

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

JOHN W. REDFORD,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondent.*

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(Case No. 281/68).

*Income Tax—Life policy—Deduction—Premium payable under a life insurance policy with an Insurance Company not carrying on life insurance business in Cyprus, but having an office or place of business as well as carrying on (insurance) business other than life insurance—Deductible for purposes of assessing taxable income—The Income Tax (Foreign Persons) Law, 1961 (Law No. 58 of 1961 as amended by Law No. 4 of 1963), section 17 (1) (b)—Cf. section 22 of the said Law—Cf. section 219 (2) (i) of the (English) Income Tax Act, 1952.*

*Premium payable under a life insurance policy—Whether deductible for purposes of income tax—See supra.*

*Statutes—Construction of—General principles applicable—Statutes imposing taxation—Construction.*

*Statutes—Cf. Insurance Companies Law, 1967—Cf. The (English) Insurance Companies Act, 1958—Cf. The (English) Income Tax Act, 1952 section 219 (2) (i).*

The Applicant, who is the Regional Manager of the Ottoman Bank in Cyprus, made in 1965 an insurance on his life with the Alliance Assurance Co. Ltd. of London. This Insurance Company has special arrangements to carry out insurance policies for the staff of the Ottoman Bank; it is registered in Cyprus as an overseas company and carries on insurance business, although no life insurance business is negotiated through its Cyprus Office. In assessing the chargeable income of the Applicant for the year 1965, the Commissioner of Income

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Tax allowed no deduction for that year of the relevant premium in respect of the aforesaid life insurance policy on the ground that on the true construction of section 17 (1) (b) of the Income Tax (Foreign Persons) Law, 1961 (Law No. 58 of 1961) such relief is only granted in relation to premiums paid under life insurance policies issued by companies carrying on in Cyprus the business of *life insurance*.

The Applicant, feeling aggrieved, instituted this recourse under Article 146 of the Constitution whereby he seeks to challenge the validity of the relevant income tax assessment raised upon him for the year 1965. It was argued on his behalf that the interpretation given by the Respondent to section 17 (1) (b) (*supra*) to the effect that the Applicant is not entitled to deduction in respect of his life policy on the ground that the insurance company with which the policy was taken does not carry on life business in Cyprus, is erroneous since the said company admittedly “carries on business in Cyprus” and has an “office or place of business in Cyprus” as provided in the aforesaid section.

The material parts of section 17 (1) of the Income Tax (Foreign Persons) Law, 1961 (Law No. 58 of 1961 as amended by Law No. 4 of 1963) provide:

“..... In ascertaining the chargeable income of any individual who –

(a) .....

(b) shall have made an insurance on his life or..... securing the payment of a fixed or determinable capital sum on death with any *insurance company carrying on business in the Republic or having an office or place of business therein*

..... there shall be allowed a deduction of the annual amount of the premium paid by him for such insurance or.....”

Counsel for the Applicant contended: (a) That this section 17 (1) (b) *supra* does not state that the business carried on by an Insurance company in Cyprus must be life insurance business; (b) that what the section requires is that the Assurance company should carry on business in the Republic; (c) that the said Allied Assurance Co. Ltd. has an office or

place of business in Cyprus and carries on insurance business therein; (d) therefore, the amount of the relevant premium paid by the Applicant is deductible under the Law; (e) the Court in construing taxing statutes should follow the principle of construing such statutes in a manner favourable to the citizen (as laid down in the cases *Inland Revenue Commissioners v. Bladnoch Distilleries Co., Ltd.* [1948] 1 All E.R. 616 at p. 625; *Inland Revenue Commissioners v. Wolfron* [1949] 1 All E.R. 865 at p. 868).

Annulling the *sub judice* assessment, the Court:—

*Held*, (1) (a). One must bear in mind that “a statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object unless crucial omission or clear direction makes that end unattainable” (see *Whitney v. Commissioners of Inland Revenue* [1926] A.C. 37 at p. 52 per Lord Dunedin).

(b) Again it has been pointed out that the imposition of a tax must be effected by plain words (see, *inter alia*, *Ormond Investment Company v. Betts* [1928] A.C. 143 at p. 162 per Lord Atkinson).

(2) Now, looking fairly at the language used in section 17 (1) (b) of our Income Tax (Foreign Persons) Law, 1961, (as amended) *supra*, I can neither read into that section nor imply—since the words “any insurance company carrying on business in the Republic or having an office or place of business therein” (*supra*) mean that it was the intention of the legislature that such “business” means life insurance business only. If the legislature intended this meaning it ought to have put into effect its intention by the appropriate words. (Cf. section 22 of the same Law in which reference is made to a life insurance company).

(3) Since it is not disputed that the aforesaid Alliance Assurance Co. Ltd. has an office or place of business and is carrying on insurance business in the Republic, I would, therefore, hold that the Commissioner misdirected himself on a point of law and declare the subject assessment *null and void* as being contrary to the provisions of the said Law and as made in abuse or excess of powers.

*Sub judice decision annulled.*

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Cases referred to:

*Inland Revenue Commissioners v. Bladnoch Distilleries Co., Ltd.*  
[1948] 1 All E.R. 616, at p. 625;

*Inland Revenue Commissioners v. Wolfron* [1949] 1 All E.R.  
865 at p. 868 per Lord Simonds;

*Whitney v. Commissioners of Inland Revenue* [1926] A.C. 37  
at p. 52 per Lord Dunedin;

*Ormond Investment Company v. Betts* [1928] A.C. 143 at p. 162  
per Lord Atkinson;

*Canadian Eagle Oil Company Ltd. v. The King* [1946] A.C. 119;

*Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921]  
1 K.B. 64 at p. 71 per Rowlatt, J.;

*Withers v. Nethersole* [1948] 1 All E.R. 400 at p. 402 per  
Viscount Simmon;

*Commissioners of Inland Revenue v. Hinchy* (1956-60) 38 T.C.  
625 (H.L.) at p. 652 per Lord Reid.

**Recourse.**

Recourse against the validity of an income tax assessment raised on Applicant in respect of the year 1965.

*X. Clerides*, for the Applicant.

*A. Evangelou*, for the Respondent.

*Cur. adv. vult.*

The following judgment was delivered by:

HADJIANASTASSIOU, J.: In these proceedings under Article 146 of the Constitution, the Applicant seeks to challenge the validity of an assessment raised upon him by the Commissioner of Income Tax for the year 1965 to pay an amount of £58.800 mils tax.

The undisputed facts, in short, are as follows:— The Applicant is the Regional Manager of Ottoman Bank in Cyprus, and on the 1st November, 1962, made an insurance on his life with the Alliance Assurance Co. Ltd. of London. This insurance company has special arrangements to carry out

insurance policies for the staff of the Ottoman Bank. The said company is registered in Cyprus as an overseas company and carries on insurance business, although no life insurance business is negotiated through the Cyprus office of the company.

The Director of Inland Revenue, in ascertaining the chargeable income of the Applicant, has allowed to him the annual amount of premium paid by him, in respect of his life policy for the years 1962, 1963 and 1964, but no deduction was allowed to him for the year 1965.

The Applicant, feeling aggrieved, wrote to the Commissioner of Income Tax, on the 23rd January, 1967, (*exhibit 3*) and had this, *inter alia*, to say:-

“ In your above quoted Assessment for 1965, however, relief has not been granted and, on verbal enquiry from your department, I was informed that, according to your present interpretation of Article 17 (1) (b) of the law, relief is only allowed in respect of policies of companies carrying on life business in Cyprus, and that the Alliance Assurance Co. Ltd. do not do life business in Cyprus. On being informed of this, I started arrangements to replace as from 1st January, 1967, the Alliance policy with one of an insurance company who do insurance policies in Cyprus.

I submit, however, that I should be allowed relief in respect of the Alliance policy for the years 1965 and 1966 on the following grounds:-

1. My interpretation of Article 17 (1) (b) of the law is that I am entitled to reduction in respect of a life insurance irrespective of whether the insurance company with which I have made the policy on my life carries on life business in Cyprus. The relevant section makes no mention of life business. On the contrary it provides that the tax-payer is entitled to a reduction if he makes an insurance on his life 'with any insurance company carrying on business in the Republic or having an office or place of business therein'.
2. I was confirmed in my interpretation of the law by the fact that relief was granted on the Alliance policy without query by your department for the years 1962, 1963 and 1964.”

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On June 24, 1968, the Commissioner of Income Tax had this to say to the Applicant in *exhibit 1(a)*:-

“ 1. I wish to refer to your letter of the 16th December, 1966, by which you objected against the assessment raised on you for the year of assessment, 1965, and to the subsequent correspondence exchanged between us concerning this case, and to inform you that it has now been decided that the premium paid on the life policy you have taken out with the Alliance Company Ltd., London, does not rank for relief for income tax purposes.

2. Assessments made for previous years will not be re-opened.”

The Applicant, feeling aggrieved because of the refusal of the Commissioner of Income Tax to allow him relief in respect of his life insurance, filed the present recourse on 14th August, 1968. The present application is based on two grounds of law: (a) That the assessment complained of is erroneous in that no provision is made for reduction in respect of Applicant's life insurance policy; and (b) that the interpretation given by Respondent to section 17 of Law 58/61, that Applicant is not entitled to deduction in respect of his life policy on the ground that the insurance company with which the policy was taken does not carry on life business in Cyprus is erroneous since the said company “carries on business in Cyprus” and has an “office or place of business in Cyprus” as provided for in the aforesaid section.

The opposition was filed on the 6th September, 1968, and is based on the following grounds of law:-

(1) That the assessment for the year of assessment 1965 complained of was properly and lawfully made under the Income Tax (Foreign Persons) Law 58/61;

(2) that the Revenue Authorities properly construed section 17 of the said law and accordingly disallowed deductions of premiums paid by Applicant in respect of a life policy with an insurance company.

Counsel for the Applicant has contended: (a) That section 17 (1) (b) of Law 58/61 does not state that the business carried on by an insurance company in Cyprus must be life insurance business; (b) that what the section requires is that the

insurance company should carry on business within the Republic; (c) that the Alliance Assurance Company has an office or place of business in Cyprus and, therefore, counsel argued that the amount of premium payable by the Applicant is deductible under the law; (d) that the Court in construing taxing acts should follow the principle of construing such acts in a manner which would be favourable to the citizen. He relies on *Inland Revenue Commissioners v. Bladnoch Distilleries Co., Ltd.* [1948] 1 All E.R. 616 at p. 625; also on *Inland Revenue Commissioners v. Wolfson* [1949] 1 All E.R. 865 at p. 868.

Counsel for the Respondent on the other hand, has contended: (a) That the Respondent rightly interpreted the provisions of this section and disallowed the deduction of the amount of premium paid by the Applicant on his life insurance policy; (b) that on reading the section as a whole, the Court should construe the words "business" to mean life insurance business only.

Now with regard to the construction of a statute, it has often been stated that a taxing statute must be strictly construed, and that any ambiguity in such a statute must, therefore, be resolved in favour of the tax-payer. The rule cannot be so stated without qualification, and the other rules of construction must also be borne in mind. It has been pointed out that the rule cannot be understood as authorising the construing of the words of statutes passed with the intention of imposing taxation in such a way as to defeat that intention, merely because the words used admit of more than one construction and one of those constructions would have that effect.

One, however, must also bear in mind that "A statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable". Per Lord Dunedin in *Whitney v. Commissioners of Inland Revenue* [1926] A.C. 37 at p. 52.

Again it has been pointed out that the imposition of a tax must be effected by plain words. Lord Atkinson in *Ormond Investment Company v. Betts* [1928] A.C. 143 at p. 162 stated the principle in these words:-

"..... it is well established that one is bound, in construing Revenue Acts, to give a fair and reasonable

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construction to their language without leaning to one side or the other, that no tax can be imposed on a subject by an Act of Parliament without words in it clearly showing an intention to lay the burden upon him, that the words of the statute must be adhered to, and that so called equitable constructions of them are not permissible”.

In *Canadian Eagle Oil Company Ltd. v. The King* [1946] A.C. 119 Viscount Simon cited with approval a statement made by Rowlatt, J. in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 K.B. 64 at p. 71.

“..... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used”.

In *Withers v. Nethersole* [1948] 1 All E.R. 400, another House of Lords case, Viscount Simon had this to say at p. 402:—

“ While various phrases and illustrations are naturally employed in developing an argument about the alleged application of the words of the income tax acts to a particular transaction, it is, nevertheless, necessary to have primary regard to the statutory words themselves and to their proper judicial construction.”

In the case of *Wolfson (supra)* [1949] 1 All E.R. 865 H.L. Lord Simonds said at p. 868:—

“ It was urged that the construction that I favour leaves an easy loophole through which the evasive tax-payer may find escape. That may be so, but I will repeat what has been said before. It is not the function of a Court of law to give to words a strained and unnatural meaning because only thus will a taxing section apply to a transaction which, had the legislature thought of it, would have been covered by appropriate words”.

In *Commissioners of Inland Revenue v. Hinchy* (1956–60) 38 T.C. 625 (H.L.), Lord Reid said at p. 652:—

“ What we must look for is the intention of Parliament, and I also find it difficult to believe that Parliament ever really intended the consequences which flow from the Crown’s contention. But we can only take the intention



of Parliament from the words which they have used in the Act and, therefore, the question is whether those words are capable of a more limited construction. If not, then we must apply them as they stand, however unreasonable or unjust the consequences and however strongly we may suspect that this was not the real intention of Parliament”.

Having reviewed some of the authorities with regard to the question of construction, I now propose to turn on the Income Tax (Foreign Persons) Law 58/61 section 17 (1) (as amended by Law 4/63). The following extracts are material:-

“..... in ascertaining the chargeable income of any individual who -

- (a) .....
- (b) shall have made an insurance on his life or the life of his wife securing the payment of a fixed or determinable capital sum on death with any insurance company carrying on business in the Republic or having an office or place of business therein.

..... there shall be allowed a deduction of the annual amount of the premium paid by him for such insurance or of the amount of such premium or contribution as the case may be”.

The position in England under the Income Tax Act (1952) is of a similar nature, and section 219 (2) (i) provides that any premiums paid by a claimant on a policy of insurance on his life or his wife for securing a capital sum on death with any insurance company legally established within Her Majesty's Dominions, India or the Republic of Ireland or lawfully carrying on business in the United Kingdom, shall be entitled to deduction from the amount of income tax he pays.

It would be observed that it is an essential requirement for relief under the English and our section, that a capital sum must be payable at death. See under the heading “Commentary” with regard to section 219 of the Income Tax Act, 1952.

Of course, for income tax purposes, in England, insurance company means any person or body of persons to which the Insurance Companies Act, 1958, applies. Subject to special

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provisions and exceptions in relation to companies carrying on employers liability insurance, overseas insurance companies, friendly societies, trade unions and members of Lloyd's or any other association of underwriters, the Insurance Companies Act, 1958, applies to all persons or bodies of persons (whether incorporated or not) whether established within or outside Great Britain, who or which carry on within Great Britain insurance business of all or any of the following classes, i.e. life insurance business, industrial assurance business, fire insurance business, accident insurance business, bond investment business, motor vehicle insurance business, and marine, aviation and transit business. Under the Insurance Companies Law, 1967, a law to regulate matters concerning the insurance companies in the Republic, company means a company formed and registered under the Companies Law, a company or corporate body constituted outside the Republic and any statutory corporation.

Having considered carefully the contention of counsel for the Applicant, and in the light of the authorities, I have reached the view that in the last resort, this case must be brought back to the test of the statutory words. So tested, the question simply is: Was the amount of premium paid by the Applicant in 1965 on a policy of insurance on his life deductible? I am of the opinion that the answer must be in the affirmative, because looking fairly at the language used, I can neither read into section 17 (1) (b) nor imply—since the words are clear and unambiguous—that the words “any insurance company carrying on business in the Republic or having an office or place of business therein”, mean that it was the intention of the legislature that such business means life insurance business only. Probably, as I was invited by counsel for the Respondent to say, the legislature intended it to be so, but as I said, the meaning of this section is primarily to be sought in the words used in the section itself and, therefore, if the legislature intended it to be so, it would put into effect its intention by the appropriate words. Cf. section 22 of the same law (as amended) in which reference is made to a life insurance company.

Since it is not disputed that the Alliance Assurance Co. Ltd., has an office or place of business and is carrying on insurance business in the Republic, I would dismiss the contention of counsel for the Respondent.

For the reasons I have endeavoured to explain, in reviewing the determination of the Director of Inland Revenue, I have reached the view that the Director misdirected himself on a point of law, and I would, therefore, in my judgment, declare that the assessment is *null* and *void* for being contrary to the provisions of the law and as made in excess or in abuse of powers.

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*Sub judice decision annulled.*