

(1988)

1988 November 29

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

VENUS FINANCE AND BUILDING COMPANY LIMITED,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,

2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 212/86).

Taxation—Assessment of income tax—Valuation of stock-in-trade of a business—In virtue of fundamental accounting principles it is necessary, before computing losses or profits of a business, to make such a valuation—The basic of the valuation should be the cost or the market value of the stock-in-trade in question, whichever the lowest—Impossibility of ascertaining the market value of the stock-in-trade in question in this case (an unfinished building in the occupied area of Cyprus)—Reasonably open to the respondent to rely on its cost.

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Taxation—Assessment of income tax—Properties situated in the area of the Republic of Cyprus occupied by Turkish invasion forces—The temporary inability of their owners to use same for their trade or business due to enemy occupation does not amount to a definite ceasure of use or loss of such property.

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The issues raised and determined in this case are sufficiently indicated in the hereinabove headnote.

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Recourse dismissed.

No order as to costs.

Cases referred to:

Finart Construct Ltd. v. The Republic (1984) 3 C.L.R. 29;

Geo. M. HadjiKyriacos Company Ltd. v. The Republic (1986) 3 C.L.R. 1598;

5 *George Tsimon Ltd. v. The Republic* (1980) 3 C.L.R. 321;

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

Recourse.

10 Recourse against the decision of the respondent whereby the deduction of £51,872 claimed by applicant as cost of work in progress relating to a building in Kyrenia commenced in 1972 but discontinued in July, 1974 as a result of the Turkish invasion was disallowed.

S. Karydes, for the applicant.

15 *A. Evangelou*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

20 A. LOIZOU P. read the following judgment. The Applicant Company was incorporated on the 30th May 1969 as a private company with limited liability. Its authorised, issued and fully paid up share capital during the material times was £100,000 divided into 100,000 shares of £1 each. In its accounts for the year ended 31st May, 1977 it claimed as a deduction the sum of £51,872 which was the cost of work in progress relating to a building at Kyrenia which commenced in 1972 but was discontinued
25 in July 1974 as a result of the Turkish invasion.

The respondent Commissioner upon examination of the applicant's accounts for the years ended 31st May 1977, 1978, 1979

and 1980, which was carried out in 1981, disallowed the said claim on the ground that the building had not been permanently extinguished or lost and proceeded to adjust the submitted computations of the income of the Applicant Company. The disallowance of the said deduction had the effect of turning the computed loss to a taxable profit and hence recourse No. 274/85 was filed against the decision of the respondent Commission. 5

Subsequently, the applicant Company submitted its audited accounts and computation for the years subject matter of the present recourse, whereby an amount of £18,342 was claimed as being eligible to be set off against the profits made in the above period as loss carried forward from the preceding years. Since the loss brought forward by the applicant company arose from the writing off of the cost of work in progress relating to the building at Kyrenia the respondent Commissioner acted as before, and disallowed such loss and proceeded to adjust the computations of the Applicant Company accordingly. His duly reasoned decision was communicated to applicant on the 25th January 1985 together with the Notices of Tax Payable which are appended to the Application. 10 15 20

The question which calls for consideration in the present case is whether in computing the chargeable income of the applicant company for the years of assessment 1980, 1981, 1982 the respondent Commissioner should take into consideration the cost price or the market value of applicants' property situated in Kyrenia. No assessment was raised or determined in respect of the income of the applicant company for the year of assessment 1983 (year of income 1983). The reference therefore by the applicant Company in the present recourse, to the year of assessment 1983 has therefore no legal basis. 25 30

The applicant company claims that its property, which is situated in the inaccessible occupied area in Kyrenia and forms part of its stock-in-trade, should be valued at market value and that they are entitled to make provision for the diminution of the value of this property due to its possible physical or other damage. 35

5 It is a fundamental principle of commercial accounting that before computing profits or losses of a business it is necessary to take into consideration the trading stock and to make a valuation of such stock. The issue in the present case is the value which should be placed upon this stock-in-trade.

It is common ground that, according to the ordinary principles of commercial accounting, the basis of valuation of trading stock is its cost or its market value whichever is the lowest.

10 It seems that in the light of the very special circumstances of this case and of the prevailing situation the market value of this property cannot be ascertained, though it has its value. The use therefore of the cost of the stock-in-trade by the Respondent Commissioner was the only ascertainable factor.

15 It has been submitted by learned counsel for the respondent Commissioner that in these circumstances, it was reasonable for the Commissioner to take into consideration the cost price being the only ascertainable value that gives the fairest and most reasonable results and not the market price of the said property which cannot be ascertained.

20 The matter is not devoid of authority. In the case of *Finart Construct-Ltd. v. The Republic* (1984) 3 C.L.R. p.29 it was said at pages 33 and 34 that:

25 "The question, therefore, at issue in the present case is the value which should be placed upon this stock-in-trade in computing the profits of the applicant company, as it is the contention of the respondent Commissioner that due to the abnormal conditions and to the inaccessibility of the owners or anybody else to that part of the island which is occupied by the Turkish forces, the market value is uncertain. It was urged that nobody
30 can say for sure what is the market value of this trading stock and the same time that nobody can deny that there is some value.

The only certain thing is the cost price; and the only possible solution was to take into consideration the cost price and not the market value which is unknown. It was submitted that it was not unreasonable for the respondent Commissioner to take into consideration the cost price which is ascertainable and that the issue turns on an accounting principle which is applicable in normal conditions and not in abnormal conditions as those prevailing here on account of the Turkish occupation of part of the Island." 5

Similar approach is to be found in the case of *Geo. M Hadji-Kyriakos Company Ltd v. The Republic* (1986) 3 C.L.R. 1598. 10

The effect of the Turkish invasion on properties situated within an occupied area has been also considered in *George Tsimon Ltd. v. The Republic* (1980) 3 C.L.R. 321 at pages 343 and 344 and in *Geo. Pavlides Ltd. v. The Republic* (1980) 3 C.L.R. 345, at page 359 and it was held that the temporary inaccessibility of the properties and the temporary inability of their owners to use same for their trade or business due to enemy occupation does not amount to a definite ceasure of use or loss of their property. 15

I have come to the conclusion that the decisions of the respondent Commission was reasonable in the circumstances and in accordance with the law and that the recourse should and is hereby dismissed. In the circumstances, however, there will be no order as to costs. 20

Recourse dismissed. 25
No order as to costs.