

1984 July 13

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS TRYFONOS,

*Applicant,*

v.

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

*Respondent.*

(Case No. 219/83).

*Income tax—Capital allowance—Deduction for—Discretionary power of Commissioner to reject unauthenticated claims for—Principles applicable—Section 51 of the Assessment and Collection of Taxes Law—Applicant failing to make a complete disclosure of his financial affairs—And raising a claim for deduction when confronted with prospect of paying income tax—Within discretion of Commissioner in exercise of his powers under the above section to reject the claim.*

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At the invitation of the respondent Commissioner the applicant submitted returns for income tax that disclosed no income. When the respondent Commissioner came to know that applicant was the joint owner of an excavator applicant put forward for the first time a claim for a capital allowance pursuant to the provisions of section 12 of the Income Tax Laws, 1961-1981. The Commissioner rejected his claim and hence this recourse.

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*Held*, that the discretionary power of the Commissioner, under section 51 of the Assessment and Collection of Taxes Law to reject unauthenticated claims for deduction, is a correlative of the duty under the law of the taxpayers to - (a) make a full disclosure of their income and assets, where necessary, and (b) the control they have over their financial affairs and peculiar amenity to substantiate their claims, as well as their obligation to keep proper records of their financial affairs; that since the applicant was less than forthcoming in making a complete

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disclosure of his financial affairs, and raised a claim for deduction only when confronted with the prospect of paying income tax it was within the discretion of the Commissioner, in exercise of his powers under s.51, to reject the claim for deduction; accordingly the recourse must fail.

*Application dismissed.*

Cases referred to:

*Rainbow v. Commissioner of Income Tax* (1984) 3 C.L.R. 846.

#### Recourse.

10 Recourse against the income tax assessment raised on applicant for the years of assessment 1979-1981.

*Chr. Triantafyllides*, for the applicant.

*M. Photiou*, for the respondent.

*Cur. adv. vult.*

15 PIKIS J. read the following judgment. The assessment to income tax of the applicant for assessment years 1979 - 1981, embodied in the decision communicated to him by letter dated 10.3.83, is challenged as vulnerable to be set aside, wholly or in part, on two grounds:-

20 (A) Failure to make proper provision by way of capital allowance for an excavator, and

(B) unwarranted imposition of a surcharge of 10% in the nature of a fine, acknowledged in the opposition to have been imposed by mistake.

25 To that extent, the recourse succeeds and that part of the decision concerning the surcharge is set aside.

There remains to decide the propriety of the refusal of the Commissioner to make allowance by way of deduction from the taxable income of applicant for investment in an excavator.

30 The decision was taken in the exercise of the discretionary powers of the Commissioner under s.51 of the Assessment and Collection of Taxes Law, empowering him to reject, at his discretion, claims for deductions not founded on reliable audited accounts. Like every discretionary power, it must be reasonably

35 exercised in the light of the facts and surrounding circumstances of the case. It is pertinent, therefore, to review the facts leading to the decision of the Commissioner, recounted in the opposition. At the invitation of the Commissioner, the applicant submitted

returns for income tax for the relevant years, that disclosed no taxable income. He also submitted, apparently at the request of the Commissioner, a statement of assets and liabilities as at 18.10.82.

In the course of interviewing the applicant and the context of the inquiry into his affairs, it transpired that he became the joint owner of an excavator registered in the joint names of applicant and a certain Treppides. Allegations by the applicant, that the purchase was mostly financed by Treppides - his relation from the United Kingdom - were rejected after examination of the instalments paid by the applicant to the Cyprus Popular Bank (Finance) Ltd., who had, it appears, financed the transaction. Upon the basis of the capital statement and the information received from inquiries made, the assessments under consideration were raised on 21.2.83. The objections of the applicant to the assessments were rejected on 10.3.83.

Thereafter, applicant put forward, for the first time, a claim for a capital allowance, pursuant to the provisions of s.12 of the Income Tax Laws, 1961 - 1981, calculated by reference to the cost of the excavator. It was the first time a claim for deduction of the kind was raised. Negotiations for the settlement of the dispute, held between the Commissioner and an accountant engaged to advise the applicant with a view to resolving the dispute, were abandoned with the initiation of the present proceedings.

Very recently\*, I examined the nature of the discretionary powers of the Commissioner under s.51. The power of the Commissioner to reject unauthenticated claims for deduction, is a correlative of the duty under the law of the taxpayers to -

- (a) make a full disclosure of their income and assets, where necessary, and
- (b) the control they have over their financial affairs and peculiar amenity to substantiate their claims, as well as their obligation to keep proper records of their financial affairs.

\* *Nina Rainbow v. Commissioner of Income Tax* (1984) 3 C.L.R. 846.

As one may infer from the history of the assessments, the applicant was less than forthcoming in making a complete disclosure of his financial affairs, and raised a claim for deduction only when confronted with the prospect of paying income tax.

- 5 In such circumstances, it was within the discretion of the Commissioner, in exercise of his powers under s.51, to reject the claim for deduction. Nothing heard before me persuades me this was not a course reasonably open to the Commissioner.

- 10 This being the case, the recourse of applicant fails. It is dismissed. Let there be no order as to costs.

*Recourse dismissed. No order as to costs.*