

1986 February 5

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ALPAN (TAKIS BROS) FAMAGUSTA LTD..

*Applicants,*

v.

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

*Respondents.*

(Case No. 430/83).

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*Special contribution—Assets in Turkish occupied area—Refusal to allow deduction for wear and tear—Failure to consider whether as a matter of proper administration such allowance ought to have been granted, even as a concession—*  
5 *Such failure rendered defective the exercise of the discretion of the respondent Commissioner.*

*Special contribution—Interest paid on special contributions payable by applicants—Not an expenditure wholly and exclusively incurred in the production of income liable to special contribution—Not deductible in computing the special contribution payable by applicants in respect of the period during which such payment was made.*  
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Respondent 2 refused to accept for the purpose of computing the Special Contribution payable by the applicants  
15 for 1981 a deduction of £194, being interest paid on special contribution payable by the applicants and to grant an allowance for wear and tear under section 12(2)(a) of the Income Tax Laws, 1961 - 1981 in respect of assets situated in the area of Cyprus, which is still under Turkish  
20 military occupation.

Hence the present recourse. It must be noted that as it appears from the address of counsel for the respondents, the respondent Commissioner grants, as a matter of concession, a wear and tear allowance for income tax purposes in respect of such assets in the occupied area.

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*Held, annulling the sub judice decision in part:*

- (A) There is some force in the contention of applicants' counsel that since the assets of the applicants in the Turkish occupied area are not to be treated as definitely lost (*George Tsimon Ltd. v. The Republic* (1980) 3 C.L.R. 321, *Geo. Pavlides Ltd. v. The Republic* (1980) 3 C.L.R. 345 and *Toumazis v. The Republic* (1984) 3 C.L.R. 36) and since in respect of them a wear and tear allowance is granted for income tax purposes, there ought not to have been refused such an allowance for special contribution purposes, if it was at all possible to grant it.

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It appears that the respondent Commissioner has not considered as a matter of proper administration whether there should be granted, even as a concession, a wear and tear allowance. This failure renders defective the exercise of his discretionary powers.

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It follows that the sub judice assessments have to be annulled for this reason and to that extent.

- (B) The claim for deducting the interest paid on special contribution payable by the applicants was correctly turned down, because such interest is not an expenditure wholly and exclusively incurred in the production of income liable to special contribution.

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*Sub judice decision annulled in part. No order as to costs.*

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**Cases referred to:**

*George Tsimon Ltd., v. The Republic* (1980) 3 C.L.R. 321;  
*Geo. Pavlides Ltd. v. The Republic* (1980) 3 C.L.R. 345;

*Toumazis v. The Republic* (1984) 3 C.L.R. 36;

*The Singer Sewing Machine Company v. Director of Department of Inland Revenue* (1979) 3 C.L.R. 507.

**Recourse.**

5      Recourse against the manner of computation of the special contribution payable by applicants in respect of the year 1981.

*G. Triantafyllides*, for the applicants.

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

*Civ. adv. vult.*

15      TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicants complain, in effect, about the manner of the computation of the special contribution payable by them in respect of 1981.

20      The applicants contend that the respondent Commissioner of Income Tax should have accepted the deduction of an amount of C£194 which was paid by the applicants as interest on the special contribution payable by them, and, also, that the Commissioner should have granted them a wear and tear allowance under section 12(2)(a) of the Income Tax Laws 1961 - 1981, in respect of assets of theirs situated in the area of Cyprus which is still under Turkish military occupation.

25      As regards the issue of the wear and tear allowance there should be borne in mind that it has been held by our Supreme Court in, inter alia, *George Tsimon Ltd. v. The Republic*, (1980) 3 C.L.R. 321, *Geo. Pavlides Ltd. v. The Republic*, (1980) 3 C.L.R. 345 and *Toumazis v. The Republic*, (1984) 3 C.L.R. 36, that assets in the Turkish occupied area of Cyprus cannot be considered as having been lost definitely, in the sense of section 12(3)(b) of the Income Tax Laws.

35      As it appears from the written address of counsel for the respondents in the present case the respondent Com-

missioner of Income Tax grants, by way of concession, a wear and tear allowance, for income tax purposes, in respect of assets in the Turkish occupied area of Cyprus.

Counsel for the respondents has, however, argued that, because when the special contribution legislation was initially enacted in October 1974 the assets of the applicants in the Turkish occupied area were not any longer being used in their trade or business, no wear and tear allowance could be claimed in respect of them for special contribution purposes.

Irrespective of whether or not the above argument of counsel for the respondents is correct from the strictly legal point of view, I do find some force in the contention of counsel for the applicants that, since the assets of the applicants in the Turkish occupied area are not to be treated as having been lost definitely and since in respect of them a wear and tear allowance is granted for income tax purposes, there ought not to have been refused such an allowance for special contribution purposes if it was at all possible to grant it.

From the material before me, and particularly from the letter of the respondent Commissioner of Income Tax dated 5th September 1983, it appears that the Commissioner of Income Tax has not duly considered whether, as a matter of proper administration and by way of relief to the applicants in respect of their assets in the Turkish occupied area there should be granted, even as a concession, a wear and tear allowance in relation to such assets, not only for income tax purposes but, also, for special contribution purposes. In my opinion, the failure of the respondent Commissioner of Income Tax to consider this aspect of the matter and to give a reasoned decision in this connection renders defective the exercise of his relevant discretionary powers with the result that the sub judice assessments for special contribution have to be annulled for this reason and to that extent.

As regards the issue of the deductibility of the interest paid on special contribution payable by the applicants I accept as valid the submission of counsel for the res-

pondents that this claim of the applicants is not well-founded, in view of the fact that the interest concerned was not an expenditure wholly and exclusively incurred in the production of the income in respect of which special contribution is payable; and it is to be noted that such interest is deducted for income tax purposes because of the application of the specific legislative provisions in section 8 of the Special Contribution (Temporary Provisions) Law, 1978 (Law 34/78), in the light of caselaw such as *The Singer Sewing Machine Company v. The Director of the Department of Inland Revenue*. (1979) 3 C.L.R. 507.

For all the foregoing reasons this recourse succeeds in part only and the sub judice assessments are annulled only in so far as in the computation of the payable by the applicants special contribution there was not included a wear and tear allowance in respect of their assets in the Turkish occupied area; and it is up to the respondent Commissioner of Income Tax to reconsider afresh the matter.

I shall not make any order as to the costs of this recourse.

*Sub judice decision partly annulled. No order as to costs.*