



[2021] 4 F.C.R. D-19

INCOME TAX

INCOME CALCULATION

Capital Cost Allowance

Appeal from Tax Court of Canada (T.C.C.) decision (2020 TCC 109) finding that appellant could not change amount of capital cost allowance (CCA) claimed in earlier years — Appellant had leasehold interest in school, surrounding land — Claimed CCA in filing its tax returns for its 1997 to 2003 taxation years — In computing its taxable income for its 2014, 2015, 2016 taxation years, appellant included claim for non-capital losses incurred from 1997 to 2003 — Reassessed, denied claim for these losses on basis that time period within which losses could be carried forward had expired — In objecting to reassessments, appellant claimed terminal loss in 2017 when disposing of its leasehold interest in property for \$1 — Minister of National Revenue (Minister) disputing amount of terminal loss — Appellant claiming that terminal loss based on its determination that amount that should be used as its undepreciated capital cost (UCC) of property was \$3,491,900 — Minister claiming that UCC was only \$679,683 — Calculated UCC on basis that CCA claimed by appellant in filing its tax returns for 1997 to 2003 reduced UCC of property of that class — Appellant now seeking to reduce CCA that it claimed on basis that revised amounts would still result in no tax being payable for each of these years — T.C.C. found that Parliament did not intend that appellant could now unilaterally change amounts claimed as discretionary deduction in computing its income for 1997 to 2003 — Issues whether UCC amount determined by deducting amounts claimed by appellant as CCA when it filed its tax returns for 1997 to 2003 or amount now proposed by appellant as revised amount of CCA for its 1997 to 2003 taxation years — UCC defined in *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1, s. 13(21) as formula $((A + B + C + D + D.1) - (E + E.1 + F + G + H + I + J + K))$ — Component of this formula disputed herein amount determined for E, where E being total depreciation allowed to taxpayer for property of class — Appellant submitting that amount to be used for E in definition of UCC in Act, s. 13(21) total of amounts now proposed by appellant as revised amounts of CCA for its 1997 to 2003 taxation years — Issue resolved by interpreting relevant provisions of Act based on textual, contextual, purposive analysis — Text of relevant provisions clear — Amount to be used for E in formula to determine UCC of property of appellant total amount deducted under Act, s. 20(1)(a) in respect of in computing appellant' income, which will include amounts deducted for its 1997 to 2003 taxation years — Appellant had discretion to choose what amounts it was claiming as CCA in computing its income for 1997 to 2003 — However, once amounts for each year chosen and appellant filed its tax returns, which included amounts so deducted, those amounts became total depreciation allowed for those years — No provision of Act allowing appellant, in 2017, to amend its returns for 1997 to 2003 — Court in *Canada v. Nassau Walnut Investments Inc.*, [1997] 2 F.C. 279 (C.A.) drew distinction between election, designation — When election made, taxpayer must make decision to forego one option in favour of another on basis of assessment of tax risks which may or may not materialize depending on uncertain events — Choice made by appellant in deciding what amount of CCA to claim in each year akin to election — Taxpayers generally unsuccessful in changing election absent specific provision of Act — Comments in *Nassau Walnut* with respect to election, inability of taxpayer to change election absent specific provision applicable in this case — Amount deducted under E in formula not dependent on appellant being assessed for particular taxation year, but rather on appellant deducting amount as CCA in computing its income for that year — History of CCA provisions confirming that changes

made to CCA system granted taxpayer right to choose amount of CCA to deduct in computing income in any particular year, subject to limitations imposed on amount that may be claimed — Parliament chose to only allow taxpayers to carry non-capital losses forward for defined period of time — Permitting appellant to revise its earlier claims for CCA would defeat purpose chosen by Parliament of having non-capital losses only available for particular period of time — Appellant attempting to revive non-capital losses that it cannot otherwise claim by converting these non-capital losses into terminal loss in 2017 — Appeal dismissed.

ST. BENEDICT CATHOLIC SECONDARY SCHOOL TRUST V. CANADA (A-302-20, 2022 FCA 125, Webb J.A., reasons for judgment dated July 6, 2022, 19 pp.)