

[TRIANAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

THEOPHILACTOS MAVROMATI (No. 1),  
*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

1. THE DIRECTOR OF INLAND REVENUE,
2. THE MINISTER OF FINANCE,

*Respondents.*

(Case No. 129/64).

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*Income Tax—Additional assessments—The Income Tax Law, Cap. 323, section 45—The Taxes (Quantifying and Recovery) Law, 1963 (Law No. 53 of 1963, enacted on the 18th July, 1963), sections 23 and 50(4)—Period of six years prescribed by section 45 of Cap. 323 (supra) and section 23 of the said Law No. 53 of 1963—To be reckoned as from the date when an assessment is made thereunder and not as from the determination of an objection made against such assessment—Sections 23 and 50(4) of Law No. 53 of 1963, supra—Neither do overlap nor are they in conflict—No additional assessment possible in respect of liability covered by section 50(4) in respect of a year of assessment not within the ambit of section 23.*

By this recourse under Article 146 of the Constitution, filed on the 2nd November, 1964, the applicant challenges the validity of additional assessments to income tax raised against him in respect of the years of assessment 1952-1958, inclusive, as follows: In respect of the years of assessment 1952, 1953 and 1954, such assessments were raised on the 9th November, 1955, under the provisions of the Income Tax Law, Cap. 323, then in force. (Note: Cap. 323 ceased to be in force on the 31st March, 1961); and in respect of the years of assessment 1955, 1956, 1957 and 1958, the said additional assessments were raised on the 18th December, 1963, under the provisions of the Taxes (Quantifying and Recovery) Law, 1963 (Law No. 53 of 1963, enacted on the 18th July, 1963). On the 17th November, 1955, the applicant objected against those of the said assessments relating to the years of assessment

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1952-1954, and on the 2nd of January, 1964, he objected against the remaining assessments viz. those relating to the years of assessment 1955-1958. All his aforesaid objections were determined, on the 14th October, 1964, under the provisions of Law No. 53 of 1963 (*supra*) and the relevant notices of determination of the objections were attached as exhibits to the body of this application.

Section 45 of Cap. 323 (*supra*) provides:

“45. Where it appears to the Commissioner that any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Commissioner may, within the year of assessment or within six years after the expiration thereof, assess such person at such amount or additional amount as according to his judgment ought to have been charged and the provisions of this Law shall apply to such assessments and to the tax charged thereunder”.

Sections 23 and 50(4) of Law No. 53 of 1963 (*supra*) provide:

“23. Where it appears to the Director that any person on whom the tax has been imposed under any Law, whether before or after the coming into operation of this Law, has not been assessed or paid the tax imposed or has been assessed at or paid an amount less than that which ought to have been paid, the Director may, within the year of assessment or within six years after the expiration thereof, assess such person at such an amount of tax or additional amount of tax as was imposed and ought to have been assessed and recovered under the provisions of the Law imposing the tax, and the provisions of this Law shall apply to such assessment and to the tax assessed thereunder”.

“50(4). If any liability for payment of tax has been incurred under the provisions of any Law imposing such tax which on the date of the coming into operation of this Law has ceased to have effect and such tax has not been quantified or collected on such date the tax shall be assessed, collected and recovered under the provisions of this Law:

Provided that nothing in this subsection contained shall be applicable to any liability incurred in respect of a year of assessment prior to the year of assessment 1955”.

Counsel for applicant argued, by way of a legal issue going to the validity of the assessments concerned, that, in view, of the provisions of section 23 of Law No. 53 of 1963 (*supra*), the applicant, on the 14th October, 1964, (viz. date of notices of determination of the aforesaid objection, *supra*) could not be assessed in respect of a year of assessment earlier than 1958; he pointed out, indeed, that under section 50(4) of the said Law (*supra*) provision has been made about going back until the year of assessment 1955, but he submitted that in this respect section 23 and section 50(4) overlap and are, thus, in conflict and that such conflict ought to be resolved in favour of the applicant tax-payer. So, in effect, the objection raised by counsel for applicant concerns only the validity of the assessments in respect of the years of assessment 1952-1957. The assessment in respect of the years of assessment 1958 is not concerned.

The learned Justice in partly rejecting the objection on behalf of the applicant:-

*Held*, (1)(a) the additional assessments in respect of the years of assessment 1952-1954 were raised under the provisions of section 45 of Cap. 323 (*supra*), and not under section 23 of Law No. 53/63 which was not then in force.

(b) Bearing in mind the contents and object of section 45, as well as its place in the context of related provisions in Cap. 323, I have no doubt in my mind that the relevant period (of six years) in section 45 (*supra*), should be reckoned as from the date when an assessment is raised thereunder and not as from the date of the determination of an objection made against such assessment; the said period (of six years) is prescribed so as to limit the time within which the taxing machinery may be set in motion against a citizen, and for no other purpose. This view is, also, based on the notion of “assessment” as understood in income tax legislation.

(c) Thus, in relation to the years of assessment 1952-1954, the material date for the purposes of section 45

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of Cap. 323 (*supra*) is the 9th November, 1955, when the said additional assessments were raised, and not the 14th October, 1964, when the objections made against them were determined under section 50(3) of the said Law No. 53 of 1963. Therefore, I hold that the preliminary objection taken by counsel for the applicant with regard to the assessments in respect of the years of assessment 1952-1954, fails.

(2) With regard to the legal objection in respect of the years of assessment 1955-1958:

(a) Sections 23 and 50(4) of the said Law No. 53 of 1963 (*supra*) do not overlap and they are not in conflict. They are provisions of one and the same Law and they have to be read together and to be given one effect in the context of the whole of such Law.

(b) Section 50(4) (*supra*) cannot be said to be itself a provision laying down the machinery for assessment, but it merely provides that the provisions of Law No. 53 of 1963 shall be applicable, *inter alia*, to the assessment of tax payable because of liability incurred under the provisions of any other Law which has ceased to have effect in the meantime.

(c) One of the provisions of Law No. 53 of 1963 which are, thus, rendered applicable to such liability is section 23 thereof (*supra*). And if an additional assessment has to be made in respect of liability provided for under section 50(4), such assessment cannot be made directly under such section and it has still to be made under section 23.

(d) In the light of the above, I am of the opinion that the additional assessment raised on the 18th December, 1963, (*supra*) in respect of the year of assessment 1957 has been validly raised because it was raised on the 18th December, 1963, *viz.* within the period of six years laid down by section 23. The same would apply to the assessment in respect of the year of assessment 1958 which is not really attacked by the preliminary legal issue raised by counsel on behalf of the applicant.

(e) Concerning the assessments for the years of assessment 1956 and 1955, again, on the basis of what I have stated already, they could only be raised under section 23 and as they were raised on the 18th December, 1963,

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*i.e.* more than six years after the end of the years of assessment 1955 and 1956, they could only be saved as valid assessments if, by reading section 23 together with section 50(4) and particularly the proviso thereto (*supra*), I could reach the conclusion that in the specific cases provided for under that section 50(4), the period prescribed in section 23 is to be deemed as having been extended until, and including, the year of assessment 1955. But I do not think I can reach such conclusion. The qualification of section 23 by section 50(4) would be a very drastic legislative measure, extending the period for the raising of additional assessments upon eight instead of six years and the proviso to section 50(4) (*supra*) falls far short of the express provision that would be regained for the purpose.

(f) For these reasons I hold that there was no lawful power to raise, on the 18th December, 1963, additional assessments in respect of the years of assessment 1955 and 1956 and that, therefore, such assessments have to be declared null and void and of no effect whatsoever.

*Order in terms.*

#### Recourse.

Recourse against the validity of income tax assessments raised on applicant in respect of the years of assessment 1952-1958, inclusive.

*M. Houry with St. G. McBride for Applicant.*

*L. Loucaides, Counsel of the Republic, with Chr. Paschalides, for Respondent.*

*Cur. adv. vult.*

The following decision was delivered by:—

TRIANTAFYLLIDES, J.: By this recourse, which was filed on the 2nd November, 1964, Applicant challenges the validity of assessments raised against him in respect of the years of assessment 1952-1958, inclusive.

Such assessments were first raised against Applicant as set out in paragraph 6 of the Opposition, viz. in respect of the years of assessment 1952, 1953 and 1954 on the 9th November, 1955, under the provisions of the Income Tax Law, Cap. 323,

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which was then in force, and in respect of the years of assessment 1955, 1956, 1957 and 1958, on the 18th December, 1963, under the provisions of the Taxes (Quantifying and Recovery) Law, 1963 (Law 53/63), which was enacted on the 18th July, 1963. Such assessments are all additional assessments.

On the 17th November, 1955, Applicant objected against those of the said assessments relating to the years of assessment 1952-1954, and on the 2nd January, 1964, he objected against those of the said assessments relating to the years of assessment 1955-1958.

All his objections were determined, on the 14th October, 1964, under the provisions of Law 53/63 and the relevant notices of determination of the objections (*exhibit 1*) are attached to the Application.

Counsel for Applicant has submitted, by way of a legal issue going to the validity of the assessments concerned, that, in view of the provisions of section 23 of Law 53/63, Applicant, on the 14th October, 1964, could not be assessed in respect of a year of assessment earlier than 1958; counsel for Applicant pointed out, indeed, that under section 50(4) provision has been made about going back until the year of assessment 1955, but he submitted that in this respect section 23 and section 50(4) overlap and are, thus, in conflict; he has argued that such conflict ought to be resolved in favour of the Applicant tax-payer.

So, in effect, the objection raised by counsel for Applicant concerns only the validity of the assessments in respect of the years of assessment 1952-1957. The assessment in respect of the year of assessment 1958 is not concerned.

The additional assessments in respect of the years of assessment 1952-1954, were raised under the provisions of section 45 of Cap. 323, and not under section 23 of Law 53/63 which was not then in force. Section 45 reads:—

“45. Where it appears to the Commissioner that any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Commissioner may, within the year of assessment or within six years after the expiration thereof, assess such person at such amount or additional amount as according to his judgment ought to have been charged and the provisions of this Law shall apply to

such assessments and to the tax charged thereunder”.

The issue to be now decided in this Case, is, really, whether or not the period prescribed in such section 45—and within which the taxing authority may assess thereunder—is to be reckoned as from the date when an assessment is first raised under section 45 or as from the date of the determination of an objection which may have been made against such assessment.

Bearing in mind the contents and object of section 45, as well as its place in the context of related provisions in Cap. 323, I have no doubt in my mind that the relevant period, in section 45, should be reckoned as from the date when an assessment is raised thereunder and not as from the date of the determination of an objection made against such assessment; the said period is prescribed so as to limit the time within which the taxing machinery may be *set in motion* against a citizen, and for no other purpose.

This view is, also, based on the notion of “assessment” as understood in income tax legislation (*vide* Simon’s Income Tax, volume I 1964-1965, p. 174).

Thus, in relation to the years of assessment 1952-1954, the material date, for the purposes of section 45 of Cap. 323 is the 9th November, 1955, when assessments were raised, and not the 14th October, 1964, when the objections made against them were determined—under section 50(3) of Law 53/63.

In the light of my view, as above, I have to hold that the preliminary legal objection taken by counsel for Applicant against the assessments for the years of assessment 1952-1954 fails; they were raised within the period laid down in section 45 of Cap. 323.

We come now to the assessments for the years of assessment 1955-1957. They were raised under the provisions of Law 53/63.

Two relevant provisions are, first, section 23, which reads as follows:—

“23. Where it appears to the Director that any person on whom the tax has been imposed under any Law, whether before or after the coming into operation of this Law, has not been assessed or paid the tax imposed or has been assessed at or paid an amount less than

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that which ought to have been paid, the Director may, within the year of assessment or within six years after the expiration thereof, assess such person at such an amount of tax or additional amount of tax as was imposed and ought to have been assessed and recovered under the provisions of the Law imposing the tax, and the provisions of this Law shall apply to such assessment and to the tax assessed thereunder”.

and, secondly, section 50(4), which reads as follows:—

“(4). If any liability for payment of tax has been incurred under the provisions of any Law imposing such tax which on the date of the coming into operation of this Law has ceased to have effect and such tax has not been quantified or collected on such date the tax shall be assessed, collected and recovered under the provisions of this Law:

Provided that nothing in this subsection contained shall be applicable to any liability incurred in respect of a year of assessment prior to the year of assessment 1955”.

It has been alleged by counsel for Applicant, and appears to have been conceded to a certain extent by counsel for Respondent, that these two provisions, somehow, overlap.

With all respect to learned counsel, I am not of the opinion that they do overlap, or that they are in conflict. They are provisions of one and the same Law and they have to be read together and to be given due effect in the context of the whole of such Law.

Section 50(4) cannot be said to be *itself* a provision laying down the machinery for assessment, but it merely provides that the provisions of Law 53/63 shall be applicable to, *inter alia*, the assessment of tax payable because of a liability incurred under the provisions of any other Law which has ceased to have effect in the meantime.

One of the provisions of Law 53/63 which are, thus, rendered applicable to such liability, as aforesaid, is section 23.

As far as I can see, section 23 is the only provision in Law 53/63 which enables the making of additional assessments—and in these proceedings we are only concerned with such assessments.



Therefore, if an additional assessment is to be made in respect of a liability provided for under section 50(4), it cannot be made directly under such section and it has still to be made under section 23.

In the light of the above, I am of the opinion that the additional assessment raised on the 18th December, 1963, in respect of the year of assessment 1957, could validly be raised under section 23, because it was raised within six years after the end of such year of assessment, and in view of what I have already said about section 45 of Cap.323—which is in all material respects the same as section 23—I hold that the validity of such assessment is not affected by the fact that the objection against it was determined only on the 14th October, 1964.

The same would apply to the assessment for the year of assessment 1958 which, as stated earlier, is not really attacked by the preliminary legal issue raised by counsel for Applicant.

Concerning the assessments for the years of assessment 1956 and 1955, again, on the basis of what I have stated already, they could only have been raised under section 23. As they were raised on the 18th December, 1963, i.e. more than six years after the end of the years of assessment 1955 and 1956, they could only be saved as valid assessments if, by reading section 23 together with section 50(4) and particularly the proviso thereto, I could reach the conclusion that, in the specific cases provided for under section 50(4), the period prescribed in section 23 is to be deemed as having been extended until, and including, the year of assessment 1955.

I do not think that I can reach such a conclusion on the basis of the wording of section 50(4) and, particularly, the proviso thereto. It is to be noted that this proviso does not, in any way, lay down that, for the purposes of section 50(4), the provisions of Law 53/63, which are to be applied, shall be applicable up to, and inclusive of, the year of assessment 1955, but it only makes a negative provision to the effect that nothing contained in section 50(4) shall be applicable to a liability incurred in respect of a year of assessment prior to the year of assessment 1955.

The qualification of section 23 by section 50(4) would be a very drastic legislative measure, extending the period for the raising of additional assessments up to eight instead of six years, and the proviso to section 50(4) falls far short of the

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express provision that would be required for the purpose.

It is not necessary, in the context of this Decision, to go into the full effect of this proviso—regarding any other matter covered by section 50(4); it suffices for the purposes of this Case that it is clear in my mind that as an additional assessment, in respect of liability covered by section 50(4), can only be made under section 23—the provisions of which have to be applied as they stand without being possible for them to be qualified by anything contained in the proviso under section 50(4)—no *additional* assessment may be *first raised* under Law 53/63 for a year of assessment prior to the year of assessment 1957—at the earliest, as the case may be—even if it relates to liability covered by section 50(4).

For these reasons, I hold that there was no lawful power to raise, on the 18th December, 1963, additional assessments in respect of the years of assessment 1955 and 1956 and that, therefore, such assessments have to be declared as *null* and *void* and of no effect whatsoever, having been made contrary to Law. The fact that Applicant, on the 2nd of January, 1964, objected against such assessments does not, in my opinion, prevent him from succeeding on the ground that these assessments were raised without lawful authority, in the first instance.

In concluding this Decision, I would like to state that regarding the assessments for the years of assessment 1952-1954, I have not had to deal in this Case—as it has not been raised—with the issue of whether or not determining on the 14th October, 1964, the objections made against them on the 9th November, 1955, amounts to abuse of powers; it is an issue which remains open for the time being.

Regarding costs for the 7th February, 1966, and today, I order that they should be costs in cause.

*Order, and order as to costs,  
in terms.*