

RONALD GORDON McINTOSH APPELLANT;

1957
*Dec. 2

AND

THE MINISTER OF NATIONAL }
REVENUE } RESPONDENT.1958
Jan. 28

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Taxation—Income tax—Profit from real estate transaction—Isolated transaction—Whether capital gain or income—Intention—Income Tax Act, 1948, c. 52, ss. 3, 4, 127(1)(e) (R.S.C. 1952, c. 148, ss. 3, 4, 139(1)(e)).

The appellant sold his grocery and meat business in 1948 and associated himself with one L in the purchase of a parcel of land with the intention of dividing it into lots and building houses thereon. Because of differences with L, the appellant terminated the association and, in 1952, sold some of his vacant lots at a profit.

Held: The profit was taxable as income.

The arrangement between the two associates was an “adventure or concern in the nature of trade” within the meaning of the term “business” as defined in s. 127(1)(e) of the *Income Tax Act*, 1948. The subsequent sale of the lots by the appellant was not merely an endeavour to realize upon an investment; there never was an intention on his part to retain the lots as an investment, but rather to dispose of them, if and when suitable prices could be obtained.

An individual is in a different position from that of a company and may not be carrying on a business when he sells investments and buys others, but the profits from an isolated venture may be taxed as well in the case of an individual as in the case of a company. *Smith v. Anderson* (1880), 15 Ch. D. 247; *Edwards (Inspector of Taxes) v. Bairstow et al.*, [1956] A.C. 14, applied.

APPEAL from a judgment of Hyndman D.J. in the Exchequer Court of Canada¹, reversing a judgment of the Income Tax Appeal Board². Appeal dismissed.

K. Laird, Q.C., for the appellant.

D. H. W. Henry, Q.C., and *J. D. C. Boland*, for the respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE:—This is an appeal from a judgment of the Exchequer Court¹ reversing the decision of the Income Tax Appeal Board² and restoring the assessment of the appellant to income tax for the year 1952.

*PRESENT: Kerwin C.J. and Locke, Cartwright, Fauteux and Abbott JJ.

¹ [1956] Ex. C.R. 127, [1956] C.T.C. 10, [1956] D.T.C. 1004.

² 12 T.A.B.C. 183, [1955] D.T.C. 99.

1958

McINTOSH The relevant statutory provisions of *The Income Tax Act*, 1948, c. 52, are:

v.
MINISTER OF
NATIONAL
REVENUE

3. The income of a taxpayer for a taxation year . . . is his income for the year . . . and, without restricting the generality of the foregoing, includes income for the year from all

Kerwin C.J.

(a) businesses . . .

4. Subject to the other provisions of this Part, income for a taxation year from a business or property is the profit therefrom for the year.

127. (1) In this Act, . . .

(e) "business" includes a profession, calling, trade, manufacture or undertaking of any kind whatsoever and includes an adventure or concern in the nature of trade but does not include an office or employment.

Having sold his grocery and meat business in 1948 and being then unoccupied, the appellant entered into an arrangement with a relative to purchase vacant land known as Grandview Park Subdivision, at that time near the city of Sarnia but subsequently incorporated within the limits of that municipality. A consideration of the entire record makes it clear that that arrangement was an adventure or concern in the nature of trade within the meaning of the term "business" as defined in the Act, but the argument is that, because of differences which arose between him and his relative, what he did subsequently was merely an endeavour to realize upon an investment. I agree with Mr. Justice Hyndman that that is not the true conclusion from all the circumstances; nor do I think that it is answered by the reasons of the Income Tax Appeal Board that, in order to escape taxation, the appellant should either have refrained from selling the lots for more than they had cost him, or else should have given them away.

It is quite true that an individual is in a position differing from that of a company and that, as stated by Jessel M.R. in *Smith v. Anderson*¹ (approved by this Court in *Argue v. Minister of National Revenue*²),

So in the ordinary case of investments, a man who has money to invest, invests his money and he may occasionally sell the investments and buy others, but he is not carrying on a business.

However, it is also true, as well in the case of an individual as of a company, that the profits of an isolated venture may be taxed: *Edwards (Inspector of Taxes) v. Bairstow et al.*³.

¹ (1880), 15 Ch. D. 247 at 261.

² [1948] S.C.R. 467 at 476, [1948] C.T.C. 235, [1948] 4 D.L.R. 161.

³ [1956] A.C. 14, [1955] 3 All E.R. 48.

It is impossible to lay down a test that will meet the multifarious circumstances that may arise in all fields of human endeavour. As is pointed out in *Noak v. Minister of National Revenue*¹, it is a question of fact in each case, referring to the *Argue* case, *supra*, and *Campbell v. Minister of National Revenue*², to which might be added the judgment of this Court in *Kennedy v. Minister of National Revenue*³, which affirmed the decision of the Exchequer Court⁴.

1958
 McINTOSH
 v.
 MINISTER OF
 NATIONAL
 REVENUE
 Kerwin C.J.

In the present case I agree with Mr. Justice Hyndman's findings with reference to the appellant that:

Having acquired the said property there was no intention in his mind to retain it as an investment, but to dispose of the lots, if and when suitable prices could be obtained.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: Donohue & Garrett, Sarnia.

Solicitor for the respondent: A. A. McGrory, Ottawa.
