



MALTA

**Fit-Tribunal ta' Revizjoni Amministrattiva
Magistrat
Dr. Gabriella Vella B.A., LL.D.**

Rikors Nru. 279/12VG

XXX

Vs

Kummissarju tat-Taxxi

Illum 6 ta' Marzu 2018

It-Tribunal,

Ra r-Rikors ipprezentat minn XXX fl-10 ta' Ottubru 2012 permezz ta' liema jitlob li l-istimi mahruga fil-konfront tieghu mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud ghall-perijodi ta' taxxa 01.10.08-31.12.08, 01.07.10-30.09.10 u 1.10.10-31.12.10 jigu kkancellati *in toto* jew alternattivament jigu imnaqqsa u li t-Tribunal jaghmel dawk id-dikjarazzjonijiet u jaghti dawk l-ordnijiet kollha xierqa w opportuni fir-rigward ta' l-imsemmija stimi, bl-ispejjez kontra l-Kummissarju tat-Taxxa fuq il-Valur Mizjud;

Ra r-Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) permezz ta' liema fl-ewwel lok josserva li t-titolu 'Kummissarju tat-Taxxa fuq il-Valur Mizjud' inbidel ghal 'Direttur Generali (Taxxa fuq il-Valur Mizjud)' u ghaldaqstant jehtieg issir id-debita korrezzjoni fl-okkju tal-proceduri u fil-mertu, jopponi ghall-appell tar-Rikorrent mill-istimi mahruga fil-konfront tieghu ghall-perijodi ta' taxxa 01.10.08-31.12.08, 01.07.10-30.09.10 u 1.10.10-31.12.10 u jitlob li l-istess jigi michud, bl-ispejjez kontra r-Rikorrent, u minflok l-imsemmija stimi ikkonfermati, stante li huwa infondat fil-fatt u fid-dritt;

Ra d-dokumenti annessi mar-Risposta tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) markati Dok. "A" sa' Dok. "H" a fol. 15 sa' 68 tal-process;

Sema' x-xhieda ta' Charles Aquilina moghtija waqt is-seduti tad-9 ta' Mejju 2013¹ u tat-8 ta' Ottubru 2013² u x-xhieda ta' Rachel Cordina, in rappreżentanza tad-Direttur Generali (Taxxa fuq il-Valur Mizjud), moghtija waqt is-seduti tat-8 ta' Ottubru 2013³ u tat-30 ta' Mejju 2014⁴ u ra d-dokumenti esebiti waqt is-seduta tat-8 ta' Ottubru 2013 markati Dok. "KB1" u Dok. "KB2" a fol. 92 u 93 tal-process, sema' x-xhieda ta' Chris Spiteri, in rappreżentanza tad-Direttur Generali (Taxxa fuq il-Valur Mizjud), moghtija waqt is-seduti tal-25 ta' Novembru 2013⁵, ta' l-24 ta' Gunju 2014⁶ u tal-25 ta' April 2014⁷ u x-xhieda tar-Rikorrent moghtija waqt is-seduti tal-25 ta' Novembru 2013⁸ u tal-25 ta' April 2014⁹, u ra d-dokumenti esebiti mir-Rikorrent markati Dok. "DB1" a fol. 114 sa' 116 tal-process;

Ra n-Nota ta' Sottomissjonijiet tar-Rikorrent a fol. 134 sa' 138 tal-process u ra in-Nota Responsiva tal-Kummissarju tat-Taxxi a fol. 141 sa' 153 tal-process;

Ra l-atti kollha tal-kawza;

Ikkonsidra:

Bil-proceduri odjerni r-Rikorrent jikkontesta stimi mahruga fil-konfront tieghu mid-Direttur Generali (Taxxa fuq il-Valur Mizjud) ghall-perijodi ta' taxxa 01.10.08-31.12.08, 01.07.10-30.09.10 u 01.10.10-31.12.10 permezz ta' liema qed jigi mitlub ihallas is-somma komplessiva ta' €10,505.41 rappreżentanti taxxa fuq il-valur mizjud, flimkien mas-somma komplessiva ulterjuri ta' €4,270.75 rappreżentanti multi amministrattivi w imghaxijiet¹⁰. Huwa jitlob li l-imsemmija stimi jigu kkancellati *in toto* jew alternattivament jigu mnaqqsa.

Ir-Rikorrent jibbaza l-appell tieghu mill-imsemmija stimi fuq is-segwenti aggravji: (i) *l-istejjem maghmula mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud mertu ta' dan l-appell, jidher illi gew imhejjija wara ezercizzju komparattiv illi l-istess Kummissarju ghamel bejn id-denunzji maghmula mill-appellanti mad-Dipartiment tat-Taxxi Interni u dawk mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud. Il-Kummissarju appellat jidher illi ma hax qies tal-fatt illi kienu l-ewwel denunzji imsemmija, u cioè dawk maghmula mad-*

¹ Fol. 83 sa' 86 tal-process.

² Fol. 94 u 95 tal-process.

³ Fol. 96 sa' 99 tal-process.

⁴ Fol. 126 sa' 128 tal-process.

⁵ Fol. 104 sa' 108 tal-process.

⁶ Fol. 130 sa' 133 tal-process.

⁷ Fol. 117 sa' 120 tal-process.

⁸ Fol. 109 sa' 111 tal-process.

⁹ Fol. 121 tal-process u fol. 122 sa' 124 tal-process.

¹⁰ Fol. 114 sa' 116 tal-process.

Dipartiment tat-Taxxi Interni illi kienu erroneji, u mhux dawk maghmula mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud. Id-diskrepanza bejn iz-zewg denunzji surriferiti hija fil-fatt dovuta ghall-aggustamenti mehtiega fid-dikjarazzjoni illi l-appellanti ghamel mad-Dipartiment tat-Taxxi Interni, u liema aggustamenti l-appellanti ghadu qieghed ihejji. Dan huwa kkonfermat mill-fatt illi l-istejjem li gew revokati mill-Kummissarju tat-Taxxa fuq il-Valur Mizjud, kif fuq intqal, gew revokati proprju abbazi ta' din ir-raguni; (ii) id-decizjoni u l-istejjem maghmula mill-Kummissarju appellat huma ibbazati fuq kalkoli erroneji u fi kwalunkwe kaz ma humiex sorretti b'motivazzjonijiet xierqa; u (iii) il-generu ta' negozju ta' l-appellanti huwa wiehed illi, min-natura tieghu, huwa, anke jekk imqar f'certi aspetti, ezenti mill-hlas ta' taxxa fuq il-valur mizjud; fil-fatt l-appellanti jista' jibbenefika minn rifuzjoni shiha, u mhux parzjali, ta' l-input tax.

Id-Direttur Generali (Taxxa fuq il-Valur Mizjud), illum Kummissarju tat-Taxxi, jopponi ghall-appell tar-Rikorrent u jitlob li l-istess jigi michud stante li: (i) l-istimi maghmula minnu ma humiex erroneji in kwantu huwa wasal ghall-istimi in kwantjoni fid-dawl tan-nuqqas tar-Rikorrent li jipprovdi dokumenti mehtiega sabiex jiggustifika l-posizzjoni tieghu ai termini tal-Kapitolu 406 tal-Ligijiet ta' Malta; (ii) l-istimi maghmula minnu ma humiex ibbazati fuq kalkoli erroneji stante li kien ir-Rikorrent stess li naqas li jipprovdi dokumentazzjoni li setghet tbiddel l-ezitu ta' l-investigazzjoni u lanqas huma bla motivazzjoni stante li ghad illi l-Artikolu 32 tal-Kap.406 tal-Ligijiet ta' Malta ma jobbligax lid-Direttur Generali (Taxxa fuq il-Valur Mizjud) jimmotiva r-raguni ghalfejn johrog stimi jekk jidhirlu li jkun il-kaz, hu ta l-motivi tieghu ghaliex hareg l-istimi mertu ta' l-dan l-appell fil-konfront tar-Rikorrent; u (iii) it-tielet aggravju fuq liema r-Rikorrent jibbaza l-appell tieghu mill-istimi mahruqa fil-konfront tieghu ghandu jigi michud in kwantu ghal kollox irrilevanti.

Fir-Risposta tieghu d-Direttur Generali (Taxxa fuq il-Valur Mizjud) josserva ukoll li l-intestatura 'Kummissarju tat-Taxxa fuq il-Valur Mizjud' inbidlet ghal 'Direttur Generali (Taxxa fuq il-Valur Mizjud)' u ghaldaqstant jitlob li ssir id-debita korrezzjoni. Filwaqt li t-Tribunal jaqbel li fiz-zmien meta gew istitwiti l-proceduri odjerni kienet fis-sehh delega mill-Kummissarju tat-Taxxi a favur id-Direttur Generali (Taxxa fuq il-Valur Mizjud) in kwantu rigwarda l-funzjonijiet nascenti mill-Att dwar it-Taxxa fuq il-Valur Mizjud, Kap. 406 tal-Ligijiet ta' Malta¹¹, minn dak iz-zmien 'l hawn il-Kummissarju tat-Taxxi rega' assumma mill-gdid il-funzjonijiet nascenti mill-Att dwar it-Taxxa fuq il-Valur Mizjud¹² u ghaldaqstant illum l-intimat proprio f'dawn il-proceduri huwa l-Kummissarju tat-Taxxi. Fid-dawl ta' dan ghalhekk, filwaqt li qed tigi milqugha

¹¹ Artikolu 3 tal-Kap.517 tal-Ligijiet ta' Malta u Ordni ta' Delega ta' Funzjonijiet relattiv ghall-Att dwar il-Kummissarju tat-Taxxi, Kap. 517 tal-Ligijiet ta' Malta, ippublikat fil-harga tal-Gazzetta ta-Gvern ta' l-20 ta' Lulju 2012.

¹² b'Ordni ta' Assunzjoni mill-Gdid ta' Funzjonijiet ippublikat fil-harga tal-Gazzetta tal-Gvern tat-8 ta' Awwissu 2014.

it-talba tad-Direttur Generali (Taxxa fuq il-Valur Mizjud) sabiex issir korrezzjoni fl-okkju tal-proceduri, tali korrezzjoni ghandha ssir fis-sens illi l-intestatura 'Kummissarju tat-Taxxa fuq il-Valur Mizjud' tigi kkancellata u sostitwita bl-intestatura 'Kummissarju tat-Taxxi'.

Trattata din il-kwistjoni jehrieg issa jigi trattat l-appell fil-mertu.

*Mill-Credit Control Report tal-VAT Inspectors Rachel Cordina u Klaus Farrugia datat 20 ta' April 2012¹³ jirrizulta li originarjament kienu nhargu stimi provvizorji fil-konfront tar-Rikorrent ghall-perijodi ta' taxxa 01.01.07-31.03.07, 01.04.07-30.06.07, 01.07.07-30.09.07, 01.10.07-31.12.07, 01.07.10-30.09.10 u 01.10.10-31.12.10 ghal dak li jirrigwarda *overstatement input tax* u ghall-perijodu ta' taxxa 01.10.08-31.12.08 in kwantu rigward *understatement output tax*. L-imsemmija VAT Inspectors kienu rrakomandaw li jinhargu tali stimi fil-konfront tar-Rikorrent in bazi ghas-segwentu konsiderazzjonijiet: *Sales Analysis – In terms of Part Five of the Fourteenth Schedule of the Vat Act X of 2003, taxpayer is declaring supplies in Box 18 with nil corresponding output tax. All relevant sales invoices were produced (Reds 22a and 22b refers). In the meantime, during vat periods 01.10.10-31.12.10 and 01.04.11-30.06.11 it was noted that output tax was charged. It was also noted that during year 2007 the taxpayer declared exempt without credit sales. From the invoices produced at Red 30a to 30d, there is a clear indication that the exempt without credit sales declared during year 2007 consisted in works carried out on the taxpayer's property. As such the hereunder Workings 1 were carried out to arrive to the percentage of input vat to be deducted. ... Therefore total amount of €3,036.57 VAT should be deducted in connection with exempt without credit sales. ... A reconciliation exercise between sales declared in the vat returns and Profit and Loss accounts for years 2007 to 2010 was carried out. These tallied accordingly. ... A copy of these accounts were also obtained from the Inland Revenue Department (emails at Red 39a and 39b refers) to confirm the authenticity of these accounts. The hereunder findings were encountered: [P&L 2007 VAT - €99,336.13 – P&L 2007 Inland Revenue - €99,336.13 – Diskrepanza - Nil; P&L 2008 VAT - €90,523 – P&L 2008 Inland Revenue - €135,500 – Diskrepanza €44,977]. From the above workings a discrepancy of €44,977 has been identified. To this effect, a separate exercise has been carried out to establish whether this discrepancy was a result of taxable supplies governed by LN 149/01 or under declaration of sales. ... Workings 4 ... clearly indicate that the discrepancy of €44,977 sales (workings 3), found between Profit and Loss Accounts 2008 produced by the taxpayer and the same Profit and Loss submitted to the Inland Revenue Department, consists of under declared sales. Consequently, the amount of €8,095.86 are due to the VAT Department. It is imperative to point out that reconciliation was limited to Profit and Loss accounts for years 2007 and 2008 since these are the only**

¹³ Fol. 17 sa' 59 tal-process.

copies available at the Inland Revenue Department. Email at Red 39a and Red 39b indicates this. Scrutiny of Purchases Invoices – 87% of the purchases invoices were selected for scrutiny taking into consideration material input VAT claimed and different suppliers. Various irregularities have been identified during the inspection of selected invoices. The taxpayer was informed accordingly. Annex 1 and Annex 2 indicate the anomalies that remain unsolved:

Annex 1: Unjustified Input VAT for Tax Period: 01.07.2010-30.09.2010

<i>Date</i>	<i>Invoice No.</i>	<i>Details</i>	<i>Net</i>	<i>VAT 18% at</i>	<i>File Ref.</i>	<i>Remarks</i>
<i>30.07.2010</i>	<i>3537</i>	<i>Stephen Parnis</i>	<i>€2,765.00</i>	<i>€497.70</i>	<i>Red 23c (no.1)</i>	<i>Produced a different invoice (inv no. 331) and different date</i>
<i>11.06.2010</i>	<i>018208</i>	<i>Autofactors</i>	<i>€1,367.00</i>	<i>€246.06</i>	<i>Red 23c (no.2)</i>	<i>Invoice issued on a different taxpayer</i>
<i>11.06.2010</i>	<i>n/a</i>	<i>Autofactors</i>	<i>€6,279.19</i>	<i>€1,133.49</i>	<i>Red 23b (no.3)</i>	<i>Invoice was not produced</i>
<i>07.07.2010</i>	<i>4714884</i>	<i>Alshin</i>	<i>€1,800.00</i>	<i>€324.00</i>	<i>Red 23c (no.4)</i>	<i>Produced incorrect invoice and amounts do not tally</i>
			<i>€12,229.12</i>	<i>€2,201.25</i>		

Annex 2: Unjustified Input VAT for Tax Period: 01.10.2010-31.12.2010

<i>Date</i>	<i>Invoice No.</i>	<i>Details</i>	<i>Net</i>	<i>VAT 18% @</i>	<i>File Ref.</i>	<i>Remarks</i>
<i>25.10.2010</i>	<i>n/a</i>	<i>A. Fenech Vella</i>	<i>€1,162.00</i>	<i>€209.16</i>	<i>Red 24b</i>	<i>Failed to produce invoice</i>

Moreover, invoice at Red 24a which was declared in tax period 01/10/10-31/12/10 instead of tax period 01/01/11-31/03/11 was adjusted since a correction letter was presented at Red 28 and after confirming that this invoice was not claimed twice.... Conclusion & Recommendations – In view

of the above, the following table represents the unjustified input VAT, which should be deducted from pending credits due following provisional assessment.

	VAT @ 18%
Overstatement of input VAT in tax period 01.01.2007-31.03.2007	€367.11
Overstatement of input VAT in tax period 01.04.2007-30.06.2007	€242.26
Overstatement of input VAT in tax period 01.07.2007-30.09.2007	€261.82
Overstatement of input VAT in tax period 01.10.2007-31.12.2007	€2,165.38
Overstatement of input VAT in tax period 01.07.2010-30.09.2010	€2,201.25
Overstatement of input VAT in tax period 01.10.2010-31.12.2010	€209.16
Total unjustified input VAT	€5,446.98

On the other hand, provisional assessment on tax period 01.10.08-31.12.08 should be raised to increase Box 18 and 23 of the vat return with net amount of €44,977 and €8,095.86 respectively.

In segwitu għall-Credit Control Report inhargu stimi provvizorji fil-konfront tar-Rikorrent, liema stimi intbaghtu lilu flimkien ma' covering letter datata 20 ta' April 2012¹⁴ li kienet tipprovdi li: *following an inspection of your tax records, kindly note that provisional assessments have been issued on the following criteria: Re tax period 01.01.2007-31.12.2007 since exempt without credit sales were claimed. Consequently a 40% of the input vat claimed during this period was deducted accordingly. Re tax periods 01.07.2010-30.09.2010 and 01.10.2010-31.12.2010 since some invoices were found incorrect/missing (invoices are listed in the Table attached). On comparing Profit & Loss a/c for year 2008 produced to the Vat Department with the Profit & Loss a/c of the same year that was produced to the Inland Revenue a discrepancy of under declaration of sales was encountered. Ir-Rikorrent talab Review ta' l-istimi provvizorji mahruġa fil-konfront tieghu u b'rapport datat 22 ta' Awwissu 2012, ir-Review Officer Chris Spiteri kkonstata u kkonkluda s-segwent: the taxpayer has been furnished with provisional assessments (red 49) for the tax period starting from 01/10/2007 to 31/12/2007, 01/10/2008 to 31/12/2008 and 01/07/2010 to 30/03/2010. The*

¹⁴ Fol. 60 tal-process.

provisional assessments cover unjustified input VAT being mainly tax claimed in the taxable purchases for resale, capital goods and services and overheads. These expenses were not supported with a correct invoice or were blocked. The provisional assessments consisted also of under declared sales. Following the request for review at red 49, contacts were made through phone with Mr. Charles Aquilina (accountant). Mr. Aquilina claimed that the purchases not allowed by the department (40% in red 40) were not claimed by the taxpayer in his VAT returns. With regards to the under declared sales, a correction letter was being presented to the IRD to adjust the profit and loss accounts accordingly since the accounts did not comply with the VAT returns. With regards to the under declared sales, the profit and loss account for year 2008 was requested by the IRS (red 39) and a discrepancy of €44,977 had been identified in year 2008. No copies of IRD correction letter were presented to the department to date, therefore the adjustment could not be confirmed with the IRD. In light of the above, it is being recommended to revoke the provisional assessments related to the partial attribution and confirm the provisional assessments related to the under declaration of sale and deficient invoices¹⁵.

Bhala fatt l-istimi ghall-perijodi ta' taxxa 01.01.07-31.03.07, 01.04.07-30.06.07, 01.07.07-30.09.07, 01.10.07-31.12.07, li kienu stimi in konnessjoni ma' *exempt without credit sales* gew revokati, filwaqt li l-istima ghall-perijodu ta' taxxa 01.10.08-31.12.08, li hija stima ghal understatement of output tax rizultanti mid-diskrepanza bejn il-P&L accounts sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud u l-P&L accounts sottomessi lid-Dipartiment tat-Taxxi Interni, li id-Direttur Generali (Taxxa fuq il-Valur Mizjud) iddetermina li kienet tirrapprezenta under declared sales tul dak il-perijodu u l-istimi ghall-perijodi ta' taxxa 01.07.10-30.09.10 u 01.10.10-31.12.10, li huma stimi ghal overstatement of input tax peress illi l-kreditu ghal input tax reklamati mir-Rikorrent fid-denunzji tieghu ghal dawk il-perijodi ta' taxxa ma giex sodisfacentement sostanzjat, gew ikkonfermati u illum jiffurmaw il-mertu ta' dan l-appell.

It-Tribunal hawn mill-ewwel josserva li r-Rikorrent ma huwiex korrett meta fil-paragrafu 3(A) tar-Rikors promotur¹⁶ jikkontendi li l-fatt li whud mill-istimi mahruqa fil-konfront tieghu gew revokati in segwitu ghar-Review mitlub minnu jikkonferma li *l-Kummissarju appellat jidher illi ma hax qies tal-fatt illi kienu l-ewwel denunzji imsemmija, u cioe dawk maghmula mad-Dipartiment tat-Taxxi Interni illi kienu erroneji, u mhux dawk maghmula mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud. Id-diskrepanza bejn iz-zewg denunzji surriferiti hija fil-fatt dovuta ghall-aggestamenti mehtiega fid-dikjarazzjoni illi l-appellanti ghamel mad-Dipartiment tat-Taxxi Interni, u liema aggestamenti l-appellanti ghadu qieghed ihejji.*

¹⁵ Fol. 64 tal-process.

¹⁶ Fol. 2 tal-process.

Il-kwistjoni tad-diskrepanza bejn il-Profit & Loss accounts ghas-sena 2008 sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud u l-Profit & Loss accounts ghall-istess sena sottomessi lid-Dipartiment tat-Taxxi Interni tittratta dwar u tikkoncerna l-understatement of output tax determinat mid-Direttur Generali (Taxxa fuq il-Valur Mizjud) ghall-perijodu ta' taxxa 01.10.08-31.12.08, liema perijodu, jew ahjar l-istima relattiva ghal tali perijodu ghadha in kontestazzjoni bejn il-partijiet kontendenti. L-istimi li gew revokati, li jigi ribadit kienu l-istimi ghall-perijodi ta' taxxa 01.01.07-31.03.07, 01.04.07-30.06.07, 01.07.07-30.09.07 u 01.10.07-31.12.07, kienu jittrattaw dwar overstatement of input tax u dawn gew revokati ghaliex kif spjega r-Review Officer Chris Spiteri waqt is-seduta ta' l-24 ta' Gunju 2014¹⁷: *l-istimi b'kollox kienu jammontaw ghal €13,542, kienu bazikament maqsumin fi tlieta: kien hemm wiehed jammonta ghal €3,036.57 li dan gie revokat min-naha taghna minhabba li sibna li 40% li kien qed jghid it-taxpayer li kien gja haseb ghalihom fir-returns. Kien hemm iehor maqsum finvoices li ma gewx ipprovduti li kienu jammontaw ghal €2,201.25 u €209.16 u l-ahhar wiehed kient ta' underdeclared sales ta' €8,095.86 li kienu diskrepanza bejn l-Inland Revenue u l-VAT Department. In risposta ghall-mistoqsija semmejt 40%, tista' telabora fuqha din? Chris Spiteri wiegeb dawn gew revokati, dawn l-40% kienu jikkonsistu f'xoghol personali li kien ghamel it-taxpayer però dan kien digà haseb ghalih fil-VAT returns u ahna meta rajna hekk min-naha tar-Review Section waqqajnihom. In risposta ghall-mistoqsija ulterjuri nghid sew li din kienet partial attribution? Chris Spiteri wiegeb hekk hu din kienet partial attribution.*

Iccarat dan il-punt it-Tribunal se jghaddi biex jittratta l-mertu proprio ta' l-appell tar-Rikorrent mill-istimi finali effettivament mahruqa fil-konfront tieghu ghall-perijodi ta' taxxa 01.10.08-31.12.08, 01.07.10-30.09.10 u 01.10.10-31.12.10.

Stimi ghall-perijodi ta' taxxa 01.07.10-30.09.10 u 01.10.10-31.12.10:

Kif già iktar 'l fuq osservat l-istimi ghall-perijodi ta' taxxa 01.07.10-30.09.10 u 01.10.10-31.12.10 inhargu fir-rigward ta' over stated input Tax u dana billi l-kreditu ghal input Tax reklamant mir-Rikorrent fid-denunzji ta' taxxa tieghu ghall-imsemmija perijodi ta' taxxa ma giex minnu sodisfacentement ippruvat.

Kif provdut fl-Artikolu 22(5) tal-Kap. 406 tal-Ligijiet ta' Malta: *id-dritt ta' kreditu ta' input tax, l-ammont ta' kreditu u l-mod li bih l-input tax hija attribwibbli ghall-provvisti huwa suggett ghall-kondizzjonijiet, limitazzjonijiet, revizzjonijiet u aggestamenti mnizzla fl-Ghaxar Skeda. A tenur ta' l-Artikolu 2 ta' l-Ghaxar Skeda tal-Kap.406 tal-Ligijiet ta' Malta: ma ghandu jitqies ebda ammont bhala input tax ta' persuna kemm-il darba dik*

¹⁷ Fol. 130 sa' 133 tal-process.

il-persuna ma ggibx prova li dik it-taxxa kellha tithallas fuq il-provvisti ta' oggetti u servizzi jew akkwisti intra-Komuniktarji jew fuq importazzjonijiet ta' oggetti li jkunu gew jew ser jigu wzati minnha fil-kors ta' l-avvanz ta' l-attività ekonomika taghha. (2) Hlief hekk kif il-Kummissarju jista' mod iehor jippermetti, ebda ammont ma ghandu jitqies bhala input tax ta' persuna kemm-il darba: (a) ma jkunx bi: (i) fattura ta' taxxa dwar it-taxxa li ghandha x'taqsam ma' l-oggetti jew servizzi provduti lilu; jew (ii) fattura ta' taxxa dwar it-taxxa li ghandha x'taqsam ma' l-oggetti miksuba minnu taht akkwist intra-Komuniktarju; jew (iii) dokument ta' importazzjoni li jkun jindika lilha bhala importatur dwar it-taxxa fuq importazzjoni; u (b) dwar kull taxxa fuq xi provvista li skond dan l-Att ghandha tithallas minn dik il-persuna jew fuq akkwist intra-Komunitarju, tkun nizzlet dik it-taxxa bhala dovuta lilha fuq id-denunzja tat-taxxa taghha; u (c) id-dokument riferit fil-paragrafu (a) jkun mizmum minn dik il-persuna u jinghata, fuq talba, lill-Kummissarju; (d) l-ammont tat-taxxa jkun inghata kont tieghu kif imiss fid-dokumentazzjoni mizmuma minn dik il-persuna sal-limitu mehtieg ghall-ghanijiet ta' l-Att.

Mill-Credit Control Report¹⁸ jirrizulta b'mod car liema kienu dawk il-fatturi ta' taxxa li ghad illi gew esebiti in sostenn tal-kreditu ghall-input tax reklam mir-Rikorrent ma kienux accettabbli ai termini tal-Ligi u liema kien dak il-kreditu ghal input tax reklam mir-Rikorrent li ma giex debitament sostanzjat¹⁹. Fil-fehma tat-Tribunal id-Direttur Generali (Taxxa fuq il-Valur Mizjud) kien korrett u gustifikat f'li ma jaccettax il-kreditu ghal input tax reklam mir-Rikorrent fil-perijodi ta' taxxa in kwistjoni ghar-raguni li l-istess Rikorrent b'mod car hafna ma ssodisfax dak provdut fl-Artikolu 22(5) tal-Kap.406 tal-Ligijiet ta' Malta u fl-Artikolu 2 ta' l-Ghaxar Skeda tal-Kap.406 tal-Ligijiet ta' Malta hawn appena citati u, ghad illi fl-ittra datata 20 ta' April 2012²⁰, huwa gie infurmat bin-nuqqasijiet ravvizati mill-VAT Inspectors u li a bazi taghhom hargu l-istimi provvizorji ghall-perijodi ta' taxxa 01.07.10-30.09.10 u 01.10.10-31.12.10, huwa ma ressaq l-ebda prova ohra, la fi stadju ta' Review u lanqas quddiem dan it-Tribunal, senjatament fatturi ta' taxxa ai termini tal-Ligi, biex jissostanzja l-kreditu ghal input tax minnu pretiz.

Fid-dawl ta' dan ghalhekk l-appell tar-Rikorrent mill-istimi ghall-perijodi ta' taxxa 01.07.10-30.09.10 u 01.10.10-31.12.10 ma huwiex gustifikat u ma jisthoqqx li jigi milqugh.

Stima ghall-perijodu ta' taxxa 01.10.08-31.12.08:

L-istima ghall-perijodu ta' taxxa 01.10.08-31.12.08 inharget mid-Direttur Generali (Taxxa fuq il-Valur Mizjud) in bazi ghal under declared sales fl-ammont ta' €44,977 minnu ravvizati fil-perijodu ta' taxxa in kwistjoni li wassal

¹⁸ Fol. 40 sa' 59 tal-process.

¹⁹ Annex 1 u Annex 2 fil-Credit Control Report

²⁰ Fol. 60 tal-process.

ghalhekk ghal understatement of output tax fl-ammont ta' €8,095.86. Il-VAT Inspectors waslu ghall-konkluzzjoni li kien hemm under declared sales fl-ammont ta' €44,977 minhabba diskrepanza, li baqghet ma gitex lilhom sodisfacement spjegata mir-Rikorrent, li rrizultatilhom bejn il-Profit & Loss accounts ghas-sena 2008 sottomessi mir-Rikorrent lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud u l-Profit & Loss accounts ghall-istess sena sottomessi mir-Rikorrent lid-Dipartiment tat-Taxxi Interni.

Fir-rigward ir-Rikorrent jissottometti li *huwa ormai evidenti li l-intimat ibbaza l-argument tieghu fuq id-diskrepanza surriferita* (ossia d-diskrepanza bejn il-Profit & Loss accounts ghas-sena 2008 minnu sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud u l-Profit & Loss accounts ghall-istess sena minnu sottomessi lid-Dipartiment tat-Taxxi Interni) *minghajr ma ha qies tal-fatt illi kienu l-ewwel denunzji imsemmija, u cioè dawk maghmula mad-Dipartiment tat-Taxxi Interni illi kienu erroneji u mhux dawk maghmula mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud. Dan minkejja l-fatt illi nghatawlu r-ragunijiet kollha 'l ghaliex ma kellux jaghmel dan. L-istanti b'kull rispettt, ma jistax jifhem din il-posizzjoni ta' l-intimat. Quddiemu l-intimat kellu: (i) profit and loss account interament sorrett minn source documents; u (ii) dikjarazzjoni skjetta tar-rikorrenti li kull diskrepanza li rrizultat fl-ezercizzju komparattiv bejn is-sottomissjonijiet lid-Dipartiment tat-Taxxi Interni u lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud, kienet dovuta ghal zball fl-ewwel sottomissjoni. Ghaliex allura, l-intimat issokkta bil-konferma ta' l-istejjem provizorji? Dan b'kull rispettt mhux biss qatt ma jigi spjegat tul dawn il-proceduri izda huwa ghal kollox arbitrarju, ingust u leziv. Dan partikolarment fid-dawl tal-fatt illi fir-rispettt tal-perijodi in kontestazzjoni Chris Spiteri stess, fis-seduta ta' l-24 ta' Gunju 2014 isostni illi: "Dr. Keith Borg: Ejja ninsew ffit il-correction letter, li qed nghidlek jiena huwa li l-profit and loss account tal-VAT department kien duly backed minn source documents. Ix-xhud: Kienu sostanzjati. Dr. Keith Borg: Mela allura qed nifhem sew jien li l-ammonti dikjarati mal-VAT Department kienu sostanzjati? Ix-xhud: Kienu sostanzjati. Dr. Keith Borg: U allura jwassalna li semmai, jekk kien hemm zball sar fis-sottomissjonijiet li saru lill-Income Tax department u mhux lill-VAT Department? Ix-xhud: Ifhem dik it-taxpayer irid jikkonfermaha. Dr. Keith Borg: Però l-ammonti dikjarati lilkom bhala VAT Department kienu sostanzjati, backed naqblu? Ix-xhud: Kienu backed". L-istanti jissottometti illi mhux biss ressaq evidenza li d-diskrepanza bejn iz-zewg denunzji surriferiti hija fil-fatt dovuta ghall-aggestamenti li kienu mehtiega fid-dikjarazzjoni illi l-istanti ghamel mad-Dipartiment tat-Taxxi Interni, izda wkoll illi pprova bi shih, billi pproduca id-dokumenti kollha mitluba minnu, illi dawk prezentati lill-intimat kienu fil-fatt il-figuri korretti. Fid-dawl ta' dan, l-istanti qajla jista' jifhem il-fatt li l-intimat jishaq li kellha tigi pprezentata lilu talba lid-Dipartiment tat-Taxxi Interni ghall-aggestament ta' l-izball hawn imsemmi; tali talba hija ghal kollox irrilevanti ghall-ezercizzju illi kellu jaghmel l-intimat li fid-dawl tad-dokumenti sottomessi lilu mill-istanti u fid-dawl tal-konferma li dawn kienu jikkombacjaw bi shih mad-denunzji sottomessi, l-istess intimat kellu*

necessarjament jirrevoka l-istejjem mertu ta' dawn il-proceduri. ... Ma ghandu jkun hemm ebda dubju ghalhekk dwar il-fatt li l-ezercizzju imhejji minn Charles Aquilina kien wiehed li ma ha qies ta' xejn ghajr is-source documents, li minnhom huwa hareg il-profit and loss accounts tar-rikorrenti u hejja, abbazi ta' l-istess, id-denunzji in ezami. Dan l-ezercizzju però ma ssodisfax lill-intimat li baqa', inutilment, jishaq fuq diskrepanza li r-raguni taghha giet spjegata lilu drabi innumerevoli. Fl-gheluq tas-sottomissjonijiet dwar dan l-aggravju, l-istanti jigbed l-attenzjoni tat-Tribunal illi numru ta' stejjem sollevati mill-intimat gew revokati wara d-debita spjega; jigi ghalhekk inutilment sottomess illi, anke wara qari ta' l-evidenza prodotta, dan it-Tribunal ma ghandu jkollu l-ebda dubju dwar il-genwinità tal-kaz in ezami²¹.

It-Tribunal però ma jaqbilx ma' dak sottomess mir-Rikorrent ghaliex kuntrarjament ghal dak minnu pretiz huwa naqas milli jipprova b'mod sodisfacenti u konvincenti li nonostante d-diskrepanza bejn il-Profit & Loss accounts ghas-sena 2008 minnu sottomessi lid-Dipartiment tat-Taxxa ghall-Valur Mizjud u il-Profit & Loss accounts ghall-istess sena minnu sottomessi lid-Dipartiment tat-Taxxi Interni, id-Direttur Generali (Taxxa fuq il-Valur Mizjud) kellu jimxi fuq il-Profit & Loss accounts sottomessi lilu u b'hekk ma johrogx jew alternattivament jirrevoka l-istima provvizorja mahruqa fil-konfront tieghu ghall-perijodu ta' taxxa 01.1.08-31.12.08.

Ghalkemm ir-Rikorrent jikkontendi li kemm Rachel Cordina kif ukoll Chris Spiteri kkonfermaw li *s-source documents* li kellu fil-pussess tieghu d-Dipartiment tat-Taxxa fuq il-Valur Mizjud ikkorboraw u kkonfermaw il-korrettezza tal-Profit & Loss accounts ghas-sena 2008 sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud, in verità dan mhux il-kaz.

Ghad illi waqt is-seduta tal-25 ta' April 2014²², in risposta ghall-mistoqsija *jigifieri ahna qed nghidu, biex niftehmu, biex anke dan l-argument naghlquh illi l-Profit and Loss accounts li gie pprezentat lid-Dipartiment tal-Vat huwa duly backed mis-source documents. Qed naqblu fuq dik?* Chris Spiteri wiegeb *iva, naqblu*, jekk ix-xhieda tieghu tittiehed fit-totalità taghha u mhux jittiehdu certa risposti *in vacuo* kif qed jaghmel ir-Rikorrent, jirrizulta b'mod car li dik ir-risposta ma kenitx, ghaliex ma setghetx kienet, fir-rigward tal-Profit & Loss accounts ghas-sena 2008 sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud.

Il-kwistjoni tas-*source documents* in sostenn tal-Profit & Loss accounts sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud già kienet qamet waqt is-seduta tal-25 ta' Novembru 2013, meta wara serie ta' domandi fir-rigward da parte tad-difensur tar-Rikorrent Chris Spiteri gie mistoqsi mit-

²¹ Nota ta' Sottomissjonijiet tar-Rikorrent, fol. 134 sa' 138 tal-process.

²² Fol. 117 sa' 120 tal-process.

Tribunal: *is-source documents li esebixxa r-rikorrent lid-Dipartiment kienu in sostenn tal-Profit & Loss esebita lid-Dipartiment? ... huwa wiegeb jien qed nitkellem fuq it-2008, fil-fatt fil-file sibt tat-2011.* Mistoqsi mill-gdid dwar *is-source documents* fis-seduta tal-25 ta' April 2014²³, Chris Spiteri ddikjara mela li ghandna *source documents* huma ta' 2010, 2011 u 2012. ... **Mela 2008 m'ghandniex source documents, però ghandna diskrepanza dik bejn l-Inland Revenue u d-Dipartiment taghna**²⁴. In risposta ghall-mistoqisja halli nistradaw dan il-punt ghax dan kien l-istess punt ta' l-ahhar darba. Ejja ninsew kompletament l-Inland Revenue, hu pacenzja bija ejja nohorguh mill-istampa. Mela l-Vat department ircieva profit and loss accounts u rcieva source documents. Il-mistoqsija hija l-profit and loss accounts meta tqabbilhom mas-source documents jirreltaw jigifieri huma identici? Chris Spiteri tenna li **jekk ha niehdu 2008, source documents m'ghandniex, li ghandna biss hija profit and loss**²⁵.

Fid-dawl ta' tali affermazzjoni da parte ta' Chris Spiteri t-Tribunal assolutament ma jistax jifhem kif ir-Rikorrent jikkontendi, u jippretendi li t-Tribunal jaqbel mieghu, li l-istess Chris Spiteri ikkonferma li minn *source documents* li kellu d-Dipartiment huma setghu jiddeterminaw li l-Profit & Loss accounts ghas-sena 2008 sottomessi lid-Dipartiment tat-Taxx fuq il-Valur Mizjud kienu l-accounts il-korretti ghal dik is-sena. Apparte minn hekk anke jekk il-mistoqsijiet ulterjuri li saru lil Chris Spiteri waqt is-seduta ta' l-24 ta' April 2014 u twegibiet moghtija minnu jigu kkunsidrati b'attenzjoni jirrizulta li huwa qatt ma qabel u/jew accetta, ghaliex fil-fatt ma setghax jaghmel hekk, illi id-Dipartiment tat-Taxxa fuq il-Valur Mizjud kellu fil-pussess tieghu *source documents* li jissostanzjaw u jikkonfermaw il-Profit & Loss accounts ghas-sena 2008 sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud. L-iskambju ta' mistoqsijiet u twegibiet kien is-segwenti: Dr. Keith Borg: U fl-2008 sibt xi diskrepanzi inti? Xhud: Id-diskrepanza hija l-income tax mal-Vat department. Dr. Keith Borg: Ghas-sena 2008? Xhud: Iva, ghas-sena 2008. Dr. Keith Borg: U ghas-sena 2010? Xhud: Fis-sena 2010, mis-source documents li kellna u l-profit and losses sibna 5 invoices; 4 invoices ftax period starting July 2010 li ma kienux korretti. Dr. Keith Borg: L-invoices? Xhud: Iva, l-invoices. Jew kellhom different date jew kienet issued ghal different tax payer. Dawk qeghdin fir-rapport, ghandkom kopja tieghu. Dr. Keith Borg: Inti li qed tghidli hu jigifieri meta qed tqabbel l-invoice mal-profit and loss accounts qed issib id-diskrepanza? Xhud: Iva, hekk hu, mis-source li qed nghidu kienu fidejna. Dr. Keith Borg: Pero' apparti mhallsa tax payer differenti whatever, l-ammonti jikkombaccjaw? Jigifieri jekk inti taqbad is-source documents u tghoddhom tasal ghall-istess figura tal-P&Ls li gew sottomessi lid-dipartiment tal-Vat? Xhud: Iva, pero' hemm dawn id-diskrepanzi li kont qed nghidlek fuqhom. Dr. Keith Borg: Jigifieri ahna qed nghidu biex niftehmu, biex anka dan l-argument naghlquh illi l-profit and

²³ Fol. 117 sa' 120 tal-process.

²⁴ Enfasi tat-Tribunal.

²⁵ Enfasi tat-Tribunal.

loss accounts li gie pprezentat lid-dipartiment tal-Vat huwa duly backed mis-source documents. Qed naqblu fuqha dik? Xhud: Iva, naqblu.

Ladarba Chris Spiteri kien qed jigi mistoqsi dwar *is-source documents* għall-2010 u dwar il-Profit & Loss Accounts għal dik is-sena li skontu kienu jaqblu izda baqa' jinsisti li għas-sena 2008 kienet qed tirrizulta diskrepanza, kif qatt jista' jigi kkunsidrat - kif invece qed jippretendi r-Rikorrent - li t-twegiba tiegħu *iva naqblu* għall-ahhar mistoqsija li saritlu hawn appena citata kienet tirreferi proprio w unikament għas-sena 2008 u għall-Profit & Loss accounts għal dak is-sena sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud.

Bl-istess mod, kuntrarjament għal dak pretiz mir-Rikorrent, mix-xhieda li tat Rachel Cordina waqt is-seduta tat-30 ta' Mejju 2014²⁶ ma tirrizultax konferma li d-Dipartiment tat-Taxxa fuq il-Valur Mizjud kellu fil-pussess tiegħu dokumenti li jikkorboraw u jikkonfermaw il-korrettezza tal-Profit & Loss accounts għas-sena 2008 sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjudj a differenza tal-Profit & Loss accounts għall-istess sena sottomessi lid-Dipartiment tat-Taxxi Interni.

In ezami waqt l-imsemmija seduta Rachel Cordina xehdet illi *l-file ta' XXX gie għandi biex niccekja li l-vat li kklejmja huwa minnu, u kif ukoll dhalna ftit fis-sales biex naraw li huma awtentici wkoll. Issa f'dan il-kaz li gara kien li meta bejna nqabblu s-sales mal-Profit & Loss account li pproduca Mr. Charles Aquilina, li huwa l-book keeper tat-taxpayer, u l-Profit & Loss accounts li gibna mill-Inland Revenue gara li ma bdewx jaqblu bejniethom. Jigifieri l-Profit & Loss accounts li pproduca t-taxpayer ma bdewx jaqblu ma' l-istess Profit & Loss accounts li pproduca t-taxpayer lill-Inland Revenue. Sibna li s-sales li ddikjara fil-Profit & Loss ta' l-Inland Revenue huma hafna iktar mill-Profit & Loss li pproduca lill-VAT Department u harget diskrepanza ta' 44,977, u b'hekk ahna hrigna provisional assessment fuq dak l-ammont biex ihallas il-vat due. In risposta għall-mistoqsija in kontro-ezami jigifieri biex nara jekk hux qed nifhem sew, jigifieri int kellek dikjarazzjoni li saret mal-Vat Department, dikjarazzjoni li saret ma' l-Inland Revenue, li ma kienux jaqblu u biex intom stajtu taraw liema wahda minnhom kienet tirrifletti r-realtà ma mortux lura għas-source document? Rachel Cordina wiegbet le ha ngħidlek, bhala sales tal-Legal Notice 149 għax dawn dak iz-zmien kienu għaddejnin fuq xi progett, kien qed jagħmel xi progett tal-Lay Lay Company, allura d-Dipartiment awtorizza lit-taxpayer biex ma jiccargjax Vat peress li huwa progett b'ammonti qawwija. Dawk l-invoices iva, gew pproducuti u kkonfermajna, wara xi workings li saru li kienu covered, **jigifieri l-ammont li jidher fil-Profit & Loss account ta' l-Inland Revenue kienu digà covered dawn l-invoices**²⁷.*

²⁶ Fol. 126 sa' 128 tal-process.

²⁷ Enfasi tat-Tribunal.

Ghalkemm Rachel Cordina in segwitu ddikjarat li l-ammonti dikjarati mir-Rikorrent mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud kienu sostanzjati, minn dak minnha affermat fis-sens li *l-ammont li jidher fil-Profit & Loss account ta' l-Inland Revenue kienu digà covered dawn l-invoices*, kjarament jirrizulta li ciò nonostante d-diskrepanza bejn il-Profit & Loss accounts ghas-sena 2008 sottomessi mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud u l-Profit & Loss accounts ghall-istess sena sottomessi mad-Dipartiment tat-Taxxi Interni baqghet bla spjegazzjoni, fattur dan li certament ma jistax jigi sorvolat jew addirittura injorat.

Mill-*Credit Control Report* u mix-xhieda ta' Rachel Cordina u ta' Chris Spiteri jirrizulta li fil-Profit & Loss accounts ghas-sena 2008 sottomessi mir-Rikorrent mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud, ir-Rikorrent iddikjara bejgh fl-ammont ta' €90,523 filwaqt illi fil-Profit & Loss accounts ghall-istess sena sottomessi mir-Rikorrent mad-Dipartiment tat-Taxxi Interni, huwa ddikjara bejgh fl-ammont ta' €135,500. La skond Rachel Cordina l-bejgh dikjarat mir-Rikorrent mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud fil-Profit & Loss accounts ghas-sena 2008 sottomessi mad-Dipartiment kien rifless fil-Profit & Loss accounts ghall-istess sena sottomessi mad-Dipartiment tat-Taxxi Interni, **xorta jibqa' l-fatt li bejn iz-zewg sets ta' Profit & Loss accounts kien hemm diskrepanza mhux spjegata ta' €44,977, li huwa appuntu il-perna tal-kwistjoni in ezami.**

Ghalkemm ir-Rikorrent jipprova jixhet l-oneru tal-prova u l-oneru tal-gustifikazzjoni tal-posizzjoni adottata fuq il-Kummissarju tat-Taxxi, in verità fil-kaz in ezami l-oneru tal-prova jinkombi esklussivament fuqu u fuq hadd iktar.

Huwa fatt indiskuss li ghall-istess sena finanzjarja, ossia s-sena 2008, ir-Rikorrent issottometta zewg sets differenti ta' Profit & Loss accounts ma' zewg Dipartimenti tat-Taxxa differenti. Din id-differenza trid tigi spjegata mir-Rikorrent u l-ispejgazzjoni trid tkun wahda mhux biss sodisfacenti izda addirittura konvincenti partikolarment fid-dawl tal-fatt li ghal kull sena finanzjarja ghandu jkun hemm Profit & Loss account wiehed li ghandu jkun l-istess ghal kull obbligu/skop fiskali li jkollu t-taxpayer.

Jigi osservat li fic-cirkostanzi partikolari ta' dan il-kaz, l-affermazzjoni ta' Charles Aquilina li *rajt l-invoices tax-xiri u tal-bejgh u fformolajt il-vat returns jigifieri l-Vat returns jiena hadthom mis-source document. Minn fuq dawk id-dokumenti jiena hrigt ukoll il-profit and loss accounts u rrizulta li kien hemm xi diskrepanzi bejn il-profit and loss accounts li ghamilt jiena u dawk li kienu gew sottomessi lit-taxxa però jiena dawk li kienu gew sottomessi lit-taxxa injorajthom ghax qbadt mill-bidu nibni l-Profit & Loss accounts. Jiena nsostni li l-Profit & Loss accounts li ghamilt jiena kienu dawk il-korretti. ... Jiena bnejthom mid-dokumenti tal-bejgh u tax-xiri tieghu. ...*

Wara li bnejt dawk il-Profit & Loss accounts, talbuhomli d-Dipartiment tal-VAT u baghtniehomlom²⁸, ma hijiex affattu sufficjenti biex tikkonvinci lit-Tribunal li minkejja l-produzzjoni ta' zewt sets ta' Profit & Loss accounts ghall-istess sena finanzjarja u nonostante d-diskrepanza li hemm bejniethom fir-rigward tal-bejgh dikjarat, il-Profit & Loss accounts ghas-sena 2008 sottomessi mad-Dipartiment tat-Taxxa fuq il-Valur Mizjud ghandhom jitqiesu bhala l-Profit & Loss accounts korretti ghal dik is-sena partikolari.

Ix-xhieda ta' Charles Aquilina ma hijiex hekk sufficjenti u konvincenti ghar-raguni li mill-provi prodotti, senjatament mix-xhieda ta' Chris Spiteri, irrizulta li *source documents* li skond l-imsemmi xhud jikkoroboraw u jikkonfermaw il-veracità tal-Profit & Loss accounts ghas-sena 2008 sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud a differenza tal-Profit & Loss accounts ghall-istess sena sottomessi lid-Dipartiment tat-Taxxi Interni, ma kienux fil-pussess tad-Dipartiment tat-Taxxa fuq il-Valur Mizjud ghad-debita verifika, u ghar-raguni ulterjuri li Charles Aquilina *ex admissis* ma ezaminax il-Profit & Loss accounts ghas-sena 2008 sottomessi lid-Dipartiment tat-Taxxi Interni. In kwantu rigwarda din l-ahhar osservazzjoni t-Tribunal josserva ulterjorment li ma jistax jifhem kif Charles Aquilina jista' jkun tant konvint li l-Profit & Loss accounts ghas-sena 2008 preparati minnu – ossia dawk sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud – huma l-accounts il-korretti ghal dik is-sena meta huwa ma ezaminax il-Profit & Loss accounts l-ohra li jirrizulta li r-Rikorrent jew persuni inkarigati minnu kienu hejjew ghal dik l-istess sena u pprezentawhom lid-Dipartiment tat-Taxxi Interni.

Ladarba r-Rikorrent jikkontendi li l-Profit & Loss accounts ghas-sena 2008 sottomessi lid-Dipartiment tat-Taxxi Interni ma humiex korretti w addirittura b'ittra datata 20 ta' Gunju 2012, kien gharraf lil Chris Spiteri li *during the year 2008 there is a difference when comparing P&L Accounts as submitted to the Vat Department compared with IRD. I like to state that P&L that I submitted to the Vat Department is the correct one and in fact I am planning to do a correction with IRD department in order to adjust P&L that was submitted to IRD*²⁹, ma huwiex affattu spjegabbli ghalfejn sa' meta nghalaq il-gbir tal-provi quddiem it-Tribunal f'Gunju ta' l-2014, ir-Rikorrent kien ghadu ma talabx lid-Direttur Generali (Taxxi Interni)/Kummissarju tat-Taxxi biex jaggusta/jikkoregi l-Profit & Loss accounts ghas-sena 2008 sottomessi mad-Dipartiment tat-Taxxi Interni.

Ghalkemm ir-Rikorrent jipprova jargumenta li tali aggestament/korrezzjoni ma humiex necessarji u rilevanti ghall-finijiet ta' l-istima mahruga fil-konfront tieghu ghall-perijodu ta' taxxa 01.10.08-31.12.08, in verità tali korrezzjoni hija fundamentali ghall-finijiet ta' tali stima iktar u iktar meta rrizulta li: (a) li ghalkemm il-bejgh dikjarat fil-Profit & Loss accounts ghas-sena 2008

²⁸ Xhieda moghtija waqt is-seduta tad-9 ta' Mejju 2013, fol. 83 sa' 86 tal-process.

²⁹ Fol. 68 tal-process.

sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud kien rifless fil-Profit & Loss accounts ghall-istess sena sottomessi lid-Dipartiment tat-Taxxi Interni, xorta kien hemm diskrepanza bejniethom li baqghet bla spjegazzjoni; (ii) kien ir-Rikorrent stess li gharraf lil Chris Spiteri li kien se jitlob korrezzjoni fil-Profit & Loss accounts ghas-sena 2008 sottomessi mad-Dipartiment tat-Taxxi Interni in kwantu dawn skontu kienu erroneji; u (c) baqghet ma tressqet l-ebda prova prova li konkretament u sodisfacentement turi li fil-fatt il-Profit & Loss accounts ghas-sena 2008 sottomessi lid-Dipartiment tat-Taxxi Interni kienu erroneji u l-Profit & Loss accounts korretti ghal dik is-sena kienu daww sottomessi lid-Dipartiment tat-Taxxa fuq il-Valur Mizjud.

Fid-dawl ta' dan kollu osservat it-Tribunal iqis li l-aggravji tar-Rikorrent fir-rigward ta' l-istima mahruqa fil-konfront tieghu ghall-perijodu ta' taxxa 01.10.08-31.12.08 ma humiex gustifikati u b'hekk ma jisthoqqx li jigu milqugha.

Ghal dawn ir-ragunijiet it-Tribunal filwaqt li jordna li ssir korrezzjoni fl-okkju ta' dawn il-proceduri fis-sens illi l-intestatura 'Kummissarju tat-Taxxa fuq il-Valur Mizjud' tigi kkancellata u sostitwita bl-intestatura 'Kummissarju tat-Taxxi', jaqta' u jiddeciedi billi jichad l-appell tar-Rikorrent mill-istimi mahruqa fil-konfront tieghu mid-Direttur Generali (Taxxa fuq il-Valur Mizjud) ghall-perijodi ta' taxxa 01.10.08-31.12.08, 01.07.10-30.09.10 u 1.10.10-31.12.10 u minflok jikkonferma l-istess imsemmija stimi.

L-ispejjez ta' dawn il-proceduri ghandhom jigu sopportati interament mir-Rikorrent.

A tenur ta' l-Artikolu 2(4) tal-Kap. 406 tal-Ligijiet ta' Malta t-Tribunal jordna li kopja ta' din id-decizjoni tigi notifikata lir-Rikorrent.

MAGISTRAT

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