

1983 December 21

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STELLA GEORGHIOU,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF FINANCE AND/OR
  2. THE DIRECTOR OF INLAND REVENUE DEPARTMENT,
- Respondents.*

(Case No. 34/80).

*Special Contribution—Income from rents—Deduction for interest paid on capital borrowed for construction of a building—Not allowable under the provisions of the existing legislation at the material time—Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76) which made such deduction possible not in force at the material time.* 5

The sole issue in this recourse was whether the respondent Director in assessing the special contribution to be paid by applicant in respect of rents which were collected during 1974 and 1975 could allow a deduction for interest paid by applicant on capital borrowed for the construction of a building. The matter was governed by paragraph 3\* of the schedule to the Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76) which came into force on the 1st April, 1976 and amended the Special Contribution (Temporary Provisions), Law, 1974 (Law 55/74). 10 15

*Held*, that as Law 15/76 came into force on the 1st April,

\* Paragraph 3 provides as follows:

“In case of assessment of income from rents there is a discount of 25 per cent on the gross income from such rents and also all interest paid on capital borrowed for acquiring the building the rent of which is subject to payment of special contribution”.

1976 and the issue in this case concerns assessment for rents which were collected during 1974 and 1975 that is before the enactment of Law 15/76, the applicant cannot rely on the provisions of a law which was not in force at the material time to claim deduction in respect of interest paid on capital borrowed as such deduction was not an allowable deduction under the provisions of the existing legislation at the material time, accordingly the recourse should fail

*Application dismissed*

10 **Recourse.**

Recourse against the decision of the respondents whereby applicant was assessed to pay the sum of £100 650 mils as special contribution for the year 1975

*N. Pehdes*, for the applicant.

15 *A. Evangelou*, Senior Counsel of the Republic, for the respondents

*Cui ad vult*

SAVVIDIS J read the following judgment. The applicant in this recourse challenges the decision of the respondent Director of Inland Revenue, whereby she was assessed to pay as special contribution for the last quarter of 1974, the sum of £2,700 mils and for the whole of 1975 the sum of £100,650 mils and prays for a declaration of the Court that such assessment is arbitrary and of no legal effect

25 The facts of the case are briefly as follows:

Applicant is the owner of immovable property in Nicosia consisting of one flat and one shop which she built in 1974. The flat is used for domestic purposes by the applicant and the shop is leased. Applicant on submitting her return of income for special contribution for the last quarter of 1974 and for the whole of 1975, claimed that the whole amount of interest of £933 paid for the year 1974 be deducted from the rents received from the said shop during the quarter ending 31st December, 1974 and the whole interest of £934 paid for the year 1975 be deducted equally from the rents received in 1975.

To arrive at the proper ratio of the cost of the building between the shop and flat, the respondent Director inspected the said

building and concluded that it was fair and reasonable that the cost of building should be apportioned equally between the flat and the shop and apportioned the interest paid by the applicant equally between the shop and the flat.

The applicant objected to such assessment and as no agreement could be reached, the respondent Director determined the special contribution levied on the basis of the apportionment already made. Against such decision, the applicant filed the present recourse. The grounds of law on which the recourse is based, as set out in the application, are the following: 5 10

(1) The respondents in taking the sub judice decision wrongly interpreted the provisions of the Special Contribution (Temporary Provisions) Law and/or they failed to apply properly the said provisions.

(2) The respondents illegally and acting contrary to the provisions of the Special Contribution (Temporary Provisions) Laws, failed to make the necessary deductions and/or reductions and/or they failed to take into consideration all the lawful deductions concerning interest which the applicant has to pay on the loan for the construction of the buildings from which the rents are collected and in respect of which the assessment was made. 15 20

(3) The respondents acted in excess and/or in abuse of power in that they failed to take into consideration the actual amount of the loan of the applicant for the construction of the said buildings from which the rents accrued, and the actual amount of the interest which she had to pay on the said loan and which was contracted for the construction of the said buildings for lease. 25

It was the contention of counsel for applicant that the decision of the Director was based on a wrong interpretation of the relevant laws and also on a wrong application of the law on the assessable income from rents of the applicant. 30

Counsel for applicant in his written address contended that the cost of the whole structure amounted to £27,300 and that according to the feasibility study of the architect this amount was apportioned in respect of the shop £16,300 and in respect of 35

the house £11,000. Applicant had cash in hand amounting to £12,300 and borrowed the balance from the Bank of Cyprus. After the construction of the buildings the applicant submitted to the Director of Inland Revenue the feasibility study and the apportionment of cost between the shop and the house. The Director of Inland Revenue refused to accept such feasibility study and apportioned the cost equally between the shop and the flat. The applicant accepted such apportionment. The value of the shop which were leased amounts to £13,650. Taking into consideration the fact that the applicant had already cash in the sum of £12,300 which would have enabled her to build her house he contended that 9/10ths of the loan of £15,000 was spent for the construction of the shop and only 1/10th for the house used for her residence. With all these facts in mind, counsel concluded, the applicant is entitled to a deduction of 9/10ths of the annual interest from the assessment of the special contribution from the income of the shop instead of 5/10ths as assessed by the Director.

Counsel for the respondents in his written address relied on the provisions of the Special Contribution (Temporary Provisions) Law and contended that applicant was not entitled to any deduction in respect of interest which was paid on the loan contracted from the Bank of Cyprus. However, counsel submitted, the respondent Director concessionally decided to allow that portion of interest attributable to the construction of the shop but not to the construction of the flat in which applicant lives with her family. The portion of the interest which was concessionally allowed for special contribution purposes, was 50 per cent of the total amount. Even if we assume that interest in an allowable deduction under the aforesaid law, it is only the interest which is an expense incurred wholly and exclusively in the production of income that may be allowed and not that portion of the interest which is attributable to the cost of the flat from which applicant derives no income. As applicant failed to prove what portion of the loan was used for the construction of the shop which produces income and what portion of the loan was used for the construction of the flat, the respondent Director's decision to apportion the cost on the 50-50 basis, was not unreasonable.

The assessment in the present case was made under the provi-

sions of the Special Contribution (Temporary Provisions) Law, 1974 (Law 55/74) which came into force as from the quarter commencing on the 1st October, 1974. The contribution payable under section 3 of Law 55/74, as set out in a Schedule annexed thereto, is as follows:

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“On each Pound up to £120 nothing.

On each Pound over £120 upto £240, 100 mils per Pound.

On each Pound over £240 upto £480, 150 mils per Pound.

On each Pound over £480 upto £1,000, 200 mils per Pound.

On each Pound over £1,000, 250 mils per Pound”.

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Under paragraph 3 of the said Schedule, there is a provision that in case of assessment of income from rents, a deduction of 25 per cent on the gross income should be made. Law 55/74 was amended by Law 43/75 but such amendment has not affected any provisions in the Schedule of Law 55/74. Subsequently, Special Contribution (Temporary Provisions) Law 1976, Law 15/76 was enacted for the purpose of codifying, amending and extending the provisions of the previous legislation. This law came into force as from the 1st April, 1976. The Schedule annexed to Law 15/76 made certain amendments concerning the scales over which the assessment should be made and under paragraph 3 of the Schedule the following amendment was effected to the Schedule in the previous laws:

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“In case of assessment of income from rents there is a discount of 25 per cent on the gross income from such rents and also all interest paid on capital borrowed for acquiring the building the rent of which is subject to payment of special contribution”.

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The material change brought about by this law is that interest payable on capital borrowed is a deductible amount from the gross income of the rents. This provision, however, came into effect as from the 1st April, 1976, whereas the issue in the present case concerns assessment for rents which were collected during 1974 and 1975 that is, before the enactment of Law 15/76. The applicant, therefore, cannot rely on the provisions of a law which was not in force at the material time to claim deduction in respect of interest paid on capital borrowed as such deduction was not an allowable deduction under the provi-

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sions of the existing legislation at the material time. The only deduction to which she was entitled under such legislation, was 25 per cent on the gross rents. The respondent, therefore, was entitled to refuse any deduction for interest paid for the years 1974 and 1975, as such deduction was not justified under the law. The decision on the part of the Director of Inland Revenue to allow a deduction on account of interest paid, was a concessional one, as no legal authority was given to him by law to make such concession. As such concession, however, has been made to the benefit of the applicant and its validity has not been contested, I have no reason to embark on it.

In the result, the recourse of the applicant fails but in the circumstances I make no order for costs.

Reference has been made by counsel for applicant to Case No. 185/80 filed by the applicant concerning assessments after December, 1975. According to the record before me that recourse was left to be decided after the determination of the present one. Therefore, any issues raised therein will have to be decided when such case comes before the Court in the proper course.

*Recourse dismissed. No order as to costs.*