[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU-A. LOIZOU, MALACHTOS, JJ.]

1973
Sept. 28

MICHALAKIS PAPANEOPHYTOU (No. 2),

*Appellant,*

MICHALAKIS PAPANEOPHYTOU (No. 2)

v.

*and*

THE REPUBLIC OF CYPRUS, THROUGH THE DIRECTOR OF THE DEPARTMENT OF INLAND REVENUE,

*Respondent.*

REPUBLIC (DIRECTOR OF THE DEPARTMENT OF INLAND REVENUE)

(Revisional Jurisdiction Appeal No. 113).

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*Income Tax—Exemption—Pension—Received under section 4(1) of the Compensation (Entitled Officers) Law 1962 (Law 52/62) as amended by Law 68/52—Is exempted from income tax in view of section 8 of said Law—No matter whether the payment of such pension refers to a period whether before or after the enactment of such Law (which under section 9 thereof has to be applied retrospectively with effect as from Independence Day* viz. *August 16, 1960).*

*Pension—Exemption from income tax—See* supra.

*Compensation (Entitled Officers) Law 1962 (as amended)—Sections 4(1), 8 and 9.*

*Statutes—Construction—Taxation enactments—Principles of construction applicable—Construction of section 8 of the Compensation (Entitled Officers) Law, 1962 (as amended)* (supra)—*See also* supra.

The sole issue in this appeal is whether the respondent was right in treating as liable to income tax in relation to the years of assessment 1962 to 1966, an amount of £493 which was paid yearly to the appellant by way of pension under section 4(1) of the Compensation (Entitled Officers) Law, 1962 (Law 52/62) as amended by the Compensation (Entitled Officers) (Amendment) Law, 1962 (Law 68/62).

The correct answer to this question depends primarily on the construction of section 8 of the aforementioned legislation, which reads as follows:

"All payments *made* under the provisions of this Law shall be exempt from income tax imposed by the Income Tax Law or any other Law in force at any time and relating to the imposition of income tax". (The original Greek text of the section is set out *post* in the Judgment).

The learned trial Judge in dismissing the appellant's claim in this respect, relied in particular on the word "made" («γενόμεναι») in section 8 (*supra*) and in section 9 of the same Law, by which such law—which was enacted on July 7, 1962—was given effect retrospectively as from Independence Day (August 16, 1960); the Judge took the view that section 8 has to be construed as not being applicable to payments of pension made after the enactment of the Law, and as referring only to payments of pension already made before its enactment in 1962.

Allowing the appeal and annulling the *sub judice* decision of the respondent, the Supeme Court :-

Held, (1) In our opinion when section 8 is construed as a whole—and it should be noted that it exempts payments made under Law 52/62 (*supra*) from income tax imposed by legislation in force at any time—the conclusion to be reached is that it is intended to apply to all payments made under the said Law 52/62, whether before or after its enactment; therefore, the issue of the interpretation of section 8 ought to be decided in favour of the appellant's claim.

(2) In our opinion section 8 covers all payments of pension made under the provisions of the said Law 52/62 including the payments of pension which, once have become payable under the said Law, are paid on the basis of the Pensions Law, Cap. 311.

(3) *In the light* of the judicial pronouncements regarding the construction of enactments relating to taxation (see *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* [1921] 1 K.B. 64, at p. 71; *Inland Revenue Commissioners* v. *Herdman* [1969] 1 All E.R. 495, at p. 511 H.L.; Cf. *Capper and Another* v. *Baldwin* [1965] 2 Q.B.

53, at p. 61), we feel bound to decide that the pension received, by virtue of the provisions of the said Law 52/62 by the appellant is exempt from income tax because of the plain words of section 8 (*supra*) and, therefore, this appeal has to be allowed and the *sub judice* decision of the respondent has to be and is annulled.

*Appeal allowed.*
*No order as to costs.*

Cases referred to:

*Cape Brandy Syndicate* v. *Inland Revenue Commissioners* [1921] 1 K.B. 64, at p. 71;

*Inland Revenue Commissioners* v. *Herdman* [1969] 1 All E.R. 495, at p. 511, H.L.;

*Capper and Another* v. *Baldwin* [1965] 2 Q.B. 53, at p. 61.

**Appeal.**

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 11th April, 1973 (Revisional Jurisdiction Case No. 393/70) dismissing appellant's recourse against the validity of an income tax assessment raised upon him in respect of sums received by him from the Republic as reduced pension for the years 1963 - 1966.

*L. Papaphilippou*, for the appellant.

*A. Evangelou*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P.: This is an appeal from the judgment * of a judge of this Court by means of which a recourse (No. 393/70) filed by the appellant, under Article 146 of the Constitution, was dismissed.

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* Reported in this Part at p. 191 *ante*.

The recourse was made against the decision of the respondent to treat as taxable, in relation to the years of assessment 1962 to 1966, an amount of £493.770 mils which was paid yearly by way of pension to the appellant under section 4(1) of the Compensation (Entitled Officers) Law, 1962 (52/62), as amended by the Compensation (Entitled Officers) (Amendment) Law, 1962 (68/62).

The appellant had held up to the 16th August, 1960, a permanent pensionable post in the service of the Government of the till then British Colony of Cyprus; as from that date, by operation of the Constitution of the Republic of Cyprus, his post came under the Greek Communal Chamber and, as a result, the appellant became entitled "to just compensation or pension on abolition of office terms", under Article 192.3 of the Constitution; it is not in dispute that Law 52/62 was enacted for the purpose of the application of the said provision of the Constitution.

The outcome of these proceedings depends primarily on the construction of section 8 of the aforementioned legislation, which reads as follows:

«8. Ἅπασαι αἱ πληρωμαὶ αἱ γενόμεναι δυνάμει τῶν διατάξεων τοῦ παρόντος Νόμου ἀπαλλάττονται τοῦ φόρου Εἰσοδήματος τοῦ ἐπιβαλλομένου συμφώνως τῷ περὶ Φόρου Εἰσοδήματος Νόμῳ ἢ οἱῳδήποτε ἑτέρῳ, ἑκάστοτε ἐν ἰσχύϊ καὶ εἰς τὴν ἐπιβολὴν φόρου εἰσοδήματος ἀφορῶντι, νόμῳ».

("All payments made under the provisions of this Law shall be exempt from income tax imposed by the Income Tax Law or any other Law in force at any time and relating to the imposition of income tax").

As pensions are treated in law as being taxable income the appellant has based on section 8 of Law 52/62 his claim for exemption from income tax regarding the amount of his yearly pension under section 4(1) of such Law.

The learned trial judge, in dismissing the appellant's claim in this respect, relied in particular on the word «γενόμεναι» ("made") in section 8 and on section 9 of the same Law, by which such Law—which was enacted on the 7th July, 1962—was given effect retrospectively

as from the 16th August, 1960; the judge took the view that section 8 had to be construed as not being applicable to payments of pension made after the enactment of the Law, and as referring only to payments of pension already made before its enactment.

We do not, with respect, agree with this view; in our opinion when section 8 is construed as a whole—and it should be noted that it exempts payments made under Law 52/62 from income tax imposed by legislation in force *at any time*—the conclusion to be reached is that it is intended to apply to all payments made under Law 52/62, whether before or after its enactment; therefore, the issue of the interpretation of section 8 ought to be decided in favour of the appellant's claim.

Counsel for the respondent has contended, however, that as by virtue of the relevant provisions of Law 52/62 the appellant became entitled to an annual pension under the provisions of the Pensions Law, Cap. 311, such pension cannot be deemed to be an amount paid under the provisions of Law 52/62 and, so, it is not, in any event, exempted from taxation because of section 8 of such Law.

In our opinion section 8 is a provision which has to be applied according to its plain meaning, namely that it was intended by the Legislature that *all* payments made under the provisions of Law 52/62 should be exempt from income tax; and, in our view, there is included within the ambit of such payments the payment of a pension which, once it has become payable under Law 52/62, is paid on the basis of provisions in the Pensions Law, Cap. 311.

Counsel for the respondent has pointed out that if the pension paid to the appellant is treated, because of section 8, as exempt from income tax then this will lead to having a category of pensioners who, unlike all other pensioners, enjoy pensions free from income tax. In our view this consideration cannot prevent us from duly applying section 8.

The approach to the construction of an enactment relating to taxation has been described in *Cape Brandy*

*Syndicate* v. *Inland Revenue Commissioners* [1921] 1 K.B. 64, as follows by Rowlatt, J. (at p. 71):

> "... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used".

In *Inland Revenue Commissioners* v. *Herdman* [1969] 1 All E.R. 495, Lord Reid said the following (at p. 511) in relation to the correct interpretation of sub-section (1) of section 412 of the Income Tax Act 1952:

> "It was argued that 'rights' in s. 412(1) must be given a peculiar meaning so that, whenever the debtor company puts itself in a better position to meet its obligations, the creditor acquires some new or increased right against his debtor. No doubt an Act of Parliament could give the word such a meaning; Parliament's power is unlimited. But that is not done expressly and there is no clear indication of any such intention. The most that was said is that otherwise there is difficulty in reconciling sub-s. (1) with the terms of sub-s. (5). Even if that is so, it appears to me to fall far short of justifying a novel and artificial meaning being given to the plain words of sub-s. (1)".

Lastly, in *Capper and Another* v. *Baldwin* [1965] 2 Q.B. 53, in construing a provision in a statute—(this time not a taxing Act)—the following were stated (at p. 61) by Lord Parker, C.J.:-

> "Mr. Wrightson's argument comes down to this, that if he is wrong and you cannot exclude such a machine as this, it really is driving a coach and four through section 33 itself and what, he maintains, must have been the plain intention of Parliament, namely, an intention not to permit such a machine to be operated for private gain in a public-house.
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> I agree that it is very odd, but the intention of Parliament must be deduced from the language used, and it may well be that Parliament expected the

necessary limitation to be imposed by the permit which is a condition precedent to the operation of such a machine in such a place. But be that as it may, I am quite unable to construe the words in such a way as to exclude this machine."

In the light of all the foregoing we feel bound to decide that the pension received, by virtue of the provisions of Law 52/62, by the appellant is exempt from income tax because of the plain words of section 8 and, therefore, this appeal has to be allowed; as a result the *sub judice* decision of the respondent has to be declared to be null and void and of no effect whatsoever; but, in view of the novelty of the issue involved in this case, we have decided to make no order as to costs.

*Appeal allowed.*
*No order as to costs.*