IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEFKOS P. GEORGHIADES.

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,

Respondent.

(Case No. 104/71).

Income Tax—Deductible expenses—Public officer—Ambassador—Legal expenses incurred by him in defending himself in disciplinary proceedings concerning him—Not allowable deductions under sections 11(1) and 13(e) of the Income Tax Laws 1961 to 1969—As such expenses are not wholly and exclusively incurred in the production of the income or for the purpose of acquiring an income.

Income Tax—Deductions—See supra.

Income Tax—Ambassador—Entitled to reside and residing in the Embassy buildings—Estimated annual value of official residence is an income chargeable with tax—Section 5(1)(b) of the Income Tax Laws 1961 to 1969 and section 6(3) of the Taxes (Quantifying and Recovery) Law, 1963, (Law No. 53 of 1963).

Chargeable income—Annual value of the official residence of an ambassador entitled to reside and residing in the Embassy buildings—Cf. supra.

In the instant case the Court held that: (1) Expenses incurred by the applicant ambassador in defending himself in disciplinary proceedings concerning him are not deductible expenses under the relevant provisions of the Income Tax Laws 1961 to 1969 (supra), and (2) the annual value of the

official residence of the applicant *i.e.* the Embassy buildings in which he was entitled to reside and residing, is an income chargeable with tax.

The facts sufficiently appear in the judgment of the Court.

Cases referred to :

Southern v. Borax Consolidated, Ltd. [1941] 1 K.B. 111;

Mitchell v. B.W. Noble, Ltd. [1927] 1 K.B. 719; 11 T.C. 372;

Vallambrosa Rubber Co., Ltd. v. Farmer [1910] 5 T.C. 529;

British Insulated and Helsby Cables, Ltd. v. Atherton [1926] A.C. 205, at p. 213;

Norman v. *Golder (Inspector of Taxes)* [1945] 1 All E.R. 352;

Murgatroyd v. Evans—Jackson [1967] 1 All E.R. 881;

Prince v. Mapp [1970] 1 All E.R. 519;

Spofforth and *Prince* v. *Golder (Inspector of Taxes)* [1945] 1 All E.R. 363, at p. 366;

Brown v. Bullock [1961] 40 T.C. 1, at p. 10;

Eagles v. *Levy*, 19 T.C. 23;

Mitchell v. *Child*, 24 T.C. 511;

Tennant v. *Smith*, 3 T.C. 158;

Robinson (H.M. Inspector of Taxes) v. *Corry*, 18 T.C. 411;

Westcott v. Bryan [1969] 3 W.L.R 255.

Recourse.

Recourse against the validity of Income Tax assessments

raised on the applicant for the years of assessment 1967—1969.

Applicant appeared in person.

A. Evangelou, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

A. Loizou, J. : The applicant was the Ambassador of the Republic in Moscow from September, 1963 to May, 1969. He was appointed to the Diplomatic Service with the rank of Ambassador as from the 11th July, 1963, on the conditions set out in *exhibit 6A* of the 12th October, 1963. These conditions, which speak of no free accommodation, were modified by the Council of Ministers Decision No. 3818 of 8th May, 1964, as far as the cost of living allowance was concerned. The applicant whilst at Moscow was residing in the embassy building by virtue of the Decision of the Council of Ministers No. 330, *(exhibit 3),* subsequently substituted by Decision No. 569, *(exhibit 4),* which left unaffected the provision regarding the Ambassador's residence; paragraph (b) of both Decisions saying that "the Ambassadors should be entitled to free house, etc.".

In 1968 disciplinary proceedings were commenced against the applicant. The Public Service Commission in April 1969 found him guilty and demoted him to the rank of Counsellor Grade A. A recourse for the annulment of that decision was filed with the Supreme Court under Article 146 of the Constitution. It was heard by one of the judges of this Court who, by his judgment, annulled the disciplinary conviction. The Republic appealed against that judgment. The appeal was heard by the Full Bench of the Supreme Court and judgment thereon has been reserved. As a result of these proceedings, the applicant incurred legal and other costs which he contends are allowable deductions for income tax purposes. The amount claimed was £2,100, calculated at the rate of £700 per year for the three years that the disciplinary proceedings and the recourse for annulment had lasted, until the

time the issue was raised with the Commissioner of Income Tax. Details of these amounts were never discussed by the respondent nor verified, because it was the contention of the respondent from the start that this expenditure does not qualify as an allowable deduction under the provisions of our income tax law.

The rent paid by the Republic for the main building which is used as the Ambassador's residence in Moscow during the years 1962 to 1970 was £1,488 per year. It was the contention of the applicant that he was not only entitled to reside exclusively in the official residence but he was also bound to reside therein, for the performance of his duties both during and after office hours. In view of this disagreement as to the factual aspect of the case, Mr. Mikis Zapides, an Administrative Officer in the Ministry of Foreign Affairs, was called and gave evidence. Among other duties, he deals with matters relating to personnel and the running of embassies. He stated that the applicant was not obliged to reside in this residence which is exclusively for the use of the Ambassador while he holds office, though they have not got an instance in which an Ambassador asked to reside in a place other than the official residence. Asked if in Moscow the official residence could be left vacant and the Ambassador go and reside elsewhere, the answer was that the Ambassador may do it but he did not see the reason why he should leave vacant the residence given to him free and reside somewhere else; he added that in case an Ambassador signifies such an intention, "the Government of course will have to examine the reasons why he does not wish to reside therein, and, if it is a question of the premises being unsatisfactory, or the furniture being unsuitable, the merits of such case will have to be examined."

Whatever the generally accepted diplomatic practices are, of which I have no positive evidence, and whatever the legal status in International Law of embassy buildings is, I have to make findings on the material before me and in the circumstances of this particular case, and, there being no direct legislative provision or other administrative instrument to the contrary, I approach the matter from the point of view of the conditions of service

appearing in *exhibit 6A* and the Decisions of the Council of Ministers, which speak of Ambassadors being "entitled to free house" and, on this point, I find that the applicant was entitled to and not obliged to reside in the embassy building.

The benefit for the free residence which is sought to be taxed, was assessed at £240 per year for the years 1967—1968, and £20 for one month's value of residence for the years 1969. These amounts represented only part of the annual value of the building. They were estimated on the basis of conditions prevailing in Cyprus, and having regard to the applicant's status and to the fact that applicant's family was not residing with him.

The applicant has no complaint about the sum itself, and rightly so, as this mode of determination of the annual value of the residence is as fair as it could be and consonant with the provisions of section 6(3) of Law 53/63 which provides that such annual value is "determined at the current market rate".

The present application is based on the following grounds of law:

> "(A) Legal and other expenses incurred to protect and maintain an existing asset are allowable deductions on the principle of the decision in *Southern* v. *Borax Consolidated Ltd.* [1941] 1 K.B. 111 and other U.K. Court decisions.
>
> (B) The annual value of Official residence is not income chargeable with tax since it is not convertible into money by the Civil Servant on the principle of the decision in *Robinson* v. *Corry*, 18 T.C. p. 411."

The applicant, who appeared in person, submitted that the legal and other expenses incurred to protect his grade in the Diplomatic Service and his office of Ambassador of the Republic, are revenue expenses and, therefore, deductible as being exclusively and wholly incurred for the purpose of enabling him to preserve his status, reputation and earning power. He referred also

to the case of *Mitchell* v. *B. W. Noble, Ltd.* [1927] 1 K.B. 719, 11 T.C. 372. It is useful to quote from the judgment of Lawrence J. in the *Borax Consolidated* case *(supra)*, to be found at p. 119:

"On behalf of the respondent company the case of *Mitchell* v. *B. W. Noble, Ltd.* (1) was referred to, and attention was drawn to the words of Lord Hanworth, where he said (2): 'It was a payment made in the course of business, with reference to a particular difficulty which arose in the course of the year, and was made not in order to secure an actual asset to the company but to enable the company to continue to carry on, as it had done in the past, the same type and high quality of business, unfettered and unimperilled by the presence of one who, if the public had known about his position, might have caused difficulty in its business and whom it was necessary to deal and settle with at once'. That was a case in which a very large payment was made to get rid of a director and it was held to be an income payment, and what counsel for the respondent company suggested was that it was looked upon by the Court as not being a payment which was made for the purpose of acquiring or realising an asset, but simply for the purpose of preserving the asset of the company's goodwill. Sargent L.J. said (3): 'The object, as disclosed by paragraph 9 of the case, was that of preserving the status and reputation of the company, which the directors felt would be somewhat imperilled by the other director remaining in the business or by a dismissal of him against his will, involving proceedings by way of action in which the good name of the company might suffer. To avoid that and to preserve the status and dividend earning power of the company seems to me a purpose which is well within the ordinary purposes of the trade, profession or vocation of the company'."

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(1) [1927] 1 K.B. 719; 11 Tax Cas. 372.
(2) [1927] 1 K.B. 737; 11 Tax Cas. 420.
(3) [1927] 1 K.B. 738; 11 Tax Cas. 421.

It should be observed that both cases refer to allowable deductions in respect of trade and, as it is known in England, income from trade is chargeable under Schedule D whereas the appropriate schedule for charging income derived from emoluments is Schedule E. In Cyprus there is no such distinction as the relevant provisions can be found in sections 11(1) and 13(e) of the Income Tax Laws 1961—1969. Section 11(1) reads :

> "For the purpose of ascertaining the chargeable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred by such person in the production of income, including..."

Regarding the deductions which are not allowable, express provision is made by section 13 of the said law which reads :

> "For the purpose of ascertaining the chargeable income of any person no deduction shall be allowed in respect of....
>
> (e) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring income."

It has been argued by learned counsel for the respondent that the legal costs claimed by the applicant are not revenue expenditure but capital expenditure. The test for such distinction is a difficult one and it can be found in the *Vallambrosa Rubber Co., Ltd.* v. *Farmer* [1910] 5 T.C. p. 559, as well as the *British Insulated and Helsby Cables, Ltd.* v. *Atherton* [1926] A.C. 205 at p. 213, where Lord Cave laid down as a general test that —

> "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 the enduring benefit of 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."

I cannot say that these legal expenses incurred by the applicant had in any way altered the original character of what he claims to be his asset that he defended thereby; and, for that reason to my mind these payments are attributable to revenue. This, however, is not enough in order to determine whether such a deduction is allowable or not; a second condition has to be satisfied and that is whether it is expenditure incurred wholly and exclusively for the production of income as appearing in section 11(1) of the law, or, disbursements or expenses not being money wholly and exclusively paid out or expended for the purpose of acquiring income, as provided by section 13(e) of the law hereinabove set out. I shall now refer to a number of cases where the words "wholly and exclusively" appearing in r. 3 of the Rules applicable to the English Schedule D, cases I and II, were judicially considered and interpreted.

The first case is that of *Norman* v. *Golder (Inspector of Taxes),* reported in [1945] 1 All E.R. p. 352. This is a case where the appellant, a professional shorthand writer practising mainly in the High Court of Justice fell ill as a result of working in unfavourable conditions in the Courts. He was away from work and incurred medical expenses amounting to £61. His contention was that the medical expenses incurred by him were permissible deductions either on general grounds or under the wear and tear clauses. In holding that the medical expenses incurred were not permissible deductions Lord Greene, M.R. in giving judgment said the following at page 354 :-

> "The appellant says that the medical expenses are deductible on general grounds. The answer there, to my mind, is quite conclusive. The rules about deductions are to be found in r. 3 of the rules applicable to Schedule D, cases I, II, in which deduction is prohibited in respect of :
>
> ....any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession, employment, or vocation.
>
> It is quite impossible to argue that a doctor's

bills represent money wholly and exclusively laid out for the purposes of the trade, profession, employment or vocation of the patient. True it is that if you do not get yourself well and so incur expenses to doctors you cannot carry on your trade or profession and if you do not carry on your trade or profession you will not earn an income, and if you do not earn an income the Revenue will not get any tax. The same thing applies to the food you eat and the clothes you wear. But expenses of that kind are not wholly and exclusively laid out for the purposes of the trade, profession or vocation. They are laid out in part for the advantage and benefit of the taxpayer as a living human being."

The aforesaid principle was applied in *Murgatroyd* v. *Evans-Jackson* [1967] 1 All E.R. 881, as well as in the case of *Prince* v. *Mapp* [1970] 1 All E.R. p. 519. That much for medical expenses.

A case which involves the consideration of the extent to which legal costs are deductible from profits and at that the legal costs incurred for the defence of a firm's partner on a criminal prosecution, is that of *Spofforth and Prince* v. *Golder (Inspector of Taxes)* [1945] 1 All E.R. page 363. Wrottesley, J. dealt with the various authorities, including the case of *Noble* v. *Mitchell (supra)* and said the following at p. 366 :-

"In the judgments of the Court of Appeal in *von Glehn's* case (1), there are passages showing that the court decided as they did, partly because they had to deal with a person who was endeavouring to deduct a penalty imposed for a breach of the law. Nothing of that kind can be alleged here. On the other hand, the real *ratio decidendi* in that case, as in many others cited during the argument, was the application of the test laid down long ago by Lord Davey in *Strong* v. *Woodifield* (2). All three members of the Court made use of it. Here it is

(1) [1920] 2 K.B. 553.
(2) [1906] A.C. 448.

once more: Is the disbursement one made not merely in the course of, or arising out of or connected with, or made out of the profits of the profession, but also for the purpose of earning the profits of the profession? It is difficult, if not impossible, to think of anything so nearly approaching the formula referred to by Lord Loreburn (in *Strong* v. *Woodifield* (1)) as unattainable, as this last phrase. It covers the most multifarious kinds of expenditure, as has been shown in cases like *Noble* v. *Mitchell* (2); *Scammell* and *Nephew's* case (3); *Usher's* case (4). It is not by any means a harsh test to apply to a taxpayer. But it appears to me definitely not to cover anyhow the payment of the costs of defending *Spofforth* against the criminal charge preferred against him. As I have said, it was, of course, important to *Spofforth* and to his partner, and so to the firm, that he should be acquitted, or still better that the charge should be dismissed by the magistrate. But so was it important to the appellant in *Norman* v. *Golder* (5), a shorthand writer, that he should recover his health. *Mutatis mutandis* I could apply almost word for word the reasoning of Lord Greene, M.R., in that case, substituting for the doctor's bill in that case, the lawyer's bill in this case, and for *Norman's* bodily health—*Spofforth's* good name and freedom."

All the aforesaid cases, as already indicated, refer to deductions regarding income from trade, profession or vocation, but they cannot be considered as having no bearing with the question under consideration in the present case. There is a great analogy, although the correct approach should be by referring to the principles applicable in the cases of income from emoluments which comes under Schedule E. The position is summed up very aptly in Revenue Law, 3rd Ed. Barry Pinson at pages 81 and 82.

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(1) [1906] A.C. 448.
(2) 11 Tax Cas. 372.
(3) [1939] 1 All E.R. 337.
(4) [1915] A.C. 433.
(5) [1945] 1 All E.R. 352.

"(1) The expense must be incurred in the performance of the duties of the office or employment. Expenditure which is incurred merely to enable a person to perform the duties, or to perform them more efficiently, does not satisfy this test.....

(2) The expense must be necessary to the office or employment as such, and not merely necessary to the individual employee. The test of what is necessary is thus an objective one.

In *Roskams* v. *Bennett,* B (who was district manager of an insurance company) was unable, through defective eyesight, to drive a car and found it necessary to maintain an office at home. A claim in respect of the additional household expenses was refused."

In the case of *Brown* v. *Bullock* [1961] 40 T.C. 1 at p 10 (Court of Appeal), Donnovan L.J. said :

"The test is not whether the employer imposes the expense but whether the duties do, in the sense that, irrespective of what the employer may prescribe, the duties cannot be performed without incurring the particular outlay. This result follows, in my opinion from the decision of the House of Lords *Rickets* v. *Colquhoun,* 10 T.C. 118."

The test, therefore, is an objective and not a subjective one. The expense must be necessary to the office of employment as such and not merely necessary to the individual employee. It must be an expense necessary to the office—of Ambassador in the present case—and not to the applicant who holds the office of Ambassador and requires this expense. In the case of *Eagles* v. *Levy,* 19 T.C. p. 23, it was held that the costs of the action for the recovery of a Director's salary were not necessarily incurred by him in the performance of the duties of his office, so as to be deductible from his emoluments under r. 3 of Schedule E. Lastly, I would like to refer on this point to the case of *Mitchell* v. *Child,* 24 T.C. p. 511 which, unlike the other cases referred to by the applicant which were decided in relation to Schedule D, is a case

where the legal expenses incurred were claimed as a deduction under rule 9 of Schedule E. This is a case where a Rector, as such, opposed a bill which the Secretary of State for Air had promoted in order to obtain powers to purchase for the extention of an aerodrome the parsonage house and garden, which the Rector owned and occupied as such. Macnaghten J. found at p. 514 as follows:

> "But in addition to his duty to retain possession of and reside at the parsonage house so long as he held the office of rector of Cranford, it was also his duty, ... to leave it so that his successor would be able to enter into possession .... and secondly a further duty of doing nothing and, so far as he could, allowing nothing to be done, which would prevent his successor from following him in possession of the rectory house and grounds, ... and there was no method open to him of raising objection other than that method which he adopted."

The comment on this decision appearing in Simon's Income Tax 2nd Ed. Vol. 2, at p. 616, paragraph 761, is as follows:

> "The effect of *Mitchell* v. *Child* (24 T.C. p. 511) would seem to be that where there is a public office or employment of profit which is held in succession, it is the duty of the holder for the time being to protect that office so that when the time comes he may hand it over to his successor with its rights and privileges unimpaired. This duty of protection falls upon every holder, though another holder might not be called upon to perform the duty in the same or any other way."

It is obvious, therefore, that it was the office that required the expense and not the Rector himself personally. The duty of the Rector was to protect the house for himself and hand it over to his successor; it was his office that imposed on him that duty.

In the result, and in the light of all the aforesaid authorities, I have come to the conclusion that on the

law as it is, the legal expenses that are incurred—in circumstances as the one under consideration—by an employee in defending himself in disciplinary proceedings are not allowable deductions under section 11(1) and 13(e) as they are not wholly and exclusively incurred in the production of the income or for the purpose of acquiring an income. Nor can it be said that they are wholly and exclusively incurred to protect and maintain an existing asset, that is to say the earning capacity of the employee. As in the case of medical expenses incurred by someone, there are other considerations besides preserving his earning capacity that cause a person, that faces disciplinary or criminal proceedings connected with his employment, to incur expenses for his defence. They are not incurred only for the protection of his position but also of his good name, reputation, and in general his standing in society, apart from preserving his position with his employer. They are not imposed by the office but by the person holding the office. For the above reasons the first part of applicant's claim fails.

I shall proceed now to deal with the question whether the annual value of the official residence is or is not income chargeable with tax. The applicant in support of his contention that the annual value of his official residence in Moscow was not income chargeable with tax, relied on two English decisions. The first is that of *Tennant* v. *Smith*, 3 T.C. 158 and the second that of *Robinson (H.M. Inspector of Taxes)* v. *Corry*, 18 T.C. p. 411. His argument followed the lines along which the two cases were decided which was to the effect that he was bound to reside therein for the purpose of transacting business after office hours; that he had no right to sublet; that in the event of ceasing to hold office he was under an obligation to quit the premises forthwith, and that the occupation of the premises was representative and not beneficial. I have already made my findings of fact in relation to this issue. The estimated annual value of the benefit which the applicant derived from the occupation by him of the Republic's embassy building in Moscow as his private residence was assessed under the provisions of section 5(1)(b) of the Income Tax Laws 1961—1969, and section 6(3) of the Taxes (Quantifying and Recovery) Law 53/63.

Section 5(1) reads as follows :

"(1) Tax shall, subject to the provisions of this Law, be payable at the rate or rates specified hereafter for each year of assessment upon the income of any person accruing in, derived from, or received in the Republic in respect of —

(a)

(b) gains or profits from any office or employment, irrespective of whether the person employed is serving in Cyprus or elsewhere, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment whether in money or otherwise."

Section 6(3) of Law No. 53/63 reads :-

"(3) The expression 'remuneration' in subsection (2) includes moneys paid or payable as salary, wages, overtime, bonus, gratuity, share of profits, perquisite, fee, commission or pension and the annual value (determined at the current market rates) of any residence, quarter, board, lodging or other perquisite or allowance granted in respect of employment whether in money or otherwise."

It is clear therefore, from the aforesaid provisions, that there is an express provision in our law that the annual value of a residence is assessable and there is provision as to the mode of calculating that annual value. This "annual value" is in addition to "share of profits, perquisites etc." which are provided in subsection (3) hereinabove as included in the expression "remuneration". I point this out as it will appear from the passage in Lord Hanworth's judgment in *Corry's case* that there is no mention of any annual value of residence in Schedule E, but the issue was whether the official residence as a valuable asset in that case ought to be brought into the meaning of the various alternatives referred to in the last part of the passage which will be quoted below.

The relevance and usefulness of judicial precedents depends on the particular statutory provision which they purport to interpret. For the sake of brevity I do not propose to make an extensive comparison of our law with the corresponding English provisions which the aforesaid two cases relied upon by the applicant interpreted. This is apparent from the judgment of Lord Hanworth M.R. who at p. 428 of the report said :-

"...If it is to be taken as a pure question of law, then I think that the case of *Tennant* v. *Smith* (1) is directly against the contention of the Crown. We must bear in mind that we are told in the Case that the condition of the occupation of an official house was 'that it was not to be let in whole or in part to any person whatsoever'; that means, in other words, that Mr. Corry could not himself make any profit out of it. To the extent to which it afforded lodging to himself or his family it was an asset, but no more. In *Tennant* v. *Smith* I do not think the decision turns upon whether or not Schedule A had been paid by someone else in respect of the house occupied by the bank manager. Lord Halsbury at page 157 said : 'The thing sought to be taxed is not income unless it can be turned into money', and Lord Watson at page 159 said :

'I do not think it comes within the category of profits, because that word in its ordinary acceptation appears to me to denote something acquired which the acquirer becomes possessed of, and can dispose of to his advantage, in other words money, or that which can be turned to pecuniary account'. Lord Macnaghten said this at page 163 : 'On examining that Schedule it became obvious that it extends only to money payment or payments convertible into money'. It appears to me that those words of Lord Halsbury, of Lord Watson and of Lord Macnaghten definitely indicate that you have got to consider what could be turned into money, that when you bear in mind this limited power over the house which

(1) 3 Tax Cas. 158.

Mr. Corry had, there is a negation of treating that official residence as a valuable asset which ought to be brought into the table of the salary, fees, perquisites, or profits, for which Mr. Corry is liable to be taxed under Schedule E."

Likewise, the following comment may be found in Simon's Income Tax, 2nd Ed. Vol. 2 at p. 542, paragraph 687 :-

> "Two lines of reasoning were followed in the House of Lords in this case: The argument of 'money's worth', the benefit not being convertible into money; and the argument that the bank was the occupier of the premises, in which the taxpayer resided 'as the servant of the bank and for the purpose of performing the duty which he owes to his employers'.
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> The next two cases were also decided on the question whether the taxpayer had the right to let the dwelling, but in the latter case of *I. R. Comrs.* v. *Miller,* the House of Lords showed that this was not the true basis of *Tennant* v. *Smith;* and that the basis was that the bank was the occupier, ignoring the question of the absence of power to sub-let."

There appears therefore that there was no express provision in the relevant English laws such as there is in Cyprus regarding the assessibility of free residence. On the true interpretation, therefore, of our statutory provisions, hereinabove set out, I have come to the conclusion that the two cases relied upon by the applicant have to be distinguished from the present one under consideration. In my view the annual value of his official residence was rightly assessed as taxable by the respondent Commission and, therefore, this part of the applicant's claim must also fail.

Before concluding, however, I would like to deal with a point touched by counsel for the respondent which is to the effect that, even if it was found that the applicant was required to reside in the embassy building then this

fact alone could not affect the taxability, but it could only be taken into account in determining the quantum of rent. It was contended that the provision of free accommodation was for the applicant's own benefit. The least that could be said was that it was for the joint benefit of the applicant and the Government, and it was submitted that in such case there should be an apportionment of the benefit derived by each party. I was referred in that respect to the case of *Westcott* v. *Bryan* [1969] 3 W.L.R. at p. 255. This proposition of course is based on express statutory provisions in England which have been brought into existence since 1963. I hold the view, however, that in the way our relevant sections are phrased there is room for such apportionment, the annual value being determined at the current market rents, which means that in assessing it the Commissioner will have to assess the benefit solely derived by the taxpayer and exclude therefrom any benefit derived by the Government. But as I have already stated this is not in issue in the present case as there is no dispute as to the amount and it appears that there was in fact such apportionment.

In the result applicant's case is dismissed. I must say, however, that this case raised two novel and interesting points and I have nothing but praise for the applicant who, though not a lawyer, presented his argument with such ingenuity. For these reasons I feel that I am justified in making no order as to costs.

Application dismissed;
no order as to costs.