[ZEKIA, P., VASSILIADES, MUNIR, JOSEPHIDES, J.J.]

NICOS KOLOKASSIDES,

Appellant (Applicant),

and

THE REPUBLIC OF CYPRUS THROUGH THE MINISTER OF FINANCE,

Respondent.

(Revisional Jurisdiction Appeal No. 4).

Administrative Law—Revevenue—Income Tax—Assessments—Appeal from dismissal of recourse against the assessment and collection of income tax due by Applicant in respect of the years of assessment 1953 *and* 1954*—Finding of trial Court that there was no valid objection to the said assessments made according to section* 42 *of the Income Tax Law, Cap.* 323*, upheld—Setting into motion machinery for collection of tax due, not part of the recourse under reference.*

Administrative Courts—Control on the exercise of executive power by public authority — Statement of fundamental principle.

Practice—Appeal against decision of one of the Judges of the Supreme Court exercising jurisdiction of the former Supreme Constitutional Court under proviso to section 11(2) *of the Administration of Justice (Miscellaneous Provisions) Law,* 1964 *(Law* 33 *of* 1964*).*

This is an appeal from the Judgment dismissing Applicants recourse both against the assessment and, also, the collection of income tax due by him in respect of the years of assessment 1953 and 1954.

The said Judgment is attacked on four grounds;Grounds 1, 2 and 4, rest on the assumption, or the contention, that a valid objection to the assessments in question, was taken in due course; and that such objections were operative at the material time.

As to ground 3, appellant's case rests on the assumed administrative act of setting in motion the machinery for the collection of the tax in question, contrary,—appellant contends—to the provisions of section 57(2) of the statute.

Held, 1. As regards grounds 1,2 and 4.

(a) This contention was mainly based on a letter from the office of the Commissioner of Income Tax, addressed to the firm of auditors, acting for the appellant, making reference to a letter written by the auditors about six months earlier to inform the Commissioner that the auditors were "working for the compilation of a Capital Statement, which they hoped to have ready within the next fortnight". The Commissioner's communication, must be read and understood in the picture formed by all the correspondence exhibited; and the position stated by the auditors which reflects appellant's attitude in connection with this matter, referred to in the uncontested facts.

(b) Moreover, the first paragraph of the letter in question refers to the accounts, assessments, and taxation of appellant's income during a period of seven years, 1952 to 1959; and there is no evidence before the Court showing that additional assessments have been made for all those years, same as they have been made for the two years in question. At least one assessment must have been made for each of the seven years referred to in the said Commissioner's communication; and there may have been objections filed in due course, under section 42, for some of those years, still waiting for support from appellant's expected accounts.

(c) The argument based on expressions picked out of this letter, cannot affect the substance of the case, as stated in the judgment and as appearing from the statement of the uncontested facts, which has never been challenged. This is sufficient to dispose of the three grounds of appeal which turn on whether there was a valid objection to the assessments in question, made according to section 42 of the Income Tax Law (Cap. 323).

II. As to ground 3*:*

This ground can be disposed of on the fundamental principle that this Court, in its administrative jurisdiction, will enter into the legal aspect of a case, if there is substance in the recourse; substance in the complaint against the administrative act attacked. Here the complaint against the administrative act of setting in motion the machinery for the collection of the tax, derives substance from the validity of the assessments upon which the tax

for collection, became payable. If those assessments are valid, the tax is due. And this is the subject-matter of the present recourse. Whatever irregularity may have occurred, if any, in setting into motion, the machinery for collecting the tax, is not part of the substance of this recourse. In fact it is not part of the present recourse at all.

Appeal dismissed.

Cases referred to:

Gavris and The Republic (I R.S.C.C. 88);

Mustafa and the Republic (I R.S.C.C. 44).

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Triantafyllides J.) given on the 19th June, 1965, (Revisional Jurisdiction Case No.117/63) dismissing a recourse concerning income tax assessments on the appellant in respect of the years of assessment 1953 and 1954.

Fr. Markides for the appellant-applicant.

L.G. Loucaides, Counsel of the Republic, for the respondent.

ZEKIA, P.: The judgment of the Court will be delivered by Mr. Justice Vassiliades.

VASSILIADES, J.: This is an appeal to the Court under the proviso to section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964, (No. 33 of 1964) from the decision* of one of the Judges of this Court, exercising the original jurisdiction of the former Supreme Constitutional Court. It is a fundamental rule of administrative law, that the control by Administrative Courts of the exercise of executive power by public authority, should be strictly directed and confined to the substance of the subject matter of the recourse; be confined to the facts of the particular case as raised and presented to the Administrative Court, in the proceeding under consideration.

The facts of this case as stated on the record at page 11,

*Note: The decision appealed from is published *post* at p. 549.

under the heading 'The uncontested facts' are these:

"Applicant is a general Commission Agent and Merchant carrying on business in Nicosia.

As Applicant failed to submit returns of his income for the years of 1952 and 1953, the Inland Revenue Department (hereinafter referred to as "the Department") proceeded with the assessment of income tax payable by the Applicant for the years of 1952 and 1953 in the years of assessment 1953 and 1954 respectively. The tax payable on the income so assessed, was subsequently paid by the Applicant.

In view of certain new information received at the Department concerning business affairs of the Applicant, additional assessments were raised on him on the 31st October, 1959 in the sum of £3,000 for each of the years of assessment 1953 and 1954. (*Exhibits* 1 *and* 2 respectively). These notices of assessments were posted by registered post to the Applicant's last known place of business on the 3rd November, 1959; but as they were not claimed by the Applicant they were returned to the Department. The green slips issued by the Post Office for registered post, were delivered to the Applicant.

On the 21st March, 1960, Mr. Costas Colokassides, brother of the Applicant and in his capacity as the legal representative of the Applicant, complained, *inter alia*, that notices of assessment for the years 1953 and 1954 were not received by the Applicant and that the Applicant came to know of such assessments when the tax collector called on him. The Applicant, however, had not submitted accounts for income tax purposes, for the years 1952-1959 either.

Eventually an agreement was reached between the Applicant and the Department to the effect that the Department agreed to accept the Applicant's 'out-of-time objections for certain years, on condition that he would render complete accounts for all outstanding years'. (Reference is made to this agreement in *Exhibit* 18). The Applicant engaged Messrs. George T. Apeyitos and Co., an independent firm of accountants, for this purpose (*Exhibits* 9, 10 *and* 13). By a letter dated the 3rd July, 1963, to the Department, the said firm

announced its withdrawal from being the accountants of the Applicant, on the ground that the Applicant, despite their repeated requests had not so far shown the firm his accounts or books. (*Exhibit* 14).

Prior to the withdrawal of the firm from acting as the Applicant's accountants proceedings were, on the 21st May, 1963, instituted under the Tax Collection Law. for the recovery of the tax due by the Applicant".

There is no dispute about all this; they are the uncontested facts.

The learned trial Judge, after hearing counsel on both sides in the present recourse, delivered his reserved judgment on the 19th June, 1965; here again, there is a short summary of the principal facts after which the Judge says:— (page 22, G of the record)—

"In the light of all relevant material before me, I have come to the conclusion that no question arises of formal objections, under section 42 of Cap. 323, having been filed and accepted out-of-time. What happened is that the income tax authorities agreed to reconsider the assessments concerned on production of proper accounts. This was quite a proper view to take because proper administration requires that responsible authorities should always be ready to reconsider their decisions when the occasion and need for doing so arises".

With respect, we fully adopt the approach of the learned trial Judge, and the view expressed in this part of his judgment.

From that position he goes into the merits of the case before him. The next paragraph of the judgment reads: (page 22, J)—

"As the Applicant failed in spite of a long time having elapsed, to place before Respondent the necessary material to enable a reconsideration to be made of the assessments in question, Respondent appears to have taken the view, and quite rightly so, that no further decision was required in the matter, no question of determining anything further arose, and the said assessments stood final, as they were indeed so, since October, 1959, when first made".

This is, undoubtedly, a correct statement of the position as

it stood at the material time.

As to the steps taken for the collection of the tax, the trial Judge deals with that matter at page 24 of the record, in the first two paragraphs of his judgment on that page, which read:—

> "An act made in the course of the collection of income tax due, being an act made in execution of the assessment for such income tax, is not itself an executory act —as the assessment is—and cannot, therefore, be the subject of a recourse; it is well settled in administrative law that acts of execution are not executory acts (see Conclusions from the Jurisprudence of the Council of State in Greece, (1929-1959) *supra*, at p. 240)".
>
> "Moreover, whatever may have been done in the course of collecting the tax due by Applicant, before the 16th August, 1960, is not within the competence of this Court, in any case; also the attempt made to effect such collection in 1963, by means of the aforesaid court-summons, is not a matter within the competence of this Court for the additional reason that it is a judicial matter. (See *Gavris* v. *The Republic*, 1 R.S.C.C. p.88)".

With what is said in the first of these two paragraphs of the judgment, learned counsel for the appellant has readily and quite rightly, in our opinion, conceded that he can have no complaint. It is a correct statement of that aspect of the case; and of the law applicable thereto. In the second paragraph the Judge, obviously goes beyond what is necessary for deciding this case. He proceeds to make an *obiter dictum* apparently in order to help officers or other litigants dealing with similar matter. But as far as this case is concerned, that cannot affect the position either way. As a result of his findings and conclusions, the learned trial Judge dismissed the recourse.

His judgment is attacked on behalf of the appellant on four grounds; the grounds stated in the carefully and ably drafted notice of appeal filed on the record. Learned counsel has tried to summarise his grounds and avoid a long line of grounds stated in the alternative, or in somewhat different form, the tendency of which is, usually, to create confusion.

The three out of the four grounds in the notice, i.e. grounds 1, 2 and 4, rest on the assumption, or the contention that a

valid objection to the assessments in question, was taken in due course; and that such objections were operative at the material time. This contention was mainly based by learned counsel for the appellant in his argument before us, by reference to some of the letters exhibited and particularly to exhibit 19. This is a letter from the office of the Commissioner of Income Tax, addressed to the firm of auditors, acting for the appellant, making reference to a letter written by the auditors about six months earlier, exhibit 20, to inform the Commissioner that the auditors were "working for the compilation of a Capital Statement, which they hoped to have ready within the next fortnight". The Commissioner's communication, exhibit 19, must be read and understood in the picture formed by all the correspondence exhibited; and the position stated by the auditors in exhibit 14, which reflects appellant's attitude in connection with this matter, referred to in the uncontested facts. Moreover, the first paragraph of the letter in question, exhibit 19, refers to the accounts, assessments, and taxation of appellant's income during a period of seven years, 1952 to 1959; and there is no evidence before the Court showing that additional assessments have been made for all those years, same as they have been made for the two years in question. At least one assessment must have been made for each of the seven years referred to in exhibit 19; and there may have been objections filed in due course, under section 42, for some of those years, still waiting for support from appellant's expected accounts.

Therefore, the argument based on expressions picked out of this letter, cannot affect the substance of the case, as stated in the judgment and as appearing from the statement of the uncontested facts, which has never been challenged. This is sufficient to dispose of the three grounds of appeal which turn on whether there was a valid objection to the assessments in question, made according to section 42 of the Income Tax Law (Cap. 323).

As to ground 3 now, appellant's case rests on the assumed administrative act of setting in motion the machinery for the collection of the tax in question, contrary,—appellant contends—to the provisions of section 57(2) of the statute. This ground can be disposed of on the fundamental principle which I have stated in the first part of this judgment; that this Court, in its administrative jurisdiction, will enter into the legal aspect of a case, if there is substance in the recourse;

substance in the complaint against the administrative act attacked. Here the complaint against the administrative act of setting in motion the machinery for the collection of the tax, derives substance from the validity of the assessments upon which the tax for collection, became payable. If those assessments are valid, the tax is due. And this is the subject-matter of the present recourse. Whatever irregularity may have occurred, if any, in setting into motion the machinery for collecting the tax, is not part of the substance of this recourse. In fact it is not part of the present recourse at all.

In the result the appeal fails; and is dismissed with costs.

Appeal dismissed with costs.

The judgment appealed from is published below:

TRIANTAFYLLIDES, J.: In this Case Applicant complains both against the assessment and, also, the collection of income tax due by him in respect of the years of assessment 1953 and 1954.

The relevant facts are found by me to be as follows:—

On the 31st October, 1959, additional assessments were raised on Applicant under the then in force Income Tax Law, Cap. 323, in respect of the years of assessment 1953 and 1954. These assessments were forwarded to Applicant by registered post on the 3rd November, 1959, but it seems that Applicant, having not collected the relevant Post Office notice-slips, never actually received the assessments in question. Nevertheless, he is deemed to have received, in November, 1959, due notice thereof, because of the provisions of section 68 of Cap. 323.

In any case, later on, in March or April, 1960, such assessments were handed over to Applicant's brother, who acted as his counsel; it was then agreed that a payment of £500.- was to be made by Applicant towards his liability arising in relation to such assessments (the total tax due being approximately £1650) and that Respondent was not to press for the immediate collection of the balance but would re-examine the matter of such assessments on submission by the Applicant of audited accounts.

It appears that such audited accounts were never submitted and eventually on the 3rd July, 1963, the accountant who

had been entrusted by Applicant with their preparation wrote to the income tax authorities confirming that he had ceased acting for Applicant because he had not supplied to him any information for the purpose of preparing the relevant accounts.

On the 27th April, 1963, a summons was issued against Applicant calling upon him to appear before the District Court of Nicosia in relation to the collection of the tax due by him under the assessments in question.

This recourse was filed on the 3rd July, 1963.

Much argument has centered around the question as to whether or not the Respondent has in fact agreed in 1960 to accept, out of time, objections against the assessments made on the 31st October, 1959, and, if so, whether or not, such objections having not been formally determined at any time thereafter, it was proper for the machinery of collection to have been set in motion in relation to such assessments.

In the light of all relevant material before me I have come to the conclusion that no question arises of formal objections, under section 42 of Cap. 323, having been filed and accepted out-of-time. What happened is that the income tax authorities agreed to reconsider the assessments concerned on production of proper accounts. This was quite a proper view to take because proper administration requires that responsible authorities should always be ready to reconsider their decisions when the occasion and need for doing so duly arises.

As the Applicant failed, in spite of a long time having elapsed, to place before Respondent the necessary material to enable a reconsideration to be made of the assessments in question, Respondent appears to have taken the view, and quite rightly so, that no further decision was required in the matter, no question of determining anything further arose, and the said assessments stood final, as they were indeed so since October 1959 when first made.

To the extent to which this recourse relates to the said two assessments themselves, this Court has no competence to entertain it as it cannot under Article 146 enter upon the validity of administrative acts or decisions which took place before the 16th August, 1960. (*Mustafa and The Republic*, 1 R.S.C.C. p. 44).

To the extent to which this recourse is aimed at the steps taken for the collection of the tax due under the said assessments, it is clear, as it appears from *exhibit* 7 in this Case, which is a notice given to Applicant for the purpose by the Inland Revenue Office on the 26th April, 1960, that the decision to effect collection was taken in 1960 and before the 16th August, 1960. The aforementioned issue of the court summons in April, 1963, is only a further attempt at collecting the tax payable by Applicant.

I cannot interfere with the above process for the collection of the tax due in this Case, for the following reasons:—

An administrative act (and decision also) is only amenable within a competence, such as of this Court under Article 146, if it is executory (ἐκτελεστή); in other words it must be an act by means of which the "will" of the administrative organ concerned has been made known in a given matter, an act which is aimed at producing a legal situation concerning the citizen affected and which entails its execution by administrative means (see Conclusions from the Jurisprudence of the Council of State in Greece 1929-1959, pp. 236-237).

I am quite aware that in Greece this attribute of an act, which may be the subject of a recourse for annulment, is specifically stated in the relevant legislation (section 46 of Law 3713 as codified in 1961) but in my opinion such express provision was only intended to reaffirm a basic requirement of administrative law in relation to the notion of proceedings for annulment and, therefore, such requirement has to be treated as included by implication, because of the very nature of things, in our own Article 146, though it is not expressly mentioned.

An act made in the course of the collection of income tax due, being an act made in execution of the assessment for such income tax, is not itself an executory act—as the assessment is—and cannot, therefore, be the subject of a recourse; it is well settled in administrative law that acts of execution are not executory acts (see Conclusions, *supra*, p. 240).

Moreover, whatever may have been done in the course of collecting the tax due by Applicant, before the 16th August, 1960, is not within the competence of this Court, in any case; also the attempt made to effect such collection in 1963, by means of the aforesaid court summons, is not a matter within

the competence of this Court for the additional reason that it is a judicial matter (see *Gavris and The* Republic, 1 R.S.C.C. p. 88).

Lastly, there is no proper reason which could lead me to the conclusion that intervention by this Court was warranted, even if it had a competence to do so, because I have already held that the assessments in question were final and they remain final and, therefore, the only ground argued by counsel for Applicant in support of the contention that collection cannot as yet take place, to the effect that the assessments are not final, does not hold good.

For all the above reasons this recourse fails and Applicant is ordered to pay £15 costs to Respondent.

Recourse dismissed. Applicant to pay £15.- *costs to Respondent.*