

1985 May 24

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

SARKIS BEZIRDJIAN,

Applicant,

v.

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

Respondent.

(Case No. 156/77).

5 *Income Tax (Amendment) Law, 1975 (No. 37/75)—Section 9 of the Law by means of which section 2(a) came into force with effect from the 1st January, 1975 not unconstitutional—Law not applied in a manner contravening the provisions of Article 24.3 of the Constitution by applying its provisions with regard to the income of 1974.*

10 *Constitutional Law—Taxation—Retrospective taxation—Article 24.3 of the Constitution—Not retrospective taxation to tax in any year a person on the basis of his income in that particular year—Income Tax (Amendment) Law, 1975 (Law 37/75) sections 2(a) and 9—Not contrary to the above Article.*

15 *Income Tax—Permanent resident, but not citizen of the Republic—Investment income from abroad—Assessment raised thereon, in 1977, for the year of assessment 1975 (year of income 1974) following the enactment of the Income Tax (Amendment) Law, 1975 (Law 37/75)—And whilst an objection against assessment, not including the investment income, was pending—Upon the enactment of Law*
20 *37/75 the first assessment became erroneous and the respondent had a right to revoke it—General principles of administrative Law relating to revocation of administrative acts not applicable—Law 37/75 not applied in a*

manner contravening Article 24.3 of the Constitution by applying its provisions to the investment income of 1974.

The applicant although not a citizen, was a permanent resident of the Republic. He was a shareholder in a private company of limited liability and derived his income from employment as a company director, from old age pension and from investment income arising outside the Republic. In July, 1975, the applicant submitted his return for the year of assessment 1975 (year of income 1974) without including his investment income from abroad since in accordance with the legislation in force up to then such income was not taxable unless remitted to Cyprus. Applicant was assessed accordingly and raised an objection against the assessment made on the ground that it was not in accordance with his declaration. After such assessment on the 11th July, 1975, the Income Tax (Amendment) Law, 1975 (No. 37/75) was enacted, in accordance with the provisions of section 2(a) of which applicant's investment income arising outside the Republic became liable to income tax, whether remitted to Cyprus or not as from the year of assessment 1975; and, as a result, a new assessment was raised on the applicant in 1977 in which the investment income of the applicant from abroad was included. By virtue of the provisions of s.9 of Law 37/75 the provisions of s. 2(a) thereof came into force "as from the year of assessment commencing on the 1st January, 1975".

Upon a recourse by the applicant it was argued by his counsel that the Court should give to the 1975 amendment prospective and not retrospective effect and, in the alternative, that the said amendment was unconstitutional as far as the investment income of 1974 arising abroad was concerned, as it contravened the provisions of Article 24.3 of the Constitution.

It was, also, submitted that since the respondent had already raised the assessment for 1974 which was accepted by both parties, it amounted to a final administrative act which could not be revoked.

Held, (1) that it is not retrospective taxation to tax in any year a person on the basis of his income in that

particular year, by means of legislation enacted during that same year, because tax on income is imposed on an annual basis and, therefore, the relevant legislation may be enacted at any time during the currency of the year concerned (see *In re HadjiKyriacos & Sons Ltd.*, 5 R.S.C.C. 22 at pp. 29-30 followed in *Antoniades and Others v. Republic* (1979) 3 C.L.R. 641 at pp. 650-652); and that, therefore, the provisions of section 9 of Law 37/75, by which section 2(a) of the same Law came into force with effect from the 1st January, 1975, are not unconstitutional.

(2) That the phrase "as from the year of assessment commencing on the 1st January, 1975" occurring in section 9 of Law 37/75 means both the income and the deductions envisaged in the section in question related to the year immediately preceding the year of assessment i.e. year of income 1974 and that, therefore, Law 37/75 is not unconstitutional and the respondent did not apply it in a manner contravening the provisions of Article 24.3 of the Constitution by applying its provisions with regard to the income of 1974.

(3) That since the applicant did not accept the assessment and had lodged an objection against it in this sense it was not a final assessment, at least, in so far as he was concerned; that, also, upon the amendment of the Income Tax Laws 1961-1973 by Law 37/75 the assessment raised on the applicant based on his income tax returns, which did not include his investment income earned abroad during the year 1974, became erroneous and the respondent had a right, on the basis of the Law, to revoke it as, in such circumstances, the general principles of administrative Law relating to revocation of an administrative act are not applicable.

Application dismissed.

35 Cases referred to:

In re HadjiKyriacos & Sons Ltd., 5 R.S.C.C. 22 at pp. 29-30;

Antoniades and Others v. Republic (1979) 3 C.L.R. 641 at pp. 650-652;

KEO Ltd. v. Republic (1982) 3 C.L.R. 141 at p. 148;

Melikian & Co. Ltd. v. Republic (1983) 3 C.L.R. 1324,
at pp. 1329, 1330.

Recourse.

Recourse against the income tax assessment raised on applicant in 1975 for the year of assessment 1974. 5

A. Triantafyllides, for the applicant.

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

Cur. adv. vult. 10

L. LOIZOU J. read the following judgment. The applicant challenges the validity of income tax assessment No. 3. 20124/37/77/75, and prays for a declaration that the decision of the respondent to impose on him income tax amounting £200.800 mils or any other sum or at all is null and void and of no effect whatsoever. 15

The applicant although not a citizen, is a permanent resident of the Republic. He is a shareholder in a private company of limited liability and derives his income from employment as a company director, from old age pension and from investment income arising outside the Republic. In July, 1975, the applicant submitted his return for the year of assessment 1975 (year of income 1974) without including his investment income from abroad since in accordance with the legislation in force up to then such income was not taxable unless remitted to Cyprus. Applicant was assessed accordingly and raised an objection against the assessment made on the ground that it was not in accordance with his declaration. 20 25

After such assessment however, on the 11th July, 1975, the Income Tax (Amendment) Law, 1975 (No. 37/75) was enacted, in accordance with the provisions of which applicant's investment income arising outside the Republic became liable to income tax, whether remitted to Cyprus or not as from the year of assessment 1975. 30 35

As a result, the respondent forwarded to the applicant a

letter dated 7th October, 1976 (exhibit 1) requesting him to supply him with information about his investment income abroad, for the year 1974 and informing him that under s. 5 (2) (c) (i) of the Income Tax Laws 1961-1976 the whole
5 of the investment income arising outside the Republic as from the year of assessment 1975 (year of income 1974) is liable to Cyprus tax whether or not remitted to the Republic and that, therefore, the assessment already raised on him would be cancelled and a new one raised to include
10 his said income.

Applicant replied, through his counsel, by letter dated 10th December, 1976 (exhibit 2) stating that s.5 (2) (c) (i) cannot have retrospective effect so as to affect the investment income of the year 1974.

15 The respondent by his letter dated 20th December, 1976, (exhibit 3) again requested the applicant to inform him about his investment income abroad during the year 1974 so that he might raise an assessment on the said income without prejudice to applicant's right to object to such
20 assessment and also file a recourse in accordance with the Law if he so wished. The applicant then by letter dated 17th January, 1977 (exhibit 4) supplied the respondent with the information requested. A new assessment was then raised by the respondent in which the said income of
25 the applicant was included and to which applicant objected on the 14th February, 1977 (exhibit 5). The respondent determined his objection by dismissing it and informed him accordingly by letter dated 15th April, 1977 (exhibit 6).

30 In consequence the applicant filed the present recourse against such decision.

The point that falls for consideration is whether the assessment raised on the applicant on the part of his income of the previous year (1974), which was not taxable in the
35 year it accrued, amounted to retrospective taxation and was, therefore, contrary to the provisions of Article 24.3 of the Constitution.

Learned counsel for the applicant argued in this respect that the Court should give to the 1975 amendment prospective and not retrospective effect and, in the alternative,
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that the said amendment is unconstitutional as far as the investment income of 1974 arising abroad is concerned, as it contravenes the provisions of Article 24.3 of the Constitution.

He also submitted that since the respondent had already raised the assessment for 1974 which was accepted by both parties, it amounted to final administrative act which could not be revoked.

Counsel for the respondent, on the other hand, argued that it was not unconstitutional to give to s.2 of Law 37/75, which was enacted on the 11th July, 1975, retrospective effect as from the 1st January, 1975. He also argued that in view of the provisions of s.6 of the Law it is not retrospective taxation to assess income, other than emoluments, on the basis of the income of the preceding year. As stated above the relevant legal provision is contained in s.5(2)(c)(i) of the Income Tax Laws, 1961-1975 which, before its amendment by Law 37/75, afforded an exemption from the payment of income tax of investment income abroad to persons not citizens of the Republic. By s.2(a) of Law 37/75 which amended s.5(2)(c) the exemption was no longer applicable to the applicant.

By virtue of the provisions of s.9 of Law 37/75 the provisions of s.2(a) thereof came into force "as from the year of assessment commencing on the 1st January, 1975".

S.6 of the Income Tax Laws 1961-1975 provides as follows:

"6. Tax shall be charged, levied and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment:

Provided that in computing the chargeable income of any person who derives income from emoluments as defined in s.48 and for the purpose of part IX and s.52 the emoluments of the year of assessment shall be substituted for the emoluments of the year immediately preceding the year of assessment."

The question of retrospectivity and constitutionality of similar taxation legislation arose first in the case of *In re*

Hadjikyriacos & Sons Ltd., 5 R.S.C.C., 22 where it was held: (at pp. 29-30)

5 “Concerning submission (b) above, the Court has
come to the conclusion that no question of retrospe-
ctivity, contrary to paragraph 3 of Article 24, arises.
As it is also apparent from the provisions of section
3(1) of Law 16/61 and clause 4 of the Annex to such
10 Law the personal tax imposed under the said Law is
a tax imposed during the currency of a particular
year, i.e. 1961, in respect of expenditure in the Com-
munal Chamber budget, as under Article 88.1 pro-
vided, for that very same year. It is not retrospective
15 taxation to tax in any year a person on the basis of
his income in that particular year, by means of legi-
slation enacted during that same year, because tax on
income is imposed on an annual basis and, therefore,
the relevant legislation may be enacted at any time
during the currency of the year concerned. The mere
20 fact that, under clause 5 of the Annex to Law 16/61,
(the text of which is set out hereinafter) the tax in
question is charged, as far as income from sources
other than emoluments is concerned, on the taxable
income derived in the year immediately preceding the
year of assessment, does not render such tax a retros-
25 pective taxation on the income of the preceding year,
i.e. 1960; it still remains a tax imposed, in all respects,
on the basis of the income in 1961, the year of assess-
ment, and simply because the taxable income in 1961,
from sources other than emoluments, is not readily
30 ascertainable in the year of assessment, such income is
computed, subject always to the application of the
appropriate legal principles, on the basis of the taxable
income from the said sources in 1960. That this is
35 the proper construction to be placed upon a provision
such as the said clause 5 is borne out by the con-
struction given to practically identical provisions in
the income-tax legislation of other countries including
England, on the income-tax legislation of which the
corresponding legislation in Cyprus happens to have
40 been modelled for years and from which Cyprus le-
gislation the formula in clause 5 appears to have been
adopted. It is for the legislature to choose the proper

method of the computation of income in respect of the year of assessment.”

The above case was considered and followed by the Full Bench of this Court in the case of *Antoniades and Others v. The Republic* (1979) 3 C.L.R. 641 at pp. 650-652. 5

I, therefore, find, on the authority of the above cases that the provisions of s. 9 of Law 37/75, by which s. 2(a) of the same Law came into force with effect from the 1st January, 1975, is not unconstitutional. What remains to be considered is whether the respondent applied that Law in a manner contravening the provisions of Article 24.3 of the Constitution by applying its provisions with regard to the income of 1974. 10

The phrase “as from the year of assessment commencing on the 1st January, 1975” occurring in s.9 of Law 37/75 was construed in the case of *KEO Ltd. v. The Republic* (1982) 3 C.L.R. 141 at p. 148 to mean that “both the income and the deductions envisaged in the section in question related to the year immediately preceding the year of assessment i.e. year of income 1974”. 15 20

The last mentioned case was followed in the case of *Melikian & Co. Ltd v. The Republic* (1983) 3 C.L.R., 1324, where the unconstitutionality and retrospectivity of a similar provision in a taxing Law were in issue. The relevant part is at pp. 1329-1331 of the report. At p. 1329 it is stated that- 25

“It has been contended, too, by counsel for the applicant that the application by the respondent of the provisions of Law 8/79 (which was enacted on 26th January, 1979, with effect as from 1st January, 1978) in respect of the income tax liability of the applicant for the year of assessment 1979 (year of income 1978) amounted to retrospective taxation contrary to the provisions of Article 24.3 of the Constitution. 30

I cannot accept as correct the above contention; and useful reference may be made in this connection to *In re Hadjikyriacos & Sons Ltd.*, 5 R.S.C.C., 22, 29, 30, where there are stated the following:” 35

and the learned Judge cites the passage from the *HadjiKyriacos* case cited above and at p. 1330 makes reference to the relevant part in the case of *KEO* (supra) and concludes at p. 1331:

5 “In the light of the above dicta I am of the opinion
that it cannot be said that in the present instance Law
8/79 was applied retrospectively in a manner incon-
sistent with Article 24.3 of the Constitution, since it
10 was duly in force as from the year of assessment 1979,
when one of the two sub judice, in the present case,
assessments—that for the year of assessment 1979—
was raised.”

In the light of the above I find that neither the Law
nor its application are unconstitutional.

15 What remains to be considered is the submission of
learned counsel for the applicant that once the assessment
for the year of income 1974 was raised on the applicant
such assessment could not be revoked.

20 In the first place it is clear from the letter of the 7th
October, 1977 (exhibit 1) that the applicant did not accept
such assessment and had lodged an objection against it and
in this sense it was not a final assessment, at least, in so
far as he was concerned. Secondly, it may be said that upon
25 the amendment of the Income Tax Laws, 1961-1973 by
Law 37/75 the assessment raised on the applicant based on
his income tax returns, which did not include his invest-
ment income earned abroad during the year 1974, be-
came erroneous and the respondent had a right, on the
basis of the Law, to revoke it as, in such circumstances,
30 the general principles of administrative Law relating to re-
vocation of an administrative act are not applicable.

In the light of the above this recourse fails and it is here-
by dismissed. There will be no order as to costs.

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Recourse dismissed.

No order as to costs.