

1985 October 14

[LORIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

DEMETRIOS LORDOS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS THROUGH  
THE COMMISSIONER OF INCOME TAX,

*Respondents.*

(Case No. 263/82).

*Special Contributions (Temporary Provisions) Law, 34/78 as amended, s. 3—Special contribution imposed and collected for every period of 3 months—Income to be taxed is the income accruing during the quarter in question—Dividend received from a company limited—Rightly treated for the purposes of special contribution as income accrued in the quarter when it was declared and paid.* 5

*Interest—Accrues from day-to-day.*

*Rent—Unless otherwise agreed accrues from day-to-day.*

*Company Law—Dividend—Meaning of—Once declared becomes immediately payable as a debt.* 10

The respondent Commissioner treated the dividend of £3,197 received by the applicant from "Lordos Polysac (Limassol) Ltd." on 30.8.79 as income liable to Special Contribution for the quarter that ended on 30.9.79 and the dividend of £1,119 received from the same company by the applicant on 1.9.80 as income liable to Special Contribution for the quarter that ended 30.9.80. As a result he raised assessments accordingly. The applicant objected on the ground that each dividend should be treated as dividend for the whole year and should, there-

fore, for the purposes of Special Contribution equally spread over the four quarters of the year. The respondent turned down this objection and as a result this recourse was filed.

5           *Held, dismissing the recourse:*

(1) Section 3 of Law 34/78 provides that special contribution is imposed and collected for every period of 3 months. The income to be so taxed is naturally the income which accrued during the quarter in question.

10           (2) A dividend usually consists of profits available for distribution and what is profits depends on the whole amounts fairly taken for the year. When a company declares a dividend, a debt becomes immediately payable to the shareholders, for which a shareholder can sue.

15           It was, therefore, reasonably open to the Commissioner to treat each dividend as income in the hands of the recipient for the quarter that it was declared and paid.

20           (3) The position as regards "interest" and "rents" is different from the position of "Dividends". Interest accrues due de die in diem and the same (unless expressly otherwise agreed) applies to rents.

*Recourse dismissed. No order as to costs.*

**Cases referred to:**

25           *Foster v. The New Trinidad Lake Asphalted Co. Ltd.*  
[1901] 1 Ch. 208;

*Re Severn and Wye and Severn Bridge Rail Co.* [1896]  
1 Ch. 559.

**Recourse.**

30           Recourse against the decision of the respondents whereby the dividends received by applicant from "Lordos Polysac (Limassol) Ltd." on 30.8.79 and 1.9.80 were treated as income liable to special contribution pursuant to the Spe-

cial Contributions (Temporary Provisions) Law, 1978 (Law No. 34/78).

*Chr. Triantafyllides*, for the applicant.

*M. Photiou*, for the respondents.

*Cur. adv. vult.* 5

LORIS J. read the following judgment. The applicant, a director of a number of Companies, of which "Lordos Polysac (Limassol) Ltd." is one, impugns by means of the present recourse the decision of the respondent Commissioner of Income Tax dated 13.4.82 (ex. 1) whereby (a) the dividend of £3,197, received by applicant on 30.8.79 from "Lordos Polysac (Limassol) Ltd." was treated as income liable to special contribution for the quarter that ended on 30.9.79 and (b) the dividend of £1,119, received by applicant on 1.9.80 from the same company as aforesaid, was treated as income liable to special contribution for the quarter that ended on 30.9.80, and assessments were raised accordingly for the aforesaid quarters pursuant to the provisions of the Special Contributions (Temporary Provisions) Law, 1978, (Law No. 34/78) as amended, and the relevant Regulations made thereunder (vide reg. 3 of the Special Contribution (Temporary Provisions) Regulations 1975).

The facts of the present case are very briefly as follows:

The applicant who was required, by virtue of s. 5 of the Assessment and Collection of Taxes Laws, 1978 to 1979, to submit returns of his income failed to do so, for the years 1975 to 1981.

An examination by the respondent of the returns submitted by "Lordos Polysac (Limassol) Ltd." for the years 1979 and 1980, revealed that the company in question had paid dividends to its shareholders on 30.8.79 and on 1.9.80; applicant's name was appearing in the returns in question, as having received a dividend of £3,197 on 30.8.79 and £1,119 on 1.9.80.

The respondent Commissioner holding the view that dividends form income liable to special contribution on

the date of the final declaration of the dividend or at the time stipulated for payment, (irrespective of the date the profit is earned and out of which the dividend is paid) and applying the respective law which provides that the levying  
5 of special contribution is quarterly, decided to treat the respective dividends received by the applicant as aforesaid as income liable to special contribution for the quarters that ended on 30.9.79 and 30.9.80 respectively.

10 Assessments were raised accordingly and relevant notices were sent to the applicant on 15.2.82.

Applicant, through his taxation consultant, submitted an objection (vide Letter of 23.3.82 - ex.2) to the above assessment, on the ground that the respondent had erroneously treated the whole amount of the dividend received  
15 by applicant as income of the quarter in which the dividend was declared, maintaining that each dividend should be treated as dividend of the whole year and should be equally spread over the four quarters of the year.

20 The respondent by letter dated 14.4.82 turned down the objection of the applicant and issued a notice of Assessment (ex. 1) upon determination of the objection.

25 The applicant feeling aggrieved filed the present recourse praying for a declaration to the effect that the assessments shown in ex. 1 are null and void, and of no effect whatsoever.

30 The single point which falls for determination in the present case, is whether income in the form of a "dividend" will be made liable to special contribution for the specific quarter in which the dividend in question was declared and paid or whether the amount of the dividend in question will be spread over the whole year of its declaration and payment.

Section 3 of the Special Contribution (Temporary Provisions) Law 34 of 1978, makes liable to special contribu-

tion, on a quarterly basis, every form of income other than income from an office or employment.

The submission of the learned counsel for the applicant as I comprehend it, is twofold:

- (a) The income in the form of dividend should be placed on the same footing as income derived from interest or rent; as income in the latter forms is spread over the whole year for taxing purposes in the same way income derived from dividends should be spread over the whole year during which the dividends were collected. 5 10
- (b) The true interpretation to be placed on section 3 of Law 34/78—it was submitted—should be that “the amount to be collected in the form of special contribution on dividends is calculated over the period of the whole year in which the profit (in relation to which the dividend is declared) was earned, but its imposition and collection is done quarterly..” 15

Learned counsel appearing for the respondent submitted that “dividend” differs altogether from interest and rent; whilst interest accrues on a day-to-day basis in the same way as rent does, dividend becomes due and payable on a fixed date either when same is declared or paid. Counsel for respondent after dealing at length with the scope of Law 34/78 and the reasons that have rendered necessary that special contribution be levied quarterly invited the Court to examine this case in the light of the specific provisions of Law 34/78, a law which has substituted and re-enacted earlier legislation which was introduced “in view of the extraordinary socio-economic conditions prevailing in Cyprus due to the Turkish invasion.” 20 25 30

Section 3 of Law 34/78 reads as follows:

«Διὰ τὴν τριμηνίαν τὴν ἀρχομένην ἀπὸ τῆς 1ης Ἀπριλίου, 1978 καὶ δι' ἐκάστην ἐπομένην τριμηνίαν, διαρκούσης τῆς ἰσχύος τοῦ παρόντος Νόμου, ἐπιβάλλεται καὶ εἰσπράττεται εἰσφορὰ κατὰ τοὺς συντελεστὰς καὶ συμφώνως πρὸς τὰς διατάξεις τὰς ἐν τῷ Πίνακι ἀναγραφόμενας, ἐπὶ τοῦ εἰσοδήματος παντὸς προσώπου.» 35

προερχομένου ἐξ οἰασδήποτε πηγῆς ἐτέρας ἢ ἀμοιβῆς».

5 (“3. For the quarter commencing on 1st April 1978 and for each subsequent quarter, during the continu-  
ance in force of this Law, a contribution, in accordance with the rates and the provisions of the Schedule, shall be imposed and collected on the income of any person from any source other than from an office or employment. (ἀμοιβή)”.

10 So special contribution is imposed and collected (επιβάλλεται και εισπράττεται) for every period of 3 months (τριμηνία).

The income to be so taxed is naturally the income which accrued during the quarter in question. In the case of income in the form of interest the taxable interest will be the interest which accrued during the period of 90 days as “interest accrues de die in diem even if payable only at intervals.” (Vide Halsbury’s Laws of England 3rd ed. Vol. 27 page 7). Rent is likewise considered, unless expressly agreed otherwise, as accruing from day to day and is apportionable in respect of time accordingly (vide Halsbury’s Laws of England, 3rd ed. Vol. 23 p. 555).

25 In the case of “dividend” the position is different. Although dividend usually consists of “profits available for distribution” that is profits which the law allows a company to distribute to the shareholders (vide Palmer’s Company Law 23rd ed. p. 990 et seq.) and “the question what is profits depends on the whole amounts fairly taken for the year” (*Foster v. The New Trinidad Lake Asphalted Co. Ltd.*, [1901] 1 Ch. 208) yet dividend accrues when declared.

35 Thus when a company declares a dividend, a debt immediately becomes payable to each shareholder, for which he can sue at law, and the Statute of Limitations immediately begins to run (*Re Severn and Wye and Severn Bridge Rail Co.*, [1896] 1 Ch. 559).

In the case under consideration, the dividends in ques-

tion were declared and paid on 30.8.79 and 1.9.80 respectively; therefore, it was reasonably open to the respondent Commissioner to treat such dividends as income in the hands of the recipient - applicant which accrued for the quarters ending on 30.9.79 and 30.9.80 respectively.

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In the result the present recourse fails and is accordingly dismissed. Let there be no order as to costs.

*Recourse dismissed with  
no order as to costs.*