

(1988)

1988 November 19

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS CHR. POUILLIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE COMMISSIONER OF INCOME TAX,
2. THE ATTORNEY-GENERAL,

Respondents.
(Case No. 260/84).

Taxation—Income Tax—Assessment of—Judicial Control—Principles applicable.

In this case the Court found that the sub judice assessments were neither excessive nor arbitrary, as the applicant had failed to substantiate his factual allegations. The Court further found that they were reasonably open to the respondent. Consequently the recourse was dismissed. 5

Recourse dismissed.
No order as to costs.

Cases referred to:

Coussoumides v. The Republic (1966) 3 C.L.R. 1; 10

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

Recourse.

Recourse against the income tax assessment raised on applicant.

M. Vassiliou, for the applicant.

5 *Y. Lazarou*, for the respondents.

Cur. adv. vult.

10 A. LOIZOU P. read the following judgment. By the present recourse the applicant seeks "a declaration of the Court that the income tax assessment against him and/or the assessment of his taxable income by the respondent Commissioner is null and void and of no legal effect whatsoever."

The applicant, at all material times, derived his income from the import and sale of drugs.

15 Following the applicant's objections against the assessments for the years 1975 and 1981 the respondent Commissioner demanded from him a statement of assets and liabilities as at the 31st December 1981, which the applicant submitted on the 25th August 1982.

20 After examining such statement and having interviewed the applicant, the respondent Commissioner on the 17th March 1983, and later on the 30th August 1983, requested from him additional information and particulars as regards money and property claimed to belong to his wife.

25 On the basis of the information and particulars submitted by the applicant as well as information in his hands the respondent Commissioner computed the applicant's income, for the period from the 9th April 1973, the date of the previous statement of assets and liabilities, to the 31st December 1981, at the total amount of £32,317.-. Further discussions were held between the respon-

dent Commissioner and the applicant during which the respondent Commissioner proposed to reduce the income so found from £32,317 to £29,000.- for the sake of a settlement but the applicant did not accept such offer and made a counter-offer of a total income for the said period of only £16,000. The respondent Commissioner then proceeded with the determination of the assessments under recourse on the basis of the computation of the total income at £32,317 and communicated his duly reasoned decision by letter of the 31st December 1983.

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After several discussions with the applicant, the respondent Commissioner reduced the assessable income for the period under review to £24,600 and proceeded with the discharge of the existing assessments determined on the 31st December 1983 and issued new assessments, after accepting the applicant's claim on a number of items. The respondent Commissioner communicated his new decision to the applicant by his letter dated the 12th March, 1984, in which it was stated inter alia, as follows:

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"... on the basis of the facts and information you have given, I have decided.

(a) to accept your statement as regards the assets and liabilities as at the 31st December 1981.

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(b) Your allegation that the furniture of your home were paid for by your wife even though it is not substantiated by any evidence, has been accepted.

(c) As regards your allegation that you received from your wedding £3000 in cash, though you did not substantiate it by any evidence, I have accepted the amount of £1500.

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(d) In one of your trips abroad, you were accompanied by your wife. The amount of £500 was considered to represent expenses for personal reasons.

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(e) You failed to present any material establishing that your wife was working in your company. Having in mind that during the years 1975-1981 you had small children and your wife was burdened with their care, I believe that she could offer only minimal services which she may have possibly offered, I have accepted the amount of £2317."

As against this decision the applicant filed the present recourse by which he claims that the sub judice decision is unjustified and unreasonable in that in raising the assessments in question the respondent Commissioner failed to accept the statements of the applicant as regards his true income, his wife's property, her contribution to his company and his true expenses.

It was contended on behalf of the respondent that the applicant failed to discharge the burden which was upon him to establish that the Court should interfere with the sub judice decision. (*See Coussoumides v. The Republic* (1966) 3 C.L.R. 1; *Georghiades v. The Republic* (1982) 3 C.L.R. 659). On the facts as they were before the respondent Commission, I find that the sub judice assessments were neither arbitrary nor excessive as the applicant failed to substantiate his allegations as to the extent of financial assistance he allegedly received from his father-in-law, as to his wife's contribution towards the family expenses and the remuneration which she allegedly received for her services to his company of which there is a record of only £315, for the years 1974 and 1975, having been paid to her. I also find that, having in mind the fact that his wedding took place in December 1974, in the absence of any evidence whatsoever, an allowance of £1500 as wedding gifts in cash was a reasonable amount to allow.

Finally I find that it was reasonably open to the respondent Commissioner to treat the amounts estimated as representing personal expenses of himself and his wife whilst abroad, were so incurred and not for the purpose of his business.

In conclusion I find that in the circumstances the sub judice de-

cision was not arbitrary, but was reasonably open to the respondent Commissioner so to decide and correct in law, the respondent Commissioner having exercised his discretion properly and in accordance with the Law.

For all the above reasons the recourse fails and is hereby dismissed. In the circumstances, however, there will be no order as to costs. 5

Recourse dismissed.

No order as to costs.