

1986 December 1

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

EURIPIDES NEOCLEOUS,

Applicant,

v.

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

Respondents.

(Case No. 929/85).

Income tax—Deferred emoluments—Retiring gratuity —What benefits constitute emoluments from one's employment and are, as such, liable to tax—Amount payable in virtue of an Employee Pension Fund upon retirement or termination of employment—Payment considered as constituting deferred emoluments (section 5(1)(b) of the Income Tax Laws) and not as a "retiring gratuity", exempted from income tax in virtue of section 8(g) of the aforesaid laws—Sub judice decision reasonably open to the Commissioner.

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10 *Words and Phrases: "Retiring gratuity" in section 8(g) of the Income Tax Laws.*

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The applicant was an employee of an insurance company. An agreement reached between the applicant and his employers provided for the termination of applicant's employment and the payment to applicant by his employers of the following amounts, namely: (a) £8,424 compensation for termination of loss of employment, and (b) £5,054.-., representing benefits accruing to the applicant under the Employee Pension Plan of the insurance company.

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As applicant's employers failed to honour their agreement applicant took them to Court. The action was settled with the payment of the amount claimed by the plaintiff.

This recourse is directed against the decision of the respondent Commissioner, whereby he considered that the said sum of £5,054 was liable to income tax, as constituting deferred emoluments (section 5(1)(b) of the Income Tax Laws). The applicant's final position was that the aforesaid payment was exempted from income tax in virtue of section 8(g) of the same laws, which exempt from income tax "any lump sum received by way of retiring gratuity, commutation of pension, death gratuity or as consolidated compensation for death or injuries".

Held, dismissing the recourse: (1) The sum of £5,054 represented benefits accrued to the applicant under the said Employee Pension Fund. In the circumstances, it was, at the lowest, reasonably open to the Commissioner, as the arbiter of facts for the purpose of administering the Income Tax Laws to take that view of the situation and adjust the tax liabilities of the applicant according to that reality

(2) The payment in question was not made upon retirement, but upon termination of employment under the terms and conditions of a plan providing for such eventuality. The expression "retiring gratuity" in section 8(g) must be given its natural meaning, that is a payment made on the occasion of retirement. The payment made to the applicant in this case was not an incident of his retirement, but a benefit received before retirement in virtue of the terms of his employment. If a benefit accords with the reasonable expectations of the recipient of the payment as a benefit expected to accrue from his employment, it constitutes an emolument deriving from his employment and as such is liable to tax. The payment in question constituted a benefit deriving from applicant's employment. At the least, it was reasonably open to the Commissioner to arrive at such a conclusion.

Recourse dismissed. 35
No order as to costs.

Cases referred to:

W. T. Ramsay Ltd. v. I.R.C. [1981] 1 All E.R. 865;

Corbett v. Duff, Dale v. Duff, Feebary v. Abbot [1941]
1 All E.R. 512;

Fitikkides v. The Republic (1970) 3 C.L.R. 15;

Coussoumides v. The Republic (1966) 3 C.L.R. 1;

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

Recourse.

5 Recourse against the income tax assessment raised on applicant whereby the sum of £5,054.- received by applicant upon cessation of his employment with American Life Insurance Company (ALICO) derived from his entitlement to the Employees Pension Plan was considered as
10 taxable.

Ph. Valiantis, for the applicant.

Y. Lazarou, for the respondent.

Cur. adv. vult.

15 PIKIS J. read the following judgment. At the centre of the controversy between the applicant and the Commissioner of Income Tax is the taxability of a sum of £5,054.- (Five thousand and fifty four pounds only) received by the former upon cessation of his employment with American Life Insurance Company (ALICO), an insurance company. The
20 sum paid to the applicant derived from his entitlement to the Employee Pension Plan of the company, payable on retirement or termination of employment. The accountant of the applicant claimed that the aforesaid amount was exempt from income tax as it represented compensation for
25 loss of office (see letter of Mr. Ionides, dated 26.3.85). The Commissioner refused the claim to exemption taking the view that the payment constituted deferred emoluments and as such was taxable under the provisions of s. 5(1)(b) of the Income Tax Laws. In his final address applicant modified the basis upon which exemption was sought, claiming exemption under the provisions of s. 8(g) of the
30 Income Tax Laws; that exempts from income tax "any lump sum received by way of retiring gratuity, commutation of pension, death gratuity or as consolidated compensation for death or injuries". The change of stand does
35 not defeat the case of the applicant for exemption as it

merely affects the interpretation of the self same facts and implications in law stemming therefrom. The Commissioner disputed the contention that the payment represented compensation for termination of employment, asserting in the address submitted on his behalf that, it constituted payment on deferred emoluments payable under and in accordance with the terms and conditions of the Employee Pension Plan. As such, it amounted to a pre-agreed payment accruing to the applicant as an incident of the conditions of his service and as an income from his employment.

To appreciate the disputations of the parties, we must refer to the background of the case and the circumstances under which the money was paid.

The applicant was an employee of American Life Insurance Co., Cyprus, aspiring to the general managership of the company, an aspiration encouraged by his employers. His expectations were frustrated when a younger person from Greece was appointed to the post. This disappointment, coupled with the failure of his employers to budget for an appropriate increment, led the applicant to contemplate resignation. The prospect was welcomed by his employers who struck an agreement with him providing for the termination of his employment and benefits incidental thereto. The agreement provided that applicant would be compensated by -

- (a) £8,424.-, compensation for termination or loss of employment and
- (b) £5,054.-, representing benefits accruing to the applicant under the Employee Pension Plan.

Having failed to honour their agreement applicant took them to Court (Action No. 1013/83—District Court Nicosia), claiming damages for breach of the contract governing the termination of his employment. The facts outlined hereinabove are a synopsis of the averments made in the statement of claim adumbrating applicant's case against his former employers.

The action was settled with the payment by the American Life Insurance Company of the amount claimed by the ap-

5 plicant for which a receipt of full discharge was issued
(exhibit 2 attached to the application). Evidently the pay-
ment of the amount of £5,054.- represented benefits accru-
ing to the applicant under the aforementioned Employee
10 Pension Plan. The contention that it represented compen-
sation for loss of office can hardly be reconciled with the
facts of the case. The claim raised by the plaintiff for re-
covery of the amount of £5,054.-, the agreement pertinent
to the termination of his employment and the action that
15 followed for breach of its provisions, were all founded
upon the premise of applicant's entitlement to the benefits
of the fund upon termination of employment. And the
payment that followed was made in response to that claim.
It was at the lowest reasonably open to the Commissioner,
20 as the arbiter of facts for the purposes of administering the
Income Tax Laws, to take that view of the situation and
adjust the tax liabilities of the applicant according to that
reality. As in every case, a document or transaction must
be viewed in its proper context. As observed in *W. T. Ram-
say Ltd. v. IRC*,¹ a transaction cannot be viewed "..... in
blinkers isolated from any context in which it properly
belongs".

25 Thus the final payment received by the aforementioned
exhibit 2, must be examined in the context of its back-
ground and the circumstances giving rise to the claim sat-
isfied thereby.

30 The sole question the Commissioner had to resolve was
whether the payment constituted a deferred emolument de-
riving from his employment and as such chargeable as in-
come under s. 5(1)(b), or a lump sum received by way of
retiring gratuity. At first glance one notices that payment
was not made upon retirement. On the contrary, it was
paid upon termination of employment under the terms and
conditions of a plan providing for that eventuality. In
35 *Renos Fitikkides v. Republic*¹ a payment made to an
employee under a "Gratuities on Termination of Service"

¹ [1981] 1 All E.R. 865 (HL).
¹ (1970) 3 C.L.R. 15

providing for the payment of a gratuity upon voluntary retirement, was treated as a delayed benefit deriving from employment and as such was found to be chargeable to income tax. The payment was not a gratuity paid upon retirement. Like the present case it was a gratuity paid upon premature termination of employment. And as such, outside the provisions of s. 8(g) of the law. 5

I need not go through the caselaw so elaborately referred to by Hadjianastassiou, J. I shall only refer to the case of *Corbett v. Duff*, *Dale v. Duff*, *Feebary v. Abbott*¹, that draws, if I may say so with respect, the demarcation line between payments qualifying as benefits deriving from employment and payments outside that range of benefits. It is a fine line making it all the more necessary to sift the facts relevant to the particular payment in order to ascertain its significance from the standpoint of the tax payer. If the benefit accords with the reasonable expectations of the recipient of the payment as a benefit expected to accrue from his employment, it constitutes an emolument deriving from his employment and as such liable to tax. 10 15 20

The wording of s. 8(g), exempting from tax gratuities upon retirement, must not be strained to read something other than it says. In particular, the expression "retiring gratuity" must be given its ordinary meaning; that is, a payment made on the occasion of retirement. This is the effect of the decision of Triantafyllides, J., as he then was, in the case of *Coussoumides v. Republic*². The following passage from his judgment illuminates the compass of s. 8 (g): 25

"I am of the opinion that what is really contemplated under the above provisions is a gratuity payable on retirement due to age or other cause putting an end to a person's working life and not a gratuity on changing employment after a certain number of years, especially if the said years do not represent practically a lifetime's work, but are only a part thereof..." 30 35

The payment made to the applicant in this case was

¹ [1941] 1 All E.R. 512.

² (1966) 3 C.L.R. 1, 9:

not an incident of his retirement. On the contrary it was a benefit received before retirement in virtue of the terms of his employment. It was claimed and paid as such. He could, with a fair degree of confidence, anticipate such payment in the event of premature termination of employment. Certainly it was not a retiring gratuity in the sense of the aforementioned provision of the Income Tax Laws. It constituted a benefit deriving from his employment and as such liable to attract income tax. At the least, it was reasonably open to the Commissioner to come to this conclusion as to the nature of the payment and raise the assessment hereinabove reviewed¹.

The recourse fails. The sub judice decision is hereby confirmed pursuant to the provisions of Article 146.4 (a) of the Constitution. In the result the case is dismissed. Let there be no order as to costs.

Recourse dismissed.
No order as to costs.

¹ See, inter alia, *Georgiades v. Republic* (1982) 3 C.L.R. 659 (FB).