

1984 February 16

[ΠΙΚΙΣ, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DYONISIOS TOUMAZIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

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

Respondents.

(Case No. 534/82).

Income tax—Accelerated writing off of assets—Section 12(3)(b) of the Income Tax Laws, 1961–1981—Inaccessibility to applicant’s assets at Famagusta due to the Turkish Invasion—Said assets not definitely “ὀριστικῶς” lost in the sense of the said section 12(3)(b)—Reasonably open to the respondent Commissioner to reject applicant’s claim for a deduction in respect of the unwritten off value of his said assets—Section 12(3)(c) of the Law not relevant.

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Words and Phrases—“Definitely” (“ὀριστικῶς”) in section 12(3)(b) of the Income Tax Laws, 1961–1981.

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The applicant and his partner were owners of “Amaryllis” hotel at Famagusta. Because of the catastrophic events of 1974, his property at Famagusta became inaccessible and he lost use over it ever since. He, however, continued his business in the south of the Country and in his returns for income tax submitted for the year 1978 he claimed a deduction from income tax in respect of the unwritten off value of the hotel amounting to £34,000.— The accelerated deduction was claimed on the ground that the use of the asset, the hotel, had been lost “oristikos”—“definitely”—in the sense of section 12(3)(b) of the Income Tax Laws, 1961–1981. The respondent Commissioner rejected the claim on the ground that “Amaryllis”

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Hotel had not been lost for the owners in the manner envisaged by s.12(3)(b) of the above Laws. Hence this recourse.

5 Counsel for the applicant mainly contended that the word "oristikos" in the context of section 12(3)(b) bears the meaning of "for the time being".

10 *Held*, that this Court is in total disagreement with the submission that the word "oristikos" in the text of s.12(3)(b) bears or can bear the meaning "for the time being"; that as a matter of interpretation of the provisions of s.12(3)(b) the assets of the applicant at Famagusta were not definitely lost; and that, accordingly, it was reasonably open to the respondent Commissioner to conclude as he did. (Section 12(3)(c) is irrelevant).

Application dismissed.

15 *Per curiam*: Contemplating the implications of the Turkish invasion, on the property rights of citizens it is appropriate to remind that the legislature regards present deprivation and denial of rights as temporary. A multitude of laws enacted to cope with the vicissitudes of the Turkish invasion is premised on the basis that this denial is temporary.
20 And so it must be if might (force) is not to prevail over right (justice). Otherwise we would come close to acknowledging that brute force can supersede legal rights.

Cases referred to:

25 *Tsimon Ltd. v. Republic* (1980) 3 C.L.R. 321;
Pavrides v. Republic (1980) 3 C.L.R. 345.

Recourse.

Recourse against the decision of the respondent rejecting applicant's claim for a deduction from income tax in respect of unwritten off value of his hotel amounting to £34,000.-.

30 *G. Triantafyllides*, for the applicant.

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

Cur. adv. vult.

35 **PIKIS J.** read the following judgment. The interpretation of s. 12(3)(b) of the Income Tax Laws, 1961-1981 and its applicabi-

lity to the facts of the case are the two main questions upon answer to which the outcome of the case turns. Section 12(3)(b) makes possible in specified circumstances the accelerated writing off of assets for income tax purposes. Such acceleration is permitted whenever the assets in respect of which the balancing deduction is claimed are lost "oristikos", an approximate translation of which word is "definitely". To set the questions in perspective reference must be made to the circumstances leading to applicant's claim for accelerated write off. 5

The taxpayer, applicant in these proceedings is a 50 per cent partner in the firm Charalambos and Dionysios Toumazis, owners of Amaryllis Hotel at Famagusta. Applicant and his partner were in the hotel business; also they let shops at Famagusta. Because of the catastrophic events of 1974, the applicant's property at Famagusta became inaccessible. They lost use of it ever since. Nevertheless, they continued their business in the south of the country. In their returns for income tax submitted for the year 1978 they claimed a deduction from income tax in respect of the unwritten off value of the hotel amounting to £34,000.--. The accelerated deduction was claimed on the ground that the use of the asset, notably the hotel, had been lost "oristikos". At the trial a vague attempt was made to invoke in support of their claim for deduction the provisions of s. 12(3)(c) allowing a balancing deduction whenever the trade or business of the taxpayer for which the asset was being used ended "oristikos ke monimos" i.e. "definitely and permanently". The admitted facts of the case rule out the application of s.12(3)(c). It is common ground that applicants carry on their former business notwithstanding loss of use of Amaryllis Hotel. So the question is confined to s.12(3)(b), its ambit and application to the facts of the case. 10 15 20 25 30

The Commissioner rejected the claim of applicant; he allowed instead the deduction ordinarily allowed by way of writing off assets in the hotel business notably 4%. He disputed the applicability of s.12(3)(b) on the ground that Amaryllis Hotel had not been lost for the owners in the manner envisaged by s.12(3)(b). 35

Counsel for the applicant acknowledges that two previous decisions of the Supreme Court support the case of the respondent. They are decisions given at first instance by 40

Savvides, J. in the exercise of the revisional jurisdiction of the Supreme Court. They are *Tsimon Ltd. v. Republic*, (1980) 3 C.L.R. 321 and *Pavlidis Ltd. v. Republic*, (1980) 3 C.L.R. 345. I was asked to depart from their tenor for legal and factual reasons. “Oristikos” was, in the contention of applicant, wrongly interpreted in the aforesaid cases, so I should depart from the ratio of the above decisions. Factually, the implications of the Turkish invasion and particularly repercussions from loss of use of property have crystallized in a manner making possible the assertion that the assets were permanently lost in the sense of s.12(3)(b). And this is an additional reason for departing from the above-stated cases.

In *Tsimon* (supra) the learned Judge debated at length the consequences of the Turkish invasion notable as they are judicially and adverted to their repercussions upon the rights of dispossessed owners. In no sense could assets presently inaccessible to their owners be considered as lost, so the learned Judge concluded, in the definitive manner postulated by s.12(3)(b). Consequently, the claim for a balancing deduction was rejected which was also the outcome in *Pavlidis Ltd.* (supra).

Counsel for applicant strove hard to persuade the Court that the word “oristikos” in the context of s.12(3)(b) bears the meaning of “for the time being”. The definitions of the word “definitely” given in the Universal and Webster dictionaries were referred to by counsel in an effort to persuade me that the word “definitely” is apt to derive colour and take shape from the context in which it is used. None of the definitions cited support the view that the word “definitely” can under any circumstances mean “for the time being”. One of the synonyms of “definitely” given by Webster is “determinately”, a word which more than any other seems to convey the intrinsic meaning of “definitely”. It deserves notice that the first two definitions of “definite” given by the Concise Oxford Dictionary are “having exact limits” and “determinate”. Under any circumstances “definite” is something that may be predicted with a fair degree of certainty. It is worthy of mention that the noun “oristikos” is defined by the Lexicon of the Dimotiki language as “certain”, “final”, “unalterable”. (See Lexicon of Eteria Ellinikon Ekdoseon, p. 504).

We were invited to uphold the construction of "oristikos" preferred by applicant by reference inter alia to the expression "oristikos ke monimos" in s.12(3)(c). By this process of thinking it was submitted that the word "oristikos" could not mean "permanently", but something transient, in any event not irrevocably settled. 5

Reflecting on the import of the adverb "oristikos" it appears to me to convey a somewhat stronger meaning than "definitely" in English. But in both languages they convey the meaning that something has crystallized to the point of admitting precise determination. I am in total disagreement with the submission that the word "oristikos" in the text of s.12(3)(b) bears or can bear the meaning "for the time being". It is a suggestion incompatible with the inherent meaning of the word and contrary to what seems to have been in the contemplation of the legislature in allowing an accelerated write off for assets lost to a trader. I find it unnecessary to debate in detail what the legislature had in mind by adding the word "permanently" in s.2(3)(c) by way of addendum to the word "definitely". 10 15

Very probably they merely wanted to add emphasis. What I can pronounce is that by employing this combination of words in the latter subsection they did not aim to qualify in any way the meaning of "oristikos" in s.12 (3)(b). 20

Contemplating the implications of the Turkish invasion, on the property rights of citizens it is appropriate to remind that the legislature regards present deprivation and denial of rights as temporary. A multitude of laws enacted to cope with the vicissitudes of the Turkish invasion is premised on the basis that this denial is temporary. And so it must be if might (force) is not to prevail over right (justice). Otherwise we would come close to acknowledging that brute force can supersede legal rights. 25 30

In view of the above I hold that as a matter of interpretation of the provisions of s.12(3)(b), the assets of the applicant at Famagusta were not definitely lost. The decisions in *Tsimon* and *Pavlidis* (supra), although not binding on the Court in the strict sense, are nevertheless of great persuasive authority, the reasoning of which leaves me persuaded they were correctly 35

decided. So, on principle as well as authority I find it was reasonably open to the respondent to conclude as he did.

The recourse is dismissed. Let there be no order as to costs.

*Recourse dismissed. No order
as to costs.*

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