1966
Mar. 28,
April 28
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ANDREAS
HADJIYIANNI
and
THE REPUBLIC OF
CYPRUS,
THROUGH THE
COMMISSIONER
OF INCOME TAX

[MUNIR, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS HADJIYIANNI,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COMMISSIONER OF INCOME TAX,

Respondent.

(Case No. 99/65).

Income Tax—Assessment—Ascertainment of the chargeable income of applicant and his wife—Deductions—Annual payments—Covenanted annual payments by applicant's wife in consideration of the transfer to her of a house, the source of income—Payments to continue for the duration of the covenantee's (transferee's) life—Those payments are in the nature of capital payments—Whereby the wife has required the property in question viz. the very source of income, and not the income itself—Therefore, the aforesaid annual payments cannot be payments made by her "wholly and exclusively for the purpose of acquiring the income" in the sense of the Income Tax Law, Cap. 323, section 12(e) and the other corresponding statutory provisions (infra)—And such payments do not come within any of the deductions which are allowed by the provisions of Cap. 323 and of the corresponding provisions of the Greek Communal Chamber (infra)—Submission regarding same sum being taxed twice—The Income Tax Law, Cap. 323, sections 10(1) and 12(e)—The Taxes (Quantifying and Recovery) Law, 1963 (Law No. 53 of 1963)—The Greek Communal Chamber Laws: Law 16 of 1961, sections 8(1) and 10(e), and sections 11(1) and 13(e) of Laws 18 of 1962 and 9 of 1963—See, also, under Evidence, Constitutional Law, herebelow.

Evidence—Onus of proof—Fiscal legislation—Exemptions and deductions—The onus rests on the tax payer to show that he is entitled to an exemption or deduction under the relevant fiscal legislation.

Constitutional Law—Article 24, paragraph 1 of the Constitution

—Whereby "every person is bound to contribute according to his means towards the public burdens"—The sums involved in the annual payments made by the wife (supra) must be regarded as being part of her "means" in the sense of paragraph 1 of Article 24 (supra)—And only become the "means" of the covenantee-payee after they have been allocated and paid over to him.

Constitutional Law—Statutes—Construction—"Personal taxes"—Laws of a Communal Chamber imposing personal taxes under Article 87, paragraph 1(f) of the Constitution—Such as the aforesaid three Laws of the Greek Communal Chamber (supra)—Imposing "personal taxes" on the basis of the income of the tax payer—There is no reason why they should be interpreted any differently in this respect from the corresponding provisions of the Income Tax Law, Cap. 323—Which also impose a tax based on income.

By this recourse the applicant is challenging five separate assessments of income tax (which have been raised under the relevant legislation on the basis of both his wife's and his own income) in respect of the five years of assessment 1959–1963, both years inclusive. The point at issue with regard to each of the aforesaid five assessments is the same, namely, that the respondent commissioner of income tax, in calculating the chargeable income of the applicant's wife in respect of each of the five years in question did not deduct a sum of £360 which she had paid to her uncle in each of the said five years under an agreement in writing dated the 31st August, 1956. On that day the wife and her uncle, V.M., of Famagusta, (hereinafter referred to as "the uncle") entered into a written agreement intituled "declaratory document". In paragraph 1 thereof it is stated that the uncle has donated his house described in the said document to his niece (the aforesaid applicant's wife) and that the title in the said house was transferred by a declaration of gift, filed with the District Lands Office Famagusta, to the wife and registered in her name on the aforementioned 31st August, 1956. Paragraph 2 of the said document states that the wife "having accepted from her uncle, V.M., the donation of the said house, she declares that she undertakes the obligation to pay to him for life £30 montly for his maintenance", and, further, that this obligation "towards her uncle is transferable to her heirs in the event of her death prior to that of her

"uncle", and that, "if a decrease in rents is observed then an analogous decrease would be effected". The agreement has also been countersigned by the husband (the applicant) who has declared at the foot thereof that he guarantees "the performance of the above obligation of my wife".

The only issue for determination in this case is whether the sum of £360, which has been paid by the applicant's wife to the uncle, in accordance with the provisions of the aforesaid agreement of the 31st August, 1956, during the years of income 1958–1962, being the years of assessment 1959-1963, respectively, is a deduction which is allowed, under the relevant provisions of the legislation in force (*infra*), in ascertaining the chargeable income of the applicant and his wife.

The assessments for the years of assessment 1959 and 1960 have been made by virtue of the provisions of the Taxes (Quantifying and Recovery) Law, 1963, (Law No. 53 of 1963) and related to the income tax liabilities of the applicant and his wife incurred under the former Income Tax Law, Cap. 323, which was in force during the two years in question. The assessments for the years of assessment 1961, 1962 and 1963 have been made under the provisions of Laws Nos. 16/61, 18/62 and 9/63, respectively, of the Greek Communal Chamber.

Section 10(1) of the Income Tax Law, Cap. 323 provides:

> "10(1) 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".

And section 12 of the same Law (Cap. 323) provides:

> "12. For the purpose of ascertaining the chargeable income of any person no deduction shall be allowed in respect of—
>
> . . . . . .
>
> (*e*) any disbursements or expenses not being money wholly and exclusively laid out and expended for the purpose of acquiring the income":

On the other hand, sections 8(1) and 10(e) of the said

Law No. 16/61 and sections 11(1) and 13(e) of the aforesaid Laws Nos. 18 of 1962 and 9 of 1963, correspond, respectively, with, and are in all material respects similar to, the abovequoted provisions of sections 10(1) and 12(e) of Cap. 323 *(supra)*.

Counsel for applicant has submitted, inter alia, that the annual payments of £360 made by the applicant's wife to her uncle is not a capital expenditure but is expenditure of a revenue or an income nature in that the annual sum is so paid in order to acquire the income which the wife derives from the house in question. Counsel also submitted that the sum of £360 paid by the wife as aforesaid was not part of her "means", in the sense of paragraph 1 of Article 24 of the Constitution *(infra)* and that, to tax the wife in respect of the said sum would amount to taxing her contrary to the provisions of that paragraph, which provides that "every person is bound to contribute according to his means towards the public burdens".

The learned Justice in dismissing the recourse:-

Held, (1) in determining whether a particular payment is of an income or capital nature each case must obviously be decided on its own particular facts.

Passage from the judgment of Lord MacDermott, C.J. in *Harry Ferguson (Motors) Ltd.* v. *I.R.Commissioners* (1951) N.I. 115, C.A. as quoted in *Cyprus Wines Co, Ltd. and the Republic of Cyprus,* (1965) 3 C.L.R. 345 at p. 350, applied.

(2) Where the tax-payer claims any exemption or deduction from tax, the onus is on him to support such claim for exemption or deduction.

Principle laid down in *Charis Georghallides* (1958) 23 C.L.R. 249, at p. 256, *applied.*

(3)(*a*) It is clear from the document of the 31st August, 1956, embodying the agreement in question that the annual payments of £360 have been made by the wife of the applicant to her uncle in consideration for the transfer to her of the aforesaid house of the latter and that it was because she was prepared to enter into such an obligation that she acquired the house in question.

(*b*) This being so, I am of opinion that the said annual

payments made by the wife to her uncle are in the nature of capital payments whereby she has acquired the property in question (*i.e.* the very source of the income itself, and not the income) and that the said payments are not payments made by her "wholly and exclusively.....for the purpose of acquiring the income" in the sense of section 12(e) of Cap. 323 and the other corresponding statutory provisions *(supra)*.

Georghallides' case (supra) followed; reasoning in *Dott* v. *Brown* [1936] 1 All E.R. 543, per Scott L.J. at pp. 530 and 552, *adopted.*

(4)(*a*) It is quite clear in my opinion that had the wife not entered by the said agreement into the obligations which she did to make the annual payments in question then the uncle would most probably not have transferred the house to the wife. I am not prepared, therefore, to accept counsel's submission that the said house was given by the uncle to the wife as a gift purely out of love and affection to his niece and likewise that the wife agreed to make the annual payments in question to her uncle also as a gift out of love and affection for her uncle.

(*b*) This being so, the applicant has not discharged the onus of proof which is on him by satisfying me that the annual payments in question by his wife to her uncle under the said agreement of the 31st August, 1956, come within any of the deductions which are allowed under the provisions of Cap. 323 and of the corresponding provisions of the legislation of the Greek Communal Chamber *(supra)*.

(5) I see no reason why "personal taxes" which are imposed by the three Laws in question of the Greek Communal Chamber *(supra)* under Article 87, paragraph 1(f) of the Constitution, on the basis of the income of the tax-payer, should be interpreted any differently in this respect from the corresponding provisions of the Income Tax Law, Cap. 323 *(supra)* which also imposed a tax based on income.

(6) Inasmuch as the wife has entered into the obligation to pay annually the sums in question, those sums must surely be regarded as being part of her "means" in the sense of paragraph 1 of Article 24 of the Constitution *(supra)* and only become the "means" of her uncle after they have been allocated and paid over to him.

(7) As to the submission by counsel for applicant regarding the same sum of £360 being taxed twice both as part of the chargeable income of the applicant's wife and as part of the chargeable income of the uncle, this same point was raised in the *Georghallides case (supra)* on to which the Supreme Court made at p. 265 *(ubi supra)* the relevant observations which I adopt.

Application dismissed.
No order as to costs.

Cases referred to:

In the matter of *Charis Georghallides* (1958) 23 C.L.R. 249; and, also, at p. 256;

British Insulated and Helsbey Cables v. *Atherton* 10 Tax Cases, 155;

Harry Ferguson (Motors) Ltd. v. *I.R. Commissioners (1951)* N.I. 115, C.A.;

Cyprus Wines Co. Ltd. and The Republic, (1965) 3 C.L.R 345 at p. 350;

Dott v. *Brown* [1936] 1 All E.R. 543, at pp. 550 and 552.

Recourse.

Recourse against the decision of the Respondent, to impose income tax on £360.- representing an annuity paid by the applicant's wife.

G. Tornaritis, for the Applicant.

M. Spanos, Counsel of the Republic, with *Chr. Paschalides*, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:—

MUNIR, J.: By this recourse under Article 146 of the Constitution the Applicant seeks the following declaration:—

"A declaration of the Honourable Court declaring the decision of the above-Respondent, dated the 18th March, 1965, to impose income tax on £360 representing an annuity paid by the above Applicant's wife is *null* and *void* and of no effect whatsoever".

The Applicant by his Application is, in effect, challenging the validity of five separate assessments of tax (which have been made on him under the relevant legislation on the basis of both his wife's and his own income) in respect of the five years of assessment 1959-1963 (both years inclusive). The point at issue with regard to each of the aforesaid five assessments is the same, namely, that the Respondent, in calculating the chargeable income of the Applicant's wife in respect of each of the five years in question did not deduct a sum of £360 which she had paid to her uncle in each of the said five years.

The material facts of this Case, which are not in dispute, may briefly be stated as follows:—

The Applicant is a married man who resides in Larnaca with his wife, Mrs. Vasiliki A. Hadjiyianni (hereinafter referred to as "the wife").

On the 31st August, 1956, the wife and her uncle, Mr. Vasilios I. Mavrommatis, of Famagusta (hereinafter referred to as "the uncle") entered into a written agreement, which is headed "declaratory document". A copy of this document, which is attached to the Application, has, by consent, been put in evidence as *Exhibit 1*.

In paragraph 1 of *Exhibit 1* it is stated that the uncle (who, until the date on which *Exhibit 1* was signed by the parties, namely, the 31st August, 1956, was the owner of a house situated in Famagusta and registered under Registration No. 4071) has donated the said house to the wife (his niece) and that the title in the said house was transferred, in accordance with the Declaration of Gift No. 778/65 filed with the District Lands Office, Famagusta, to the wife and registered in her name on the aforementioned 31st August, 1956.

Paragraph 2 of *Exhibit 1* states that the wife "having accepted from her uncle Mr. Vasilios I. Mavrommatis the donation of the said house, she declares that she undertakes the obligation to pay to him for life....for his maintenance" the sums specified in the ensuing provisions of the said paragraph 2 of *Exhibit 1*. Of these ensuing provisions the part which is relevant for the purposes of this Case is the portion contained in sub-paragraph *(b)* of the said paragraph 2 where it is stated that after the delivery of the house in question to her, the wife "undertakes the obligation to pay

to her uncle Mr. Vasilios I. Mavrommatis £30.- per month for life for his maintenance". Sub-paragraph *(c)* of the said paragraph 2 of *Exhibit 1* further provides that this obligation of the wife "towards her uncle is transferable to her heirs in the event of her death prior to that of her uncle". It is also expressly stated in the said sub-paragraph *(c)* that the "performance of this obligation is also guaranteed by the husband", i.e. Mr. Andreas Hadjiyianni (the Applicant). *Exhibit 1* has also been countersigned by the Applicant who has declared at the foot thereof that he guarantees "the performance of the above obligation of my wife". The following addition has been made by the parties at the very end of *Exhibit 1:*— "If a decrease in rents is observed then an analogous decrease would be effected".

On the 15th February, 1965, the Applicant wrote a letter to the Respondent *(Exhibit 2)* stating that the annual payments of £360, which were made to his wife's uncle, should have been deducted from their chargeable income in respect of the five years of assessment in question. The Respondent replied to the Applicant by letter dated the 18th March, 1965, asserting that the annual payments in question of £360 were not deductible and had been properly included in making the assessments in question. This is the "decision" which is referred to in the Applicant's motion for relief.

The only issue for determination in this Case is whether the sum of £360, which has been paid by the Applicant's wife to the uncle, in accordance with the provisions of *Exhibit 1*, during the years of income 1958, 1959, 1960, 1961 and 1962, being the years of assessment 1959, 1960, 1961, 1962 and 1963, respectively, is a deduction which is allowed, under the relevant provisions of the legislation in question, in ascertaining the chargeable income of the Applicant and his wife.

The assessments for the years of assessment 1959 and 1960 have, as stated in the Respondent's Opposition, been made by virtue of the provisions of the Taxes (Quantifying and Recovery) Law, 1963 (No. 53/63) and related to the tax liabilities of the Applicant and his wife under the former Income Tax Law (Cap. 323) which was in force during the two years in question. The assessments for the years of assessment 1961, 1962 and 1963 have been made under the provisions of Laws Nos. 16/61, 18/62 and 9/63, respectively, of the Greek Communal Chamber.

Section 10(1) of Cap. 323 expressly sets out the deductions which *are* allowed in ascertaining the chargeable income of any person under that Law and the opening words of the said section read as follows:—

"Deductions allowed. 10(1). 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...*".

A provision which is complementary to the above-quoted provision of section 10(1) of Cap. 323 is contained in paragraph *(e)* of section 12 of Cap. 323, which is a section expressly setting out the deductions which are *not* allowed under that Law. This provision reads as follows:—

"Deductions not allowed 12. For the purpose of ascertaining the chargeable income of any person no deduction shall be allowed in respect of—

. . . . . .

(e) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income."

Sections 8(1) and 10*(e)* of Law No. 16/61 of the Greek Communal Chamber and sections 11(1) and 13*(e)* of Laws Nos. 18/62 and 9/63 of the Greek Communal Chamber correspond, respectively, with, and are in all material respects similar to, the above-quoted provisions of sections 10(1) and 12*(e)* of Cap. 323. That this is so is not in dispute between the parties and the Case has been argued by learned counsel on both sides on this basis.

It will be seen, therefore, that the issue for determination in this Case, to which I have referred above, really turns on the interpretation of, and the meaning to be given to, the above-quoted provisions contained in sections 10(1) and 12*(e)* of Cap. 323 and the aforesaid corresponding provisions contained in the three Laws in question of the Greek Communal Chamber, namely, sections 8(1) and 10*(e)* of Law No. 16/61 and sections 11(1) and 13*(e)* of Laws Nos. 18/62 and 9/63.

Counsel for Applicant has submitted that the annual pay-

ments of £360 made by the Applicant's wife to her uncle is not a capital expenditure but is expenditure of a revenue or an income nature in that the annual sum paid is so paid in order to acquire the income which the Applicant's wife derives from the house in question. Counsel for Applicant argued that the uncle made a gift of the house in question to his niece (the wife) subject to conditions. He submitted that the annual sum of £360 has not been paid for the purpose of purchasing the house in question. In support of his argument counsel for Applicant cited passages from Halsbury's "Laws of England" (3rd Edition) Volume 20, p. 12, paragraph 7, and p. 248, paragraph 454. Counsel for Applicant further pointed out that the uncle also shows the amount of £360 received from the Applicant's wife in his tax returns and that the uncle is also taxable in respect of the said sum. If the Applicant and his wife were also to pay tax in respect of the annual payment of £360 this would amount, in the submission of counsel for Applicant, to taxing the same sum twice. Counsel for Applicant further submitted that the tax payable under the three Laws in question of the Greek Communal Chamber is not income tax, as such, but are "personal contributions" and that, therefore, the relevant provisions of such Laws should not be interpreted as if they were income tax legislation in accordance with the ordinary principles of income tax. Counsel for Applicant also submitted that the sum of £360 paid by the wife to her uncle was not a part of her "means", in the sense of paragraph 1 of Article 24 of the Constitution, inasmuch as that sum became the "means" of the uncle, and that to tax the wife in respect of the said sum would amount to taxing her contrary to the provisions of paragraph 1 of Article 24, which provides that "Every person is bound to contribute according to his means towards the public burdens".

Counsel for Respondent has submitted, on the other hand, that the annual payment of £360 in question does not amount to "outgoings and expenses wholly and exclusively incurred" by the Applicant's wife "in the production of the income" in the sense of section 10(1) of Cap. 323 and the corresponding provisions of the Greek Communal Chamber legislation in question and that the said payment, furthermore, is among the deductions which are not allowed under section 12 of Cap. 323, namely, under paragraph *(e)* of the said section 12, and that such payments are not, in his submission, "dis-

bursements or expenses...wholly and exclusively laid out of expended for the purpose of acquiring the income", in the sense of paragraph *(e)* of section 12 of Cap. 323 and the corresponding provisions contained in the three Laws in question of the Greek Communal Chamber. Counsel for Respondent submitted that it is clear on the basis of the document *(Exhibit 1)* itself that the payment of the annual sum in question by the wife to her uncle is in consideration of the transfer to her of the house in question and that if this view is accepted then it is clear that the annual payments in question are capital payments incurred in order to obtain the house itself. Counsel for Respondent went on to submit that even if the Court does not accept his argument that there is this consideration for the payment of the sum in question to the uncle, then the annual payments in question are nevertheless in the nature of capital expenditure and not of an income or revenue nature. He submitted that the annual sum of £360 is paid by the wife for the purpose of acquiring the source of the income itself (i.e. the house) and not "for the purpose of acquiring the income", as such, in the sense of the above-mentioned statutory provisions in question. In support of his case counsel for Respondent cited from Simon's "Income Tax", Volume 1, (1964-1965) p. 31, paragraph 56, and the Case of *Charis Georghallides* (1958) 23 C.L.R., 249 and *British Insulated and Helsbey Cables* v. *Atherton* (10 Tax Cases, p. 155).

The distinction between payments which are capital payments and payments which are of an income or revenue nature has been the subject of many decided cases in the past in England, and many tests have been suggested in those cases and by leading text-book writers on the subject as to how this fine distinction between expenditure of a capital and income nature should be distinguished. In this connection I would again cite the passage from the judgment of Lord MacDermott, C.J. in *Harry Ferguson (Motors) Ltd.* v. *I. R. Commissioners* (1951) N.I. 115, C.A. which has also been quoted in *Cyprus Wines Co. Ltd. and The Republic of Cyprus*, (1965) 3 C.L.R. p. 345 at p. 350. Lord MacDermott pointed out in the above-mentioned case that—

> "There is, so far as we are aware, no single, infallible test for settling the vexed question whether a receipt is of an income or capital nature. Each case must depend on its particular facts and what may have weight in one

set of circumstances may have little weight in another. Thus, the use of the words 'income' and 'capital' are not necessarily conclusive; what is paid out of profits may not always be income; and what is paid as consideration for a capital asset may, on occasion, be received as income. One has to look to all the relevant circumstances and reach a conclusion according to their general tenor and combined effect".

The above remarks, in my view, apply equally to payments as they do to receipts, and in determining whether a particular payment is of an income or capital nature each case must obviously be decided on its own particular facts. I do not, therefore, propose to examine at any great length, for the purposes of this judgment, the very many cases which exist on this fertile subject, and in which it has been held that particular payments, in particular circumstances, are of a capital nature and in which, on the other hand, it has been held that other particular payments, in other particular circumstances, are of an income nature. In my opinion such a question must be determined by reference to the context of the document itself (i.e. in this Case *Exhibit 1)* and all the other relevant circumstances under which the payments in question have been made and also by reference to the relevant statutory provisions which, in this country, exist on the subject, namely, the provisions of sections 10(1) and 12*(e)* of Cap. 323 and the corresponding provisions of the three Laws in question of the Greek Communal Chamber, namely sections 8(1) and 10*(e)* of Law No. 16/61 and sections 11(1) and 13*(e)* of Laws Nos. 18/62 and 9/63.

What I have to determine, therefore, in this Case is whether the annual payments in question of the sum of £360, in respect of the five years of assessment in question, made by the wife to her uncle under *Exhibit 1* are "outgoings and expenses wholly and exclusively incurred" by the wife "in the production of the income", in the sense of section 10(1) of Cap. 323 (and the aforesaid corresponding provisions of the legislation in question of the Greek Communal Chamber) as being deductions which are allowed under the said statutory provisions or, to put it in another way, as is stated in paragraph *(e)* of section 12 of Cap. 323 (and the aforesaid corresponding provisions of the legislation in question of the Greek Communal Chamber) whether the annual payments in question amount to "money wholly and exclusively

laid out or expended for the purpose of acquiring the income"?

It should be stated at the outset that it is a well-established principle of income tax law that, just as in a disputed case the onus to satisfy the Court as to liability to pay tax is on the taxing authority, so, where the tax-payer claims any exemption or deduction from tax, the onus is on him to support such claim for exemption or deduction. This principle is very clearly expressed in the following passage of the judgment of the Supreme Court in the case of *Charis Georghallides* (1958) 23 C.L.R. p. 249, at p. 256:— .

> "One dealing with fiscal legislation should carefully examine first, whether the taxpayer is clearly within the words of the provisions by which he is charged with tax and, secondly, if he claims any exemption or deduction from tax—to which liability is either admitted or established—whether such claim is clearly supported by the relevant provision of the Law. In a disputed case the onus to satisfy the Court as to liability to pay tax is on the Tax Authorities and the onus to support a claim for exemption or deduction allowance is on the taxpayer".

The onus is thus on the Applicant to show that he is entitled to a deduction under a particular provision of Cap. 323, as regards the years of assessment 1959 and 1960, and under a particular provision of the legislation in question of the Greek Communal Chamber as regards the years of assessment 1961, 1962 and 1963.

I have carefully examined the provisions of *Exhibit 1* and it is, in my opinion, quite clear from that document that the annual payments of £360, which have been made by the wife to her uncle in respect of the years of assessment which are the subject-matter of this recourse, have been made by her in consideration for the transfer to her of the house in question in Famagusta which is described in paragraph 1 of *Exhibit 1*. Paragraph 2 of *Exhibit 1* expressly states that the wife "*having accepted from her uncle, Mr. Vassilis I. Mavrommatis the donation of the said house*, she declares that she undertakes the obligation to pay to him for life" the sum in question. It will also be seen from paragraph 1 of *Exhibit 1* that the house in question was transferred to, and registered in the name of, the wife on the very day on which *Exhibit 1* was signed by the parties. Furthermore, the

Applicant by endorsement made at the end of *Exhibit 1*, has expressly guaranteed the performance by his wife of her obligations under *Exhibit 1*

In *Georghallides' Case* (*supra*) a loan of £9,000 had been contracted by the son from the mother, which had been expended for the building of certain premises The son undertook the contractual obligation to repay the said sum by allocating part of the rents collected The Supreme Court in that case held that the payments made by the son to his mother in repayment of the loan which he had contracted was in the nature of a capital disbursement

It is true that in *Georghallides' Case (supra)* the sums paid by the son to his mother were in repayment of a fixed amount, namely the loan of £9,000, whereas in this Case the annual payments in question are not instalments of a fixed gross sum but are to continue for the duration of the life of the uncle I do not think that the fact that there is no fixed gross sum should in itself make any difference to the nature and character of the annual payments, if it is otherwise clear from all the circumstances of the case that the payments are in fact of a capital nature In this connection I would refer to the case of *Dott* v. *Brown* [1936] 1 All E R. p. 543 In that case the respondent, *inter alia*, covenanted to pay to the appellant two sums of £1,000 each on the dates therein mentioned and £250 on each succeeding 31st March, so long as the appellant should live, such covenant to bind the respondent's estate after his death. It was held by the Court of Appeal that the annual payments were instalments of a capital and not of an income nature and the respondent was not entitled to make any deductions in respect of income tax In his judgment in that case Scott L J observed at p 550 that "a sale for a lump sum, which is to be paid ultimately by reference to certain subsequent considerations affecting the amount—a sort of arrangement that the ultimate sum payable may be higher or lower as the value of the property sold may turn out to be more or less is a perfectly natural and not uncommon transaction in the sale of certain types of property, particularly where goodwill is included in the sale No fixed sum is there defined because the true essence of the transaction is that the consideration shall vary according to future calculations depending on certain facts To say that, because in that transaction the sum might so vary it was not a capital payment, would be an erroneous con-

clusion". Later on in his judgment (at p. 552) Scott L.J., after examining the provisions of the covenant in question in that case and coming to the conclusion that there was no reason to treat the two payments of £1,000 or the £250 annual payments as anything more than instalments of purchase price, went on to state as follows:—

> "Why, then, should one presume that the parties in the transactions intended the £250 to be in any sense different in nature to the two £1,000 payments—it was all *in the same clause—no distinction. The only scintilla* of doubt which I can see is raised by the language of the clause—that the payments of £250 are to be terminated on the petitioner's death. Well, now, why the parties should not have made that bargain without in the least intending it to substitute an income annuity for a capital instalment, I cannot see, but surely the natural meaning of it is that the seller—the creditor—says: 'If you carry out that provision of payment of instalments as long as I live, I shall be satisfied. After that we may cry quits and my estate will not ask any more'. I think that is quite clear, but if there is any ambiguity in it at all, in my view it is for the party contending that the nature of the payments of the £250 is different from the nature of the payments of £1,000, to show that this is so, and unless it is made clear, then I think that the decision must be that the £250 remained capital just as much as the £1,000 payments. For these reasons the court must disagree with the result of the judgment of the learned judge below, and the appeal must be allowed with costs here and below".

I am of the opinion that the obligation into which the wife has entered under *Exhibit 1* to make the payments in question to her uncle were made in consideration for the transfer to her of the house in question and that it was because she was prepared to enter into such an obligation that she acquired the house in question. This being so, I am of the opinion, having regard to the contents of the document, *Exhibit 1*, and all the relevant circumstances of this Case, that the annual payments in question made by the wife to her uncle under *Exhibit 1* are in the nature of capital payments whereby she has acquired the property in question (i.e. the very source of the income itself) and that the said payments are not payments made by her "wholly and exclusively.....for

the purpose of acquiring the income" in the sense of section 12*(e)* of Cap. 323 and the other corresponding statutory provisions.

I cannot, in the light of the contents of *Exhibit 1*, accept the submission of counsel for Applicant that the house was given by the uncle to the wife as a gift purely out of love and affection to his niece and that likewise, the wife agreed to make the annual payments in question to her uncle also as a gift simply out of love and affection for her uncle. It is quite clear in my opinion from *Exhibit 1* that had the wife not entered, by the said *Exhibit 1*, into the obligations which she did to make the annual payments in question then the uncle would most probably not have transferred the house in question to the wife, which was made on the very same day as that on which *Exhibit 1* was signed by them.

This being so the Applicant has not discharged the onus of proof which is on him by satisfying me that the annual payments in question by his wife to her uncle under *Exhibit* 1 come within any of the deductions which are allowed under the provisions of Cap. 323 and of the corresponding provisions of the legislation in question of the Greek Communal Chamber.

Before concluding this judgment I should like to deal briefly with three additional or subsidiary submissions which have been made by counsel for Applicant in the course of his argument of this Case.

(1). Counsel for Applicant submitted that with regard to the years of assessment 1961, 1962 and 1963 which have been made under the Laws in question of the Greek Communal Chamber, the taxation in question is not income tax, as such, but is taxation imposed by the Greek Communal Chamber under Article 87.1*(f)* of the Constitution, and the matter should not, therefore, be decided in accordance with the ordinary principles appertaining to income tax matters. An examination of the relevant provisions of the three Laws in question of the Greek Communal Chamber, namely sections 8(1) and 10*(e)* of Law No.16/61 and sections 11(1) and 13*(e)* of Laws Nos. 18/62 and 9/63 will show that these statutory provisions correspond with, and are in all material respects similar to, the provisions of sections 10(1) and 12*(e)* of Cap. 323. I cannot, in the circumstances, agree with this submission of counsel for Applicant and I see no reason why

"personal taxes" which are imposed by the three Laws in question of the Greek Communal Chamber under Article 87.1*(f)* of the Constitution, on the basis of the income of the tax-payer, should be interpreted any differently in this respect from the corresponding provisions of Cap. 323 which also imposed a tax based on income.

(2). With regard to the submission of counsel for Applicant that the sum of £360 in question, which has been paid annually by the Applicant's wife to her uncle is not part of the "means" of the Applicant's wife in the sense of paragraph 1 of Article 24 of the Constitution, here again, I cannot agree with this submission of counsel for Applicant. Inasmuch as she has entered into an obligation by *Exhibit 1* to pay the sum in question, that sum must surely be regarded as being part of her "means" in the sense of paragraph 1 of Article 24 and only becomes the "means" of her uncle after it has been allocated and paid over to him.

(3). As to the submission of counsel for Applicant regarding the same sum of £360 being taxed twice both as part of the chargeable income of the Applicant's wife and as part of the chargeable income of the uncle, this same point was raised in *Georghallides' Case (supra)* as to which the Supreme Court made the following observations at p. 265:—

> "The learned counsel for the appellant directed a great part of his argument to the unfairness of collecting income tax from the share allowed to the mother twice: From the covenantor and from the covenantee separately. All we can do is to endorse what the Court below said that this was not a subject for decision in the lower Court and not a subject of appeal before us. If the Income Tax Authorities are willing to regard the sums handed over to the mother in the nature of capital disbursements they are in a position to do so and refund the taxes collected from the mother".

The question of the tax liability of the uncle is not the subject-matter of this recourse and is not in issue before me in this Case, and the issue, therefore, whether or not the £360 in question paid annually by the Applicant's wife to her uncle during the years in question are part of the chargeable income of the uncle and whether or not it would be proper, in the circumstances, to charge the uncle tax in respect thereof, cannot be decided in this Case.

For the reasons given above I am of the opinion that the Respondent acted properly and in accordance with the statutory provisions in question in not deducting the sum of £360 paid by the Applicant's wife to her uncle under *Exhibit 1*, in respect of the five years of assessment in question, in ascertaining the chargeable income of the Applicant and his wife in respect of such years and that the five assessments in question, which are the subject-matter of this recourse have, therefore, been properly and validly made.

This Application cannot, therefore, succeed and is hereby dismissed accordingly. Having regard to the nature of the case and the legal issues involved there will, in the circumstances, be no order as to costs.

Application dismissed.
No order as to costs.