

1979 March 13

[TRIANAFYLLIDES, P., HADJIANASTASSIOU, MALACHTOS,
SAVVIDES, JJ.]

THE SINGER SEWING MACHINE COMPANY,
Appellant,

and

THE DIRECTOR OF THE DEPARTMENT OF
INLAND REVENUE,
Respondent.

(*Revisional Jurisdiction Appeal No. 196.*)

Special Contribution (Temporary Provisions) Law, 1974 (Law 55/74 as amended by Laws 43/75, 67/75 and 15/76)—Ascertainment of income for purposes of contribution thereunder—Deductions—Losses sustained in previous years—Are not allowable deductions—
5 *Paragraph 2(c) of the Schedule to the Law—Law 15/66 (supra) has no retrospective effect.*

Special Contribution (Temporary Provisions) Law, 1974 (Law 55/74 as amended by Laws 43/75, 67/75 and 15/76)—Not contrary to paragraphs 1 and 4 of Article 24 of the Constitution.

10 *Constitutional Law—Constitutionality of legislation—Special Contribution (Temporary Provisions) Law, 1974 (Law 55/74 as amended by Laws 43/75, 67/75 and 15/76)—Not unconstitutional as being contrary to paragraphs 1 and 4 Article 24 of the Constitution.*

15 In computing the special contribution payable by the appellants under paragraph 2 of the Schedule to the Special Contribution (Temporary Provisions) Law, 1974 (Law 55/74 as amended by Laws 43/75 and 67/75), in respect of the quarter ending on March 31, 1976, the respondent Commissioner decided that there should not be taken into account any losses of theirs
20 in previous quarters; and in computing their special contribution, under the Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76), in respect of the quarter ending on June 30, 1976, he decided that there should not be taken into account any losses suffered by them up to December 31, 1975,
25 it being common ground that the appellants have not suffered any loss in the first quarter of 1976, ending on March 31, 1976.

By means of Law 15/76, which was enacted with effect as from April 1, 1976, subparagraph (c) of paragraph 2, above, was amended through the addition thereto of a proviso to the effect that losses in one quarter may be set off against the income of the subsequent quarter.

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Upon appeal against the dismissal of the recourse challenging the above decision:

(1) That in view of the provision in subparagraph (c) of the said paragraph 2, to the effect that losses carried forward from previous years cannot be deducted for the purposes of computing the special contribution payable for the quarter ending on March 31, 1976, the relevant legislation was properly applied by the respondent Commissioner in refusing to take into account losses sustained by the appellants in previous years.

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(2) That Law 15/76 cannot be given, and was not intended to be given, retrospective effect, inasmuch as the special contribution to which it relates is assessed and imposed quarterly in watertight compartments; that, consequently, the aforementioned proviso is operative only as from the quarter commencing on April 1, 1976; that, as a result, there ought not, and could not, be taken into account, in relation to the computation of the special contribution payable by the appellants in respect of the quarter commencing on April 1, 1976, any losses suffered in previous years or quarters, prior to 1976, as claimed by the appellants.

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(3) That, moreover, the taking into account of losses suffered in years prior to the year 1976, appears to be, in any event, excluded by the operation of subparagraph (c) of paragraph 2 of the Schedule to Law 55/74 as it stood before its amendment by Law 15/76; and that, accordingly, the trial Judge has rightly found that the respondent Commissioner of Income Tax applied the law correctly in computing the amounts of special contribution payable by the appellants.

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On the question whether the relevant legislative provisions are unconstitutional:

Held, (1) That the introduction, in view of the extraordinary socioeconomic conditions prevailing in Cyprus due to the Turkish invasion, of a scheme involving the payment of special contribution assessed on the basis of income in any particular quarter—

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irrespective of any past losses up to the enactment of Law 15/76, and subject to the losses of previous quarters being taken into account after the enactment of the said Law—amounts to a form of taxation the introduction of which, as a matter of fiscal policy, does not contravene the provisions of Article 24.1 of the Constitution, since it entails reasonable differentiations related to a universally accepted, and not an arbitrary, test of means, such as income; and that, in the circumstances, it cannot be said that the appellants have discharged the onus of satisfying this Court beyond a reasonable doubt that the taxation scheme in question is discriminatory in a manner contrary to Article 24.1 of the Constitution.

Held, further, that in view of the fact that the special contribution paid in respect of any one quarter is deducted when computing the income tax payable by the taxpayer concerned for the particular year of assessment, and, moreover, since the rates on the basis of which the special contribution is computed are not very high, this Court does not feel persuaded by the appellants that the application of Law 55/74 or Law 15/76 offends against the provision in Article 24.4 of the Constitution which excludes the imposition of destructive or prohibitive taxation.

Appeal dismissed.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 4th March, 1978 (Revisional Jurisdiction Case No. 313/76) whereby appellants' recourse, against the validity of assessments to special contributions raised on them for the quarters ending on 31.3.76 and 30.6.76, was dismissed.

A. Markides, for the appellants.

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

TRIANAFYLLIDES P. gave the following judgment of the Court. In the present case the appellants—who were the applicants in recourse No. 313/76—have appealed against the judgment* of a Judge of this Court who dismissed that recourse.

* Reported in (1978) 3 C.L.R. 71.

By means of such recourse the appellants have challenged the decisions of the respondent Commissioner of Income Tax that in computing the special contribution payable by them in respect of the quarter ending on March 31, 1976, there should not be taken into account any losses of theirs in previous years, and that in computing the special contribution payable by the appellants in respect of the quarter ending on June 30, 1976, under the in the meantime enacted Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76), there should not be taken into account any losses suffered by them up to December 31, 1975, it being common ground that the appellants have not suffered any loss in the first quarter of 1976, ending on March 31, 1976.

The provision applicable in relation to the quarter ending on March 31, 1976, was, at the material time, paragraph 2 of the Schedule to the Special Contribution (Temporary Provisions) Law, 1974 (Law 55/74), as amended by the Special Contribution (Temporary Provisions) (Amendment) Law, 1975 (Law 43/75) and the Temporary Legislation (Continuation) Law, 1975 (Law 67/75).

In view of the provision in subparagraph (c) of the said paragraph 2, to the effect that losses carried forward from previous years cannot be deducted for the purposes of computing the special contribution payable for the quarter ending on March 31, 1976, we are of the view that the relevant legislation was properly applied by the respondent Commissioner in refusing to take into account losses sustained by the appellants in previous years.

By means of Law 15/76, which was enacted with effect as from April 1, 1976, subparagraph (c) of paragraph 2, above, was amended through the addition thereto of a proviso to the effect that losses in one quarter may be set off against the income of the subsequent quarter.

We are in agreement with the trial Judge that Law 15/76 cannot be given, and was not intended to be given, retrospective effect, inasmuch as the special contribution to which it relates is assessed and imposed quarterly in watertight compartments; consequently, the aforementioned proviso is operative only as from the quarter commencing on April 1, 1976. As a result

there ought not, and could not, be taken into account, in relation to the computation of the special contribution payable by the appellants in respect of the quarter commencing on April 1, 1976, any losses suffered in previous years or quarters, prior
5 to 1976, as claimed by the appellants.

Moreover, the taking into account of losses suffered in years prior to the year 1976, appears to be, in any event, excluded by the operation of subparagraph (c) of paragraph 2 of the Schedule to Law 55/74 as it stood before its amendment by Law 15/76.

10 We are, therefore, of the opinion that the trial Judge has rightly found that the respondent Commissioner of Income Tax applied the law correctly in computing the amounts of special contribution payable by the appellants.

15 There remains to examine, next, the issue of the constitutionality of the relevant legislative provisions:

The introduction, in view of the extraordinary socio-economic conditions prevailing in Cyprus due to the Turkish invasion, of a scheme involving the payment of special contribution assessed on the basis of income in any particular quarter—irrespective of
20 any past losses up to the enactment of Law 15/76, and subject to the losses of previous quarters being taken into account after the enactment of the said Law—amounts, in our opinion, to a form of taxation the introduction of which, as a matter of fiscal policy, does not contravene the provisions of Article 24.1
25 of the Constitution, since it entails reasonable differentiations related to a universally accepted, and not an arbitrary, test of means, such as income.

In the circumstances, it cannot be said that the appellants have discharged the onus of satisfying us beyond a reasonable
30 doubt that the taxation scheme in question is discriminatory in a manner contrary to Article 24.1 of the Constitution.

Also, in view of the fact that the special contribution paid in respect of any one quarter is deducted when computing the income tax payable by the taxpayer concerned for the particular year of assessment, and, moreover, since the rates on the
35 basis of which the special contribution is computed are not very high, we do not feel persuaded by the appellants that the application of Law 55/74 or Law 15/76 offends against the

provision in Article 24.4 of the Constitution which excludes the imposition of destructive or prohibitive taxation.

For all the above reasons this appeal fails, but in the light of all pertinent considerations, we shall not make an order for costs against the appellants.

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*Appeal dismissed. No order
as to costs.*