


IT 44 - Application of section 52 where loss is sustained due to contract not being completed

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TAXATION RULING NO. IT 44

APPLICATION OF SECTION 52 WHERE LOSS IS SUSTAINED DUE
TO CONTRACT NOT BEING COMPLETED.

F.O.I. EMBARGO: May be released

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LOSS ON SALE OF LAND

51

52

FACTS

The question concerned the application of section 52 in a particular situation where a taxpayer entered into a contract to purchase land for the purpose of resale at a profit but failed to complete the contract and incurred loss by forfeiture of the deposit.

2. It was accepted that the taxpayer and his colleagues set out to acquire the subject blocks for the purpose of selling them at a profit. There was no suggestion nor was there any evidence to the contrary. That being so what was in issue was the income tax consequences arising out of a transaction on revenue account in circumstances where the transaction was frustrated.

RULING

3. The law should not be construed too narrowly in these circumstances. If the taxpayer and his colleagues were in business as land dealers there would be no doubt that a deduction would be allowable for the expenditure under section 51. Because they have embarked upon an isolated transaction does not mean they are not entitled to a deduction. It is most undesirable that a revenue transaction should be treated so differently because of the varying circumstances.

4. While arguments exist against the application of section 52,, it is far from clear that a deduction is not authorised by section 51. The expenditures arose out of a transaction entered into for the purpose of gaining or producing assessable income, i.e., profit on the sale of the blocks. To that extent it may be said that they were incurred in gaining or producing assessable income within the meaning of section 51.

5. In all the circumstances it was considered that the deduction claimed should be allowed.

COMMISSIONER OF TAXATION