

1988 December 10

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

G.A.P. ESTATES LTD. ,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTER OF FINANCE AND/OR  
THE COMMISSIONER OF INCOME TAX,  
2. THE ATTORNEY-GENERAL OF THE REPUBLIC,

*Respondents.*

(Case No. 417/84).

*Taxation—Special Contribution—Rents—The Special Contribution (Temporary Provisions) Law, 1976, para. 3 of Schedule thereof, as replaced by Law 34/78—The deduction of 25% on gross rents and of the interest on the capital borrowed for acquiring the building—Claim for deduction of actual expenses of running the property exceeding the said 25%—Rightly turned down—The said provision is not repugnant to or inconsistent with Art. 23, 24 and 28 of the Constitution.* 5

*Constitutional Law—Right to property—Constitution Art. 23—Para. 3 of the Schedule to the Special Contribution (Temporary Provisions) Law, 1976, as replaced by Law 34/78, is not contrary to Art. 23, because it neither restricts nor deprives the applicant of the right to own property.* 10

*Constitutional Law—Taxation—Constitution, Art. 24—Para. 3 of the Schedule to the Special Contribution (Temporary Provisions) Law 1976, as replaced by Law 34/78, cannot be contrary to Art. 24, because it is not a taxing provision, but a provision granting relief from taxation.* 15

*Constitutional Law—Equality—Constitution, Art. 28—Para. 3 of the Schedule to the Special Contribution (Temporary Provisions) Law, 1976, as replaced*

by Law 34178 is not contrary to Art. 28.

*Constitutional Law—Equality—Constitution, Art. 28—The latitude enjoyed by legislator in enacting taxation laws.*

5 *Constitutionality of Statutes—Examination of by Courts—Principles applicable.*

The facts of this case appear sufficiently from the judgment of the Court.

*Recourse dismissed.  
No order as to costs.*

10 *Cases referred to:*

*The Board of Registration of Architects and Civil Engineers v. Kyriakides*  
(1966) 3 C.L.R. 640;

*Xydias v. The Republic* (1976) 3 C.L.R. 303;

*Nicosia Race Club v. The Republic* (1984) 3 C.L.R. 799;

15 *Kissonerga Development v. The Republic* (1982) 3 C.L.R. 462.

### **Recourse.**

Recourse against the special contribution assessments imposed on applicant for the quarters ended in the period 1st January, 1978 to 31st December, 1980.

20 *M. Vassiliou*, for the applicant.

*Y. Lazarou*, for the respondent.

*Cur. adv. vult.*

25 A. LOIZOU P. read the following judgment. By the present recourse which was taken over by me on the 16th of March 1988 from a colleague who has since retired, the applicant company which is a private company of limited liability incorporated in Cy-

prus in 1964, seeks a declaration of the Court that the special contribution assessments imposed by the respondent Commissioner for the quarters ended in the period 1st January 1978 to 31st December 1980 are null and void and of no legal effect whatsoever.

The applicant Company derives its income from rents from a block of flats in Regaena Street, Nicosia which was acquired from A. Vassilopoulos (R.E.W) Ltd on the 21st May 1964. 5

The applicant Company submitted audited accounts prepared by its auditor for the years 1978, 1979 and 1980, together with returns of chargeable income for income tax purposes, but did not submit similar returns in respect of income liable to special contribution. 10

The respondent Commissioner after examination of the accounts, discussed the points which were raised with the applicant Company's auditor and the computations of chargeable income for income tax purposes were agreed subject to certain adjustments. Computations of chargeable income liable to special contribution were also discussed and agreed that special contribution was leviable in respect of this, in accordance with the provisions of paragraph 3 of the Schedule to the Special Contribution (Temporary Provisions) Laws 1978 to 1983. 15 20

Accordingly the respondent Director, levied special contribution for the quarters ended in the period 1st January 1978 to 31st December 1980 and Notices for Special Contribution levied were sent to the applicant company on the 14th March, 1984. The applicant Company objected to these assessments by letter of the 24th April, 1984 on the ground that expenses incurred in the production of the income of applicant Company should be allowed as a deduction in computing the income liable to special contribution. 25

The respondent Director after a careful consideration of the grounds of objection raised by the applicant Company decided to reject its objection and proceeded with the determination of the special contribution levied. His decision together with the rele- 30

5     vant Notices of Special Contribution payable after objection was communicated to the applicant Company by letter of the 28th May, 1984 wherein it was stated that the deductions already allowed were those provided for by the Law and that those claimed could not be so allowed, not being so provided for by the Law.

10     Hence the present recourse was filed whereby it was submitted by the applicant Company that paragraph 3 of the Schedule to the Special Contribution (Temporary Provisions) Law, 1976 (Law No. 15 of 1976) and as replaced subsequently by Law No. 34 of 15     1978 which provides that in computing the income from rents, a deduction of twenty five per cent of such gross income is allowed as well as the interest on the capital borrowed for acquiring the building the rent of which is subject to the payment of special contribution is arbitrary and unreasonable in that it excludes the possibility that the actual expenses of running the properties yielding rent may, in actual fact, as is the case in the present instance, be more than the amount of 25% and also that in any event it does not provide for relief but is basically a method of calculation of the chargeable income from rents.

20     It was further contended that such provision is unconstitutional as being contrary to Article 23 in that it is oppressive and it interferes thus with the applicant Company's right of ownership; also that the Law by fixing a flat rate of 25% is contrary to Article 25     24 being thus of a destructive nature in that it prevents owners of old buildings from effecting the necessary repairs from income from rents after payment of special contribution.

30     Finally it was argued that such provision is contrary to Article 28 of the Constitution in that it contravenes the principle of equality, in that it places owners of old buildings in the same position as owners of new buildings.

Issues of constitutionality are not normally determined unless it is absolutely necessary to a decision of the case and unless the constitutionality of a law is specifically challenged. But even then, the Court will not examine or determine such questions if

put in abstracto. See *The Board of Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. 640 at pp. 654-655; also *Xydias v. Republic* (1976) 3 C.L.R. 303 where it is stated at p. 311.

"In considering the question of constitutionality of a statute we have to be guided by certain well established principles governing the exercise of judicial control of legislative enactments. A rule of precautionary nature is that no act or legislation will be declared void except in a very clear case or unless the act is unconstitutional beyond all reasonable doubt." 5 10

In the present case we must not loose sight of the fact that we are not concerned with a case of income tax where the imposition of tax is made on the chargeable income of the tax payer which is derived at after deductions but with a case of special contribution where the gross income from rents is charged and similarly the deduction of 25% is on the gross amount of such income. There is nothing unconstitutional about that. In any event even if assuming that such deduction at a flat rate of 25% is in respect of the expenses of the property yielding rent there is no evidence before me that the actual expenses of this particular property are more than 25% of the gross amount of rents. A statement of account has been produced as an exhibit of the income and outgoings of the respondent Company, but I feel that a distinction has to be made between the outgoings and expenses of the Company itself which concern the matter of ascertaining the chargeable income of the Company under the Income Tax Laws, and expenses incurred in respect of the upkeep of the property itself which is a different matter altogether. 15 20 25

As regards further arguments advanced on behalf of the applicant Company I consider that paragraph 3 is not a taxing provision as alleged but is a provision giving relief from taxation, therefore, Article 24 has no application, but even if applicable, I would consider that it is neither of a destructive nor of a prohibitive nature. See *Xydias v. Republic* (supra) at p. 311: 30

"I have considered the arguments of counsel for applicant, as far as I have been able to apprehend them, and I must say from the outset that I find no merit in them. The mere fact that the duty payable by the tax payer is higher than the net profit made by him from the business in connection with which the tax is paid, does not render the legislative enactment imposing such tax of a destructive nature."

Similarly I considered that Article 23 is not applicable either, there being no deprivation or restriction of the applicant Company's right to own property.

Finally with regard to Article 28 there again is no contravention, there having been established no discrimination as against the applicant Company, as property owner. In any case, as was relevantly stated in *Xydias v. Republic* (supra) at p. 312.

"When taxation laws are attacked on the ground that they infringe the doctrine of equality the legislative discretion is permitted by the judiciary a great latitude in view of the complexity of fiscal adjustment; in other words, the power of the State to classify for purposes of taxation is of wide range and flexibility. (*Matsis v. The Republic* (1969) 3 C.L.R. 245 at page 259.)"

See also the case of *Nicosia Race Club v. Republic* (1984) 3 C.L.R. 799 at pp. 813 - 814.

In *H.M. Seervai's Constitutional Law of India* (2nd Edition), Vol. 1, it is stated at p. 211 on the principle of equality.

"(h) Even a single individual may be in a class by himself on account of some special circumstances or reasons applicable to him and not applicable to others; a law may be constitutional even though it relates to a single individual who is in a class by himself."

And a further passage from Seervai at p. 222 was cited in the

case of *Kissonerga Development v. Republic* (1982) 3 C.L.R. 462 at p. 487, a case dealing with the imposition by the Council of Ministers of a percentage of 3% to be added to bills for sleeping accommodation or entertainment of clients of hotel and tourist establishments and places of entertainment with the exception of those on mountain resorts: 5

"However, it was held in *East India Tobacco Co. v. A.P.* 1963 1 SCR 404, 409 (62) A. Sc 1733 that the wide latitude given by our Constitution to the legislature in classification for taxation was correctly described in the following words: 10

'A state does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably ... The (U.S.) Supreme Court has been practical and has permitted a very wide latitude in classification for taxation.'" 15

In conclusion I find that the decisions of the respondent Commissioner to impose Special Contribution on the applicant Company was in accordance with the provisions of the Law.

For the reasons stated above this recourse fails and is hereby dismissed and the sub-judice decisions are confirmed. In the circumstances there will be no order as to costs. 20

*Recourse dismissed.  
No order as to costs.*