

INCOME TAX

INCOME CALCULATION

Capital Gains and Losses

Appeal from Tax Court of Canada decision (2007 TCC 1730) allowing appeal from determination of loss under *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1, ss. 40(3.3),(3.4),(3.5) for 2000 taxation year—Judge erring in her interpretation of these subsections and in finding respondent entitled to claim capital loss realized on sale of shares of affiliated company, later merged and also affiliated, in computing its taxable income—Presumption in s. 40(3.5)(c) that corporation formed on merger deemed to own share while affiliated with transferor applying, three conditions of ss. 40(3.3)(a),(b),(c), therefore met; s. 40(3.4) setting out that transferor’s loss from disposition of shares deemed nil applying—Judge erring in considering intent of Cascades Inc. (respondent) in her analysis because stop-loss rule in those subsections applying regardless of taxpayer’s intent—Appeal allowed.

CASCADES INC. V. CANADA (A-8-08, 2009 FCA 135, Nadon, J.A., judgment dated April 30, 2009, 18 pp.)