

THE ADMINISTRATIVE REVIEW TRIBUNAL

The summaries below are of the decisions delivered by the Administrative Review Tribunal (ART) since its constitution. The first part is in respect of appeals filed under the Duty on Documents and Transfers Act. This is followed by summaries of decisions delivered under the Income Tax Act, while VAT summaries complete the publication. The summaries are of decisions appearing on the web-site of the Ministry of Justice, and are in the order in which the relative Rikorsi were registered. A brief Index by subject matter of the topics discussed is included with each lot of decisions, though in slightly different form for each. It will be noted that in some instances we have added brief comments. These are mostly set out in italics, but have no official status.

DUTY ON DOCUMENTS & TRANSFERS ACT

Rikors 15/2009

9 July 2010

Mgte Doreen Clarke

Case inherited by the ART from the former Board of Special Commissioners.

Taxpayer, a Central Bank employee, acquired an immovable in a shell state for Lm18,000. The relative road had not yet been formed or named. To part finance and finish the house, taxpayer was granted a loan of Lm14,000 by the Central Bank. The Revenue's valuing architect inspected the building when works had been finalized and declared that it was worth Lm28,000. An assessment was raised accordingly. The ART noted that the Central Bank was hardly likely to get involved in shady transactions. Moreover, the immovable next door had been sold, also in a shell state, for Lm16,000, and the Revenue had not queried this value. Finally, the architect member of the Board of Special Commissioners, had stated that Lm18,000 was a fair value for the immovable in a shell state. The ART therefore accepted the appeal and revoked the Revenue's assessment.

Rikors 20/2009

20 January 2014

Mgte Gabriella Vella

The ART made a subsequently often repeated review of the restructuring of the Revenue Departments and the delegation of functions between various public officials. It is not clear why this had to be repeated in several decisions when no party seems to have raised any issue in this respect.

The case concerned the value to be attributed to a large commercial property situated on a main road. It was proved to the ART's satisfaction that the area valued by the Department's architect was actually in excess of that transferred by the relative public deed. The architect had also used what were high rates per square metre. The ART therefore accepted a valuation made by its technical member which was close to that declared in the deed of transfer and revoked the assessment complained of.

Rikors 26/2009

9 July 2010

Mgte Doreen Clarke

Case inherited by the ART from the Board of Special Commissioners.

Taxpayer had purchased a property in Sliema at a declared value of Lm70,000. The Revenue had raised an assessment to duty on the basis that its valuing architect had established that the market value of the property on the date of transfer was Lm90,000. The ART noted that the Board's member who was an architect had inspected the immovable and had confirmed that the market value was actually Lm70,000. This value had been reached on the basis of the locality of the property, that it was a semi-basement and was susceptible to leakage of water and consequential damp. The ART therefore accepted the appeal and cancelled the Revenue's assessment.

Rikors 27/2009

14 March 2011

Mgte Gabriella Vella

Case inherited by the ART from the Board of Special Commissioners.

Taxpayer acquired a small flat in Sliema for the declared value of Lm20,000, and by means of a private writing had also purchased the furniture and contents for Lm10,000. The Revenue raised an assessment on an alleged value of Lm32,000. No agreement could be reached and matters ended up before the ART where taxpayer claimed, *inter alia*, that the Revenue architect had not even inspected the premises. The ART declared that whether the inspection had taken place or not had not been satisfactorily proved by the appellant and that, in this sense, the assessment had not been proved to be excessive. The Board, however, had carried out an inspection of the premises in question and had arrived at a value of Lm26,000 for the immovable in question. The ART decided to accept this value which was halfway between that declared and that assessed. As the declared value was still less than 85% of the real market value, however, it seemed that additional penal duty should have been charged at a higher amount than that levied by the Revenue (*note: the ART seemed to have ignored the powers of the Revenue not to impose the maximum amount of additional duty that could be charged*). The ART, however, somehow still arrived at the conclusion that, in the circumstances of the case, no additional duty should be charged.

Rikors 29/2009

2 July 2013

Mgte Gabriella Vella

Rikors 30/2009

These two cases were taken together as they referred to adjacent building plots which had been assessed by the Department's valuer at a higher value than that declared in the contracts of transfer. The ART decided that the values assessed could be excessive as the Government architect seemed not have taken all the relevant factors into consideration. The ART's technical member was therefore asked to carry out a fresh valuation. This came out identical to the values declared by appellants on their purchase, so that the ART had no difficulty in accepting the appeals and vacating the assessments complained of.

Rikors 32/2009

24 January 2017

Mgte Gabriella Vella

The amount of duty concerned in this appeal was relatively small, but the case got complicated because of the death of the original transferor, the passage of file from the Board of Special Commissioners to the ART, intricate questions of statute barring and prescription, and by constitutional issues brought up by the heirs of the transferor. The ART dismissed pleas regarding prescription and constitutional matters, but accepted that the Department had in no way shown that the declared value was less than the real value, or the market value of the immovable transferred. Though the onus of proving that the onus of proving that the assessment complained of still lay on the appellant, the Department was still expected to give at least prima facie evidence as to why the estimated assessment had been raised. Eight years after the appeal, it was therefore accepted by the ART with costs against the Department.

Rikors 34/2009

11 January 2015

Mgte Gabriella Vella

A case about a garage car space that was disputed in rather strong terms.

Appellant pleaded, as a matter of principle, that in raising an assessment 'to the best of his judgement' the Revenue had broken the rule of natural justice '*nemo iudex in causa propria*'. The ART had no problem in rejecting this proposition as the Revenue had exercised the powers vested in it by law properly and legally. As regards the real merit of the case, appellant claimed that the Revenue's architect had made technical errors in valuation. Up to a certain degree this was accepted by the ART, but its technical member pointed out that the car space was in fact a space for two cars. She established their value roughly midway between the declared and the assessed values, and the assessment was reduced accordingly. Additional penal tax remained chargeable on the reduced value, while costs were to be paid as to one half by each party.

Rikors 36/2009

9 July 2010

Mgte Doreen Clarke

Case inherited by the ART from the Board of Special Commissioners.

Basically no details are available regarding this case, except that appellant had purchased an immovable. As the decision was given under the DDTA, however, it is presumed that the Revenue had claimed that the declared price was lower than the real market value and an amount of additional duty had been charged. As taxpayer had however failed to turn up before the Board, and continued to do so before the ART, the appeal was rejected on the grounds that taxpayer had not proved that the assessment complained of was excessive as required by law.

Rikors 37/2009

15 October 2015

Mgte Gabriella Vella

This case involved a closely debated valuation of two adjoining extensive plots of land in Marsascala, one of which was owned in full ownership, the other only as to two-thirds. The issue was complicated by the fact that while the land had a relatively short frontage on a public street, the building of a short private road would solve this problem, but would obviously occupy a good slice of the land. Eventually, this road was constructed though in a substantially different form from what had been contemplated by the Revenue valuer. The ART felt that this

point could not be ignored, even though the actual construction of the road was made several years after the transfer of the land. The ART also considered that several points made by the valuer were not tenable, or precise, and preferred to accept the views of its technical member who produced a valuation that was very close to the agreed transfer price. The ART therefore accepted the appeal and vacated the relative assessment, with costs against the Revenue.

Rikors 39/2009

8 November 2009

Mgte Gabriella Vella

A decision regarding stamp duty under the DDTA which is somewhat affected by controversy.

The transfer concerned land at B'Kara acquired jointly by three companies for Lm40,000. This was valued at Lm88,000 by the Revenue architect, and an assessment and notice of refusal were issued accordingly. The relative notices were issued by the Department to one of the companies only, and another of the companies claimed that as it had not been served with a notice of assessment, no assessment existed which it had to answer for as the law comprised a provision (inherited from the old DDDA, and subsequently confirmed in practice under the ITA) to the effect that an assessment was to be deemed to have been raised when it was served on the respective taxpayer. Unfortunately, the A.R.T. based itself on a decision given by the Civil Court in a case involving the Commissioner for Lands, i.e. in no way connected with taxation. It was held in that case that under the Code of Organisation and Civil Procedure that actual personal delivery of a judicial document was not absolutely necessary if it could be proved that the person concerned had otherwise come to know about the matter, and he was in a position to defend his interests accordingly. In this case, the complaining taxpayer knew about the matter as it was kept *au courant* by the other companies involved, so that the plea was not entertained. (Note: With respect, the clear and precise provisions of the DDTA should not have been so arbitrarily swept aside on the basis of a totally irrelevant case decided on the basis of the general law of Malta. It has long been clear that the provisions of a special law have to supersede those of general law).

It was complained by all three companies that the assessment issued by the Department had been issued on a figure of Lm 88,000, which was the full value as assessed by the departmental architect, while this should have been issued on the difference between the declared and the assessed values. The A.R.T. pointed out that while this was true, the actual tax charged was on the difference in values and not on the entire value. It therefore rejected this complaint and, in virtue of the power vested in it by law, ordered that the figure of Lm 88,000 shown in the assessment was to be substituted by the correct amount of Lm 48,000. (Though strictly speaking this was perhaps not within the A.R.T.'s powers, this was only a common sense decision).

As regards the value to be taxed, there appears to be some doubt whether building permits had been issued on the land prior to its transfer. After a lot of quibbling about "White Areas" and 'Green Areas', and actual date of issue of permits, the ART opted to confirm the assessed value when, according to established rules of procedure in tax matters, when there exists a cogent doubt, the benefit of the doubt has to be given to the taxpayer. It is true that soon after the valuation made by the departmental valuer, appellants had started to make transfers at his

value, but it had long been held by the courts that values changed on the day that permits are issued, and that no argument for the higher price could be adduced simply on the basis that their issue was clearly in the offing.

Finally, the A.R.T. refused to confirm a penal penalty equal to ten times the amount of the tax involved on the grounds that the actual price paid was Lm 40,000. It therefore reverted to the application of a penalty equal to the additional tax which had been endangered, as it felt this was possible under the provisions of the law. (Note: though there must be some doubt about the correctness of this interpretation, the reduction of the impossibly ferocious penalty, which has now been removed from the law, reflected a balanced judgement).

(The A.R.T. did not make any comment about the fact that 20 years had passed between the date of the relevant transaction and the date its decision. A clear cut case of justice being delayed..... Such delays appear to have become commonplace. The A.R.T. also did not comment on an apparent paradox whereby it was reported that appellants seemed to be holding that they had not appealed the case as it was not worthwhile to do so as the penalty charged had been reduced: this may have been a normal reaction after this decision, but it does not seem to be at all relevant to the decision itself).

Rikors 45/2009

26 November 2013

Mgte Gabriella Vella

Another case inherited by the ART from the Board of Special Commissioners.

This case encompassed a lengthy decision regarding the value of a garage which was characterised by numerous points of procedure. The ART traced the stages in the re-shuffling of the Revenue Departments leading to the replacement of the Commissioner of Inland Revenue by a Director General, though no issue seems to have arisen in this regards.

The first point raised by appellant was that, as a person requiring a permit to reside in Malta, he had been discriminated against as the duty payable by such persons was 10% higher than it would otherwise have been. Moreover, the legislation imposing the higher duty had subsequently been repealed because, as claimed by appellant, it has been accepted that it was discriminatory and hence unconstitutional. The ART stated that no proof had been brought before it that the law had been repealed because of such a structural defect. Nor, on the other hand, was it competent to examine and determine any constitutional matter: this had to be done by the Civil Court acting in its constitutional capacity. It also noted, after examining precedents and case law, that it could not itself refer the matter to the Constitutional Court as, for this purpose, it did not qualify as a court of law. Appellant also claimed that the raising of the assessment violated his rights under the European Convention on Human Rights as it was an attempt to unjustly deprive him of his property. The ART repeated that it was not competent to take cognizance of such matters.

Appellant also raised various minor trivial issues which had patiently to be reviewed and discarded by the ART including the fact that the Revenue's architect's work was not reliable as at least one of his valuations had been overturned in another case. He also tried to take issue with the fact that the legislation sometimes referred to 'real value' and sometimes to 'market

value'. The ART found this complaint to be frivolous. Appellant also queried that the garage was described as being no 13 in a street in Sliema, while it should have been described as no 13 in premises situated at no 87 in the said street. There could, however, be no doubt that the valuing architect engaged by the Revenue was in fact referring to the garage in question, even though he actually could not enter the garage as nobody attended to open it up for him. Nonetheless, this could not affect his valuation.

The ART finally dismissed the appeal with costs.

Rikors 47/2009

13 October 2014

Mgte Gabriella Vella

This straightforward case concerned the transfer of a garage in Gozo between two well known and long established private family companies. The value declared in the deed of transfer was Lm 28,750, but the Revenue architect gave a value of Lm 45,000 to the premises. This was confirmed during the objection stage as well as in evidence before the ART. The ART found his work on the valuation rather weak (*note: no very cogent reason appears to have been given for this decision*), and preferred a valuation by its technical assistant who produced a valuation of Lm30,051. As the actual transfer price was more than 85% of this value, the ART proceeded to vacate the assessment complained of.

Rikors 48/2009

16 May 2014

Mgte Doreen Clarke

Case inherited by the ART from the Board of Special Commissioners.

Appellant had acquired a small extremely dilapidated property in Valletta for the declared price of Lm 10,000. The immovable in question was partially rented out. The Revenue valuer had arrived at a market value of Lm21,000, and an assessment had been raised accordingly. The ART's technical assistant had inspected the premises at a time when no work had been done thereon after acquisition, and had arrived at a value of Lm10,000. As the Revenue architect was not in a position to give further details, the ART vacated the assessment notwithstanding that the relevant duty and additional duty had been paid, and that the sellers of the immovable had found no difficulty in accepting an assessments raised upon them.

Rikors 49/2009

23 October 2012

Mgte Gabriella Vella

Taxpayers had acquired a considerable plot of land on which they built a villa between the date of the preliminary agreement (konvenju) and the date of the actual transfer of the property by notarial deed. It was agreed that the assessed value for DDTA purposes was the correct value on the date of the final transfer, but taxpayers contended that the dutiable value was that of the property actually purchased from the vendors. The ART agreed and accepted the appeal, vacating the assessment. The ART felt that it was unjust that in such circumstances taxpayers were to be charged to duty on expenditure which they themselves had incurred. The Revenue pointed out that the law specifically stated that the taxable value was that on the day on which the transfer had taken place and that, in any case, it was a principle of Civil Law that the owner of the land also owned whatsoever was fixed or built on it. The ART, however, made use of a proviso in the Civil Code which enabled the contrary to be proved regarding this

fundamental principle. It therefore ruled that duty was chargeable only on what had actually passed from the ownership of the vendor to that of the purchasers, irrespective of what the DDTA specifically stated. *(Note: the ART did not bring up the argument it used in other cases to the effect that, in terms of the DDTA Regulations, the valuation had to take account of all circumstances affecting the property transferred on the date of the transfer. In actual fact, what happens between the date of a konvenju and that of the actual transfer cannot be said to affect the value on the date of the transfer).*

Rikors 51/2009

10 October 2013

Mgte Gabriella Vella

A case inherited by the ART from the Board of Special Commissioners.

Appellant company acquired a 'back garden' in an area considered to be ready for prime development. The declared price was Lm10,000, but the Revenue architect valued it at Lm150,000: duty and additional duty were assessed accordingly in substantial amounts. The company objected on the grounds that the assessment was excessive, and the matter eventually ended up before the ART. The company contended that the Revenue valuation was too high as the land in question was subject to third party tenancy rights. This, it claimed, emerged from the contract of purchase, but it did not bother to exhibit a copy of the contract. As the ART was not given any indication of this alleged encumbrance, it had no option but to decide that appellant had not proved that the assessment complained of was excessive and the appeal had to be rejected with costs.

Rikors 52/2009

28 January 2016

Mgte Gabriella Vella

The case concerned the transfer of property at St Julians. The property was an undivided part of a larger area, and there were problems concerning it due to occupancy by a farmer, court action by third parties claiming a share of ownership, and the irregular shape of the land which restricted its possible use. The Revenue architect seemed to have taken no notice of these problems, and valued the land at an extremely high price. The ART could not accept such riding roughshod over legitimate considerations, and a valuation by its technical member which took account of the aforesaid issues, concluded that the declared transfer value was actually higher than the market value. The assessment complained of was therefore vacated with costs against the Revenue.

Rikors 53/2009

17 March 2016

Mgte Gabriella Vella

Still another case inherited by the ART from the old Board of Special Commissioners. The original assessment to duty had in fact been raised on 12 May 2004, while the transfer in question had taken place in November 2001. The property in question was situated in a choice area at Ta' L-Ibragg, and consisted of a large villa built on spacious grounds. It was common ground between the parties that the premises were in a rather bad shape on transfer, and required a fair amount of refurbishment. Appellant proved by way of receipts what expenses he had incurred after transfer and he could also prove, by way of reference to public adverts for the sale of similar properties, that the declared price for the transfer was really the then going

market value. On the other hand, the Revenue architect was not in a position to give such a detailed analysis of his work. It does not appear that the ART's technical member was brought into the picture (indeed, it would have been an almost impossible task to work out a fresh valuation more than ten years after the happening of the transfer), and the ART closed the case by accepting the appeal, with costs against the Revenue.

Rikors 59/2009

4 November 2013

Mgte Gabriella Vella

An ordinary dispute regarding the real or market value of immovable property got extended to great lengths because of several pleas of prescription put in by appellants. All of these pleas were rejected by the ART, as were other petty pleas of a procedural nature. As regards the value of the immovable in question, it emerged that the Revenue architect had ignored the fact that the premises did not have direct access from the public street, but had to be reached through a private drive-in. This was held to materially affect its value. The reduction carried out by the ART's technical assistant brought the value down to practically what had been the declared value on the deed of transfer, so that, after all, the appeal had to be accepted and the assessment vacated.

Rikors 63/2009

20 April 2017

The value to be determined in this case was that of a perpetual emphyteutical grant where the stamp duty payable is equated to one year's ground rent payable. The government valuer made rather a mess of his explanations as to how he had valued the immovable asset transferred by the grant. He was obviously all at sea about facts and figures and capitalization rate or rates to be used, and got fairly hauled over the coals by the ART which accepted the appeal and cancelled the assessment. Of interest is that the ART took as binding for all purposes the capitalization rate of 5% fixed for ground rent redemption by art 1501 of the Civil Code. In actual fact, this may run counter to the provisions of Rule 6 of the DDTA Rules regarding valuations.

Rikors 68/2009

13 October 2014

Mgte Gabriella Vella

This was a case where works were done on immovable property between the date of the *konvenju* and that of the actual transfer by notarial deed. The ART accepted that the value of the property on transfer should, for duty purposes, reflect the fact that the works had been done by the purchaser at his cost, and that the chargeable 'market value' stipulated by law should be reduced accordingly. Such reductions in value are a feature in ART decisions, overriding the wording of the law which specifically lays down as a fundamental rule that the chargeable value is the value, estimated by taking everything into account, on the date of the transfer of the property, which is without any shadow of doubt the date on which the notarial deed is drawn up.

The ART took another important decision in the case, accepting as valid evidence receipts for expenses released by third parties who were not asked to confirm them on oath before the ART. This was unusual, but has to be accepted as being practical step where no doubt exists about the veracity of documents.

Rikors 73/2009

11 April 2009

Mgte Gabriella Vella

The decision in this case is rather complicated as the ART went into detail regarding the administrative arrangements following the substitution of the Commissioner of Inland Revenue by a Commissioner for Tax with overall responsibility for tax Departments, and a Director General in charge of the Inland Revenue Department.

The substantive point at issue concerned the chargeable value of premises purchased by appellant company. This had been bought on the preliminary agreement in shell form, but had been in a finished state when the final deed was signed. The ART was satisfied that the necessary work to finish the premises had been paid for by appellant company during the intervening period. The Revenue contended that the taxable according to law was the “average market price on the date of the transfer of the property”, which would effectively (according to the ART’s technical assistant) confirm the assessment raised. The ART, however, pointed out that the law also stated that “all the relevant circumstances affecting the property on that date” were to be taken into account. In what may be weak argumentation possibly contradicting Court of Appeal decisions, the ART held that this meant the taxable value was that on the date of the preliminary agreement rather than that of the date on which the actual transfer since the increase in value had been paid for by the purchasing company.

Rikors 79/2009

15 October 2015

Mgte Gabriella Vella

Appellants had bought commercial premises in 1998 which were in a poor state of maintenance. The premises had been put up for sale by the bank creditor of the owner which had given its consent for the transfer at the price indicated in the deed of transfer. Funds were made available by another bank to the purchaser and went straight to the seller’s bank on account of his indebtedness. Appellants gave evidence that they had put in a lot of work on the premises to put it in a reasonable shape, and that this was done before the Revenue’s architect had inspected the premises. Everybody seemed agreed that by the time valuation eventually was made, the premises had been subject to a lot of maintenance work, but in the absence of documentary evidence, and in view of some rather conflicting evidence given before it, the ART could not accept that the assessment was not justified. The technical member of the ART does not appear to have been brought into the picture, and the assessment, including an extremely large amount of penal additional duty, was confirmed.

Rikors 88/2009

25 October 2018

Mgte Gabriella Vella

Another of the perennial late filing cases which took no less than nine years to decide. The Revenue put in a late filing plea regarding this appeal, but taxpayer countered that he had never received a notice of refusal to his objection, and that he had only filed an appeal when he did because the Revenue had started chasing him for payment. The ART ruled that the Revenue had not proved when and where their refusal had been served, and rejected the plea of late filing. It appears that after an objection had been filed, taxpayer had changed his place of residence, and the refusal had been served at his old residence to an unidentified person.

The ART seemed to be of the opinion that the Revenue could have made a better attempt to clear up this point but, in the circumstance, it rejected the plea with costs. It is not known whether there have been any further developments in this case which concerns a transfer made in 1999

Rikors 34/2010

14 March 2011

Mgte Gabriella Vella

Strictly speaking, the ART, in terms of the law setting it up, should give one final decision incorporating all points raised by appellant. The Tribunal, however, felt that it should none the less issue preliminary decisions when a taxpayer claimed that an assessment had been raised when already statute barred, since such plea, if accepted, would extinguish the assessment irrespective of the substantive issues involved. In this case, the parties themselves had accepted that this procedure was to be followed. In this case, the assessment had been raised under the DDTA, which specified that an assessment is raised on the date on which it is served on the taxpayer. The assessment complained of should have been raised within one year from the 9th February 2000 when the relative notice had been given to the Department. The assessment issued was dated 15 January 2000, but the Departmental records in this regards were in a rather confused state, and the ART was not satisfied that notice had actually been effected within the proper time limit. The assessment was therefore statute barred and automatically vacated.

Rikors 35/2010

18 June 2015

Mgte Gabriella Vella

In this case, valuation by the Revenue architect was made several years after purchase of the immovable, and it was made when the premises had been built entirely and totally 'finished', and were already occupied by the new owners. Appellant contended that the apartment in question had been acquired in shell form, but the Revenue architect stated that he could not take this matter into account as no documentary evidence was made available to him in this respect. The ART accepted neither version as the contract of transfer had not stated that the apartment was being acquired in shell form, but that it had various works still be carried out, some of which were listed. A revaluation was therefore carried out by the technical member of the ART whose detailed report reduced substantially the value attributable to the apartment on the dated of acquisition. The reduced value was within the 85% elbow room admitted by the law, so that the assessment complained of was revoked by the ART with costs against the Revenue.

Rikors 45/2010

18 June 2015

Mgte Gabriella Vella

By way of a normal notarial deed, appellant company bought what were described as two air-spaces which were to be built as a maisonette and a flat. When the Revenue's architect inspected the site, however, he found buildings already constructed thereon, although in shell form. As no representative of appellant was present, he valued the buildings which he saw to the best of his ability. Appellant company maintained all along that the buildings had been erected between the date of purchase and the date of inspection, but no evidence to the ART's satisfaction were made available regarding this issue. In fact, certain factors indicated

otherwise. As the value given by the Revenue architect to what he saw during his inspection was not challenged, the ART proceeded to confirm with costs, the assessment complained of.

Rikors 48/2010

27 November 2017

Mgte Gabriella Vella

This case referred to the value of garages and car spaces in a large development in the centre of Sliema. There were few points of disagreement, except for the conflicting views on values of the appellant's and the Revenue's architects. The opinions of the ART's technical assistant favoured the views of the appellant's architect, and the appeal was therefore accepted with costs against the Revenue.

**Rikorsi 1/2011
2/2011**

15 March 2012

Mgte Gabriella Vella

Cases taken together to final decisions which, at the **preliminary stage**, were basically the same as that decided by the ART in Rikors no 125/2011.. The ART likewise decided that taxpayers in these cases (donor and donee) had filed valid appeals notwithstanding that formal notices of refusal had not been issued by the Department. The exchange of correspondence which had taken place effectively constituted refusals and the ART confirmed the validity of the appeals. Rather surprisingly, the Revenue submitted that, while still maintaining no refusal had been issued, the aggrieved taxpayers could have challenged the demand made for payment under the normal provisions of civil law. This proposition was rejected by the ART.

Final decisions delivered on 7 October 2014

The final decisions determined the substantive point at issue, namely the amount of duty payable on the transfer of a house in Sliema. The premises appear to have been fairly large, but rather old and in a poor state of maintenance. In its decision, the ART again found it necessary to trace the process of restructuring of the Revenue Department, and the consequential delegation of powers. As regards the real point in dispute, the value of the premises was declared at EUR 175,000 in the deed of transfer, but this was raised to EUR 210,000 by the Revenue's architect. During the course of the appeal, taxpayers submitted two valuations by other architects which were said to be supported by a further two other architects, but the latter individuals were not formally brought into the picture. The new valuations were extremely low, and the ART considered that the submissions by and for the appellants were rather shaky and fairly contradictory. This state of affairs was made worse by the donee claiming that the transfer had been effected to provide him with his residence, in which case the duty payable would have been reduced to 80% of that otherwise chargeable. In fact, however, the premises were converted into a fitness centre, and the ART found no difficulty in rejecting the appeals with costs.

Rikors 7/2011

15 October 2015

Mgte Gabriella Vella

The case concerned the acquisition of two properties situated one over the other which were demolished and had started being reconstructed by the time the Revenue valuer came to inspect them. In the circumstances, the architect made it clear that the value he assigned was of a building plot of about one and a half times the normal size. As this was an inter-family

transfer, the architect moreover made certain that none of the benefits available under the laws for such transfers was applicable. Appellants contended that the property acquired was in a dilapidated state and that the purchase price fairly reflected the going rate in the neighborhood. The ART, however, considered that these points had not been successfully proved by appellants, and that, in any case, it preferred to stick to the valuation of the Revenue architect which appeared to be reasonable for a large building site in the area concerned. The appeal was therefore dismissed.

Rikors 8/2011

15 April 2018

Mgte Gabriella Vella

Appellant owned just less than one half of a leading commercial outlet in Republic Street, Valletta. He bought out the other owners, but the case concerned the purchase of 7/16 of the site. This was valued at rather high figure by the Revenue valuer for DDTA purposes, and among the reasons given appears to be that the purchaser already owned a substantial part of the premises. *(Note: if the text is correctly understood, this is gaffe, as it is well accepted that such personal matters should not affect the real or market value of the item transferred).* Furthermore appellant had to purchase from one owner a minute 3/160 part of the premises. As often happens, he paid a relatively excessive price for this minute fraction, but the ART proceeded to carry out an arithmetical exercise to convert this price to that applicable to the much bigger portion of the case in question. This does not seem to be quite logical, but the ART used the result of this computation to confirm the Revenue assessment – saving for a minor error which was to be adjusted. Appellant had to pay all costs involved.

Rikors 10/2011

15 October 2015

Mgte Gabriella Vella

In this case, a scheme for reducing duty was defeated by the ART. Appellants were asked to sign a contract whereby one company sold them a flat in shell form, while another company (in the same ownership) was contemporaneously contracted to eventually do the finishing. Due to various hitches and delays, the whole operation took time, but when the Revenue architect inspected the premises, these were found to be in a highly finished state. The ART refused to accept that these were two unconnected transactions, and that the finishing had been done after acquisition, and it therefore confirmed the Revenue valuation so that the assessment, including penal additional duty, was to stand.

Rikors 40/2011

23 May 2013

Mgte Gabriella Vella

A long and closely argued decision regarding the value of a flat and garage in which the ART practically ignored the conclusions reached by its own technical assistant. The ART once again went into the administrative details consequential to the change in the department's structure on the creation of the office of Commissioner for Tax. The real substance of the case concerned when works on the premises were carried out, and by whom they had been paid for. The situation was further complicated since when the deed of transfer was entered into the phrase 'in its presently finished state except for a bathroom and an ensuite' did not mean *totally* finished but only to the extent that they were then finished. Effectively, the ART opted for the latter interpretation and, taking into account what it considered to be certain

inconsistencies in the Revenue architect's valuations, it accepted the appeal and vacated the assessment complained of.

Rikors 70/2011

22 May 2014

Mgte Doreen Clarke

A company had acquired a valuable large site for development. It subsequently required a much smaller plot to round off this acquisition, and paid for this plot at a much higher rate per square metre than it had paid for the original site. Acquisition of the two areas was made from two entirely separate and unconnected owners. The Revenue architect valued the small site now acquired at a still higher market value, and an assessment was raised accordingly. No agreement could be reached between the parties and appellant company had recourse to the ART. At this stage, the company once more raised the question of the constitutionality of the relative legislative instrument, and the ART once again indicated that it was not a constitutional court and such matters had to be discussed in a different forum. It does not appear that appellant chose to do so, and instead proceeded with the substantive claim that the assessment was excessive. The ART noted that the law itself stated that, for taxation purposes, the value of property was to be the average price which such property would fetch on the open market on the date of the transaction. The ART also accepted appellant's contention that the valuation had to be made on objective criteria relating to the nature and quality of the property transferred, and not on subjective criteria relating to either party in the transaction. In so doing, the ART (*Note: correctly*) reversed a decision delivered by the former Board of Special Commissioners which had confirmed an assessment raised purely on subjective criteria applying to the purchaser of the property¹. It emerged during the hearing that the Revenue architect had based his valuation on the fact that the land in question was adjacent to the large property which the company already owned. The ART accepted that this was a wrong way of proceeding in valuations, and it accepted, following a valuation by its technical assistant, that the land's value was actually lower than the price paid for it by appellant company. The ART therefore accepted the appeal and cancelled the relative assessment. The ART could not, of course, go below the declared price paid.

Rikors 122/2011

15 October 2015

Mgte Gabriella Vella

After a preliminary plea by the Revenue that the appeal was filed late (and therefore null and void) had been withdrawn, the ART proceeded to consider the merits of the case. This concerned land in Marsascala which could only partly be built up. The land in question was subject to a multitude of court cases whereby several persons were suing each other, including the purchaser, regarding the validity of contracts concerning the land and their actual title of ownership thereto. These cases were not brought to the attention of the Revenue's architect who simply valued the site as subject to a long term emphyteutical concession. The architect confirmed to the ART that, apart from the question of the pending court cases, his valuation was just and fair, but the ART felt justified, in the circumstances of the case, to accept that the declared price in the transfer deed was proper and that the Revenue valuer should in fact have

¹ See Indirect Taxation Manual, The Duty on Documents & Transfers Act, page 121, footnote 21. Progress Press, 2013.

taken into account pending court action regarding the land. The appeal was therefore accepted and the assessment complained of cancelled.

Rikors 125/2011

15 March 2012

Mgte Gabriella Vella

Several taxpayers objected to assessments raised upon them consequential to a valuation carried out by the Revenue architect of commercial premises in Valletta which they had acquired jointly. The taxpayers filed an appeal to the ART, but the Revenue pleaded that they had not yet issued a notice of refusal in respect of the relative objections so that there was no possibility at law of appeals being filed. The Revenue had in fact re-submitted the valuation to their architect for a second opinion, and he had confirmed his figures. This information was conveyed to the taxpayers, and they were informed that their objection would be refused, whereupon they would have the right to file appeals to the ART within 30 days. Taxpayers had promptly appealed to the ART, but the Revenue filed a preliminary plea as above that no notice of refusal had yet been issued. The Revenue letter appears to have been rather ambiguously worded and the ART held that it was in effect a notice of refusal. The appeals were therefore convalidated.

Rikors 140/2011

12 June 2017

Mgte Gabriella Vella

An extended argumentation regarding a penthouse in a choice location in Sliema. This covered several issues of fact, such as whether the roof was in a dangerous state when purchased. The ART did not accept appellants arguments (*Note: perhaps not totally unjustified*), and confirmed the value given by the Department's valuer who had already reduced his original estimate by an appreciable amount. The ART's view point that some of the damages which appellants claimed to have existed in the premises could have been recovered at common law – presumably from the sellers – may not be satisfactory since appellants were under no constraint to do so at law or otherwise. The fact that they had done all the necessary repairs does not seem to be a valid argument to be used against them when valuing the property on acquisition. It also does not appear this point had been raised during the hearing of the appeal. Another point which may be queried is that the ART did not accept that the air space acquired with the property did not have much value once it was subject to the condition 'altius non tollendi'.

Rikors 142/2011

15 March 2012

Mgte Gabriella Vella

A preliminary decision which, the ART itself admitted, was not in conformity with the provisions of the Administrative Justice Act that seemed to prohibit preliminary decisions. The ART, however, pointed out that it was inevitable to have preliminary decisions when the issue concerned the validity of the appeal itself.

Appellant had objected to an assessment to duty on the grounds that it was excessive. The Revenue in due course wrote back saying that they had referred the case to their architect who had confirmed values, and that they would be confirming the assessment. Taxpayer promptly filed an appeal with the ART within the normal 30 days granted for the appealing, but the Revenue put up a preliminary plea on the grounds that they had not yet issued a notice of refusal in accordance with the familiar procedures. The ART, distinguishing the case from those

in Rikorsi 1/2011 and 125/2011, decisions given on the same date, accepted the Revenue plea and declared the appeal null and void.

Rikors 155/2011

22 February 2018

Mgte Gabriella Vella

The property transferred in this case was a well-known, though surprisingly small, retail shop in a central site in Valletta. The purchasers had in fact been tenants of the shop for several decades, and the question arose whether this fact should affect the market value on transfer since in fact they would not be buying something subject to this burthen. The Revenue valuer opted to value the premises as clear of all hindrances or burthens. The ART considered that it was irrelevant that the former burthen had been in favour of the purchasers, as that was a purely personal matter, while the valuation had to be based on the market or real value of what was being transferred, which was a shop leased to third parties. The appeal was therefore accepted with costs against the Revenue. *(Note: This decision may be considered as reversing formally a decision by the former Board of Special Commissioners for stamp duty in case no 7/1996 when the purely personal circumstances of the transferee had been given major importance).*

Rikors 157/2011

18 June 2015

Mgte Gabriella Vella

Rikors 158/2011

That valuation is an art rather than a science, emerges clearly from these two cases. The taxpayers involved were two pairs of spouses, with one pair selling a flat and garages spaces in a leading development in Sliema to the other pair, and then buying, from other parties, another flat, and other garage spaces in the same development. Values involved were rather high, and the move from one apartment to the other appears to have been largely dictated by family considerations, while there were no evident commercial considerations to be taken into account in either transaction. Values declared in the transactions were increased by the Revenue architect, who set out at great length and detail his reasons for the valuation. Appellants also prepared their case in great detail and presented what *prima facie* appeared to be valid reasons as to why the declared values should not be increased. The ART, after considering all submissions made, seemed to favour the values given by the Revenue valuer, while its technical assistant's own valuations appeared to be close to the Revenue ones. The ART therefore confirmed the assessments raised, and does not even appear to have made the minimal reductions emerging from its technical member's work.

Rikors 160/2011

11 September 2012

Mgte Gabriella Vella

■ See decisions in Rikorsi 209 and 210/2011

Rikors 176/2011

26 October 2017

Mgte Gabriella Vella

The appellant company in this case was the same as that in case 202/2011. Though it appears that in both cases the transactions suffered from equally fundamental confusion regarding ownership of the assets subject to duty, the decisions in the two cases were diametrically

opposite. In this case, the company bought a portion of land from an undivided estate but nobody, least of all the Government valuer, could establish with precision which was the land so acquired. The appellants apparently did their best to identify the property, but it seems that they could not actually help very much as their purchase was very much a leap in the dark. The Department finally issued an estimated assessment, levying a quarter of a million in duty and penalty. This was clearly too much for the ART to accept and quoting the Court of Appeal's judgment in income tax case no 229, it held that the process laid down in the law for raising estimated assessments had not been followed. It therefore cancelled the assessment complained of with costs against the Department.

Rikors 178/2011

28 January 2019

Mgte Gabriella Vella

Another case regarding the transfer of a flat in a tourist area. When the Revenue valuer attempted to make an inspection of the premises, there was nobody to meet him on site. An estimated assessment was therefore raised and duty charged accordingly. On objection, and following appellant's explanation that there had been some misunderstanding regarding the missed meeting, the chargeable value was reduced, but it still remained beyond the 85% benchmark. On appeal to the ART, a preliminary plea that the ART was not competent to hear the case was withdrawn, but another plea was sustained. The ART, after making a wide review of case law on the subject, rejected this plea which was to the effect that the Revenue refusal had not been properly and legally motivated. As regards the value to be attributed to the property in question, the Revenue valuer gave a very satisfactory explanation of his work and methodology, while appellant brought no proofs on this point. In the circumstances, the ARTY had no option but to confirm the value as revised during the objection stage, as well as the additional duty charged.

Rikors 187/2011

28 May 2012

Mgte Gabriella Vella

Appellant in this case pleaded that the assessment to duty in respect of a transfer of immovable property had been received beyond the statutory time limit of one year after the giving of notice of the transfer to the Department. The Revenue contended that this time limit had not been exceeded, but they could not prove when the notice of assessment had been served by registered post. Nothing could therefore be proved either way, but all indications appeared to be that delivery of the notice within the statutory period had not been made and this, at law, was the date when the assessment was to be deemed to have been raised. The preliminary plea of statute barring was therefore accepted and the relative assessment vacated.

Rikors 188/2011

22 January 2015

Mgte Gabriella Vella

Rikors 189/2011

These two cases refer to the transfer of the same property: one as vendor and the other as purchaser. It is to be noted that the selling company was owned by members of the same family as the purchasers. There were apparently some delays in registration of the transaction and in valuation by the Revenue architect, and appellants claimed that when valuation was eventually done, the air-space which had been the subject of the transfer had been built up, so

that there was a large difference in value between the date of the contract, which referred only to the air-space, and the buildings which the Revenue architect had inspected. Evidence given by appellants' architect was considered to be rather shaky, and no documentary proof was forthcoming. The ART was not satisfied from the non-documentary proof which was placed before it that only the airspace existed at the time of the contract of transfer, and it was of the opinion that all indications were that building had already taken place on transfer, even though the notary had no inkling that this was so. The appeal was therefore rejected.

Rikors 193/2011

28 January 2019

Mgte Gabriella Vella

A fairly unsatisfactory decision regarding duty on the transfer of an air space on a block of flats in Sliema. The Revenue valuer declared that as he was not able to visit the site in question, he had considered it to be of equal area to that next door, and had fixed values as high as possible to defend the Revenue's rights. Both statements were inevitably frowned upon by the ART. The ART's technical assistant did inspect the site and gave a much lower taxable value, though still above the 85% benchmark. Duty and additional duty due were reduced accordingly. The ART refused to enter into an issue which cropped up during the hearing as to whether appellant had in fact purchased the entire site or only three quarters thereof, stating that this was something for a Civil Court to decide. With respect, this was all very well, but it is not clear how the tax case could be decided before this matter was determined – though it is true that the ART was deciding on a transfer that had taken place no less than 13 years before.

Rikors 194/2011

28 January 2014

Mgte Gabriella Vella

The case concerned an air space donated by parents to their son to build his residence. The ART made the usual review of the restructuring of the Revenue Department and the delegation of duties. Substantively, the ART had to consider the problems caused by the air space being affected by infringements of the building permit for the site. Clearly, there had been a transgression, but the construction of the property had nonetheless continued. MEPA had however stopped the installation of services, and had ordered partial dismantling of the construction. There were also questions as to which area was to be valued: whether the whole area of the air space was to be taken into account, or whether only that part which could properly be used for construction. In the midst of all this confusion, the ART discarded the opinion of its own technical assistant (which it is allowed to do at law) and rejected the appeal with costs.

Rikors 198/2011

20 April 2017

Mgte Gabriella Vella

A rather poor show by the Revenue valuer who first valued a flat at Xemxija at EUR 186,000, but then put down this figure to EUR 149,000 for no very clear reason, except stating that he had forgotten why he had done so. He was also at fault regarding the age of the premises in question and their physical condition. The ART concluded proceedings by cancelling the assessment complained of.

Rikors 199/2011

22 November 2017

Mgte Gabriella Vella

Appellant had purchased two adjacent immovable properties in Zejtun on the same day, but from different owners. The values of the properties apparently depended to a major extent on their being owned by the same person. Valuation of the properties was admittedly not an easy task, though it is not recorded whether the fact of common ownership through purchase had in any way reflected on the values assigned in the sense that such common ownership was incidental could not be taken into account in establishing the market value of each site considered as a separate unit. The Revenue valuer, however, had made a thorough job of his work, while appellant preferred to make his own case, so that his professional adviser is not recorded to have made known his views. The ART could not accept any of appellant's arguments, all of which were summarily dismissed, and the appeal rejected with costs.

Rikors 200/2011

17 March 2016

Mgte Gabriella Vella

This case concerned a fairly large old house situated in the heart of Sliema. It was purchased in a very bad state of maintenance ('half fallen down') and subject to tenancy rights in favour of third parties which were not clearly set out in the notary's deed or in his report on the transfer made in the normal way to the Revenue. The ART was convinced that the Revenue's architect had completely ignored this matter, even though it had been brought to his notice at the objection stage when he did reduce overall values by a few thousand euros. However, the purchasers of the property had to disburse a further EUR 70,000 to satisfy the claims of the persons having tenancy rights. In the circumstances, the ART cancelled the assessment complained of with costs. As regards the award of costs, the ART admitted that the Revenue might have been somewhat misguided by the notice filed by the transferring notary, but they should have taken note of the existence of these rights at the objection stage as they had then been brought to their notice.

Rikors 201/2011

8 November 2016

Mgte Gabriella Vella

In this case a preliminary agreement for the transfer of land at Zabbar entered into in the year 1989 led to interminable procedures in the Civil Court which were only terminated in the year 2007. The transfer was finally effected by notarial deed on 7 February 2007. The value of the transfer was given at EUR 10,016 as had been stipulated in the preliminary agreement. For stamp duty purposes, however, the Government valuer fixed the value as on date of transfer, and an assessment was raised accordingly. Appellants claimed that the taxable value should be the amount agreed eighteen years before as was confirmed by the Court of Appeal in its final decision. The A.R.T., however, pointed out that the Court was not carrying out a valuation, but only deciding a decades long controversy. The A.R.T. also pointed out that the law stipulated that the taxable value was the value of the property on the date of transfer, or that set out in the deed of transfer, whichever was the higher. Appellants did not appear to query the value fixed by the Government auditor as aforesaid, and the A.R.T. did not appear to find it necessary to have a fresh valuation made by its technical assistant. The appeal was therefore rejected. The condition set out in the relative Legal Notice to the effect that valuations had to

take into account all the relevant circumstances concerning the property, could not be interpreted to overcome this basic requirement of the law.

This decision confirmed the decisions taken in similar circumstance in various other cases.

Rikors 202/2011

22 May 2017

Mgte Gabriella Vella

A rather unusual case where a high estimated assessment raised on the advice of the Department's valuer was confirmed by the ART. The buyers of the land in question had repeatedly failed to attend for an inspection when asked to do so by the valuer, who confirmed that he could not be certain what he was actually valuing. Appellants stated that due to the unprofessional actions of the notary preparing the deed of transfer, they had been engulfed in numerous court cases which they seemed to be losing one after another. The ART pointed out that some, if not all, the cases mentioned had nothing to do with the land which the Government architect had been trying to value, and in the circumstances it rejected the appeal and confirmed the assessment raised

Rikors 207/2011

11 June 2011

Mgte Gabriella Vella

This case concerned the transfer of the same property as that in the next following summary: this case was filed by the vendor, while the next one was filed by the purchases. One of the few stamp duty cases were both parties appealed. Surely, only one party should have been chased to this extent by the Revenue.

Rikors 208/2011

11 June 2011

Mgte Gabriella Vella

The case concerned a flat in St Paul's Bay which was valued by the Revenue at EUR 150,000 'best of judgement', as the architect could not obtain access to the premises. The transfer value had been declared at EUR 76,809. During the objection stage, the valuer had obtained access and reduced the value to EUR 130,000. The transfer was of the premises in shell form, but the architect found it to be ready and finished to a reasonable standard. The vendor gave evidence that the declared price was correct and that he had sold other flats in the same block for more or less the same figures. Appellants' son gave evidence and confirmed that the finishing had been taken care of by appellant and his brother in law, who had extensive knowledge about these matters. No receipts were produced, however, regarding expenses incurred by the purchaser in this way. The son also explained that his parents' financial resources were not sufficient to have enabled them to pay the assessed amount. The ART was not impressed with these arguments and rejected the appeal with costs.

Rikorsi 209 and 210/ 2011 (also 160/2011) 20 September 2012

Mgte Gabriella Vella

Three identical cases essentially concerned with normal objections regarding the assessed value of immoveable property for duty purposes. Although the taxpayers had entered appeals before the ART, they contended that the Revenue's claim for the payment of the assessed duty should be heard by the normal courts of the country rather than the ART. The ART made a careful analysis of how the power to raise assessments had devolved under the law on the relevant Director General. It then pointed out that the proceedings before it were in no way connected

with enforcing payment of the duty, but only with its assessment. These two functions were entirely different, and were in no way to be confused with each other. Moreover, the law had clearly vested the ART with the competence of hearing disputes regarding the determination of the amount of duty payable. In the circumstances, the preliminary pleas of the appellants were rejected with costs.

Rikors 212/2011

8 November 2016

Mgte Gabriella Vella

Appellants had bought a maisonette, plus an underground car space in a development in Mellieha. The property was fairly extensive but in a poor state. By the time the Revenue valuer had called to inspect the premises, a lot of refurbishing and improvements had been made. At first the Revenue architect had valued the property at EUR 215,000, but he had reduced this to EUR 195,000 when he was provided with documentary evidence of improvements made after acquisition. The A.R.T.'s technical assistant had more or less been of the same idea, and the A.R.T. refused to reduce the value further, i.e. beyond that justified by documentary evidence. The additional tax now payable amounted to just EUR 1,595, plus additional tax in the same amount. Appellant explained that that a large part of the necessary work had been carried out by himself so that no documentation was available, but the A.R.T. refused to budge on this issue, so that it can be said that taxpayer was paying tax and additional tax on his own work.

Rikors 213/2011

30 November 2017

Mgte Gabriella Vella

This case was rather complicated, but it brought to the fore the fact that under the DDTA, though not under the general law of Malta, liability for the payment of stamp duty was laid upon both the seller and the purchaser. In this case, however, it seems that appellant had made a promise of sale agreement with a person who eventually transferred his rights there under to a third party. The latter had objected to the final charges laid upon him in connection with his acquisition, but he had settled for reduced agreed amount 'to avoid further litigation'. Appellant, the original owner, had additional duty imposed upon him on the grounds that the final purchaser had accepted a higher value. The ART confirmed that there could be liability in terms of law, but it pointed out that the final transaction between the second and final persons concerned in the deal did not really concern the original owner. Moreover, the intermediate 'owner' had made substantial alterations to the premises which had not been taken into account. This again did not affect the original owner, so that the assessment raised was cancelled by the ART with costs against the Revenue.

Rikors 215/2011

22 February 2015

Mgte Gabriella Vella

Questions regarding the sale of an apartment in a much sought after location in Sliema whose declared value was EUR 156,000. The Revenue architect valued the flat at EUR 185,000, but the technical assistant to the ART came out with a value of EUR 160,000. For various reasons (*on which no comment is being made*) the ART opted for the value of EUR 160,000. As the declared value was more than 85% of this figure, the assessment, plus additional duty, was vacated by the ART.

Rikors 216/2011

12 February 2015

Mgte Gabriella Vella

A battle royal over a divided portion of land in the San Gwann Industrial Estate. Various valuations were made and a long list of technical assumption and theories were put forward by the parties, including the technical assistant to the ART. Some of these were not much appreciated by the ART as they were considered to be unjust personal attacks on the said technical assistant and her professional abilities. The ART, however, also chose to make certain remarks in respect of architects presenting alternative valuations which were less than complimentary. In the end, the declared value of EUR 405,777 was increased to EUR 570,900, as against the assessed value of EUR 644,976. As the declared price was less than 85% of the ART determined value, appellant company was required to pay additional duty, plus penalties in a fairly substantial amount.

Rikors 217/2011

25 September 2011

Mgte Gabriella Vella

Appellant in this case pleaded that the assessment raised upon her was statute barred. The Revenue contended that the assessment had been raised within the statutory time limit of one year, but due to changing postal arrangements could not definitely prove the point (*Note: delivery of the notice of assessment equates, under the DDTA, the raising of the assessment*). Taxpayer worked mostly abroad, and her post was received by her father at their home. He successfully persuaded the ART that he had immediately taken steps to file an objection when the assessment had been received, and the ART consequently accepted that the assessment had fallen out of time and stood to be vacated.

Rikors 220/2011

16 May 2014

Mgte Doreen Clarke

A leading developer acquired an imposing old building at Sliema which was Scheduled at Grade One. The value declared in the deed of transfer was EUR 465,874, and appellant had a valuation at EUR 450,000. The Revenue architect, however, had put the market value at EUR 780,000, and an assessment to duty and additional duty was consequently raised. No agreement could be reached, and the matter eventually ended up before the ART. The immovable property in question had long been in the market, and although it had an imposing façade, it was in a very poor state of maintenance, and required a lot of refurbishment. As a Grade One scheduled property, moreover, there were restrictions on its potential use. The planning authority refused to grant a commercial permit, and taxpayer eventually spent more than EUR 200,000 further to enable his daughter to move into the property as her residence. The ART remarked that the Revenue architect had made a rather superficial valuation, and had not even completed a normal checklist in full. Appellant's valuer, on the other hand, produced a much fuller and detailed valuation and explained the repercussions of a property being scheduled at Grade One. The ART's own technical member had inspected the property and after making a detailed report emerged with a value of EUR 500,000 on transfer. As the declared transfer value was not below 85% of this amount, the ART accepted the taxpayer's appeal and revoked the assessment complained of.

Rikors 221/2011

12 October 2012

Mgte Doreen Clarke

The facts of this case, and those set out in **Rikors 15/2009** appear to be identical, and it need only be noted that in this decision a transfer of shares in companies owned by appellant was mentioned but appears to be totally unconnected with the decision. The opening part of the decision, in fact, refers to an assessment raised in connection with these shares, but the decision then switches to repeat word for word the decision in **Rikors 15/2009**. There appears to be some administrative error somewhere.

Rikors 224/2011

18 February 2014

Mgte Gabriella Vella

The case concerned the market value of a small apartment and a car parking space in a top development in Sliema. Three different valuations were produced and doubts expressed as to the state of finish in which the immovables were transferred. The ART discarded the valuation furnished by its own technical assistant and opted for a reduced valuation prepared by the Revenue valuer at the objection stage. A lot of space in the decision is occupied by the ART tracing the restructuring of the Revenue Department, and a review of the relative legal instruments.

Rikors 226/2011

15 October 2015

Mgte Gabriella Vella

Rikors 227/2011

Appellant in these two cases was a development company which had sold two car spaces in 2002. These were paid for in 2004, but due to an oversight the relative deeds were not published by notarial acts, and this was only done in 2011. The Revenue's architect valued the properties at a much higher price than that stated in the deeds, which was naturally what had been agreed upon and paid for a decade before. The time lapse between these events taking place had clearly increased the value of what was being transferred, but the deeds specifically stated that the transfers were being given effect to on the date thereof with the lease commencing on that date.

The Revenue put in a preliminary plea that the objection against the assessments was invalid as it had been filed late, and as no precise grounds of objection were given. The ART could not accept this contention (*Note: it would perhaps have been more correct practice for the refusal to accept an objection as being valid to be referred to the Civil Court, but the wording used by the Revenue in not accepting the objection as valid could perhaps be taken as the issue of a notice of refusal which could be appealed against before the ART*). Facts proved otherwise: moreover, the Revenue had clearly indicated in writing that no further action stood to be taken in this case as transferee had already paid the duty in question. Civil Law states that where there is an obligation which falls *in solidum* on more than one party, the payment by one party extinguishes the obligations of all other parties. This notwithstanding, the vendor still had the right to contest an assessment which had been raised upon him and for which the Revenue, rightly or wrongly, was demanding payment. The ART therefore proceeded to consider the objection filed by appellants to the effect that the declared transfer prices were correct as they referred to transactions which had in fact taken place ten years before. The ART could not accept this proposition as the law clearly states that the taxable value is that on the date of

transfer, and no transfer of immovable property can, or will have been made except by way of notarial deed – and, as noted above, no attempt was made to give it retrospective effect. *(Note: the ART was here being more precise in aligning itself with the actual provisions of the law, than what it might have been in earlier cases).* Though in possession of the property for nearly ten years, the transferee had not actually owned anything before the notarial deed was drawn up.

The Revenue's architect had given a rather high value to the property transferred without, however, inspecting it. He argued that he knew all about these car spaces which were all the same – but the technical member of the ART saw that these car spaces were somewhat smaller than usual and she reduced their value accordingly. The reduced value was not within the 85% elbow room admitted by law and the ART could therefore only reduce the duty charged (including additional penal duty) accordingly.

(Note: it is not clear how the issue of the obligation in solidum having already been settled by the transferee paying the duty was actually solved. Neither is it known what amount of duty the transferee actually paid. These omissions appear to leave some cogent questions unanswered).

Rikors 230/2011

15 October 2015

Mgte Gabriella Vella

In this case, a father had donated an immovable property to his two children. It subsequently emerged that the same property had been ceded by the father by way of perpetual sub-emphyteusis to a company. Father and children, therefore, entered into another deed whereby the deed of donation was rescinded. The appellants had in fact objected against the assessment to duty (plus additional duty) on the grounds that it was excessive, but the ART accepted that the point now brought forward was all-encompassing. The deed of rescission had been entered into *buona fide* to cancel a transfer which could not, in fact, have been made at law. The transactions were made between a father and his children and it was absurd to expect them to go to court to meet the precise requirements of the law on this issue. The fact was that the deed of transfer had no standing at law once the thing donated did not belong to the donor. The ART refused to accept technicalities raised by the Revenue (which also included a wrong claim that the original objection had been filed late), and cancelled the tax charged. The ART also seemed to indicate that any duty paid when the deed of donation was entered into should be repaid. Because of certain issues discerned by the ART in the way in which the case was handled by appellants, costs were to be borne by them.

(Note: *It may be important to refer to the only known tax decision delivered by the Court of Appeal in this context. This was the case of *Galizia v Schembri* decided on 8 July 1930 whereby rescission of a deed of donation was considered to have actually given rise to a second taxable transmission, but in that case rescission was not of a defective contract, but of a perfectly legal contract which had given rise to unwelcome consequences². The Board of Special Commissioners constituted under the Income Tax Act had also had strong words to say when the Revenue tried*

² See Vella: Death and Donation Duty Act, 1973, University Press 1982, page 43.

to enforce, on a technical point, tax on certain income which was proved in fact not to have existed³).

Rikors 259/2011

28 January 2019

Mgte Gabriella Vella

This case concerned the transfer of a ground floor flat at Marsascala. Contrasting values were given by the Revenue valuer and appellant's architect. Much of the argument hinged about the legality or otherwise of a yard in the premises, and whether this was relevant to the case. The ART tended to avoid both issues and preferred the valuation of the Revenue architect. Many allegations made by appellant as to what was to be taken into account in valuing the premises were held not to have been proved, and the ART consequently confirmed the assessment. As regards the additional (penal) duty charged, the ART held the law only required a difference in declared and assessed values for such duty to be chargeable, saving the 85% benchmark. In other words, there need not be fraud or any other duplicity in the declared values in the deed of transfer for the additional duty to be chargeable.

Rikors 263/2011

18 June 2015

Mgte Gabriella Vella

This case concerned a family which sold to a company a fairly old property for re-development. The property was divided into various apartments and garages and it appears that the instructions given to Revenue valuer were confused (or confusing) and that he consequently did not value precisely what had been transferred. When this matter had been sorted out, it transpired that the actual market value of what had been transferred was lower than the declared price. The ART had therefore no difficulty in accepting the appeal and cancelling the Revenue's assessment, with costs.

Rikors 264/2011

26 October 2017

Mgte Gabriella Vella

The owners of two companies which were in the same group, being wholly owned by the same persons, sought to merge (or amalgamate) the two, there being no legal or factual purpose for maintaining two structures. Documentation for this purpose was prepared and exemption from duty was duly claimed in terms of law. These basically purported that an exchange of shares was being carried out as the first step of amalgamation. What actually took place, however, was a sale of shares which was not covered by the precise, though complicated, requirements of the law, and it appears that the transaction had taken place without the prior approval of the Department being obtained. The ART rejected the thesis that this was only a step in the overall process of merger: a sale of shares had taken place and that was immediately taxable. The ART proceeded to quote historical text books indicating that there was a fundamental difference between a sale and an exchange, though the final result was very much the same, namely what was formerly owned by either party now became the property of the other. The difference came into being through the use of money in a sale. Furthermore, an attempted way out of the difficulty through the rescission of the deed of sale was dismissed as what had been done was done, and rescission could not cancel a tax liability which had immediately come into being on the sale being carried out. *(Note: This was a general principle*

³ BSC case no. 114, decided 3 July 1965.

of law and had long been applied for tax purposes through the case of Galizia v Schembri buy the Court of Appeal on 8 July 1930, under the Succession and Donation Duty Ordinance).

Rikors 272/2011

7 October 2014

Mgte Gabriella Vella

The case was decided together with case of **Rikors 3/2012** as the two cases referred to the vendor and purchaser of the same immovable property. After clearing the usual problems regarding the restructuring of the Revenue Department and the consequential delegation of functions, the ART had to tackle the valuation attributable to the transfer of property which was owned in *perpetual dominium* by transferor, but was already held in temporary lease (*cens temporanju*) by transferee for the remaining period of a lease for 25 years. This style of ownership had clearly confused the parties as well as some, if not all, their advisers. The ART had therefore to sort out the precise situation which it successfully did in clear terms. (*Note: from time immemorial this situation had made a precise valuation almost impossible to work out*⁴).

The transferee happened to be already interested in acquiring the premises next door, but these were in no way connected with the transferor. On the other hand, transferee had made it clear that he would not be interested in acquiring the *perpetual dominium* owned by the transferor unless he also got possession of the premises next door – which he successfully concluded. Transferor herself wanted desperately to have cash from the sale because of her personal requirements as a resident in a high grade retirement home.

The ART pointed out that the personal requirements of transferor and transferee could not affect the market value of the premises in question. These had clearly driven down the price at which the transfer took place. On the other hand, the Revenue architect had opted to work out values for the building in question and for its air space. This had been done because of certain wrong assumptions concerning planning regulations in respect of the area in question. The ART therefore cancelled from the assessment the separate value attributed to the air space established by the Revenue valuer, but this still left the declared value of the premises at less than 85% of the value arrived at by him, which the ART accepted. Duty and additional duty (charged at a considerably reduced amount) were therefore still payable. Costs were awarded as to two-thirds against the Revenue and one-third against appellants.

Rikors 279/2011

20 April 2017

Mgte Gabriella Vella

The case concerned a maisonette which appellant had transferred to his wife in the course of their separation. The ART considered that no steps had been taken by appellant under the Civil Code which could have led to an exemption from stamp duty. It also held that the assessment was not statute barred as claimed by appellant. As regards values, the declared value had been EUR 81,528, but as the Government valuer did not succeed in having access to the property, an estimated assessment on EUR 175,000 had been raised. Following an objection, the valuer obtained access and established a value of EUR 98,000. He was however working on the assumption that the premises had been transferred together with the relative air space.

⁴ See Report of the Commission entrusted with the preparation of the Death and Donation Duty Act, 1972.

The ART pointed out that the deed of transfer had clearly stated that the airspace was already occupied by third party premises. The ART consequently ordered that no additional amount beyond the declared value was to be taxed, and awarded costs against the Revenue.

Rikors 1/2012

26 October 2017

Mgte Gabriella Vella

A rather unsatisfactory case decided some 8 years after the transaction had taken place. The immovable concerned, a small flat at Qawra which had some structural defects, was transferred for EUR 80,000. The Government valuer carried out two very superficial inspections, as described in the decision, and valued the flat at EUR 107,000. The ART did not accept appellant's arguments regarding the market value, but obtained its technical assistant's opinion, who gave a value of EUR 100,000. This left the transfer price at less than 85% of the market value so established, so that a reduced assessment and reduced additional duty were still payable. Costs were to be borne equally by the two parties.

Rikors 3/2012

7 October 2014

Mgte Gabriella Vella

See decision in Rikors 272/2011

Rikors 4/2012

10 October 2013

Mgte Gabriella Vella

A rather fishy case which had the ART sending its decision to the Police authorities so that they could investigate the high possibility of attempted fraud by appellant and a company with which he appeared to be closely connected, though this was not definitely proved during the proceedings. Taxpayer was seeking to reduce the value of an apartment as established by the Revenue's valuer by proving that the value on the formal transfer included expenses incurred by him on the property during the period between the 'konvenju' and the actual deed of transfer. To prove his point, appellant produced a fiscal receipt issued by the company. The ART considered this to be a sham and fraud and confirmed the assessment as raised, besides referring the case to the police. All this took place after the ART had ruled that events as set out by it in detail had clearly proved that there had been no infringement by the Revenue of the rules of prescription, or of the process of dealing with the objection raised to the assessment.

Rikors 5/2012

22 February 2018

Mgte Gabriella Vella

This case concerned the value of a small flat at St Paul's Bay. The ART was not satisfied with the valuation carried out by the Revenue architect, and it reduced the chargeable value in line with the values provided by appellants' own architect and the ART's technical assistant. The ART. However, did not accept a contention that no duty should be payable as the premises in question had been the sellers' private residence. Exemption would have applied had the case been about income tax due on the transfer under the relative capital gains provisions, but the exemption given under one law could not be utilized for the purposes of another law, although falling under the same department. Appellant also protested against the charge to penal additional tax, but the ART felt that these provisions (*Note: now long removed from the law*)

were basically automatic and outside its brief. The ART, however, ordered the Revenue to pay all costs of the appeal.

Rikors 12/2012

28 January 2016

Mgte Gabriella Vella

In this case two spouses (both professionals) purchased an old relatively small property in Valletta overlooking the Grand Harbour, but with entrance from the back streets of the city. The Revenue architect clearly based his valuation on the site of the property and its view over the Grand Harbour, but the ART's technical member also took account of the small size of the property, the irregular pattern of its construction and the poor state of maintenance. The ART, though lamenting that taxpayers should have collaborated better with the Revenue during the assessment and objection stages to arrive at a proper conclusion, had no option but to accept the appeal with costs against the Revenue.

Rikors 20/2012

24 January 2017

Mgte Gabriella Vella

The Department and its valuer got hauled over the coals in respect of an estimated assessment and objection there against which were high handedly dealt with by both. The appeal concerning the value of and air space was met in full and the assessment complained of cancelled with costs against the Department.

Rikors 21/2012

22 January 2015

Mgte Gabriella Vella

The ART felt it incumbent on the Tribunal to once again set out in detail the process of restructuring of the Revenue Department and the delegation of duties thereunder (*note: seeing the course which the case took, one can hardly fault the Tribunal for so doing!*).

The real issue in this case concerned the amount of duty chargeable in respect of the transfer of four building plots in the principal street in Mosta. Appellant had a *konvenju* dating back many years to sell the plots if a case which he had before the courts was lost by him and the plots remained in his possession. This case was eventually lost, and appellant was under pressure to meet his obligations to sell the plots in terms of the *konvenju*. Matters again ended up before the courts as appellant dragged his feet over legal issues, but he once more lost his case and the Court of Appeal imposed his obligation to sell and appointed a notary to prepare the deed of transfer. The transfer price was clearly that set out in the old *konvenju*, but the Revenue architect fixed the market value on transfer at much higher figures, largely due to the passage of time.

Appellant claimed that the transfer price had been fixed by the Court of Appeal in its final pronouncement, but the ART pointed out that effectively the Court had only ordered that the *konvenju* be given effect to. The price had been fixed by the parties many years earlier. On the other hand, tax law laid down that the chargeable value was the market value on the date of the transfer, which only took place on the signing of the relative notarial deed. The passage of time could not be a factor in determining the value particularly as it was fairly evident that this had resulted from appellant's own actions. Moreover, the fact that this long passage of time had not been brought to the Revenue architect's notice was considered by the ART to be

irrelevant. Another unusual point brought up by appellant that the Revenue should have intervened in the case before the Court of Appeal was likewise dismissed by the ART as totally irrelevant. The ART also dismissed another totally fanciful claim that tax exemption should apply in the circumstances.

Finally, appellant claimed protection under article 1120 of the Civil Code which contemplates the reduction of penalties in certain circumstances. The Tribunal pointed out that this provision was totally inapplicable in the present case, where the penalties suffered were due under a specific law, the Duty on Documents and Transfers Act.

All in all, it is clear that appellant's actions were a serious abuse of the country's legal system, and it is no wonder that all his tax appeals were rejected with costs.

Rikors 24/2012

30 May 2014

Mgte Doreen Clarke

The Revenue claimed that the objection filed by appellant company in respect of a transfer of immoveable property was invalid. It is not clear what the invalidity claimed by the Revenue was all about: the actual case concerned a complaint that a declared value of EUR 93,175 in a transfer had been raised by the Revenue to EUR 135,000. On appeal, the company involved pointed out that it had never acquired the immoveable in question: this had been done by another company in the same group. The original assessment was therefore itself null and void. The ART rejected the Revenue's claim that this was a minor *lapsus calami* and proceeded to void the assessment.

Rikors 26/2012

24 January 2017

Mgte Gabriella Vella

The immovable property transferred in this case was a one car garage with its air space in Sliema. The Government valuer assigned a very high value, mostly because of the air space. However, it resulted that the air space of the garage could not be developed all by itself, and a would-be developer would first have to acquire adjacent air spaces. The ART considered that this was one assumption too many to make and, saving a minor adjustment recommended by its valuer, accepted the appeal with costs against the Department.

Rikors 33/2012

26 November 2013

Mgte Gabriella Vella

An apparent confusion at the Department led to an assessment being raised in respect of the duty payable on a transfer on a value of EUR 151,000, when the declared value was EUR 116,468. Following an objection raised, the Revenue sent a different architect to value the premises afresh, which was now established at EUR 130,000. For some unknown reason, the Revenue rejected the objection, but reduced the assessed value to EUR 140,000. On appeal, the ART held that, in the circumstances, the market value had to be taken to be EUR 130,000. Since the declared value of EUR 116,868 was well within the 85% leeway admitted by the law, no further duty could be imposed beyond that paid on the deed of transfer, and the assessment complained of had to be cancelled.

Rikors 34/2012

18 June 2018

Mgte Gabriella Vella

A total estimated value of EUR 60,000 was placed on two derelict houses in Cospicua. When a proper valuation could be carried out, the architect placed a value of EUR 18,000 on each. For some unknown reason the total value was only reduced to EUR 48,000, in the notice of refusal. On appeal, the ART reduced the total values to EUR 36,000, but penal additional duty was still chargeable as the 85% touchstone was not overcome. In view of the circumstances of the case, however, the ART held that costs should all be paid by the Revenue.

Rikors 39/2012

25 October 2018

Mgte Gabriella Vella

This case concerned the value to be attributed to shares in a private company on their sale. The transfer brought into operation certain anti-avoidance provisions of the law which have since been amended. In their original form as applicable in this case, the provisions laid down that, except in specified cases, debts incurred because of immovable property were not to be taken into account when most of the values in the shares transferred consisted of such property. In the present case the bank loans had been taken by a parent company in accordance with group policy, so that there was no direct relationship between the bank and the company whose shares were being transferred, even though the company had granted a hypothec on its property to help the parent company obtain the Bank loan. The ART held that, in the circumstances, the conditions laid down by the law for granting a deduction for the loan in valuing the shares had not been satisfied and rejected the appeal with costs.

(Note: it is not known whether an appeal in this rather unfortunate case has been filed, but this was another instance in tax matters where the stringent provisions of the law regarding deductions connected with financing through bank loans are requested, when the loans are, in the first instance, made by parent companies. The provisions relevant to this case have been amended, but tax problems connected with such cases have to be carefully considered).

Rikors 49/2012

23 April 2013

Mgte Gabriella Vella

In a case concerning alleged late filing of an appeal, the ART declared that this, being a question affecting public policy, had to be taken up by it *ex officio*. The ART also found it necessary to go through the events leading to the issue of preliminary decisions, as well as the restructuring of the Revenue Department and delegation of duties. It resulted that the taxpayer had filed a new objection against the notice of refusal instead of appealing. When advised that this was useless, they had recourse to the Minister of Finance, who apparently asked the Head of Department to look into the matter. The Revenue felt that as the process of appeal to the ART was fairly new, and a taxpayer's letter following the refusal could, in a sense, be considered to be an appeal, they should not put up the plea of statute barring. The ART, however, thought otherwise. The question of time limits for the filing of appeals was one of public policy, and the local Courts and Tribunals had always (as evidenced by the several cases it referred to) held that when the facts were clear cut, no extension at all was possible. The appeal had therefore to be rejected as being out of time, and the assessment confirmed.

Rikors 62/2012

25 October 2018

Mgte Gabriella Vella

Appellants had acquired immovable property which they proceeded to destroy and to reconstruct into much larger premises, namely a block of flats. The sellers of the property were due to move into one of these flats. On examination by the Revenue's valuer, which took place five months after the formal transfer by notarial deed, it emerged that quite a lot of work had already been carried out. The architect explained how he had move backwards in time to the deed of transfer in order to give a value as at that time, as required by law. After several considerations were taken into account, the ART accepted that appellants had in fact put in more work before that date as the sellers were keen to move into their new home. The assessments raised were therefore cancelled, though during the hearing there was quite a lot of statements and counter statements which made matters rather confusing. The ART was here reaffirming a principle which had been established by the Court of Appeal and already followed by the ART (*note: see page 129 of the Malta Institute of Taxation Manual on the DDTA, page 128*) that if it is proved that work had already been done on the premises by the time of the formal deed of transfer is entered into, the value of this work has to be deducted from the actual value of the premises on date of transfer, though this seems to contradict the clear wording of the law on this matter. (*Note: linked with Rikors 63/2012 below*).

Rikors 63/2012

25 October 2018

Mgte Gabriella Vella

(Note: linked with the immediately preceding summary. Evidence given was used in both cases).

The Revenue valuer inspected the premises some five months after the transfer had taken place through the contract of acquisition. Appellant mainly contended that the valuer had not taken into account the fact that work had been put in between the two dates. It was contended that while the transfer was of air space, the valuer had put a value of the building which had in the meantime been erected. The valuer was given the impression by appellant that actually a substantial part of the building had been ready by the time of the transfer, and he stated that he had seen receipts which tended to confirm this fact. On further consideration, it resulted that appellant had also carried out works on the premises before the date of the contract of sale. Following the Court of Appeal ruling mentioned above, the ART considered that if it was so satisfied, the value of this work was not subject to duty, irrespective of fact that the DDTA is very specific that the value to be taken into account is the value on the date of the transferring contract. Following an inspection by the technical assistant to the ART, and some complicated arguments regarding practice in the building industry, the taxable value was reduced, but as the 85% touchstone was not satisfied, an appropriate amount of penal additional duty was still chargeable.

Rikorsi 69 & 78/2012

29 May 2017

Mgte Gabriella Vella

These cases were filed by the seller and buyer, respectively, of the same duplex apartment (i.e. a flat on two levels) at a choice locality. The Department raised preliminary procedural pleas which were once again (*Note: undoubtedly quite correctly*) swept aside by the ART. The Tribunal then went on to consider the real point at issue which was the market value of the premises on the day of the transaction. The Government valuer gave details as to how he had

carried out his task and what factors had been taken into account. For appellants, the Sales and Managing director of the selling company, as well as its financial controller and the architect who had built the immovable in question were called in to give evidence. They all indicated a price much lower than what the Government valuer had fixed. The ART's technical assistant pointed out that the two parties had given different measurements of the premises, while her own calculations were much closer to those submitted for the appellants. In the circumstances, the ART accepted the appeal and cancelled the assessment raised with costs against the Department.

Rikors 78/2012

22 May 2012

Mgte Gabriella Vella

--- See decision in case 69/2012 above ----

Rikors 141/2012

22 January 2018

Mgte Gabriella Vella

This appears to be one of the cases leading to the criminal prosecution and imprisonment of the notary who had prepared the relative transfer deed but gave wrong reports to the Revenue and pocketed the stamp duty deposited with him. It is therefore difficult to discern any logic in the facts set out in the decision. The case concerns premises which had been subject to temporary emphyteusis in favour of the joint office between the State and Church. This burthen had been redeemed by the selling company so that the sale of the property was of freehold premises. The site was ear-marked for a three floor plus penthouse development, and the Government architect valued it accordingly. Having cleared all the obfuscations created by the notary's ill-advised manipulations, the ART had no option but to confirm the assessment, but making some reductions made necessary by the notary's actions. As the Revenue had not been at fault in any way in the process, and the notary had in fact been engaged by appellants, all costs had to be borne by them.

Note: see Rikors no 276/2012 for the purchaser's appeal in the same case

Rikors 193/2012

20 January 2012

Mgte Gabriella Vella

In this case the Revenue had issued a notice of refusal which, however, appears to have been served on another person while taxpayer was abroad. As the Revenue heard nothing further from the taxpayer, it was apparently assumed that the assessment had thereby become final and conclusive, and judicial action for collection was in due course taken against taxpayer. At that stage taxpayer appealed to the ART which, however, explained that the matter had passed out of its competence which was limited to deciding the amount of tax payable, and that therefore it had to reject the appeal. The ART, however, declared that in theory the case could revert back to it if action before other courts resulted in the restitution of taxpayer's rights following possibly incorrect service of the notice of refusal.

Rikors 197/2012

10 October 2013

Mgte Gabriella Vella

A fairly run of the mill case where appellants were contending that the assessment raised upon them had been statute barred. The Revenue were not in a position to definitely prove whether and when service was actually made, but this was crucial as in terms of law service constituted

the raising of the assessment. The ART, therefore, could not ignore appellant's sworn contentions that the actual assessment had never been actually served upon them and, in the circumstances had to rule that prescription applied.

Rikors 201/2012

15 January 2015

Mgte Doreen Clarke

Taxpayer had bought a property at a declared value of EUR 284,183. The Revenue's architect valued the property at EUR 345,000, and an assessment was raised accordingly. No agreement could be reached during the objection stage, and the normal notice of refusal was issued. Taxpayer, instead of appealing to the ART, sent a letter to the Revenue to 'appeal' the decision. This was done just three days after the issue of the notice of refusal. Though this procedure was clearly invalid, nobody at the Revenue deigned to point out the error during the ample time that still remained for a proper appeal to be filed. Eventually, the duty due was claimed, at which point taxpayer learned that his 'appeal' had been wrongly filed. He then filed a proper one to the ART, but the Revenue pleaded nullity because of the lapse of time limits. The ART could not accept a story put up by appellant to the effect that he had written his letter instead of filing an appeal to the ART because somebody at the Revenue had told him to do so. The ART made a review of the issue regarding time limits, and quoted several court decisions (as well as of former Boards of Special Commissioners) to the effect that such excuses were not acceptable. Once a time limit had lapsed, it could not be revived in any way. The ART considered not relevant certain presumed precedents quoted by the taxpayer and declared the appeal null and void.

Rikorsi 220 and 221/2012 22 May 2014

Mgte Doreen Clarke

Identical cases which seem to concern the same property. Appellant company had bought an apartment flat and a car space in a major development in Sliema at a declared value of EUR 131,027. The Revenue's architect determined the market value of the transfer for a total of EUR 258,000, and an assessment was raised to duty on the taxpayer as the vendor. In the objection and appeal proceedings, legal points were taken as to whether the law was *ultra vires* the Constitution of Malta regarding the blocking of appeals on points of fact, and whether the ART was the appropriate forum for the case to be judged. The ART pointed out that it was not the proper forum for constitutional issues to be determined. These issues were apparently dropped and the case reverted to the determination of the value to be attributed to the transfer. (*Note: in actual fact, the blocking of appeals on points of fact had been dropped from the law*). The ART had however to determine another point which had long before been settled in Income Tax: namely whether a proper objection can be considered to have been filed when the taxpayer simply states that the assessment complained of was excessive. The ART confirmed that such objections constituted precise grounds and the case continued on the real merits. It emerged that the Revenue architect had only inspected the car space, though he had seen plans for the flat which was a one room studio apartment plus bathroom. The ART's technical assistant inspected both the flat and the garage and had determined the total value at EUR 138,000. As the difference between this value and the declared transfer price did not infringe the 85% rule, the appeal was accepted and the assessment in question was revoked.

Rikors 276/2012

22 January 2018

Mgte Gabriella Vella

This case was filed by the purchaser in the transfer dealt with in **Rikors no 161/2012** above. It emerged, however, that this appeal had been filed late, and had therefore to be rejected without further consideration. It is however surprising that even at this late stage the ART found it necessary to go into the intricacies as to who was the proper public officer to be cited as the respondent.

Rikors 101/2013

22 May 2014

Mgte Doreen Clarke

A case of prolonged bickering about the value of a unit sold in a large sale development in Sliema. The declared value was EUR 285,000, while the Revenue architect had opted for a value of EUR 360,000. Constitutional pleas regarding competence of the ART were brought up, and the ART once again decided that that was none of its business. As regards value, strong doubts were raised on the Revenue architect's method of proceeding, and the ART's technical assistant came up with a market value of EUR 310,000. As the declared value of EUR 285,000 was well within the 85% limit, the ART accepted the appeal and vacated the assessment complained of.

Rikors 139/2013

20 April 2017

Mgte Gabriella Vella

The case concerned the transfer of an immovable property which, at the precise date of transfer, was not covered by Planning Authority permits for a proposed change of use. The Government's, and the ART's own technical assistant held that once it was clear that the Planning Authority's permission would be granted, as it in fact had been, it was only reasonable to take into the change into of use then possible. The ART agreed and rejected the appeal. There were other minor issues involved in the case, including the now changed atrocious method of calculating additional penal duty, but these can be ignored. The important point of this decision is the fact that the ART accepted that an event still to take place on the date of transfer had to be taken into account. Previous practice in this regards, including judicial opinion, was that a pending event had to be left out of consideration for valuation purposes since the law required that the taxable value was that on the precise date of transfer. Thus, the decision contradicts outright the decision delivered by the full Court of Appeal on 26 November 1971 in the case of *Agius Ferrante v Calleja*. (*Note: the ART may find comfort in the fact the method used could be consonant with accepted accountancy practice*).

Rikors 160/2013

18 June 2015

Mgte Gabriella Vella

This case referred to the sale of property resulting from the development of the items considered in **Rikors 263/2011**. The particular property was a flat sold to foreigners. The original value assigned by the Revenue architect had been reduced when he was able to inspect the apartment in question, but it still remained fairly in excess of the declared amount. It was claimed that the valuation made by the Revenue architect included finishes which had been added by the transferee. The documentation regarding the transfer was not clear, and although both transferor and transferee confirmed that this was the case, and that they had

documents to prove it, the fact was that these documents were never presented to the Revenue or the ART. The ART had therefore no option but to confirm the assessment as raised.

Rikors 203/2012

22 May 2017

Mgte Gabriella Vella

Conflicting values were given in this case by the architects engaged by the Government and the appellants, and by the ART's technical assistant. No real problems arose, and the facts were agreed all round: it seemed that only the personal appreciation of the three persons concerned differed. The ART opted to be guided by the report of its technical assistant, and as the declared value was not less than 85% of this value, the ART accepted the appeal, and cancelled the assessment complained off with costs against the Department.

Rikors 261/2012

25 October 2012

Mgte Gabriella Vella

The case concerned lengthy wrangling about the market value of a flat in Tarxien acquired by a company in 1999. The real point of discussion was whether the flat had been acquired only in shell form or complete. Appellant claimed that it had brought up the flat to the required state after purchasing the property, but before the Department's valuer had inspected the premises. The ART heard numerous versions as to what had really happened and, following an inspection by the technical assistant, came to the conclusion that appellant had not proved satisfactorily what it was claiming and confirmed the assessment with costs.

(Note: the decision contains some interesting remarks as to what the ART considers to be its functions and powers).

Rikors 147/2013

18 April 2018

Mgte Gabriella Vella

This case concerned the value to be attributed to a flat in an important development in St Julians. The director of the purchasing company was not resident in Malta, and could not be present on the appointed day to open the premises when the Revenue valuer was due to make an inspection. An estimated, but astronomical 'best of judgement' assessment was therefore raised. Following an objection, and successful inspection, the value was reduced to about one third of the original, but the final figure was still not acceptable to appellant who filed a case before the ART. After prolonged argumentation and a visit by the ART's technical assistant, the ART confirmed the Revenue's final figure and rejected the appeal with costs.

(Note: two considerations may be put forward in respect of this case. The original assessment was raised 'best of judgement', but the assessment as raised may have been null and void as the astronomical figure for what was obviously not a very special flat could never have resulted from the best use of anybody's judgement. In other (though income tax) cases, the ART had faithfully followed the Appeal Court's stand on this matter. Secondly, the fact that the premises were serviced by a lift was given importance by the ART, although appellant pointed out that he had to pay an annual fee in this regards. Few details are available on this point, but the outright rejection by the ART of this issue may be questionable).

Rikors 320/2013

17 March 2016

Mgte Gabriella Vella

This minor case concerned the donation of half of a certain property in Floriana. These were rather old, were in a poor state of maintenance, and had no access to the street. Access was through an internal narrow passage from below the stairs of other premises. The taxpayer appeared to be a most truculent person and gave no co-operation to the (two) Revenue valuers who did their best to arrive at a proper valuation. No proof was forthcoming that the low market value fixed by the Revenue was in any way excessive, and the ART simply confirmed the assessment raised with costs against the taxpayer.

Rikors 328/2013

28 July 2016

Mgte Gabrielle Vella

A fairly rare case of stamp duty on immovable property transmitted *causa mortis*. The only relevant point was the value to be attributed to one particular item in the estate. This was a 2/3 share in a fairly extensive property which was scheduled and had historic value. It was also fairly centrally situated but had been vandalized over the years and was practically derelict. Doubts also existed whether it had been occupied by squatters at the time in question. Several valuations were carried out by different architects, so that various arguments and counter arguments regarding values and which factors should be taken into account were forthcoming. The A.R.T. was clearly in a quandry as to which valuation it should adopt, but it took the stand that one of the relevant factors was to be ignored as the documentation had not been sworn: this concerned the cost it would take to repair the premises. However, the chargeable value was reduced from EUR 333,333 to EUR 266,666 in accordance with the valuation prepared by its technical assistant. This was still much higher than the declared value. No change in the value of the other premises comprised in the transmission was accepted by the A.R.T.

Rikors 22/2014

9 April 2018

Mgte Gabriella Vella

The transfer involved in this case was of an extensive site in a prime area in St Julians. There was already a villa built on the site, and various constructions required to be demolished for the site to be fully developed. Following an objection, it appears that the Revenue were in fact of the opinion that the assessed value was too low. The ART, however, pointed out that the Revenue's architect had failed to take into account of various factors which impinged heavily on the value of the site. These included the creation of a 'servitu' in favour of the existing villa, and of possibly another villa still to be built, as well as the necessity of carving out access roads from the site to enable its full development. The ART assistant valued the site at a rather reduced amount, though still in excess of the declared value. As the allowed difference of 85% was not infringed, however, the ART accepted the appeal and cancelled the assessment raised by the Revenue who were to pay all costs.

Rikors 111/2014

17 March 2016

Mgte Gabriella Vella

The method of service of assessments was again queried in this case. This question assumes major importance under the D.D.T.A. as the law specifically sets out that an assessment is deemed to have been raised when service thereof is made on the taxpayer. In the present case, appellant, who lived alone, had moved his house from his last known address, and the

relative letter packet was re-routed to his new address. Taxpayer maintained that he had never received the letter at this address, and only came to know of the matter when he started receiving demand notes for payment. This was well outside the time limit for raising/serving of an assessment following the receipt of the notice of transfer from the notary, and taxpayer therefore pleaded that the assessment was statute barred. The Revenue based their claim that it was not statute barred on certain deeming provisions of the Act relative to service, and on the fact that the letter packet regarding the notice of assessment had not been returned to them. The ART held that the deeming provision had been satisfactorily superseded by taxpayer through explanations given in his evidence, and noted that the fact that the Revenue were stating that the letter packet had not been returned to them a second time, constituted no proof whatsoever. The ART referred to the decision already given in this sense in Rikors 197/2012 on 10 October 2013, which it confirmed. The ART also queried why the Revenue had not brought evidence from the Postal Authorities regarding service and, in the circumstances, concluded that the assessment complained had indeed become statute barred before service. The ART therefore had no need to examine further grounds of objection put forward by the taxpayer.

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