

[JACKSON, C.J., AND MELISSAS, J.]

(April 21, 1949)

ORPHANIDES & MURAT, OF FAMAGUSTA, AS AGENTS FOR
THE KHEDIVIAL MAIL LINE S.A.E., OF ALEXANDRIA,
Appellants,

v.

THE COMMISSIONER OF INCOME TAX,

*Respondent.**(Case stated in Income Tax Appeal No. 25.)*

*Revenue—Income Tax—“Company”—Foreign Shipping Company
—Residence—Carrying on business in Cyprus—Authorized Agent
—Regular Agency of non-resident company—Chargeability of
Agent—Exemption of Foreign Shipping Company from Income
Tax—Reciprocal Concessions—Income Tax Law, 1941, sections
2, 16 and 22, sub-section (4).*

An Egyptian shipping company owned ships which regularly visited Cyprus to transport passengers and freight to and from Palestine and Egypt. In 1933 the Egyptian company appointed the appellants as their general agents in Cyprus and thereafter the appellants signed formal contracts on behalf of their principals relating to the carriage of goods and passengers from Cyprus and collected money which they remitted to the Egyptian company, retaining an agency commission.

On appeal against an assessment to income tax for the year 1945 made on the appellants as agents for the Egyptian company in respect of the profits of their business of shipping.

Held: (i) that the Egyptian shipping company clearly carried on business in Cyprus and that it fell within the definition of the term “company” in section 2 of the Income Tax Law, 1941; (ii) that the company was assessable in the name of the appellants under section 22 (4) of the Law; and (iii) that there was no evidence upon which the Judge could have come to any other conclusion but that no right to exemption had been established under section 16 of the Law.

Decision of the Judge in Chambers affirmed.

Case stated by the Judge in Chambers.

The Judge found the following facts:—

(1) That the Khedivial Mail Line are a Société Anonyme not resident in Cyprus but at Alexandria, Egypt. That they are shipowners and engage in the business of shipping. That as part of such business their ships regularly visit Cyprus to transport passengers and freight to and from Palestine and Egypt.

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(2) That the appellant firm of Orphanides & Murat are and have been since 1933 the General Agents and Representatives throughout Cyprus of the Khedivial Mail Line, and as such it is their duty to use every endeavour to further the interests of their principals and not to be associated with or represent any other concern whose interests may conflict with those of their principals.

(3) That the appellants used only the printed stationery and forms supplied to them by the Khedivial Mail Line for transacting their affairs in Cyprus.

(4) That the appellants had no authority to depart or deviate in any particular from the detailed instructions contained in their contract with the Khedivial Mail Line or alter or vary any form. Nor had they power to make contracts on behalf of the company other than by filling up and signing the formal printed contracts for freight and passages with which they were provided by their principals.

(5) That appellants signed the formal contracts on behalf of their principals, collected and received payments of money due, gave receipts, and transmitted all sums received to the head office of the Khedivial Mail Line at Alexandria after deducting agency commission.

(6) That no accounts of the Khedivial Mail Line were made up or audited in Cyprus—all accounting being done in Alexandria.

(7) That the Khedivial Mail Line has no banking account in Cyprus.

(8) That the Governor has never been satisfied that Egypt grants equivalent exemption from Income Tax to ship-owners resident in Cyprus.

The appellants contended (i) that they were not attorneys of the Khedivial Mail Line, nor authorized to carry on the general agency for, nor acted as receivers or branch of management of the Khedivial Mail Line; (ii) that the Khedivial Mail Line never had an office or place of business in Cyprus; and (iii) that the Khedivial Mail Line did not carry on business in Cyprus, as the appellants, through whom they acted, were merely general commission agents. In support of their contentions the appellants cited the following authorities :—

Income Tax Law, 1941, section 22 (4).

Grainger & Son v. William Lane Gough (1896) A.C. 325.

De Beers Consolidated Mines Ltd. v. Howe (1906) A.C. 455.

Sulley v. The Attorney-General, Eng. Reps., Vol. 157, Exch. p. 1364.

Egyptian Delta Land & Investment Co. Ltd. v. Todd (1929) A.C.1.

The Commissioner contended (i) that residence in Cyprus was not necessary to render a person liable for income tax ; (ii) that tax was chargeable on income of any person accruing in, derived from, or received in the Colony in respect of gains or profit from any trade or business ; (iii) that trade or business was carried on where the contracts were made ; (iv) that appellants were not general commission agents, that they did not merely get occasional offers and transmit to principals abroad, and that they were the exclusive and regular agents of the Khedivial Mail Line in Cyprus ; (v) that income of the Khedivial Mail Line accrued in or was derived from Cyprus and that business was carried on there ; and (vi) that there was no evidence that Egypt granted exemption from income tax to shipowners resident in Cyprus, and that the Court had no discretion under section 16 of the Law : from the correspondence produced in evidence it would appear that the Governor had decided that there was no reciprocal exemption. The following authorities were cited in support of these contentions :

Income Tax Act, 1918, Schedule D and Rules 5-12.

Erichson v. Last (1881) 8 Q.B.D. 414, at pp. 417, 418.

Weiss, Biheller & Brooks Ltd. v. Farmer (1923) 1 K.B. 226.

Wilcock v. Pinto (1925) 1 K.B. 30.

Maclaine v. Eccott (1926) A.C. 424.

Tarn v. Scanlan (1928) A.C. 34 at pp. 47-49.

The Judge being of the opinion that the appellants were the exclusive agents of the Egyptian company in Cyprus, on whose behalf they entered into and signed contracts in Cyprus, held (a) that the Egyptian company were rightly assessed in the name of the appellants ; (b) that the Egyptian company were through their agents making contracts in and deriving income from Cyprus and were therefore carrying on business and assessable for income tax in Cyprus ; and (c) that ship-owners resident in Egypt were not exempt from income tax under section 16 of the Income Tax Law, 1941. He accordingly dismissed the appeal except for an amendment of the amount of the valuation consented to by the Commissioner reducing the assessment of £50,000 to £44,191. The appellants applied to the Judge to state a case for the opinion of the Supreme Court.

G. N. Rossides for the appellants.

The Solicitor-General (*C. Tornaritis*) for the respondent.

The judgment of the Court was delivered by the Chief Justice.

JACKSON, C.J. : We feel no doubt that the decision of the Judge in Chambers was right on the points stated by him for our opinion.

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The non-resident shipping company clearly carries on business in Cyprus in which the appellants are its regular and exclusive agents and sign contracts on behalf of the shipping company relating to the carriage of goods and passengers from Cyprus to places elsewhere. The appellants as agents receive payment in Cyprus and transmit it to the shipping company in Egypt, retaining an agency commission.

On the facts as found by the Judge in Chambers, it is clear that the shipping company falls within the definition of the term "company" in section 2 of the Income Tax Law, No. 6 of 1941, and that the company is assessable in the name of the appellants under section 22 (4) of that Law.

As to the third point raised, namely, that the shipping company is entitled to exemption under section 16 of the Law, the appellants' advocate fairly and properly admitted that there was no evidence upon which the Judge in Chambers could have come to any other conclusion but that no right to exemption had been established under this section.

The case of *Tarn v. Scanlan* and the other three cases discussed in the same report [(1928) A.C. 34] appear to us to decide the principles governing this case and have a much closer application to the facts than the authorities quoted on behalf of the appellants.

We feel no doubt, therefore, that the decision of the Judge in Chambers on the points before us must be affirmed and that this appeal must be dismissed with costs.

Appeal dismissed with costs.