

1988 May 10

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS KONARIS AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYRPUS, THROUGH  
1. THE COMMISSIONER OF INCOME TAX,  
2. THE DIRECTOR OF INLAND REVENUE,

*Respondents.*

*(Cases Nos. 380/85, 381/85, 382/85).*

*Partnerships—A partner cannot be an employee of the partnership as well—  
His "salary" is, in the circumstances, a share in the profits.*

5 *Taxation—Special Contribution—The Special Contribution (Temporary Provi-  
sions) Law, 1978 (Law 34/78), section 3 and 2(1)—Emoluments—  
"Salary" of partner from partnership—Rightly considered as not amounting  
to "emoluments"—The expression "money paid in respect .... of any of-  
fice"—Does not cover the case of the applicants.*

*Words and phrases: "Emolument" in section 2(1) of the Special Contribution  
(Temporary Provisions) Law, 34/78.*

10 *Words and phrases: "Money paid in respect ... of any office" in section 3 of  
The Special Contribution (Temporary Provisions) Law, 34/78.*

The applicants are partners in a partnership business. At all times mate-  
rial to this recourse they were drawing, apart from their share in the profits  
of the partnership, "salaries" as remuneration for their services.

15 The question raised in this recourse is whether such "salaries" could be  
subjected to special contribution, as the respondent asserted by means of

the sub judge decision.

Held, dismissing the recourses: (1) The relevant legal provision is section 3 of Law 34/78 in conjunction with the definition of the word "emoluments" in section 2(1).

(2) The applicants as partners, by the very nature of the partnership are precluded from acting in a dual capacity, that is, that of partner and of employee. The "salaries" were in fact share in the profits. 5

(3) The expression "money paid..... in respect of any office" does not cover the case of the applicants. Such expression refers to officers which by their very nature do not have the master/servant relationship such as members of various Boards or Public Companies. 10

*Recourses dismissed.  
No order as to costs.*

*Cases referred to:*

*Ellis v. Joseph Ellis and Co. (1905) 1 K.B.324.*

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### **Recourses.**

Recourses against the special contribution assessments imposed on applicant.

*C. Melas with Chr. Demetriou, for the applicants.*

*Y. Lazarou, for the respondents.*

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*Cur. adv. vult.*

A. LOIZOU P. read the following judgment. By the present recourses which were tried together as they present common issues of law and fact the applicants seek a declaration of the Court that the special contribution assessments imposed by the respondent Commissioner are null and void and of no legal effect whatsoever. 25

Applicant Georghios Konaris filed recourse No. 380/85, against the special contribution assessments raised for the quarters January 1977 to April 1982 and January 1983 to April 1983.

- 5 Applicant Socratis Lartides filed recourse No. 381/85, against the special contribution assessments raised for the quarters January 1977, to April 1982 and January 1983 to April 1983.

10 And finally applicant Panayiotis Konaris filed Recourse No. 382/85, against the special contribution assessments raised for the quarters February 1980 to March, 1980, January 1981 to April, 1981, January 1982 to April 1982 and January 1983 to April 1983.

15 All applicants are Directors of the partnership "Larticon Synthetic Detergents Company" and were receiving monthly remuneration for their services to the partnership.

20 Applicants G. Konaris and Lartides submitted special contribution returns for the quarters January 1977 to March, 1977, but did not submit similar returns in respect of the other quarters subject matter of this recourse. Applicant P. Konaris did not submit any returns. The respondent Director issued special contribution assessments in respect of all quarters which assessments were based on the share of profit of the applicants plus the amount of salary drawn from the partnership "Larticon Synthetic Detergents Company" of which the applicants are partners. Against the  
25 above assessments the applicants' accountant filed objections on the ground that the salaries from the partnership should not have been assessed to special contribution.

30 The respondent Director, having carefully considered the applicants' objections, decided to reject them holding the view that the alleged salaries drawn from the partnership were subject to the provisions of the Special Contribution Laws, and such decision was communicated to the applicants by letter with final notices of special contribution assessments for the quarters subject-matter

of these recourses.

It was contended by the applicants that part of the income which they received from the partnership in the quarters January 1977 to April 1983 was paid to them by way of salary for their services to the firm and as such it constitutes "emoluments" and is therefore exempt from special contribution by virtue of section 3 of the Special Contribution (Temporary Provisions) Law 1978, (Law No. 34 of 1978). They argued that they are not precluded from receiving such remuneration for their services to the partnership as accountant, mechanical engineer, or technical engineer, as the case may be, because, the law only makes a differentiation between sources of income.

Indeed the law does differentiate between sources of income and the same person may apart from his salary have income from other sources for which he is bound to pay special contribution. I consider, however, that in the present instance the "Salaries" drawn by the applicants came from no other source but from the share of each partner of the profits of the partnership and the fact that they are received in the form of and under the name of "Salary" does not alter what they really are. That such moneys may have otherwise been expended by the applicants to third parties for providing the partnership with the services in question, which moneys being salaries may have been exempt from special contribution is neither here or there as on the facts of the present case such moneys cannot be considered as salaries paid by the applicants to themselves. The applicants as partners, by the very nature of the partnership are precluded from acting in a dual capacity, that is, that of partner and of employee. Relevant to this is what was stated in the case of *Ellis v. Joseph Ellis and Co.* [1905] 1 K.B. 324 at p. 328:

"It seems to me that, when one comes to analyse an arrangement of this kind, namely one by which a partner himself works, and receives sums which are called wages, it really does not create a relation of employers and employed, but is, in truth, a mode of adjusting the amount that must be taken to

5 have been contributed to the partnership assets by a partner who has made what is really a contribution in kind, and does not affect his relation to the other partners, which is that of co-adventurer and not employee. Such a partner can not put himself in the position of not being a partner when he is one, or of being a workman employed, when that position would involve that he would be both employer and employee."

The relevant provisions of section 3 of Law No. 34 of 1978, which are as follows do not assist the applicants case:

10 "For the quarter beginning as from 1st April 1978 and for every subsequent quarter during the period when this Law shall be in force, there shall be levied and collected a contribution at the rates and in accordance with the provisions set forth in the Schedule, on the income of any person which derived  
15 from any source other than emoluments."

The word "emoluments " is defined in section 2(1) thereof as follows:

20 "remuneration in money paid in any manner whatsoever in respect of any office or salaried services, wherever exercised or rendered and includes any allowance, of a monetary or other kind, payable in consideration of such office or services, as well as pensions, but does not include any other retiremet grant or gratuity or any sums paid by an approved Provident Fund."

25 It has been argued that in the above definition of emolumets, the expression "money paid..... in respect of any office" covers the case of the applicants . I think not, for such expression refers to officers which by their very nature do not have the master/servant relationship such as members of various Boards or for instance, public companies, etc, but cannot possibly cover the case  
30 of the applicants. Therefore this argument fails also.

For all the above reasons these recourses fail and are hereby dismissed, but in the circumstances there will be no order as to costs.

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*Recourses dismissed.  
No order as to costs.*