

1986 November 22

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ANNA ANDREA LAGOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTER OF FINANCE AND/OR  
2. THE DIRECTOR OF INLAND REVENUE.

*Respondents.*

*(Case No. 100/86).*

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*Taxation—Capital gains tax—Fictitious transaction—Agreement to sell immovable property—Transfer by seller of one half share by way of gift to her husband—Followed by transfer by both of said property to purchasers—Panayiotou v. The Republic (1986) 3 C.L.R. 2311 adopted—Wife remained throughout the real owner, her husband playing role of an agent.*

*Taxation—Fictitious transactions—Breadth of discretion of tax authorities to treat transaction according to its true effect.*

10       The facts of this case are very similar to the facts in *Panayiotou v. The Republic* (1986) 3 C.L.R. 2311. As in that case respondent 2 treated the gift by the seller to her husband as fictitious and disregarded it, when assessing the seller's (applicant's) liability to capital gains tax. The arguments of applicant's counsel were the same as those made in the said case.

15       *Held, dismissing the recourse:* (1) It is unnecessary to reproduce the points debated in *Panayiotou*, *supra*. The attachment of a copy of the judgment in that case serves the same purpose.

(2) It is useful to refer to *Coates v. Arndale Properties Ltd.* [1985] 1 All E.R. 15, as it illuminates the breadth of the power of the tax Authorities to go behind the apparent effect of the transaction and treat it according to its true effect.

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(3) The applicant remained the true owner with the husband playing the role of an agent, who promptly complied with her wishes to implement what she had bargained to do, that is, transfer of the property in the name of the purchasers.

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*Recourse dismissed.*  
*No order as to costs.*

**Cases referred to:**

*Panayiotou v. The Republic* (1986) 3 C.L.R. 2311;

*Coates v. Arndale Properties Ltd.* [1985] 1 All E.R. 15.

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**Recourse.**

Recourse against the decision of the Director of Inland Revenue whereby he disregarded the gift of the one half share of the property to applicant's husband who joined her on the same day in transferring the property to the purchasers and charged the applicant to capital gains tax on the whole amount of value of the property.

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*D. Papachrysostomou*, for the applicant.

*Y. Lazarou*, for the respondents.

*Cur. adv. vult.*

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PIKIS J. read the following judgment. For reasons similar to those given in the case of *Panayiotou v. Republic*<sup>1</sup> this recourse, too, must be dismissed. The facts are very similar and the legal issues identical. Like the pursuer in the above recourse the applicant in this case also agreed to sell immovable property to third parties and like her, before implementing her agreement, she transferred by way of gift

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<sup>1</sup> (1986) 3 C.L.R. 2311

half share of the property to her husband who later joined her in transferring the property to the purchaser.

5 The Director disregarded the transfer as fictitious for the same reasons that he rejected a like transfer by the applicant to her husband in the above recourse. Much the same arguments were raised in this case in support of the submission that the Director lacked power to disregard the implications of the gift of the property to the husband. Further, it was submitted that the provisions of the Capital Gains Tax Law—52/80, providing for the assessment of the value of the land as at 27.6.78—that is a date prior to the enactment of the law—are unconstitutional as involving the imposition of retrospective taxation, contrary to the provisions of Article 24.3 of the Constitution. In 15 *Panayiotou*, supra, it was decided that neither submission is valid in law and held it was at the least reasonably open to the Director to disregard the transaction as fictitious. It is unnecessary to reproduce the discussion of the points debated and the reasons for my conclusions. The attachment 20 of a copy of the judgment in that case to be read as an inseparable part of the judgment in this case, will serve the same purpose. And it is appended hereto, accordingly.

25 Counsel raised no argument before me that I should depart from the conclusions reached and the decision arrived at in that case. However, I find it useful to refer by way of appendix to that judgment to a decision of the *House of Lords* that has come to my notice and illuminates, I believe, the breadth of the power of the tax Authorities to go behind the apparent effect of a transaction and treat it for 30 purposes of taxation according to its true effect.

The case is that of *Coates v. Arndale Properties Ltd.*<sup>1</sup> It was decided that the transfer of a lease of immovable property from a member of a group of companies to another, recorded as a trading transaction, leaving the 35 member of a group with a loss accounted for as a revenue loss, could be disregarded as the item was never, in point of fact, treated by the Group as anything other than a

<sup>1</sup> [1985] 1 All E.R. 115.

capital asset that did not change real hands as a result of the transfer. By analogy and by process of the same reasoning the transfer of the property in this case to the husband did not really result in a change of ownership. The applicant remained the true owner with the husband playing the role of an agent who promptly complied with the wishes of the principal, implementing her wishes by doing what she had bargained to do, that is, transfer the property in the name of the purchasers. 5

The recourse fails. The decision of the Director is confirmed pursuant to the provisions of Article 146.4(a) of the Constitution. There shall be no order as to costs. 10

*Recourse dismissed.  
No order as to costs.*