

1986 May 31

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ADIS LTD.,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF FINANCE, AND/OR  
THE DIRECTOR OF INLAND REVENUE  
DEPARTMENT,

*Respondents.*

(Case No. 575/84).

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*The Capital Gains Tax Law 52/80—Ss. 2, 4, 9(2) and 10—  
“Profit” in s. 2—“Disposal” in s. 10—Covers all instances  
of transfers or alienation of the beneficial title from one  
person to another except the four instances enumerated in  
the said s. 10—Reasons behind transfer or alienation im- 5  
material—Powers of the Director of Inland Revenue under  
s. 9(2)—Company limited transferring land to its share-  
holders by way of gift—Its gain is subject to tax.*

*Lands Office—Transfer of Property—Declaration as to—Except 10  
when fraud or false entries are claimed to have been made,  
one cannot accept any allegation inconsistent with such  
declaration.*

*Constitutional Law—Constitution, Articles 24 and 28—Taxa- 15  
tion—In matters of taxation the legislature has broader  
powers of classification than in other fields—The Capital  
Gains Tax Law, s. 10(b)—Distinction between gift by a  
physical person to a company limited and gift by a  
company limited to physical persons—Distinction rea-  
sonable.*

On the 9.9.82 the applicant company gifted a building 20

5 site in Strovolos under Reg. No. K413, which it had purchased in 1977 for £9,500 plus £480 Land Registration fees, to its only shareholders and directors, namely D. Zachariades and his wife A. Zachariadou. The applicant company declared that the value of the said site was as at the date of its said disposal £10,000 and as at 27.6.78 also £10,000 and, consequently, there was no capital gain taxable under Law 52/80.

10 The respondent Director accepted the valuation as on 29.6.78 as being £10,000, but did not accept the valuation as on the date of the said disposal, and fixed the same at £18,000 and, consequently, raised an assessment of capital gains tax amounting to £1,600, i.e. 20% on the gain of £8,000.

15 The applicant company objected to such assessment. The Director dismissed the objection on the following grounds, namely "On the basis of s. 9(1) of Law 52/80, the sales of other similar properties in the same area at the same time, the valuation of the Lands Office for the purposes of collecting the Transfer Registration Fees, as well as other factors that I have in my mind that affect the market value of immovable property, I have come to the conclusion that market value of the aforesaid property as at the date of its disposal was £18,000."

25 Hence the present recourse. Applicant contended that there was no "disposal" within the meaning of s. 10 of Law 52/80 as the property had been sold to the applicant by its shareholders and as the applicant company had been unable to pay the purchase-price the sale was cancelled and the present transaction was entered into in order to restore the parties to their former position. In accordance, however, to the Declaration of Transfer submitted to the Land Registry Office the said property was sold to the applicant by a certain A. Zachariades, an uncle of the two shareholders; The audited accounts of the applicant company for the period ending 31.12.77 show that the said purchase price was owed by it to its said two shareholders, and the audited accounts for the period ending 31.12.81 show that the balance of the said debt was only £278.-.

The applicant company further contended that the valuation in question was excessive and that s. 10(b) of Law 52/80 violates Articles 24 and 28.1 of the Constitution in that it discriminates between gifts made by a physical person to a limited company "of which all shareholders are members and continue for a period of five years after such donation to be members of the family of the donor" and gifts made by such companies to physical persons. 5

*Held, dismissing the recourse:* (1) A declaration of transfer submitted to the Land Registry Office is a formal document prescribed by Law and except in cases where fraud or false entries are claimed to have been made, one cannot accept anything inconsistent with its contents that may render such declaration as not containing true statements merely because it is useful so to do on a given occasion. 10 15

(2) The transaction in question is a disposal within the meaning of s. 10 of Law 52/80. The definition of this term is so wide that it covers all kinds of transfers or alienation of the beneficial title from one person to another except the four instances enumerated in the said section. Whenever the ownership in assets changes or their owner divest himself of his rights or interest over them in a manner including sale, exchange or give, there is a disposal, the reasons behind such change being irrelevant. The change of ownership because of the disponent being indebted to the person to whom he disposes the asset makes no difference. Section 2 of Law 52/80 defines "profit" as "the profit of any person which accrues after the coming into operation of this Law by reason of disposal of ownership and which does not constitute a profit falling within the provisions of the Income-Tax Laws in force at the time". In the present case, as there is such gain, liability to pay Capital Gains Tax arises under s. 4 of the said law. 20 25 30

(3) Section 9(2) of the said law provides that if there has not taken place a sale or purchase there shall be deemed to have been paid or received an amount equal to the amount which in the opinion of the Director such property would realize, if bought or sold, as the case may be, in open market at the date of its disposal. In the cir- 35 40

cumstances of this case there is no reason to interfere with the valuation in question made by the respondent Director.

5 (4) There exists reasonable differentiation between the case of a gift by a physical person to a limited company and the case of a gift by such company to a physical person. In matters of taxation great latitude is allowed and there is a broader power of classification by the legislature than it is allowed in other fields. A state is allowed to  
10 choose districts, objects, persons, methods and even rates of taxation; a state does not have to tax everything in order to tax something (*Apostolou and Others v. The Republic* (1984) 3 C.L.R. 509 followed).

*Recourse dismissed.*

15 *No order as to costs.*

**Cases referred to:**

*Apostolou and Others v. The Republic* (1984) 3 C.L.R. 509;

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

*Panos Lanitis and Sons Investment Company v. The Republic* (1973) 3 C.L.R. 667;

*Lanitis and Sons v. The Republic* (1984) 3 C.L.R. 1588.

**Recourse.**

25 Recourse against the decision of the respondents to impose on the applicants capital gains tax amounting to £1,600.- on gains accrued to the applicant company on the disposal of immovable property.

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

30 *Y. Lazarou*, for the respondents.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. By the present recourse the applicant Company seeks:-

- (a) A declaration of the Court that the decision of the respondent Director of Inland Revenue, communicated to it by letter dated 25th August, 1984, together with the relevant Notice of Capital Gains Tax payable, by which Capital Gains Tax amounting to £1,600 was imposed on the gains accrued to the applicant Company on the disposal of immovable property, namely a building-site in Strovolos under Registration No. K413 sh/pl. XXI/62/E/2 plot No. 421 of an extent of one evlek and 3,400 sq. ft. is null and void and with no effect whatsoever. 5 10
- (b) A declaration of the Court that the respondent by determining that the applicant Company "sold" the relevant property, acted under misconception which renders the decision to impose capital gains tax as null and void and with no effect whatsoever. 15

The applicant Company was incorporated in Cyprus in July 1975, as a private one with limited liability with an authorise issued and fully paid up share capital of one-hundred shares of one pound each. Of this share capital 50% is owned by Demetrakis Zachariades and the other 50% by his wife Agni. For the purposes of the Capital Gains Tax Law 1980, (Law No. 52 of 1980)—hereinafter to be referred to as the Law—the applicant Company submitted an undated Declaration of Disposal of Property (Form IR 401) which was received at the office of the respondent Director on the 9th July 1982. It was declared therein that the property in question was disposed of to Agni D. Zachariadou and Demetrios L. Zachariades, that its market value as at the date of disposal, i.e. on the 9th July 1982, was £10,000.- and there was no gain and consequently no liability to capital gains tax as for the purposes of Section 6 of the Law in computing the gain, the purchase price as at 27th June, 1978 was also £10,000. 20 25 30

From the inquiry carried out into the matter by the respondent Director it emerged that the applicant Company gifted the said building site to these two people who were the only shareholders and directors of the applicant Company and that same had been purchased by it for £9,500 35

plus £480 Land Registration Fees in 1977. The respondent Director accepted the applicant Company's valuation of the purchase price as being £10,000 as on the 27th June 1978, but did not accept the valuation of the market value as at the date of disposal on the 9th July 1982, which after taking into consideration all factors pertaining to the market value of the said building-site the respondent Director fixed same at £18,000 and computed the capital gain at £8,000 by the simple deduction of its value in 1978 from its market value in 1982.

The respondent Director raised an assessment accordingly and sent to the applicant Company the relevant notice, the capital gains tax amounting to £1,600 i.e. 20% on the gain as provided by Section 4 of the Law and was made payable on the 29th April 1983. The applicant Company objected through its counsel by letter dated 18th May, 1983, copy of which is appended to the opposition (Appendix A).

The grounds for such objection given therein are the following:

- (a) The transfer of the building-site from the Company was to its two shareholders that constitute same.
- (b) The Company is a pure family Company and the two shareholders are spouses.
- (c) The Company did not obtain the building-site as a result of its own business activity.
- (d) The transfer to the shareholders was effected because in it there was built the family residence of the two persons, who as shareholders constitute the Company.
- (e) His clients observe that it was peculiar or beyond reality to consider that there was in respect of that building-site an increase of £8,000 in such a short period between its acquisition and its disposal by the Company.
- (f) Finally it was observed that since the reverse transactions relieve from the Law the natural person

which transfers to a Company from obligation of paying capital gains tax, it was considered that the principle of equality safeguarded by Article 28 as well as the obligation to distribute evenly the burdens under Article 24, demanded that the present case be exempted from taxation especially under the factual circumstances which I mentioned above." 5

The respondent Director rejected the objection in question and communicated his decision to the applicant Company by his letter dated 25th August 1984, (Appendix B) attaching thereto the relevant Notice of Capital Gains Tax payable. In it he informed the applicant Company that he did not accept their valuation of the property as being £10,000 at the time of its disposal and went on to say: "On the basis of Section 9(1) of the Capital Gains Tax Law No. 52/80 the sales of other similar properties in the same area, at the same time the valuation of the Lands Office for the purposes of collecting the Transfer Registration Fees, as well as other factors that I have in my mind that affect the market value of immovable property, I have come to the conclusion that the market value of the aforesaid property as at the date of its disposal was £18,000." 10 15 20

Section 10 of the Law, is so far as relevant, reads:- 25

«10. Δια τους σκοπούς του παρόντος Νόμου διάθεσις ιδιοκτησίας περιλαμβάνει πώλησιν, συμφωνίαν πωλήσεως, ανταλλαγήν, μίσθωσιν, ήτις ενεγράφη συμφώνως προς τας διατάξεις του εκάστοτε εν ισχύι περί Ακινήτου Ιδιοκτησίας (Διακατοχή, Εγγραφή και Εκτίμησις) Νόμου και δωρεάν ιδιοκτησίας ως και εγκατάλειψιν χρήσεως ή εκμεταλλεύσεως οιουδήποτε σχετικού δικαιώματος, αλλά δεν περιλαμβάνει - » 30

And in English it reads:

"10. For the purposes of this Law disposal of property includes sale, an agreement of sale, an exchange, a lease registered in accordance with the provisions of the Immovable Property (Tenure Registration and 35

Valuation) Law in force for the time being and a gift of property as well as abandonment of the use or enjoyment of any relevant right - "

5 It was the contention of the applicant Company that no liability to Capital Gains Tax arises as there was no "disposal" within the meaning of Section 10 of the Law, hereinabove set out, or accrued gain as the property in question was sold to the applicant Company by Agni Zachariadou and Demetrios L. Zachariades in 1977 for £9,930 and as the  
10 applicant Company had been unable to pay the sale-price, the sale was cancelled and the present transaction was entered into in order to restore the parties to their original position.

15 It was urged on behalf of the respondent Director that this contention advanced on behalf of the applicant Company is not born out by the facts. According to the Declaration of Transfer of Immovable Property submitted to the Land Registry Office on the 2nd December 1977, exhibit (A), attached to the written address filed on behalf of  
20 the respondent Director, the said property was sold to the applicant Company by a certain Apollon V. Zachariades, who is an uncle of the two shareholders of the applicant Company and not by them or either of them. It was further urged that as the original vendor was the said uncle,  
25 the allegations advanced by learned counsel for the applicant Company cannot stand as is the entry in the audited accounts of the applicant Company for the period ending 31st December, 1977, showing Agni and Demetrios Zachariades to be owed by the applicant Company the price for  
30 which the property was sold, for the said entry is inconsistent with the Declaration of Transfer.

I must say at this stage that a Declaration of Transfer is a formal document prescribed by Law and one cannot accept anything inconsistent with its contents that may  
35 render the said Declaration as not containing true statements merely because it is useful so to do on a given occasion. By this I am not referring to the cases where fraud or false entries are claimed to have been committed in respect of such declaration.

Learned counsel for the respondent Director proceeded, however further and argued his case on the assumption that the entry in the audited accounts was correct, but again he pointed out that the undisputed fact emanating from the audited accounts for the period 1977-1981 appended to the written address filed on behalf of the respondent Director, as exhibit (B), was that the applicant Company had discharged the debt by the 31st December, 1981, leaving only a balance of £278. Analytically the following entries were recorded:

*"CURRENT LIABILITIES: DIRECTORS' ACCOUNTS*

	1977	1978	1979	1980	1981	
	£	£	£	£	£	
Agni D. Zachariadou	4,990	2,983	2,258	3,546	139	
Demetrios L. Zachariades	<u>4,990</u>	<u>2,983</u>	<u>2,258</u>	<u>3,546</u>	<u>139</u>	15
	<u>£9,980</u>	<u>5,966</u>	<u>4,516</u>	<u>7,092</u>	<u>278</u>	

It is clear from the aforesaid exposition that the transaction in question is a disposal within the meaning of Section 10 of the Law. The definition of this term is so wide that it covers all kinds of transfers or alienation of the beneficial title to an asset from one person to another except the four instances enumerated in the said section to which I shall be shortly making a brief reference. It is clear that whenever the ownership in assets changes or their owner divests himself of his rights or interest over them in a manner including sale, exchange or gift, there is a disposal, the reasons behind such change of ownership being irrelevant. Likewise the change of ownership in asset because of the disponent is indebted to the person to whom he disposes the asset is immaterial for the purposes of the Law and it makes no difference that no profit or gain has actually been realised by the disponent. In this way in the case of a gift or property, although no money is paid to or received by the donor, yet, he is liable to capital gains tax if the market value of the property gifted at the

date of the gift is higher than that as at the date the asset was acquired.

5 The word "profit" is defined in Section 2 of the Law as meaning "the profit of any person which accrues after the date of coming in operation of this Law by reason of disposal of ownership and which does not constitute a profit falling within the provisions of the Income-Tax Laws in force at the time."

10 In the present case as there is such gain within the meaning of the Law liability to pay the Capital Gains Tax levied, arises under Section 4 of the Law which reads as follows:-

15 "Subject to the provisions of this Law and the exceptions contained therein on any gains accruing from a disposal of property there shall be levied and paid a tax at the rate of 20% on such gains."

The exceptions provided by Section 10 are the following:

"(a) Transfer on account of death.

20 (b) Gift made by parent to child, between spouses or relatives within the second degree of relationship or to a company with limited liability of which all shareholders are members and continue for a period of five years after such donation to be members of  
25 the family of the donor:-

30 Provided that in such a case as value of the property is considered the original value at the time of the acquisition of the property by the donor or its value on the 27th June 1978, whichever of these dates is the latest:

35 Provided further that in case the ownership was acquired by the donor before the 14th July 1974, the donee may elect that the value of the property be considered that as on the 14th July 1974.

(c) Gift to the Republic or to any charitable institu-

tion approved for the purpose by the Council of Ministers.

(d) Exchange or sale by virtue of the Agricultural Land (Consolidation) Laws in force at the time.”

It is clear that the facts of the present case do not bring 5  
it within any of the aforesaid exceptions.

But even if the facts were as alleged by the applicant Company, that the property was returned to its directors for the settlement of its debt to them, the transaction is again taxable since the gain has adversely accrued once 10  
the debt was almost £10,000 and the value of the property disposed become £18,000 at the material time.

The second issue for determination, is whether the valuation by the respondent Director as regards the market value of the property in question as at the date of disposal 15  
is excessive.

Under Section 9(2) of the Law if there has not taken place a sale or purchase there shall be deemed to have been paid or received an amount equal to the amount which in the opinion of the Director such property would realize if 20  
bought or sold as the case may be, in open market at the time of the occurrence of the event. This valuation of the property in question represents the price which it would have realised in the open market at the date of its disposal. In this respect one may turn to the applicant Company's 25  
previous valuation of the property which in 1979 as shown in the submitted accounts for the period ending 31st December 1979, attached to the address filed on behalf of the respondent Director as exhibit “C”, was valued at 30  
£15,000.

On the totality of the circumstances I find no reason to interfere with the valuation in question.

There remains to examine the last ground of Law relied upon by the applicant Company, namely that there is a violation of the principle of equality as safeguarded by 35  
Article 28(1) of the Constitution in general and Article 24 in matters of taxation, in the sense that the Law discrimi-

nates by its Section 10(b) between gifts made by a physical person to a limited Company and gifts made by such companies to physical persons.

5 The question of equality and discrimination have been dealt with at length in a series of cases. I need only refer to the case of *Apostolou and Others v. The Republic* (1984) 3 C.L.R. 509, in which the principles governing the application of Article 28 of the Constitution in matters of taxation were expounded by the Full Bench of this Court, by  
10 reference to its previous Case Law. It is sufficient for the purposes of this judgment to say briefly that it was held therein by reference to the case of *Serghios Antoniadis and Others v. The Republic* (1979) 3 C.L.R. 641, that the legislative discretion in matters of taxation is allowed a great  
15 latitude in view of the complexity of fiscal adjustment and that in taxation matters there is a broader power of classification by the legislation than in the exercise of the legislative power in other fields; that, moreover, absolute equality in taxation cannot be obtained, and it is not  
20 really required by the principle of equality; that in matters of taxation the state is allowed to pick and choose districts, objects, persons, methods and even rates of taxation; that a state does not have to tax everything in order to tax something.

25 In the present case reference may also be made to the case of *Panos Lanitis and Sons Investment Company v. The Republic* (1973) 3 C.L.R. 667 where I dealt with the question of the differentiation of Income-Tax legislation between private companies and public companies. a  
30 distinction also found to be justifiable by the Full Bench in *Lanitis and Sons v. The Republic* (1984) 3 C.L.R. 1588. Reference may also be made to the differentiations that exist in income-tax taxation between physical persons and companies with limited liability because of their  
35 intrinsic differences.

This ground therefore also fails as it covers in itself a

wide range and there exist reasonable differentiations between the two situations.

For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*

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