1978 June 15

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS SYRIMIS AND ANOTHER IN THEIR CAPACITY AS ADMINISTRATORS OF THE ESTATE OF THE DECEASED IOANNIS MORPHITIS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF ESTATE DUTY,

Respondents.

(*Case No.* 222/76).

Estate Duty—Assessment—Death occurring before the abnormal situation—Assessment taking place within six months from the coming into operation of the Estate Duty (Amendment) Law, 1976 (*Law No.* 3 *of* 1976)—*Section* 10 *of the Law applicable even though the assets were not in existence at the time of the determination of the estate duty and the estate has not sustained any financial loss on account of the abnormal situation.*

Estate duty—Assessment—Realization expenses in Cyprus—Not proper deductions.

Statutes—Construction—Principles applicable—Taxing statute—Construction of s. 23A *of the Estate Duty Laws* 1962 *to* 1976 (*introduced by s.* 10 *of Law No.* 3 *of* 1976).

Estate Duty Laws, 1962 to 1976—Construction of section 23A of the Laws (*introduced by s.* 10 *of Law No.* 3 *of* 1976).

Ioannis Morphitis, late of Strovolos, died on the 16th April, 1970 leaving assets and liabilities in Cyprus, the United Kingdom and Greece. Among these assets there were an orange grove within Morphou and Chrysiliou villages and 2406 one Pound ordinary shares of the Bank of Cyprus Ltd. The orange grove

was in 1968 transferred by the deceased, by way of gift, to the Company Akinita Ioannis Morphitis Ltd. This property was, by virtue of the provisions of section 7 (d) of the Estate Duty Laws 1962 to 1976, (to be referred to as "the Law") deemed to be property passing on the death of the deceased and liable to estate duty because it had been transferred within the three-year statutory period prior to his death. The orange grove was sold by the donee company on the 23rd December, 1969 for £24,000. The Bank of Cyprus shares were sold by the Administrators in September and October, 1972 for £11,939.

Section 23A of the Law (introduced by s. 10 of Law 3 of 1976) provides as follows:-

> " 23A. Notwithstanding the provisions of section 23, where the assessment of the estate duty payable in relation to the estate of a person who died prior to the abnormal situation takes place within a period of six months from the date of the coming into operation of this Law, the Commissioner, in determining the value of any property shall take into consideration the price which in his opinion it would fetch if sold in the open market at the time of the assessment".

It was conceded that the deceased died before the abnormal situation and that the assessment took place within a period of six months from the date of the coming into operation of the Law.

In determining the estate duty payable in respect of the above two items of property the respondent Commissioner came to the conclusion that section 23A of the Law was not applicable because these assets were not in existence at the time of the determination of the Estate duty and because the estate has not sustained any financial loss on account of the abnormal situation as the shares were sold at their market value before the events of 1974 and the orange grove had been gifted by the deceased before 1969.

In challenging the validity of the assessment the applicants, who are the administrators of the estate of the above deceased, argued (a) that the assessments of the value of the shares and the orange grove were made contrary to Law, inasmuch as the provisions of section 23A of the Law have not been applied;

(b) that the realisation expenses incurred in Cyprus were proper deductions.

Held, (1) that construing section 23A in accordance with the principles governing construction of taxing enactments (see pp. 183–85 *post*) and having regard to the plain words of this section two conditions have to be satisfied before it is invoked, namely (a) that the death occurred before the abnormal situation and (b) that the assessment took place within the six months from the coming into operation of the Law.

(2) That once both these conditions are satisfied by the factual background of the case, section 23A of the Law applies and that, accordingly, the Commissioner is under a duty to make the assessment on the properties in question, on the basis of the price, which, in his opinion, they would fetch if sold in the open market. (*Vestey's* (*Lord*) *Executors* v. *I. R. Comrs.* [1949] 1 All E.R. 1108 at p. 1120 *applied*).

(3) That the Commissioner's decision not to allow realisation expenses in Cyprus is a correct one (See Dymond's Death duties 14th Ed. pp. 569 and 1189).

Sub judice decision annulled.

Cases referred to:

Commissioner of Inland Revenue v. *Herbert* [1913] A.C. 326 at p. 332;

Littmann v. *Barron* [1951] 2 All E.R. 393 at p. 398;

Barron (*Inspector of Taxes*) v. *Littmann* [1953] 2 All E.R. 548;

Cape Brandy Syndicate v. *I. R. Commissioners* [1921] 1 K.B. 64 at p. 71; affirmed on appeal [1921] 2 K.B. 403;

Canadian Eagle Oil Co. Ltd., v. *R.* [1945] 2 All E.R. 499 at p. 507;

Vestey's (*Lord*) *Executors* v. *I. R. Comrs.* [1949] 1 All E.R 1108 at p. 1120;

I. R. Comrs. v. *Wolfson* [1949] 1 All E.R. 865 at p. 870;

I. R. Comrs. v. *Hinchy* [1960] 1 All E.R. 505 at p. 512.

Recourse.

Recourse against the validity of an estate duty assessment raised on the estate of the late Ioannis Morphitis.

G. Polyviou, for the applicants.

A. Evangelou, Counsel of the Republic, for the respondents.

Cur. adv. vult.

A. Loizou J. read the following judgment. The applicants are the administrators of the estate of Ioannis Morphitis, late of Strovolos, a commission agent and importer who died in London on the 16th April, 1970, leaving assets and liabilities in Cyprus, the United Kingdom and Greece. Among these 5 assets there were an orange grove within Morphou and Chrysiliou villages of an extent of about 35 donums and two thousand, four hundred and six (2406) one Pound Ordinary Shares of the Bank of Cyprus Ltd. The said orange grove had been transferred by the deceased, by way of gift, to the Company Akinita 10 Ioanni Morphiti Ltd., in 1968, that is to say, within the three-year statutory period prior to his death, which, by virtue of the provisions of section 7 (d) of the Estate Duty Laws 1962 to 1976 (hereinafter to be referred to as "the Law"), as it was at the time, was deemed to be property passing on the death of 15 the deceased, liable to estate duty as such.

The donee company sold same, on the 23rd December, 1969, to Oriana Co. Ltd. for £24,000.– payable by instalments. The respondent Commissioner taking into consideration that the material time for the valuation of such property was then, 20 under section 23 (1) of the Law, the time of the death of the deceased and that there were also credit facilities and interest included in the sale price, valued the orange grove for estate duty purposes, at £20,000.– which was also the value declared by the applicants. The Bank of Cyprus shares were sold by 25 the administrators in September and October, 1972 for £11,939.–.

The respondent Commissioner after taking into consideration the various sales of such shares round the date of the death of the deceased, concluded that a reasonable valuation would be at £5.– per share, *i.e.* £12,030.–, but as the applicants had sold 30 the said shares for £11,939, he adopted this sale price as the value of the shares for estate duty purposes.

Though there is disagreement as to the correctness of this valuation by a figure of about £400.–, I do not think that there are grounds for me to interfere with this valuation. 35

A declaration regarding the property of the deceased was submitted by the administrators on the 29th October, 1970, but only in respect of the immovables. No declaration was submitted in respect of the movables of the deceased, because,

as claimed, of the complexity of the case, the existence of assets in U.K. and Greece which had to be cleared up, and the fact that the income tax liability of the deceased in respect of his income for the years 1966–1972 had not been settled and this was a material element, as the amount of income tax is an allowable deduction from the value of the estate. In fact, this has been conceded on behalf of the respondent Commissioner and an undertaking has been given that when the whole liability will be finally settled, he will take same into consideration in arriving at the estate duty payable and that the decision of the Court will be subject to this undertaking.

In view of the failure of the applicants to render the proper declaration of property required by section 32 of the Law, the respondent Commissioner on the 27th November, 1975 raised, under section 35 of the Law, an assessment (*Exhibit* 1, Appendix 'B') on £112,000 according to which the estate duty payable, plus interest, was £30,115.700 mils.

Meetings and negotiations took place but as no agreement could be reached on disputed points, the respondent Commissioner proceeded with the determination of the objection of the applicants, and his decision was communicated to them on the 30th July, 1976 by a revised notice of assessment (*Exhibit* 1 Appendix 'G'). Attached thereto there was an amended statement, showing the details of valuation of the estate and a memorandum prepared by Mr. Mateas, an Assessor–Valuer at the Estate Duty Office, which in effect constitutes the reasoning for the *sub judice* decision, particularly, regarding the approach of the respondent Commissioner in respect of the shares and the orange grove (*Exhibit* 1, Appendix 'H'), and which in so far as material, reads:

> "Valuation of Bank of Cyprus shares Sect. 23A Estate Duty Laws (1962–1976)
>
> ....
>
> 2. ....
>
> 3. Determination of Estate Duty payable is made within the time limit provided by the Law, but case is not coming under the above section for the following reasons:
>
> (a) Shares were not in existence at the time of the determination of Estate Duty payable.

(b) The Estate has not sustained any financial loss from the sale of the above shares.

....

2. Valuation of Immovable Properties gifted by the deceased within the statutory period of 3 years prior to his death. 5

Deceased gifted within the statutory period of 3 years prior to his death to Ioannis Morphitis Estate Co. Ltd.:-

(a) ....

(b) ....

2. Valuation of above property does not come under Sec. 10 of Amendment Law 3/76 for the same reasons as those given for Bank of Cyprus shares. 10

3. ...."

The criteria, therefore, applied by the respondent Commissioner in considering whether section 23A of the Law applies in either instance, are, (a) the existence or not of these assets at the time of the determination of the estate duty payable, and (b) the fact that the estate did not sustain any financial loss on 15 account of the abnormal situation, because (i) the shares were sold at their market value before the events of 1974 and (ii) the orange grove had been gifted by the deceased before 1969.

By the present recourse the applicants challenge the validity of this revised assessment on a number of grounds, but as 20 eventually argued before me the main issue is that the assessments of the value of the shares and the orange grove were made contrary to Law, inasmuch as the provisions of section 23A of the Estate Duty Laws 1962-1976 had not been applied. This is an amendment introduced by section 10 of the Estate 25 Duty (Amendment) Law, 1976 (Law No. 3 of 1976) and it reads:

" 23A. Notwithstanding the provisions of section 23, where the assessment of the estate duty payable in relation to the estate of a person who died prior to the abnormal 30 situation takes place within a period of six months from the date of the coming into operation of this Law, the Commissioner, in determining the value of any property shall take into consideration the price which in his opinion

it would fetch if sold in the open market at the time of the assessment."

It has been the contention of the applicants that had this section been applied, the value of the shares would have been 5 much less. Likewise, the value of the orange grove would have been practically nil, because of its location. It was, however, indicated that their aim is the annulment of the *sub judice* decision and that the valuation of both assets should be left to be made by the appropriate organ applying the correct legal 10 test set out in section 23A of the Law.

On the other hand, counsel for the respondent Commissioner has adopted the approach of the administration on the matter and urged that the intention of the legislator was to relieve those whose property was in fact affected by the abnormal 15 situation, which was not the case in hand; the orange grove had been gifted and the shares sold at their market value long before 1974.

It is plain that this is a case that turns on the construction of a statutory provision, namely, section 23A of the Law, a 20 taxing law at that. The general rule of construction of such a law, as in the case of all other statutory provisions, is that the intention of the legislature must be gathered from the words used giving them their ordinary and natural meaning. As stated by Lord Haldane in *Commissioner of Inland Revenue* v. 25 *Herbert* [1913] A.C. 326 at p. 332:

" The duty of a Court of law is simply to take the statute it has to construe as it stands and to construe its words according to their natural significance. While reference may be made to the state of the law and the material facts 30 and events with which it is apparent that Parliament was dealing, it is not admissible to speculate on the probable opinions and motives of those who framed the legislation excepting in so far as these appear from the language of the statute".

35 This, however, is not absolute; the ordinary and natural meaning of the words used may, at times, allow another possible meaning if the words would lead to absurdity or inconsistency. Moreover, it has more than once been judicially pronounced

that taxing enactments must be strictly construed and that any ambiguity must be resolved in favour of the tax payer, inasmuch as no charge can be imposed upon a person except by clear and unequivocal language and that if an enactment is ambiguous such a person is entitled to the benefit of the doubt. (See *Hérbert* (*supra*). Of course, the enactment has to be looked as a whole. This rule, however, cannot be stated without qualification; it does not mean that because an enactment is on the whole a taxing one, all its provisions are taxing provisions. Only such provisions, as are taxing provisions are subject to the rule. Moreover, as stated in *Littmann* v. *Barron* [1951] 2 All E.R. 393 at p. 398 by Cohen, C.J. affirmed sub. nom. *Barron* (*Inspector of Taxes*) v. *Littmann* [1953] 2 All E.R. 548, the principle that in cases of ambiguity a taxing statute should be construed in favour of a tax payer does not apply to a provision giving a tax payer relief in certain cases from a section clearly imposing liability.

Relevant also to our case is what was stated by Rowlatt, J. in *Cape Brandy Syndicate* v. *I. R. Commissioners* [1921] 1 K.B. 64 at p. 71 affirmed, [1921] 2 K.B. 403 and stated with approval by Viscount Simon in *Canadian Eagle Oil Co. Ltd.*, v. *R.* [1945] 2 All E.R. 499 at p. 507, where it was said:–

> " In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used".

Also, as stated by Lord Normand in *Vestey's* (*Lord*) *Executors* v. *I. R. Comrs.*, [1949] 1 All E.R. 1108 at p. 1120,

> " It is not the function of a Court of Law to give to words a strained and unnatural meaning because only thus will a taxing section apply to a transaction which, had the legislators thought of it, would have been covered by appropriate words".

In *I. R. Comrs.* v. *Wolfson* [1949] 1 All E.R. 865 at p. 870, Lord Normand again referring to the correct interpretation and the possibility that it may be avaded, if properly constructed, said:

"That it may be easily evaded is possible. That is a consideration which is irrelevant to its proper interpretation".

Likewise, in *Vestey's* (*supra*) at page 1120, Lord Normand again stated:-

5 " The Court will not stretch the terms of taxing Acts in order to improve on the efforts of the Parliament and to stop gaps which are left open by the statutes. Tax avoidance is an evil, but it would be the beginning of much greater evils if the Courts were to overstretch the language 10 of the statute in order to subject to taxation people of whom they disapproved".

Also, as stated by Lord Reid in *I. R. Comrs.* v. *Hinchy* [1960] 1 All E.R. 505, at p. 512,

" What we must look for is the intention of Parliament, 15 and I also find it difficult to believe that Parliament ever really intended the consequences which flow from the Crown's contention. But we can only take the intention of Parliament from the words which they have used in the Act and, therefore, the question is whether these words 20 are capable of a mere limited construction. If not, then we must apply them as they stand, however unreasonable or unjust the consequences and however strongly we may suspect that this was not the real intention of Parliament."

Having regard to the plain words of section 23A of the Law, 25 I have no difficulty in saying that the prerequisites suggested as existing in it, do not emanate from the plain words of the enactment. What the section requires, is that the assessment of an estate duty payable must be in relation to a person who died prior to the abnormal situation; that the assessment of such 30 duty took place within a period of six months from the date of the coming into force of the Law and that in such a case the Commissioner inspite of the provisions of section 23, shall take into consideration, in determining the value of any property the price which, in his opinion, would fetch if sold in the 35 open market at the time of the assessment. We have, therefore, two conditions to be satisfied before the section is invoked.

(a) that the death occurred before the abnormal situation, and

(b) that the assessment took place within the six months from the coming into operation of the Law.

It has been conceded that both these prerequisites are satisfied by the factual background of the case, and, in my view, once these prerequisites are satisfied, section 23A of the Law applies and consequently the Commissioner is under a duty to make the assessment on the properties in question, on the basis of the price, which, in his opinion, they would fetch if sold in the open market at the time of such assessment. Though this may appear, odd, there is nothing against the applicants taking advantage of the wording of the Law. If the legislature wanted to exclude instances as the present one, words bringing about such effect should have been inserted therein.

Adapting to the present case what was stated in *Vestey's* case (*supra*), I say that I must not stretch the terms of this enactment in order to improve on the efforts of the legislature and to stop gaps which were left open by the enactment or overstretch the language of the section in order to subject to taxation the estate of the deceased.

If anything, as far as the orange grove is concerned, there is an element of contradiction in the approach of the respondent Commissioner, as it did not physically exist as part of the estate at the time of the death. It was only by means of a legal presumption that though gifted and alienated from the estate of the deceased, it was treated as part of same, in view of the fact that it had been donated within the statutory period of three years. I cannot read into the section words to the effect that these assets should have been in existence at the time of the determination of the estate duty or that the estate must have been affected by the abnormal situation for the section to apply.

For all the above reasons, the present recourse succeeds, and the *sub judice* decision is annulled.

Before, however, concluding, I would like, out of deference to both counsel, to answer the point raised in the course of the hearing, as to whether the costs of the realisation expenses are proper deductions from the value of the estate of the deceased or not.

It was submitted by counsel for the respondent Commissioner that these expenses were rightly disallowed, as they did not qualify for deduction.

They were realisation expenses incurred in Cyprus, whereas, 5 the respondent Commissioner allowed realisation expenses which were incurred for assets outside Cyprus.

I agree with the approach of the respondent Commissioner on the subject and the authority on this proposition is to be found in Dymond's Death Duties 14th Ed. pp. 569 and 1189. 10 At page 569 it is stated:

> " The principal value is defined as the price which, in the opinion of the Commissioners the property would fetch if sold in the open market at the time of the death of the deceased (Finance Act, 1894, s. 7 (5)). The price which 15 the property fetches is the gross sale price, without deduction for the costs of sale, except that, if the property is part of an unadministered estate or a share of property subject to a trust already in operation which involves conversion, or if the property consists of certified chattels 20 of national, etc., interest, allowance for costs may be made".

And at page 1189,

> " Where the property (not being stocks or shares) has actually been sold within a short time after the death of 25 the deceased under open, market conditions, the gross sum realised may generally be taken as the principal value, but no deduction may be made for expenses of sale, such as solicitors' or auctioneers' charges, printing or advertising."

30 In other words, it is the gross value of the estate which is taken into consideration without taking into account any realisation expenses.

On these authorities and bearing in mind that the charging section 23 contains the same criteria as the corresponding 35 English provisions, I have come to the conclusion that the respondent Commissioner's decision not to allow realisation expenses in Cyprus, is a correct one.

In the result, the *sub judice* decision is annulled, but in the circumstances I make no order as to costs.

Sub judice decision annulled.
No order as to costs.