell to Young.

By deed dated September 24, 1952 (which it will be noted is the day before the Directors' Meeting of September 25, 1952) and filed as Exhibit A, the appellant sold 8 lots to Young for $4,000; by deed dated October 17, 1952 (Exhibit C) Young sold the same lots to Nelmar Realty Ltd. for $9,600; and by deed dated October 21, 1952 (Exhibit B) Nelmar sold the same lots to Rolmac Construction Co. Ltd. for $12,000—or $1,500 per lot. These sales, made in 1952, are not directly in issue here.

By deed dated June 12, 1953, the appellant sold a further 8 lots to Young (Exhibit D) for $4,000; Young in turn conveyed the same lots to Nelmar Realty for $9,600 by deed dated June 16, 1953 (Exhibit E); and by deed dated June 30, 1953 (Exhibit F) Nelmar conveyed the same lots to Rolmac Construction Co. Ltd. for $12,000.

The same pattern was again followed in regard to a further 8 lots. The appellant conveyed 8 lots to Young by deed dated July 27, 1953 (Exhibit G) for $4,000; Young in turn conveyed them to Nelmar Realty Ltd. by deed dated August 18, 1953 for $9,600 (Exhibit H); and Nelmar conveyed them to Rolmac Construction Co. Ltd. on August 27, 1953 for $12,000 (Exhibit I).

It is these two sales of 8 lots each to Young in 1953 and made pursuant to the agreement arrived at at the Directors' Meeting on September 25, 1952, which resulted in the re-assessments now in question.

From these three sales by the appellant to Young a clear pattern emerges. Young purchased each lot at $500, sold it immediately for $1,200 to Nelmar, which in turn immediately sold it to Rolmac Construction Co. Ltd. for $1,500. There is no evidence that either Young or Nelmar expended any monies on the properties while they owned them. In every case, the ultimate purchaser was Rolmac Construction Co. Ltd.—a company engaged in the construction and sale of houses and of which Rolka—the secretary-treasurer of the appellant company—was the only shareholder.

1961

ANCASTER DEVELOPMENT CO. LTD. v. MINISTER OF NATIONAL REVENUE

Cameron J.

As stated in *Johnston v. M.N.R.*[1], the taxpayer must establish the existence of facts or law showing an error in relation to the taxation imposed upon him. In that case, which arose under the *Income War Tax Act*, Rand J., in delivering the judgment of the majority of the Court, said at p. 489:

> Notwithstanding that it is spoken of in section 63(2) as an action ready for trial or hearing, the proceeding is an appeal from the taxation; and since the taxation is on the basis of certain facts and certain provisions of law either those facts or the application of the law is challenged. Every such fact found or assumed by the assessor or the Minister must then be accepted as it was dealt with by these persons unless questioned by the appellant. If the taxpayer here intended to contest the fact that he supported his wife within the meaning of the Rules mentioned he should have raised that issue in his pleading, and the burden would have rested on him as on any appellant to show that the conclusion below was not warranted. For that purpose he might bring evidence before the Court notwithstanding that it had not been placed before the assessor or the Minister, but the onus was his to demolish the basic fact on which the taxation rested.

As I have said, the basic assumption of the Minister in making the assessment for 1953, now under appeal, was that the appellant company was not dealing at arm's length with Young when it agreed to sell him the lots at $500 each—September 25, 1952, and the onus is on the appellant to show that that assumption was erroneous.

It is true that Young's shareholdings in the company were then insufficient to give him control of the company. Rolka had an equal number of shares and between them they had control if they acted in concert. There are many facts in evidence which clearly suggest that they were in fact acting in concert throughout. It is possible that these facts could have been interpreted differently had the appellant called Rolka as a witness. He, above all others, must have been in a position to know all the facts and to explain the various transactions that took place. Young, of course, had died prior to the hearing, but it would appear that Rolka was available as he gave evidence before me in his own tax appeals just a few days previously. His absence at the trial was wholly unexplained.

It is important to note that Rolka, up to September 25, 1952, had a right to purchase the lots which later became the property of Young; that the price which Rolka was to pay was the cost to the company which therefore would make no profit; that the right which Rolka held was a

[1] [1948] S.C.R. 486.

1961
ANCASTER DEVELOPMENT CO. LTD.
v.
MINISTER OF NATIONAL REVENUE
Cameron J.

valuable right as the evidence discloses that similar lots in the same subdivision were sold at a much higher figure than $500, which was the agreed cost of the lots to the appellant company (including purchase price, installation of roads and sewers and overhead). Why, then, would Rolka without consideration release such a valuable right? The answer, I think, is found in the fact that at the same meeting at which Rolka surrendered his right, Young, with the approval of Rolka, was given exactly the same right, and that within a very short time after the respective sales to Young, all the lots which Young acquired were in the possession of Rolmac Construction Co. Ltd.—a company solely owned by Rolka. Rolmac in its operations would therefore be able to show a cost to it of $1,500 per lot instead of $500, thereby reducing its income tax. Coupled with these facts is the evidence that Young made very substantial gifts of money or bonds to Rolka on which the Young Estate paid gift tax. In this case, no explanation is forthcoming as to why such gifts were made.

In this case, also, there is no admissible evidence as to the precise role played by Nelmar Realty Ltd. in the transactions, or as to its shareholders, or why the various properties passed through its hands. There are, however, several indications that Rolka, at the time he surrendered his right to purchase the lots from the appellant, was fully aware of and approved of the entire plan to have the lots sold to Young who, in turn, would sell them to Nelmar Realty, which would then sell them to his own company, Rolmac Construction Company. I have already referred to the substantial and wholly unexplained gifts from Young to Rolka.

Then there is the evidence of Francis Wigle, a member of the legal firm of Christilaw, Gage and Wigle of Hamilton, which prepared all the conveyances to which I have referred and in so doing were acting for the appellant company, Young, Nelmar Realty and Rolmac Construction Co. Ltd. When Mr. Wigle's attention was directed to the fact that the first conveyance to Young was dated September 24, 1952—one day before the directors authorized the sale to Young and prior to the date when Rolka gave up his right to purchase the lots—he said that it was fair to infer that he had received instructions to execute the conveyance on September 24, or earlier; he added that his instructions for

1961

ANCASTER DEVELOPMENT CO. LTD. v. MINISTER OF NATIONAL REVENUE

Cameron J.

that conveyance came from Young. It may, therefore, be reasonably inferred in the absence of other evidence that prior to the Directors' Meeting of September 25, 1952, Young was aware that Rolka was about to surrender his right to purchase and had consented to Young acquiring the same lots. In argument, counsel for the appellant conceded that from the evidence it was apparent that when each sale to Young was made, the subsequent sales to Nelmar and then to Rolmac were in contemplation.

Mr. Wigle prepared the deed from the appellant to Young for the last of the sales on July 27, 1953, and after he had it signed by Young, sent a letter to the appellant company on July 29, 1953, with a request that it be signed by Rolka as secretary-treasurer, the company's seal attached, and that it then be returned for registration. In the same letter (Exhibit J) the following appeared:

We assume that we are to forward the Deed from Nelmar Realty Limited to Rolmac Construction Company Limited, to Nelmar Realty Limited for execution.

Would you please confirm that the considerations of the three transactions are as follows:

Sale by Ancaster Development Co. Ltd. to Young ...... $ 500.00 per lot
Sale by John H. Young to Nelmar Realty Limited .... $1,200.00 " "
Sale by Nelmar Realty Limited to Rolmac Construction
Company Ltd. .... $1,500.00 " "

From that letter it is abundantly clear that in respect of that sale, at least, a plan had been ararnged even before Young secured his deed by which the lots would be immediately sold by him to Nelmar Realty, which company, in turn, would sell them to Rolmac Construction Co. Ltd.

That letter, I think, was clearly intended to come to the attention of Rolka, and it did. In his reply, dated August 3, 1953, and written on the stationery of Rolmac Construction Co. Ltd. (Exhibit K), he stated:

Re: Your Letter of July 29, 1953

This is our confirmation that the prices set out in your letter are correct and we are enclosing the deeds to Mr. Young properly signed and sealed.

It was signed "Rolmac Construction Co. Ltd.—R.C.W. Rolka". From that letter it is apparent that Rolka was fully aware of the plan by which the lots, after passing through the hands of Young and Nelmar, would be conveyed to his own company—Rolmac.

1961
ANCASTER DEVELOPMENT CO. LTD.
v.
MINISTER OF NATIONAL REVENUE
Cameron J.

Several questions immediately arise in connection with these two letters. Why, for example, did not Mr. Wigle at the time Mr. Young signed the deed, as president of the appellant company, secure from him the amount of the consideration to be paid to the appellant company and by Nelmar to Young? Why was Nelmar Realty not questioned as to the consideration it was to pay to Young and to receive from Rolmac Construction Co. Ltd.? Why was Rolka in a position to state positively the price that was to be paid by Nelmar to Young and by Rolmac Construction Co. to Nelmar? In the absence of any other evidence, it seems reasonable to assume that the guiding hand in all these transactions was that of Rolka and that throughout he was acting in concert with Young and according to a plan conceived by Rolka, by which all the lots would eventually become the property of his company; and that in some unexplained way he was enabled to speak for and represent Nelmar Realty.

That inference satisfactorily answers the questions as to why Young made substantial and unexplained gifts to Rolka and why Young, who had sold the lots to the appellant company only a few months earlier, would wish to re-purchase a substantial part of them at cost and without profit to the company of which he was the president. It also serves to explain why the appellant company was willing on September 25, 1952, to sell lots to Young at a price substantially below that at which it sold other lots in the Survey.

Counsel for the appellant relied on *M.N.R. v. Sheldon's Engineering Ltd.*[1] That was a case involving a matter of capital cost allowances under s. 11(1)(*a*) and s. 20(2) of the 1948 *Income Tax Act,* and the question was whether or not the vendor and purchaser at the time of the sale of certain capital assets were dealing at arm's length. I do not think it necessary to state the facts in that well-known case. It is sufficient to say that the judgment was based on the finding that a certain bank was the registered owner of the majority of the shares in the old company at the date when that company sold its assets to the new company (Sheldon's Engineering Limited) and that the vendor and purchaser in the sale were in fact dealing at arm's length. The facts

[1] [1955] S.C.R. 637.

in that case are readily distinguishable from those now before me. If it be suggested that that case is authority for the submission made by counsel for the appellant herein that only the bare facts of the actual sale itself can be considered, I could not agree. In my view, the Court is entitled to consider all the surrounding facts and circumstances in order to determine whether or not the parties at the time of sale were in fact dealing at arm's length, and in *Sheldon's* case, did so.

Reference may also be made to *Miron & Freres Ltd. v. M.N.R.*[1]

My conclusions in this case have been arrived at solely by reference to the matters which I have mentioned above. Certain other documents were tendered in evidence by the respondent, namely, two certified copies of memoranda made by Mr. Martin, solicitor for the appellant company, Nelmar, Rolmac Construction Co. and Rolka, and marked as Exhibits L and M; and a further memorandum relating to Rolka and the appellant company, marked as Exhibit N. These documents were copies of documents secured respectively from Mr. Martin and Mr. Wright (accountant for Mr. Rolka, Nelmar and Rolmac Construction Co.) by the witness Atkinson, a duly appointed representative of the Minister acting under the provisions of s. 126 of the Act. Counsel for the appellant objected to their admissibility on a number of grounds.

In this case, I find it quite unnecessary to form any opinion on this matter which is an involved and difficult one. Counsel for the parties did not argue the matter in this case but were content to rely on their arguments in the personal appeals of Rolka which I heard a few days previously and in which the admissibility of the same documents was in question. The transcript of the proceedings and the argument in that case have not yet been received. In this case these exhibits, if admitted, would be of no assistance to the appellant, and, as above stated, the other evidence is sufficient, in my view, to warrant fully the conclusions which I have reached.

For the reasons which I have stated, I have come to the conclusion that the appellant has failed to demolish the basic assumption on which the re-assessment for 1953 was

[1] [1955] S.C.R. 679.

1961
ANCASTER DEVELOPMENT CO. LTD.
v.
MINISTER OF NATIONAL REVENUE
Cameron J.

made, namely, that at the time the appellant sold the lots on September 25, 1952 to Young, the latter was one of several persons by whom the appellant company was directly or indirectly controlled. In fact, the only reasonable inference from the evidence before me is that at the time of, and throughout that transaction, Rolka and Young, who admittedly by their combined shareholdings had control of the company, were in fact then acting in concert and exercising that control. The transaction is therefore within the provisions of s. 17(2) and of the then s. 139(5)(*a*) of the Act (*supra*). The appeal on that point therefore fails.

In view of that finding, I must now ascertain the fair market value of the lots on September 25, 1952—the date of the sale to Young. In the assessment, it was put at $1,500 per lot. Mr. A. L. Eyre, an assessor in the Department of National Revenue at Hamilton, stated that he had arrived at that value after searches in the Registry Office for sales in that Survey. He was influenced to a large extent by the fact that the appellant company in 1953 sold a substantial number of individual lots at prices averaging $1,400 per lot, and in many cases at $1,500 per lot; and by the fact that the sales by Nelmar to Rolmac, both in 1952 and 1953, were at the rate of $1,500 per lot. Mr. Eyre was a good witness, but he has had no experience in buying and selling real estate and he relied entirely on his searches of registered deeds. There are two matters which I think he failed to take into consideration, namely, that values in 1953 were substantially higher than they were in 1952; and that the market value of an individual lot may be somewhat more than the value per lot when a number of lots are purchased at the same time.

I find it unnecessary to review the whole of the evidence on this point. Mr. E. O. McKay, an experienced real estate agent and appraiser at Hamilton, stated that when a sale of a number of lots is made to a builder, the latter would try to purchase at a price which, after allowing for a profit of 30 per cent. to himself, would enable him to sell the lots at the going price for individual lots. I infer from this evidence that the objective is not invariably attained, that at times it may be less. I would fix that mark-up at 20 per cent. He also said that a purchaser of a block of lots would still further endeavour to reduce the cost to him by an

amount roughly equivalent to the taxes and carrying charges between the time of his purchase and a later sale, and this amount he estimated at one dollar per foot frontage. Again, I must find that this objective is not always reached and accordingly I fix that amount at something less, namely, fifty cents per foot frontage, or $50 per hundred foot lot.

Accepting the evidence that the fair market value of individual lots in 1952 was $1,100, I have come to the conclusion that the fair market value for lots when sold "wholesale", or in large groups as was done on September 25, 1952, was $875 per lot. A sale of a number of lots at that price to a wholesale purchaser would enable him to sell at the retail price of $1,100 per lot and to make a profit of 20 per cent. on his transaction, plus $50 per lot for carrying charges.

In the result, therefore, I find that the total market value of the 16 lots so sold to Young in 1953 was $14,000. It follows that the respondent was in error in adding $16,000 to the declared income of the appellant and should have added $6,000.

Accordingly, the appeal for the taxation year 1953 will be allowed, the decision of the Tax Appeal Board set aside, and the matter referred back to the Minister to re-assess the appellant for that year in accordance with my finding. It would appear from the records before me that when that re-assessment is made, the appellant will have no "loss" in 1953 to carry forward to the 1954 taxation year, and accordingly the appeal for the latter year will be dismissed.

After giving careful consideration to the question of costs, I have come to the conclusion that in the circumstances of this case, no costs should be awarded to or against either party. Success has been divided and while the appellant has succeeded in having its 1953 tax reduced somewhat, I cannot overlook the fact that the entire problem was created by the somewhat devious manner in which the then officers of the appellant company conducted their affairs. If full disclosure of all the surrounding facts had been made, no dispute would have arisen.

Judgment accordingly.