

BETWEEN :

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

APPELLANT;

Toronto  
1965  
June 23  
—

AND

EGIDIO PEVATO ..... RESPONDENT.

*Income Tax—Federal—Income Tax Act, R.S.C. 1952, c. 148, s. 20(1), (2)—  
Income Tax Regulations s. 1101(1)—Capital cost allowance recapture  
followed in same year by acquisition of other property—Whether new  
property imputable to “same business” so as to avoid recapture.*

After the sale of his interest in the Parklane Hotel, the Respondent acquired the Canadiana Motel which the Minister considered a different business for the purpose of s. 1101(1) of the Regulations.

In the Minister’s view the capital cost allowance recaptured on the sale of the first property would not be affected by the subsequent acquisition later in the same year whereas in the respondent’s view both properties related to the same business and were accordingly in the same class. So that the amount otherwise recapturable would be applied in reduction of the undepreciated capital cost of the new property.

*Held:* That the Respondent, at all material times, was engaged in the same business of an innkeeper or “motel-keeper”, which was in essence the business of providing accommodation to guests and it was irrelevant.

- 2. That the facilities in one premise were different from those in the other.
- 3. That in the Parklane Hotel his interest was as a member of a partnership whereas in the Canadiana Motel it was that of a single proprietor.

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4. That the physical plant of the Canadiana Motel was not completed until after the disposition of the physical plant of the Parklane Hotel.
5. That there was a smaller number or different category of employees at the hotel than at the motel.
- 6 That in view of this finding it was unnecessary to consider whether section 1101(1) of the Regulations was *ultra vires*.
7. That the appeal be dismissed.

APPEAL from a decision of the Tax Appeal Board.

*C. R. O. Munro, Q.C.* and *R. W. Law* for appellant.

*Donald J. Johnston*, for respondent.

GIBSON J.:—I am of the opinion that this case can be decided on the question of fact raised in the action. The question of fact, in brief, is whether the respondent, Egidio Pevato, was engaged in the same business at all material times within the meaning of s. 1101(1) of the regulations made under the *Income Tax Act* when he sold his interest in the Parklane Hotel at Sudbury, Ontario, and acquired the Canadiana Motel, also at Sudbury.

In my opinion the business of the respondent was that of an innkeeper or hotel or motel keeper at all material times, which is in essence the business of providing accommodation to guests. In my opinion it is irrelevant whether the facilities as opposed to the room accommodation in the Parklane Hotel and those in the Canadiana Motel are different; that the Parklane Hotel was a partnership, whereas the interest of the respondent in the Canadiana Motel is that of a single proprietor; that the physical plant of the Canadiana Motel was not completed until after the disposition by the respondent of the physical plant of the Parklane Hotel, and that there was a smaller number or different category of employees at the Parklane Hotel than there is or was at any material time at the Canadiana Motel.

In view of this finding, I do not propose to deal with the question of law submitted as to whether or not s. 1101 (1) of the regulations made under the *Income Tax Act* is *intra vires* of the Governor in Council.

In the result, therefore, the appeal is dismissed, with costs.