

1984 July 27

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALECOS PANAYIOTOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,

2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 60/75).

Facts—Assessment of, by Administration—Judicial control—Principles applicable.

*Income tax—Assessment—Judicial Control—Principles applicable—
Taxpayer failing or neglecting to submit his income tax returns—
Effect.*

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This was a recourse against the decision of the respondent in respect of the income tax imposed on the applicant for the years of assessment 1966 to 1972. The only argument put forward by counsel for applicant in his written address, was that at all material times the applicant was residing in the United Kingdom and he was only visiting Cyprus occasionally on a temporary basis. On the other hand, counsel for the respondent submitted that the allegation of the applicant that he was not a resident of Cyprus, was unfounded because, in the first place, the said allegation has not been put forward before the respondent when his case was examined by him, but on the contrary, according to his own income tax returns submitted for the years 1965 to 1971, the applicant was a resident of Cyprus living with his wife in respect of whom he claimed an allowance. Moreover, he claimed tax allowances in respect of his two children who were studying at the time in the United Kingdom. It was, also, clear that applicant failed to submit to the respondent the relevant information despite the repeated reminders to that effect.

Held, that the administration's assessment of facts is not subject to judicial control by an administrative Court on a recourse for annulment; that a taxpayer that fails or neglects to submit the income tax returns takes upon himself the risk of having his assessable income arrived at by an inquiry to be made by the Commissioner and the determination and assessment of the tax by the Director; that it is well settled that in recourses against an assessment of income tax under Article 146 of the Constitution, this Court will not interfere with the sub judice decision of the Income Tax Authorities when it comes to the conclusion that such a decision was reasonably and properly open to them on the basis of the corrected facts and in the light of the correct application of the relevant legislation and principles of law; that the burden of proof to satisfy the Court that it should interfere with such a decision lies always on an applicant; that it is clear that in view of the facts that were before the respondent Commissioner at the time and in the light of the relevant legislation, it was reasonably open to him to reach the conclusions he did in respect of the applicant's taxable income and it cannot be said that the assessments complained of were arbitrary or that the said assessments were imposed contrary to the Income Tax Laws, 1961 to 1973 or the Taxes (Quantifying and Recovery) Law No. 53 of 1963, as amended by Law 61 of 1969; that the applicant has failed to discharge the burden of satisfying this Court that the case in hand is a proper case to interfere with the sub judice decision; accordingly the recourse must fail.

Application dismissed.

Cases referred to:

Nikou v. Republic (1983) 3 C.L.R. 1113 at p. 1117;

Republic v. Georghiades (1972) 3 C.L.R. 594 at pp. 692-695.

Recourse.

Recourse against the income tax assessment raised on applicant for the years of assessment 1966-1972.

N. Clerides, for the applicant.

A. Evangelou, Senior Counsel of the Republic with
M. Photiou, for the respondents.

Cur. adv. vult.

MALACHIOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the decision

of the respondent in respect of the income tax imposed on him for the years of assessment 1966 to 1972 is arbitrary and, therefore, null and void and of no legal effect whatsoever.

The relevant facts of the case are the following:

- 5 The applicant, who derives his income from a tourist agency business, was assessed by the Commissioner of Income Tax to pay income tax for the years 1970 and 1971 (years of income 1969 and 1970). As he objected to this assessment, a capital investigation was carried out by an income tax assessor, on
- 10 information and particulars given by him. The examination covered the period as from 30.9.64 to 27.1.72 and it revealed that the applicant was under-assessed. To complete the investigation the applicant was asked to furnish further information and particulars, as no agreement could be reached in respect of
- 15 his chargeable income. The applicant failed to produce the information and particulars asked for and the respondent Commissioner proceeded with raising of additional assessments for the years of assessment 1966, 1967, 1968, 1969, 1970 and 1971, giving to the applicant full explanation as to how he arrived at
- 20 the chargeable income by his letter dated 18th September, 1972. By this very same letter the respondent Commissioner was informing the applicant that if he did not agree with the additional assessments raised, he could file an objection, together with the following information and particulars:
- 25 (a) balance sheet of the income of "Alecoss Tours London Ltd" as on 31.12.70 or 31.12.71;
- (b) copy of the profit and loss account of the said company in respect of the same period;
- 30 (c) certificate of registration of the applicant's house in London as well as detailed statement of the price paid by him for the acquisition of the said house;
- (d) detailed statement of the rents collected by him from the letting of his house in London during the period as from 30.9.64 to 31.12.71.
- 35 As against the above assessments the applicant objected, through his advocate, by letter dated 26.10.72 and, at the same time, undertook to submit the information requested by the respondent Commissioner. However, despite the repeated

reminders by the respondent, the applicant failed to provide the required particulars. Finally, on 14.2.74, the respondent Commissioner informed the applicant that if he did not submit the information requested within one month, he would have no alternative but to determine his income on the basis of the available facts without further notice. 5

As the applicant again failed to reply, the respondent Commissioner wrote the following letter to the applicant dated 21.1.75:

“I refer to your objection to the tax assessments of your income for the years of assessment 1966 to 1972 (years of income 1965 to 1971) and I would inform you as follows: 10

(a) your assessments for the above years were mainly based on your signed statements of the 27th January, 1972, particulars of the balance sheet of your income for the aforesaid years were given to you in my letter of the same reference and dated 18th September, 1972; 15

(b) you did not supply the information and particulars requested in my aforesaid letter;

(c) the promise given by your advocate in his letter dated 26th October, 1972 that the said particulars would be submitted after your return from London and, in any event, not later than the end of January, 1973, was not kept; 20

(d) you failed to comply with the contents of my letter dated 14th February, 1974, by which you were requested to submit particulars in respect of your objection within one month from the date of my said letter. 25

Nevertheless, your case was re-examined and it transpired that your tax assessments for the same years are correct and as a result I have decided to confirm them.” 30

Notice of tax payable in respect of years of assessment 1966 to 1972, dated 25.2.75, were enclosed in the aforesaid letter.

This income and tax payable was determined as follows:

<i>Year of assessment</i>	<i>Amount</i>	<i>Tax Payable</i>	
1966	£4000.-	£915.800	
1967	£4000.-	£879.200	35

	1968	£4000.-	£871.700
	1969	£5000.-	£942.500
	1970	£5000.-	£767.000
	1971	£5000.-	£767.000
5	1972	£5000.-	£912.500

The applicant being dissatisfied with the above assessments, filed the present recourse, which is based on the following grounds of law:

- 10 1. That the assessments raised are arbitrary and do not correspond to the actual income of the applicant; and
2. That the sub judice decision is contrary to the provisions of the Income Tax Law of 1961 as well as the Taxes (Quantifying and Recovery) (Amendment) Law of 1963.

15 The only argument put forward by counsel for applicant in his written address, is that at all material times the applicant was residing in the United Kingdom and he was only visiting Cyprus occasionally on a temporary basis. He further argued that the fact that his son followed him to the United Kingdom since 1967 and his daughter in 1968 and, finally, his wife in July 1972, support the said allegation of his client. He also argued that 20 the acquisition of immovable property in the United Kingdom, the profits from his business there, etc., are not relevant to the assessment on his income tax in Cyprus as the money was earned through his business in England where he had already 25 paid income tax.

On the other hand, it has been submitted by counsel for the respondent that the allegation of the applicant that he was not a resident of Cyprus, is unfounded. In the first place, the said allegation has not been put forward before the respondent when 30 his case was examined by him, but, on the contrary, according to his own income tax returns submitted for the years 1965 to 1971, the applicant was a resident of Cyprus living with his wife in respect of whom he claimed an allowance. Moreover, he claimed tax allowances in respect of his two children who were 35 studying at the time in the United Kingdom.

Counsel for the respondent also submitted that the only reasonable inference from the statements made by the applicant

before the Commissioner is that he was at the material time a resident of Cyprus.

The legal principles governing the interference by an Administrative Court with the determination of the factual basis of an administrative act or decision, are well known and have been expounded in many decisions of this Court. In the recent case of *Achilleas Nikou v. The Republic* (1983) 3 C.L.R. 1113 at page 1117 the following is stated:

“There is ample authority with regard to the non reviewability of the determination on the merits in respect of which I dealt at length in the case of *The Republic, through The Public Service Commission v. Lefkos Georghiades* (1972) 3 C.L.R. 594, at pages 692-695. Suffice it to say that the administration’s assessments of facts is not subject to judicial control by an administrative Court on a recourse for annulment. (See Zacharopoulos ‘Digest of Caselaw’ (1935-1952), Vol. 1, at p. 41, para. 251 under the heading ‘Non-reviewability of the Determination on the Merits’ and the numerous decisions of the Greek Council of State for the years 1961-1963, Vol. ‘A’ (A-N) p. 77, which may be condensed as follows:

“The ground for annulment directed against the administration’s determination of the facts is rejected as unacceptable or, questioning such determination on the merits, since same is not proved to be the product of a misconception of the facts or in excess of the extreme limits of the discretionary powers of the administration. Moreover, the ground for annulment referring to the inefficiency and misconception of the reasoning of the act against which the recourse is directed and attacking the determination of the facts made by the administration without exceeding the extreme limits of its discretionary powers is rejected as unacceptable”.

Further, it must be borne in mind that the applicant has failed to submit to the respondent the relevant information despite the repeated reminders to that effect. On this point the following passage, which appears at page 1118 in the *Nikou* case, supra, is relevant:

“Needles to say that one should not lose sight of the fact that the applicant himself failed to submit at the appropriate time his returns of income which would inevitably contain matters that would have been within his exclusive knowledge and which could be duly investigated by the respondent Commissioner. A tax-payer that fails or neglects to submit the income tax returns takes upon himself the risk of having his assessable income arrived at by an inquiry, which in the present case could not but have been the best possible.

Moreover under section 13(3) of the Assessment and Collection of Taxes Law, 1978-1979, in cases where a person has not delivered a return and the Director is of the opinion that such person is liable to pay tax to the best of his judgment, the Director may determine the object of the tax and assess such person according to the nature and extent of his business.”

And, further down at page 1119 the following is stated:

“It is well settled that in recourses against an assessment of income-tax under Article 146 of the Constitution, this Court will not interfere with the sub judice decision of the Income-Tax Authorities when it comes to the conclusion that such a decision was reasonably and properly open to them on the basis of the corrected facts and in the light of the correct application of the relevant legislation and principles of law. The burden of proof to satisfy the Court that it should interfere with such a decision lying always on an applicant. (See *Rallis Makrides v. The Republic* (1967) 3 C.L.R. 147; *Clift v. The Republic* (1965) 3 C.L.R. 285; *Christides v. The Republic* (1966) 3 C.L.R. 732; *Coussoumides v. The Republic* (1966) 3 C.L.R. 1, adopted and followed in *Lilian Georghiades v. The Republic* (1980) 3 C.L.R. p. 525 at pp. 544-545, which latter case was approved on appeal by the Full Bench of this Court, its judgment reported under the same name in (1982) 3 C.L.R. p. 659.”

It is clear to me that in view of the facts that were before the respondent Commissioner at the time and in the light of the relevant legislation, it was reasonably open to him to reach the conclusions he did in respect of the applicant's taxable income and it cannot be said that the assessments complained of were

arbitrary or that the said assessments were imposed contrary to the Income Tax Laws, 1961 to 1973 or the Taxes (Quantifying and Recovery) Law No. 53 of 1963, as amended by Law 61 of 1969.

Finally, I must say that in the present case the applicant has failed to discharge the burden of satisfying this Court that the case in hand is a proper case to interfere with the sub judice decision complained of. 5

Therefore, this recourse fails and is hereby dismissed.

On the question of costs, I make no order. 10

Recourse dismissed. No order as to costs.