1980 April 30

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGE TSIMON LTD.,

*Applicants,*

*v.*

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

*Respondents.*

(*Case No.* 288/78).

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*Judicial notice—Facts concerning the political situation in Cyprus—Judicial notice of.*

*Contract—Frustration—"Indefinite impossibility"—Principle of—Not applicable to contracts of lease of land and land generally.*

*Income tax—Balancing deduction—Section* 12(3) *and* (4) *of the Income Tax Laws—Inaccessibility to immovable property due to the Turkish occupation of Northern Cyprus—A temporary situation that resulted by enemy action which, though protracted, cannot be considered as definite and permanent—In the circumstances of this case applicants' assets have not "definitely"* ("ὁριστικῶς") *ceased to be used for the purpose of their trade as envisaged by s.* 12(3)(b) *of the Laws and that their trade or business has not "definitely and permanently"* ("ὁριστικῶς καὶ μονίμως") *discontinued as envisaged by s.* 12(3)(c)—*Respondent Commissioner rightly refused to accept a balancing deduction in respect of said properties.*

The applicants are, among others, the owners of certain immovable properties situated within Kyrenia District in the north part of Cyprus. Applicants were in possession and enjoyment of the said properties till July, 1974 when Turkey invaded Cyprus and occupied the north part of Cyprus by

force. As a result of such occupation the said properties have since become inaccessible to their owners, the applicants.

On September 29, 1975 the applicants submitted to the respondents their return of income together with a "balancing statement" in respect of the said properties, whereby the applicants treated the value of such properties as a total loss. After deducting such value from the computation of capital allowance in the balancing statement of 1974, applicants alleged that they were not liable to pay any income tax for the year 1974, in view of the fact that any profit was counter-balanced by the loss of the said properties. The respondents did not accept the above balancing statement and on April 12, 1976 they sent a notice of assessment to the applicants for the year 1974, whereby they were assessed to pay £13,139. Hence this recourse in which the only issue for consideration was whether the applicants were entitled to a balancing deduction in respect of their properties at Kyrenia which have become inaccessible to them, due to the Turkish invasion and subsequent occupation of the area within which such properties were situated. Such issue depended on the construction of section 12(3)* and (4)* of the Income Tax Laws and their applicability to the present case and particularly on the construction of the words "ὁριστικῶς" ("definitely") in para. (b) of the said sub-section 3 of section 12 and "ὁριστικῶς καὶ μονίμως" ("definitely and permanently") in para. (c) of the same sub-section.

*Held, (after taking judicial notice of certain facts concerning the political situation in Cyprus and which formed the background of this case–vide pp. 337–38 post)* (1) that the principle that "indefinite impossibility" discharges a liability under a contract has no application in contracts of lease of land and land generally and in any case no application in the circumstances of the present case.

(2) That, taking into consideration all surrounding circumstances of this case, the applicants failed to satisfy the Court that the assets of the company have "definitely" ("ὁριστικῶς") ceased to be used for the purpose of their trade as envisaged by section 12(3)(b) of the Income Tax Laws or that the trade or business of the applicants has "definitely and permanently"

* Quoted in full at pp. 330-32 *post*.

("ὁριστικῶς καὶ μονίμως") discontinued as envisaged by section 12(3)(c) of the Income Tax Laws to enable them to claim the balancing deduction which they have been refused by the Commissioner of Income Tax; that the mere temporary inaccessibility by the applicants of their immovable properties in Kyrenia, which are still registered in their name, due to enemy occupation and for so long as such occupation continues, cannot, in the present circumstances, be considered as a "definite" ceasure of the use of their properties for the purpose of their trade or business or that their business has "definitely and permanently" discontinued; that this is a temporary situation which resulted by enemy action which though protracted, cannot be considered as definite and permanent; that, therefore, the Commissioner of Income Tax rightly refused to accept a balancing deduction in respect of the subject matter properties; and that, accordingly, the recourse must be dismissed.

*Application dismissed*

Cases referred to:

*Attorney-General of the Republic* v. *Ibrahim and Others,* 1964 C.L.R. 195 at pp. 201, 202, 203;

*Satyabrata Ghose* v. *Mugneeram Bangur* (1954) S.C.R. 310.

**Recourse.**

Recourse against the validity of the income tax assessment raised on applicants for the year of assessment 1975

*G. Cacoyiannis*, for the applicants.

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

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. The applicants are the owners of, among other assets, certain properties situated at Kyrenia district which are described in the application as follows:

House at Millstone,
House at Cononos Street,
Old farm house,
Irrigation system.

By the present recourse the applicants ask for—

"A. A declaration that the Notice of Payment of Tax (in Assessment No. 283/Ad/76/75) dated 10th April,

1978 for the year of assessment 1975 (income year 1974) sent by Respondents to Applicants, is null and void and of no effect whatsoever.

B. A declaration that the decisions of the Applicants as set out in the Applicants' letter dated 10th April, 1978 accompanying the Notice of Payment of Tax referred to in A. above, are null and void and of no effect whatsoever.

C. A declaration that the Respondents' decision to reject the objection of the Applicants (through their accountants) dated 20th April, 1976 to the assessment made by the Respondents by their Notice of Assessment dated 12th April, 1976 is null and void and of no effect whatsoever.

D. A declaration that the decision of the Respondents (contained in the above documents) not to accept the Applicants' Balancing Statement and/or Balancing Deduction in respect of the properties referred to therein (house at Millstone, Kyrenia, house at Cononos Street, Kyrenia, old farm house and irrigation system) is null and void and of no effect whatsoever.

E. A declaration that the decision of the Respondents to impose income tax on Applicants for the year of Assessment 1975 amounting to £8,804.375 mils is null and void and of no effect whatsoever."

The grounds of law on which the recourse is based, are shortly that the applicants' properties lying in the Turkish occupied part of Cyprus and particularly in Kyrenia district, should, for the purpose of section 12(3)(b) of the Income Tax Laws 1961–1976 (hereinafter referred to as "Income Tax Laws"), be deemed to have permanently ceased to be used by the applicants for the purpose of their trade, business, profession, vocation, or employment carried on by them. Furthermore, that the trade, business, profession, vocation or employment of the applicants in the area in which the said properties are situated and/or in relation to and/or by the use of such properties is permanently discontinued for the purposes of section 12(3)(c) of the Income Tax Laws. Consequently, the applicants contend that the respondents were bound, by virtue of the provisions of section 12(3) and

12(4) of the Income Tax Laws, to accept the applicants' Balancing Statement and/or Balancing Deduction which accompanied their accounts for the year of assessment 1975. Respondents' refusal to accept the said Balancing Statement and/or Balancing Deduction, amounts, according to the contention of the applicants, to an act in excess and/or in abuse of their powers and/or was contrary to section 12(3) and 12(4) of the Income Tax Laws and/or contrary to the Constitution and in particular to Article 24.1 thereof, in that the said properties have ceased to be part of the means of the applicants and, also, contrary to Article 28 of the Constitution, in that the applicants are receiving unequal treatment as compared to non-refugee citizens of the Republic whose properties are accessible and used by them.

As to what amounts to a "balancing deduction" under section 12(3) and 12(4) of the Income Tax Laws, counsel for the respondents has, in an elaborate way, explained to the Court. He mentioned that such deduction is an allowance for wear and tear given for the acquisition of capital assets used in the business, varying according to the nature of the assets. Such allowance is deducted from the original amount paid and then the balance is carried forward to the following year as a capital asset of the company. A similar procedure is followed for the ensuing years by deducting every year the allowance for wear and tear from the balance carried forward at the end of each year. If, at any time, the capital asset is sold by the company, any amount in excess of the value of the asset, as appearing on the last return, is considered as a profit, whereas if the amount realised is loss, this is treated as a loss which the company is entitled to deduct from the accounts and such deduction is considered to be a balancing deduction.

The undisputed facts of the case are shortly as follows:

The applicants are the owners, of the properties referred to earlier in this judgment. Such properties are situated within Kyrenia district, in the North part of Cyprus. Applicants were in possession and enjoyment of the said properties till July, 1974 when Turkey invaded Cyprus and has occupied the North part of Cyprus by force.

It is the contention of counsel for the applicants that once applicants' properties in Kyrenia have become inaccessible,

applicants were entitled to a balancing deduction in respect of the value of such properties, as in July, 1974 when the Turkish invasion took place and such property has ceased to be used for the purpose of any trade or business carried out by them within Kyrenia district.

On the 29th September, 1975 applicants submitted to the respondents their return of income together with a "balancing statement" in respect of the said properties, whereby the applicants treated the value of such properties as a total loss. After deducting such value from the computation of capital allowance in the balancing statement of 1974, they allege that they are not liable to pay any income tax for the year 1974, in view of the fact that any profit is counter-balanced by the loss of the said properties. Such balancing statement was not accepted by the Commissioner of Income Tax and on the 12th April, 1976 a Notice of Assessment was sent to the applicants for the year 1974, whereby they were assessed to pay £13,139.—. Such Notice of Assessment is *exhibit* 1 before the Court. Attached to the said Notice there was a letter addressed to the auditors of the applicants, in reply to their balancing statement (*exhibit* 2), in which particulars are given how the assessment was made in finding the chargeable income of the applicants and the tax payable on such income. Acting on behalf of the applicants, applicants' auditors by letter dated 20th April, 1976 (*exhibit* 3), objected to the said assessment and put forward the grounds of their objection and applied for a revision of the assessment in accordance with their balancing statement. Such letter reads as follows:

> " 'Ενεταλημεν ὑπο τῶν ἐν τῷ θέματι τῆς παρούσης ἐπιστολῆς ἀναφερομένων πελατῶν μας ὅπως ὑποβάλωμεν ἔνστασιν καὶ διὰ τῆς παρουσης ὑποβάλλομεν ἔνστασιν κατὰ τῆς γενομένης πρὸς αὐτους φορολογίας δια τὸ ἔτος 1974 (Φορολογικον ἔτος 1975) ὡς ούσης ὑπερβολικῆς, ἐσφαλμένης καὶ μὴ συναδούσης προς τα πραγματικὰ αὐτῶν εἰσοδήματα
>
> 'Ως ἀναφέρετε εἰς τὴν πρὸς ἡμᾶς ἀναφορικῶς πρὸς τοὺς ὡς ἀνω πελάτας μας ἐπιστολὴν σας ὑπὸ ἡμερομηνίαν 12ην 'Απριλιου, 1976, εἰς τὴν ὁποίαν ἐπιστολὴν σας, εἰρήσθω ἐν παρόδω, ἡ παροῦσα δέον ὅπως θεωρηθῆ καὶ ὡς ἀπάντησις, δὲν ἀποδεχεσθε τὴν ἀφαίρεσιν ἐκ τοῦ εἰσοδήματος τῶν πελατῶν μας τῆς ζημίας τὴν ὁποίαν οὗτοι ὑπέστησαν ἐντὸς τοῦ ἔτους

1974 ἀναφορικῶς πρὸς κτίρια καὶ ἐγκαταστάσεις ἀρδεύσεως, τὰ ὁποῖα εὑρίσκοντο κατὰ τὴν ἡμέραν τῆς Τουρκικῆς εἰσβολῆς ἐντὸς τῆς ὑπὸ τῶν Τουρκικῶν στρατευμάτων καταληφθείσης περιοχῆς. 'Αντ' αὐτοῦ ἀφαιρεῖτε παραχώρησιν δι' ἐτησίαν φθορὰν ἐπὶ τῶν προαναφερθέντων στοιχείων. Τὰ ὡς ἄνω, ὡς ἀντιλαμβανόμεθα, ἐγένοντο συμφώνως πρὸς τὴν ὑφ' ὑμῶν εἰς παρομοίας περιπτώσεις ἀκολουθουμένην τακτικήν. Τὸ τοιοῦτον, ὡς καὶ προφορικῶς ἐτονίσαμεν εἰς ὑμᾶς, θεωροῦμεν ἀδικαιολόγητον καὶ παντελῶς ἐσφαλμένον διὰ τοὺς ἀκολούθους, μεταξὺ ἄλλων λόγους:

(α) Τὰ ὑπὸ συζήτησιν στοιχεῖα ἀπὸ τῆς Τουρκικῆς εἰσβολῆς καὶ τῆς καταλήψεως τῆς βορείου Κύπρου ὑπὸ τῶν Τουρκικῶν στρατευμάτων κατοχῆς, ἤτοι ἀπὸ εἴκοσι καὶ πλέον μηνῶν, ἔπαυσαν νὰ χρησιμοποιοῦνται ὑπὸ τῶν πελατῶν μας. Οὐδεὶς δὲ εἰς τὰς ὑπὸ τοῦ κράτους ἐλεγχομένας περιοχὰς εἶναι σήμερον εἰς θέσιν νὰ ἐξακριβώσῃ κατὰ πόσον ταῦτα ἐξακολουθοῦν νὰ ὑφίστανται καὶ ἐὰν ὑφίστανται εἰς ποίαν κατάστασιν ταῦτα εὑρίσκονται.

(β) Οὐδεὶς εἶναι εἰς θέσιν νὰ γνωρίζῃ κατὰ πόσον τὰ ἐν λόγω στοιχεῖα, ἐὰν ὑπάρχουν σήμερον καὶ ἐὰν θὰ ἐξακολουθήσουν νὰ ὑπάρχουν εἰς τὸ μέλλον, θὰ ἐπαναπεριέλθουν εἰς τὴν οὐσιαστικὴν ἰδιοκτησίαν καὶ χρῆσιν τῶν δικαιούχων πελατῶν μας.

(γ) Οὐδεὶς δύναται νὰ προβλέψῃ καὶ εἰλικρινῶς νὰ καθορίσῃ ποῖοι θὰ εἶναι οἱ ὅροι οἱασδήποτε πιθανῆς μελλοντικῆς πολιτικῆς διευθετήσεως, ἐὰν θὰ ὑπάρξῃ ποτὲ τοιαύτη, ἀναφορικῶς πρὸς περιουσιακὰ στοιχεῖα εὑρισκόμενα εἰς τὰς ὑπὸ κατοχὴν βορείας περιοχὰς τῆς νήσου μας.

(δ) 'Η ὑφ' ὑμῶν ἀκολουθουμένη τακτική, τὴν ὁποίαν οἱ πελάται μας ἐν πάσῃ περιπτώσει θεωροῦν ἐσφαλμένην, εἶναι ἀντίθετος πρὸς τὸ γράμμα καὶ πνεῦμα τοῦ νόμου καὶ ὡς ἐκ τούτου δὲν εἶναι δυνατὸν αὕτη νὰ δεσμεύῃ τὸν φορολογούμενον ἢ νὰ ἔχῃ οἱανδήποτε νομικὴν ἰσχύν.

(ε) 'Η φορολογικὴ νομοθεσία προνοεῖ, κατὰ τὴν γνώμην μας, σαφῶς (ἄρθρον 12(3) καὶ (4) τῶν περὶ φορολογίας τοῦ εἰσοδήματος νόμων τοῦ 1961 ἕως 1969) διὰ περιπτώσεις ζημιῶν ὡς αἱ εἰς τὴν παροῦσαν περίπτωσιν τῶν πελατῶν μας.

(ζ) Πάντα τὰ ὑπὸ τοῦ σχετικοῦ νόμου προνοούμενα ἤτοι

ἡ ὑποβολὴ εἰς ὑμᾶς ἐξισωτικῆς καταστάσεως μεθ' ὅλων τῶν ἀναγκαίων λεπτομερειῶν καὶ ὑπολογισμῶν ἐγένοντο ἀπὸ πάσης ἀπόψεως κανονικῶς ὑφ' ἡμῶν ἐκ μέρους τῶν πελατῶν μας.

(η) Ὅταν κατὰ τὸ ἔτος 1963 φορολογούμενοι ἀπώλεσαν ὑπὸ δυστυχῶς παρομοίας συνθήκας περιουσίαν εἰς τοὺς Τουρκικοὺς τομεῖς τῆς Λευκωσίας καὶ ἀλλαχοῦ αἱ ζημίαι τὰς ὁποίας οὗτοι οὕτω ὑπέστησαν ἐγένοντο, ὀρθῶς κατὰ τὴν ἄποψιν μας, πλήρως ἀποδεκταὶ ὑφ' ὑμῶν.

(θ) Ἐὰν, ὡς πάντες εὐχόμεθα, καταστῇ δυνατὴ ἡ ἐπιστροφὴ τῶν ἐν λόγῳ στοιχείων εἰς τοὺς πελάτας μας, οὗτοι διὰ τῆς παρούσης μέσῳ ἡμῶν ὑπευθύνως δηλοῦν ὅτι θὰ εἶναι πλέον ἢ εὐτυχεῖς ἐὰν λογισθῇ καὶ ληφθῇ ὑπ' ὄψιν ἡ ἀξία τῶν ἐν λόγῳ στοιχείων εἰς τὸ ἐνεργητικὸν των γίνουν δὲ κατὰ τὸ ἔτος τῆς τοιαύτης ἐπιστροφῆς ἅπασαι αἱ σχετικαὶ φορολογικαὶ ἀναπροσαρμογαί.

Ἐν ὄψει πάντων τῶν προαναφερθέντων αἰτούμεθα τὴν ἀναθεώρησιν τῆς ἐπὶ τῶν πελατῶν μας γενομένης φορολογίας, ἐπιστρέφομεν δὲ ἐσωκλείστως τὸ σχετικὸν ἔντυπον I.R. 13 πρὸς ἀναθεώρησιν τούτου."

("We have been instructed by our clients referred to in the subject of the present letter to submit an objection against the income tax assessment raised on them for the year 1974 (year of assessment 1975) as being excessive, erroneous and not being in accord with their true assets.

As you state in your letter to us regarding our above clients dated 12th April, 1976, to which letter, it should be noted by the way, the present letter must be considered as a reply, you do not accept the deduction from the income of our clients of the loss which they suffered during 1974 in respect of buildings and irrigation installations which were on the date of the Tarkish invasion in the area captured by the Turkish army. Instead of this you deduct an amount for annual loss on the above-mentioned properties. The above as we understand were made in accordance with the policy followed by you in similar cases. This, as was also verbally pointed out to you, we consider unjustified and completely wrong for the following, *inter alia*, reasons:-

(a) The properties under consideration as from the Turkish

invasion and the occupation of the northern Cyprus by the Turkish invasion forces, i.e. for more than 20 months have ceased to be used by our clients. No one residing in the parts controlled by the state is today in a position to ascertain whether the said properties continue to exist and if they do in what state they are.

(b) No one is in a position to know whether the said properties, if they exist today and if they continue to exist in future, will come back to the substantive possession and use by our clients who are entitled to them.

(c) No one can foresee and frankly define the conditions of any possible future political settlement, if there will ever be one, regarding the properties situated in the areas under occupation in the northern part of Cyprus.

(d) The policy followed by you, which in any case is considered as a wrong one by our clients, is contrary to the letter and spirit of the law and therefore it is not possible to be binding on the tax-payer or to have any legal effect.

(e) The taxation legislation, in our view, clearly provides (section 12(3) and (4) of the Income Tax Laws 1961-1969) for cases of loss like the ones in the present case of the applicants.

(f) All the requirements of the relevant law i.e. the submission to you of a balancing statement with all necessary details and calculations have been submitted, in all respects, regularly by us on our clients' behalf.

(g) When in 1963 tax-payers, unfortunately lost under similar circumstances property in the Turkish sectors of Nicosia and elsewhere the losses which they thus suffered, have been, correctly in our view, fully accepted by you.

(h) If, as we all wish, the return of the above properties to our clients becomes possible, our clients by this letter through us responsibly declare that they will be more than happy to have the value of the said properties

considered and taken into account to their credit and all relevant taxation re-adjustments be made during the year of such return.

In view of the above-mentioned we request the re-examination of the assessment raised on our clients, and we return herewith the relevant form I.R. 13.")

After considering the objection made, the Commissioner of Income Tax rejected same, by letter dated 10th April, 1978, addressed to the applicants (*exhibit* 4).

Such letter was accompanied by a final Notice of Assessment with the usual provision that applicants could, if they so wished, file a recourse in the Supreme Court, if they considered themselves as treated unjustly. Hence, applicants filed the present recourse.

The question as to whether the decision of the Commissioner was contrary to Article 28 of the Constitution in that the applicants are receiving unequal treatment as compared to non-refugee citizens of the Republic whose properties are assessible and used by them, which is referred in the application as one of the grounds of law on which the application is based, was not pursued at the hearing by counsel for the applicants who stated that the only issue before the Court is as to whether the applicants are entitled to a balancing deduction in respect of their properties at Kyrenia which have become inaccessible to them, due to the Turkish invasion and subsequent occupation of the area within which such properties are situated. Such issue depends on the construction of section 12, sub-sections (3) and (4) of the Income Tax Laws and their applicability in the present case. Sections 12(3) and 12(4) of the Income Tax Laws, as set out in the Revisional Consolidation of the Cyprus Legislation of the 31st March, 1976, read as follows:

"12. .....

(3) Where under the provisions of this section any deduction has been allowed in any year of assessment, in ascertaining the chargeable income of a person engaged in a trade, business, profession, vocation or employment and any of the following events occurs in the year immediately preceding the year of assessment or, in the case of employment, in the year of assessment, that is to say—

(a) the property or any part thereof ceases to belong to the person carrying on the trade, business, profession, vocation or employment whether on a sale of the property or any part thereof or in any other circumstances of any description; or

(b) while continuing to belong to the person carrying on the trade, business, profession, vocation or employment the property or any part thereof permanently ceases to be used for the purposes of the trade, business, profession, vocation or employment carried on by him; or

(c) the trade, business, profession, vocation or employment is permanently discontinued, the property not having previously ceased to belong to the person carrying on the trade, business, profession, vocation or employment.

the person shall, in the year of assessment, render to the Commissioner at the same time as he renders his return of income a statement (hereinafter referred to as a 'balancing statement' ) in respect of the property in question showing the items following—

(i) the amount of the capital expenditure on the provision thereof;

(ii) the total depreciation which has occurred by reason of exhaustion or wear and tear since the date of purchase of such property, including the aggregate amount of all deductions previously allowed under the provisions of this section:

Provided that in the case of any property acquired on or after the first day of January, 1954, for the purpose of arriving at the aggregate amount of all deductions previously allowed, no account shall be taken of any deductions previously allowed under paragraphs (b) and (c) of subsection (2); and

(iii) the amount of all sale, insurance, salvage or compensation moneys in respect thereof:

Provided that the demolition of a building at the instance of the owner shall not be a ground for rendering a balancing

statement if made before the lapse of five years from the date of acquisition.

(4) In ascertaining the chargeable income of a person who is required under sub-section (3) to render a balancing statement to the Commissioner a deduction (hereinafter referred to as a 'balancing deduction' ) shall be allowed or, as the case may be, an addition (hereinafter referred to as a 'balancing addition' ) shall be made and such balancing deduction or balancing addition shall be calculated by reference to the balancing statement or statements rendered by the persons in respect of the year immediately preceding the year of assessment, or, in the case of employment, in respect of the year of assessment as follows:-

(a) the amount of a balancing deduction shall be the amount by which the amount of item (i) of the balancing statement exceeds the sum of the amounts of item (ii) and item (iii) of that statement; or

(b) the amount of the balancing addition shall be the amount by which the sum of the amounts of item (ii) and item (iii) of the balancing statement exceeds the amount of item (i) of that statement:

Provided that in no case shall the balancing addition exceed the aggregate amount of any deductions previously allowed under the provisions of this section and included in item (ii) of the balancing statement."

The Greek text reads as follows:

("(3) Εἰς περιπτώσεις καθ' ἃς, κατὰ τὸν προσδιορισμὸν τοῦ φορολογητέου εἰσοδήματος προσώπου ἀσκοῦντος ἐμπορικὴν ἢ βιομηχανικὴν ἐπιχείρησιν, ἐπιτήδευμα ἢ βιοτεχνίαν τινά, ἐλευθέριον ἢ ἄλλο τι ἐπάγγελμα, ἢ παρέχοντος μισθωτὰς ὑπηρεσίας, ἔχει χορηγηθῆ ἔκπτωσίς τις ἔν τινι φορολογικῷ ἔτει δυνάμει τῶν διατάξεων τοῦ ἄρθρου τούτου ἀναφορικῶς πρὸς στοιχεῖον τι παγίου ἐνεργητικοῦ καὶ ἐν τῷ ἔτει τῷ ἀμέσως προηγουμένῳ τοῦ φορολογικοῦ ἔτους, ἢ, εἰς τὴν περίπτωσιν μισθωτῶν ὑπηρεσιῶν, διαρκοῦντος τοῦ φορολογικοῦ ἔτους, ἤθελεν ἐπισυμβῆ ἐν τῶν ἀκολούθων γεγονότων, ἤτοι—

(α) τὸ τοιοῦτο στοιχεῖον ἢ μέρος τούτου ἔπαυσεν ἀνῆκον εἰς

τὸ πρόσωπον τὸ ἀσκοῦν τὴν ἐμπορικὴν ἢ βιομηχανικὴν ἐπιχείρησιν, ἐπιτήδευμα ἢ βιοτεχνίαν, ἐλευθέριον ἢ ἄλλο τι ἐπάγγελμα ἢ τὸ παρέχον μισθωτὰς ὑπηρεσίας, εἴτε λόγῳ πωλήσεως τοῦ ἐν λόγῳ στοιχείου ἢ μέρους αὐτοῦ εἴτε ὑφ' οἱασδήποτε ἄλλας συνθήκας.

(β) τὸ τοιοῦτο στοιχεῖον ἢ μέρος τούτου ἤθελε παύσει ὁριστικῶς νὰ χρησιμοποιῆται διὰ τοὺς σκοποὺς τῆς ὑπὸ τοῦ προσώπου τούτου ἀσκουμένης ἐμπορικῆς ἢ βιομηχανικῆς ἐπιχειρήσεως, ἐπιτηδεύματος ἢ βιοτεχνίας, ἐλευθερίου ἢ ἄλλου ἐπαγγέλματος, ἢ μισθωτῆς ὑπηρεσίας ἐνῷ ἐξακολουθῇ νὰ ἀνήκῃ εἰσέτι εἰς τὸ πρόσωπον τὸ ἀσκοῦν τὴν ἐμπορικὴν ἢ βιομηχανικὴν ἐπιχείρησιν, ἐπιτήδευμα ἢ βιοτεχνίαν, τὸ ἐλευθέριον ἢ ἄλλο τι ἐπάγγελμα, ἢ τὴν μισθωτὴν ὑπηρεσίαν.

(γ) ἡ ἀσκουμένη ἐμπορικὴ ἢ βιομηχανικὴ ἐπιχείρησις, ἐπιτήδευμα ἢ βιοτεχνία, τὸ ἐλευθέριον ἢ ἄλλο ἐπάγγελμα ἢ ἡ μισθωτὴ ὑπηρεσία ἐτερματίσθη ὁριστικῶς καὶ μονίμως, τοῦ τοιούτου στοιχείου μὴ παύσαντος προηγουμένως νὰ ἀνήκῃ εἰς τὸ πρόσωπον τὸ ἀσκοῦν τὴν ἐμπορικὴν ἢ βιομηχανικὴν ἐπιχείρησιν, ἐπιτήδευμα ἢ βιοτεχνίαν, ἐλευθέριον ἢ ἄλλο τι ἐπάγγελμα ἢ μισθωτὴν ὑπηρεσίαν,

τὸ ὑπόχρεων εἰς φορολογίαν πρόσωπον θὰ ὑποβάλῃ εἰς τὸν Ἔφορον κατὰ τὴν διάρκειαν τοῦ φορολογικοῦ ἔτους, ὁμοῦ μετὰ τῆς φορολογικῆς αὐτοῦ δηλώσεως, κατάστασιν (κατωτέρω ἀναφερομένην ὡς 'ἐξισωτικὴ κατάστασις') ἀναφορικῶς πρὸς τὸ στοιχεῖον παγίου ἐνεργητικοῦ, περιέχουσαν τὰ κατωτέρω στοιχεῖα—

(ι) τὸ ποσὸν τῆς διὰ τὴν κτῆσιν τούτου γενομένης κεφαλαιουχικῆς δαπάνης.

(ιι) τὸ σύνολον τοῦ ποσοῦ τῆς ὑποτιμήσεως ἣν τὸ τοιοῦτο στοιχεῖον ὑπέστη ἀφ' ἧς τοῦτο ἠγοράσθη ὑπὸ μορφὴν φθορᾶς λόγῳ χρήσεως καὶ χρόνου, περιλαμβανομένου καὶ τοῦ συνολικοῦ ποσοῦ τῶν ἐκπτώσεων αἵτινες ἐχορηγήθησαν ἤδη δυνάμει τῶν διατάξεων τοῦ παρόντος ἄρθρου:

Νοεῖται ὅτι, ἐν ᾗ περιπτώσει τὸ τοιοῦτο στοιχεῖον παγίου ἐνεργητικοῦ ἐκτήθη κατὰ ἢ μετὰ τὴν 1ην Ἰανουαρίου, 1954, διὰ νὰ ἐξευρεθῇ τὸ συνολικὸν ποσὸν τῶν ἤδη χορηγη-

θεισῶν ἐκπτώσεων, αἱ τυχὸν χορηγηθεῖσαι ἐκπτώσεις δυνάμει τῶν παραγράφων (β) καὶ (γ) τοῦ ἐδαφίου (2), δὲν θὰ λαμβάνωνται ὑπ' ὄψιν· καὶ

(iii) τὸ ποσὸν τὸ ἀντιπροσωπεῦον τὸ τίμημα πωλήσεως ἢ καταβολὴν ἀσφαλισθέντος ποσοῦ ἢ ἄλλης τινὸς ἀποζημιώσεως ἢ τὸ κατάλοιπον τῆς ἀξίας τοῦ τοιούτου κεφαλαιουχικοῦ στοιχείου:

Νοεῖται ὅτι ἡ τῇ πρωτοβουλίᾳ ἢ ὁδηγίᾳ τοῦ κυρίου κατεδάφισις κτιρίου τινὸς δὲν θὰ συνιστᾷ λόγον ὑποβολῆς ἐξισωτικῆς καταστάσεως ἐὰν αὕτη ἐγένετο πρὸ τῆς παρόδου πέντε ἐτῶν ἀφ' ἧς τὸ τοιοῦτο στοιχεῖον ἐκτήθη.

(4) Πρὸς ἐξεύρεσιν τοῦ φορολογητέου εἰσοδήματος προσώπου ὑποχρέου δυνάμει τοῦ ἐδαφίου (3) ὅπως ὑποβάλῃ εἰς τὸν Ἔφορον ἐξισωτικὴν κατάστασιν, ἀφαίρεσις (ἐν τοῖς κατωτέρω ἀναφερομένη ὡς 'ἐξισωτικὴ ἀφαίρεσις') θὰ ἐπιτρέπηται ἢ, ἀναλόγως τῆς περιπτώσεως, πρόσθεσις (ἐν τοῖς κατωτέρω ἀναφερομένη ὡς 'ἐξισωτικὴ πρόσθεσις') θὰ γίνηται, τῆς τοιαύτης ἐξισωτικῆς ἀφαιρέσεως ἢ προσθέσεως ὑπολογιζομένης ὡς ἀκολούθως βάσει τῶν στοιχείων τῶν ἐμπεριεχομένων ἐν τῇ ἐξισωτικῇ καταστάσει ἢ καταστάσεσι ταῖς ὑποβαλλομέναις ὑπὸ τοῦ ὑποχρέου εἰς φόρον προσώπου ἀναφορικῶς πρὸς τὸ ἔτος τὸ ἀμέσως προηγούμενον τοῦ φορολογικοῦ ἔτους ἢ, εἰς τὴν περίπτωσιν μισθωτῶν ὑπηρεσιῶν, ἀναφορικῶς πρὸς τὸ φορολογικὸν ἔτος—

(α) τὸ ποσὸν τῆς ἐξισωτικῆς ἀφαιρέσεως θὰ εἶναι τὸ ποσὸν δι' οὗ τὸ ἐν τῇ ἐξισωτικῇ καταστάσει στοιχεῖον (i) ὑπερβαίνει τὸ ἄθροισμα τῶν στοιχείων (ii) καὶ (iii) τῆς εἰρημένης καταστάσεως·

(β) τὸ ποσὸν τῆς ἐξισωτικῆς προσθέσεως θὰ εἶναι τὸ ποσὸν δι' οὗ τὸ ἄθροισμα τῶν ἐν τῇ ἐξισωτικῇ καταστάσει στοιχείων (ii) καὶ (iii) ὑπερβαίνει τὸ στοιχεῖον (i) τῆς εἰρημένης καταστάσεως:

Νοεῖται ὅτι ἐν οὐδεμιᾷ περιπτώσει τὸ ποσὸν τῆς ἐξισωτικῆς προσθέσεως θὰ ὑπερβαίνῃ τὸ σύνολον τῶν ἐκπτώσεων τῶν ἤδη χορηγηθεισῶν δυνάμει τῶν διατάξεων τοῦ παρόντος ἄρθρου καὶ περιλαμβανομένων ἐν τῷ ποσῷ τοῦ στοιχείου (ii) τῆς ἐξισωτικῆς καταστάσεως." ).

The only amendment on section 12(3) and (4) after 1976, is

an amendment effected by Law 40/79, whereby the words "ἐν τῷ ἔτει τῷ ἀμέσως..... ὑπηρεσιῶν" ("in the year immediately ..... employment") have been deleted which, amendment, in any event, has no material effect in the present case.

Comparing the two texts, a difference is noticed in the wording between the Greek and the English text in section 12(3)(b) and 12(3)(c). In the Greek text which is the official text, we have, under section 12(3)(b) the word "ὁριστικῶς" and under section 12(3)(c) the words "ὁριστικῶς καὶ μονίμως", whereas, in the English text we have in both these sections the word "permanently".

Counsel for applicants submitted that the words "ὁριστικῶς" appearing in sub-section 3(b) and "ὁριστικῶς καὶ μονίμως" appearing in sub-section 3(c) of section 12, have the same meaning in both sub-sections as the English word "permanently" which appears in the English text in both sub-sections, and argued his case on the construction of the word "permanently" appearing in the English text. He referred to the definition of the word "permanent" as given in the Shorter Oxford Dictionary and Black's Law Dictionary and invited the Court to construe such word as not meaning perpetually. He submitted that temporary inavoidability brings about impossibility and he made reference, in this respect, to Pollock and Mulla, Indian Contract and Specific Relief Act, 9th ed., page 409 where it deals with the frustration of contracts by supervening impossibility. He also invited the Court to take judicial notice of the following facts:

(a) That these properties have been under Turkish occupation since 1974.

(b) That the Turkish occupied area is inaccessible to the Greek owners of the properties.

(c) That such area is inaccessible to the security forces of the Republic and the Government officials generally and nobody can say whether the houses are still standing and the irrigation system is still working.

He submitted that by taking into consideration these facts, the Court could reach the conclusion that the applicants have been permanently deprived of the use of such properties.

Counsel for the respondents, on the other hand, argued that the words appearing in the Greek text are "ὁριστικῶς" (in s. 12(3)(b)) and "ὁριστικῶς καὶ μονίμως" (in section 12(3)(c)) and that such words should be given their ordinary meaning. He referred to the definition of the word "ὁριστικῶς" as given in the Greek-English Dictionary of Petrovithi and the Greek Dictionary of Proias, Vol. 2, and submitted that the applicants have failed to prove that there was a cessation of the use of the asset for the purpose of section 12(3)(b). In dealing with section 12(3)(c), he argued that under this section, in addition to the word "ὁριστικῶς" the legislator has included the word "μονίμως" as well. He gave the equivalent in English of "oristikos" as "definitely" and "monimos" as "permanently" and as to the definition of the word "permanently" he made reference to the word as defined in the Strout's Judicial Dictionary and he concluded by submitting that the applicants have failed to prove that their properties have been lost altogether and in fact they have never alleged so in the present case.

On the question of judicial notice of facts within the knowledge of the Court there is authority in *The Attorney-General of the Republic* v. *Mustafa Ibrahim and others*, 1964 C.L.R., 195 in which Vassiliades, J. (as he then was) had this to say at p. 201:

> "As the subject matter of this case, however, is still *sub judice*, I must avoid going further into the factual part of the case, excepting so far as it is necessary for determining the legal issues under consideration in this appeal. I shall therefore take the factual position from the existing record and from what I think I can take judicial notice of, subject to proof at the trial ....."

And at pp. 202 and 203:

> "Whether these assumed conditions constitute present reality in the Republic of Cyprus, may, for the purposes of this case, remain a matter of proof; but they are conditions material in considering the legal issues arising in the appeal. And although I am inclined to think, that having lived in Cyprus during this period, I can take judicial notice of the existence of such conditions, as suggested by the Attorney-General, I prefer to act upon them as assumptions, in view of the pending trial."

I, therefore, find that having lived in Cyprus at all material times related to the present recourse, I can take judicial notice of the facts mentioned by both counsel concerning the political situation in Cyprus and for the purposes of this case, I take judicial notice of the following facts which form the background of the case:

In July, 1974, after an unsuccessful coup against the President of the Republic, Archbishop Makarios, Turkey, under the pretext of protecting the Turkish community, invaded Cyprus and 40 per cent of the total area of Cyprus including the North of Cyprus came under the occupation of the Turkish forces. The Greek population of such part had to seek refuge and protection in the free area which remained under the control of the Government of Cyprus and the majority of those who remained within the area occupied by the Turkish invading forces, were forced to move away, leaving behind their properties. At some later stage, the Turks who were residing in the South, were forced by their leaders to move to the North and they were transported to the Turkish occupied areas, leaving behind their properties situated in the South.

The properties owned by the applicants and which are the subject matter of this recourse, were situated in Kyrenia within the area now under the occupation of the Turkish forces and which have become inaccessible to their owners. After the Cyprus Government had taken repeatedly the matter of the Turkish invasion before the United Nations and the Security Council, resolutions were passed at the United Nations, recommending, amongst other matters, intercommunal talks for finding a solution of the problem. As a matter of fact, intercommunal talks started under the auspices of the Secretary-General of the United Nations which, however, came to a deadlock. On the 12th February, 1977 the then President of the Republic, Archbishop Makarios and the Leader of the Turkish community Mr. Raouf Denktash came together for negotiations on higher level at the UNFICYP Headquarters, Nicosia, in the presence of the United Nations Secretary-General Mr. Kurt Waldheim. An agreement was reached at such meeting that the intercommunal talks should be resumed and certain guide-lines were agreed for the interlocutors. Amongst the four principles set out in the said guide-lines, were the question of freedom of movement and freedom of settlement, the right of property and

other specific matters. As a result of the death of the President of the Republic, there was again a deadlock in the intercommunal talks. On the 19th May, 1979, a new meeting was arranged between the new President, Mr. Kyprianou and Mr. Raouf Denktash, in the presence, again, of Dr. Waldheim, the Secretary-General of the United Nations, when a new agreement was reached for the resumption of the intercommunal talks, on the basis of the ten-point agreement reached at that meeting. Amongst the points agreed were that the guide-lines agreed on the 12th February, 1977 between Archbishop Makarios and Mr. Denktash and also the United Nations resolutions relevant to the Cyprus question, will form the basis of the talks. Also, that there should be the respect for human rights and fundamental freedoms of all citizens of the Republic. Notwithstanding that efforts for the resumption of the intercommunal talks did not materialize, such efforts still continue on the initiative of the Secretary-General of the United Nations.

It is under these surrounding circumstances that the Court is invited to decide whether the applicants have been deprived of their properties at Kyrenia "ὁριστικῶς" (definitely) and/or "ὁριστικῶς καὶ μονίμως" (definitely and permanently).

Learned counsel for applicants in advancing his argument that temporary inavoidability brings about impossibility, sought to rely on the following extract from Pollock and Mulla, Indian Contract and Specific Relief Acts, 9th ed., from the topic dealing with frustration of contract by impossibility at p. 409:

> " 'Becomes impossible'.—The Indian decisions merely illustrate what amounts to supervening impossibility or illegality within the meaning of the second paragraph.
>
> According to one learned writer, impossibility may be caused in several ways:
>
> (a) Indefinitely impossible.
>
> (b) Destruction of subject-matter.
>
> (c) Unavailability.
>
> (d) Death or disability.
>
> (e) Method of performance impossible.
>
> (f) Statute.

(a) *Indefinitely impossible.*—The principle is that where supervening events not due to default of either party render the performance of a contract indefinitely impossible and there is no undertaking to be bound in any event, frustration ensues, even though the parties may have expressly provided for the case of a limited interruption. *The mere fact that a prohibition is placed on the use of the land during the period it remains in force is not sufficient to frustrate a contract.*"

It is clear from the last sentence of the above citation which I have underlined that the general principles as to frustration of contract, as referred to above, have no equal application to leases of land and land generally. Support is given to the underlined part, by reference in the foot notes at the same page, to the case of *Satyabrata Ghose* v. *Mugneeram Bangur* (1954) S.C.R. 310 which was a case of a contract of land where big area out of it was requisitioned. A number of other cases is also given in the same note where a prohibition placed on the use of the land during the period it remains in force, is not sufficient to frustrate the contract. Further, at page 413, the same authors in dealing with interest in land, state as follows:

"Indian Law.—A lease in Indian law is not a mere contract, but is a transfer of an interest in land and creates a right in rem. The Supreme Court has held that the doctrine of frustration is not applicable to leases. 'Where the property leased is not destroyed or substantially and permanently unfit the lessee cannot avoid the lease because he does not or is unable to use the land for purposes for which it is let to him'. Rights of parties do not, after the lease is granted, rest in contract ..... Section 4 of the Transfer of Property Act does not enact that the provisions of the Contract Act are to be read into the Transfer of Property Act. There is a clear distinction between a completed conveyance and an executory contract and events which discharge a contract do not invalidate a concluded transfer. Said Shah J. in the *Dada Siba* case:

'By its express terms s. 56 of the Contract Act does not apply to cases in which there is a completed transfer. The second paragraph of s. 56 ..... has a limited application to covenants under a lease. A covenant

under a lease to do an act, which after the contract is made becomes impossible or by reason of some event which the promisor could not prevent unlawful, becomes void when the act becomes impossible or unlawful. But on that account the transfer of property resulting from the lease granted by the lessor to the lessee is not declared void' ".

The above principles are similar to the corresponding ones under the English Law where a differentiation is drawn in the case of discharge of contract by frustration in the case of ordinary contracts and in contracts concerning land. Reading from the Ninth Edition of Cheshire and Fifoot on the Law of Contract at pp. 555, 556, the following are stated:

"A controversial question that is still undecided by the House of Lords is whether the doctrine of frustration can be applied to a case of land. If, for instance, land which has been let for building purposes for 99 years is, within five years from the beginning of the tenancy, completely submerged in the sea or zoned as a permanent open space, can it be said that the fundamental purpose of the contract has been frustrated and that the term itself must automatically cease?

It is, indeed, well settled by a number of decisions that if, during the continuance of the lease, the premises are requisitioned by the Government or destroyed by fire, or by enemy action, the tenant remains liable on his covenants to pay rent and to repair the property. But these decisions, which assume that individual covenants by a landlord or tenant are absolute, do not preclude the possibility that an event may be regarded as frustrating the fundamental purpose of the contract and, therefore, as terminating the lease altogether. The view that has so far prevailed, at least in the lower Courts, is that leases are outside the doctrine of frustration. This is based on the fact that a lease creates not merely a contract but also an estate. Thus in *London and Northern Estates Co.* v. *Schlesinger* [1916] 1 K.B. 20, it was held that the lease of a flat was not terminated by the fact that the tenant had become an alien enemy and was therefore prohibited from residing on the premises. LUSH, J., said:

'It is not correct to speak of this tenancy agreement

as a contract and nothing more. A term of years was created by it and vested in the appellant, and I can see no reason for saying that, because this order disqualified him from personally residing in the flat, it affected the chattel interest which was vested in him by virtue of the agreement.'

A contract is frustrated when the venture cannot be carried out, but in the case of a lease the venture contemplated by the parties is the transfer of an estate to the tenant. The contractual obligations are but incidental to this transfer, and, even if one or more of them ceased to bind the tenant because of some supervening cause, this does not affect the continuance of the estate. The foundation of the agreement is the creation of the estate, and so long as the foundation exists there is no frustration. This last way of stating the law has been stigmatized by LORD SIMON as coming perilously near to arguing in a circle, for why should frustration be excluded merely because the foundation happens to be the transfer of an estate? In his view there is no difficulty in applying the doctrine of frustration, at any rate to a building lease. The object in such a case is to erect buildings on the site for the benefit of the lessor and lessee, and if for instance the site is zoned for ever as an open space, it could reasonably be said that the fundamental purpose of the transaction had been defeated. LORD WRIGHT has taken the same view: the doctrine is modern and flexible and ought not to be restricted by an arbitrary formula.

These opinions were expressed in *Cricklewood Property and Investment Trust, Ltd.* v. *Leighton's Investment Trust, Ltd.*

In May, 1936, a building lease was made to the lessees for a term of ninety-nine years. Before any buildings had been erected the war of 1939 broke out and restrictions imposed by the Government made it impossible for the lessees to erect the shops that they had covenanted to erect. In an action brought against them for the recovery of rent they pleaded that the lease was frustrated.

It was held unanimously by the House of Lords that the doctrine of frustration, even if it were capable of application

to a lease, did not apply in the instant circumstances. The compulsory suspension of building did not strike at the root of the transaction, for when it was imposed the lease still had more than ninety years to run, and therefore the interruption in performance was likely to last only for a small fraction of the term."

It is clear from the above that the argument of learned counsel for applicants that "indefinite impossibility" discharges a liability under a contract has no application in contracts of lease of land and land generally and in any case no application in the circumstances of the present case.

I come now to the various definitions of the word "permanent" referred to by counsel for the applicants of which the Court was invited to take cognizance in the present case.

In the Black's Law Dictionary, Revised, 4th ed. 1968, the word "permanent" is explained as "Fixed, continuing, lasting, stable, enduring, abiding, not subject to change, Generally opposed in law to 'temporary' but not always meaning 'perpetual'."

In the Shorter Oxford Dictionary the word "permanent" is defined as "Lasting or designed to last indefinitely without change; enduring, persistent; opp. to temporary. Continuing steadfast in a course. That which endures or persists".

As I have already mentioned earlier in this judgment, counsel for applicants based his argument on the construction of the word "permanently" which appears in the translation in English of the word "μονίμως" in section 12(3)(b) and "ὁριστικῶς καὶ μονίμως" in section 12(3)(c) of the Greek text of the Law which is the authoritative text. It is for this reason that counsel for respondents drew the attention of the Court to the definition of the Greek words "ὁριστικῶς" and "ὁριστικῶς καὶ μονίμως" and based his argument on the construction of the word "ὁριστικῶς" which appears in both sections. He referred to the following definitions of the word "ὁριστικὸς".

In the Greek Dictionary of Proias, "ὁριστικὸς" is defined as "ἀμετάβλητος, τελειωτικὸς, ὁριστικὴ ἀπόφασις".

And in the Greek–English Dictionary of Petrovithi the meaning is given as "definite, definitive, conclusive, positive".

In addition to the above definitions referred to by counsel,

one may find numerous similar definitions in other dictionaries. I consider it sufficient for the purposes of the present case, to add the following definitions:

In the Greek Dictionary of Proias, the word "μόνιμος" is defined as: "Ὁ σταθερὸς, ὁ μένων πάντοτε ἢ ἐπὶ μακρὸν ἐν τῷ αὐτῷ τόπῳ ἢ τῇ αὐτῇ καταστάσει, ὁ οὐχὶ προσωρινὸς".

And in the "Big Lexicon of the Greek Language" (Μέγα Λεξικὸν τῆς Ἑλληνικῆς Γλώσσης) by Liddell and Scott the word "μόνιμος" is defined as: "Κοινότερον ἐπὶ πραγμάτων καταστάσεων καὶ τῶν ὁμοίων, σταθερὸς, διαμένων ἀμετάβλητος. 'Μονιμότης' τὸ μονίμως διαμένων".

In Black's Law Dictionary (Revised Fourth Edition) the word "definite" is defined as "fixed, determined, defined, bounded" and the word "definitive" as "that which finally and completely ends and settles a controversy."

In Webster's Dictionary the word "definite" is defined as "A thing defined or determined." And "definitely" as "A definite thing."

In the Universal Dictionary the word "definite" is defined as "Clearly defined, precise, having exact, well-appointed: to make an appointment for a definite time and place; having a clear, precise meaning, unambiguous, unqualified, positive: a definite answer, statement opinion". And the word "Definitely" as meaning "In a definite manner: clearly, plainly, unambiguously".

With all the above in mind and having taken into consideration all surrounding circumstances of the present case as already mentioned in my judgment, I have come to the conclusion that applicants failed to satisfy the Court that the assets of the Company have "definitely" (ὁριστικῶς) ceased to be used for the purpose of their trade as envisaged by section 12(3)(b) of the Income Tax Laws or that the trade or business of the applicants has "definitely and permanently" (ὁριστικῶς καὶ μονίμως) discontinued as envisaged by section 12(3)(c) of the Income Tax Laws to enable them to claim the balancing deduction which they have been refused by the Commissioner of Income Tax. The mere temporary inaccessibility by the

applicants of their immovable properties in Kyrenia, which are still registered in their name, due to enemy occupation and for so long as such occupation continues, cannot, in the present circumstances, be considered as a "definite" ceasure of the use of their properties for the purpose of their trade or business or that their business has "definitely and permanently" discontinued. This is a temporary situation which resulted by enemy actions which though protracted, cannot be considered as definite and permanent.

In the result, I find that the Commissioner of Income Tax rightly refused to accept a balancing deduction in respect of the subject matter properties and in consequence the present recourse is dismissed.

Taking into consideration the nature of the case, I make no order for costs.

*Application dismissed. No order as to costs.*