

BETWEEN :

JOSEPH S. IRWIN APPELLANT;

AND

THE MINISTER OF NATIONAL }
REVENUE } RESPONDENT.

[See headnote to preceding case *ante* p. 51.]

This is an appeal from a judgment of the Income Tax Appeal Board¹ which affirmed a reassessment with respect to the appellant's income tax assessment for the year 1953 by which an amount of profits in the sum of \$13,047.54 for

¹23 Tax A.B.C. 233.

the year 1953 realized on the sale of a number of oil and gas leases and rights was added to the taxpayer's income for the above year as follows:

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For 1953

$\frac{1}{2}$ interest in Petroleum and Natural Gas Reservations 1317 and 1318	\$ 1,000.00
$\frac{1}{2}$ interest in Petroleum & Natural Gas Reservation 1326 and interspersed leases plus a $\frac{1}{2}$ interest in 2½% gross royalty therein	\$ 13,885.44
	\$ 14,885.44

Deduct:

Rentals paid on C.P.R. Reservation	\$1,217.50	
1954 Revised loss	\$ 620.40	\$ 1,837.90
		\$ 13,047.54

The taxpayer, a professional consulting geologist, had, in the last twenty years, acquired rights to oil lands on twelve occasions for the purpose of having them explored, developed and then obtaining a royalty or a payment out of the oil or gas found.

For the appellant, it is contended that the amounts so added to his income were merely the realization of a capital asset and as such were not taxable; that they were investments from which he hoped to receive taxable income by way of royalties; that as an alternative argument and in the event he should not succeed in his contention that the profits realized were capital profits he is entitled to apply rule 1800 of the *Income Tax Regulations* pursuant to s. 14(2) of the *Income Tax Act* and place his inventory of petroleum and natural gas interests on a fair market value figure which, on that basis, would indicate that he has sustained no profits, but has incurred losses. For the Minister, it is contended that the sums were income from a business and, therefore, within ss. 3 and 4 and 127(1)(e) of the 1948 Act which was merely renumbered 139(1)(e) in the 1952 Act; that the taxpayer was not entitled under s. 14(2) of the *Income Tax Act* and Regulation 1800 to place his inventory on a basis other than cost.

This appeal, and two others, bearing numbers 160971 and 160973 and all rising out of the same set of circumstances, came on for hearing at Calgary, Alberta, at the same time.

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A judgment was rendered in one of these appeals bearing number 160973 covering the facts contained in all the appeals. Indeed, all the evidence adduced and arguments proposed apply to the three appeals and the Court's decision in case 160973, with the exception of the matter of the tardiness of the assessment which applies only to the 1952 taxation year, shall be the decision of this Court in this appeal also. Judgment has today been handed down in case bearing number 160973 of this Court holding that the profit of the taxpayer from his oil and gas right transactions was profit from a business within the meaning of ss. 3 and 4 of the Act as extended by s. 127(1)(e), later replaced by s. 139(1)(e) of the same Act; that the taxpayer was entitled under s. 4(2) of the *Income Tax Act* and Regulation 1800, passed pursuant thereto, to produce an inventory of his properties on a fair market value basis which as of December 31, 1951, had the following fair market values:

#730	\$ 8,544.00
#513	\$ 2,117.00
#514	\$ 941.00
#1317	\$ 6,050.60
#1318	\$ 15,392.22
#1326	\$ 41,811.00
Shell Freehold	\$ 1,491.00
Imperial Freehold	\$ 7,091.00
#1268	\$ 45,922.40
C.P.R.	\$ 8,360.80
	\$137,721.02

and finally allowing the appeals with costs and referring the assessments back to the Minister to be revised accordingly.

For the same reasons as stated in case number 160973 of the Exchequer Court of Canada—and which may be considered as forming part of this judgment—the present appeal is allowed and the assessment here should also be referred back to the Minister to be revised accordingly.

The appellant is entitled to his costs after taxation, but inasmuch as the same counsel appeared for the appellant in all these cases which were dealt with in one hearing, the appellant's costs at the trial will be limited to one case.

Judgment accordingly.