1985 May 30

[A. LOIZOU, DEMETRIADES, SAVVIDES, LORIS, STYLIANIDES, JJ.]

MELIK MELIKIAN AND CO. LTD.,

Appellant-Applicant,

v.

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

Respondent.

(Revisional Jurisdiction Appeal No. 352).

Income Tax—Capital allowances—"Plant and machinery"—"Private motor vehicles"—Used for carriage of goods—Reasonably open to the respondent Commissioner not to treat them as "plant and machinery" entitling appellant to capital allowances—Section 2 of the Income Tax (Amendment), Law, 1979 (Law 8/79)—Regulation 17(7)(v) of the Motor Vehicles and Road Traffic Regulations 1957-1967 and 1973.

The appellant company challenged the validity of income tax assessments in respect of its income for the years of assessment 1979 and 1980 as being erroneous because the respondent Commissioner in computing its taxable income wrongly disallowed capital allowances in respect of the cost of two vehicles of the station-waggon type used for carriage of goods. The sub judice refusal was based on the ground that a motor-vehicle "falling under the term 'private motor vehicle' in sub-paragraph (v) of paragraph 7 of regulation 17 of the Motor Vehicles and Road Traffic Regulations 1957-1967 and 1973 shall not be deemed plant and machinery and in consequence do not rank for capital allowances".

The trial Judge dismissed the recourse after holding that it was reasonably and lawfully open to the respondent Commissioner to treat the two station waggons of the ap-

pellant Company, irrespective of their use, as not being either light or heavy goods vehicles but as private motor-vehicles which could not be treated as plant and machinery; and hence this appeal.

Held, that there is no reason to interfere with the approach of the trial Judge who confirmed that it was reasonably open for the respondent Commissioner to have treated station-waggons as not being goods vehicles and therefore as not falling within the meaning of the term "plant and machinery" as used in the context of section 12(1) of the Income Tax Laws; and that, accordingly the appeal must be dismissed (*Roberts (Inspector of Taxes)* v. *Granada T. V. Rental* [1970] 2 All E.R. 764 distinguished).

Appeal dismissed.

Cases referred to:

Roberts (Inspector of Taxes) v. *Granada T.V. Rentals* [1970] 2 All E. R. 764.

Appeal.

Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 23rd April, 1983 (Revisional Jurisdiction Case No. 236/81)* dismissing appellant's recourse against the income tax assessments raised on applicant for the years of assessment 1979 and 1980.

L. Papaphilippou, for the appellant.

M. Photiou, for the respondent.

Cur. adv. vult.

A. Loizou J. read the following judgment of the Court. The sole issue in this appeal from the judgment of the President of this Court, is whether two motor vehicles of the station waggon type were rightly treated by the respondent Commissioner irrespective of their use as not being either light or heavy goods vehicles but as being pri-

* Reported in (1983) 3 C.L.R. 1324.

vate motor vehicles which under the relevant legislation could not be treated as "plant and machinery" entitling the appellant Company to capital allowances.

Our task has been made very easy as in the judgment under appeal all relevant elements factual and legal are set out. The appellants are a commercial Company of limited liability and they have been distributors of a brand of cigarettes manufactures in Cyprus. They were assessed for income-tax purposes for the years of income 1978 and 1979 and they challenged these assessments on the ground that it was contrary to the Law for the respondent Commissioner to have disallowed capital allowances in respect of the aforementioned two vehicles which were purchased by them during the respective years.

The refusal of the respondent Commissioner to accede to the claim of the appellant Company was communicated to them by his letter of the 18th April 1981. The gist of such a refusal was that the Law clearly provided that a motor vehicle "falling under the term 'private motor vehicle' in sub-paragraph (v) of paragraph 7 of Regulation 17 of the Motor Vehicles and Road Traffic Regulations 1957-1967 and 1973 shall not be deemed plant and machinery and in consequence do not rank for capital allowances". The appellant Company was further informed as regards their contentions that the Income-Tax (Amendment) Law 1979, (Law No. 8 of 1979) which was enacted on the 26th January 1979, did not apply to motor vehicles purchased prior to this enactment was not correct inasmuch as this Law came into operation on the 1st January 1978, and referred to private motor vehicles purchased prior and after that date.

The contention before the learned President, which was pursued also in this appeal before us was that, the respondent Commissioner misapplied the provisions of section 2 of the aforesaid amending Law which introduced into the basic legislation a second paragraph at the end of section 12(1) which section so amended reads as follows:-

> "12.- (1) In this section 'property' means plant, machinery or buildings, including employees' dwellings, owned by a person engaged in a trade, business, pro-

fession, vocation or employment and used and employed by such person in such trade, business, profession, vocation or employment, or in scientific research proved to the satisfaction of the Commissioner to be for the benefit of such trade, business, profession, vocation or employment.

For the purposes of this subsection a private motor vehicle other than a goods vehicle within the meaning of sub-paragraph (v) of paragraph (7) of Regulation 17 of the Motor Vehicles and Road Traffic Regulations, 1973 to 1978, shall not be deemed to be within the meaning of the term, 'plant and machinery'."

Regulation 17(7)(v) of the Motor Vehicles and Road Traffic Regulations 1973 makes a distinction between a private motor vehicle and a goods motor vehicle which is defined in regulation 2 thereof as one which is constructed or adapted to be used by the carrying of goods and includes both light and heavy goods vehicles.

It was argued before us on behalf of the appellant Company, that the learned President was wrong in holding that it was reasonably and lawfully open to the respondent Commissioner to treat the two station-waggons of the appellant Company, irrespective of their use, as not being either light or heavy goods vehicles but as private motor-vehicles which could not be treated as plant and machinery and that he erred as regards the construction of the relevant legislation, already referred to in this judgment.

It was indeed held by the learned President that the mere fact that the appellants may have been using the station-waggons in question either primarily or even exclusively for the carriage of goods cannot render such station-waggons "plant and machinery" in the sense of the legislative provisions concerned, just as a private saloon type motor car cannot be treated as "plant and machinery" even if it is solely used for the carrying of goods.

We find no reason to interfere with the approach of the learned President who confirmed that it was reasonably open for the respondent Commissioner to have treated station-waggons as not being goods vehicles and therefore as not falling within the meaning of the term "plant and ma-

chinery" as used in the context of section 12(1) of the Income Tax Laws. The second part of this section narrows down the first part when it comes to vehicles by excluding expressly private motor vehicles from being deemed to be within the meaning of the term "plant and machinery".

We have been referred by counsel for the appellant to the case of *Roberts (Inspector of Taxes)* v. *Granada T.V. Rental* [1970] 2 All E.R. p. 764, regarding claims for income-tax deductions on mini-vans. We need not go at length into the facts and legal aspects of this case as it is clearly distinguishable because of the difference in the wording of the relevant statutory provisions.

For all the above reasons this appeal is dismissed but in the circumstances there will be no order as to costs.

Appeal dismissed with no order as to costs.