IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS CHRISTIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE COMMISSIONER OF INCOME TAX,
2. THE ATTORNEY-GENERAL, AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

Respondent.

(Case No. 139/65).

Income Tax—Assessments—Deduction in computing profits—Distinction between capital and revenue expenditure—Payments made by firm, in which Applicant is a partner, to certain other firms for abandoning their production for a period of four years—Payments not capital expenditure but allowable against income in assessing profits for Income Tax purposes—Law 16 *of* 1961 *of the Greek Communal Chamber, sections* 8 *and* 10 (ε) (στ).

The Applicant in this recourse, a partner in a firm, complains against the validity of income tax assessments raised by the 1st Respondent on the firm for the years of assessment 1960and 1961.

The undisputed facts of the case were as follows:

On the 28th August, 1957, the partnership Christides Bros. together with four other flour millers entered into five separate agreements with five other flour millers whereby the former leased the flour mills of the latter for an initial period of two years commencing on the 1st September, 1957, and ending on the 31st August, 1959. It is common ground that these agreements were extended by the parties thereto, under the terms of the agreement, for a further period of two years up to the end of August, 1961; the "rent" payable under these agreements varied in each case but in all other respects the five agreements are identical. There was provision in each of them to the effect that the lessees were not bound to use the flour mills the subject of the agreements and that when a mill was not

operated then an amount of £3.- per day (or £90.- per month if the mill was not operated for a whole month) would be deducted from the monthly rent. By virtue of another clause in each of the agreements the owners of the mills were restricted from parting with the mills including the machinery during the currency of the agreements.

It may be said at this stage that none of the mills was ever operated during the period of the agreements.

The partnership, Christides Bros., in submitting their income tax returns for the years of assessment 1960 and 1961 treated their share of the rent under the agreements as revenue expenditure and deducted it from their trading receipts. The Respondents disallowed the deduction on the ground that it was capital expenditure with the result that Applicant's share in the profits was increased and so was the tax payable by him.

The only question that falls to be decided in this Case is whether the sums paid by the partnership under the five agreements could be properly deducted in determining the taxable income of the partnership and the submissions of counsel of both sides were restricted to this issue. On behalf of the Applicant it was contended that the payments were revenue expenditure and, therefore, deductible and on behalf of the Respondent it was contended that they were capital expenditure.

The relative provision in our law is section 8 of Law 16/61 of the Greek Communal Chamber which lays down that for the purpose of ascertaining the chargeable income of any person there shall be deducted all expenses wholly and exclusively incurred by such person in the production of the income, and section 10 of the same law and particularly paragraphs (ε) and (στ) thereof which provide that no deduction shall be allowed in respect of:

" ....

(ε) Any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;

(στ) any capital withdrawn or any sum employed or intended to be employed as capital.

Held, (1). I have carefully considered the case in the light of the submissions made by counsel on both sides and of the

authorities and I have come to the conclusion that the payments made under the agreements were expenses wholly and exclusively incurred for the production of the income and are, therefore, deductible in ascertaining the chargeable income of the partnership for income tax purposes for the years in question.

I have reached this decision mainly on the following grounds:
(a) that the payments were recurrent expenses;

(b) that any advantage gained by the partnership as a result of the agreements was limited to their term and having regard to the length of the period (maximum of four years) it cannot, in my view, be said that such advantage was for the enduring benefit of the partnership's trade;

(c) that, as it clearly appears from clause 6 of the agreements, the lessors intended to resume production at the expiration of the term and this would presumably put an end to any advantage acquired by the partnership;

(d) that by the agreements the lessees acquired a contractual right but did not acquire an interest in land (see section 4 of the Immovable Property (Tenure Registration and Valuation) Law Cap. 224);

(e) that the payments under the agreements were, in my view, part of the cost of performing the income earning operations of the partnership and not part of the cost of improving its permanent structure or adding to it or to the income earning plant or machinery.

(2) For all the above reasons this recourse must succeed. In the result the assessments are hereby declared null and void to the extent of the disallowance by the Commissioner of the payments made under the said agreements.

(3) Regarding costs I think that in all the circumstances it is right that the Respondent should pay £15 against Applicant's costs.

Assessments complained of annulled. Respondent to pay £15.– against Applicant's costs.

Cases referred to:

Vallambrosa Rubber Co. Ltd. v. *Farmer* (Surveyor of Taxes) (1910) 5 Tax Cases 529;

British Insulated and Helsby Cables Ltd. v. *Atherton* [1925] All E.R. Rep. 623;

Commissioner of Taxes v. *Nchanga Consolidated Copper Mines Ltd.* [1964] 1 All E.R. 208;

Regent Oil Co. Ltd. v. *Strick (Inspector of Taxes)* [1965] 3 All E.R. 174;

Bolam (H.M. Inspector of Taxes) v. *Regent Oil Co. Ltd.* (1956) 37 Tax Cases 56;

B. P. Australia Ltd., v. *Commissioner of Taxation of the Commonwealth of Australia* [1965] 3 All E.R. 209;

Mobil Oil Co. Ltd. v. *Commissioner of Taxation of the Commonwealth of Australia* [1965] 3 All E.R. 225;

Collins (Inspector of Taxes) v. *Joseph Adamson and Co.*, [1937] 4 All E.R. 236;

Henriksen (Inspector of Taxes) v. *Grafton Hotel Ltd.* [1942] 1 All E.R. 678.

Recourse.

Recourse against the validity of the assessments of Income Tax made by the first Respondent on the Applicant for the years of assessment 1960 and 1961.

A. Triantafyllides, for the Applicant.

M. Spanos, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The facts sufficiently appear in the Judgment delivered by:

LOIZOU, J.: The Applicant is a partner in the firm Christides Bros., who are flour millers of Kythrea.

By this recourse he challenges the validity of the assessments of income tax made by the first Respondent, the Commissioner of Income Tax, on the firm for the years of assessment 1960 and 1961 (years of income 1959 and 1960) on a number of grounds. When the case came up for hearing counsel appearing for both parties declared that most of their differences had been settled and that the only remaining issue for trial was whether the decision of the Commissioner of Income Tax that certain payments made by the firm were capital expenditure

and, therefore, not a deductible expense for income tax purposes was properly and lawfully taken.

The undisputed facts of the case are briefly as follows·

On the 28th August, 1957, the partnership Christides Bros. together with four other flour millers entered into five separate agreements with five other flour millers whereby the former leased the flour mills of the latter for an initial period of two years commencing on the 1st September, 1957, and ending on the 31st August, 1959 It is common ground that these agreements were extended by the parties thereto, under the terms of the agreement, for a further period of two years up to the end of August, 1961, the "rent" payable under these agreements varied in each case but in all other respects the five agreements are identical There was provision in each of them to the effect that the lessees were not bound to use the flour mills the subject of the agreements and that when a mill was not operated then an amount of £3 – per day (or £90 – per month if the mill was not operated for a whole month) would be deducted from the monthly rent By virtue of another clause in each of the agreements the owners of the mills were restricted from parting with the mills including the machinery during the currency of the agreements

It may be said at this stage that none of the mills was ever operated during the period of the agreements

The partnership, Christides Bros, in submitting their income tax returns for the years of assessment 1960 and 1961 treated their share of the rent under the agreements as revenue expenditure and deducted it from their trading receipts The Respondents disallowed the deduction on the ground that it was capital expenditure with the result that Applicant's share in the profits was increased and so was the tax payable by him.

The only question that falls to be decided in this Case is whether the sums paid by the partnership under the five agreements could be properly deducted in determining the taxable income of the partnership and the submissions of counsel of both sides were restricted to this issue On behalf of the Applicant it was contended that the payments were revenue expenditure and, therefore, deductible and on behalf of the Respondent that they were capital expenditure.

The relative provision in our law is section 8 of Law 16/61

of the Greek Communal Chamber which lays down that for the purpose of ascertaining the chargeable income of any person there shall be deducted all expenses wholly and exclusively incurred by such person in the production of the income, and section 10 of the same law and particularly paragraphs (ε) and (στ) thereof which provide that no deduction shall be allowed in respect of:

. . . .

> "(ε) Any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;
>
> (στ) any capital withdrawn or any sum employed or intended to be employed as capital;"

The distinction between capital and revenue expediture is not always an easy question and although the answer in each case must depend on its own facts reference to decided cases may be useful as an indication of what considerations may be taken into account in approaching this question.

In *Vallambrosa Rubber Co. Ltd.* v. *Farmer (Surveyor of Taxes)* (1910) 5 Tax Cases 529, Lord Dunedin suggested this rough test in dealing with this problem:

> "In a rough way I think it is not a bad criterion of what is capital expenditure as against what is income expenditure to say that capital expenditure is a thing that is going to be spent once and for all, and income expenditure is a thing that is going to recur every year".

In *British Insulated and Helsby Cables Ltd.* v. *Atherton*, [1925] All E.R. Rep., p. 623 the House of Lords decided that a contribution made by the company to form the nucleus of a pension fund constituted by a trust deed for its staff was not deductible for income tax purposes because it was expenditure once and for all with a view to the bringing into existence of an asset or advantage for the enduring benefit of the company's trade.

The establishment of the pension fund was found necessary because the company who had a large clerical and technical staff, found that it had frequently lost experienced members of its salaried staff, who left to take up appointments elsewhere and that the absence of a regular system of pensions

was injurious to its business in other respects. It was, therefore, decided to establish a pension fund in the hope that the benefits to be derived from the fund would induce the members of its staff to remain in its service and otherwise increase the efficiency of the company's staff. Under the scheme each member of the staff undertook to contribute 5% of his salary and the company undertook to contribute an amount equivalent to one half of the contributions of the members, and further undertook to pay the sum of £31,784.– to form the nucleus of the fund, and to provide the capital sum necessary in order that passed years of service of the then existing staff should rank for pension. It is with regard to this initial lump sum payment that the dispute arose.

Viscount Cave L.C. in the course of his Judgment, after referring with approval to the dictum of Lord Dunedin in the *Vallambrosa* case, said this (at p. 629):

> "But when an expenditure is made, not entirely once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital".

Another case which was cited by counsel for the Applicant in support of his case was *Commissioner of Taxes* v. *Nchanga Consolidated Copper Mines Ltd.*, [1964] 1 All E.R. p. 208. This was a case in which the taxpayer company was one of three independent copper mining companies in Northern Rhodesia which together formed a group of companies whose production was marketed by a common sales department which entered into forward sales commitments on the basis of production estimates supplied by each company. Each company was responsible for fulfilling its own commitments though the copper was not sold as the product of anyone company. In 1958, as the result of a steep fall in world copper prices, the group decided to reduce its overall planned production for that year by 10% under an arrangement between the three companies that one of them, Bancroft Ltd., should go out of production for 12 months beginning early in 1958, that the other two companies should produce the whole of the group's planned output for 1958 less the reduction of 10% and that these two should pay Bancroft Ltd. compensation

for abandoning its production for the year. In effect, by paying compensation, the two companies acquired the right to have Bancroft Ltd. out of production for the year. The result of this arrangement was that the taxpayer company's planned output for 1958 was increased by 9,000 tons. The taxpayer company's share of compensation paid to Bancroft Ltd. was £1,384,569 and in assessing its taxable profits for the year ending March 31, 1959, the company deducted this payment from its trading receipts. The deduction was disallowed by the Commissioner of Taxes on the ground that it was expenditure of a capital nature. The Privy Council held that the expenditure was not capital expenditure, it was wholly related to the production of the output of the company's mine for the year and was analogous to an operating cost, but had no analogy with expenditure for the purpose of acquiring a long term "enduring" contract.

Viscount Radcliffe in delivering the unanimous opinion of the Privy Council said this at p. 212:

> "Again courts have stressed the importance of observing a demarcation between the cost of creating, acquiring or enlarging the permanent (which does not mean perpetual) structure of which the income is to be the produce or fruit and the cost of earning that income itself or performing the income earning operations".

and at p. 213:

> "In considering allocations of expenditure between the capital and income accounts, it is almost unavoidable to argue from analogy. An instance is taken which seems to fall beyond dispute on one or other side of the line and it is argued that the case under review is in substance more akin to that than to any other comparable instance which falls beyond argument on the opposite side. Applying this method, their Lordships think that *Nchanga's* expenditure has no true analogy with expenditure for the purposes of acquiring a business or the benefit of a long term or 'enduring' contract".

A case cited by learned counsel for the Respondent in support of his argument is *Regent Oil Co. Ltd.* v. *Strick* (*Inspector of Taxes*) [1965] 3 All E.R. p. 174.

The question in issue in that case was whether the taxpayers

were entitled to deduct in computing their profits for income tax purposes and for profits tax purposes payments made to retailers to secure over a term of years exclusive outlets for the taxpayers' oil, as being revenue expenditure, or whether such payments were capital expenditure.

The payments in question were lump sum payments made by the Regent Oil Co. to four dealers in petrol who were tied to take Regent's petrol exclusively for a term of years by means of a transaction known as lease and sub-lease.

The four dealers were (1) Green Ace Motors (2) C.V. Clapp Ltd. (3) Stadium Motor Works and (4) Murphy. In the case of Green Ace Motors the tie was for a period of ten years and the lump sum involved £10,000. In that of Clapp the period was five years and the lump sum payment £2,083 and in the case of the last two dealers the period was 21 years and the lump sum payments £10,416 and £27,000 respectively.

Under the lease-sub-lease method of tie the arrangement was made with two documents admittedly all part of the same transaction. The first document was a lease between the dealer of the one part and Regent of the other part, whereby the dealer in consideration of the lump sum payment demised to Regent the dealer's garage premises for a term of years at the nominal amount of £1.- per annum. Regent entered into a number of covenants usual in a lease. The second document of the same date was a sub-lease made between Regent of the one part and the dealer of the other part, whereby Regent in consideration of the rent reserved and of the dealer's covenants demised to the dealer the garage premises for the same term less three days at a rent of £1.- per annum. The dealer entered into a number of covenants usual in a lease and in addition a number of special covenants to continue to carry on the premises the business of a dealer, to have Regent's brands of motor fuel available at all reasonable times so long as Regent were willing and able to supply him with fuel, to purchase its total requirements of motor fuel from the company, and not sell any motor fuel supplied by any other company, from those premises or any adjoining premises owned or occupied by the dealer. There was the usual proviso for re-entry on breach of any covenant. The lump sum payment was calculated by reference to the gallonage which it was expected would be sold at the station during the currency of the sub-lease.

It was held by the House of Lords on appeal that the lump sum payments were expenditure of a capital and not of a revenue nature, and therefore were not deductible in computing the taxpayers' profits for the purposes of income tax and profits tax.

It is quite clear from the Judgment however, that their Lordships base their decision on the ground that the lump sum payments were made for the acquisition of interests in land which were assets of a capital nature being the acquisition of property for the purpose of carrying on a trade thereon and in the case of the two 21 year ties also in view of the length of the ties and the enduring nature of the advantage acquired. Lord Reid in the course of his Judgment at p. 186 said:

> "I would have no doubt that the lump sums paid for the 21 year ties could not be treated as revenue outgoings, even if there was no lease and sub-lease. These ties were not obtained in order to facilitate planned marketing or because the taxpayers thought it desirable to have them. The lump sums paid for them were paid only because garage owners were in a strong bargaining position: They wanted and were able to get large sums paid immediately; and they were willing to grant long ties in return.
>
> With regard to the other two cases, however, I must consider what difference it makes that the transaction took the form of a lease and sub-lease. This is not a mere matter of form, because this form of transaction gave to the taxpayers much better security for the performance by the garage owner of his obligation, and it gave to them interest in land which afforded that security. So the quality of their asset is different from what it is under the older form of tie. I have already said that all relevant factors must be considered in each particular case, and I regard this as a highly relevant factor. Premiums paid for leases have always been regarded as capital, but we were not referred to any case where a premium had been paid for a very short lease – say two or three years – and I do not wish to decide whether even in such a case a premium would necessarily be treated as a capital outlay. I am satisfied that the weight of this factor in the present cases is sufficient to turn the scale if otherwise there were doubt, and I would therefore hold that in each of the four cases the lump sums paid by the taxpayers cannot be allowed as revenue outgoings".

Lord Pearce at p. 193 said:

"It is contended that the transactions here in question can be equated to the payment by a wholesaler to a retailer of a lump sum in advance to secure his entire custom for a period. If that were possible, the considerations pointing towards a revenue expenditure would, in my opinion, have prevailed on balance in the transaction where only a five year period is involved. They would probably have failed to do so, however, in the two transactions which related to periods of 21 years and which thereby acquire a more enduring and structural quality. No such equation is, however, possible. A lease-sub-lease transaction is materially different both in form and in substance. By it the wholesalers obtain for a premium an interest in the land from which their goods are retailed to the public. Admittedly they have bound themselves to sublet and therefore their right to possession, like that of any leaseholder who sublets for all save three days of his lease, will probably be minimal. Breaches of covenant, however, might put them into possession; and in that case they would be in possession of land which they could sublet. Moreover, throughout the period of the lease, although not in possession, they have, not merely a personal covenant by a retailer, but an interet in land through which they can enforce its use in a way beneficial to themselves. The acquisition of such an interest in land points strongly to a capital expenditure and, on the facts of these cases, dominates other indications".

Lord UpJohn at p. 196 said:

"In the field of real property in relation to taxation certain matters are so fundamental as now to be axiomatic. Thus in cases other than those where a man is a property dealer, so that property is his stock-in-trade, it is quite clear that the purchase of a fee simple for a purchase price by a trader is the acquisition of property for the purposes of trade and the purchase cannot be regarded as a cost of carrying on the trade; it is therefore capital. This is so though the trader may desire to acquire the property for the purpose of providing himself with circulating capital by mining operations on the property acquired even if he is intending to acquire the property only for a short time. Exactly the same principle applies if the purchase price is

payable by instalments spread over a period; it is a capital payment. But if the trader acquires a property on lease and pays a rent reserved by that lease that rent is not regarded as merely the acquisition of property de die in diem, but as payment for the use of property and the rent therefore is treated as a revenue expenditure and is deductible for purposes of tax.................This is as well settled as anything in the law of taxation; but it frequently happens that the trader, anxious to acquire a leasehold property, has to pay a premium for the acquisition of a lease or possibly on renewal of a lease on its expiry; there can be no difference between the two situations. In such a case it is quite clear that the payment of a premium is regarded as the cost of acquiring the property for the purposes of the trade and not as part of the carrying on of the trade, and hence the premium, although paid for a property of a wasting character, is capital....... There is no magic in the use of the word 'premium'; it merely means a lump sum paid as a consideration for the acquisition of the lease. So also, if the premium or lump sum is paid by instalments spread over the term of the lease, it still remains of a capital nature".

and at p. 199:

"The amount of the payment and the length of the tie, however, are important elements among all the other relevant facts. I part company at once with the submissions of counsel on both sides on the one hand that a lump sum payment for a *tie for more than an annual* accounting period is necessarily capital and, on the other, that the length of the tie is utterly immaterial save as a factor in calculating the anticipated gallonage and so the amount of the lump sum payment. The lump sum payments here are large; but one must not attribute to that too much importance, because after all the lump sum payment is calculated on the basis that it represents no more than one penny per gallon on the expected sales over the length of the tie. So I approach this matter as one of judicial common sense and I start with the case of Murphy; it seems to me that to pay substantial sums for a tie for as long as twenty-one years is quite plainly, as a matter of common sense, a tie which must be described as of a capital nature so that the sums paid under the Murphy agreements must be

regarded as capital. So, too, must be the sum of £10,416 paid under the agreement for the Stadium Motor Works, Belfast, for a tie of a similar length.

"On the other hand, one has the agreement with C. V. Clapp Ltd., for a payment of a sum for five years. The sum, of course, is much less, as is the tie, but I would think that the length of the tie plainly puts it into the character of a merely long term trading contract, and this would have been an ordinary trading expense deductible for tax had it not been for the fact that the company was able to drive a hard bargain with Regent to ensure that it was capital. The interesting case, of course, is that of Green Ace Motors where the tie was for ten years for payment of a sum of £5,000. This is a borderline case and I shall say no more about it than that I think that it was very wise of that company also to drive a hard bargain with Regent which quite plainly made the sum a capital sum".

It is interesting to compare the last case with the case of *Bolam* (*H.M. Inspector of Taxes*) v. *Regent Oil Co. Ltd.*, (1956) 37 Tax Cases p. 56.

In this latter case the sums involved were also lump sum payments made by Regent for ties with dealers of up to five or six years. As in the *Strick* case payments were calculated on the estimated gallonage of petrol supplies to the dealers but, unlike in the *Strick* case, the agreements were not in the form of a lease and sub-lease.

Danckwerts, J., upheld the finding of the Commissioners that the payments were recurring payments of an income nature made to preserve the company's goodwill and that they did not create capital assets of an enduring nature.

In *B.P. Australia Ltd.*, v. *Commissioner of Taxation of the Commonwealth of Australia*, [1965] 3 All E.R. p. 209, another case cited by learned counsel for the Respondents, the Privy Council held that certain lump sum payments made by B.P. to dealers under solo site agreements (which is the Australian name for the ties or exclusivity agreements entered into by oil companies with dealers) of an average duration of five years, were expenditure of a revenue rather than a capital nature.

This case was followed in *Mobil Oil Co. Ltd.* v. *Commissioner of Taxation of the Commonwealth of Australia*, [1965] 3 All E.R.

at p. 225, the facts of which were very similar to those of that case.

Another case of some interest on the distinction between capital and income is *Collins* (*Inspector of Taxes*) v. *Joseph Adamson and Co.*, [1937] 4 All E.R. p. 236.

In that case an Association was formed for the purpose of maintaining prices of boilers and as part of its operations it applied a part of its funds in one case to the purchase of (a) a business, which was thereupon wound up (b) its plant, which was thereupon destroyed and (c) a covenant preventing future competition (for 20 years) and in a second case, for the acquisition of shares in a company, to obtain control thereof and to secure it as an active member of the Association. The payments were held to be capital payments as creating an advantage of an enduring nature.

Lawrence, J., in the course of his judgment said (at p. 241):

"In my opinion, those payments created for the members of that Association advantages of an enduring nature, and of such an enduring nature, I think, as properly to be treated as capital, and not to be treated as revenue. It appears to me that the present case is really a stronger case than the case of *Atherton*, because in the present case there was this company, Hewitt and Kellett Ltd., which by reason of this payment ceased to exist and the land on which its business had been carried on was, for the purpose, of boiler-making, sterilized for the period of twenty years. All its assets were disposed of, and it does not appear to me to make any difference whether they were acquired by the members of the Association for the purpose of exploitation in the business of boiler-making, or for the purpose of being scrapped. They were equally acquired by the members of the Association and such acquisition appears to me to be clearly a capital acquisition............ In the case of John Thompson (Wolverhampton) Ltd., the result to the Association and its members of the grant of £5,500 was that Wilsons boiler-makers of Glascow were brought into the combine, and their profits became subject to the pool, which was necessary, in the opinion of the Association, to keep the scheme going. In that case, too, I think that the payment was of a capital nature, because it created what I think may properly be called an asset, or at least an advantage of an enduring nature".

One other argument by learned counsel for the Respondents must be mentioned It was stated that by the agreements the partnership acquired an asset of a monopoly nature and that therefore the payments in respect thereof were capital payments He cited the case of *Henriksen (Inspector of Taxes)* v *Grafton Hotel Ltd*, [1942] 1 All E R p 678 as an authority for this proposition

Under section 14 (1) (a) of the Licensing (Consolidation) Act 1910 licensing justices have on the grant of new justices' on-licence to attach conditions "for securing to the public any monopoly value which is represented by the difference between the value which the premises will bear, in the opinion of the justices, when licensed, and the value of the same premises if they were not licensed"

The taxpayers in the above case were tenants of licensed premises and under the terms of their lease they were bound to pay the monopoly value fixed by the justices in granting the on-licence; they sought to deduct these payments for income tax purposes The court of appeal decided that monopoly value is in its nature a capital payment and remains so although the licence is granted for a short term of years.

Lord Greene, M R at p 682 stated

"A payment of this character appears to me to fall into the same class as the payment of a premium on the grant of a lease which is admittedly not deductible . . The lessee purchases the term for the premium There is no revenue quality in a payment made to acquire such an asset as a term of years Another class of expenditure which is comparable to the payment now in question is expenditure on improvements to the property which justices may require to be made as a condition of granting a licence Such expenditure would clearly not be deductible in so far at any rate as the work required went beyond mere repair"

I think it would be appropriate to quote here what Lord Reid said in the course of his Judgment in the *Strick* case, which was decided 23 years later, in connection with the *Henriksen* case

"It was argued that *Henriksen* v. *Crafton Hotel Ltd* was

authority for the proposition that a payment, which is made for an asset lasting three years and which will then have to be repeated to acquire a new asset for the same purpose is not a recurring payment and must be treated as a capital outlay; but Lord Greene M.R., laid stress on the special features of that case and I need not consider whether they were sufficient to justify the decision. If and in so far as the *ratio decidendi* was based on any such general proposition I would not agree with it".

Having reviewed some of the authorities on the subject I now come to the present case.

As stated earlier on, the terms of the five agreements are identical with the exception of the rent reserved in each case, which varies between £240 and £320 per month. Under clause 1 of the agreements the rent is payable at the end of each month but a sum of £3 would be deducted for each day that the tenants did not operate the mill or in case the mill was not operated for a whole month a total of £90.— would be deducted from the monthly rent.

By clause 2 (c) of the agreements the lessees were free to operate, if they so wished, the mills for the grinding of wheat only but they were not bound to so operate the mills for any period or at all during the currency of the lease.

The owners covenanted not to sell, gift or in any way alienate the mills including the machinery or any part thereof (clause 3 (b)).

Finally clause 6 of the agreements reads as follows:

"Οἱ ἐνοικιασταὶ δύο μῆνας πρὸ τῆς λήξεως τῆς παρούσης ἐνοικιάσεως καὶ εἰς περίπτωσιν καθ' ἣν δὲν σκοπεύουν νὰ ἀνανεώσουν ταύτην καὶ περαιτέρω εἰς περίπτωσιν μὴ λειτουργίας τοῦ μισθίου καὶ τῶν ἐν αὐτῷ μηχανημάτων δι' ἀλευροποίησιν, θὰ ἐπιτρέπωσι εἰς τὸν ἰδιοκτήτην ὑπὸ τὴν ἐπίβλεψίν των νὰ προβαίνῃ εἰς ἐπισκευὴν καὶ/ἢ προπαρασκευαστικὰς ἐργασίας διὰ τὴν ἐκ μέρους του ἐπαναλειτουργίαν τούτων".

In the light of the above it is, in my view, reasonable to conclude that the primary object of the lessees in entering into the agreements was not to acquire possession of the mills with a view to using them themselves but rather to put them out of

production for the period of the agreements. It is equally clear that the advantage they hoped to acquire by so doing was the increase of the output of their own mills and consequently of their income.

I have carefully considered the case in the light of the submissions made by counsel on both sides and of the authorities and I have come to the conclusion that the payments made under the agreements were expenses wholly and exlusively incurred for the production of the income and are, therefore, deductible in ascertaining the chargeable income of the partnership for income tax purposes for the years in question.

I have reached this decision mainly on the following grounds:

(a) that the payments were recurrent expenses;

(b) that any advantage gained by the partnership as a result of the agreements was limited to their term and having regard to the length of the period (maximum of four years) it cannot, in my view, be said that such advantage was for the enduring benefit of the partnership's trade;

(c) that, as it clearly appears from clause 6 of the agreements, the lessors intended to resume production at the expiration of the term and this would presumably put an end to any advantage acquired by the partnership;

(d) that by the agreements the lessees acquired a contractual right but did not acquire an interest in land (see section 4 of the Immovable Property (Tenure Registration and Valuation) Law (Cap. 224);

(e) that the payments under the agreements were, in my view, part of the cost of performing the income earning operations of the partnership and not part of the cost of improving its permanent structure or adding to it or to the income earning plant or machinery.

For all the above reasons this recourse must succeed. In the result the assessments are hereby declared null and void to the extent of the disallowance by the Commissioner of the payments made under the said agreements.

Regarding costs I think that in all the circumstances it is right that the Respondent should pay £15 against Applicant's costs.

Assessments complained of annulled. Respondent to pay £15.– *against Applicant's costs.*