

1983 November 15

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS MENELAOU STAVRINIDES,

Applicant,

v.

THE COMMISSIONER OF INCOME TAX,

Respondent.

(Case No. 114/83).

Income Tax—Tax credit for loss of eyesight—Paragraph 2 of the Second Schedule of the Income Tax Laws, 1961–1981—Construction of “for work for which eyesight is necessary”—They relate to work for which eyesight required and not to a particular work.

On the 1st August, 1973 the applicant, who has since 1970 5
been a member of the Police Force performing the duties of
pyrotechnist, was involved in an accident, in the performance
of his duties, as a result of which he lost the sight of his left
eye. He was compensated for the injuries received and he was
allotted duties of store-keeper in the same branch of the Police. 10
In 1980 he was promoted to the rank of Sergeant.

In his return of income tax for the year 1981 the applicant
claimed tax credit of £200.— for loss of eye-sight of the left eye
under paragraph 2* of the Second Schedule of the Income Tax
Laws, 1961–1981. 15

The respondent Commissioner, after examination of the said
return, rejected the claim for credit for loss of eye-sight and
raised an assessment accordingly. Hence this recourse in which
the sole issue for consideration was whether a tax payer was

* Paragraph 2 is quoted at p. 97 post.

entitled to the credit of £200 if the eyesight was permanently weakened to a degree that rendered him incapable for work where eyesight was necessary in general or for the work he was doing prior to such weakening.

5 *Held*, that the words “for work for which eyesight is necessary”
 in the said paragraph 2 refer to the condition of the taxpayer
 during the year of the assessment under consideration; that they
 do not refer to the particular work the taxpayer was doing at
 10 the time of the accident that caused the weakening of his eyesight;
 that they relate to work in general for which eyesight is required
 and not to a particular work; that since applicant continues to
 be working profitably and performing the duties of store-keeper
 which require eyesight, and he was even promoted, it was open
 to the respondent Commissioner to reach the sub judice decision
 15 which is not contrary to Law; accordingly the recourse must
 fail.

Application dismissed.

Cases referred to:

In re Georghallides, 23 C.L.R. 249;
 20 *HjiYianni v. Republic* (1966) 3 C.L.R. 338;
Coussoumides v. Republic (1966) 3 C.L.R. 1, at p. 18;
Georgiades v. Republic (1982) 3 C.L.R. 659;
Mangli v. Republic (1983) 3 C.L.R. 527.

Recourse.

25 Recourse against the decision of the respondent to reject
 applicant’s claim for credit for loss of eye-sight and for the
 income tax assessment raised on the applicant.

P. Angelides, for the applicant.

M. Photiou, for the respondent.

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Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant
 is a member of the Police Force. He joined the Force in 1970.
 He was posted at the Criminal Investigation Department and
 was allotted the duties of pyrotechnist.

On 1st August, 1973, Sub-Inspector Hji-Loizou and the applicant were involved in an accident in the performance of their duties. Hji-Loizou succumbed to his injuries and the applicant sustained personal injuries, including loss of the sight of his left eye. He was compensated for the injuries received and he was allotted duties of storekeeper in the same branch of the Police. In 1980 he was promoted to the rank of Sergeant. 5

Section 34 of the Income Tax Law provides:-

“There shall be levied and paid upon chargeable income tax at the rates and in accordance with the provisions set forth in the Second Schedule.” 10

The Second Schedule was amended by s.18 of the Income Tax (Amendment) Law, 1981 (Law No. 24/81). For the first time provision was made making tax allowance for persons suffering from loss of eye-sight or from a permanent weakening thereof. 15

The applicant in his return of income tax for the year 1981 submitted on the 8th April, 1982, claimed tax credit of £200.- for loss of eye-sight of the left eye under paragraph 2 of the Second Schedule of the Income Tax Laws, 1961-1981.

The respondent Commissioner, after examination of the said return, rejected the claim for credit for loss of eye-sight and raised an assessment accordingly. 20

On the 24th January, 1983, the applicant objected against the assessment contending that he satisfied the provisions of para. 2 of the Second Schedule of the Income Tax Laws and, therefore, a tax credit of £200.- should be allowed to him. The respondent Commissioner, after reconsideration, decided that the case of the applicant did not fall within the ambit of the said statutory provision. He proceeded with the determination of the assessment and communicated his such decision to the applicant by letter dated 17th February, 1983. 25 30

By this recourse the applicant challenges the decision of the respondent Commissioner and seeks a declaration of the Court that this administrative act is contrary to the provisions of the Law and that it was not duly reasoned. At the hearing the argument was limited to the interpretation of the relevant statutory provision and its application in the case of this applicant. 35

The power of this Court in tax cases is limited to the scrutiny of the legality of the action and to ascertain whether the Administration has exceeded the outer limits of its powers. The onus is on the taxpayer to support his claim and satisfy the Court that it should interfere with the sub judice decision in a recourse. (Charis Georghallides, (1958) 23 C.L.R. 249; Hji-Yianni v. The Republic, (1966) 3 C.L.R. 338; Coussoumides v. Republic (1966) 3 C.L.R. 1, at p.18; Georghiades v. Republic, (1982) 3 C.L.R. 659; Mangli v. The Republic, (1983) 3 C.L.R. 527).

10 The whole case turns on the construction of paragraph 2 of the Second Schedule of the Law. It reads as follows:-

“2. Εἰς τὴν περίπτωσιν προσώπου πάσχοντος ἐκ στερήσεως τῆς ὀράσεως ἢ ἐκ μονίμου τινὸς μειώσεως ταύτης εἰς βαθμὸν καθιστῶντα αὐτὴν ἀνεπαρκῆ δι’ ἐργασίαν, διὰ τὴν ὁποῖαν ἢ ὄρασις εἶναι ἀναγκαία, παρέχεται πίστῶσις ἔναντι τοῦ καταβλητέου φόρου ἐκ διακοσίων λιρῶν ἀλλὰ τὸ συνολικὸν ποσὸν πιστώσεως τὸ ὁποῖον οὕτω δύναται νὰ ἐπιτραπῆ ὡς ἔκπτωσης καθ’ οἷονδῆποτε φορολογικὸν ἔτος δὲν θὰ ὑπερβαίνη τὸν συνολικὸν φόρον τὸν ὑπ’ αὐτοῦ καταβλητέον διὰ τὸ ὑπὸ ἐξέτασιν φορολογικὸν ἔτος”.

15 (“2. In the case of a person suffering from loss of eyesight or from a permanent weakening thereof to a degree that renders it inadequate for work for which eye-sight is necessary, there shall be allowed a credit of two hundred pounds against the tax payable, but the total amount of the credit which may be so allowed as a deduction during any year of assessment, shall not exceed the total amount of tax payable thereby in respect of the year of assessment”).

30 Mr. Angelides submitted that, as the applicant from 1973 was not performing the duties of pyrotechnist but of storekeeper due to the loss of his left eyesight, his eyesight “is inadequate for the job” of pyrotechnist and, therefore, he is entitled to the benefit of the tax credit. The words “ἀνεπαρκῆ δι’ ἐργασίαν” (“inadequate for work”) should be interpreted to mean “eyesight inadequate for the job he was doing at the material time his eyesight has weakened.”

Learned counsel for the respondents, on the other hand, maintained that the true construction of the material part of

the Law is that a taxpayer is entitled to the credit of £200.- if the eyesight is permanently weakened to a degree that renders him incapable for work where eyesight is necessary in general and not for the work he was doing prior to such weakening.

Paragraph 2 of the Second Schedule is part of s.34. The income tax is levied on the annual income. This is an overriding provision which should be borne in mind in construing the Second Schedule. There is no ambiguity in paragraph 2 under construction. The credit allowance of £200.- against the tax payable is for each year of assessment. The basis and condition precedent for this credit is "loss of eyesight or permanent weakening thereof to a degree that renders it inadequate" for work for which eyesight is necessary. 5 10

A person suffering from loss of eyesight - completely blind - is entitled to this tax credit. The other category of taxpayers who are entitled to this credit are those who suffer from permanent weakening of eyesight to a degree that renders them incapable to do work for which eyesight is necessary. The permanent weakening of the eyesight by itself is not sufficient. There must be a nexus between the weakening of the eyesight and the incapacity to do work which requires eyesight. 15 20

The applicant suffered a permanent weakening of his eyesight due to the loss of his left eye in 1973. He continues, however, to be working profitably and performing the duties of store-keeper which require eyesight, and he was even promoted. It is correct that he may be hindered to some degree to perform other duties in the Police Force but this is outside the ambit of this benevolent legislative provision. 25

The words "for work for which eyesight is necessary" refer to the condition of the taxpayer during the year of assessment under consideration. They do not refer to the particular work the taxpayer was doing at the time of the accident that caused the weakening of his eyesight. They relate to work in general for which eyesight is required and not to a particular work. 30

All the facts were before the respondent Commissioner. The reasoning emerges from the letter communicated to the applicant and the other material in the file. The decision is not 35

contrary to Law. It was open to the Commissioner to reach this decision. Indeed, he could not reach any other decision.

In view of the aforesaid this case is dismissed with no order as to costs.

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Recourse dismissed with no order as to costs.

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