1985 August 14

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STEPHANOS STEPHANOU,

Applicant,

v.

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

Respondents.

(Case No. 177/69).

Income Tax—The Taxes (Quantifying and Recovery) Law, 53/1963, ss. 5, 13 and 23—Additional assessments—May be raised under s. 23—In which case the procedure under ss. 5 and 13 need not be followed—Preventive assessment—The Commissioner of Income Tax has no power to raise a preventive assessment—Ambit of s. 23.

Personal tax on member of Greek Community (see also under Constitutional Law, infra)—Liability to pay—Accrues in the year when the income was earned—Irrespective of whether a notice of assessement was served on the taxpayer or not.

Constitutional Law—Articles 87.1 and 88.1 of the Constitution—Imposition of personal tax—Not contrary to said Articles merely because the revenue to be collected might not coincide with mathematical assuracy with the anticipating deficit in the budget of the Greek Communal Chamber, so long as such revenue was not obviously calculated to exceed the Chamber's actual deficit and any resulting difference would be carried forward to the following year.

Words and Phrases—"Tax" in s. 23 of Law 53/1963—Includes a "personal tax"—"Under any Law" in the same section—Includes a Law of the Greek Communal Chamber.

Administrative Law—Methods of computing income in back duty cases—It is not for the Court to decide which method is the best—This Court will not substitute its discretion for that of the respondent—The only question is whether it was reasonably open to the respondent to choose the method he did.

The applicant was assessed to pay income tax for the year of assessment 1960(59) and, as a member of the Greek Community, personal tax for the years of assessment 1961(60) to 1965(64).

At some time during 1965 the Commissioner of Income Tax (hereinafter referred to as the Commissioner) requested information as to the sources of a sum of £45,200, being the cost of a block of flats, in respect of which the applicant had claimed capital allowance. The information supplied by the applicant in reply included information in respect of certain amounts in various bank accounts. By letter dated 13.12.1966 the Commissioner informed the applicant as follows:

"Since it did not become possible for your accounts to be examined, I have the honour to enclose a preventive assessment for the year of assessment 1960 and you are urged to file an objection if you consider it excessive".

The applicant filed an objection against this assessment.

On the 22.2.1967 the Commissioner requested the production of copies of the applicant's bank accounts for the years 1962-1965 as well as a statement of his assets and liabilities as at 1.12.1965, together with the date and cost of acquisition of each asset. In the course of investigations made as a result by the applicant's tax consultant, it transpired that the applicant had not declared in his returns a sum of £4,665, representing bank interest earned during 1959-1965. The applicant proceeded to declare it and, thereafter, paid the additional tax demanded in respect of such interest for the years 1961(60)-1965(64).

The correspondence between the applicant's consultant and the Commissioner continued. The Commissioner raised various additional assessments on the applicant, to which

he filed objections. Finally the sub judice decisions were reached.

The applicant seeks a declaration that the additional assessments raised on him for the years of assessment 1960(59) to 1965(64) and the imposition on him of income tax thereunder are null and void and of no effect whatsoever.

Counsel for the applicant submitted:

(A) That the assessment in the above letter dated 13.12.1966 for the year 1959(60) is illegal since there is no power to raise a preventive assessment.

(B) That the additional assessments for the years 1961(60) - 1965(64) are illegal in that they impose a tax on a member of the Greek Community contrary to Articles 87.1 and 88.1 of the Constitution as any deficit in the budget of the Greek Communal Chamber in respect of those years had already been met by the Republic.

(C) That the Taxes (Quantifying and Recovery) Law 53/1963 under which the assessments for the year 1961(60) - 1965(64) were raised does not apply to personal tax levied on members of the Greek Community but only to income tax as such.

(D) That specifically in respect of the year of assessment 1961(60) there was no power under the Law then in force (Law 16/61 of the Greek Communal Chamber) to raise additional assessments.

(E) That the amounts of tax paid by the applicant in respect of his undeclared interest should be refunded to him because at the time of assessment there was no deficit in the Budget of the G.C.C. and, the assessments are, therefore, illegal.

(F) That the method used by the respondent in computing the omitted income is contrary to the existing practice, arbitrary and that it amounts to abuse of power.

(G) That the respondent arbitrarily reduced the applicant's capital at the end of 1958 with the result that capital increase were shown in the years following.

(H) That it was not possible for the respondent to raise the additional assessments in question unless he first established undisclosed chargeable income and since he did not ascertain the sources of the alleged undisclosed income he could not find that it came from taxable sources.

(I) That certain notices were not valid because they were not signed by the Commissioner himself or because they were addressed to the applicant's consultant or not sent by registered post.

Held, (1) *As to submission A above,* that while an additional assessment may be raised under s. 23 of Law 53/63 in which case the procedure under sections 5 and 13 of the same Law does not have to be followed, a "preventive" or "provisional" assessment is not permitted having regard to the judgment in *Solomonides* v. *The Republic* (1968) 3 C.L.R. 105. The question, therefore, is whether the assessment in question was in fact a "preventive" or an additional one. It is additional in the sense that it was raised over and above the original one. Since, however, the respondent did not have, at the time, ascertained the exact amount of income omitted, he could not raise a proper additional assessment on a specific taxable amount; the respondent intended it to be preventive in the sense that it was raised before the accounts of the applicant were examined, in order to prevent tax evasion on the part of the applicant, which would have resulted if the respondent waited until the examination of such accounts, in which case the six years period of limitation provided by s. 23 of the Law for raising additional assessments would have elapsed. The assessment in question is, therefore, preventive and as a result it has to be annulled.

(2) *As to submission (B) above,* that it was not seriously disputed that there was actually a deficit in the budget of the Greek Communal Chamber of each year of assessment from 1961 to 1964 inclusive, which had not yet been met by the end of 1964 and which, having been undertaken by the Republic, had been met by the end of 1966; thus at the time of the sub judice assessments there was no deficit in the budgets of the years in question. This is, however, immaterial as the liability to pay tax accrues in the year when the income was earned irrespective

of whether a notice of assesment was served on the taxpayer or not. The imposition of the tax is deemed to have been made between 1960 and 1965 when a deficit actually existed; and since there is no indication that it was at the time of its imposition (1960-1965) obviously calculated to exceed the deficit in the budget of each year respectively, submission B above has to be rejected.

(3) *As to submission C above,* that the personal tax imposed on members of the Greek Community is a "direct" tax based on income as distinct from an "indirect" tax. The word "tax" in s. 23 of Law 53/63 includes also a personal tax. In the absence of any qualification the expression "under any Law" in the same section includes a Law of the Greek Communal Chamber. The submission has, therefore, to be dismissed.

(4) *As to submission D above,* that the fact that there was no provision in Law 16/1961 enabling the Commissioner to raise additional assessments, does not take away or restrict his powers under s. 23 of Law 53/1963. This is a general Law applicable to cases where tax was imposed under any Law and is not restricted to taxes imposed under a Law giving power to raise additional assessments. As a result this submission also fails.

(5) *As to submission E above,* that in view of the position as explained in paragraph 2 above, this submission has to be rejected; in any event this submission was bound to fail, firstly because the applicant assented to the payment of the tax on the interest and, secondly, because the assessments concerned were raised almost two years before the filing of the recourse with the result that it is out of time in so far as they are concerned.

(6) *As to submission F above,* a) That the evidence established that there are two methods of computing income in back duty cases. The "annual rests" method whereby the income is uncertained annually and the "Block" or "means" test whereby the capital increase of the applicant is ascertained by establishing the capital position both at the beginning and at the end of the period under investigation. The respondent in this case used the first of the above methods.

b) It is not for this Court to decide which method of computation is the best because this would amount in effect to the Court substituting its discretion for that of the respondent. What this Court has to decide is whether it was reasonably open to apply the method he did. In the circumstances of this case it was reasonably open for the respondent to apply the method he did.

(7) *As to submission G above,* that it was, in the circumstances of this case, reasonably open to the respondent to decide as he did; this Court will not substitute its own discretion for that of the respondent, even if it could have decided otherwise on the same facts.

(8) *As to submission H above,* that the word "discovers" in the English Tax Acts has been given a wide interpretation so as to mean "has reason to believe", "is satisfied" or "comes to the conclusion on information before him". In the circumstances of this case it was reasonably open to the respondent to attribute the omitted income as coming from taxable sources.

(9) *As to submission I above,* that the applicant accepted the notices in question as valid; and that in any event the points raised are insignificant and even if they amounted to defects in the procedure these were not so material as to affect the validity of the sub judice decision.

Recourse succeeds partly to the extent indicated above; no order as to costs.

Cases referred to:

Solomonides v. *The Republic* (1968) 3 C.L.R. 105;

Constanne Estates v. *The Republic* (1982) 3 C.L.R. 859;

In Re Tax Collection Law 31/62 and HjiKyriacos and Sons Ltd., 5 R.S.C.C. 22;

Christou v. *The Republic* (1965) 3 C.L.R. 214;

Frangos v. *The Republic* (1965) 3 C.L.R. 641;

Demetriades v. *The Greek Communal Chamber and the Republic* (1965) 3 C.L.R. 605;

Ceylon Finance Company Ltd., v. *Ellwood (Inspector of Taxes)* [1962] A.C. 782; [1962] 1 All E.R. 854.

Banning v. *Wright* [1969] 48 T. C. 421.

Recourse.

Recourse against the additional income tax assessments raised on applicants for the years of assessment 1960-1965.

L. N. Clerides, for the applicant.

A. Evangelou, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

L. LOIZOU J. read the following judgment. The applicant seeks a declaration that the additional assessments raised on him for the years of assessment 1960(59) to 1965(64) and the imposition on him of income tax thereunder are null and void and of no effect whatsoever.

The applicant, was a life director of "Frangoudes and Stephanou Ltd." and derived his income mainly from emoluments, dividents, interest and rents. In 1960 he was assessed to pay income tax for the year of assessment 1960 (59) and paid the tax so assessed. With regard to the years of assessment 1961(60) to 1965(64) the applicant, being a member of the Greek Community, was assessed to personal tax in accordance with the relative laws of the Greek Communal Chamber.

On the 9th August, 1966, the applicant submitted his return for the year of assessment 1966(65) and claimed a capital allowance in respect of a block of flats, the cost of which was £45,200.- (see exhibit 15). As a result the Commissioner of Income Tax (the respondent) addressed a letter to him dated the 10th October, 1966 (exhibit 16) requesting, inter alia, information regarding the sources of the funds used for the erection of this block of flats. The applicant replied by exhibit 17 dated the 25th October,

1966, giving such information, which included certain amounts in various bank accounts.

The respondent then, by letter dated the 13th December, 1966 (exhibit 1), informed the applicant that he had raised a preventive assessment on him for the year of assessment 1960(59) on the ground that it had not been possible to examine his accounts. An objection was filed by the applicant against the above assessment on the 27th December, 1966 (exhibit 18).

On the 22nd February, 1967, the respondent requested by his letter (exhibit 2) the production, inter alia, of copies of bank accounts for the years 1962-1965, as well as a statement of assets and liabilities as at 1st December, 1965, together with the date and cost of acquisition of each asset. As a result the applicant instructed, in March, 1967, a tax consultant, to investigate his case in collaboration with his auditors, who submitted a statement as above, on the 26th July, 1967 (exhibit 3). In the course of the above investigations it transpired that the applicant had not declared in his returns a sum of £4,665 representing bank interest on fixed term deposits credited to him during 1959-1965 and proceeded to declare it, acting on the advice of his tax consultant and auditors, and paid the additional tax demanded for the years 1961(60)-1965(64).

The applicant was required, by letter date the 18th October, 1967, (exhibit 23) to pay the additional tax on the interest declared by him for the year 1960(59) and was also informed that his objection (exhibit 18) was still under consideration.

In the meantime, correspondence between the respondent and applicant's consultant was continuing regarding further information about the assets and liabilities of the applicant and bank accounts both in Cyprus and abroad and evidence in respect thereof.

The applicant was then informed by letter dated the 30th December, 1968 (exhibit 4) that the assessment with regard to the years of assessment 1960-1966 were finalized and three new additional assessments were raised on him for the years 1962(61), 1963(62) and 1965(64). Applicant's

consultant objected to the above assessments by letter dated the 21st February, 1969 (exhibit 5) and as a result the respondent agreed by his letter dated the 27th March, 1969 (exhibit 6) to allow certain deductions to the said additional assessments.

On the 24th March, 1969, the respondent Commissioner informed the applicant that he had raised another additional assessment for 1964(63) (exhibit 10) and by another letter dated the 3rd April, 1969 (exhibit 7) applicant was informed that his objections for the additional assessments in respect of the years 1961 and 1965 had been dismissed as unjustified.

Applicant's consultant wrote a letter to the Commissioner dated the 10th April, 1969 (exhibit 8) objecting to the additional assessment for 1964(63) and also requesting the supply of due reasons for the determination of the objections for the years 1961 and 1965. Objection was also made, in the same letter, about the manner in which the Commissioner was dealing with the case and he was requested to determine the objections for all the years at one time so as to enable the applicant to file one comprehensive recourse against such determinations.

The Commissioner informed the applicant by letter dated the 2nd May, 1969 (exhibit 11) that his objection with regard to the year of assessment 1964 had been dismissed. He also informed the applicant's consultant by another letter of the same date that he decided to determine the objection for the years of assessment 1960, 1962, 1963 and 1964 and send the relevant notices of tax payable direct to the applicant by registered post (exhibit 12). Applicant's counsel wrote to the Commissioner a letter dated the 9th May, 1969 (exhibit 13) commenting on the contents of the letter to the applicant (exhibit 11).

The applicant then filed the present recourse against the assessments for the years 1960(59) to 1965(64).

All notices of assessments on the applicant, both original and additional with regard to all the years in dispute were produced as exhibit 14.

I will deal first with the year of assessment 1960(59) (assessment No. 730/AD/66/60).

With regard to this assessment counsel for applicant argued citing the case of *Solomonides* v. *The Republic* (1968) 3 C.L.R. 105, that it is illegal since there is no power to raise a preventive or even a provisional assessment and also that it is not duly reasoned. He further argued that even if the Commissioner had such power the assessment is again null and void for it has been raised under the provisions of The Taxes (Quantifying and Recovery) Law, 1963 (Law 53/63) whilst the procedure prescribed by sections 5 and 13 of that Law was not followed and lastly that s. 23 of the same Law refers to additional assessments which can only be raised after an original assessment under s. 13 had first been made.

Counsel for the respondent argued that the present case is distinguishable from the *Solomonides* case (supra) that the assessment in question was in fact an additional assesment which is possible under s. 23 of Law 53/63 and that the provisions of sections 5 and 13 do not apply in cases of additional assessments.

Before embarking on the main issue, that is whether the sub judice assessment is a "protective" or "preventive" or an additional one, I wish to make it clear that additional assessments may be raised under s. 23 of Law 53/63 and in such cases the procedure under sections 5 and 13 of the same Law does not have to be followed. (See the case of *Constanne Estates Ltd.* v. *The Republic* (1982) 3 C.L.R. 859, at p. 867). In the present case it is in evidence, even admitted by the applicant in his statement of facts in support of the application that another original assessment with regard to the same year had already been raised on him, which makes it clear that an additional assessment could have been raised under s. 23 of the Law, if the Commissioner found that he had been undercharged by the original assessment. The assessment in question, No. 730/AD/66/60, was raised under Law 53/63 as it appears from exhibit 1, the notice sent to the applicant in respect thereof. This notice, was, however, accompanied by a note, which reads as follows:

"Since it did not become possible for your accounts to be examined, I have the honour to enclose a preventive assessment for the year of assessment 1960 and you are urged to file an objection if you consider it excessive."

It is not in fact disputed that a "preventive" or provisional assessment is not permitted having regard to the judgment in the *Solomonides* case (supra). This being the position and as the matter was not raised or argued we need not concern ourselves with the correctness or otherwise of the *Solomonides* case in this respect. What remains, therefore, to be examined is the contention of counsel for the respondent that the assessment in question was in fact a "preventive" or an additional one.

Having considered the legal arguments raised and the facts and circumstances of the case, I find that the assessment in question was an additional one, in the sense that it had been raised over and above the original one. Since, however, the respondent did not have, at the time, ascertained the exact amount of income omitted he could not raise a proper additional assessment on a specific taxable amount and as a result he raised the assessment in question, which he named a "preventive" assessment. It is my view that he did in fact intend it to be so in the sense that it was raised before the accounts of the applicant were examined, in order to prevent tax evasion on the part of the applicant, which would have resulted if the respondent waited until the examination of such accounts, in which case the six years period of limitation provided by s. 23 of the Law for raising additional assessments would have elapsed.

I, therefore, find that the assessment in question, imposed by exhibit 1, was in fact a preventive assessment and in this sense as conceded by counsel, on the authority of the *Solomonides* case, an improper and unauthorized one under the Law, and as a result it has to be annulled.

Years of assessment 1961(60) - 1965(64)

With regard to the remaining years of assessment, 1961 (60) to 1965(64) there are certain common grounds raised by counsel which I shall examine first. I should, however,

first mention that applicant attacks the additional assessments with regard to the years 1961(60), 1964(63) and 1965(64) on legal grounds only and it is with regard to the remaining years of assessment 1962(61) and 1963(62) that a dispute arises as to the amount of the income as well.

The first common ground is whether the additional assessments with regard to the years of assessment 1961(60) - 1965(64) are illegal in that they impose tax on a member of the Greek Community contrary to the provisions of Articles 87.1 and 88.1 of the Constitution which read:

"Article 87

1. The Communal Chambers shall, in relation to their respective community, have competence to exercise within the limits of this Constitution and subject to paragraph 3 of this Article, legislative power solely with regard to the following matters:

(a)

(b)

(c)

(d)

(e)

(f) imposition of personal taxes and fees on members of their respective Community in order to provide for their respective needs and for the needs of bodies and institutions under their control as in Article 88 provided;"

"Article 88

1. The power of imposing taxes under sub-paragraph (f) of paragraph (1) of Article 87 of a Communal Chamber shall be exercised for the purposes of meeting the part of its expenditure provided in its budget in each financial year which is not met by the payment made to such Communal Chamber in respect of such financial year by the Republic out of

its Budget as provided in paragraph 2 of this Article or by any other revenue which such Chamber may have in that financial year."

Counsel for applicant argued that any deficit in the budget of the Greek Communal Chamber in respect of those years had been met by the Republic by collections in respect of the previous years and as a result the above assessments were contrary to the said Articles.

It was held in *Re Tax Collection Law 31 of 1962 and HajiKyriacos and Sons Ltd.*, 5 R.S.C.C., 22 at p. 28 that the imposition of personal tax was not contrary to the provisions of Article 88.1 merely because the revenue to be collected might not coincide with exact mathematical accuracy with the anticipated deficit, so long as such revenue was not obviously calculated to exceed the Chamber's actual deficit and any resulting difference could be carried forward to the following year.

As it appears from exhibit 33 there was actually a deficit in the budget of each year of assessment from 1961 to 1964 inclusive which had not yet been met by the end of 1964 and was undertaken by the Republic of Cyprus. It was alleged by counsel for the applicant by giving certain figures to that effect in his written reply (without, however, mentioning whether these figures emanated from an official source of information) that the deficiency had already been met by the end of 1966, and thus at the time when the sub judice assessments were raised and the tax collected there was no actual deficit in the budgets of the years in question.

The existence of the said figures has not been seriously disputed by counsel for the respondents, but, in any case, this is immaterial in view of the judgments of this Court in the cases of *Christou* v. *The Republic* (1965) 3 C.L.R. 214 and *Frangos* v. *The Republic* (1965) 3 C.L.R. 641, where it was held that the liability to pay tax accrued in the year when the income was earned irrespective of whether a notice of assessment was served on the taxpayer or not.

Applying the above dicta to the facts of the present case I come the conclusion that although the sub judice assess-

ments were raised and determined in 1968 and 1969, at a time when, presumably, there was no deficit in the budgets of the years of assessment in question, the imposition of the tax is deemed to have been made between 1960 and 1965 when a deficit actually existed. Such tax, is, therefore, recoverable since, on the authority of the *HjiKyriacos* case (supra) there is no indication that it was at the time of its imposition (1960 - 1965) obviously calculated to exceed the deficit in the budget of each year respectively.

This ground is, therefore, dismissed.

The next point raised, which again relates to all additional assessments in respect of the years 1961(60) - 1965 (64) is that The Taxes (Quantifying and Recovery) Law, 1963 (Law 53/63), under which the assessments in question were raised, does not apply to personal tax levied on members of the Greek Community but only to income tax as such.

Section 23 of the above Law reads as follows:

> "23. Where it appears to the Director that any person on whom a tax has been imposed under any Law, whether before or after the coming into operation of this Law, has not been assessed or paid the tax imposed or has been assessed at or paid an amount less than that which ought to have been paid, the Director may, within the year of assessment or within six years after the expiration thereof, assess such person at such an amount of tax or additional amount of tax as was imposed and ought to have been assessed and recovered under the provisions of the Law imposing the tax, and the provisions of this Law shall apply to such assessment and to the tax assessed thereunder.

The word tax is defined in section 2 of the same Law as follows:

> " 'Tax' means a direct tax imposed by a Law whether before or after the coming into operation of this Law, in respect of a period therein provided irrespective of whether such period relates to a period before the date of the coming into operation of this Law or

not, the amount of which is ascertained on the basis of objective criteria laid down in the Law whereby the tax is imposed;"

The personal tax imposed on members of the Greek Community is a "direct" tax based on income, as distinct from an "indirect tax" (such as tax on excise etc). (See the case of *Demetriades* v. *The Greek Communal Chamber and The Republic* (1965) 3 C.L.R. 605 at pp. 611-612).

The word "tax" in s. 23 of Law 53/63 therefore includes also a personal tax.

Coming now to the expression "under any Law", in the same section there is no indication whatsoever that this should apply only to Laws of the Republic and not include, also, Laws of the Greek Communal Chamber. If there was such an intention it is reasonable to assume that the legislator would have stated so expressly in view of the existence then, of the relevant Greek Communal Chamber Laws. In the absence of any qualification as to the meaning of "any Law", I must find that it must also mean a Law of the Greek Communal Chamber.

This argument is made more specifically in respect of the year of assessment 1961, in that under the Law applicable then, that is Law 16/61 of the Greek Communal Chamber, there was no provision similar to the provisions in the subsequent Laws of the Greek Communal Chamber (Laws 18/62, 9/73, 7/64 and 11/65), enabling the Commissioner to raise an additional assessment.

It is true that no such provision existed in Law 16/61, but this, in my view, does not take away or restrict the powers of the Commissioner given to him in this respect by s. 23 of Law 53/63. Law 53/63 is a general Law applicable to cases where tax was imposed under any Law and is not restricted to taxes imposed under a Law giving power to raise additional assessments. This, moreover, would not amount to the imposition of tax retrospectively since the tax in question is deemed to have accrued and to have been imposed in 1960 (when the income was earned). (See the cases of *Christou* and *Frangou* (supra)). It is not the imposition of the tax which was made under Law 53/63 but only its quantification.

The fact that it is not mentioned in the notices sent to the applicant that the assessments were raised under Law 53/63, but such notices were entitled "Personal Contribution of Members of the Greek Community" is immaterial, the intention of the respondent clearly being, in my view, to signify to the applicant that the imposition of the tax was made in accordance with the provisions of the Greek Communal Chamber Laws. Besides the fact that they were raised under Law 53/63 may be deduced from certain letters of the respondent to the applicant (see exhibit 11).

As a result this ground also fails.

With regard to the reasoning of the sub judice decisions I need say no more than that such reasoning appears in the voluminous correspondence exchanged between the parties.

Before proceeding to examine the next general point I would like to deal briefly with the second prayer of the recourse which presumably relates to the amounts of tax paid by the applicant in respect of his undeclared interest, which he subsequently declared. The applicant claims that the tax based on the above interest should be refunded to him because at the time of its assessment there was no deficit in the budget and the assessments are, therefore, illegal. I have already dealt with the question of the deficit in the budget and in view of my finding on this issue I must dismiss this part of the prayer as well. But, quite independently of the above, this part of the case was bound to fail, firstly because the applicant himself declared such interest and assented to the payment of tax thereon and, secondly because the assessments concerned were raised almost two years before the filling of the recourse with the result that it is out of time in so far as they are concerned.

The next ground is that the method used by the respondent in computing the omitted income in contrary to the existing practice, arbitrary and that it amounts to abuse of powers.

It has been established by evidence on oath adduced by both sides that there are two methods for computing income in back duty cases. The first is the one used by the

respondent in the present case, the "annual rests" method, by which the income is ascertained annually and the other is the "block test" (as called by the respondent) or the "means test" method (as called by applicant's consultant). By this method the capital increase of the applicant is ascertained by establishing the capital position both at the beginning and at the end of the period under investigation and the proceeds are then spread over the years in between.

It is the contention of counsel for applicant that the "annual rests" method can only be used in cases where annual accounts (profit and loss accounts and balance sheets) have been submitted over the years and that in the present case no such accounts were available and the respondent should, therefore, have applied the "means test" method.

It transpires from the evidence, and is not in fact disputed by the parties, that the resulting amount of income over the whole period would have been the same, whichever of the two methods was applied, had it not been for certain disputed amounts. The difference lies in the amount of tax payable in that as a result of the metohd applied by the respondent there are bigger increases of capital in certain years with the result that the applicant pays more tax, since the tax is imposed on graduated scales.

It is not for this Court to decide which method of computation is the best because this would amount in effect to this Court substituting its own discretion for that of the respondent. What this Court, therefore, has to decide is whether it was reasonably open to the respondent to apply the method he did.

I am satisfied from the evidence before me that the "annual rests" method is open to the respondent when the capital position at the end of each year can be ascertained with a fair degree of accuracy. In this respect the respondent had requested the applicant to supply all relevant information which the applicant did and his consultant, moreover, supplied, by exhibit 24, the capital position at the end of each year, thus making it possible for the respondent to apply the annual rests. method. I, therefore,

find that, in the circumstances, it was reasonably open to the respondent to apply the method he did.

As a result this ground also fails.

I now come to the next complaint of applicant which is that the respondent arbitrarily reduced his opening capital at the end of 1958 with the result that capital increases were shown in the years following. It is contended by applicant that such reduction was effected by the refusal of the respondent to accept the existence of certain assets worth at cost £16,733. Such assets consisted as alleged by the applicant of £2,500 in cash (out of which the respondent accepted £300), army stores worth £2,130, second-hand cars worth £1,280 and certain amounts due to the applicant by a number of relatives of his, amounting to a total of £4,900 (none of which was accepted). Also of certain gold coins and foreign currency worth £3,540 (out of which a total of £400 was accepted by the respondent), War Loan Bonds worth £3,000 (60 having been accepted) and lastly a capital of £935 in a certain company (£792 having been accepted).

As it appears from the evidence (both in the sworn affidavits and during cross-examination of the affiants) the reason that the respondent did not accept the above assets alleged to have been owned by the applicant is that the applicant did not produce any evidence as to their existence. Moreover, they did not appear at the end of the closing period and although the applicant gave some explanation as to how he disposed of them he was not in a position to produce any evidence as to such disposals. His consultant also stated on various occasions, both in his letters to the respondent and in his evidence, that he did not have personal knowledge of those facts but he relied on what the applicant himself had told him; the applicant, however, although he was the only person who had personal knowledge refused to sign a certificate of full disclosure because, as it was said, he could not be absolutely sure, due to the time that had elapsed, that he did not forget something. Besides, the respondent gives an explanation of how he came to the conclusion that the capital was inflated at the beginning of the period (pp. 41-42 of his cross-examin-

ation) and I am satisfied that such explanation is reasonable and justifies his conclusion. This being the position I must hold that with regard to this issue also it was reasonably open to the respondent to decide as he did and this Court will not substitute its own discretion for that of the respondent even if it could have decided otherwise on the same facts. As a result this ground also is dismissed.

Another point raised is that it was not possible for the respondent to raise the additional assessments in question unless he first established undisclosed chargeable income and since he did not ascertain the sources of the alleged undisclosed income he could not find that it came from taxable sources.

It was alleged on the part of the respondent that he had information about undisclosed trading transactions regarding second-hand goods from army stores and that he considered the omitted income as coming from undisclosed trading transactions, and that he also took into cosideration the fact that the applicant, being a company director, was in a position to control the company's activities (pp. 37-38 of the evidence).

The word "discovers" in the English Tax Acts, has been given a wide interpretation so as to mean "has reason to believe", "is satisfied" or "comes to the conclusion on information before him". (See, Simon's Taxes, vol. A3. 248 and the case of *Ceylon Finance Co. Ltd.* v. *Ellwood (Inspector of Taxes)* [1962] A.C. 782; [1962] 1 All E.R. 854 which was also applied in *Banning* v. *Wright* [1969] 48 T.C. 421, 433.

In my view it was reasonably open to the respondent, in the circumstances, having established the existence of omitted income to attribute it as coming from taxable sources in the absence of any indication to the contrary. In fact the applicant never furnished any evidence to the effect that such income came from untaxable sources.

With regard to certain disputed amounts, after considering carefully all material before me and especially the evidence adduced I find that many of the amounts claimed on the part of the applicant not to have been deducted from the profits, although deductible, such as interest from

bank accounts abroad, were later admitted to have been deducted. Certain amounts, however drawn by the applicant from his bank accounts abroad and spent abroad were not so deducted but were added to "expenditure." The respondent explains (at pp. 39 and 46 of his cross-examination) why he had to add these figures to the expenditure. As explained he has done so because they were shown in the accounts submitted by the applicant (exhibit 24) as a capital decrease and he had, therefore, to add it on the other part of the scale, the expenditure, in order to find the income by substracting the amount of the capital decrease. I must say that I find this explanation reasonable and I see no reason why the respondent was not entitled to do this.

In fact, as I understand the position, the main dispute in this case arose as a result of the non-acceptance by the respondent of the capital position at the beginning of the period as submitted by the applicant and all disputed amounts arose as a result of adjustments effected by the respondent in applying his method of ascertaining the omitted income. As I have already found I see no reason to disturb the sub judice decision in these respects.

Before concluding I wish to refer to certain other minor points which were raised by counsel for applicant, that is that certain notices sent by the respondent were not valid either because they were not signed by the Commissioner himself or that they were addressed to his consultant or not sent by registered post. The applicant however, accepted them as valid, at the time and complied with their contents. In any event I find such points insignificant and even if they amounted to defects in the procedure these were not so material as to affect the validity of the assessments which are the subject-matter of the recourse.

In the result this recourse succeeds partly, to the extent indicated above. There will be no order as to costs.

Recourse succeeds in part.
No order as to costs.