CASES

DETERMINED BY THE

EXCHEQUER COURT OF CANADA

AT FIRST INSTANCE

AND

IN THE EXERCISE OF ITS APPELLATE JURISDICTION

CAUSES

ADJUGÉES PAR

LA COUR DE L'ÉCHIQUIER DU CANADA

EN SA JURIDICTION DE COUR DE PREMIÈRE INSTANCE

ET

EN SA JURIDICTION D'APPEL

1960 Dec. 5, 6, 7, 8
1962 Sep. 17
1963 Feb. 25

BETWEEN:

HERB PAYNE TRANSPORT LIMITED .... APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE .... RESPONDENT.

Revenue—Income tax—Income Tax Act, R.S.C. 1952, c. 148, ss. 11(1)(a), 20(1), 20(6)(g)—Sale of business as going concern—Determination of consideration received for depreciable property—Appeal allowed.

Appellant in March, 1956, sold its trucking business for $200,000. The appeal is from an assessment made by respondent in respect of the 1956 taxation year under which the sum of $117,540.99 was added to appellant's income as recaptured capital cost allowance under s. 20(1) of the Act. Other items added are not disputed. The matter at issue is what parts of the total sale price might reasonably be regarded as being the consideration for the disposition of the appellant's depreciable properties of various classes.

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The valuation to be attributed to goodwill was a key point to the allocation of the total consideration and after considering various factors the Court placed an evaluation of $50,000 as being reasonable for the goodwill of appellant's business, inclusive of its trucking licence.

Held: That a determination under s. 20(6)(*g*) of the Act is not necessarily based on the fair market value of the property in question and may be more or less than that value, depending on the circumstances.

2. That the fact that in five of the sub-sections of s. 20(6) which precede s-s. (*g*) the term "fair market value" is used and that it is not used in s-s. (*g*) (where the term "can reasonably be regarded" is used) is a clear indication that it was not intended by Parliament to be the standard to be used in applying s-s. (*g*).
3. That such a determination depends solely on what part of the total consideration can be allotted to each property in the light of all the circumstances of the particular case.
4. That after examining the matter item by item the appeal be allowed in part.

APPEAL under the *Income Tax Act.*

The appeal was heard before the Honourable Mr. Justice Noël at Ottawa.

John G. McDonald, Q.C. and *David A. Ward* for appellant.

Gordon D. Watson, Q.C. and *F. J. Dubrule* for respondent.

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

NOËL J. now (February 25, 1963) delivered the following judgment:

This is an appeal from a notice of reassessment issued by the respondent in respect of the 1956 taxation year under which the sum of $117,540.99 was added to the appellant's income as recaptured capital cost allowance under s. 20(1) of the *Income Tax Act,* $4,163.60 as the proceeds of sale of inventory and $6,110.73 as mortgage and loan interest. The appellant does not dispute the inclusion of the proceeds of sale of inventory and subsequent to this appeal it has been agreed between the parties that the amount of mortgage and loan interest properly includible in the income of the appellant is $5,181.49 and not $6,110.73 and a formal consent was filed with the Court.

The appellant's rather profitable trucking business in Peterborough, Ontario, was built up by its principal officer,

Mr. Herbert M. Payne, over a 25-year period from a one-truck to a 30-truck operation with a substantial truck warehouse and a large staff. It did all the transporting of the goods of Canada Packers, in Ontario, which was 60 per cent of its business as well as that of the Hinde and Dauch Paper Co., Quaker Oats Company, Whittiker Wood Co. and others of a minor nature who were manufacturers in Peterborough and in 1955 it acquired a new customer, Johnson Motors, an outboard marine manufacturer in Peterborough.

The appellant owned a garage built on a parcel of land located at the south end of the south side of the main section of Peterborough with a paved area in front of this garage. The building proper was constructed in different parts. When, during the last war, the appellant first bought the east half of the lot, the east six-door part of the garage was built. The next five-door part was built in 1953 or 1954. It is a concrete block construction with a cement floor. The total cost of this building was approximately $29,000.

Sometime in the beginning of the year 1956, Mr. Donald A. Paxton, of Peterborough, Ontario, approached Mr. Payne, the owner of the appellant company, and asked him what he wanted for his company. Mr. Payne replied that he valued the appellant company at $250,000 of which $100,000 was for goodwill and the balance for its fixed assets.

In March 1956, negotiations were begun by Mr. Paxton for the acquisition of the shares of the appellant company and a draft agreement, dated March 1956, was forwarded to Mr. Herbert Marshall Payne, the principal shareholder of the appellant company for this purpose. This agreement provided *inter alia* that:

> The Vendor agrees to sell and the Purchaser agrees to purchase all the outstanding shares of the Company having a capital value of $90,321.96 as shown on the balance sheet dated December 31, 1955 for the sum of $200,000.

For the purpose of the proposed purchase of the shares, a list of depreciable property owned by the appellant as at December 31, 1955, was supplied to the purchaser's accountant, a Mr. Black, which included a tabulation of the original cost of the appellant's tangible assets as appears from Ex. B.

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This preliminary offer was refused by Mr. Payne for some undisclosed reason and a further proposal was later made by the same Mr. Paxton but this time the offer was not for the shares but for the purchase of "the trucking and transport business carried on under the name of Herb Payne Transport Limited and all interest and goodwill thereof together with all trucks, tractors, trailers, fixtures, motor vehicles, licences, land and buildings, as set out in Schedules "A" and "B" attached to the said agreement", Ex. 3, dated March 13, 1956, which agreement was accepted by the appellant on March 19, 1956, at a special meeting of shareholders of the appellant company.

It would appear from the evidence that the purchaser's accountant and solicitor, in preparing Schedule "A", which was afterwards attached to Ex. 3, the agreement document, and which Schedule "A" was signed by both Mr. and Mrs. Payne the owners of the shares of the appellant company, transposed as the value of the fixed assets, which appears on Schedule "A", the original capital cost of the appellant company's tangible assets, as contained in Ex. "B" and which had been supplied previously for the proposed share purchase. The original capital cost of its tangible assets totalled $203,461.47 and underneath the above total on Schedule "A" of Ex. 3 the words "Total consideration" were added and opposite a price of $200,000 was mentioned. As the individual figures on Schedule "A" add to more than the aggregate purchase price, they should, in my opinion, be subject to caution. Furthermore the words "Total consideration $200,000" may apply to not only the items listed in Schedule "A" but also to the goodwill of the business as the latter is specifically mentioned in Ex. 3 to which Schedule "A" is attached. Now the valuation of the fixed assets of the business for the purpose of the sale of assets was apparently never discussed with the appellant's main shareholders, by the purchaser or his representatives nor by the appellant's own accountant and solicitor with the result that Mr. and Mrs. Payne both signed Schedule "A" for the sole purpose of identifying the depreciable property without appreciating the possible significance of the figures on the sheet, which sheet, of course, contained no amount for the goodwill of the business although, as we have seen, goodwill was mentioned in the agreement document, Ex. 3. The same would apply

to two other documents signed by Mr. Payne, Ex. 5, the bill of sale, and Ex. 6, the bill of sale of the goods, chattels, both of which were in effect filed in the office of the clerk of the County Court of Peterborough. These documents contained a list and values of the depreciable assets of the appellant company. Let me say here that no evidence was adduced on behalf of the respondent to establish any agreement between the appellant and Mr. Paxton concerning the value of the assets of the appellant sold to Mr. Paxton and the evidence adduced by the appellant affirmatively denied any such agreement.

Schedule "A", "Statement of Fixed Assets as of December 31st, 1955" listed the following items and amounts:

Item	Amount
Land	$ 1,125.00
Concrete block garage	29,012 62
Lights and light fixtures	2,850 00
Machinery and equipment	1,185.67
Furniture and fixtures	837.40
Refrigeration units	15,960.00
Asphalt driveway	2,700.00
Automotive equipment	149,790 78
	$203,461.47
Total consideration	$200,000 00

No allocation was made, therefore, of the sales value of the depreciable assets and the value of the goodwill of the business.

Schedule "B" listed registration plates and P.C.V. licence plates at $5,686.50 and this amount was paid separately and in addition to the $200,000 price.

This agreement, Ex. 3, was subject to the transfer of all licences pertaining to the said business and a condition of same was for the vendor not to "directly or indirectly, act or become employed in any capacity whatsoever in any road transport or trucking company or concern operating in the Province of Ontario, nor will he have any interest, financial or otherwise, in any such company, so as to compete with the purchaser operating the business being the subject matter of this sale operating as a public vehicle transport business, for a period of five years from the date hereof."

As all the items listed in Schedule "A", except land, were classes of depreciable property in respect of which capital cost allowance had been claimed by the appellant

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in prior years pursuant to the provisions of s. 11(1)(*a*) of the *Income Tax Act* and as the aggregate proceeds of the disposition of such property exceeded the aggregate undepreciated capital cost to the appellant of all such classes of property, it becomes necessary to consider what portion of such proceeds, if any, shall be deemed to be recaptured capital cost allowance which should be added to income for taxation purposes pursuant to s. 20(1) and (6) of the Act.

The appellant, in reporting its income for 1956, calculated its capital cost recapture at $13,954.26 by assuming a recapture of $113,954.26 and deducting therefrom $100,000 re goodwill. When reassessing the appellant, the respondent, among other things, increased capital cost allowance recapture by $117,540.99. It is admitted by the appellant that $5,115.01 (i.e. recapture on its concrete block garage) of the $117,540.99 claimed to have been recaptured is properly assessed and the sole issue now is with respect to the balance of $112,425.98.

The appellant, on the other hand, contends that the $200,000 consideration for the purchase of the business should be apportioned as follows:

Land and buildings	$ 78,000.00
Refrigeration units	6,400 00
30 automotive units	37,500 00
Goodwill	78,100.00
	$200,000.00

The assessment must be presumed to be valid and correct unless and until the appellant satisfies the onus of establishing error on the part of the Minister, cf. *Noralta Hotel Limited v. M.N.R.*[1].

The relevant provisions of the *Income Tax Act*, R.S.C. 1952, c. 148, are as follows:

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;

20. (1) Where depreciable property of a taxpayer of a prescribed class has, in a taxation year, been disposed of and the proceeds of disposition exceed the undepreciated capital cost to him of depreciable property of that class immediately before the disposition, the lesser of

[1] 54 D.T.C. 1080.

(*a*) the amount of the excess, or

(*b*) the amount that the excess would be if the property had been disposed of for the capital cost thereof to the taxpayer,

shall be included in computing his income for the year.

20. (6) For the purpose of this section and regulations made under paragraph (*a*) of subsection (1) of section 11, the following rules apply:

* * *

(*g*) where an amount can reasonably be regarded as being in part the consideration for disposition of depreciable property of a taxpayer of a prescribed class and as being in part consideration for something else, the part of the amount that can reasonably be regarded as being the consideration for such disposition shall be deemed to be the proceeds of disposition of depreciable property of that class irrespective of the form or legal effect of the contract or agreement; and the person to whom the depreciable property was disposed of shall be deemed to have acquired the property at a capital cost to him equal to the same part of that amount;

The issue in this appeal is to determine what part of the amount of $200,000 which the appellant received from Mr. Paxton can reasonably be regarded as being the consideration for the disposition of the appellant's depreciable property, i.e. its buildings, lights and light fixtures, machinery and equipment, furniture and fixtures, refrigeration units, asphalt driveway and automotive equipment. Whatever amount is so regarded shall be deemed to be the proceeds of the disposition of its depreciable property within the meaning of s. 20(1) of the Act.

If one should rely entirely on the documentary evidence produced and particularly Schedule "A" to Ex. 3, which was signed by Mr. Payne, the appellant's principal shareholder, the portion of the price attributable to each group of assets would have been conclusively determined by the arm's length agreement of the parties.

There is no doubt that ordinarily, the price of an asset arrived at by *bona fide* negotiations at arm's length in a commercial transaction should establish the value of that asset at that time and place.

However, as we have seen, the evidence discloses that in the present instance although values appear opposite all of the depreciated assets of the appellant they had not been agreed between the parties as establishing the value of the said assets. These values would, therefore, under the circumstances, be open for determination under s. 20(6)(*g*) of the *Income Tax Act* which, as we have seen, specifically states that: "the part of the amount that can *reasonably* be regarded as being the consideration for such

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disposition *shall* be deemed to be the proceeds of disposition of depreciable property of that class irrespective of the *form* or *legal* effect of the contract or agreement;".

The above rule appears to be mandatory and would apply to any case where a disposal of depreciable property occurs. It also, in my opinion, would have the effect of permitting evidence with respect to the reasonableness of the consideration for such depreciated property to be adduced notwithstanding the ordinary rules of evidence which, as suggested by counsel for the respondent, might apply here to prevent contradiction by oral evidence of the terms of a written document and this would be especially so in a case such as we have here where the purchaser and the appellant, as we have seen, were never *"ad idem"* concerning the valuation of assets of the business for the purpose of the sale of assets.

The only matter, therefore, remaining is to examine the amounts set down in Schedule "A" of Ex. 3 for the appellant's fixed assets and determine if, in view of the evidence presented, they can be reasonably regarded as being the consideration for such disposition, which, or course, is a question of fact to be determined by examination of the peculiar features applicable to each case.

Because of the reciprocal effect on purchaser and vendor of any such finding here I am prepared to accept, as suggested by counsel for the respondent, that the matter should be considered from the viewpoint of the purchaser as well as from the viewpoint of the vendor.

There is also no question that if the purchaser and vendor acting at arm's length, reach a mutual decision as to apportionment of price against various assets which appear to be reasonable under the circumstances, they should be accepted by the taxation authority as accurate and they should be binding on both parties.

However, in the present instance, the consideration for the fixed assets as set down in the reassessment of the respondent appears to me to be most unreasonable for the following reasons. In the first place, the mere fact that the purchaser here was prepared to pay $200,000 for the shares of the appellant company, and therefore take over the company with its fixed depreciated assets as they were at that time, indicates that he had then implicitly assumed that a certain amount was carried in the $200,000 for

goodwill. Indeed, the incidence of income tax upon the purchaser in such a case would, I believe, indicate that he was prepared to pay a high price for goodwill or for the right to future profits and that he expected the continuation of such profits for a long period.

The appellant urges that the only yardstick to apply in determining what "can reasonably be regarded" as being the consideration for disposition of depreciable assets is their "fair market value."

This, in my opinion, as pointed out by counsel for the respondent, is not so and the fact that in five of the subsections of s. 20(6) which precedes s-s. (*g*), the term "fair market value" is used and that it is not used in s-s. (*g*) (where the term "can reasonably be regarded" is used) is a clear indication that it was not intended by Parliament to be the standard to be used in applying s-s. (*g*).

Indeed, the consideration given and received for the disposition of depreciable property may, but need not, necessarily coincide with "fair market value".

In some cases the consideration may be less or more than fair market value according to the surrounding circumstances and the differing reasons which may have activated the buyer or the seller but in all cases, under s. 20(6)(*g*) of the Act, the consideration must be reasonable.

Before dealing with the apportionment of the sale price in accordance with Schedule "A" of Ex. 3, the matter of goodwill should now be examined. As stated by Lord MacNaughton in *Commissioners of Inland Revenue v. Muller Limited*[1] goodwill is a thing very easily described but very difficult to define. He however defined goodwill by embracing the elements which are the sources of goodwill.

His definition was:

> Goodwill is the benefit and advantage of a good name, reputation and connection of a business. It is the attractive force which brings in customers. It is the one thing which distinguishes a well established business from a new business at its first start . . . Goodwill is composed of a variety of elements. It differs in its composition in different trades and on different bases in the same trade. One element may preponderate here and another there.

[1] [1901] A.C. 217.

Other factors to be considered are good relations with employees, favourable commercial contracts, franchises, good financial relationships and finally good management. All these advantages are interrelated and form a composite which will assist in estimating the value of goodwill in a business.

It is then necessary to examine a number of things such as the profits over a selected number of past years, placing a value on net tangible assets used in the business as a going concern, determining a normal rate of return which an investor in a business would receive on his capital, estimating the possible duration of the profits from the business.

The evidence of Mr. David York Timbrell, a chartered accountant called on behalf of the appellant, establishes that the latter's business had a substantial value in view of the considerable and constant income earned by the taxpayer in the last five years preceding March of 1956. Its net profit after proper deductions of capital allowances for the following years is as hereunder set down:

1952	for twelve months	$36,241.31
1953	for twelve months	$27,451.54
1954	for twelve months	$31,408 66
1955	for twelve months	$26,989.98
1956	for a three month period ending March 31, 1956	$22,332.71

Further evidence of the substantial value of goodwill in this transaction can be found in the fact that the purchaser, according to the evidence of Mr. Brown, an officer of Canada Packers Limited, the main customer of the appellant company, called him before the transaction was entered into and asked for and received Mr. Brown's assurance that the appellant's business with Canada Packers Limited would continue.

There is also additional evidence of the value of the goodwill here in the fact that the P.C.V. licence owned by the appellant under which it carried on its trucking business had a value of $35,000 as indicated by the evidence of the purchaser himself who placed the value upon that licence for the purpose of the sale by him to his private corporation of the business purchased in March 1956. Mr. Black, the purchaser's accountant, stated that as Mr. Paxton was receiving shares for the above value in his own

corporation where he already owned practically all the shares, this value is not too significant. It may well be that the value here was blown up but it would still seem that this trucking licence had some value which, in my opinion should be added to the figure one would obtain based on the appellant's past earning record and the possible duration of its profits.

I might also add that the purchaser's requirement that Mr. Payne, the appellant's main shareholder, should enter into a covenant not to compete in the trucking business for five years, that he should assist in arranging for the transfer of the P.C.V. licence and that the appellant company should consent to the use of its name by a company to be formed by the purchaser to carry on the business acquired, all indicated in some measure the value of the goodwill of this business.

On the basis of the above evidence and taking into consideration values to be attributed to the fixed assets of the appellant company which I have already done, which values I will shortly deal with individually, I consider that an evaluation of $50,000 for the goodwill of appellant's business, inclusive of its trucking licence, would be most reasonable.

The question now to be determined is whether the apportionment of the sale price in accordance with Schedule "A" of Ex. 3 was, under the circumstances, reasonable. In order to do so, I shall follow the order in which the depreciation items appear on Schedule "A".

The first item is land and concrete block garage and I shall also include here the asphalt driveway.

The appellant, as we have seen, admits that $5,115.05 should be included in computing its income for the 1956 taxation year, representing recaptured capital cost allowance on this garage and adds that the difference between original cost, as shown by Ex. 2, and the value of $78,000 (of which $66,067.06 for buildings and $12,357 for land) ascribed to the garage and land by Messrs. Sands and Saxby, its expert evaluators, was a capital receipt.

The value ascribed to the garage and land by respondent's evaluators, Oliver Roberts, Carter & Company, is $44,000 and the difference between the parties with respect to the evaluation of the land and buildings becomes significant only because the apportionment of a large

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portion of the price to real estate would leave less available for the apportionment to other assets. It would, therefore, be of some assistance to establish the value of the land and buildings.

The property is located on the north side of Romaine Street, in the City of Peterborough, and is surrounded by a multiple housing area. It is within easy access to a number of factories. The property with a frontage of 139.36 feet on Romaine Street by a depth of 231 feet, contains a total of 32,192 square feet. It is as a trucking terminal a non-conforming user as it is now situated in a multiple residence area. Originally, this property was in many smaller parts and has been assembled since the year 1936 to 1953. It was improved by the building of a cement block trucking terminal which was completed in the latter part of 1954. There is room within the terminal to store approximately thirty-five trucks. In addition to this truck terminal, a portion of the yard is paved. It contains a total building area of 12,800 square feet of which 400 square feet are in office rooms and 293 square feet in furnace and stock rooms the balance being entirely free for all purposes of truck storage. There is also a one and a half storey frame house on the land.

Messrs. Sands and Saxby, real estate agents and appraisers, established the value of the garage and land at $78,000. Both of these gentlemen are experienced professional valuers with knowledge of local conditions and Mr. Saxby had, in addition, considerable experience in the construction business. On the other hand, respondent's valuer, Mr. Richard Roberts, who valued the land and buildings at $44,000, admitting to no experience in the construction of buildings, made an error of several dollars per square foot when comparing the cost of the Bell Telephone building with appellant's garage.

Mr. Payne testified that in the original negotiations with Mr. Paxton, he valued the garage at $75,000 out of a price of $250,000 and that when the prospective purchaser suggested that the price was a little high, Mr. Payne admitted that one thing he was high on was the price put on the garage.

Cf. p. 69 of the transcript:

Q. 1 You didn't take anything for goodwill?

A. No, my goodwill I said was worth $100,000. I still held out for my goodwill.

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Q. 2 When did you decide that?

A. All the time. I said first of all as I said when I first started to talk it was $100,000 goodwill and when the agreement came along that I reduced, I reduced the garage $25,000 which made it $50,000. Well then when we got the final figure $200,000, in my own mind I said I would forget the refrigeration units and I left it at the garage at the $50,000, the rolling stock at $50,000 and $100,000 goodwill is the way I sold as far as I was concerned.

In view of Mr. Payne's own estimate of the garage at $50,000 and the evidence adduced by the evaluators, I do feel that this amount of $50,000 is the one that should be adopted as a reasonable consideration for the garage and house of the appellant. With respect to the land, bearing in mind the comparable land sales, I do feel that the average of thirty cents a square foot is a reasonable basis and would therefore give a total for 32,192 square feet of $9,657. I also find that the 1,200 square yards at $2.25 a square yard, which is the cost of the paved surface, is also a reasonable consideration for same at $2,700.

The evidence discloses that other tangible assets such as the following were old and partially obsolete and on that basis I believe that a reasonable consideration for these items would be as follows:

Lights and light fixtures	$1,425.00
Machinery and equipment	593.00
Furniture and fixtures	418.70

We shall now deal with the eight refrigeration units which appear on Schedule "A" at $15,960 but which the appellant has estimated at $6,400.

Mr. Payne admitted that these units were originally acquired by the appellant company at bargain prices because the distributor was anxious to break the ice in opening a market for the product. He testified that he valued these units at $25,000 in negotiations with Mr. Paxton and he had $24,400 insurance on them. He however explains his value of $25,000 at p. 69 of the transcript:

His Lordship: I don't see how your mind was working. In the Fall of '55 you put a value in your mind of $25,000 on those refrigeration units and six months later in '56 you just cleaned the slate. They had no value at all in your mind.

A. Well, My Lord, they had been used for a number of years and they were getting where they should be maybe replaced and that exactly I just let the refrigerations go that was all.

His Lordship: Yes but in '55 they weren't going. They were worth $25,000 in your mind.

A. Yes.

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His Lordship: That is why I have difficulty in following you.

A. That is where I draw my figure to get my price up to the $250,000. I figured he was going to try to chisel me down some place.

Q. You were trying to get the highest price and he was trying to get the lowest?

A. Well I left myself there that I could come down.

Mr. David Grinstead, an employee of the Freehaul Trailer Co., on the basis that these units were six or seven years old and were of the smaller size would have allowed between $800 and $1,000 per unit if they were in good working condition. He admits, however, that his company would have done everything in 1956 to get out of taking the equipment in because of the limited market at the time. This no doubt must have unduly influenced this witness, a salesman, who would bear in mind the possibility that the appellant may want to turn in these units for a trade-in. For the purchaser, however, these units together had a substantial value in excess, I believe, of their market value. One thousand two hundred dollars per unit would, in my estimation, be a reasonable consideration in the circumstances, which for eight units would total $9,600.

We have now reached the automotive equipment which appears on Schedule "A" of Ex. 3 in an amount of $149,790.78 and which the appellant has estimated at $37,500.

The amount of $149,790.78 was the original cost of this equipment which was purchased between 1948 and 1955.

Mr. Grinstead evaluated in 1956, fourteen trailers at $27,800 as it appears from his letter dated February 1956 (Ex. 11) after, however, examining only 50 per cent of them.

This amount of $27,800 was what his company Freehaul would have been willing to pay for these vehicles on a trade-in. He testified that although he could not recall the exact state of the used trailer market in 1956, he would say that he would be able to buy quite a few of these trailers at approximately the prices he mentioned above in used trailer markets in Ontario at the time.

Mr. James Wilson, a garage operator, also sold cars and trucks, new and used, in Lindsay, Ontario. During the winter of 1955 and 1956 he inspected the trucks and tractors owned by the appellant company and made an ap-

praisal on them upon Mr. Payne's request in February 1956 which appears in a letter dated February 16, 1956 (Ex. 12). His appraisal of these units totals $19,275. The total amount of the trucks and trailers would, according to both Mr. Wilson and Mr. Grinstead, total $47,075.

This in my opinion is far below a reasonable consideration for these units. Here again both of these witnesses are salesmen who would try to whittle down the trade-in price to a minimum and I believe this is what they did. Furthermore, I believe, as urged by counsel for the respondent, that this equipment available in a group such as here definitely had an enhanced value beyond what the individual items might have sold for individually on the market, because of the utility of this equipment as a unit in enabling the purchaser to carry on with them a very profitable business with no delays or interruptions.

On that basis, I would think that the balance remaining of $75,606.30 after deducting the value of the goodwill as determined above and the other fixed assets would in the circumstances be a reasonable consideration for the automotive equipment.

I therefore find that the amounts set out hereunder with respect to the following items are those that can reasonably be regarded as being the consideration for the disposition of those assets within the meaning of s. 20(1) of the *Income Tax Act:*

Item	Amount
Goodwill	$ 50,000.00
Land	9,657.00
Concrete block garage and house	50,000.00
Lights and light fixtures	1,425.00
Machinery and equipment	593.00
Furniture and fixtures	418.70
Refrigeration units	9,600.00
Asphalt driveway	2,700.00
Automotive equipment	75,606.30
	$200,000.00

Accordingly, the appeal will be allowed and the matter referred back to the Minister to reassess the appellant in accordance with my findings with the addition of $4,163.60 as the proceeds of sale of inventory and the agreement reached by the parties as to the amount of $5,181.49 added as mortgage and loan interest.

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I have considered the question of cost and have reached the conclusion that in the circumstances of this appeal, one half of its taxable cost only should be awarded to the appellant. While it has succeeded in having its 1956 assessment reduced somewhat, it is mainly responsible for the position taken by the respondent in assessing it as he did by allowing Schedule "A" of Ex. 3 to form part of the sale document of its assets with an apportionment of the various items of its fixed assets based on original cost and a very substantial part of the time of this hearing was occupied in taking evidence with respect to that document.

I am satisfied that if this had not been done a considerable part of the dispute would not have arisen.

Judgment accordingly.