HIGH COURT OF JUSTICE (CHANCERY DIVISION)—17, 18 AND 31 JULY 1986

COURT OF APPEAL—10 AND 11 DECEMBER 1987 AND 29 JANUARY 1988

HOUSE OF LORDS—9, 10 AND 11 OCTOBER AND 23 NOVEMBER 1989

MacKinlay (H.M. Inspector of Taxes) *v.* Arthur Young McClelland Moores & Co.[1]

Income Tax—Schedule D Case II—Computation of partnership profits—Large firm of Accountants—Reimbursement of removal expenses of partners required to move to another branch of firm—Whether deductible as expenditure incurred wholly and exclusively for purposes of the profession—Whether, in considering the purpose for which expenditure is incurred, a partnership firm is to be treated as an entity separate from the individual partners—Income and Corporation Taxes Act 1970, *s* 130(a).

Arthur Young, a 95 partner firm of accountants, acting by an executive committee pursuant to a policy adopted by the committee and agreed to by all the partners, requested two of its partners to move to branches in different parts of the country and reimbursed part of their costs of removal. The partners moved reluctantly and one of them would not have moved at all but for the payment. The Inspector refused to allow the firm a deduction for the expenditure. It appealed to the Commissioners where it was argued that, in the case of a large partnership, the interests of the partners as partners can be severed from their personal and private interests, and that a benefit to a partner resulting from expenditure incurred in pursuance of a policy agreed by all the partners with a view to advancing the interests of the firm, can be regarded as incidental to the achievement of that purpose, even though in the case of an individual it could not be so regarded. The Special Commissioners held that this expenditure was incurred wholly and exclusively for the purposes of the firm's business. The Crown appealed.

The Chancery Division, allowing the Crown's appeal, held that a partnership firm, although treated for the purposes of ss 152 and 153 Income and Corporation Taxes Act 1970 as if it were a separate entity, was not an entity for taxing purposes or any other purposes. Accordingly expenditure which in the case of an individual trader would have fallen to be treated as serving a dual purpose could not, even in the case of a large partnership, be treated as expenditure incurred wholly and exclusively for the benefit of the firm as a separate entity. The firm appealed.

The Court of Appeal, allowing the firm's appeal, held (1) that for the purpose of computing the profits of a firm liable to income tax under Case II

[1] Reported (ChD) [1986] 1 WLR 1468; [1986] STC 491; (CA) [1989] Ch 454; [1988] 2 All ER 1; [1988] STC 116; (HL) [1990] 2 AC 239; [1990] 1 All ER 45; [1989] STC 898.

of Sch D a partnership is regarded as an entity distinct from its members; (2) that a payment made to a partner otherwise than for services rendered to the firm in his capacity as a partner falls to be treated as an expense in computing the profits of the partnership; (3) that the Commissioners were entitled, on the facts, to draw the inference that the collective purpose of the partnership in reimbursing the partners was wholly and exclusively to advance the partnership's trade or professional interests and to regard the benefits received by the two partners as merely incidental to the achievement of those purposes. The Crown appealed.

Held, in the House of Lords, allowing the Crown's appeal:

(1) that the purpose of the partnership could not be segregated from the purpose of the partners for whose benefit the payment enured. The size of the partnership, the existence of the executive committee and the partners' willingness or not to move were irrelevant and there was no warrant for any concept of the collective purpose of a partnership;

(2) that no analogy could be drawn with the reimbursement of expenses to an employee;

(3) that the question whether the expenditure was incurred exclusively for partnership purposes could not be answered simply by ascertaining what was the motive with which the move was undertaken, for the expenditure served and was necessarily and inherently intended to serve the personal interests of the partner in establishing a private residence for himself and his family.

Per Lord Oliver: "It can make not the slightest difference whether a partner incurs an expenditure out of his own pocket and recovers it from the partnership funds or whether he draws the money directly from the partnership funds in the first instance."

"... much argument has been addressed to the question whether the purpose of the particular payment falls to be ascertained objectively or by reference only to the subjective intention of the taxpayer. For my part I think that the difficulties suggested here are more illusory than real. The question in each case is what was the object to be served by the disbursement or expense? As was pointed out by Lord Brightman in *Mallalieu's*[1] case, this cannot be answered simply by evidence of what the payer says that he intended to achieve. Some results are so inevitably and inextricably involved in particular activities they cannot but be said to be a purpose of the activity."

CASE

Stated under the Taxes Management Act 1970, s 56 by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

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(1) 57 TC 330.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 10, 11 and 13 December 1984 Arthur Young McClelland Moores & Co. (hereinafter called "the firm") appealed against an assessment made under Sch D for the year 1981–82 in the sum of £6,000,000. A

2. The question for our decision, our findings of fact on the evidence adduced, the respective contentions of Mr. A.E. Park Q.C. on behalf of the firm and of the Appellant in person together with our determination in principle are set out in our Decision which was issued on 21 January 1985 and a copy of which is annexed as part of this Case. B

3. The following partners in the firm gave evidence before us: C

Mr. John Oliver Robertson Darby, Chairman of the firm

Mr. Roger John Wilson

Mr. John Anthony Cooper

Mr. Richard Meadows Rouse D

4. The following documents were proved or admitted before us:

Agreed Statement of Facts

Document Number 1: Partnership Agreement dated 11 November 1979 E

Document Number 2: Extract from a letter dated 13 January 1983

Document Number 3: Extract from a letter dated 7 February 1983

Document Number 4: Extracts from the firm's accounts for the year ended 30 April 1980 F

Copies of such of the above as are not annexed hereto as exhibits are available for inspection by the Court if required.

5. In addition to the cases mentioned in our Decision the following case was cited to us: *Reynolds and Gibson* v. *Crompton*[1] 33 TC 288. G

6. Following our Decision in principle figures were agreed between the parties and on 28 March 1985 we adjusted the assessment accordingly.

7. The Appellant immediately after the determination of the appeal declared to us his dissatisfaction therewith as being erroneous in point of law and on 29 March 1985 required us to state a Case for the opinion of the High Court pursuant to the Taxes Management Act 1970, s 56 which Case we have stated and do sign accordingly. H

8. The question of law for the opinion of the Court is whether we were correct in holding that certain expenses reimbursed to two of the partners of the firm during the relevant year, in connection with the removals of their private residences, were wholly and exclusively laid out or expended for the purposes of the profession carried on by the partners of the firm and therefore deductible in arriving at the taxable profits of the firm. I

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[1] [1952] 1 All ER 888.

A T.H.K. Everett
B. O'Brien
} Commissioners for the Special Purposes of the Income Tax Acts

Turnstile House
98 High Holborn
B London WC1V 6LQ

27 June 1985

C

DECISION

Arthur Young McClelland Moores & Co. ("the firm") appeals against an assessment to Income Tax made under Sch D for the year 1981–82 in the sum of £6,000,000 in respect of profits from the firm's profession as accountants.

D

The question for our determination is whether certain expenses reimbursed to two of the partners of the firm during the relevant year, in connection with the removals of their private residences, were wholly and exclusively laid out or expended for the purposes of the profession carried on by the partners and therefore deductible in arriving at the taxable profits of
E the firm (Income and Corporation Taxes Act 1970, s 130(a) and (b)). (Statutory references hereafter are to the Income and Corporation Taxes Act 1970 unless otherwise stated).

The firm is an English partnership of accountants of considerable size.
F At the start of the relevant accounting period ("the accounting period") from 1 May 1979 to 30 April 1980 the firm had 88 partners. It also had approximately 1,464 employees of whom 629 were qualified accountants. At the end of the accounting period the firm had 95 partners and approximately 1,439 employees, 714 of whom were professionally qualified.

G At the end of the accounting period the firm had offices in the United Kingdom in the following places:

London	Edinburgh
Birmingham	Aberdeen
Bradford	Dundee
H Bristol	Forfar
Dudley	Glasgow
Liverpool	Perth
Manchester	
Newcastle	
Nottingham	

I

A new office was opened at Southampton on 1 September 1980.

The firm is old established and has grown in size rapidly during the last 20 years and particularly since the removal of the statutory limit on the number of partners by s 120 Companies Act 1967. At the date of the hearing the firm had approximately 200 partners.

With such numbers frequent partners' meetings became a practical impossibility. The partnership agreement dated 1 November 1979 (Document No.1) recognises the existence of the firm's executive committee ("the executive committee") which takes most of the administrative decisions needed for the smooth running of the firm. The executive committee consists of an elected chairman, six elected members and one appointed member. We heard oral evidence from Mr. J.O.R. Darby who became a partner in the firm in 1959 and was elected chairman of the firm and of the executive committee in 1975. He still held these positions at the date of the hearing.

The firm's expansion in recent years has taken place partly by its opening new offices and partly by mergers with other firms. The Southampton office, opened by Mr. R.J. Wilson is an example of a new office. We were also given an example of a merger, namely that which took place on 1 May 1970 with Messrs. Graham & Spoor of Newcastle, of which firm Mr. J.A. Cooper was a partner. Both Mr. Wilson and Mr. Cooper gave evidence before us. We also heard oral evidence from Mr. R.M. Rouse who became a partner of the firm in 1966 and who, it was agreed, was an example of an average, mid-career partner of the firm who was neither a member of the executive committee nor a recipient of any relocation expenses such as form the subject of this appeal.

The increase in the size of the firm and the number of its offices made it necessary for the executive committee to look carefully at the manning of its offices and in particular to consider carefully who should be the senior or managing partner in each individual office. From time to time individual partners and employees were requested to move from one part of the country to another in order to work in a different office of the firm. To enable its business to be carried on effectively it was necessary for the firm to have offices in major business centres throughout the country, to serve its public company clients in particular. Such a policy resulted in its needing to transfer to particular offices at certain times, persons with special expertise or leadership qualities.

The practice of moving partners and employees from one of the firm's offices to another commenced in about the year 1975. Within a short period of time it became the accepted policy of the firm that any partner or employee might be requested to move for the benefit of the firm's business. Employees of the firm who were taken into partnership were made aware of the policy at the time of their admission to partnership. Partners of the firm who became partners on the occasion of mergers were not always immediately aware of all the details of the policy on becoming partners in the firm. The policy was not a term of the partnership agreement.

In an effort to make this policy palatable and acceptable to all members of the firm, the executive committee decided that the firm would make a substantial contribution to the cost of the private removal expenses of each person who was asked to move.

That contribution was made up of the following elements:

1. Full reimbursement of estate agents' charges, surveyors' fees, legal costs and disbursements and furniture removers' charges.

2. Full reimbursement of reasonable expenses for travel and subsistence for a maximum period of three months:

(a) whilst looking for a new house, and

(b) during the relocation period.

3. Payment of a disturbance allowance, of £1,000 in the case of a partner and £700 in the case of an employee, to cover inevitable out-of-pocket expenses such as carpet laying, refitting of curtains etc.

The policy applied equally to partners and employees of whatever grade or seniority. Hereafter the firm's policy of requesting partners and employees to move and of contributing to their removal costs is referred to as "the firm's removal policy".

All partners of the firm approved and agreed with the firm's removal policy. A partner would not be compelled to move if he refused after being requested to do so, but a partner who declined to move would be held in less esteem by his colleagues. We were told and we accept that his financial prospects might suffer and he would be looked upon as someone who did not have the best interests of the firm at heart. Occasionally partners would refuse to move when requested and in one or two such instances their shares of profits were affected. Employees who were requested to move could not be compelled to do so and, unlike partners, their positions in the firm would not be affected prejudicially should they refuse. On the other hand we heard no evidence concerning any instance of a refusal to move by an employee and the acceptance of such a move by an employee was likely to enhance his prospects of promotion within the firm and might lead to promotion on the occasion of the move.

The firm accepted that as it was requesting partners and employees to move from their homes for business reasons, it would be inequitable to expect them to bear the whole cost of such removal. Indeed the firm realised that unless it bore the cost of such removals, it was most unlikely that anyone would move.

The firm bore the cost of such removals only when the request came from the firm. Any partner or employee who wished to move from one office to another for personal reasons and was permitted to do so, bore the entire cost of such removal himself. Equally, partners and employees who moved house whilst continuing to work at the same office bore the entire cost of their removals. Occasionally a person's wish to work in a different office accorded with the wishes of the firm, but if the request for such a move came from the person undertaking it, he bore the entire cost without any contribution from the firm.

During the accounting period the firm incurred expenditure of £8,568.40 on partners' relocation expenses and it is these expenses which form the subject of this appeal. Details of this expenditure appear in the Annex to this decision[1]. Of the total expenditure, £5,446.25 was incurred in connection with the removal of M.L. Wilson from London to Southampton; the balance related to the removal of Mr. Cooper from Newcastle to Bristol. During the same period the firm paid out £15,660 in connection with the relocation of

[1] Page 718 *post*.

employees who moved at the request of the firm. No dispute arises in connection with that expenditure.

Mr. Wilson became a partner in the firm on 1 May 1979 after spending approximately six years working for the firm in its London office as an employee. On becoming a partner he had a meeting with Mr. Darby, who, as chairman of the executive committee, outlined to Mr. Wilson, as to all new partners, the scope and responsibilities of his new position. At that meeting Mr. Wilson was told that he might be requested to move from London if the executive committee considered that such a move would be beneficial for the firm, but that in such event his removal costs would be borne by the firm. No such move was then in prospect for Mr. Wilson. He indicated to Mr. Darby that he was not willing to agree to move *anywhere*, but that he would consider any such proposal on its merits at the time that it was put to him. He also indicated that he would need to discuss such a proposal with his wife. He took the view that any move must be undertaken wholeheartedly and with full commitment, involving the whole family.

At the time that he became a partner, Mr. Wilson had heard rumours of the possibility that the firm might open a new office in Southampton. At some time during the latter half of 1979 the firm decided to open such an office. It was considered that Southampton was a suitable place for a new office and in the firm's opinion there was no suitable local accountancy practice with which the firm could merge.

Mr. Wilson had taken his degree at Southampton University, he had some contacts there and in the opinion of the executive committee he was a suitable person to open the new office. Accordingly some time during the latter half of 1979 Mr. Darby asked Mr. Wilson to undertake this task and to move to Southampton on a permanent basis, it being understood that the firm would bear his relocation expenses. After discussing the matter with his wife, Mr. Wilson agreed to go. He moved with his wife to a new house in Southampton in January 1980. Mr. Wilson was still living in Southampton at the date of the appeal hearing but was about to move locally (at his own expense) to a better house.

Mr. Wilson would not have moved from London to Southampton in 1980 had his relocation expenses not been borne by the firm. He was financially unable to bear the cost himself and also believed that it would have been unreasonable for the firm to ask him to defray his own removal costs as he gained no immediate personal or financial advantage from the move. His links with Southampton were limited to his stay there as an undergraduate many years before and accordingly on the occasion of the move from London Mr. and Mrs. Wilson had to make a new life for themselves. From a financial point of view, in the short term Mr. Wilson suffered three disadvantages. First, his share of profit was reduced as he lost the London weighting element. Secondly, the prices of houses in Southampton increased less markedly from 1980 onwards than did those in London. Thirdly, although the firm paid out a total of £5,446.25 towards his removal costs, such sum did not cover the entire costs of removal: the refurbishing of the house in Southampton cost substantially more than the amount of the firm's disturbance allowance.

When the Southampton office opened, three or four of the firm's employees moved to it from London. Some moved at their own request and

some at the request of the firm. The relocation expenses of those members of staff asked to move by the firm were borne in full by the firm in accordance with its usual policy.

Mr. Cooper, having become a partner in the Newcastle firm of Messrs. Graham & Spoor on 1 January 1969, became a partner in the firm on 1 May 1970 on the occasion of the merger of his old firm's practice with the firm. On that date his old firm became the Newcastle office of the firm and Mr. Cooper remained there as an equity partner until 1976.

In the summer of 1976 Mr. A.D. Chessells, a partner in the Bristol office of the firm, was moved to London at the firm's request. Mr. Chessells had been the leading or managing partner of the Bristol office and as none of the other Bristol partners at that time was of the calibre to become leader of the Bristol office, the executive committee looked around for a new leader and selected Mr. Cooper.

Mr. Darby flew to Newcastle to ask Mr. Cooper to move to Bristol. Although the full implications of the firm's removal policy had not been spelt out to Mr. Cooper in the way in which it had been made clear to Mr. Wilson, he was aware of the policy in general terms. On hearing of the firm's request from Mr. Darby, Mr. Cooper declined to accept a permanent move to Bristol. He had personal reasons for wishing to remain in the Newcastle area. He and his wife were then engaged on what he described as "a labour of love" namely the restoration of their home which was an old country farmhouse. Accordingly Mr. Cooper told Mr. Darby that he would accept secondment to Bristol for a period of two years.

In view of his decision not to move permanently to Bristol, Mr. Cooper did not sell his house in Northumberland in 1976. He was told by Mr. Darby that the firm would contribute up to a maximum of £4,000 in connection with Mr. Cooper's living expenses during the period of his secondment. Rather than live in an hotel, Mr. Cooper purchased a very small cottage in Wiltshire on 14 November 1976. He commuted to Bristol from this cottage, returning home to Northumberland as frequently as possible. His wife spent most of her time in Northumberland.

After Mr. Cooper's move to Bristol in 1976 the executive committee continued to grapple with the problem of finding a permanent replacement for the leader of the Bristol office. In the summer of 1977 the executive committee thought that it had solved the problem and invited Mr. Cooper to move to the firm's Hong Kong office. Mr. Cooper visited it and, having done so, refused to go there.

Subsequently there were further discussions between Mr. Cooper and Mr. Darby as the other possible candidates for leadership of the Bristol office had proved unsuitable. Mr. Darby again asked Mr. Cooper to accept a permanent move to Bristol and this time he accepted. He sold his house in Northumberland in May 1978, purchased a house in central Bristol in August 1979, and moved into it in May 1980. He sold the cottage in Wiltshire in May 1983.

Mr. Cooper's move to Bristol was thus a long-drawn-out affair, made even more protracted by personal factors, none of which is directly attributable to his status as a partner in the firm. Having made a decision,

late in 1977 or early in 1978, to move permanently to Bristol he believed that it would be to his advantage to sell his house in Northumberland before purchasing a house in or near Bristol. Having sold his old house he believed that as a cash purchaser, he would be in an advantageous position when negotiating to purchase a new house. He and his wife were hoping to adopt children and accordingly wished to move to a large house in a rural area near Bristol. They found such a house, but its price rose beyond their reach during a period of rapid inflation of property prices in 1978 and 1979. Having lost the house which they had hoped to buy, they were also unable to adopt children and eventually purchased their present house, against his wife's inclinations.

Mr. Cooper suffered considerable financial disadvantage as a result of his move from Newcastle to Bristol, although he freely admitted that much of that loss was due to his own actions. It will be seen from the Annex to this decision that the firm did not pay Mr. Cooper's furniture storage costs during the time that his furniture was in store. The cottage in Wiltshire, being very small, was unable to receive most of his furniture.

Mr. Cooper stated in evidence which we accept that he would not have agreed to move to Bristol had the firm not agreed to contribute to his removal costs.

At the date of the hearing Mr. Cooper had been requested by the firm to remove from Bristol to Reading, in order to become Regional Managing Partner of the South of England there. He intended to accept the firm's invitation and to move as requested. The expenses of his move to Reading would be paid by the firm.

Mr. Rouse became a partner in the firm in London in 1966 and at the date of the hearing he had not moved and had no prospect of a move. He regarded himself as a typical mid-career partner of the firm. He was not a member of the executive committee.

He was fully acquainted with the firm's removal policy. It had his approval and, having discussed it with other partners in the firm, believed that, broadly, they shared his views on the matter. We accept his evidence.

The four partners who gave evidence before us all took the view that the firm's removal policy was beneficial to the firm and that it would be unrealistic, unfair and commercially restrictive to expect partners or staff to move in such circumstances if the firm did not pay their relocation expenses. Each witness took the view that no distinction could be drawn between partners and staff in this context and that the object of the firm in implementing and continuing the firm's removal policy was to produce a more efficient firm. We accept that evidence.

In addition to the primary facts we make the following inferential findings of fact:

1. Although it is not a provision of the firm's partnership agreement that the relocation expenses of partners who are requested to move by the firm shall be paid by the firm, such a state of affairs is established partnership policy of the firm and understood to be so by all the partners of the firm.

2. The relocation expenses of partners of the firm are only paid or borne by the firm if a partner moves at the firm's request rather than at his own wish.

3. Relocation expenses when paid by or on behalf of a partner are paid by the firm only within the limits of what is reasonable in amount.

4. From the point of view of the firm, its policy in requiring partners to move from time to time and bearing their relocation expenses is followed entirely for business reasons.

5. Each partner of the firm concurs in the firm's removal policy entirely for business reasons.

6. In relation to the purpose of the firm's relocation expenditure, the firm had the same motive when paying or bearing partners' relocation expenditure and employees' relocation expenditure.

Mr. A.E. Park Q.C. made the following submissions on behalf of the firm:

1. If expenditure incurred by the firm is incurred wholly and exclusively for business reasons, any incidental personal benefit to a partner does not prevent deduction under Case II of Sch D: *Bentleys, Stokes & Lowless* v. *Beeson*[1] 33 TC 491; *Bowden* v. *Russell & Russell*[2] 42 TC 301 and *Edwards* v. *Warmsley, Henshall & Co.*[3] 44 TC 431.

2. There is no distinction in *principle* between the relocation expenses of employees and partners. Employees' relocation expenses are rightly agreed to be allowable. Partners' relocation expenses are allowable for the same reason, namely that the business needs partners to relocate and the firm asks them to do so. In either case the person moving does so only at the firm's request and the firm realises that a person cannot be expected to bear expenses necessitated solely by the business requirements of the firm.

3. The Inspector has disallowed the partners' relocation expenses, seeking to equate the position of the firm with that of a sole trader. This is a false analogy. In the case of a sole trader, only one person is involved. Where however one tax-paying entity pays the relocation costs of another wholly for business reasons, they are deductible, as, for example, where an employer pays the relocation costs of an employee. The critical point however is not the status of the person who is moving house but the connection between that person and the payer. In the instant case the tax-paying entity is either the partnership as a single entity or each individual partner as ninety-five tax-paying entities. If the partnership is the tax-paying entity then neither Mr. Wilson nor Mr. Cooper is the payer. If all the partners are the tax-paying entities then ninety-four of them (if not ninety-five) should be permitted to deduct the expenditure for tax purposes. To disallow a tax benefit to ninety-four partners because of a benefit to one is formalistic, unrealistic and unfair.

4. There is substantial authority to support the proposition that the firm should be treated for tax purposes as a separate entity. It is conceded that for the general purposes of English law a partnership is not a separate entity dis-

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(1) [1952] 2 All ER 82. (2) [1965] 1 WLR 711. (3) [1968] 1 All ER 1089.

tinct from its members. But for tax purposes, and in particular for the purpose of ascertaining tax liability, different rules apply. There is a distinction to be drawn between the principles for ascertaining tax liability and the principles relating to payment of tax: *Harrison* v. *Willis Bros.*(1) 43 TC 61; *Heastie* v. *Veitch & Co.*(2) 18 TC 305; *Watson & Everitt* v. *Blunden* 18 TC 402 and *Rex* v. *General Commissioners of Income Tax for the City of London* (ex parte *Gibbs and others*)(3) 24 TC 221 at page 248.

Mr. H.A. MacKinlay, the District Inspector for the Strand Tax District made the following submissions on behalf of the Revenue:

1. The question in issue is whether the relocation expenses in the instant case are deductible in computing the profits of the partners of the firm under Case II of Sch D.

2. It is conceded by the firm that such expenses are not deductible by a sole trader even if business circumstances make it necessary for a sole trader to move. Conversely, where one taxable entity requires another to move, relocation expenses are properly allowable. Accordingly the question arises as to whether there is more than one taxable entity in the instant case.

3. An English partnership is not a separate person for taxing purposes from the persons comprising it. We are dealing in the instant case with an English partnership and not a Scottish partnership. Different considerations may apply in Scottish law.

4. Even if it is found that in the instant case the payer is a separate taxable entity from the person moving house, it is still open to the Special Commissioners to disallow the expenditure if it involved any duality of purpose or a conscious or unconscious private motive: *Samuel Dracup & Sons Ltd.* v. *Dakin* 37 TC 377; *Mason* v. *Tyson*(4) 53 TC 333; *Newsom* v. *Robertson*(5) 33 TC 452; *Caillebotte* v. *Quinn*(6) 50 TC 222 and *Mallalieu* v. *Drummond*(7)57 TC 330.

Conclusions

We are concerned in this appeal with expenditure by or on behalf of partners in the firm, when such partners move house in order to enable them to conduct their professional affairs in a different office of the firm from that in which they worked previously. Mr. Park contends that such expenditure is an allowable expense in the firm's accounts notwithstanding the provisions of s 130. The Revenue for their part submit that such expenditure is disallowed by s 130(a) and (b), which provides:

> "130. Subject to the provisions of the Tax Acts, in computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of —
>
> (a) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation,

(1) [1966] Ch 619. (2) [1934] 1 KB 535. (3) [1942] AC 402.
(4) [1980] STC 284. (5) [1952] 2 All ER 728. (6) [1975] 1 WLR 731.
(7) [1983] STC 665.

A (b) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of the trade, profession or vocation,"

Leaving on one side for the moment Mr. Park's contention that for tax purB poses the firm is a separate entity, it may be helpful to look at the expenditure in question both from the point of view of the firm as payer and from the point of view of Mr. Wilson and Mr. Cooper respectively as recipients.

When Mr. Wilson became a partner in the firm on 1 May 1979 he had heard rumours of the possibility that the firm might open a new office on the C south coast, possibly in the vicinity of Southampton, but he had no inkling that he would be called upon to move, either to Southampton or to any other place. Mr. Darby told him about the firm's general policy and Mr. Wilson replied that he would consider any request for him to move at the time that it was made and in the light of the circumstances then prevailing, after discussing the matter with his wife.

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Later that same year Mr. Wilson agreed to move to Southampton after being requested to do so. He had no personal reasons, whether social or financial, for agreeing to do so. Although he had studied at Southampton University some ten years previously, his links with Southampton were tenuous. In the short term his personal and social life was going to be disrupted E to a considerable extent. For several months he was commuting between Southampton and London. He was looking (with the assistance of his wife) for a house in which to live in Southampton. He was also engaged on finding and establishing premises in Southampton for his new office and at the same time it was necessary for him to spend time in the office in London in order to carry on his business and, we infer, to report in detail to his partners on F the progress of his efforts to establish the Southampton Office. The house which he purchased in Southampton was not the house which he would have chosen had he known the area well. Thus, at the time of the appeal hearing he was proposing to undertake, at his own expense, a move to another house in a more congenial area of Southampton.

G We have little difficulty in coming to the conclusion that Mr. Wilson moved from London to Southampton purely for business reasons. He was aware of the firm's removal policy. He approved of that policy. He could see that his move to Southampton would be for the benefit of the firm and that it was a sensible, professional and commercial decision.

H Mr. Cooper's circumstances were different from Mr. Wilson's. When Mr. Darby approached Mr. Cooper in 1976, with the request that he should move to Bristol permanently to replace Mr. Chessells as the senior and managing partner there, Mr. Cooper was reluctant to go. Mr. Cooper impressed us as a professional man of considerable ability. He is obviously held in esteem by his partners and this has been demonstrated recently by their I request that he should become the firm's managing partner for the South of England. We infer from the evidence that, but for his commitment to the firm and his profession, he might well have refused to move from Newcastle at all. His decision to go to Bristol initially on temporary secondment for two years and later to accept a permanent position there ensured that the next few years would be extremely difficult ones for him and his wife. The immediate result, on Mr. Cooper's moving to Bristol in September 1976, was

that he spent long periods separated from his wife and in the long term it resulted in his living in a house in the centre of Bristol in an urban environment which his wife disliked. An incidental result was the loss of their house in Northumberland by which Mr. and Mrs. Cooper set great store. Financially the move to Bristol proved to be a disaster for Mr. Cooper but he made it clear in his evidence that he did not hold the firm responsible for all his losses. He did say however, and we accept, that the expenses which he sought to recover from the firm were very carefully audited by his partners and this is borne out by the firm's refusal to reimburse to Mr. Cooper his furniture storage costs.

We find that in Mr. Cooper's case his reasons for moving to Bristol were even more emphatically business and commercial ones than were Mr. Wilson's. In neither case would the partner concerned have agreed to move if the firm had not been willing to underwrite his removal costs and the sole motive, in each partner's mind when moving, was that such a move would be sensible and beneficial for the professional and commercial interests of the firm as a whole.

Turning now to consider the position from the aspect of the firm, it is clear that if the motives of Mr. Wilson and Mr. Cooper were entirely professional and commercial then, so also to an even greater extent, were the motives of the other ninety-three partners in the firm. We accept the evidence of Mr. Rouse as typical of the motives and beliefs of the other partners, and in particular the motives and beliefs of those partners in the firm (such as Mr. Rouse) who had not moved at the firm's expense and who had no prospect of doing so. There was no scintilla of personal benefit to each of those partners in bearing a proportion of the cost of the removal expenses of Mr. Wilson and Mr. Cooper. In the short term each of them suffered financially. They were content however, believing such expenditure to be for the ultimate benefit of the firm's business

We find in particular that those partners who did not receive financial assistance towards the cost of removals did not concur in the firm's removal policy in order to ensure that, should they ever be asked to move, the firm would pay or contribute to their expenses.

The Revenue contends that as Mr. Wilson and Mr. Cooper have to live somewhere, whatever their professional or business positions may be, there is necessarily some duality of purpose involved in the expenditure on partners' removal expenses during the accounting period. They seek to draw an analogy with the lunches eaten by Mr. Quinn in *Caillebotte* v. *Quinn*[1]. The analogy is false. Mr. Quinn needed to eat in order to live. Neither Mr. Wilson nor Mr. Cooper needed to move house for other than professional reasons. Before embarking on their respective removals, they each possessed houses which were satisfactory to them (and in Mr. Cooper's case, particularly so). Neither wished to move. When they did so, each of them purchased a new house without any assistance from the firm towards its capital cost. The firm's financial contribution in each case was solely towards the cost of the removal, not towards the cost of the new house. We note that this contention of the Revenue must surely apply equally in the case of employees, but it is

(1) 50 TC 222.

not alleged that the firm's expenditure on employees' removal expenses should be disallowed.

We therefore hold that whether one looks at the firm as a single entity, as we are asked to do by Mr. Park or as ninety-five separate entities as suggested by Mr. MacKinlay, there is no duality of purpose in connection with the expenditure on the removal expenses of Mr. Cooper and Mr. Wilson during the accounting period. The firm incurred such expenditure wholly and exclusively for the purposes of its profession and the motive of each of the partners of the firm (including both Mr. Wilson and Mr. Cooper) was similarly circumscribed. But for the fact that Mr. Wilson and Mr. Cooper were partners in the firm and committed to advancing its interests, they would not have moved house. Further, we infer that given a free choice at the moment when each was asked to move, Mr. Wilson would have remained in London and Mr. Cooper, without any shadow of doubt, would have remained in Northumberland.

Having reached such a conclusion it is not necessary for us to adjudicate on Mr. Park's contention that for tax purposes a partnership is a separate tax-paying entity from the partners who comprise it.

It remains only for us to deal with the submissions which have been put to us by both parties in this appeal with reference to the position of the sole trader. It is common ground in this appeal that a sole trader incurring removal expenses such as those which we have considered in the instant case would not be entitled to claim deductions in respect of them in his trading accounts for tax purposes. It is not necessary for us to say whether we subscribe fully to this point of view but for present purposes we are content to accept that it will be correct in most cases. It is hard to imagine a set of circumstances in which a sole trader would be able to contend that his motive for moving house was wholly and exclusively for the purposes of his trade, profession or vocation. Being a single indivisible person it is a virtual certainty that his motives will be coloured by reasons other than business ones.

At the other end of the scale from the sole trader we have the growth of large partnerships more akin to corporate structures than professional concerns. The firm had 88 partners on 1 May 1979, 95 partners on 30 April 1980 and approximately 200 partners at the date of the hearing of the appeal. Despite the stress laid on the provisions of the Partnership Act 1890 by Mr. MacKinlay it is difficult to consider such a large organisation in terms other than corporate. In recent years and at all times relevant to this appeal, the firm possessed an executive committee. Under its chairman this committee effectively ran the firm and took most of the decisions necessary for its management. The committee was answerable only to the bi-annual general meeting of the partners. In such circumstances it is hardly surprising that the witnesses saw the firm more as a corporation than a partnership and regarded themselves more as executives than partners. Mr. Wilson saw himself as managing director of a subsidiary company and Mr. Cooper agreed with Mr. Wilson's analysis.

We accept Mr. Park's submission that to allow this appeal will not only recognise the special facts relating to the payments made by the firm to or on behalf of Mr. Cooper and Mr. Wilson but will also accord with reality.

Accordingly we allow the appeal and adjourn the hearing for agreement of figures. On being informed of the parties' agreement we will issue our final determination.

T.H.K. Everett
B. O'Brien
} Commissioners for the Special Purposes of the Income Tax Acts

Turnstile House
98 High Holborn
London WC1V 6LQ

21 January 1985

ANNEX

Expenditure by the firm on removal expenses during the accounting period

R. J. Wilson — London to Southampton

	£	£	£
Professional fees for surveyors, agents and solicitors	3,566.25		
Removal charges	215.00		
Mortgage redemption fee	15.00		
Removal and subsistence expenses and removal allowance for fittings etc.	1,650.00		5,446.25
J.A. Cooper — Newcastle to Bristol			
Survey fees, legal fees, estate agent's commission, furniture removal costs etc.		7,622.15	
Furniture storage costs		984.57	
		8,606.72	
Less: —			
Charged to J. A. Cooper drawings	984.57		
Charged prior year	4,500.00	5,484.57	3,122.15
			8,568.40

The case was heard in the Chancery Division before Vinelott J. on 17 and 18 July 1986 when judgment was reserved. On 31 July 1986 judgment was given in favour of the Crown, with costs.

Alan Moses for the Crown.

Andrew Park Q.C. for the Company.

The following cases were cited in argument in addition to the cases referred to in the judgment:—*Watkis* v. *Ashford Sparkes & Harward* 58 TC

468; [1985] STC 451; *Newsom* v. *Robertson* 33 TC 452; [1952] 2 All ER 728; *Hillyer* v. *Leeke* 51 TC 90; [1976] STC 490; *Bentleys, Stokes & Lowless* v. *Beeson* 33 TC 491; [1952] 2 All ER 82; *Reynolds and Gibson* v. *Crompton* 33 TC 288; [1952] 1 All ER 888; *Commissioners of Inland Revenue* v. *Korner and Others* 45 TC 287; [1969] 1 WLR 554; *Pook* v. *Owen* 45 TC 571; [1970] AC 244; *Lewis* v. *Commissioners of Inland Revenue* 18 TC 174; [1933] 2 KB 557.

Vinelott J.:—This is an appeal by way of Case Stated under s 56 of the Taxes Management Act 1970 against a decision of the Special Commissioners. The facts are set out in a very clear and detailed decision annexed to the Case. A very brief summary will suffice to put into context the question of law which arises.

The Respondents, Arthur Young McClelland Moores & Co., are a well known firm of chartered accountants. Like the Commissioners, I will refer to it as "the firm", although, for reasons which will later appear, it is important to bear in mind that that expression is no more than a convenient description of a group of individuals who carry on a profession in partnership together.

The firm has grown dramatically in recent years and is now one of the largest in this country. At the beginning of the relevant accounting period (from 1 May 1979 to 30 April 1980) the firm had 88 partners; at the end of the period it had 95 partners; it now has over 200 partners. The firm is administered by an executive committee comprising the chairman (the senior partner), six elected members and one appointed member. The partners as a whole meet biannually. The firm has offices throughout England, Wales and Scotland.

As the firm grew in size and acquired offices throughout Great Britain it became necessary to ask partners and employees to move from one part of the country to another to ensure that the staff was deployed to the firm's best advantage. The decision records that "it became the accepted policy of the firm that any partner or employee might be requested to move for the benefit of the firm's business".

To make this policy or practice more acceptable the executive committee decided that the firm should contribute to the expenses of a partner or employee who was asked to move. They decided that the contribution by the firm should be a sum equal to any estate agent's charges, surveyor's fees, legal costs and disbursements and furniture removal charges actually incurred, reasonable expenses for travel and subsistence to a maximum of three months whilst the partner or employee was looking for a new house and during the relocation period, and a disturbance allowance of £1,000 in the case of a partner and £700 in the case of an employee, to meet the cost of, for example, re-laying carpets and refitting curtains. All the partners agreed with this policy, though it did not become a term of the partnership agreement that a partner who moved at the request of the firm would be paid these sums. No partner was ever required to move, that is, there was never any question of his being expelled or of his share of profits being diminished if he did not move, and, of course, an employee could not be dismissed if he refused to move. But partners and employees for the most part (I think in the case of employees always) agreed to move when asked to do

so. No doubt they had in mind that their future prospects with the firm might suffer if they did not. The contribution by the firm to the expenses of removal was an added inducement to them to fall in with the firm's wishes or, perhaps more accurately, removed or diminished any disinclination to move which might otherwise have sprung from consideration of expense.

There was evidence accepted by the Commissioners that if the firm had not agreed to make this contribution some partners and employees might have refused to move. I should emphasise that the policy was to make a contribution to the cost of the move only if the move was made at the request of the firm; if a partner or employee asked to move to another office no contribution was made.

During the accounting period in question the firm paid one partner, a Mr. R.J. Wilson, £5,446.25, and another partner, a Mr. J.A. Cooper, £3,122.15 as contributions to the expenses of moving home. The question is whether (as the Commissioners found) these two sums are deductible in ascertaining the profits of the firm as being money "wholly and exclusively laid out" for the purposes of the firm's business. It is, I think, only necessary to consider the case of Mr. Wilson. The facts of his case suffice to raise the question of law which, of course, is the only question which this Court is capable of deciding.

Mr. Wilson became a partner on 1 May having spent six years as an employed accountant at one of the firm's London offices. The executive committee decided to open a new office in Southampton. Mr. Wilson was asked if he would move to Southampton to open and take charge of the new office. He agreed to do so. Three or four of the firm's employees went with him—some at the firm's request and some because they preferred to live and work in Southampton. There was evidence before the Commissioners that the move to Southampton turned out to be financially disadvantageous to Mr. Wilson. The cost to him of moving to Southampton and furnishing his new house exceeded the firm's contribution. Moreover, his share of profits was reduced because he lost his London weighting allowance. Then he found he did not like the house he had first bought and when he got to know Southampton better he decided to move again; at the date of the hearing by the Commissioners he was faced with the cost of another move for which he would get no contribution from the firm. So, at the end, he was substantially out of pocket as a result of complying with the firm's request that he move to Southampton to take charge of the new office. He had no particular motive or reason for moving to Southampton. Although he had graduated from Southampton University (some 10 years earlier) he had no friends there; he preferred his settled life in London.

The Commissioners found that Mr. Wilson moved from London to Southampton purely for business reasons because it would be for the benefit of the firm. They accepted the evidence of a middle-ranking partner "as typical of the motives and beliefs of the other partners ... who had not moved at the firm's expense and who had no prospect of doing so". The Commissioners found that there([1])

> "was no scintilla of personal benefit to each of those partners in bearing a proportion of the cost of the removal expenses of Mr. Wilson and Mr.

([1]) Page 716E/G *ante*.

A Cooper. In the short term each of them suffered financially. They were content, however, believing such expenditure to be for the ultimate benefit of the firm's business.

We find in particular that those partners who did not receive financial assistance towards the cost of removal did not concur in the firm's B removal policy in order to ensure that, should they ever be asked to move, the firm would pay or contribute to their expenses."

Their conclusion was(1)

"that whether one looks at the firm as a single entity, as we are asked to do by Mr. Park or as ninety-five separate entities as suggested by Mr. C MacKinlay, there is no duality of purpose in connection with the expenditure on the removal expenses of Mr. Cooper and Mr. Wilson during the accounting period. The firm incurred such expenditure wholly and exclusively for the purposes of its profession and the motive of each of the partners of the firm (including both Mr. Wilson and Mr. Cooper) was similarly circumscribed. But for the fact that Mr. Wilson and Mr. D Cooper were partners in the firm and committed to advancing its interests, they would not have moved house. Further, we infer that given a free choice at the moment when each was asked to move, Mr. Wilson would have remained in London and Mr. Cooper, without any shadow of doubt, would have remained in Northumberland."

E I think that in reaching their conclusion the Commissioners in effect directed their minds to the wrong question. In order to formulate the right question I think it is right to contrast two extreme cases. If partners take the view that it will be in the interests of their firm, or that it will advance their business and ultimately the prospects of their firm, that an employee should F be asked to open and manage a new branch in Southampton, and, to encourage him to do so, offer to make a contribution to any costs he incurs in moving his home to Southampton, the contribution is clearly expenditure incurred "wholly and exclusively" for the purposes of the firm's business. That is the situation here. The Crown accepts that the payments made to the employees who moved at the request of the firm with Mr. Wilson are G deductible. It is irrelevant to ask whether the contributions went to defray an expense incurred by the employee for a private purpose or for a dual purpose. It is the purpose of the firm, that is, of the partners of the firm, that is determinative. The liability of the employee turns on other considerations, in particular whether he comes within the special provisions relating to employees earning more than £8,500 per annum; if he does not it may turn on H whether this money was paid to him by way of reimbursement of expenses incurred by him directly or to other persons, such as a firm of furniture removers.

At the other extreme I will take an hypothetical example. Suppose that Mr. Arthur Young had survived and in 1979 had been the sole principal of I the firm, the business then carried on in the same place and by the same persons who in fact carried it on in 1979 (but with the addition of Mr. Young who, let us suppose, was in charge of its city office and lived near his work), and suppose that he decided it would be in the interests of the firm that it should open an office in Southampton, and that he should take charge of it

(1) Page 717A/C *ante*.

himself. Suppose, further, that he decided that it would be in the interests of the firm that he should move to Southampton so he could be near his work. The expenses incurred by him in moving to Southampton would quite clearly not be expenses incurred wholly and exclusively for the purposes of the firm's business. No doubt it would be to the advantage of the firm (considered as a separate entity) that if he moved to Southampton and took charge of the office there he should also move his home to Southampton. He would then avoid on the one hand the exhausting and time-consuming task of commuting from London to Southampton and, on the other hand, the disruption to his family life of living away from home during his working life. But expenditure for these purposes, though in a sense incurred for the benefit of the firm's business, could not be considered expenditure wholly and exclusively incurred for the purposes of the business. The expenditure would be indistinguishable from that incurred by Mr. Mason in *Mason* v. *Tyson*(1) 53 TC 333 in doing up a flat above his office so he could on occasion work late.

Mr. Park was, I think, disposed to accept that this would be so. The explanation he offered was that in the case of an individual (or a small partnership) the motives of personal benefit or advantage would be inextricably mixed with business or professional purposes. So, in the real world the Commissioners could never find that (in my hypothetical example) Mr. Young's only and unadulterated motive and purpose was to advance the interests of his firm; but in principle if the Commissioners, after an examination of his motives, conscious and unconscious, were to come to the conclusion that motives of personal benefit or advantage played no part, the expenditure would be deductible. This argument is reflected in the decision of the Commissioners, who said(2):

> "It is common ground in this appeal that a sole trader incurring removal expenses such as those which we have considered in the instant case would not be entitled to claim deductions in respect of them in his trading accounts for tax purposes. It is not necessary for us to say whether we subscribe fully to this point of view but for present purposes we are content to accept that it will be correct in most cases. It is hard to imagine a set of circumstances in which a sole trader would be able to contend that his motive for moving house was wholly and exclusively for the purposes of his trade, profession or vocation. Being a single indivisible person, it is a virtual certainty that his motives will be coloured by reasons other than business ones."

Before me Mr. Park founded his argument upon a passage in the speech of Lord Brightman in *Mallalieu* v. *Drummond*(3) [1983] 2 AC 861 at page 875. Lord Brightman, having observed that the ground of the decision of Slade J. and of the Court of Appeal was that "the conscious motive of the taxpayer was decisive ... What was present in the taxpayer's mind at the time of the expenditure concluded the case", went on to reject that view in a passage which I will cite in full:

> "My Lords, I find myself totally unable to accept this narrow approach. Of course Miss Mallalieu thought only of the requirements of her profession when she first bought (as a capital expense) her wardrobe of subdued clothing and, no doubt, as and when she replaced items or sent them to the launderers or the cleaners she would, if asked, have

(1) [1980] STC 284. (2) Page 717E/F *ante*. (3) 57 TC 330, at page 370A/D.

repeated that she was maintaining her wardrobe because of those requirements. It is the natural way that anyone incurring such expenditure would think and speak. But she needed clothes to travel to work and clothes to wear at work, and I think it is inescapable that one object, though not a conscious motive, was the provision of the clothing that she needed as a human being. I reject the notion that the object of a taxpayer is inevitably limited to the particular conscious motive in mind at the moment of expenditure. Of course the motive of which the taxpayer is conscious is of a vital significance, but it is not inevitably the only object which the commissioners are entitled to find to exist. In my opinion the commissioners were not only entitled to reach the conclusion that the taxpayer's object was both to serve the purposes of her profession and also to serve her personal purposes, but I myself would have found it impossible to reach any other conclusion."

Mr. Park's submission, as I understand it, is that Lord Brightman ascribed to Miss Mallalieu an unconscious motive or purpose which accompanied or coloured the conscious motive or purpose of acquiring clothes which would enable her to carry on her professional activities. I do not think that Lord Brightman intended to ascribe to Miss Mallalieu an unconscious motive. As I understand it, the ground of the decision in the House of Lords in *Mallalieu* v. *Drummond* was that the expenditure by Miss Mallalieu plainly served a private purpose (the provision of clothes for work and clothes to wear at work) and that the private advantage offered by it could not properly be treated as a mere incidental effect of expenditure wholly and exclusively incurred for the purpose of meeting her professional requirements, although the purpose which presented itself to her mind was that of meeting the requirements of her profession. In cases where expenditure plainly serves two purposes an inquiry into the state of mind of the taxpayer is unnecessary and may be misleading. In *Mallalieu* v. *Drummond* Lord Brightman clearly thought that the court would not have been bound by a decision by the Commissioners that Miss Mallalieu's sole object was to serve the purposes of her profession. Similarly, in *Caillebotte* v. *Quinn*[1] Templeman J. overruled a decision of the General Commissioners that the cost of a meal consumed by a subcontract carpenter working away from home over and above the cost of the meal he normally consumed at home was a deductible expense.

By contrast, if a personal benefit or advantage conferred by expenditure for which a deduction is claimed can fairly be considered either as a purpose of the expenditure or as an incidental effect of expenditure incurred solely for a business or professional purpose it is for the Commissioners to determine what was the purpose of the expenditure. In doing so they must have regard to all the surrounding circumstances, as well as to any evidence adduced by the taxpayer as to his own state of mind. They are not required to embark on an inquiry into his subconscious motivation.

In the instant case the purpose served by the expenditure is not in question. The question is whether expenditure which would not have been deductible if incurred by an individual trader is deductible if incurred by partners in pursuance of a policy adopted by all the partners as one calculated to advance the interests of their firm. The case for the taxpayer is that in the case of a large partnership the interests of the partners as partners can

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(1) 50 TC 222.

be severed from their personal and private interests and that a benefit to a partner resulting from expenditure incurred in pursuance of a policy agreed by all the partners with a view to advancing the interests of the firm can be regarded as incidental to the achievement of that purpose, even though in the case of an individual it could not be so regarded. This approach is, I think, that adopted by the Commissioners, who found(1):

> "Despite the stress laid on the provisions of the Partnership Act 1890 by Mr. MacKinlay it is difficult to consider such a large organisation in terms other than corporate. In recent years and at all times relevant to this appeal, the firm possessed an executive committee. Under its chairman this committee effectively ran the firm and took most of the decisions necessary for its management. The committee was answerable only to the bi-annual general meeting of the partners. In such circumstances it is hardly surprising that the witnesses saw the firm more as a corporation than a partnership and regarded themselves more as executives than partners. Mr. Wilson saw himself as managing director of a subsidiary company and Mr. Cooper agreed with Mr. Wilson's analysis."

Mr. Park's submissions on this point were founded on the decisions of the Court of Appeal in *Heastie* v. *Veitch* 18 TC 305(2), *Watson & Everitt* v. *Blunden* reported in the same volume of Tax Cases at page 402, and *Rex* v. *General Commissioners of Income Tax for the City of London* (ex parte *Gibbs and Others*)(3) 24 TC 221. Before turning to those cases I should, I think, say something about the way in which partnership profits are assessed to tax. There are, in effect, three stages. First, the profits of the firm for an appropriate basis period must be ascertained. What has to be ascertained is the profits of the firm and not of the individual partners. That is not, I think, stated anywhere in the Income Tax Acts, but it follows necessarily from the fact that there is only one business and not a number of different businesses carried on by each of the partners. The income of the firm for the year is then treated as divided between the partners who were partners during the year to which the claim relates—the year of assessment—in one of the many senses of that word: see the proviso to s 26 of the Taxes Act 1970. That is the second stage. The tax payable is then calculated according to the circumstances of each partner—that is, after taking into account on the one hand any personal allowances, reliefs or deductions to which he is entitled and any higher rate of tax for which he is liable. The Acts do not provide for the way in which personal allowances, reliefs and deductions are to be apportioned between the partnership income and other income. I understand that in practice they are deducted from the share of the partnership income if that was the partner's main source of income. When the tax exigible in respect of each share of the partnership income has been ascertained the total tax payable is calculated. Section 152 (formerly Rule 10 of the Rules applicable to Cases I and II of Sch D) provides that the total sum so calculated is to be treated as "one sum ... separate and distinct from any other tax chargeable on those persons ... and a joint assessment shall be made in the partnership name." That is the third stage.

In *Heastie* a partner allowed property of which he was the sole owner to be occupied by the partnership at a rack rent. The question was whether the rent could be deducted in ascertaining the profits of the partnership or

(1) Page 717G/I *ante*. (2) [1934] 1 KB 535. (3) [1942] AC 402.

whether (as the Crown contended) only the annual value ascertained for the purposes of Sch A could be deducted. As Romer L.J. pointed out, there was no difference in principle between the rent paid to the partner who owned the property and a sum paid to a partner in a hotel business who carried on a separate business as a wine merchant and who supplied wine to the partnership at a proper price(1).

> "The fact that such a deduction would be permissible is, I think, made clear by Rule 10 of the rules applicable to Cases I and II, which says that, for the purposes of taxation under Schedule D, a partnership is treated as a separate entity from the individual partners composing the firm."

In *Watson & Everitt*(2) the taxpayer in partnership with others bought a brickyard and other property with a view to working the brickyard and developing the property as a building estate. He was entitled to a four-ninths share of the profits of the partnership. He also carried on a practice as a solicitor. As a solicitor he acted for the partnership. He claimed that in computing his profits as a solicitor four-ninths of the profit cost incurred by the partnership should be deducted. To the extent of four-ninths of the profit cost he was paying himself. The taxpayer's appeal was dismissed by Finlay J., and by the Court of Appeal. Romer L.J. in his judgment said(3):

> "It really is, if I may say so, too ridiculous to suggest that, for the purposes of assessing the profits of those two firms under Schedule D, you are going to be troubled with the partnership accounts and the rights as between the partners. For the purposes of Schedule D, the two firms are to be treated as separate entities and, so treating them, there is no difficulty at all. Treating here, therefore, the partnership carrying on this co-adventure as one entity, and the solicitor, of course, as he is, as a perfectly distinct entity, there is no trouble."

I do not think that these cases lend any support to Mr. Park's submissions. *Heastie* concerned what I have described as the first stage. What falls to be ascertained at the first stage is the profits of the business conducted by the firm. In ascertaining those profits what is paid to a partner for something supplied by him otherwise than in his capacity as a partner is deductible. The business cannot be treated as a number of separate businesses. The profits are ascertained in the same way as if the business were conducted by a separate entity—just as the tax chargeable, although it is in fact an aggregation of the tax chargeable in respect of the partners' separate shares, is treated as if it were a liability of the firm as a separate tax-paying entity. That was also the ground of the decision in *Watson & Everitt*. Neither case lends any support to the proposition that in ascertaining the profits of the firm a benefit or advantage conferred on a partner as a partner can be treated as ancillary to the purposes attributed to the firm considered as a separate entity.

Ex parte Gibbs(4) was a very different case. Rule 9 of the Rules applicable to Cases I and II provided that if in a year of assessment a person ceased to carry on a trade, profession or business in respect of which an assessment was made and was succeeded by another person the profits should be apportioned between the two periods. The question was whether the rule applied where (as in *ex parte Gibbs*) a new partner was admitted to a partnership.

(1) 18 TC 305, at page 319. (2) 18 TC 402. (3) *Ibid*, at page 410.
(4) 24 TC 221.

The Court of Appeal held that it did not. As Scott L.J. pointed out (at page 228):

> "Ordinarily the subject-matter of Rule 9 is the case of one proprietor of a business giving it up and another acquiring it as a going concern—for example, on a sale. Section 19 of the Interpretation Act, 1889, of course applies to the word 'person' in Rule 9 'so far as the context permits'. The context would obviously permit of its including the plural in case of one firm selling the business as a going concern to an individual or company, or to a wholly different firm. But I do not think that it is a natural use of language to say that a firm ceases to carry on its business and that another firm succeeds to the business when all that happens is, for instance, that a young managing clerk has become a very junior partner with a tiny percentage of the firm's profits added to his salary."

That decision was reversed by the House of Lords but only on the ground that, having regard to an amendment to Rule 11 (which provided expressly that a change in a partnership should not be treated as a discontinuance unless the partners so elected), the construction adopted by the Court of Appeal had the effect that Rule 9 could have no practical application (save for a period of two years until the amended Rule 11 came into operation). Lord Simon agreed with the analysis of the Court of Appeal and differed from the Court of Appeal only upon this ground. He said (at page 243):

> "I concede without any doubt or qualification the proposition relating to the English law of partnership upon which the judgment of the Court of Appeal is largely based. Strictly speaking, it is certainly true that an old partnership cannot be regarded as 'ceasing' to carry on the trade, and the new partnership cannot be regarded as 'succeeding' to it when some members of the old partnership are also members of the new, and thus do not individually cease to carry on the trade at all. A, B, C and D are carrying on the trade throughout the year; how can it be said that they, or any of them, have in the course of the year ceased to carry it on? If language is accurately used, a partnership firm does not carry on a trade at all: it is the individuals in the firm who carry on the trade in partnership. It is not the firm which is liable to Income Tax. The individuals composing the firm are so liable, though by Rule 10 when a trade is carried on by two or more persons jointly the tax is computed and stated jointly and in one sum and is separate and distinct from any other tax chargeable to those persons or any of them, and a joint assessment shall be made in the partnership name."

The passage relied on by Mr. Park appears in the speech of Lord Macmillan who, after citing Rule 10 (now s 152), said (at page 247):

> "The profits of a business carried on by a partnership are thus treated as a separate subject of assessment and the assessment is made in the partnership name. The personification of partnerships is even more manifest in Rule 12 by which in certain circumstances a 'partnership shall be deemed to reside outside the United Kingdom, notwithstanding the fact that some of the members of the said partnership are resident in the United Kingdom'. That Rule uses the expressions 'the trade or business of a partnership firm'; 'the said firm shall be chargeable'; 'an assessment may be made on the said firm in respect of the said profits in the name of any partner resident in the United Kingdom'. Justification is

thus not wanting for the view expressed by Romer, L.J., that for taxing purposes 'a partnership firm is treated as an entity distinct from the persons who constitute the firm' (*Watson & Everitt* v. *Blunden*, 18 TC 402, at page 409). Having regard to the special vocabulary of the Income Tax legislation, I find no difficulty in interpreting the words 'a person charged' in Rule 9 to include the case of several persons associated together in partnership for the purpose of carrying on a trade in common, whose profits are by the Acts made the subject of separate assessment and separate charge."

But I do not think Lord Macmillan (or the other of their Lordships who heard the appeal) intended to differ from the general observations in the speech of Lord Simon which I have cited. Although a partnership firm was treated by Rule 10 as if it were a separate entity (and is so treated for the purposes of ss 152 and 153), it is not an entity for taxing purposes or any other purposes. Its name is simply a convenient way of describing the persons who constitute the firm. (See *Harrison* v. *Willis Bros*[1] 43 TC 61 *per* Lord Denning at page 73.)

In my judgment, therefore, the authorities do not support the proposition that expenditure which in the case of an individual trader would fall to be treated as serving a dual purpose can in the case of a large partnership be treated as expenditure incurred wholly and exclusively for the benefit of the firm as a separate entity, the personal benefit or advantage of an individual partner being treated as a mere incidental effect of the expenditure. Indeed, if the law were otherwise very surprising results would follow. In the instant case the shares of the partners in the partnership profits are adjusted by a London weighting allowance. If Mr. Park is right I do not see why, if the firm paid a London allowance out of its gross income and if it could satisfy the Commissioners that the sole purpose of paying this allowance was to persuade the most suitable persons to incur the greater expense of living in London so that they could conveniently work at the London Office, the weighting allowance should not similarly be deductible. Moreover, like the contribution to removal expenses which is now in issue, the weighting allowance would not attract tax in the hands of the partner to whom it was paid. In this case it has not been argued—I think rightly—that the expenditure can be severed as between the partners and that only that part of the expenditure attributable to the share of Mr. Wilson is disallowed under para (a) of s 130. Such an approach would clearly be inconsistent with the treatment of the profits of a partnership firm as the profits of a single business.

In *ex parte Gibbs* all their Lordships stressed the need to adopt a construction of taxing statutes in a way which did not produce inequalities as between Scotland and England. As I understand it, the conclusion I have reached will not produce any such inequality. Although for certain purposes a partnership in Scotland is treated as a corporate body (it can for instance own property in the partnership name) it is not liable to corporation tax and (subject to s 47) the Partnership Act 1890 applies to it. Sections 26 and 152–154 of the Taxes Act, of course, apply equally to a Scottish partnership. If any difference does arise the anomaly will have to be corrected by legislation.

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(1) [1966] Ch 619.

For the reasons I have given, I think this appeal must be allowed. A

Appeal allowed, with costs.

B

The Company's appeal was heard in the Court of Appeal (Slade, Balcombe and Stocker L.JJ.) on 9, 10, 11 and 15 December 1987 when judgment was reserved. On 29 January 1988 judgment was given unanimously against the Crown, with costs.

C

Andrew Park Q.C. for the Company.

Alan Moses for the Crown.

The following cases were cited in argument in addition to the cases referred to in the judgment:—*Bowden* v. *Russell and Russell* 42 TC 301; D [1965] 1 WLR 711; *Harrison* v. *Willis Bros.* 43 TC 61; [1966] Ch 619; *Korner and Others* v. *Commissioners of Inland Revenue* 45 TC 287; [1969] 1 WLR 554; *James Snook & Co. Ltd.* v. *Blasdale* 33 TC 244; *Samuel Dracup & Sons Ltd.* v. *Dakin* 37 TC 377.

E

Slade L.J.:—This is an appeal by a firm now known as Arthur Young and formerly known as Arthur Young McClelland Moores & Co. ("the firm") from an order of Vinelott J. made on 30 October 1986. He had before F him an appeal from the Special Commissioners by way of Case Stated under s 56 of the Taxes Management Act 1970. The appeal related to an assessment to income tax made against the firm under Sch D for the year 1981–1982. For this purpose the assessable profits of the firm fell to be calculated by reference to the accounting period 1 May 1979–30 April 1980. Briefly, the question at issue was and is whether two sums expended by the firm as G contributions to the expenses incurred by two of the partners in moving house at the request of the firm are deductible in ascertaining those profits.

The firm is a large and well-known firm of chartered accountants. As at 30 April 1980 it had 95 partners and about 1,400 employees, of whom about H a half were professionally qualified. It had 15 offices in various parts of England and Scotland. A new office was opened in Southampton in September 1980. By the time of the period with which we are concerned a partners' meeting had become a practical impossibility and an executive committee took most of the administrative decisions needed for the smooth run- I ning of the firm. This committee consisted of an elected chairman, six elected members and one appointed member. The partners as a whole met biennially.

From time to time individual partners and employees were requested to move from one part of the country to another in order to work in a different

office of the firm, to ensure that the staff were deployed to the firm's best advantage. The Commissioners' decision recorded(1):

> "The practice of moving partners and employees from one of the firm's offices to another commenced in about the year 1975. Within a short period of time it became the accepted policy of the firm that any partner or employee might be requested to move for the benefit of the firm's business. Employees of the firm who were taken into partnership were made aware of the policy at the time of their admission to partnership. Partners of the firm who became partners on the occasion of mergers were not always immediately aware of all the details of the policy on becoming partners in the firm. The policy was not a term of the partnership agreement.
>
> In an effort to make this policy palatable and acceptable to all members of the firm, the executive committee decided that the firm would make a substantial contribution to the cost of the private removal expenses of each person who was asked to move."

The contribution was made up of three elements. These elements are set out in the decision but their details do not matter. It is not suggested that the amounts of the contributions were too generous or exceeded the expenses actually incurred by the recipients. The firm's policy of requesting partners and employees to move and of contributing to their removal costs ("the firm's removal policy") applied equally to partners and employees of whatever grade or seniority.

The Commissioners found as facts(2):

> "All partners of the firm approved and agreed with the firm's removal policy. A partner would not be compelled to move if he refused after being requested to do so, but a partner who declined to move would be held in less esteem by his colleagues. We were told and we accept that his financial prospects might suffer and he would be looked upon as someone who did not have the best interests of the firm at heart. Occasionally partners would refuse to move when requested and in one or two such instances their shares of profits were affected. Employees who were requested to move could not be compelled to do so and, unlike partners, their positions in the firm would not be affected prejudicially should they refuse. On the other hand we heard no evidence concerning any instance of a refusal to move by an employee and the acceptance of such a move by an employee was likely to enhance his prospects of promotion within the firm and might lead to promotion on the occasion of the move.
>
> The firm accepted that as it was requesting partners and employees to move from their homes for business reasons, it would be inequitable to expect them to bear the whole cost of such removal. Indeed the firm realised that unless it bore the cost of such removals, it was most unlikely that anyone would move.
>
> The firm bore the cost of such removals only when the request came from the firm. Any partner or employee who wished to move from one office to another for personal reasons and was permitted to do so, bore the entire cost of such removal himself. Equally, partners and

(1) Page 708F/I *ante*. (2) Page 709C/H *ante*.

employees who moved house whilst continuing to work at the same office bore the entire cost of their removals. Occasionally a person's wish to work in a different office accorded with the wishes of the firm, but if the request for such a move came from the person undertaking it, he bore the entire cost without any contribution from the firm."

During the relevant accounting period the firm incurred expenditure of £8,568.40 on the relocation expenses of two partners. Of this sum, £5,446.25 was expended in connection with the removal of Mr. Wilson from London to Southampton and £3,122.14 was expended in connection with the removal of Mr. Cooper from Newcastle to Bristol.

The issue on this appeal is whether the expenses totalling £8,568.40 are deductible in ascertaining the firm's profits for the relevant year. During the same accounting period the firm paid out £15,560 in connection with the moving expenses of employees who moved at the firm's request. Significantly, as the firm would submit, the Crown accepts that these expenses are deductible in ascertaining the firm's profits for the relevant period.

The circumstances in which this expenditure arose are described in detail at pages 6–12 of the Commissioners' decision(1). They can be stated quite shortly. At the end of 1979 Mr. Darby, the chairman of the firm and of the executive committee, asked Mr. Wilson, who was then living in London, to open a new office for the firm in Southampton and to move to Southampton on a permanent basis, on the understanding that the firm would bear his relocation expenses. In due course Mr. Wilson agreed to go. In January 1980 he moved with his wife from London to a new house in Southampton. The Commissioners made these findings(2):

"Mr. Wilson would not have moved from London to Southampton in 1980 had his relocation expenses not been borne by the firm. He was financially unable to bear the cost himself and also believed that it would have been unreasonable for the firm to ask him to defray his own removal costs as he gained no immediate personal or financial advantage from the move. His links with Southampton were limited to his stay there as an undergraduate many years before and accordingly on the occasion of the move from London Mr. and Mrs. Wilson had to make a new life for themselves. From a financial point of view, in the short term Mr. Wilson suffered three disadvantages. First, his share of profit was reduced as he lost the London weighting element. Secondly, the prices of houses in Southampton increased less markedly from 1980 onwards than did those in London. Thirdly, although the firm paid out a total of £5,446.25 towards his removal costs, such sum did not cover the entire costs of removal: the refurbishing of the house in Southampton cost substantially more than the amount of the firm's disturbance allowance."

Mr. Cooper's move was a long-drawn out affair. In 1976 he was working as a partner in the Newcastle office of the firm and lived in a house in Northumberland. In that year he was asked to move to Bristol to become leader of the Bristol office of the firm. At that stage he declined to accept a permanent move to Bristol, but agreed to accept secondment to Bristol for two years. He retained his Northumberland house for the time being but in

(1) Pages 710A/712G *ante*. (2) Page 710G/I *ante*.

November 1976 purchased a cottage in Wiltshire, from which he commuted to Bristol, returning home to join his wife in Northumberland as often as possible. Subsequently, Mr. Darby again asked Mr. Cooper to accept a permanent move to Bristol. This time he accepted. He sold his house in Northumberland in May 1978, bought a house in Bristol in August 1979 and moved into it in May 1980. The Commissioners found as facts that "Mr. Cooper suffered considerable financial disadvantage as a result of his move from Newcastle to Bristol" and that "he would not have agreed to move to Bristol had the firm not agreed to contribute to his removal costs".

The Commissioners heard oral evidence from Mr. Darby, Mr. Wilson, Mr. Cooper and Mr. Rouse, who was not a member of the executive committee and regarded himself as a "typical mid-career partner of the firm". The Commissioners accepted evidence of the four partners to the following effect(1):

> "The four partners who gave evidence before us all took the view that the firm's removal policy was beneficial to the firm and that it would be unrealistic, unfair and commercially restrictive to expect partners or staff to move in such circumstances if the firm did not pay their relocation expenses. Each witness took the view that no distinction could be drawn between partners and staff in this context and that the object of the firm in implementing and continuing the firm's removal policy was to produce a more efficient firm."

Having made the findings of primary facts to which I have already referred, the Commissioners proceeded to make what they described as "the following inferential findings of fact"(2):

> "1. Although it is not a provision of the firm's partnership agreement that the relocation expenses of partners who are requested to move by the firm shall be paid by the firm, such a state of affairs is established partnership policy of the firm and understood to be so by all the partners of the firm.
>
> 2. The relocation expenses of partners of the firm are only paid or borne by the firm if a partner moves at the firm's request rather than at his own wish.
>
> 3. Relocation expenses when paid by or on behalf of a partner are paid by the firm only within the limits of what is reasonable in amount.
>
> 4. From the point of view of the firm, its policy in requiring partners to move from time to time and bearing their relocation expenses is followed entirely for business reasons.
>
> 5. Each partner of the firm concurs in the firm's removal policy entirely for business reasons.
>
> 6. In relation to the purpose of the firm's relocation expenditure, the firm had the same motive when paying or bearing partners' relocation expenditure and employees' relocation expenditure."

By virtue of s 108 of the Income and Corporation Taxes Act 1970 (which was the taxing statute in force at the material time) tax under Sch D falls to be charged in respect of the annual profits or gains arising or accru-

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(1) Page 712G/H *ante*. (2) Pages 712I/713C *ante*.

ing "...to any person residing in the United Kingdom from any trade, profession or vocation, whether carried on in the United Kingdom or elsewhere..." A

Section 109 provides that tax under Sch D shall be charged under a number of specified Cases, of which Case II is "tax in respect of any profession or vocation not contained in any other Schedule". B

Section 130, so far as material, provides that:

> "... in computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of— C
>
> (a) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation,
>
> (b) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of the trade, profession or vocation ..." D

Section 152 provides:

> "Where a trade or profession is carried on by two or more persons jointly, income tax in respect thereof shall be computed and stated jointly, and in one sum, and shall be separate and distinct from any other tax chargeable on those persons or any of them, and a joint assessment shall be made in the partnership name." E

The Commissioners held that the expenses totalling £8,568.40 reimbursed to Mr. Wilson and Mr. Cooper during the relevant year *were* "wholly and exclusively laid out or expended for the purposes of the profession" carried on by the partners of the firm and were therefore deductible in arriving at the taxable profits of the firm. F

The Commissioners in their decision, under the heading "Conclusions", having referred to s 130(a) and (b) of the 1970 Act, said: "... Mr. Wilson agreed to move to Southampton after being requested to do so. He had no personal reasons, whether social or financial, for agreeing to do so." G

A little later they said(1):

> "We have little difficulty in coming to the conclusion that Mr. Wilson moved from London to Southampton purely for business reasons. He was aware of the firm's removal policy. He approved of that policy. He could see that his move to Southampton would be for the benefit of the firm and that it was a sensible, professional and commercial decision." H I

As regards Mr. Cooper they said(2):

> "We find that in Mr. Cooper's case his reasons for moving to Bristol were even more emphatically business and commercial ones than

(1) Page 715G *ante*. (2) Page 716C/D *ante*.

were Mr. Wilson's. In neither case would the partner concerned have agreed to move if the firm had not been willing to underwrite his removal costs and the sole motive, in each partner's mind when moving, was that such a move would be sensible and beneficial for the professional and commercial interests of the firm as a whole."

They then considered the matter from the viewpoint of the firm as a whole, saying this(1):

"Turning now to consider the position from the aspect of the firm, it is clear that if the motives of Mr. Wilson and Mr. Cooper were entirely professional and commercial then, so also to an even greater extent, were the motives of the other ninety-three partners in the firm. We accept the evidence of Mr. Rouse as typical of the motives and beliefs of those partners in the firm (such as Mr. Rouse) who had not moved at the firm's expense and who had no prospect of doing so. There was no scintilla of personal benefit to each of those partners in bearing a proportion of the cost of the removal expenses of Mr. Wilson and Mr. Cooper. In the short term each of them suffered financially. They were content however, believing such expenditure to be for the ultimate benefit of the firm's business."

The gist of the Commissioners' ultimate conclusion is to be found in the following passage of their decision(2):

"We therefore hold that whether one looks at the firm as a single entity, as we are asked to do by Mr. Park or as ninety-five separate entities as suggested by Mr. MacKinlay, there is no duality of purpose in connection with the expenditure on the removal expenses of Mr. Cooper and Mr. Wilson during the accounting period. The firm incurred such expenditure wholly and exclusively for the purposes of its profession and the motive of each of the partners of the firm (including both Mr. Wilson and Mr. Cooper) was similarly circumscribed. But for the fact that Mr. Wilson and Mr. Cooper were partners in the firm and committed to advancing its interests, they would not have moved house. Further, we infer that given a free choice at the moment where each was asked to move, Mr. Wilson would have remained in London and Mr. Cooper, without any shadow of doubt, would have remained in Northumberland."

The question of law posed by the Case stated for the opinion of the Court (which was answered by Vinelott J. in the negative) was and is whether the Commissioners were correct in holding that the expenses totalling £8,568.40 were "wholly and exclusively laid out or expended for the purposes of the profession" carried on by the partners of the firm within the meaning of s 130(a) of the 1970 Act and therefore deductible in arriving at its taxable profits. Since there is no appeal from the Commissioners on a question of fact, the issue on this appeal resolves itself to the question whether their findings of primary fact entitled them to draw the inference that this expenditure was wholly and exclusively incurred for the purposes of the firm's profession: (compare *Mallalieu* v. *Drummond*(3) [1983] 2 AC 861 at page 872 *per* Lord Brightman).

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(1) Page 716D/F *ante*. (2) Page 717A/C *ante*. (3) 57 TC 330, at page 367.

Before the decision of the House of Lords in *Mallalieu* v. *Drummond* [1983] 2 AC 861 there was a widespread belief that, in ascertaining the purpose of expenditure, the state of mind of the spender was the only relevant factor. Thus, in *Bentleys, Stokes & Lowless* v. *Beeson*(1) 33 TC 491 Romer L.J. had said this (at pages 503–504)(2):

> "The sole question is whether the expenditure in question was 'exclusively' laid out for business purposes, that is: What was the motive or object in the mind of the two individuals responsible for the activities in question?"

In *Mallalieu* the House of Lords decisively rejected this view of the law. That familiar case concerned the right of a female barrister, in computing the profits of her profession, to deduct the cost of replacing and laundering clothes suitable to be worn under her gown in court appearances. The General Commissioners found as facts (*inter alia*) that she had an ample private wardrobe, that she would not have bought the disputed items but for the requirements of her profession and that the preservation of warmth and decency was not a consideration which crossed her mind when she bought them. Nevertheless, they found that, in incurring the expense, she had a dual purpose, namely to enable her to earn profits in her profession and to enable her to be properly clothed during the time when she was on the way to chambers or to court and while she was thereafter engaged in her professional activity and on other occasions when she did not find it desirable that she should change out of her court clothes. Sitting at first instance, I reversed the Commissioners' decision and this Court upheld my decision, essentially on the same grounds in each case as those subsequently expressed thus by Lord Elwyn-Jones in a dissenting speech in the same case in the House of Lords ([1983] 2 AC at page 868)(3):

> "It was in my view not open to the commissioners in view of their findings of fact as to the appellant's purposes to conclude that as in this case the clothing was suitable for private as well as for professional use, one of her purposes must have been to spend money on the clothing for her private use. This in my view was to disregard the evidence which they accepted as to her actual motive and purpose. This they have found was to enable her to carry on her profession. Other benefits derived from the expenditure, namely that the clothing also provided her with warmth and decency, were purely incidental to the carrying on of her profession in the compulsory clothing she had to wear."

However, the majority of the House of Lords took a different view. The *ratio* of their decision is to be found in the following passage from the leading speech of Lord Brightman (at page 875)(4):

> "I return to the question for your Lordship's decision whether there was evidence which entitled the commissioners to reach the conclusion that the object of the taxpayer in spending this money was not only to serve the purposes of her profession, but was also to serve her private purposes of providing apparel with which to clothe herself. Slade J. felt driven to answer the question in favour of the taxpayer because he felt constrained by the commissioners' finding that, in effect, the only object present in the mind of the taxpayer was the requirements of her profes-

(1) [1952] 2 All ER 82. (2) *Ibid*, at page 84G/H. (3) 57 TC 330, at page 363.
(4) *Ibid*, at pages 369/370.

sion. The conscious motive of the taxpayer was decisive. The reasoning of the Court of Appeal was the same. What was present in the taxpayer's mind at the time of the expenditure concluded the case.

My Lords, I find myself totally unable to accept this narrow approach. Of course Miss Mallalieu thought only of the requirements of her profession when she first bought (as a capital expense) her wardrobe of subdued clothing and, no doubt, as and when she replaced items or sent them to the launderers or the cleaners she would, if asked, have repeated that she was maintaining her wardrobe because of those requirements. It is the natural way that anyone incurring such expenditure would think and speak. But she needed clothes to travel to work and clothes to wear at work, and I think it is inescapable that one object, though not a conscious motive, was the provision of the clothing that she needed as a human being. I reject the notion that the object of a taxpayer in inevitably limited to the particular conscious motive in mind at the moment of expenditure. Of course the motive of which the taxpayer is conscious is of a vital significance, but it is not inevitably the only object which the commissioners are entitled to find to exist. In my opinion the commissioners were not only entitled to reach the conclusion that the taxpayer's object was both to serve the purposes of her profession and also to serve her personal purposes, but I myself would have found it impossible to reach any other conclusion."

While the House of Lords in *Mallalieu* accepted that the Commissioners will generally "need to look into the taxpayer's mind at the moment when the expenditure is made", they considered that no such inquiry is necessary in "obvious cases which speak for themselves": (see [1983] 2 AC at page 870D([1])). They regarded the case before them as falling into the latter category because they regarded it as inescapable that one object of the expenditure was "the provision of the clothing that [the taxpayer] needed as a human being" (*ibid* at page 875D([2])). This private and personal advantage given to her by the expenditure could not be treated as a mere incidental effect of expenditure wholly and exclusively incurred for the purpose of meeting her professional requirements. In the circumstances their Lordships considered the Commissioners not only entitled but bound to conclude that her object was both to serve the purposes of her profession and also to serve her personal purposes: (*ibid* at page 875E).

Such is my understanding of the *ratio* of the decision in *Mallalieu*. I might add that we were referred to at least three decisions in which certain expenses incurred by individuals were held not deductible for tax purposes. The first was *Newsom* v. *Robertson*([3]) 33 TC 452, which concerned expenses incurred by a barrister in travelling between his home at Whipsnade and his chambers in Lincoln's Inn. The second was *Mason* v. *Tyson*([4]) 53 TC 333, which related to the expenses incurred by a chartered surveyor in repairing and redecorating a small flat over his business premises, where he slept from time to time when he had to stay late at work. The third was *Hillyer* v. *Leeke*([5]) 51 TC 90, which concerned the expenses incurred by a computer engineer in the upkeep of two ordinary civilian suits worn only when he was at work. In the light of *Mallalieu*, whatever the motives of the taxpayers, I doubt whether in any of those three cases it would have been open to the

([1]) 57 TC 330, at page 365. ([2]) *Ibid*, at page 370. ([3]) [1952] 2 All ER 728.
([4]) [1980] STC 284. ([5]) [1976] STC 490.

Commissioners, as a matter of law, to find that the expenditure in question had been incurred solely for business purposes; the nature of the expenditure would have precluded it.

In argument before the Commissioners in the present case, presumably in the light of *Mallalieu*, a concession was made on behalf of the firm and recorded thus (at page 21 of the decision)([1]):

> "It is common ground in this appeal that a sole trader incurring removal expenses such as those which we have considered in the instant case would not be entitled to claim deductions in respect of them in his trading accounts for tax purposes. It is not necessary for us to say whether we subscribe fully to this point of view but for present purposes we are content to accept that it will be correct in most cases. It is hard to imagine a set of circumstances in which a sole trader would be able to contend that his motive for moving house was wholly and exclusively for the purposes of his trade, profession or vocation. Being a single indivisible person it is a virtual certainty that his motives will be coloured by reasons other than business ones."

It appears that before Vinelott J. no formal concession was made that a sole trader, incurring removal expenses such as those in issue in the present case, would not be entitled to claim deductions in respect of them in his trading accounts for tax purposes. However, it seems that the contrary was only somewhat faintly argued: (see for example TC Leaflet 3062 at page 5([2])). The learned Judge by inference clearly concluded or assumed that such expenses would not be deductible, without explicitly stating reasons for this conclusion or assumption. In this Court Mr. Park, while again making no formal concessions to this effect, appeared again not disposed to argue more than somewhat faintly to the contrary.

Mr. Moses invited us to hold that the expenses incurred by an individual in moving house can never be said to have been incurred "wholly and exclusively" for business purposes. In his submission the very nature of the expenditure, as serving in part to meet a human need of the spender, would oblige the Commissioners as a matter of law to hold that it was incurred at least in part for private purposes.

I do not think it necessary or desirable for us to state any such unqualified principle about hypothetical cases which are not before us. I am not, for my part, prepared to say that no cases could ever arise where such expense incurred by an individual could be deductible. Lord Brightman in *Mallalieu* v. *Drummond*([3])[1983] 2 AC at page 875H, Templeman J. in *Caillabotte* v. *Quinn*([4]) [1975] 1 WLR 731 at page 733F and Goulding J. in *Hillyer* v. *Leeke*([5]) 51 TC 90 all recognised that there might be exceptional cases where expenditure on clothing could properly be said to have been incurred wholly and exclusively for the purpose of a business, even though the clothing in question while worn would confer on the wearer the incidental human benefits of warmth and decency. In a decision subsequent to *Mallalieu*, Nourse J. in *Watkis* v. *Ashford Sparkes & Harward*([6]) [1985] STC 451, on rather special facts as found, held (*inter alia*) that the Special Commissioners were entitled to conclude that the cost of overnight accommodation for the partners in a solicitors' firm at its annual conference was wholly and exclusively incurred

([1]) Page 717E/F *ante*. ([2]) Page 722C/D *ante*. ([3]) 57 TC 330, at page 370.
([4]) 50 TC 222, at page 226. ([5]) [1976] STC 490. ([6]) 58 TC 468.

for business purposes and that no distinction was to be made between the cost of accommodation and meals. Conceivably in some cases the question whether expenses incurred by an individual in moving house might involve, in Lord Brightman's words, a "matter of fact and degree": (see *Mallalieu* at page 875F([1])). Furthermore, distinctions might perhaps fall to be drawn between the cost of providing a house and the cost of moving to it.

Nevertheless, I accept that, in the light of *Mallalieu*, if not in all cases, at least in most, the Commissioners would be bound as a matter of law to hold that, whatever the taxpayer's conscious motive, the purpose of expenditure incurred by an individual in moving his belongings from a previous home to a new home must in part have been to serve a private purpose—that is to say the purpose of meeting his human need to have a properly equipped home in which to live. The translation of an actual case to a hypothetical case is not a wholly satisfactory process. In the circumstances, however, I am willing to proceed on the same assumption in favour of the Crown as did the Commissioners and the learned Judge, namely that the expenses in question in the present case would not have been deductible if incurred by an individual.

The learned Judge, proceeding on this assumption, went on to say:([2])

> "The question is whether expenditure which would not have been deductible if incurred by an individual trader is deductible if incurred by partners in pursuance of a policy adopted by all the partners as one calculated to advance the interests of their firm."

In the course of dealing with this question, the learned Judge gave a helpful description of the three stages which are in effect involved in assessing partnership profits to tax. The accuracy of this description has not been challenged in argument before us and I gratefully adopt it([3]):

> "First, the profits of the firm for an appropriate basis period must be ascertained. What has to be ascertained is the profits of the firm and not of the individual partners. That is not, I think, stated anywhere in the Income Tax Acts, but it follows necessarily from the fact that there is only one business and not a number of different businesses carried on by each of the partners. The income of the firm for the year is then treated as divided between the partners who were partners during the year to which the claim relates—the year of assessment—in one of the many senses of that word: see the proviso to section 26 of the Taxes Act 1970. That is the second stage. The tax payable is then calculated according to the circumstances of each partner—that is, after taking into account on the one hand any personal allowances, reliefs or deductions to which he is entitled and any higher rate of tax for which he is liable. The Acts do not provide for the way in which personal allowances, reliefs and deductions are to be apportioned between the partnership income and other income. I understand that in practice they are deducted from the share of the partnership income if that was the partner's main source of income. When the tax exigible in respect of each share of the partnership income has been ascertained the total tax payable is calculated. Section 152 (formerly Rule 10 of the Rules applicable to Cases I and II of Schedule D) provides that the total sum so calculated is to be treated as 'one sum ... separate and distinct from

([1]) 57 TC 330, at page 370. ([2]) Page 723I *ante*. ([3]) Page 724E/H *ante*.

any other tax chargeable on these persons ... and a joint assessment shall be made in the partnership name.' That is the third stage." A

The authorities show clearly that, at least for the purpose of conducting the first of these three stages, (1) a partnership is to be treated as an entity separate from the partners constituting the firm, (2) it is accordingly possible for a partnership to incur an expense which is deductible in ascertaining the firm's profits, even though the recipient is one of its own members. Thus, in *Heastie* v. *Veitch & Co.*[1] 18 TC 305 the question arose whether rent which a partnership paid to its senior partner for the occupation of its business premises was deductible in computing the firm's liability to tax under Sch D. Finlay J. held that, though the rent would have been deductible if paid to an outsider, "that cannot apply where you are dealing with a partnership and where two partners, so to speak, pay and one receives". His decision was reversed by the Court of Appeal. Romer L.J. accepted that, in ascertaining the profits of a partnership for tax purposes, it is not permissible to deduct payments made to a partner for "*services rendered as a partner*". However, he said (at page 319)[2]: B C D

"... it is not the fact that you can never, in ascertaining the profits of a partnership, deduct something paid to one of the partners. An illustration I ventured to give during the argument in this: suppose two people are carrying on business in partnership as hotel proprietors and it is necessary for the purpose of carrying on that hotel, that business, that they should be supplied from time to time with wine, and suppose one of the partners is carrying on a wholly independent business on his own account in the wine business and supplies wine to the partnership, it would be idle to suggest, would it not, that for the purpose of ascertaining the profits of the hotel you could not deduct the sums paid to the partner who was the wine merchant? The fact that such a deduction would be permissible is, I think, made clear by Rule 10 of the Rules to Cases I and II which says that, for the purposes of taxation under Schedule D, a partnership is treated as a separate entity from individual partners composing the firm." E F

The application of the same principle rendered impermissible a deduction in *Watson & Everitt* v. *Blunden* 18 TC 402. In that case the taxpayer, who was a practising solicitor, had in partnership with others bought certain property with a view to working and developing it. He was entitled to four-ninths of the profits of the partnership and acted as its solicitor. He claimed that, in computing his profits as a solicitor, four-ninths of the profits costs should be deducted, essentially on the grounds that he was to this extent paying himself. Finlay J., and this Court on appeal, rejected this contention. Romer L.J. said (at page 410): G H

"It really is, if I may say so, too ridiculous to suggest that, for the purposes of assessing the profits of those two firms under Schedule D, you are going to be troubled with the partnership accounts and the rights as between the partners. For the purposes of Schedule D, the two firms are to be treated as separate entities and, so treating them, there is no difficulty at all. Treating here, therefore, the partnership carrying on this as adventure as one entity, and the solicitor, of course, as he is, as a perfectly distinct entity, there is not trouble." I

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(1) [1934] 1 KB 535. (2) *Ibid*, at pages 546/547.

A In my opinion, as Mr. Park submitted on behalf of the firm, the two last-mentioned authorities establish or illustrate two propositions. A payment made to a partner for services rendered by him to his firm *in his capacity as a partner* cannot be treated as an expense in ascertaining the profits of the firm for tax purposes. Conversely, however, a payment made to a partner otherwise than for services rendered to the firm in his capacity as a partner, falls B to be treated as an expense; whether it passes the "wholly and exclusively" test is another matter. The learned Judge made this comment in regard to *Heastie* and *Watson & Everitt*[1]:

> "Neither case lends any support to the proposition that in ascertaining the profits of the firm a benefit or advantage conferred on a C partner as a partner can be treated as ancillary to the purposes attributed to the firm considered as a separate entity."

With this general statement of principle I respectfully agree. However, I do not think the relevant payments made to either of Mr. Wilson and Mr. Cooper can be regarded as payments made to him for services rendered to D the firm in his capacity as a partner. Accordingly, I think they clearly fall to be deducted in ascertaining the profits of the partnership at the first of Vinelott J.'s three stages. The question is whether s 130 precludes them from being deductible at the third stage.

E The effect of para (a) of s 130 must be to exclude as a deduction the money spent by the firm unless it can establish that such money was spent exclusively for the purposes of its profession as a firm of chartered accountants.

As Lord Brightman said in *Mallalieu* v. *Drummond* (*supra* at page F 870[2]):

> "The words in the paragraph 'expended *for the purposes* of the trade, profession or vocation' mean in my opinion 'expended *to serve the purposes* of the trade, profession or vocation'...
>
> G To ascertain whether the money was expended to serve the purposes of the taxpayer's business it is necessary to discover the taxpayer's 'object' in making the expenditure."

Thus, unless the taxpayer and the person benefiting from the expenditure be the same person, it is the object of the taxpayer in making the expen- H diture, rather than that of the beneficiary in receiving it, which has to be ascertained. Ultimately, the issue in the present case must be whether the Commissioners' findings of primary fact entitled them to draw the inference that *the firm's* object in making the relevant expenditure was wholly and exclusively to serve the purposes of its business.

I The learned Judge came to the conclusion that[3]

> "the authorities do not support the proposition that expenditure which in the case of an individual trader would fall to be treated as serving a dual purpose can in the case of a large partnership be treated as expenditure incurred wholly and exclusively for the benefit of the firm as a

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(1) Page 725H *ante*. (2) 57 TC 330, at page 365. (3) Page 727D/E *ante*.

separate entity, the personal benefit or advantage of an individual partner being treated as a mere incidental effect of the expenditure." A

This, as I read his judgment, was the basis on which he concluded that the Commissioners' decision was insupportable in law.

I respectfully differ from this view. While the authorities do not lend explicit support to the proposition mentioned by him, I think that none of the cases cited to us rebut it. There appear to have been surprisingly few cases in which the courts have ever been invited to consider the application of the "wholly and exclusively" test in the context of partnership expenditure. No case has been cited to us in which any court higher than that of first instance has considered it since *Mallalieu.* B C

In my judgment, the analogy between the case of expenses incurred by a sole trader of which he is the beneficiary and the case of expenses incurred by a partnership, of which one partner is the beneficiary, is a misleading one. Section 130(a), as I have said, directs attention to the object of the spender, not the recipient. In the first of those two cases it is impossible to differentiate between the objects of the taxpayer qua spender and qua beneficiary; if in part the expenditure served his needs as a human being, then, in the light of *Mallalieu,* it may be difficult to deny that at least part of the purposes of the spender was to serve that need. In the second case, the position appears to me quite different. D E

In the second case, where the payer and the beneficiary are not the same, it is clearly possible, in a sense in which it was not possible in *Mallalieu's* case, to evaluate the objects of the payer in incurring the expenditure separately and distinctly from those of the beneficiary. Where the payer is a partnership, whether or not the recipient is one of the partners, I think that, save in a case where the nature of the expenditure speaks for itself, a proper application of s 130(a) requires the Revenue to ascertain the purpose of the expenditure at least primarily by what was referred to in argument as "the collective purpose" of the partnership in incurring it. F

True it is that under the general law a partnership has no legal personality of its own distinct from that of the individual partners who compose it: (see for example *Ex parte Gibbs*[1] [1942] AC 402 at page 413 *per* Viscount Simon L.C.). Nevertheless, in my judgment, the authorities show that, for the purpose of computing the profits of a firm liable to income tax under Case II of Sch D, even if not for other purposes of the Taxes Acts, a partnership is regarded as an entity distinct from its members: (see for example *Heastie* v. *Veitch & Co.*[2] (*supra*), *Watson & Everitt* v. *Blunden*[3] (*supra*) and *Padmore* v. *Commissioners of Inland Revenue*[4] [1987] STC 36 at page 45 *per* Peter Gibson J.). While the intentions and motives of individual partners may well be relevant in this context, in my judgment s 130 must correspondingly contemplate that ultimately it is the collective purposes of this notionally distinct entity which has to be ascertained. G H I

I would reject the contention put forward to the Commissioners on behalf of the Crown (recorded at page 20 of their decision[5]) that, in carrying out this exercise, the firm should be regarded as 95 entities. An inquiry

(1) 24 TC 221. (2) 18 TC 305. (3) 18 TC 402.
(4) 62 TC 352. (5) Page 717A/B *ante.*

into the separate minds of 95 partners is not merely impractical but as inappropriate as it would be to look into the separate minds of 95 directors of a company when ascertaining the purpose of corporate expenditure—*a fortiori* when the right to make administrative decisions has been delegated to a smaller executive body, as in the present case.

In the present case there would appear to be no doubt that the collective purpose of the firm in paying the removal expenses of *employees* totalling £15,560, referred to in the Commissioners' decision, was wholly and exclusively to promote the professional business carried on by the firm. And the Revenue has so accepted.

Likewise, in my judgment, if one looks at the matter in the absence of authority, the inescapable inference from the Commissioners' findings of primary fact is that the collective purpose of the firm, in bearing a proportion of the removal costs of Mr. Wilson and Mr. Cooper, was wholly and exclusively to advance its professional interests. This was the inference which the Commissioners drew. Was there any authority or principle of law to prevent them from so finding in accordance with their view of the facts?

In any case where a partnership has made a payment to one of its partners from which he has derived an element of personal benefit and the firm subsequently seeks to claim that the money has been expended wholly and exclusively for the purposes of the partnership's trade or profession, it must be right that the Revenue should view the claim with some circumspection and scrutinise it with corresponding care. Particularly if the partnership is a small one and the benefit is of a type which serves needs of the recipient as a human being (for example, for food, clothing or habitation) it may be difficult to resist the inference that at least part of the collective purpose of the expenditure was to meet that need, in other words that the expenditure was incurred with a dual purpose. As Lord Brightman put it in *Mallalieu's* case (at page 875D)[1]:

> "Of course the motive of which the taxpayer is conscious is of vital significance, but it is not inevitably the only object which the Commissioners are entitled to find to exist."

For my part, however, I do not accept the proposition that in such circumstances expenditure can, as a matter of law, *never* be said to have been incurred wholly and exclusively for the purposes of the trade or profession of the partnership. The decision of this Court in *Heastie* v. *Veitch & Co.* (*supra*) well illustrates that the mere fact that the recipient partner receives an incidental benefit from the payment in question does not by itself, and as a matter of law, prevent the payment from being deductible by virtue of s 130, if the collective purpose of the partnership in making the payment was wholly and exclusively to advance the partnership's trade or professional interests. As it happened in that case, the receipt of rent did not serve the interests of the recipient as a human being. It was not therefore a *Mallalieu* type of case. However, where partnership expenditure is in question, I can see no difference in principle between those payments made by a partnership to a partner (otherwise than for services to the partnership) which serve in part to meet his human needs and those which do not. I repeat that, in my judgment, it is the collective purpose of the partnership as a whole which has to be ascer-

(1) 57 TC 330, at page 370.

tained. I see no reason why in principle a payment by a partnership to a partner, which happens to meet in part the human needs of the recipient, should *necessarily* fall foul of s 130, while other payments which confer on him incidental benefits of a different nature are not necessarily similarly disqualified from deduction in computing the firm's profits.

Everything must turn on a fair and proper assessment of the partnership's collective purpose in making the payment. If it serves in part to meet a human need of the recipient, that will merely be one factor, albeit an important one, for the Revenue to take into account in carefully scrutinising the firm's collective purpose or purposes. The situation is, in my view, quite different from that where an individual trader makes a payment which serves to meet such a need of his own. In such a case it is the very same entity who makes and receives the payment; as the decision in *Mallalieu* demonstrates, it is impossible to disregard the human benefit which he has received as recipient in ascribing to him, as payer, purposes in making the payment.

The Commissioners' very careful decision can perhaps be fairly criticised on a ground forcefully submitted by Mr. Moses, namely, though they referred in passing to the decision of the House of Lords in *Mallalieu*, they did not sufficiently analyse the possible impact of that decision on the problem before them. Perhaps because it was not specifically put to them, they did not specifically deal with the point forcefully advanced by Mr. Moses in the forefront of his argument before us—namely that, in the light of *Mallalieu* the very nature of the relevant expenditure in the present case precluded the Commissioners as a matter of law from finding (as they did) that the relevant expense had been incurred by the firm wholly and exclusively for the purposes of its profession.

For the reasons which I have already stated, however, I do not think that this submission was well founded. As the learned Judge correctly stated(1):

> "... if a personal benefit or advantage conferred by expenditure for which a deduction is claimed can fairly be considered either as a purpose of the expenditure or as an incidental effect of expenditure incurred solely for a business or professional purposes it is for the Commissioners to determine what was the purpose of the expenditure."

In my judgment, as Mr. Park submitted, this proposition covers this case and the learned Judge, with all respect to him, erred in interfering with the Commissioners' decision. Having regard to their findings of primary fact, on the rather special facts of this case, they were in my opinion well entitled, after a close scrutiny of the facts, to draw the inference that the relevant expense had been incurred wholly and exclusively for the purposes of the firm's profession and to regard the benefits received by Mr. Wilson and Mr. Cooper as merely incidental to the achievement of those purposes. The so-called benefits, it might be added, consisted of no more than a partial indemnity against some of the costs of moves of house which they did not wish to make.

I would allow this appeal. I would set aside the order of Vinelott J. and affirm the determination of the Special Commissioners.

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(1) Page 723G/H *ante*.

Balcombe L.J.:—I have had the advantage of reading in draft the judgment of Slade L.J. and, for the reasons which he there gives, I, too, would allow this appeal. However, for my part, I would wish to keep open for argument, in a case in which it arises directly, the question whether there could be circumstances in which removal expenses of the kind in issue in the present case would be deductible if incurred by an individual. Notwithstanding the concession made by the Appellants before the Special Commissioners—a concession about which, I note, the Special Commissioners express some hesitation (see page 21 of the decision(1))—it seems to me that there may be circumstances in which it may be possible to establish that the costs of moving house may be deductible when it can be proved that the move took place only to serve the purposes of a trade, profession or vocation. While I accept that the provision of clothing, food and drink, and habitation, must always (in part, at least) be simply to serve a human need, it seems to be that it may be possible, in appropriate circumstances, to distinguish the cost of *moving* house from the cost of *providing* a house.

Stocker L.J.:—I also agree that this appeal should be allowed for the reasons given in the draft judgments of my Lords which I have had the benefit of reading.

For my part, I share the reservations of Balcombe L.J. with regard to the position of an individual carrying on his trade or profession on his own. Having regard to the conclusions of my Lords, with which I agree, on the basis of the collective purpose of the partnership, it is unnecessary to express any concluded view with regard to the position of individual traders.

Appeal allowed, with costs. Leave to appeal to the House of Lords granted upon terms as to costs.

The Crown's appeal was heard in the House of Lords (Lords Bridge of Harwich, Brandon of Oakbrook, Templeman, Oliver of Aylmerton and Goff of Chieveley) on 9, 10 and 11 October 1989 when judgment was reserved. On 23 November 1989 judgment was given unanimously in favour of the Crown, with costs.

(2)*Christopher McCall Q.C.* and *Alan Moses* for the Crown. This appeal raises questions of considerable importance to the Crown in relation to partnership expenses. The particular issue which it raises is whether contributions by a partnership towards removal expenses incurred by two of the partners in moving home at the request of the partnership are deductible in ascertaining the assessable profits of the partnership. The respondent seeks to go wider and raise the whole question of deductibility of expenses in general and to invite your lordships to reconsider the decision of this House in *Mallalieu* v. *Drummond* [1983] AC 861.

It is the Crown's submission that the Special Commissioners misdirected themselves fundamentally and that their findings of fact cannot be sustained. Further, the Court of Appeal fell into almost the same error in treating the partnership as a collective entity distinct from the individual partners and as treating the payments made as if made to strangers. A second question which arises is: whether in considering the object of the payment it is possible to ignore the individual wish of the partner concerned in effecting the expense

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(1) Page 717E/F *ante*. (2) Argument reported by J.A. Griffiths Esq., Barrister-at-Law.

which was reimbursed and subordinate it to the collective wish of the partnership.

There are three relevant basic principles of taxation. (1) The computation of profits requires the deduction of expenses to be taken into account: *Usher's Wiltshire Breweries Ltd.* v. *Bruce* [1915] AC 433. (2) Profits are to be computed in accordance with the normal principles of accountancy: *Beauchamp* v. *F.W. Woolworth Plc.* [1990] AC 478, 489, *per* Lord Templeman. (3) Just as a capital profit is not a profit for the purposes of income tax so normally the principle is that expenses are deductible if they are not of a capital nature: *British Insulated and Helsby Cables Ltd.* v. *Atherton* [1926] AC 205. It is necessary to state the basic principles because the statute does not state what is deductible but only what is *not* deductible. The provisions of s 130 of the Income and Corporation Taxes Act 1970 are restrictive provisions. The Crown's case is that s 130(*a*) excludes the present payments from being deducted in computing the profits of the partnership. For the provisions relating to partnerships: see s 26(*c*) of the Act of 1970. This indicates that in the last resort what is being taxed is not the partnership but the individual partners.

As to the facts, both the Special Commissioners and the Court of Appeal relied on motive. But the Act refers to "purposes" for which the money is laid out or expended. The question that has to be asked is: for what purpose did these two partners move their respective homes from A to B? The answer must be that it was not wholly and exclusively for a professional purpose, but partly for personal purposes. It is not enough that they were moving for the good of the partnership: in moving they were re-establishing their private lives and that is a private purpose, so the expenses were not exclusively for the purposes of the trade.

The following principles are to be extracted from the authorities: (i) Paragraph (*a*) of s 130 raises the question whether the expenditure was laid out for the purposes of serving the interests of the trade or business, whether it was incurred as a way of earning the profits of such trade or business: *Mallalieu* v. *Drummond* [1983] 2 AC 861, 870A, *per* Lord Brightman. (ii) This is a question of fact and its determination by the General or Special Commissioners can only be overturned if they have misdirected themselves: *Edwards* v. *Bairstow* [1956] AC 14; and *Bentleys, Stokes & Lowless* v. *Beeson* [1952] 2 All ER 82. (iii) The question is primarily, but not exclusively, one of subjective intent: the *Bentleys, Stokes* case; *Robinson* v. *Scott Bader Co. Ltd.* [1981] 1 WLR 1135 and; *Mallalieu* v. *Drummond* [1983] 2 AC 861. As a general matter, it is necessary to enquire whether there was a purpose present even though the individual was not conscious of it: *Mallalieu* v. *Drummond.* (iv) The question revolves around purpose and not motive. (v) It is an exclusive purpose that has to be found if deduction is to be permitted. It is not enough that there was a predominant purpose.

The following cases illustrate the approach which has been taken by the courts as to whether or not claimed business or professional expenses are deductible: *Newsom* v. *Robertson* [1953] Ch 7; *Horton* v. *Young* [1972] Ch 157; *Sargent* v. *Barnes* [1978] 1 WLR 823; *Edwards* v. *Warmsley Henshall & Co.* (1968) 44 TC 431; *Norman* v. *Golder* (1944) 26 TC 293; *Prince* v. *Mapp* [1970] 1 WLR 260; *Caillebotte* v. *Quinn* [1975] 1 WLR 731; *Watkis* v. *Ashford Sparkes & Harward* [1985] 1 WLR 994; and *Mason* v. *Tyson* (1980) 53 TC 333.

A Attention is drawn in particular to *Newsom* v. *Robertson* [1953] Ch 7, which dealt with travelling expenses, for the graphic and helpful distinction drawn by Denning L.J. between living expenses and business expenses. The test is not whether the expenditure is a benefit to the taxpayer, but whether the expenses claimed were living expenses or business expenses. In the present case these expenses were plainly living expenses. Compare also *Mason* v. B *Tyson*: if the expenses in that case were non-deductible the same must be true here.

Mallalieu v. *Drummond* [1983] 2 AC 861 is very pertinent in considering the present case. If the decision of the Court of Appeal is upheld then it would follow that if Miss Mallalieu had been a partner in a firm of solicitors C then she would be entitled to deduct the expense she had incurred in providing herself with her professional attire but not if she had been a member of the Bar. That is the extraordinary consequence of the decision below in the present case.

The Special Commissioners fundamentally erred in asking themselves D the wrong question. They considered the motives for the move by the partners. But to consider motivation is not conclusive and is not helpful. If a motive were the correct test then *Mallalieu* v. *Drummond* [1983] 2 AC 861 would have been decided in favour of the taxpayer.

There is a crucial difference in law between the tax position of partners E and that of their employees which was not considered by the Special Commissioners. It is implicit in their decision that these expenses were incurred for the purposes of the partnership's profession and that any benefits received by the individual partners were only incidental to the achievement of that end. But that approach does not address the question at issue here, namely, whether these expenses were incurred wholly and exclusively F for the purposes of the profession.

The judgment of Vinelott J. [1986] 1 WLR 1468 came to the right decision and he was entirely right in holding that the partnership cases such as *Heastie* v. *Veitch & Co.* [1934] 1 KB 535 give no support to the taxpayer's argument. G

Partnership as an entity distinct from its members. Neither as a matter of general English law nor as a matter of United Kingdom tax law has a partnership a legal personality of its own distinct from that of the individual members undertaking the business of the partnership: *Income Tax Commissioners for the City of London* v. *Gibbs* [1942] AC 402, 413, *per* H Viscount Simon L.C.

The first stage in assessing the profits of a trading or professional partnership to tax is to calculate the profits of the trade or profession undertaken by the individual partners. It is misleading to describe that as ascertaining "the profits of the firm." The firm is merely a collective noun used to I describe all the individuals who have entered into the partnership.

In computing the profits of the trade or profession, expenses of an income nature not excluded by s 130 of the Act of 1970 are deducted. Payments made to a partner acting in a capacity other than a partner are analogous to payments made to third party recipients. *Heastie* v. *Veitch & Co.* [1934] 1 KB 535 and *Watson & Everitt* v. *Blunden* (1933) 18 TC 402, are

examples of payments made in return for services rendered by a partner in a capacity other than that of partner, in the first case in the capacity of a landlord and in the second in the capacity of a practising solicitor.

The Court of Appeal looked at the reimbursements and asked what was their purpose rather than at the purposes of the partners in incurring the expenses reimbursed. The payments made to Mr. Wilson and Mr. Cooper in the present case are not analogous to payments made to a partner acting as landlord or solicitor. They were made because they were partners. In so far as the payments may be regarded as being in return for services they were for services rendered by Mr. Wilson and Mr. Cooper as partners. They were made to them in their capacity as partners. Accordingly, the Court of Appeal erred in distinguishing between the partnership as payer and Mr. Wilson and Mr. Cooper as recipients. The payments were made by all the partners on behalf of each other and were paid by Mr. Wilson and Mr. Cooper just as much as by all the other partners. They cannot therefore be treated as expenses at all in ascertaining the profits of the accountancy profession for tax purposes. The decision of the Court of Appeal turns on the distinction between the partnership as payer and the partners as recipients. If, as the Crown submits, the payments were not made to Mr. Wilson and Mr. Cooper in return for services rendered otherwise then as partners no such distinction can be made; as a result it is necessary to look at the purposes of the expenditure reimbursed, and not simply the purposes of the reimbursements, and the payments were therefore not deductible expenses. If the Court of Appeal is right then partnerships will be able to obtain deduction for many types of expenditure which is for the personal benefit of the partners: it will be enough that the partnership was acting for its collective trading purposes, since on the Court of Appeal's reasoning the individual partners' purposes will be irrelevant. That cannot be right.

In conclusion, if the decision of the Court of Appeal is correct its application cannot be confined to large partnerships. The attribution of a "collective purpose" to a partnership in present circumstances is fundamentally wrong.

Andrew Park Q.C. and *David Goy* for the firm. The case for the partnership may be summarised as follows: (1) For the partnership to succeed (i) the payments must have been expenses; and (ii) they must have been laid out wholly and exclusively for the purposes of the profession.

(2) A payment made by a partnership to a partner is an expense (rather than allocation of profit) if it is paid to the recipient for something done by him acting otherwise than as a partner. (3) When Mr. Wilson and Mr. Cooper relocated their domestic establishments to Southampton and Bristol they were acting otherwise than as partners. (4) The payments were made to reimburse Mr. Wilson and Mr. Cooper for part of the costs incurred in relocating their domestic establishments to Southampton and Bristol. (5) Therefore the payments were expenses.

(6) Whether an expense is wholly and exclusively laid out for the purposes of a profession is primarily a question of fact for the Commissioners. (7) In this case the Commissioners have found as a fact that the expense was laid out wholly and exclusively for the purposes of the profession. On the primary facts it was clearly open to them so to find. (8) This is not a case such as *Mallalieu* v. *Drummond* [1983] 2 AC 861 in which the Commissioners

were obliged as a matter of law to find some concurrent non-professional purpose. (9) The purposes of the profession for which (or to serve which) the expenses were laid out were to secure that Mr. Wilson should set up the Southampton office and that Mr. Cooper should manage the Bristol office. Any effects of the expenditure on Mr. Wilson and Mr. Cooper in their private capacities were incidental effects, not purposes of the expenditure; at the lowest it was open to the Commissioners to regard them as merely incidental effects.

(10) It follows that the Commissioners' decision was not erroneous in point of law, and the Crown's appeal should be dismissed.

This is a case concerning an entirely genuine reduction of profits brought about by an entirely genuine outlay of money solely for business reasons. The profits which the partners shared were lower than otherwise they would have been because of the outlay in question. The analogy between payments made to an employee and payments made to a partner is helpful because in respect of the wholly and exclusively test there is no distinction between a partner's relocation expenses and an employee's relocation expenses.

Heastie v. *Veitch & Co.* [1934] 1 KB 535 is authority for the proposition that at least for tax purposes it is legally possible for a partnership to incur an expense where the recipient is one of its own members. As Romer L.J. observed, "it is not true that in ascertaining the profits of a partnership no sum paid to one of the partners can ever be deducted."

To elaborate on the foregoing proposition (2), (i) some payments by a partnership to a partner are allocations of profits. Others are not; rather they are expenses of the partnership. If they are expenses of the partnerships whether they are laid out wholly and exclusively for the purposes of the profession depends on the particular facts of the case. (ii) payments by a partnership to a partner for acting as a partner are allocations of profits. (iii) payments by a partnership to a partner by way of a reimbursement of expenses incurred by the partner in the course of the partnership business (a) are expenses of the partnership business; (b) will in almost every case pass the wholly and exclusively test. Example: the partner who goes to Edinburgh on partnership business, makes his own hotel booking and pays the hotel bill himself. The partnership reimburses him for the expense which he has met.

(iv) Payments by a partnership to a partner by way of reimbursement of expenses incurred by the partner otherwise than in the course of the partnership business fall into two categories. (a) Category I: If the partner qualifies to receive the reimbursement by acting as a partner in the course of the partnership business, the reimbursement is within (ii), i.e. it is an allocation of profits. Examples: (i) A partnership adopts a policy of reimbursing to its partners their costs of travelling to work. (ii) A partnership rewards a partner who has attracted a great deal of business in the year by agreeing to reimburse him his golf club subscription. (b) Category 2: If the partner qualifies to receive the reimbursement otherwise than by acting as a partner in the course of the partnership business, the reimbursement is an expense of the partnership. (But as will be seen this does not automatically mean that it is tax deductible).

Examples: (a) The example suggested by Lord Brandon of Oakbrook. A partnership requires a partner to learn French because of the growing French connection of the partnership. Now when the partner is taking his French lessons he is not acting as a partner. Nevertheless the cost of those lessons is deductible. (b) The present case.

(v) Where a payment by way of reimbursement by a partnership is within category 2 and thus is an expense of the partnership, whether it is deductible for tax purposes depends on whether the expense is or is not laid out wholly and exclusively for (that is to serve) the purposes of the partnership's profession. In that connection; (a) the circumstance that the individual partners expense which the partnership reimburses was not incurred in the course of the partnership business must place a substantial burden on the partnership in establishing on the facts that its reimbursement was an expense laid out by it wholly and exclusively for the purposes of its profession. (b) However, there is no rule of law that the burden is insurmountable. (c) It must be remembered that the purpose for (or to serve), which the individual partner incurred his expense need not in all cases be the same as the purpose for (or to serve), which the partnership has committed itself to reimburse the expense to him.

As to the wholly and exclusively test, the partnership has to satisfy the Commissioners that its policy in making the payments was wholly and exclusively to serve the interests of the profession. Further, it is conceded that in considering that test the circumstance that the recipients are also members of the body making the payment is very relevant. To elaborate. Where the decision that a trading or professional "organisation" (a deliberately neutral word) should make a payment is reached by a body of individuals one or more of whom are beneficiaries of the payment in a capacity other than as a member or members of the body, the assertion that the payment is made wholly and exclusively for the purposes of the trade or profession requires close scrutiny of the facts. This situation arises commonly where the trading or professional organisation is a company, the decision to make the payment is made by its board of directors, and one or more of the directors are beneficiaries of the payment in other capacities, for example, as shareholders. The situation is in principle exactly the same where the trading or professional organisation is a partnership, the decision to make the payment is made by the partners, and one or more of the partners are beneficiaries of the payment in other capacities.

In the present case the question of fact which needs to be considered is one where a beneficiary was a member of the body which decided to make the payment has been conclusively resolved by the decision of the Commissioners. In any case, the payments were made in normal implementation of a partnership policy which had plainly been decided upon wholly and exclusively for or to serve the purposes of the profession.

In the application of the wholly and exclusively test, there are two points to be borne in mind: (i) the distinction between the purpose of the expenditure and its incidental effect; (ii) how far is the test a subjective test depending on what was consciously present to the minds of those making the expenditure, and how far is it an objective test. It is submitted that it is predominantly a subjective test.

A The purposes to serve which these items of expenditure were incurred and correspondingly in the minds of the partnership were wholly and exclusively for the purposes of the profession.

In *Bentleys, Stokes & Lowless* v. *Beeson* [1952] 2 All ER 82, it is clear that Romer L.J. was laying down a subjective test. Further, it is apparent B from his judgment that he saw little difference between the words "motive", "object" and "purpose".

As to the cases, in principle the present case is indistinguishable from *Heastie* v. *Veitch & Co.* [1934] 1 KB 535. In *Morgan* v. *Tate & Lyle Ltd.* C [1955] AC 21 this House took the purposes for which the expenditure there in question was laid out to be the conscious purposes of the taxpayer company. *Inland Revenue Commissioners* v. *Carron Company* (1968) 45 TC 18 adopted the same approach as to the purpose for the payment. In addition, the fact that in the process of accomplishing the intended professional purpose there was an incidental non-professional effect achieved does not pre- D vent the sum in question from being wholly and exclusively expended for the purposes of the trade. In *Inland Revenue Commissioners* v. *Korner* [1969] 1 WLR 554, 561, the approach adopted by Lord Donovan in that case is unequivocally the same as the approach of the Commissioners in the present case.

E In *Mallalieu* v. *Drummond* [1983] 2 AC 861 Lord Brightman is directing the Commissioners that they must hear evidence as to what the conscious purposes of the taxpayer were and make findings thereon. The crucial point in that case was that the taxpayer even if she had not been a barrister would have been obliged to buy clothes from time to time. But in the present case if F Mr. Cooper had not been an accountant he would not have moved from Newcastle to Bristol. In *Mallalieu* v. *Drummond* the payer and the recipient were one and the same person. It was not possible to disentangle one from the other. In the case of this partnership it is possible to separate the partnership collectively from the single partners. The purpose of the payment was that of advancing the purposes of the profession. *Watkis* v. *Ashford Sparkes* G *& Harward* [1985] 1 WLR 994 is important for its explanation of the decision in *Mallalieu* v. *Drummond* and for the fact that Nourse J. upheld the decision of the Special Commissioner.

In conclusion, (1) it is very important to bear clearly in mind what H expense is in issue in the present case. The expense is the expense of the firm and not of the two partners. (2) The question arises: why did the firm incur the expense? The answer is because the firm was contractually bound to pay it. (3) For and to serve what purpose was the firm contractually bound? It was to secure the professional benefit of the two partners working in Bristol and Southampton respectively. (4) It is accepted that when the expenditure I was made it had some incidental effects: (a) the conscious purpose was not the incidental effect: (b) the serving of that secondary effect should not be regarded as a concurrent purpose of which the firm was unconscious. It follows that the decision of the Special Commissioners was right. Alternatively, it was a decision to which they were entitled to come on the facts found by them. The decision of Vinelott J. was wrong and the judgment of the Court of Appeal was right.

McCall Q.C. was not called upon to reply.

The following cases were cited in argument in addition to the cases referred to in the speeches:—

Usher's Wiltshire Brewery Co. Ltd. v. *Bruce* 6 TC 399; [1915] AC 433; *British Insulated and Helsby Cables Ltd.* v. *Atherton* 10 TC 155; [1926] AC 205; *Beauchamp* v. *F.W. Woolworth PLC* 61 TC 542; [1990] 1 AC 478; [1989] STC 510; *Edwards* v. *Bairstow* 36 TC 207; [1956] AC 14; *Bentley Stokes and Lowless* v. *Beeson* 33 TC 491; [1952] 2 All ER 82; *Robinson* v. *Scott-Bader Co. Ltd.* 54 TC 757; [1981] STC 436; *Newsom* v. *Robertson* 33 TC 452; [1953] 1 Ch 7; *Horton* v. *Young* 47 TC 60; [1972] Ch 157; *Sargent* v. *Barnes* 52 TC 335; [1978] 1 WLR 823; *Edwards* v. *Warmsley Henshall* 44 TC 431; [1968] 1 All ER 1089; *Bowden* v. *Russell & Russell* 42 TC 301; [1965] 1 WLR 711; *Norman* v. *Golder* 26 TC 293; *Prince* v. *Mapp* 46 TC 169; [1970] 1 WLR 260; *Caillebotte* v. *Quinn* 50 TC 222; [1975] 1 WLR 731; *Watkis* v. *Ashford Sparkes and Harward* 58 TC 468; [1985] 1 WLR 994; *Hochstrasser* v. *Mayes* 38 TC 673; [1960] AC 376; *Morgan* v. *Tate & Lyle Ltd.* 33 TC 367; [1955] AC 21; *Korner* v. *Commissioners of Inland Revenue* 45 TC 287; [1969] 1 WLR 554; *Commissioners of Inland Revenue* v. *Carron Company* 45 TC 18; 1968 SC 47.

Lord Bridge of Harwich:—My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Oliver of Aylmerton. I agree with it and for the reasons he gives I would allow this appeal.

Lord Brandon of Oakbrook:—My Lords, I understand that all your Lordships are of the opinion that this appeal should be allowed and the judgment of Vinelott J. restored. I have reached the same conclusion, but I have done so reluctantly, because I consider that the result, in so far as it involved differentiating for tax purposes between the relocation expenses of partners on the one hand and their employees on the other, is neither sensible nor just.

Lord Templeman:—My Lords, I have had the advantage of reading in draft the opinion of my noble and learned friend, Lord Oliver of Aylmerton. I agree with it and would allow this appeal and restore the order made by Vinelott J.

Lord Oliver of Aylmerton:—My Lords, this appeal raises what, in the end, is a very short point, namely, the deductibility for the purposes of income tax payable under Sch D Case II of what may be conveniently described as "relocation expenses" paid out of partnership funds to two of the partners.

Schedule D, the provisions of which are to be found in s 108 of the Income and Corporation Taxes Act 1970, charges to tax (*inter alia*) "(*a*) the annual profits or gains arising or accruing... (ii) to any person residing in the United Kingdom from any trade, profession or vocation, whether carried on

A in the United Kingdom or elsewhere." Section 109 of the Act provides that tax under Sch D is to be charged under seven different cases to which individual provisions are applicable, Case II being "tax in respect of any profession or vocation not contained in any other Schedule." Annual profits of a profession may be broadly and colloquially defined as the income earned by the professional activity after deducting the expenses incurred in earning it, B ascertained in accordance with ordinary accountancy principles, but s 130 of the Act contains provisions restricting the types of expenditure which may be treated as deductions from annual income including the profits for computing the profits for tax purposes. It provides that:

> "Subject to the provisions of the Tax Acts, in computing the C amount of the profits or gains to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of—(*a*) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation, ..."

There is a wealth of authority regarding the application of this formula D to individual items of expenditure of various kinds, but whilst the cases may be helpful as illustrations or analogues, the question in each case is the simple question of whether the facts are capable of fitting and do fit the formula. There is no very difficult issue of construction involved, for it is not in doubt that the word "exclusively" is used in its ordinary and natural sense. The difficulties, such as they are, lie not in the words "wholly and exclu- E sively" but in ascertaining whether a particular expenditure is, as a matter of fact, laid out "for" and only for the purposes of the trade or profession.

Before turning to the facts of the instant case, I ought, perhaps, to say a word about the position, both generally and in relation to income tax of partners in a firm. A partner working in the business or undertaking of the F partnership is in a very different position from an employee. He has no contract of employment for he is, with his partners, an owner of the undertaking in which he is engaged and he is entitled, with his partners, to an undivided share in all the assets of the undertaking. In receiving any money or property out of the partnership funds or assets, he is to an extent receiving not only his own property but also the property of his co-partners. Every such receipt G must, therefore, be brought into account in computing his share of the profits or assets. Equally, of course, any expenditure which he incurs out of his own pocket on behalf of the partnership in the proper performance of his duties as a partner will be brought into account against his co-partners in such computation. If, with the agreement of his partners, he pays himself a "salary," this merely means that he receives an additional part of the profits H before they fall to be divided between the partners in the appropriate proportions. But the "salary" remains part of the profits.

So far as concerns the assessment of partnership profits to tax, I do not think that I can improve on the analysis in the instant case of Vinelott J. [1986] 1 WLR 1468, 1474–1475(1) which I will both quote and adopt:

I

> "There are, in effect, three stages. First, the profits of the firm for an appropriate basis period must be ascertained. What has to be ascertained is the profits of the firm and not of the individual partners. That is not, I think, stated anywhere in the Income Tax Acts, but it follows necessarily from the fact that there is only one business and not a num-

(1) Page 724E/I *ante*.

ber of different businesses carried on by each of the partners. The income of the firm for the year is then treated as divided between the partners who were partners during the year to which the claim relates—the year of assessment in one of the many senses of that word: see the proviso to section 26 of the Income and Corporation Taxes Act 1970. That is the second stage. The tax payable is then calculated according to the circumstances of each partner—that is, after taking into account on the one hand personal allowances, reliefs or deductions to which he is entitled and any higher rate of tax for which he is liable. The Acts do not provide for the way in which personal allowances, reliefs and deductions are to be apportioned between the partnership income and other income. I understand that in practice they are deducted from the share of the partnership income if that was the partner's main source of income. When the tax exigible in respect of each share of the partnership income has been ascertained the total tax payable is calculated. Section 152 (formerly rule 10 of the Rules applicable to Cases I and II of Schedule D) provides that the total sum so calculated is to be treated as 'one sum ... separate and distinct from any other tax chargeable on those persons ... and a joint assessment shall be made in the partnership name.' That is the third stage."

The question in the instant case is whether, at the first stage, moneys paid out of the partnership assets to a partner in order to indemnify him against expenses incurred by him out of his own pocket otherwise than on behalf of the partnership or in the course of acting in the partnership business can be deducted at the first stage as being a payment any personal benefit from which is purely incidental or ancillary to the purposes of the firm considered as an entity separate from the recipient.

The relevant facts can be very shortly stated. The Respondent firm, in which there were at the material time 95 partners, is a well-known firm of chartered accountants with offices in various parts of the United Kingdom. It is impracticable, for obvious reasons, to hold regular partners' meetings and the administration of the partnership is conducted by an executive committee of eight partners under the chairmanship of the senior partner. In order to deploy both partners and staff to the best advantage, it becomes necessary from time to time for the executive committee to request individual partners or members of the staff to move from one part of the country to another and the possibility that he may be requested to move is accepted by each partner as part of the firm's policy. To make this more acceptable, the executive committee has adopted a policy which, though not written into the partnership deed, is accepted by all the partners, of paying to a partner acceding to a request to move in the firm's interest a sum of relocation expenses which is equal to the aggregate of estate agents' charges, surveyors' fees, legal costs and disbursements, furniture removal charges and reasonable expenses for travel and subsistence for a maximum of three months whilst looking for a new house. In addition, there is paid a disturbance allowance of £1,000 in the case of a partner and £700 in the case of an employee by way of compensation for the incidental costs of moving such as relaying carpets or refitting curtains. In practice, both partners and employees have moved when requested and no doubt their willingness to do so has been influenced to a greater or lesser degree by the policy which I have described.

The instant appeal concerns two sums of £5,446.25 and £3,122.15 respectively paid out of the partnership funds by way of relocation expenses

to two partners, Mr. Wilson and Mr. Cooper, during the accounting period 1981–82. In the case of Mr. Wilson, he had been engaged in working in the firm's London office and was asked to and did move to Southampton in order to open and take charge of their new office in that city. It is not in dispute that he moved to Southampton only because he was asked to and that he would have preferred to stay in London. In the case of Mr. Cooper, he was asked to and did, albeit reluctantly, move from Newcastle, where he lived and was working, to Bristol. The Special Commissioners found as a fact and this is not disputed that he would not have agreed to move had his partners not agreed, in accordance with the firm's policy, to contribute to his removal expenses. The Respondents having claimed to deduct these two sums as allowable expenses in the computation of the firm's taxable profits for the year, the claim was disallowed by the Appellant Inspector. The Respondents appealed to the Special Commissioners who, on 21 January 1985, allowed the appeal, holding that the payment had one purpose and one purpose only, namely, the furtherance of the interests of the partnership practice and were accordingly wholly and exclusively laid out for the purposes of the profession. In reaching this conclusion it is evident that the Special Commissioners were paying regard to two and only two considerations, that is to say, the conscious motives of Mr. Wilson and Mr. Cooper in agreeing to move and the motives of the partners (as represented by the executive committee) in requesting them to do so and agreeing to contribute to the cost in accordance with the established policy. They moved, the Commissioners held, purely for business reasons and derived no personal benefit from the move, which in fact eventually turned out in each case to be financially disadvantageous. Likewise the executive committee, in paying the expenses, was motivated solely by the consideration that it would be for the benefit of the partnership practice to have these two partners working at (and therefore living near) the offices at Southampton and Bristol respectively.

Now it is plain that in so holding the Special Commissioners were regarding the firm as being, as it were, an entity quite separate from the two individual partners whose initial personal expenditure was being reimbursed and looking not at all at the immediate purpose which that expenditure served—namely, the establishment of personal residences for themselves and their families—but solely at the advantages which the firm would derive from having these partners residing in their new locations. The real, indeed the only question, in this appeal is whether that was a permissible way in which to test whether the expenditure was laid out not merely as something from which the partnership was intended to and did derive a benefit but exclusively for the purposes of the partnership practice.

The Appellant having appealed to the High Court, Vinelott J., in a judgment of admirable clarity, reversed the Special Commissioners and allowed the appeal. It was not, he observed, seriously open to question that if Mr. Wilson and Mr. Cooper had each been sole traders (if such a description is permissible in the case of chartered accountants) and had moved their respective residences in order to enhance the interests of their respective professional practices, the expenditure incurred in finding a new home and moving to it could not qualify as expenditure incurred solely for the purposes of the practices so as to permit its deduction in the computation of their professional profits as sole traders. In searching for, acquiring and moving to new residences, whatever their motives, they could not possibly be said to be acting as accountants in the course of professional practice. They would be simply individual citizens establishing private residences in places convenient to

them and, as Vinelott J. observed, the expenditure would be indistinguishable from that incurred by Mr. Mason in *Mason* v. *Tyson*(1) 53 TC 333, in repairing and redecorating a flat above his office so that he could, if he wished, work late. In order to justify treating expenditure by an individual partner on a different footing, it was necessary, in effect, to ignore any benefit deriving from the original outlay made by him as an individual and to treat as the relevant purpose only the motive of the executive committee in making the reimbursement out of the partnership funds, from which of course the firm as such derived no benefit beyond that of securing the performance of the individual partner's services in the most convenient area. Thus the Respondent's case rested before your Lordships upon the proposition that, in its relationship to individual partners, the firm can be treated as a separate legal entity in exactly the same way as if the relationship were that of employer and employee. This indeed seems to have been the basis of the judgment of the Court of Appeal, which reversed Vinelott J. and restored the decision of the Special Commissioners. Slade L.J. [1989] Ch 454, 472(2), stated the question for determination thus:

> "Ultimately, the issue in the present case must be whether the Commissioners' findings of primary fact entitled them to draw the inference that *the firm's* object in making the relevant expenditure was wholly and exclusively to serve the purposes of its business."

The *ratio* of the Court of Appeal's decision is encapsulated in a passage in which, after contrasting the position of the individual sole trader, Slade L.J. continued, at pp. 473–474(3):

> "In the second case, where the payer and the beneficiary are not the same, it is clearly possible ... to evaluate the objects of the payer in incurring the expenditure separately and distinctly from those of the beneficiary. Where the payer is a partnership whether or not the recipient is one of the partners, I think that, save in a case where the nature of the expenditure speaks for itself, a proper application of section 130(a) requires the revenue to ascertain the purpose of the expenditure at least primarily by what was referred to in argument as 'the collective purpose' of the partnership in incurring it.
>
> True it is that under the general law a partnership has no legal personality of its own distinct from that of the individual partners who compose it: *Rex* v. *Inland Revenue Commissioners, Ex parte Gibbs* [1942] A.C. 402, 413, per Viscount Simon L.C. Nevertheless, in my judgment, the authorities show that, for the purpose of computing the profits of a firm liable to income tax under Case II of Schedule D, even if not for other purposes of the Income Tax Acts, a partnership is regarded as an entity distinct from its members: see for example *Heastie* v. *Veitch & Co.*(4) [1934] 1 KB 535, *Watson and Everitt* v. *Blunden*, 18 T.C. 402 and *Padmore* v. *Commissioners of Inland Revenue*(5) [1987] STC 36, 45, *per* Peter Gibson J. While the intentions and motives of individual partners may well be relevant in this context, in my judgment section 130 must correspondingly contemplate that ultimately it is the collective purpose of this notionally distinct entity which has to be ascertained."

Now there is, if I may say so respectfully, a confusion here. It is perfectly true that in *Heastie* v. *Veitch & Co.*, [1934] 1 KB 535, 547 Romer L.J.

(1) [1980] STC 284. (2) Page 739H *ante*. (3) Page 740E/I *ante*.
(4) 18 TC 305. (5) 62 TC 352.

remarked that by rule 10 of the Rules applicable to Cases I and II (now contained in s 152 of the Act) a partnership is treated for the purposes of Sch D taxation as a separate entity from the individual partners composing the firm — that is at stage three of Vinelott J.'s analysis—but there is nothing in that decision nor in the other cases cited by Slade L.J. to justify a conclusion that it can permissibly be so treated at stage one of the analysis in relation to sums which have been received by a partner from the partnership funds in his capacity as a partner. All that *Heastie's* case established was that sums received by a partner in a quite different capacity, for instance, as the landlord of premises let to the partnership or for goods supplied from an independent trade carried on by a partner, are not to be regarded as non-deductible expenses simply because they are received by a person who is also a partner in the firm. But we are not concerned here with sums coming to the hands of Mr. Wilson and Mr. Cooper as a result of some wholly collateral bargain between them and the firm of Arthur Young and Co. What they received, they received as partners in the firm. The fact that they were partners and were going to continue to act as such was indeed the very justification for the receipt.

My Lords, for my part, I am unable to accept that the purpose of "the partnership," considered as if it had a separate legal identity, and the purpose of the individual partners for whose benefit the payment enured can be segregated in this way. I cannot, with respect to the Court of Appeal, resist the conclusion that they allowed themselves to be confused and led astray by a number of extraneous factors which do not, as a matter of analysis, have any legal significance. In the first place, they appear to have been influenced by the sheer size of the partnership in the instant case and to have considered that a large partnership falls in some way to be treated differently from a small partnership, so that an element of personal benefit may fall to be taken into account in the case of a small firm but ignored in the case of a large firm (see Slade L.J., at p. 1131C–E). It is true that Slade L.J. rests this distinction on the ground of the greater ease with which an inference of a confusion of private and collective motive may be drawn in the case of the smaller firm—presumably on the footing that in a large firm a great many of the partners will not, in practice, know anything about the payment and therefore cannot be said to be affected by the purpose of the recipient. But there can surely be no difference in principle. Partners are partners, however numerous; and mere numbers cannot in itself justify an attribution of a "collective purpose" unjustified in the case of a small partnership.

Secondly, I cannot help feeling that some confusion has been caused simply by the mechanics by which the payments concerned in the instant case were effected. They were resolved on by the executive committee and paid out of partnership funds on the orders of the executive committee by way of reimbursement of an expenditure which the two partners had incurred out of their own pockets. Factually this makes it easier to regard the reimbursement and the expenditure reimbursed as quite separate transactions and to have regard only to the motives of the executive committee in sanctioning the reimbursement—a reflection indeed of Mr. Park's submissions to your Lordships. The purpose of the payment, he submits, was not to pay for the partners' removal expenses. It was to nullify the disadvantage which the partners suffered as a result of having paid those expenses themselves, and the only motive for nullifying that disadvantage was to secure their concurrence in moving in the interests of the partnership. Attractively as this submission was put, I find myself quite unable to accept this way of looking at the trans-

actions. Indeed, on this analysis the reimbursement, at the instance of the other partners, of the costs of a chauffeur-driven car to transport the senior partner to and from work in order to increase his efficiency as a working member of the firm or of the cost of a holiday in Switzerland to convalesce after an illness would qualify as deductible expenditure so long as it could be established that the "collective purpose" of the sanctioning partners was to further the partnership business. There is no warrant in statute or authority for this concept of collective purpose and I do not, for my part, find it acceptable as a matter of analysis. It can make not the slightest difference whether a partner incurs an expenditure out of his own pocket and recovers it from the partnership funds or whether he draws the money required directly from the partnership funds in the first instance—for example, where he is enabled to draw cheques on the partnership bank account and his partners, either expressly or by implication, agree that he need not bring the money drawn into account in ascertaining his share of the profits. There is in either case only one relevant expenditure and it is the purpose of that outlay which has to be regarded.

A third factor which, I think, has led to some confusion at any rate in the minds of the Special Commissioners, is the initial unwillingness of Mr. Wilson and Mr. Cooper to move. I do not, for my part, see how this can possibly be a relevant consideration in ascertaining whether the costs of moving were exclusively for the purposes of the partnership profession. The expenditure serves the same purpose whether the partner concerned wants to move, is merely willing to move or moves with evident reluctance.

Finally, I think that a good deal of the confusion was caused in the Court of Appeal, as indeed it was before your Lordships, by an appeal to the position of employee as providing a useful analogy. Superficially, the analogy is attractive, as indeed is the suggestion that "the reality" of the situation renders absurd any distinction between, for instance, a senior employee and a junior partner. But, with respect, the distinction is not only legal but real. An employee has no interest in the property or profits of the firm and anything paid to him by way of additional remuneration for acting as an employee and to secure his continued loyalty to the firm cannot easily fail to be deductible as an expenditure exclusively for the purpose of the firm's business. There are, of course, limits to this—for instance, the firm cannot pay the employee's PAYE tax for him and claim to deduct it as an expense (see *Bamford* v. *A.T.A. Advertising Ltd* [1972] 1 WLR 1261). But, in general, money laid out in order to secure the continued loyal service of the workforce is referable solely to the business or profession in which that workforce is employed and is accordingly deductible. The purpose to which the employee chooses to devote what he receives does not enter into the picture and one is not concerned to inquire into the connection between that purpose and the business in which the employee is employed. A partner, on the other hand, whether he be senior or junior is in a quite different position. What he receives out of the partnership funds falls to be brought into account in ascertaining his share of the profits of the firm except in so far he can demonstrate that it represents a payment to him in reimbursement of sums expended by him on partnership purposes in the carrying on of the partnership business or practice—the example was given in the course of argument of the partner travelling to and staying in Edinburgh on the business of the firm—or a payment entirely collateral made to him otherwise than in his

capacity as a partner (as in *Heastie* v. *Veitch & Co.*[1] [1934] 1 KB 535). It may be that in relation to a particular receipt by a partner of partnership moneys not falling under either of the above heads, his co-partners are agreeable to his retaining it without bringing it into account so that to that extent the divisible profits at the end of the year are notionally reduced by the amount retained; but this cannot alter the fact that what is retained is part of the profits which would otherwise be divisible. What is taxable is the actual not the notional profit and what has to be demonstrated if a deduction is to be allowed for tax purposes in respect of moneys paid to a partner is that it was paid exclusively for the purposes of the partnership business.

However attractive, therefore, the employer-employee analogy may seem at first sight, it is not one from which, on analysis, I feel that I can derive any assistance. One is, accordingly, brought back, first, last and all the time to the question whether an expenditure upon a partner's removing expenses can be said to be laid out not just partly but exclusively for the purposes of the partnership business. That cannot, in my judgment, be answered simply by ascertaining what was the motive with which the move was undertaken. It is inescapable as it seems to me, that the expenditure, motivated no doubt by the fact of moving house, which in turn was motivated by the desire to put the partner concerned in a better position to further the interests of the firm, was an expenditure serving and necessarily and inherently intended to serve the personal interests of the partner in establishing his private residence for himself and his family and it cannot be said to be exclusively for the purposes of the partnership practice.

Your Lordships have been referred to what may be regarded as a seminal decision of this House in *Mallalieu* v. *Drummond*[2][1983] 2 AC 861 and much argument has been addressed to the question whether the purpose of the particular payment falls to be ascertained objectively or by reference only to the subjective intention of the payer. For my part, I think that the difficulties suggested here are more illusory than real. The question in each case is what was the object to be served by the disbursement or expense? As was pointed out by Lord Brightman in *Mallalieu's* case, this cannot be answered simply by evidence of what the payer says that he intended to achieve. Some results are so inevitably and inextricably involved in particular activities they cannot but be said to be a purpose of the activity. Miss Mallalieu's restrained and sober garb inevitably served and cannot but have been intended to serve the purpose of preserving warmth and decency and her purpose in buying cannot but have been, in part at least, to serve that purpose whether she consciously thought about it or not. So here the payment of estate agents' fees, conveyancing costs and so on, and the provision of carpets and curtains cannot but have been intended to serve the purpose of establishing a comfortable private home for the partner concerned even though his motive in establishing a home in that particular place was to assist him in furthering the partnership interests. Nobody could say with any colour of conviction that in purchasing new curtains he or his wife was acting upon partnership business. In my judgment once one escapes from what I regard as the fallacy of confusing the purpose of the expenditure with the motives of the members of the executive committee (and, inferentially, of the other partners) in resolving to reimburse the expenditure, the case presents very little difficulty and is, indeed, a much clearer and easier case than *Mallalieu* v. *Drummond.*

(1) 18 TC 305. (2) 57 TC 330.

For my part, I entertain no doubt that the decision of Vinelott J. was correct and I would allow this appeal.

Lord Goff of Chieveley:—My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Oliver of Aylmerton. I agree with it and for the reasons he gives I would allow this appeal.

Appeal allowed, with costs.

[Solicitors:—Solicitor of Inland Revenue; Messrs. McKenna & Co.]