

1986 July 5

(TRIANAFYLLIDES P)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS MAOURI,

Applicant,

v

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

Respondents

(Case No 531/82)

*Taxation — Income Tax / Special Contribution — Assessments raised by
Commissioner of Income Tax — Judicial control — This Court is not entitled
to disturb the sub judice decision, if such decision was reasonably open to the
Commissioner of Income Tax*

The facts sufficiently appear in the judgment of the Court 5

*Recourse dismissed
No order as to costs*

Cases referred to

Georghiades v The Republic (1982) 3 C L R 659,

Stavrnides v The Republic (1985) 3 C L R 2766, 10

Eliades v The Republic (1985) 3 C L R 1904

Recourse.

Recourse against the income tax assessment raised an applicant
for the years of assessment 1977-1979 and in respect of the special
contributions for the period 1.1.1975 - 31 3.1978. 15

A. Karas, for the applicant.

M. Photiou, for the respondent.

Cur adv. vult.

TRIANTAFYLIDIS P. read the following judgment. By means of the present recourse the applicant is challenging assessments raised by the respondent Commissioner of Income Tax in respect of income tax for the years of assessment 1977-1979 and in
5 respect of special contribution for the period from 1 January 1975 to 31 March 1978.

The applicant derives his income from farming.

As he had outstanding objections to the aforementioned assessments he was called to the Income Tax Office, on 19
10 November 1980, where he gave a statement regarding his assets and liabilities and on the basis of such statement, and together with other information, the tax liability of the applicant was examined; and since no agreement was reached between the applicant and the Commissioner of Income Tax the latter determined the
15 objections and communicated to the applicant his decision on 15 December 1980.

Against such decision the applicant filed recourse No. 83/81, which was withdrawn on 15 February 1982, due to the fact that
20 certain information about the assets of the applicant came to the knowledge of the Commissioner of Income Tax, after the determination of the objections, and he agreed to reconsider his decision in the matter.

There followed discussions between the applicant and his lawyer and the Commissioner of Income Tax, but as no agreement
25 was reached the Commissioner decided to abide by the assessments already raised and communicated his decision to the applicant on 30 September 1982, together with the relevant notices of tax payable.

In support of the present recourse counsel for the applicant has
30 submitted that the Commissioner of Income Tax has acted under a misconception regarding facts which might affect the applicant's tax liability, in that he had failed to take into account that the applicant is a displaced person, that he has lost his property due to the Turkish invasion and that he has sustained losses because of
35 damage to crops which he cultivated.

It has been, also, argued that the sub judice decision was reached in contravention of the rights safeguarded by Articles 6, 24 and 28 of the Constitution.

From the material placed before this Court I have come to the
40 conclusion that the applicant has failed to substantiate in a

satisfactory manner his claims regarding losses which he allegedly has sustained and that he has, also, failed to furnish the Commissioner of Income Tax with certificates, documents and other particulars supporting his objections against the assessments in question.

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On the basis, therefore, of the material before him it was reasonably open to the Commissioner of Income Tax to raise the assessments concerned in the way complained of by the applicant, and this Court is, consequently, not entitled to disturb his relevant decision (see, in this respect, *Georghiades v. The Republic*, (1982) 3 C.L.R. 659, 669, *Stavrinides v. The Republic*, (1985) 3 C.L.R. 2766, 2770 and *Eliades v. The Republic*, (1985) 3 C.L.R. 1904, 1910).

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Regarding, next, the contention of counsel for the applicant that the assessments contravene Articles 6, 24 and 28 of the Constitution I am of the view that it has not been established, in a way justifying the intervention of this Court, that either the assessments in question are excessive and not according to the applicant's means or that he was treated in a discriminatory manner as compared to other citizens of the Republic.

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In the result this recourse fails and is dismissed accordingly; but with no order as to its costs.

Recourse dismissed.

No order as to costs.