

1984 December 19

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS CHRISTOPHIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 70/81).

Income tax—Deductible expenditure—Child receiving full time education abroad—Deduction in respect of—Production of a certificate of student’s registration from the Minister of Education of the Republic not a mere formality but a clear statutory prerequisite—First proviso to sub-section 1(iii) of section 16 of the Income Tax Laws, 1961 to 1979. 5

Under sub-section 1(iii) of section 16* of the Income Tax Laws, 1961 to 1979 any individual shall be allowed, in respect of a child receiving full time education abroad, a deduction equal to the amount expended by him on such child’s maintenance and education but not exceeding, in any case six hundred pounds; and under the first proviso to the above subsection “no amount in excess of two hundred pounds shall be deducted unless the child obtains a student’s registration by the Minister of Education of the Republic”. 10 15

Applicant claimed relief for his two children studying abroad but did not enclose a certificate of student’s registration as provided above. The respondent Commissioner turned down the claim for relief and hence this recourse.

* Section 16(1)(iii) is quoted at pp. 1458–1459 post.

Held, that the requirement for a certificate of student's registration is not a mere formality but is a clear statutory prerequisite, before the Commissioner of Income Tax considers whether an allowance in this respect will be made; that in view
5 of the position as it was at the time the sub judge decision was taken and the material which was before the Commissioner of Income Tax when he took the sub judge decision it was reasonably open to the Commissioner to decide as he did, since no registration was produced to him to prove that applicant's
10 daughter was a student at the material time, that is, 1979; and that, therefore, the recourse must fail.

Application dismissed.

Recourse.

Recourse against the income tax assessment raised on the
15 applicant for the year 1979.

Applicant appeared in person.

M. Photiou, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant by
20 the present recourse challenges the validity of the decision of the respondent Commissioner of Income Tax by which applicant's assessment of income tax for the year 1979 was raised and determined at £387.700 mils.

Applicant objected to such assessment on the ground that
25 an amount of £600.—spent by him for his daughter's educational expenses abroad and which was an expenditure deductible under the law had not been deducted from his income. According to the facts set out in the opposition applicant in submitting his return of income for 1979 claimed relief for his two children
30 studying abroad but did not enclose with his return a certificate of student's registration by the Minister of Education of the Republic of Cyprus as provided by the first proviso to subsection 1 (iii) of section 16 of the Income Tax Laws, 1961 to 1979. Therefore, the respondent Commissioner on assessing
35 applicant for the year 1979 granted relief of £200.—only for each child as provided by the aforesaid proviso. On the 11th November, 1980, applicant called on Mr. A. Zevlaris, Principal

Assessor, Income Tax Office, Limassol, and objected to such assessment. Applicant produced the required certificate from the Ministry of Education only in respect of one of his two daughters, namely Gloria, but failed to produce any such certificate in respect of his second daughter, namely, Maro. 5
As a result of the production of such certificate, the respondent Commissioner revised his assessment by granting relief of £600.—for applicant's daughter Gloria and the normal deduction of £200.—for applicant's daughter Maro for whom applicant failed to produce any registration certificate from the Ministry 10
of Education.

It is the contention of the applicant that in 1979 his daughter Maro was a regular student in the University of Athens from which she graduated in February, 1980. In support of his contention he produced copy of a diploma in law of the Univer- 15
sity of Athens dated 1st April, 1980, awarded to her and copy of a certificate of the same University issued by its Secretariat and dated 19th January, 1980, which reads as follows:

“Christofidou Andrea Maro of Nicosia was registered 20
on 20.9.1973 as a first year student of the School of Law (Law Department) under Registration No. 14566 for the academic year 1973/74 and is a student of the 4th year for the academic year 1977–1978.

The study of the University is of a duration of four years.

The aforesaid person participated in the oral diploma 25
examinations in the periods of June–July, 1978, October–November, 1979, but has not yet completed same. She is entitled to complete her oral diploma examinations in the periods January–February, 1980 and thereafter”.

It is an undisputed fact that in 1979 applicant's daughter 30
was not attending the University regularly but was only visiting Athens for the purpose of participating at the examinations. This is manifested from a written statement produced by the applicant on which the dates of his daughter's presence in Athens, 35
taken from the entries in her passport, are mentioned, which was checked and initialled by Mr. Zevlaris. According to such statement she had left Cyprus and stayed in Athens on four

occasions in 1979. The first on the 17th January, 1979, for a stay of 32 days, the second on the 18th March, 1979, for 29 days, the third on the 12th June, 1979, for 16 days and the fourth on the 1st October, 1979 for 33 days, thus making a total of 110
5 days stay abroad.

It is contended by the applicant that for his daughter's attendance at the University for the above purpose he spent a sum of £600.—(of which £330.—in respect of air tickets, travelling and other expenses) which he claims to deduct from his earned
10 income. He further contended that the requirement of a student's registration certificate from the Ministry of Education was introduced in May, 1979, by Law 40/79 and that till then the Commissioner of Income Tax was satisfied with the production of a certificate of studenship issued by the University.
15 He finally contended that the requirement for a certificate from the Ministry of Education is a mere formality and that in any event had he asked for such a certificate it would not have been denied to him, as mentioned in a letter from the Ministry of Education dated the 3rd May, 1982, which he produced and which reads
20 as follows:

“It is hereby certified that during the academic year 1977–
–1978 a certificate was granted to Christofidou Andrea
Maro that she was registered in the students' register
25 of the Ministry of Education under No. 1956, for purposes of foreign exchange allowance. During the said academic year the student was attending lessons of the 4th year of the Law School of the University of Athens. If the student had submitted applications to the Ministry of
30 Education, a permit for foreign exchange would have been granted to her to participate to the diploma examinations up to February, 1980, when she was awarded her diploma according to the certificates of the University of Athens submitted today”.

Applicant further in his written address in reply to that of
35 counsel for the respondents, contended that students of the University of Athens are not required to attend classes or lectures and in consequence it makes no difference whether a student stays in Athens continuously or whether he goes there casually during the examination periods to take his examinations.

Counsel for the respondents on the other hand submitted that the requirement for a certificate of registration is not a mere formality but that it is a prerequisite under the law before the Commissioner of Income Tax will consider whether an allowance for such expenditure is to be made. Though, counsel added, when applicant's assessment was under consideration, and applicant was repeatedly asked to produce such certificate, he failed to do so and as a result the Commissioner of Income Tax had to determine the objection on the basis of the material before him.

It was further the contention of counsel for respondents that applicant's daughter was not, in any event, in 1979 receiving "full time" education in a university as contemplated by section 16 of the Income Tax Laws, 1961-1979 as amended by section 8 of Law 40/79.

The material part of section 8 of Law 40/79 whereby section 16 of the principal law was deleted and substituted by new section 16 reads as follows:

"16.(1) Subject to the provisions of subsections (2) and (3) of section 20, any individual who proves to the satisfaction of the Commissioner that he has or had a child or children living at any time during the year of assessment, shall be allowed when his chargeable income is being ascertained—

(i) _____

(ii) _____

(iii) in respect of a child over the age of sixteen and under the age of twenty-eight years at the commencement of the year of assessment, receiving full time education in a school, college, university or other recognised educational institution outside Cyprus—

_____ a deduction equal to the amount expended by such individual on such child's maintenance and education but not exceeding in any case six hundred pounds:

Provided that no amount in excess of two hundred pounds shall be deducted unless the child obtains a

student's registration by the Minister of Education of the Republic:

Provided further that the tax so saved shall not exceed the amount of three hundred pounds''.

5 It is an undisputed fact in the present case that when the assessment of applicant's income was being considered and before the respondent Commissioner of Income Tax had finally determined applicant's objection and even up to the filing of the present recourse the applicant had not produced a student's
10 registration by the Minister of Education as contemplated by the Law. In fact, from the material before me it appears that no such certificate was ever issued. The requirement for such certificate is not a mere formality as contended by applicant, but is a clear statutory prerequisite, before the Commissioner
15 of Income Tax considers whether an allowance in this respect will be made.

In the course of the hearing as already mentioned the applicant sought to rely on a letter from the Ministry of Education dated the 3rd May, 1982, to the effect that had he applied for registration of his daughter in the students' register of the Ministry
20 of Education, such registration would have been effected in the light of the certificate of the University of Athens which was submitted on that day.

What emanates from this letter is that the applicant's daughter
25 was registered as a student with the Ministry of Education up to and including the academic year 1977-1978 but after such date her name was not re-registered again for any academic year after 1978. It is also mentioned that she was attending the 4th year of the Law School of the University of Athens in
30 the year 1977-1978 and according to the certificate of the University of Athens, which was also produced, the course was only a four years' course ending during the academic year 1977-1978.

In view of the position as it was at the time the sub judge decision was taken and the material which was before the Commissioner of Income Tax when he took the sub judge decision,
35 I find that it was reasonably open to the Commissioner to decide as he did, since no registration was produced to him to prove that applicant's daughter, Maro, was a student at the

material time, that is, 1979. The recourse, therefore, fails on this issue.

With regard to the other point raised by counsel, that is, whether applicant's daughter should be considered on the strength of a certificate issued by the Ministry of Education and produced in this Court, as a student within the meaning of section 16(1)(iii) of the Law, I have to observe that this certificate is not concerned with this recourse, as it was issued and produced at a much later stage and was not before the respondent when taking the sub judge decision. Reference to the above certificate dated 3.5.1982 has been made earlier in this judgment. The argument that applicant's daughter was not a full time student in 1979 was first raised by counsel for the respondent in his written address, after he has considered the address of applicant where the dates of his daughter's visit to Athens were attached. It is not, therefore, an issue raised and decided by the sub judge decision and any pronouncement on it by me now will be, in my view, an interference with the discretion of the Commissioner of Income Tax to decide on it at any future time.

In the result, this recourse fails on the ground that the applicant did not observe the requirements of the law and the sub judge decision was, in the circumstances, reasonably open to the respondent. However, having regard to the circumstances of the case, I make no order as to costs.

Recourse dismissed. No order as to costs.