

1985 December 5

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

SPYROS STAVRINIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS THROUGH

1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 355/83).

Income Tax—Assessment—In the circumstances sub judice assessment was reasonably open to the Commissioner of Income Tax.

A company, which the applicant incorporated under the name at Spyros Stavrindes Ltd., took over as from 1.1.71 all the applicant's assets and liabilities as at 1.1.71. On 10.1.72 applicant submitted a statement of his assets and liabilities as at 31.12.70 and a computation of chargeable income for the years 1966-1970 and eventually applicant's liability to income tax for the years 1966-70 was settled subject to an agreement providing inter alia that the settlement would be revised according to the outcome of pending litigation in case 6551/70 with a Czechoslovakian company named MOTOCOV.

This action, whereby the said MOTOCOV claimed for £23,053.596 mils plus interest (amounting to £3,000) was settled on 22.1.1974. In accordance with the settlement Spyros Stavrindes Ltd. undertook to pay in full settlement 17,000 (pounds Sterling). Due to difference in rate of exchange that cost to the said company the sum of £14,381.075 mils. Therefore a gain at £11,672.521 mils

resulted, £23,053.596 mils + £3,000 = £26,053.596 —
£14,381.075 mils = £11,672.521 mils).

5 The company Spyros Stavrínides Ltd., in consideration
of the difference in the rate of exchange when the said
liability was overtaken by it on 1.1.1971, and services
rendered to clients of the products of Motocov, withheld
the sum of £3,000.- out of the gain of £11,672.521 mils
and the balance of £8,672.521 mils was transferred to the
credit of applicant's current account with the said com-
pany.

10 As a result the respondent Commissioner on the 12.12.80
raised an assessment on the applicant for the said sum of
£8,672.521 as income for 1974 (year of assessment 1975).
The applicant objected, but his objections was dismissed.

15 Hence the present recourse.

20 *Held*, dismissing the recourse (1) In the circumstances
the sub judice decision to treat the sum of £8,672.521 mils
as income was reasonably open to the Commissioner. In-
deed the liability to MOTOCOV was a circulating capital
and therefore any difference in the rate of exchange was
liable to income tax; and any sums foregone by MOTO-
COV were against and in consideration of trade expenses
and/or losses which had been accounted for as deduction
in assessing applicant's income for 1966-1970, and there-
fore, their redemption is revenue liable to income tax.

25 (2) The said income of £8,672.521 mils accrued in
1974 (year of assessment 1975) and it was taxed on
12.12.80, i.e. less than six years as envisaged by the Law.
It follows that applicant's contention that the assessment
made was out of time cannot stand.

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Recourse dismissed.

No order as to costs.

Cases referred to:

Koumipa Ltd. v. The Republic (1979) 3 C.L.R. 272;

35 *'Fitikkides v. The Republic* (1970) 3 C.L.R. 15.

Recourse.

Recourse against the income tax assessment raised on applicant for the year of assessment 1975.

A. Triantafyllides, for the applicant.

M. Photiou, for the respondents.

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Cur. adv. vult.

LORIS J. read the following judgment. The applicant by means of the present recourse impugns the decision of the respondent Commissioner of Income Tax dated 25.6.83 (vide letter attached to the application), whereby applicant's objection, dated 31.1.81, directed against the income tax assessment for the year of assessment 1975, in the sum of £5,352.300 mils (vide appendix "A" attached to the opposition) was turned down, the original assessment of 12.12.80 having thus been confirmed.

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The facts of the present case are very briefly as follows:

Applicant was up to 31.12.1970, a self-employed person trading in agricultural chemicals and in agricultural machinery and tools.

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From 1.1.71, he incorporated a company under the name of Spyros Stavrindes Ltd., which took over his business including his business assets and liabilities as at 1.1.1971.

As applicant had neither submitted returns of income for the years 1966 to 1970, nor kept proper books of accounts till 31.12.70, the respondent Commissioner of Income Tax requested him to submit a statement of his assets and liabilities as at 31.12.70 as well as his returns of income for the years 1966 to 1970.

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On 10.1.1972 applicant through his accountant submitted a statement of his private and business assets and liabilities as at 31.12.1970 and a computation of chargeable income for the years 1966 to 1970 (vide particulars in paragraph 5 of the opposition).

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Upon the basis of the above capital statement submitted in December 1972, applicant's liability to income tax was settled by the respondent Commissioner subject to an agreement embodied in the document of 8.2.73 (appendix "B" attached to the opposition) whereby it was provided, inter alia, that the settlement of income tax as above would be revised according to the outcome of the pending litigation in Nicosia case No. 6551/70 with a Czechoslovakian company named MOTOCOV.

At a later stage, when the respondent Commissioner examined the audited accounts of Spyros Stavrinides Ltd., for the year 1974, which were submitted by its auditor namely N. Proios on the 4th September, 1978, it was revealed for first time that the aforesaid litigation was settled in Court on the 22nd January, 1974.

By virtue of the settlement in the aforesaid action, the company Spyros Stavrinides Ltd., (which had taken over the business assets and liabilities of applicant on 1.1.1971, including the liability of bills of exchange—in Action No. 6551/70—amounting to £23,053.596 mils plus interest of £3,000.-) would in full settlement pay in sterling pounds 17,000.-. Due to difference in rates of exchange on payment of the £17,000 sterling it did cost the company Spyros Stavrinides Ltd. C£14,381.075 mils. Therefore a gain (due to difference of exchange and part of debt foregone for considerations explained in paragraphs 10 - 12 of the opposition) of £11,672.521 mils resulted. (i.e. £23,053.596 mils + £3,000 = £26,053.596 mils — £14,381.075 mils = £11,672.521 mils).

The company Spyros Stavrinides Ltd., in consideration of the difference in the rate of exchange when the said liability was overtaken by it on 1.1.1971, and services rendered to clients of the products of Motovoc, withheld the sum of £3,000.- out of the gain of £11,672.521 mils and the balance of £8,672.521 mils was transferred to the credit of applicant's current account with the said company.

The respondent Commissioner of Income Tax taking into consideration (a) that the balance of £8,672.521 mils was transferred to applicant's current account with the said company in the year 1974 (b) the considerations set out in

paragraph 11 of the opposition, decided that the gain of £8,672.521 mils was a receipt by applicant in the year 1974 liable to income tax and on 12.12.1980 raised an assessment on him for the aforesaid sum (vide appendix "A" attached to the opposition).

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The applicant objected to such an assessment on 31.1.81; the objection was turned down by the respondent, (vide letter attached to the recourse) hence the present recourse.

The main complaint of the applicant is that the respondent Commissioner of Income Tax wrongly treated the amount of £8,673 as taxable income.

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Further it is maintained that even if the aforesaid amount was taxable (a) the assessment is out of time; (b) the sub judice decision is not duly reasoned.

In connection with the main complaint of the applicant I hold the view that it was open to the respondent Commissioner to treat the aforesaid amount of £8,673 as taxable income for the following reasons.

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(a) the liability of £23,053.521 mils plus £3,000 interest due to MOTOCOV was a circulating capital.

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(b) as the said liability was a circulating capital, any difference in the rate of exchange was liable to income tax (*Koumipa Ltd., v. The Republic* (1979) 3 C.L.R. 272);

(c) any sums foregone by Motocov were against and in consideration of trade expenses and/or losses. Such expenses and/or losses were accounted for as a deduction in the above computation of applicant's total assessable income for the period in question; therefore their redemption are revenue receipts liable to income tax.

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As regards the time element it is crystal clear that the amount of £8,673 emanated from the settlement in Nicosia, Action No. 6551/70; and it is an undisputed fact that the settlement in question was effected as late as 22.1.1974; as stated earlier on in the present judgment, this amount was transferred to the credit of applicant's

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current account with the said company in 1974. In short the income accrued (*Fitikkides v. The Republic* (1970) 3 C.L.R. 15 at p. 32) in 1974 (year of assessment 1975) and it was taxed on 12.12.1980 i.e. less than 6 years as envisaged by the Law. Therefore this contention of applicants is doomed to failure as well.

Now as regards reasoning it is clear that the sub judice decision conveys the necessary reasoning to the applicant; bearing in mind that the reasoning behind the decision may be legitimately supplemented from the material contained in the file, I hold the view that the several documents before me contain sufficient material enabling judicial scrutiny.

In the result the present recourse fails and is accordingly dismissed; let there be no order as to costs.

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Recourse dismissed.
No order as to costs.