1988 July 8

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELMA PAPER SACKS CO. LTD.,

Applicants,

v.

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

Respondent.

(Case No. 468/85).

Special Contribution—Allowances—Natural wear and tear in respect of fixed assets situated in the occupied areas of the Republic—Whether deductible—Question determined in the negative.

Special Contribution—Losses capable of being carried forward—Donations during the period in question—Whether the losses emanated therefrom can be carried forward—Question determined in the negative.

The issues that arose for determination in the above case appear sufficiently from the hereinabove headnotes. The Court pointed out that in virtue of section 6 of the Special Contribution (Temporary Provisions) Law, 1978 (Law 34/78) the Income Tax Laws in force at the time applied mutatis mutandis. In the light of this rule the question whether the allowances claimed can be deducted or whether the losses hereinabove referrred to can be carried forward must be determined in accordance with such Income Tax Laws.

As regards the claim in respect of the wear and tear of fixed assets situated in the occupied area, the matter is governed by section 12(2)(a) of the Income Tax Laws. The wording of this section leaves no room for doubt. It applies for wear and tear of property "arising out of the use and employment of such property in trade, business, profession, vocation or employment during the year of assessment". In this case it cannot be said that the fixed assets, which are situated in the occupied area of the Republic, could

be used during the particular period of assessment.

As regards the question whether the loss emanating from donations can be carried forward, the matter has already been decided in the case of *Elma Paper Sacks Co Ltd v. The Republic* (1987) 3 C.L.R. 239.

Recourse dismissed.
No order as to costs.

Cases referred to:

Tsimon Ltd. v. Republic (1980) 3 C.L.R. 321;

Geo. Pavlides Ltd. v. Republic (1980) 3 C.L.R. 345;

In re Charis Georghallides, 23 C.L.R. 249;

Cape Brandy Syndicate v. The Commissioners of Inland Revenue [1921] 12 TC 358;

Hellenic Bank Ltd. v. The Republic (1987) 3 C.L.R. 1619;

Elma Paper Sacks Co. Ltd. v. The Republic (1987) 3 C.L.R. 239.

Recourse.

Recourse against the special contribution assessments raised on applicants for the years of assessment 1975 - 1980.

K. Michaelides, for the applicants.

Y. Lazarou, for the respondents.

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 manufac-

ture and sale of paper bags.

The applicant company, though it did not submit returns for special contribution, nevertheless, it submitted through its accountants audited accounts and computations for income tax purposes and special contribution purposes every year. The respondent in 1979 proceeded and raised provisional special contribution assessments in accordance with the computations submitted by the applicant's auditors, pending the examination of the accounts and computations.

The applicant's auditors by letter dated 16th November, 1979, objected against such assessments. The respondent dealt with such objection and also with all computations for all quarters which are the subject matter of this recourse and proceeded to the issue of revised special contribution assessments and informed the applicant's auditors accordingly by letter dated 13th December, 1982. The applicant's auditors objected to such revised assessment by letter dated 28th December, 1982, on the ground that they were not in accordance with the computations submitted by them and requested to be informed of the legal basis of the respondent's decision to disallow the annual wear and tear allowances claimed on fixed assets situated in the occupied areas, pointing out that they were not aware of any new legislation disallowing annual wear and tear for special contribution purposes.

The respondent having considered the applicant's objections decided on 24.1.83 to determine the objections by maintaining the revised assessments and informed the applicant of his reasoned decision by letter dated 24th January, 1983, stating that there is no new legislation on the matter and that according to the existing legislation the applicant was not entitled to any capital deduction on capital assets which are situated in the occupied areas and that such deductions were wrongly granted in the past.

At the request of the applicant's auditors a meeting was held at the office of the respondent on the 1st February, 1983, between the respondent, two of the directors of the applicant company and

one of their auditors during which the representatives of the applicant persisted that fixed assets located in the occupied areas were eligible to wear and tear allowances as they were not considered as assets which ceased permanently and definitely to be used in the business.

The applicant's auditors wrote on the 3rd February, 1983, a letter to the respondent putting down in writing their views on the matter.The respondent by letter dated 17th February, 1983, informed the applicant that he had decided to withdraw his determination of the objections against the special contribution assessments for the quarters in question and that a new decision was to be taken on the matter. Such new decision was communicated to the applicant by letter dated 6th February, 1985, informing it that the respondent decided to maintain his original decision as regards the disallowance of wear and tear deductions in respect of assets situated in the occupied areas as assets not used in the applicant's trade or business. In addition the respondent decided to disallow for the purposes of special contribution, as he did for income tax purposes, the donations and contributions claimed to be deductible as losses to be carried over to future years of assessment.Final special contribution assessments for the quarters in question were attached to the aforesaid letter. As a result, the applicant filed the present recourse praying for a declaration that:-

(A) The special contribution assessments Nos 2A2634/1/80x-4/80x, 2A2634/1/79x - 4/79x, 2A2634/1/78x - 4/78x, 2A2634/1/77 - 4/77, A2634/1/76 - 4/76, 2A2634/3/75 - 4/75x dated 8/2/1985 raised by the respondent are null and void of no effect whatsoever.

(B) The decisions of the respondent to impose special contribution tax on the applicant amounting to £142.20 for the year of assessment 1975, £2079 for the year of assessment 1976, £1039 for the year of assessment 1977, £3656 for the year of assessment 1978, £1675 for the year of assessment 1979, £487.30 for the year of assessment 1980 are null and void and of no effect whatsoever.

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

(D) Costs.

The legal grounds raised by the applicant's counsel in support of the recourse are the following:

1. The respondent's decision not to allow deductions for exhaustion and wear and tear of property situated in the occupied areas is contrary to sections 6 and 10 of Law 34/78, and s. 12(2) (a) of the Income Tax Laws 1961 to 1983 and is wrong in law.

2. The respondent's decision not to carry over to future years of assessment the loss arising out of a gift or donation is contrary to s.6 of Law 34/78 and s.11(1) (f) of the Income Tax Laws 1961 to 1983 and wrong in law.

3. The resulting computations acted upon by the respondent are wrong in fact and in law.

4. The respondent acted upon a material misconception of the law and facts.

The questions which pose for consideration in this recourse may briefly be summarised as follows:

(a) Whether the applicant is entitled to wear and tear allowance in respect of fixed assets within the Turkish occupied areas and whether the refusal of the respondent to allow such deduction was the proper one in the circumstances of the case.

(b) Whether the respondent in computing the losses for the yeas 1981 - 1983 properly exercised his discretion in refusing to allow the carrying over of the losses arising out of two donations made in 1981 and 1983.

I shall deal with question (a) first.

Counsel for the applicant contended that in the light of the decisions of this court in *Tsimon Ltd. v.Republic* (1980) 3 C.L.R. 321 and *Geo. Pavlides Ltd. v. Republic* (1980) 3 C.L.R. 345, fixed assets in areas occupied by the Turks are presumed to continue to be in the use and employment of their respective owners and as such they are subject to wear and tear allowance. He submitted that since such allowances were made for the purposes of income tax they should have also been made for the purposes of the Special Contribution Law by virtue of which the provisions of the Income Tax Laws are applicable in this respect. He further made reference to circular No. 1982/15 issued by the respondent on 5.8.1982 whereby such allowances were granted concessionally for income tax purposes but not for special contribution purposes. Counsel disagreed that such allowances are concessional and argued that once it was decided that fixed assets in the Turkish occupied areas were not permanently lost, they were in the use and employment of their owners, even fictitiously, both for income tax and special contribution purposes.

The law on the basis of which the jub judice decision was taken is the Special Contribution (Temporary Provisions) Law, 1978 (Law 34/78).

Section 3 of the said law provides as follows:-

3. Διά την τριμηνίαν την αρχομένην από της 1ης Απριλίου, 1978 και δι' εκάστην επομένην τριμηνίαν, διαρκούσης της ισχύος του παρόντος Νόμου, επιβάλλεται και εισπράττεται εισφορά, κατά τους συντελεστάς και συμφώνως προς τας διατάξεις τας εν τω Πίνακι αναγραφομένας, επί του εισοδήματος παντός προσώπου προερχομένου εξ οιασδήποτε πηγής ετέρας ή αμοιβής.

Section 6 of such law provides as follows:-

6. Αί διατάξεις των εκάστοτε εν ισχύι περί Φορολογίας

του Εισοδήματος Νόμων καί των περί Καθορισμού του Ποσού και Ανακτήσεως Φόρων Νόμων, εφαρμόζονται, τηρουμένων των αναλογιών, υπό τας εν τω Πίνακι αναφερομένας τροποποιήσεις, αλλ' ουδεμία προσωπική έκπτωσις παραχωρείται και ουδέν εισόδημα απαλλάττεται της εισφοράς εξαιρέσει-

And the English trar slation:-

("3. For the quarter beginning as from the 1st April, 1978 and for every subsequent quarter during the period when this Law shall be in force there shall be levied and collected a contribution, at the rates and in accordance with the provisions set forth in the Schedule, on the income of every person which is derived from any source other than emoluments.

6. The provisions of the Income Tax Laws and the Taxes (Quantifying and Recovery) Laws in force at the time shall apply, mutatis mutandis, subject to the amendments set forth in the Schedule, but no personal allowance shall be granted and no income shall be exempt from the contribution save -

.....")

Also under paragraph 2 of the Schedule to Law 34/78 the following provision is made:

"2. Τηρουμένων των διατάξεων της παραγράφου 3, προς προσδιορισμόν του εισοδήματος εκπίπτονται άπασαι αι δυνάμει των εκάστοτε εν ισχύι περί Φορολογίας του Εισοδήματος Νόμων επιτρεπόμεναι εκπτώσεις εξαιρέσει των ακολούθων:"

("Subject to the provisions of paragraph 3 in ascertaining the income there shall be allowed all deductions under the provisions of the Income Tax Laws in force at the time, except the following:").

The relevant provisions of the Income Tax Laws 1961 - 1981 in respect of wear and tear allowance for fixed assets which, by virtue of section 6 of Law 34/78 are made applicable in computing the income tax chargeable to special contribution, read as follows:

"12.- (1) Εν τω παρόντι άρθρω 'στοιχεία παγίου ενεργητικού' σημαίνει εγκαταστάσεις, μηχανήματα ή κτίρια περιλαμβανομένων και καταλυμάτων των υπαλλήλων, άτινα ανήκουσιν εις πρόσωπον ασκούν εμπορικήν ή βιομηχανικήν εν γένει επιχείρησιν, επιτήδευμα ή βιοτεχνίαν τινά, ελευθέριον ή αλλό τι επάγγελμα ή παρέχον μισθωτάς υπηρεσίας και άτινα χρησιμοποιούνται υπό του προσώπου τούτου εν τη τοιαύτη εμπορική ή βιομηχανική επιχειρήσει, επιτηδεύματι ή βιοτεχνία, ελευθερίω ή άλλω επαγγέλματι, ή υπηρεσία. .....

(2) Κατά τον προσδιορισμόν του φορολογητέου εισοδήματος προσώπου ασκούντος εμπορικήν ή βιομηχανικήν τινα επιχείρησιν, επιτήδευμα ή βιοτεχνίαν τινά, ελευθέριον ή άλλο τι επάγγελμα, ή παρέχοντος μισθωτάς υπηρεσίας, θα χορηγήται-

(α) τηρουμένων των διατάξεων του παρόντος άρθρου, έκπτωσις ευλόγου τινός ποσού διά την μείωσιν αξίας και φθοράν ήν υφίστανται τα τοιαύτα στοιχεία ως εκ της χρήσεως αυτών εν τη εμπορική ή βιομηχανική επιχειρήσει, επιτηδεύματι ή βιοτεχνία, ελευθερίω ή άλλω επαγγέλματι, ή εν τη παροχή μισθωτών υπηρεσιών, κατά την διάρκεια του φορολογικού έτους:"

("12(1) In this section 'property' means plant, machinery or buildings, including employees' dwellings, owner by a person engaged in a trade, business, profession, vocation or employment and used and employed by such person in such trade, business, profession, vocation or employment.....
.....

(2) In ascertaining the chargeable income of any person engaged in a trade, business, profession, vocation or employment there shall be allowed -

(a) subject to the provisions of this section, a deduction of a reasonable amount for exhaustion and wear and tear of property arising out of the use and employment of such property in the trade, business, profession, vocation or employment during the year of assessment:").

Counsel for the respondent in supporting the sub judice assessments based his arguments on the express provision in section 12 concerning *property used and employed* during the year of assessment and submitted that properties within the occupied areas were neither used nor employed in the trade of the applicant and, therefore, any deduction for wear and tear could not be granted in respect thereof. Concerning the cases of *Tsimon* and *Pavlides* on which the applicant relied counsel submitted that no inference can be drawn from such decisions that the properties in the occupied areas continued to be in the use and employment of their respective owners but what the court decided was that such properties did not definitely cease to be used for the purposes of trade as to be considered as permanenlty lost in the sense of section 12(3) (b) of the Income Tax Laws.

Before proceeding to construe the provisions of the relevant laws, I shall briefly deal with the reference made to the cases of *Tsimon* and *Pavlides* (supra).

The issue in both the said cases rested of the construction of section 12(3) and (4) of the Income Tax Laws and in particular on whether properties situated within the Turkish occupied areas and which had become inaccessible to their owners due to the Turkish occupation, which followed the Turkish invasion, could be considered as totally lost and as such deductible from the computation of capital allowance in the yearly balancing statements. Both cases turned on the question as to whether such assests had "definitely" ceased to be used for the purposes of their owners'

trade as envisaged by section 12(3) (b) of the Income Tax Laws or that the trade or business of their owners was "definitely and permanently discontinued" as envisaged by s. 12(3) (c) of the Income Tax Laws.

The above cases are distinguishable from the present case in which the construction of the words "used and employed" in sub - section (1) of section 12 and "use and employment of such property ..... during the year of assesssment" in sub - section (2) of section 12 is under consideration.

It is well established by our case law that when the Court deals with fiscal legislation it has to examine carefully the provisions of the relevant laws and in the present case whether any claim for exemption or deduction for wear and tear of property can find support in the relevant provisions of the law.

In a case stated in 1958 under the provisions of the law then in force, the High Court, *in the matter of Charis Georghallides,* 23 C.L.R. 249 held at p. 256:

> "One dealing with fiscal legislation should carefully examine first, whether the taxpayer is clearly within the words of the provisions by which he is charged with tax and, secondly, if he claims any exemption or deduction from tax - to which liability is either admitted or established - whether such claim is clearly supported by the relevant provision of the Law. In a disputed case the onus to satisfy the Court as to liability to pay tax is on the Tax Authorities and the onus to support a claim for exemption or deduction allowance is on the taxpayer."

On the principle that the provisions of a statute should be strictly interpreted, Rowlatt, J. in *Cape Brandy Syndicate v. The Commissioners of Inland Revenue* [1921] 12 T.C. 358 had this to say at p. 366:-

> "..... in taxation you have to look simply at what is clearly said .....there

is no presumption as to tax; you read nothing in; you imply nothing, but you look fairly at what is said and at what is said clearly and that is the tax."

In the present case by looking fairly at the language of the law there is no room for doubt or ambiguity. The words in s. 12(2) (a) are clear. A deduction for the exhaustion and wear and tear of property can only be claimed if it arose" out of the use and employment of such property" in the trade, business etc. "during the year of assessment".

The deduction claimed is allowed for income tax purposes only by way of concession. As to the legal effect of such concessions, it was held by the Full Bench of this Court, in the case of the *Hellenic Bank Ltd v. The Republic* (1987) 3 C.L.R. 1619 at p. 1626 that they "do not have the force of law and do not strictly form part of tax code".

It is an undisputed fact in the present case that though the property of the applicant is situated within the Turkish occupied areas it still belongs to it and has not been "definitely" and "permanently" lost. Nevertheless, such property was inaccessible to the applicant due to enemy occupation and at no time *during the years of assesment* it had been used and employed in the applicant's trade or business.

Bearing in mind the above I find that it was reasonably open to the respondent to find that a deduction for wear and tear in respect of such properties could not be allowed.

This disposes of the first question. I shall now proceed to the second question.

The question as to whether donations made by the applicant in 1981 and 1983 could be included in the taxable losses for such years, to be carried forward and set off against the company's future income has already been answered by me in Case No. 469/85 of the same applicant (see *Elma Paper Sacks Co. Ltd. v. The*

Republic (1987) 3 C.L.R. 239) in which the computations for income tax purposes for the same years were in issue. In the said case I concluded as follows, at p. 244:-

"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 respodent 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."

I fully indorse the above and having so found, the applicant's claim that for the purposes of special contribution it is entitled to carry over the loss arising out of two donations made in 1981 and 1983, fails.

In the result the recourse is hereby dismissed but in the circumstances I make no order for costs.

Recourse dismissed.
No order as to costs.