

1986 October 18

{DEMETRIADES, J.}

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

STAVROS GEORGHIOU,

Applicant,

v.

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

Respondent.

(Case No. 26/81).

*Income Tax—The Income Tax Laws, 1961-1977—Bad debts
—Section 11(1)(c)—Amounts claimed as deductible under
s. 11(1) should have been incurred wholly and exclusively
5 in the production of income—Loan to company—In the
circumstances represents capital invested in such com-
pany.*

10 The applicant was practising the profession of an ac-
countant as an employee of a firm of accountants. As he
decided to set up his own practice he resigned from his
said employment and after such resignation he and his
brother formed a company under the name of Thassos
Motels Ltd. As the company needed money the applicant
lent to it £15,000. After the invasion the applicant, who
15 until then was living in Famagusta, came to Nicosia where
he took up employment as an accountant with a commercial
firm.

20 The applicant objected to the income tax assessment
raised by the respondent in respect of the years 1975 and
1976, claiming relief for losses he sustained in Famagusta,
one of them being the amount of £15,000 advanced to the
said company. The respondent rejected the claim on the
ground that the £15,000 represented capital loss and as
a result the applicant filed the present recourse.

Held, dismissing the recourse: (1) The relevant provision is section 11(1)(c)* of the Income Tax Laws, 1961-1977. For a tax-payer to claim a deduction under s. 11(1) he must satisfy the respondent that the amount claimed to be deductible is an expense wholly and exclusively incurred in the production of income. 5

(2) There is no evidence that the loan to the said company was in any way connected with earning income in his capacity as an accountant. Nor is there any evidence that the said company cannot repay the loan. 10

(3) The amount lent to the company was capital invested in another enterprise outside the usual course of the applicant's profession.

Recourse dismissed.

No order as to costs. 15

Recourse.

Recourse against the decision of the respondents whereby they treated the sum of £15,000.- lent by applicant to Thassos Motels Ltd. as capital loss and not being set off against applicant's income for the years of assessment 1975, 1976 and 1977. 20

L. Papaphilippou, for the applicant.

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

Cur. adv. vult 25

DEMETRIADES J. read the following judgment. The applicant was practising the profession of an accountant as an employee of a firm of accountants and was posted in Samagusta until 1973, when he decided to set up his own practice. After his resignation from his employment with the accountancy firm he and his brother formed a company with the name of Thassos Motels Ltd. (hereinafter referred to as the "company") and each acquired 20,000 of its shares. 30

As the company needed money, he and his brother lent 35

Quoted at p. 1758 post.

to the company £15,000.- and £35,000.- respectively. The amount lent by the applicant to the company was the proceeds of a sale of a flat belonging to him. There is no evidence or allegation before me that the sum of £15,000.- lent by the applicant to the company had anything to do with his practice as an accountant.

After the invasion the applicant moved to Nicosia and took up employment as an accountant with a commercial firm.

As the applicant failed to submit his returns of income for the years 1975 and 1976, as provided by section 5 of the Assessment and Collection of Taxes Law, 1978 (Law 4/78), the respondent raised assessments for these two years in accordance with the provisions of section 13(3) of that Law. To these assessments the applicant objected, claiming relief for losses suffered by him in Famagusta, one of them being the amount of £15,000.- advanced to the company.

The respondent, by his letter dated the 19th November, 1980, rejected the claim of the applicant on the ground that the amount of £15,000.- was a capital loss and not an expense wholly and exclusively incurred in the production of income.

By means of this recourse the applicant challenges this decision of the respondent and prays for:-

"A. A Declaration that the act or decision of the respondents dated the 19th of November, 1980 whereby they treated the sum of £15,000 lent by the Applicant to Thassos Motels Ltd. of Famagusta as capital loss and not capable of being set off against the applicant's income for the years of assessment 1975(74), 1976(75), 1977(76) and subsequent years, is null and void and of no legal effect whatsoever.

B. Costs."

His recourse is based on the following grounds of law:-

"1. The said act or decision is contrary to the provisions of section 15 of the Income Tax Laws 1961 to 1979.

2. The respondents were wrong in law and in fact because the said amount of £15,000 falls within the provisions of section 11(1)(c) of the Income Tax Laws 1961 to 1979.

3. The respondents acted under misconception of facts in treating the amount of £15,000 lent by the applicant to Thassos Motels Ltd. as loss of capital and not as a bad debt. 5

4. The said act or decision is not duly or adequately reasoned contrary to Article 29 of the Constitution." 10

The provision of the Income Tax Laws (Laws 1961-1977) which allows the respondent to accept deductions from the earned income of a tax payer is section 11 which, at its material part, reads as follows:-

"11. (1) For the purpose of ascertaining the chargeable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred by such person in the production of the income, including - 15

(a) 20

(b)

(c) bad debts incurred in any trade, business, profession or vocation proved to the satisfaction of the Commissioner to have become bad debts during the year immediately preceding the year of assessment and actually written off during the same year notwithstanding that such bad debts were due and payable prior to the commencement of the said year, and also the amount of any specific provision for doubtful debts in respect of which the Commissioner is satisfied that they have or will eventually become irrecoverable: 25 30

Provided

(d)"

I shall take the first three grounds of law on which the 35

applicant bases his recourse, together, as I think that they are interconnected.

5 In my view for a tax payer to claim a deduction under section 11(1) he must satisfy the respondent that the amount he claims to be deductible is an expense wholly and exclusively incurred for the production of his income. Production of income is not limited to money earned by the exercise of a trade, business, profession or vocation, but income is, also, derived in many other ways, that is for
10 example, by way of investing in buildings that yield rent, by lending money etc. This last source of income is also taxable and in some instances deductions are allowed.

It is not in dispute that the applicant was an accountant earning his income by exercising his profession. It is, also,
15 an undisputed fact that the applicant, having sold his flat, invested in the company the proceeds of its sale. However, there is no evidence before me or to that effect before the respondent, that the loan made to the company was in any way connected with earning income in his capacity as
20 an accountant. Nor is there evidence before me, or the respondent, that the company to which the money was lent by the applicant cannot repay the loan.

The fact that the town of Famagusta is at present under Turkish occupation is not a fact that would at present lead
25 me to the conclusion that the amount of £15,000.- lent by the applicant to the company will never be recovered and thus it has become a bad debt. To my mind, the amount lent by the applicant to the company was capital invested in another enterprise outside the usual course of the applicant's profession. It was, therefore, not an expense wholly
30 and exclusively incurred for the production of the income of the applicant in his profession and for this reason I dismiss the recourse but, in the circumstances, I make no order as to its costs.

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*Recourse dismissed.
No order as to costs.*