

1985 June 24

[LORIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

NTINOS KONTOS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTRY OF FINANCE AND/OR  
2. THE COMMISSIONER OF INCOME TAX,

*Respondents.*

*(Case No. 350/82).*

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*Income tax—"Balancing addition"—Under section 12(4) of the  
Income Tax Laws 1961-1981—Is "Income" liable to spe-  
cial contribution under the Special Contribution (Temporary  
Provisions) Law, 1978 (Law 34/78 as amended).*

5       The applicant in this recourse challenged that part of  
the decision of the respondents dated 22.6.82 whereby the  
amount of £23,785, a balancing addition under the provi-  
sions of section 12(4) of the Income Tax Laws 1961-1981  
10       in respect of cars sold by him during the year 1979, was  
included in the computation of his income liable to spe-  
cial contribution under the provisions of the Special  
Contribution (Temporary Provisions) Law 1978, (Law  
No. 34/78) as amended.

15       *On the sole issue whether a "balancing addition" pur-  
suant to the provisions of s.12(4) of the Income Tax Laws  
1961-1981, can be considered as "income" liable to spe-  
cial contribution under the provisions of the Special  
Contribution (Temporary Provisions) Law No. 34/78 as  
20       amended, in view of the absence of specific provision, in  
the latter legislation, to that effect:*

*Held, that from the clear and unequivocal wording of*

Law 34/78 it is abundantly clear that the provisions of the Income Tax Laws are applicable to the assessment of special contributions and there is nothing whatsoever in the Law of 1978 to indicate that the provisions of s. 12(4) of the Income Tax Laws ("balancing addition") are inapplicable; that, on the contrary, the exhaustive enumeration of the exemptions in section 6 of the Law indicates that the "balancing addition" clearly set out in the Income Tax Laws, is also applicable in the computation of income liable to special contribution.

*Application dismissed.*

**Cases referred to:**

*George Tsimon Ltd. v. Republic* (1980) 3 C.L.R. 321 at p. 325;

*Geo. Pavlides Ltd. v. Republic* (1980) 3 C.L.R. 345 at p. 348;

*Anastassiou v. Republic* (1977) 3 C.L.R. 91 at p. 109.

**Recourse.**

Recourse against the decision of the respondents whereby an amount of £23,785.- a balancing addition under the provision of the Income Tax Laws 1961-1981 in respect of cars sold by the applicant during the year 1979 was included in the computation of his income liable to special contribution under Law No. 34/78.

*N. Pelides*, for the applicant.

*M. Photiou*, for the respondents.

*Cur. adv. vult.*

LORIS J. read the following judgment. The applicant impugnes by means of the present recourse that part of the decision of the respondents dated 22.6.82 (set out in Appendix "A" attached to the opposition) whereby the amount of £23,785, a balancing addition under the provisions of section 12(4) of the Income Tax Laws 1961-1981 in respect of cars sold by the applicant during the year 1979, was included in the computation of his income liable to special contribution under the provisions of the Special

Contribution (Temporary Provisions) Law 1978, (Law No. 34/78) as amended.

5 The single point raised by the present recourse is whether a "balancing addition" pursuant to the provisions of s. 12(4) of the Income Tax Laws 1961-1981, can be considered as "income" liable to special contribution under the provisions of the Special Contribution (Temporary Provisions) Law No. 34/78 as amended, in view of the absence of specific provision, in the latter legislation, to that effect.

10 What is a "balancing addition" (as well as a "balancing deduction") is set out in sub-section (4) of section 12 of the Income Tax Laws (vide s.5(e) of Law 40/79) which reads as follows:

15 "(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')

20 shall be made and such balancing deduction or balancing addition shall be calculated by reference to the balancing statement or statements rendered by the person in respect of the year of assessment as follows:-

25 (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

30 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:

35 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."

In this connection vide *George Tsimon Ltd. v. The Republic*, (1980) 3 C.L.R. 321 at p. 325 and *Geo. Pavlides*

*Ltd. v. The Republic*, (1980) 3 C.L.R. 345 at p. 348.

The Special Contribution (Temporary Provisions) Law 1978, Law No. 34/78, as amended (vide Laws 29/79, 12/80, 13/81, 12/82, 13/83, 31/84 and 23/85) provides in s. 6 that “The provisions of the Income Tax Laws and of the Taxes (Quantifying and Recovery) Laws, shall apply mutatis mutandis, subject to the amendments set forth in the Schedule, but no personal allowances shall be granted and; no income shall be exempt from the contribution save...”, and there follow paragraphs (a) to (h) in which the exemptions are stated exhaustively. It is significant to note that nothing is mentioned therein about “balancing additions.”

It is true that there are few other exemptions referred to in the Schedule to the Law 34/78 as amended, but none of these refers to “balancing additions.”

From the clear and unequivocal wording of Law 34/78 it is abundantly clear that the provisions of the Income Tax Laws are applicable to the assessment of special contributions and there is nothing whatsoever in the Law of 1978 to indicate that the provisions of s. 12(4) of the Income Tax Laws (“balancing addition”) are inapplicable; on the contrary, the exhaustive enumeration of the exemptions in section 6 of the Law indicates that the “balancing addition” clearly set out in the Income Tax Laws, is also applicable in the computation of income liable to special contribution.

Concluding, I consider it useful to repeat what was stated by the learned President of this Court in delivering his judgment in the Full Bench case of *Anastassiou v. The Republic* (1977) 3 C.L.R. 91 at p. 109 in respect of the Special Contribution (Temporary Provisions) Law—Law No. 55/74—which was later substituted by the present Law in force i.e. Law No. 34/78:

“Law 55/74 is, in essence, a taxing statute; and it

is, indeed, a socio-economic measure which was introduced in view of the repercussions of the calamitous for our country events in the summer of 1974..."

5 In the result the present recourse fails and it is accordingly dismissed.

Let there be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*