

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

BRANCO SALVAGE LTD.,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, AS SUCCESSOR TO  
THE GREEK COMMUNAL CHAMBER, THROUGH  
THE ATTORNEY-GENERAL OF THE REPUBLIC  
AND ANOTHER,

*Respondents.*

*(Case No. 118/67).*

1968  
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BRANCO  
SALVAGE LTD.

v.

REPUBLIC  
(ATTORNEY-  
GENERAL OF THE  
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AND ANOTHER)

*Income Tax—Assessment—Merchant Shipping Legislation—Exemption from taxation in respect of income derived from the operation of a “Cyprus ship”—The Merchant Shipping (Taxing Provisions) Law, 1963 (Law No. 47 of 1963), section 3—“Cyprus ship” as defined in section 2(1) of the Law is a ship registrable in Cyprus under the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law 1963, (Law No. 45 of 1963) “and actually registered thereunder”—Applicant’s ship provisionally registered as a Cyprus ship since 1962 but not registered under the said Law No. 45 of 1963 until the 15th July 1964—Such ship is not a “Cyprus ship” within the definition in section 2(1) of the said Law No. 47 of 1963 as regards the period preceding 15th July, 1964—Consequently, the Applicant is not entitled to the exemption provided under section 3 of the last mentioned Law No. 47 of 1963 in respect of the income derived from the operation of their said ship during the period 1st January 1964—15th July, 1964—Notwithstanding that they had applied for the registration of their ship under Law No. 45 of 1963 on the 4th November 1963—Even assuming that the delay on the part of the appropriate authorities was unjustifiable—Other remedies available for such undue delay if any.*

*Ship—“Cyprus ship” within section 2(1) of the Merchant Shipping (Taxing Provisions) Law, 1963 (Law No. 47 of 1963)—Exemption from taxation in respect of income derived from such a ship—Section 3.*

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*Words and Phrases*—"Cyprus Ship" within sections 2(1) and 3 of the Merchant Shipping (Taxing Provisions) Law, 1963 (Law No. 47 of 1963).

The Applicant company is the owner of a ship, m/v "Nora", which was registered as a "Cyprus ship" on the 15th July, 1964, under the provisions of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law No. 45 of 1963). It is common ground that the Applicant was entitled to be, and has been exempted, from the payment of income tax in respect of profits derived from the operation of the said ship after the 15th July, 1964—the date of her registration—in view of the provisions of section 3 of the Merchant Shipping (Taxing Provisions) Law, 1963 (Law No. 47 of 1963). But the Applicant claims that it is entitled to the exemption in respect *also* of the period from the 1st January 1964 to 15th July, 1964, in view of the fact that m/v "Nora" was provisionally registered as a Cyprus ship since 1962—before the enactment of Law No. 45 of 1963 (*supra*)—and in view, further, of the fact that, after the enactment of that Law, the Applicant applied on the 4th November, 1963, for proper registration of m/v "Nora" under the said Law No. 45 of 1963, such registration, however, having been (unjustifiably in the Applicant's allegation) delayed by the authorities concerned until the 15th July, 1964, as aforesaid:

Dismissing the recourse, the Court:

*Held*, (1). In order that the owner of a ship may enjoy the exemption from taxation provided for under section 3 of Law 47 of 1963 (*supra*), the ship must be a "Cyprus ship" as defined in section 2(1) of this Law, namely, a ship registrable in the Republic under the provisions of the previous Law No. 45 of 1963 (*supra*) "and actually registered thereunder". Following *Branco Salvage Ltd. and The Republic* (1966) 3 C.L.R. 238, and agreeing with the view adopted in that case by Munir J. I hold that m/v "Nora" was not before the 15th July, 1964, a Cyprus ship within the definition.

(2) Even if it is taken as an established fact that the registration of m/v "Nora" was unduly and unjustifiably delayed by the appropriate authorities as alleged by the Applicant, this Court cannot give relief in this recourse for such delay. The remedy for such delay was a recourse

under Article 146 of the Constitution for failure—refusal or omission—to register the ship; and had such recourse succeeded then the Applicant might, under Article 146.6, have claimed damages which could well have amounted to the loss of the benefit of the exemption from taxation under section 3 of the aforesaid Law No. 47 of 1963.

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*Recourse dismissed.*

*No order as to costs.*

Cases referred to:

*Branco Salvage Ltd. and The Republic* (1966) 3 C.L.R. 238,  
*followed;*

*In the Estate of Colman (deceased)* [1958] 2 All E.R. 35,  
*distinguished.*

### **Recourse.**

Recourse against the validity of the determination by Respondent 2, the Commissioner of Income Tax, of the matter of an income tax assessment in respect of the year of assessment 1965.

*G. Michaelides*, for the Applicant.

*Chr. Paschalides*, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered/ by:—

TRIANAFYLLIDES, J.: By this recourse the Applicant challenges the validity of the final determination, by the Respondent Commissioner of Income Tax, of the matter of an income tax assessment in respect of the year of assessment 1965; the notice of such determination is dated the 31st March, 1967, and is *exhibit 1* in this case.

By a letter dated the 30th March, 1967, the Commissioner has given reasons for the course taken by him in the matter (see *exhibit 2*).

The Applicant company is the owner of a ship, m/v “Nora”, which was registered as a Cyprus ship on the 15th July, 1964, under the provisions of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law 1963 (Law 45/63).

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With the exception of a sum of £21, all the income in respect of which the Applicant was taxed by means of the *sub judice* decision represents profits derived from the operation of m/v "Nora" between the 1st January, 1964 and the 15th July, 1964.

It is common ground that the Applicant was entitled to be, and has been, exempted from the payment of income tax in respect of profits derived from the operation of m/v "Nora" after the 15th July, 1964—the date of the registration of the ship—in view of the provisions of section 3 of the Merchant Shipping (Taxing Provisions) Law, 1963 (Law 47/63).

Both Laws, 45/63 and 47/63, were amended subsequently in 1965, but we are not concerned herein with such amendments.

The Applicant claims, in these proceedings, that it is entitled to the exemption, provided for under section 3 of Law 47/63, in respect, also, of the period from 1st January, 1964 to 15th July, 1964, in view of the fact that m/v "Nora" was provisionally registered, as a Cyprus ship, since 1962—before the enactment of the relevant legislation, Law 45/63—and in view, further, of the fact that, after the enactment of Law 45/63, the Applicant applied, on the 4th November, 1963, for proper registration of m/v "Nora" thereunder; and, as alleged by the Applicant—not unjustifiably, *prima facie*—such registration was unduly delayed by the authorities concerned and was not effected until the 15th July, 1964 (see in this respect the relevant correspondence which has been produced as *exhibit 3*).

In order that the owner of a ship may enjoy the exemption from taxation provided for under section 3 of Law 47/63 the ship must be a "Cyprus ship", as defined in section 2(1) of Law 47/63, namely, a ship registrable in the Republic under the provisions of Law 45/63 "and actually registered thereunder".

Regarding the exact meaning of the definition of a "Cyprus ship", for the purposes of section 3 of Law 47/63, I see no reason to disagree with the view adopted by Munir, J., in *Branco Salvage Ltd. and The Republic* (1966) 3 C.L.R. 238; the issue there was closely similar to the one involved in the present case, but it related to a different—the 1964—year of assessment.

As it appears from the letter of the Commissioner of Income Tax, dated the 30th March, 1967 (*exhibit 2*), the *Branco* case (*supra*) was relied upon by him for the purpose of arriving at his *sub judice* decision.

The law being as it is I, really, do fail to see how the Commissioner could have acted otherwise than as he did, and how he could have acceded to the request to exempt from taxation the income of the Applicant from the operation of m/v "Nora" during the period between the 1st January, 1964 and the 15th July, 1964; because the fact remains that, no matter for what reason, the said ship was not actually registered, in the sense of the definition of a "Cyprus ship" in section 2(1) of Law 47/63, and, therefore, the income from such ship could not enjoy the exemption under section 3 of the same Law.

In an effort to persuade me that I should treat the ship as actually registered, since before the 15th July, 1964, learned counsel for the Applicant has referred me to the case *In the Estate of Colman (deceased)* [1958] 2 All E.R. p. 35; I have not been able to find anything in the Judgment in the said case—which concerns the application to the special facts of that case of the expression "in actual military service" in section 11 of the English Wills Act 1837 (7 Will 4 & 1 Vict. c. 26)—to lead me to the conclusion that I can construe the relevant definition in section 2(1) of Law 47/63 so as to find that m/v "Nora" was actually registered as a "Cyprus ship" before the 15th July, 1964.

Even if it is taken as an established fact that the registration of m/v "Nora" was unduly and unjustifiably delayed by the appropriate authorities, this Court cannot give relief, in this recourse, for such delay. Nor could the Commissioner of Income Tax misapply the relevant legislation in order to give to the Applicant relief for the said delay, through exempting from taxation income which would not lawfully be exempted.

The remedy for the delay in registering m/v "Nora", was, at the appropriate time, a recourse under Article 146 of the Constitution, for failure—refusal or omission—to register the ship; and had such recourse been successful then the Applicant might, under Article 146.6, have claimed damages

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which could well have amounted to the loss of the benefit of exemption from taxation, under section 3 of Law 47/63, in respect of the whole or part of the period between the 1st January, 1964 and 15th July, 1964, as the case might be.

In the result this recourse fails and is dismissed accordingly, but there shall be no order as to costs.

*Application dismissed.*  
*No order as to costs.*