1987 October 24

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ERATO STEPHANI,

Applicant,

v.

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

Respondents.

(Case No. 499/85).

COSTAS STEPHANI,

v. *Applicant,*

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

Respondents.

(Case No. 500/85).

Taxation — Capital gains — The Capital Gains Tax Law 52/80, section 5(2) — What counts for the allowance of £10,000 is the disposal of a dwelling house, not the number of persons holding an interest thereon.

Construction of Statutes — The Interpretation Law, Cap. 1, section 2 — Words in the singular — Include the plural — Words in the plural — Include the singular. 5

Construction of Statutes — Clear words — No room for applying the rules of interpretation, which are merely presumptions in cases of ambiguity.

By means of this recourse the applicants, who are husband and wife, impugn the assessment of capital gains tax on each one of them on the capital 10

profit, which they made from the disposal of their dwelling house, registered in equal undivided shares in their joint names

The only issue that was left for determination is one involving the correct interpretation of section 5(2) of Law 52/80 which reads as follows

5 «5(2) No tax shall be payable where the gains accruing from the disposal of a dwelling house used by the owner for his own habitation for a continuous period of at least five years and situate on land not exceeding one donum do not exceed ten thousand pounds

Provided that -

10 (i) where the gains accruing from a disposal exceed ten thousand pounds, tax shall be paid on the amount exceeding the ten thousand pounds,

(ii)

(iii) »

The respondent maintained that the exemption refers to the disposal of the 15 whole house and not to each person having an interest therein and for this reason deducted £5,000 from the profit of applicant 1 and £5,000 from the profit of applicant 2

The applicant maintained that the respondent should have deducted from each applicant's profit £10,000

20 Held, *dismissing the recourse* (1) The wording of section 5(2) of Law 52/80 is clear and unambiguous It is the disposal of the dwelling house that counts for calculating the allowance of £10,000, and not the number of persons holding an interest therein

(2) The mention of the word «owner» in section 5(2), and the word «every 25 person» in the definition of gain (section 2) and the word «disponer» in section 20 in the singular number does not change the clear meaning of section 5(2), in this connection it must always be borne in mind, that our Interpretation Law, Cap 1 provides in section 2 thereof that «words in the singular include the plural, words in the plural include the singular»

30 *Recourses dismissed*
No order as to costs

Cases referred to

Croxford v Universal Insurance Co [1936] 2 K B 253,

Komodromos & Others v Registrar of Trade Unions (1983) 3 C.L.R. 495.

Recourses.

Recourses against the assessments of capital gains tax on each of the applicants in respect of capital profit derived by them from the disposal of 1/2 share each in a house at Nicosia. 5

P. Polyviou, for the applicants.

Y. Lazarou, for the respondents.

Cur. adv. vult.

LORIS J. read the following judgment. Both applicants in the above intituled recourses, (which were heard together on the application of all sides as presenting an identical legal issue) impugn the assessment of capital gains tax on each one of them in respect of the capital profit which the respondent Commissioner alleges that the applicants have derived from the disposal of 1/2 share each in a house at Nicosia (Trypiotis quarter) covered by plot 523 of Sheet/Plan XXI/52.2.IV, registered by virtue of Registration No. B606 in the name of both applicants who are husband and wife. 10 15

Initially both recourses presented two issues: a factual issue relating to the valuation of the property concerned and a legal issue revolving on the interpretation of s. 5(2) of the Capital Gains Tax Law of 1980 (Law No. 52/80). 20

As regards the factual issue the parties came to agree that the true valuation of the property concerned was at the material time £58,000, and their said agreement was declared before me at the clarification stage on the 6th November, 1986. 25

Therefore, there now falls for determination the legal issue only, which as already stated above revolves on the interpretation of s. 5(2) of Law No. 52/80. 30

Before proceeding to examine this issue it is useful to reproduce hereinbelow, verbatim, the relevant part of the sub-section in question:

«5(2) Ουδείς φόρος καταβάλλεται οσάκις το κέρδος το οποίον προκύπτει εκ της διαθέσεως μιας κατοικίας χρησιμοποιουμένης υπό του ιδιοκτήτου τουλάχιστον δια συνολικήν περίοδον πέντε ετών δια σκοπούς 35

ιδιοκατοικήσεως και κειμένης επί εκτάσεως γης μέχρι μιας σκάλας δεν υπερβαίνει το ποσόν των δέκα χιλιάδων λιρών:

Νοείται ότι-

5 (ι) εις περίπτωσιν καθ' ην το εκ της διαθέσεως κέρδος υπερβαίνει το ποσόν των δέκα χιλιάδων λιρών θα καταβάλληται φόρος επί του ποσού του υπερβαίνοντος τας δέκα χιλιάδας λίρας·

(ιι) ....

10 (ιιι) .... »

(English translation:

«5(2) No tax shall be payable where the gains accruing from the disposal of a dwelling house used by the owner for his own habitation for a continuous period of at least five years and 15 situate on land not exceeding one donum do not exceed ten thousand pounds:

Provided that -

(i) where the gains accruing from a disposal exceeding the ten thousand pounds;

20 (ii) ....

(iii) .... »

As stated earlier in the present judgment the property in question was owned by both applicants in the recourse, jointly in an undivided share of 1/2 each.

25 The respondent obviously holding the view that the «gains accruing from the disposal of a dwelling house» should be held to mean that the relevant exemption from taxation is allowed in respect of the disposal of the house as a whole rather, than in respect of each person having an interest therein, allowed an 30 exemption of £5,000 to each of the applicants.

It was maintained by learned counsel appearing for both applicants that such a calculation of the allowance was contrary to the provisions of s. 5(2) of Law 52/80. He argued forcefully that section 5(2) should be construed as denoting that on the disposal 35 of a dwelling house which is jointly owned, each joint owner is entitled to the £10,000 exemption, separately.

Learned counsel for applicants submitted that the aforesaid interpretation is supported by the literal meaning of the words used in s. 5(2) as taken in their text as well as by the overall context of the law. He maintained that the definition of gain in section 2 of the law* and the use of the singular number in s. 20** in respect of the disponer of property, lend support to his aforesaid submission. Learned counsel for respondents maintained that the Commissioner applied correctly the law to the facts of this case; he submitted that according to s. 5(2) of the Law, for any house disposed of, the maximum exemption is £10,000 irrespective of the number of owners who have disposed of their interest therein, as the section in question is not concerned with disposal of interests in a dwelling house but with the disposal of the dwelling house itself.

I have carefully considered the provisions of s. 5(2) of Law 52/80 bearing in mind arguments by both sides.

I hold the view that the wording of s. 5(2) is clear and unambiguous; and

> «where the words of an Act of Parliament are clear, there is no room for applying any of the principles of interpretation, which are merely presumptions in cases of ambiguity in the Statute.» (per Scott L.J. *Groxford v. Universal Insurance Co., [1936] 2 K.B. 253 at p. 281* - vide also *Komodromos & Others v. Registrar of Trade Unions* (1983) 3 C.L.R. 495 at p. 507).

Their literal meaning is clear: No tax shall be payable where the gains accruing from the disposal of a dwelling house (used by the owner etc.) do not exceed ten thousand pounds. In other words upon the sale of a dwelling house and where the gains accruing from such a transaction do not exceed £10,000, no tax is payable. It is the disposal of the dwelling house that counts for calculating

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* *Gain means the gain of every person which accrues after the coming into operation of this Law by reason of the disposal of property and which is not profit within the meaning of the Income Tax Laws for the time being in force*

** *«The disponer of ownership should pay the tax at the time of the disposal of immovable property»*

* *«Κέρδος» σημαίνει το κέρδος παντός προσώπου το οποίον προκύπτει μετά την ημερομηνίαν της ενάρξεως της ισχύος του παρόντος Νόμου λόγω διαθέσεως ιδιοκτησίας και το οποίον δεν αποτελεί κέρδος εμπίπτον εντός των διατάξεων των εκάστοτε εν ισχύι περί Φορολογίας του Εισοδήματος Νόμων.*

** *Ο διαθέτης ιδιοκτησίας υποχρεούται να καταβάλη τον φόρον κατά τον χρόνον της διαθέσεως της ακινήτου ιδιοκτησίας....»*

the allowance of £10,000 and not the number of owners holding the house in undivided shares.

The mention of the word «owner in this sub-section as well as of the word «every person» (παντός προσώπου) in the definition of gain (section 2) of the word disponer in section 20 in the singular number cannot alter the clear and unambiguous words of section 5(2) of the Law; in this connection it must always be borne in mind, that our Interpretation Law Cap. 1 provides in section 2 thereof that «words in the singular include the plural, and words in the plural include the singular.»

For the above reasons I hold the view that the respondent Commissioner applied correctly the Law to the facts of the present cases.

In the result both recourses are doomed to failure and they are accordingly dismissed; in the circumstances there will be no order as to costs.

Recourses dismissed.
No order as to costs.