

1985 July 5

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

THRASOS A. GEORGHIADES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE DIRECTOR OF INLAND REVENUE,

Respondents.

(Case No. 166/79).

Income Tax—Assessments of Income—In the circumstances of this case reasonably open to the Commissioner to reach the decision challenged by this recourse.

5 The applicant derived his income during the period relevant in this recourse from three sources, i.e. from his profession as a physiotherapist, from his employment as a luggage porter and from rents. For the year of assessment 1975 the applicant declared his income from his profession as £600 and apart from rents he did not disclose any other income. For the year of assessment 1976
10 he declared his income from his said profession as £600 and again did not show any income from his employment as a porter. For the year of assessment 1977 he declared his income from his profession as £1,100.

15 For the year of assessment 1977 the applicant submitted a second return some time after the Income Tax Office came to know of his employment as a porter. In this second return he declared his income both from his profession and his employment as £1,896 and submitted accounts
20 in respect of all the aforesaid three years with regard to the expenses which he incurred in the exercise of his profession. The said accounts showed that the applicant had

a loss from his profession amounting to £970 for the year of assessment 1975, £1,121 for the next year and £1,131 for 1977.

The Commissioner of Income Tax did not accept the said accounts. This recourse is directed against the decision relating to the applicant's tax liability for the years of assessment 1975-1977. In the course of the hearing the applicant stated that he only disputes the income from his profession as the same was assessed for each of the above years by the sub judge decision.

In arriving at the sub judge decision the Commissioner took into consideration applicant's income from his profession as declared by him for the previous years (£720 for 1972, £850 for 1973 and £880 for 1974) as well as for the years of assessment 1975-1977, before his income from his employment came to light, and also the fact that it would not be possible for the applicant and his family to live on the subsequently declared income, unless he borrowed money, which was not the case as, in fact, he had only a debt of £100.

Counsel for the respondents stressed the fact that the Commissioner would have been prepared to accept the accounts, if proper books were kept and they were otherwise reasonable. The Commissioner did not rely on s. 43 of the Tax Quantifying Law, 1963.

Held, dismissing the recourse, that in the circumstances of this case it was reasonably open to the Commissioner to reach the decision challenged and that no ground has been disclosed justifying interference with such decision.

Recourse dismissed.
No order as to costs.

Recourse.

Recourse against the income tax assessments raised on applicant for the years of assessment 1975-1977.

Applicant appeared in person.

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

Cur. adv. vult.

L. LOIZOU J. read the following judgment. The applicant by this recourse challenges the validity of the decision of the respondents relating to his tax liability for the years of assessment 1975 to 1977 (years of income 1974 to 1976) and prays for a declaration that such decision be declared null and void and of no legal effect.

The tax imposed on the applicant in respect of the above years of assessment, as shown in the prayer for relief and in the facts in support of the Application, was £131,700 mils for the year 1975, £120,300 mils for the year 1976 and £164,800 mils for the year 1977. There appears to be some discrepancy between the above figures and the figures given in the relevant exhibit but it is of no consequence for the purposes of this judgment.

The facts of the case are briefly as follows:

The applicant derives his income as a physiotherapist, as a luggage porter at the Limassol harbour and from rents.

In the returns of income submitted by him for the years in question he failed to declare any income from his employment as a luggage porter or disclose the fact of such employment.

For the years of assessment 1975 and 1976 assessments were raised on the applicant to which he objected and the matter was settled at an interview between him and the respondent Commissioner of Income Tax on the basis of his income as a physiotherapist.

At a subsequent stage and as a result of a meeting between the representatives of the luggage porters and the Commissioner with the object of agreeing on the assessable income of each luggage porter it came to light that the applicant was also a luggage porter in addition to his profession as a physiotherapist. At the meeting in question it was agreed between the representatives of the luggage porters and the Commissioner that the luggage porters would be assessed on the basis of income of £1,767.- for the year 1974, of £1,542.- for the year 1975 and of £1,500.- for the year 1976.

As a result of the above, additional assessments were

raised on the applicant so as to include the above agreed income from his employment as a luggage porter. The applicant objected and as no agreement could be reached the Commission had to determine the additional assessment. He communicated his decision to the applicant by letter dated 7th July, 1978, exhibit 2, together with the relevant notices of tax payable.

Against this decision the applicant filed recourse No. 379/78. One of his grounds was that income from rents belonging to his wife was included in the assessments. As a result of this ground the Commissioner agreed to reconsider his decision and raise new assessments not aggregating applicant's income with that of his wife and upon this undertaking the recourse was withdrawn.

Investigations carried out at the Land Registry Office, however, revealed that during the years in dispute the house belonged to the applicant and not to his wife as stated in the recourse. In fact the house was transferred in the name of applicant's wife in January, 1978. As a result the Commissioner maintained his assessments and sent fresh notices of tax payable for each of the three years to the applicant under cover of a letter dated 12th February, 1979 (exhibit 3).

As a result the applicant filed the present recourse.

The grounds of law upon which the recourse is based are that the respondents wrongly interpreted and/or applied the provisions of the Income Tax Law and that the decision was taken in excess and/or abuse of powers in that they did not take into consideration the real income of the applicant and/or disregarded items that could reduce the applicant's tax liabilities.

At the hearing of the recourse the applicant appeared in person. He explained to the Court that originally he had briefed counsel who prepared and filed his recourse to appear for him at the hearing but subsequently he decided that it would be better if he appeared in person.

After stating to the Court that he did not dispute his income from his employment as a luggage porter and his income from rents as assessed by the Commissioner and

that he only disputed his income from his profession as a physiotherapist, he proceeded to read ten typewritten pages by way of address copies of which he handed to the Court and also to counsel appearing for the respondents.

5 I shall not attempt to depict here the many and varied arguments raised in his address because very little of what he said was relevant to the issue in these proceedings. It is sufficient to say that it included arguments that he had
10 put his case to the President of the Republic and the Minister of Justice and that the President of the Republic found his complaint justified; that the salaries of persons holding high offices in the administration were not considered as salaries but as allowances not subject to income tax; that the remuneration of doctors and physiotherapists
15 should not be liable to income tax as it is contrary to human rights and the Helsinki Final Act etc., etc. The small part of his address which had anything to do with this case was directed against that part of the decision exhibit 2, which related to the income from his profession
20 as a physiotherapist and especially to the non-acceptance of the statement of accounts submitted by him which showed that he had a loss from his profession amounting to £970.- for the year of income 1974, £1,121.- for the year 1975 and £1,131.- for the year 1976.

25 The respondent Commissioner did not accept the accounts submitted by the applicant because he did not keep proper books and also because if he were to accept them the balance remaining from his income from all sources would be £771.-, £44.- and £153.- for each of the three
30 years respectively which would not be sufficient for the maintenance of his family of six persons. Consequently, he assessed applicant on the basis of an income amounting to £480.-, £600.- and £840.- for the three years respectively, with regard to the income from his profession.

35 It is an undisputed fact that for the years of assessment 1971, 1972 and 1973 the applicant accepted that his income from his profession as a physiotherapist was £720.-, £850.- and £880.- respectively. It is also a fact that for the years in dispute the applicant had submitted returns of
40 income. For the year of assessment 1975 he declared the income from his profession as £600.- and apart from rents he did not disclose any other income (exhibit 4). For the

year of assessment 1976 in his return (exhibit 5) he declared as income from his profession the sum of £600.- and again did not show any income from his employment as a porter. For the year of assessment 1977 he submitted two returns, exhibits 6A and 6B. In the first he declared the income from his profession as £1,100. The second return was submitted after the Income Tax Office came to know of his employment as a luggage porter and of the income he derived from such employment. In this second return he declared the income both from his profession and his employment as £1,896.- and also submitted accounts in respect of all three years with regard to the expenses incurred in the exercise of his profession as a result of which he shows the loss stated earlier on.

In his reply, which covered fifteen typewritten pages, applicant explained that the income declared in his returns both for the three years in question and earlier was his real income both from his profession as a physiotherapist and his employment as a porter. The fact, he said, that he did not disclose his employment as a luggage porter was not an attempt to conceal his income from such employment because this fact was very well known in Limassol but did it for reasons of prestige.

In deciding applicant's final assessments, the subject-matter of this recourse, the Commissioner took into consideration applicant's income from his profession as declared by him for the previous years as well as that declared for the years of assessment 1975 to 1977 before his income from his employment came to light and also the fact that it would not be possible for the applicant and his family to live on his subsequently declared income unless he borrowed money which was not the case as, in fact, he had only a debt of £100.

It was stressed by learned counsel for the respondents that the reason the Commissioner did not accept the accounts submitted by the applicant was not because he relied on s. 43 of the Tax Quantifying and Recovery Law, 1963, in force at the time, i.e. because they were not audited by an independent practicing accountant approved by the Mi-

nister of Finance and that he would have been prepared to accept them if proper books were kept and they were otherwise reasonable.

5 Having considered this case in the light of the above circumstances I am clearly of the view that it was reasonably open to the Commissioner to reach the decision challenged by this recourse and that no ground has been disclosed justifying interference with such decision.

10 In the result this recourse is dismissed. There will be no order as to costs.

*Recourse dismissed.
No order as to costs.*