1972
May 16

BANK OF CYPRUS LTD.

v.

REPUBLIC (MINISTRY OF FINANCE AND ANOTHER)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

BANK OF CYPRUS LTD.,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 204/66).

Income Tax—Profits from trade—Sums recovered in respect of debts previously treated as bad—Regarded as trading receipts of the year in which they were recovered—Proviso to section 10(1)(c) of the Income Tax Law, Cap. 323—See also section 5(1)(a) and (2)(c), and section 10(1)(c)—Comparison with the British income tax enactment.

Bad debt—Treated as such by the Commissioner of Income Tax—Sums recovered thereafter in respect of such bad debt—Held to be a trading receipt of the year in which they were recovered.

In 1952 the applicant Bank were owed by a certain S.G. a debt secured by a mortgage on a house. Some time that year the property was sold at their instance by public auction under the Sale of Mortgaged Property Law, Cap. 233, and bought by them for £1,040. As at that time the debt stood at £4,653, the sale left £3,613 still owing to them, which, plus a sum of £61 paid by them for transfer fees, making a total of £3,674 was allowed by the Commissioner of Income Tax as a bad debt deductible, and was actually deducted,

from their income in 1952 in ascertaining their chargeable income for that year. In 1958 the applicants sold the property to its former owner for £2,600, a sum of £1,510 more than the total of the price as it had been knocked down to them in 1952 as aforesaid and a sum of £50 that they had meanwhile spent on certain additions to it.

The sole issue in this case is whether the Commissioner was right in treating the sum of £1,510 arrived at as above explained, as part of the applicant's chargeable income for the year 1958 in question *(supra)*. The learned Justice held that the Commissioner was right in so doing.

After reviewing the facts and quoting section 5(1)(a) and (2)(c) and section 10(1)(c) of the Income Tax Law, Cap. 323, as well as a passage from the *Dickinson* case *(infra)*, the learned Judge :-

Held, (1) To my mind, the passages quoted from that case (*viz.* the *Dickinson* case, see *post* in the judgment) clearly show that if the law applicable to the instant case had been, in addition to section 5(1)(a) and (2)(c) of the Income Tax Law, Cap. 323, a provision such as the sub-rule referred to in that case, the respondent must succeed.

(2) True the facts here are not the same as those in the *Dickinson* case; but what the doctrine of precedent is about is, not identical facts, but the applicability of a *ratio decidendi* to another set of facts.

(3) Now, of the facts of this case one, and only one, calls for notice in relation to the question whether the *ratio decidendi* of the *Dickinson* case is relevant to the issue before me, and that is that here the receipt realized after the bad debt deduction had been made was a receipt of money paid in consideration of a sale by the creditor to the debtor. But looking at the facts broadly, as the Court of Appeal did in the *Dickinson* case, and as I think I should, the result of the said receipt as far as the applicants were concerned, was simply to put them in the same position as they would have been in if the house had

not been sold in the first place, if the applicants had received a bad debt allowance in respect of their 1952 income on the footing that the debt of the mortgagor the said S.G. had depreciated by £3,674 (the amount of the deduction above referred to) and if in 1958 the debtor had made a payment of £2,550 (the amount of the said receipt less the £50 spent by the applicants on additions to the house, *supra*) against his debt. Thus nothing turns on the particular facts of this case as compared with those of the *Dickinson case*.

(4) Now, looking at the facts of this case I am of opinion that the said receipt should be treated as "a sum recovered" within the proviso to section 10(1)(c) so that it must be taken into account as part of the applicants' income for 1958 (*Note:* all statutory provisions referred to above as well the said passages from the *Dickinson* case, are set out *post* in the judgment).

Recourse dismissed.
No order as to costs.

Cases referred to:

Bristow (H.M. Inspector of Taxes) v. *Dickinson and Co., Ltd.* 27 T.C. 157, at pp. 161-162;

Absalom v. *Talbot,* 26 T.C. 166, at p. 188 H.L.

Recourse.

Recourse against the decision of the respondents to impose on the applicants income tax amounting to £641.750 mils in respect of the sale by the applicants of a house.

G. Polyviou, for the applicants.

A. Evangelou, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

STAVRINIDES, J. : In 1952 the applicants, a banking company, were owed by a Mr. S. Georghiades a debt secured by a mortgage on a house. Some time that year the property was sold at their instance by public auction under the Sale of Mortgaged Property Law, Cap. 233, and bought by them for £1,040. As at the time the mortgage debt stood at £4,653, the sale left £3,613 still owing to them, which, plus a sum of £61 paid by them for transfer fees, making a total of £3,674, was allowed by the Commissioner of Income Tax as a bad debt deductible, and was actually deducted, from their 1952 income in ascertaining their chargeable income for that year. In 1958 the applicants sold the property back to its former owner for £2,600, a sum by £1,510 more than the total of the price at which it had been knocked down to them and a sum of £50 that they had meanwhile spent on additions to it. It has not been expressly stated on either side that the £2,600 have been paid, but it is implicit in the argument on both sides that they have.

Paragraphs 7 and 8 of the indorsement on the application read :

> "7. The said house after its (purchase) by the applicants... became a fixed asset of theirs and as such was shown as part of their immovable property in their annual balance sheet.
>
> 8. The Commissioner of Income Tax was granting to the applicants wear and tear allowances on buildings acquired by them in similar circumstances including the house in question."

In a notice of assessment of the applicants' income for 1958 the Commissioner of Income Tax treated the sum of £1,510, arrived at as above explained, as part of the applicants' chargeable income for that year, and what I have to determine in these proceedings is whether the assessment was, in that respect, legally right or not.

In the words of counsel for the respondent "his basic

proposition was that the profit (meaning the above sum of £1,510) was income arising out of the applicants' trade or business as a result of an adventure in the nature of trade and therefore taxable under s. 5(1)(a) of (the Income Tax Law) Cap. 323", which was the enactment in force at all material times. So far as relevant to this case, the provision referred to reads :

> "Tax shall, subject to the provisions of this Law, be payable.... in respect of
>
> (a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;"

and by s. 5(2)(c) the expression "trade" "shall include every manufacture or adventure or concern in the nature of trade".

Section 5(1)(a) of the Law is modelled on the British Income Tax Act, 1952, Sch. D. (set out in s. 122 thereof), para. 1(a)(ii), and s. 5(2)(c) on the definition of "trade" in s. 526(1) of the Act, which are based, respectively, on the British Income Tax Act, 1918, Sch. D. para. 1(a)(ii), and the definition of "trade" in s. 237 thereof. There are some differences between the two sets of British provisions to which I have referred and between each set and the corresponding provisions of Cap. 323, but neither counsel suggested that any of those differences is relevant to this case, and I am satisfied that none is.

Counsel for the applicants expressly accepted (and rightly, of course) that "the original advance"—meaning the transaction whereby Mr. Georghiades became indebted to his clients—was one by way of trade; but he urged on me that the sale of the house back to the debtor ("the resale") was not, because "it would be absurd to suggest that in making the advance the applicants intended or contemplated the eventual inability of the borrower to repay the loan and the consequent sale of the house and its purchase by (themselves), still less (the resale) at a profit"; and pointed to the fact that the

purchase by his clients took place in 1952 and the resale in 1958. That the applicants did contemplate the possibility of Mr. Georghiades being unable to pay his debt is clear from the fact that the advance was made on the security of a mortgage; and the purchase of mortgaged property, on its sale under Cap. 233, by the mortgagee himself, is not uncommon—nor indeed is its eventual sale back to the mortgagor. However, I will not go further into the argument advanced on behalf of the applicants, nor deal with that put forward on behalf of the respondent, because neither of them took account of the fact, referred to at the outset of this judgment, that in 1952, on the basis of the price at which they had bought the house, the applicants had been allowed a bad debt deduction from their chargeable income for that year—a fact which, in my view, is decisive of the issue that I have to determine.

It was held in England in *Bristow (H.M. Inspector of Taxes)* v. *Dickinson & Co., Ltd.*, 27 T.C. 157, a unanimous decision of the Court of Appeal delivered by Lord Greene M.R., that where a taxpayer has been allowed to deduct from his chargeable income for a particular year a debt on the ground that it is irrecoverable, and in a subsequent year that debt, or part of it, is paid, the amount so received must be treated as a trading receipt of the year in which it was paid. In the second paragraph of his judgment, at pp. 161, 162, Lord Greene put the facts of that case in abstraction thus:

> "A trading company in the year 1 sells goods on credit. The amount so owing to it is brought into account in the computation of its profits and gains for the year 1. In the years 2 and 3 events happen which, first of all, depreciate the value of that debt, and later on destroy its value altogether. In the accounts for the years 2 and 3 the Revenue accept the view that the depreciation and final devaluation of the debt should be made the subject of an allowance in those respective years. In the year 4 further events happen of a quite unusual and, indeed, unexpected nature, which have the effect of converting the debt, which has been treated as bad, into a perfectly good debt which is paid in the year 4."

The paragraph continues :

> "The Revenue then says : 'In taking the account of your profits and gains for the year 4, you must bring in that sum as a receipt. You have received it in the year 4, and you must accordingly bring it into account.' It is not a question of revising or amending, by additional assessment or otherwise, any of the assessments for the years 1, 2 or 3. The claim of the Revenue is to treat receipt as a receipt of income for the year 4."

Lord Greene went on :

> "The only statutory provision which bears on this question to which I need refer is r. 3(i) of the Rules applicable to Cases I and II of Sch. D. to the Income Tax Act, 1918."

and proceeded to quote that provision, which reads :

> "In computing the amount of the profits or gains to be charged, no sum shall be deducted in respect of..... any debts, except bad debts proved to be such to the satisfaction of the Commissioners and doubtful debts to the extent that they are respectively estimated to be bad."

At p. 164 he referred to *Absalom* v. *Talbot*, 26 T.C. 166, at p. 188 H.L., and quoted the following passage from Lord Porter's judgment :

> "Your Lordships' attention, however, has been drawn to the practice in the past of the Inland Revenue authorities of making an allowance in respect of losses for bad or doubtful debts as and when they occur, though the debt itself was originally treated as being of its face value in a previous year's accounts. Such a practice necessitates, I think, the corresponding obligation on the part of the taxpayer to submit in a later year to an increase in the sum at which a debt previously treated as bad or doubtful should be brought into account if, in fact, a payment greater than the

assumed value had been obtained or seems likely to be obtained on a later occasion."

He expressed no disagreement as to any part of the passage, but only doubts, and that solely as regards the words "it seems likely to be obtained." At p. 165 Lord Greene said :

> "Here is a receipt in the year 4. Why should not it be struck with tax when it has not so far been brought into effective computation? It is not like an ordinary trading debt which, when it is received, would not be taxed a second time. This is a peculiar debt, having regard to its history, or which it is impossible to say that, at the time when it was received, it had been brought into account for tax purposes while it was still only a debt. You cannot put what happened in the year 1 into a sort of watertight compartment and disregard what happened in the years 2 and 3. In my opinion you must look to the result of all the transactions, and ask yourself in the year 4 : What is the status of this receipt as between the taxpayer and the Revenue? Is it a receipt which must be excluded from computation on the ground that it has already come in another form, namely, the form of a debt, or is it to be treated as something which has never been brought into account at all owing to the particular provisions of sub-r. 3(i) and to what, in fact, was done under those provisions? In my opinion the Crown's contention is right in this matter."

To my mind the passages quoted from the above case clearly show that if the law applicable to the instant case had been, in addition to s. 5(1)(a) and 2(c) of Cap. 323, a provision such as the sub-rule referred to in that case, the respondent must succeed. True, the facts here are not the same as those in the *Dickinson* case; but what the doctrine of precedent is about is, not identical facts, but the applicability of a *ratio decidendi* to another set of facts. Now of the facts of this case one, and only one, calls for notice in relation to the question whether the *ratio decidendi* of the *Dickinson* case is relevant to the issue before me, and that is that here the receipt

realized after the bad debt deduction had been made (hereafter "the receipt") was a receipt of money paid in consideration of a sale by the creditor to the debtor. But looking at the facts broadly, as the Court of Appeal did in the *Dickinson* case, and as I think I should, the result of the receipt, as far as the applicants were concerned, was simply to put them in the same position as they would have been in if the house had not been sold in the first place, if the applicants had received a bad debt allowance in respect of their 1952 income on the footing that Mr. Georghiades' debt had depreciated by £3,674 (the amount of the deduction above referred to), and if in 1958 the debtor had made a payment of £2,550 (the amount of the receipt less the £50 spent by the applicants on addition to the house) against his debt. Thus nothing turns on the particular facts of this case as compared with those of the *Dickinson* case and therefore the question resolves itself into one of whether there is any local statutory provision that makes any difference. Now the following provisions, and these only, call for notice in this connection : s. 5(1)(a) and 2(c) and s. 10(1)(c) of Cap. 323. As appears from the foregoing, the first two provisions present verbal differences from the British Income Tax Acts of 1918 and 1952, but those differences are of no consequence in this case. Section 10(1)(c) reads :

> "For the purpose of ascertaining the chargeable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred by such person in the production of the income, including—
>
> (c) bad debts incurred in any trade, business, profession or vocation proved to the satisfaction of the Commissioner to have become bad debts during the year immediately preceding the year of assessment notwithstanding that such bad debts were due and payable prior to the commencement of the said year :
>
> Provided that all sums recovered during

the said year on account of amounts previously written off or allowed in respect of bad debts shall, for the purposes of this Law, be treated as receipts of the trade, business, profession or vocation for that year."

It will be seen that the enacting part of that paragraph is, substantially, a reproduction of sub-r. 3(i). Does the proviso make any difference in this case? As far as it goes, in my view it embodies, in substance, the *ratio decidendi* of the *Dickinson* case. It is true that it does not, in terms, apply to a sum paid by a debtor to his creditor for a fresh consideration. But looking at the facts as indicated, I am of the opinion that the receipt should be treated as "a sum recovered" within the proviso, so that it must be taken into account as part of the applicant's income for 1958.

For the above reasons the application must fail.

Counsel for the respondent claims no costs.

Court: Application dismissed without costs.

Application dismissed without costs.