

THE MINISTER OF NATIONAL  
REVENUE .....

APPELLANT;

1967  
\*Jan. 31  
Mar. 2

AND

FOREIGN POWER SECURITIES  
CORPORATION LIMITED ....

RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Taxation—Income tax—Public investment company—Shares acquired at costs—Profit on sale of same—Whether capital gain or income—Income Tax Act, R.S.C. 1952, c. 148, ss. 3, 4, 139(1)(e).*

The respondent, a public investment company, had acquired from its parent private investment company a large number of shares in Trans-Canada Pipe Lines Ltd. and Quebec Natural Gas Corporation, at costs. In 1957 and 1958, the respondent sold some of these shares at a considerable profit. The Exchequer Court held that this profit was the realization of an investment and non-taxable. The Minister appealed to this Court.

*Held:* The Minister's appeal should be dismissed.

The trial judge gave full consideration to all the circumstances relied upon by the Minister and rightly concluded that the shares were acquired by the respondent as investments to be held as a source of income in

\*PRESENT: Taschereau C.J. and Cartwright, Fauteux, Martland and Spence JJ.

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the ordinary course of its business as an investment company, and that the reason it decided to realize these investments after a comparatively short period of time was that, in the opinion of its responsible officers, the shares had reached a price which was unrealistically high.

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*Revenu—Impôt sur le revenu—Compagnie publique de placements—Actions acquises au prix coûtant—Profit lors de la revente—Est-ce un gain de capital ou un revenu—Loi de l'Impôt sur le Revenu, S.R.C. 1962, c. 148, arts. 3, 4, 139(1)(e).*

L'intimée, une compagnie publique de placements, a acquis au prix coûtant d'une compagnie privée de placements par qui elle était contrôlée un grand nombre d'actions de la compagnie Trans-Canada Pipe Lines Ltd. et de Quebec Natural Gas Corporation. En 1957 et 1958, l'intimée a vendu un nombre de ces actions avec un profit considérable. La Cour de l'Échiquier a jugé que ce profit était la réalisation d'un placement et non sujet à la taxe. Le Ministre en appela devant cette Cour.

*Arrêt:* L'appel du Ministre doit être rejeté.

Le juge de première instance a pleinement considéré toutes les circonstances sur lesquelles le Ministre s'était appuyé et a correctement conclu que les actions avaient été acquises par l'intimée comme un placement pour être conservé comme source de revenus dans le cours ordinaire de son entreprise de compagnie de placements, et que la raison pour laquelle elle a décidé de réaliser ces placements après une période de temps comparativement courte est que, dans l'opinion de ses officiers responsables, les actions avaient atteint un prix tellement élevé qu'il dépassait toute réalité.

APPEL d'un jugement du Juge Noël de la Cour de l'Échiquier du Canada<sup>1</sup>, en matière d'impôt sur le revenu. Appel rejeté.

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APPEAL from a judgment of Noël J. of the Exchequer Court of Canada<sup>1</sup>, in an income tax matter. Appeal dismissed.

*G. W. Ainslie and P. Cumyn*, for the appellant.

*R. de Wolfe MacKay, Q.C.*, and *Keith E. Eaton*, for the respondent.

The judgment of the Court was delivered by

CARTWRIGHT J:—This is an appeal from a judgment<sup>1</sup> of Noël J. allowing the respondent's appeal from the assessments of income tax made for its 1957 and 1958 taxation years.

<sup>1</sup> [1936] Ex. C.R. 358, [1966] C.T.C. 23, 63 D.T.C. 5012.

The question for decision is whether profits of \$703,636 realized in 1957 and \$63,932 realized in 1958 on the acquisition and sale by the respondent of shares in Trans-Canada Pipe Lines Limited and Quebec Natural Gas Corporation were income from a business within the meaning of ss. 3, 4 and 139(1)(e) of the *Income Tax Act*, as is contended by the appellant, or were realization of an enhancement in the value of investments held by the appellant, as found by the learned trial judge.

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It is not questioned that the primary activities of the respondent are those of a bona fide investment company but counsel for the appellant argues that the particular transactions, out of which the profit sought to be taxed arose, were speculations constituting adventures in the nature of a trade.

The question is essentially one of fact depending on the intention with which the respondent acquired the shares.

The learned trial judge has set out the relevant facts in detail and has made reference to several passages in the evidence. I do not find it necessary to repeat these. I am satisfied that the learned trial judge gave full consideration to all the circumstances relied upon by the appellant and having done so he reached the conclusion that the shares in question were acquired by the respondent as investments to be held as a source of income in the ordinary course of its business as an investment company and that the reason it decided to realize these investments after a comparatively short period of time was that, in the opinion of its responsible officers, the shares had reached a price which was unrealistically high.

If this finding of fact is accepted, no question of law arises. A perusal of the record in the light of the full and able arguments addressed to us satisfies me that this finding was right.

For the reasons given by Noël J. and those briefly stated above, I would dismiss the appeal with costs.

*Appeal dismissed with costs.*

*Solicitor for the appellant: E. A. Driedger, Ottawa.*

*Solicitors for the respondent: Duquet, MacKay, Weldon, Bronstetter, Willis & Johnston, Montreal.*