

1984 January 14

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

FINART CONSTRUCT LTD..

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE COMMISSIONER OF INCOME TAX,

*Respondent.*

(Case No. 67/81).

5 *Income tax—Stock-in-trade—Building sites in Turkish occupied area of Cyprus—Value which should be placed thereon—Whether their cost or their market value—Market value cannot be ascertained, though building sites have their value, because of the prevailing situation—Use of the cost of the stock-in-trade by respondent Commissioner reasonable in the circumstances—Principles of commercial accounting.*

10 *Income tax—Assessment—Revocation—Possible both under the principles of Administrative law and under section 23 of the Assessment and Collection of Taxes Law, 1978 (Law 4 of 1978).*

15 In submitting its accounts of the year 1974 the applicant company claimed as a deduction the sum of £3,655.300 mils being loss suffered from its building-sites situated in the Turkish occupied area of Cyprus. The respondent Commissioner estimated that the total value of the building sites, as on 31st December, 1974, was £550 and informed the applicant company by letter dated the 14th July, 1976. In August, 1980 when the respondent Commissioner examined the accounts submitted by the applicant for the year 1978, he reviewed the question of  
20 the market value of the building-sites that were written off in the accounts for the year ended 31st December 1974 and decided that the market value in relation to property meant the price which the property would reasonably be expected to

fetch from sale in the open market. In the case of the said building-sites owing to the then and present conditions the market value was unascertained and consequently the cost of these building-sites should be taken into consideration in computing the chargeable income of the applicant Company for the year of assessment 1975—year of income 1974. He then readjusted the computation of chargeable income for 1974 and communicated his decision to the applicant Company by letter dated 30th August 1980. Hence this recourse

It was common ground that according to the ordinary principles of commercial accounting the basis of valuation of trading stock was its cost or its market value, whichever was the lowest, and the market value in relation to property meant the price which it might reasonably be expected to fetch on sale in the open market

*Held*, that considering the very special circumstances of this case and of the prevailing situation in the light of which it is only by some peculiar process that the market value of these building-sites cannot be ascertained, though they have their value, the use of the cost of the stock-in-trade by the respondent Commissioner which was the only ascertainable factor, was reasonable in the circumstances and the only alternative which it appears to give the fairest and most reasonable results in this case once there was no market and no market price accordingly the recourse should fail

*Held*, further, that the respondent could in 1980 revoke his decision which he took in 1976 because such a course is possible both under the general principles of administrative law and under the provisions of section 23 of the Assessment and Collection of Taxes Law, 1978 (Law No 4 of 1978) which covers cases where the Commissioner changes his opinion on a question of law or he finds out some facts which he did not know before or even if he knew before, he did not appreciate them properly

*Application dismissed*

Cases referred to

*BSC Footwear Ltd v. Ridgway (Inspector of Taxes)* [1972]  
2 All ER 534 at p 536,

*Willingale v. International Commercial Bank* [1978] 1 All E.R. 754;

*Republic v. Frangos* (1965) 3 C.L.R. 641 at pp. 654-657;

5 *Solomonides v. The Republic* (1968) 3 C.L.R. 105 at pp. 119, 123-124.

### Recourse.

Recourse against the income tax assessments raised on applicants for the years 1975-1979.

*A. Dikigoropoulos*, for the applicant.

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

*Cur. adv. vult.*

15 A. LOIZOU J. read the following judgment. By the present recourse the applicant Company challenges the assessments raised on them for the years 1975-1979, (years of income 1974-1978) which are contained in the schedule attached to the opposition.

20 The relevant facts are not in dispute. The applicant Company was incorporated in 1971 as a private Company of limited liability with an authorized and fully issued share capital of one thousand ordinary shares of one pound each. It derives its income from its business of building contractors, land developers and dealers. In 1974 the applicant Company was the owner of the following plots of land.

25 (a) Plot 161/2/2/1 reg. No. 6772, plan sheet X11/39.E.1, at Ayios Epictitos, Kyrenia, at a cost of £2,130.100 mils

30 (b) Plots 200/1/1, 200/3/1, and 222/2, Reg. No. 1104, Plan Sheet X11/29.E.1, at Thermia, Kyrenia at a cost of £1,560.100 mils.

(c) Plots 197/2 and 200/2/2, Reg. No. 1102, Plan Sheet X11/29.E.1 at Thermia, Kyrenia. These plots were bought on 5.3.1974 at the price of £1,500.- but until

20th July 1974 only an amount of £1000.— was paid against the purchase price.

In the accounts of the year 1974 submitted in October 1975 it claimed as a deduction the sum of £3,655.300 mils being loss suffered from the building-sites held in the Turkish occupied area of Cyprus. This loss was computed after writing off to the Profit and Loss Account the total cost of the building-sites as follows: 5

Cost of sites	£6,305.300	
Less: Proceeds from sale of a site	2,650.000	10
	<u>£3,655.300</u>	

The procedure adopted is claimed by the applicant Company as fully justified under the generally accepted accounting practice which dictates “that trading-stock should be stated on the year and accounts at the lower of cost and net realisable value”. 15

The respondent Commissioner did not agree with the view of the applicant Company that the building-sites in question had no market value. According to the circumstances prevailing then, and to the best of his judgment, as asserted in the opposition, he estimated that the total market value of the said building-sites as on 31st December 1974, was £550.—. He revised the computation of chargeable income for 1974 and informed the applicant Company accordingly by letter dated the 14th July 1976, exhibit 1. Otherwise he accepted applicant Company’s return. 20 25

In August 1980 when the respondent Commissioner examined the accounts for the years 1978, submitted by the applicant Company he reviewed the question of the market value of the building-sites that were written off in the accounts for the year ended 31st December 1974 and decided that the market value in relation to property meant the price which the property would reasonably be expected to fetch from sale in the open market. In the case of the said building-sites owing to the then and present conditions the market value is unascertained and consequently the cost of these building-sites should be taken into consideration in computing the chargeable income of the applicant Company for the year of assessment 1975—year of income 1974. The respondent Commissioner then 30 35

readjusted the computation of chargeable income for 1974 and communicated his decision to the applicant Company by letter dated 30th August 1980, (exhibit 2). This revision is as follows:

5	Loss brought forward	£2,439.—
	Less cost of written off properties	4,140.—
	Revised income	£1,701

The applicant Company objected to the said decision. Their objection was considered by the respondent Commissioner, who rejected same and determined the assessments. This decision was communicated to the applicant Company by letter dated 10th December, 1980, together with the relevant notices of tax payable (exhibit 4).

It is common ground that according to the ordinary principles of commercial accounting the basis of valuation of trading stock is its cost or its market value, whichever is the lowest; and the market value in relation to property means the price which it might reasonably be expected to fetch on sale in the open market. The purpose of valuating stock at market price instead of cost, is to provide for an anticipated loss on sale. These propositions are born out by ample authority. (See *Simon's Taxes*, 3rd Ed., Vol. B, para. Bl. 1010, under the heading "Valuation of Stock—General Principles", et seq. and the authorities therein set out. See also *BSC Footwear Ltd etc. v. Ridgway (Inspector of Taxes)* [1971] 2 All E.R., p. 534, as well as *Willingale v. International Commercial Bank* [1978] 1 All E.R. 754.

The question, therefore, at issue in the present case is the value which should be placed upon this stock-in-trade in computing the profits of the applicant Company, as it is the contention of the respondent Commissioner that due to the abnormal conditions and to the inaccessibility of the owners or anybody's else to that part of the island which is occupied by the Turkish forces, the market value is uncertain. It was urged that nobody can say for sure what is the market value of this trading stock and at the same time that nobody can deny that there is some value.

The only certain thing is the cost price; and the only possible solution was to take into consideration the cost price and not

the market value which is unknown. It was submitted that it was not unreasonable for the respondent Commissioner to take into consideration the cost price which is ascertainable and that the issue turns on an accounting principle which is applicable in normal conditions and not in abnormal conditions as those prevailing here on account of the Turkish occupation of part of the Island. 5

In the case of *BSC Footwear Ltd. etc. v. Ridgway (Inspector of Taxes)* (supra), Lord Reid at p. 536 had said:

"... That exception has been expressed by the phrase 'cost or market value, whichever is the lower'. But that is only a shorthand convenient form of expression. It is not contended by the Crown that it is a rule of law to be interpreted as if the words occurred in a statute. It is I think accurate and adequate where there is a market in the ordinary sense. 10 15

A market is a place where there is sufficient trade to enable a market price at a particular time to be recognisable and where a trader can buy or sell almost immediately at that price, so that a seller can put in his pocket the full price less expenses, which can be neglected as we are not seeking mathematical accuracy. Then market price can fairly be taken to be the value of marketable goods which a trader holds in stock either for sale or consumption in his business. There is no question of such goods having a special value to the trader; otherwise he would not sell or consume them. But what if there is no market in the sense? It appears to me that in principle what we must be looking for in every case is the value of the goods in stock on the day when the trader closes his annual accounts. If there is truly a market price on that day then that is the best indication of their value. If there is not then we must look for commercial accounting practice. The last word must always be with the Court. If there is a uniform accounting practice it should not be rejected without good reason. If there is not the Court must choose which version appears to give the fairest and most reasonable result in the particular case". 20 25 30 35

And further down at page 537, he says:-

“But we are not looking for theoretical perfection. What we are looking for is a method of ascertaining value at a particular date when there is no market and no market price. Then one method at least would be to ask what the taxpayer will ultimately get for his stock after performing all necessary operations before it can be sold and to deduct a fair estimate of the total cost of these operations”.

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Considering the very special circumstances of this case and of the prevailing situation in the light of which it is only by some peculiar process that the market value of these building-sites cannot be ascertained, though they have their value, the use of the cost of the stock-in-trade by the respondent Commissioner which was the only ascertainable factor, was reasonable in the circumstances and the only alternative which I find that it appears to give—adopting the words of Lord Reid just quoted—the fairest and most reasonable results in this case once there was no market and no market price.

For all the above reasons this ground should fail.

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A further ground that the respondent Commissioner could not revoke his decision in 1980 which he took in 1976, though not at length argued on behalf of the applicant Company, cannot stand either because both on the general principles of administrative law and under the provisions of section 23 of the Assessment and Collection of Taxes Law, 1978, Law No. 4 of 1978, the so-called omission section which has been interpreted to cover cases where the Commissioner changes his opinion on a question of law or he finds out some facts which he did not know before or even if he knew before, he did not appreciate them properly. (See *Halsbury's Laws of England*, 3rd Ed., Vol. 20, para. 1315, at pp. 670–671, and the cases of *The Republic of Cyprus through 1. The Attorney-General*, 2. *The Ministry of Finance, through The Director of the Department of Inland Revenue, v. Ioannis Chr. Frangos*, (1965) 3 C.L.R. p. 641, at pp. 654–657; *Solomonides v. The Republic* (1968) 3 C.L.R., p. 105, at pp. 119 and 123 up to 124).

For all the above reasons this recourse is dismissed but in the circumstances there will be no order as to costs.

*Recourse dismissed with no order as to costs.*