

[TRIANTAFYLLOIDES, J.]  
IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

P.G.G. CLIFT,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

(a) THE MINISTER OF FINANCE,

(b) THE COMMISSIONER OF INCOME TAX,

*Respondent.*

(Case No. 152/63).

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*Administrative Law—Taxes—Income Tax—Assessments—The Income Tax (Foreign Persons) Law, 1961 (Law 58 of 1961), section 5(1)(b)—Inclusion by Respondent in the taxable income of Applicant of an amount representing the rent of Applicant's residence, which was being paid by his employers—Possible in law to treat such sum as taxable income of Applicant under section 5(1)(b) of the Law—Reasonably open to Respondent, in the circumstances of this case, to treat the whole amount of such rent as part of the taxable income of Applicant.*

By this recourse Applicant seeks the annulment of tax assessments raised on him in respect of the years of assessment 1959, 1960 and 1961.

The ground on which the said assessments are being challenged is that, in raising such assessments, Respondent has included in the taxable income of Applicant for each of the years in question—and because of the nature of such income the year of income coincided with the year of assessment—an amount of £50 per month representing the rent for a house in which he was residing in Nicosia and which rent was being paid by his employers.

The following two grounds fall for determination:

(a) was it possible in law for Respondent to treat at all any amount paid by way of rent for the house concerned as taxable income of Applicant?

(b) was it proper for Respondent to treat the whole

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amount of £50.- per month, as taxable income of Applicant, in this particular case?

*Held, I. As regards ground (a)*

It was possible in law to treat the sum paid by Applicant's employers, by way of rent for the house in which Applicant was residing, as taxable income of Applicant under section 5(1)(b) of Law 58/61.

*II. As regards ground (b)*

In the circumstances in which the rent of £50.- per month was being paid, it was reasonably open to Respondent to treat the whole said amount of £50.- per month as part of the taxable income of Applicant.

*III. As regards costs:*

Respondent is entitled to costs which I assess at only £15.-.

*Application dismissed.*

**Recourse.**

Recourse for the annulment of four income tax assessments raised on applicant in respect of the years of assessment 1959, 1960, 1961 and 1962.

*St. McBride* for the applicant.

*K. Talarides, Counsel of the Republic,* for respondent.

*Cur. adv. vult.*

The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: In this case the applicant applies for the annulment of four income tax assessments raised on him in respect of the years of assessment 1959, 1960, 1961 and 1962.

At the hearing the assessment in respect of the year of assessment 1962 ceased to be part of the subject-matter of this recourse, because counsel for Applicant stated that it is not being challenged any more and that agreement has been reached for its satisfaction by Applicant. To the extent, therefore, to which this recourse is related to such assess-

ment it is to be considered as withdrawn and struck out accordingly.

The ground on which the remaining assessments are being challenged as not being valid, is that, in raising such assessments, Respondent has included in the taxable income of Applicant for each of the years in question—and because of the nature of such income the year of income coincided with the year of assessment—an amount of £50 per month representing the rent for a house in which he was residing in Nicosia and which rent was being paid by his employers, Messrs. Saoulis and Sons Ltd.

It has been the contention of Applicant that, under his agreement of employment with Messrs. Saoulis and Sons Ltd., he was entitled to rent allowance equal to 4% on his salary and that his employers had the obligation of providing him with a house in return for such allowance, and that, therefore, as his relevant emoluments did not exceed 4% on his salary, he was not liable to be taxed on the basis of the £50.— per month, which was in fact paid by his employers for the house provided for him by them and which was in excess of the said 4%. It has been submitted by counsel for Applicant that the value of the accommodation in question to Applicant, for purposes of income tax, was only 4% on his salary, irrespective of the actual rent paid by his employers.

It has been argued, on the contrary, by counsel for Respondent, that the whole rent for the house in question amounted to taxable income of Applicant, in the sense of section 5(1) (b) of the Income Tax (Foreign Persons) Law 1961, Law 58/61, and that the agreement between Applicant and his employers, whatever it might be, concerning the rent allowance, could not affect the legal liability of Applicant to be taxed in this matter under the provisions of section 5(1)(b).

Section 5(1) (b) provides that “Tax shall . . . . . be payable . . . . . upon the income of any person accruing in, derived from, or received in the Republic in respect of— . . . . . (b) gains or profits from any office or employment. . . . . including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment whether in money or otherwise”.

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I do not think that it is necessary to go at great length into the factual aspect of this Case. It is sufficient to state that Applicant having found himself a house in Nicosia belonging to a certain Mrs. Orlandi and the rent having been agreed to at £50.- per month, Applicant proceeded to occupy this house as tenant during the period relevant to the sub judice assessments; he used to pay the rent and receive the money therefor from his employers, in the name of whom Mrs. Orlandi did issue the necessary receipts.

In approaching the validity of the assessments in question I have to decide two things:—

- (a) was it possible in law for Respondent to treat at all any amount paid by way of rent for the house concerned as taxable income of Applicant?
- (b) was it proper for Respondent to treat the whole amount of £50.- per month, as taxable income of Applicant, in this particular case?

With regard to issue (a) I have come to the conclusion that it was possible in law to treat the sum paid by Applicant's employers, by way of rent for the house in which Applicant was residing, as taxable income of Applicant under section 5(1) (b) of Law 58/61.

There can be no doubt that his employers were providing Applicant with a house because of his employment with them. The rent in question was in effect being paid for the purpose of providing Applicant with quarters, in accordance with the terms of his employment, and, therefore, the Respondent rightly treated the matter as being within the ambit of section 5(1) (b) of Law 58/61.

On issue (b), above, I have reached the conclusion that, in the circumstances in which the rent of £50.- per month was being paid, it was reasonably open to Respondent to treat the whole said amount of £50.- per month as part of the taxable income of Applicant.

Of course, the proper application of section 5(1) (b), depends on the circumstances of each particular case. So long as a matter falls within the ambit of section 5(1) (b), the particular mode of application of such provision to such matter, in the light of all relevant circumstances, will not be interfered with by this Court, as an administrative Court,

if such mode was reasonably open to the taxing authority in the light of the said circumstances.

Bearing these principles in mind I have reached the conclusion that it was reasonably open to the Respondent to treat the total amount paid, in each year of assessment, by way of rent for the house in question, as representing a proper estimate of the annual value of such house and, thus, as being taxable income of Applicant; in this connection it is significant that the rent of £50.- per month was freely agreed upon between the parties concerned and, therefore, it could reasonably be taken by the Respondent as representing the annual value of the house concerned, for the purpose of taxing Applicant's income under section 5(1) (b).

I have paid due regard to the argument advanced by Applicant's side that out of the rent for the house in question, there could be treated as Applicant's taxable income, if at all, only an amount equal to 4% on Applicant's annual salary, because this was the rent allowance agreed upon between Applicant and his employers—according to Applicant's contention—and anything paid over and above such amount in implementation of the obligation of Applicant's employers to provide him with free quarters, in return for his rent allowance, could not be treated as part of Applicant's taxable yearly income.

I cannot see my way to upholding such submission.

First of all, Applicant has not sufficiently established to my satisfaction the alleged by him agreement concerning the obligation of his employers to provide him with a house in return for a rent allowance which would amount only to 4% on his annual salary.

Mr. Socrates Saoulis, the employer of Applicant, who, by consent of both counsel, was called to give evidence by the Court, did not support Applicant's version. But even if I were to regard the contradiction of Applicant's version by Mr. Saoulis as not detracting at all from the weight of such version, I could not overlook documentary evidence in this Case which in my opinion has the effect of leading to the conclusion that the rent allowance as a whole was part of Applicant's employment emoluments.

It appears from such documentary evidence that Applicant, having accepted by cable an offer cabled to him by his

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eventual employers, had the said offer also confirmed by a letter addressed to him on the 18th April, 1958 (*exhibit 11*), in which it was stated that his emoluments would include a housing allowance of £540.- p.a. in addition to his salary of £1240.- p.a. and, also, an emergency allowance of £250.- p.a.

It will be seen that the aforesaid amount of £540.- p.a., which is only £60.- a year short of the actual amount of £600 p.a. which had eventually to be paid as rent for the house of Mrs. Orlandi, is far more than a mere 4% on Applicant's salary, even if the emergency allowance were to be treated as part of such salary.

It is useful to note also that on the 27th April, 1958, Applicant wrote back to his employers, acknowledging receipt of the letter of the 18th and announcing his coming to take up his duties and he did not raise any specific point about the rent allowance being only 4% on his salary.

Applicant has stated that the question of the rent allowance being only 4% on his salary was agreed upon between him and his employers after his arrival in Cyprus. But even if that was so—and I am not satisfied that this has been sufficiently established—then again, in my opinion, such agreement could only be treated as an ineffectual attempt to defeat the provisions of section 5(1) (b) and could not affect Applicant's liability to pay income tax thereunder. Indeed, I fail to see the real use of such agreement from the point of view of the employment terms between Applicant and his employers; they offered him a housing allowance of £540.- p.a. and eventually they gave him a house, for which they paid, at an annual rent just above this allowance. There could be, on the material before me, no purpose that could have been served, by the agreement alleged by Applicant, other than to minimize his liability for income tax.

In my opinion, it was not possible by such agreement to avoid paying tax which was payable as a result of the essential nature of things. Otherwise it would amount to holding that in applying section 5(1) (b) the Respondent had to pay regard not to the real state of affairs but to a fictional one created for the purpose of defeating the provisions of such section. Such a conclusion would certainly not be the proper one. Whether, if Applicant were finally to sufficiently

establish the said agreement he would have a claim for reimbursement by his employers of the income tax paid by himself on such part of his rent allowance which is in excess of 4% on his salary, is a matter that does not have to be resolved in this Case.

For all the above reasons this recourse fails. As regards costs Respondent is entitled to costs which I assess at only £15.-

*Application dismissed. Costs assessed at £15.- awarded to Respondent.*

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