

1988 April 23

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS STYLIANOU,

Applicant.

v.

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

Respondents.

(Case No. 555/85).

*Taxation—Income Tax—Exemptions—The Income Tax Laws, section 8(x)—
 The exemption of the 90 per centum of foreign exchange imported from the
 rendering of salaried services outside the Republic to private businesses—
 Ambit of—Citizens of the Republic are, also, entitled to the exemption—It
 matters not who imports the foreign exchange.*

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*Construction of statutes—Words and phrases should be given their ordinary
 grammatical meaning.*

The applicant was at the material time an employee of an offshore company. He is a Cypriot. His services to his employers are rendered outside Cyprus. He was being paid in Cyprus from an external account maintained by his employers.

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He claimed the 90% relief provided in section 8(x) of the Income Tax Laws, the relevant part of which reads as follows:

"There shall be exempt from the tax ninety per centum of foreign exchange so imported from the rendering outside the Republic of salaried services to private businesses."

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As the respondent refused to allow the aforesaid exemption, the applicant filed this recourse.

5 Counsel for the respondent argued that it is not the applicant but his employers who import the foreign exchange into Cyprus and that the applicant, being a Cypriot employee of an offshore company, is not entitled to the relief claimed by him.

10 Held, *annulling the sub judice decision*: (1) It is a cardinal principle that words or phrases appearing in a statute should be given their ordinary grammatical meaning unless the contrary is shown. The law makes no differentiation between citizens of the Republic and aliens, nor does it provide that the foreign exchange must be imported into the Republic by the tax payer himself. What the law provides is that foreign exchange is imported as a result of the rendering by a tax payer of services abroad.

*Sub judice decision annulled.
Costs against respondent.*

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Recourse.

Recourse against the income tax assessments raised on applicant for the years 1980 - 1983.

G. Triantafyllides, for the applicant.

20 *M. Photiou*, for the respondents.

Cur. adv. vult.

25 DEMETRIADES J. read the following judgment. By this recourse the applicant challenges the assessments of income tax imposed upon him by a decision of the 2nd respondent, hereinafter referred to as the respondent, dated the 4th April, 1985, for the years 1980, 1981, 1982 and 1983 (assessment Nos 80/85/04/020, 81/85/04/020, 82/85/04/020 and 83/85/04/020, respectively) and more specifically, the applicant challenges the decision of the respondent by which the latter refused to exempt from income tax
30 90% of the former's income earned during the aforesaid years.

The undisputed facts of the case are the following.

The applicant resides in Limassol and earns his income from his employment with Barber Green (Cyprus) Ltd. , an offshore company. The income of the applicant is derived exclusively from services rendered to his employers outside Cyprus.

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The applicant was assessed to income tax for the years in question, on the salary his employers declared that they had paid him. Objection was lodged against these assessments by his accountant on the ground that as the services of the applicant in the years 1981 - 1983 were carried out abroad he was entitled to relief in respect of 90% of his salary in accordance with the provisions of section 8(x) of the Income Tax Laws. Upon production of the applicant's passport to the officers of the respondent, it was found that the applicant spent a number of days abroad in each of the respective years. The applicant's objection was rejected by the respondent by his letter dated the 4th April, 1985. Hence the present recourse which is based on the grounds of excess or abuse of power and that the sub judice decision is contrary to the law and the principles of administrative law.

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Counsel for the applicant in his written address argued that the applicant is employed by the aforesaid company as an engineer and his duties consist of servicing heavy equipment manufactured and sold by the company outside Cyprus, whenever he is required to do so, and that he does not perform any duties in Cyprus. It is further the applicant's case that his salary was agreed in U.S. Dollars, that he is paid from an external account of the company, after conversion of his salary into Cyprus pounds, according to the rate of exchange of the dollar prevailing at the time of payment and that in this way the applicant, by having his salary remitted to Cyprus, imports foreign exchange. He also attached copies of the payrolls of the applicant during the years in question which show the amount in dollars due to the applicant, the rate of exchange and the amount paid to him in Cyprus pounds. Counsel submitted that the applicant fully satisfies the

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provisions of section 8(X) of the Law and is, therefore, entitled to the 90% relief from income tax.

Counsel for the respondent argued that it is not the applicant but his employers who import the foreign exchange into Cyprus and that the applicant, being a Cypriot employee of an offshore
5 company, is not entitled to the relief claimed by him.

The relevant legislative provision is section 8(X) of the Income Tax Laws, 1961 - 1984 (section 8(κδ) in the Greek text). This section, as amended by Laws 37/75 and 24/81, reads as follows:

10 "8. Απαλλάσσονται του φόρου-

.....

(κδ) τα τρία τοις εκατόν του εν τη Δημοκρατία εισαγο-
μένου ξένου συναλλάγματος προερχομένου εκ της εξαγω-
γής επιτοπίως κατασκευαζομένων ή παραγομένων προϊ-
15 όντων, το τριάκοντα τοις εκατόν του εν τη Δημοκρατία
εισαγομένου ξένου συναλλάγματος εκ τη παροχής επαγ-
γελματικών υπηρεσιών εν τω εξωτερικώ, ως και το ενενή-
κοντα τοις εκατόν του ούτως εισαγομένου ξένου συναλ-
λάγματος εκ της παροχής εκτός της Δημοκρατίας
20 μισθωτών υπηρεσιών προς ιδιωτικές επιχειρήσεις."

("8. There shall be exempt from the tax-

.....

(x) three per centum of the foreign exchange imported into
the Republic which is derived from the export of locally manu-
25 factured or produced products, thirty per centum of foreign ex-
change imported into the Republic from the rendering of pro-
fessional services abroad, as well as ninety per centum of
foreign exchange so imported from the rendering outside the

Republic of salaried services to private businesses:")

The whole question turns on the interpretation of the last part of the above subsection, under which the applicant claims relief.

It is a cardinal principle that words or phrases appearing in a statute should be given their ordinary grammatical meaning unless the contrary is shown. 5

Having this in mind, I am of the view that for a person to be entitled to have his income exempted from income tax to the extent of 90%, the following conditions must be satisfied.

(a) He must render services to a private business; 10

(b) such services must be rendered abroad; and

(c) foreign exchange earned as a result of such services rendered should be imported into the Republic.

It is further my view that the law makes no differentiation between citizens of the Republic and aliens, nor does it provide that the foreign exchange must be imported into the Republic by the tax payer himself, that is by a remittance made by himself from abroad into an account with a bank in the Republic. What the relevant section of the law provides is that foreign exchange is imported as a result of the rendering by a tax payer of services abroad. 15 20

In the present case, the applicant earned his income by rendering his services to his employers abroad and he could have chosen to have his salary paid in U.S. Dollars in an account with a Bank abroad and then have it remitted to him to Cyprus. Would, in that case, the respondent treat the remittance of the salary of the applicant as not importation of foreign exchange? 25

Offshore companies registered in the Republic are not allowed to trade and earn money in the Republic. Therefore, any money paid by them here, for any cause or reason, must be either earned or imported from abroad. It is, therefore, immaterial whether the
5 money earned by the applicant for his services to his employers were paid in Cyprus currency. What counts is that he rendered his services abroad; that his salary was earned abroad and that although it was deposited in his account with a Bank in Cyprus, in Cyprus currency, it was money imported as a result of services
10 for the benefit of a private business which, if I may add, could not trade in the Republic and thus make money here with which to pay the salary of the applicant.

In the result, I find that the respondent misinterpreted the law and that the sub judice decision should be declared null and void
15 and of no effect.

The sub judice assessments are, therefore, annulled.

The respondent to pay the costs of this recourse.

*Sub judice assessments annulled
with costs against respondents.*