1962
Oct. 4
1963
Jan. 21

BETWEEN:

GLADYS M. MAINWARING .....APPELLANT;

AND

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

Revenue—Income—Income Tax Act, 1948, S. of C. 1948, c. 52, ss. 3, 4, 127(1)(e)—Shares of stock purchased by wife from husband and sold at a profit—Whether profit from a business—Appeal allowed.

Appellant, a housewife, inherited a small sum of money in 1949. At that time her husband, a prominent businessman, in association with others had organized an oil and gas producing company in which he acquired a large number of shares at a price of one-half a cent per share. Appellant, who was utterly lacking in business experience, gave to her husband her cheque for $1,000.00 for which she acquired from him 33,333 of these shares at the price of one-half cent per share costing in all $166.67, and other stocks purchased for her by her husband. The shares in the oil and gas company advanced in price and most of those purchased by the appellant were sold in 1951 and 1952 realizing substantial profits for her. The Minister taxed these profits as those from a business. The appellant appealed from such assessment and at the hearing of such appeal the Minister moved that her husband's evidence in a concurrent appeal be considered in toto as an inherent part of the case under consideration.

Held: That the transaction had none of the characteristics of carrying on a business.

2. That the evidence of the husband in the concurrent case cannot be admitted.

3. That the appeal be allowed.

APPEAL under the *Income Tax Act.*

The appeal was heard before the Honourable Mr. Justice Dumoulin at Victoria.

C. C. Locke, Q.C. and *W. M. Carlyle* for appellant.

W. J. Wallace for respondent.

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

DUMOULIN J. now (January 21, 1963) delivered the following judgment:

Mrs. Gladys M. Mainwaring, a housewife, residing in the City of Vancouver, B.C., appeals against the assessments imposed upon her income by the respondent for taxation years 1951 and 1952.

The material aspects of this case are of the simplest.

In the course of 1949, the appellant inherited, from an aunt in England, a rather modest amount of some $2,617.89, which she deposited at a local branch (Vancouver) of the Bank of Montreal on August 27, 1949, as appears on exhibit 2.

It so happened that her husband, Mr. W. C. Mainwaring, at the time Vice-President of British Columbia Electric and a prominent businessman, had just organized, in partnership with four or five others, an oil and gas producing company, Britalta Petroleums Ltd., of which he owned 133,333 shares obtained at a price of ½ cent per unit.

If Mr. Mainwaring possessed extensive business experience, such was not the case with his wife, who had no knowledge whatever of financial transactions, and her evidence before the Court fully substantiates her assertion to this effect.

Under the circumstances it surely appears a quite natural move on appellant's part to look to her husband for proper advice concerning the intended investment. And it is not unnatural either that Mainwaring should recommend investing part of the windfall in the budding enterprise just launched by himself and a few associates.

Accordingly, exhibit 3, a $1,000 cheque, dated Nov. 14, 1949, signed by the appellant in favour of W. C. Mainwaring completed her purchase of 33,333 shares of Common Stock in Britalta Petroleums Ltd., at one half cent (½) per share, as evidenced on a receipt, exhibit 4, also of November 14, 1949, with the mention that: "The balance of the above amount is to pay for other stocks I have purchased for her", signed: W. C. Mainwaring. The outstanding surplus of the legacy was left in the bank.

Two years later to a day, November 13, 1951, the common stock of Britalta Petroleums had achieved a meteoric rise and would continue ascending to much more fruitful levels for months to come. It therefore seems a permissible assumption to think that appellant acted as most sane investors would have done, possibly on her husband's prompting and no blame attaches, in reaping from November 13, 1951, until December 15, 1962, the astounding yields accruing from her 1949 deal. Exhibit A relates the com-

1963

GLADYS M. MAINWARING v. MINISTER OF NATIONAL REVENUE

Dumoulin J.

plete listing of those sales at prices ranging, per share, from a minimum of $4.10, to a maximum of $7.25. On the day of the last transaction entered on exhibit A, Dec. 15, 1952, Mrs. Mainwaring still retained a lot of 2,233 shares. The profit thus realized reached a grand total of $170,802.94.

Such was the participation of the appellant in the matter, that of buying common shares in an oil company just formed and subsequently reselling at a profit, a normal investment initially, a normal incentive as the stock sky-rocketted. This lady testified convincingly to her ignorance of the company's internal story, the many intricate dealings it underwent to obtain sufficient financing. Indeed the Court feels assured that had she been apprised of such details they would have meant nothing due to her utter unfamiliarity with the methods or terms of business technique.

This set of facts, innocuous enough, nevertheless led the respondent to reassess in the sum of $40,002.25, appellant's taxable income for 1951, and in a further amount of $131,584.14 for taxation year 1952, allegedly, as stated in paragraph 4 of the Reply to Notice of Appeal, because:

> 4. The acquisition by the Appellant of the shares of Britalta Petroleums Limited and the subsequent sale of them by the Appellant during the taxation years 1951 and 1952 at a total profit to the Appellant of $170,802.94 is income from a business within the meaning of the word as defined in *The Income Tax Act*.

To the recital above given of each and every feature of the instant transaction, I need only say that it offered none of the characteristics of carrying on a business, something the totally unexperienced appellant could not have done however earnestly she might have tried, and I might also add a reference to a recent decision: *Irrigation Industries Ltd. v. Minister of National Revenue*[1], in which Mr. Justice Martland, speaking for a majority of the Supreme Court, held as follows:

> I cannot agree that the question as to whether or not an isolated transaction in securities is to constitute an adventure in the nature of trade can be determined solely upon that basis. In my opinion, a person who puts money into a business enterprise by the purchase of the shares of a company on an isolated occasion, and not as a part of his regular business, cannot be said to have engaged in an adventure in the nature of trade merely because the purpose was speculative in that, at that time, he did not intend to hold the shares indefinitely, but intended, if

[1] [1962] S.C.R. 346 at 347.

possible, to sell them at a profit as soon as he reasonably could. I think that there must be clearer indication of trade than this . . .

1963

GLADYS M. MAINWARING v. MINISTER OF NATIONAL REVENUE

Dumoulin J.

At the hearing, counsel for respondent moved that Mr. Mainwaring's evidence, in case No. 165547, should be considered in toto as an inherent part of the instant one, a rather unusual suggestion properly objected to on appellant's behalf. I see no grounds whatever for not rejecting this request.

For the reasons preceding the appeal is allowed and the record of the case will be returned to the Minister for consequential reassessment.

Appellant shall recover all costs after taxation.

Judgment accordingly.