1982 February 2

[L. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KEO LTD.,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COMMISSIONER OF INCOME TAX,

Respondent.

(*Case No.* 324/77).

Statutes—Construction—Principles applicable—A statute should be construed as a whole—Construction of section 12(2)(*d*) *of the Income Tax Laws* 1961 *to* 1975—*In case where meaning of a taxing section is ambiguous and capable of two alternative meanings, Court must prefer the meaning most favourable to the subject.*

Income Tax Laws, 1961 *to* 1975—*Section* 12(2)(*d*) *of the Law introduced by section* 6(*b*) *of Law* 37/75—*Benefits and reliefs thereunder are effective as from the* 1*st January,* 1974—*Section* 6 *of the above Laws and section* 9 *of Law* 37/75.

In 1974 the applicant Company acquired and used in its business assets worth £357,420 and payment of those assets was mainly effected in 1974. Applicant, relying on section 12(2)(d)* of the Income Tax Laws 1961 to 1975, claimed a

* Section 12(2)(d), which was introduced by section 6(b) of the Income Tax (Amendment) Law, 1975 (Law 37/75), reads as follows:

"(d) Notwithstanding the provisions of paragraph (a) and subject to the provisions of paragraphs (b) and (c) of this section where within three years from the coming into operation of this Law there shall be incurred by any business expenditure on the acquisition of property consisting of new plant and machinery or on the construction, reconstruction, extension or adaptation of property consisting of buildings, such expenditure shall be deducted from the chargeable income of the business:

.....

....."

deduction of the whole cost of the assets acquired in 1974. The respondent Commissioner turned down the claim on the ground that section 12(2)(d) was applicable in cases where the expenditure therein envisaged was incurred within three years from the coming into operation of the section i.e. the 1st January, 1975. Hence this recourse. By virtue of section 9 of Law 37/1975 the said section 12(2)(d) came into operation "as from the year of assessment commencing on the 1st January, 1975".

Held, that a statute should be construed as a whole and, so far as possible, there should be avoided any inconsistency or repugnancy either within the section to be construed or as between that section and other parts of the Statute; that in the present case this Court is dealing with taxation legislation and the relevant section 12(2)(d) aims at granting relief from taxation under certain circumstances and the only dispute relates to the date of commencement of the section in question and, consequently, the time as from when the taxpayer is entitled to the relief; that it is, therefore, pertinent and necessary to look at section 6* of the Income Tax Laws 1961 to 1975 under the provisions of which taxation is assessed; that it is clear from section 6 that in respect of the assessment of income tax there is taken into consideration the chargeable income of the year immediately preceding the year of assessment; that since the said section 12(2)(d) expressly provides that "..... such expenditure shall be deducted from the chargeable income of the business" and that by section 9 the said section comes into operation "as from the year of assessment commencing on the 1st January, 1975" it is not unreasonable to construe the section as meaning that both the income and the deductions envisaged in the section in question relate to the year immediately preceding the year of assessment i.e. the year of income 1974; accordingly the sub judice decision must be annulled.

Held, further, that in cases where the meaning of a taxing section is ambiguous and capable of two alternative meanings the Courts must prefer the meaning more favourable to the subject (see *I.R.C.* v. *Bladnoch Distellery Co. Ltd.* [1948] 1 All

* Section 6 provides as follows:

"6. Tax shall be charged, levied and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment".

E.R. 616 at p. 625 which was followed in *Vita-Ora Co. Ltd.* v. *The Republic* (1973) 3 C.L.R. 273).

Sub judice decision annulled.

Cases referred to:

Commissioners of the Ancholme Drainage and Navigation v. *T.P. Wedhen (H.M. Inspector of Taxes)* [1936] 1 All E.R. 759;

I.R.C. v. *Bladnoch Distellery Co. Ltd.* [1948] 1 All E.R. 616 at p. 625;

Vita-Ora Co. Ltd. v. *The Republic* (1973) 3 C.L.R. 273.

Recourse.

Recourse against the income tax assessment raised on applicants for the year 1974 and against the assessment in respect of the levying of special contribution for the quarter 1.10.1974-31.12.1974.

G. Polyviou, for the applicant.

A. Evangelou, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

L. LOIZOU J. read the following judgment of the Court. The applicants in this case are a public company of limited liability incorporated in 1958 for the manufacture and sale of wines and spirits.

It is common ground that in 1974 the company acquired and used in its business assets worth £357,420.- and payment for these assets was effected in 1974 except for a sum of £150,246.- which had been paid for part of those assets in 1973.

The applicants rendered, on the 29th July, 1975, their accounts for the year of income 1974 through their auditors. By these accounts which are exhibit 1A before the Court the applicants claimed the usual wear and tear allowances in respect of the assets acquired and used during 1974.

An assessment was raised by the respondents on the basis of those accounts on a declared income of £333,186.- An objection was made by the applicants as regards certain dividents paid to shareholders without deducting the income tax (exhibit

1E) and the objection was finally determined on the 29th November, 1975, and the income tax payable fixed at £123,836.730 mils (exhibit 1F). With regard to this income the company was also liable to pay special contribution for the quarter 1st October, 1974 to 31st December, 1974 under the provisions of the Special Contribution (Temporary Provisions) Law, 55 of 1974, which was computed by the auditors of the applicants at £14,932.-

On the 2nd October, 1976, the applicants' auditors, in view of the enactment on the 11th July, 1975 of the Income Tax (Amendment) Law 1975, submitted a revised computation of the chargeable income of the company for 1974 (exhibit 1B) claiming the deduction of the whole cost of the assets acquired in 1974 in accordance with the provisions of Law 37 of 1975 which amounted to a further deduction of £192,136.- The income tax payable by the company was thus reduced from £141,604.050 mils to £66,292.350 mils. Similarly, as a consequence of this new computation, there was no profit left liable to special contribution in respect of the quarter 1st October, 1974 to 31st December, 1974 because the cost of the assets counterbalanced the profit with the result that there resulted a loss of £29,675.- and nothing remained to be paid by way of special contribution. The respondents examined these revised computations of the applicants on the 19th September, 1977, and decided to reject them (exhibit 1F). The respondents likewise rejected the computation of the applicants with regard to the special contribution by letter dated 6th October, 1977 (exhibit 1J). The amount payable as special contribution as assessed by the respondents was £39,054.250 mils.

Having given some of the amounts involved in this case I must add that nothing turns on them as they are of no consequence in deciding the issue in this case.

By this recourse the applicants seek firstly, a declaration that the assessment raised by the respondents on the applicants in respect of their income for the year of assessment 1975 (year of income 1974) is null and void and of no effect whatsoever and, secondly, a declaration to the effect that the assessment raised on the applicants by the respondents in respect of the levying of special contribution for the quarter 1st October, 1974 to 31st December, 1974, is also null and void.

The grounds of law on which the application is based are the following:

1. The construction placed by the respondents on the provisions of paragraph (d) of sub-section (2) of section 12 of the Income Tax Laws 1961-1975 and upon which the respondents relied is erroneous.

2. The respondents failed to appreciate the fact that the said paragraph (d) of sub-section (2) of section 12 was introduced in the Income Tax legislation by virtue of section 6(b) of the Income Tax (Amendment) Law, 1975 which, pursuant to section 9 of the same law, came into operation as from the year of assessment commencing on the 1st January, 1975.

3. The respondents disregarded the definition of the words "year of assessment" appearing in section 2 of the Income Tax Laws 1961-1975.

4. The respondents failed to apply section 6 of the Income Tax Laws 1961-1975 under which tax shall be charged, levied and collected for each year of assessment upon the chargeable income of any person for the year preceding the year of assessment, which in the present case is the year 1974.

5. The applicants will allege that all capital assets acquired and used or employed in their business during the income year from 1st January, 1974 to 31st December, 1974 are eligible for the allowances provided for in sub-section (2) of section 12 of the law.

6. The raising of the additional assessment for special contribution in respect of the applicants' profits for the quarter from 1st October, 1974 to 31st December, 1974 was the result of the erroneous and wrongful disallowance by the respondents of the applicants' claim for 100% writing off of the capital cost of assets acquired or used and employed in their business during the year 1974.

7. The computation of the income liable to special contribution as made by the respondents by their letter dated 19th September, 1977 is wrong.

The real and only question which will resolve the above

grounds of law is really the correct interpretation of paragraph (d) of section 12(2) of the Income Tax Laws 1961 to 1975 which was first introduced into the section by section 6(b) of the Income Tax (Amendment) Law, 1975 (No. 37 of 1975) and the date on which it came into force. In other words whether the benefits and reliefs with regard to which provision is made in the said paragraph is effective as from the 1st January, 1975 or as from the 1st January, 1974.

Paragraph (d) reads as follows:

"(d). Notwithstanding the provisions of paragraph (a) and subject to the provisions of paragraphs (b) and (c) of this section where within three years from the coming into operation of this Law there shall be incurred by any business expenditure on the acquisition of property consisting of new plant and machinery or on the construction, reconstruction, extension or adaptation of property consisting of buildings, such expenditure shall be deducted from the chargeable income of the business:

.....

....."

By virtue of the provisions of s.9 of the same Law (No. 37 of 1975) (which is incorporated in s.54(2) of the English Codified edition) the above paragraph came into operation "as from the year of assessment commencing on the 1st January, 1975".

The gist of the argument of learned counsel for the applicants in support of his case that the benefits and reliefs of s.12(2)(d), or accelerated depreciation as it has been called, are effective as from the year of income 1974, was that the combined effect of sections 12(2)(d), section 54(2) and section 6 of the Income Tax Laws 1961 to 1975 read together with the definition of the words "year of assessment" in section 2 leave no doubt that paragraph (d) is applicable as from the year of income 1974. He pointed out certain other sections of the law which also provide certain other benefits and reliefs such as paragraph (v) of section 8, section 5(4) and also paragraphs (b) and (c) of section 12 where the legislature leaves no doubt as to the time the relevant provisions become applicable. Another point in support of his submission, learned counsel

argued, is the fact that it was thought necessary to repeal altogether and substitute paragraph (d) of s.12(2) by s.2(c) of Law 8 of 1979 which, at least, shows that the legislature thought that the said paragraph, as it stood, was open to the construction he suggested.

Counsel for the respondents, on the other hand, contended that the word "incurred" in the phrase "within three years of the coming into operation of this law there shall be incurred" clearly shows that the section is applicable in cases where the expenditure therein envisaged was incurred within three years from the coming into operation of the section i.e. the 1st January, 1975 and that the fact that the basis of assessment is the income of the preceding year does not entitle the applicants to have the beneficial treatment of accelerated depreciation by taking into consideration the expenditure which was incurred in 1974.

The whole difficulty in the present case arises because of the use of the words "as from the year of assessment" which occur in section 9 of Law 37 of 1975 and one may reasonably wonder why if the intention was that the law and particularly paragraph (d) of section 6 with which we are concerned were intended to come into operation on the 1st January, 1975, it was found necessary to include the words "year of assessment" at all since without them the meaning would not be open to any doubt.

A statute should be construed as a whole and, so far as possible, there should be avoided any inconsistency or repugnancy either within the section to be construed or as between that section and other parts of the statute (see Halsbury's Laws of England, 3rd ed., vol. 36, p. 395, para. 594 and The Commissioners of the Ancholme Drainage and *Navigation* v. *T.P. Wedhen* (H.M. Inspector of Taxes) [1936] 1 All E.R. 759).

In the present case we are dealing with taxation legislation and the relevant section aims at granting relief from taxation under certain circumstances and the only dispute relates to the date of the commencement of the operation of the section in question and, consequently, the time as from when the taxpayer is entitled to the relief. It is, therefore, in my view, pertinent and necessary to look at the section under the provisions of which taxation is assessed. This is section 6 of the Income Tax Laws 1961 to 1975 the relevant part of which reads as follows:

"6. Tax shall be charged, levied and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment".

It is clear from the above that in respect of the assessment of income tax there is taken into consideration the chargeable income of the year immediately preceding the year of assessment.

Bearing in mind that section 6(d) of Law 37 of 1975 expressly provides that ——— "such expenditure shall be deducted from the chargeable income of the business" and that by section 9 of the same law the said section comes into operation "as from the year of assessment commencing on the 1st January, 1975" it is, in my view, not unreasonable to construe the section as meaning that both the income and that deductions envisaged in the section in question relate to the year immediately preceding the year of assessment i.e. the year of income 1974.

But, be that as it may, even in cases where the meaning of a taxing section is ambiguous and capable of two alternative meanings the Courts must prefer the meaning more favourable to the subject. (See *I.R.C.* v. *Bladnoch Distellery Co. Ltd.* [1948] 1 All E.R. 616 at p. 625 which was followed in *Vita-Oru Co. Ltd.* v. *The Republic* (1973) 3 C.L.R. 273).

For all the above reasons this recourse succeeds and the decision challenged is hereby annulled.

In all the circumstances I have decided to make no order as to costs.

Sub judice decision annulled.
No order as to costs.