

1987 February 19

[SAWIDES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELMA PAPER SACKS CO LTD ,

Applicant.

v

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

Respondent

(Case No 469/85)

*Income tax—The Income Tax Laws, 1961-1981—Section 11(1)(f)—Donations—
«Loss» in the sense of the proviso to the said section—Means «taxable loss»
and not an «accounting loss»—Amount of donations correctly deducted from
amount of taxable losses to be carried forward*

- 5** *Income tax—Accountancy principles—Cannot override provisions of taxing statute*

10 The question in this case is whether the way the respondent Commissioner applied section 11(1)(f) of the Income Tax Laws 1961-1981 when he deducted certain donations made by the applicant company in 1981 and 1983 from the company's taxable losses to be carried forward and set off against the company's future income was reasonably open to him

15 The proviso to the said section reads «Provided that, notwithstanding any provisions of this law to the contrary, in the event of a loss incurred in the year in which such donation or contribution was made, any part of the loss up to the amount of the donation or contribution shall not be carried forward and shall not be set off against the income for subsequent years»

Counsel for the applicant submitted, inter alia, that the word «loss» in the proviso cannot mean «taxable loss», but «accounting loss»

20 *Held, dismissing the recourse (1) The provisions of a taxing statute cannot be overriden by any well known principles of accountancy*

(2) The proviso to section 11(1)(f) deals with losses that can be carried forward and set off against future income, as such they cannot be treated otherwise than as «taxable losses» The respondent was, therefore, entitled to

deduct the donations from the taxable losses to be carried forward

Recourse dismissed

No order as to costs

Cases referred to

Heather v P E Consulting Group Ltd [1979] 48 T C 293 **5**

Recourse.

Recourse against the income tax assessments raised on applicant in respect of the years 1981-83

K Michaelides, for the applicant.

Y Lazarou, for the respondent. **10**

Cur adv vult

SAVVIDES J read the following judgment. The applicant is a private company of limited liability incorporated on 4 10 1968. During the material time it derived its income from the manufacture and sale of paper sacks. The applicant submitted returns and accounts, through its accountants, for the years 1981, 1982 and 1983, which showed losses as follows: **15**

Year 1981 £503,087

Year 1982 £278,371.

Year 1983 £345,555. **20**

The respondent Commissioner examined the accounts and computations for the said years as well as the accounts and computations for the years 1977-1980 which are not the subject of this recourse, and adjusted the computations by adding back certain amounts which were not allowed for income tax purposes. Such amendments were communicated to the applicant's auditors by letter dated 15.12.1984. On 12.1.1985 the respondent issued original assessments in accordance with the adjusted computations showing losses to carry forward as follows: **25**

Year 1981 £493,473.

Year 1982 £263,913.

Year 1983 £331,405. **30**

On 3.1.1985 the applicant's auditors in reply to the above assessments, wrote a letter to the respondent stating their

disagreement to the respondent's decision to disallow certain items including the following which relate to the years subject matter of this recourse:

5 (a) Donations amounting to £10,996.- paid in 1981 and £2,194.- paid in 1983 which were not allowed to form part of a loss to be carried forward in view of losses in the respective years.

10 (b) A 100% depreciation of electrical installations, allowing instead of normal depreciation in respect of the cost of such installations. The sums added back in this respect were £3,120 for 1981, £347.- for 1982 and £347.- for 1983.

On the 24th January, 1985 the applicant's auditors filed a formal objection against the aforementioned assessment adopting the grounds stated in their letter of 3.1.1985.

15 The respondent having considered the applicant's objections, decided to accept its claim for accelerated depreciation of electrical installations but did not accept its claim regarding the deduction of donations and contributions. This decision was communicated to the applicant by letter dated 8.2.1985 and final assessments were raised by the respondent, showing the losses to
20 be carried forward as follows:

Year 1981, £498,373.-

Year 1982, £268,466.-

Year 1983, £335,661.-

25 As a result, the applicant filed the present recourse, praying for the following relief:

(A) A declaration that the Income Tax assessments Nos 83/85/02/020, 82/85/02/020, 81/85/02/020 dated 8/2/85 raised by the respondent are null and void and of no effect whatsoever, and

30 (B) a declaration that the decision of the respondent in computing the losses for the years 1981-1983, not to carry over the loss arising out of the two donations and contributions made in 1981 and 1983, is null and void and of no effect whatsoever.

The grounds of law on which the recourse is based, are the following:

35 1. The sub judice decision is contrary to section 11(1)(f) of the

Income Tax Laws 1961 - 1983 and wrong in Law.

2. The respondent acted under a misconception of the law and the material facts.

3. The assessments complained of are arbitrary and legally as well as factually unfounded. 5

The sole question in issue in the present recourse is whether the decision of the respondent to deduct the donations made by the applicant in 1981 and 1983, to the amounts of £10,996 and £2,194 respectively, from the taxable losses to be carried forward and set off against the company's future income, was reasonably open to it. 10

Section 11(1)(f) of the Income Tax Laws 1961-1981 provides as follows:

11.—(1) Πρός εξεύρεσιν του φορολογητέου εισοδήματος παντός προσώπου θα εκπίπτωνται άπασαι αι δαπάναι ας το τοιούτον πρόσωπον υπέστη εξ ολοκλήρου και αποκλειστικώς προς κτήσιν του εισοδήματος. Εν αυταίς περιλαμβάνονται- 15

(στ) δωρεαί ή συνεισφοραί γενόμεναι δι' εκπαιδευτικούς, μορφωτικούς ή άλλους φιλανθρωπικούς σκοπούς προς την Δημοκρατίαν ή αρχήν τοπικής Διοικήσεως ή προς οιονδήποτε εν αυτή φιλανθρωπικόν ίδρυμα εγκρινόμενον ως τοιούτον υπο του Υπουργικού Συμβουλίου μέχρι ποσού είκοσι χιλιάδων λιρών και πενήκοντα τοις εκατόν οιονδήποτε ποσού υπερβαίνοντος τας είκοσι χιλιάδας λίρας; 20 25

Νοείται, ότι, παρ' οιονδήποτε αντίθετον διάταξιν του παρόντος Νόμου, εν περιπτώσει ζημίας επισυμβάσης εντός του έτους κατά το οποίον εγένετο η δωρεά ή συνεισφορά, παν μέρος της ζημίας μέχρι του ύψους του ποσού της δωρεάς ή συνεισφοράς δεν θα μεταφέρηται και δεν θα συμψηφίζηται μετά του εισοδήματος των επομένων ετών; 30 35

(*11(1) For the purpose of ascertaining the chargeable income

of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred by such person in the production of the income, including -

- 5 (f)
donations or contributions made for educational, cultural or other charitable purposes to the Republic or a local Authority or to any charitable institution therein approved as such by the Council of Ministers up to the amount of twenty thousand pounds and fifty per centum of any amount exceeding twenty thousand pounds:
- 10

15 Provided that, notwithstanding any provisions of this Law to the contrary, in the event of a loss incurred in the year in which such donation or contribution was made, any part of the loss up to the amount of the donation or contribution shall not be carried forward and shall not be set off against the income for subsequent years).

20 Counsel for the applicant in his written address contended that the losses that had occurred were taxable losses and that taxable losses are losses that result after certain allowances such as depreciation and wear and tear allowances are taken into account under the relevant law. Such allowances do not represent expenses actually incurred by the company, but merely represent

25 a fictitious sum which the legislator considers fair to allow a company to deduct. He further submitted that the word «loss» in the proviso cannot mean «taxable loss» but «accounting loss».

30 Counsel for the respondent submitted that under our fiscal legislation only one type of loss can be carried forward and set off against the income of subsequent years, namely the loss which is computed in accordance with the income tax provisions applicable in ascertaining the chargeable income, which is the loss that the applicant properly named «taxable loss». «Loss», counsel added, under the provisions of our law, should be construed as

35 meaning «taxable loss» and not «accounting loss».

It is well established that irrespective of any well known principles of accountancy, such principles cannot override the provisions of the taxing statutes. (See, *Heather v. P.E. Consulting*

Group Ltd [1979] 48 T C 293 in which Goulding J said, at p 313:

«The general principle seems, on the contrary, to be that, in determining what is capital expenditure and what is revenue expenditure in order to ascertain profits for tax purposes, the Court must follow ordinary principles of commercial accountancy, save so far as modified by express statutory direction» 5

Bearing in mind the provisions of section 11(1)(f) of the Income Tax Laws 1961-1981, I agree with the submission of counsel for the respondent that, in ascertaining the chargeable income, the respondent correctly construed the provisions of the law as applicable to «taxable loss» and not «accounting loss» The proviso to paragraph (f) deals with losses which can be carried forward and set off against future income, as such, they cannot be treated otherwise than «taxable losses» The respondent, therefore, was entitled to deduct such donations from the taxable losses to be carried forward 10 15

In the result this recourse fails and is hereby dismissed with no order as to costs

Recourse dismissed 20
No order as to costs