

1987 November 28

[A LOIZOU J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION  
ETERIA ASPHALTOSTROSEON PREMIXCO LTD

*Applicants.*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE COMMISSIONER OF INCOME TAX,

*Respondent*

(Case No 607/85)

*Legitimate interest — Should exist not only at the time of filing of the recourse, but, also, at the time of its hearing — Complaint that Commissioner of Income Tax wrongly disallowed deductions of interest on debts contracted before the 14 8 74, because the applicants had not been declared displaced persons under the Debtor's Relief Law — Applicants were declared by competent Court as displaced debtors after the filing of the Recourse — Recourse abated*

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The Applicant Company, deducted from its taxable income the amount in respect of the interest on loans contracted before 14th August 1974, in each of the years of 1974-1978 as follows 1974 interest £4,464, 1975 - interest £10,714, (1976)- interest £10,714, 1978 - interest £10,715 That makes a total of £47,321

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It was the case of the respondent Commissioner of Income-Tax that by virtue of the Debtors Relief (Temporary Provisions) Law of 1979, (Law No 24 of 1979) the said interest was not legally due and payable and therefore no deduction thereof should have been made for income-tax as well as for special contribution purposes

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As a result the Commissioner amended accordingly the computations of applicants' income made by their auditors for the years 1973-1983 The result was that the adjusted computation for 1980 showed a profit for Special Contribution purposes

Hence this recourse

It must be noted that at the time the sub judge decision was taken the applicant Company had not as yet been declared under the Debtors' Relief Law a displaced or stricken debtor

However, after the filing of this recourse the applicants were declared upon application filed by them against their creditors in the District Court of Nicosia under the said law displaced persons

Held, dismissing the recourse The result of the situation as it has now developed is that the present recourse has been abated and should be dismissed on the ground that the applicant Company has no longer a legitimate interest which according to the authorities must exist not only at the time of filing of the application, but also at the time of its hearing 5

*Recourse dismissed*  
*No order as to costs* 10

*Cases referred to*

*Papasavvas v. The Republic* (1967) 3 C L R 111

*Papadopoulos v The Municipality of Limassol* (1974) 3 C L R 352

**Recourse.**

Recourse against the assessment for the special contribution for the four quarters of the year 1980 raised on the applicants. 15

*E. Odysseos*, for the applicants

*Y. Lazarou*, for the respondents

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. This recourse is against the assessment for the special contribution for the four quarters of the year 1980 which were raised and determined by the respondent Commissioner of Income-tax as shown in the Schedule (Appendix A to the application) 20

The applicant Company is a private Company with limited liability incorporated on the 9th September 1968 Its authorized share capital was five-hundred thousand shares of one pound each. Its issued shared capital was three-hundred thousand of such shares, held by Christakis Constantinou and Andreas Constantinou who are also its directors. It derived its income during the material time from asphaltting business and land development. 25 30

The applicant Company submitted its returns for the years 1980-1981 but no returns for special contribution in respect of the four quarters of 1980. Some time in 1985, the respondent 35

Commissioner examined the accounts of the applicant Company for the years 1973-1983, including the accounts and computations in respect of the year of 1980, the subject year of this recourse. The number of queries arising from the examination were discussed  
5 with the auditors of the applicant Company and certain adjustments thereon were agreed with the exception of the treatment of the interest disallowed with which aspect of the case I shall be hereinafter dealing.

The applicant Company, deducted the amount in respect of the  
10 interest on loans contracted before 14th August 1984, in each of the years of 1974-1978 as follows: 1974 — interest £4,464; 1975 — interest £10,714; 1977 — interest £10,714; 1978 — interest £10,715. That makes a total of £47,321.

It was the case of the respondent Commissioner of Income-tax  
15 that by virtue of the Debtors Relief (Temporary Provisions) Law of 1979, (Law No. 24 of 1979) the said interest was not legally due and payable and therefore no deduction thereof should have been made for income-tax, as well as for special contribution purposes. The applicant Company adjusted the total interest  
20 debited into the accounts for the years 1974 to 1978, amounting to £47,321, in the year 1983, by crediting the Profit and Loss Accounts of that year with the sum of £47,321, and so treated that sum as an income receipt in 1983. The respondent Commissioner disagreed on that treatment, holding the view that the deduction  
25 made in each year in respect of that interest should be disallowed.

The respondent Commissioner proceeded with the amendments to the auditor's computations for the years 1973-1983 and informed the auditors of the applicant Company accordingly by letter dated 2nd February 1985, (Appendices A2  
30 and A3, attached to the application). The adjusted computation in respect of all years 1973-1983 showed losses for both income tax and special contribution with the exception of the special contribution computation for the year 1980, which showed a profit for the year after deducting loss brought forward in the sum  
35 of £32,973. The respondent Commissioner proceeded then on the 26th February, 1985 and raised special contribution assessments for the four quarters of 1980 (Appendix 4A attached to the application). The applicant Company's auditors, by letter dated the 14th March, 1985, filed an objection on behalf of their  
40 Company on the ground that the special contribution for 1980 was not in accordance with their computations.

The respondent Commissioner rejected the objections and informed the applicants by letter dated 4th April 1985 (Exhibit A1 attached to the Application) and Final Notices of Special Contribution for the said four quarters of 1980

As set out in the opposition filed on behalf of the respondent Commissioner the acts and/or decisions complained of were properly and lawfully taken after all relevant facts and circumstances were taken into consideration, viz 5

According to the opposition filed on behalf of the respondent Commissioner 10

(a) The Special Contribution assessments for the four quarters of 1980 were levied under sections 3, 6 and 10 of the Special Contribution (Temporary Provisions) Law 1978, (Law No 34 of 1978) as amended by Laws No 29/79, 12/78 and sections 3, 13(2) and 23(1) of the Assessment and Collection of Taxes Law, 1978-1979 15

(b) The objections against the above assessments were determined under section 20(5) of the Assessment and Collection of Taxes Laws, 1978-1979

Before the Turkish invasion the applicant Company was operating in the now occupied parts of Cyprus. It had several factories and two quarries in the area of Mia Milia and Kythrea and it left behind a considerable number of machinery, equipment, tools, appliances, spare parts and large quantities of goods. According to their estimate their losses amounted to two-hundred thousand pounds 20  
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The bankers of the applicant Company were the National and Grndlays Bank Limited. Its dealings were in the form of loans, current accounts, a floating charge and other banking transactions. On the 15th August 1975, it owed about one-hundred thousand pounds to the said bank which was taken over by the Cyprus Popular Bank Limited. The applicant Company asked both these Banks to recognize that it was a displaced or stricken debtor in accordance with the Debtors Relief (Temporary Provisions) Laws 1979 - 1985, (hereinafter to be referred to as the law) but both Banks refused to recognize them as such and continued to debit them with interest on the loans due to them 30  
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When the sub-judice decision was taken the applicant Company had not as yet been declared under the Law a displaced or stricken debtor, but it was treated as such by the respondent Commissioner obviously due to its actual financial situation.  
5 viewed in the light of the provisions of the Law.

Early in 1986, the applicant Company filed in the District Court of Nicosia an application under the Law, and by an Order of the Court dated the 23rd September 1986, photocopy of which has been produced as Exhibit «XX» before me, the applicant  
10 Company was declared a displaced debtor in the sense of the Law.

Considerable argument has been advanced on both sides as to whether the respondent Commissioner, could, without a declaration by the Court of the applicant Company as a displaced or stricken debtor under the Law, conclude that it was such and  
15 therefore not liable to pay interest on its preinvasion debts in question.

I need not, however, go into the matter as the situation has radically changed as a result of the aforementioned Order of the Court by which the applicant Company has been declared a  
20 displaced debtor, the legal effect of which was to judicially acknowledge that the applicant Company is entitled to the benefits of the said Law and in particular as regards the present recourse, the provisions of Section 4(1) thereof which provide that «notwithstanding the provisions of any other Law during the  
25 period mentioned in subsection 1 of section 3, no interest shall be charged, debited, or collected on a debt of a displaced or stricken debtor».

The result of the situation as it has now developed is that the present recourse has been abated and should be dismissed on the  
30 ground that the applicant Company has no longer a legitimate interest which according to the authorities, it must exist not only at the time of the filing of the application, but also at the time of its hearing. In this respect reference may be made to the cases of *Papasavvas v. The Republic* (1967) 3 C.L.R. 111; *Papadopoulos v. The Municipality of Limassol* (1974) 3 C.L.R. 352, and *Tsatsos Recourse for Annulment* 3rd Edition p. 54.  
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In the result the recourse is dismissed but in the circumstances there will be no order as to costs.

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