1986 July 14

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

P. S. PARTELLIDES LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 417/85).

Income Tax—Compensation for the termination of an agency agreement—The determination of the issue whether such compensation is a capital receipt or a trading profit depends on the facts of each case—No single infallible test —The length of the period for which the agreement would have to run, if it had not been terminated, is a factor of importance in determining the said issue—Failure to carry due inquiry into such a factor is a ground of annulment.

Income Tax—Depreciation—"Plant and machinery"—Private saloon cars—They are not plant and machinery.

Income Tax—Exception or allowances—Burden of proof in establishing such exception or allowances is on the applicant—Entertainment expenses—Allowable, if exclusively attributed to the production of income.

Income Tax—Discretion of the Commissioner—Judicial control.

The applicant company derives its income from the import and distribution of pharmaceutical drugs. The audited accounts, which the applicant company had submitted to the Commissioner of Income Tax for the years 1978 and 1979, were examined by the Commissioner in 1982. By letter dated 29.9.82 the Commissioner informed

the applicant of the amendments he made as regards the relevant computations of its income. The applicants objected, but, as such objection was dismissed, they filed recourse 55/83 to this Court, which was later withdrawn upon an undertaking by the Commissioner that he would reconsider the matter as the sub judice in that recourse decision was not duly reasoned.

The Commissioner reconsidered the matter and issued revised assessments which are the subject-matter of this recourse. The items which the Commissioner added back to the accounts, which the applicants had submitted were: (a) Depreciation on the cost of land of two flats amounting to £41 and £67 respectively in the years 1978 and 1979, (b) An amount of £300.- representing entertainment expenses out of a total of £1,206.- on the ground that there was no evidence to show that this expenditure was incurred in the production of applicant's income, (c) An amount of £285.- for depreciation of private cars, (d) An amount of £12,411.- paid to applicant in 1979 as compensation for the termination of the agency agreement between a Swiss Organisation and the applicant, and (e) A sum of £300.- for director S. Partellides and a sum of £200.- for director M. Partellidou for the use of the company's cars for private purposes. As regards item (d) the Court found that the business of the applicants was not materially affected by such termination.

Held, annulling in part the sub judice decision:

(1) Applicants' argument, that the Commissioner had no power to raise new additional taxes with the same reasoning with which the Court declared the taxation as null and void, cannot be accepted because the Court in recourse 55/83 did not annul the sub judice decision, but simply struck it out as the applicants had withdrawn it.

(2) As regards the compensation received by the applicants in respect of the termination of the agency agreement the question is whether such compensation was a capital receipt or a trading profit. The determination of this question depends on the circumstances of each par-

ticular case. "There is no single infallible test in settling the vexed question of whether a receipt is of an income or capital nature (Dictum of Lord MacDermott in *Harry Ferguson (Motors)* case, infra, adopted".

The length of the period, which the agreement of agency has to run at the time of its termination, is a factor of importance in determining the said question (Dicta of Lords Flemming and Moncrieff in the *Kelsall Parsons and Co.* case, infra, were cited by the Court with approval).

As neither the respondent nor the applicants were in a position to state the duration of the relevant agency agreement and as such duration is of importance in determining the said issue, it follows that the respondent Commissioner failed to carry out a proper inquiry into the matter and, therefore, this part of his decision would be annulled.

(3) Private saloon motor cars cannot be treated as "plant and machinery" and, therefore, counsel for the applicants rightly abandoned the relevant complaint of the applicants.

(4) The burden to prove an exemption or deduction in fiscal laws is on the applicants. Entertainment expenses are allowable, if they were wholly and exclusively incurred in the production of income (Section 11(1) and 13(e) of the Income Tax Laws 1961-1981). In this case the applicants did not furnish any documentary evidence. In the circumstances this Court should not interfere with the discretion of the respondent.

(5) Once the applicants admitted the use of the applicants' cars by their directors, it was up to the discretion of the respondent to determine the extent of the amount to be attributed for private use and the Court generally does not interfere with the exercise of such discretion.

Sub judice decision annulled in part.

Cases referred to:

Goussoumides v. *The Republic* (1966) 3 C.L.R. 1;

Makrides v. *The Republic* (1967) 3 C.L.R. 147;

Lilian Georghiades v. The Republic (1982) 3 C.L.R. 659;

HjiYiannis v. The Republic (1966) 3 C.L.R. 338;

Kittides v. The Republic (1973) 3 C.L.R. 123;

Mavrommatis (No. 1) v. The Republic (1966) 3 C.L.R. 143;

Van den Berghs Ltd. v. Clark (H.M. Inspector of Taxes), 19 T.C. 390;

Cyprus Wines Co. Ltd. v. The Republic (1965) 3 C.L.R. 345,

Kelsall Parsons and Co. v. The Commissioners of Inland Revenue, 21 T.C. 608;

Republic v. Minerva Cinetheatrical Co. Ltd. (1979) 3 C.L.R. 340;

Harry Ferguson (Motors) Ltd. v. I.R. Commissioners (1951) N.I. 115,

Melik Melikian and Co. Ltd. v. The Republic, (1985) 3 C.L.R. 1322;

Manufacturers Life Insurance v. The Republic (1967) 3 C.L.R. 460,

Rainbow v. The Republic (1984) 3 C.L.R. 846

Recourse.

Recourse against the income tax assessment and the special contribution raised on applicants for the year 1979.

L. Clerides, for the applicants.

M. Photiou, for the respondent

Cur. adv. vult.

KOURRIS J. read the following judgment. This recourse is against the assessments for the year 1979 (year of income 1978) and the year 1979 and special contribution levied for the quarters 1.78 to 4.78 and 1.79 to 4.79, which were raised and determined, as shown in the Schedule

attached to the opposition and marked as Appendix "A".

FACTS:

The applicant is P. S. Partellides Limited, of Nicosia, a private company of limited liability incorporated on 5.6.1967 and it derives its income from the import and distribution of pharmaceutical drugs.

The audited accounts of applicant Company for the years subject matter of this recourse, i.e. 1978 and 1979, were submitted on 7.8.1979 and 19.12.1980, respectively. The said accounts were examined by the Commissioner of Income Tax in 1982 and who, on 29.9.1982, addressed a letter to applicant's auditor, setting out the amended computations for income tax and special contribution. On 2.10.1982 assessments for the years, subject matter of this recourse, were issued on the basis of the amended computations of 29.9.1982 against which objections were filed on 30.10.1982, on behalf of applicant company by Phanos Ionides Ltd., taxation consultants. The Commissioner of Income Tax after considering the case, decided to reject the objections by maintaining the original assessments and informed applicant Company accordingly by letter dated 8.12.1982.

Against this decision applicant Company filed Recourse No. 55/83, which on 6.6.1983, was withdrawn by the applicant Company, in view of the undertaking given to the Court by respondent to reconsider and issue a new decision, as the sub judice decision was not duly reasoned. (Vide Appendix "E" attached to the written address of counsel for the respondents).

The respondent Commissioner proceeded on 22.9.1983 in issuing revised assessments for the years, subject matter of the present recourse, full explanations on the adjustments made to the submitted computations having been given in a letter to applicant's auditors and consultants dated 15.9.1983 attached to the opposition as Appendix "B". The items which were added back on the submitted computations, were as follows:

(a) Depreciation on the cost of land of two flats amounting to £41.- and £67.- respectively, in the years

1978 and 1979 was disallowed.

(b) An amount of £300.- representing entertainment of customers out of a total of £1,206 for the year 1978 was not allowed for the reason that no supporting evidence was produced to show that this expenditure was incurred in the production of applicant's income.

(c) An amount of £285.- for depreciation of private saloon cars was disallowed, and

(d) An amount of £12,411 paid to applicant Company in 1979 by the Swiss Pharmaceutical Organisation "GEIGY" as compensation for the termination of the agency agreement between "GEIGY" and applicants, was treated by the respondent Commissioner as income liable to tax.

Against the revised assessments issued on 22.9.1983, Phanos Ionides Ltd., on behalf of applicant Company, objected by letter dated 11.10.1983, attached to the opposition as Appendix "C". The Commissioner of Income Tax having considered the said objections, decided to reject them by maintaining the assessments issued on 22.9.1983. The respondents on 23.2.1985 filed assessments accordingly and informed applicant Company of their duly reasoned decision by letter dated 23.2.1985, a photostatic copy of which is attached to the opposition as Appendix "D". Hence, the present recourse.

THE LAW:

In view of the presumption of legality of administrative acts, the sub judice assessments should be presumed to be valid unless the applicant succeeds to prove the contrary. In the case of *Coussoumides* v. *The Republic* (1966) 3 C.L.R. 1, at p. 18, it was established that in a recourse to the Supreme Court under Article 146 of the Constitution it is on the applicant on whom lies the initial burden of proof to satisfy the Court that it should interfere with the subject matter of the recourse. This was followed in the case of *Rallis Makrides* v. *The Republic* (1967) 3 C.L.R. 147 at p. 153. In the case of *Lilian Georghiades* v. *The Republic* (1982) 3 C.L.R. 659 at pp. 667-669, the Full Bench of the Supreme Court has made it abundantly clear that if the respondents' decision is one which was

reasonably open to them, then this Court will not disturb same. Furthermore, in income tax cases it is expressly stated in the relevant laws that the burden to satisfy the Court that an assessment is excessive, is on the person who attacks same. (See, section 21(2) of the Assessment and Collection of Taxes Laws, 1978-1979, (Laws 4/78, 23/78 and 41/79)). This Law applies also to special contribution cases by virtue of section 6 of Laws 34/78 and 55/74.

Also where, as in the present case, the tax-payer claims a deduction under the provisions of a taxation law, again, he has the burden to prove that he is entitled to such reduction. (See, *Andreas Hji Yiannis* v. *The Republic* (1966) 3 C.L.R. 338 at pp. 350, 351 and *Ploutis Kittides* v. *The Republic* (1973) 3 C.L.R. 123 at p. 133.

Preliminary legal point raised by the applicant Company.

Applicants allege that the assessments which are the subject matter of this recourse, are void and of no legal effect, because the Commissioner of Income Tax had no power to raise new additional taxes with the same reasoning with which the Court declared the taxation as null and void.

I am inclined to agree with learned counsel for the respondents that the Court did not declare the decision in Recourse No. 55/83 null and void and of no legal effect. It appears from Appendix "E" that on 6.6.1983, counsel for the respondents gave an undertaking to the Court on behalf of the Commissioner of Income Tax that he was willing to re-examine applicant's case and issue a new decision. As a result, counsel for the applicants withdrew the recourse which was struck out by the Court without any order as to costs. The Court did not declare the decision or the assessments, the subject matter of that recourse, as null and void, but simply struck out the recourse. The effect of the above record of the Court was that there was no recourse against the respondents' aforesaid decision of 2.10.1982 which was legally standing but there was the undertaking of the respondent to reconsider the case and issue a new decision which, in point of fact, the respondent

did on 22.9.1983, i.e. again within the six years period provided by section 23 of the law.

The relevant time to measure the period of six years is the raising of the assessment which was made on 22.9.1983 and not the determination of the objection to the above assessments, i.e. the sub judice decision dated 23.2.1985. (Vide, Appendix "D" to the opposition). See *Theophylactos Mavrommatis (No. 1)* v. *The Republic* (1966) 3 C.L.R. 143 at pp. 148, 149 dealing with the provisions of section 45 of Cap. 323 which are similar to those of section 32 of the new Law, i.e. Law 24/78 referred to above.

I am of the view that even if the original decision was annulled by the Court, which clearly is not the case, again under the provisions of para. 5 of Article 146 of the Constitution, in conjunction with section 21(3) of Law 4/78, the respondent was entitled to re-examine the whole case applying the legal and factual status which existed when the original decision was taken.

(1) *Merits of the case.*

Counsel for the applicants contended that the sum of £12,411 paid by the Swiss pharmaceutical firm Geigy for the termination of the agency agreement with the applicants was a capital receipt and ought not to be reckoned as forming any part of the profits arising from the carrying on of their trade. In support of his contention he relied on the case of *Van den Berghs Ltd.* v. *Clark (H.M. Inspector of Taxes)* 19 Tax Cases 390.

Counsel for the respondent contended that the sum of £12,411 paid as compensation is in the nature of trading profit and not of a capital receipt which ought to be included in the compensation of the applicants' profits or gains for income tax purposes.

The question of the dinstiction between a capital receipt and a trading profit is one which has been the subject-matter of many tax cases in the Courts in England, where statutory provisions similar to our statutory provisions referred to have existed for many years. I propose to set out on this point the judgment of the Court in the case of

Cyprus Wines Co. Ltd. v. *The Republic* (1965) 3 C.L.R., 345 at p. 350:

"This distinction is so fine and so technical that it is not always easy, even after exhaustive study of the prolific case law on the subject, to know exactly where to draw the line. How very fine the distinction as may be amply illustrated by the very fact that what may be a capital item in the accounts of one taxpayer might, in the particular circumstances of another bear an income character. I fully share the views expressed by Lord MacDermott, C.J., in the case of *Harry Ferguson (Motors) Ltd.* v. *I.R. Commissioners* (1951) N. I., 115, C.A., when he stated:-

'There is, so far as we are aware, no single, infallible test for settling the vexed question whether a receipt is of an income or capital nature. Each case must depend on its particular facts and what may have weight in one set of circumstances may have little weight in another. Thus, the use of the words 'income' and 'capital' are not necessarily conclusive; what is paid out of profits may not always be income; and what is paid as consideration for a capital asset may, on occasion, be received as income. One has to look to all the relevant circumstances and reach a conclusion according to the general tenor and combined effect'.

A test was suggested by Lord Clyde in the case of *Burmah Steam Ship Company Ltd.* v. *I. R. Commissioners,* 16 T.C. 67, which was a case in which joint owners of a vessel which they had bought at second hand, placed it with repairers who exceeded the stipulated time of the completion of overhaul. Damages were paid in compromise of a claim in respect of the estimated loss of profit from trading with the ship. The Court of Session held that the appellant's share of the damages was a trading receipt. Lord Clyde suggested the following test in his judgment: (page 71).

'Suppose some one who chartered one of the appellant's vessels breached the charter and exposed

himself to a claim of damages at the applicant's instance, there could, I imagine, be no doubt that the damages recovered would properly enter the appellant's profit and loss account for the year. The reason would be that the breach of the charter was an injury inflicted on the appellant's trading, making (so to speak) a hole in the appellant's profits, and the damages recovered could not therefore be reasonably or appropriately put by the appellant —in accordance with the principles of sound commercial accounting—to any other purpose than to fill that hole. Suppose, on the other hand, that one of the appellant's vessels was negligently run down and sunk by a vessel belonging to some other shipowner, and the appellant recovered as damages the value of the sunken vessel, I imagine that there could be no doubt that the damages so recovered could not enter the appellant's profit and loss account because the destruction of the vessel would be an injury inflicted, not on the appellant's trading, but on the capital assets of the appellant's trade, making (so to speak) a hole in them, and the damages could therefore—on the same principles as before—only be used to fill that hole'. "

Counsel for the applicant has based his argument on the decision of the House of Lords in the case of *Van den Berghs* and it was urged that the whole structure of the appellants' business was affected by the cancellation of the agency agreement and that the authority of *Van den Berghs Ltd.* v. *Clark* (supra) the payment should, therefore, be treated as a capital payment. Counsel for the respondent has submitted that its application to the facts of the present case should result in the conclusion that the sum of £12,411 in question had been received by the applicant as a trading profit.

The allegation of counsel for the applicant that the whole structure of the business was affected by the cancellation of the said agency agreement, is contradicted by the oral evidence of Neophytos Neophytou, Senior Assessor A, in the Income Tax Office, who gave evidence as to

the sales, gross profit and net income of the applicant Company and who produced a charter of the said items which is exhibit 1. before the Court. It appears that the sales have not fallen during the year the agency was terminated or the following years, at least to a considerable extent, and the same picture appears in the case of gross profits.

I accept the evidence of the said witness that the net profits do not show the true picture of the business of a company, because a company may use gross profits in order to write off capital gains. In view of the material before me, I find that appellants' business was not affected or at least not materially affected by the cancellation of the agency agreement.

Further, the facts of the *Van den Berghs* case are distinguishable from the facts of the case in hand. An analysis of the Van den Berghs case was aptly made in the case of *Kelsall Parsons & Co.* v. *Commissioners of Inland Revenue*, 21 Tax Cases, 608 where Lord Moncrief said at p. 623, as follows:

> "In that case, (referring to the case *(Ven den Berghs)* an English and a foreign trading company had entered into a pooling agreement which was to endure for a period of years. It was proposed, and eventually it was agreed by joint consent, to cancel that agreement at a period when, apart from cancellation; it would still have run for many years; and a payment was made by the foreign to the English company as compensation for the cancellation of their rights under the agreement. It was held that the payment received by the English company was to be regarded as a capital and not as a revenue payment; but the payment in that case had been made in respect of the cancellation of an agreement directed to result, not in the making, but only in the partition, of trading profits. The agreement which had been discharged had been an agreement directed to exclude competition as between the English and the foreign trader. Apart from the introduction of a conventional scheme effecting stabilisation by effecting distribution, the pro-

fits which each of the companies, English and foreign, were to enjoy, whether that agreement had or had not been made, were such profits as would result from their individual exercise of their trade. The only effect of the agreement was, by eliminating competition and restricting liberty, to render the market more favourable to both traders, in the view of the contracting parties, towards the making of trading profits; and, as the agreement was independent of any contract for the direct making of profits, it was held that the payment for its cancellation was to be regarded as capital. With such a case the present case, in my view, has no analogy."

With all due respect I adopt what Lord Moncrieff said and I am also of the view that the facts of the case in hand are not similar to the facts of the *Van den Berghs* case.

The leading case in Cyprus on the question whether a payment is considered to be a trading profit or a capital profit is the case of *The Republic* v. *Minerva Cinetheatrical Co. Ltd.* (1979) 3 C.L.R. 340. The Court at p. 349, said as follows:

"In *Barr, Crombie and Co. Ltd.* v. *Commissioners of Inland Revenue* (supra), Lord Normand, dealing with the question whether the sum received by the company was a capital payment or a trading receipt, said at pp. 411 - 412:-

'Lord Cave, L. C., in the case of *British Insulated and Helsby Cables Ltd.* v. *Atherton*, [1926] A. C. 205, at p. 213; 10 T.C. 155, at page 192, said: 'But when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for 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.' And, of course, one may equally say that an expenditure made once and for all as payment for abandoning or surrendering an asset

is received by the recipient as a capital and not as a revenue payment, in the absence of any indication to the contrary. In the present case virtually the whole assets of the Appellant Company consisted in this agreement. When the agreement was surrendered or abandoned practically nothing remained of the Company's business. It was forced to reduce its staff and to transfer into other premises, and it really started a new trading life. Its trading existence as practised up to that time had ceased with the liquidation of the shipping company. The proportions of its profits, to which I have referred, demonstrate that'."

A case whose facts are more or less similar to the case in hand is the case of *Kelsall Parsons & Co.* v. *The Commissioner of Inland Revenue* (supra) which was an appeal against a determination of the General Commissioners, who have held that a payment of £1,500 made to the appellants as compensation for termination of an agency agreement should be included in computing the taxable profits for the year in which the payment was made and the appeal was dismissed. The facts of the case were that the appellants were manufacturers' agents for various manufacturers for the sale in Scotland, on a commission basis, of such manufacturers products. One of their agencies was for the sale of the products of George Ellison Ltd. of Birmingham. Ellisons requested that the agency agreement should be terminated forthwith and negotiations followed and on the 26th May, 1934 an agreement was reached to the effect that the sum of £1,500.- should be paid as compensation for terminating the agreement on September, 30, 1934, instead of September, 30, 1935. The effect of this was that the agency agreement continued to operate for all but the last year of its full contemplated life and in respect of this cancellation one year before its contemplated term the appellant received the £1,500.- by way of compensation. The agreement in question was for three years and it was terminated at the end of the 2nd year at the instance of the principals. It was held that the parties must have had in view, in fixing this sum of £1,500.-, that by the premature termination of the agreement the appli-

cants would be deprived of the profits which they might expect to earn from the agreement during the year 1934-1935 and must be regarded at trading profits.

What is important, bearing in mind the facts of our case, is what Lord Flemming said at p. 622. He said:

> "I wish to add that I attach importance to the fact that the agreement had only one year to run at the date of its termination. A different case would have arisen for decision if the agreement had been terminated when it had still, say, a period of ten years to run. A payment made in respect of a loss to be sustained over a period of years may well have a different character from a payment made in respect of a loss to be sustained in the year in which the payment is recovered."

Likewise, Lord Moncrieff said at p. 624 as follows:

> "If, on the other hand, an agreement such as this, though directed towards resulting in the making of trading profits, has an outlook over a period of years, then I agree with Lord Flemming that disturbance of such an agreement, although associated with the disturbance of prospect of the making of trading profits may be a disturbance of what should properly be regarded as a capital interest."

I have considered very carefully the arguments submitted by counsel on both sides and the authorities respectively cited by them and to the other authorities referred to in the *Minerva* case (supra) and the authorities cited in the *Van den Berghs* case (supra). I endorse the views expressed by Lord MacDermott in the hereinabove quoted passage from his judgment in the *Harry Ferguson (Motors)* case (supra) to the effect that each case depends on its particular facts and that "there is no single infallible test in settling the vexed question of whether a receipt is of an income or capital nature."

Neither the applicant Company nor the respondent were in a position to state to the Court as to the duration of the said agency agreement. The duration of the agreement,

as it appears from the case of *Kelsall Parsons & Co.* (supra), is most important, as it is likely to show whether a receipt is a trading or capital receipt.

I would say that there has been no proper inquiry by the Commissioner of Income Tax and I would reluctantly annul his decision on this point.

(2) *Depreciation of private saloon cars.*

Counsel for the applicant Company abandoned this point in view of the decision in the case of *Melik Melikian & Co. Ltd.* v. *Republic* (1985) 3 C.L.R. 1322, rightly in my view, because in this case it was held that private saloon motor cars cannot be treated as "plant and machinery" even if they are solely used for the carrying of goods, i.e. trade purposes.

(3) *Entertainment expenses.*

Entertainment expenses are allowable as an expense wholly and exclusively incurred in the production of income on the basis of the combined effect of section 11(1) and 13(e) of the Income Tax Laws 1961-1981 as expenditure as in the case of *Manufacturers Life Insurance* v. *The Republic* (1967) 3 C.L.R. 460. The applicants claimed £1,206.- as entertainment expenses and the Commissioner of Income Tax did not allow an amount of £300.-. The burden is upon the applicants to prove the exact amount of such expenses by furnishing documentary evidence, which, evidence, does not exist in the present case. (See, Appendix "D" to the opposition, para. 1 (c)).

As I have already stated, the burden to prove an exemption or deduction in fiscal laws is on the applicants. (See, *HadjiYiannis and Kittides* (supra) and *Nina Rainbow* v. *Republic* (1984) 3 C.L.R. 846). The respondent is not obliged to accept whatever amount is presented to him as entertainment expenses by the tax payer and I think I should not interfere with the exercise of his discretion to disallow the sum of £300.-.

(4) *Directors' benefit from the use of the company's cars for private purposes.*

The Commisisoner of Income Tax did not allow the sum of £300.- for the Director Savvas Partellides and the sum of £200.- for Mrs. Magda Partellidou for the use of the company's cars for private purposes.

Applicants do not deny that the Directors Mr. Savvas Partellides and Mrs. Magda Partellidou used the company's cars for private purposes, but simply allege that such use is very small.

I am of the view that once they accept such use, then it is for the respondent's discretion to decide the extent of the amount to be attributed for private use so that to be deducted as expenses of the company's cars and the Court generally does not interfere with the exercise of such discretion, because it relates to the merits of the case. The Court will not substitute its own discretion to that of the administration. In the circumstances, there is no material before me enabling me to interfere with the exercise of the discretion of the Commissioner of Income Tax and I uphold him on this point.

(5) *Payment of interest.*

Counsel for the respondents abandoned his claim that the applicants should pay interest on each year of the assessment, i.e. as on 2.12.1979 and 1.7.1980. He was contend to say that the respondents will be satisfied if the payment of interest commenced as from 1.9.1983, as it was doubtful whether the delay in raising the assessments was due to the unreasonable default of the applicant Company.

For the reasons given above, I am of the opinion that, on the facts of this particular case, it was reasonably open to the respondents to reach the decisions they did with regard to the depreciation for private saloon cars, entertainment expenses and Directors' benefit from the use of the company's cars for private purposes.

With regard to the payment of compensation for the termination of the agency agreement, I am of the view that there has been no due inquiry and, therefore, I annul the decision of the Commissioner of Income Tax.

Let there be no order as to costs. 5

Sub judice decision partly annulled.
No order as to costs.