

1983 November 12

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ATHANASIOS MAKRIDES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 327/82).

*Income tax—Residence—Interest paid under loan for acquisition of
—Relief from Income Tax—Concessionary Policy of Income
Tax Authorities—Who may claim relief up to the maximum
amount permitted thereunder.*

5 The applicant borrowed a sum of £11,168 in order to finance the
building of a house intended as a residence for his daughter who
was engaged to be married. The house was built on land belonging
to his wife, who in due course conveyed the land with all that
was erected upon it, to their daughter. The applicant claimed
10 relief from income tax for the interest paid for each one of the
three years of assessment, 1978–1980 upto the maximum of
£750 permitted under a concessionary policy* of the Income
Tax Authorities, respecting interest payable under a loan for
the acquisition of a residence. The respondent Commissioner
15 allowed relief only in part, taking the view that under the provi-
sions of the relevant arrangement applicant was only entitled
to deduct from his taxable income for interest paid, a sum of
£100. Hence this recourse.

20 *Held*, that on any view of the provisions of the Concessionary
Policy only the spouse who owned the land on which the build-
ing was erected could claim relief upto an amount of £750.—,

* The Concessionary policy is quoted at pp. 1383–1384 post.

quite irrespective of who was liable to pay the interest for the loan used for the building of the house; accordingly the recourse should fail.

Application dismissed.

Cases referred to:

Georghiadis v. Republic (1982) 3 C.L.R. 659;

HadjiYianni v. Republic (1966) 3 C.L.R. 338;

Kittides v. Republic (1973) 3 C.L.R. 123;

I.R.C. v. Federation of Self-Employed [1981] 2 All E.R. 93.

Recourse.

Recourse against the decision of the respondents to grant in specified circumstances relief from income tax for interest paid for the acquisition of a residence.

V. Erotocritou, for the applicant.

M. Photiou, for respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The construction of the provisions of a policy decision of the Income Tax authorities to grant in specified circumstances relief from income tax for interest paid for the acquisition of a residence, a concessionary arrangement styled "interest on loans for non-trading purposes", and its application to the facts of this case, are the only issues calling for consideration.

The parties are in agreement on every other issue, including the facts which, in the contention of the applicant, justified the extension to the applicant of the highest concession permitted thereunder, viz. £750.-.

The Facts of the Case:

The applicant borrowed a sum of £11,168.- in order to finance the building of a house intended as a residence for his daughter engaged to be married. The house was built on land belonging to his wife. Evidently, the couple pulled their resources together to set up their daughter in life. In due course, the wife of applicant conveyed the land with all that was erected upon it, to their daughter. The applicant claimed relief from income tax for the interest paid for each one of the three years of assessment under consideration, 1978-1980, upto the maximum of

£750.— permitted under the aforementioned concessionary policy of the Income Tax authorities, respecting interest payable under a loan for the acquisition of a residence. His spouse is a housewife with no income of her own. She is not a tax-
5 payer. The Commissioner allowed relief only in part, taking the view that under the provisions of the relevant arrangement applicant was only entitled to deduct from his taxable income for interest paid, a sum of £100.—.

Counsel for the respondents in his written address submitted
10 the decision of the Commissioner was inevitable on a proper construction of the provisions of the concessionary arrangement: therefore, he invited the Court to dismiss the recourse as totally ill founded. In his view, the applicant singularly failed to establish either that the decision was not reasonably open to the
15 Commissioner, or discharge the burden cast upon a tax-payer to justify exemption from liability to pay tax under the general provisions of the law. These propositions are well founded in administrative law* and always pertinent to administrative review, subject to this qualification: A duty is cast upon the
20 Income Tax authorities to ascertain the true legal nature of the transaction, a prerequisite for the valid exercise of their powers —*W. T. Ramsay Limited v. IRC* [1981] 1 All E.R. 865. This duty they discharged in the instant case, by correctly ascertaining the facts and evaluating them in their proper context. One
25 issue posed for consideration, whether the applicant could deduct from his taxable income a sum of £750.—, notwithstanding that he was not the owner of the land on which the house was built.

The relevant provisions of the concessionary arrangement
30 provided:—

“(a) *Residences*

- (i) The purchase, erection, improvement or repair of a building used as residence.
- (ii) The purchase, erection, improvement or repair of a
35 building gifted to be used as residence of a married child.

* *Georghiades v. Republic* (1982) 3 C.L.R. 659; *Andreas Hadjiyianni v. The Republic of Cyprus through the Commissioner of Income Tax* (1966) 3 C.L.R. 338; and *Plutis Kittides v. Republic (Minister of Finance and Another)* (1973) 3 C.L.R. 123.

Provided the amount allowed under this heading will not exceed in aggregate the sum of £750 in any one year. Such interest deduction is allowed to the person who owns the asset. In cases of husband and wife the interest deduction is given to the spouse who is the owner irrespective of which of the two spouses borrowed the money for such purpose. Where the owner of the residence has no income or has such income from which the interest deduction cannot be relieved in full, the other spouse may be allowed to treat any interest or balance of unrelieved interest, on money borrowed as falling under s.8 paragraph (e).

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- (b)
- (c)
- (d)
- (e) Any other purpose, provided the amount of interest involved does not exceed £100. If it exceeds £100 an amount of only £100 may be allowed.

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On any view of the aforesaid provisions, only the spouse who owned the land on which the building was erected could claim relief upto an amount of £750.-, quite irrespective of who was liable to pay the interest for the loan used for the building of the house.

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In his reply to the address of respondents, counsel for the applicant as much as admitted that this is the only possible construction of the aforementioned document circulated to all income tax authorities. Nevertheless, he invited the Court to grant the relief claimed by his client on grounds of equality and fairness. Reference was made in his address to unspecified cases where relief was granted from income tax in similar circumstances. Neither in the body of the application or anywhere else are these cases specified, nor has the Court been apprised of the circumstances surrounding them. Therefore, no cognizance can be taken of them. Moreover, it is settled beyond question that a case of inequality cannot be established by reference to decisions taken outside the ambit of the law, paralegal if I can use that expression. The submission that it

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is inherently fair that the concession ought to be allowed, is no reason as such for upholding it. Nor can it make any difference to the case of the applicant that the Income Tax Law was subsequently amended in a way making a more liberal allowance in this area (section 6, Income Tax (Amendment) Law—24/81). Lastly, it is doubtful, in the light of the decision in *IRC v. Federation of Self-Employed* [1981] 2 All E.R. 93, whether it is at all possible to probe in these proceedings the tax affairs of any other citizen. The House of Lords decided that the imposition of income tax carries an element of confidentiality between the Revenue and the tax-payer, disregard of which may work detriment to the public.

For all the above reasons, the application must be dismissed. I wish to emphasize that the legitimacy of the concessionary arrangement was not probed in these proceedings. It was not an issue before me. To the extent that the decision in *Federation of Self-Employed* may be relevant in Cyprus and, I express no opinion on the subject, it suggests that a concessionary policy may be evolved, provided it is not unlawful or ultra-vires the law.

The application is dismissed. There will be no order as to costs.

Application dismissed. No order as to costs.