[HALLINAN, C.J., AND ZEKIA, J.]
(November 5, 1954)

IN THE MATTER OF SECTION 39 (9) OF THE INCOME TAX LAW, CAP. 297,

AND

IN THE MATTER OF COSTAS CHRISTODOULOU OF NICOSIA, *Applicant.*

(*Case Stated No.* 95)

Income Tax Law (Cap. 297), section 50(3)—Voluntary disposition—Includes property yielding income—no income in year of transfer—English Income Tax Law compared.

The applicant in 1948 transferred immovable property voluntarily to a grandchild. In 1950 (the year prior to the year of assessment) the transferee was under 18 and the property yielded a rent. The Income Tax Commissioner treated this rent as part of the income of the applicant relying on section 50(3) of the Income Tax Law (Cap. 297).

Upon appeal,

Held: (1) The word "disposition" in section 50(3) includes not only a disposition of income but of property yielding income.

(2) Even if the property yields no income during the year of transfer, section 50(3) applies if it yielded income during the year prior to the year of assessment. Referring to the English statutes in *pari materia* the Court also made the following observations in respect of section 50(3):

(1) This sub-section is intended to apply to voluntary dispositions only;

(2) in England income from voluntary dispositions is only deemed income of the disponor if the disponee is his child; in Cyprus it is so deemed even if the disponee is a stranger—a severe restriction on voluntary transfers;

(3) unlike England, in Cyprus the disponor cannot obtain a refund of income tax from trustees paid by the disponor on income received by the trustees.

Case Stated from the decision of the District Court of Nicosia (Income Tax Appeal No. 212).

J. Clerides, Q.C., with *G. Clerides* for the applicant.

L. Loizou, Crown Counsel, for the respondent.

The judgment of the Court was delivered by:

HALLINAN, C.J.: In 1948 the applicant transferred a building site to his grandchild who is under 18 and unmarried. At the time of the transfer the site yielded no rent, but since 1949 the transferee has derived a rent of £240 a year. There is no suggestion that the transfer was made for the purpose of evading income tax. In the year of assessment 1951 the Commissioner of Income Tax treated the rent of £240 derived

from the transferred land during the year preceding the year of assessment as part of the applicant's income, relying on section 50 (3) of the Income Tax Law (Cap. 297) which reads as follows:

"Where, by virtue or in consequence of any disposition made during the life of the disponer, any income is payable to or for the benefit of any person in any year immediately preceding the year of assessment, the income shall, if at the commencement of that year the person was under the age of eighteen years and unmarried, be treated for the purposes of this Law as the income of the disponer for that year and not as the income of any other person".

The applicant objected to this assessment and appealed. The learned Judge in the Court below upheld the assessment and held that the rent derived from the transferred land must be treated as the income of the applicant.

It has been submitted on behalf of the applicant that the word "disposition" in sub-section (3) only covers dispositions of income, not of property yielding income. In support of this submission counsel referred us to section 393 of the English Income Tax Act, 1952, where this expression is used, and he has also referred us to the definition of "disposition" contained in section 396 which reads: "'disposition' includes any trust, covenant, agreement or arrangement". He has compared this definition with the definition of "settlement" in section 403 of the English Act which is expressed to include the transfer of assets. As against this argument, however, the word "disposition" in its ordinary meaning would include the transfer of property yielding income as well as income, whereas the word "settlement" in its ordinary meaning is a special mode of transferring assets and it required special statutory provision to enlarge it so as to include any transfer of assets. The word "disposition" is defined in section 50 (5) of our Law to include, *inter alia*, a grant; and this certainly suggests the transfer of assets and not merely the transfer of income. The word "disposition" is used in sub-section (2) of the same section and there its application obviously cannot be restricted to disposition of income. We see no sufficient reason why the word "disposition" in sub-section (2) should have a different meaning to the same word as used in sub-section (3).

It has been argued for the applicant that if the word "disposition" in sub-section (3) includes assets then cases of double taxation would arise which were never intended by the legislative authority. That is to say, if assets are transferred to a minor for valuable consideration and the vendor invests the proceeds and derives income therefrom, he will be taxed on both the income from the property

transferred and from the property invested. The short answer to this argument is that (even if the sub-section is interpreted to apply to dispositions for value) the possibility of double taxation will arise whether the transfer for value was assets or income from assets. Having regard to the English statutory provisions from which sub-section (3) is derived, it is obvious that the legislative authority intended this sub-section to apply only to voluntary dispositions; and in fact we are assured by the Income Tax Commissioner that it is interpreted in this sense by his department. It would appear advisable, however, at a convenient time to amend this sub-section so as to make it clear that it applies only to voluntary dispositions.

There is another aspect of sub-section (3) which might at the same time be considered by the legislative authority: under the English Act the income derived from a voluntary disposition is only deemed income of the donor for purposes of tax if the donee is his child; whereas under our sub-section (3) it does not matter whether the donee is a child of the donor or a stranger. This provision would appear unduly to penalise voluntary dispositions which are not efforts to evade tax.

Counsel for the applicant has also drawn our attention to section 400 of the English Act which provides that where the income under a settlement in favour of minors is treated for the purposes of income tax as income of the settlor, the settlor can recover a refund of tax from the trustees. There is no such provision in our law, as indeed there might well be; but the absence of such a provision should not in our view alter the ordinary meaning of the word "disposition" in sub-section (3).

Finally it was submitted for the applicant that because the property was yielding no income at the time it was transferred, the income that has subsequently arisen cannot be deemed to be the income of the donor. We are unable to accept this interpretation of the words of sub-section (3) which in this respect seems quite clear. In order that income derived from property disposed of by the tax-payer should be treated as his income, it is only necessary for the revenue authority to show that at some time the tax-payer has disposed of some property voluntarily, that in the year prior to the year of assessment this property was yielding income, and the donee in that year was still under the age of 18 and unmarried.

For the reasons we have given, in our opinion the determination of the trial Judge was correct.