

(1988)

1988 January 22

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MAROULLA GEORGHIOU CHARALAMBOUS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE DIRECTOR OF THE DEPARTMENT OF INLAND
REVENUE,
2. THE ATTORNEY-GENERAL OF THE REPUBLIC.

Respondents.

(Case No. 473/86).

Taxation—Capital Gains Tax—The Capital Gains Tax Law 52/80, section 5 (1)—Assessment of profit from previous sale not challenged in time by a recourse—Such assessment was taken into account in calculating the relief under section 5(1) in respect of a new sale—Upon a recourse challenging the decision imposing tax on the profit from the second sale, the Court cannot examine the validity of the first assessment.

5

Judicial control—Taxation—Capital Gains—The Capital Gains Tax Law 52/80—Principles applicable.

This recourse is directed against the decision to tax the applicant £300.- on capital gains derived from the sale of a plot of land on 11.7.83.

10

The applicant complained of: (a) Undervaluation of the plot as at 27.6.78, and (b) Failure or omission to afford the applicant the benefits of the exemption provided for in s.5(1) of Law 52/80.

On 5.5.81 the applicant had transferred another plot of land, but alleged that such plot was sold prior to the enactment of Law 52/80. Her allegation was turned down on 21.6.85. She did not challenge the decision

15

by a recourse to this Court. Objection (b) above was based on the contention that the respondent should not have taken into consideration the profit of the first transaction.

5 Having heard evidence, the Court found that the decision of 21.6.85 was properly brought to applicant's knowledge and that the administration did not mislead her in any way.

10 Held, *dismissing the recourse*: (1) The jurisdiction of the Court in cases of tax review is confined to a review of the legality of the action of the Administration within the compass of their authority. Provided they operate within the framework of their powers, the Administration is the arbiter of the fact-finding process. And so long as the inquiry into the factual background is adequate and the decision one reasonably open to them, the Court will sustain it as a valid exercise of their powers.

15 (2) There is no material justifying interference with the finding in respect of the value of the land as at 27.6.78.

(3) The validity of the decision of 21.6.85 is not in issue in this recourse. Consequently, the applicant's second complaint is doomed to failure.

Recourse dismissed.

20 *Cases referred to:*

Georghiades v. Republic (1982) 3 C.L.R. 659.

Recourse.

Recourse against the decision of the respondents to impose on applicant the sum of £300.- as capital gains tax.

25 *M. Vasiliades*, for the applicant.

Y. Lazarou, for the respondents.

Cur. adv. vult.

PIKIS, J. read the following judgment. The present applica-

tion raises for review a decision of the Director of the Department of Inland Revenue taxing the applicant to pay £300- capital gains tax, plus interest, under the Capital Gains Tax Law (Law 52/80).

It is common ground that applicant sold on 11th July, 1983, a plot of land for £3,500.--. As the sale was effected after the enactment of the law it was subject to its provisions; and a declaration was submitted pursuant to its provisions. Briefly, the law provides that dispositions of immovable property are liable to capital gains tax in accordance with the rules laid down therein. The yardstick of taxation is the difference between the value of the land at the date of its disposition (s.10) and, its value on 27.6.78 (s. 6(1)). Profit realised from a disposition or dispositions of property up to £5,000.-- is exempted from taxation (s.5).

Applicant objected to the taxation of two grounds -

(a) Undervaluation of the property as at 27.6.78 and

(b) failure or omission to afford the applicant the benefits of the exemption provided for in s.5(1).

To complete the factual background, the property sold in 1983 was valued at £2,000.- as at 27.6.78.

Notwithstanding the disagreement of the applicant with value put on her property on 27.6.78, nothing was placed before the Authorities to controvert their findings or cast doubts on the adequacy of their inquiry. Nor was such an attempt made before the Court either. The decision of the respondents was based on a valuation of an expert in the field of land valuation, namely Mr. Mateas, who founded his valuation on what may be described as a thorough search into the value of the property. We may remind that the jurisdiction of the Court in cases of tax review is no different from that in any other field of administrative action*. It is confined to a review of the legality of the action of the Administr-

* *Georghiades v. The Republic* (1982) 3 C.L.R. 659.

ation within the compass of their authority. Provided they operate within the framework of their powers the Administration is the arbiter of the fact-finding process. And so long as the inquiry into the factual background is adequate and the decision one reasonably open to them, the Court will sustain it as a valid exercise of their powers. On a consideration of the facts founding the decision to value the property at £2,000. -- as at 27.6.78, I find no ground whatever justifying interference with it.

To appreciate the other contentious issue, namely the allegation of failure on the part of the respondents to afford the applicant the relief envisaged by s.5, we must refer to another sale of property by the applicant, and her liability to capital gains tax.

On 5.5.81 the applicant transferred a piece of land for the sale of which she submitted a declaration under the Capital Gains Tax Law. In her declaration she asserted that the property had been sold prior to the enactment of the law, that is on 17.4.79, and consequently the transaction was not caught by its provisions. The Director refuted the contention and found that the disposition was subject to the provisions of the law (Decision of 21.6.85). But inasmuch as the profit realised amounted to no more than £5,000 -- applicant was relieved from the payment of tax being entitled to the benefits of s.5(1) of Law 52/80. Respondents maintained that applicant was soon afterwards notified of the decision but yet failed to challenge it before the Court. Therefore, the decision is a closed chapter that cannot be reopened in view of the provisions of article 146.3 of the Constitution. Applicant doubted the contention of the respondents that the decision of 21.6.85 was brought to their notice. In an affidavit sworn to by her husband the allegation was made that he had no certain recollection of whether they had been notified of the decision of 21.6.85. In cross-examination before me he modified his position on the subject, saying "possibly I did receive notice and have forgotten about it I do not insist that I did not receive notice." On the other hand, the evidence of Mr. Omirou leaves me in no doubt that no-

tice of the decision of 21.6.85 was duly given to the applicant . In the absence of a challenge within the 75 - day period envisaged by para. 3 of article 146, we have no jurisdiction to go into the validity of that act. Applicant submitted that there is yet another reason for ignoring the decision of 21.6.85, deriving from the conduct of the Administration in the matter. In his affidavit the husband of the applicant maintained that the officer - in - charge of the Office of the Income Tax Department at Paphos, left him with the impression by statements made at their interview that their department would accept as genuine the sale agreement of 17.4.79 and on the amount exempt the transaction from the provisions of Law 52/80. Once more the affiant modified his position in cross - examination, agreeing with the suggestion that all that Mr. Theocharides had told him was that his claim for exemption would be forwarded to the Commissioner who would in time decide whether it was subject to the provisions of the law. The evidence of Mr. Theocharides leaves no doubt about what had happened at that meeting. He made it clear to the husband of the applicant that decision did not not lie with him though he himself had recommended acceptance of genuineness of the agreement of 17.4.79.

I am satisfied that the Administration did not mislead the applicant or her husband as to either their rights or their position. The conduct of the Administration was in no way reprehensible. Had the validity of the decision of 21.6.85 been open for review, the applicant might have a chance of success. But that is not an issue before me. Nothing further need be said on the subject.

In the light of the above, the recourse cannot but be dismissed. Furthermore, the sub-judice decision is confirmed pursuant to the provisions of article 146.4 (a) of the Constitution.

Recourse dismissed.