

1988 November 19

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COURTIS ENTERPRISES LIMITED,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,

2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 535182).

Taxation—Assessment of taxes—Judicial control—Principles applicable.

5 *Taxation—Assessment of taxes—Absence of accounts prepared by an independent accountant practicing in the Republic and duly authorised by the Minister of Finance to prepare accounts—The powers of the Director of Inland Revenue in such a case—The Assessment and Collection of Taxes Laws, 1978-1979, sections 32 and 51.*

10 In this case the Court dismissed the recourse for annulment against the sub judice assessments of income tax on the ground that, in the light of the aforesaid sections 32 and 51, the absence of proper accounts and the inconsistencies of applicants' own "home made" estimations, they were reasonably open to the Commissioner.

Recourse dismissed.

No order as to costs.

Cases referred to:

- 15 *Minerva Cinetheatrical Co. Ltd. v. The Republic* (1975) 3 C.L.R. 116;
Georghiades v. The Republic (1982) 3 C.L.R. 659.

Recourse.

Recourse against the income tax assessments raised on applicants for the years 1978 - 1979.

A. Triantafyllides, for the applicants.

A. Evangelou, Senior Counsel of the Republic, for the respondents. 5

Cur. adv. vult.

A. LOIZOU P. read the following judgment. The applicant Company Courtis Enterprises Ltd., of Famagusta is a private Company of limited liability deriving its income from general trading and from commission agency. It was incorporated in Famagusta where it had its trading operations till the Turkish invasion in July, 1974. In 1976, it started to re-activate its trading operations in Nicosia. 10

On 23rd March, 1981, they submitted homemade incomplete Trading and Profit and Loss Accounts for the years ended 31st December, 1976 to 1980 showing an amount of £7,954.329 as total profits. Following the submission of the said incomplete accounts, the respondent Commissioner requested the applicant Company by his letter of the 19th August, 1981 to submit their balance-sheets for the years ended 31st December, 1977 to 1980, and copies of the bank current accounts for the said years. The applicant company failed to submit the aforesaid balance-sheets and bank statements. 15 20

There followed meetings of the accountants of the applicant Company, their Managing Director and their lawyer with officials of the office of the respondent Commissioner in the course of which proposals were exchanged with a view to an amicable settlement. Also during the same time correspondence was exchanged between the parties. 25 30

5 By means of a letter dated the 15th July 1982, the applicant Company gave details and statements which were prepared by them and which were to the effect that the total loss incurred and to be carried forward as at 14th August 1974, amounted to £13,276; and that after deducting the net profit earned in the years 1976 to 1980 there remained the balance of loss to be carried forward as at 31st December, 1980, amounting to £ 5,322.

10 In reply, the respondent Commissioner by his letter dated the 26th August 1982, informed the applicant Company that the accounts submitted by them were incomplete and could not form the basis of their assessment unless accounts prepared by an authorised auditor, were submitted. The applicant Company replied by letter dated 26th August 1982, and gave their reasons for not submitting proper accounts prepared by an authorised auditor and again repeated their offer to allow such an amount of loss to be carried forward as at 14th August 1974, so as to absorb the total profits earned during the years 1976 to 1981.

15 These reasons were found to be unjustified by the respondent Commissioner, who seeing that no agreement could be reached decided to allow the sum of £5,000 as loss to be carried forward as at 14th August 1974, and to determine the applicant Company's liability to income tax for the years of assessment 1977 to 1980 to the best of his judgment as provided under section 12(2) (b) of the Assessment and Collection of Taxes Laws 1978 to 1979. The decision of the respondent Commissioner was communicated to the applicant Company by letter dated 2nd October 1982 and as a result the applicant Company filed the present recourse praying as follows:

20 "A Declaration that Assessments Nos. 77/82/10/010, 78/82/10/010 and 33/82/10/010 are null and void and of no effect whatsoever and/or the decisions of the Respondents contained therein including the decision to impose income tax on the Applicants amounting to £728.450 mils for the years of assessment 79/78, or any other sum or at all, is null void and of no effect whatsoever."

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The main submission on behalf of the applicant Company was that they should not be penalized for not producing audited accounts in support of their losses for the year 1973 and 1974 because all the essential material on which such accounts could be based is in Famagusta and consequently the applicants are not able to produce the said accounts for 1973 and 1974.

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It was the case of the respondent Commissioner that the claim of the applicant Company for losses was rejected as no evidence or proper accounts prepared by an authorised auditor were produced in support of such losses; and that, instead applicant Company submitted home-made incomplete estimates of expenses and receipts which provided no record of the transactions entered into by the business or valuation of its trading work.

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It was further argued on behalf of the respondent Commissioner that the method employed by the applicant Company "in estimating their receipts was itself inconsistent in that while on the one hand the expenses were estimated on a rising trend - the rate of annual increase in 1973 was 29% and in 1974 35% - the receipts were estimated on declining trend so that in 1973 according to their estimates they fell by 40% in comparison with 1972 whilst no receipts were estimated for the first eight months of normal trading in 1974". Finally it was submitted "that in the light of such facts, namely, the absence of reliable audited accounts, the lack of any documentary evidence to substantiate the alleged expenditure and the obvious inconsistency of his home-made estimations, the respondent Commissioner was fully justified in requesting the estimations and refusing to allow the losses or expenditure claimed and indeed was expressly empowered to do so by virtue of the provisions contained in sections 32 and 51 of the Assessment and Collection of Taxes Laws 1978 - 1979".

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The aforesaid sections read as follows:

"32. Any accounts and any computations relating to the object of the tax produced to the Director or accompanying any return of the object of the tax rendered to the Director, may, at

the Director's discretion, not be considered if they have not been prepared and certified by an independent accountant practicing in the Republic duly authorised by the Minister of Finance to prepare accounts and computations of the object of the tax. The Minister of Finance may, on issuing such authorisation, impose such conditions as to him may appear necessary or advisable for the purpose of ensuring preparation and submission of accounts showing a true and correct statement with regard to trade, business, profession or vocation:

Provided that the Minister of Finance may at any time withdraw such authorisation from any practicing accountant or a member of a firm of such accountants, if an accountant's competence or conduct in the matter of preparation of accounts or computations of chargeable income justifies such an action on the part of the Minister of Finance:

Provided further that any decision of the Minister of Finance under this section may be subject to review by the Council of Ministers in accordance with Regulations made under section 52.

51. Deductions from the amount of the object of the tax allowable under the provisions of the Law whereby the tax is imposed may not be made for the purposes of this Law unless proper accounts, to the satisfaction of the Director, and a computation showing the assessable object of the tax prepared by an independent practicing accountant approved by the Minister of Finance as in section 32, are produced to the Director, and a finding by the Director that any such accounts or computations are unsatisfactory shall not be a ground of objection under the provisions of sub-section (2) of section 20."

In the course of the hearing detailed affidavits were filed by the parties giving their respective versions on the previous factual aspects of the case. I need not go into the contents of these affidavits. Suffice it to say that the contention of the respondent about obvious inconsistencies "of the home-made estimations" of the

applicant Company is fully borne out by the material before me.

The sub ~~judice~~ decision being a decision against an income tax assessment cannot be disturbed by this Court if it is a decision which could reasonably and properly, in law, and fact be reached by the Taxing Authority. (See *inter alia*, *Minerva Cinetheatrical Co. Ltd. v. The Republic* (1975) 3 C.L.R. 116. See also the exposition of the law governing judicial review of taxation decisions by Pikiis J., in *Georghiades v. The Republic* (1982) 3 C.L.R. 659 at pp. 667-669). 5

Taking into consideration the principles governing judicial control of taxation decisions, the ~~af~~orequoted provisions of sections 32 and 51 and the material before the respondent Commissioner, particularly the ~~said~~ inconsistencies and the absence of proper accounts, I hold that the sub ~~judice~~ decision was one which could reasonably and properly be taken by the Taxing Authority. The recourse must, therefore, fail and is hereby dismissed with no order as to costs. 10
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*Recourse dismissed.
No order as to costs.*