[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EXPRESS FINANCE COMPANY LTD.,

Applicant,

and

THE DIRECTOR OF THE DEPARTMENT OF INLAND REVENUE,

Respondent.

(Case No. 125/72).

Income Tax—Reduced tax—Interest—Company—Financing hire-purchase agreements, money-lending, investing and trading in money company—Income derived from interest of bank deposits and mortgages—Though a trading income within paragraph (a) of section 5(1) of the Income Tax Laws 1961 - 1969 is not entitled to the benefits of reduced tax under the proviso to paragraph 2 of the Second Schedule to section 34 of the Income Tax Laws 1961 - 1969 (as set out in section 31 of Law 60 of 1969).

Words and Phrases—"Interest...." in the first proviso to paragraph 2 of the Second Schedule to section 34 of the Income Tax Laws 1961 - 1969, as set out in section 31 of Law 60/69.

Statutes—Construction—The words of a statute are normally to be construed in their ordinary meaning—Though due regard must be had to their subject matter and object and to the occasion on which and the circumstances with reference to which they are used—And they should be construed in the light of their context rather than in what may be either their strict etymological sense or their popular meaning apart from that context.

The facts and all relevant statutory provisions sufficiently appear in the judgment of the learned Judge of the Supreme Court who tried and dismissed this recourse under Article 146 of the Constitution filed by the applicant Company against the assessment raised by the Commissioner of Income

Tax on the Company for the year of assessment 1970.

Cases referred to:

Smiles (Surveyor of Taxes) v. *Australasian Mortgage and Agency Company (Limited)*, 2 Tax Cases 367;

Liverpool and London and Glove Insurance Company v. *Bennett, (Surveyor of Taxes)*, 6 *Tax Cases 327;*

Bennett v. *Ogston (Inspector of Taxes)*, 15 Tax Cases 374;

Vita - Ora Co. Ltd. v. *The Republic* (1972) 3 C.L.R. 566.

Recourse.

Recourse against the validity of an income tax assessment raised on applicant in respect of the year of assessment 1970.

Ph. Poetis, for the applicant.

A. Evangelou, for the respondent.

Cur. adv. vult.

The following judgment * was delivered by:-

A. LOIZOU, J.: This is a recourse against the assessment raised by the Commissioner of Income Tax on the applicant Company for the year of assessment 1970 (year of income 1969) under section 5(1)(a) and (d) of the Income Tax Laws 1961 - 1969 and sections 13(2)(a) and 23 of the Taxes (Quantifying and Recovery) Law, 53/63, as amended by Law 61/69.

An objection made on the aforesaid assessment was rejected, under section 20(5) of the Taxes (Quantifying and Recovery) Laws, hence the present recourse.

The Applicant Company is a finance corporation incorporated and registered in the Republic. The assessable income of the Company for the year in question, was £3,434. The Commissioner of Income Tax made, however, a distinction between income derived by the Applicant Company from carrying on the business of financing hire-purchase agreements, as trading income derived from the sources specified in paragraph (a) of section 5(1) of the Income Tax Laws and taxed it at the reduced rate of

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* For final judgment on appeal see p. 321 in this part *post.*

250 mils in the pound, and income from interest on mortgages and deposits of money with Banks which he claimed that they should be taxed at the full rate of 450 mils in the pound. The amounts involved are £666 interest on bank deposits and £341 interest from mortgages, a total of £1,007. On this amount, the tax payable is £176.225 mils, as it appears from the Schedules attached to the opposition.

Lending of money with or without securities or on mortgages, is one of its main objects and the income derived therefrom in the form of interest, is part of its receipts of trade. Likewise, interest from bank deposits in the circumstances of this case is incidental to its trading and it should be considered as forming an integral part of the business receipts of the Company, which has to deposit with the Bank, apparently money which it does not immediately require. In any event, such interest might also be considered as part of the money-lending business of the Company.

Having regard to its Memorandum of Association (*exhibit* 1) and the activities carried on by it, the only reasonable conclusion is that it carries on business of financing hire-purchase agreements and in general that of money lending, investing and trading in money.

In the present case, we are not concerned with the distinction made by the Commissioner of Income Tax, as it does not affect the outcome of this recourse regarding the sum of £1,007, the tax which is in issue in these proceedings.

The whole issue for determination, turns on the interpretation to be given to the proviso to paragraph 2 of the Second Schedule to section 34 of the Income Tax Laws, 1961 - 1969, as set out in section 31 of Law 60/69. It reads :-

> "2. Companies and all other bodies corporate or unincorporate shall pay tax at the rate of four hundred and twenty-five mils on every pound of chargeable income :
>
> Provided that in cases where the chargeable income of a company incorporated and registered in the Republic, which is derived from the sources

specified in paragraphs (a) and (g) of sub-section (1) of section 5 not including interest, dividends and rents —

(a) does not exceed the sum of £7,000, an amount of upto £5,000 of the said income, which is transferred to its reserve capital and is kept in the company and used for its purposes shall be taxed at the rate of 250 mils on every pound;

(b) exceeds the sum of £7,000, but does not exceed the sum of £8,500, the tax payable shall, subject to the provisions of paragraph (a) above, be equal to the sum of the tax payable on a chargeable income of £7,000 and the amount by which the chargeable income exceeds the sum of £7,000 :

Provided further that in the event of the company being liquidated, the total of the capital reserve of any trading period, which was taxed at the rate of 250 mils on every pound may be deemed to be income in the year in which such company is liquidated and shall be taxed at the rate of 175 mils on every pound."

One of the conditions that have to be satisfied in order that the benefit of the proviso may be derived, is that an amount up to £5,000 of the said income is transferred to its reserve capital and is kept in the Company and used for its purposes. In the present case, no such transfer appears from the Balance Sheet and the Profit and Loss Account (*exhibit* 3) to have been made. Though the Commissioner of Income Tax never raised this objection, it was one of the arguments advanced at the hearing, in the light of the recent decision in *Vita - Ora Co. Ltd.* v. *The Republic* (1972) 3 C.L.R. 566, where it was held that merely leaving such an amount in the Profit and Loss Account, is not enough to satisfy this condition of the proviso. It is correct that this requirement is not satisfied, but this case has come to Court mainly on the ground that turns on the interpretation of the proviso to paragraph 2 hereinabove set out and in particular the meaning to be given to the words "not including interest, dividends and rents" to be found therein.

It has been contended on behalf of the Applicant Company that there should be no distinction between income from financing of hire-purchase agreements and the other income of the Company and that all its income is trading income assessable under section 5(1)(a) of the Income Tax Laws which reads :-

> "Tax shall, subject to the provisions of this Law, be payable at the rate or rates specified hereafter for each year of assessment upon the income of any person accruing in, derived from, or received in the Republic in respect of —
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> (a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised."

It is common ground that paragraph (g) of section 5(1) referred to in the proviso which deals with profits from farming and animal breeding, does not come into play.

I have been referred to a number of English authorities, where, depending on the facts of each case, it was held that interest derived from investments or lending of money, could, in a proper case, be assessable under Case 1 of Schedule D, as being receipts from trade, or interest forming part of the profits or gains of the company assessable under the said case. (See *Smiles (Surveyor of Taxes)* v. *Australasian Mortgage and Agency Company (Limited)*, 2 Tax Cases 367; *Liverpool and London and Glove Insurance Company* v. *Bennett (Surveyor of Taxes)*, 6 Tax Cases, p. 327 and *Bennett* v. *Ogston (Inspector of Taxes)*, 15 Tax Cases, 374). They are of assistance in determining under which Case or Schedule income is assessable, but in the present case we are not solely concerned under which paragraph income is assessable.

I have already concluded that the interest of bank deposits and mortgages hereinabove referred to which have yielded income, the subject matter of this recourse, is trading income derived from the sources specified in paragraph (a) of section 5(1). The question that has to be examined, however, is whether this income, being in itself interest, is entitled to the benefits of the reduced tax.

The words of a statute are normally to be construed in their ordinary meaning, though due regard must be had to their subject matter and object and to the occasion on which and the circumstances with reference to which they are used, and they should be construed in the light of their context rather than in what may be either their strict etymological sense or their popular meaning apart from that context. (See Halsbury's Laws of England, Third Edition, Vol. 36, paragraph 593).

The word "interest", with which we are concerned here, as used in the phrase "not including interest, dividends and rents" to be found in the proviso to paragraph 2 of the Second Schedule hereinabove set out, is to be construed in its ordinary meaning, and not by reference to the paragraph under which that income is normally assessable. The meaning of the word "interest" in this proviso, is independent, in other words, of the source under which it is taxable. Interest and dividends are taxable normally under paragraph 5(1)(d) and rents under paragraph (f). If the legislator intended that chargeable income derived from the sources specified in paragraph 5(1)(a) was to be taxed at the reduced rate in its entirety, even if made up as a whole or in part of interest, then there was no need for the words "not including interest, dividends and rents" to have been inserted in the proviso. It would have been enough to refer only to income derived from the sources specified in paragraph (a), because income derived under paragraphs (d) and (f) is not as such entitled to the benefit of the reduced rate, there being specific reference to paragraph 5(1)(a) and no reference to paragraphs (d) and (f). Therefore, a further limitation has been placed on the income which is entitled to such a benefit.

The inclusion of the said limitation prevents the Applicant Company from obtaining the benefit of the reduced taxation, inasmuch as the subject matter of the present recourse, that is to say the amount of £1,007 is income consisting of interest not entitled to the said benefit.

For the above reasons the application is dismissed, but in the circumstances there will be no order as to costs.

Application dismissed.
No order as to costs.