



MALTA

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

Rikors Nru. 77/12VG

XXX

Vs

Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)

Illum 3 ta' Lulju 2020

It-Tribunal,

Ra r-Rikors ipprezentat minn XXX fis-27 ta' April 2012 permezz ta' liema jitlob li t-Tribunal iħassar u jirrevoka l-istimi maħruġa fil-konfront tiegħu mill-Kummissarju tat-Taxxa fuq il-Valur Miżjud għall-perijodi ta' taxxa mill-1 ta' Dicembru 2006 sat-28 ta' Frar 2010, bl-ispejjeż kontra l-Kummissarju tat-Taxxa fuq il-Valur Miżjud;

Ra d-dokumenti annessi mar-Rikors promotur markati Dok. "RS1" sa' Dok. "RS43" a fol. 3 sa' 61 tal-proċess;

Ra r-Risposta tad-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud) permezz ta' liema jopponi ghall-appell tar-Rikorrent mill-istimi minnu maħruġa fil-konfront tiegħu u jitlob li l-istess jiġi miċħud, bl-ispejjeż kontra r-Rikorrent, u minflok l-istimi hekk maħruġa kontrih jiġu kkonfermati. Fl-imsemmija Risposta l-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud) jissolleva wkoll l-eċċeżzjoni a tenur ta' l-Artikolu 48(5) tal-Kap. 406 tal-Ligijiet ta' Malta u dana billi r-Rikorrent naqas milli jissottometti id-dokumentazzjoni lilu mitluba fil-kors ta' l-investigazzjoni;

Ra d-dokumenti annessi mar-Risposta tad-Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud) markati Dok. "A" sa' Dok. "F" a fol. 69 sa' 89 tal-proċess;

Ra li waqt is-seduta tat-12 ta' Settembru 2012¹, fir-Rikors fl-ismijiet "XXX Limited v. Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)" ġie dikjarat li l-provi li jingħabru f'dawk il-proċeduri għandhom jghoddu għal dawn il-proċeduri wkoll. Ra li il-partijiet kontendenti reġgħu qablu dwar dan kollu fis-seduta tat-2 ta' Frar 2015²;

¹ Fol. 119 tar-Rikors fl-ismijiet "XXX Limited v. Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)", Rik. Nru. 76/12.

² Fol. 154 tar-Rikors fl-ismijiet "XXX Limited v. Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)", Rik. Nru. 76/12.

Ra t-talba avvanzata waqt is-seduta tal-11 ta' Ĝunju 2013³ sabiex fid-dawl tas-sentenza fl-ismijiet "John Geranzi Limited v. Kummissarju tat-Taxxi Interni" Appell Nru. 22/09 deċiża fit-30 ta' Novembru 2012 u peress illi l-proċeduri odjerni jittrattaw dwar taxxa imposta bħala *punitive measure*, fejn għandu japplika l-principju ta' l-inverżjoni tal-provi kif ukoll dak tad-dritt tas-silenzju, it-Tribunal jordna l-inverżjoni tal-provi b'dana li jibda bil-provi l-ewwel id-Direttur Ģenerali (Taxxa fuq il-Valur Miżjud). Ra li d-Direttur Ģenerali (Taxxa fuq il-Valur Miżjud) irrimetta ruħu għad-deċiżjoni tat-Tribunal;

Ra li b'Digriet datat 16 ta' Lulju 2013⁴, it-Tribunal laqa' t-talba avvanzata waqt is-seduta tal-11 ta' Ĝunju 2013 u ordna l-inverżjoni tal-provi, b'dana li jibda l-ewwel bil-provi d-Direttur Ģenerali (Taxxa fuq il-Valur Miżjud);

Ra li b'Rikors ippreżentat fit-22 ta' Lulju 2013⁵, id-Direttur Ģenerali (Taxxa fuq il-Valur Miżjud) talab l-awtorizzazzjoni sabiex jappella mid-Digriet mogħti fis-16 ta' Lulju 2013, liema talba però ġiet miċħuda b'Digriet mogħti fis-7 ta' Awwissu 2013⁶;

Ra li waqt is-seduta tat-2 ta' Frar 2015⁷, ġie dikjarat li fid-dawl ta' l-eċċeżzjoni a tenur ta' l-Artikolu 48(5) tal-Kap. 406 tal-Ligjiet ta' Malta sollevata mill-Kummissarju tat-Taxxa fuq il-Valur Miżjud, it-Tribunal ser jittratta u jiddeċiedi din l-eċċeżzjoni qabel ma jittratta l-mertu ta' l-appell tar-Rikorrent;

Sema' x-xhieda ta' Brian Debono, rappreżentant tad-Direttur Ģenerali (Taxxa fuq il-Valur Miżjud), mogħtija waqt is-seduta tas-17 ta' Frar 2014⁸ u x-xhieda ta' Anton Bonnici, rappreżentant tat-Tax Compliance Unit, mogħtija waqt is-seduta tat-2 ta' Frar 2015⁹ u ra d-dokumenti esebiti minnu a fol. 154A sa' 154T tar-Rikors fl-ismijiet "XXX Limited v. Direttur Ģenerali (Taxxa fuq il-Valur Miżjud)" Rik. Nru. 76/12, sema' x-xhieda ta' Jesmar Bilocca mogħtija waqt is-seduti tas-27 ta' April 2015¹⁰ u tat-28 ta' Mejju 2015¹¹ u x-xhieda ta' Roberto Spiteri mogħtija waqt is-seduta tat-22 ta' Ottubru 2015¹² u ra l-affidavit ta' l-istess Roberto Spiteri a fol. 180 tal-proċess;

Ra li waqt is-seduta tal-5 ta' Diċembru 2017¹³, ir-Rikorrent talab l-awtorizzazzjoni sabiex a tenur ta' l-Avviż Legali 279/08 jibgħat domandi lill-Awtoritajiet Esteri għall-fini li jsir l-eżami ta' l-Uffiċċiali tal-Guardia di Finanza u l-awtoritajiet ġudizzjarji ta' Ragusa. Ra n-Nota spjegattiva tar-Rikorrent a fol. 171 u 172 tal-proċess. Ra d-Digriet mogħti fid-19 ta' April 2018¹⁴ permezz ta' liema it-talba tar-Rikorrent ġiet miċħuda;

³ Fol. 123 tar-Rikors fl-ismijiet "XXX Limited v. Direttur Ģenerali (Taxxa fuq il-Valur Miżjud)", Rik. Nru. 76/12.

⁴ Fol. 125 sa' 131 tar-Rikors fl-ismijiet "XXX Limited v. Direttur Ģenerali (Taxxa fuq il-Valur Miżjud)", Rik. Nru. 76/12.

⁵ Fol. 105 tal-proċess.

⁶ Fol. 107 tal-proċess.

⁷ Fol. 154 tar-Rikors fl-ismijiet "XXX Limited v. Direttur Ģenerali (Taxxa fuq il-Valur Miżjud)", Rik. Nru. 76/12.

⁸ Fol. 115A sa' 115D tal-proċess.

⁹ Fol. 143 sa' 145 tal-proċess.

¹⁰ Fol. 147 sa' 151 tal-proċess.

¹¹ Fol. 153 u 154 tal-proċess.

¹² Fol. 156 sa' 162 tal-proċess.

¹³ Fol. 170 tal-proċess.

¹⁴ Fol. 176 tal-proċess.

Ra n-Nota ta' Sottomissjonijiet¹⁵ tal-Kummissarju tat-Taxxi relativament għall-eċċeżzjoni minnu sollevata a tenur ta' l-Artikolu 48(5) tal-Kap. 406 tal-Ligijiet ta' Malta u ra n-Nota Responsiva¹⁶ tar-Rikorrent relativament għal din l-istess eċċeżzjoni;

Ra l-atti kollha tal-kawża;

Ikkonsidra:

Ir-Rikorrent ġie notifikat b'erbatax-il stima maħruġa fil-konfront tiegħu mill-Kummissarju tat-Taxxi għall-perijodi ta' taxxa 01.12.06-28.02.07, 01.03.07-31.05.07, 01.06.07-31.08.07, 01.09.07-30.11.07, 01.12.07-31.12.07, 01.01.08-29.02.08, 01.03.08-31.05.08, 01.06.08-31.08.08, 01.09.08-30.11.08, 01.12.08-28.02.09, 01.03.09-31.05.09, 01.06.09-31.08.09, 01.09.09-30.11.09, 01.12.09-28.02.10 permezz ta' liema l-Kummissarju ježigi ħlas tas-somma komplexiva ta' €174,184 bħala taxxa, flimkien mas-somma komplexiva ta' €35,654.79 bħala taxxa amministrattiva u s-somma komplexiva ta' €56,367.45 bħala imghax¹⁷. Peress illi ġassu aggravat bil-ħruġ ta' dawn l-istimi fil-konfront tiegħu, ir-Rikorrent interpona appell għal quddiem dan it-Tribunal fejn jitlob it-thassir u revoka ta' l-istess imsemmija stimi.

Ir-Rikorrent jibbażza l-appell tiegħu mill-istimi maħruġa fil-konfront tiegħu fuq is-segwenti aggravji: (i) il-likwidazzjonijiet ta' taxxa w avviżi ta' rifjut ma inħargux *properly, reasonably* u *fairly*; (ii) huwa ma ngħatax smiegh xieraq fl-istadju ta' l-oggeżzjoni; (iii) qatt ma għamel ix-xiri u/jew bejgħ illi qed jgħid il-Kummissarju; (iv) il-kalkoli tal-Kummissarju huma għal kollox żbaljati u bbażati fuq premessi ħżiena; (v) it-taxxa pperikolata/multi amministrattivi w imghax punittiv jippekkaw serjament f'dak li huwa proporzjonalità.

Id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud), illum Kummissarju tat-Taxxi, jopponi għall-appell tar-Rikorrent mill-istimi maħruġa fil-konfront tiegħu għall-perijodi ta' taxxa 01.12.06-28.02.07, 01.03.07-31.05.07, 01.06.07-31.08.07, 01.09.07-30.11.07, 01.12.07-31.12.07, 01.01.08-29.02.08, 01.03.08-31.05.08, 01.06.08-31.08.08, 01.09.08-30.11.08, 01.12.08-28.02.09, 01.03.09-31.05.09, 01.06.09-31.08.09, 01.09.09-30.11.09, 01.12.09-28.02.10 u jitlob li l-istess jiġi miċħud, bl-ispejjeż kontra ir-Rikorrent, u minflok l-imsemmija stimi jiġu ikkonfermati. Il-Kummissarju jossolleva wkoll l-eċċeżzjoni a tenur ta' l-Artikolu 48(5) tal-Kap. 406 tal-Ligijiet ta' Malta stante li skontu *l-appellant naqas milli jipprovi d-dokumenti hekk kif kien mitlub mid-Direttur Ġenerali. Għaldaqstant l-Onor Tribunal għandu jicħad kull talba ta' l-appellant sabiex jiproduci d-dokumenti f'dan l-istadju.*

It-Tribunal itenni li fid-dawl ta' l-eċċeżzjoni sollevata mill-Kummissarju tat-Taxxi a tenur ta' l-Artikolu 48(5) tal-Kap. 406 tal-Ligijiet ta' Malta, ikun opportun li tīgħi tratta u deċiżja din l-eċċeżzjoni qabel ma jiġi trattat u deċiż l-appell fil-mertu.

¹⁵ Fol. 182 sa' 195 tal-proċess.

¹⁶ Fol. 100 sa' 201 tal-proċess.

¹⁷ Fol. 48 sa' 61 tal-proċess.

L-Artikolu 48 tal-Kap. 406 tal-Liġijiet ta' Malta jittratta dwar id-dokumentazzjoni li għandha tinżamm mit-taxpayer u s-suabartikolu (5) ta' l-imsemmi artikolu tal-Liġi jipprovdi li: *il-Kummissarju jista'*, *fkull zmien matul iż-żmien specifikat fis-subartikolu (4), jeħtieg lil kull persuna li tipproduċi jew jista' jeleva mingħand kull persuna, inkluż terza persuna d-dokumentazzjoni, dokumenti, konteġġi u data elettronika meħtieġa li jinżammu minnha bis-saħħa ta' dan l-artikolu, u jagħmel kopji tagħhom: Iżda, jekk ikun hemm evidenza li wara li tkun intalbet mill-Kummissarju b'avviż bil-miktub, il-persuna tkun naqset li tipproduċi mingħajr skużanti raġonevoli d-dokumentazzjoni, dokumenti, konteġġi u data elettronika sa' tletin jum mid-data tan-notifika ta' dak l-avviż, hija ma tkunx tista' titħalla tipproduċi dik id-dokumentazzjoni, dokumenti, konteġġi u data elettronika fi stadju aktar tard minn meta tkun inħarġet stima jew stimi provviżojri jew quddiem it-Tribunal, jew fxi Qorti tal-Ġustizzja*¹⁸: Izda wkoll meta titqiegħed fiduċja fuq xi persuna oħra sabiex din twettaq xi biċċa xogħol, il-fatt li jkun hemm dik il-fiduċja ma jitqiesx li hija skużanti raġonevoli għall-ġhanijiet ta' dan is-subartikolu.

L-eċċeżzjoni tal-Kummissarju tat-Taxxi hija appuntu bbażata fuq l-ewwel proviso tas-subartikolu (5) ta' l-Artikolu 48 tal-Kap. 406 tal-Liġijiet ta' Malta.

Mill-imsemmi provvediment tal-Liġi joħrog ċar li biex il-Kummissarju tat-Taxxi jista' jinvoka dan l-ewwel proviso tas-subartikolu (5) ta' l-Artikolu 48 tal-Kap. 406 tal-Liġijiet ta' Malta kontra t-taxpayer, fil-każ in eżami r-Rikorrent, għandu l-ewwel qabel kollox jirriżulta li t-taxpayer ikun ġie mitlub jissottometti d-dokumentazzjoni, dokumenti, konteġġi u data elettronika, b'avviż bil-miktub. Kemm-il darba tali talba bil-miktub ma tirriżultax l-Artikolu 48(5) tal-Kap. 406 tal-Liġijiet ta' Malta ma japplikax.

Mill-provi prodotti u senjatament mix-xhieda ta' Anton Bonnici, rappreżentant tat-Tax Compliance Unit inkarigat mill-investigazzjoni fil-konfront tar-Rikorrent, u mid-dokumenti minnu esebiti jirriżulta li saru talbiet bil-miktub lir-Rikorrent biex jipprovdi dokumentazzjoni, dokumenti, konteġġi u d-data elettronika meħtieġa għall-finijiet ta' l-investigazzjoni fil-konfront tiegħi, għal liema talbiet però huwa baqa' per lo più inadempjenti.

B'ittra datata 22 ta' Novembru 2010 ir-Rikorrent ġie infurmat li *the Tax Compliance Unit will be conducting a tax audit of your statutory tax declarations and, where relevant, of any related parties. In this regard, Ms. Maria Borg and Mr. Anton Bonnici will be performing this assignment, as provided under the Income Tax Acts. The tax audit will be carried out on the Income Tax declaration of basis year 2009 (Year of Assessment 2010). You are kindly requested to attend a meeting at the TCU premises in Floriana on Wednesday 1st December 2010 at 9:00a.m. During this meeting you are kindly requested to provide the following documentation for basis years 2004 to 2009: Copies of bank statements of all bank accounts held by yourself and/or your spouse; Supporting documentation in respect of the profit and loss filed*

¹⁸ Enfasi tat-Tribunal.

*with income tax returns; Copies of income tax returns not yet filed.*¹⁹ Mill-AR Card a fol. 154T tal-proċess fl-ismijiet “XXX Limited v. Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)” jirrizulta li din l-ittra kienet ġiet notifikata. Apparte minn hekk waqt laqgħa miżmuma fid-9 ta’ Dic̊embru 2010²⁰, ir-Rikorrent ingħata żewġ *statements of affairs* sabiex jiġu kkumpilati minnu.

B’ittra oħra datata 15 ta’ Ġunju 2011²¹, liema ittra wkoll ġiet notifikata²², ir-Rikorrent ġie infurmat li *further to our letter of 22nd November 2010, whereby you were notified that the Tax Compliance Unit will be conducting a tax audit in respect of your statutory tax declarations, and further to our meeting of 9th December 2010, it is noted that the returns for years of assessment 2004, 2008 and 2009 have not yet been submitted to the Inland Revenue Department, notwithstanding the fact that all requested documentation was never provided to us. In this regard, please note that unless the above mentioned returns and documentation are received by the Department by 30th June 2011 latest, the Tax Compliance Unit shall proceed to conclude the case with the information at its disposal by raising assessments in respect of which you have the right to object as provided under the Income Tax Management Act.*

Is-sitwazzjoni dwar liema mid-dokumentazzjoni, dokumenti, konteggi u data elettronika mitluba mir-Rikorrent ġiet minnu sottomessa fl-istadju ta’ l-investigazzjoni tirriżulta ben kristalizzata fit-Tax Audit Report imhejjji mit-Tax Compliance Unit²³.

Mis-sezzjoni *General Background*²⁴ jirriżulta li s-segwenti dokumentazzjoni, għad illi mitluba ma ġietx provduta: *Income tax returns for Y/A 2008, 2009 and 2011; proper accounting records; Source documentation, including sales and purchases invoices; Complete bank statements; VAT workings; Statement of affairs.* Fejn ġew biex jiddeskrivu Audit Work Done l-uffiċjali tat-TCU, ossia Anton Bonnici u Maria Borg, osservaw illi: *a first meeting was held on 9th December 2010 with Roberto Spiteri and his representative Paul Camilleri. During this meeting, the taxpayer was requested to provide various documentation that was required to perform the tax audit. Following several reminders, the taxpayer eventually produced some of the documentation requested during the first meeting. However, most documentation was not provided, including: Income tax returns for years of assessment 2008, 2009 and 2011; Proper accounting records; Source documentation such as purchases and sales invoices; Complete bank statements; VAT workings; Statement of affairs. On 15th June 2011, a final letter was sent to Mr. Spiteri, copied by email to Paul Camilleri as his representative, informing him that unless all outstanding documentation was received by the end of June 2011, the tax audit would be concluded on the basis of the information available to the Tax Compliance Unit. Nevertheless, both the taxpayer and his representative failed to communicate with us or to provide us with any of the outstanding documentation.*

Reconciliation of sales declared in tax return as sales declared in VAT

¹⁹ Fol. 154S tal-proċess fl-ismijiet “XXX Limited v. Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)” Rik. Nru. 76/12.

²⁰ Fol. 154P tal-proċess fl-ismijiet “XXX Limited v. Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)” Rik. Nru. 76/12.

²¹ Fol. 154K tal-proċess fl-ismijiet “XXX Limited v. Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)” Rik. Nru. 76/12.

²² Fol. 154J tal-proċess fl-ismijiet “XXX Limited v. Direttur Ĝeneral (Taxxa fuq il-Valur Miżjud)” Rik. Nru. 76/12.

²³ Fol. 77 sa’ 88 tal-proċess.

²⁴ Fol. 79 tal-proċess.

return - The declared turnover for income tax purposes was compared with that declared for VAT purposes as follows:

| Basis Year: | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|--------|--------|--------|--------|--------|
| | Lm | Lm | EUR | EUR | EUR |
| Sales as per IRD records | 3,000 | Note 1 | Note 1 | 24,020 | Note 1 |
| Sales as per VAT returns (VAT No. 1747-5806) | 3,000 | o | o | o | o |
| Sales as per VAT returns (VAT No. 1869-9235) | Note 2 | Note 2 | o | o | o |
| Excess sales declared for income tax purposes over sales declared for VAT purposes | o | n/a | n/a | 24,020 | n/a |

Note 1 - Income tax returns for Y/A 2008, 2009 and 2011 were not submitted to the Inland Revenue Department as at the date of this report.

Note 2 - VAT No. 1869-9235 was registered on 1st January 2008.

In view of the fact that the taxpayer ended his communication with us, no explanations were forthcoming in respect of the discrepancy resulting for 2009 and, consequently, the excess sales declared for income tax purposes over sales declared for VAT purposes are being deemed as undeclared sales for VAT purposes and recommended to be assessed accordingly. For assessment purposes it is recommended that such undeclared sales are attributed to the personal VAT number of XXX (i.e. VAT No: 1747-5806) in view of the fact that such undeclared sales are directly derived from the personal declarations made by Mr. Spiteri in this income tax returns. Review of bank statements provided - The taxpayer provided bank statements for the period 2006 to 2010. The bank deposits were compared to sales declared for VAT purposes and the following discrepancies emerged:

| Basis Year: | 2006 | 2007 | 2008 | 2009 | 2010 |
|--|-------|-------|--------|--------|------|
| | Lm | Lm | € | € | € |
| Bank deposits | 855 | 5,993 | 95,034 | 1,200 | 251 |
| Income declared (net) Undeclared spouse income (net) (refer to Table 10) | 7,537 | - | - | 11,892 | - |
| Excess bank deposits over known inflows | n/a | 1,180 | 82,479 | n/a | n/a |
| Excess bank deposits over known inflows (net of 18% deemed VAT) | n/a | 1,000 | 69,897 | n/a | n/a |
| Sales as per VAT returns | 3,000 | o | o | o | o |

(Note 1)

| | | | | | |
|-------------------|-----|-------|--------|-----|-----|
| Discrepancy (VAT) | n/a | 1,000 | 69,897 | n/a | n/ |
| € Equivalent | n/a | 2,329 | 69,897 | n/a | n/a |

Note 1 - Sales as per VAT returns includes total sales as per VAT Nos: 1747-5806 and 1869-9235

The following issues were encountered during the work done in connection with the above reconciliation: No details were provided regarding the nature of the deposits and it was therefore assumed that all bank deposits in excess over known inflows relate to the business of the taxpayer. For the purposes of the above reconciliation these deposits were adjusted for deemed VAT; It was evident that not all bank statements were provided. In fact, one may note from Table 4 above that the inflows from known sources of income are not fully traced to bank deposits for the years 2006, 2009 and 2010. As stated earlier on the taxpayer did not provide explanations to the above issues as the taxpayer and his representative terminated communication with us, and therefore the discrepancies between bank deposits and sales as declared for VAT, as shown in Table 4, are being recommended that such undeclared sales. For VAT assessment purposes it is also recommended that such undeclared sales are attributed to the personal VAT number of XXX (i.e. VAT No: 1747-5806) in view of the fact that such undeclared sales are directly linked to deposits in the personal bank accounts of Mr. Spiteri. **Intra Community Transactions** - From a review of the intra community acquisitions (ICAs) declared by the taxpayer in the VAT returns, it was noted that significant discrepancies resulted when such ICAs were compared to declarations made by the taxpayer's EU suppliers according to the VAT Information Exchange System (VIES). The discrepancies are shown in the below table ... As the taxpayer was not available to explain the above discrepancies, such discrepancies shall be deemed to represent ICAs that were not declared by the taxpayer in the respective VAT returns for the purpose of downscaling his business activities and it is being recommended that such undeclared ICAs be assessed accordingly. Consequently, output tax shall be charged on the ICAs not declared by the taxpayer but no input tax shall be allowed through the reverse charge deduction.

Minn dan kollu jirriżulta għalhekk illi mid-dokumentazzjoni, dokumenti, konteggi u data elettronika lilu mitluba bil-miktub ir-Rikorrent ipprovda dokumentazzjoni minima u naqas milli jipprovdi dokumentazzjoni, dokumenti, konteggi u data elettronika essenzjali għall-finijiet ta' investigazzjoni li kienet qed issir fil-konfront tiegħu. Huwa lampanti ad eżempju n-nuqqas ta' sottomissjoni lit-Tax Compliance Unit ta', fost oħrajn, income tax returns for Y/A 2008, 2009 and 2011; proper accounting records; source documentation, including sales and purchases invoices; complete bank statements; VAT workings u statement of affairs.

Stabbilit għalhekk li r-Rikorrent gie mitlub, bil-miktub, jipprovdi sensiela ta' dokumentazzjoni, dokumenti, konteggi u data elettronika u li dan naqas li jagħmlu fir-rigward ta' parti sostanzjali fir-rigward ta' dak lilu mitlub, jeħtieg issa jiġi determinat jekk l-istess Rikorrenti kellux skużanti raġonevoli għal tali nuqqas.

Id-Dipartment tat-Taxxa fuq il-Valur Miżjud ittentu jistabilixxi jekk ir-Rikorrent kellux skużanti raġonevoli għalfejn naqsas milli jipprovdi parti sostanzjali tad-

dokumentazzjoni, dokumenti, konteġġi u data elettronika lilu mitluba waqt l-investigazzjoni tat-Tax Compliance Unit. In effetti fl-istadju ta' Review Jesmar Bilocca, ir-Review Officer inkarigat mir-review ta' l-istimi proviżorji li kienu nħargu fil-konfront tar-Rikorrent kien, permezz ta' ittra datata 28 ta' Frar 2012²⁵, għarraf lill-imsemmi Rikorrent li *with reference to your request for review for provisional assessments dated 24th January 2012, you are being requested to provide to the department the reasons, preferably via email, as to why not all documents required were submitted to the Tax Compliance Unit. Your email address, telephone and mobile numbers are also required...* Mill-AR Card a fol. 72 tal-proċess jirriżulta li din l-ittra kienet ġiet notifikata. Permezz ta' email datata 6 ta' Marzu 2012²⁶, Paul Camilleri, tax representative tar-Rikorrent, kien għarraf lil Jesmar Bilocca li *I write to you on behalf of our client Mr. XXX in respect of VAT numbers MT1747-5806 and MT1652-8232. I have been advised by my client that he seems to have mislaid a lot of documents in respect of the returns in question, because they were stored at his warehouse. Most of the documents still in his warehouse were destroyed by mould. I have seen some of the documents but was unable to work on them due to the state of the documents.* Wara din l-email, permezz ta' email datata 12 ta' Marzu 2012²⁷, Jesmar Bilocca reġa ikkomunika ma' Roberto Spiteri u għarfu li *with reference to our earlier teleconversation, below please find the important documents, which were not submitted during the investigation carried out by the Tax Compliance Unit (TCU). Important documents not provided for VAT no: 1652-8232 - Copies of financial statements; income tax returns for Y/A 2008 to 2011 not filed; Source documentation, including sales and purchase invoices; and VAT workings. Important documents not provided for VAT no: 1747-5806 - Income tax returns for Y/A 2008, 2009 and 2011; Proper accounting records; Source documentation, including sales and purchase invoices; Complete bank statements; VAT workings; and Statement of Affairs. Moreover it was reported that at one point you have failed to communicate with the TCU. The email below may show why some documents were not presented, however it is not considered as a reasonable excuse as to why you have ended your communication with the TCU, and therefore they had no explanation for certain anomalies. Kindly let me know whether you have further comments or reasons with reference to the above and whether you actually have workings and documents to provide us in order to support your arguments by not later than next Wednesday 14th March 2012.*

Ir-raġunijiet mogħtija mir-Rikorrent għalfejn naqas milli jissottometti d-dokumentazzjoni lilu mitluba mill-Ufficjali tat-Tax Compliance Unit ma gewx aċċettati mir-Review Officer u l-istess Rikorrent naqas milli jagħti spjega jew informazzjoni ulterjuri fir-rigward u għalhekk fir-Rapport²⁸ tiegħi Jesmar Bilocca ikkonkluda li: *following the request for review at red 22, a letter was sent to the taxpayer on 28th February 2012 requesting reasons as to why not all documents were submitted to TCU. His representative, Mr. Paul Camilleri, replied via email, which included the following reasons: client mislaid a lot of documents; most documents destroyed by mould; and some documents were seen but his representative, Mr. Paul Camilleri, was unable to work on them due to the state of*

²⁵ Fol. 71 tal-proċess.

²⁶ Fol. 74 tal-proċess.

²⁷ Fol. 73 tal-proċess.

²⁸ Fol. 89 tal-proċess.

the documents. The above reasons may reflect why some documents were not presented however they did not justify why the communication with the TCU has been terminated (red 56). Therefore on 12th March 2011 the taxpayer was contacted on his mobile and it was agreed that I will send him an email; email address was provided over the mobile. On the same day of the mobile call, an email was sent to the taxpayer in order to provide further comments and reasons by 14th March 2012 (red 57). During the same day that the latter email was sent, another mobile call was made to the taxpayer to confirm the email address. Mr. XXX confirmed the e-mail address and that it had already been received by him. No reply has been received by yesterday 15th March 2012. In light of the above, it is being recommended to approve the provisional assessments in question.

Meta r-Rikorrent²⁹, prodott mill-Kummissarju tat-Taxxi, xehed f'dawn il-proċeduri huwa ddikjara li dawn id-dokumenti mmuffati kien ipprezentahom lid-Dipartiment tat-Taxxa fuq il-Valur Miżjud iżda dawn ma ġewx minnhom aċċettati minħabba l-istat li kienu fihom. Mistoqsi *l-Vat Department lil min?* huwa wieġeb kif tajthomlhom tawhomli lura għaliex qaluli li ma jaċċettawx f'din il-kundizzjoni. Fl-affidavit³⁰ tiegħu imbagħad iddikjara li: jiena kont niġġestixxi l-business ta' importazzjoni ta' ilma tax-xorb mill-Italia u darba fost l-oħrajin kont ġejt avviċinat minn certa Pino Malandrino (li kont nafu minn qabel) sabiex ipoġġini f'kuntatt ma' 'businessmen' minn Sqallija, fosthom kien hemm Fabio Radenza, Francesco Accardi, Salvatore Radenza. Jien kont filfatt bdejt ingħi ix-xogħol mingħandhom u għal dan ix-xogħol kont nuža l-VAT number tal-kumpannija XXX Limited (MT 1652-8232). Kont ukoll ġejt mistoqsi minn Fabio Radenza biex nidħlu fi sħab flimkien u filfatt kont VAT number fisimna t-tnejn, però n-numru ma nafx x'inhu. Jien ukoll kelli VAT number ieħor fismi li kont nuža bil-business tal-kiri tad-DVDs, dan kelli n-numru MT 1747-5806. L-ewwel darba li skoprejt li kien hemm xi tbagħbis bin-numri tal-VAT tiegħi kien meta kont irċevejt kont eżägeratament għoli min-naħha tad-Dipartiment tal-VAT. Jien kont mort kellimt lil xi ħadd minn dak id-Dipartiment u hemmhekk skoprejt li l-VAT numbers tiegħi kienu ntużaw biex inxtraw ħafna prodotti mill-Italia. Hemmhekk irrealizzajt li l-VAT number tiegħi kien ġie hijacked. Dawn il-prodotti qatt ma kont naf bihom. Wara ftit taż-żmien id-Dipartiment tal-VAT kien talabni biex intiħ id-dokumentazzjoni kollha rigward dawn l-istimi. Jien niftakar li kont mort id-Dipartiment u kont ipprezentajt id-dokumenti kollha li kelli fil-pussess tiegħi. Dawn id-dokumenti kienu jirrelataw mal-VAT returns li kont nissottometti bil-business tiegħi. Id-Dipartiment ried li nippreżenta wkoll dokumenti in sostenn ta' l-ammonti eżägerati ta' VAT li kelli fih ħdanu. Jien kont kellimt lil Fabio Radenza biex jiispiegali x'kien qed jiġri u hu qalli biex inkellem lil Guardia di Finanza peress li hu, flimkien ma' oħrajin, kien qiegħed jiġi investigat. Jien ippruvajt kemm-il darba inkellmu però qatt ma rrisponda lura. Jien ma kelli ebda informazzjoni jew dokument dwar l-ammonti li kien qiegħed jitlobni l-VAT Department u allura ma stajtx nippreżenta ebda dokument aktar minn dawk li kont ipprezentajt. Ngħid li l-informazzjoni u d-dokumenti mitluba mid-Dipartiment tal-VAT kienu jirrigwardaw attivitā illegali u kriminali li saret minn wara dahri bin-numri tal-VAT li jsejħu lili u jien bl-ebda ma seta jkoll din l-infomrazzjoni u/jew dokumenti, proprju għax dan kollu sar minn wara dahri. Illi

²⁹ Xhieda mogħtija waqt is-seduta tat-22 ta' Ottubru 2015, fol. 156 sa' 161 tal-proċess.

³⁰ Fol. 180 tal-proċess.

din hija r-raġuni għalfejn ma stajtx nagħti ebda dokument lill-Kummissarju tal-VAT u mhux minħabba xi raġuni oħra.

It-Tribunal eżamina bir-reqqa dak dikjarat mir-Rikorrent ghall-fini li jagħti raġuni għalfejn ma gewx sottomessi d-dokumentazzjoni, dokumenti, konteggi u data elettronika mitluba mill-Ufficijali tat-Tax Compliance Unit u fil-fehma Tiegħu ma tirriżulta l-ebda skużanti raġjonevoli li tiġġustifika n-nuqqas tas-sottomissjoni ta' dak mitlub, senjatament income tax returns for Y/A 2008, 2009 and 2011; proper accounting records; source documentation, including sales and purchases invoices; complete bank statements; VAT workings; statement of affairs.

A tenur ta' l-Artikolu 48(1),(2),(3) u (4) tal-Kap. 406 tal-Ligijiet ta' Malta: (1) *Kull persuna reġistrata taxxabbli stabilita f'Malta għandha żżomm dokumentazzjoni shiħa u kif imiss tal-operazzjonijiet kollha mwettqa fil-kors jew avvanz ta' l-attività ekonomika tagħha; (2) Kull persuna li tkun suġġetta għat-taxxa fuq xi operazzjoni jew li tidentifika lilha nnifisha bħala persuna reġistrata taħt dan l-Att għall-għan ta' xi operazzjoni, għandha żżomm dokumentazzjoni shiħa u kif imiss ta' kull operazzjoni bħal dik; (3) Kull persuna taxxabbli u kull persuna legali mhux taxxabbli għanha żżomm dokumentazzjoni shiħa u kif imiss ta' l-akkwisti intra-Komunitarji kollha magħmul minnha; (4) Id-dokumentazzjoni li għaliha jirreferu s-subartikoli (1), (2) u (3) għandha tinżamm u tinħażen b'dak il-mod, ikun fiha dawk id-dettalju tkun dokumentata b'dak it-tagħrif, dokumenti u kontijiet murija fil-Ħdex-il Skeda u dik id-dokumentazzjoni, tagħrif, dokumenti u kontijiet għandhom jinżammu għal żmien ta' mill-anqas sitt snin minn tmiem is-sena li jkollhom x'jaqsmu magħha, jew dak il-perijodu ieħor jew perijodi oħra hekk kif il-Ministru jista', fkażi jiet speċjali jordna permezz ta' regolamenti...*

Fid-dawl ta' dawn il-provvedimenti tal-Ligi huwa ferm evidenti li l-iskuži avvanzati mir-Rikorrent waqt l-investigazzjoni fis-sens li ħafna mid-dokumenti mitluba lilu intilfu - fi kliem Paul Camilleri *he seems to have mislaid a lot of documents in respect of the returns in question* - u li l-kumplament tad-dokumenti huma inutilizzabbli għax imuffati, ma humiex u qatt ma jistgħu jiġi kkunsidrati bħala skużanti raġjonevoli għan-nuqqas ta' sottomissjoni tad-dokumenti, dokumentazzjoni, konteggi u data elettronika mitluba. Apparte dan kollu, jiġi osservat li d-dokumenti allegatament immuffati lanqas biss ingābu a konjizzjoni tat-Tax Compliance Unit - fuq ir-rapport ta' min huma bbażati l-istimi maħruġa fil-konfront tar-Rikorrent - biex l-ufficijali inkarigati mill-investigazzjoni setgħu jiddeterminaw huma stess kienew inutilizzabbli o meno. Għalkemm fix-xhieda li ta waqt is-seduta tat-22 ta' Ottubru 2015³¹, ir-Rikorrent iddikjara li kien ta d-dokumenti lid-Dipartiment tat-Taxxa fuq il-Valur Miżjud - mhux it-Tax Compliance Unit - iż-żda dawn ġew rifutati, meta ġie mistoqsi lil min ta dawn id-dokumenti, kull ma rrisponda kien kif *tajthom lhom tawhomli lura għaliex qaluli li ma jaċċettawxf din il-kundizzjoni*. Mill-email ta' Paul Camilleri lil Jesmar Bilocca datata 6 ta' Marzu 2012³² jirriżulta in oltre li kien dan Paul Camilleri biss li ra dawn id-dokumenti u kien hu biss li ddetermina li kien inutilizzabbli.

³¹ Fol. 156 sa' 161 tal-proċess.

³² Fol. 91 tal-proċess.

In kwantu rigwarda dak allegat mir-Rikorrent fl-affidavit tiegħu fejn kjarament jikkontendi li hu personali u tramite s-soċjetà tiegħu XXX Limited, safha vittma ta' frodi fiskali skontu perpetrata minn Fabio Radenza w oħrajin minn wara dahru, għalkemm it-Tribunal jista' jifhem li din hija d-difiża versu l-istimi maħurġa fil-konfront tiegħu, assolutament ma jistax jifhem kif dan il-fatt jista' jiġiustifika n-nuqqas ta' sottomissjoni ta' dokumentazzjoni, dokumenti u konteġġi bħala ma huma income tax returns for Y/A 2008, 2009 and 2011; proper accounting records; source documentation, including sales and purchases invoices; complete bank statements; VAT workings; statement of affairs, partikolarment meta: (i) għas-snin taħt investigazzjoni, jew ta' l-inqas għal uħu minnhom ir-Rikorrent issottometta kemm denunzji tat-taxxa fuq l-income u denunzji tat-taxxa dwar il-valur miżjud, denunzji dawn li presumibilment imtlew a baži ta' informazzjoni dedotta minn din it-tip ta' dokumentazzjoni; u (ii) mid-dokumentazzjoni sottomessa minnu stess - senjatamente bank account statements mis-sales invoices list - jirriżultaw depožiti li certament għandhom spjega u ġustifikazzjoni anke f'forma dokumentarja.

In kwantu rigward dokumentazzjoni pertinenti għall-Intra Community Acquisitions li r-Rikorrent jikkontendi li ma għandux u qatt ma kellu, jsegwi li a baži ta' dak minnu stess affermat huwa issa prekluż milli jissottometti din it-tip ta' dokumentazzjoni tul-is-smiġħ ta' dawn il-proċeduri.

Apparte minn dan kollu t-Tribunal josserva li l-kuntatt li r-Rikorrent kellu mad-Dipartiment tat-Taxxa fuq il-Valur Miżjud kien ma' l-Anti Fraud Unit li mir-Rapport li jinsab esebit a fol. 50 tal-proċess fl-ismijiet "Roberto Spiteri et v. Direttur Generali (Taxxa fuq il-Valur Miżjud" Rik. Nru. 194/12, ittrattat il-materja ta' *force blocking* tan-numri tal-VAT ta' tar-Rikorrent u tas-soċjetà XXX Limited. Peress li dan l-aspett kien differenti mill-investigazzjoni tat-Tax Compliance Unit, anke jekk ir-Rikorrent seta' ssottometta jew pprova jissottometti xi dokumenti, dokumentazzjoni, konteġġi u data elettronika lil din il-Unit - fatt dan dwar liema t-Tribunal għandu riservi serjissimi - xorta jibqa' l-fatt li ammont sostanzjali ta' dokumenti, dokumentazzjoni, konteġġi u data elettronika mitluba mit-Tax Compliance Unit baqghu ma gew sottomessi qatt.

Fid-dawl ta' dan kollu osservat għalhekk it-Tribunal ma jsib l-ebda skużanti raġjonevoli li tiġiustifika n-nuqqas tar-Rikorrent li jissottometti parti sostanzjali mid-dokumenti, dokumentazzjoni, konteġġi u data elettronika lilu mitluba mit-Tax Compliance Unit. Konsegwentement għalhekk, a tenur ta' l-Artikolu 48(5) tal-Kap. 406 tal-Liġijiet ta' Malta, id-dokumentazzjoni, dokumenti, konteġġi u data elettronika lilu mitluba u li ma ġewx minnu sottomessi waqt l-investigazzjoni ma jistgħux jiġi sottomessi u ppreżentati tul-is-smiġħ ta' dawn il-proċeduri. Bi-istess mod dik id-dokumentazzjoni li r-Rikorrent iddikkjara li ma hijiex fil-pussess tiegħu u skontu da parte tiegħu praktikament lanqas teżisti, ukoll ma tistax tigi minnu esebita u sottomessa tul-is-smiġħ tal-proċeduri.

Għal dawn ir-raġunijiet it-Tribunal jilqa' l-eċċeżżjoni a tenur ta' l-Artikolu 48(5) tal-Kap. 406 tal-Liġijiet ta' Malta sollevata mill-Kummissarju tat-Taxxi u jiddikjara li r-Rikorrent huwa prekluż milli tul-is-smiġħ ta' dawn il-proċeduri jissottometti d-dokumentazzjoni, dokumenti, konteġġi u data elettronika lilu mitluba mit-Tax Compliance Unit u li ma ġewx minnu sottomessi tul-l-investigazzjoni fil-konfront

tiegħu, kif ukoll id-dokumentazzjoni li jikkontendi li ma hijiex fil-pusseß tiegħu u li skontu da parte tiegħu lanqas teżisti.

It-Tribunal jirriserva li jiddeċiedi dwar il-kap ta' l-ispejjeż fis-sentenza finali dwar il-mertu.

It-Tribunal għalhekk jordna l-prosegwiment tal-kawża fil-mertu.

A tenur tal-Partita 2(4) tal-Partita Disa' tal-Kap. 406 tal-Ligijiet ta' Malta jordna li kopja ta' din id-deċiżjoni tiġi notifikata lir-Rikorrent.

MAĞISTRAT

DEPUTAT REGISTRATUR