[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES,
STAVRINIDES, HADJIANASTASSIOU, JJ.]

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

Appellant,

and

ARIS CHRISTODOULOU,

Respondent.

(Revisional Jurisdiction Appeal No. 65).

Income Tax—Taxable income—"Gains or profits from any office or employment"—Scholarship—Employee on scholarship under scholarship agreement with employer—Receiving payments in excess of his then salary, for his maintenance and tuition in California during the period of scholarship (eighteen months)—This means that the employers paid the whole amount required to recover the cost of the scholarship—Consequently, no part of the said amount was taxable income as "gains or profits from any office or employment" under section 5 (1) (*b*) *of the Income Tax Laws* 1961 *to* 1969—*Cf. section* 8(*d*) *of said Laws.*

Scholarship allowance—Income Tax—See, supra.

Words and Phrases—"Gains or profits from any office or employment" within section 5 (1) (*b*) *of the Income Tax Laws* 1961 *to* 1969.

Gains or profits—See supra.

The Respondent tax-payer is an employee of a large agricultural concern of Limassol. He first joined the Staff of his employers in January, 1964. In September, 1965 the employers granted to the tax-payer a scholarship for further studies in agriculture in Davies University of California in the United States of America for a period of eighteen months, under agreement in writing produced as an *exhibit* in Court. Under this agreement, the employers undertook to pay the tax-payer his air-fare from Cyprus to California and back; plus the amount required to make up the difference between his then salary and the amount of 3,400 dollars for the first year and 1700 dollars for the last six months of the said scholarship, which represent the cost of his maintenance and

tuition during the period of the scholarship. In effect this means that the employers would pay the whole amount required to cover the cost of the scholarship (tuition, maintenance and travelling) but would pay no salary for the period of scholarship during which it was intended that the tax-payer would retain his status as employee of the said concern so as to preserve continuity of service and other advantages from his employment.

In computing the tax-payer's income for the years 1966 and 1967 the Appellant Commissioner of Income Tax treated the amount paid to the tax-payer under the scholarship agreement as consisting of two different items: (a) the salary (at pre-scholarship rate) considered as taxable income earned for services to the employers; and (b) the amount required to make up the difference between the "salary" and the cost of the scholarship as stated above, which was considered as non-taxable. It would appear that the employers have appropriated in their books the said amount in the way the Appellant Commissioner proceeded to divide it as above, the suggestion being that this was done by the employers for purposes of taxation.

The tax-payer (Respondent) challenged successfully the assessment in question by a recourse under Article 146 of the Constitution, claiming that no part of the whole said amount was taxable income, under section 5 (1) (b) of the Income Tax Laws 1961 to 1969, as "gain or profit from any office or employment"; all of it being of the same nature, as having been paid to him solely for the purposes of the scholarship under the said agreement with his employers; and the Appellant Commissioner having, therefore, wrongly divided it for purposes of taxation into a taxable and a non-taxable part.

The Commissioner of Income Tax took this appeal against the decision of the learned Judge of the Supreme Court in the first instance annulling the assessment in question; and the Supreme Court dismissing the appeal:

Held, (1). The learned trial Judge was right in holding that no part of the whole amount in question, received by the tax-payer (now Respondent) under the scholarship agreement, was taxable, as none was "gain or profit from any office or employment" within section 5 (1) (b) of the Income Tax Laws 1961 to 1969.

(2) We are only concerned in this appeal with the nature of the amounts received by the tax-payer during the period in question under the scholarship agreement; and not with the form in which his employers may have appropriated the amount—even assuming that they did so for the purposes of taxation as suggested on behalf of the Appellant—so long as there is nothing illegal in the transaction. In any case it would be a matter for the taxation returns of the employers; and the Appellant cannot complain here about any lawful arrangements for the purpose of avoiding (not evading) tax (Dictum of Lord Denning, M.R. in *Jefford and Another* v. *Gee* [1970] 2 W.L.R. 702, at p. 714 applied).

Appeal dismissed.
No order as to costs.

Cases referred to:

Jefford and Another v. *Gee* [1970] 2 W.L.R. 702, at p. 714 per Lord Denning, M.R. *applied.*

Hochstrasser v. *Mayes* [1959] 3 All E.R. 817.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Loizou, J.) given on the 24th October 1969, (Revisional Jurisdiction Cases Nos. 71/69 and 72/69)* whereby the decisions of the Appellant—Commissiner concerning the income tax assessments on the Respondent—tax-payer in respect of the years 1966 and 1967 were declared *null* and *void.*

K. Talarides, Senior Counsel of the Republic, for the Appellant.

Chr. Demetriades, for the Respondent.

The judgment of the Court was delivered by:

VASSILIADES, P.: In this revisional appeal, under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law No. 33/64—same as in all appeals—it is for the Appellant to satisfy the Bench hearing the appeal that the first instance decision is erroneous so that the Court should intervene. In the appeal before us we are unanimously of the opinion that the Appellant has not shown reason for such intervention.

* Reported in (1969) 3 C.L.R. 467.

We would refer to the passage cited in the judgment of the trial Judge from *Hochstrasser* v. *Mayes* [1959] 3 All E.R. 817, that –

> " the authorities show this, that it is a question to be answered in the light of the particular facts of every case whether or not a particular payment is or is not a profit received from the employment";

and, as such, liable to tax under section 5 (1) (b) of the Income Tax Law No. 58/61.

The principal facts on which the question turns in the instant case—which constitute common ground—may be summarized as follows: The respondent tax-payer (hereinafter referred to as "the tax-payer") is an employee of Lanitis Farm Ltd. of Limassol, one of the large agricultural concerns in Cyprus. He first joined the staff of his employers (hereinafter referred to as "the company") in January, 1964. We have it, moreover, from counsel that his father is one of the senior officers of the company; and that the tax-payer already held an academic qualification in agriculture, which is his main line of work in the company.

In September, 1965, the company granted to the tax-payer a scholarship for further studies in agriculture in Davies University of California, in the United States of America, for a period of 18 months, under an agreement the terms of which are set out in the relevant document before us. Under this agreement, the company undertook to pay to the tax-payer his air-fare from Cyprus to California and back; plus the amount required to make up the difference between his then salary and the amount of $3400 for the first year and $1700 for the last six months, which represent the cost of his maintenance and tuition during the period of the scholarship. In effect this means that the company would pay the whole amount required to cover the cost of the scholarship (tuition, maintenance and travelling) but would pay no salary for the period of the scholarship during which it was intended that the tax-payer would retain his status as employee of the company so as to preserve continuity of service and other advantages from his employment.

On his part the tax-payer would devote all his time to his studies, the company retaining the right to discontinue the scholarship and recall their employee back to Cyprus if he

did not make satisfactory progress in his studies. Furthermore, the tax-payer agreed upon completion of his studies to continue working in the employment of the company in Cyprus for a period of five years at such salary as would normally be paid by the company to such officers from time to time. The parties agreed that any dispute on matters arising under the agreement would be referred to arbitration. It is common ground that during the period of the scholarship the cost thereof rose from $3400 to $3850 per annum, which the company paid in full. In their income tax forms and returns, the company stated the payments made for the scholarship as provided in the agreement.

In computing the tax-payer's income for the years 1966 and 1967 the Appellant treated the amount paid to the tax-payer under the scholarship agreement as consisting of two different items: (a) The salary (at pre-scholarship rate) considered as taxable income earned for services to the company; and (b) the amount required to make up the difference between "the salary" and the cost of the scholarship as above, which was considered as non-taxable.

The Respondent tax-payer disputed the Appellant's claim for tax on any part of the amount received from the company under the scholarship agreement, contending that none of it was taxable income under section 5 (1) (b) as none was "gain or profit from any office or employment". He claimed that the whole amount was paid to him for the purposes of the scholarship, under his agreement with the company; all of it being of the same nature and the Appellant having no right to divide it for purposes of taxation into a taxable and a non-taxable part.

The learned trial Judge dealt fully with the point; and after considering several authorities, posed the question for decision as being: "Were the disputed payments received by the Applicant (tax-payer) gains or profits from his employment?" Which he answered: "In the light of the authorities I am clearly of opinion that the answer must be in the negative; to my mind (the Judge adds) it is obvious that such payments were made in connection with his studies under the scholarship agreement and not by way of remuneration or reward for his services, even though the fact of his employment may have been the *causa sine qua non* of the scholarship agreement".

We heard carefully the elaborate argument of learned counsel for the Appellant, but we found it unnecessary to call on counsel for the Respondent tax-payer. We are only concerned in this appeal with the nature of the amounts received by the tax-payer during the period in question under the scholarship agreement; and not with the form in which the company may have appropriated the amount—even assuming that they did so for the purposes of taxation as suggested on behalf of the Appellant—so long as there is nothing illegal in the transaction. In any case it would be a matter for the taxation returns of the company. To use the words of Lord Denning, M.R. in *Jefford and Another* v. *Gee* [1970] 2 W.L.R. (part 13) p. 702 at p. 714 "it is to the advantage of both parties to settle on these terms, rather than benefit the revenue. There is nothing illegal in it. It is every day practice to make arrangements with a view to evading taxation". So long as the arrangement is not illegal it is open to the parties to make it; and the Appellant cannot complain about it unless he can show that the tax-payer misrepresented the actual position for the purpose of evading (not avoiding) tax.

The learned trial Judge went also into the question whether the amounts received by the tax-payer were received as income arising from a scholarship; and as such exempted from income tax by virtue of the provisions of section 8(d). Upholding as we do his decision on the nature of the income in question as far as the tax-payer is concerned, we find it unnecessary to go into this further question of exemption from income tax, although the matter would seem to be covered by the same reasoning and decision. We think that this appeal fails; and should be dismissed. As to costs this being an arguable case on a taxation issue, we do not think that we should make any order for costs in the appeal.

Appeal dismissed. No order as to costs.