

(1988)

1988 April 30

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEONIDAS D. HADJIMITSIS,

Applicant,

v.

THE REPUBLIC OF CYRPUS, THROUGH
1. THE MINISTRY OF FINANCE AND/OR
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 760/86).

Taxation—Capital Gains Tax Law, 1980 (Law 52/1980)—It is not retrospective, but prospective in effect—Conferment of rights or imposition of liabilities with reference to events prior to the enactment of the Law does not render it retrospective—Imprint of retrospectivity ordinarily derives from disturbance of rights accrued and vested prior to the enactment of the law. 5

Taxation—Capital Gains Tax Law, 1980 (Law 52/1980)—Conflicting valuation as to the value of the land in question as on 27.6.78—In the circumstances it was reasonably open to the respondent to rely on the valuation made by the Principal of the Department of Estate Duty. 10

Taxation—Capital Gains Tax Law, 1980 (Law 52/1980)—Land sold at £64,000—Allegation that its market value was less than £64,000 to allow for commission, expenses and other charges incidental to the transaction—In the absence of supporting evidence, it was reasonably open to the respondent to find that no such expenses were incurred. 15

The facts of this case need not be summarized as they are sufficiently in-

icated in the hereinabove headnote.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

- 5 *Papaconstantinou and Another v. The Republic* (1986) 3 C.L.R. 1672;
Santis and Others v. The Republic (1983) 3 C.L.R. 419.

Recourse.

10 Recourse against the decision of the respondents to impose on applicant the sum of £6,160,- capital gains tax arising from the sale of a plot of land.

R. Schizas, for the applicant.

Y. Lazarou, for the respondents.

Cur. adv. vult.

15 PIKIS J. read the following judgment. This is an application of Leonidas HadjiMitsis for the review of the decision of the Commissioner of Income tax to impose on him £6,160.- capital gains tax arising from the sale of a plot of land, a field of 23 donums at Yeroskipou. The property had been sold in 1982 for £64,000. In the statement submitted for the purposes of the Capital Gains Tax Law (Law 52/80), the applicant recorded the sale price, £64,000.- as evidence of the market value of the land at the time, and his estimation of its value on 27th June, 1978; the material date for the discernment of the value of the land for the purposes of the law, stated at £58,250. The Commissioner sought information and evidence supporting his assessment of the value of the land as at 27th June, 1978. In response the applicant submitted to the Commissioner a valuation by Mr. Christofi, a Lands and Surveys Consultant (a Chartered Surveyor) who assessed the market value of the land as at 27 th June, 1978, at

£40,000. For the purposes of completing the inquiry into the value of the land on 27th June, 1978, the Commissioner obtained a valuation from Mr. Mateas, a Land Valuer, the principal of the Department of Estate Duty. Mr. Mateas assessed the value of the land at £28,000.

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Examination of the two valuations reveals a steady upward trend in the value of land in the area under consideration between the years 1978 to 1982, as a result of which land doubled in value within the relatively short period that elapsed between 27th June, 1978 and the date of sale (10.7.1982). The differences in the assessments made by the two valuers mostly stem from two factors:

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(a) The upward adjustment of the value of the property by Mr. Christofi by a margin of 25% reflecting the favourable characteristics of the land; and

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(b) The adjustment made by Mr. Mateas in the value of the land between material dates to reflect the favourable change of the building ratio between 1978 to 1982. By virtue of the Zoning Order dated 31st August, 1979, (R.A.A. 197), the building ratio was increased from 5% to 8%.

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The 25% increase added to the value of the property by Mr. Christofi largely rested on the opinion of Mr. Christofi. There is no material from which any safe inference can be drawn respecting to the beneficial effects on the value of land from the agreeable shape of the property, having the characteristics of the land of the applicant. To my comprehension, the valuation of Mr. Mateas paid closer heed to hard facts and had on the whole a solid factual foundation. It was at the least reasonably open to the Commissioner in the exercise of the discretion vested in him by the Capital Gains Tax Legislation (52/80) to accept the assessment of Mr. Mateas and act upon it for the purpose of discerning the tax, if any, to which the applicant was liable. The adjustment made by Mr. Mateas on account of the change in the building ratio was perfectly warranted by its inevitable beneficial impact on the value of land.

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Another aspect of the assessment questioned by the applicant, though with less vigour, concerns the market value of the land at the date of its disposal. Applicant suggested it should be computed at less than £64,000.- to allow for commission, expenses and other charges incidental to the transaction. The claim was rejected by the Commissioner for lack of satisfactory proof. As counsel for the Republic pointed out in his address, the allegations made by the applicant in this area are riddled with contradictory statements, drawing attention, inter alia, to the allegations made in a civil action raised by the applicant before the District Court of Paphos (Civil Action 1272/86). In propounding his cause on this aspect of the case, the applicant overlooks that the amount of £64,000.- was declared to be the value of the land at the date of sale and was cited as the value of land in the declaration made for the purposes of Law 52/80. Section 6(1)(b) of Law 52/80 does allow deductions for expenses wholly and exclusively incurred for the acquisition of the taxable gain, not otherwise deductible under the Income Tax Laws. In this case it was at the least reasonably open to the Commissioner to find that no such expenses were incurred in the absence of satisfactory supporting evidence. Notwithstanding the decision in *Papaconstantinou and Another v. The Republic* (1986) 3 C.L.R. 1672, counsel argued that the computation of profit should be determined by reference to the value of the land at the date of the enactment of the law and the date of sale. The submission ignores the tenor of the above decision and the implications of prospective legislation. Legislation is prospective so long as it takes effect from the date of the enactment of the law. The conferment of rights and the imposition of liabilities by reference to events that occurred prior to the enactment of the law, does not render the legislation retrospective. The imprint of retrospectivity ordinarily derives from the disturbance of rights that accrued and vested prior to the enactment of the law (*Santis & Others v. The Republic* (1983) 3 C.L.R. 419). Under and in accordance with the provisions of the Capital Gains Tax liability for the payment of capital gains tax can only arise subsequently to the date of the enactment of the law; therefore, the law is wholly prospective in character and content. It does not make provision for the levying of taxation in respect of any profit earned prior to its enactment.

Pikis J.

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The recourse is dismissed. The sub judice decision is hereby confirmed pursuant to the provisions of para. 4 (a) of Article 146 of the Constitution.

Recourse dismissed.