1959

Apr. 2

May 25

BETWEEN:

ABE LEE BARRON, ... APPELLANT,

AND

THE MINISTER OF NATIONAL REVENUE, ... RESPONDENT.

Revenue—Income tax—Appeal from Income Tax Appeal Board—Failure of appellant to discharge onus of proving assessment erroneous—Appeal dismissed.

Appellant, a practising solicitor, was actively interested in the promotion, incorporation and financing of a company called Renfrew Petroleums Ltd. and in a report to its president and directors he stated that $10,000 worth of stock of the company was allowed to himself for organization etc. that having been agreed upon at the first meeting. It was agreed that the stock was always worth $10,000 in money. In reassessing the appellant for income tax purposes the Minister added the sum of $10,000 to his taxable income and an appeal to the Income Tax Appeal Board was allowed in part. He now appeals to this Court from that decision, contending that he received the stock as a trustee and had no beneficial interest therein. The Minister cross-appeals.

Held: That the appellant not having discharged the onus on him to establish error in the re-assessment the appeal must be dismissed and the re-assessment affirmed.

APPEAL from a decision of the Income Tax Appeal Board.

The appeal was heard by the Honourable Mr. Justice Cameron at Calgary.

The appellant in person.

Miles H. Patterson and *T. E. Jackson* for respondent.

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

CAMERON J. now (May 25, 1959) delivered the following judgment:

In this case, the appellant appeals from a decision of the Income Tax Appeal Board dated April 2, 1958 which allowed in part his appeal from a re-assessment dated December 21, 1956 for the taxation year 1950. In re-assessing the appellant, the Minister added to his declared income the sum of $10,000, described as "$10,000 worth of Renfrew shares received for services rendered". The Board allowed his appeal as to one-third of that amount, namely, $3,333.33. The Minister cross-appeals and asks that the re-assessment be restored. It is well settled that both as to the appeal and the cross-appeal, the onus is on the taxpayer to prove that the re-assessment was incorrect (*M.N.R. v. Simpson's Ltd.* (1)).

The appellant is a barrister who has practiced his profession in Calgary for many years. He has also been interested in the activities of a number of companies having to do with petroleum and natural gas in Alberta. The "Renfrew shares" above referred to are shares in Renfrew Petroleums Ltd. and it is not disputed that they had value at all relevant times of $10,000. The sole question for determination is whether, if he received them, the appellant did so in his personal capacity or whether, as he alleges, he received them in the capacity of a trustee and had himself no beneficial interest therein.

Renfrew Petroleums Ltd. (which I shall refer to as "Renfrew") was incorporated in the fall of 1950. The appellant was its solicitor and actively interested in its promotion, incorporation and financing as shown by a mimeographed letter (Exhibit A) dated December 19, 1950, signed by him and addressed to its president and directors and, presumably, sent also to its shareholders. Three paragraphs therefrom are informative as to the part he played and as to the $10,000 in stock in question.

> I am submitting herewith a report on the affairs of your company insofar as I am concerned to date.

[1] [1953] Ex. C.R. 93.

1959

BARRON
v.
MINISTER OF
NATIONAL
REVENUE

Cameron J.

This company actually was started at a meeting of a few of us some time during the latter part of October at which time it intended to make a bid on the South West Quarter of Section 19, in Township 58, Range 23, West of the 4th Meridian. At the meeting the sum of $73,000.00 was raised. This, however, included the sum of $15,000.00 which was contributed by Share Oils Limited which company was anxious to participate in the purchase of this Quarter Section. The land was purchased on the 2nd of November at the price of $42,280.00 of which sum we were contributing $35,938.00 for 85% interest and Share Oils Limited was contributing $6,342.00 for 15% interest. After the land was purchased I received innumerable applications by friends and friends of friends wanting to join with us, with the result that at the time the subscription list was closed I had received altogether the sum of $158,575.00.

Having regard to the payment made by myself of the sum of $35,938.00 above mentioned there was still in my hands to the credit of the subscribers the sum of $122,637.00 which I transferred to the credit of your company at the Canadian Bank of Commerce, Main Branch, where it is now on deposit. I then proceeded to have allotted, with your approval, shares of stock for monies received and have caused to be allotted 2,360,050 shares being computed at the rate of 14 shares for each dollar actually subscribed. (Excepting $10,000.00 worth of stock allowed to myself for organization, etc. and which was agreed upon at the first meeting).

It seems that the last sentence in brackets came to the attention of the taxing authorities and formed the basis of the re-assessment. It is a clear statement in writing by the appellant that $10,000 worth of Renfrew stock was allowed to him for organization, etc., and that that amount was agreed upon at the first meeting.

Now the only oral evidence at the hearing of this appeal was that of the appellant who acted also as his own counsel. (I emphasize this matter because of the fact that before the Income Tax Appeal Board other witnesses were heard and apparently were of assistance to the Board in reaching its conclusion.) In cross-examination, the appellant readily admitted that he had prepared and sent out the report (Exhibit A). Further, he said that at the meeting referred to, he had demanded that $15,000 worth of Renfrew stock be issued to him as his fees for the organization and promotion of the company, that he was then offered and accepted $10,000 worth of stock for such services, and that there was no doubt that all others at the meeting understood that such shares (on the basis of 14 shares per dollar) were being allotted to him for his services. He added that the statement in Exhibit A relating thereto "is not particularly untrue".

Earlier, in direct evidence, the appellant stated that he had received no part of the shares beneficially, that the $10,000 in stock of Renfrew was not a payment for his services at all (although everyone at the meeting had understood it to be so), but that it was in fact a "promotion fee" which was to be divided equally between Legion Oils Ltd., Harold Bowman, and Louis Diamond. Legion Oils Ltd. (hereinafter to be called "Legion") was incorporated in 1950 and the appellant was its president and the main, if not the sole, shareholder. Bowman, an employee of a drilling company, was to try to secure "farm-outs" which Legion would finance, the profits to be divided equally. To the west of the Legion property in Redwater there was another property which might be acquired. Diamond, a successful promoter, was brought in and it was agreed to incorporate Renfrew. A substantial number of applications for shares were received and title to the property was acquired in the name of the appellant who also held all the money subscribed in trust in his own name. He says that Diamond demanded a "promotion fee" for his services in bringing in shareholders and called the meeting referred to in Exhibit A. At that meeting, the appellant said in direct examination that he represented Legion, Diamond and Bowman, who had agreed to split the "promotion fee" equally and that it was a "promotion fee" that was asked for and granted at the meeting to the extent of $10,000 in Renfrew stock.

Exhibit 1, dated December 15, 1950, is the first annual return of Renfrew under *The Companies Act* of Alberta showing 2,360,050 shares issued, some 300 being held by three individuals (said to be qualifying shares), and the balance of 2,359,750 having been allotted to the appellant. The appellant says that he gave Diamond shares in Renfrew in payment of his agreed one-third of the "promotion fee" on the basis of 14 shares for each of the $3,333.33 to which he was entitled. There is no evidence other than the statement of the appellant that Diamond received these shares and the appellant was unable to say when the shares were transferred.

1959

BARRON v. MINISTER OF NATIONAL REVENUE

Cameron J.

I must admit to a considerable degree of difficulty in following the appellant's statement as to the manner in which the one-third interest of both Legion and Bowman in the "promotion fee" came into his hands as it actually did. He put in evidence Exhibit 3, a one-page document signed by the three parties. It reads as follows:

Settlement between Bowman Barron & Diamond.

1. Legion belongs to Barron alone
2. Savanah Creek belongs to Bowman alone
3. Renfrew belongs to Barron & Diamond alone
4. Octave in 3 equal shares
5. Ft. Sask. If it goes through will be a 3 way and Bowman and Diamond will owe Barron $625.00 each.

Barron for Legion will sign all documents necessary to complete above division.

The appellant says that by reason of that settlement, Bowman transferred his right to one-third of the "promotion fee" to Legion and that Legion assigned to Bowman all its interest in Savannah Creek. In the result Legion, being already entitled to one-third of the "promotion fee", became the owner of two-thirds thereof. That right, the appellant says, was transferred to him in part settlement of Legion's obligation to him under a loan of $7,018.81 shown in the balance sheet of Legion for the year ending August 31, 1951 (Exhibit 2).

Now the settlement (Exhibit 3) was undated and the appellant was unable to state even the year in which it was signed or put into effect. Moreover, it says nothing whatever about the so-called "promotion fee" or that Bowman or Legion ever had any interest therein. It is significant, also, that in Exhibit 2—the balance sheet of Legion for the year ending August 31, 1951, a date long after Legion became entitled to a share of the "promotion fee"—the detailed statement of assets includes no reference to any interest in Renfrew stock or any interest in any "promotion fee".

In cross-examination, the appellant was also invited to explain the Notice of Objection filed by him following the re-assessment, and dated February 1, 1957 (Exhibit B). It is in part as follows:

I was the Secretary of Legion Oils Limited which had property in the North West part of Redwater. Adjoining land to the west was being offered for sale by the Provincial Government. As Secretary of the Company I endeavored to induce Parties to purchase these lands because it would be favorable to Legion Oils Limited, and if they did not make an offer to purchase Legion Oils would do so. In the result Renfrew Petroleums Limited was formed and they purchased adjoining lands. I insisted on behalf of Legion Oils Limited that they give the Company shares to the value of $10,000.00 which was done.

However, one Howard Bowman was interested for various reasons and so he became entitled to receive one-third of these shares of stock amounting to $3333.33. The said Howard Bowman transferred his shares of stock to Legion Oils Limited in consideration of a transfer by Legion Oils Limited of its interest in Savannah Creek property with the result that in any event he should be charged with the said sum of $3333.33 and Legion charged with $6666.67.

It will be noted at once that this statement over the signature of the appellant differs very widely, not only from his report to the officers of Renfrew (Exhibit A), but also from his evidence at the hearing of the appeal. The Notice of Objection does not refer to any interest of Diamond in the $10,000 stock of Renfrew here in issue, or that Diamond ever received any part thereof. It states expressly that the appellant on behalf of Legion insisted on that company being given all the shares. That statement is, of course, in direct conflict with his own admission that he asked for and was allowed the $10,000 in Renfrew stock in payment of his own services. Notwithstanding his direct evidence, he asserted that the Notice of Objection was correct but suggested that if there were any inaccuracies, they were occasioned by the fact that he had signed it "in blank" and that it had been filled in by his secretary on his telephoned instruction while he was absent on vacation.

In view of the appellant's own admission that the full amount of $10,000 in stock was awarded to him by the meeting of shareholders of Renfrew in payment for his own

1959

BARRON
v.
MINISTER OF
NATIONAL
REVENUE

Cameron J.

services, I am quite unable to disregard the serious discrepancies in the various statements made by the appellant to which I have referred, and on which he bases his claim that in fact he was a trustee for others as to the entire amount. The appellant had been the president of Legion which is still in existence, and been the solicitor for Renfrew, and had held practically all its stock in his own name, and had given instructions to the Prudential Trust Company, the transfer agent or registrar for Renfrew, as to the manner and dates of the various allotments of stock. Presumably, if the appellant's contention is sound, the books, documents and records of Legion, Renfrew and the Prudential Trust would have been of assistance in so proving and would have constituted the best evidence as to what actually took place. While Diamond has died, Bowman is still living and was not called. None of this readily available evidence was introduced and without it I am quite unable to reach the conclusion that the appellant has satisfied the onus put upon him to establish error in the re-assessment.

If, as submitted by the appellant, he received two-thirds of the $10,000 in Renfrew stock from Legion in part payment of his loan to that company, it would have been a very easy matter for him to have produced evidence from the records of Legion as to the times, amounts and manner in which the loan was paid off, but nothing of that sort was attempted. The appellant himself gave no evidence as to when that loan was repaid. It is significant to note also that according to Legion's balance sheet (Exhibit 2) the loan was still unpaid on August 31, 1951, whereas the appellant in the report of December 19, 1950 (Exhibit A) stated that the full $10,000 in Renfrew stock had been "allowed" to him prior to the latter date. Similarly, the records of Renfrew and Prudential Trust would have furnished the best evidence as to whether Diamond, Bowman or Legion ever received any Renfrew stock as part of a "promotion fee". There is no documentary evidence before me to establish that they ever received any stock in Renfrew.

At the trial, I intimated to the appellant that I thought he could have called further evidence such as I have mentioned, and stated that I was prepared to grant a reasonable adjournment to enable him to do so, if he so desired.

I rejected his suggestion that the hearing be adjourned until I was again sitting in Calgary as I was unlikely to do so for some years; whereupon he rejected the offer of a reasonably short adjournment and closed his case.

The appeal was heard in Calgary on April 2, 1959, and subsequently during the sittings of this Court at Vancouver I received a letter from the appellant dated April 8, enclosing certain documents and asking for leave to introduce them, as well as other material, in evidence. On my instructions, the Deputy Registrar on April 16 advised the appellant by letter that under the circumstances I declined to look at the documents forwarded, but intimated that should the appellant desire to introduce further evidence, he should do so on motion to a Judge in Chambers at Ottawa after giving notice of the application to the respondent. The Registrar further stated, "It will be necessary for you to do so without delay, otherwise your case will be determined on the material now before the Court".

More than a month has now elapsed since that letter was forwarded, and since no application has been made for an order permitting further evidence to be adduced, I have reached the conclusion that the appellant has now abandoned any such intention and accordingly I have decided to dispose of the appeal on the evidence given at the trial.

The re-assessment was based on the assumption that stock to the admitted value was secured by the appellant either as professional fees or as remuneration for services rendered, in either of which cases it constitutes income in the hands of the appellant. For the reasons stated above, I have come to the conclusion that the appellant has failed to establish error in the re-assessment or any part thereof. Without further proof, I am unable to accept the conflicting statements of the appellant as sufficient to overcome his own written statement in Exhibit A that he was awarded $10,000 in stock for his own services.

Accordingly, the appellant's appeal will be dismissed, the cross-appeal will be allowed and the re-assessment affirmed, the whole with costs to be paid by the appellant after taxation.

Judgment accordingly.