
Winnipeg 1967
Jan. 24-26
Feb. 28

BETWEEN:

METROPOLITAN TAXI LIMITED ..... APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE ..... RESPONDENT.

Income tax—Capital cost allowances—Licence to operate taxicab—Whether purchase-price part of cost of vehicle—Whether an intangible advantage of enduring nature—Income Tax Regulations, classes 10 and 14.

On January 26th 1961 appellant company which operated 19 taxicabs in Winnipeg purchased for $104,441 the assets of another taxicab company mainly for the purpose of acquiring 14 taxicabs which were licensed to operate until February 28th 1961. In assessing appellant for 1961 the Minister allocated $18,590 of the purchase-price to the 14 taxicabs which were depreciable under class 10 of the capital cost allowances and $72,031 was allocated to non-depreciable property. Appellant appealed contending that the $72,031 should be regarded as part of the cost of the 14 taxicabs on the ground that the licences to operate them were component parts of the licensed property, or alternatively that the $72,031 was expended to acquire the 14 licences which were

property depreciable under class 14. The number of taxicabs in Winnipeg was limited to 400 by the Taxicab Board operating under statutory powers. Licences to operate taxicabs were issued annually by the Board to the owners for specific vehicles and the renewal of a licence or the issue of a licence for a substitute vehicle or to a new owner was virtually automatic though not obligatory and a licence could be cancelled or suspended by the Board for violations of the law. Licences had a value in the market place of between $5,000 and $6,000 in 1961.

Held, a licence to operate a taxicab was not a component part of the taxicab but was personal to the owner and capital cost allowances therefore were not authorized under either class 10 or class 14. What appellant purchased for the $72,031 was a long term commercial benefit which was an intangible enduring advantage of a capital nature, *viz* the reasonable expectation of succeeding to the vendor's position before the Taxicab Board and of expanding its business by 14 taxicabs.

Cartwright v. Sculcoates Union [1900] A.C. 150; *Rex v. Shoreditch Assessment Committee* [1910] 2 K.B. 859; *Fitzwilliam (Earl) v. Inland Revenue Commissioners* [1914] A.C. 753, distinguished.

APPEAL and CROSS-APPEAL from Tax Appeal Board.

A. J. Irving for appellant.

D. G. H. Bowman and *J. R. London* for respondent.

CATTANACH J.:—This is an appeal from a decision of the Tax Appeal Board[1] dated April 29, 1966 in respect of an income tax assessment for the 1961 taxation year of the appellant.

The appellant, a corporation incorporated pursuant to the laws of the Province of Manitoba, carries on the business of operating taxicabs in the Metropolitan area of the City of Winnipeg, in that province. Pursuant to an agreement dated January 26, 1961 the appellant acquired the assets of another corporation, Adolph's Taxi Company Limited (hereinafter referred to as Adolph's), also engaged in the operation of taxicabs in the City of Winnipeg, for a total consideration of $104,441.65. The assets so acquired included garage and office equipment, meters, radios and automobiles, including 14 vehicles which Adolph's was licensed to operate as taxicabs.

In filing its return of income for its 1961 taxation year, the appellant did not claim that any portion of the purchase price represented the consideration for assets falling

[1] (1966) 41 Tax A.B.C. 117.

1967

METRO-POLITAN TAXI LTD. v. MINISTER OF NATIONAL REVENUE

Cattanach J.

within Class 14 of Schedule B to the Regulations made pursuant to section 11(1)(*a*) of the *Income Tax Act*, that is "property that is a patent, franchise, concession or licence for a limited period in respect of property". Rather the appellant allocated the purchase price as follows:

(1) Garage and Office Equipment (Class 8)	$ 2,000
(2) Radios (Class 9)	8,250
(3) Taxicabs (Class 10)	93,550
Total	$103,800

The Minister, in assessing the appellant, allocated the purchase price of $104,441.65, (which includes legal fees of $641.65 thereby accounting for the discrepancy in the above total), as follows:

(1) Garage and Office Equipment (Class 8)	$ 2,000
(2) Meters (Class 8)	3,570
(3) Radios (Class 9)	8,250
(4) Automobiles (Class 10)	18,590
(5) Consideration not attributable to depreciable property	72,031.65
Total	$104,441.65

Only the fifth item in the Minister's allocation of the purchase price is in dispute between the parties before me and this was also the only item in dispute before the Tax Appeal Board.

So far as I can determine, the appellant's contention before the Tax Appeal Board was that the sum of $72,-031.65 was laid out to acquire fourteen licences for a limited period, that such amount was reasonable to allocate to the licences under section 20(6)(*g*) of the *Income Tax Act* and accordingly an allowance in respect of that capital cost should be permitted and depreciated over the terms of the licences. It was further contended that no goodwill was acquired.

The Tax Appeal Board found that the appellant "sought and acquired an intangible, enduring advantage of a capital

nature and the evidence confirms that the greater part of the sum of $72,000 ($72,031.65) was paid for the privilege of expanding its operations by acquiring the business previously carried on by Adolph's Taxi Company" and that "there is no provision in the *Income Tax Regulations* for an allowance which might be granted in respect of such an asset".

However, the Board found that the licences on the fourteen taxicabs purchased by the appellant on January 26, 1961 expired on February 28, 1961 and accordingly must be deemed as belonging to those assets falling within Class 14 of Schedule B and an allowance should be granted in respect of the capital cost for the unexpired portions of the licences. The appeal was, therefore, allowed and the assessment was referred back to the Minister to ascertain the portion of the purchase price attributable to licences for the period from the date of their acquisition to the date of their expiration in order that an allowance may be granted with respect to that amount to be found.

It is from the foregoing decision of the Tax Appeal Board that the appellant now appeals, contending that the whole sum of $72,031.65 is subject to a capital cost allowance and the Minister cross-appeals from that part of the decision of the *Tax Appeal Board* which permitted an allowance on an amount to be determined as attributable to the unexpired period of the licences.

However, counsel for the appellant advanced as his principal argument before me a position that was not taken and argued before the Tax Appeal Board. His position before me, as I understand it, is that licences or authorizations issued in respect of an asset or property are an element of and a component part of that asset or property, and that licences issued in respect of property do not stand by themselves as property but form part of the licensed property. If those premises are accepted he then contends that the pertinent provisions of the *Income Tax Act* and regulations thereunder do not purport to isolate elements of an asset or property. It would follow from this that the entire amount of $72,031.65 was expended for the fourteen vehicles, licensed to operate as taxicabs and as such subject to capital cost allowance as automotive equipment within Class 10 of Schedule B to the regulations.

1967

METRO-POLITAN TAXI LTD. v. MINISTER OF NATIONAL REVENUE

Cattanach J.

Under the *Taxicab Act*, chapter 260, R.S.M. 1954 a Taxicab Board was established with extensive powers to regulate the taxicab business in greater Winnipeg and to exercise a general supervision over owners, operators and drivers.

The Statute provides that there shall be a separate licence (1) to carry on a taxicab business, (2) to operate a taxicab and (3) to drive a taxicab.

Under the authority conferred by section 7 of the Act, the Taxicab Board, considering the public convenience and necessity, limited the number of taxicabs that may be operated to four hundred. This quota was set by the Taxicab Board in 1947 and was an increase over the previously prevailing number of 283 to accommodate returning war veterans. The prescribed quota has been fully occupied from the date of its establishment. While it is possible that the number might be increased at some future time, that possibility seems very remote.

In order to obtain a licence to operate a taxicab there must be a specific vehicle and a licence is issued to the owner with respect to that vehicle which is described in the licence. The licence on its face is described as a "Licence to Operate a Taxicab" and in smaller type immediately thereunder appear the words "and Certificate of Registration of Vehicle". The operative language reads that the owner "is hereby licensed to operate the motor vehicle described herein as a Taxicab". When the vehicle, with respect to which a licence has been issued, becomes worn out or no longer serviceable, (the normal life of a taxicab being three years) a new licence will be issued for a substitute vehicle and the former licence is cancelled.

Licences to operate a taxicab are issued annually by the Board upon payment of the prescribed fee. Once issued the renewal of a licence to the same owner is virtually automatic, although the Board need not renew any particular licence. Further, section 5 of the Statute provides that the Board may suspend or cancel any licence issued by it in the event of any contravention of the provisions of the *Highway Act*, the *Taxicab Act* or the regulations, directives or decisions of the Board.

Because the quota of four hundred has been filled and a long waiting list exists, the only practicable ways in which

a person might become eligible to operate a taxicab, or if already engaged in the taxicab business to increase the number of taxicabs which he may operate, are to buy the shares of a corporate taxicab operator or to succeed to the position of an already licensed operator by buying from that operator one or more vehicles with respect to which a licence has been issued.

In the present instance the appellant adopted the latter course in the expectation of increasing its then fleet of nineteen taxicabs to thirty-three by the addition of the fourteen licensed taxicabs owned by Adolph's. Mr. Abramson, the president of the appellant, testified that his purpose in purchasing the assets of Adolph's was to acquire the fourteen taxicabs. He was not interested in the other assets which were only purchased incidentally. Neither was he interested in the taxicabs as vehicles, but only because they were licensed to operate as taxicabs. Seven of the taxicabs were operated by the appellant, under the name "Adolph's" for the short period it took to replace them with new vehicles. The remaining seven taxicabs were operated for a slightly longer period. When new vehicles were available to replace them, the appellant sold the fourteen acquired from Adolph's at negligible prices.

The agreement between the appellant and Adolph's was entered into on January 26, 1961 and the licences on the taxicabs acquired would have expired on February 28, 1961. Mr. Abramson testified that he had no interest whatsoever in the unexpired period as such. He added that he would have paid the same price on March 1, 1961 that he had paid on January 26, 1961. His obvious interest was to effect a permanent expansion of the appellant's business.

Because of the circumstances above outlined, it is quite obvious that the licences to operate taxicabs in greater Winnipeg have acquired a considerable value. In the language of the market place these licences commanded prices between $5,000 and $6,000 in 1961. In 1967 the price is about $9,000. In view of the fact that the licences are not transferable, but that a new licence is issued in the name of the purchaser of a vehicle with respect to which a taxicab licence has been issued, I construe that language as meaning that a purchaser would pay those amounts at those times to acquire the position of the vendor *vis-à-vis* the Taxicab Board.

1967

METRO-POLITAN TAXI LTD. v. MINISTER OF NATIONAL REVENUE

Cattanach J.

Mr. Abramson stated that the formula he used to arrive at the price of the licensed taxicabs purchased from Adolph's was to take the market value of the taxicab as an automobile and add $5,000 to that amount.

The agreement of January 26, 1961 between the appellant and Adolph's referred to the assets purchased by the appellant as "all the taxicabs, stock-in-trade, machinery and office equipment and other goods and chattels owned by the vendor and used in connection with" the vendor's taxicab business. By paragraph 6 of the agreement the vendor agreed to transfer into the name of the purchaser all licences which the vendor held. (The language of paragraph 6 is inaccurate in so far as it may contemplate the vendor transferring taxicab operating licences into the name of the purchaser bearing in mind that a new licence is issued by the Taxicab Board in the name of the new owner with respect to a vehicle previously licensed as a taxicab.)

The vendor also covenanted not to compete with the appellant for a period of five years.

Paragraph 17 of the agreement stated that in the event that the Taxicab Board did not grant its approval to the transaction the appellant would reconvey all assets to the vendor and the parties would be placed in their same respective positions as if the agreement had not been entered into.

However, the Taxicab Board did not withhold its approval and licences were issued to the appellant.

The Bill of Sale dated January 27, 1961 between Adolph's and the appellant sets out the subject matter thereof in two schedules at a total purchase price of $103,800. In paragraph 2 of the Bill of Sale the goodwill and rights to the taxicab business and the trade names of Adolph's are included at a value of $15,000.

Neither the agreement for sale, nor the Bill of Sale establishes any specific amount of the purchase price for the licences, although paragraph 6 of the agreement for sale sets out the vendor's undertaking to transfer the licences to the appellant. There is no question whatsoever that the prime (if not the sole) purpose of the appellant in purchasing the assets of Adolph's was to stand in Adolph's position before the Taxicab Board by obtaining the fourteen licensed vehicles possession of which, by virtue of the prevailing practice of the Taxicab Board, would give the appellant

the almost certain expectation that licences in substitution therefor would be granted to the appellant and renewed in each succeeding year on payment of an annual fee subject, of course, to the possibility of the licences being cancelled for cause.

The question to be determined is for what did the appellant expend the sum of $72,031.65 and, when that determination has been made, to determine whether what that sum was expended for is depreciable property subject to capital cost allowance in accordance with the regulations under the *Income Tax Act*.

The relevant sections of the *Income Tax Act* and regulations made thereunder are:

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. (5) In this section and regulations made under paragraph (*a*) of subsection (1) of section 11,

(*a*) "depreciable property" of a taxpayer as of any time in a taxation year means property in respect of which the taxpayer has been allowed, or is entitled to, a deduction under regulations made under paragraph (*a*) of subsection (1) of section 11 in computing income for that or a previous taxation year;

Section 1100 of the *Income Tax Regulations*:

1100 (1) Under paragraph (*a*) of subsection (1) of section 11 of the Act, there is hereby allowed to a taxpayer, in computing his income from a business or property, as the case may be, deductions for each taxation year equal to

(*a*) such amounts as he may claim in respect of property of each of the following classes in Schedule B not exceeding in respect of property

. . .

(*x*) of class 10, 30%

of the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

. . .

(*c*) such amount as he may claim in respect of property of class 14 in Schedule B not exceeding the lesser of

(i) the aggregate of the amounts for the year obtained by apportioning the capital cost to him of each property over the life of the property remaining at the time the cost was incurred, or

1967

METROPOLITAN TAXI LTD. v. MINISTER OF NATIONAL REVENUE

Cattanach J

(ii) the undepreciated capital cost to him as of the end of the taxation year (before making any deduction under this subsection for the taxation year) of property of the class;

Classes 10 and 14 of Schedule B read as follows:

CLASS 10

Property not included in any other class that is

(a) automotive equipment (the remaining language is omitted as not being applicable)

CLASS 14

Property that is a patent, franchise, concession or licence for a limited period in respect of property . . .

As previously intimated the principal argument advanced before me by counsel for the appellant was that the entire amount of $72,031.65 is properly attributable to the purchase price of the fourteen licensed taxicabs the value of which was enhanced by that amount by virtue of their being licensed. In the event that it should be considered that the licences are property in themselves and not an element or component part of the vehicles, he then contends, as an alternative, that the licences fall within Class 14 of Schedule B as property that is a licence for a limited period in respect of property.

In support of his principal contention counsel for the appellant relies on the rating cases, particularly *Cartwright v. Sculcoates Union*[1] and *Rex v. Shoreditch Assessment Committee*[2]. In the rating cases the assessor was obliged to assess the value of a licensed public house for the poor rate. The Act of Parliament stated very concisely that the question to be solved was, what would it be reasonably expected that the premises would be let to a tenant for. In answering such a question it was held that it is proper to consider the existence of a licence and the amount of trade that came or was actually carried on to arrive at the rent at which the house may reasonably be expected to let.

He also placed strong reliance on *Fitzwilliam (Earl) v. Inland Revenue Commissioners*[3]. In that case the problem was to estimate the total value of land for the purpose of assessing a reversion duty which by section 13 of the *Finance Act* was assessed on the value of the benefit accruing to a lessor by reason of the determination of the lease. On

[1] [1900] A.C. 150.
[2] [1910] 2 K.B. 859.
[3] [1914] A.C. 753.

this particular leasehold there was a house which was licensed as a public house. For the purposes of the reversion duty the total value of the land was the market price. It was notorious that licensed premises commanded more than unlicensed premises. It was agreed that the value of the property if the house were unlicensed was 300*l.* but that the value of the property including the licence was 500*l.* It was held that the value of the licence to use the dwelling house on the land as a public house was an element to be taken into account in determining the value of the land for reversion duty purposes.

In commenting upon the premises licensed for the sale of liquor in the *Fitzwilliam* case (*supra*) Lord Atkinson had this to say at pages 757 and 758:

> . . . Now the condition of the premises was, amongst other things, this, that they were suitable for the carrying on in them of the business of a publican. That was one of their inherent capacities affecting their value, and, secondly, they were premises in which a person had by the licence of the proper authorities been authorized to utilize this capacity, and to carry on in them this very trade and business, but the fact that a person had been so authorized to utilize this capacity gave to any person who might become owner of the premises a right or claim to have the licence continued.
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> . . .
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> The person who would purchase the premises in the market would not purchase the existing licence, but no doubt the right or chance of obtaining a similar licence would belong to him. The lessor is, as I have already pointed out, in as good, if not in a better position, in this respect.
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> Under s. 25 of the Licensing (Consolidation) Act, 1910, he could obtain a transfer of the licence to himself when he went into occupation, or he could let to a new tenant, who could apply for a transfer. Under s. 26 the owner could object successfully to his former tenant obtaining a removal of the licence from the lessor's premises to some other premises newly acquired by him. The lessor could obtain a protection order authorizing him to continue to carry on this trade in his premises during the currency of the old licence until the time arrived for applying for a transfer. He gets the advantages specified in the Fourth Schedule to this statute. And lastly, he acquires an absolute right, if the business be properly conducted, to have the licence renewed, or compensation paid in case the renewal be refused.

In my view the facts of the foregoing cases are readily distinguishable from those in the present case.

It is apparent from the above quoted language of Lord Atkinson that the licence there in question bore a definite link with and formed an integral part of the land. In the present case the intention of the appellant in entering into the contract of sale with Adolph's was not primarily to

1967

METRO-POLITAN TAXI LTD v. MINISTER OF NATIONAL REVENUE

Cattanach J

acquire the physical assets of Adolph's, but rather the acquisition of those assets for the purpose of succeeding to Adolph's privileged position and reasonable expectation of being able to participate to the extent of fourteen taxicabs in the total of four hundred taxicabs which are permitted to be operated in greater Winnipeg. This to me, is the implication inherent in the contract between the parties. There was something more involved than mere ownership of a physical asset. Because of the policy adopted by the Taxicab Board of granting a licence to the purchaser of a licensed taxicab, what the purchaser acquires is an expectation, amounting almost to a certainty, of being granted a licence but it is only an expectation that is acquired, not a right.

I am, therefore, in agreement with the finding of the Chairman of the Tax Appeal Board, based upon the evidence before him, which was substantially the same as that adduced before me, that the appellant agreed to the purchase price of the assets of Adolph's to be in a position to apply for a grant of fourteen licences to operate taxicabs. It should be emphasized that the grant of a licence to a purchaser is not the transfer of the licence of the former owner of the taxicabs, but a new grant to the new owner. While it is true that the licence to the owner is with respect to specifically described automobiles, nevertheless, I am of the opinion that the licence so granted is personal to the owner. The licence is granted to a named person authorizing that person to operate the vehicle described therein as a taxicab. A vehicle so employed can be expected to be suitable for that purpose for a period of short duration and must be replaced by a new vehicle. This the Taxicab Board recognizes by its policy of issuing a new licence to the same owner for the replacement. I am certain that if a vehicle were lost or destroyed a new licence would be readily forthcoming for its replacement. Therefore the reference to the registration of a specifically described vehicle in the licence to the owner is merely an incidental feature. It does not detract from the personal nature of the licence.

I am also in complete accord with the finding of the Chairman of the Tax Appeal Board that what the appellant sought and acquired was "an intangible, enduring advantage of a capital nature" and that the evidence before

him, which was substantially the same as that before me, "confirms that the greater part of the sum of $72,000 was paid for the privilege of expanding its operations by acquiring the business previously carried on by Adolph's Taxi Company."

I do not accept the premise of counsel for the appellant that the licences here issued in respect of the vehicles constitute an element or a component part of that property. In my view the licences here granted are personal to the respective owners and the purchase of the licensed taxicabs formed part of the bargain whereby the appellant acquired a reasonable expectation of being able to expand its business to the extent of the fourteen taxicabs it purchased from Adolph's. Accordingly there is a clear distinction between the value of the vehicles as such and the value of their purchase as a means to accomplish the above mentioned end.

It will be recalled that in the Bill of Sale dated January 27, 1961 between the appellant and Adolph's an amount of $15,000 of the purchase price was attributed to the goodwill and rights to the taxicab business and trade names of Adolph's. The above amount of $15,000 is included in the amount of $72,031.65 here in dispute.

While the appellant contended that no goodwill was acquired because Adolph's was not operating profitably due to mismanagement, defalcations by an employee and similar causes, nevertheless, the appellant did make use of the Adolph trade name and carried on considerable advertising under that name. I am, therefore, convinced that an element of goodwill was acquired, which is not subject to capital cost allowance, but because of the conclusions I have reached, it is not necessary for me to attribute any specific part of the sum of $72,031.65 to goodwill.

I am convinced that what the appellant paid for was a long-term commercial benefit. When the appellant bought the assets of Adolph's it succeeded to Adolph's position before the Taxicab Board and, because of the well known policy of that Board, could reasonably expect to be able to operate an expanded fleet of taxicabs from year to year. For that expectation and privilege the appellant was prepared to pay and did pay a substantial amount. To attribute that

1967

METRO-POLITAN TAXI LTD. v. MINISTER OF NATIONAL REVENUE

Cattanach J.

amount to the value of the fourteen taxicabs, as contended by the appellant, would, in my opinion, be unreasonable and, as I conceive it, a distortion of the true substance of the transaction.

Section 20(6)(*g*) of the *Income Tax Act* provides:

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

In assessing the appellant, the Minister considered that an amount of $18,590 of the purchase price could be reasonably regarded the consideration for the fourteen taxicabs as automobiles, being depreciable property with Class 10 of the *Income Tax Regulations* and subject to a capital cost allowance accordingly. The evidence before me established that the amount of $18,590 so attributed by the Minister was, in fact, generous, the automobiles being sold shortly after their acquisition by the appellant for approximately $4,000. The sum of $72,031.65 was attributed by the Minister as consideration for "something else". I have concluded that the consideration which can be reasonably regarded as being in part for "something else" was, in fact, the consideration for the privilege of assuming the position of Adolph's before the Taxicab Board and the reasonable expectation of the appellant being able to expand its business to that extent.

There is no provision in the *Income Tax Act* nor the regulations thereunder for an allowance which might be granted for such an asset.

The appellant's alternative argument was that advanced before the Tax Appeal Board that the sum of $72,031.65 was expended to acquire the fourteen licences which were property within Class 14 of the *Income Tax Regulations,* i.e. a licence for a limited period in respect of property.

In view of my conclusion that the licences granted by the Taxicab Board are personal to the owner, although with respect to a specific vehicle, it follows that they are not transferable in themselves and are not the subject matter of barter or sale. Therefore, the appellant did not buy the licences in question but by its purchase of fourteen licensed taxicabs placed itself in a better position from which to apply to the Taxicab Board for licences on its own behalf.

Accordingly the appellant's appeal does not succeed.

I turn now to the Minister's cross-appeal from that portion of the Tax Appeal Board's decision by which the assessment was referred back to the Minister to ascertain the portion of the purchase price attributable to the unexpired period of the licences between January 26, 1961 and February 28, 1961 in order that an allowance might be granted with respect to that amount to be found. It follows from my conclusion that the licences are personal to the owner and are not the subject matter of sale but that the appellant in actuality, bought the privilege of standing in Adolph's stead, that there is no provision for an allowance on such an intangible asset which does not constitute depreciable property within any class prescribed in the *Income Tax Regulations*. Further, Mr. Abramson, the president of the appellant, testified that he was not interested in purchasing the unexpired term of the licences from Adolph's and that the price he would have paid for the assets of Adolph's would have been the same on March 1, 1961 as it was on January 26, 1961. In my opinion, the evidence is conclusive that nothing was paid which is properly attributable to that factor.

The Minister is, therefore, successful in his cross-appeal.

In the result the appeal is dismissed, the cross-appeal of the Minister is allowed, with costs to the Minister throughout and the assessment of the Minister is restored.