[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS MILTIADOUS,

Applicant,

and

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

Respondents.

(*Case No.* 377/68).

Income Tax—Assessment—Earned income—Earned income relief—To be allowed on the basis of the total earned income before its reduction by means of any other deduction therefrom—Section 19 *of the Income Tax (Foreign Persons) Law,* 1961 (*Law No.* 58 *of* 1961) *read together with the Income Tax (Foreign Persons) (Amendment) Law* 1966 (*Law No.* 21 *of* 1966)—*Cf. section* 17 *of the English Income Tax Act* 1968.

Income—Earned income—Relief—Earned income relief—How to be computed—See above.

Earned income relief—How computed—See above.

Income Tax—Assessment—Income tax practice not followed in the present case through an error in the relevant computation—Sub judice assessment annulled on this ground i.e. as being the product of an erroneous exercise of the relevant powers.

This is a recourse against the income tax assessment raised by Respondent 2 against the Applicant in respect of the year of assessment 1966. The facts which are not in dispute, are shortly as follows:

The relevant income of the Applicant was £2,664 earned and £216 unearned. The Respondent 2 (Commissioner of Income Tax) did agree to deduct from the total income of the Applicant (for the purpose of finding the taxable income) £6 professional tax and £373 bank interest. But such deductions were made from the earned income tax of the Applicant leaving

thus a balance of £2,285. Then 1/10 of such balance was treated as the allowance by way of earned income relief provided for under section 19 of the Income Tax (Foreign Persons) Law, 1961 (Law 58/61) read together with the Income Tax (Foreign Persons) (Amendment) Law, 1966 (Law 21/66). The Applicant objected to such a course, contending that he should have been allowed the earned income relief on the basis of his total earned income, before deduction therefrom of the aforesaid £6 professional tax and £373 bank interest. The Respondent Commissioner rejected this objection; as a result the Applicant tax payer filed the present recourse. During the hearing of this case counsel for the Respondents stated that, in accordance with proper income tax practice the said professional tax of £6 and interest £373 should have been deducted first from the unearned income (£126 *supra*) of the Applicant and, as this was not sufficient to absorb the total of these amounts, the balance thereof should have been deducted from the earned income of the Applicant. And then the earned income relief should have been granted to the Applicant in respect of what remained out of his earned income. Counsel conceded that due to an error in the relevant computation such practice was not followed in the present instance.

Annulling the assessment in question the Court:

Held, (1)(a). The very fair attitude taken by counsel for the Respondents regarding the correct income tax practice is in accordance with the approach adopted in the case of *Adams* v. *Musker,* 15 T.C.413 at p. 416.

(b) It follows that on this ground, and on this ground alone, the *sub judice* assessment has to be annulled, as being the product of an erroneous exercise of the relevant powers.

(2)(a) There remains the issue as to whether or not the earned income relief should have been allowed on the basis of the total of the earned income of the Applicant, prior to its being reduced by means of other deductions therefrom. Strictly speaking once the assessment concerned has been annulled on another ground I need not go into such case; but as it has been fully argued before me I shall express my view thereon for the guidance of the parties, so as to avoid, possibly further litigation on this point.

(b) Bearing in mind the object and effect of our relevant provision—section 19 of Law 58/61 (*supra*)—I have reached

the view that the earned income relief should have been allowed on the total of the earned income of the Applicant before its reduction by any other deduction therefrom. This view is strengthened by dicta in the judgments given in *Adams* v. *Musker supra* at p. 417 per Rowlatt, J. and in *Lewin* v. *Aller* [1954] 2 All E.R. 703 at p. 705 per Sir Raymond Evershed, M.R.

(c) It is now on the Respondent Income Tax Commissioner to reconsider the matter in the light of this judgment.

Sub judice assessment annulled with £15 *costs.*

Cases referred to:

Adams v. *Musker*, 15 T.C. 413 at pp. 416–417 per Rowlatt, J.

Lewin v. *Aller* [1954] 2 All E.R. 703 at p. 705 per Sir Raymond Evershed, M.R.

Recourse.

Recourse against the income tax assessment raised by Respondent 2 against the Applicant in respect of the year of assessment 1966.

G. Polyviou, for the Applicant.

Chr. Paschalides, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:–

TRIANTAFYLLIDES, J.: This is a recourse against the income tax assessment (*exhibit* 3) raised by Respondent 2—who comes under Respondent 1—against the Applicant in respect of the year of assessment 1966.

On the basis of the facts before the Court, which do not appear to be disputed, the relevant income of the Applicant was as follows: £2,664 earned and £126 unearned income.

It appears from the Opposition that the Respondent Commissioner of Income Tax did agree to deduct out of the total income of the Applicant—(for the purpose of finding his taxable income)—£6 professional tax and £373 bank interest.

Such deductions were deducted from the earned income of the Applicant, leaving a balance of £2,285. Then, 1/10 of such balance was treated as the allowance by way of earned income relief, provided for under section 19 of the Income Tax (Foreign Persons) Law, 1961 (Law 58/61) when read together with the Income Tax (Foreign Persons) (Amendment) Law, 1966 (Law 21/66).

The Applicant objected to such a course, contending that he should have been allowed the earned income relief on the basis of his total earned income, before deduction therefrom of the £6 professional tax and the £373 bank interest. Respondent 2 considered this objection and rejected it; he replied accordingly to the Applicant on the 19th September, 1968 (see *exhibit* 2).

As a result the Applicant has filed the present recourse on the 30th November, 1968.

During the hearing of this case, counsel for the Respondents stated to the Court that, in accordance with proper income tax practice, the said tax and interest should have been deducted, first, from the unearned income of the Applicant and, as this was not sufficient to absorb the total of these amounts, the balance thereof should have been deducted from the earned income of the Applicant; and then the earned income relief should have been granted to the Applicant in respect of what remained out of his earned income. Counsel conceded that due to an error in the relevant computation such practice was not followed in the present instance.

The very fair attitude taken by counsel for the Respondents, regarding the correct income tax practice, is in accordance with the approach adopted in the case of *Adams* v. *Musker* (15 T.C. 413, at p. 416).

It follows that on this ground, and on this ground alone, the *sub judice* assessment has to be annulled, as being the product of an erroneous exercise of the relevant powers; and it is hereby declared to be *null* and *void* and of no effect whatsoever.

There remains the issue as to whether or not the earned income relief should have been allowed on the basis of the total of the earned income of the Applicant, prior to it being reduced by means of other deductions therefrom.

Strictly speaking, once the assessment concerned has been annulled on another ground I need not go into such issue; but as it has been fully argued before me I shall express my view thereon for the guidance of the parties, so as to avoid, possibly, further litigation on this point.

Bearing in mind the object and effect of our relevant provision—section 19 of Law 58/61—I have reached the view that the earned income relief should have been allowed on the basis of the total earned income of the Applicant, before its reduction by means of any other deduction therefrom.

This view of mine is strengthened by dicta in the judgments given in *Adams* v. *Musker* (see, *supra*, per Rowlatt, J., at p. 417) and in *Lewin* v. *Aller* [1954] 2 All E.R. 703, (see per Sir Raymond Evershed, M.R., at p. 705) from which it appears that the same construction would have been placed on the corresponding provision in the relevant English legislation had it not been for the fact of the existence in the English legislation of section 17 of the Income Tax Act 1918; and counsel for the Respondents has not drawn my attention to any such provision in our own legislation.

It is now up to the Respondent Income Tax Commissioner to reconsider the matter in the light of this judgment.

I have decided to award in favour of the Applicant part of his costs which I assess at £15 and I order that they should be paid by the Republic.

Sub judice assessment annulled; order for costs as above.