



TRIBUNAL TA' REVIZJONI AMMINISTRATTIVA

**MAGISTRAT DR.
GABRIELLA VELLA**

Seduta ta' l-10 ta' Ottubru, 2013

Rikors Numru. 51/2009

Equal Co. Ltd.

Vs

Kummissarju tat-Taxxi Interni

It-Tribunal,

Ra t-talba tas-socjetà rikorrenti originarjament ipprezentata quddiem il-Bord ta' Kummissarji Speċjali permezz ta' liema titlob li jigi dikjarat li ma hija minnha dovuta ebda taxxa ulterjuri lill-Kummissarju tat-Taxxi Interni fuq l-akkwist ta' parti minn *back garden* gewwa San Giljan bis-sahha ta' kuntratt datat 29 ta' April 2000, u li ebda taxxa addizzjonali/penali ma ghandha tigi imposta fuqha in konnessjoni ma' dan l-istess akkwist;

Ra r-Risposta tal-Kummissarju tat-Taxxi Interni permezz ta' liema jopponi ghat-talba tas-socjetà Rikorrenti jitlob li l-istess tigi michuda, bl-ispejjez kontra taghha, stante li ghar-ragunijiet minnu già moghtija fid-decizjoni ta' l-24 ta'

Kopja Informali ta' Sentenza

Settembru 2003, il-Likwidazzjoni tat-taxxa fuq dokumenti u trasferimenti dwar trasferiment ta' immobbli lis-socjetà Equal Company Limited bis-sahha ta' kuntratt fl-atti tan-Nutar Peter Fleri Soler datat 29 ta' April 2000, hija gusta u timmerita konferma;

Ra d-decizjoni tal-Kummissarju tat-Taxxi Interni dwar il-Kont Numru 43487 datata 24 ta' Settembru 2003 a fol. 1 sa' 3 tal-process u ra d-dokumenti esebiti mill-Kummissarju tat-Taxxi Interni flimkien mar-Risposta tieghu markati Dok. "A" sa' Dok. "D" a fol. 7 sa' 10 tal-process;

Ra l-affidavit ta' Frank Scicluna esebit mis-socjetà Rikorrenti permezz ta' Nota ipprezentata fl-14 ta' Novembru 2011 a fol. 21 u 22 tal-process;

Sema' x-xhieda tal-Perit Carmel Cacopardo¹ u ta' Ivan Portelli in rappreżentanza tal-Kummissarju tat-Taxxi Interni², entrambe moghtija waqt is-seduta tat-23 ta' Ottubru 2012 u ra d-dokumenti esebiti minn Ivan Portelli markati Dok. "IP1" sa' Dok. "IP5" a fol. 33 sa' 41 tal-process;

Sema' t-trattazzjoni orali da parte tad-difensuri tal-partijiet;

Ra l-atti l-ohra kollha tal-kawza;

Ikkonsidra:

B' Avviz pprezentat min-Nutar Peter Fleri Soler fil-15 ta' Mejju 2000, il-Kummissarju tat-Taxxi Interni gie avzat li bis-sahha ta' kuntratt fl-atti ta' l-imsemmi Nutar datat 29 ta' April 2000, is-socjetà Rikorrenti akkwistat minghand is-socjetà The Vintage Company Limited *a portion of the back garden at present forming part of the tenement at number six (6) Saint George's Road, Saint Julian's and which divided portion of garden is accessible from Forrest Street, Saint Julian's, including any developments thereon measures approximately three hundred and seventy five*

¹ Fol. 42 sa' 45 tal-process.

² Fol. 45A u 45B tal-process.

square metres (375m²); as free and unencumbered and with all its rights and appurtenances. The said portion of land shall be segregated from the said property number 6 in terms of the plan annexed to the deed as Document "B". The said divided portion is indicated in yellow on the plan annexed to the deed marked Document "B", versu l-prezz ta' Lm10,000³.

B'Notifika ta' Likwidazzjoni bil-Kont Nru. 43487 datata 12 ta' Frar 2001⁴ (u mhux 12 ta' Frar 2000 kif erronejament indikat mis-socjetà Rikorrenti fir-Rikors taghha), is-socjetà Rikorrenti giet infurmata mill-Kummissarju tat-Taxxi Interni li fir-rigward ta' l-imsemmi akkwist ta' parti minn *back garden* gewwa San Giljan, bis-sahha tal-kuntratt datat 29 ta' April 2000, gie minnu determinat li l-valur taxxabli ta' tali akkwist kien ta' Lm140,000 u ghalhekk hija minnha dovuta taxxa ulterjuri fl-ammont ta' Lm7,000 u taxxa addizzjonali/penali fl-ammont ta' Lm14,000, b'dana li hija minnha dovuta lill-Kummissarju tat-Taxxi Interni s-somma komplessiva ta' Lm21,000. Is-socjetà Rikorrenti tramite n-Nutar Peter Fleri Soler oggezzjonat ghall-Likwidazzjoni mahruqa mill-Kummissarju tat-Taxxi Interni permezz ta' ittra ta' oggezzjoni datata 22 ta' Frar 2001⁵, fejn essenzjalment gie dikjarat illi *on behalf of my client Equal Co. Ltd. I hereby object to the unwarranted and unreasonable valuation and consequent Tax and Duty imposed on them.* B'Avviz ta' Rifjut datat 1 ta' Ottubru 2003⁶ is-socjetà Rikorrenti giet infurmata li l-oggezzjoni taghha mill-Likwidazzjoni mahruqa kontriha giet rifjutata mill-Kummissarju tat-Taxxi Interni u li ghalhekk gie kkonfermat il-valur taxxabli ta' Lm140,000 ghall-akkwista ta' parti minn *back garden* gewwa San Giljan bis-sahha ta' kuntratt datat 29 ta' April 2000 u konsegwentement hija minnha dovuta s-somma komplessiva ta' Lm21,000, illum ekwivalenti ghal €48,916.84, konsistenti fis-somma ta' Lm7,000 rapprezentanti taxxa ulterjuri dovuta fuq il-valur taxxabli u fis-somma ta' Lm14,000 rapprezentanti taxxa addizzjonali.

³ Dok. "A" a fol. 7 tal-process.

⁴ Dok. "B" a fol. 8 tal-process.

⁵ Dok. "C" a fol. 9 tal-process.

⁶ Dok. "D" a fol. 10 tal-process.

Is-socjetà Rikorrenti appellat minn tali Rifjut ta' Oggezzjoni u titlob li jigi dikjarat li fuq l-akkwist imsemmi ma hija dovuta minnha ebda taxxa uljterjuri u ma ghandha tigi imposta fuqha ebda taxxa addizzjonali stante li: (i) *the price for which the property was acquired in the deed of transfer in question, namely deed dated 29th April 2000 enrolled in the records of Notary Peter Fleri Soler is the real value and consideration*; (ii) *the deed of acquisition clearly indicates that the property in question was transferred “free from any third party rights, whether real or personal save⁷ for a lease in favour of Godwin and Maud Lowell presently occupying the house at number six St. George’s Road, St. Julian’s, of which this land forms part, which Purchaser Company declares to be cogniscent of”*; u (iii) *in determining the real value of the immovable property transferred the Commissioner’s technical expert failed to take into account the fact that the property was occupied by third parties by title of lease. The advice upon which the Commissioner acted was therefore based on incorrect information.*

Il-Kummissarju tat-Taxxi Interni jopponi ghat-talbiet tas-socjetà Rikorrenti stante li *ghar-ragunijiet moghtija minnu fid-decizjoni tieghu ta' l-24 ta' Settembru 2003, il-likwidazzjoni tat-taxxa fuq dokumenti u trasferimenti dwar trasferiment ta' mmobbli lil Equal Company Limited li avvera ruhu b'kuntratt fl-atti tan-Nutar Peter Fleri Soler tad-29 ta' April 2000, hija gusta u timmerita konferma. Ir-ragunijiet in bazi ghal liema l-Kummissarju tat-Taxxi Interni rifjuta l-oggezzjoni tas-socjetà Rikorrenti ghall-Likwidazzjoni mahruqa kontra taghha u konsegwentement ikkonferma dik il-Likwidazzjoni fl-intier taghha huma li *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 should 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*

⁷ Sottolinear tas-socjetà Rikorrenti.

property transferred, the Commissioner has obtained the advice of his technical expert who valued the said immovable property at one hundred and fifty thousand Maltese Liri (Lm150,000). 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, the departmental engineer confirmed his valuation and remarked that the immovable property is a prime building site. On the other hand, transferee has 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 hereby confirms the assessment in that respect. The Commissioner respectfully observes that transferor has accepted the Commissioner's assessment and paid additional duties accordingly. 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 ten times the difference between the duty paid on such deed and the duty chargeable as determined by the Commissioner. The amount of additional duty property chargeable in this case was Lm70,000 but the Commissioner availed himself of the powers conferred upon him by article 24 of the Act and reduced the additional duty to Lm14,000. It is this latter amount which is in contestation. However, the Commissioner sees no valid reason to remit or reduce further the additional duty incurred⁸.

Mir-Rikors tas-socjetà Rikorrenti u mis-sottomissjonijiet avvanzati mid-difensur taghha waqt it-trattazzjoni orali jirrizulta li l-aggravju centrali fuq liema tibbaza l-appell taghha mid-decizjoni tal-Kummissarju tat-Taxxi Interni u l-konsegwenti Likwidazzjoni mahruġa minnu huwa li l-istess Kummissarju jew ahjar il-Perit minnu inkargiat għall-fini li jaghmel stima tal-proprjetà, ossia parti minn *back garden*, minnha akkwistat bil-kuntratt fl-atti tan-Nutar Peter Fleri

⁸ Decizjoni tal-Kummissarju tat-Taxxi Interni datata 24 ta' Settembru 2003, fol. 1 sa' 3 tal-process.

Soler datat 29 ta' April 2000, naqas milli jiehu in konsiderazzjoni il-fatt li l-gnien kien soggett ghal drittijiet favur terzi bil-konsegwenza li erronejament wasal biex ghamel stima ta' l-istess fl-ammont ta' Lm150,000. Il-Perit Carmel Cacopardo, li kien il-Perit inkarigat mill-Kummissarju tat-Taxxi Interni ghall-fini li jaghmel stima tal-proprietà akkwistata mis-socjetà Rikorrenti kategorikament cahad li l-istima tieghu hija zbaljata u fix-xhieda li ta waqt is-seduta tat-23 ta' Ottubru 2012⁹ spjega li huwa ghamel stima ta' gnien li ghandu faccata fuq Forrest Street, San Giljan, tal-kejl ta' 375m.k., li kien jiffirma parti mid-dar Nru.6, St. Georges Road, San Giljan. L-istima tieghu kienet ta' bicca art fabbrikabli stante li *dik it-triq hija fabbrikabli kollha. L-ischemes kif kienu dakinhar kienu ta' erba' sulari 'l fuq mit-triq u llum huma erba' sulari u basement, jigifieri bejn wiehed u iehor baqghu l-istess* u stante wkoll li dakinhar li huwa zamm l-access fis-sit in kwistjoni kien qed isir xoghol ta' skavar. Fir-rigward ta' eventwali drittijiet ta' terzi l-Perit Cacopardo ddikjara li *ma ghandix nota li hemm cnus jew xi drittijiet ohra la fin-notamenti tieghi u lanqas fin-noatries abstract. Fil-fatt in-notaries abstract jghid free and unencumbered.* Il-Perit jghid ukoll li hadd min-naha tas-socjetà Rikorrenti ma gibidlu l-attenzjoni dwar il-fatt li seta' kien hemm drittijiet ta' terzi fuq dan il-gnien, tant illi ma ghandu ebda notament f'dan is-sens.

Ai termini ta' l-Artikolu 58(3) tal-Kap.364 tal-Ligijiet ta' Malta *l-piz tal-prova illi l-likwidazzjoni li dwarha jsir l-ilment hija eccessiva jkun ta' l-appellant*¹⁰, u ghalhekk fil-kaz in ezami s-socjetà Rikorrenti trid, ghall-fini li tirnexxi fl-appell taghha mid-decizjoni tal-Kummissarju tat-Taxxi Interni li jirrifjuta l-oggezzjoni taghha u minflok jikkonferma l-Likwidazzjoni mahruqa minnu, tipprova li l-gnien minnha akkwistat fid-29 ta' April 2000 kien soggett ghal drittijiet ta' terzi. Fil-fehma tat-Tribunal però tali prova ma saritx da parte tas-socjetà Rikorrenti.

⁹ Fol. 42 sa' 45 tal-process.

¹⁰ Dan l-Artikolu tal-Ligi kien vigenti w applikabbli anke fiz-zmien meta l-appelli minn decizjonijiet ta' rifjut ta' oggezzjoni tal-Kummissarju tat-Taxxi Interni kienu jinSTEMghu mill-Bord ta' Kummissarji Speċjali - Artikolu 58(3) ta' l-Att XVII ta' l-1993.

Fir-Rikors ta' l-appell tagħha s-socjetà Rikorrenti tikkontendi li *the deed of acquisition clearly indicates that the property in question was transferred “free from any third party rights, whether real or personal save for a lease in favour of Godwin and Maud Lowell presently occupying the house at number six (6) St. George’s Road, St. Julian’s of which this land forms part, which Purchaser Company declares to be cognisant of*, izda għal raguni inspjegabbli hija naqset milli tesebixxi fl-atti ta' dawn il-proceduri l-kuntratt ta' trasferiment fl-atti tan-Nutar Dottor Peter Fleri Soler datat 29 ta' April 2000 li biha akkwistat il-porzjoni ta' gnien in kwistjoni. Jigi osservat ukoll li meta sottomettiet l-oggezzjoni tagħha għall-Likwidazzjoni tal-Kummissarju tat-Taxxi Interni¹¹ s-socjetà Rikorrenti ma għamlet l-ebda accenn għal xi drittijiet ta' terzi u lanqas indikat dak li skontha jirrizulta mill-kuntratt ta' l-akkwist. In fatti fl-oggezzjoni tagħha s-socjetà Rikorrenti semplicement oggezzjonat *to the unwarranted and unreasonable valuation and consequent Tax and Duty imposed on them* minghajr ma qalet għaliex tali Likwidazzjoni kienet hekk skontha *unwarranted and unreasonable*.

Fil-fehma tat-Tribunal kien imperattiv għas-socjetà Rikorrenti li tesebixxi l-kuntratt ta' l-akkwist fl-atti tan-Nutar Peter Fleri Soler datat 29 ta' April 2000 fl-atti ta' dawn il-proceduri sabiex tikkonferma dak minnha affermat fir-Rikors ta' l-appell partikolarment meta dak minnha affermat ma jaqbilx ma dak dikjarat min-Nutar Peter Fleri Soler fl-avviz li huwa ta lill-Kummissarju tat-Taxxi Interni dwar it-trasferiment in kwistjoni.

In effetti fl-imsemmi avviz in-Nutar Fleri Soler iddeskriva x-xorta tat-transazzjoni bil-mod segwenti: *sale of portion of the back garden at present forming part of the tenement at number six (6) Saint George’s Road, Saint Julian’s and which divided portion of garden is accessible from Forrest Street, Saint Julian’s, including any developments thereon measures approximately three hundred and seventy five square metres (375m²); as free and unencumbered and*

¹¹ Dok. “C” a fol. 9 tal-process.

*with all its rights and appurtenances. The said portion of land shall be segregated from the said property number 6 in terms of the plan annexed to the deed as Document "B". The said divided portion is indicated in yellow on the plan annexed to the deed marked Document "B"*¹². Minn din id-deskrizzjoni jirrizulta b'mod car li kuntrarjament ghal dak affermat mis-socjetà Rikorrenti, il-porzjoni tal-gnien minnha akkwistat ma kien soggett ghal ebda drittijiet ta' terzi izda kien *free and unencumbered*.

In sostenn ta' l-appell taghha s-socjetà Rikorrenti pprezentat affidavit ta' Frank Scicluna¹³ li fiz-zmien in kwistjoni kien Direttur taghha izda minn dan l-affidavit ma jirrizulta assolutament xejn dwar dawn l-allegati drittijiet ta' terzi fuq il-gnien in kwistjoni. In effetti fl-affidavit tieghu Frank Scicluna semplicement jghid *fid-29 ta' April 2000 u cioè meta l-fond inbiegh, il-fond ma kienx fi stat tajjeb u fl-inhawi ma kienx hemm demand qawwi ghal appartamento. L-appartement huwa fuq restaurant ta' fast food u ghalhekk il-valur kien limitat. Kien wiehed mill-ewwel appartamenti biex jinbiegh f'dak inhawi. Appartamenti fl-istess area kienu inbieghu bi prezz ferm inqas. Jigi osservat illi appartate l-fatt li f'dan l-affidavit Frank Scicluna ma jghid assolutament xejn dwar drittijiet ta' terzi, huwa jaghmel referenza ghal appartamento li nbiegh fid-29 ta' April 2000 mentri l-kaz in ezami jittrartta dwar akkwist ta' porzjoni ta' gnien tal-kejl ta' circa 375m² b'kuntratt datat 29 ta' April 2000 u ghalhekk l-istess affidavit ffit li xejn jista' jitqies li ghandu rilevanza ghall-kaz in ezami.*

Fid-dawl ta' dan kollu osservat johrog b'mod car ghalhekk li s-socjetà Rikorrenti ma rnextlihiex tipprova l-aggravju centrali fuq liema tibbaza l-appell taghha mid-decizjoni u konsegwenti Likwidazzjoni tal-Kummissarju tat-Taxxi Interni, u cioè li l-porzjoni ta' gnien minnha akkwistat fid-29 ta' April 2000 kien soggett ghal drittijiet ta' terzi. Anzi l-unika prova cara u konkreta li tirrizulta hi proprio l-kuntrarju u cioè li l-istess porzjon ta' gnien gie lilha trasferit *free and unencumbered*.

¹² Dok. "A" a fol. 7 tal-process.

¹³ Fol. 22 tal-process.

Kopja Informali ta' Sentenza

Fic-cirkostanzi ghalhekk it-Tribunal ma jistax iqis li l-istima maghmula mill-Perit Carmel Cacopardo tal-porzjon ta' gnien tal-kejl ta' 375m² b'access minn Forrest Street, St. Julian's, akkwistat mis-socjetà Rikorrenti bhala *free and unencumbered* fl-ammont ta' Lm150,000 hija zbaljata jew eccessiva u konsegwentement ghalhekk lanqas ma jista' jqis li l-Likwidazzjoni maghmula mill-Kummissarju tat-Taxxi Interni fl-ammont ta' Lm7,000 (illum ekwivalenti ghal €16,305.61) bhala taxa ulterjuri u fl-ammont ta' Lm14,000 (illum ekwivalenti ghal €32,611.22) bhala taxa addizzjonali/penali fir-rigward ta' valur taxxabli ta' Lm140,000, hija eccessiva.

Ladarba l-aggravji fuq liema s-socjetà Rikorrenti tibbaza l-appell taghha mid-decizjoni u konsegwenti Likwidazzjoni tal-Kummissarju tat-Taxxi Interni jirrizultaw ghal kollox ingustifikati, it-Tribunal ma ghandux triq ohra ghajr li jichad l-istess.

Ghal dawn ir-ragunijiet it-Tribunal jaqta' u jiddeciedi l-kaz billi jichad l-appell interpost mis-socjetà Rikorrenti mid-decizjoni tal-Kummissarju tat-Taxxi Interni datata 24 ta' Settembru 2003 u konsegwenti Likwidazzjoni bin-Numru IV043487 datata 1 ta' Ottubru 2003 u minflok jikkonferma l-istess imsemmija decizjoni u konsegwenti Likwidazzjoni.

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

Ai termini ta' l-Artikolu 58(4) tal-Kap.364 tal-Ligijiet ta' Malta, it-Tribunal jordna li avviz ta' din id-decizjoni, tad-data taghha u ta' dak li effettivament gie deciz jintbaghat lill-Kummissarju tat-Taxxi Interni.

< Sentenza Finali >

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