[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PLUTIS KITTIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE AND ANOTHER,

Respondents.

(Case No. 42/71).

Income Tax—Income—Alienation—Application of income—Distinction—Income derived from rent of a house—Arranged by tax-payer to be collected by his daughter—House agreed to be gifted to said daughter under a contract of dowry—Transfer to daughter by registration of said house not effected—Contract of dowry substituted by a consent judgment for £10,000 against tax-payer, in an action for specific performance of said contract and/or damages for breach thereof—Arrangement or undertaking in question not amounting to a binding or effective alienation of income—Therefore, such rent forms part of the applicant's (tax-payer's) chargeable income for income tax purposes—The Taxes (Quantifying and Recovery) Law, 1963 (Law 53/63) (as amended by Law 61/69)—Section 28—Corresponding to section 50 of the Income Tax Law, Cap. 297 (repealed)—Cf. sections 392, 393, 395 and 397 of the (English) Income Tax Act, 1952.

Alienation or disposition of income—As distinct from mere application—See supra.

Words and Phrases—Disposition or alienation of income—Application of income—See supra.

Administrative acts or decisions—Need for due reasoning—Object of the rule requiring reasons to be given for administrative decisions—Is to enable the person concerned, as well as the Court, on review, to ascertain in each particular case whether the decision is well founded

in fact and in law (see Hadjisavva *v.* The Republic *(1972) 3 C.L.R. 174 and* Papazachariou *v.* The Republic *(1972) 3 C.L.R. 486).*

Reasoning of administrative decisions— See supra.

The sole issue in this recourse under Article 146 of the Constitution is whether income derived from rents collected by the daughter of the applicant in respect of a house at Limassol given to her (but not yet transferred by registration) as a dowry by her father, should be charged to his (the applicant's father's) chargeable income and be assessed to income tax accordingly. It was contended by the applicant that the answer should be in the negative, because the said house having been given to his daughter as a gift under a contract of dowry, there has been a disposition or alienation of the property yielding the income as well as of the income itself; it follows, the argument went on, that the rents so collected by the daughter should not have been included in the relevant assessments which the Commissioner of Income Tax has raised upon the father (applicant). The learned Judge of the Supreme Court did not accept this contention and dismissed the present recourse, holding that in the circumstances of the case and in the light of the authorities there has been merely an appropriation by the father in favour of her said daughter of the rents in question, and not a disposition or alienation thereof within the provisions of section 28 of the Taxes (Quantifying and Recovery) Law, 1963 (Law 53/63) as amended by Law 61/69; and that consequently, the Commissioner rightly assessed those rents as being taxable income of the father (applicant).

The facts of the case are briefly as follows :-

On January 6, 1963, the applicant engaged his daughter to Mr. K.S. and had agreed by a written contract of dowry to give her a particular building site as well as to erect thereon a house for the couple to live in. On December 29, 1963, the couple got married, and when the marital house was completed in 1964, they moved in. When the husband —an engineer in the service of Cyprus Telecommunications Authority—was transferred to another town sometime after April 1966, the said house was rented, and the rents were ever since collected by the applicant's daughter. It would seem that for reasons of financial difficulties, the father (applicant) was unable to transfer and register the house in

question into the name of his daughter because both the buliding site and the house were mortgaged.

On October 22, 1966 the daughter instituted proceedings in the District Court of Limassol in which she was claiming, *inter alia*, specific performance of the said contract of dowry and/or damages for breach of the said contract. In accordance with a settlement reached, a judgment by consent was issued against the defendant father (now the applicant) to pay to the plaintiff (daughter) an amount of £10,000 with 4% interest per annum thereon as from January 17, 1967 till final payment. The settlement further provides that execution of the judgment would be stayed so long as the defendant (father) pays £1,000 per year till final payment of the said mortgage debt relating to the said immovable property (site and building, *supra*), such payments to begin as from February 1968. It was further stipulated that if within a period of six years from the date of the settlement the defendant father transfers and registers into the name of his daughter (plaintiff) the said immovable property subject matter of the action, free from any encumbrance, then the judgment debt (*supra*) would be deemed as fully satisfied.

Upon those facts, it was argued by counsel for the respondents, *inter alia* :-

(a) that although admittedly the rents were collected by the daughter of the applicant, still in view of the result of the consent judgment of the District Court of Limassol (*supra*), such income was an application of the income by the owner-applicant, and not an alienation of such income;

(b) that even if the applicant was bound by law to do so, then again the rent should have been charged to his chargeable income, unless there was an effective disposition of the property yielding the said income;

(c) that in the light of all the circumstanecs the applicant was applying the said income from the house in question to his daughter but he was not alienating it.

Dismissing the recourse, the learned Judge of the Supreme Court :-

Held, (1). The way a person chooses to spend or apply his income is not material for income tax purposes, even if such expenditure is necessitated by law

or contract (as it has been alleged in this case). (See *Wigram Family Settled Estates L'd.* v. *Inland Revenue Commissioners* [1957] 1 All E.R. 311, at p. 320, per Romer L.J.); and no deduction is allowable either for the purpose of assessment or for the purpose of computing the total income in respect of any such application of income. The distinction, of course, between the application of income and the alienation of income has been the cause of much trouble in each case. The mere application of income in pursuance of an obligation under a contract, other than a covenant to pay an annual sum or under a law, does not affect the ownership of that income or entitle the income so applied to be deducted from the total income. (Cf. *Perkins' Executors* v. *The Commissioners of Inland Revenue*, 13 Tax Cases 851).

(2)(a) Regarding the nature of the undertaking of the applicant towards his daughter in allowing her to collect the rents of the house in question, I must confess that I have some difficulty in deciding what was actually the nature of such an agreement or arrangement. It is clear, however, that those rents could not have been collected by the daughter under the contract of dowry (*supra*) as claimed by the applicant, once under the compromise reached in the aforesaid action in the District Court of Limassol (*supra*) nothing was said about the rents.

(b) In order that the alienation of income is to be effective, it must operate to divert immediately the beneficial interest of the alienation and vest it in the alienee. Three is no doubt that under the general law, absence of a complete transfer of property by the owner, there must be a valid trust created by him in favour of the beneficiary; and a trust cannot be created by an incomplete transfer, but can be created by complete and unequivocal declaration of trust (see *Allan* v. *Inland Revenue Commissioners*, 9 Tax Cases, 234, at pp. 256 - 257, per Lord Cave L.C.).

(3) In the light of the authoritative judicial pronouncements and in all the circumstances of the case, I find myself in agreement with counsel for the respondent Commissioner of Income Tax that the undertaking or arrangement made by the applicant for the benefit of his daughter—for wha'ever purpose he had in mind—does not amount to a binding or effective disposition or alienation of income for the purposes of the Income Tax Laws, but only a transfer or application of the income derived of the rents of the house in question to his daughter; and such income formed part of the income of the applicant father for income tax purposes. I would, therefore, affirm the decision of the Commissioner and dismiss the contention of counsel for the applicant that the real meaning of the arrangement or transaction made by the applicant was that both the property yielding the income and the income itself were effectively alienated in favour of his daughter.

Held : *As to the point raised by counsel for the applicant to the effect that the* sub judice *decision was not duly reasoned :*

(A) I ought to reiterate what has been said in a number of cases *i.e.* that the whole object of the rule requiring reasons to be given for administrative decisions, is to enable the persons concerned, as well as the Court, to ascertain in each particular case on review whether or not the decision is well founded in fact and in law (see *HadjiSavva* v. *The Republic* (1972) 3 C.L.R. 174).

(B) Having carefully considered the argument and after perusing the relevant correspondence, I find myself unable to agree with the submission of counsel for the applicant, and I would, therefore, dismiss this contention also. (Cf. *Papazachariou* v. *The Republic* (1972) 3 C.L.R. 486, at p. 504).

Recourse dismissed.
No order as to costs.

Cases referred to :

In the matter of s. 39(9) of the Income Tax Law, Cap.

297 and In the matter of Charis Georghallides, 23 C.L.R. 249, at pp. 257, 258;

HadjiYiannis v. *The Republic* (1966) 3 C.L.R. 338;

In the matter of Section 39(9) of the Income Tax Law, Cap. 297 and In the matter of Costas Christodoulou, 20 C.L.R. 119;

Wigram Family Settled Estates, Ltd. v. *Inland Revenue Commissioners* [1957] 1 All E.R. 311, at p. 320;

Perkins' Executors v. *The Commissioners of Inland Revenue*, 13 Tax Cases 851;

Inland Revenue Commissioners v. *Mallaby-Deeley* [1938] 3 All E.R. 463, at p. 468;

Tennant v. *Smith* [1892] A.C. 150;

Inland Revenue Commissioners v. *Miller* [1930] A.C. 222;

(Note : Overruling : *M'Dougall* v. *Sutherland* [1894] 3 Tax Cases 261; and criticising : *Corke* v. *Fry* [1895] 3 Tax Cases 335);

Lady Miller v. *The Commissioners of Inland Revenue*, 15 Tax Cases 25, at p. 54;

Inland Revenue Commissioners v. *Allan*, 9 Tax Cases 234, at pp. 256 - 257;

Commissioners of Inland Revenue v. *Parsons*, 13 Tax Cases 700, at pp. 707 - 708;

HadjiSavva v. *The Republic* (1972) 3 C.L.R. 174;

Papazachariou v. *The Republic* (1972) 3 C.L.R. 486, at p. 504.

Recourse.

Recourse against the validity of an income tax assessment raised upon applicant for the years 1967, 1968, 1969 and 1970.

L. Papaphilippou, for the applicant.

A. Evangelou, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by :-

HADJIANASTASSIOU, J. : In this case the sole question between the parties to this recourse is whether or not the Commissioner of Income Tax was entitled to raise the assessments of income tax in respect of the applicant for the years 1967, 1968, 1969 and 1970, including the income received from a house situated at Ayia Phylaxis within Limassol town.

The facts are these : The applicant is an architect by profession and his income includes the amounts received from the sale of land as well as the income from the rents of the house in question. On January 6, 1963, he engaged his daughter Rina Plutarchou Kittidou to Mr. Kostas Seryides of Derinia near Famagusta town, and had agreed by a contract of dowry to give as a gift to his daughter a building site at Ayia Phylaxis, as well as to errect a house for the couple to live in. On December 29, 1963, the couple got married, and when the marital house was completed in 1964, they moved in. When the husband, who is working for CYTA as an engineer was trasferred to Famagusta, sometime after April, 1966, the house was rented, and the rents were collected by the daughter of the applicant. In fact, it has already been conceded for the purposes of this recourse, that the amounts of rents have been collected only by the daughter of the applicant and not by himself.

Unfortunately, for reasons of financial difficulties, which have been stated by the applicant himself in evidence, he was unable to transfer and register the house in question into the name of his daughter because both the building site and the building were mortgaged. Apparently, his daughter not appreciating his difficulties, instituted proceedings against him on October 22, 1966, in the District Court of Limassol in Case No. 2108/66, in which she was demanding, *inter alia*, specific performance of the contract of dowry and/or damages for the breach of the said contract. In accordane with the settlement reached, a judgment by consent was issued against the defendant 1 (applicant) to pay to the plaintiff (the daughter) an amount of £10,000 with 4% interest on that amount as from January 17, 1967 till final payment. The settlement further reads that execution of that judg-

ment debt would be postponed if the defendant pays £1,000 per year till final payment of the mortgage debt relating to the said property. The payments would begin as from February, 1968, and after that they would continue on each consecutive February of each ensuing year. Furthermore, the Court ordered that if within a period of 6 years from the date of the settlement the defendant transfers into the name of the plaintiff the property, subject matter of the action, free from any debts, then the judgment debt would be considered as fully satisfied.

On December 18, 1970, Mr. Zevlaris on behalf of the Commissioner, was writing to the accountants of the applicant that for the years 1967 - 1970 inclusive, in calculating the chargeable income of the applicant, he has included the income of the rents from the house at Ayia Phylaxis, calculated at £66 per month. On January 7, 1971, counsel on behalf of the applicant, in accordance with s. 20(1) of the Taxes (Quantifying and Recovery) Law 1963 (as amended), disputed the assessments for the years 1965, 1966, 1967, 1968, 1969 and 1970, and by a notice of objection in writing he applied to the Commissioner to review and to revise the assessments made upon him, giving the ground that the amounts of rents were collected by his daughter and that it was not part of his chargeable income under the law. Applicant further requested an appointment to discuss the whole matter, but before such appointment was granted, the Commissioner turned down his objection and on February 12, 1971, had this to say :-

«Ἐπιθυμῶ νὰ ἀναφερθῶ εἰς τὴν ὑπὸ ἡμερομηνίαν 7ης Ἰανουαρίου, 1971, ἐπιστολήν τοῦ δικηγόρου σας καὶ νὰ σᾶς πληροφορήσω τὰ ἑξῆς :-

(α) Εἰς τὴν παράγραφον (2) τῆς πρὸς τοὺς ἐλεγκτάς σας ἐπιστολῆς μου τῆς 18ης Δεκεμβρίου, 1970 δίδεται ὁ λόγος διὰ τὸν ὁποῖον τὸ εἰσόδημα ἐκ τῆς οἰκίας τῆς ὁδοῦ Ἁγίας Φυλάξεως ἐν Λεμεσῷ θεωρεῖται ἰδικόν σας. Αὕτη ἔχει ὡς ἀκολούθως :-

'Ἐπειδὴ ἡ ἐνοικιαζομένη οἰκία εἶναι ἐγγεγραμμένη ἐπ' ὀνόματι τοῦ πελάτου σας, οὗτος θεωρεῖται ὁ νόμιμος δικαιοῦχος καὶ φορολογεῖται ἐπὶ τοῦ προκύπτοντος εἰσοδήματος. Διὰ τὴν περίοδον ἀπὸ 1ης Ἀπριλίου, 1964, ἄχρι 31ης Μαρτίου, 1966, ὅτε

ἐχρησιμοποιεῖτο ὑπὸ τοῦ γαμβροῦ του ὡς ἰδιοκατοικία, ὡς εἰσόδημα τοῦ πελάτου σας θὰ λογισθῆ τὸ 4% τῆς ἐκτιμημένης ἀξίας τῆς ἐν λόγῳ οἰκίας'.

(β) Κατόπιν τούτου ἀπεφάσισα ὅπως μειώσω τὴν φορολογίαν σας διὰ τὸ φορολογικὸν ἔτος 1967 εἰς Λ.1919. Αἱ φορολογίαι τῶν ὑπολοίπων ἐτῶν εἶναι κανονικαὶ καὶ ὡς ἐκ τούτου ἀδυνατῶ νὰ προβῶ εἰς οἱανδήποτε ἐλάττωσιν».

("I wish to refer to your counsel's letter dated the 7th January, 1971 and to inform you as follows :-

(a) In paragraph 2 of my letter to your auditors dated 18th December, 1970, there is given the reason why the income from the house at Ayia Phylaxis road at Limassol is considered as yours. It runs as follows :-

'As the rented house is registered in the name of your client, he is deemed the lawful beneficiary and he is taxed on the income accruing. For the period from April 1, 1964 to March 31, 1966, when it was used by his son-in-law as residence, as income of your client there will be considered the 4% of the assessed value of the said house'.

(b) Following this I have decided to reduce your assessment for the year of assessment 1967 to £1,919. The assessments for the remaining years are in order and I am thus unable to make any reduction").

On February 24, 1971, the applicant, feeling aggrieved, filed the present recourse and claimed the following relief :-

(a) Declaration that the act and/or decision of the Commissioner to add on to his own income rents derived from the house in Limassol which rents have been collected by his daughter in accordance with the contract of dowry and/or the decision of the District Court of Limassol was null and void and of no effect whatsoever; and

(b) a declaration of the Court that all the rents and/or income which was derived from the said house ought not to have been included in the chargeable income of the applicant.

On March 18, 1971, notice of opposition was given on behalf of the respondent that the decision was taken lawfully in accordance with the laws in existence at the time, after examining all facts and circumstances relating to this case.

On December 23, 1971, Mr. Hjimarkou on behalf of the applicant in his opening address has contended :-

(a) That the imposition of the tax relating to the income derived from the rents of the house at Ayia Phylaxis was contrary to Article 24.4 of the Constitution because those rents were never received or were part of the applicant's income once his daughter was receiving same;

(b) that the Commissioner misdirected himself as to the legal position in adding those rents on to the income of the applicant, simply because applicant remained the legal owner of the property; and

(c) that the decision of the Commissioner was reached under a misconception of the real facts and was not duly reasoned. Counsel relies on Kyriakopoullos on the Greek Administrative Law, 4th edn. Vol. 2 at p. 384. Counsel further stated that he abandoned ground 3 of the points of law raised in the application.

Counsel on behalf of the respondents contended —

(a) that the Commissioner did not misdirect himself as to the question of the facts because those facts were placed before him earlier by an independent auditor who was appointed by the applicant himself;

(b) that although admittedly the rents were collected by the daughter of the applicant, in view of the result of the judgment of the trial Court in Limassol, such income was an application of the income by the owner-applicant, and not an alienation of such income;

(c) that even if applicant was bound by law to do so, then again the income from the rents would have been charged to his chargeable income, unless there was an effective disposition of the property yielding the said income; and

(d) that in the light of all the circumstances, the applicant was applying the said income from the house in

question to his daughter and he was not alienating it.

Counsel relied on *In the Matter of s. 39(9) of the Income Tax Law Cap. 297 and In the Matter of Charis Georghallides,* 23 C.L.R. 249. Also, on the case of *HadjiYiannis* v. *The Republic* (1966) 3 C.L.R. 338.

Because Mr. Hjimarkou requested an adjournment in order to enable him to consider the authorities cited, the case was fixed for further hearing to a convenient date to both counsel on February 11, 1972. On that date, Mr. Papaphilippou in reply, argued that no presumption in law existed because the registered owner of an immovable property is necessarily the person entitled to profits derived from its use, once there were facts which show that somebody else is entitled to such income; and once that person was in possession of that property, alienation actually and effectively took place. Counsel further argued that the Court should distinguish the case from the facts of *Georghallides* case (*supra*). He contended that in this case there was both an alienation of the property and the income derived from such property, and, therefore, the applicant cannot in law be charged with tax based on the rents derived from the house in question.

I think I ought to reiterate what has been said in a number of cases, that in a disputed case, the onus to satisfy the Court as to the liability to pay tax is on the Commissioner, whereas the onus to establish a claim for deduction or allowance is on the tax payer. With this principle in mind, I think I should have added that the assessments for the year of assessment 1967, have, as stated in the notice of opposition, been made by virtue of s. 5(1) (the Charging Section of the Income Tax (Foreign Persons) Law, 58/61 (as amended by Laws 4/63 and 21/66)) and by virtue of s. 13(3) and s. 23 of the Taxes (Quantifying and Recovery) Law, 1963 (Law No. 53/63). The assessments for the years of assessment 1968 - 69 have been made under the provisions of s 5(1) of the Income Tax Laws 1961 to 1969 and of ss. 13(2)(b) and 23(1) of the Taxes (Quantifying and Recovery) Law, 1963 (Law 53/63) (as amended by Law 61/69). The assessment for the year of assessment 1970 has been made under the provisions of s. 5(1) of the Income Tax Laws 1961 - 69 and s. 13(2)(b) of the Taxes

(Quantifying and Recovery) Laws, 1963 (Law 53/63) as amended by Law 61/69.

All the said assessments, because objections were made, have been finally decided in accordance with the provisions of s. 20(5) of the Taxes (Quantifying and Recovery) Law 1963 (Law 53/63) as amended by Law 61/69.

Reverting now to the argument of counsel for the respondents that in the case in hand, what the applicant was doing with the rents of the house in question was applying the said income and not alienating it to his daughter, I would state that the way a person chooses to spend or apply his income is not material for income tax purposes, even if such expenditure is necessitated by law or by a contract (as has been alleged in this case). (See *Wigram Family Settled Estates Ltd.* v. *Inland Revenue Commissioners* [1957] 1 All E.R. 311, at p. 320, per Romer, L.J.); and no deduction is allowable either for the purpose of assessment or for the purpose of computing total income from all sources in respect of any such application of income. The distinction, of course, between the application of income and the alienation of income is important, and has been the cause of much trouble in each case. The mere application of income in pursuance of an obligation under a contract, other than a covenant to pay an annual sum or under a law, does not affect the ownership of that income or entitle the income so applied to be deducted from the total income. I think in order to show how difficult the problem is, I can do no better than quote from the case of *Perkins' Executors* v. *The Commissioners of Inland Revenue*, 13 T.C. 851. Rowlatt, J., dealing with the distinction between an application and alienation of income had this to say :-

> "It seems to me that the question—I think the Solicitor-General agreed with me—as a question can be stated very clearly. If a person has alienated his income so that it is no longer his income he is not supertaxed upon it, but if he merely applies the income so that it passes through him and goes on to an ulterior purpose, even although he may be obliged to do so, still that remains his income. I do not think there is any difficulty about stating that that is the question. It is the particular case

that causes trouble every time, and I am bound to say it does occur to me that there may be cases where the line is very hard to draw between what is an alienation and what is a binding application. From that point of view I suppose it is very important to look and see what the purpose of the application is, whether it is to pay a man's own debt or for some other purpose, but I suppose logically the purpose of an alienation, if it is an alienation, does not matter, and the purpose of an application, if it really is an application, does not matter either. However, that is how it stands."

The principle laid down in *Perkins* case was adopted and followed by the former Supreme Court of Cyprus in the *Charis Georghallides* case, 23 C.L.R. 249. Regarding the point raised as to whether the transaction in that case amounted under the Income Tax Law, Cap. 297 (repealed) to an effective disposition or alienation or absolute assignment of income or merely to a charge or application of income, Zekia, J. said at p. 257 :-

"From the terms of the contract it is apparent that the title of the premises as well as the right to lease premises and terminate a lease, fix rents etc. is within the exclusive right and absolute discretion of the appellant, the son. He is the registered owner of the premises, he is the landlord and he has got the right solely to lease the premises in question. The tenants, the rent payers, are exclusively his tenants and answerable only to him for paying rents.

The transaction in question amounts to nothing else than to an undertaking by the son to pay to his mother the portion of rent collected by the former according to the terms of the contract. The creation of a charge on this particular income of the appellant has been intended. There is no privity of contract between the tenants and the mother. There is no absolute assignment of future rents or part thereof. Does this agreement have the effect of an effective disposition of part of the income of the appellant so as to entitle him not to include this sum in his chargeable income or, in the alter-

native, does it entitle him to a claim of a deduction for an equivalent amount from his income?"

Later on, after touching on s. 50(3) of the Income Tax Law, he had this to say at p. 258 :-

"We have to fall back to the general Law and find out whether the purported transfer of income is effective enough to pass property in the income to the disponee, *i.e.* covenantee or trustee. In other words, there must be an alienation of income so that the seller or covenantor might say that a particular income is no more his. A disposition short of an alienation in our view is not sufficient for shifting the liability to pay tax on somebody else. A disposition for instance which only creates a charge on a particular income or in effect does not go beyond a contractual obligation on the part of a promissor to hand over part of the income he collects from a definite source could not be considered an effective disposition or alienation of income for the purpose of the Income Tax Law. This view derives some support by the following provisions akin to section 50(3) of Income Tax Law (Sections 392, 393, 395 and 397 of the Income Tax Act, 1952). They relate to dispositions made by the disponor, the owner of income, in favour of his minor children and disposition in favour of persons generally, for periods which cannot exceed six years."

Although there are no special provisions for modes of transfer or disposition of income for the purpose of the Income Tax Law, yet in the case of *In the Matter of Section 39(9) of the Income Tax Law, Cap. 297,* and *In the Matter of Costas Christodoulou* of Nicosia, 20 C.L.R. 119, it was held that the word "disposition" in section 50(3) includes not only a disposition of income but of property yielding income. The headnote reads as follows :-

"The applicant in 1948 transferred immovable property voluntarily to a grandchild. In 1950 (the year prior to the year of assessment) the transferee was under 18 and the property yielded a rent. The Income Tax Commissioner treated this rent as part of the income of the applicant relying on section

50(3) of the Income Tax Law (Cap. 297)."

The applicant objected to this assessment and the learned trial judge in the Court below upheld the assessment and held that the rent derived from the transferred land must be treated as the income of the applicant.

Hallinan, C.J. dealing with the question of the problem of voluntary disposition, said at p. 120 :-

> "It has been submitted on behalf of the applicant that the word 'disposition' in sub-section (3) only covers dispositions of income, not of property yielding income. In support of this submission counsel referred us to section 393 of the English Income Tax Act, 1952, where this expression is used, and he has also referred us to the definition of 'disposition' contained in section 396 which reads: 'disposition' includes any trust, covenant, agreement or arrangement. He has compared this definition with the definition of 'settlement' in section 403 of the English Act which is expressed to include the transfer of assets. As against this argument, however, the word 'disposition' in its ordinary meaning would include the transfer of property yielding income as well as income, whereas the word 'settlement' in its ordinary meaning is a special mode of transferring assets and it required special statutory provision to enlarge it so as to include any transfer of assets. The word 'disposition' is defined in section 50(5) of our Law to include, *inter alia*, a grant; and this certainly suggests the transfer of assets and not merely the transfer of income. The word 'disposition' is used in sub-section (2) of the same section and there its application obviously cannot be restricted to disposition of income. We see no sufficient reason why the word 'disposition' in sub-section (2) should have a different meaning to the same word as used in sub-section (3).
>
> It has been argued for the applicant that if the word 'disposition' in sub-section (3) includes assets then cases of double taxation would arise which were never intended by the legislative authority. That is to say, if assets are transferred to a minor for valuable consideration and the vendor invests the

proceeds and derives income therefrom, he will be taxed on both the income from the property transferred and from the property invested. The short answer to this argument is that (even if the sub-section is interpreted to apply to dispositions for value) the possibility of double taxation will arise whether the transfer for value was assets or income from assets. Having regard to the English statutory provisions from which sub-section (3) is derived, it is obvious that the legislative authority intended this sub-section to apply only to voluntary dispositions; and in fact we are assured by the Income Tax Commissioner that it is intrepreted in this sense by his department. It would appear advisable, however, at a convenient time to amend this sub-section so as to make it clear that it applies only to voluntary dispositions."

It is to be observed that in *Christodoulou* case the Court did not deal with the mode of transfer of income independently of the property yielding the income which might be held acceptable for the purposes of the Income Tax Law.

There is no doubt that the purpose of both the old section 50 and the new section 28 of the Taxes (Quantifying and Recovery) Law, 1963, is intended to give power to the Commissioner to disregard certain transactions which reduce or would reduce the amount of tax payable, thus evading the payment of tax. In fairness of course to the applicant, I must add that no suggestion was made on behalf of the Commissioner that in the present case the applicant tried to evade paying the tax. I propose reading sub-section 2 of s. 28 :-

"Where by virtue or in consequence of any disposition made during the life of the disponer, other than a disposition for valuable and sufficient consideration, any object of the tax is disposable to or for the benefit of any person in any year immediately preceding the year of assessment, such object of the tax shall, if at the commencement of that year the person was under the age of eighteen years and unmarried, be treated for the purpose of this Law as an object of the tax belonging to the disponer."

Then I turn to sub-section 3 which is in these terms :-

> "... 'disposition' includes any trust, grant, covenant, agreement, arrangement or transfer of assets."

This sub-section 3, but for the word "grant" is identical to s. 396 of the Income Tax Act, 1952.

Regarding the question as to whether a disposition is made for valuable and sufficient consideration, Lawrence, J., in *Inland Revenue Commissioners* v. *Mallaby-Deeley* [1938] 3 All E.R. 463, said at p. 468 :-

> "Difficulty, no doubt, does arise from the contention of the appellants that the disposition is one made for valuable and sufficient consideration, because, whereas they argue that, on the question as to whether it is a disposition made for valuable and sufficient consideration or not, they seek to link it up with the undertaking, and to say that the discharge of the undertaking and the different obligations undertaken by the deed of 1930 constitute valuable and sufficient consideration. In my judgment, it was open to the commissioners when considering all the facts of this transaction, and when considering that it arose out of an undertaking which I hold was a voluntary undertaking on the part of the appellant, to find, as they have found, that the deed which took the place of this voluntary undertaking was not made for valuable and sufficient consideration."

In my judgment I do not think that anyone could argue, or indeed argued here that the disposition made by the father was effected or intended to be made for valuable and sufficient consideration in these circumstances.

Regarding the nature of the undertaking of the applicant towards his daughter in allowing her to collect the rents from the house in question, I must confess, that I had some difficulty in deciding what was actually the nature of such an agreement or arrangement. It is clear, in my view, however, that those rents could not have been paid under the contract of dowry as claimed in the pleadings of the applicant once under the settlement reached in Action No. 2108/66 in the District Court of Limassol nothing was said about the rents. Looking at

the evidence of the applicant, in order to see what the purpose of the application of the income is, I find nothing to justify me taking the view that the applicant intended to pay towards this judgment debt. There was nothing which prevented the applicant from including in the compromise reached in Court, to allow his daughter to collect the rents, but as I said earlier, nothing was done, and the applicant in giving evidence before me does not even try to explain as to the arrangement made regarding the rents. He simply said in evidence that the tenant was found by his daughter and that he was not aware for what amount the house was rented. Then he explained that from the date his daughter occupied the said house, he fulfilled his contract except for the obligation that he had to pay an amount which was due and payable under the mortgage. Thus, it appears that what the applicant meant was that because his daughter was occupying the said house and that she was entitled to collect the rents, the amount of rents became the income of his daughter.

In *Tennant* v. *Smith* [1892] A.C. 150 H.L. the "right to let" test formulated is not whether the occupier can let the premises and thus turn the value of his occupation into money, but whether he is the occupier, *i.e.* the person having the use of the lands and tenements. In *Inland Revenue Commissioners* v. *Miller* [1930] A.C. 222 H.L., the House of Lords explained that the "right to let" test applied in *Tennant* (*supra*) was not the rigid exclusive test in determining whether the annual value of premises occupied rent free was the income of the occupier. The House overruled *M' Dougall* v. *Sutherland* [1894] 3 T.C. 261 (in which case the Court of Session decided that the annual value of a manse occupied by a Free Church Minister, was not the minister's income), and also intimated that *Corke* v. Fry [1895] 3 T.C. 335, (Minister of Established Church of Scotland who has power to let manse; annual value held to be his income), was correct in result, but that so far as the *ratio decidendi* depend on the "right to let" test, it was erroneous. See also *Lady Miller* v. *The Commissioners of Inland Revenue*, 15 T.C. 25 at p. 54.

Let me now see whether the applicant purported to alienate his income derived from the rents of the house

in question in favour of his daughter. I think that in order that the alienation of income is to be effective, it must operate to divest immediately the beneficial interest of the alienation and vest it in the alienee. There is no doubt that under the general law, absence of a complete transfer of property by the owner, there must be a valid trust created by him in favour of the beneficiary. As it will appear in a moment, a trust cannot be created by an incomplete transfer, but can be created by complete and unequivocal declaration of trust. In *Inland Revenue Commissioners* v. *Allan*, 9 T.C. 234, the headnote reads as follows :-

> "In August, 1916, the respondent decided to make provision for his wife and daughter, and early in 1917 a draft deed of settlement was submitted to him by which the trust funds were to be held by him and his wife as trustees as to one-half for the benefit of the wife for her life and after her death as the other half which was to be accumulated for the benefit of the daughter on attaining 25. The trusts were to take effect as from the 1st January, 1917, as regards property vested in the trustees before that date, and as from the date of vesting as regards all other trust property. Owing to unavoidable delays the deed was not actually completed until the 29th April, 1919."

Cave, L.C. said at pp. 256 - 257 :-

> "But it is clearly not sufficient to enable the appellant to succeed in this appeal, for such a declaration left it open to him to frame and mould the trust at some future time as he might then think fit; it was not an immediate and complete declaration of trust, but merely a declaration of his intention to settle the shares and of his intention meanwhile to keep them in medio, so that they might be ready when the trust was effectively declared."

Later on, the Lord Chancellor had this to say :-

> "At all events, I think that is the real meaning of the transaction; and, if so, there was plainly no definite and established trust in February, 1917, or at any later time before the deed was executed.

During that time the settlor was at liberty either to alter the draft deed or to change his mind and to make no settlement at all, and neither his wife nor his daughter, nor anyone on their behalf, could, I think, have enforced the alleged trust."

In *Inland Revenue Commissioners* v. *Parsons*, 13 T.C. 700 (a case of ineffective oral declaration of trust), the headnote reads as follows :-

"With a view to affording certain employees in a company a closer personal interest in the company, the respondent, who was the controlling shareholder, instituted a scheme under which he set aside a definite number of his shares to be transferred to each employee when the dividends thereon, together with any sums that might be paid by the employee, amounted to the par value of the shares. The dividends and any payments by the employees were credited to the shares in a separate account kept by the company for each employee, and if the employee died or left the company's employment before the shares were fully paid for, the full amount credited to his account was to be paid to him in cash. Until actual transfer to the employee, the shares remained in the ownership of the respondent who received the dividends arising on the shares.

The respondent was assessed to supertax in respect of the dividends received on the shares set aside under this scheme, but the Special Commissioners, on appeal, decided that these dividends were subject to a binding trust in favour of the employees, and did not form part of his income for supertax purposes."

Rowlatt, J. had this to say at pp. 707 - 708 :-

"Whether you call that trust, or whether you call it contract, I do not think matters. In the meanwhile, if the employee leaves or dies, the money at the credit of the account will be paid over in its place. I do not think that affects it in the least; that is all part of the scheme for giving a greater interest to the employees. I do not think it affects it in the least, but I cannot bring myself to see that these dividends as they accrued half-yearly are other than

the dividends of Sir Charles Parsons; he may have obligations in the future in respect of them, but they are the dividends of Sir Charles Parsons and of nobody else. I think if the employees were asked to pay the tax in respect of having received these dividends they would feel very much astonished. I think this appeal should be allowed with costs."

The decision of Rowlatt, J. was affirmed on appeal.

Directing myself with all these authoritative judicial pronouncements and in all the circumstances of the case, I find myself in agreement with counsel for the respondent that the undertaking or arrangement made by the applicant—for whatever purpose he had in mind—was not subject to a binding or effective disposition or alienation of income for the purpose of the Income Tax Laws, but only a transfer or application of the income derived from the rents of the house in question to his daughter, and such income formed part of the income of the applicant for income tax purposes. I would, therefore, affirm the decision of the Commissioner and dismiss the contention of counsel for the applicant that the real meaning of the arrangement or transaction made by the applicant was that both the property yielding the income and the income were effectively alienated in favour of his daughter.

Regarding the further contention of counsel for the applicant that the decision of the respondent was not duly reasoned, I believe I ought to reiterate what has been said in a number of cases before, that the whole object of the rule requiring reasons to be given for administrative decisions, is to enable the person concerned, as well as the Court, on review, to ascertain in each particular case whether the decision is well founded in fact and in accordance with the law (*HadjiSavva* v. *The Republic* (1972) 3 C.L.R. 174).

Having considered carefully the argument of counsel and after perusing the relevant correspondence between the applicant and the Commissioner of Income Tax, I find myself unable to agree with the submission of counsel, and I would, therefore, dismiss this contention also. Cf. *Papazachariou* v. *The Republic (Educational Service Committee)* (1972) 3 C.L.R. 486 at p. 504.

For the reasons I have endeavoured to explain, I have reached the view that the applicant has failed to establish a claim for exemption or deduction allowance regarding the income derived from the house in question, and, in my judgment I find that the relief claimed under A & B fails.

Court: Do you claim costs, Mr. Evangelou, in this case?

Mr. Evangelou: In view of the circumstances of this case, I do not claim costs Your Honour.

Court: The order of the Court is that the recourse fails and is dismissed with no order as to costs.

Application dismissed; no order as to costs.