

1987 April 6

[PIKIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS TRIKOMITIS,

*Applicant,*

v

THE COMMISSIONER OF INCOME TAX,

*Respondent*

*(Case No 279/86)*

*Income tax — Judicial control — Principles applicable — When a decision is considered as reasonably open to the administration — Facts relevant to the determination of tax liability — Subject to the limits of its discretion the Administration is the arbiter of such facts*

In determining the applicant's liability to income tax and special contribution the Commissioner of Income Tax rejected aspects of the accounts submitted by the applicant and in particular rejected, in the absence of satisfactory proof the following allegations of the applicant, namely that (a) The purchase of a building site in Limassol was financed by a gratis payment of £21,750 from one Mr Hara, a Japanese executive of a motor company, (b) The studies of applicant's son were financed by an amount of £9 000 by the same Mr Hara (c) An amount of £15 000 in cash was brought over by the applicant on his displacement from Famagusta, (d) Capital allowance for buildings erected at Famagusta shortly before the Turkish invasion a claim that was made for the first time in 1985, and (e) £13,000 collected by the applicant from a family company for pre 1974 debts

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As a result the applicant filed this recourse

Held, *dismissing the recourse* (1) Income tax cases too are subject to the same rules applicable to Judicial review of administrative action The ultimate question is whether the sub judge decision was reasonably open to the Administration A decision was reasonably open provided it is founded on an adequate inquiry, it rests on a sound conception of the facts and is within the discretionary powers vested in the Administration Subject to the limits of its discretion the Administration is the arbiter of the facts relevant to the liability of the subject to tax

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(2) It is the duty of a taxpayer, particularly of a business man, to keep proper

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5 records and make full disclosure of his financial affairs. There is a corresponding amenity on the part of the Commissioner to reject income tax returns made in deviation of such duty (*Rainbow v The Republic* (1984) 3 C L R 846 and *Tryfonos v The Republic* (1984) 3 C L R 884 adopted). In this case the applicant omitted to make disclosure about an important asset and, generally, his conduct was apt to give cause for further inquiry.

(3) Considering applicant's conduct in its entirety and his failure to furnish evidence in support of his contentions, it was more than reasonably open to the respondent to reject applicant's allegations.

10 *Recourse dismissed with £100 costs against applicant*

*Cases referred to*

*Georghiades v The Republic* (1982) 3 C L R 659

*Rainbow v The Republic* (1984) 3 C L R 846

15 *Tryfonos v The Republic* (1984) 3 C L R 884

**Recourse.**

Recourse against the assessment of income tax and special contribution raised on applicant

A Poets, for the applicant

20 Y Lazarou, for the respondent

*Cur adv vult*

PIKIS J read the following judgment. The crucial question that must be answered in these proceedings is whether it was reasonably open to the Commissioner to reject aspects of the accounts submitted by the applicant for the determination of his liability to income tax and special contributions. It is evident from the events that preceded the assessments questioned in these proceedings, that the Income Tax Office reviewed with apprehension the accounts submitted by the applicant. Their inquisitive approach was not without reason. Applicant, to begin, was guilty of long delay in making his returns. Furthermore, his accounts were scantily documented and by any standards incomplete. To ascertain the liability to tax of the applicant, statements of the assets and liabilities of the applicant at particular dates were sought and obtained. When submitted the statements were far from complete. Important assets of the applicant were left out, a fact that no doubt reinforced the mistrust with which th

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viewed his accounts. To give one example, he omitted to account for the purchases during the relevant period of a building site at Limassol for an amount of £31,750 - A series of meetings were held between officials of the respondent and the applicant and his auditor in order to elicit his income and expenditure during the years under review. In the end the Commissioner sought documentation of certain items featuring in the accounts, in the absence of which he rejected the allegations of the applicant, a rejection that enhanced his liability to tax.

More analytically the Commissioner rejected, in the absence of 10  
satisfactory proof, the following allegations of the applicant, that:

(a) The purchase of the Limassol building site was financed in great part by Mr. Hara, a Japanese executive of a motor company. When the purchase of the site was discovered by the respondent and the applicant was asked to account for this acquisition, he claimed that an amount of £21,750.- 15  
represented a gratis payment of Mr. Hara, seemingly inspired by friendship. No evidence of any kind was adduced to substantiate this assertion.

(b) The studies of the son of the applicant in the United Kingdom were financed by an amount of £9,000.- by Mr. Hara, the benefactor of the family. Similarly, no documentary evidence was produced to substantiate this allegation either. 20

(c) An amount of £15,000.- in cash was brought over by the applicant on his displacement from Famagusta. No Bank lodgment or any other documentary evidence signifying possession of the money was produced. 25

(d) Capital allowance for buildings erected at Famagusta shortly before the Turkish invasion. The claim for deduction on this account was first made on 10th July, 1985. Even if the making of the investment was accepted on its face value, a fact doubted by the respondent, applicant would not be entitled to any allowance as suggested by counsel for the respondent in the absence of any proof that the premises were used and employed in a business. 30

(e) £13,000.- collected by the applicant from a family company for pre 1974 debts. Such proof as was given of the names of the debtors who made payment was considered unsatisfactory, whereas the conflicting allegations made by 35

the applicant in the course of the investigation of his tax affairs about the actual sum collected added to the doubts of the respondent about the validity of the allegations of the applicant

- 5      In a letter of the respondent accompanying the sub judice assessments to income tax and special contribution in accordance with the law in force at the material time, the gaps in the statements of applicant were noted as well as the absence of satisfactory proof substantiating the relevant allegations. The assessments  
10 raised are, as already explained, the subject-matter of the present proceedings. Counsel for the applicant submitted the rejection of the allegations of his client was peremptory and an abuse of the powers vested in the Commissioner. Applicant submitted whatever evidence was available to him and should not be  
15 penalized for his inability to make a more comprehensive statement of his financial affairs.

- Respecting the collection of debts and the consequential payment made by the family company to the applicant, the documentary evidence adduced was, under any circumstances,  
20 satisfactory and ought to have been accepted by the Commissioner. An affidavit of the applicant sworn to on 3rd March, 1987, adds nothing by way of objective proof to the case of the applicant.

- In Georghiades v The Republic\** the Full Bench of the Supreme  
25 Court affirmed that income tax cases too are subject to the same rules applicable to judicial review of administrative action. The ultimate question, as in every other case, is whether the impugned administrative act was reasonably open to the Administration. A decision is reasonably open to the Administration provided it is  
30 founded on an adequate inquiry, it rests on a sound conception of the facts and is within the discretionary powers vested in the Administration. Subject to the limits of their discretion, the Administration is the arbiter of the facts relevant to the liability of the subject to tax.

- 35      Two subsequent decisions of the Supreme Court serve to stress the duty of a tax-payer, particularly a business-man, to keep proper records and make full disclosure of his financial affairs, and the corresponding amenity of the Commissioner to reject income

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\* (1982) 3 C L R 659

tax returns made in deviation of the afore-mentioned duty of a taxpayer. The cases are: *Rainbow v. The Republic\** and *Tryfonos v. The Republic\*\**. In this case too the Commissioner was justified in treating aspects of the accounts of the applicant with an element of mistrust. Not only the applicant omitted to make disclosure about an important asset, but his conduct generally was apt to give cause for further inquiry. Moreover, his inability to furnish documentary evidence about the benevolence of the family friend or business associate, Mr. Hara, and the way his donations were channelled to the family could not but reinforce the unwillingness of the Commissioner to accept his statements as correct. Review of the background to the sub judge assessments reveals a consistent effort on the part of the applicant to reduce his liability to tax. The belated claim for a capital allowance is indicative of this effort, whereas his inconsistencies regarding the amounts actually collected from debtors through the family company, could very easily leave the Commissioner unsatisfied with the correctness of the allegation. Lastly, the absence of any evidence whatever to support the claim that he carried an amount of £15,000 in cash could be treated as one other effort to scale down the height of his income. The Commissioner afforded reasonable opportunity to the applicant to come forward and support his claims before finally rejecting the above items in his accounts, in the absence of any satisfactory response.

Considering the conduct of the applicant in its entirety and the failure to furnish evidence supporting his contentions, it was more than reasonably open to the Commissioner to reject his allegations. In conclusion, I find the recourse wholly unjustified and it is dismissed. In fact, I am of the view this is a proper case to adjudge the applicant to pay costs.

In the result the sub judge decisions are, pursuant to Art. 146.4(a), confirmed in the whole. The applicant is adjudged to pay the costs of the proceedings fixed at £100.

*Recourse dismissed.*  
*Applicant to pay £100.-costs.*

\* (1984) 3 C.L.R. 846

\*\* (1984) 3 C.L.R. 884