1984 October 19

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ROYAL INSURANCE CO. LTD.,

Applicants,

v.

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

Respondent,

(*Case No.* 344/73).

Income Tax—Double Taxation—United Kingdom Insurance Company —Discontinuing its life insurance business but continued to accept other insurance contracts—Engaged in a trade or business through a "permanent establishment" in Cyprus within the meaning of Article 3(1) *of the Double Taxation Agreement between Cyprus and the United Kingdom—And its profits are taxable by virtue of section* 5(1)(*a*) *of the Income Tax Laws*, 1961–1967—*Section* 2(5) *of the Insurance Companies Law*, 1967 *not applicable.*

The applicants were an Insurance Company incorporated under the Law of the United Kingdom and were carrying on various kinds of insurance business in England and in most parts of the world, including Cyprus. As from the 1st July, 1968 the life insurance business of the applicant Company in Cyprus was discontinued but the Company continued to accept all other insurance contracts and, also, continued to service the already concluded life insurance policies.

Upon a recourse against the respondent's decision not to refund to applicants income tax overpaid in respect of the years of assessment 1969–1971, counsel for the applicants mainly contended that contrary to the provisions of s.41(1) of the Cyprus Income Tax, Laws, 1961 to 1969 the respondents disregarded the provisions of the Double Taxation Agreement between Cyprus and

the United Kingdom and in particular para. 1 of Article 3* of the said Agreement.

Held, that if a person discontinues a branch or part of his business, the business as a whole still continues; that, therefore, the applicant company was engaged in a trade or business through a "permanent establishment" in Cyprus within the meaning of Article 3(1) of the Double Taxation Agreement, between Cyprus and the United Kingdom; and that, accordingly, its profits were taxable by virue of s.5(1)(a) of the Income Tax Laws, 1961-1967 (section 2(5) of the Insurance Companies Law, 1967 not applicable).

Application dismissed.

Cases refeired to:

South Behar Rail Co. v. *I.R.C.*, 12 T.C. 662 at p. 704;

Hillerns and Fowler v. *Murray*, 17 T.C. 77;

Highland Rail Industries Co. v. *I.T. Special* Comrs, 2 T.C. 151;

Howden Boiler and Armaments Co. Ltd. v. *Steward*, 9 T.C. 205;

Redford v. *Republic* (1970) 3 C.L.R. 407.

Recourse.

Recourse against the refusal of the respondent to refund income tax over-paid by applicant for the years of assessment 1969, 1970, 1971.

G. Polyviou, for the applicants.

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

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In these proceeding the applicant hereby applied to the Court for the following relief:

1. A declaration that the respondents' decision not to refund and/or the respondents' refusal to refund income tax over-paid in respect of the years of assessment 1969, 1970 and 1971 is null and void and of no effect whatsoever.

2. A declaration that the respondents' decision that the applicants carried on life insurance business through a permanent

* Article 3(1) is quoted at p. 1122 post.

establishment in Cyprus during the said years and that taxable profits have been derived therefrom or attributed thereto is wrong in law and/or null and void.

3. The costs of this recourse.

The applicant relied on the following grounds of law: 5

1. Contrary to the provisions of s.41(1) of the Cyprus Income Tax Law, 1961 to 1969 the respondents disregarded the provisions of the Double Taxation Agreement between Cyprus and the United Kingdom and in particular para. 1 of Article 3 of the said Agreement. 10

2. The respondents misdirected themselves as to the facts pertaining to this case and decided wrongly that the applicants have been carrying on life insurance business in Cyprus during the years 1969, 1970 and 1971.

3. The respondents have interpreted wrongly and/or failed 15 to appreciate the true legal effect of s.2(5) of the Cyprus Insurance Companies Law, 1967.

4. The respondents have wrongly decided that the applicants have had during the said years in Cyprus a permanent establishment in so far as life insurance business in concerned. 20

5. The applicants are entitled to the refund of tax wrongly paid in good faith and/or otherwise paid in excess of the amount with which they are properly chargeable under s.30 of the Taxes (Quantifying and Recovery) Laws, 1961 to 1969.

The application was based on the following facts: 25

1. The applicants are an Insurance Company incorporated under the Law of the United Kingdom and carrying on various kinds of insurance business in England and in most parts of the world including Cyprus.

2. As from the 1st July, 1968, the applicants have ceased carry- 30 ing on the business of life assurance in Cyprus and as far as this line of business is concerned they did not have and/or ceased having a permanent establishment in Cyprus. The applicants' life assurance business was transferred as from that date to and/ or was carried from the applicants' Head Office in London and/ 35

or control of such business was exercised from the applicants' Head Office in London.

3. The applicants allege that as from the 1st July, 1968, no profits can be attributed to their permanent establishment in 5 Cyprus in respect of premium collected after the 1st July, 1968, on life policies issued by them to persons resident in Cyprus before the 1st July, 1968.

4. The applicants allege that by reason of the facts alleged hereinbefore they are entitled to the refund of income tax 10 paid by mistake and in good faith and/or of the tax overpaid as from the 1st July, 1968, on the strength of assessment wrongly made by the respondent in respect of the years 1969, 1970 and 1971.

5. The applicants have taken up the matter with the respond- 15 ents by correspondence ending with their letter of the 8th June, 1973, to which the respondents replied by their letter of the 16th June, 1973. The applicants' letter of the 8th June, 1973, was not an objection under s.20 sub-section 1 of the Taxes (Quantifying and Recovery) Laws 1961 to 1969 submitted out 20 of date requesting the respondents to revise the assessments for the years 1969, 1970 and 1971. It was a claim under s.30 of the said Laws for repayment of tax overpaid bona fide. Copies of the letters in question are attached herewith marked "A" and "B" respectively. The rest of the correspondence will 25 be produced in a bundle during the hearing of the recourse.

6. The total amount of tax overpaid and the repayment of which is claimed by the applicants amounts to £8,912.675 mils. Particulars of this amount are set out in the attached Schedule marked "C".

30 On the 8th June, 1973, Pharos Agencies Limited addressed the following letter to the Commissioner of Income Tax:

"Dear Sir

Taxation of Life Assurance Business

We refer to your undated letter No. N.B.666 of which we 35 have passed to our Principals. In reply we have been authorised to submit the following for your consideration.

(a) A double taxation agreement between Cyprus and the U.K. has been in operation during the material years.

(b) The provisions of the Double Taxation Agreement between Cyprus and the U.K. prevail over the provisions of the general Income Tax Law—vide section 41(1) of the Cyprus Income Tax Law, 1961 to 1969 which reads: 5

> 'If the Council of Ministers by Order declares that arrangements specified in the Order have been made with the Government of any territory outside the Republic with a view to affording relief from double taxation in relation to income 10 tax and any tax of a similar character imposed by the laws of that territory and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax notwithstanding anything in any law con- 15 tained'.

(c) Our Principals' case falls clearly under the provisions of article 3 of the Double Taxation Agreement between our two countries, para. (1) of which reads:-

> 'The industrial or commercial profits of a United 20 Kingdom enterprise shall not be subject to Cyprus tax unless the enterprise is engaged in trade or business in Cyprus through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Cyprus but 25 only on so much of them as is attributable to that permanent establishment'.

(d) The profits of a life insurance business come within the term 'commercial profits' mentioned in article 3, para. 1, of the agreement. 30

(e) Under para. 1 of article 3, Cyprus Tax may be imposed on the commercial profits of a U.K. enterprise only if such profits are attributed to a permanent establishment of the U.K. enterprise in Cyprus.

(f) The term 'permanent establishment', when used 35 with respect to an enterprise of one of the territories, means a branch, management or other fixed place of business, but does not include an agency unless the

agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprises or has a stock of merchandise from which he regularly fills orders on its behalf.

5 (g) During the material years our Principals carried on no life insurance business in Cyprus and therefore no profits from life business can be attributed to the permanent establishment in Cyprus of our Principals.

(h) A further point that may be borne in mind is that the 10 Cyprus Agents of 'Royal' had in fact no power to negotiate and conclude on behalf of 'Royal' contracts in respect of life insurance business. They did however have power and did conclude contracts in respect of insurance other than life.

15 (i) In support of the above views we would refer you to our letter to you of 28.12.1972, para. 4. In that letter we pointed out that the Cyprus Insurance Companies Law 1967, specifically excludes the receipt of premiums and the payment of claims from the meaning of 'carrying 20 on of insurance business'; and further that our Principals have not been requested to make a deposit with the Central Bank of Cyprus for carrying on life assurance business as required by section 15 of the same Law.

2. As already stated this case is governed by the provisions 25 of the Double Taxation Agreement between Cyprus and the U.K. Under this agreement the assessment on our Principals should be restricted to such part of the profits as is attributed to business carried on by our Principals in Cyprus through their permanent establishment. During the material years no 30 profit from life business can be attributed to our Principals' permanent establishment in Cyprus since life business was not transacted in Cyprus.

3. If after consideration of the above you still feel that you are unable to reopen past assessments our Principals would be 35 grateful if you would amplify the grounds on which you rely for holding the view that they are liable to tax in Cyprus on the premiums collected on life policies after they ceased to transact

life business in Cyprus and moved control of such business to their Head Office in U.K".

On the 16th June, 1973, the Commissioner of Income Tax in reply to the above letter had this to say:

"*Royal Insurance Co. Ltd.* 5
Taxation of Life Assurance Business.

With reference to your letter dated 8th June, 1973, I wish to inform you as follows:-

(a) The assessments for the years of assessment 1969, 1970 and 1971 were properly made and the tax has 10 already been paid. I cannot now entertain an out of date objection for the purpose of revising those assessments.

(b) The company has, for a big number of years, admitted, and quite rightly so, that it was carrying on business 15 in Cyprus through a permanent establishment. You know that the question whether or not a trade or business has been discontinued is a question of fact. The mere fact that the company confined its work after the 1st July 1968 to its existing state by not accepting 20 new work, does not of itself constitute discontinuance of its business. Also the fact that the company's operations became less active is not by itself evidence that the original business has ceased.

In view of the above, and having regard to the facts 25 of this case I am of the opinion that this company has in no time discontinued carrying on its business in Cyprus through a permanent establishment, and the tax position as far as it concerns its income from the old policies has not altered". 30

On 23.10.1973 the opposition was filed, but on the 3rd December, 1974, Mr. Evangelou, counsel for the respondent applied to the Court to file an amended opposition which is as follows:

1. That the decision complained of which was communicated 35 to Applicants on the 16th June, 1973 is not an executory act in the sense of Art. 146 of the Constitution in that it is not aimed

at producing a legal situation concerning Applicants but it is merely a refusal of the Respondent to go again into the question of the assessments which were finalised in February, 1973.

2. That the Applicants do not have an existing legitimate interest in the sense of Art. 146.2 inasmuch as they accepted the assessments and paid the tax without reservation.

3. That the recourse does not lie in view of the fact that Applicants have not made an objection as provided in section 20 of Law 53/63 as amended by Law 61/69, which is a prerequisite of the filing of a recourse.

4. That the application was filed out of time.

5. The acts and/or decisions complained of were properly and lawfully taken under the following provisions after all relevant facts and circumstances were taken into consideration, viz.

(a) The Assessments for the years of Assessments 1969 to 1971 (years of income 1968 to 1970) were raised under Sections 5(1) (a) 25 and 26 of the Income Tax Laws 1961 to 1969.

(b) The Respondent Commissioners' decision to include in the above assessments profits from the carrying of the Life Insurance Business by Applicant Company was properly and lawfully made under section 5(1)(a) of the Income Tax Laws 1961 to 1969.

The following facts are relied upon in opposition:-

1. Applicants are an Insurance Company incorporated under the Laws of the United Kingdom carrying on various kinds of Insurance business in the United Kingdom and in most parts of the world including Cyprus, through their Principal Representatives, Pharos Agencies Limited.

2. Until the 1st July, 1968 Applicants carried on business in Cyprus including Life Assurance Business. As from that date applicants decided not to accept any more Life Contracts through their permanent establishment in Cyprus. They, however, continued to serve existing policies and to accept all other kinds of insurance contracts.

3. For the years of assessment 1969 to 1971 applicants submitted returns of income, which after examination were accepted and Notices of Assessment in respect of these years were served on the Company. The assessments were as follows:

Year of Assessment	Assessable Income	Tax Payable
1969	£ 4,115	£1,748.875
1970	£22,041	£9,367.425
1971	£ 7,867	£3,343.475

The tax involved in the above mentioned assessments was duly paid by applicants.

4. Following a claim by applicants through their principal representatives for Cyprus, Pharos Agencies Limited, the Commissioner decided after exchanging correspondence to re-open the above mentioned assessments as well as the assessment for the year of assessment 1968 (year of Income 1967) and to refund tax overpaid because Investiment Income earned in Cyprus was added to the profits of applicants and it was also included in the world Income of Applicants for the purpose of arriving at the Investment Income assessable in Cyprus. In fact this amounted to assessing twice the same income.

5. The respondent Commissioner accepted applicants' claim and the Original assessments were reduced as shown herebelow:

Year of Assessment	Assessable Income	Tax Payable
1969	£ 2,521	£1,071.425
1970	£18,528	£7,874.425
1971	£ 3,041	£1,292.425

Following the reduction of the Original Assessments a refund of tax amounting to £4,875.600 was made and paid to Applicants on the 24th February, 1973. In this amount it was included a sum of £654.075 in respect of the year of Assessment 1968 (year of Income 1967) not forming the subject matter of this Recourse.

6. The respondent Commissioner denied to entertain the other claim of applicants viz. that no profits in respect of Life Assurance business attributable to Cyprus contracts after the 1st July, 1968, were assessable because as from that date the Company ceased to carry on Life Assurance business in Cyprus.

The respondent Commissioner's view was that even if applicants did not accept new life assurance contracts after 1st July, 1968 the mere fact that they collected premiums in respect of contracts made before that date, and negotiated the settlement of claims of respect of such contracts they were carrying on business in Cyprus through a Permanent Establishment and the profits attributable to such contracts were assessable to Cyprus income tax.

On the 20th March, 1974, Mr. Polyviou had this to say:

> "In this case in view of the points involved, I have requested Mr. Evangelou to agree to have a meeting and discuss the case from all angles. He is agreeable to such a course and in view of the fact that there seems to be an early available date for commencing this hearing if we fail in our negotiations, we request the Court to give us this short adjournment to enable counsel to discuss this case between them".

Indeed, the case was fixed for hearing on the 18th April, 1975, but on that date both counsel requested the Court to grant them an adjournment with a view to finding an amicable solution. The case had to be adjourned once again, and finally it was fixed for hearing on the 17th November, 1975, at 10.00 a.m. There were further adjournments for reasons appearing on record and finally the case started on the 11th July, 1979.

These being the facts of the present case, which I have set out in rather some detail, I am invited to decide whether the respondent's decision not to re-open the assessments in respect of the years of assessment 1969, 1970 and 1971 and his refusal to refund income tax was a correct decision.

The answer to this question turns upon the interpretation of section 30 of the Taxes (Quantifying and Recovery) Law, 1963 (53 of 1963) as subsequently amended by Law 69 of 1969, the relevant part of which provides as follows:-

> "If it be proved to the satisfaction of the Director that any person for any year of assessment has paid tax by decuction or otherwise in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded".

The essence of the case for the applicants, as ably argued before the Court by Mr. Polyviou is that as from 1968 no taxable profits can be attributed to Applicants' permanent establishment in Cyprus in respect of premiums collected after the 1st July for life insurance issued by them to persons resident in Cyprus, 5 since after that date they ceased to accept new policies, though they continued to carry out all other insurance business. He based his argument both on the particular facts of this case, as well as on sections 2(5) and 15 of Insurance Companies Law of 1967 (Law 27 of 1967). He further submitted that, though 10 the applicants collect premiums on the old policies and they carry out all other insurance business, these transactions do not amount to carrying on business through a permanent establishment in accordance with the Double Taxation Agreement in existence at the material time, between Cyprus and the 15 United Kingdom. Consequently, counsel concluded, the applicant company does not carry life insurance business through a permanent establishment and their profits do not attract tax and any tax paid by them in good faith has been paid in excess and should be refunded by virtue of the aforementioned 20 section 30. Any tax payer, counsel for the respondent contended, who pays tax because of whatever reason, by deduction or otherwise, which means by error or mistake or because of wrongful overcharging, is entitled to a refund.

Mr. Evangelou, counsel for the respondent resisted these 25 submissions and in his usual clear presentation formulated the following submissions:

That section 30 cannot be invoked in the present case because its application is restricted to cases where tax is paid by deduction or otherwise; that the expression "or otherwise" should be con- 30 strued ejusdem generis with the preceding word "deduction", and applicants' case does not satisfy this requirement. Section 30 cannot be invoked to challenge the validity of assessments which have already been finalised and tax already paid. If the applicant Company, counsel stressed, challenges the validity 35 of assessments in question, the present recourse cannot proceed because they do not possess an existing legitimate interest, and further they failed to object as provided in section 20 of the aforementioned Law 53 of 1963 and that the recourse is out of time. Even if section 30 could be invoked in the present 40

case, counsel argued, applicant company is not entitled to a refund because it did not cease to carry on business in Cyprus.

Pausing here for a moment, I must mention that during the course of the hearing, it has been abundantly made clear that 5 applicants are attacking the decision of the respondent Commissioner not to re-open the assessments under section 30 and that they are not challenging the validity of the assessments in question as originally decided by the respondent Commissioner. In view of this statement, Mr. Evangelou's second 10 and third submissions are not really necessary to be decided for the determination of the present case.

Regarding Mr. Evangelou's first submission, that section 30 has a restricted meaning and cannot be applied to the facts of the present case, I think I may dispense with this submission 15 as well, and proceed to decide the merits of the case, not out of discourtesy to counsel for the respondent who, indeed advanced a strong argument, but because on a previous occasion the respondent Commissioner invoked this section and reopened applicants' case and in fact made a refund of tax which was 20 paid by them in excess, and I shall therefore leave this point entirely open and proceed to consider the merits of the case and decide the question whether the applicant company paid tax in excess of the amount with which it is properly chargeable.

The relevant charging section is section 5(1)(a) of the Income 25 Tax Laws, 1961-1967 which provides that "tax shall be payable at the rate or rates specified hereafter for each year of assessment upon the income of any person accruing or derived from or received in the Republic in respect of gains or profits from any trade, business, profession or vocation".

30 Under the definition section 2 of the above Law, "person" includes a body of persons and "body of persons" mean, inter alia, a company. The word "Company" in the same section means any Company incorporated or registered under any law in force in the Republic, and any company through which 35 they incorporated or registered outside the Republic carries on business or has an office or place of business in Cyprus.

It is pertinent to mention here that at the material time, a Double Taxation Agreement between Cyprus and the United

Kingdom was in operation. The provisions of the Double Taxation Agreement prevail over the provisions of the Income Tax Laws by virtue of Article 169.3 of the Constitution and also 41(1) of the aforesaid Income Tax Laws.

The relevant provisions of the Double Taxation Agreement, which was in existence at the material time, (now it has been amended) are contained in Article 3 para. 1 which reads as follows:-

> "The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Cyprus tax unless the enterprise is engaged in trade or business in Cyprus through a permanent establishment situated therein. If it is so engaged, tax may be imposed on these profits by Cyprus but only on so much of them as is attributable to that permanent establishment".

The term "permanent establishment" is defined in sub para. (k) of para. 1 of Article 2 of the Agreement as follows:-

> "The term 'permanent establishment', when used with respect to an enterprise of one of the territories, means a branch, management or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf".

From the above provisions of the Double Taxation Agreement it follows that the profits of a U.K. enterprise are subjected to Cyprus tax only if the enterprise is engaged in a trade or business through a permanent establishment in Cyprus.

The question, therefore, which has to be decided is whether the applicant company having ceased to accept new life insurance policies, though servicing existing life policies, as contended by Mr. Evangelou and not actually disputed by Mr. Polyviou, and admittedly carrying on other insurance business, fall within the words of the aforesaid Article 2, para. 1; in other words whether the company was engaged in a trade or business through a permanent establishment. This depends on whether the applicant company is considered as having discontinued

its business as a whole and not only a branch of its business. This is a question of fact and has to be decided on the particular facts of each case.

As to what constitutes discontinuance of a trade, there is authority to the proposition that the fact that the operations of a business became less active is not by itself evidence that the original business has ceased. Thus, in *South Behar Rail Co. Ltd.* v. *I.R.C.*, 12 T.C. 662, 704 H.L., "down to 1906 a railway was held by the company and worked by another company, the first company being entitled to a share of the profits. In 1906 the possession of the railway was relinquished to the Secretary of State for India, and it was arranged that for a period of a fixed annuity should be paid to the first company in lieu of its share of profits. After 1906 the first company did nothing but receive the annuity and distribute it to the shareholders and receive and distribute small sums of war–bond interest deposit and transfer fees. It was held that the company was carrying on a trade or businest, or undertaking of a similar character, within FA 1920, s.52, and was, therefore, liable to the former corporation profits tax".

So, too, in *Hillerns and Fowler* v. *Murray*, 17 T.C. 77, the dissolution of a partnership did not constitute discontinuance of a trade where outstanding contracts were completed after dissolution.

Where only a part of a trade or business is discontinued, the cessation provisions do not apply in respect of that part which has been discontinued and the case is dealt with as if the whole of the business had continued and the assessment for the year in question is made on the preceding year basis. (See Simon's Taxes 3rd edition, Vol. E para. El. 144 at p. 119).

The above principles were well illustrated in the case of *Highland Rail Industries Co.* v. *I.T. Special Comrs*, 2 T.C. 151 where a railway company discontinued the running of certain steamships but continued to run the railway. It was held that the assessment for the year following the discontinuance of the shipping line had to be based on the profit of the whole undertaking in the preceding year.

Again in the case of *Howden Boiler and Armaments Co. Ltd.* v. *Stewart*, 9 T.C. 205, where a company manufactured boilers and armaments and subsequently ceased to manufacture armaments, it was held that the company carried on one business with two departments and the company's contention that the assessment should be based only on the boiler making profits was rejected. 5

I should refrain from embarking on detailed examination of other cases cited in view of the fact that, as already stated this is a question of fact and has to be decided on the particular facts of each case. 10

From all the above cases, it follows that if a person discontinues a branch or part of his business, the business as a whole still continues. So, assuming that the life insurance business of the applicant Company, which forms part of its business was discontinued, this does not mean that the business was discontinued, as a whole. However, it is an admitted fact that applicant Company continued to accept all other insurance contracts, and indeed, continued to service the already concluded life insurance policies. In my judgment, therefore, the company was engaged in a trade or business through a permanent establishment in Cyprus, and so I find. Subsection (5) of section 2 of the Insurance Companies Law 1967, upon which counsel for the applicants relied, and which provides that the receipt of premiums under existing policies is not deemed to constitute the carrying on of an insurance business, does not carry applicants' case much further, because as this subsection provides, it only applies for the purpose of the Insurance Companies Law, and cannot have a general application. 15 20 25

But irrespective of what has been stated above, the phrase "engaged in trade or business in Cyprus through a permanent establishment" in the aforesaid Article 3(1) of the Double Taxation Agreement, cannot be interpreted in such a way that such business means life insurance business, because by doing so, I would have to read into that article or imply words which have not been used by the drafters. 30 35

In the case *Redford* v. *The Republic* (1970) 3 C.L.R. p. 407

I had occasion to consider a similar phrase contained in section 17(1)(b) of the Income Tax Law 58 of 1961. That was a case where the respondent Commissioner of Income Tax did not allow a deduction of the premium in respect of a life insurance policy on the ground that such relief was only granted in relation to premiums paid under life insurance policies issued by companies carrying in Cyprus the business of life insurance. The decision of the Commissioner was declared null and void since the insurance company admittedly carried on insurance business in Cyprus and had an office or place in Cyprus though it did not carry on life insurance business. In delivering the judgment, I had this to say at page 418:-

> "Having considered carefully the contention of counsel for the applicant, and in the light of the authorities, I have reached the view that in the last resort, this case must be brought back to the test of the statutory words. So tested, the question simply is: Was the amount of premium paid by the applicant in 1965 on a policy of insurance on his life deductible? I am of the opinion that the answer must be in the affirmative, because looking fairly at the language used, I can neither read into section 17(1)(b) nor imply—since the words are clear and unambiguous—that the words 'any insurance company carrying on business in the Republic or having an office or place of business therein', means that it was the intention of the legislature that such business means life insurance business only. Probably, as I was invited by counsel for the Respondent to say, the legislature intended it to be so, but as I said, the meaning of this section is primarily to be sought in the words used in the section itself and, therefore, if the legislature intended it to be so, it would put into effect its intention by the appropriate words. Cf. section 22 of the same law (as amended) in which reference is made to a life insurance company".

For the above reasons, the recourse is dismissed, but in the circumstances, I make no order as to costs.

Recourse dismissed. No order as to costs.