

1985 November 21

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CYPRUS HOTELS LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

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

Respondents.

(Cases Nos. 256/82 and 257/82).

Income Tax—Special Contribution—Deductible expenses—Interest—Applicants’ liability to pay interest for the period after 15.8.74 extinguished by virtue of s.4 of The Debtors’ Relief (Temporary Provisions) Law, 24/79—Therefore, the amount of such interest cannot be allowed as a deductible expense—The Assessment and Collection of Taxes Law 4/78 s.23(1)—Power to reopen accounts. 5

The applicant company was declared a displaced or stricken debtor under Law 24/79. Before the enactment of Law 24/79 the applicant filed its accounts/tax returns for the years 1974-1978 deducting the interest payable to banks in respect of bank loans etc. In view of the provisions of Law 24/79 which had been enacted in the meantime the respondents decided not to allow the deductions of interest on debts to the said Banks covered by the provisions of Law 24/79. 10 15

The applicant company objected, but the respondent Commissioner did not accept the objection and as a result the present recourses were filed. Counsel for the applicant company argued, inter alia, that in view of the decision in *British Mexican Petroleum Co. Ltd. v. Jackson (Inspector* 20

of Taxes) [1932] 16 T.C. 570 respondents were wrong to reopen the accounts of applicants, as such accounts had been finalised and were closed and that if the interest in question is not a deductible expense the purpose of Law 24/79, i.e. to assist stricken debtors, would be defeated.

Held, dismissing the recourse:

(1) The Director of the Department of Inland Revenue is specifically empowered by s. 23(1) of Law 4/78 to order the reopening of any account.

(2) S. 4 (1) of Law 24/79 does not provide for a mere suspension or deferment of a displaced or stricken debtor's obligation to pay interest, but completely abolishes and obliterates the liability to pay interest after 15.8.1974 and as long as the abnormal situation continues. Therefore, since the liability of the applicant company to pay interest was completely extinguished, the amount of such interest cannot be allowed as a deductible expense.

Recourse dismissed.

No order as to costs.

Cases referred to:

British Mexican Petroleum Co. Ltd. v. Jackson (Inspector of Taxes) [1932] 16 T.C. 570;

Odeon Associated Theatres Ltd. v. Jones (Inspector of Taxes) [1972] 1 All E.R. 681.

Recourses.

Recourses against the income tax assessment raised on applicants for the year of assessment 1980.

G. Triantafyllides, for the applicants.

M. Photiou, for the respondents.

Cur. adv. vult.

MALACHTOS J. read the following judgment. By the present recourses, which have been heard together, as they present common questions of law and fact, the applicant

company, The Cyprus Hotels Ltd., a public company with limited liability, seeks a declaration of the Court that:

I. (a) The income tax assessment for the year of assessment 1980 and/or the decision of the respondents to impose tax on applicant for the year of assessment 1980, amounting to £4,544.565 mils or to any other sum or at all, is null and void and of no legal effect whatsoever. 5

(b) The decision of the respondents to impose income tax on, and/or not to allow as deductible expense, the amounts, which were properly paid and payable by way of interest for the period 15th August, 1974 to 31st December, 1978, on the loans and overdraft outstanding as at 15th August, 1974, which amounts were by the provisions the Debtors' Relief Law, 1979, (No. 24) declared as not recoverable by creditors from displaced and/or affected persons, is null and void and of no effect whatsoever. 10
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II. (a) The Special Contribution Assessments for the years 1975 to 1980 and/or the decision of the respondents to impose Special Contribution on applicant for the years 1975 to 1980 (both inclusive) amounting to £50,208.- or any other sum or at all, is null and void and of no legal effect whatsoever. 20

(b) The decision of the respondents to impose Special Contribution on, and/or not to allow as deductible expenses the amounts, which were properly paid and payable by way of interest for the period 15th August, 1974 to 31st December, 1978, on the loans and overdraft outstanding as at 15th August, 1974, which amounts were by the provisions of the Debtors' Relief Law, 1979, (No. 24) declared as not recoverable by creditors from displaced and/or affected persons, is null and void and of no legal effect whatsoever. 25
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The relevant facts of the case, which are not in dispute, are briefly as follows:

The applicant is a public company of limited liability and derives its income from the hotel and catering business. According to the provisions of the Debtors Relief (Temporary Provisions) Law of 1979, (Law 24 of 1979), the applicant 35

company was declared a displaced and/or stricken debtor.

5 The applicant company filed its accounts/income tax returns for the years 1974 to 1978 deducting the interest payable to banks in respect of bank loans etc. In March, 1979, after the finalisation of the above accounts, Law 24 of 1979 was enacted which provides that no interest shall be charged, debited or collected on a debt of a displaced or stricken debtor as from 15.8.1974. In view of this, the respondents decided not to allow the applicant's submission
10 that the interest payable in respect of such debts to the banks be considered as a deduction expense for income tax purposes, for the period 15.8.1974 to 31.12.1978. Their relevant decision was communicated to the applicant company by letter of 12.3.1982, together with the relevant income tax assessments and special contribution levied.
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To this, the applicant objected, on the ground that such interest was a deductible expense because the accounts for each financial year were drawn up in accordance with the conditions prevailing at the end of each financial year and had duly been finalised before the enactment of Law 24/79.
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The respondent Commissioner considered the applicant's objections but as he did not agree that the interest in question was an allowable deduction, he proceeded to determine the income tax assessments and the Special Contribution. This decision was communicated to the applicant company by letter dated 18.5.1982 together with the relevant notices of income tax and Special Contribution levied.
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As a result, the applicant filed the present recourses.

30 Counsel for the applicant has put forward the following arguments: That on the strength of the *British Mexican Petroleum Co. Ltd. v. Jackson (Inspector of Taxes)* [1932] 16 T. C. 570 at p. 591-593, the respondents were wrong to reopen the accounts of the applicant, as these had been
35 finalised and were closed.

This argument must fail because the Director of the Department of Inland Revenue is specifically empowered by section 23(1) of the Assessment and Collection of Taxes

Law of 1978 (Law 4 of 1978) to order the reopening of any account. Section 23 (1) provides:

“Where it appears to the Director that any person has not been assessed or has been assessed at a less amount than that which he ought to have been assessed, the Director may, within the year of assessment or within six years of 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 collected 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.”

Secondly, it was argued that the purpose of Law 24/79 was to assist and benefit stricken debtors such as the applicant company, its main business being the Ledra Palace Hotel which, after the events of 1974, became completely inoperable. The effect of the Law, it was argued, was to abolish completely the interest payable in respect of debts of displaced or stricken debtors. Consequently, if the amount of such interest is not to be considered as a deductible amount for tax purposes but that it is subject to tax, then the purpose of the Law to assist stricken debtors would be defeated or no benefit would accrue to such debtors. The case of *Odeon Associated Theatres Ltd. v. Jones (Inspector of Taxes)* [1972] 1 All E. R. 681 was cited where it was held that in computing for income tax purposes the profits or gains of the tax payer company, there should be allowed, as a deductible expense, the cost of deferred repairs to certain cinemas owned by them.

The respondents on the other hand argued that to apply the case of *Odeon Treatres* (supra) would be in conflict with the provisions of Law 24/79 which are temporary and are likely to last until the end of the abnormal situation.

If the Commissioner of Income Tax were to allow the interest due as a deductible allowance for income tax purposes, such debtors would be receiving a double benefit, that is, on the one hand they would not be paying their creditors the interest due and on the other hand, they would

be deducting the amounts of such interest as non taxable expenses.

5 After careful consideration of the relevant sections of Law 24/79 I am of the opinion that section 4(1) does not provide for a mere suspension or deferment of a debtor's obligation to pay interest, but completely abolishes and obliterates such liability to pay interest after 1974 and as long as the abnormal situation continues.

Section 4 provides:

10 "Notwithstanding the provisions of any other Law, during the period mentioned in subsection (1) of section 3, no interest shall be charged, debited or collected on a debt of a displaced or stricken debtor.

15 (2) Any interest which may have been charged or debited or the interest paid by a displaced or stricken debtor for the period as from the 15th August, 1974, until the date of the coming into operation of this Law shall be deemed to have been charged, debited or paid, as the case may be, on account of the balance
20 of the debt.

(3) Where any debt has been discharged during the period mentioned in the previous subsection and in the manner provided thereby, or the balance of the debt still due is smaller than the amount of the interest charged, debited or paid under the said subsection, as the case may be, the creditor shall, within
25 three months from the date of the coming into operation of this Law, pay the difference to the displaced or stricken debtor."

30 The wording of the section is clear and unambiguous: "...no interest shall be charged...", and then proceeds to make specific provision for the refund to the debtor of any interest paid. If the intention of the legislator was to provide for the mere suspension of such interest, it would
35 have been clearly provided so, as it is in fact in section 3 of the Law, in respect of debts due:

Section 3(1). "...during the abnormal situation... the right of every creditor to recover a debt due by a displaced or stricken debtor is suspended..."

Consequently, since the liability of the applicant company to pay interest is completely extinguished, the amount of such interest cannot be allowed as a deductible expense, as it no longer constitutes an amount due and is, therefore, taxable.

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For the reasons stated above, these recourses fail and are hereby dismissed.

There will be no order as to costs.

Recourses dismissed.

No order as to costs.

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