

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

MICHALAKIS PAPANEOPHYTOU (No. 1).

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE DIRECTOR OF THE DEPARTMENT  
OF INLAND REVENUE,

*Respondent.*

(Case No. 393/70).

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*Income Tax—Exemptions—Pension received retrospectively on abolition of post or office terms—Section 4(1) of the Compensation (Entitled Officers) Law, 1962 (Law No. 52 of 1962)—Exemption from income tax under section 8 of said Law—It covers only payments relating to the period from the date of retirement of the officer concerned until the date of the enactment of said Law (viz. July 7, 1962)—And not payments to be made thereafter—Cf. section 9 of the said Law.*

*“Entitled Officers”—Pensions—Exemption from income tax—See supra.*

*Compensation (Entitled Officers) Law, 1962 (Law No. 52 of 1962)—Construction of section 8 of the Law—Cf. supra; cf. infra.*

*Statutes—Construction—Principles applicable—Not permissible to add to the words of the statute and to insert therein an extension which is not to be found in, or indicated by, it.*

The sole question in issue in this case is whether the Commissioner of Income Tax rightly included in the taxable income of the applicant the amount received by him from the Republic as a reduced pension for the years 1963 to 1966 inclusive; and the answer to this question depends entirely on the construction of section 8 of the Compensation

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(Entitled Officers) Law, 1962 (Law No. 52 of 1962), which reads as follows :

“8. All payments *made* under the provisions of this Law shall be exempt from income tax imposed by the Income Tax Law or other Law for the time being in force relating to the imposition of income tax.”

It is to be noted that by section 9 the said Law, enacted in July 7, 1962, was given retrospective effect as from the 16th August, 1960; and the applicant, although he signed the necessary forms and options in October 1962, became entitled to, and did receive, reduced pension under the said Law as from November 8, 1960. The Commissioner of Income Tax, acting apparently under the said section 8 (*supra*), did not include such reduced pension in the chargeable income of the applicant in relation to the years 1960 to 1962 inclusive; but taking the view that the effect of that section 8 is to exempt from income tax payments made under the statute (including of course reduced pension), relating only to the period as from the date of applicant's retirement from the service (November 8, 1960) to July 7, 1962, when the statute (Law 52/62) was enacted, the Commissioner included in the relevant assessments for the years 1963 to 1966 inclusive the reduced pension received by the applicant with reference to such period.

Counsel for the applicant argued that on the true construction of the said section 8 of Law 52/62 (*supra*) the exemption thereunder from income tax covers not only payments under the statute “made” («γενόμενοι») in the past but also payments to be made («γενησόμενοι») in future.

The learned Judge of the Supreme Court felt unable to accept this argument; and after reviewing the circumstances of the case and considering the history of the matter, dismissed the recourse and :

Held, (1). I can find no warrant in the section itself (*viz.* section 8 of Law 52/62, *supra*) for inserting or in any way reading in the phrase «οι πληρωμαί αι γενόμενοι» (*i.e.* “payments *made*”) the words «ή γενησόμενοι» (*i.e.* “or to be made”) without doing violence to the language of the section. In my view the meaning and effect of the section is this: in all cases in which an

“entitled officer” (such as the applicant) has collected retrospectively certain amounts of money under the statute, such payments shall be exempt from income tax.

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- (2) Indeed, I have difficulty in seeing how the legislature, if its intention was to have such far reaching effects, viz. that an “entitled officer” who opted to receive reduced pension on abolition of office terms would be exempt from paying income tax on all past and future payments—did not in any way put into effect its intention by choice of clear and appropriate words. (Cf. *Redford v. The Republic* (1970) 3 C.L.R. 409, at p. 416, where I adopted and followed the statement made by Rowlatt J. in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 K.B. 64, at p. 71. Cf. also *London Brick Co. v. Robinson (An Infant)* [1943] A.C. 341, at p. 348, where the House of Lords declined to vary words in themselves obscure and ambiguous).

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- (3) For the above reasons, I find myself compelled to the conclusion that the contention of counsel is untenable and I would, therefore, dismiss this recourse.

*Recourse dismissed.*  
*No order as to costs.*

Cases referred to :

*Attorney-General v. London County Council*, 4 Tax Cases 265, at p. 293, per Lord MacNaghten;

*Dewar v. Inland Revenue Commissioners*, 19 Tax Cases 561, at p. 568;

*Longsdon v. Minister of Pensions and National Insurance* [1966] 1 Q.B. 587;

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

*London Brick Co. v. Robinson (An Infant)* [1943] A.C. 341, at p. 348;

*Redford v. The Republic* (1970) 3 C.L.R. 409, at p. 416.

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### Recourse.

Recourse against the validity of an income tax assessment raised upon applicant, in respect of sums received by him from the Republic as a reduced pension for the years 1963 - 1966.

*L. Papaphilippou*, for the applicant.

*A. Evangelou*, Counsel of the Republic,  
for the respondent.

*Cur. adv. vult.*

The following judgment \* was delivered by :-

HADJIANASTASSIOU, J. : In these proceedings under Article 146 of the Constitution, the sole question is whether the Commissioner of Income Tax rightly included in the taxable income of the applicant the amounts received by him from the Republic of Cyprus as a reduced pension for the years of 1963 to 1966 inclusive.

The facts are simple : The applicant who was the headmaster of the Rural Gymnasium of Morphou, held a pensionable office, immediately before the date of the coming into operation of the Constitution, in the public service of the Government of the then Colony of Cyprus. Because by operation of the Constitution the office held by him came within the competence of the Greek Communal Chamber, he chose to serve under that Communal Chamber and also elected to receive from the Republic a pension on abolition of post or office terms.

On January 20, 1960, the applicant wrote to the Establishment Secretary and had this, *inter alia*, to say :-

“Under the circumstances it is obvious that the office which I hold is being abolished in the interest of the public service, and that I cannot, in my present grade, be fitted into another similar post. I should, therefore, be grateful if His Excellency the Governor would be pleased to permit me to retire in accordance with the provisions of s. 6(c) and (d) of the Pensions Law, Cap. 228.”

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\* For final judgment on appeal see p.527 in this Part *post*.

On January 28, 1960, Mr. Papagavriel on behalf of the Establishment Secretary, wrote to the Chief Education Officer (Greek) requesting him to confirm or otherwise that the post of Headmaster Rural Central School would be abolished, and, if so, as from what date.

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On February 3, 1960, Mr. Georghiades, Acting Chief Education Officer, in reply, said :-

“(3) Mr. Papanephytous will be then replaced as from September, 1960 by a fully qualified person. If Mr. Papanephytous remains he will be responsible for the Rural Farm of the school, a post which will be created due to the new arrangements, but which will not be equal in status.

(4) If these arrangements amount to the abolition of his present post, and should he be allowed to retire, please note that his services will be required until the 15th July, 1960.”

There was further correspondence and on April 24, 1961, Mr. Michaelides on behalf of the Director of the Education Office, wrote to the Director of the Personnel Department that Mr. Papanephytous elected to continue serving under the Greek Communal Chamber.

On October 5, 1962, the applicant, in accordance with the provisions of s. 4 of the Compensation (Entitled Officers) Law, 1962, (No. 52/62) filled and signed a form of option and addressed it to the Minister of Finance in these terms :-

“Sir,

In accordance with the provisions of s. 4 of the Compensation (Entitled Officers) Law 1962. I hereby opt to receive—pension on abolition of post or office terms...”

and in paragraph 2 he stated :-

“I am aware that if, after the expiration of four months from the date of the coming into operation of the abovementioned law and within a period of 5 years of such date I am employed or continue to be employed in the service under the Greek Communal Chamber, the additional pension granted to

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me under paragraph B of Regulation 26 of the Pensions Regulations shall cease to be paid to me". See the form of option, appendix (b).

On December 27, 1962, the Director of Personnel Department who comes under the Minister of Finance, wrote to the applicant in these terms :-

"I am directed to refer to your retirement from the service and to inform you that the Council of Ministers has been pleased to grant you a reduced pension at the rate of £474.150 mils per annum w.e.f. 8th November, 1960, and gratuity of £1,975.625 mils. This is subject to such deduction as provided in s. 5(1) of Law 52/62."

- Apparently, there was further correspondence between the Director of Personnel Department and the Minister of Finance regarding the revised award to be granted to the applicant (see p. 13, Minute 34 of the file *exhibit 1*), and on August 12, 1964, the Director of Personnel Department wrote to the applicant in these terms :-

"I am directed to refer to your retirement from the Service and to my letter of even number dated 27th December, 1962, and to inform you that the Council of Ministers has been pleased to grant you a revised reduced pension at the rate of £493.770 mils per annum with effect as from the 8th November, 1960, and a revised gratuity of £2,057.375 mils. This is subject to :-

- (a) the adjustment of reduced pension @ £474.150 mils p.a. with effect from the 8th November, 1960, gratuity of £1,975.625 mils and interest of £231.387 mils already paid to you.
- (b) the deduction provided in section 50(1) of Law 52/62."

As I have said earlier in this judgment, although the applicant signed the form of option on October 5, 1962, the pension granted to him was with retrospective effect as from November 8, 1960; and the payments made, as it appears from the assessments raised for the years of assessment 1960 - 1962 inclusive, (appendix 'A') were not

added to the chargeable income of the applicant for those years, apparently because of s. 8 of Law 52/62.

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As it appears from paragraph 4 of the opposition, the Commissioner, because he was of the view that the amount of pension received by the applicant was taxable, he included the sum of £474 in his taxable income for the year of assessment 1963, and the sum of £494 as income for the years 1964 - 1966 inclusive. On October 8, 1966, the applicant through his accountants wrote a letter to the Commissioner objecting that the amounts received by him as pension were taxable. The Commissioner having examined the reasons, and because the applicant in his letter dated October 19, 1970, accepted to pay an additional amount of tax of £264.230 in full settlement of the years of assessment 1963 to 1966, on October 21, 1970, he wrote to the applicant in these terms :-

"I refer to the agreement made between us with regard to the objections raised for the years of assessment 1961 - 1966, and I attach confirmation for the payment of the tax for the years of 1963 - 1966, you were not taxed for the years 1961 - 1962."

The applicant, feeling aggrieved because of that decision, filed the present recourse and the application was based on the following grounds of law :-

(a) that the respondent has acted under a misconception of the legal construction of s. 8 of the Compensation (Entitled Officers) Law, 1962, that the amounts which were granted to him as compensation were taxable;

(b) that the imposition of income tax on the amounts received by him as pension is contrary to the said section 8 of Law 52/62; and

(c) that the respondent erroneously construed the legal position that the compensation granted to applicant for the years of assessment in question falls within the provisions of the Pensions Law Cap. 311.

The opposition on behalf of the respondent filed on January 8, 1971, was to the effect that the decision of the Commissioner was lawfully taken and after examination of all relevant and material facts of the case, *i.e.* :-

(a) that the imposition of income tax for the year of

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assessment 1963 was made in accordance with s. 5(1)(c) and s. 45 of the Greek Communal Law 1963 (Law No. 9/63);

(b) that the imposition of tax for the year of assessment 1964 was made in accordance with s. 2 of the Greek Communal Law 1964, (Law No. 7/64) and s. 23 of the Taxes (Quantifying and Recovery) Law 1963 (No. 53/63);

(c) that the imposition of tax for the year of assessment 1965 was made in accordance with s. 2 of the Greek Communal Law 1965, (No. 2/65) and s. 23 of the Taxes (Quantifying and Recovery) Law 1963 (No. 53/63);

(d) that the imposition of tax for the year of assessment 1966 was made in accordance with s. 5(1)(e) and s. 46 of the Income Tax (Foreign Persons) Law 1961, as amended by Laws Nos. 4/63 and 21/66, and under s. 23 of the Taxes (Quantifying and Recovery) Law 1963 (No. 53/63); and

(e) because there was an objection against the imposition of the tax, the Commissioner finally decided and settled the amount payable by the applicant under s. 20(5) of the Taxes (Quantifying and Recovery) Law 1963 (No. 53/63) as amended by Law 61/69.

The question which is posed is whether the reduced pension received by the applicant under s. 4(1)(a) of Law 52/62 for the years of assessment 1963 - 1966 is assessable to income tax. I think that in order to answer this question I have to examine what was the position of the applicant regarding his pension rights, who, until the 15th day of August, 1960, was holding in a substantive capacity a pensionable post or office.

The position was regulated under s. 6 of the Pensions Law, Cap. 311, which provides that "no pension, gratuity or other allowance shall be granted under this law to any officer except on his retirement from the public service in one of the following cases :-

(c) on the abolition of his office; and

(d) on compulsory retirement for the purpose of facilitating improvement in the organization of the depart-



ment to which he belongs, by which greater efficiency or economy may be effected.”

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Thus, it appears that the applicant in the present case was not entitled to receive any pension, but for the provisions of Law 52/62 which gave to an entitled pensionable officer the option to receive a pension on abolition of post or office or compensation in the form of a gratuity.

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In accordance with the interpretation section 2 of the said law, “pension on abolition of office terms” means the pension which may be granted under the Pensions Law to an officer who retires in consequence of the abolition of his post or office.

The question remains, therefore, as I have said earlier, whether the amount received by the applicant as a pension is taxable or not. There is no doubt that with regard to the question of compensation in the form of a gratuity, there is no dispute because it has been conceded by counsel for the respondent that such amount is exempt under the provisions of s. 8(1)(d) of the Greek Communal Law 9/63 and the applicant has not been taxed on the amount of £2,057.375 mils.

Counsel on behalf of the applicant contended —

(a) that the amounts received by the applicant, once he had elected to retire from the service, should not be included in the taxable income, because section 8 of Law 52/62 exempts such payments from the operation of the Income Tax Law;

(b) that although the phraseology used in s. 8 as to the words “all payments made” appear to present some difficulty in construing them, nevertheless, he argued, such words must be construed as meaning that it was the intention of the legislator to read into the section the word “yenisomene”, in order to cover payments effected pursuant or in view of the provisions of this law, and not only payments made in the past.

On the contrary, counsel on behalf of the respondent contended —

(a) that the pension received by the applicant is not

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exempt from income tax because what s. 8 of Law 52/62 is doing is to exempt only the payments made in the past. Counsel further argued that the Court cannot read in a section words which are favourable to a citizen, but only to construe the intention of the House of Representatives which intention must be borne out of the wording of the section itself. He relies on the authority of *Redford v. The Republic* (1970) 3 C.L.R. 409, at p. 415;

(b) that regarding the question of gratuity s. 8(1)(d) of the Greek Communal Law No. 9/63 only expressly exempts gratuity and not pension;

(c) that the words "all payments made" appearing in s. 8 of Law 52/62 (Yenomene) are not confusing if one reads the whole of the section, and once the pension received by applicant was not granted by virtue of Law 52/62, but by virtue of the Pensions Law Cap. 311; and

(d) that any other interpretation would discriminate between pensioners of the Greek Communal Chamber and Government Pensioners, and that it was therefore clear that the legislature in Law 52/62 did not intend to discriminate between those two classes.

Before dealing with the submissions of both counsel, I find it convenient to deal with the relevant legislation, and s. 3 of Law 52/62 which deals with the entitled officers deemed to have retired, is in these terms:-

"Notwithstanding anything in the Pensions Law or in the Provident Fund Law contained, an entitled officer shall be deemed to have retired on the fifteenth day of August, 1960, or, in case he was eligible for any leave of absence on that date, on the date of the expiration of such leave :

Provided that an entitled officer who, before the date of the promulgation of this Law by its publication in the Official Gazette of the Republic, has been re-appointed to the public service of the Republic shall not be deemed to have retired and the period which elapsed from the sixteenth day of August, 1960, inclusive, to the date immediately preceding the date of his re-appointment to the public service of the Republic, shall be deemed to

have been a period of leave without pay granted on grounds of public policy."

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Regarding the question of benefits upon retirement to which an officer would be entitled, s. 4(1)(a) reads as follows :-

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"Upon retirement as in section 3 provided, an entitled pensionable officer shall be eligible to receive, at his option exercised in the form set out in the First Schedule, which shall be sent to the Minister within a period of three months of the date of the coming into operation of this Law, either

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(a) pension on abolition of post or office terms;

or

"

Then I turn to s. 5 which deals with the cessation of part of pension or refund of pension in certain circumstances, and provides that

"If, after the expiration of four months from the date of the coming into operation of this Law and within a period of five years of such date —

- (i) an entitled pensionable officer who has been granted pension on abolition of post or office terms under paragraph (a) of sub-section (1) of section 4 is employed or continues to be employed in service under the Communal Chamber within whose competence his post or office has come by operation of the Constitution, the payment of the additional pension granted to him under paragraph (b) of Regulation 26 of the Pensions Regulations shall cease from the date following the expiration of four months from the coming into operation of this Law or from the date of such employment, whichever is the later."

Regulation 26 of the Pensions Regulations deals with the abolition of office and re-organization and is in these terms :-

"If an officer holding a pensionable office retires from the public service in consequence of the abolition of his office or for the purpose of facilitating

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improvements in the organization of the Department to which he belongs, by which greater efficiency or economy may be effected —

(a)

(b) he may, if he retires from the service under the Government of Cyprus, be granted an additional pension at the annual rate of one-sixtieth of his pensionable emoluments for each complete period of three years pensionable service."

Then I read s. 8 of Law 52/62 which deals with the payments made to an entitled pensionable officer and which are exempted from the income tax, and in Greek is as follows :-

«Άπασαι αἱ πληρωμαὶ αἱ γινόμεναι δυνάμει τῶν διατάξεων τοῦ παρόντος Νόμου ἀπαλλάττονται τοῦ φόρου εἰσοδήματος τοῦ ἐπιβαλλομένου συμφώνως τῷ περὶ Φόρου Εἰσοδήματος Νόμῳ ἢ οἰωδῆποτε ἐτέρῳ ἐκάστοτε ἐν ἰσχύϊ καὶ εἰς τὴν ἐπιβολὴν φόρου εἰσοδήματος ἀφορῶντι, Νόμῳ».

And in English is in these terms :-

"All payments made under the provisions of this law shall be exempt from income tax imposed by the Income Tax Law or other law for the time being in force relating to the imposition of income tax."

And in accordance with s. 9, the said law will come into force as from the 16th August, 1960.

I think I must also deal with the Greek Communal Law, 1963, (Law 9/63), under which the Greek members of the Republic became liable to pay tax on income, and s. 5(1)(e) reads in Greek as follows :-

«Τηρουμένων τῶν διατάξεων τοῦ παρόντος Νόμου διὰ τὸ φορολογικὸν ἔτος 1963 ἐπιβάλλεται, πρὸς κάλυψιν τοῦ ἐν τῷ προϋπολογισμῷ διὰ τὸ ἔτος τοῦτο ἐλλείματος, βάσει φορολογικῶν συντελεστῶν εἰδικώτερον ἐν τοῖς ἐφεξῆς καθοριζομένων, εἰσφορά ἐπὶ τοῦ εἰσοδήματος παντὸς προσώπου τοῦ κτωμένου ἢ προκύπτοντος ἐν τῇ Δημοκρατίᾳ ἢ ἀποστελλομένου

καί λαμβανομένου εἰς τὴν Δημοκρατίαν ἐκ τῶν κα-  
τωτέρω ἀναφερομένων πηγῶν, ἦτοι :

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συντάξεις, ποσά εἰσοδήματος πληρωτέα δυνάμει ἀπο-  
φάσεως τοῦ δικαστηρίου ἢ ὄρου τεθέντος ἐν διαθήκῃ  
ἢ συμβάσει, ὡς καὶ ἐτήσια ἰσόβια ἢ δι' ὠρισμένην  
περίοδον καταβαλλόμενα πρόσοδοι».

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(“Subject to the provisions of this Law there shall  
be imposed for the year of assessment 1963, in  
order to cover the budget deficit for the year, at the  
rates specified hereafter, a contribution upon the  
income of any person accruing in, derived from or  
received in the Republic in respect of :

any pension, income payable under a judgment of  
the Court or under a term inserted in a will or  
contract, and annuity”).

Thus it appears clearly that for the year of assessment  
1963, under the aforesaid section 5(1)(e) of Law 9/63,  
the Greek Communal Chamber was empowered to impose  
tax on the amounts of pensions received by the applicant.  
Cf. s. 5(1)(e) of the Income Tax Laws 1961 - 1969. I  
should have also added that in England since the Act of  
1799 (as amended) for the purpose of the tax, the income  
for the current year of persons to be assessed was ranged  
under four divisions, and under division II “income  
arising from personal property and from trades, ..... offices,  
pensions.....” was included in the chargeable income of  
a person.

I think I ought to state that the tax is imposed exclusively  
on income (*Attorney-General v. London County Council*,  
4 T.C. 265, at p. 293 per Lord MacNaghten). Although  
both in England and in Cyprus the Income Tax Acts  
attempt no comprehensive definition of income, never-  
theless, it was said that to constitute income a receipt  
of money's worth is usually necessary. (*Dewar v. Inland  
Revenue Commissioners*, 19 T.C. 561 at p. 568). In its  
natural and ordinary meaning the word “income” means

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“that which comes in”. Cf. *Longsdon v. Minister of Pensions and National Insurance* [1966] 1 Q.B. 587.

With this in mind I think I must deal with both contentions of counsel for the applicant at the same time, and in interpreting s. 8 of our Law 52/62, I think the proper course is in the first instance that one has to examine the language of the section and to ask what is its natural meaning. Having done so, I confess that the words of that section appear to me to be free from any ambiguity. “All payments made under the provisions of this law shall be exempt from income tax imposed by the Income Tax Law or other law for the time being in force...” means according to ordinary canons of construction, that all payments made to an “entitled officer” relating to the period as from the date of his retirement to July 7, 1962, shall be exempt from income tax, only for that period.

In the light of my judgment, I can find no warrant in the section itself for inserting or in any way reading in the word “yenismene” (*viz.*, payments to be made in future) because I find it impossible without doing violence to the language of the section to give any other answer than this :- In all cases in which an “entitled officer” has collected retrospectively certain amounts of money, such payments shall be exempt from income tax for that period, and not for payments which would continue to be made in the future. It seems to me that what counsel is asking this Court is to add to the words of the section and to insert an extension which is not to be found in it or indicated by it. Indeed, I have difficulty in seeing how the legislature which intended to have such far reaching effects, *viz.*, that an “entitled officer” who opted to receive pension on abolition of post or office terms would be exempt from paying income tax on all past and future payments, did not in any way put into effect its intention by choice of clear and appropriate words. Cf. *Redford v. The Republic* (1970) 3 C.L.R. 409 at p. 416, where I adopted and followed the statement made by Rowlatt, J., in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 K.B. 64 at p. 71. Cf. also *London Brick Co. v. Robinson (An Infant)* [1943] A.C. 341 at p. 348, where the House of Lords declined to vary words not in themselves obscure or ambiguous.

For the reasons I have given, I find myself compelled to the conclusion that the contention of counsel is untenable and I would, therefore, dismiss both contentions of counsel.

In the light of this judgment, I am of the view that the decision of the Commissioner of Income Tax should be affirmed because it is not contrary to any of the provisions of our Constitution or of any of the laws referred to in this application or is made in excess or in abuse of powers.

The Order of the Court is, therefore, the recourse fails and is dismissed but with no order as to costs.

*Application dismissed.*  
*No order as to costs.*

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