



**THE ADMINISTRATIVE REVIEW TRIBUNAL**

**MAGISTRATE DR.  
GABRIELLA VELLA**

Sitting of the 20 th January, 2014

Rikors Number. 193/2012

**Frank Spiteri**

**Vs**

**Director General (Inland Revenue)**

**The Tribunal,**

After having considered the Application filed by Frank Spiteri on the 14<sup>th</sup> June 2012, by means of which he requests the Tribunal to uphold his appeal from the Assessment issued against him by the Commissioner for Inland Revenue and consequently cancel and revoke the said Assessment;

After having considered the documents submitted by the Applicant together with his Application at folio 2 to 16 of the records of the proceedings;

After having considered the Reply by the Director General (Inland Revenue) by means of which he objects to the

request put forth by the Applicant and asks that the Applicant's appeal be rejected, with costs against him, on the ground that the decision dated 3<sup>rd</sup> June 2011 and consequent Assessment issued against the Applicant are fair and have been delivered and issued in terms of the Law;

After having considered the testimony given by the Applicant<sup>1</sup> and by Dion Borg<sup>2</sup> during the sitting held on the 12<sup>th</sup> November 2012 and testimony given by Alex Frendo as a representative of the Director General (Inland Revenue) during the sitting held on the 4<sup>th</sup> November 2013<sup>3</sup>;

After having considered the Decree dated 29<sup>th</sup> January 2013;

After having considered the documents submitted by the Director General (Inland Revenue) by means of a Note filed on the 4<sup>th</sup> February 2013 at folio 38 to 118 of the records of the proceedings;

After having considered the minutes of the sitting held on the 2<sup>nd</sup> July 2013, during which the Tribunal *ex officio* raised a query pertaining to its competence to determine these proceedings in view of the fact that from the records it transpires that a judicial letter in terms of Section 60A of Chapter 364 of the Laws of Malta has been issued against the Applicant;

After having heard oral submissions by the parties regarding this particular issue, that is whether the Tribunal is competent to hear and determine the appeal lodged by the Applicant;

After having considered that the case has been put off to the 20<sup>th</sup> January 2014 for judgement on whether the Tribunal is competent to hear and determine the appeal lodged by the Applicant;

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<sup>1</sup> Folio 33A to 33H of the records of the proceedings.

<sup>2</sup> Folio 33I to 33L of the records of the proceedings.

<sup>3</sup> Folio 123 to 126 of the records of the proceedings.

After having considered all the records of the proceedings;

**Considers:**

By virtue of a deed in the records of Notary Remigio Zammit Pace dated 18<sup>th</sup> February 2008<sup>4</sup>, the Applicant acquired tenement numbered 25 in St. Lawrence Street, Vittoriosa, for the price of €34,940.60. On the 26<sup>th</sup> May 2008 the Commissioner for Inland Revenue issued an assessment against the Applicant wherein he determined the additional chargeable value of the property acquired by the Applicant at €81,000 and consequently assessed duty due on the said additional chargeable value at €4,050 and additional tax due at €4,050 for a total of €8,100<sup>5</sup>. The Applicant objected to the said Assessment by means of a letter dated 7<sup>th</sup> July 2009<sup>6</sup> and a further letter dated 8<sup>th</sup> December 2009<sup>7</sup>. Even though the additional chargeable value of the property was reduced to €58,000, the objection submitted by the Applicant was refused by the Commissioner by means of a decision dated 3<sup>rd</sup> June 2011<sup>8</sup> and an Assessment was issued against the Applicant wherein the duty due on the additional chargeable value of €58,000 has been assessed at €2,900 and additional tax due at €2,900, for a total of €5,800<sup>9</sup>. Following the publication of a notice in terms of Section 61(1) of Chapter 364 of the Laws of Malta in the Government Gazette and one daily local newspaper with reference to the Assessment issued against the Applicant bearing Claim No. IV18685<sup>10</sup>, the Commissioner for Inland Revenue proceeded to issue a Demand Note in terms of Section 60A of Chapter 364 of the Laws of Malta dated 7<sup>th</sup> November 2011<sup>11</sup>. Following the publication of a notice in terms of Section 61(1) of

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<sup>4</sup> Folio 7 to 16 of the records of the proceedings.

<sup>5</sup> Folio 5 of the records of the proceedings.

<sup>6</sup> Folio 3 of the records of the proceedings.

<sup>7</sup> Folio 4 of the records of the proceedings.

<sup>8</sup> Folio 72 to 74 of the records of the proceedings.

<sup>9</sup> Folio 78 and 79 of the records of the proceedings.

<sup>10</sup> Folio 68 and 69 of the records of the proceedings.

<sup>11</sup> Folio 64 of the records of the proceedings.

Chapter 364 of the Laws of Malta in the Government Gazette and one daily local newspaper with reference to the said Demand Note<sup>12</sup>, the Commissioner for Inland Revenue proceeded to issue a judicial letter, filed before the Court of Magistrates (Malta) bearing number 542/12, in terms of Section 60A of Chapter 364 of the Laws of Malta. The Tribunal viewed the records of the said judicial letter, which judicial letter is dated 22<sup>nd</sup> February 2012, and it results that the same has been served in the hands of a certain Rick O'Connell on the 9<sup>th</sup> May 2012. On the 14<sup>th</sup> June 2012, the Applicant submitted an appeal before this Tribunal from the Assessment raised against him by the Commissioner for Inland Revenue, which appeal is founded on the following grounds: (i) the Notice of Refusal and relative Assessment were not validly served upon him; (ii) the executive title obtained by the Commissioner for Inland Revenue against him is not valid at law; and (iii) the Assessment issued by the Commissioner for Inland Revenue as founded on the valuation by the Architect appointed by the said Commissioner, has not been issued "properly", "reasonably" and "fairly".

Since the Applicant filed his appeal on the **14<sup>th</sup> June 2012**, that is after the issue of the Demand Note dated 7<sup>th</sup> November 2012 and after the issue of the judicial letter dated 22<sup>nd</sup> February 2012, both issued in terms of Section 60A of Chapter 364 of the Laws of Malta, **and** since the Applicant is claiming, as one of the grounds of his appeal, that the Notice of Refusal and consequent Assessment issued against him were not validly served on him and that executive title obtained by the Commissioner for Inland Revenue against him is also not valid at law, the Tribunal deemed it necessary to question its competence to hear and determine this particular case and is effectively deciding this matter by means of this decision.

Section 60A of Chapter 364 of the Laws of Malta provides that: *(1) An assessment which is final and conclusive in accordance with article 60 shall be an executive title within the meaning and for the purposes of Title VII of Part*

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<sup>12</sup> Folio 62 and 63 of the records of the proceedings.

*I of Book Second of the Code of Organisation and Civil Procedure. (2) If duty and, or additional duty, and or interest is not paid as prescribed in this Act, the Commissioner shall serve a demand note upon the person liable for the payment, and if payment is not made within fifteen days from the date of the service of such demand note, the Commissioner may enforce payment in virtue of the executive titled referred to in subarticle (1), after two days from the service of an intimation for payment made by means of a judicial act. Section 60 of the said Chapter of the Laws of Malta provides that where no valid objection or appeal has been lodged against an assessment, or where the amount of the duty has been agreed to under article 56(2), or where an amount of the duty and additional duty is paid as provided in article 52 of the Act, in respect of such duty and additional duty so paid, or where an appeal has been withdrawn or discontinued, or where the amount of duty payable has been determined on objection or appeal, the assessment as made or agreed to or determined on objection or appeal, as the case may be, shall be final and conclusive for all purposes of this Act:...*

From the said provisions of the law it clearly results that if *inter alia* no objection and/or no appeal is lodged from an Assessment raised by the Commissioner for Inland Revenue within the statutory period set out in the law, then that Assessment is to be considered as final and conclusive **and** consequently as an executive title within the meaning and for the purposes of Title VII of Part I of Book Second of the Code of Organisation and Civil Procedure. The collection of duty and/or any penalties due under the Act and therefore the enforcement of the Commissioner's executive title against the taxpayer is initiated by means of the issue of a Demand Note and, should the taxpayer fail to pay up, is followed up by the issue of a judicial letter before the competent court of civil jurisdiction and, should the taxpayer persist in not paying up, completed with the issue of the relative executive warrants in terms of Chapter 12 of the Laws of Malta.

In terms of Section 16(1) of Chapter 364 of the Laws of Malta all actions for the recovery of any duty due and of any penalty incurred under the Act are to be brought before the courts of civil jurisdiction. It therefore follows that once the Commissioner for Inland Revenue proceeds before a court of Civil jurisdiction to enforce his title against the taxpayer and thus collect payment of duty and/or any penalty due under the Act, the taxpayer can contest the validity of the Commissioner's executive title only before that Court and not any other Court or Tribunal. The Administrative Review Tribunal in particular is not competent to hear and determine issues pertaining to the actual collection of duty and/or penalties due under the Act by the Commissioner or to the validity and/or enforcement of the Commissioner's executive title against the taxpayer since in terms of Section 57(1) of Chapter 364 of the Laws of Malta *the Administrative Review Tribunal shall be competent to hear and determine appeals in accordance with the provisions of article 58,* which Section, in particular sub-section (1), in turn provides that *any person who feels aggrieved by an assessment, and has not agreed with the Commissioner on the amount of duty payable as provided in article 56(1), may enter an appeal to the Tribunal within thirty days from the date of the service upon him of a notice of the refusal of the Commissioner to amend the assessment as desired.* From the said provisions of the Law it clearly results that the Tribunal is competent to deal with appeals by the taxpayer from Assessments issued by the Commissioner for Inland Revenue, prior to these Assessments becoming final and conclusive in terms of Law and therefore prior to the Commissioner obtaining **and** proceeding to enforce an executive title against the taxpayer before the competent court of civil jurisdiction.

In these proceedings even though the Applicant is ultimately seeking to obtain the cancellation of the Assessment issued against him by the Commissioner for Inland Revenue, he is also contesting the validity of the executive title obtained by the Commissioner against him by claiming that the service of the Notice of Refusal and consequent Assessment issued against him is not valid in

terms of Law. In fact in his Application the Applicant puts forth the following submission as a ground for his appeal: *illi qabel xejn jehtieg illi jigi puntwalizzat illi l-esponent sar jaf bl-avviz tar-rifjut fit-23 ta' Mejju 2012. Illi kif jirrizulta mill-annessi dokumenti, l-esponent kien informa lill-appellat illi r-residenza principali tieghu hija barra minn Malta u illi huwa jkun barra l-maggor parti taz-zmien. Illi minkeja dan, l-appellant halla l-avviz ta' rifjut f'indirizz Malta ma' certu Richard O'Connell. Illi O'Connell: (a) mhux awtorizzat jilqa notifika ta' dokumenti f'isem l-esponent; (b) mhux awtorizzat jircievi l-posta ta' l-esponent; (c) mhuwiex prokuratur ta' l-esponent; (d) mhuwiex fis-servizz ta' l-esponent; u (e) mhux membru tal-familja ta' l-esponent. Illi ghalhekk l-avviz ta' rifjut ma giex notifikat kif titlob il-ligi. Dan il-punt qed jitqajjem in vista ta' l-Artikolu 187 tal-Kap.12 dwar in-notifiki u l-mod kif gie interpretat ghall-fini tal-ligi fiskali fil-kawza fl-ismijiet Hallett Ivan v. Kummissarju tat-Taxxa fuq il-Valur Mizjud. Illi sopra corna bastonate, l-appellat hareg titolu ezekuttiv ghat-taxxa kontestata billi halla d-dokumenti relattivi ma' l-imsemmi Richard O'Connell. Illi ghalhekk it-titolu ezekuttiv vantat huwa irregolari.*

In this particular case the Applicant should not have contested, and in reality could not and still cannot contest, the validity of the service of the Notice of Refusal and consequent Assessment issued against him by the Commissioner for Inland Revenue and consequently the validity of the resulting executive title obtained by the Commissioner against him before this Tribunal because there already is another Court seized with the enforcement of that executive title, that is the Court of Magistrates (Malta) under whose authority the Commissioner issued a judicial letter against the Applicant in terms of Section 60A of Chapter 364 of the Laws of Malta. In the light of that observed above, once the Commissioner for Inland Revenue has initiated proceedings for the collection of duty and/or penalties due under the Act by the taxpayer and relative enforcement of his executive title against the taxpayer before the competent court of civil jurisdiction, issues pertaining to the validity of the service of the Notice of Refusal and

consequent Assessment issued against the Applicant and the resulting validity of the executive title obtained by the Commissioner against the Applicant should have been directed before that Court and not before this Tribunal.

In reality the incompetence of the Tribunal to determine these particular issues once the procedure for the enforcement of the executive has been instituted before the competent court of civil jurisdiction also stems from Section 7 of the Administrative Justice Act, Chapter 490 of the Laws of Malta, which provides that *the Administrative Review Tribunal shall be competent to review administrative acts of the public administration on points of law and points of fact. It shall also be competent to decide disputes referred to it unless any court or other administrative tribunal is already seized of such dispute.*

In the Tribunal's view it is only after the **service** of the Notice of Refusal and consequent Assessment issued against the Applicant and the **resulting executive title** obtained by the Commissioner for Inland Revenue against him were to be declared null and void by the competent court of civil jurisdiction that it would then be competent to determine an appeal by the Applicant from the Assessment issued against him. Basically a declaration by the competent court of civil jurisdiction that the service of the Notice of Refusal and consequent Assessment issued against the Applicant and the resulting executive title obtained by the Commissioner for Inland Revenue against him are null and void would revert the whole situation to the *status quo ante* with the Applicant having the possibility to exercise his right of appeal before this Tribunal in terms of Section 58 of Chapter 364 of the Laws of Malta.

During oral submissions the Applicant argued that should this Tribunal decline to hear and determine his case on the grounds of incompetence he would effectively be left without a remedy against the Commissioner's claim for payment of duty and additional tax with regards to the acquisition of tenement No.25, St. Lawrence Street, Vittoriosa, as assessed in the Assessment issued against



him following the refusal of his objection. In the light of that observed above it is clear that this submission by the Applicant is completely incorrect since the Tribunal could possibly be made competent to hear and determine an appeal from the Assessment if his arguments against the validity of the service of the Notice of Refusal and consequent Assessment and the validity of the executive title obtained by the Commissioner against him were to be upheld by the competent court of civil jurisdiction.

In the light of the above the Tribunal deems that in the particular circumstances of this case it is, at this stage, not competent to hear and determine the proceedings instituted by the Applicant on the 14<sup>th</sup> June 2012 and therefore abstains from taking further cognisance of the same.

Costs are to be borne by the Applicant.

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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