

1987 February 17

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SHOEMEX LIMITED,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF FINANCE AND/OR  
THE COMMISSIONER OF INCOME TAX,

*Respondents.*

(Case No. 261/86).

*Income Tax—Deductions—Colour painted by tax-payer is never sufficient to justify a deduction—Payment of £20,000 by a company limited to the widow of a deceased director and shareholder in appreciation of latter's services—A voluntary payment unconnected with the production of applicants' income—Moreover, in view of its nature as a voluntary payment, its deduction from applicants' taxable income is prohibited by s.13(k) of the Income Tax Laws—Section 8(g) of the said laws cannot justify its deduction from such income.*

*Recourse for annulment—Practice—Costs—Principles governing exercise of Court's discretion.*

10       The applicants, a private company, seemingly to mark their appreciation of  
the services of the late Groutides, who died in 1983, resolved to give his wife.  
£20,000. It must be noted that from 18.1.80 the deceased and his wife were  
the sole shareholders of the company. The applicants sought to deduct the  
15       aforesaid payment from their taxable income on two grounds, that is as  
payment made wholly and exclusively for the production of income and as a  
payment deductible in virtue of section 8(g) of the Income Tax Law.

As the Commissioner rejected the said claim for deduction, the applicants  
filed the present recourse.

20       Held, *dismissing the recourse*: (1) The colour in which facts are painted by  
the tax payer is never sufficient to justify a deduction. An air of very - similitude  
to facts, which may ground a deduction, is never enough. Supposing the  
applicants overcame the hurdle of good faith respecting the genuineness of  
the transaction, the payment for which the deduction was sought was plainly  
25       a voluntary one in the nature of a gift wholly unconnected with the production  
of income. Moreover, as a voluntary payment its deduction was prohibited by  
s.13(k) of the Income Tax Laws.

(2) Section 8(g), which regulates the liability to tax or exemption from it of  
the recipients of retiring gratuity, commutation of pension and death

gratuities, cannot support the deduction claimed

(3) Whenever the fate of a recourse for annulment is determined by facts unveiled in the course of the judicial inquiry, through examination of the administrative files, dismissal of the recourse will not entail an order for costs. But when the facts, as known to the applicant, cannot ground his case the Court may in the exercise of its discretion make an order for costs

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*Recourse dismissed £75 - costs against applicants*

*Cases referred to*

*Coates v Amdale Properties Ltd* [1985] 1 All E R 15, 10

*Kowloon Stock Exchange v IR Comr* [1985] 1 All E R 205,

*Dollar v Lyon* [1981] Ch D 333,

*Scott and Ingham v Treheame*, 9 T C 69,

*Copeman v William Ford and Sons Ltd*, 24 T C 53,

*Jubson Bros and Co v CIR*, 12 T C 147, 15

*Coussoumides v The Republic* (1966) 3 C L R 1,

*Fitikkides v The Republic* (1973) 3 C L R 15,

*Neocleous v The Republic* (1982) 3 C L R 1435,

*Frangos and Others v The Republic* (1982) 3 C L R 53,

*Booksellers Association v The Republic* (1985) 3 C L R 1171, 20

*Nakis Bonded Warehouse v The Republic* (1985) 3 C L R 1179,

*Papadopoulos v Municipality of Nicosia* (1986) 3 C L R 2046

**Recourse.**

Recourse against the refusal of the respondents to accept the sum of £20,000 given by the applicant company to the wife of one of its shareholders, who had passed away, as an appreciation of the services rendered by the deceased to the company, as a payment made exclusively for the production of income and as a payment deductible under the provisions of section 8(g) of the Income Tax Laws. 25 30

*Chr. Kitromilides*, for the applicants.

*A. Evangelou*, Senior Counsel of the Republic, for the respondents

*Cur. adv. vult*

PIKIS J. read the following judgment. Shoemex Limited, a private company, seemingly to mark their appreciation of the services rendered to the company by Petros Groutides, who passed away in 1983, resolved to give his wife, a fellow shareholder and director, the sum of £20,000. (Twenty Thousand Cyprus Pounds only). From 18th January, 1980, the deceased and his wife were the sole shareholders of the company. In computing their taxable income they claimed a right to deduct the amount of £20,000 on a dual basis. Primarily, as a payment made wholly and exclusively for the production of income and, secondarily, as a payment deductible under the provisions of s.8(g) of the Income Tax Laws.

The Commissioner rejected the claim and eventually raised an assessment without making any allowance for the payment of the aforementioned amount of money. Respondents disputed amenity to make a deduction under either of the two heads relied upon by applicants; moreover, they questioned the genuineness of the payment and, generally, the bona fides of the applicants. They challenged applicants to produce the resolution authorising the payment, albeit without success.

However imaginatively one views the payment to the wife, it cannot but be regarded as a gift made to her, unconnected with the trading and business activities of the company. It was for all purposes a voluntary payment, in no way associated with the production of income. The suggestion that it was made with that end in mind, wholly overlooks the nature of the payment.

The colour given to a payment by the tax payer is no basis for a deduction unless the facts viewed in the correct perspective justify the deduction. As observed in *Coates v. Arndale Properties Ltd.* \* the colour in which facts are painted is never sufficient to justify a deduction; an air of very-similitude, it was pointed out, to facts that might ground an exemption is never enough. The facts surrounding the payment must in substance entitle the tax payer to claim exemption. The decision in *Kowloon Stock Exchange v. IR Comr.* \*\* is to the same effect. Trade, it was indicated, primarily denotes operations of a commercial character ordinarily involving the supply of goods or services for reward. Counsel for the

\* [1985] 1 All E.R. 15 (HL).

\*\* [1985] 1 All E.R. 205 (PC).

respondents was right in submitting that not only the payment did not qualify as expenditure wholly and exclusively expended for the purpose of acquiring income, but as a voluntary payment its deduction was specifically prohibited by the provisions of s.13(k) English cases cited by Mr Evangelou\* suggest that payment made by the tax payer to members of the family or to a director of a company or on account of love and affection, are not generally regarded as payments made for business considerations. Supposing applicants overcame the hurdle of good faith respecting the genuineness of the transaction, the payment for which exemption was sought was plainly a voluntary one in the nature of a gift unconnected with the production of the income of the company

The alternative basis upon which exemption was claimed, namely s.8(g), is no less ill founded. In the first place, s.8(g) purports to regulate the liability to tax or exemption from it of the recipients of retiring gratuity commutation of pension and death gratuities. If a gratuity or pension is paid pursuant to a contractual obligation it may, in appropriate circumstances, be deducted by the company in the computation of their income as a payment made for the discharge of a legal obligation. No useful purpose would be served by discussing further the ambit of s.8(g) except note it was the subject of examination and analysis in a number of cases\*\*. I conclude that s.8(g) can, under no conceivable circumstances, support the exemption claimed. In the end, I find the case for the applicants to be wholly unfounded

In proceedings for administrative review costs are not awarded incidentally to the outcome of the case; they are at large in view of the inquisitive character of the proceedings. Whenever the fate of the proceedings is determined by facts unveiled in the course of judicial inquiry, through examination of administrative files, dismissal of the recourse will not ordinarily entail an order for costs incidentally thereto. On the other hand, where the material facts,

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\* *Dollar v Lyon* [1981] Ch D 333, *Scott and Ingham v Trehearne*, 9 TC 69; *Copeman v William Ford & Sons Ltd* 24 TC 53, *Jubson Bros & Co v CIR*, 12 TC 147

\*\* See *Coussoumides v Republic* (1966) 3 CLR 1, 9; *Fitikkides v Republic* (1973) 3 CLR 15, *Neocleous v Republic* (1986) 3 CLR 1435

as known to the applicant, cannot ground his case, the Court may, in the exercise of its discretion, make an order as to costs\*. And so I propose to do in this case, adjudging the applicants to pay £75.- (Seventy Five Pounds only) towards the costs of respondents.

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*Recourse dismissed.*  
*Applicants to pay £75. - costs*

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\*\* See, *inter alia*, *Frangos and Others v. Republic* (1982) 3 C.L.R., 53; *Booksellers Association v. Republic* (1985) 3 C.L.R. 1171; *Naks Bonded Warehouse v. Republic* (1985) 3 C.L.R. 1179; and *Papadopoulos v. Municipality of Nicosia* (1986) 3 C.L.R. 2046.