

1985 June 21

[L. Loizou, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

MARIA ANGELIDOU,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF FINANCE AND/OR  
THE COMMISSIONER OF INCOME TAX,

*Respondents.*

*(Case No. 363/79).*

*Income tax—Tax collected by deduction in excess of the amount with which applicant was chargeable—Refund of—Claim for, to be made within six years from the end of the relevant year of assessment—Mere fact that respondents had requested applicant to submit returns of income cannot operate as an estoppel preventing them from refusing her claim for refund which was submitted belatedly—Sections 38(1) and (2) of the Assessment and Collection of Taxes Laws, 1978 to 1979.* 5

The applicant challenged the decision of the respondents by virtue of which they refused to refund to her tax collected by way of deductions from dividends received by her in the year of income 1971 (year of assessment 1972). The sub judge refusal was based on the ground that the declaration of income has not been submitted within 6 years as per section 38(2)\* of the Assessment and Collection of Taxes Laws, 1978-1979. 10 15

Counsel for the applicant mainly contended that since the respondents themselves requested the applicant to submit returns of income tax for the years 1971-1977 they 20

\* Section 38(1) and (2) is quoted at pp. 1214-1215 post.

were estopped from rejecting her claim for the refund to her of the amount concerned.

5 *Held*, that the mere fact that the respondents had requested the applicant to comply with her obligations under the income tax legislation and submit returns of income, as she should have done, cannot operate as an estoppel preventing the respondents from refusing any claim of the applicant submitted belatedly especially if such claim is not in accordance with the relevant legislative provisions; that in the light of all relevant facts and circumstances of the present case the sub judice decision was reasonably open to the respondent Commissioner of Income Tax in the correct application of the relevant legislation and, therefore, the present recourse must fail.

15 *Application dismissed.*

**Recourse.**

20 Recourse against the decision of the respondents whereby they refused to refund to applicant tax collected by way of deductions from dividends received by her in the year of income 1971 (year of assessment 1972).

*A. S. Angelides*, for the applicant.

*A. Evangelou*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

25 L. LOIZOU J. read the following judgment. By the present recourse the applicant challenges in effect the decision of the respondents by virtue of which they refused to refund to her tax collected by way of deductions from dividends received by her in the year of income 1971 (year of assessment 1972).

30 The said decision is contained in a letter dated 23rd July, 1979, addressed to the applicant by the Income Tax Office (exhibit 1) which reads as follows:

35 «Αναφέρομαι εις τήν δήλωσιν τοῦ εισοδήματος σας διὰ τὸ ἔτος 1971 ἢ ὅποια ὑπεβλήθη τὸν Ἰούνιο τοῦ

1979 και σās πληροφορω̄ ὅτι ἀδυνατῶ νὰ ἐπιστρέψω τὸν ἐκ τῶν μερισμάτων κρατηθέντα φόρον ἀνερχόμενον εἰς £91.664 καθ' ὅτι ἡ δήλωσις σας δὲν ὑπεβλήθη ἐντὸς 6 ἐτῶν ὡς τὸ ἄρθρον 38(2) τῶν Περί Φορολογίας καὶ Εἰσπράξεως Φόρων Νόμων 1978/1979.» 5

(I refer to your declaration of income for the year 1971 which has been submitted in June 1979 and I inform you that I am unable to refund the tax collected by deduction from dividends amounting to £91.664 as your declaration has not been submitted within 6 years as per section 38(2) of the Assessment and Collection of Taxes Laws 1978/1979). 10

Section 38(1) and (2) of the Assessment and Collection of Taxes Laws 1978 to 1979, reads as follows:

«38 (1) Ἐὰν ἀποδειχθῆ, κατὰ τρόπον ἰκανοποιῶντα τὸν Διευθυντὴν, ὅτι ἀναφορικῶς πρὸς φορολογικὸν τι ἔτος πρὸσωπὸν τι κατέβαλε φόρον διὰ παρακρατήσεως ἢ ἄλλως, ὑπερβαίνοντα τὸ ποσὸν τοῦ φόρου τοῦ ὀρθῶς ἐπ' αὐτοῦ ἐπιβλητέου, τὸ τοιοῦτον πρὸσωπον δικαιούται ὅπως τῷ ἀποδοθῆ τὸ καθ' ὑπερβολὴν καταβληθὲν ποσόν. 15 20

(2) Πᾶσα δυνάμει τοῦ παρόντος ἄρθρου ἀπαίτησις δι' ἐπιστροφὴν φόρου δέον ὅπως ὑποβάλληται ἐντὸς ἕξι ἐτῶν ἀπὸ τῆς λήξεως τοῦ φορολογικοῦ ἔτους εἰς ὃ ἡ ἀπαίτησις ἀναφέρεται καὶ ἐὰν αὕτη γενῆ ἀποδεκτὴ, ὁ Διευθυντὴς ἐκδίδει πιστοποιητικὸν περὶ τοῦ ἐπιστρεπτέου ποσοῦ, ἅμα δὲ τῇ λήψει τοῦ πιστοποιητικοῦ ὁ Γενικὸς Λογιστὴς διενεργεῖ ἐπιστροφὴν τοῦ φόρου συμφώνως τῶν ἐν τῷ τοιοῦτῳ πιστοποιητικῷ διαλαμβανομένων. 25 30

(3) . . . . . »

(38 (1) If it be proved to the satisfaction of the Director that any person for any year of assessment has paid tax by deduction or otherwise in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded. 35

(2) Any claim for repayment of tax under this sec-

tion shall be made within six years from the end of the year of assessment to which the claim relates and, if admitted, the Director shall give a certificate of the amount to be repaid and upon the receipt of the certificate, the Accountant-General shall cause repayment to be made in conformity therewith.

(3) .....

The relevant facts of this case as they appear from the material on record and the evidence adduced on behalf of the respondents are briefly as follows:

The applicant derives her income from her employment with Ambrosia Oils Ltd., and from dividends. It appears that the income tax office in examining the tax affairs of Akinita Vias Demetriou Ltd—Vias Demetriou is the father of the applicant—in December, 1978, noticed that during the years 1970 and 1971 the applicant had advanced by way of loans to the company the sum of £21,000. As in the declaration of her income for the year 1970 there was no mention of any interest collected from any bank from the deposit of any money by her, it was suspected that she might have received interest which she did not disclose and, as a result, she was requested by the letter dated 15th January, 1979, (exhibit 2A), to submit returns of her income for the years 1971-1977, for which she had not submitted any declaration forms.

The declaration of income form for the year 1970 was submitted by Mr. Vias Demetriou as the authorized representative of the applicant on the 14th September, 1972 and it was accompanied by a dividends certificate.

In April, 1979, the applicant submitted returns of income for the years of assessment 1973-1975 (years of income 1972-1974) and on the 7th June, 1979, her return for the year of assessment 1972, (year of income 1971), subject-matter of this recourse, declaring an income of £254 as dividends received from the Bank of Cyprus Ltd and Kermia Company Ltd. The tax deducted from the dividends in respect of this year amounted to £91.664.

The applicant objected to the decision of the respondent Commissioner of Income Tax not to refund to her the

aforsaid amount by a letter dated 20th August, 1979. The respondent after examining the contents of applicant's letter informed her, on the 8th September, 1979, that he had nothing to add to his letter of the 23rd July, 1979 (exhibit 1).

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Counsel for the applicant argued that prior to the 19th September, 1977 she did not know that no returns of income had been submitted on her behalf to the income tax office as she was a student and her father only had information regarding her dividends which were her only income until then; and that as she persisted to settle her pending tax affairs since October, 1977, had the respondent acceded to her request to arrange a meeting the six years period would not have elapsed. Counsel further submitted that since the respondents themselves requested the applicant to submit returns of income tax for the years 1971-1977 they were estopped from rejecting her claim for the refund to her of the amount concerned and, also that the applicant was discriminated against vis-a-vis the other tax payers and that the stand of the respondent towards her was vindictive.

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Finally learned counsel made another point to the effect that whereas s. 38(2) provides that "a claim" for repayment should be made within six years.... in the letter (exhibit 1) it is stated that "your declaration" has not been submitted within six years and submitted that there was a difference between the two and that in the present case there was no "declaration" but a "claim" according to the section.

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As no further particulars were given to substantiate the contention of counsel for the applicant that she was discriminated against or that the stand adopted by the respondents towards her was vindictive I have to disregard both these allegations as unsubstantiated.

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Regarding the submission that the respondents, because of their conduct, were estopped from reaching the decision complained of I am of the view that the mere fact that the respondents had requested the applicant to comply with her obligations under the income tax legislation and submit returns of income, as she should have done, cannot operate

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as an estoppel preventing the respondents from refusing any claim of the applicant submitted belatedly especially if such claim is not in accordance with the relevant legislative provisions.

5 It is an admitted fact that prior to the 7th June, 1979, when applicant submitted her declaration of income for the year of assessment 1972 (year of income 1971) no claim was made either in a declaration of income tax form or by letter or any other means for the refund to the applicant of the sum the subject-matter of this recourse. The point, therefore, made by learned counsel with regard to the wording of the section and that of the letter (exhibit 1) is of no consequence whatsoever.

15 The relevant provisions of the Law are clear and unambiguous and the tax problems which had arisen in the present case are solely due to the failure of the applicant to submit in time returns of income as she should have done.

20 The father of the applicant who had submitted a declaration of her income for the year 1970 accompanied by a dividends certificate was well aware that he could have done so for the year 1971 too and the applicant herself even in 1977, when she was in Cyprus, could have submitted returns, so as to be within the time limit provided by the Law.

30 In the light of all relevant facts and circumstances of the present case I am satisfied that the sub judice decision was reasonably open to the respondent Commissioner of Income Tax in the correct application of the relevant legislation and, therefore, the present recourse must fail. In all the circumstances I make no order as to costs.

*Recourse dismissed.  
No order as to costs.*