



**MALTA**

**Fit-Tribunal ta' Revizjoni Amministrattiva  
(Att dwar it-Taxxa fuq il-Valur Miżjud - Kap.406 tal-Liġijiet ta' Malta)  
Maġistrat  
Dr. Gabriella Vella B.A., LL.D.**

**Rikors Nru. 32/14VG**

**XXX**

**Vs**

**Direttur Ġenerali (Taxxa fuq il-Valur Miżjud)**

**Ilum 12 ta' Ottubru 2021**

**It-Tribunal,**

Ra r-Rikors ipprezentat mis-soċjetà XXX fit-28 ta' Marzu 2014 permezz ta' liema titlob li t-Tribunal jikkancella u jirrevoka l-istimi mahruġa fil-konfront tagħha mid-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) għall-perijodi ta' taxxa 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, 01.03.10-31.05.10, 01.06.10-31.08.10, 01.09.10-30.11.10, 01.12.10-28.02.11, 01.03.11-31.05.11, 01.06.11-31.08.11 u 01.09.11-30.11.11;

Ra d-dokumenti annessi mar-Rikors promotur a fol. 3 sa' 21 tal-proċess;

Ra r-Risposta tad-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) permezz ta' liema jopponi għall-appell tas-soċjetà Rikorrenti mill-istimi mahruġa fil-konfront tagħha għall-perijodi ta' taxxa 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, 01.03.10-31.05.10, 01.06.10-31.08.10, 01.09.10-30.11.10, 01.12.10-28.02.11, 01.03.11-31.05.11, 01.06.11-31.08.11 u 01.09.11-30.11.11 u jitlob li l-istess jiġi miċhud u minflok l-imsemmija stimi jiġu ikkonfermati stante li l-aggravji fuq liema s-soċjetà Rikorrenti tibbaża l-appell tagħha huma għal kollox infondati fil-fatt u fid-dritt;

Ra d-dokumenti annessi mar-Risposta tad-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) markati Dok. "A" sa' Dok. "I1" a fol. 30 sa' 63 tal-proċess;

Sema' x-xhieda ta' Joseph Sammut mogħtija waqt is-seduta tas-27 ta' Novembru 2016<sup>1</sup> u ra id-dokumenti esebiti minnu markati Dok. "JS1" a fol. 79 sa' 86 tal-proċess, sema' x-xhieda ta' Ivan Bugeja, rappreżentant tat-Tax Compliance Unit, mogħtija waqt is-seduta tal-5 ta'

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<sup>1</sup> Fol. 87 u 88 tal-proċess.

Marzu 2015<sup>2</sup> u x-xhieda ta' Jesmar Bilocca, rappreżentant tal-Kummissarju tat-Taxxi, mogħtija waqt is-seduti tas-27 ta' April 2015<sup>3</sup> u tat-28 ta' Mejju 2015<sup>4</sup> u ra d-dokumenti a fol. 103 u 104 tal-proċess u sema' x-xhieda ta' Wang Hui mogħtija waqt is-seduta ta' l-1 ta' Frar 2016<sup>5</sup>;

Ra n-Nota ta' Sottomissjonijiet tas-soċjetà Rikorrenti a fol. 135 sa' 138 tal-proċess u ra n-Nota Responsiva tal-Kummissarju tat-Taxxi a fol. 140 sa' 151 tal-proċess;

Ra l-atti kollha tal-kawża;

### Ikkonsidra:

In forza ta' stimi maħruġa għall-perijodi ta' taxxa 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, 01.03.10-31.05.10, 01.06.10-31.08.10, 01.09.10-30.11.10, 01.12.10-28.02.11, 01.03.11-31.05.11, 01.06.11-31.08.11 u 01.09.11-30.11.11<sup>6</sup>, id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud), illum Kummissarju tat-Taxxi, qed jesigi mingħand is-soċjetà Rikorrenti l-ħlas tas-somma ta' €15,812.74 rappreżentanti taxxa fuq il-valur miżjud, flimkien mas-somma ulterjuri ta' €3,162.55 rappreżentanti taxxi amministrattivi u s-somma ta' €7,527.31 rappreżentanti imgħax, komplessivament ammontanti għal **€26,502.60**.

Is-soċjetà Rikorrenti hassitha aggravata bil-ħruġ ta' dawn l-istimi fil-konfront tagħha u interponiet appell minnhom quddiem dan it-Tribunal. L-aggravji fuq liema tibbaża l-appell tagħha huma s-segwenti: (i) in linea preliminari, in-nullità ta' l-istimi stante li l-ittra datata 4 ta' Marzu 2014, li hija d-dokument uffiċjali li bih id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) infurmaha bil-ħruġ ta' l-istimi fil-konfront tagħha, hija niesqa mill-motivazzjoni ħlief għall-kliem *ġeneriku (uniku) illi "the Department did not accept the amount (sic) that you indicated ..."*. Dan imur kontra kull norma stabbilita u każistika li f'fażi ta' deċiżjonijiet kważi ġudizzjarji, wieħed mir-rekwiziti huwa li d-deċiżjoni tkun motivata dwar ir-raġuni/raġunijiet in bażi għal liema tkun ittiehdet dik id-deċiżjoni - għaldaqstant la Id-deċiżjoni fil-każ in eżami ma hijiex motivata, l-istimi maħruġa fil-konfront tagħha għandhom jiġu dikjarati bħala nulli u bla effett fil-Liġi; (ii) fil-mertu, l-istimi maħruġa fil-konfront tagħha huma invalidi għaliex inħarġu taħt presunzjonijiet, assunzjonijiet, premessi u spjegazzjonijiet żbaljati kif ukoll b'mod arbitrarju bi proċess ta' Review ivvizzjat stante li minkejja l-ispedizzjonijiet u rikjesta formali da parte tagħha, dawn ġew injorati mid-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) li lanqas wieġeb għall-komunikazzjoni formali sottomessa waqt l-istadju ta' Review. Id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) mexa b'mod arbitrarju, irrispettuż u xejn dinjituż fil-mod kif ħareġ l-istimi in kwistjoni fil-konfront tagħha.

Id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud), illum Kummissarju tat-Taxxi, jopponi għall-appell tas-soċjetà Rikorrenti mill-istimi maħruġa fil-konfront tagħha għall-perijodi ta' taxxa 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, 01.03.10-31.05.10, 01.06.10-31.08.10, 01.09.10-30.11.10, 01.12.10-28.02.11, 01.03.11-31.05.11, 01.06.11-31.08.11 u 01.09.11-30.11.11 u jitlob li l-istess

<sup>2</sup> Fol. 90 sa' 94 tal-proċess.

<sup>3</sup> Fol. 105 sa' 108 tal-proċess.

<sup>4</sup> Fol. 112 sa' 117 tal-proċess.

<sup>5</sup> Fol. 120 sa' 123 tal-proċess.

<sup>6</sup> Fol. 5 sa' 21 tal-proċess.

jigi miċhud u minflok l-imsemmija stimi jigu ikkonfermati stante li l-aggravji fuq liema s-soċjetà Rikorrenti tibbaża l-appell tagħha huma għal kollox infondati fil-fatt u fid-dritt.

Fil-fehma tat-Tribunal l-ewwel kwistjoni li għandha tiġi trattata hija dik sollevata mis-soċjetà Rikorrenti bl-aggravju preliminari tagħha dwar in-nullità ta' l-istimi maħruġa fil-konfront tagħha stante li d-deċiżjoni in bażi għal liema d-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) hareġ l-imsemmija stimi hija bla motivazzjoni.

### **Aggravju preliminari:**

Mill-provi prodotti u mill-atti proċesswali jirriżulta li l-investigazzjoni fil-konfront tas-soċjetà Rikorrenti saret da parte tat-Tax Compliance Unit. Kif dikjarat mid-Direttur tas-soċjetà Rikorrenti Wang Hui<sup>7</sup>, matul din l-investigazzjoni, jew għall-inqas sa' l-2013, l-imsemmija soċjetà kienet rappreżentata mid-ditta EMD u in segwitu ġie inkarigat rappreżentant ieħor - ossia Joseph Sammut - biex ikompli jirrapreżentaha minflok id-ditta EMD. Permezz ta' Avviż datat 13 ta' Novembru 2013<sup>8</sup>, liema Avviż ġie debitament notifikat lis-soċjetà Rikorrenti<sup>9</sup>, id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) għarraf lis-soċjetà Rikorrenti li *the enclosed provisional assessments have been raised following proposal from the Tax Compliance Unit. A summary of the proposed assessment is also attached*<sup>10</sup>. *If you disagree with the attached provisional assessments, you may request a review of the provisional assessments within thirty days from receipt of this letter indicating in Part 1 of the attached notice the specific areas where you disagree and the reason why. If you agree with the provisional assessments, kindly sign within 30 days from the receipt of this letter Part 2 of the attached notice. As per Article 37(4) of the VAT Act, if payment is made within 30 days from the signing of this agreement, which payment consists of the tax due plus the agreed administrative penalty and the interest, then the administrative penalty will be equivalent to 10% instead of 20% of the tax due. If there is no reply to the above within 30 days, the Department has no other option but to confirm the provisional assessment with 20% administrative penalty plus interest.*

Is-sommarju ta' l-istimi anness ma' l-Avviż tat-13 ta' Novembru 2013<sup>11</sup> juri biċ-ċar il-kalkoli tat-Tax Compliance Unit fuq liema ġew ibbażati l-istimi u jagħti anke spjega tal-baži ta' l-istimi: *the VAT assessment comprises the following amounts: (a) Increase in Sales (Taxable outputs); (b) Decrease in Telephone expenses (Services & overheads); (c) Decrease in Electricity expense (Services & overheads). From the years 2008 to 2011, the above amounts have been apportioned to the respective VAT periods on a pro-rata basis to declared sales for (a) and on pro-rata basis to declared services & overheads for (b) and (c) above.*

Is-soċjetà Rikorrenti talbet Review mill-istimi proviżorji maħruġa fil-konfront tagħha in baži għall-oġġezzjoni li *l-istess huma invalidi fil-fatt u fid-dritt. Bla preġudizzju nħarġu fuq premessi u assumptions zbaljati*<sup>12</sup>. B'Avviż datat 3 ta' Diċembru 2013<sup>13</sup> id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) - notifikat fid-9 ta' Diċembru 2013<sup>14</sup> - għarraf lis-soċjetà Rikorrenti li *with reference to your request for review for provisional assessments, which are dated 13<sup>th</sup> November 2013, you are kindly requested to provide the Department further arguments and proof in support of your reasons as to why you disagree with the*

<sup>7</sup> Xhieda mogħtija waqt is-seduta ta' l-1 ta' Frar 2016, fol. 120 sa' 123 tal-proċess.

<sup>8</sup> Fol. 37 tal-proċess.

<sup>9</sup> Vide fol. 47 tal-proċess.

<sup>10</sup> Enfasi tat-Tribunal.

<sup>11</sup> Vide a tergo ta' fol. 37 tal-proċess.

<sup>12</sup> Fol. 48 tal-proċess.

<sup>13</sup> Fol. 49 tal-proċess.

<sup>14</sup> Fol. 50 tal-proċess.

*provisional assessments in question. Moreover you are also requested to provide to the department the reason/s, preferably via email, as to why you failed to provide certain crucial information required by the Tax Compliance Unit. Email address and mobile numbers are also required. Information not provided includes the following: Invoices for fixed asset additions; Stock lists; and Feedback following the meeting held on 1<sup>st</sup> August 2013 at the TCU and emails dated 9<sup>th</sup> and 18<sup>th</sup> September 2013.*

*Mir-Review Report<sup>15</sup> u mix-xhieda ta' Jesmar Bilocca, Review Officer fi hdan id-Dipartiment tat-Taxxa fuq il-Valur Miżjud li kien inkarigat mir-Review ta' l-istimi proviżorji maħruġa fil-konfront tas-soċjetà Rikorrenti, jirriżulta li fl-20 ta' Diċembru 2013 inżammet laqa' bejn ir-Review Officer u r-rappreżentant tas-soċjetà Rikorrenti Joseph Sammut fejn during the explanation of the workings of the provisional assessments by the undersigned (ossia Jesmar Bilocca), Mr. Sammut argues that the end result of the increase in sales do not tally with the figures he had in hand. However, when he presented the workings, which according to him, he had received from the TCU, contrary to what he said the figures tallied exactly. This confirms the version of the TCU that he was actually informed with the results. Furthermore, an email was provided by the TCU to the undersigned as a proof that the revised workings were actually provided to Mr. Sammut via an email dated 9<sup>th</sup> September 2013. Nevertheless Mr. Sammut did not revert to the TCU with any feedback. It was also remarked to Mr. Sammut that the provisional assessment does not include any VAT in connection to rent expenditure. No other documents were submitted to support his arguments....*

*In segwitu għall-istadju tar-Review, b'Avviż datat 19 ta' Frar 2014<sup>16</sup>, id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) għarraf lis-soċjetà Rikorrenti li with reference to your request for review of the provisional assessments, which are dated 13<sup>th</sup> November 2013, due to the lack of sufficient and reliable evidence it was concluded to raise the respective assessments. The assessments will be sent in due course. If you feel aggrieved by the decision you may lodge an appeal with the Administrative Review Tribunal as per Legal Notice 89 of 2012 within 30 days from receipt of the said assessments. B'Avviż ulterjuri datat 4 ta' Marzu 2014<sup>17</sup>, id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) għarraf lis-soċjetà Rikorrenti li as the Department did not accept the amount that you indicated in your Tax Returns, the enclosed assessments are being raised in terms of Section 32(3) of the Value Added Tax Act, 1998, which states: After the expiration of a period of not less than thirty days and not more than six (6) months from the service on a person of a provisional assessment in respect of a tax period the Director General may make an assessment of the Output Tax and the Input Tax of that person for that period and of the administrative penalty to which that person became liable. If you feel aggrieved by these assessments, you may appeal to the Administrative Review Tribunal at the Law Courts as per Article 43 and 46 of the VAT Act within thirty (30) days of the date upon which this notice of assessments has been served.*

*Fid-dawl ta' dan kollu appena osservat, it-Tribunal diffiċilment jista' jifhem kif is-soċjetà Rikorrenti tikkontendi li l-istimi maħruġa fil-konfront tagħha għall-perijodi ta' taxxa 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, 01.03.10-31.05.10, 01.06.10-31.08.10, 01.09.10-30.11.10, 01.12.10-28.02.11, 01.03.11-31.05.11, 01.06.11-31.08.11 u 01.09.11-30.11.11 huma nulli u bla effett fil-Liġi. Bl-istess mod diffiċilment jista' jifhem kif is-soċjetà Rikorrenti tippretendi li*

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<sup>15</sup> Fol. 51 u 52 tal-proċess.

<sup>16</sup> Fol. 53 tal-proċess.

<sup>17</sup> Fol. 54 tal-proċess.

targumenta b'suċċess li d-deċiżjoni tad-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) in bażi għal liema hareġ l-istimi finali fil-konfront tagħha hija nieqsa minn kull motivazzjoni.

Kuntrarjament għal dak pretiż mis-soċjetà Rikorrenti, id-deċiżjoni vera e proprio tad-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) fil-konfront tagħha u li a bażi tagħha nħarġu l-istimi mertu ta' dan l-appell ma hijiex kontenuta fl-Avviż datat 4 ta' Marzu 2014 iżda fl-Avviż datat 19 ta' Frar 2014, fejn, jiġi ribadit, id-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) kjarament għarraf lis-soċjetà Rikorrenti li *with reference to your request for review of the provisional assessments, which are dated 13<sup>th</sup> November 2013, due to the lack of sufficient and reliable evidence it was concluded to raise the respective assessments*<sup>18</sup>. *The assessments will be sent in due course.* Hawn it-Tribunal jagħmel referenza għad-deċiżjoni tal-House of Lords fl-ismijiet **South Bucks District Council v. Porter (No 2) [2004] 1 WLR 1953**, fejn dwar il-htieġa li deċiżjonijiet ta' awtoritajiet amministrattivi jkunu motivati ġie osservat illi *the reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. ... Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced*<sup>19</sup>.

Hija proprio din l-aħħar osservazzjoni li hija ferm importanti fil-kuntest ta' dawn il-proċeduri. Is-soċjetà Rikorrenti u r-rappreżentanti tagħha kienu jafu ben tajjeb x'kienu l-kwistjonijiet li dwarhom kellhom dubji u/jew objezzjonijiet it-Tax Compliance Unit u d-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud), kemm fl-istadju ta' l-investigazzjoni kif ukoll fl-istadju tar-Review u kienu jafu ben tajjeb ukoll il-baži ta' l-istimi proviżorji mahruġa mid-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud), għaldaqstant meta wara l-istadju tar-Review is-soċjetà Rikorrenti ġiet infurmata li *due to the lack of sufficient and reliable evidence it was concluded to raise the respective assessments*, fejn essenzjalment ġew ikkonfermati l-istimi proviżorji, hija kienet f'posizzjoni li taf ben tajjeb għaliex, għalfejn u kif inħarġu tali stimi fil-konfront tagħha.

Fid-dawl ta' dan għalhekk jirrizulta li l-aggravju preliminari sollevat mis-soċjetà Rikorrenti ma huwiex ġustifikat u ma jistħoqqx li jiġi milqugħ.

### **Appell fil-mertu:**

Fil-mertu s-soċjetà Rikorrenti tikkontendi li l-istimi mahruġa fil-konfront tagħha mid-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) għall-perijodi ta' taxxa 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, 01.03.10-31.05.10, 01.06.10-31.08.10, 01.09.10-30.11.10, 01.12.10-28.02.11, 01.03.11-31.05.11, 01.06.11-31.08.11 u 01.09.11-30.11.11 huma invalidi għaliex ibbażati fuq presunzjonijiet, assunzjonijiet, premessi u spjegazzjonijiet żbaljati kif ukoll għaliex l-istadju

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<sup>18</sup> Enfasi tat-Tribunal.

<sup>19</sup> Enfasi tat-Tribunal.

tar-Review kien vizzjat għaliex minkejja l-ispejgazzjonijiet u anke rikjesta formali magħmula minnha, dawn ġew għal kollox injorati.

Fir-Rapport tat-Tax Compliance Unit<sup>20</sup> ġie kkonstatat u konkluz is-segweni: *The company XXX was incorporated in June 2007. Its principal activity is the operation of a Chinese restaurant in Qawra. A preliminary review of the profit and loss declarations for basis years 2007 to 2011 is shown hereunder:*

<b>Basis Years</b>	<b>Jun-Dec 2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
	<b>€ equiv</b>	<b>€</b>	<b>€</b>	<b>€</b>	<b>€</b>
Sales	1,465	23,281	14,812	24,529	23,205
Opening Stock	4,840		4,558	3,121	673
Purchases/Direct Costs		13,225	7,044	11,924	16,387
Closing Stock	(3,543)		(3,121)	(673)	(945)
Cost of Sales	1,297	13,225	8,481	14,372	16,115
<b>Gross Profit</b>	<b>168</b>	<b>10,056</b>	<b>6,331</b>	<b>10,157</b>	<b>7,090</b>
<b>Expenses</b>					
Wages	5,660	44,690	41,544	15,600	15,668
Rent	5,656	11,674	11,949	11,477	11,478
Other expenses	5,383	10,473	14,129	11,675	12,056
	<b>16,699</b>	<b>66,837</b>	<b>67,622</b>	<b>38,752</b>	<b>39,202</b>
<b>Loss for year</b>	<b>(16,531)</b>	<b>(56,781)</b>	<b>(61,291)</b>	<b>(28,595)</b>	<b>(32,112)</b>
<b>Gross Profit Mark Up</b>	<b>13%</b>	<b>76%</b>	<b>75%</b>	<b>71%</b>	<b>44%</b>
<b>Wages to Sales Ratio</b>	<b>386%</b>	<b>192%</b>	<b>280%</b>	<b>64%</b>	<b>68%</b>

*The above declarations show losses declared every year since the company was incorporated. Moreover, declared wages are high in comparison to declared sales. In fact, for the first two and a half years, wages were higher than sales.*

*Furthermore, shareholders' loans have increased considerably from year to year as shown hereunder:*

	<b>Basis Yr</b>	<b>Basis Yr</b>	<b>Basis Yr</b>	<b>Basis Yr</b>	<b>Basis Yr</b>
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>

<sup>20</sup> Fol. 32 sa' a tergo ta' fol. 37 tal-proċess.

	<i>Basis Yr</i>	<i>Basis Yr</i>	<i>Basis Yr</i>	<i>Basis Yr</i>	<i>Basis Yr</i>
	<b>€ equiv</b>	<b>€</b>	<b>€</b>	<b>€</b>	
Shareholders' Loans	24,778	62,502	110,895	144,306	184,702
Annual Percentage Increase		152%	77%	30%	28%

*In view of the above, there is a high risk that sales are being under-declared.*

...

**Detailed Audit Findings - Audit Tests on Sales - Bank Deposits.** *Bank deposits were higher than declared sales proceeds for all three years (2008-2010) tested, as shown in table 4 below. Moreover an analysis of bank deposits indicates that 78% of total deposits are from the restaurant's Point-of-Sales system, thereby indicating a higher risk of undeclared cash sales.*

<b>Basis Years</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
	€	€	€
Sales as per Financial Statements	23,281	14,812	24,529
Add 18% VAT thereon	4,191	2,666	4,415
Total Sales Proceeds	27,472	17,478	28,944
Total Bank Deposits	35,790	32,613	33,110
<b>Unexplained Bank Deposits (inclusive of VAT)</b>	<b>8,318</b>	<b>15,135</b>	<b>4,166</b>
<b>Unexplained Bank Deposits (exclusive of VAT)</b>	<b>7,049</b>	<b>12,826</b>	<b>3,531</b>

**Z-Readings.** *Z-readings were compared to sales declarations in the financial statements and the following differences were noted:*

<b>Basis Years</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
	€	€	€
<b>As per Z-readings</b>			
January	-	1,546	957
February	3,131	1,712	278
March	2,323	1,341	1,300

<b>Basis Years</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
April	2,030	1,132	1,670
May	3,178	1,137	1,842
June	3,938	753	2,170
July	1,990	1,706	3,243
August	3,051	1,791	3,149
September	2,346	1,531	3,931
October	1,926	2,084	3,913
November	1,411	980	2,591
December	2,128	626	3,422
Sales as per Z-readings (including VAT)	<b>27,452</b>	<b>16,339</b>	<b>28,466</b>
Sales as per Z-readings (excluding VAT)	23,264	13,847	24,124
Sales as per financial statements	23,281	14,812	24,529
<b>Difference</b>	<b>17</b>	<b>965</b>	<b>405</b>

*Although no material differences were identified between declared sales and z-readings, an analysis of the latter points out to substantially low sales declarations even in periods with typically increased sales activity such as the Christmas Period and the summer months, as per table 6 ...*

<b>Basis Years</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
	<b>€/day</b>	<b>€/day</b>	<b>€/day</b>
Average daily sales in summer (July- September)	80	55	112
Average daily sales in Christmas Period (December)	69	20	110
Overall average daily sales during year (January - December)	75	45	78

**Analysis of VAT declarations.** *Vat declarations indicate a high proportion of purchases and overheads relative to sales, well in excess of sector averages as shown hereunder. Remarkably, the purchases to sales ratio was 152% for 2009 VAT declarations.*



Basis Year	Business Declarations			Taxpayer's Ratios		Sector Ratios (NACE 5530)	
	Sales	Purchases	Services & Overheads	Purchases to Sales	Purchases & Overheads To Sales	Purchases to Sales	Purchases & Overheads to Sales
2008	23,281	17,875	3,035	76%	89%	46%	64%
2009	14,812	22,461	5,051	152%	186%	45%	65%
2010	24,529	12,326	5,682	50%	73%	42%	63%
2011	23,457	17,755	6,002	76%	101%	31%	62%

**Computation of Under-declared Sales.** All the above audit tests on sales/cost of sales reveal under-declared sales. Consequently, sales have been increased as shown in table 8 further below. Sales were increased to bring the company's purchases to sales ratio in line with the sector purchases to sales ratio for NACE Code 5610 (Restaurants). In addition sales for the first three years of operation were further increased on the basis that a business that is unable to cover part of its costs is unlikely to continue operating.

	2007	2008	2009	2010	2011
	€-equiv	€	€	€	€
Sales as declared	1,465	23,281	14,812	24,529	23,205
Increase in sales to match to purchases to sales' sector ratio (1)	-	5,469	841	3,861	29,656
Further increase in Sales	4,195	15,940	25,891	-	-
<b>Total increase in Sales</b>	<b>4,195</b>	<b>21,409</b>	<b>26,732</b>	<b>3,861</b>	<b>52,861</b>
<b>Total Sales</b>	<b>5,660</b>	<b>44,690</b>	<b>41,544</b>	<b>28,390</b>	<b>52,861</b>
Opening Stock	4,840*		4,558	3,121	673
Purchases/Direct Costs		13,225	7,044	11,924	16,387
Closing Stock	(3,543)		(3,121)	(673)	(945)
<b>Cost of Sales</b>	<b>1,297</b>	<b>13,225</b>	<b>8,481</b>	<b>14,372</b>	<b>16,115</b>
<b>Adjusted Gross Profit</b>	<b>4,363</b>	<b>31,465</b>	<b>33,063</b>	<b>14,018</b>	<b>36,746</b>
<b>Sector P/S ratio (1)</b>	<b>46%</b>	<b>46%</b>	<b>45%</b>	<b>42%</b>	<b>31%</b>

Fir-rigward ta' l-Opening Stock dikjarat mis-soċjetà Rikorrenti fl-2007, it-Tax Compliance Unit osservat illi *the company declared opening stock in year 2007 even though the*

company was incorporated in the same year. Since no purchases were declared by the taxpayer in the same year, it is being assumed that this figure was wrongly classified as stock rather than purchases in the TIFD.

Apparte konsiderazzjonijiet u konklużjonijiet dwar il-bejgh, it-Tax Compliance Unit ikkonstatat u kkonkludiet is-segwenti fir-rigward ta' l-ispejjeż reklamati mis-soċjetà Rikorrenti fid-denunzji tat-taxxa tagħha għall-perijodi ta' taxxa mertu ta' dawn il-proċeduri:

**Audit Tests on Expenses. Wages & Salaries.** *The company employs three employees, namely its two directors, Yong Wang and his daughter Hui Wang, and a part-time employee Marcon Zammit. The declared wages as per financial statements agree to the wages as per FSS returns. However, it transpired that over 97% of the wages are credited to the shareholders' loan accounts rather than paid out from the company's bank accounts. It is unrealistic that directors (and also a part-time employee) do not take a salary and, moreover, directors' drawings are much less than their deposits. In view of this, the declared wage expenses are considered unrealistically high when compared to sales, even as adjusted by TCU. In particular, wages for years 2008 and 2009 are deemed excessive and hence are being reduced to the same level of wages declare in 2010 i.e. €15,600.*

...

**Other over-claimed expenses.** *It was noticed that the company over-claimed its water and electricity bills as indicated hereunder. The difference is being brought to charge fully in basis year 2010.*

	€
Water & electricity as per Profit & Loss	
2008	1,809
2009	3,920
2010	2,118
Total	7,847
Water & electricity as per invoices	6,553
Unsupported water & electricity expenses	1,294

For VAT purposes, €1,150 (out of €1,294) is attributable to electricity expenses and therefore subject to VAT at 5%.

It was also noted that telephone bills were addressed to the director's personal address rather than the company address. Accordingly, these expenses are being reversed: 2007 - €14, 2008 - €527, 2009 - €509, 2010 - €306, 2011 - €304.

**Rent.** *The company rented its business premises from another company, S.A.R.G. Limited (IT 992303828/VAT 1527421). The rental expense was validated against the rental contract. It was noted from the VAT system that the lessor was classified with the VAT department under Register B and did not charge VAT on the rental amount. No input VAT was in turn claimed by XXX.*

Mill-kontenut tar-Rapport tat-Tax Compliance Unit jirriżulta ferm ċar li l-indikazzjonijiet illi kien hemm dikjarjar bin-nieqes tal-bejgħ da parte tas-soċjetà Rikorrenti - u per konsegwenza dikjarjar bin-nieqes ta' l-Output Tax fid-denunzji tat-taxxa tagħha għall-perijodi ta' taxxa in kwistjoni - u anke dikjarjar biż-żejjed ta' infig - u per konsegwenza dikjarjar biż-żejjed ta' Input Tax fid-denunzji tat-taxxa għall-perijodi ta' taxxa in kwistjoni, kollha ħarġu mid-dokumentazzjoni ta' l-istess soċjetà Rikorrenti. In effetti t-Tax Compliance Unit għamlet il-konstatazzjonijiet tagħha a bażi ta' eżami u audit tal-Profit & Loss Declarations tas-soċjetà Rikorrenti, tal-financial statements tas-soċjetà Rikorrenti, tal-kontijiet bankarji tas-soċjetà Rikorrenti, taz-Z-readings tas-soċjetà Rikorrenti u tad-dikjarazzjonijiet tat-taxxa tas-soċjetà Rikorrenti, kif ukoll tal-fatturi sottomessi minnha biex jiġi sostanzjat u ġustifikat il-kreditu għal Input Tax reklammat minnha fil-perijodi ta' taxxa in kwistjoni.

Essendo din is-sitwazzjoni huwa bil-wisq evidenti li t-Tax Compliance Unit ippretendiet - u dana b'mod għal kollox ġust u mistenni - spjegazzjoni mingħand is-soċjetà Rikorrenti sabiex tiġġustifika l-anomaliji li rriżultaw mid-dokumentazzjoni tagħha. Fir-rigward fil-fatt jirriżulta, kemm mir-Rapport tat-Tax Compliance Unit, kif ukoll mix-xhieda ta' Ivan Bugeja, rappreżentant tat-Tax Compliance Unit, li nżammu laqgħat mar-rappreżentant tas-soċjetà Rikorrenti kif ukoll intbagħtu talbiet bil-miktub għal iktar informazzjoni u spjegazzjonijiet iżda dawn, in kwantu rigward informazzjoni fundamentali, baqgħu kollha bla risposta.

Ad eżempju permezz ta' email datata 25 ta' April 2013<sup>21</sup> indirizzata lir-rappreżentant tas-soċjetà Rikorrenti, Ivan Bugeja talab għas-segwenti informazzjoni - *Further to our meeting this morning in respect of XXX kindly provide the following information. This information has been requested to the previous representatives:*

- (a) *a description of the restaurant as regards its size, number of covers, names of chefs and waiters/waitresses etc.;*
- (b) *an explanation for the fact that the restaurant operated a Net Loss every year and has a high Wages to Sales ratio varying between 64% to 386%;...*
- (c) *an explanation for the high Purchases to Sales ratio declared in VAT returns (in excess of 100%) - refer to attachment;*
- (d) *details of Lessor in respect of Rent expenses claimed for years 2008 to 2011;*
- (e) *an explanation why wages are being posted to Shareholders' Loans rather than against Bank or Cash;*
- (f) *reconciliation for Purchases and Expenses as declared in Profit & Loss account and as declared in VAT Returns;*
- (g) *an explanation of the difference in Water and Electricity Expenses below ...*
- (h) *an explanation as to why Telephone expenses bills are being invoiced to "Morning Dawn, Fl2, Triq il-Ġifen, St. Paul's Bay" (director's personal address) rather than the business premises address;*
- (i) *a copy of the Nominal Ledger for years 2008 to 2010.*
- (j) *kindly note that one of the directors, Ms. Hui Wang, has outstanding tax balances for Y/A 2009 (€1,204) and Y/A 2010 (€1,185).*

Jirriżulta li l-informazzjoni mitluba ma ġietx, għall-inqas mhux fl-interezza tagħha, provduta lit-Tax Compliance Unit, tant illi fir-Rapport tagħha ġie kkonstatat li *XXX has been assessed on increases in sales and decreases in expense amounts as described further on in this tax audit report. The above findings and the resultant reduction in trading losses and increase in VAT thereon were explained to taxpayer's representative, Mr. Joseph*

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<sup>21</sup> Fol. 31 tal-proċess.

Sammut, during a meeting held on 1<sup>st</sup> August 2013 at the Tax Compliance Unit. In emails dated 9<sup>th</sup> September and 18<sup>th</sup> September 2013, Mr. Sammut was requested to provide feedback by 23<sup>rd</sup> September 2013 as to whether these findings are being accepted, or otherwise, from the taxpayer's side. However, no reply was received thereto. Dana kollu gie kkonfermat ukoll minn Ivan Bugeja fix-xhieda li ta waqt is-seduta tal-5 ta' Marzu 2015<sup>22</sup>, fejn iddikjara li: qed nitkellmu fuq kumpanija li ddikjarat net loss kull sena, jigifieri mis-sena 2007 sa' mill-inqas il-perjodi li rajna ahna ddikjarat net loss kull sena. Jekk wiehed ihares lejn il-gross profit ta' din il-kumpanija, qed nitkellmu fuq restaurant, il-gross profit lanqas hu bizzejjed biex ikopri l-wages dikjarati. Qed nghid il-wages dikjarati ghax din il-kumpanija ghandha tliet persuni biss dikjarati; tnejn minnhom huma diretturi Cinizi u l-persuna l-oħra hija part timer li jaqla' paga dikjarata sa' elf u tlett mija gross wages, il-paga gross fis-sena. Ahna jigifieri iltqajna, id-direttur tal-kumpanija kien prezenti, huwa Ciniz, meta kien prezenti hu kien hemm l-interpretu jigifieri ahna saqsejna kemm lilek (ossia lil Joseph Sammut) u kemm lir-rapprezentant ta' qablek rigward min huma l-koki u min huma l-waiters jigifieri ma kellna l-ebda risposta jigifieri wiehed ihalli dubju dwar jekk dawn il-pagi dikjarati li kellhom ikunu iktar. Jekk wiehed jara l-Vat returns jara li l-purchases u l-over heads li hemm dikjarati fil-Vat returns huma iktar mis-sales li hemm fil-Vat returns. Jekk wiehed ihares lejn il-bank statements jara li d-depoziti fil-bank statements huma iktar mis-sales dikjarati. Jekk wiehed jara z-Z readings tal-kumpanija jara li jekk per eżempju nharsu lejn ix-xahar ta' Dicembru l-average sales inkluz il-Vat iwarjaw minn ghoxrin ewro kuljum sa' mija u ghaxar ewro kuljum. Issa Dicembru qed nitkellmu fuq perjodu li tipikament is-sales ikunu gholljin minhabba z-zminijiet tal-festi. Jekk wiehed ihares lejn ix-xhur tas-Sajf naraw li s-sales inkluzi l-Vat iwarjaw minn hamsa u hamsin ewro (inkluz il-Vat) sa' mija u tnax-il ewro (inkluz il-Vat). Jigifieri ghandna diversi indikazzjonijiet li juru li s-sales huma under declared. Jekk wiehed ihares lejn il-purchases u lejn l-istocks jara li per eżempju fl-ewwel sena – fis-sena 2007 – li hija is-sena li fiha nfethet il-kumpanija ghandna opening stock ta' erbat elef tmien mija u erbgħin (4840). Qed nghidu kumpanija gdida qed tiftah b'opening stock ta' erbat elef tmien mija u erbgħin. Purchases ma ghandha xejn fdik is-sena u ghandha closing stock ta' tliet elef hames mija u tlieta u erbgħin (3543) jigifieri qed nghidu press'a poco tliet kwarti tal-istock li kien hemm fil-bidu tas-sena, dan baqa' closing stock. Jekk wiehed ihares is-sena ta' wara ma ghandniex figuri ta' opening stock u closing stock imma ghandna biss figura ta' direct loss ta' tlettax-il elf mitejn u hamsa u ghoxrin (13,225) u l-istess is-sena ta' wara. Jigifieri anke hemm dubji serji rigward il-purchases u l-istock figures. Ahna kellna meetings jigifieri tajjeb nghidu li qablek kien hemm rapprezentanti oħrajn u l-accounts kienu ppreparati mhux minnek biex nghidu kollox, saqsejna lilhom rigward il-waiters, ix-chefs, saqsejnihom ukoll għalfejn il-kumpanija għal liema raguni ddikjarat net loss kull sena u ma kellniex risposta. Eventwalment bdejna niltaqgħu miegħek jigifieri t-tax payer hatar lilek bhala rapprezentant u bazikament konna tkellimna jigifieri kellna meetings. Mela fid-29 ta' Mejju inti kont tlabt għal abbozz ta' ftehim, konna issettjajna meeting għall-10 ta' Gunju u fl-email konna saqsejna li jekk inti ma tistax dik il-gurnata jekk jogħgħbok tipproponi an alternative date li hija konvenjenti għalik, issa fdik il-gurnata tal-10 ta' Gunju inti ma attendejtx. Issa l-għada fil-11 ta' Gunju konna bgħattnielek abbozz mingħajr pregudizzju. Issa dan l-abbozz kien maħsub li naslu għall-ftehim jigifieri kien pjuttost konservattiv. In fatti l-increase in sales li hija proposta fdan l-abbozz tant kienet konservattiva li hija inqas min-net losses kollha, jekk tgħodd in-net losses kollha li ddikjarat il-kumpanija matul il-perjodu, l-increase in sales hija inqas minn dawn in-net losses iddikjarati. Kellna meeting fl-1 ta' Awwissu fejn jigifieri jiena u r-rapprezentanti tat-tax compliance unit kellna meeting miegħek biex niddiskutu l-workings, imbagħad ma konna smajna xejn, konna bgħattna e-mail fid-9 ta' Settembru rigward jekk it-tax payer

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<sup>22</sup> Fol. 90 sa' 94 tal-proċess.

*hux jaqbel ma' dan l-assessment, e-mail oħra fit-18 ta' Settembru u ma kellniex risposta. Imbagħad minħabba li ma kellniex risposta, it-tax compliance unit ħareġ l-assessment.*

Is-soċjetà Rikorrenti baqgħet bl-istess attitudini, ossia li ma tipprovdix l-ispjegazzjonijiet u provi meħtieġa biex tiġġustifika l-anomaliji riskontrati mit-Tax Compliance Unit fid-dokumentazzjoni tagħha fil-kors ta' l-Audit, anke fl-istadju tar-Review minnha stess mitlub mill-istimi provizorji li nħarġu fil-konfront tagħha.

Kif già iktar 'l fuq osservat, fir-Rapport tiegħu r-Review Officer Jesmar Bilocca kkonstata li: *the first meeting was held on 20<sup>th</sup> December 2013 during which only Mr. Sammut was present for the meeting. During the explanation of the workings of the provisional assessments by the undersigned (ossia Jesmar Bilocca), Mr. Sammut argues that the end result of the increase in sales do not tally with the figures he had in hand. However, when he presented the workings, which according to him, he had received from the TCU, contrary to what he said the figures tallied exactly. This confirms the version of the TCU that he was actually informed with the results. Furthermore, an email was provided by the TCU to the undersigned as a proof that the revised workings were actually provided to Mr. Sammut via an email dated 9<sup>th</sup> September 2013. Nevertheless Mr. Sammut did not revert to the TCU with any feedback. It was also remarked to Mr. Sammut that the provisional assessment does not include any VAT in connection to rent expenditure. No other documents were submitted to support his arguments. U kkonstata ulterjorment illi: It was agreed that a second meeting will be held in order to enable Mr. Sammut to provide supporting evidence. The meeting was set for 10<sup>th</sup> January 2014 but it was cancelled on the same day of the meeting by Mr. Sammut. It was postponed for 20<sup>th</sup> January 2014. During a tele-conversation that took place on 10<sup>th</sup> January 2014, Mr. Sammut stated that he has no documentary evidence to submit but wanted to present a letter incorporating the issued discussed during the first meeting for the appeal's stage purposes. As a matter of fact at the second meeting Mr. Sammut presented a letter incorporating his arguments as to why he did not agree with the provisional assessments. Nevertheless, the accountant did agree verbally that there were under-declared sales but not to the extent as reflected in the provisional assessments. Moreover as per his email dated on the 20<sup>th</sup> January 2014, sales declaration "be and large they do represent the actual sales registered..." In his correspondence Mr. Sammut questioned the methodology in which the audit was carried out and the fluctuations in the mark-ups following the adjustments by the TCU. However, he failed to explain the high purchases to sales ratio declared in the VAT returns, the increase in shareholders loan and the low declarations in sales per the z-readings. He also failed to notice that the results of the mark-ups, following the application of the purchases to sales ratio, indicated the unreliability of the figures in the profit and loss account. It was also verified with Ivan Bugeja of TCU that the information such as the size, number of covers, names of chefs and waiters and waitresses was not provided despite that it was required. Consequently, the TCU had not option other than working with the information available.*

Fix-xhieda li ta waqt is-seduta tas-27 ta' April 2015<sup>23</sup>, Jesmar Bilocca ddikjara li: *mir-rapport tat-TCU ħareġ li dawn kemm il-darba ippruvaw jikkuntatjaw lit-tax payer jew lir-rappreżentant tiegħu, kien hemm drabi fejn irrispondew lura u taw informazzjoni però kien hemm drabi oħra fejn kien hemm informazzjoni li ma ingħatatx. Jiena kkuntatjajt lit-tax payer u wara iltqajt darbtejn mar-rappreżentant tiegħu s-Sur Sammut. Bazikament l-ewwel darba li ltqajt miegħu qalli li dawn il-final result qatt ma ġew murijja lilu u ma kien jaf xejn bihom u li ma kellux informazzjoni fuqhom. Kif konna qed naraw, qed naraw l-istess karti tiegħi u tiegħu fil-fatt irriżulta li l-istess karti ngħatawlu li kienu l-final results*

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<sup>23</sup> Fol. 105 sa' 108 tal-proċess.

u iddeċidejna li nerġgħu niltaqgħu darba oħra biex iġibli xi evidenza jew provi għalfejn mhux jaqbel u minn naħa tiegħu kif għandhom joħorġu, l-vera sales li kellu jkun hemm dikjarati però fil-ġurnata li kellna niltaqgħu qalli biex nieħu paċenzja u niltaqgħu darb'oħra u ltqajna darb'oħra. Bazikament minflok giet evidenza, giet ittra li qed tmaqdar ix-xogħol tat-TCU. Mela jiena kont qed nitlob ir-raġuni għalfejn ma kkoperajtx mat-TCU, għedtlik biex nerġgħu niltaqgħu u iltqajna u erġajt ġejt bl-istess tmaqdir fuq ix-xogħol tat-TCU u fuq il-workings li kien hemm u r-raġunijiet għalfejn mhux qed jaqbel magħhom u r-raġuni għalfejn ma tahomx informazzjoni ma kienx hemm. Huma talbuh ukoll informazzjoni u huwa qal li messu marru fuq il-post u ċċekjaw aktar dettalji fuq ir-restaurant per se, mentri dawn fl-emails li jiena rċevejt imbagħad mit-TCU talbuh informazzjoni dwar l-ismijiet tal-istaff, kemm kien hemm imwejjed u s-size tar-restaurant jiġifieri dawn kienu talbuhomlu fil-verità però din l-informazzjoni lilhom ma ngħatatx. Jiena bqajt mingħajr dawn ir-risposti u ma kelli l-ebda mod ieħor x'nagħmel ħlief li noħroġ bir-riżultat.

Fix-xhieda ulterjuri li waqt is-seduta ta' tat-28 ta' Mejju 2015<sup>24</sup>, Jesmar Bilocca iddikjara li: Jiena rajt ir-riżultati tal-exercise li ħarġu kif tkellimna flimkien (ossia hu u Joseph Sammut) tal-mark up li ħareġ mir-riżultat tat-TCU, u għalkemm hemm divergenzi fl-ammonti li qed tgħid inti ma jfissirx li ma jagħmilx sens, u ma naqbilx miegħek li m'huwiex tajjeb. Eżempju wieħed minnhom kien jekk tiftakar sewwa anki inti semmejtu il-purchases to sales ratio. ... Imbagħad baġttlek il-final letter fejn għedtlik li m'ahniex naqblu. Però jekk tippermettuli I'm very surprised għaliex imxejt ta' raġel miegħek, tkellimna dawn il-punti fid-dettal u tajtek id-dokumentazzjoni għax għedtlik ma tawhomlokx it-TCU? Il-karta tat-TCU tajthieli inti stess il-final result, jiġifieri fil-verità inti kellek. Bdejt titkellem fuq issue ta' rental u bdejt ngħidlek li m'hemmx issue ta' rental fil-vat u bdejt nispegalek li m'hemmx u fl-istess email li baġttli tal-20 ta' Jannar meta ltqajna għall-meeting semmejtli punti li wħud minnhom lanqas biss kellhom x'jaqsmu. Jiena sorpriz ħafna għaliex tkellimna fid-dettal jiena u inti u inti taf li tkellimna fid-dettal u spjegajtlek kollox u inti bgħatt ittra biss bil-punti li qajjimna fl-ewwel meeting u inti għedtli li ser iġġib evidenza minn naħa tiegħek u ħallejt fidejk u ġejt it-tieni meeting bl-ittra u bl-istess argument li ddiskutejna jiena u inti u ma stajtx inwieġbek aktar minn hekk jiena.

Il-kritika tas-soċjetà Rikorrenti għar-Rapport tat-Tax Compliance Unit msemmija minn Jesmar Bilocca tinsab fl-ittra datat 15 ta' Jannar 2014<sup>25</sup>, fejn jingħad illi nikteb u nagħmel referenza għas-suespost sugġett u speċifikatament rigwardanti l-istejjem proviżorji li jkopru l-perijodi fiskali kollha minn 01.12.2007 sa' 30.11.2011. F'dan ir-rigward niġbidlek l-attenzjoni għas-segwenti u cioè:

- i. Illi ż-żjieda fil-bejgħ hija bbażata fuq 'sector ratios' arbitrarji u li la kienu 'referenced' u lanqas ġustifikati;
- ii. Illi l-istess 'sector ratios' huma rrazzjonati stante illi dak tas-sena 2011 għandu divergenza ta' aktar minn tletin (30) fil-mija fuq il-medja tat-tlieta ta' qablu;
- iii. Illi fil-"Further Increase in Sales" hemm fattorizzati l-ammonti ta' "Wages" illi m'humix relatati u m'għandhom x'jaqsmu xejn mat-Trading Account;
- iv. Illi tant huwa anomalu l-inseriment tal-"Further Increase in Sales" illi fis-snin 2010 u 2011, b'mod mill-aktar stramb, ma giet inserita l-ebda somma biex tkabbar is-"sales";
- v. Illi l-"Adjusted Gross Profit" huwa ntenzjonat sabiex jassorbi parti mill-"Wages" illi fis-snin 2008 u 2009 kienu sproporzjonati mas-sena preċedenti u s-snin sussegwenti; dawn il-'wages' imma jirreferu għall-ħlasijiet lid-diretturi u li ħafna minnhom filwaqt

<sup>24</sup> Fol. 112 sa' 117 tal-proċess.

<sup>25</sup> Fol. 83 u 84 tal-proċess.

li huma rikonoxxuti iżda li fil-fatt ma tħallsux; eżerċizzju sempliċi ta' 'cash' jistabilixxi dan;

- vi. Illi per konsekwenza ta' l-eżerċizzju tat-TCU r-riżultanti Mark-Ups m'humiex relattivi u lanqas jagħmlu sens tant illi fis-sena 2008 huwa 238% fis-sena 2009 huwa 3905, fis-sena 2010 huwa 98% u fis-sena 2011 huwa 228%;
- vii. Illi ntużaw 'purchases to sales' ratios meta kellhom jintużaw 'mark ups' għaliex ta' l-ewwel (sales to purchases) mhuwiex ratio li jintuża f'eżerċizzji ta' "extrapolation" bħal dak tat-TCU għaliex ma jagħti l-ebda support u garanziji illi r-riżultat ikun wieħed qrib ir-rejalta;

*Illi minħabba dawn id-difetti fundamentali u oħrajn li s-sottomissjoni tagħhom qed tkun riservata, is-soċjetà suesposta qegħda togġezzjona għall-imsemmija stejjem u titlob illi jkunu riveduti għaliex la huma ġusti u lanqas teknikament validi.*

Dawn il-punti "teknici" effettivament jiffurmaw l-unika "prova" mressqa mis-soċjetà Rikorrenti in sostenn ta' l-appell tagħha mill-istimi mahruġa fil-konfront tagħha għall-perijodi ta' taxxa 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, 01.03.10-31.05.10, 01.06.10-31.08.10, 01.09.10-30.11.10, 01.12.10-28.02.11, 01.03.11-31.05.11, 01.06.11-31.08.11 u 01.09.11-30.11.11. In effetti Joseph Sammut xeded illi: dan huwa każ ta' kumpanija Ċiniza li topera catering outlet illi giet investigata mit-tax compliance unit u apparentement dawn marru hemmhekk mingħajr ma kienu assistiti. Il-lingwa Maltija d-direttur jafha, il-lingwa Inġliża jafha mill-inqas u meta joħroġ imbagħad iktar tard fil-kontro eżami ta' min hareġ l-assessments. Jiena ġejt nominat biex nitratta review mal-Vat department fuq il-kwistjoni tal-Vat u tkellimt ma' Jesmar Bilocca u kelli xi żewġ inkontri miegħu. Il-parti hija teknika jigifieri ma naħsibx li għandi noqgħod ngħabbi lit-tribunal at this stage għax imbagħad at the end of the day xorta nagħmilhom fis-submissions tiegħi u hemmhekk ikunu hafna iktar ċari milli noqgħod nitratta. Però xtaqt nagħmel żewġ punti anke biex nirreppja x-xhieda tiegħi li huma żewġ punti fundamentali. L-ewwel wieħed huwa li jiena bgħatt xi 3 ittri bl-argumentazzjoni lil Jesmar Bilocca u dan ma wegibni qatt fuqhom u ħa nesebihom hawnhekk u t-tieni punt huwa illi l-perm tat-technical exercise kien mibni fuq affarijiet illi huma illi teknikament ma jagħmlux sens u elenkajthom hawnhekk jidhru hafna li ma jagħmlux sens. Issa jiena ma naħsibx li għandi nidhol illum f'dan id-dettall għaliex ma jagħmlux sens għaliex kif għidt diġà joħorġu iktar tard jigifieri fis-submissions tiegħi. Però rrid nagħmel enfasi fuq dawn iż-żewġ affarijiet għaliex fl-opinjoni tiegħi l-fatt illi fl-inkontri tiegħi u ktibt l-argumentazzjoni però ma kelli twegiba għall-inqas għandu jirrispondini min kien qed jagħmel ir-review diment illi anke fil-parti tal-assessment ma kienx assistit min huwa. Jigifieri dak il-fatt illi jiena ktibt 3 ittri hawn – żewġ ittri u e-mail – bl-argumentazzjoni tiegħi u ma kelli l-ebda risposta jiena ħassejt illi dan kien ġie trattat b'mod illi ma kienx kif suppost. U t-tieni ħaġa l-argumentazzjoni prinċipali huwa li l-assessment li qed nesebixxi l-pern tiegħu kien mibni fuq affarijiet illi teknikament jiena fl-opinjoni tiegħi ma jagħmlux sens għaliex anke l-persentaġġi per eżempju l-persentaġġi li ħadu sector ratios kienu differenti hafna jigifieri ma kienx hemm standardisation tagħhom. Imma din xi ħaġa li ovvjament imbagħad tidhol fid-dettall meta nagħmel is-submissions.

Fin-Nota ta' Sottomissjonijiet però s-soċjetà Rikorrenti sempliċement illimitat ruhha li tirrepeti, pratikament kelma b'kelma, il-kontenut ta' l-ittra datata 15 ta' Jannar 2014 esebita a fol. 83 u 84 tal-proċess.

Fil-fehma tat-Tribunal, fiċ-ċirkostanzi partikolari ta' dan il-każ fejn it-Tax Compliance Unit kienet evidentement qed tiddubita mill-korrettezza non che veracità ta' dak dikjarat mis-

soċjetà Rikorrenti fid-dokumentazzjoni varja tagħha u d-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) kien u baqa' jiddubita mill-istess tant illi kkonferma l-istimi proviżorji maħruġa fil-konfront tas-soċjetà Rikorrenti u hareġ l-istimi mertu ta' dawn il-proċeduri, is-soċjetà Rikorrenti kellha tagħmel ferm iktar milli tressaq argumenti "teknici" biex tipprova turi li l-istimi hekk maħruġa fil-konfront tagħha huma eċċessivi.

Filwaqt li huwa veru li l-kalkoli tat-Tax Compliance Unit, li essenzjalment jiffurmaw il-bażi ta' l-istimi maħruġa fil-konfront tas-soċjetà Rikorrenti, huma in parte ibbażati fuq *sector ratios* u anke fuq ċerti assunzjonijiet li kellhom jittiehdu, dan l-operat da parte tat-Tax Compliance Unit u tad-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) ġie rez neċessarju minhabba l-inadempjenza ta' l-istess soċjetà verso t-talbiet ripetuti għal informazzjoni u provi kemm tat-Tax Compliance Unit kif ukoll tar-Review Officer sabiex jiġu spjegati l-anomaliji minnhom riskontrati fid-dokumentazzjoni varja tagħha stess. Ċertament l-istimi maħruġa mid-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) ma jistgħux jiġu kontrastati b'semplici argumentazzjonijiet teknici u teorici da parte tas-soċjetà Rikorrenti mingħajr però ma jkun hemm imqar l-iċken prova li ssostni tali argumenti u li turi, anzi tipprova kif meħtieġ fil-Liġi, li l-istimi hekk maħruġa fil-konfront tagħha huma eċċessivi.

Filwaqt li t-Tribunal jista' jifhem li s-soċjetà Rikorrenti tħossha aggravata bl-adozzjoni ta' *sector ratios*, biex turi li kalkoli bbażati fuq l-istess huma eċċessivi - u dana partikolarment fid-dawl ta' l-anomaliji ovgji li rriżultaw mid-dokumentazzjoni varja tagħha stess - l-imsemmija soċjetà kellha l-oneru li tressaq kontegġi maħduma minnha li jispjegaw l-anomaliji imsemmija u per konsegwenza li jxejnu l-kalkoli tat-Tax Compliance Unit - haġa li però għal raġunijiet li taf hija biss ma għamlitx.

Għalkemm is-soċjetà Rikorrenti tista' ma taqbilx mal-mod kif it-Tax Compliance Unit trattat il-"wages" dikjarati mis-soċjetà Rikorrenti, l-imsemmija soċjetà kellha l-oneru li tressaq provi li jiġġustifikaw l-ammonti ta' "wages" minnha dikjarati, partikolarment fejn dawn kienu jeċċedu bil-bosta l-bejgħ dikjarat, u li jiġġustifikaw u/jew jispjegaw kif 97% tal-"wages" kienu qed jiġu *credited to the shareholders' loan account rather than paid out from the company's bank accounts* - haġa li però għal raġunijiet li taf hija biss ma għamlitx. Apparte minnhekk, kemm-il darba s-soċjetà Rikorrenti għażlet li tallega li l-"wages" *jirreferu għal ħlasijiet lid-diretturi li ħafna minnhom filwaqt li huma rikonoxxuti iżda li fil-fatt ma tħallsux; eżercizzju semplici ta' 'cash' jistabilixxi dan*, hija kellha l-oneru li tipprova dak minnha allegat - haġa li però, għal darb' oħra, għal raġunijiet li taf hi biss ma għamlitx.

Filwaqt li s-soċjetà Rikorrenti ressqet kritika mhux sostanzjata verso l-konkluzjonijiet u konsegwenti Rapport tat-Tax Compliance Unit u b'hekk verso l-istimi maħruġa fil-konfront tagħha, hija baqgħet għal kollox siekta fir-rigward tad-dubji sollevati mill-istess Tax Compliance Unit fir-rigward ta' l-anomaliji riskontrati fid-dokumentazzjoni tagħha. L-unika 'prova' ulterjuri mressqa minnha apparte x-xhieda ta' Joseph Sammut li llimita ruħu għal punti teknici bla provi u għall-kritika li ma nżammitx *site visit* fir-restaurant mingħajr però ma affronta l-anomaliji riskontrati mit-Tax Compliance Unit, hija x-xhieda ta' Wang Hui, li minnha però ma jirriżulta xejn ta' sustanza.

Ladarba l-anomaliji riskontri mit-Tax Compliance Unit baqgħu ma ġewx spjegati jew ta' l-inqas iċċarati mis-soċjetà Rikorrenti, jsegwi li l-istess soċjetà baqgħet ma ippruvatx b'mod sodisfaċenti li l-istimi maħruġa fil-konfront tagħha għall-perijodi ta' taxxa 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, 01.03.10-31.05.10, 01.06.10-31.08.10, 01.09.10-30.11.10, 01.12.10-28.02.11, 01.03.11-31.05.11, 01.06.11-31.08.11 u 01.09.11-30.11.11, in kwantu rigwarda l-element ta' Output Tax huma eċċessivi.



L-imsemmija stimi jittrattaw ukoll l-aspett ta' kreditu għal Input Tax reklamati mis-soċjetà Rikorrenti li però ma ġiex aċċettat mid-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud). Ir-raġunijiet għalfejn dan il-kreditu għal Input Tax ma ġiex aċċettat mit-Tax Compliance Unit u per konsegwenza mid-Direttur Ġenerali (Taxxa fuq il-Valur Miżjud) jirriżulta ferm ċar mir-Rapport tat-Tax Compliance Unit, iżda fir-rigward is-soċjetà Rikorrenti baqgħet għal kollox siekta.

Għal kull buon fini t-Tribunal josserva li fl-email datata 20 ta' Jannar 2014<sup>26</sup> indirizzata lil Jesmar Bilocca, jingħad illi *further to my correspondence dated 15 January 2014 and further to our meeting for review today, kindly note the following: Rental Charges incurred including VAT thereon since both Lessor and Lessee are corporate taxpayers; the relative rent agreement has been submitted today....* Madanakollu mir-Rapport tat-Tax Compliance Unit jirriżulta li *the company rented its business premises from another company, S.A.R.G. Limited (IT99230328/VAT 1527421). The rental expense was validated against the rental contract. **It was noted from the VAT system that the lessor was classified with the VAT department under Register B and did not charge VAT on the rental amount. No input VAT was in turn claimed by XXX.***

Fid-dawl ta' dan osservat għalhekk jirriżulta li anke in kwantu rigwarda l-element ta' Input Tax kontenut fl-istimi maħruġa fil-konfront tas-soċjetà Rikorrenti, l-imsemmija soċjetà ma ppruvatx bl-ebda mod li dawn huma eċċessivi.

It-Tribunal josserva ulterjorment li s-soċjetà Rikorrenti tavvanza ċerta allegazzjonijiet fil-konfront ta' l-operat tat-Tax Compliance Unit u tar-Review Officer Jesmar Bilocca li irriżultaw għal kollox infondati.

Fix-xhieda tiegħu Joseph Sammut donnu jallega li fil-kors ta' l-investigazzjoni s-soċjetà Rikorrenti ma kenitx rappreżentata. Li dan ma huwiex assolutament minnu jirriżulta mix-xhieda ta' Wang Hui<sup>27</sup> in kwantu ġie dikjarat b'mod ċar li sa' l-2013 is-soċjetà Rikorrenti kienet rappreżentata fil-vertenza mat-Tax Compliance Unit mid-ditta EMD u wara komplet tiġi rappreżentata, u dana imbagħad anke fl-istadju tar-Review, minn Joseph Sammut stess.

Is-soċjetà Rikorrenti - dejjem tramite Joseph Sammut - tikkontendi li r-Review Officer Jesmar Bilocca baqa' qatt ma rrisponda għat-talbiet/kritika tagħha. Dana però jirriżulta ċar li ma huwiex minnu. Fl-ewwel lok Jesmar Bilocca ddikjara li huwa kien ittratta l-punti kollha sollevati mis-soċjetà Rikorrenti fl-ewwel laqgħa tar-Review Process u meta baqgħet tinsisti fuq il-punti tagħha huwa ma kellux iktar x'jgħidilha u fit-tieni lok mir-Rapport tiegħu jirriżulta li Jesmar Bilocca kkonsidra l-punti sollevati mis-soċjetà Rikorrenti iżda ċaħadhom.

Il-fatt li d-Dipartiment tat-Taxxa fuq il-Valur Miżjud ma aċċettax il-punti u l-kritika sollevata mis-soċjetà Rikorrenti verso r-Rapport tat-Tax Compliance Unit li jiffirma l-bażi ta' l-istimi - inklużi dawk proviżorji - maħruġa fil-konfront tagħha, ma jfissirx b'daqshekk li huwa injora tali punti u ma tax kashom.

Punt ieħor li t-Tribunal jrid jissolleva jittratta dwar is-sottomissjoni avanzata mis-soċjetà Rikorrenti fin-Nota ta' Sottomissjonijiet tagħha, ossia li *fl-aħħarnett, u dan addizzjonalment mal-punti tekniċi elaborati iktar 'l fuq, is-soċjetà Rikorrenti tixtieq iġġib għall-konjizzjoni ta' l-Onor Tribunal illi hija qatt ma ġiet imposta fuqha xi penali jew sanzjoni għaliex ma ħarġitx riċevuti fiskali kif ukoll qatt ma ġiet sugġetta għal spezzjoni fiżika sabiex l-operat*

<sup>26</sup> Fol. 82 tal-proċess.

<sup>27</sup> Xhieda mogħtija waqt is-seduta ta' l-1 ta' Frar 2016, fol. 120 sa' 123 tal-proċess.

*tagħha jkun magħruf b'mod preċiż u rejali fid-dawl tad-distorsjonijiet aritmetiċi u tekniċi emergenti waqt it-tfassil u l-finalizzazzjoni tar-Rapport tat-TCU. L-osservazzjoni tat-Tribunal hija fir-rigward ta' l-affermazzjoni illi hija qatt ma giet imposta fuqha xi penali jew sanzjoni għaliex ma ħarġitx riċevuti fiskali. Din l-affermazzjoni ma hija xejn għajr allegazzjoni li, bħall-kumplament, ma gietx debitament ippruvata. In effetti ma tistax titqies mod ieħor stante li huwa prinċipji assodat fis-sistema ġuridika nostrali li dak li jingħad waqt it-trattazzjoni (inluż għalhekk dak sottomess fin-Noti ta' Sottomissjonijiet) ma jikkostitwixxix prova. Din l-osservazzjoni ssib konferma f'dak osservat mill-Prim' Awla tal-Qorti Ċivili fis-sentenza fl-ismijiet Josephine mart Vincent Sammut et v. Lorenzo Agius et, Ċitaz. Nru. 367/93 deċiża fit-28 ta' Novembru 1996 u kkonfermata mill-Qorti ta' l-Appell fid-9 ta' Frar 2001, fejn appuntu ngħad illi: *dak li jingħad mid-difensuri fit-trattazzjoni orali jew skritta ma jikkostitwixxix prova (App. Ċiv. Chircop v. Dr. Fr. Frendo Randon noe 12/10/79) u għalhekk l-atturi ma jistgħux fit-trattazzjoni tagħhom jagħmlu provi u jġibu difiżi li ma tqajmum waqt il-kawża.**

Huwa evidenti għalhekk illi l-appell tas-soċjetà Rikorrenti mill-istimi maħruġa fil-konfront tagħha għall-perijodi ta' taxxa 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, 01.03.10-31.05.10, 01.06.10-31.08.10, 01.09.10-30.11.10, 01.12.10-28.02.11, 01.03.11-31.05.11, 01.06.11-31.08.11 u 01.09.11-30.11.11 ma huwiex ġustifikat, la fir-rigward ta' l-aggravju preliminari u lanqas fil-mertu, u b'hekk ma jisthoqqux li jiġi milqugh.

Għal dawn ir-raġunijiet it-Tribunal jaqta' u jiddeċiedi billi jiċhad l-aggravju preliminari sollevat mis-soċjetà Rikorrenti, jiċhad ukoll l-aggravju fil-mertu, b'dana għalhekk li jiċhad l-appell tas-soċjetà Rikorrenti mill-istimi maħruġa fil-konfront tagħha għall-perijodi ta' taxxa 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, 01.03.10-31.05.10, 01.06.10-31.08.10, 01.09.10-30.11.10, 01.12.10-28.02.11, 01.03.11-31.05.11, 01.06.11-31.08.11 u 01.09.11-30.11.11 fl-intier tiegħu u minflok jikkonferma l-istess imsemmija stimi.

L-ispejjeż ta' dawn il-proċeduri jibqgħu a karigu tas-soċjetà Rikorrenti.

A tenur tal-Partita 2(4) tad-Disa' Skeda tal-Kap.406 tal-Liġijiet ta' Malta, it-Tribunal jordna li kopja ta' din is-sentenza tiġi notifikata lis-soċjetà Rikorrenti.

**MAĠISTRAT**

**DEPUTAT REĠISTRATUR**