

BETWEEN:

H. RICHARD WHITTALL APPELLANT;

AND

THE MINISTER OF NATIONAL }
REVENUE } RESPONDENT.

1964
Sept. 16, 17
Oct. 23

Revenue—Income—Income tax—Acquisition and sale of shares—Ordinary investment—Adventure or concern in the nature of trade—Fiduciary position of company director—Profits from a business—Income Tax Act, R.S.C. 1952, c. 148, s. 3.

This is an appeal from the re-assessment by the respondent in respect of the income of the appellant for the taxation years 1952, 1953 and 1954 arising out of the acquisition and disposal of shares in Inland Natural Gas Co. Ltd., Yankee Princess Oils Ltd., Canadian Collieries (Dunsmuir) Ltd. and St. John's Trust Syndicate.

At all material times the appellant was vice-president and a director of Norman R. Whittall Ltd, an investment dealer, stockbroker and underwriter carrying on business in Vancouver, British Columbia.

The development of the appellant's interests in the companies in question and his acquisition of shares therein is more particularly set out in the reasons for judgment in *Norman R. Whittall v. Minister of National Revenue, ante, p. 342.*

Held: That for the reasons given in *Norman R. Whittall v. Minister of National Revenue, ante, p. 342,* the transactions under review are trading operations as part of the business of the appellant.

- 2. That because of the particular fiduciary relationships of the appellant with certain of the companies in question and their shareholders, in his capacity of director thereof, the transactions under review did not constitute ordinary investments and the profits realized from the sales of the securities were profits from a business within the meaning of s. 3 of the *Income Tax Act.*
- 3. That the appeal is dismissed.

APPEAL under the *Income Tax Act.*

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

D. McK. Brown, Q.C. and *R. A. McCall* for appellant.

1964
 H. R.
 WHITTALL
 v.
 MINISTER OF
 NATIONAL
 REVENUE

H. J. Grey for respondent.

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

GIBSON J. now (October 23, 1964) delivered the following judgment:

This is an appeal from the re-assessments by the Minister of National Revenue in respect of the income of the appellant for the taxation years 1952, 1953 and 1954, whereby the taxable income was assessed respectively at \$71,823.35, \$17,820.94 and \$45,763.69.

At all material times, the appellant was the vice-president and a director of Norman R. Whittall Ltd., a company incorporated under the laws of British Columbia and carrying on the business of brokers, investment dealers and underwriters at 424 Burrard St., in the City of Vancouver, B.C.; and prior to 1952, the appellant was engaged as a full-time executive of Ross Whittall Ltd.

The appellant had a 12½% interest in the firm of Ross Whittall Ltd. since 1947 and later acquired a 20% interest at a cost of \$25,000 to \$30,000.

The explanations given by the respondent for these re-assessments for the relevant years were as follows:

For 1952:

Taxable Income previous assessed		\$16,995.85
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Add:

Proceeds re sale of St. John's Trust Syndicate	\$19,400.00	
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Less:

Cost of Interest in four Wilson Syndicate Units	1,250.00	18,150.00
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Profit on sale of shares of Yankee Princess Oils Ltd. acquired during promotion and re-organization of Yankee Princess Oils Ltd.:

Sales Feb. 1, 1951 to June 12, 1952— 43,500 shares	\$39,990.00	
Cost—10,000 shares @ 8¢	\$ 800.00	
33,500 shares @ 7½¢	2,512.50	36,677.50

<i>Adjusted Taxable Income Assessed</i>		<u>\$71,823.35</u>
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For 1953:

Taxable Income previously assessed		\$ 7,417.12
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Add:

Proceeds from sale of shares of Inland Natural Gas Co. Ltd., which were received from St. John's Trust Syndicate in 1952	\$10,343.82	
<i>Less:</i> Cost of same at \$1.00 per share	4,000.00	\$ 6,343.82
		<hr/>
Proceeds from sale of shares of Canadian Collieries (Dunsmuir) Ltd., which were acquired through participation with Ross Whittall Ltd. on purchase from Sunray Oils: 1500 shares	\$ 9,310 00	
<i>Less:</i> Cost at \$3 50 per share	5,250.00	4,060 00
		<hr/>
<i>Adjusted Taxable Income Assessed</i>		<u><u>\$17,820.94</u></u>

For 1954:

Taxable Income previously assessed \$22,866 93

Add: Proceeds from sale of shares of Inland Natural Gas Co. Ltd. which were—

(1) Received from St. Johns Trust Syndicate in 1952 and

(2) acquired by exchange as a result of the purchase of Canadian Northern Oil & Gas Ltd. shares which were underwritten by Ross Whittall Ltd.

\$28,210.93

Less: Cost of same at \$1.00 per share ...

11,000 00

17,210 93

Proceeds from sale of shares of Can. Collieries (Dunsmuir) Ltd. which were acquired through participation with Ross Whittall Ltd. in Purchase from Sunray Oils: 1000 shares

\$ 9,185 83

Less: Cost at \$3 50 per share

3,500.00

5,685.83

Adjusted Taxable Income assessed

\$45,763.69

As will be noted from the above, during the year 1952 the appellant was assessed for further taxable income on the net proceeds of the sale of St. John's Trust Syndicate units and on the sale of Yankee Princess Oils Ltd. shares; and for the year 1953, he was assessed in respect of the proceeds of the sale of shares of Inland Natural Gas Co. Ltd., and of Canadian Collieries (Dunsmuir) Ltd.; in respect of the year 1954, he was assessed in respect of further sales of the shares of Inland Natural Gas Co. Ltd., and of Canadian Collieries (Dunsmuir) Ltd.

The development of these interests and their acquisition are more particularly set out in the reasons for judgment in the case of *Norman R. Whittall v. Minister of National Revenue ante*, p. 342 and need not be repeated here.

1964

H. R.

WHITTALL
v.MINISTER OF
NATIONAL
REVENUE

Gibson J.

There is one substantial difference in the instant case, however, namely, in the fiduciary capacities in which the appellant was in relation to the various companies and their shareholders at the material times.

The appellant was a director and officer only of the St. John Oil & Gas Co. Ltd., of Yankee Princess Ltd. and of Ross Whittall Limited. Ross Whittall Limited was the fiscal agent of Yankee Princess Ltd. and did the underwriting for it and also for Inland Natural Gas Co. Ltd. and St. John Oil & Gas Co. Ltd. (In respect of the latter company, the evidence was that it was really an exchange of shares and an accommodation granted by Ross Whittall Limited in the hope that there would be underwriting in the future given it by St. John Oil & Gas Co. Ltd.)

For the reasons given in the case of *Norman R. Whittall v. The Minister of National Revenue (supra)* the general finding that these transactions were trading operations as part of the business is applicable in this case, and also because of the particular fiduciary relationships of the appellant with certain of these companies and their shareholders in his capacity as director thereof, I find that these transactions in these securities did not constitute "ordinary" investments, and therefore, I am of opinion that the profits realized from the sales of the securities more particularly set out in the re-assessment notices for 1952, 1953 and 1954 were profits from a business within the meaning of section 3 of the *Income Tax Act*, and that the Minister was right in including it in the assessment.

The appeal in respect to each of the re-assessments is, therefore, dismissed with costs.

Judgment accordingly.