



**MALTA**

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

**Rikors Nru. 208/11VG**

**Lino Prospero u martu Frances Carabott**

**Vs**

**Kummissarju tat-Taxxi**

**Illum 18 ta' Gunju 2018**

**It-Tribunal,**

Ra r-Rikors ipprezentat minn Lino Prospero u martu Frances Carabott fid-9 ta' Settembru 2011 permezz ta' liema jitlobu li t-Tribunal: (i) jiddikjara li l-prezz li bih huma akkwistaw l-appartament numru 16, fit-tmien sular, ossia fid-disa' sular ta' bini tal-blokk ta' appartamenti "The Pearls", Block A, fi Triq San Pawl u fi Triq San Pawl il-Bahar, San Pawl il-Bahar, in forza ta' kuntratt fl-atti tan-Nutar Sam Abela datat 8 ta' Jannar 2009, u l-eventwali hlas ta' taxxa, jirriflettu l-valur veru, gust u reali u li konsegwentement l-ebda ammont ma huwa minnhom dovut lill-Kummissarju tat-Taxxi Interni u b'hekk ihassar u jirrevoka d-decizjoni tal-Kummissarju tat-Taxxi Interni datata 28 ta' Lulju 2011 u l-konsegwenti Likwidazzjoni ta' Taxxa mahruga fil-konfront taghhom in konnessjoni ma' l-akkwist ta' l-imsemmi fond; jew alternattivament (ii) jirrifirma d-decizjoni tal-Kummissarju tat-Taxxi Interni datata 28 ta' Lulju 2011 u konsegwentement inaqqs il-Likwidazzjoni ta' Taxxa mahruga mill-Kummissarju tat-Taxxi Interni fil-konfront taghhom in konnessjoni ma' l-akkwist ta' l-appartament imsemmi; u (iii) jaghti dawk l-ordnijiet kollha dwar il-Likwidazzjoni ta' Taxxa u d-decizjoni tal-Kummissarju tat-Taxxi Interni datata 28 ta' Lulju 2011 li jidhrulu xierqa u opportuni fic-cirkostanzi tal-kaz; bl-ispejjez kontra l-Kummissarju tat-Taxxi Interni;

Ra d-dokument anness mar-Rikors promotur, ossia d-decizjoni tal-Kummissarju tat-Taxxi Interni ta' Rifjut ta' Oggezzjoni datata 28 ta' Lulju 2011, a fol. 7 sa' 9 tal-process;

Ra r-Risposta tal-Kummissarju tat-Taxxi Intenri permezz ta' liema jopponi ghall-appell tar-Rikorrenti u jitlob li l-istess jigi michud, bl-ispejjez kontra taghhom,

stante li d-decizjoni mehuda minnu u l-konsegwenti Likwidazzjoni ta' Taxxa mahruga minnu huma gusti u saru skond il-Ligi;

Sema' x-xhieda ta' Noel Zammit moghtija waqt is-seduta tas-26 ta' Jannar 2012<sup>1</sup> u ra d-dokumenti esebiti minnu markati Dok. "NZ1" sa' Dok. "NZ4" a fol. 28 sa' 54 tal-process, sema' x-xhieda ta' Ivan Portelli in rapprezentanza tal-Kummissarju tat-Taxxi, moghtija waqt is-seduta ta' l-14 ta' Frar 2012<sup>2</sup> u x-xhieda tal-Perit Mario Cassar moghtija waqt is-seduta ta' l-20 ta' Novembru 2012<sup>3</sup>, sema' x-xhieda ta' Patrizio Prospero moghtija waqt is-seduta tad-29 ta' Jannar 2013<sup>4</sup> u ra d-dokument esebiti minnu markati Dok. "PP1" a fol. 82 tal-process, u ra d-dokumenti markati Dok. "DG1" sa' Dok. "DG7" esebiti mid-Direttur Generali (Taxxi Interni) permezz ta' Nota ipprezentata fil-11 ta' Marzu 2014 a fol. 101 sa' 114 tal-process;

Ra d-Digriet moghti fl-14 ta' Frar 2012<sup>5</sup>, permezz ta' liema gie ordnat li d-desinjazzjoni "Kummissarju tat-Taxxi Interni" tigi korretta ghal "Kummissarju tat-Taxxi" fid-dawl ta' l-Att XXII ta' l-2011 li dahal fis-sehh in forza ta' l-Avviz Legali 16 ta' l-2012;

Ra li waqt is-seduta ta' l-4 ta' April 2014<sup>6</sup> it-Tribunal ikkonceda lir-Rikorrenti zmien xahrejn ghall-prezentata tan-Nota ta' Sottomissjonijiet taghhom b'notifika jew visto tal-kontro-parti li a sua volta kellu zmien xahrejn min-notifika ghall-prezentata tan-Nota Responsiva, izda ebda wahda mill-partijiet kontendenti ma ressqet is-sottomissjonijiet taghha bil-miktub;

Ra l-atti kollha tal-kawza;

### **Ikkonsidra:**

In forza ta' kuntratt fl-atti tan-Nutar Dottor Sam Abela datat 8 ta' Jannar 2009<sup>7</sup>, ir-Rikorrenti akkwistaw minghand Emanuel sive Noel Zammit u martu Stephanie Zammit *the apartment without its relative airspace, internally numbered sixteen (16), situated at level eight (8), being the ninth (9<sup>th</sup>) level of building, forming part of Block letter "A", ... without an official number and named "The Pearls", in Saint Paul's Street and Triq San Pawl il-Bahar and an unnamed road abutting onto Triq San Pawl il-Bahar, Saint Paul's Bay, inkluz the perpetual and uninterrupted use together with the other apartments/penthouses of the respective block of those parts intended for common use, and these namely consist of the outer door, the entrance hall, stairwell and staircase, lift and lift shaft, the landings, the rainwater and drainage disposal systems, the internal shafts within the respective block and all those other areas and services intended for common use within the respective block ... enjoying the active rights and is subject to the passive servitudes arising from its relative position. Otherwise ... free and unencumbered*

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<sup>1</sup> Fol. 55 sa' 57 tal-process.

<sup>2</sup> Fol. 63 sa' 65 tal-process.

<sup>3</sup> Fol. 77 sa' 80 tal-process.

<sup>4</sup> Fol. 83 sa' 91 tal-process.

<sup>5</sup> Fol. 62 tal-process.

<sup>6</sup> Fol. 115 tal-process.

<sup>7</sup> Dok. "NZ1" a fol. 28 sa' 35 tal-process.

*and with all its rights and appurtenances verso l-prezz ta' €76,869.32. Skond kif stipulat fil-kuntratt ta' l-akkwist dan l-appartament gie minnhom akkwistat in shell form state.*

Dan it-trasferiment gie komunikat lill-Kummissarju tat-Taxxi Interni fil-5 ta' Frar 2009<sup>8</sup>, li a sua volta inkariga lill-Perit Mario Cassar sabiex jaghtih stima tal-valur reali ta' l-appartament akkwistat mir-Rikorrenti fiz-zmien tat-trasferiment, ossia fit-8 ta' Jannar 2009. L-ewwel stima moghtija mill-Perit Mario Cassar u ipprezentata lill-Kummissarju tat-Taxxi Interni fl-10 ta' Gunju 2009 kienet stima *best of judgment* ta' €150,000<sup>9</sup>. Din l-istima kienet wahda *best of judgment* ghaliex il-Perit Cassar ma kienx irnexxielu jzomm access fl-appartament akkwistat mir-Rikorrenti peress illi ma kien fetahlu hadd. A bazi ta' din l-istima w a tenur ta' l-Artikolu 52 tal-Kap.364 tal-Ligijiet ta' Malta, il-Kummissarju tat-Taxxi Interni hareg Likwidazzjoni ta' Taxxa bil-Kont Nru. IV109720 datata 17 ta' Gunju 2009 fil-konfront tar-Rikorrenti permezz ta' liema talab il-hlas tas-somma ta' €3,655 bhala taxxa fuq il-valur addizzjonali taxxabli ta' €73,100 u l-hlas tas-somma ulterjuri ta' €3,655 bhala taxxa addizzjonali/penali<sup>10</sup>.

Permezz ta' ittra datata l-1 ta' Lulju 2009<sup>11</sup> ir-Rikorrenti oggezzjonaw ghall-Likwidazzjoni ta' Taxxa mahruga mill-Kummissarju tat-Taxxi Interni stante li *I did not meet the Architect since I received the inspection notice after the date scheduled for inspection (the valuation was based on a best of judgment). On the above, I kindly request the department to forward the file again to the Department Architect to inspect the property in question since the value estimated by the Department does not reflect the true market value.* Wara din l-oggezzjoni l-Perit Mario Cassar spezzjona l-appartament akkwistat mir-Rikorrenti u hareg stima ta' €130,000 bhala l-valur reali fiz-zmien tat-trasferiment tal-proprietà minnu spezzjonata<sup>12</sup>. Permezz ta' ittra datata l-1 ta' Novembru 2009<sup>13</sup>, ir-Rikorrenti mill-gdid oggezzjonaw ghall-istima mahruga mill-Perit Cassar stante li *the value estimated by the Architect is way above the true market value and the price declared in the contract. The price declared in the contract is the true market value, thus I still object to the additional tax due, since this does not reflect the current market value (date of contract).* Ir-Rikorrenti talbu li ssir spezzjona ulterjuri da parte tal-Perit Cassar, liema spezzjoni però baqghet ma inzammix ghalix meta l-Perit Cassar mill-gdid ipprova jaccedi fl-appartament in kwistjoni ma fetahlu hadd<sup>14</sup>.

B'decizjoni datata 28 ta' Lulju 2011<sup>15</sup>, il-Kummissarju tat-Taxxi ddikjara li l-valur reali fiz-zmien tat-trasferiment ta' l-appartament akkwistat mir-Rikorrenti kien ta' €130,000 kif stamt mill-Perit Cassar u b'hekk iddetermina li hija dovuta mir-Rikorrenti taxxa fl-ammont ta' €2,655 u taxxa addizzjonali fl-ammont ta' €2,655,

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<sup>8</sup> Dok. "DG1" a fol. 102 sa' 104 tal-process.

<sup>9</sup> Dok. "DG2" a fol. 105 tal-process.

<sup>10</sup> Dok. "DG3" a fol. 106 tal-process.

<sup>11</sup> Dok. "DG4" a fol. 107 tal-process.

<sup>12</sup> Dok. "DG5" a fol. 108 tal-process.

<sup>13</sup> Dok. "DG6" a fol. 109 tal-process.

<sup>14</sup> Xhieda tal-Perit Mario Cassar moghtija waqt is-seduta ta' l-20 ta' Novembru 2012, fol. 77 sa' 80 tal-process.

<sup>15</sup> A fol. 112 sa' 114 tal-process.

komplessivament ammontanti ghal €5,310. Din id-decizjoni giet segwita b’Likwidazzjoni ta’ Taxxa bil-Kont Nru. IV119221 datata 8 ta’ Awwissu 2011<sup>16</sup> permezz ta’ liema r-Rikorrenti qed jigu mitluba jhallsu s-somma ta’ €2,655 bhala taxxa fuq il-valur addizzjonali taxxabbli ta’ €53,100, flimkien mas-somma ta’ €2,655 bhala taxxa addizzjonali/penali.

Ir-Rikorrenti hassewhom aggravati bid-decizjoni tal-Kummissarju tat-Taxxi Interni tat-28 ta’ Lulju 2011 u bil-Likwidazzjoni ta’ Taxxa bil-Kont Nru. IV119221 u ghalhekk interponew dan l-appell quddiem it-Tribunal permezz ta’ liema jitolbu ghas-segwenti rimedji: li t-Tribunal (i) jiddikjara li l-prezz li bih huma akkwistaw l-appartament numru 16, fit-tmien sular, ossia fid-disa’ sular ta’ bini tal-blokk ta’ appartamenti “The Pearls”, Block A, fi Triq San Pawl u fi Triq San Pawl il-Bahar, San Pawl il-Bahar, in forza ta’ kuntratt fl-atti tan-Nutar Sam Abela datat 8 ta’ Jannar 2009, u l-eventwali hlas ta’ taxxa, jirriflettu l-valur veru, gust u reali u li konsegwentement l-ebda ammont ma huwa minnhom dovut lill-Kummissarju tat-Taxxi Interni u b’hekk ihassar u jirrevoka d-decizjoni tal-Kummissarju tat-Taxxi Interni datata 28 ta’ Lulju 2011 u l-konsegwenti Likwidazzjoni ta’ Taxxa mahruga fil-konfront taghhom in konnessjoni ma’ l-akkwist ta’ l-imsemmi fond; jew alternattivament (ii) jirrifirma d-decizjoni tal-Kummissarju tat-Taxxi Interni datata 28 ta’ Lulju 2011 u konsegwentement inaqqas il-Likwidazzjoni ta’ Taxxa mahruga mill-Kummissarju tat-Taxxi Interni fil-konfront taghhom in konnessjoni ma’ l-akkwist ta’ l-appartament imsemmi; u (iii) jaghti dawk l-ordnijiet kollha dwar il-Likwidazzjoni ta’ Taxxa u d-decizjoni tal-Kummissarju tat-Taxxi Interni datata 28 ta’ Lulju 2011 li jidhrulu xierqa u opportuni fic-cirkostanzi tal-kaz.

Ir-Rikorrenti jibbazaw l-appell taghhom mill-Likwidazzjoni ta’ Taxxa bil-Kont Nru. IV119221 fuq is-segwenti aggravji: (i) *il-likwidazzjoni tal-valur tal-proprjeta immobbli li giet akkwistata mill-esponenti permezz ta’ l-att pubbliku in atti tan-Nutar Sam Abela datat 8 ta’ Jannar 2009, hekk kif maghmula mill-Kummissarju tat-Taxxi Interni hija fic-cirkostanzi kollha nfondata. Il-valur ta’ din il-proprjeta immobbli kif dikjarat fl-att pubbliku surreferit jirrifletti l-valur veru, gust u reali fid-data illi fiha din il-proprjeta giet hekk trasferita;* (ii) *minkejja li l-esponenti sottomettiet lill-intimat Kummissarju tat-Taxxi Interni evidenza sufficienti sabiex tissorstanza l-aggravji hawn fuq sollevati, l-intimat, fid-decizjoni de quo jghid illi “[...] transferee failed to produce any evidence to show that the value declared in the deed is correct. Under the circumstances, the Commissioner sees no valid reason for discarding the advice obtained by him and confirms his assessment in that respect”. Il-Kummissarju tat-Taxxi Interni jasal ghat-tieni decizjoni tieghu u jirriduci l-valur moghti lill-proprjeta minn mija u hamsin elf euro (€150,000) ghal mija u tletin elf euro (€130,000) wara li rrikorra ghall-awzilju tal-perit tekniku, strah fuq l-istess rizultanzi tal-perit u skarta ghal kollox l-oggezzjoni ta’ l-esponenti u jaccenna li l-istess esponenti ma ssostantjatx il-kontestazzjoni taghha<sup>17</sup>.*

Il-Kummissarju tat-Taxxi Interni, illum Kummissarju tat-Taxxi, jipponi ghall-appell tar-Rikorrenti mid-decizjoni tieghu tat-28 ta’ Lulju 2011 u mill-Likwidazzjoni ta’

<sup>16</sup> Dok. “DG7” a fol. 110 u 111 tal-process.

<sup>17</sup> Rikors promotur, fol. 3 u 4 tal-process.

Taxxa bil-Kont Nru. IV119221 u jitlob li l-istess jigi michud stante li d-decizjoni mehuda minnu u l-konsegwenti Likwidazzjoni ta' Taxxa mahruga minnu huma gusti u saru skond il-Ligi.

Mix-xhieda tal-Perit Mario Cassar<sup>18</sup> jirrizulta li huwa ta' valur ta' appartament f'finished state u mhux f'shell form. In effetti fir-rigward il-Perit xehed: *jekk niftakar tajjeb il-blokk in kwistjoni vvalutajtu u rajt li qieghed f'St. Paul's Street, St. Paul's Bay, fin-nizla tal-veccja. ... dawn l-appartamenti kollha kienu finished. Kull darba li mort jiena, mort darba, darbtejn, tlieta, rajt xi erbgha jew sitta minn hemm, kollha finished kienu. Jiena tajt valutazzjoni ta' finished u jekk niftakar tajjeb bhala appartamenti huma spazjuzi u bicciet minnhom jekk niftakar tajjeb ghandhom faccata fuq St. Paul's u faccata fuq it-triq tal-genb, hemm triq steep hafna. ... il-finishes kienu a good grade of finishing. ... normalment meta nerga' nibghat, meta d-dipartiment jaghti lit-taxpayer ic-chance jerga' jaghmel il-valutazzjoni, jiena nitlob xi VAT receipts jew xi prova li kien shell dan, issa hemm min igibhom u hemm min ma jgibhomx. F'dan il-kaz jidher li ma ltqajtx mieghu jigifieri ma nfermanix jew xi hadd baghat notifika li ma jistax jattendi jew biex nipposoponuh. In risposta ghall-mistoqsija tat-Tribunal ghalkemm dawn l-ircevuti setghu ma gewx mghoddija lilek direttament mit-taxpayer ghal dawn ir-ragunijiet, id-dipartiment minn naha tieghu infurmak li forsi t-taxpayer seta' esebixxa dokumentazzjoni? il-Perit Cassar wiegeb normalment jinfurmani imma din id-darba ma qalli xejn, u ma jidhirx li gew ipprezentati Vat receipts f'dan il-kaz partikolari. In risposta ghall-mistoqsija ulterjuri tat-Tribunal u finished, habitable adirittura? il-Perit wiegeb of course, it was a good standard of finish. L-unika problema li kien hemm li niftakru tajjeb dan il-kaz. Fil-common parts kien hemm katusa tqattar u niftakru tajjeb ghaliex sa' fejn naf jiena l-owner minn H'Attard u kien joqghod quddiemi.*

Ir-Rikorrenti jippruvaw ixejnu l-konstatazzjonijiet ta' u konsegwenti stima moghtija mill-Perit Mario Cassar u konsegwentement jippruvaw juru li l-Likwidazzjoni ta' Taxxa bil-Kont Nru. IV119221 hija eccessiva, permezz ta' zewg tipi ta' prova: (i) ix-xhieda tal-venditur Emanuel sive Noel Zammit li esebixxa l-kuntratti ta' l-akkwist relattivi ghall-appartament akkwistat mir-Rikorrenti u ghal zewg appartamenti ohra fl-istess blokk li minnha jiforma parti l-appartament mertu ta' dawn il-proceduri, minn liema jirrizulta li dawn it-tlett appartamenti inbieghu bejn wiehed u iehor ghall-istess valur u gew trasferiti f'shell form; u (ii) ix-xhieda ta' Patrizio Prospero, li jigi t-tifel taghhom, li xehed illi l-genituri tieghu akkwistaw l-appartament in kwistjoni f'shell form u kienu missieru u zijuh li kkompletaw il-finishes ta' dan l-appartament.

Emanuel sive Noel Zammit xehed illi *jiena kont zviluppajt blokka ta' appartamenti maghrufa bhala "The Pearls" Block A fi Triq San Pawl, San Pawl il-Bahar, u jiena qieghed fil-process li nbiegh dawn l-appartamenti. Fil-fatt lir-Rikorrent kont biegehjtlu wiehed minn dawn l-appartamenti f'din il-blokka. L-appartament lir-rikorrent kont biegehjtulu ghall-prezz ta' €76,000 u dan kif jirrizulta mill-istess kuntratt fl-atti tan-Nutar Sam Abela li qed jigi esebit u mmarkat bhala Dok.*

<sup>18</sup> Xhieda moghtija waqt is-seduta ta' l-20 ta' Novembru 2012, fol. 77 sa' 80 tal-process.

“NZ1”<sup>19</sup>. Il-flat li xtara Propsero jinsab fil-level number 8 u kif ghedt dana bieghetu ghall-valur ta' €76,000. Il-flat ta' taht Prospero u jerga' ta' tahtu ghalkemm ghandhom l-istess layout inbieghu ghal prezz irhas u dan ghar-raguni li aktar ma tghola fil-livell aktar jghola peress li aktar jonqos il-hoss minhabba li dawn jaghtu ghal fuq il-main road. Il-lay out ta' l-appartamenti huwa l-istess u allura l-varjazzjoni fil-prezz kif spjegajt tiddependi mill-fatt li jkunu fil-livell aktar gholi. Qed nesebixxi zewg kuntratti ohra rispettivament immarkati Dok. “NZ2”<sup>20</sup> u Dok. “NZ3”<sup>21</sup> wiehed relattiv ghall-appartament flat 8 li jinsab fil-level 6 u dan inbiegh ghall-prezz ta' €72,000. Hemm ukoll il-kuntratt tal-flat numru 12 fil-level 7 li nbiegh ghall-prezz ta' €73,000. Ghalkemm Emanuel sive Noel Zammit iddikjara li ma giex infurmat b'access li kellu jew inzamm fl-appartament akkwistat mir-Rikorrenti, huwa xehed illi naf bhala fatt però li l-Perit tad-Dipartiment kien mar ghamel access fil-flat 8 u 12 li pprezentajt il-kuntratti taghhom u wara li sar l-access mill-perit, jiena ma rcevejt l-ebda forma ta' likwidazzjoni ulterjuri da parte tal-Kummissarju tat-Taxxi Interni<sup>22</sup>.

Dwar l-ezitu ta' l-ispezzjoni tal-Perit Cassar ta' l-appartamenti 8 u 12 fl-istess blokka li fiha jinsab l-appartament akkwistat mir-Rikorrenti u dwar l-azzjoni mehuda mill-Kummissarju tat-Taxxi Intenri fir-rigward, xehed Ivan Portelli, rapprezentant tal-Kummissarju tat-Taxxi<sup>23</sup>, li essenzjalment ikkonferma li kienet saret spezzjoni mill-Perit Cassar f'dawn iz-zewg appartamenti, li in segwitu ghal dawk l-ispezzjonijiet kienu nhargu Kontijiet da parte tal-Kummissarju tat-Taxxi Interni fir-rigward tat-taxpayers koncernati, liema Kontijiet però kienu gew ikkancellati wara li saret oggezzjoni da parte tat-taxpayers.

Fil-fehma tat-Tribunal ix-xhieda ta' Ivan Portelli turi bic-car li l-Kontijiet li nhargu fil-konfront tat-taxpayers relattivament ghat-trasferiment ta' l-appartamenti 8 u 12, Block A, The Pearls, St. Paul's Street, San Pawl il-Bahar, gew ikkancellati mill-Kummissarju tat-Taxxi Intenri ghaliex l-istess Kummissarju kien sodisfatt li l-oggezzjonijiet sollevati mit-taxpayers f'dawk il-kazijiet kienu, ghax hekk irrizultaw, gustifikati. Il-fatt li dawk il-Kontijiet gew ikkancellati ghaliex il-Kummissarju tat-Taxxi Interni qies li l-oggezzjonijiet tat-taxpayers kienu gustifikati ma jwassalx biex u ma jistax jinftiehem b'mod li pratikament awtomatikament il-Likwidazzjoni ta' Taxxa bil-Kont Nru. IV119221 mahrug fil-konfront tar-Rikorrenti ghandha tigi ikkancellata, kif invece pretiz mir-Rikorrenti w anke mill-venditur Emanuel Zammit. Isegwi ghalhekk li biex l-appell tar-Rikorrenti mid-decizjoni tal-Kummissarju tat-Taxxi Intenri datata 28 ta' Lulju 2011 u mill-Likwidazzjoni ta' Taxxa bil-Kont Nru. IV119221 datata 8 ta' Awwissu 2011 jigi milqugh, huma ghandhom jippruvaw b'mod sodisfacenti li kuntrarjament ghal dak ikkonstatat u ikkunsidrat mill-Perit Mario Cassar, huma kienu akkwistaw l-appartament mertu ta' dawn il-proceduri f'shell form.

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<sup>19</sup> Fol. 28 sa' 35 tal-process.

<sup>20</sup> Fol. 36 sa' 43 tal-process.

<sup>21</sup> Fol. 44 sa' 53 tal-process.

<sup>22</sup> Xhieda moghtija waqt is-seduta tas-26 ta' Jannar 2012 a fol. 55 sa' 57 tal-process.

<sup>23</sup> Xhieda moghtija waqt is-seduta tas-16 ta' Frar 2012, fol. 63 sa' 65 tal-process.

Kif già iktar 'l fuq osservat ir-Rikorrenti jippruvaw jissosstanzjaw il-kontestazzjoni taghhom li l-istima tal-Perit Cassar u per konsegwenza l-Likwidazzjoni ta' Taxxa bil-Kont Nru. IV119221 huma eccessivi tramite x-xhieda ta' binhom Patrizio Prospero li xehed waqt is-seduta tas-29 ta' Jannar 2013<sup>24</sup>.

Patrizio Prospero iddikjara li l-genituri tieghu kienu akkwistaw l-appartament numru 16, f'The Pearls, f'St. Paul's Street, San Pawl il-Bahar, tal-kejl ta' circa 70m.k., ghall-valur ta' Lm33,000, ekwivalenti ghal €76,869.32. Huwa xehed ulterjorment illi *the property was seen and sold in shell form because my parents, my father not my mother, my father is quite well acquainted in doing things himself and with the help of my uncle, who is presently in Malta because he is the husband of my mother's sister, who works in tile laying and gypsum making, they have made basically the works themselves. Basically my parents have bought this flat with the money that my father got after going into pension because in Italy when you are going to take the pension you are given an amount of money which is one wage per year that you have worked. My parents are not rich by family, and they always worked both normal good jobs but they are not rich by family they didn't inherit anything. They are both pensioners and those money they decided to invest them in this property here in Malta. I am residing here in Malta now and I've been living here for the past eight years. They decided to purchase this flat to come over in summer and they purchased it with there savings. They preferred to do things themselves to get a lower price rather than spending more money in a finished placed and then they did it bit by bit and in one year they completed the flat. They furnished it and they bought the things and they did it up themselves. ... I am trying to remember to be 100% correct, it was yes completely shell form, I don't remember to be honest because I didn't went to see it with them, maybe the chasing of the electricity was already passed, but the tiling, the gypsum and the air conditioners were definitely done after they purchased the flat ... As I was saying the price was Lm33,000 in shell form. The money my parents have taken from the liquidazione were invested in that flat, that's plain and simple and I don't have any other particular things to say besides the fact that under my responsibility and oath I know what they have purchased the flat for and I'm sure that that was the price and there is the receipt of the agent. Of course the agent have made all the deals for them and has paid all they had to pay and the agent will not accept any commission which is less than the value, I mean for him is business and at the end of the day he didn't accept any commission which is lower to what he had sold the flat. We have a fiscal receipt for that and besides that I don't have anything particular to say. What I can say but of course this is what I know, maybe it can be proved at a later stage, my parents have made friends with other people in the block and they have discussed when this thing happened because they got a little bit anxious about this thing. Of course and for what concerns our knowledge and what we know, no one in the block was assessed for and they were all declared on the same more or less value. Of course those that are over looking the sea which are three bedroom have a higher price, but more or less those which are on the same level they were all sold for the same price more or less and maybe one thousand more. Maybe the deals*

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<sup>24</sup> Fol. 83 sa' 91 tal-process.

*that one made with the vendor, approximately is the same value, and there isn't a big difference and none of them were assessed for extra tax to pay. I mean we are the only ones in the block who actually are unfortunately facing this problem.*

It-Tribunal ma huwiex affattu sodisfatt mill-valur probatorju tax-xhieda ta' Patrizio Prospero u ma jqisx li din ix-xhieda tikkostitwixxi l-aqwa prova li r-Rikorrenti setghu jressqu fir-rigward ta' l-istat li fih huma akkwistaw l-appartament in kwistjoni<sup>25</sup> u dana nonostante l-fatt li giet esebita r-ricevuta ta' Dhalia Estate Agency Limited ghall-hlas tas-somma ta' €4,535, bil-VAT inkluza, li wkoll wahdedha ma tistax titqies bhala l-ahjar prova fic-cirkostanzi.

Jibda biex jigi osservat li t-Tribunal ma jistghax jifhem ghalfejn minflok ma xehedu huma direttament, ir-Rikorrenti ghazlu li jressqu bhala xhud lil binhom biss - li milli jidher ma kellux wisq involviment la fl-akkwist tal-fond u wisq inqas fix-xoghlijiet esegwiti fih - minghajr ma ressqu wkoll imqar lir-ragel ta' oht ir-Rikorrenti Frances Carabott li allegatament ghamel hafna mix-xoghlijiet fl-appartament. It-Tribunal lanqas ma jista' jifhem ghalfejn u ghaliex ir-Rikorrenti - jekk verament ma zammewx il-fatturi u ricevuti relattivi ghall-allegat akkwist da parte taghhom tal-materjal utilizzat biex gie kompletat l-appartament - ma ippruvawx jottjenu kopja ohra ta' dawn il-fatturi u ricevuti minghand minn gie akkwistat il-materjal bhal ad ezempju madum u gypsum jew ta' l-inqas ressqu lil dawn il-persuni biex jaghtu x-xhieda taghhom f'dawn il-proceduri, partikolarment meta jigi kkunsidrat li ai termini tal-Ligi tali fornituri huma obbligati li jzommu *records* tal-bejgh li jaghmlu ghal diversi snin. It-Tribunal josserva wkoll li r-Rikorrenti naqsu milli jipprezentaw ir-ricevuti relattivi ghall-akkwist ta' l-air conditioners, fridges u mobbli u furnishings ohra li skond binhom Patrizio Prospero ghandhom fil-pussess taghhom, minn liema ricevuti seta' jirrizulta *time-line* car ta' meta gew akkwistati dawk il-mobbli u furnishings li per necessità jigu akkwistati biss wara li l-appartament jkun kompletat.

It-Tribunal ma huwiex affattu konvint mill-fatt li l-appartament gie akkwistat in shell form ukoll minhabba dikjarazzjoni maghmula minn Patrizio Prospero fix-xhieda tieghu li tikkontrasta ferm mal-konstatazzjonijiet li l-Perit Mario Cassar ghamel waqt l-ispezzjoni ta' l-appartament.

Patrizio Prospero iddikjara li l-genituri tieghu *decided to purchase this flat to come over in summer and they purchased it with their savings. They preferred to do things themselves to get a lower price rather than spending more money in a finished place and then **they did it bit by bit and in one year they completed the flat. They furnished it and they bought the things and they did it up themselves***<sup>26</sup>. Il-Perit Cassar però acceda fl-appartament in kwistjoni f'xi zmien bejn l-1 ta' Lulju 2009, id-data ta' l-ewwel ittra ta' oggezzjoni wara l-hrug tal-Likwidazzjoni ta' Taxxa a bazi ta' stima *best of judgment*, u l-1 ta' Novembru 2009, id-data tat-tieni ittra ta' oggezzjoni wara li l-Perit irrevoda l-istima tieghu ghal €130,000 wara li appuntu spezzjona l-fond, ossia qabel gheluq sena mill-akkwist ta' l-appartament in kwistjoni, u f'dik l-ispezzjoni huwa sab

<sup>25</sup> Artikolu 559 tal-Kap.12 tal-Ligijiet ta' Malta.

<sup>26</sup> Enfasi tat-Tribunal.



appartament f'finished state, anzi fi kliemu stess *in a good standard of finish* u abitabbli.

Fid-dawl ta' dan kollu osservat it-Tribunal iqis li r-Rikorrenti ma rnextilhomx jippruvaw b'mod sodisfacenti li l-appartament spezzjonat mill-Perit Cassar li kien in *a good standard of finish* gie minnhom akkwistat *in shell form*. Isegwi ghalhekk li ir-Rikorrenti ma rnextilhomx jippruvaw b'mod sodisfacenti li d-decizjoni tal-Kummissarju tat-Taxxi Interni datata 28 ta' Lulju 2011 hija zbaljata u li l-istima tal-Perit Mario Cassar u l-konsegwenti Likwidazzjoni ta' Taxxa bil-Kont Nru. IV119221 bazata fuq tali stima, huma eccessivi.

Ghaldaqstant it-Tribunal iqis li l-appell tar-Rikorrenti mid-decizjoni tal-Kummissarju tat-Taxxi Interni datata 28 ta' Lulju 2011 u mill-Likwidazzjoni ta' Taxxa bil-Kont Nru. IV119221 ma huwiex gustifikat u b'hekk ma jisthoqqx li jigi milqugh.

Ghal dawn ir-ragunijiet it-Tribunal jaqta' u jiddeciedi billi jichad l-appell tar-Rikorrenti mid-decizjoni tal-Kummissarju tat-Taxxi Interni datata 28 ta' Lulju 2011 u mill-Likwidazzjoni ta' Taxxa bil-Kont Nru. IV119221, u minflok jikkonferma l-istess decizjoni u Likwidazzjoni ta' Taxxa.

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

**MAGISTRAT**

**DEPUTAT REGISTRATUR**