

1988 December 30

[A.LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ATHINOULLA TH. IERONIMIDES,

Applicant.

v.

THE REPUBLIC OF CYRPUS, THROUGH
THE COMMISSIONER OF INCOME TAX,

Respondent.

(Case No. 344/85).

Taxation—Capital Gains Tax—Fact finding process regarding the value of the land on the material date—Judicial control of—Principles applicable—Review confined to the evidence that was actually before the respondent when the decision was taken—Therefore, evidence in the form of an expert's report made on behalf of the applicant, should be ignored, if such report was not before the respondent—The report, however, has significance in deciding matters justifying interference, such as misconception of fact or law or abuse of power.

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Having found that the value placed by the respondent to the land in question as on the 27.6.78 was reasonably open to him, the Court dismissed the recourse.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

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

Christofides v. The Republic (1984) 3 C.L.R. 1454;

Smirli v. The Republic (1988) 3 C.L.R. 1305.

Recourse.

Recourse against the assessment of capital gains tax levied on the applicant on the gain from the disposal of the immovable property under Reg. No. I. 1752.

J. Mavronicolas with St. Ieronymides, for the applicant.

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Y. Lazarou, for the respondent.

Cur. adv. vult.

A. LOIZOU P. read the following judgment. This is a recourse against the assessment of capital gains tax which was levied and determined on the gain from the disposal of the immovable property of the applicant under Registration No. I. 1752 plot No. 1708, described as a building site, of an area of one evlek and 2100 sq. ft. I have taken over this recourse on the 3rd February 1988 from a colleague who retired.

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On the 28th June 1982 the applicant sold the building site subject-matter of this recourse. In the Declaration of disposal of Immoveable Property (Form I.R. 401), which she submitted to the Respondent Commissioner, the applicant declared as sale proceeds the sum of £14,000 and deducted therefrom as the base value on the 27th June 1978 also the sum of £14,000.-.

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The Respondent Commissioner accepted the amount of the sale proceeds but refused to accept the declared market value of the 27th June 1978, which he valued at £9,500 instead. On the basis of the market value of £9,500 as at 27th June 1978, the Respondent Commissioner raised an assessment on a capital gain of £4,500 on the 30th June, 1983 which was sent to the Applicant. On the 7th July, 1983 the Applicant lodged an objection, through her husband, Mr. Theodoros Ieronymides, stating that the market value of her property on the 27th June 1978 was more than £14,000.-.

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5 The Respondent Commissioner, after inviting the Applicant's husband to his office for discussion and having carefully considered the grounds of objection rejected the Applicant's valuation of the market value of the property as on the 27th June, 1978, and proceeded with the determination of the assessment. The Respondent Commissioner communicated to the applicant his duly reasoned decision by letter dated the 28th December, 1984, (Appendix "A"), together with the relevant Notice of Capital Gains Tax.

10 The applicant filed the present recourse praying the following relief:

"A. A declaration that the act and/or decision of the Respondent to assess Applicant to capital gains tax on the amount of £9,500 is null and void, and of no effect whatsoever.

B. A declaration that the true (taxable) value is C£14,000.

15 C. A declaration that the provisions of section 6 of The Capital Gains Tax Law 1980 (Law No. 52 of 1980) in so far as they purport to tax gains accruing before 1.8.1980 are null and void and of no effect whatsoever as being contrary to, or inconsistent with Article 24(3) of the Constitution."

20 The dispute therefore between the parties revolves around one main issue, namely, the value of the subject property as at the 27th June 1978. The applicant alleges that the value of the land as at the 27th June 1978 and as at the 28th June 1982 is the same and that the valuation relied on by the Respondent Commissioner
25 did not take into consideration the factors and prices concerning sales of similar properties in the same area at the same time, as well as other factors affecting the market value of the Land. Hence his decision to value such property at £9,500.- as at the 27th June, 1978 is wrong.

30 In support of her allegations the applicant produced a valuation report by Th. Ieronymides and Associates Ltd. Chartered Surveyors, which her counsel described as containing the true, real and

impartial assessment of the market value of the said property on 27th June, 1978 and by which it is proved as claimed by the applicant that the assessment of the Respondent Commissioner is manifestly wrong. (Exhibit 3).

It may be mentioned here that the Applicant abandoned her allegation of the unconstitutionality of section 6 of the Capital Gains Tax Law 1980. 5

Counsel for the Respondent Commissioner on the other hand has urged that the valuation on which he based his decision - Exhibit 1 - was prepared by an expert in the field of land valuation, namely Mr. Mateas, a qualified assessor and valuer of land who as it is evident conducted a thorough search into all the elements and considerations relevant to the value of the land and that there is no ground justifying any interference with his decision to value the property at £9,500 - as at the 27th June, 1978. 10 15

The jurisdiction of the Court in cases of tax review is no different from that in any other field of administrative action. It is confined to a review of the legality of the action of the Administration within the compass of their authority. Provided they operate within the framework of their powers the Administration is the arbiter of the fact-finding process. And so long as the inquiry into the factual background is adequate and the decision is one reasonably open to them the Court will sustain it as a valid exercise of their powers (vide *Georghiadis v. Republic* (1982) 3 C.L.R. 659). 20 25

The usefulness of the valuation submitted by the applicant, and which was for the first time brought to light in the course of the present proceedings, is as to whether in appreciating the facts of the case, the respondent Commissioner acted under any misconception of fact or law or in abuse of power, that is in circumstances in which this Court would be justified to interfere with his appreciation of the facts or the determination of the merits. Not being before the Respondent Commissioner when the sub judice decision was reached, it should otherwise be ignored as a review by 30

the Court is confined to the evidence that was before the Respondent Commissioner at the time he reached the sub-judice decision - vide *Christofides v. Republic* (1984) 3 C.L.R. 1454 at 1459-1460.

5 Thus in the case in hand the question whether the decision of
the Respondent Commissioner was reasonably open to him
should be answered by reference to Mr. Mateas valuation, this
being the only evidence before the Respondent Commissioner at
the material time as to the value of the land as at the 27th June
10 1978 and test that valuation with the valuation produced on behalf
of the applicant in order to see if there has been as already stated a
ground to interfere with the appreciation of facts in the light of the
general principles of administrative law hereinabove set out.

15 Moreover the valuation of the respondents is supported by the
report produced as exhibit 1 which I adopt and in which the va-
luer for the Respondent Commissioner gives a detailed account of
the method used and the comparable sales which were relied upon
in arriving at the conclusion that the value of the subject property
as on the 27th June 1978 was £9,500 that is £1.66 cents per
20 square foot. Also this report constitutes an indication that all the
factors which were relevant to the value of the land were taken
into consideration by Mr. Mateas.

I should however state at this stage that it is desirable that such
valuations are properly placed before the Respondent Commis-
25 sioner when objections are lodged, or before any decision in re-
spect thereof is taken (Relevant in this instance I consider it to be
the case of *Angeliki Smirli v. Republic*, (1988) 3 C.L.R. 1305
and the authorities therein referred to.)

30 In the present instance there is no record of what were the
grounds of objection raised by the applicant's husband who also
prepared the assessment in question but one might be tempted to
consider that his valuation was also part of the arguments ad-
vanced by him in dealing with the objection.

For all the above reasons the recourse fails and is hereby dismissed and the sub judice decision is confirmed in whole. There will be however no order as to costs.

Recourse dismissed .
No order as to costs. 5