

1985 September 20

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

GEORGHIOS ELIADES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 538/82).

Administrative law—Administrative act—The Court will never substitute the decision of the administrative organ with its own, if such decision was reached after a correct assessment of the factual background and the organ acted in accordance with the notions of sound administration—The Court will not interfere with a decision of the administration, if it was reasonably open to it. 5

Income Tax—The Convention for the avoidance of double taxation and fiscal evasion between the Republic of Cyprus and the U.K.—Information received by respondent as to applicant's income in U.K.—Applicant's failure to submit particulars requested—No duty of the Commissioner to carry out a further inquiry—The sub judice assessment reasonably open to him. 10

By virtue of a convention signed between the Republic of Cyprus and the Government of the United Kingdom for the avoidance of double taxation and the prevention of fiscal evasion (Published in the Gazette of the Republic in Greek on 5.7.74 and in English on 1.11.74) the respondent received from the Inland Revenue of the U.K. information that a person bearing the name of the applicant and 15
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whose address was the same as that of his, had, in 1979 received income from two sources in England, which the applicant had failed to declare in his return for that year, i.e. a commission of £4,438 sterling from a U.K. firm and
5 £585.97p. as interest from an investment with a Bank in Birmingham.

Following a meeting with the Commissioner the applicant produced a letter by the firm of Joy and King (Export) Ltd. that his commission from them was £438.60 sterling.
10 This amount, however, did not tally with what that company declared in their accounts ending 31.10.79.

Upon request by the Commissioner for a statement of applicant's assets and liabilities as on 31.12.79 and for particulars of his income and copies of bank accounts he
15 was operating abroad, the applicant submitted a statement of his assets and liabilities as on 31.12.79, in which he stated that he had no assets abroad.

At a meeting that followed the officer examining his case once again asked the applicant to produce the particulars of his investments and income abroad. As the applicant failed to do so, the respondent proceeded and determined the applicant's assessments for the year 1979.
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As a result the applicant filed the present recourse. In his evidence before the Court he simply denied that he received the amount above referred to from Joy and King (Export) Ltd. and with regard to the interest from the Bank at Birmingham said that somebody unknown to him and without his knowledge might have deposited the money in his name so that such person who could be one
25 30 of his relatives in U.K. may avoid payment of income tax there.

Held, dismissing the recourse (1) It is well settled that an administrative decision is null and void if the administrative organ fails to carry out a sufficient inquiry into
35 all the relevant factors surrounding the case. It is, also, a cardinal principle of administrative law that this Court will never substitute the decision of an administrative organ with its own if such decision was reached after it had made a correct assessment of the factual background of

the case and acted in accordance with the notions of sound administration. Further, this Court will never interfere with a decision of an administrative organ if the decision was reasonably open to it.

(2) Once the Commissioner received the information from the authorities of the United Kingdom regarding applicant's income and passed over such information to the applicant, who failed to contradict such information, it was reasonably open to the Commissioner to reach the sub-judice decision. He had no duty to carry out a further inquiry.

Recourse dismissed.

Costs in favour of respondents.

Cases referred to:

Mangli v. The Republic (1983) 3 C.L.R. 52; 15

Georgiades v. The Republic (1982) 3 C.L.R. 659;

Pikis v. The Republic (1965) 3 C.L.R. 131.

Recourse.

Recourse against the income tax assessment raised on applicant for the year 1979. 20

D. Papachrysostomou, for the applicant.

M. Photiou, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. What the applicant challenges by his recourse is the decision of the Commissioner of Income Tax to raise an assessment of the income of the applicant for 1979 and his decision that the applicant was liable to pay the sum of £2,400.900 mils income tax and £1,364.650 mils special contribution. 25

The applicant is a manufacturer, commission agent and land owner. 30

In 1980 the applicant submitted to the Commissioner of Income Tax his returns for 1979 and the latter, after exa-

mining them, rejected the returns submitted by the applicant and raised an assessment on the sum of £3,942.-.

5 In November 1980, the Commissioner, after receiving information that the applicant had received the sum of £4,438.- Sterling from a U.K. firm as commission and the sum of £585.97 p. as interest on money invested with a bank in Birmingham, requested the applicant to call at his office for an examination. The applicant complied and admitted that he was a commission agent for aluminium parts and that he derived income from commissions from a number of overseas firms. As he was not, at the time, in a position to give particulars to the income tax office, another meeting was arranged during which his accountant supplied the income tax office with a list showing the names of the firms with which the applicant had dealings, as well as letters from such firms stating the amounts of commissions received by the applicant.

20 One of these letters sent by the firm of Joy & King (Export) Ltd. stated that the commission paid to the applicant by them for 1979 was £438.60 Sterling, which sum, however, did not agree with the amount the said firm declared in their accounts for the year ending 31st October 1979. As a result, the applicant was requested to produce a statement showing commissions received from the said firm in previous years for verification of his allegations. As the applicant failed to forward the statement asked for within a reasonable time, the Commissioner proceeded to raise an additional assessment and the applicant was duly notified of this decision by letter dated 2nd April, 1981. 30 Against this assessment the applicant objected on the ground that it was excessive.

35 By letter dated 15th September, 1981, the Commissioner required the applicant to submit to him, within one month from that day—with the object of examining the applicant's objection—the following:

- (a) A statement of assets and liabilities, both in Cyprus and abroad ending on the 31st December, 1979, which statement ought to include the assets and liabilities of his wife and children, and

- (b) full details of his income from abroad and the copies of bank accounts which he was operating abroad during the period between 1st January, 1974 to the 31st December, 1979.

On the 7th November, 1981, the applicant submitted a statement of his assets and liabilities as on 31st December, 1979, in which he stated that he had no assets abroad.

When the applicant was called later at the income tax office to discuss his statement of assets and liabilities, which he had already submitted, the officer examining him informed him that he knew that the applicant had investments abroad and that as a result he had to produce information and particulars asked for in the letter of the Commissioner dated 15th September, 1981. As the applicant failed to produce the particulars of his investments and income abroad, the Commissioner decided to determine the assessment for the year 1979. The decision of the Commissioner was communicated to the applicant by letter dated 4th October, 1982, together with the relevant notice of tax payable. It is this decision that the applicant challenges by his recourse.

What led the Commissioner to proceed and raise an additional assessment on the applicant were two informations received by him from the Inland Revenue of the United Kingdom. The one related to commission received in 1979 by the applicant from the firm of Joy & King (Export) Ltd., which did not tally with the figure given by the applicant, and the second that applicant had received an amount of £585.97 p. as interest on a deposit standing to his credit with Forward Trust Ltd., Birmingham.

This information was brought to the notice of the applicant by the income tax authorities who, though they gave to him ample time to produce evidence supporting his allegations that he had not received commissions to the extent alleged by the Commissioner, or that he kept no bank account with the Birmingham bank, failed to do so.

In giving evidence before the Court, the applicant simply denied that he had received in 1979 from Joy & King (Export) Ltd. commissions amounting to £4,438.- and with

regard to interest received he alleged that somebody unknown to him and without his knowledge might have deposited money in his name, so that that person, who could be one of his relatives in the United Kingdom, by doing
5 so could evade payment of income tax there on undeclared profits he made. The applicant admitted that the name and address of the beneficiary appearing on the Inland Revenue slip (which is exhibit 7) sent to the Commissioner here in Cyprus were the same as his name and address.

10 The question that poses for decision in the present recourse is whether it was open to the Commissioner to reach the sub judice decision. Counsel for the applicant submitted that the sub judice decision must be declared null and void as the Commissioner based his decision on wrong facts,
15 in that he ought not to rely on mere information supplied to him, to which the applicant could not have the means to trace or check.

It is well settled that an administrative decision is null and void if the administrative organ fails to carry out a
20 sufficient inquiry into all the relevant factors surrounding the case. It is, also, a cardinal principle of administrative law that this Court will never substitute the decision of an administrative organ with its own if such decision was reached after it had made a correct assessment of the
25 factual background of the case and acted in accordance with the notions of sound administration. Further, this Court will never interfere with a decision of an administrative organ if the decision was reasonably open to it.

In reaching my above opinion I have useful guidance
30 from the, amongst others, following cases of the Supreme Court of Cyprus: *Mangli v. The Republic*, (1983) 3 C.L.R. 52, 56, *Georghiades v. The Republic*, (1982) 3 C.L.R. 659, 669 and *Pikis v. The Republic*, (1965) 3 C.L.R. 131, 149.

35 In the present case the Commissioner received information from the Inland Revenue in the United Kingdom that a person bearing the name of the applicant and whose address was the same as that of his, had, in 1979, received income from two sources in England which the applicant
40 had failed to declare in his returns for that year. The in-

formation on which the Commissioner relied upon was received by virtue of a Convention signed between the Republic of Cyprus and the Government of the United Kingdom of Great Britain and Northern Ireland, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. This Convention was published in Greek in the Gazette of the Republic No. 1107 of the 5th July, 1974, under Notification No. 1152 and in English in Gazette No. 1148 of the 1st November, 1974, under Notification No. 1608.

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By the provisions of Article 26 of this Convention, the competent authorities of the contracting States "shall exchange information.... for the prevention of fiscal evasion..."

Once the Commissioner had received the information regarding the income the applicant received in the United Kingdom in 1979, which information he passed over to the applicant, and as the applicant, who had all the means to contradict the information of the Commissioner, had failed to do so, I find that it was reasonably open to the Commissioner to reach his decision and that he was not under a duty to carry out a further inquiry into the United Kingdom income of the applicant.

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In the result, the recourse is dismissed with costs in favour of the respondents.

Recourse dismissed with costs.

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