



## **THE ADMINISTRATIVE REVIEW TRIBUNAL**

**MAGISTRATE DR.  
GABRIELLA VELLA**

Sitting of the 26 th November, 2013

Rikors Number. 33/2012

**George Thomas Goodal**

**Vs**

**Commissioner of Inland Revenue**

**The Tribunal,**

After having taken cognizance of the application filed by George Thomas Goodal on the 21st March 2012 by means of which he requests that the Tribunal cancel the Assessment dated 17<sup>th</sup> February 2012 issued against him by the Commissioner of Inland Revenue following the decision dated 15<sup>th</sup> February 2012, since the said Assessment is abusive, illegal, unjust and not in terms of law once the deed of transfer reflected the market price of the immovable transferred, and consequently no further tax and additional tax are due by him;

After having taking cognizance of the documents submitted by the Applicant together with his Application marked as Dok."A" at folio 4 to 8 of the records of the proceedings;

After having taken cognizance of the Reply submitted by the Commissioner of Revenue by means of which he opposes the request put forth by the Applicant and pleads that the same should be rejected, with costs against the Applicant, since the Assessment issued by him is just and in terms of law;

After having heard testimony given by the Applicant during the sittings held on the 28<sup>th</sup> May 2012<sup>1</sup>, on the 11<sup>th</sup> September 2012<sup>2</sup> and on the 5<sup>th</sup> March 2013<sup>3</sup> and after having taken cognizance of documents submitted by the Applicant by means of a Note filed on the 28<sup>th</sup> May 2012 at folio 26 to 28 of the records of the proceedings, documents marked as Doc. "GG1" to Doc. "GG5" at folio 29 to 35 of the records of the proceedings, documents marked Doc. "ED2" and Doc. "ED3" at folio 46 and 47 of the proceedings and documents marked as Doc. "GV1" at folio 72 to 75 of the records of the proceedings, after having taken cognizance of the affidavit by Jason Lauri submitted by means of a Note filed on the 11<sup>th</sup> September 2012 at folio 43 to 45 of the records of the proceedings and after having heard testimony given by the said Jason Lauri during the sitting held on the 5<sup>th</sup> March 2013<sup>4</sup>, after having heard testimony given by Mr. Jean-Pierre Attard A. & C.E.<sup>5</sup> during the sitting held on the 26<sup>th</sup> November 2012 and testimony given by Ivan Portelli, as representative of the Director General (Inland Revenue), during the sitting held on the 26<sup>th</sup> November 2012<sup>6</sup> and after having taken cognizance of documents submitted by the Director General (Inland Revenue) marked as Doc. "GG1" to Doc. "GG4" at folio 55 to 65 of the records of the proceedings and documents submitted by means of a Note filed on the

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<sup>1</sup> Folio 36 to 41 of the records of the proceedings.

<sup>2</sup> Folio 48 to 50 of the records of the proceedings.

<sup>3</sup> Folio 76 to 82 of the records of the proceedings.

<sup>4</sup> Folio 80 to 82 of the records of the proceedings.

<sup>5</sup> Folio 66 to 69 of the records of the proceedings.

<sup>6</sup> Folio 70 of the records of the proceedings.

13<sup>th</sup> March 2013 marked as Doc. "RA" at folio 83 to 90 of the records of the proceedings;

After having heard final oral submissions by the parties;

After having taken cognizance of all the records of the proceedings;

**Considers:**

By virtue of these proceedings the Applicant is contesting an Assessment bearing Claim No. IV117997<sup>7</sup> issued against him by the Commissioner of Inland Revenue on the 17<sup>th</sup> February 2012 following a decision by the Commissioner dated 15<sup>th</sup> February 2012<sup>8</sup> by virtue of which he rejected the Applicant's objection from the Assessment as originally issued on the 22<sup>nd</sup> March 2011<sup>9</sup> and determined that *the duty and additional duty payable by GOODALL GEORGE THOMAS in respect of the aforesaid transfer [tenement No.24, Sir George Borg Street, Sliema, by virtue of a deed in the records of Notary Mark Abela dated 17th September 2010] to be €1,175 and €1,175 respectively, for a total amount payable of €2,350 (as on 16<sup>th</sup> February 2012).*

The Commissioner of Inland Revenue reached his decision on the basis of the following considerations: *by a deed drawn up in the acts of Notary Doctor of Laws Mark Abela of the 17<sup>th</sup> September 2010, Anthony Azzopardi, Alfred Azzopardi, Maria Dolores Cauchi, Josephine Azzopardi, Mario Azzopardi, Michael Azzopardi, Paul Azzopardi, Carmen Cini, Maria Dolores Borg, Mary Azzopardi, Maria Rosaria sive Rose Azzopardi, John Azzopardi Vella, Maria Carmela sive Marlene Caruana Huber and Elizabeth Miller transferred to George Thomas Goodall the townhouse with its relative airspace, officially numbered twenty four (24) and named "Poppy" in Sir George Borg Street (previously Point Street) in Sliema, as free from the payment of any ground rent, free and*

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<sup>7</sup> Doc. "GG5" at folio 33 of the records of the proceedings.

<sup>8</sup> Folio 34 and 35 of the records of the proceedings.

<sup>9</sup> Doc. "GG4" at folio 32 of the records of the proceedings.

*unencumbered and with all its rights and appurtenances, for the declared price of one hundred and sixteen thousand and five hundred Euro (€116,500). By Rule 3 of the Duty on Documents and Transfers Rules, 1993 it is established that the value of any property subject to duty under the Act "shall be the average price which such property would fetch if sold on the open market ..." And the value of the property "shall be the value of such property on the date of the said transfer inter vivos....." In determining the value of the immovable property transferred, the Commissioner has obtained the advice of his technical expert who valued the said immovable property at one hundred and fifty thousand euro (€150,000). The Commissioner had no option other than to proceed with an assessment on the basis of the difference between the value of the immovable property in question as determined by him on technical advice and the declared price. At objection's stage, reference was again made to the departmental engineer who, after reviewing the sale in question, revised his original valuation to €140,000. Therefore, the Commissioner directs that the claim is to be revised on the basis of the difference in values between the latter value and the price declared. On the other-hand, transferee failed to produce any evidence to show that the value declared in the deed is correct. Under the circumstances, the Commissioner sees no valid reason for discarding the advice obtained by him and confirms his assessment in that respect. As regards additional duty, this was imposed in terms of article 52(4) of the Duty on Documents and Transfers Act (Cap.364), whereby the transferee shall be liable to pay an additional duty equal to the amount of estimated duty as determined by the Commissioner. The amount of additional duty properly chargeable in this case was €1,675. However, following the revision as directed in the preceeding minute, the Commissioner directs that the amount of additional duty should be proportionately reduced to €1,175. Otherwise, the Commissioner sees no valid reason to remit or reduce further the additional duty incurred.*

The Applicant objects to the decision and consequent Assessment issued by the Commissioner of Inland Revenue *inter alia* on the ground that the price declared in the deed of transfer in the records of Notary Mark Abela dated 17<sup>th</sup> September 2010 and paid by him to the vendors for the purchase of the premises at No.24, Poppy, Sir George Borg Street, Sliema, was the market price of the property and that therefore no further duty and additional duty are due by him to the Commissioner of Inland Revenue. The Commissioner on his part argues that the Assessment issued against the Applicant is just and in terms of law and should therefore be upheld.

From the records of the proceedings and in particular from the deed in the Records of Notary Mark Abela dated 17<sup>th</sup> September 2010, it results that the Applicant purchased the tenement No.24, Poppy, Sir George Borg Street, Sliema, free from the payment of any ground rent and free and unencumbered for the price of **€116,468.68**. The premises in question were subsequently inspected by Mr. Tancred Mifsud A. & C.E. appointed by the Commissioner of Inland Revenue, who valued the property at **€150,000** as evidenced by his Report submitted to the Commissioner and marked Doc. "GG2" at folio 57 and 58 of the records of the proceedings. Following this valuation and in the light of that provided for under Section 52(1) and (4) of Chapter 364 of the Laws of Malta, the Commissioner proceeded to issue an Assessment against the Applicant, dated 22<sup>nd</sup> March 2011, requesting payment of the sum of €1,675 by way of tax due on the additional chargeable value of €33,500 and the sum of €1,675 by way of additional duty <sup>10</sup>. Upon receipt of the said Assessment the Applicant objected thereto on the grounds that the property in question had been empty for a considerable number of years without electricity and water connections and therefore required extensive works, which were mainly carried out by him following the transfer proper, and had been on the market for quite some time before he purchased it<sup>11</sup>. Following the said

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<sup>10</sup> Doc. "GG4" a folio 32 of the records of the proceedings.

<sup>11</sup> Letter of objection dated 29th March 2011, Doc. "GG2" at folio 30 of the records of the proceedings.

objection the premises were once again inspected by an architect appointed by the Commissioner of Inland Revenue. This second inspection was carried out by Mr. Jean-Pierre Attard A.&C.E. who valued the property at **€130,000** as evidenced by his Report submitted to the Commissioner of Inland Revenue and marked as document Doc. "GG4" at folio 60 of the records of the proceedings and as further confirmed on oath by the said Architect during the sitting held on the 26<sup>th</sup> November 2012<sup>12</sup>. Following this valuation the Commissioner of Inland Revenue proceeded to reject the objection submitted by the Applicant to the Assessment issued on the 22<sup>nd</sup> March 2011 on the basis *inter alia* that *at objection's stage, reference was again made to the departmental engineer who, after reviewing the sale in question, **revised his original valuation to €140,000***<sup>13</sup>. Therefore, the Commissioner directs that the claim is to be revised on the basis of the difference in values between the latter value and the price declared. On the otherhand, transferee failed to produce any evidence to show that the value declared in the deed is correct. Under the circumstances, the Commissioner sees no valid reason for discarding the advice obtained by him and confirms his assessment in that respect, and proceeded to issue an Assessment dated 17<sup>th</sup> February 2012 against the Applicant requesting payment of the sum of €1,175 by way of duty on the additional chargeable value of €23,500 and the further sum of €1,175 by way of additional duty, together amounting to €2,350<sup>14</sup>.

Upon accurate examination of this evidence it immediately results that the decision and consequent Assessment by the Commissioner of Inland Revenue respectively dated 15<sup>th</sup> February 2012 and 17<sup>th</sup> February 2012 are founded on an incorrect premise. Whilst acknowledging that he is founding his decision of the 15<sup>th</sup> February 2012 and consequent Assessment of the 17<sup>th</sup> February 2012, which Assessment has effectively superseded the original Assessment of the 22<sup>nd</sup> March 2011, on the revised

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<sup>12</sup> Folio 66 to 69 of the records of the proceedings.

<sup>13</sup> Emphasis by the Tribunal.

<sup>14</sup> Folio 62 of the records of the proceedings.

valuation by the expert appointed by him, the Commissioner erroneously states that the said revised valuation amounts to €140,000 when in actual fact and as per the Report by Architect Jean-Pierre Attard marked Doc. "GG4" at folio 60 of the records of the proceedings, the revised valuation is of €130,000. When this valuation is considered in the light of that provided for under Section 52(1) and (4) of Chapter 364 of the Laws of Malta, it results that in reality no further duty and additional duty are due by the Applicant and that therefore the Assessment being complained of is excessive.

Section 52(1) of Chapter 364 of the Laws of Malta provides that: *Where the Commissioner is satisfied that the price or consideration, or the value of an immovable as declared in a deed of transfer or in a declaration of a transfer causa mortis made in accordance with article 33, is less than eighty five per centum of the real value or consideration as established by the Commissioner, or is less than the consideration that results to the Commissioner to have been actually paid on the deed, or where a declaration that ought to be made in terms of article 33 has not been made, he shall proceed to determine by order in writing the amount of duty chargeable on the difference between the value or consideration declared in the deed and the value or consideration of the immovable as established or as results to the Commissioner to have been actually paid or the duty that would have been payable on a declaration, as the case may be, and shall raise an assessment accordingly.....* When this provision, duly translated into mathematical terms, is applied to the actual and correct facts of these proceedings it results that 85% of Lm130,000 amounts to €110,500, which value is lower than the price declared in the deed of transfer in the records of Notary Mark Abela dated 17<sup>th</sup> September 2010 relative to the transfer of the premises No.24, Poppy, Sir George Borg, Street, Sliema, in favour of the Applicant. Therefore once the price declared in the said deed of transfer amounts to more than 85% of the real value of the property as determined by the Commissioner of Inland Revenue, in terms of the said provision of the law no

further duty is due by the Applicant on the said transfer and in terms of sub-section (4) of Section 52 of Chapter 364 of the Laws of Malta no additional duty is due by the Applicant. The Assessment based on a valuation of €140,000 is clearly incorrect and consequently excessive.

In the light of the above observations it results that the Applicant's appeal from the decision and consequent Assessment issued by the Commissioner of Inland Revenue respectively dated 15<sup>th</sup> February 2012 and 17<sup>th</sup> February 2012, is justified and must therefore be upheld.

For the above reasons the Tribunal upholds the Appeal lodged by the Applicant on the 21<sup>st</sup> March 2012 and consequently revokes the decision by the Commissioner of Inland Revenue dated 15<sup>th</sup> February 2012 and the consequent Assessment dated 17<sup>th</sup> February 2012, and cancels the said decision and Assessment.

Costs pertinent to these proceedings are to be borne by the Director General (Inland Revenue).

In terms of Section 58(4) of Chapter 364 of the Laws of Malta, the Tribunal orders that Notice of this decision, of the date therefore and of that determined by the Tribunal be sent to the Director General (Inland Revenue).

**< Final Judgement >**

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