1986 September 16

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

GEO. M. HADJIKYRIACOS CO. LTD.,

Applicant,

v.

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

Respondents.

(Case No. 47/83).

Income Tax—Discretion of Commissioner of Income Tax—Judicial control—Principles applicable.

Income Tax—Profits or losses of a business—Principles of commercial accounting—Necessity of valuation of stock-in-trade before computing such profits or losses—Methods to be used in making such a valuation. 5

Immovable property—Turkish invasion—Effect of invasion on properties situated in the occupied area of the Republic.

Applicants are a company of limited liability deriving their income from the manufacture of biscuits and other 10 confectionary items. In the audited accounts, which the applicants submitted for the year of assessment 1975 (year of income 1974) to respondent 2, they claimed a deduction of £10,000 as a loss from their participation in J. Constantinou and others, who had purchased a grove 15 known as "Loizides Grove" for the purpose of developing and dividing into building sites. The grove is situated in an area occupied by the Turkish invasion forces.

It appears that sometime in January, 1973 the applicants acquired the interest in the said joint venture of one 20

of the original participants in the said venture by paying to such person the said sum of £10,000. However, in their audited accounts, which they submitted in February, 1974 for the year of assessment 1974 (year of income 1973) the joint venture was not mentioned and the said sum of £10,000 was included in the ordinary trade debtors.

Respondent 2 did not accept the claim for the said deduction on the following grounds, namely that the payment of £10,000 represented applicants' original capital for the acquisition of the interest of one of the original participants in the said venture, that such payment cannot be considered as expenditure made totally and exclusively for the acquisition of applicants' income, that applicants' participation in the said venture is not covered by their memorandum of association, that most probably applicants had a profit and not loss from their participation in the venture and that the fact that no accounts had been submitted for the years 1973 and 1974 showing any profit or loss of the joint venture did not allow him to reach the conclusion that the £10,000 represent in fact loss suffered by the applicant company.

As a result applicants filed the present recourse. In the *affidavit* sworn on their *behalf* by Mr. *Mavroudis it* is alleged that the grove had been purchased by the venture at the price of £325,000, that £212,000 had been paid upto the time of invasion, that the venture incurred further expenditure of £30.000 - £40,000 for dividing the grove into building sites, that the number of such sites were 96 out of which 35 to 40 were sold, that as regards the sites sold as aforesaid a small sum of £1,000—£2,000 had been paid before the invasion and that due to the invasion it was not possible to produce any accounts.

In the affidavit filed on behalf of the respondents and sworn by Mr. Panayides, a principal assessor of the Department of Inland Revenue there are made certain calculations on the basis of the facts alleged in Mr. Mavroudis' affidavit and in accordance with accepted accounting principles. As a result of such calculations the affiant disagreed with Mr. Mavroudis' contention that no profits were made by the venture before the Turkish invasion.

Held, dismissing the recourse: (1) This Court does not substitute its discretion to that of the Commissioner of Income Tax. The duty of this Court is to scrutinize the legality of the decision and ascertain whether such decision was reasonably open to him. It is well settled that where a taxpayer claims any exemption or deduction from tax, the onus is on him to support such a claim. 5

(2) The grove purchased by the joint venture is situated in an area occupied by the Turkish invasion forces. The effect of the Turkish invasion on properties situated within an occupied area has been considered by this Court in *George Tsimon Ltd.* v. *The Republic* (1980) 3 C.L.R. 321 at pp. 343-344 and in *Geo. Pavlides Ltd.* v. *The Republic* (1980) 3 C.L.R. 345 at p. 359. The temporary inaccessibility of the grove and the temporary inability of the applicants to use the same for their trade or business, due to enemy occupation, does not amount to a definite ceasure of use or loss of their property. 10 15

(3) The Court has not been satisfied that the applicants have discharged the burden of showing that there has been a deductible loss of £10,000 or any lesser amount. It is a fundamental principle of commercial accounting that before computing the profits or losses of a business it is necessary to take into consideration the trading stock and to make a valuation of the stock. The method to be used in making such a valuation was considered by this Court in *Finart Construct Ltd.* v. *The Republic* (1984) 3 C.L.R. 29. In this case the applicants failed to value the stock-in-trade acquired by the investment of £10.000. The Commissioner was, therefore, right in refusing to allow to write off such amount as having been permanently lost. It is, also, material to note that in their accounts for 1973 the applicants did not describe the said amount as a circulating asset, but included it in the debtors account. Since it was not part of the applicants' business to lend money or act as bankers, the said payment could not qualify as a deductible expense. 20 25 30 35

Recourse dismissed. £50.- costs in favour of respondents.

Cases referred to:

Georghiades v. *The Republic* (1982) 3 C.L.R. 659;

In re Charis Georghallides, 23 C.L.R. 249;

Kittides v. *The Republic* (1973) 3 C.L.R. 123;

5 *George Tsimon Ltd.* v. *The Republic* (1980) 3 C.L.R. 321;

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

Finart Construct Ltd. v. *Republic* (1984) 3 C.L.R. 29.

Recourse.

10 Recourse against the income tax assessments raised on applicant for the years 1975-1976.

A. Triantafyllides, for the applicant.

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

15 *Cur. adv. vult.*

SAVVIDES J. read the following judgment. The present recourse is directed against the assessments of income tax for the years of assessment 1975-1976 (years of income 1974-1975), which were raised and determined by res-
20 pondent 2 as per notifications of assessment sent to the applicant according to which the tax payable for the year of assessment 1975 amounted to £4,056.200 mils and for the year of assessment 1976 to £193.800 mils.

Applicant is a private company incorporated in Septem-
25 ber, 1966 as a private company of limited liability with an authorised share capital of £150,000. Applicant company derives its income from the manufacture and sale of biscuits and other relevant confectionary items.

On 20th February, 1975, applicant company's auditor,
30 Mr. J. Papakyriakou, submitted audited accounts for the year 1974. In the profit and loss account, they claimed a

deduction of £10,000 for loss incurred from a joint venture in J. Constantinou and others, under the heading "The Grove".

The auditor in his report, annexed to the accounts, stated the following: 5

> "Foreseen loss from the joint venture J. Constantinou and others of a sum of £10,000.
>
> The object of the said joint venture was the development and sale of building sites of the purchased property known as 'Loizides Grove' in Famagusta. The 10 said property has been, since the end of 1974, under the control of the Turkish invading forces."

Upon inquiries made by the respondent Commissioner of Income Tax in respect of the £10,000.- loss incurred from the said joint venture, applicant company and/or its 15 auditor Mr. Papakyriakou, gave the following additional information:

> "(a) Applicant company some time in January, 1973, took part in a joint venture together with five other persons, namely, A. K. Antoniou of London, 20 Mr. Mavroudis of Famagusta now of Nicosia. Mikis Hji Michael of Famagusta now of Limassol. I. Constantinou of Kato Varosha now of London and Mrs. L. Zapiti of Kato Varosha now of Nicosia, who bought the orange grove known as 'Loizides Grove' of Va- 25 rosha, for the sum of £325,000.-.
>
> (b) That the orange grove was purshased with the intention to develop and divide it into building sites.
>
> (c) That on the 23rd January, 1973, applicant company paid into the said joint venture bank ac- 30 count the sum of £10,000.-.
>
> (d) That applicant company could not furnish any form of accounts of the said joint venture as the books of account which were kept at Famagusta were left there." 35

Applicant company when submitting its accounts in February, 1974, for the year 1973, did not mention its

involvement in the said joint venture, neither in its report to the accounts, nor by showing separately the payment of £10,000 to the joint venture bank account, on the face of the balance sheet as at 31st December, 1973. Applicant included the said payment in the ordinary trade debtors.

The respondent Commissioner of Income Tax, considering such transaction as not being a transaction in the ordinary course of applicant company's trade; and in accord to accounting principles and provisions of the Companies Law and after taking into consideration all relevant facts and also bearing in mind the matters hereinafter mentioned, concluded that the said sum of £10,000 was not expense wholly and exclusively incurred by applicant company in the production of income.

The matters taken into consideration by the respondent Commissioner as above, as appearing in his statement of facts set out in the opposition are:-

(a) The sum in question could not be regarded as having been expended for the purposes of the trade or business of the applicant company.

(b) The sum of £10,000.- was paid by applicant company on 23rd January, 1973, in order to acquire part of the interest in the joint venture, i.e. 10 per cent from Mr. Antoniou who was one of the original purchasers of the said grove by virtue of an agreement of 23rd December, 1972.

(c) The said sum constituted capital expenditure and if employed in the business of the joint venture, it was employed as capital. Therefore, any loss is loss of capital and it is not an allowable deduction in accordance with the provisions of sections 11(1) and 13(f) of the Income Tax Laws 1961-1981.

(d) It was not part of the business of applicant company to lend money or to act as bankers and that they did not in fact carry on the business of money lenders or bankers as accessory to their business of manufacturing biscuits.

(e) No accounts of the joint venture were submitted to show the actual loss incurred or profit realised.

The applicant company objected to the assessments raised and as an agreement could not be reached, the respondent Commissioner determined the assessments and communicated his decision to the applicant company by letter dated 13th June, 1978. Applicant company filed a recourse before the Supreme Court challenging such assessments.

In the course of the hearing it emanated that new facts were placed, for the first time, before the Court, which had not been placed before the respondent Commissioner, and both counsel agreed that the case should be sent back to the respondent Commissioner with a view to reconsidering same in the light of the new material and arriving at a new decision.

In the light of the statement made by both counsel to the Court, the Court annulled the decision of the respondent with a view that applicant company's objection to the assessment be considered and determined afresh.

The respondent Commissioner having reconsidered applicant's objection to the said assessments upon the new facts and information produced, reached the conclusion, once again, that the sum of £10,000.- was not an expense wholly and exclusively incurred by applicant company in the production of income and, therefore, it was not an allowable deduction. The respondent Commissioner communicated his decision by letter dated 11th January, 1983, in which the reasons for rejecting applicant's objection are explained at some length.

The reasons given by the Commissioner of Income Tax as appearing in the said letter are as follows·

"

After examination of the new material produced and on re-examination of the whole case, I have reached the conclusion that I cannot accept the foreseeability of loss from the said joint venture for the following reasons:

(a) In the purchase deed there is a condition that the property was not to be delivered to the purchasers for the purpose of construction of building sites before the 1st May, 1973.

5 (b) The payment of £10,000.- which was effected by you on the 23rd January, 1973, represented your original capital for the acquisition of the rights of Mr. A. K. Antoniou in the joint venture J. Constantinou and others.

10 (c) The amount of £10,000.- paid cannot be considered as expenditure which was made totally and exclusively for the acquisition of your income.

(d) I accept that before the Turkish invasion certain work was carried out for the division of the
15 purchased property known as 'Loizides Grove' into building sites and that a number of building sites were sold, but accounts, however, have not been submitted by the joint venture J. Constantinou and others for the years 1973-1974 showing any profit
20 or loss of the joint venture.

(e) The participation of your company in the joint venture, which had as its object the development and sale of building sites, from the purchased property, is not covered by the memorandum of your company.

25 (f) On the basis of the new material which has been produced, I understand that a number of building sites has been sold to a number of persons, which indicates that the company had an income and most probably profit and not loss from its participa-
30 tion to the joint venture.

(g) The fact that no accounts have been submitted showing any profit or loss from the joint venture during the years 1973-1974, does not allow me to reach the conclusion that the sum of £10,000.- repre-
35 sents in fact loss suffered by your company.

2. I enclose the relevant notices of assessment of tax and your attention is drawn to paragraph 6 of the

notices "in case you consider yourself aggrieved by the said decision."

As a result, applicant filed the present recourse challenging the said assessments.

The recourse is based on the following grounds of law: 5

1. The respondents' refusal to allow as deductible expense and/or loss the amount of £10,000 which the applicant had lost in a joint venture in Famagusta was wrong.

2. The respondents acted in excess or abuse of power in 10 not allowing the above items as deductible expenses.

By his opposition counsel for respondents advanced the following grounds of law:

1. The assessment for the year of assessment 1975 (year of income 1974) was raised under sections 5(1) and 15 6 of the Income Tax Laws 1961 to 1975 and sections 3 and 13(2)(b) of the Taxes (Quantifying and Recovery) Law No. 53 of 1963 as amended by Law No. 61 of 1969 now repealed and replaced by the Assessment and Collection of Taxes Laws 1978 to 1979. 20

2. The assessment for the year of assessment 1976 (year of income 1975) was raised under sections 5(1) and 6 of the Income Tax Laws 1961 to 1976 and sections 3, 13(2) (b) and 23(1) of the Taxes (Quantifying and Recovery) Law No. 53 of 1963 as amended by Law No. 61 of 1969 25 now repealed and replaced by the Assessment and Collection of Taxes Laws 1978 to 1979.

3. The objection to the assessments for the years of assessment 1975 and 1976 were determined under section 20(5) of the Assessment and Collection of Taxes Laws 30 1978 to 1979.

4. The decision of the respondent Commissioner not to allow the sum of £10,000.- as a deductible expense was taken in accordance with the provisions of section 11(1) and 10(f) of the Income Tax Laws 1961 to 1981. 35

By leave of the Court affidavit evidence was adduced by both parties.

By his affidavit dated 6th February, 1986, sworn on behalf of the applicant by Mr. Christodoulos Mavroudis, 5 one of the co-purchasers of the property known as "Loizides Grove" stated, inter alia, the following:-

"

2. The purchase price of the property was agreed at C£325,000.- and till the Turkish invasion a sum of 10 C£212,000.- was paid.

3. Further and in addition to the above. for the division of the property into building sites an expenditure of C£30,000.—C£40,000 was incurred.

4. The building sites under division were 96, of 15 which 35 to 40 were sold.

5. In accordance with the terms of payment a small sum of about £1,000—£2,000, was paid in advance and the balance was payable by a number of instalments. On such basis it was not possible to ma-20 terialize any profit before the Turkish invasion, in that, from the sales made it could not have been possible to cover the amounts paid for the purchase of the land and the expenses for division.

6. Due to the Turkish invasion it has not become 25 possible to produce any accounts, as all material was left in Famagusta."

By his affidavit, on behalf of the respondents, dated 19th April, 1984, Mr. P. Panayides, a principal assessor of the Inland Revenue Department, refuted the allegations 30 contained in Mr. Mavroudis' affidavit as to any loss incurred. He alleges, inter alia, that:-

"

2. no documentary evidence was produced showing the amount paid by the joint venture against 35 the selling price of the land upto the date of the Turkish invasion.

3. No audited accounts or proper books and records have been produced to the Income Tax Office showing the exact amount expended by the joint venture in connection with the scheme, the number of building sites parcelled, the number of building sites sold, the price at which they were sold and the amounts received from such sales. The affiant is uncertain as to the number of building sites parcelled, number of building sites sold, the expenses incurred for the parcellation of the land and the advances received from the purchasers of the plots sold. 5 10

Moreover, he does not state the price at which the plots were sold.

4. Although the assets, i.e. the building sites are presently inaccessible to their owners they have not been permanently lost. Therefore, in view of the fact that dealings in land realised handsome profits applicant could not have incurred any loss if proper computation of profits of the joint venture was made in accordance with the accepted accounting principles. Such a computation of profits based on affiant's statements would be as follows: 15 20

(i) Purchase price of the land	£325,000.-
Add: Parcellation expenses	£40,000.-
Total cost of 96 building sites	£365,000.-

25

(ii) Number of building sites parcelled=96

Therefore cost of each site $= \frac{£365,000}{96} = 3,802$

(iii) Number of building sites sold 35 to 40—say 40. As affiant did not state approximate sale price of each site, I have assumed that an average price of £5,000 would be more than reasonable. 30

COMPUTATION OF PROFIT OR LOSS

Sales of 40 building sites @ £5,000 each	£200,000
Closing stock of building sites 56 @ £3,802 at cost	£212,912
	£412,912
Less: Cost of 96 building sites	£365,000
Profit	£47,912

Realised profit i.e. profit realised against cash received from purchases during the period under consideration is

$$\frac{£47,912 \times 40 \times £1,500 \text{ (average deposits received)}}{200,000 \text{ (total sale price)}} =$$

$$\frac{£47,912 \times 60,000}{200,000} = £14,373.60$$

Applicant Company's share=10% of £14,373.60= £1,437.36.

Therefore, I disagree with affiant's contention that no profit was made by the joint venture prior to the Turkish invasion."

In arguing his case, counsel for applicant submitted that the applicant was entitled to deduct the amount of £10,000, as this amount was paid in order to produce income from land development, so, it comes within the meaning of section 11(1) of the Income Tax Laws 1961 - 1975 as an expense wholly and exclusively incurred for the production of income. The fact, counsel added, that no accounts were produced cannot be taken against the applicant, because such failure was due to the occupation of Famagusta by the invading forces. Dealing with the legal ground raised by the opposition that there was no provision in the memorandum of association for land dealing, counsel submitted that this is irrelevant as the important consideration is whether the sum of £10,000.- was an

expense exclusively incurred for the production of income and not whether the memorandum of the company provides or not for land dealing.

In concluding, counsel for applicant submitted that the sum of £10,000.- was a necessary expense for the production of income from land dealing and, therefore, it has to be deducted from the taxable income of the applicant. 5

Counsel for the respondents, on the other hand, argued that the sum of £10,000.- was paid by applicant for the acquisition of 10 per cent in the joint venture and as result it represents part in the capital of such business and therefore any loss is capital loss. Furthermore, that it was not incurred wholly and exclusively in the production of income, as, when it was paid on 23rd January, 1973, the joint venture had not incurred any expenses because, according to the contract of sale, it was not to take possession of the property until 1st May, 1973. Counsel further contended that, irrespecetive of the fact as to how a person treats or names a particular transaction, it is material that applicant Company in its accounts for 1973, did not describe the said transaction as a circulating asset but it included this payment with the debtors account, and since it was not part of the business of the applicant to lend money or to act as a banker, this payment could not qualify as a deductible expense. The allegation of the applicant, counsel pointed out, that the auditor himself described this payment as a trade debt, cannot stand because the accounts were prepared by the auditor as presented by the company and were signed by its Directors. Assuming, counsel added, that the amount in question forms part of stock in trade, it has not been permanently lost and therefore it cannot be completely written off. 10 15 20 25 30

When the case was fixed for clarifications counsel for applicant in his clarifying address submitted that the question which the Court had to decide is whether the business upon which the joint venture embarked was a venture in the nature of trade or not. He contended that the fact that the purpose of the joint venture was to buy land and 35

parcel it into building sites with a view to selling them to various purchasers, leaves no doubt that the venture was in the nature of trade. In dealing with the affidavit of Mr. Panayides he submitted that the normal accounting
5 principles cannot apply in the present case, because an extraordinary situation has arisen due to the fact that the building sites have become inaccessible due to the Turkish invasion.

Counsel for the respondents in his clarifying address
10 contended that the applicant failed to discharge the onus cast on it to support its claim for exemption or deduction. What the Court has to examine, counsel submitted, is to ascertain whether the decision taken by the Commissioner was one open to him and not substitute its own decision
15 to that of the Commissioner. The fact, counsel, added, that the applicant failed to produce audited accounts showing the actual loss or profit realised, and also its failure to include the property into its trading stock, are matters which could be seriously taken into consideration against
20 the applicant. Had there been a proper stock taking, and bearing in mind the fact that temporary inaccessibility of the building sites due to the Turkish invasion does not amount to a permanent loss, the result would have been profit and not loss according to the affidavit of Mr. Pana-
25 yides. Counsel concluded his clarification by submitting that in the circumstances the decision of the respondent Commissioner was one reasonably open to him.

It is well settled that the Court, when having to consider the validity of a decision of the Commissioner of Income
30 Tax on a matter of taxation, has no power to substitute its own decision to that of the Commissioner but its duty extends to the scrutiny of the legality of the decision and ascertaining whether such decision was reasonably open to him. The position has become abundantly clear by the de-
35 cision of the Full Bench in *Georghiades* v. *The Republic* (1982) 3 C.L.R. 659, where at pp. 668-669, we read:

> "The scope and compass of the jurisdiction under Article 146 is by now firmly established. The review and the inquiry it entails is limited to the validity of
40 the act impeached. Such validity is tested by refe-

rence to the powers vested by law in the administration, the manner of their exercise and the factual substratum, particularly its correctness. The revisional jurisdiction of the Supreme Court is primarily of a corrective character. It is aimed to ensure, in the interest of legality and public good, that the administration functions within the sphere of its authority and always subject to the principles of good administration. The Court will not assume administrative responsibilities, a course impermissible under a system of separation of State powers, constitutionally entrenched in Cyprus. It is appropriate to recall in this respect, the observations of Triantafyllides, J., as he then was, in *Costas M. Pikis* v. *The Republic* (1965) 3 C.L.R. 131, at 149, earmarking the powers of the executive and the judiciary: 'After all it must not be lost sight of that it is for the Government to govern and for the Court only to control......'

Unlike the powers vested in the District Court before independence to adjudicate upon a taxation assessment by s. 43—Cap. 233—and earlier by virtue of s. 39 of Cap. 297 (of the old edition of the Statute Laws of Cyprus), the Supreme Court has no jurisdiction to go into the merits of the taxation and substitute, where necessary, its own decision. The power of the Supreme Court is limited, as indicated, to the scrutiny of the legality of the action, and to ascertain whether the administration has exceeded the outer limits of its powers. Provided they confine their action within the ambit of their power, an organ of public administration remains the arbiter of the decision necessary to give effect to the law; and so long as they make a correct assessment of the factual background and act in accordance with the notions of sound administration, their decision will not be faulted. In the end, the Courts must sustain their decision if it was reasonably open to them."

It is also well settled that where a tax payer claims any exemption or deduction from tax, the onus is on him to support such claim (see, *In the matter of Charis Georghallides* 23 C.L.R. 249, *Kittides* v. *The Republic* (1973)

3 C.L.R. 123 at p. 133, in both of which the principle has been reiterated that "in a disputed case, the onus to satisfy the Court as to the liability to pay tax is on the Commissioner, whereas the onus to establish a
5 claim for deduction or allowance is on the tax payer").

In the present case it is alleged on behalf of the applicant that the applicant has incurred a loss of £10,000.- from its involvement in a joint venture for the purchase and parcellation of land into building sites. It is common
10 ground that the said property is situated within the areas occupied by the Turkish forces which have invaded Cyprus.

In the course of argument much weight was attached by the applicant to the fact that the property owned by the
15 joint venture has become inaccessible to the applicant and the other persons engaged in the joint venture and therefore it could not realise any profit. As a result, it treated the amount of £10,000.- invested in the joint venture as a total loss, and has not included the value of such property
20 in its capital asset as stock-in-trade.

As to the effect of the Turkish invasion on properties situated within Turkish occupied areas and as to whether such properties can be considered as a lost asset, the matter has been determined by this Court in the cases of
25 *George Tsimon Ltd.* v. *The Republic* (1980) 3 C.L.R. 321 at pp. 343-344 and *Geo. Pavlides Ltd.* v. *The Republic* (1980) 3 C.L.R. 345, at p. 359 where it was held that:

> "The mere temporary inaccessibility by the applicants of such property and their temporary inability
> 30 to use same for the purpose of their trade or business, due to enemy occupation and for so long as such occupation lasts, does not amount to a 'definite' ceasure of use or 'definite' loss of their property which, as admitted by the applicants, still stands registered
> 35 in their names as absolute owners and it is not alleged as having been lost permanently;"

It is common ground that no audited accounts and proper books or records had been produced to the Commissioner of Income Tax, showing the actual loss incurred,

or any profit realised from the transaction, or the number of building sites sold and the amounts received from such sales. It is the contention of the applicant that such records could not be produced as they had been left in the Turkish occupied area. Irrespective, however, of the fact that such records could not be accessible, there was nothing to prevent the applicant to submit a general statement based on information which could be made available. For the first time the only information which has been made available by the applicant and which had not been placed before the respondent Commissioner of Income Tax when examining the case, is that contained in the affidavit of Mr. Mavroudis by which he is giving the number of the building sites into which the property has been parcelled, the number of the building sites sold and the income realised by the sale of such building sites before the Turkish invasion. On the basis of such information Mr. Panayides, a principal assessor of Income Tax, made certain calculations according to which, as mentioned in his affidavit, a profit was realised during the period under consideration and not any loss. Mr. Panayides was not summoned to be cross-examined on his affidavit evidence. On the contents of the affidavits before me I am not satisfied that the applicant has discharged the burden of showing that there has been a deductible loss of £10.000.- or of any lesser amount.

It is a fundamental principle of commercial accounting that before computing the profits or losses of a business it is necessary to take into consideration the trading stock and to make valuation of this stock. In the recent case of *Finart Construct Ltd.* v. *Republic* (1984) 3 C.L.R. 29, the Court had to deal with the duty and purpose of valuating the trading stock and the mode in which the value of trading stock can be ascertained in circumstances similar to those of the present case. A. Loizou, J. had this to say at pp. 33, 34, 35:

> "It is common ground that according to the ordinary principles of commercial accounting the basis of valuation of trading stock is its cost or its market value, whichever is the lowest; and the market value

in relation to property means the price which it might reasonably be expected to fetch on sale in the open market The purpose of valuating stock at market price instead of cost, is to provide for an anticipated loss on sale These propositions are born out by ample authority (See Simon's Taxes, 3rd Ed , Vol B, para B1 1010, under the heading 'Valuation of Stock—General Principles', et seq and the authorities therein set out See also *BSC Footwear Ltd etc* v *Ridgway (Inspector of Taxes)* [1971] 2 All E R . p 534, as well as *Willingale* v *International Commercial Bank* [1978] 1 All E R 754

The question, therefore, at issue in the present case is the value which should be placed upon this stock-in-trade in computing the profits of the applicant Company, as it is the contention of the respondent Commissioner that due to the abnormal conditions and to the inaccessibility of owners or anybody's else to that part of the island which is occupied by the Turkish forces, the market value is uncertain It was urged that nobody can say for sure what is the market value of this trading stock and at the same time that nobody can deny that there is some value

The only certain thing is the cost price, and the only possible solution was to take into consideration the cost price and not the market value which is unknown It was submitted that it was not unreasonable for the respondent Commissioner to take into consideration the cost price which is ascertainable and that the issue turns on an accounting principle which is applicable in normal conditions and not in abnormal conditions as those prevailing here on account of the Turkish occupation of part of the Island

Considering the very special circumstances of this case and of the prevailing situation in the light of which it is only by some peculiar process that the market value of these building-sites cannot be ascertained, though they have their value, the use of the cost of the stock-in-trade by the respondent Com-

> missioner which was the only ascertainable factor, was reasonable in the circumstances and the only alternative which I find that it appears to give—adopting the words of Lord Reid just quoted—the fairest and most reasonable results in this case once there was no market and no market price."

In the present case the applicant failed to value the stock-in-trade acquired by the investment of £10,000.- and claimed to write off the sum of £10,000.- as an asset which was permanently lost, which is not the case for the reasons hereinabove explained. The Commissioner, therefore, rightly rejected an entitlement by the applicant to write off such amount as having been permanently lost. On the other hand, it is material to note that applicant Company in its accounts of 1973 did not describe the said transaction as a circulating asset but it included this payment to debtors account. Since it was not part of the business of the applicant to lend money or to act as a banker, this payment could not qualify as a deductible expense. (In connection with the tax-payer's method of accounting see Simon's Income Tax, 1964-1965. Replacement Vol. 2 paragraph 472 p. 288).

Bearing in mind all the circumstances of the case as hereinabove explained, and on the material before me, I find that it was reasonably open to the respondent Commissioner of Income Tax to reach the sub judice decision and that his discretion was properly exercised in the present case.

For all the above reasons this recourse fails and is hereby dismissed with £50.- costs in favour of the respondents.

Recourse dismissed with £50.- costs in favour of respondents.