

1988 May 31

[SAVVIDES, D.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANNA ST. PAVLOU,

Applicant,

v.

THE DIRECTOR OF INLAND REVENUE,

Respondent.

(Case No. 18/86).

Taxation—Capital Gains Tax—The Capital Gains Tax Law, 1980 (Law 52/1980), section 6(1)—It is not unconstitutional.

Taxation—Excessive assessment, allegation as to—Burden of proof—It rests on the applicant.

5 *Taxation—Assessment and collection of Taxes—Judicial control—Principles applicable.*

Constitutional Law—Taxation—The capital Gains Tax Law, 1980 (Law 52/80), section 6(1)—It is not unconstitutional.

10 The facts of this case are similar to those in *Pavlou v. The Republic* (1988) 3 C.L.R. 1125.

Recourse dismissed.

No order as to costs.

Recourse.

15 Recourse against the decision of the respondents to impose on applicant capital gains tax amounting to £ 750.- as a result of the disposition of half of her property under Reg. No. D. 198.

C. Loizou, for the applicant.

Y. Lazarou, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. By the present re-
course applicant challenges the decision of the respondent dated 5
5th November, 1985 imposing upon her a capital gains tax
amounting to £ 750.- as a result of the disposition by her of half a
share of the property under registration D198.

Applicant was the owner of half a share in the field under reg-
istration D198, sheet/plan 30/36/WI, plot 227, at Deftera, the oth-
er half share of which belonged to her husband. 10

On 17th October, 1983, the respondent raised on applicant an
assessment imposing capital gains tax against which she objected
on 28th November, 1983 on the ground that the proceeds of the
land which amounted to £ 50,000.- represent the value of her
share and that of her husband as well as the value of another field
under registration No. D.292 belonging to her husband, such val-
ue being £25,000.- and the balace of £ 25,000.- represent the
value of barracks, plant and machinery and pipes thereon amount-
ing to £20,000.- and goodwill amounting to £ 5,000.- 15 20

On 5th November, 1985 the respondent determined applicant's
objection by maintaining his original assessment. His reasoned
decision was communicated to the applicant (Appendix "C" to the
opposition) together with the relevant notices on capital gains tax
payable. The reasons given by the respondent in the said letter
are as follows: 25

"After a careful examination of the market value of your
property under registration D198 on the 1st December, 1980,
the date of its disposition as well as on 27th June, 1978, I
have reached the conclusion that the assessment of its market
value which you have declared does not correspond with their 30

market value on the aforesaid dates.

5 On the basis of the material before me concerning sales of other similar properties in the same area about the same period, the valuation of the Lands & Surveys Department for the purpose of collecting of registration fees as well as other factors which in my mind affect the market value of the immovable property I have reached the conclusion that the market value of your property under registration D198 on 1st December, 1980 was £20,000.- and on 27th June, 1978 £11,250.-."

10 Applicants as a result filed the present recourse challenging the said assessments.

15 The grounds of law raised and argued by counsel for applicant are in fact the same as those in Case No. 17/86 which was filed by her husband against the respondent challenging the latter's decision imposing upon him a capital gains tax in respect of the other half share of the same property and also the whole share in another property and in which judgment has already been delivered.

They are briefly:

20 That the sub judice decision was taken in excess and/or abuse of power and under a misconception of law and fact and in violation of the Constitution; it is contrary to the accepted principles of natural justice and it is not duly reasoned.

25 Counsel for applicant by his written address in expounding on the grounds of law directed his argument on the three following submissions:

(a) That the Capital Gains Tax Law, 1980 and in particular section 6(1) is unconstitutional.

(b) That the assessments were excessive.

(c) That the respondent wrongly applied the law and failed to

take into consideration the factor of inflation between 1978 and 1980.

Counsel for the respondent in support of his opposition referred to a valuation report prepared by Mr. Mateas, the then Assistant Commissioner of Estate Duty as to the value of the property as on 27th June, 1978. Such valuation is based on comparable sales of property effected in 1978 and 1979 and after a comparison between the said properties and the subject-matter ones and all necessary readjustments the market value of the whole property under registration D198, was assessed at £22,500.- as on 27th June, 1978, and applicant's share therein at £11,250.-. He also drew the attention of the Court to the fact that applicant, her husband and the buyers, at the time of the declaration effecting the transfer of both properties to the buyers, declared to the Department of Lands & Surveys on the declaration of sale that the agreed price for the sale of the land was only £50,000.-

As mentioned earlier the same arguments were advanced by counsel for applicant in Case No. 17/86 in support of the claim of applicant's husband and I need not repeat them in detail. I adopt the reasons given in the said case which apply mutatis mutandis in the present case, and in briefly answering the questions posed for consideration I conclude as follows:

The relevant provisions of Law 52/80 challenged as unconstitutional on the ground of retrospectivity are constitutional and valid and consequently the objection raised on this ground fails.

As to the second ground of law raised, that the subject-matter property as well as the other property of her husband were sold in 1980 for the sum of £50,000.- which included boreholes and fixtures standing thereon, such amount was the amount declared in the declaration of sale as the value of the property. Leaving aside the question that any structures, wells and boreholes existing on the said property are "immovable property" within the definition of the Immoveable Property (Tenure, Registration and Valuation) Law, Cap. 224 there is no mention either in the contract

5 of sale or in the declaration of transfer that the capital value of the property was less than £50,000.- Furthermore neither the applicant nor her husband produced to the respondent any relevant documents or other relevant material in support of their conten-
5 tions. It is expressly provided by law and it is well settled that in tax cases the burden of proof that an assessment is excessive rests on the person challenging the decision. Support in this respect may be found in the authorities given in my judgment in Case No. 17/86.

10 For the same reasons as mentioned in Case No. 17/86 I have come to the conclusion that the contention of the applicant that out of the amount of sale a sum of £20,000.- should be deducted in respect of installations existing on the said property is untenable and the applicant failed to discharge the burden cast on her to
15 claim such deduction. Also, as to the amount of £5,000.- representing goodwill of the land in question such claim has not been established and, therefore, I find that the respondent rightly refused to accept same.

20 As to the last legal ground argued that any capital gain in this case is merely an appreciation of the value of the property due to inflation and that such appreciation should be deducted I have come to the conclusion that no sound argument has been advanced in this respect and no authority in support thereof and, therefore, I find that such ground should also fail.

25 It is well settled by a series of cases reference to which is made in Case No. 17/86 that in recourses against assessment of taxes the Court will not interfere with the decision of the Inland Revenue Authorities, when it comes to the conclusion that such a deci-
30 sion was reasonably and properly open to them on the basis of the relevant facts and in the light of the application of the relevant legislation and principles of law. The burden of proof to satisfy the Court that it should interfere with such a decision lies always on an applicant.

From the material before me I have come to the conclusion that

it was reasonably open to the respondent Director of Inland Revenue at the time and in the light of the new legislation and the material before him to reach the subject-matter decision and that the assessments complained of were neither arbitrary nor contrary to the law. The applicant has failed to discharge the burden of satisfying this Court that the case under consideration is a proper one to interfere with the sub judice decision complained of. 5

Therefore, this recourse fails and is hereby dismissed but bearing in mind the fact that I have already awarded costs in favour of respondent in *Pavlou v. The Republic* (1988) 3 C.L.R. 1125 I shall make no order for costs. 10

Recourse dismissed.
No order as to costs.