1986 December 9

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

GEORGHIOS N. GEORGHIOU,

Applicant,

v.

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

Respondent.

(Case No. 450/80)

Constitutional Law —Equality — Constitution, Article 28— Taxation —In taxing matters the legislature is allowed great latitude in view of the complexity of fiscal adjustments.

Constitutional Law —Equality — Constitution, Article 28— Taxation —Income tax —Section 12(2)(b) of the Income Tax Laws, 1961 - 1969 —Distinction between private saloon motor vehicles and other classes of vehicles—Distinction reasonable and, in any event, it constitutes a differentiation between classes of things and not classes of persons —Not repugnant to Article 28—Section 12(1) introduced by Law 8/79—Not repugnant to Article 28.

Constitutional Law—Taxation—Retrospectivity of—Constitution, Article 24.3—Application of law enacted during year of assessment in respect of income derived during the year immediately preceding the year of assessment—Does not amount to retrospective taxation— Application of Law 8/79 in computing income derived in 1978 (year of assessment 1979) and in 1977 (year of assessment 1978) —Its application as regards 1978 (year of assessment 1979) was not retrospective, but its application as regards 1977 (year of assessment 1978) was retrospective.

Revisional Jurisdiction —The Court is not bound by the contention of the parties.

In November, 1977 the applicant, who earns his income by exercising the profession of an architect and as a director of a construction company, ordered a new Mercedes car at the price of £7,500, on account of which he paid £1,000. The car was delivered to him in June, 1978. Its total cost was £7,670. The applicant included the car as a fixed asset for the year of assessment 1978 and claimed 100% capital allowance for it. The respondent decided that the purchase of the car could not be considered as a purchase of a capital asset in 1977 and that, as regard 1978, no allowance could be claimed by reason of the provisions of the Income Tax (Amendment) Law, 8/1979. As a result the present recourse was filed.

Held, (1) All material facts, that is the order of the car in 1977, its delivery in 1978 and the payment on account of £1,000 were correctly put before the Commissioner. It follows that applicant's contention that the respondent laboured under a misconception of fact cannot succeed.

(2) The distinction made by section 12(2)(b) of the Income Tax Laws, 1961 - 1969 between private saloon cars and other kinds of vehicles is a reasonable one and, in any event, it is not a differentiation between classes of persons, but between classes of things. The applicant failed to convince the Court that the said section 12(2)(b) and section 12(1), introduced by Law 8/1979 offend against the principle of equality.

(3) The case law of this Court shows that the mere fact that a tax is imposed by a law enacted during the year of assessment on the income tax in the year immediately preceding the year of assessment does not amount to retrospective taxation. In the light of this principle Law 8/79 was not applied retrospectively in this case as regards the year of assessment 1979 (year of income 1978) and, therefore, there has been no contravention of Article 24.3 of the Constitution. The application, however, of the provisions of Law 8/79 to the year of assessment 1978 (year of income 1977) amounts to retrospective

taxation. It follows that the applicant was entitled to an allowance of £1,000 paid by him in 1977, but not to any wear and tear allowance in respect of that year, because the car was not "in use and employment" in his trade as provided by section 12(2)(a) of the Income Tax Laws.

Sub judice decision annulled in part. No order as to costs.

Cases referred to:

Psaras v. *The Republic* (1968) 3 C.L.R. 353;

Matsis v. *The Republic* (1969) 3 C.L.R. 245;

Hoppi v. *The Republic* (1972) 3 C.L.R. 269;

Xydias v. *The Republic* (1976) 3 C.L.R. 303;

Colocassides and Another v. *The Republic* (1977) 3 C.L.R. 364;

Ionides v. *The Republic* (1980) 3 C.L.R. 1;

Antoniades and Others v. *The Republic* (1979) 3 C.L.R. 641;

Re Hji Kyriakos and Sons Ltd., 5 R.S.C.C. 22;

KEO Ltd. v. *The Republic* (1982) 3 C.L.R. 141;

Bezirdjian v. *The Republic* (1985) 3 C.L.R. 955;

Melikian and Co. Ltd. v. *The Republic* (1983) 3 C.L.R. 1324;

Savva v. *The Republic* (1986) 3 C.L.R. 445.

Recourse.

Recourse against the income tax assessment raised on applicant for the years of assessment 1978 - 1979.

L. Papaphilippou, for the applicant.

M. Photiou, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. The applicant, an architect who earns his income by exercising his profesion and, also, as a director of a construction company, in November, 1977 ordered a new Mercedes car, the price of which was £7,500, on account of which he paid the sum of £1,000.-.

The car was delivered to him in June, 1978 and its total cost to him then was £7,670.-. In the returns for purposes of income tax, which he submitted through his auditors, the applicant included the cost of the said car as a fixed asset for the year of assessment 1978 and claimed 100% capital allowance for it.

By his letter dated the 14th January, 1980, the respondent informed the applicant that the purchase of the car could not be considered as a purchase of a capital asset in 1977 and the capital allowance claimed could not be granted because the car was delivered in 1978. The respondent, also, refused to allow any capital allowance in respect of the said car from the returns of 1978 in view of the provisions of the Income Tax (Amendment) Law, 1979, (Law 8/79) by which the capital allowance in respect of a motor vehicle other than a goods vehicle, was withdrawn.

The applicant objected against the relevant assessments raised by the respondent. His objections were determined and rejected by the respondent who communicated his decision to the applicant, by letter dated the 10th September, 1980.

The applicant then filed the present recourse, by which he prays for a declaration that the assessment raised by the respondent on his income for income tax purposes for the years of assessment 1978(77) and 1979(78), as determined by the respondent on the 25th September, 1980, is null and void and of no effect whatsoever.

The grounds of law, as set out in the application, are that:

"1. The respondent acted under misconception of facts in his refusal to allow capital allowance, i.e. investment allowance and annual wear and tear allowance under section 12 of the Income Tax

Laws, 1961 - 1977 in respect of a motor car ordered by the applicant in 1977 and delivered to him in June 1978, in that such car was used by the applicant in the exercise of his profession.

2. The application of section 12(2)(b) of the Income Tax Laws 1961 - 1969 in a way distinguishing a 'private motor vehicle' used in applicant's profession from motor vehicles used for carriage of passengers and goods for reward, equals to discrimination and unequal treatment contrary to Article 28 of the Constitution.

3. The respondent acted contrary to Article 24.3 of the Constitution in that he applied Law No. 8/1979 retrospectively i.e. in computation of applicant's income for the years 1978(77) and 1979(78).

4. The respondent applied an erroneous method in computing the applicant's assessable income for the years 1978(77) and 1979(78)

5. The respondent erroneously did not apply the rules of strict construction of tax laws and the principle that in case of ambiguity in a tax law such ambiguity is construed in favour of the tax-payer.

6. The act or decision complained of is not duly and/or sufficiently reasoned contrary to Article 29 of the Constitution."

In respect of the first ground, counsel for the applicant argued that the respondent ignored the fact that the acquisition of the car commenced in 1977 and, thus, he acted under a misconception of fact.

I do not agree with this submission as all material facts, namely the order of the car in 1977, its delivery in 1978 and the payment in 1977 of the sum of £1,000.- as an advance towards the price of the car, were clearly and correctly put before the respondent and it is them that he considered in reaching his decision.

For this reason, this ground of law fails.

Regarding the second ground, counsel for applicant argued that the provisions of section 12(2)(b) of the Income Tax Laws, 1961 - 1969, are unconstitutional as they discriminate between a private motor vehicle, as this is defined by the Motor Vehicles and Road Traffic Regulations, which is used for the carriage of passengers (for which investment and wear and tear allowances are not granted), and any other kind of motor vehicle used in a trade, business, profession or occupation, for which such allowances are granted. Similarly, counsel argued, the provisions of section 12(1) of the Law, which were introduced by the amending Law 8/79 and which excluded private motor vehicles from the definition of the term "plant and machinery", for which annual wear and tear allowance could be granted, are also unconstitutional as contravening the provisions of Article 28 of the Constitution.

Counsel for the respondent argued that it is for the applicant to satisfy the Court beyond any doubt that the said provisions are unconstitutional and that he failed to do so. He stressed that the legislative discretion allows a great latitude in respect of taxation laws and that the differentiation in the present case, between private saloon cars and goods vehicles, being two completely different types of vehicles, is a reasonable one.

It has been held in a number of cases that the Court will not interfere with the validity of an enactment unless satisfied beyond reasonable doubt that it is unconstitutional (see *Psaras* v. *The Republic*, (1968) 3 C.L.R. 353; *Matsis* v. *The Republic*, (1969) 3 C.L.R. 245; *Hoppi* v. *The Republic*, (1972) 3 C.L.R. 269).

On the question of infringement of the principle of equality safeguarded by Article 28 of the Constitution by taxation legislation, it has been similarly held that the legislative discretion is permitted a great latitude in view of the complexity of fiscal adjustments (see *Matsis* v. *The Republic*, (supra), *Xydias* v. *The Republic*, (1976) 3 C.L.R. 303; *Kolokassides and Another* v. *The Republic* (1977) 3 C.L.R. 364; *Ionides* v. *The Republic*, (1980) 3 C.L.R. 1).

In the light of the above principles I find that the dif-

ferentiation in the present case between private saloon motor-vehicles and other kinds of vehicles is a reasonable one and that the applicant failed to convince me of the unconstitutionality of the provisions of sections 12(1) and 12(2) (b) of the Law. In any event, the differentiation made is between classes of motor vehicles and not between classes of persons (see *Antoniades and others* v. *The Republic*, (1979) 3 C.L.R. 641).

This ground of law is, therefore, also dismissed.

In relation to the third ground (which is the most material one) counsel for the applicant argued that by section 12(2)(d) of the Law (introduced by section 6(b) of Law 37/75), a deduction was allowed from a tax-payer's profits of the whole of the expenditure incurred for the acquisition of property consisting of new "plant and machinery", provided such expenditure was commenced within three years from the coming into operation of that law and was completed within five years thereof; that the applicant took advantage of these provisions and ordered the car in question in 1977; that it was by Law 8/79 that private cars were excluded from the definition of "plant and machinery" and that para. (d) of sub-section (2) was, also, repealed and replaced by the same law. Therefore, counsel submitted, the respondent acted wrongly in not allowing the deductions claimed by the applicant.

Counsel further submitted that Law 8/79 is unconstitutional in that although it was enacted on the 26th January, 1979, the withdrawal of the grant of annual wear and tear for private cars was given retrospective effect as from the income year 1977.

Counsel for the respondent conceded that Law 8/79 is, in its strict application unconstitutional in that by section 3 thereof such Law came into force from the year of assessment 1978, that is year of income 1977. It is, however, counsel's position, that it is not unconstitutional vis a vis the applicant because it was applied only in respect of the year of assessment 1979 (year of income 1978) and not for the year of assessment 1978 (year of income 1977) and it cannot, therefore, be declared unconstitutional.

Counsel maintained that the provisions of the new paragraph (d) which was introduced by Law 8/79 apply to applicant's case only for the expenditure incurred in 1977, i.e. the £1,000.- paid on account for the purchase of the car, but do not apply in respect of the year of assesment 1979 (1978) because it is expressly provided by section 12(1) as amended by section 2 of Law 8/79, that private motor vehicles shall not be deemed to be within the meaning of "plant and machinery". He finally submitted that Law 8/79 is not retrospective if it is applied for the year of income 1978 and concluded by stating that the respondent undertakes to grant to the applicant the allowance of £1,000.- paid in 1977 for the purchase of the car.

I shall deal first with the retrospectivity of Law 8/79 with regard to the year of assessment 1979(78).

It has been held in *Re Hji Kyriakos and Sons Ltd.*, 5 R.S.C.C. 22 at p. 30, that:-

> "The mere 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 retrospective taxation on the income of the preceding year."

(See, also, *KEO Ltd.* v. *The Republic*, (1982) 3 C.L.R. 141, at pp. 147, 148; *Bezirdjian* v. *The Republic*, (1985) 3 C.L.R. 955, at pp. 961-963).

The question of retrospectivity of Law 8/79 was in issue in the case of *Melikian & Co. Ltd.* v. *The Republic*, (1983) 3 C.L.R. 1324. In that case the validity of the assessments raised by the Commissioner of Income Tax in respect of the years 1979(78) and 1980(79) were challenged on the ground that the Commissioner wrongly disallowed capital allowances in respect of the cost of two vehicles of the station-wagon type, purchased by the applicant in 1978 and 1979 respectively. Triantafyllides P. held, following the above cited cases, that the application of Law 8/79 to the

year of income 1978 did not amount to retrospective taxation.

In the light of all the above cases, I also hold that Law 8/79 was not applied retrospectively in the case of the applicant with regard to the year of assessment 1979 (year of income 1978). If, however, the same provisions were applied to the year of assessment 1978 (year of income 1977), their application would have amounted to retrospective taxation. Counsel for the respondent, having conceded so, stated in his written address that "the respondent undertakes to grant to the applicant the allowance of £1.000.- paid in 1977 for the purchase of the aforesaid motor car".

An administrative Court is not bound by any statements or admissions by the parties but has to draw its own conclusions since the responsibility for annulling an administrative act or decision remains exclusively in the Court trying the case (see *Savva* v. *The Republic*, (1986) 3 C.L.R. 445, at p. 448, where reference is made to a number of authorities on the point).

Having considered the arguments of counsel and the legislative provisions applicable in the present case, I have come to the conclusion that the applicant is entitled to the allowance of £1,000.- paid by him in 1977 for the purchase of the car in question. He is not, however, entitled to any wear and tear allowance in respect of that year, since the car was not "in use and employment" in his trade in 1977 as provided by the Law (section 12(2) (a)).

As to the remaining grounds, I find no merit in them having regard to my above findings and they are, therefore, dismissed. The applicant failed to show that the method of computing the applicant's income was not reasonably open to the respondent and there is no ambiguity in the Law, so as to resolve it in the applicant's favour.

As to the reasoning of the sub judice decision, being a question of degree, I find that in the circumstances the

reasoning given was enough so as to let the applicant know why his claim was rejected.

In the result, this recourse succeeds partly.

Order accordingly.

There will be no order as to costs.

Recourse succeeds in part.
No order as to costs.