

1983 December 2

[PICKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PLAYBOY BOUTIQUES LIMITED,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
COMMISSIONER OF INCOME TAX,

*Respondent.*

(Case No. 138/83).

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*Income tax—Deductible expenditure—Building—Expenditure for acquisition of, deductible only when building completed by 31st December, 1979—Section 12(2)(d) of the Income Tax Laws, 1961—1979.*

5       The sole issue in this recourse was whether capital incurred for the acquisition of a building the construction of which began prior to 31.12.1977 but not completed by 31.12.1979, was deductible for purposes of income tax and levying a special contribution under the provisions of the Income Tax Laws, 1961–1979 and  
10       Special Contribution (Temporary Provision) Laws, 1978–1982, respectively.

The answer depended on the interpretation of the provisions of s.12(2)(d)\* of the Income Tax Law as amended by s.2(c) of Law 8/79.

15       *Held*, that no exemption could be claimed in respect of the acquisition of a building for purposes of income tax and levying a special contribution unless the building was completed by 31.12.1979.

*Application dismissed.*

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\* Section 12(2)(d) is quoted at pp. 1186-1187 post.

Cases referred to:

- Stylianou v. Papacleovoulou* (1982) 1 C.L.R. 542;
- Odysseos v. Pieris Estates and Others* (1982) 1 C.L.R. 557;
- Markidou v. Kiliaris and Another* (1983) 1 C.L.R. 392.

**Recourse.**

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Recourse against the refusal of the respondent to exempt capital incurred for the acquisition of a building the construction of which began prior to 31.12.1977 and not completed by 31.12.1979 for purposes of income tax and levying a special contribution.

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- G. Tornaritis*, for applicants.
- M. Photiou*, for respondent.

*Cur. adv. vult.*

PIKIS J. read the following judgment. Stripped of its trimmings, this recourse raises only one question of law that requires an answer: Whether capital incurred for the acquisition of a building the construction of which began prior to 21.12.1977 but not completed by 31.12.1979, is deductible for purposes of income tax and levying a special contribution under the provisions of the Income Tax Laws, 1961–1979 and Special Contribution (Temporary Provision) Laws, 1978–1982, respectively. The answer depends on the interpretation of the provisions of s.12(2)(d) of the income Tax Law as amended by s.2(c) of Law 8/79. It reads:

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“Section 12 .....

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(2) In ascertaining the chargeable income of any person engaged in a trade, business, profession, vocation or employment, there shall be allowed—

(a) .....

(b) .....

(c) .....

(d) notwithstanding the provisions of para. (a) and subject to the provisions of paras. (b) and (c), a deduction equal to the amount of the expenditure incurred—

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(i) in cases where, from the 1st January, 1975 to

5 the 31st December, 1977, expenditure was incurred by any business for the acquisition of property consisting of new plant and machinery or for the construction, reconstruction, extension or adaptation of property consisting of buildings:

10 Provided that where the Commissioner is satisfied that such acquisition or construction has commenced within the above period, but has not been completed, such expenditure shall be allowed if incurred until the 31st December, 1979;

15 The proviso to s.12(2)(d) which forms an integral part of the enactment, clearly establishes that a deduction for the construction of a building is only allowable where the building was completed by 31.12.1979. The applicants contend in these proceedings that the assessment by the respondent of their chargeable income for the years 1979 and 1980 is erroneous because of failure to give effect to the aforementioned provisions of the law and, as such, liable to be set aside. The same error crept  
20 in the assessment of the special contribution levied at the quarterly intervals envisaged by the law during the same years. The respondent opposed the application, maintaining they correctly applied the law. The facts relevant to the dispute are narrated below.

25 The appellants, a company trading in readymade clothes, contracted to buy from Pieris Estates Limited, apparently a construction company, a shop and an apartment at a block of flats named "PROKIMEA", situate in Limassol, for a sum of £28,500.-. The terms of the agreement were embodied in a  
30 written contract executed on 26.5.1978. The contract provided payment would be made in three equal instalments, as follows:-

- (a) £9,500.- on 30.5.1978
- (b) £9,500.- upon completion of the building and,
- (c) the balance upon registration of the property in the  
35 name of the applicants.

The agreement stipulated that the building would be completed before the end of 1979. Notwithstanding this stipulation, the building was not completed by the end of 1979.

Also is common ground that applicants paid only the first instalment. Nevertheless, they claimed to be entitled to deduct from their chargeable income for the year 1979 and 1980 the sums owing to Pieris Estates Limited, under the aforementioned agreement, because the respondent allegedly represented to them—this is the essence of their arguments raised in Court—5 at the time of their agreement to buy the properties that exemption could be claimed from income tax. No representations were ever, as admitted, made to applicants directly by the respondent or his subordinates. The representation upon 10 which they allegedly relied, was embodied in a letter addressed to Pieris Estates Limited, of 6.2.1978, affirming that construction of the building in question began prior to 31.12.1977 (Appendix 1 to the address of applicants). The respondent denies ever making any representations to the applicants or to Pieris Estates 15 Limited, other than affirming that the construction of the building in question commenced prior to 31.12.1977. Moreover, and in order to disabuse Pieris Estates Limited of any erroneous impressions they might gather from the aforementioned letter of 6.2.1978, they addressed to them a second 20 letter shortly afterwards, on 20.2.1978, making it abundantly clear that no exemption could be claimed in respect of the construction of a building, unless completed by 31.12.1979. All other differences between the parties were resolved, as it 25 emerges from the file of the case, in a meeting between the auditors of the applicants and a representative of the respondent.

The combined effect of the aforementioned two letters could not have left Pieris Estates Limited or anyone for that matter in any doubt that unless the building was completed before 30 the end of 1979 no exemption could be claimed under the relevant provisions of the law. To charge the respondent with misrepresenting the position at law, is totally unwarranted. At the time that applicants contracted to purchase the property, the vendors could not claim to have been misled in any way 35 by the respondent and provided they communicated the position as explained by the Commissioner to the applicants, they could have been in no doubt themselves either. Consequently, they could have no conceivable complaint against the respondent. I consider it pertinent to put on record lest I 40 am misunderstood that, in my view, the letter of 6.2.1978 could not have misled Pieris Estates Limited as to the state of the

law either. It merely asserted what the law laid down that, in order to be eligible for exemption, the first prerequisite was that construction of the building should have commenced prior to 31.12.1977.

5 Another fact founding, according to respondent, estoppel, stems from acceptance by the respondent of the first instalment paid for the acquisition of the premises under construction, as deductible expenditure for the computation of applicants' chargeable income for the year 1978. Evidently, it was accepted  
10 in anticipation of the building being completed, as agreed between vendor and purchaser, before 31.12.1979. I fail to see how the respondent is estopped, because of a concession apparently made to the applicants for the year 1978, from applying the law to the true facts ascertained after an inquiry. Mr.  
15 Photiou brought to my attention that an inquiry, whether the building had been completed before the relevant date, became necessary, because of, what he termed, false allegations made by applicants in subsequent years, to the effect that the building had been completed within the period envisaged by  
20 the law. I am not in these proceedings required to probe into the alleged falsity of the allegations of the applicants. I am content to note that the building, as acknowledged by all, was not completed by 31.12.1979.

In my judgment, the recourse of the applicants is totally  
25 groundless. I consider it unnecessary to debate the application of estoppel in administrative law and its relationship, if any, to estoppel under the doctrines of equity\* or the obligation of the Administration to show good faith in its dealings with the citizen. Any such discussion, in the circumstances  
30 of this case, would be an academic exercise on which I shall not embark.

The recourse is dismissed. Let there be no order as to costs.

*Recourse dismissed with no order  
as to costs.*

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\* (See, *Stylianou v. Papacleoulou* (1982) 1 C.L.R. 542;  
*Odysseos v. Pieris Estates And Others* (1982) 1 C.L.R. 557;  
*Markidou v. Kiliaris And Another* (1983) 1 C.L.R. 392).