

1988, March 31.

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS ZEVLARIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 434/86).

Taxation—Income Tax—The two duties of the taxpayer, i.e. to keep proper records and accounts disclosing his income and to make a frank disclosure of this income—Gaps in the accounts and absence of proper documentation—Ground for Commissioner to reject the accounts as inaccurate and proceed to raise an assessment reasonably warranted by the totality of the circumstances—The ultimate question is whether the decision was reasonably open to the Administration.

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Taxation—Income tax—The Income Tax Laws, section 5(1)(d)—Interest earned from deposits with the Teachers Cooperative Savings—Not exempt from taxation.

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The facts of this case appear in the judgment of the Court.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Georghiades v. The Republic (1982) 3 C.L.R. 639;

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Rainbow v The Republic (1984) 3 C.L.R. 846.

Recourse.

Recourse against the income tax assessment raised on applicant for the years 1979-1982.

5 *M. Christodoulou*, for the applicant.

Y. Lazarou, for the respondents.

Cur. adv. vult.

10 PIKIS J. read the following judgment. At issue is the validity of the assessment of the applicant to income tax for the years 1979-1982 (Years of Income 1978-1981). In the contention of the applicant the assessments are liable to be set aside because they are fraught with misconception of the facts and the law, as well as abuse of the discretionary powers vested in the Commissioner. Misconception of facts derives from failure to ascertain the facts relevant to the capital of the applicant on 31st December, 15 1977, while misconception of the law stems from a misconstruction of the relevant provisions of the Income Tax Law affecting the taxability of interest earned from savings deposited with the Teachers Cooperative Savings Society. Abuse of power, on the other hand, emanates from the refusal of the Commissioner to accept that an amount of £4,650.- fees earned from the management of the property of a certain Demetriou, a resident of Australia, 20 were the income of his wife and not himself. It is the case for the applicant that the recipient of these fees was his wife.

25 At the request of the Commissioner the applicant submitted a capital statement disclosing his assets over a 7 - year period ranging from 1974 to 1981. It was regarded necessary for the proper determination of his income during the aforementioned period. A major complaint of the applicant is that though the authorities accepted the statement of family assets as accurate and on the basis 30 of it assessed him to income tax for the preceding years, they ar-

bitrarily adjusted downward the figure given for his capital as at 31st December, 1977, a fact resulting in a surplus of income of about £9,000.- for which he was assessed to tax in the ensuing years. In addition to the statement affecting his capital, the applicant made available for examination his books and accounts disclosing the movement of capital and his income over the years. 5

As well as being a salary earner, the applicant had income from other sources, that is, rents and interest. Moreover, an amount of £4,650.- was earned representing fees for the management of the relatively large estate of Demetriou, a fairly burdensome business. Notwithstanding the fact that he was accountable to Demetriou and kept his books, he contended that the recipient of the fees was his wife. 10

The Commissioner found the accounts and records produced by the applicant incomplete and in some respects inaccurate and insisted that the assessment made of his capital assets at 31st December, 1977, was sound and perfectly warranted by the records made available. The dispute affecting the assets of the applicant mostly concerns a debt of £5,500.- owing to the family by A. P. Georghiades Ltd. and another amount of £3,500.- a debt owing to them or cash in their possession. He rejected the allegation that the earner of the fees for the management of the estate of Demetriou was anybody other than the applicant. Lastly, interest earned from savings was contrary to the contention of the applicant, liable to tax in view of the provisions of s. 5(1)(d) and the Income Tax Laws 1961-1981. 15 20 25

I have given careful consideration to the facts and the documentary evidence relevant to the taxation of the applicant. The pertinent question in this, as in every other case of judicial review of administrative action, is whether the decision is vulnerable to be set aside for abuse or excess of power, a question ultimately, devolves to whether the decision was one reasonably open to the Administration (*Georghiades v. Republic* (1982) 3 C.L.R. 659). 30

The Income Tax legislation is premised on two equally impor-

tant duties of the tax-payer:

(a) The duty to keep proper records and accounts disclosing his income; and

(b) The duty to make a frank disclosure of his income.

5 Failure to comply with the first duty can in no way result in an
advantage to the tax-payer (*Rainbow v. Republic* (1984) 3
C.L.R. 846). The existence of gaps in the accounts and the ab-
sence of proper documentation is a valid ground for the Commis-
sioner to reject them as an inaccurate statement of the tax-payer's
10 reasonably warranted by the totality of the circumstances throwing
light on the income of the tax-payer.

In this case the records kept by the tax-payer were in many re-
spects inadequate. The questionnaire of the Commissioner and
the answers furnished thereto did not wholly fill the gaps in the
15 accounts and records kept of the income and expenditure of the
tax-payer. It was reasonably open to the Commissioner to assess
his capital, as he did, as at 31st December, 1977, and equally
open to him to reject the allegation that the applicant's wife was
the recipient of the fees earned for the management of the estate of
20 Mr. Demetriou. No legal relationship existed between Mr. Demet-
riou and applicant's wife, whereas the keeping of the accounts of
the estate by the applicant afforded evidence that the services ren-
dered or a big part of them were rendered by the tax-payer. Very
possibly his wife assisted him to earn those fees, but that is no
25 reason for treating the income as that of his wife. Lastly, interest
earned from deposits with the Teachers Cooperative Savings So-
ciety were not exempt for taxation in view of the provisions of
s.5(1)(d) of the Income Tax Laws.

30 The recourse is dismissed. The assessments are confirmed pursu-
ant to the provisions of Art. 146.4(a) of the Constitution. Let
there be no orders as to costs.

*Recourse dismissed.
No order as to costs.*