

1988 June 28

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANGELIKI SMIRLI,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF INLAND REVENUE DEPARTMENT,

Respondent.

(Case No. 435/86).

Taxation—Assessment of—Judicial Control—Principles applicable.

Taxation—Capital gains—Conflicting valuations of experts regarding value of land as at 27.6.78—In the circumstances, it was reasonably open to the Commissioner to rely on the valuation he did actually rely.

5 The facts of this case appear sufficiently in the Judgment of the Court.

Recourse dismissed.

No order as to costs.

Cases referred to:

Nicou v. The Republic (1983) 3 C.L.R. 1113.

10 **Recourse.**

Recourse against the decision of the respondent to impose on applicant the sum of £660 = as capital gains tax in respect of the disposition of her shop at Paphos.

Chr. Georghiades, for the applicant.

Y. Lazarou, for the respondent.

Cur. adv. vult.

A. LOIZOU P. read the following judgment. The applicant was at all material times the owner of a shop at Paphos. On the 21st August 1984, she submitted a declaration of disposition of the said shop. According to it the market value of the shop on the 27th June 1978 was £ 2,000 and its sale - price £ 4,800. 5

The respondent Director by means of a notice dated the 10th January 1985, (Appendix A), imposed £ 660 as capital gains tax in respect of the disposition of the shop in question. In the determination of the amount of the above taxation the respondent Director assessed the market value of the shop as at 27th June 1978, as being £1,500. 10

The applicant objected to the assessment and submitted that the market value of the shop as on the 27th June, 1978, was higher than £1,500 and that in estimating the gains the respondent wrongly took into consideration the 27th June 1978, as the material date. In support of her objection the applicant relied on the valuation of Mr. Andreas Pantazis a qualified valuer. According to his valuation the market value of the shop as on the 27th June 1978, was £ 3,800. 15 20

The respondent Director by his letter dated the 25th April 1986, (Appendix H), rejected the objection. The said letter so far as relevant reads: 25

"I have considered your allegation that the market value of the property you disposed on the 13th April 1984, under Registration No. 23873 was on the 27th June 1978 greater than the one specified in the above taxation and I inform you that on the basis of the material before me which concerns comparable sales in the same area at about the same period of time, as well 30

as other factors that I have in mind as affecting the market value of the immovable property, I have arrived at the conclusion that my valuation is a proper one and I am unable to alter it

5 As against the dismissal of his objection the applicant filed the present recourse praying for a declaration that the decision embodied in the above letter was unconstitutional, unlawful, null and void and of no effect whatsoever.

11 The recourse was based on the following grounds of law:

10 (1) The decision of the respondent Director was founded on a wrong evaluation of the market value of the property as at 27th June 1978, that is to say he relied on a value which was lower than the proper value and therefore the taxation was imposed in a manner contrary to the provisions of sections 4 and 6 (1) (a) of the Capital Gains Tax Law, 1980 and/or is the result of a misconception of fact and law.

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(2) The sub judice decision was not reasoned and/or its reasoning was not proper and lawful.

20 (3) The sub - judice decision was issued in abuse and/or excess of power.

(4) Without prejudice to the other grounds of law, additionally and/or alternatively the sub judice decision was founded upon an unconstitutional legal provision that is on section 6 of the Capital Gains Tax Law, 1980 which, is so far as the said section in the determination of the gain relied on the market value of the property on the 27th June, 1978, imposes retrospective taxation and it, therefore, violates Article 24 (3) of the Constitution.

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30 At the clarification stage, learned counsel for the applicant abandoned grounds of law (3) and (4) above as well as ground (1) with the exception of misconception of law. Regarding ground of law (2) he stated that it does not constitute a "self -

contained" ground of law and is covered by the remaining grounds of law.

In considering the applicant's objection the respondent Director had before him, on the one hand, the valuation of Mr. Pantazis, (Appendix B) , and on the other hand a valuation of Mr. Gr. Mateas, the Head of the Estate Duty Office of the Inland Revenue Department (Exhibit 1). The valuation of the latter was based on seven comparable sales which took place between the 15th May, 1978 and the 21st May 1983. The valuation report of Mr. Pantazis does not refer to any comparable sale, but it simply arrives at the conclusion that the market value of the shop on the 27th June 1978, was £ 3,800. It is deemed proper to quote in full the valuation report of Mr. Pantazis.

" VALUATION OF PLOT 397 SHEET PLAN L1.2.61V

The property is a shop and is situated at Kanaris Street. Very close to the property are the Bank of Cyprus, Popular Bank and retail shops of great variety of goods.

The property is in Moutallos Quarter Paphos, Sheet Plan L1.2.6. IV, plot 397 and has an extent of 480 sq. ft. Demand of shops was high in 1978 due to the expansion in business of the town's shopping centre and the scarcity of supply of shops in the area due to the existence of old buildings and the non - redevelopment in the area.

Having regard to the above factors which affect the property the good location, short supply and high demand and potentials of the property and the prevailing good conditions of the property market I am of the opinion that the Open Market Value of the property as at 27.6.1978 was of the order of £3,800 (Three thousand, eight hundred pounds)."

In considering the only ground of law on which the recourse is based, namely misconception of law that has remained, I have to be guided by the principles governing judicial control of taxation

decisions.

In the case of *Nicou v. The Republic* (1983) 3 C.L.R. 1113, I have dealt at length with the above principles at pp. 1117, 1119 of the report. At p. 1119 I said:

5 "It is well settled that in recourses against an assessment of
income - tax under Article 146 of the Constitution, this Court
will not interfere with the sub judice decision of the Income -
Tax Authorities when it comes to the conclusion that such a
10 decision was reasonably and properly open to them on the ba-
sis of the corrected facts and in the light of the correct applica-
tion of the relevant legislation and principles of law. The bur-
den of proof to satisfy the Court that it should interfere with
such a decision lying always on an applicant. (See *Rallis Mar-
kides v. The Republic* (1967) 3 C.L.R. 147; *Clift v. The Re-
public* (1965) 3 C.L.R. 285; *Christides v. The Republic*
15 (1966) 3 C.L.R. 732; *Coussoummides v. The Republic*
(1966) 3 C.L.R. 1, adopted and followed in *Lilian Georgh-
ades v. The Republic* (1980) 3 C.L.R. p. 525 at pp. 544 -
545, which latter case was approved on appeal by the Full
20 Bench of this Court, its judgment reported under the same
name in (1982) 3 C.L.R. p. 659."

In this case it is clear that on the basis of the material that was
before the respondent Director and in the light of the correct appli-
cation of the relevant legislation, it was reasonably open to him to
25 reach the sub judice decision and it cannot be said that the assess-
ment in question was imposed in a manner contrary to law. More-
over the sub judice decision is duly and adequately reasoned and
is not the product of any misconception of fact or law.

For all the above reasons the recourse must fail and is hereby
dismissed with no order as to costs.

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*Recourse dismissed.
No order as to costs.*