

THE INCOME TAX ACTS

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Rikors 7/2006

24 July 2018

It is not clear whether this decision has a place with ART decisions. The decision as reproduced in the M o J web-site itself states that the presiding magistrate was acting in her capacity as a magistrate in a normal court of justice, but it is nonetheless listed with the other ART tax

appeals in the Ministry of Justice web-site. In any case, taxpayer had, on the 21st November 2005, complained that he had received an official letter from the Revenue in respect of assessments charging Lm1,599 for the years of assessments from 1978 to 1990. He claimed that he had no outstanding tax to settle and that, moreover, all these years were statute barred. The Revenue pointed out that these were in respect of assessments which had become final and conclusive as it did not seem that taxpayer had filed objections there against. In respect of some years, there had also been written agreement as to how tax was to be settled. The ART upheld partly the plea of prescription for the years of assessment 1978 to 1981, repeating court judgments which had held that it was not acceptable that amendments be made to the law for the sole purpose of reopening prescription which had been allowed to come into existence through inaction by the Department. The decision contains a useful summary of case law on this subject. As regards other years, prescription did not apply as it had been broken in one of the normal ways recognised at law. Costs of the appeal were to be shared between the parties.

Rikors 17/2011

11 January 2016

The Revenue appear in this case to have been chasing very hard after a rather recalcitrant taxpayer who, however, was of a certain age and worked, when at all, as a part time plasterer. He also had a drink problem, besides other health issues. The Revenue case depended on taxpayer having acquired two small properties, owning some ageing motor vehicles, and a mysterious cheque for Lm4,000 given to him by another taxpayer who was himself under investigation, and for which nobody seemed able to provide an explanation. There were also no verifiable trade records. Taxpayer appears to have been a difficult and recalcitrant person, but the obdurate chasing by the Revenue of such small fry must raise some doubts. The ART was also not very sympathetic to taxpayer and his advisers (or to his/their case), and refused medical evidence to the effect that appellant had been unable to work more than part time for several years. The ART seemed to be of the opinion that if taxpayer could work at all, no medical evidence in his favour could be considered. The ART quoted at length case law regarding the onus of proof in the case of estimated assessments, and came to the conclusion that the Revenue had sufficient reasons justifying it to raise estimated assessments on Lm10,000 income for each of five years, while taxpayer had not brought forward sufficient proof to the effect that the assessments were excessive. The ART (unlike its predecessor the Board of Special Commissioners when dealing with similar cases) seemed to expect that taxpayer should have kept the detailed trade records indicated in the law if he wanted to

overturn the Revenue's assessments, irrespective of the entity of his business. The ART consequently rejected the appeal with costs.

Rikorsi 24/2011 to 32/2011

3 December 2018

These nine cases, which were decided some eight years after filing, all concerned the same taxpayer and his assessments for the years of assessment from 1999 to 2007. They are spread over some 200 closely written pages and concern nearly EUR 3 million in tax, and additional (penal) tax. The decisions are repetitive, and while each contains a remark that assessments for 2005 – 2007 had been agreed and tax reduced accordingly, there are full blown decisions for these here years confirming the tax and additional tax charged by the Revenue.

Taxpayer appears to have been a rather difficult person/taxpayer, and his trade records seem to have been a curious hotchpotch of bank statements and various other documents. The department also highlighted failure to keep appointments, and the non production of certain records that had been requested. It appears that the Revenue were desirous of advancing the plea that no appeal could be validly filed by taxpayer as he had not produced the necessary documents before the hearing of the appeal had started. Appellant countered that these had already been presented to the Tax Compliance Unit in a VAT appeal, and that the Revenue officers dealing with the two aspects of his tax affairs were housed in the same premises, and formed part of the same Unit. The ART seemed to agree that this neither here nor there, but in effect it went on to decide the case on its merits as to it seemed appropriate. *(Note: in other cases, it had been held that these provisions were probably anit-constitutional and ultra vires the law constituting the ART. In any case, it was patently unjust and unfair for the Revenue to bring forward such a plea in the circumstances).*

As regards trade records, the ART seemed to be particularly struck by the absence of a 'cash book'. Presumably this was a reference to the provisions of article 16 of the Commercial Code which not only requires that a cash book has to be kept, but also that it be periodically balanced during the year. Surely it must be considered that this provision is totally obsolete in present day accountancy practice and mores.

Taxpayer seems to have operated in all matters concerning boats, yachts and other matters relative to maritime craft, and in allied lines. The scope and extent of his commercial activities were extremely wide, but his records (in so far as they existed), were in a hopeless tangle. The bank statements exhibited could apparently not cover the whole of his activities, and the Revenue took the stance that this was proof that there must have existed other and undisclosed accounts. The ART indicated its agreement with this line of thought, but it must be pointed out that no tangible proof appears to have been forthcoming to this effect. However, be as it may, estimated assessments appear to have been raised on the basis of the turnover in

the known bank statements. Various statements made under oath by Revenue officials during the hearing of the appeals are reproduced in the decisions, but there is no clear cut explanation as to what exactly was taken to represent profits, and very possibly the whole amount was so considered. It also noted that, apparently with the ART's approval, the resulting profits were topped up to cater for other accounts which appellant could possibly have had as above set out, but which nobody seems to have been able to identify. The ART repeated the Revenue's statement that appellant had not produced bank conformation letters to the effect that he had no undisclosed accounts, but it is not explained what are such documents which, in view of what is set out in the decisions, could possibly extend world wide.

The ART also pointed out that appellant had made suspicious looking capital investments, but these amounted to a net amount of some one tenth of the assessed taxes (*note: not profits*).

To sum up, taxpayer who, as indicated above was rather difficult to deal with, had played with fire and had got badly burnt. It is not known whether there are further proceedings to report in this case, but the long delays in determining this case may infringe the constitutional principles set out in Court Appeal case no 280.

**Rikorsi 49/2011
50/2011**

3 May 2012

Two decisions delivered on the same day in respect of the same appellant company, but for the years of assessment 2003 and 2004, respectively. Estimated assessments had been raised on the company for the two years in respect of large sums which, according to the company, had originated from its principal shareholder who held 49,000 out of the issued 50,000 shares. The Revenue felt that there were actually unreported sales of some Lm210,000, and raised assessments accordingly. The company objected against these assessments on the grounds that, as stated above, the sums in question had originated from the shareholder and his wife. When challenged to prove this assertion, the said individuals retained that there was a dichotomy between the business and the affairs of his family which is not legally questionable. The ART found this to be a weak excuse seeing that the shareholder owned all but two per cent of the shareholding in the company. In any case, the shareholder had proved that he had received some Lm30,000 by way of inheritance, and this amount had been eliminated from the additional income brought to charge in the company's hands. The ART had no alternative but to reject the appeal and confirm the assessments as raised.

In essence, this case may be considered to have been one of pure fact, but in proceeding to reject the appeal, the ART made a useful review of the procedure laid down by the law for the raising of estimated assessments. The ART also 'looked through the corporate veil' which is always a point of legal contention.

(Note: this decision was confirmed by the Court of Appeal on 27 May 2015 which maintained that no appeal lay from the ART's decision as this had been purely on a point of fact).

**Rikorsi 51 and 52/2011
61 to 66/2011**

2 February 2012

These eight decisions are identical in all respects, but they cover an equivalent number of years of assessment in respect of which appeals were filed by the same taxpayer, and for all intents and purposes stand to be considered as one. It is not clear why eight separate decisions totalling 128 pages were given.

Before tackling the substantive issues concerned, the ART had some strong words to say about the way in which "notes of observations/submissions" were to be filed. Such submissions can only be accepted if authorized beforehand by the ART. Normal court practice is that if authorization is not obtained beforehand, a request for permission to do so is submitted contemporaneously with the "note" it is desired to submit. Permission is usually (but not always) granted. In this case, the ART, after making its point, proceeded to accept the note, and counter note submitted by the opposing party, and passed to the determination of the point at issue which was a preliminary submission as to whether the relative assessments had become statute barred by the time of their raising, and were therefore null and void. In reality, giving such a preliminary decision is itself contrary to the provisions of the ART's constituent legislation but, as the ART has repeatedly held, it is convenient and practical to give preliminary decisions on points regarding issues which, if accepted, results in the assessments complained of being automatically vacated.

As indicated, taxpayer had filed objections against the assessments, *inter alia* on the grounds that they were statute barred. The ART noted that certain rather unfortunate transitory provisions enacted in a hurry when the Revenue were hard pressed for the raising of assessments within the time limits specified by law, did not apply in this case. The normal legislation already stated that where taxpayers had failed to file returns, or had omitted to declare therein income which should have been declared, and the Commissioner was of the opinion that such default or omission had been due to "fraud, art, contrivance or gross or willful neglect", the Revenue could raise assessments **at any time** on the income which had not been declared. The ART, however, held that this wording could not mean that the door was open indefinitely for the raising of assessments where it is alleged that there had been default or omission as aforesaid. Though such powers were clearly granted by the law, their use (particularly the Commissioner's appraisal of the circumstances) had to be done reasonably and, moreover, on the basis of all the relevant facts of the case. Taxpayers, including possibly defaulting ones, had a right to have their tax matters dealt with as expeditiously as possible,

and not left open practically indefinitely. So also, when the Commissioner alleges that there had been “fraud, art etc.”, by the taxpayer, the onus of proof in this regards lies fairly and squarely on the Revenue. It had long been laid down by the Court of Appeal that the mere act of default or omission was not sufficient to automatically indicate that there had been fraud etc. The Revenue had at least to show that their decision on the matter was not capricious.

In the present case, the Revenue had only stated that it was clear that taxpayer had foreign bank accounts on which he had not declared any interest for tax purposes and that, therefore, they were fully justified in raising estimated assessments which had been worked on the basis of 5% of the money in the bank accounts. The ART made what were perhaps some rather unfortunate remarks to the effect that the Revenue were thereby considering tax avoidance equivalent to tax evasion, but there can be no question, however, that the ART was right in stating that the former Board of Special Commissioners, as backed by the Court of Appeal, had pointed out that such decisions, which implied the use of discretion, could not be taken on the basis of presumptions or assumptions. Where allegations of fraud etc were involved, these had to be proved by concrete facts and documentary evidence: this is an inviolate principle of general law in the country.

The ART also emphasized that at no point had the Revenue tried to explain why they were of the opinion that there had been “fraud, art etc”. They had merely stuck to the formula “You failed to declare interests received for the year of assessment”. The taxpayer had provided what, in his opinion at least, amounted to full explanations and documentation. It did not appear that the Revenue had tried explain, or gave any motivation as to why these were not being accepted, and the ART held that this amounted to an infringement of a principle which the Courts were strongly upholding to the effect that decisions by any authority, including the Revenue when acting in a semi-judicial function in refusing objections, had to be motivated to at least a reasonable degree, if not to give a full explanation as to why the decision had been taken.

Finally, the ART complained that the Revenue’s stand seemed to be just a poor excuse for raising assessments some of which referred to no less than 17 years back. In the circumstances, the ART accepted the plea of prescription, thus rendering the assessments null and void.

Rikorsi 53/2011 to 60/2011

16 January 2017

A fairly confusing set of appeals. Some of the years in dispute had already been declared statute barred by the ART as regards the raising of assessments, but complicated circumstances still held good regarding the remainder of the years in dispute. Reference is made in the decision to a capital accretion exercise by the Department, which however seemed not to have been discussed further. The decision concentrated on estimated assessments concerning foreign interest income which the Revenue alleged had been received but not reported by taxpayer. Appellant appears to have had a rather adventurous life in America and Australia, but was finally deported from the latter country, whereupon he returned to Malta. Large remittances were later made from Australia to Malta, and the Revenue held that he must have received interest at 5% thereon before remittance was effected, but had no tangible proof

thereof. Taxpayer utterly failed to co-operate with the Department and failed to produce any bank statements from Australia. (It did not help matters that at a certain stage he suffered a stroke which partially paralysed him). Making some rather unfortunate (*Note: and perhaps unnecessary*) references to criminal law practice, the ART declared that there was sufficient circumstantial evidence to warrant the raising of assessments. It also held (*following a rather unusual reading of the text*) that reference to the double taxation agreement between Malta and Australia would be of no help in this case. Taxpayer's appeals on this issue were therefore rejected.

Rikors 55/2011

23 November 2017

(This case was heard in conjunction with case 53/2011 above, and the evidence heard in that case was made available for this case as well).

In this extremely complicated back duty case, appellant may have been unduly harshly treated, after his participation in an investment registration scheme and after the submission of adjustment forms. (*Note: both exercises were expressed to be intended to enable a person regularize his tax affairs, but they actually seemed to have had the unexpected results. The use of adjustment forms to break prescription was particularly dubious*).

The usual complications of back duty cases were made more difficult in this case by taxpayer having resided for a long time in Australia, and it is not clear whether remittances from that country were of past or present income or capital. Furthermore, taxpayer seemed to have access to very substantial funds from Italy in setting up a capital investment business in Malta. It is difficult to determine to what extent these factors impressed the ART in deciding to confirm the assessments and reject the appeal, but references to criminal law theories in this case, and to Lord Denning's remarks thereon are remarkable. Also fairly unusual is the fact that a capital accretion exercise resulted in the raising of an assessment for just one year. By its very nature, such an exercise has to be carried out over several years to yield positive results for the Revenue.

An important point is that it emerges for the first time that the Revenue operate a so-called Data Warehouse in which a vast array of information about members of the public in general is stored. This is freely available for use when a tax investigation is being carried out on any person. (*Note: this system of collecting information is contrary to European judicial practices*).

As indicated, the ART rejected the appeal, but it did order that no interest was to be charged for a period of time when appellant could not possibly have any fault for any delay in the proceedings.

Rikors 69/2011

18 May 2015

Appellant in this case claimed that he could not file the necessary documents for the year of assessment 2001 as these had been burned during a fire in his house. The Revenue pointed out that sales reported for income tax purposes were different from what had been reported in his VAT returns, and that no real proof regarding the alleged fire had been forthcoming. The

'estimated' assessment which had been consequently raised was based on deposits in taxpayer's bank accounts, and was fully justified. Appellant claimed that the Revenue's decision had not been motivated. The ART referred to various cases where this principle had been upheld, and it had been laid down that the Commissioner (today Director) was acting in a quasi-judicial position in issuing notices of refusals, and that these, therefore, had to be properly motivated. The ART, however, set out the sequence of events as these had happened in this case, and it was satisfied that the refusal issued had been properly motivated. Having cleared this point, the ART passed to the facts of the case, and it noted that appellant had given three conflicting explanations for the bank deposits, while his 'accountant's' explanation as to what had happened was evasive and proved nothing. The ART finally decided that the taxpayer had in no way proved that the assessment complained of was excessive, and though the rate of profit used by the Revenue appeared to be rather high, it had no alternative but to confirm the assessment as raised, with costs against appellant. (*Note: decision confirmed by the Court of Appeal in case no 261 on 16 March 2018*).

Rikors 78/2011

11 October 2011

This massively verbose decision, delivered some seven years after the filing of the appeal, concerned a capital accretion exercise prepared by the Revenue. The unexplained increases in capital were brought to charge as 'other income'. This procedure was held to be correct by the ART, and was in fact based on case law and established practice: there was no need for the Revenue to be more specific once the capital accretion had been confirmed. The ART also repeated that there could be no question of statute barring once the accretions remained unexplained.

As regards the accretion exercise, this was complicated by the dissolution of the community of acquests by a married couple who continued to live together, and had not actually separated. The ART preferred to follow the Revenue argumentation that the accretion was to be calculated on the provisions of the contract of dissolution rather on what was claimed to have been done in practice. This followed the civil law provision concerning the law of contract, though possibly the correct tax procedure would have been to ascertain what had actually happened in practice. Another debatable point was whether, in computing the accrual, only the profits made on the sale of an immovable should have been deducted from the accretion and not the full value thereof. The net result of this exercise was that appellant had to pay substantial tax and penalties for a period of twelve years.

Rikors 85/2011

19 November 2015

In this case, the ART upheld an assessment raised by the Revenue to thwart a tax avoidance scheme. Appellants had sought to bypass the taxation of a capital gain accruing from the disposal of an apart-hotel by effecting the transfer through a series of divisions of companies and transfers from one company to another in the same ownership. At the time in question there had still to be entered in the statute book the detailed anti-avoidance provisions which now exist, so that the Revenue had to depend for their case on the general anti-avoidance

provisions now found in article 51 of the Income Tax Act, but whose origin can be traced back to section 21 of the original Income Tax Act, 1948.

The ART has first to tackle and remove a smoke screen of claims put up by appellant alleging irregularities and suppression of rights. These included such matters as identifying which was appellant's first year of assessment when considering whether the Revenue had misquoted the relative year, but this and other procedural issues are not being reproduced in this summary, as they were only of peripheral importance. In any case, the ART observed that article 51 of the Income Tax Act necessarily granted a fair amount of elbow room in which to apply the anti-avoidance provisions which it contemplates.

The actual transaction which led the Revenue to invoke the provisions in question commenced with the division of a company which, *inter alia*, owned an apart-hotel into two companies, both owned by the same shareholder, and into one of which the apart-hotel was segregated. No taxes were chargeable at that stage, and confirmation to this effect was obtained from the Revenue. The same shareholder then set up another company, also fully owned by him, but in which the directors were the eventual acquirers of the property. The company owning the property after the division of companies, now sold the hotel to the latest new company. No taxes were applicable as the two companies were then still within the same ownership. Finally, the latest company to own the property issued a massive allotment of shares to the directors who thereupon became the actual owners of the property. The cash generated by the allotment would then have been used to satisfy the debt incurred by the final company in acquiring the apart-hotel. (*Note: this point is not specifically commented upon by the ART, but it emerges clearly*).

The point at issue was whether the beneficial provisions in the Income Tax Act and the Companies Act regarding the division of companies and inter-group transfers were being abused by taxpayer to avoid payment of tax otherwise clearly due, and whether the Revenue in invoking the provisions of article 51 had infringed the principle of legitimate expectations when it overturned an exemption granted at the beginning of the operation which was spread over three years. The ART found no difficulty in disposing of the second issue, suggesting that legitimate expectations, in general, were really that beneficial provisions of the law would not be abused to achieve tax avoidance. As regards the Revenue having changed opinion to cancel an exemption already granted, the ART pointed out that the first transaction which had obtained its blessing had long been radically superseded.

The ART pointed out that evidence clearly showed that the directors, now shareholders in the final owning company, had long been asking the original owner of the apart-hotel to sell it to them. He finally agreed, possibly due to reasons of health – which the ART considered to be irrelevant, even if true. The transfer had taken place through a carefully worked out scheme which fell very much within the principles laid down in the classic U.K. anti-avoidance cases of *Ramsay v C.I.R.*, *I.R.C. v Burmah Oil* and *Furniss v Dawson*. (*Note: the ART did not mention the later U.K. cases somewhat mitigating these decisions*). The ART refused to follow a local case where application of anti-avoidance rules was refused as the Court in that case had found that the Revenue had nothing but allegations and suppositions on which to peg their case. On the

other hand neither did the ART mention Court of Appeal case no 76 where the Board of Special Commissioners and the Court drew aside the corporate veil to bring to tax a surplus with reference to the real nature of the transaction involved. *(Note: the ART also picked various other holes in appellant's arguments, but these not be mentioned as they are all subsidiary to its main line of approach to the case).*

The ART came to the conclusion that all the transactions and maneuverings in this case were part of just one pre-ordained transaction: the sale of the apart-hotel to new owners in such a way as to avoid the taxation of the capital profit received, as well as the avoidance of stamp duty on the transfer of property. The appeal was therefore rejected, but the ART ruled that no interest should apply for a longish period of time during which the case had been dormant, possibly while the switch over from Board of Special Commissioners to the ART was taking place.

(Note: this case proves the efficacy of the general anti-avoidance provisions comprised in the Income Tax Act and raises the issue whether the innumerable specific anti-avoidance provisions which now clutter the legislation were really necessary).

Rikors 94/2011

12 February 2015

This was a case of estimated assessments raised on a taxpayer for three years of assessment on the grounds that the only declared income consisted of social security benefits in an amount which would not have been sufficient to maintain taxpayer and his family, particularly when some transactions in immovable property were taken into account.

After a lengthy exposition by the ART of the restructuring of the department and the new arrangements regarding the delegation of powers, the ART examined a preliminary plea that the assessments were statute barred. This was not accepted as facts showed that the assessments had been raised well within the time limit fixed by law: the five years allowed for the raising of assessments had to be calculated from the date of the filing of the returns by taxpayer *(note: and no longer with reference to the year of assessment or basis year in question)*.

As regards the amount of the income brought to charge to tax, the Revenue had added substantial amounts of "other income" to what had been declared, on the basis that the Social Security payments received were not sufficient for taxpayer's livelihood. The ART also noted that taxpayer had actually declared wrongly the amounts received by him by way of social security. In examining the question of the amounts added by the Revenue "*ex officio*", the ART sought guidance from the decision delivered by the Court of Appeal in case no 229, where it had been held that in such cases it was up to the Revenue to prove clearly its contentions – and not just by inference. That case had also mentioned with approval a decision given by the Privy Council in a referral from Guyana which tax legislation similar to Malta. The ART clearly felt itself bound to follow the guidelines so laid down.

Unusually, the case against appellant had started with a query from the Social Security Department asking what income taxpayer had been declaring for tax purposes as they felt that

he had been giving them wrong declarations. The Revenue explained that the sums added 'best of judgement' or 'ex officio' were as follows:

y.o.a. 1999: Lm12,000 being the cost of purchase of half a maisonette for Lm,900, plus Lm3,000 'other income',

y.o.a. 2000: Lm5,500 being Lm2,500 from the sale of a garage, and Lm3,500 other income

y.o.a. 2001: Lm6,000 being all 'other income'.

The Revenue contended that for y.o.a. 1999 appellant had explained that the Lm9,000 spent on purchasing the maisonette had originated as to Lm6,500 from a gambling win, and a loan of Lm2,500 from his brother. No proof had been forthcoming in this regards. The receipts from the sale of the garage had been considered to be income because this had been taken by emphyteusis from Government without any further payment beyond the annual emphyteutical charge, so that all the Lm2,000 received was chargeable with C.G.T. In evidence before the ART, appellant changed his story about the Lm9,000 regarding the garage. He now said that Lm5,000 had been given to him by his mother, while he had saved Lm4,000 over the years from his abundant children's allowances. The ART had no difficulty in ignoring these new excuses. The Revenue were therefore correct in bringing both the Lm9,000 and Lm2,000 to charge.

As regards the 'other income' brought to charged each year, the Revenue could only explain that this had been added to 'top up' appellant's income to amounts which were necessary for the family's maintenance. The ART found this explanation to fall short of the requirements laid down by the Court of Appeal, and more so by the Privy Council. Calculations made on a '*campata in aria*' were not good enough and constitute no proof on the Revenue's side that such income had really existed.

In the circumstances, the ART decided that all 'other income' assessed was to be cancelled, but that the Lm9,000 spent on a maisonette and receipts from the sale of the garage were to be added to the correct amount of social benefits received (less any that were possibly exempt). No order was made regarding costs, so that both parties had to pay their own.

Rikors 96/2011

11 January 2011

The ART pointed out that, in this case, the onus of proving that the assessment complained of was excessive lay on the taxpayer not only in virtue of express provisions of the Income Tax Act, but also because he was trying to give a different meaning to a transfer of shares than what was set out in the notarial deed effecting the transfer. The ART set out the principles of interpretation of contracts contained in the Code of Organisation and Civil Procedure (Cap 16), and after reviewing the merits of the case concluded that appellant had failed to discharge this onus.

Appellant sold Ordinary Shares which he owned in a company to another shareholder. These had been subscribed for at par, but the transfer resulted in a surplus of some Lm140,000 which the Revenue considered to be a capital gain subject to tax. Appellant contended that the sale went beyond a mere transfer of shares, and covered also his loss of employment with the company, and a prohibition of not competing with the company. These matters had not been

set out in the deed of transfer because the deal was financed by the bank which would not have done so if the transaction was represented as being more than a simple transfer of shares.

Appellant maintained all throughout that he had been forced out of the company which he had founded and carefully nurtured. Furthermore, the sale had been made at only a fraction of the real value of the shares, and partly in kind and partly in long term installments. It was also clear from a letter sent by an eminent legal consultant that a large part of the payment made had been in lieu of compensation for loss of office. This was confirmed by appellant's own lawyer who had conducted negotiations. A multitude of witnesses were brought forward by appellant to justify the request for exemption which, it was claimed, had been granted in the case of several other categories of employees — e.g. dockyard workers and HSBC staff. The ART felt that the entire transaction had to be linear in nature, but it found various discrepancies in the line of thought put forward. This applied particularly to the letter mentioned above as having been sent by an eminent lawyer, but which had never been confirmed on oath. *(Note: it is not understood how such confirmation could have affected the basic argument involved)*. The ART also rightly gave major importance to the fact that the shares transferred did not belong personally to appellant, but to his company. The ART gave no importance to the fact that taxpayer and his wife personally renounced in the contract of transfer to any further claim they might have had against the purchasing company. So also it was taxpayer personally who accepted not to exercise his know-how in competition with the purchasers for a period of three years, not the owning company.

The ART concluded by referring to the definition given by the law to taxable capital gains to include trade, goodwill, permits, authors' rights, trade marks, etc. The ART, however, did not enter at great length into the possible repercussions of this provision – possibly because it had decided to view this case as being purely and simply a share transfer. The appeal had therefore to be rejected.

(Note: The ART decision in this case was confirmed by the Court of Appeal in case no 262 on 16 October 2018 as being one on a point of fact, not law. One must query whether the transaction could have been better structured to obtain at least partial exemption which seemed to be justified. Similar circumstances had been considered by the Court of Appeal in case no 92, where the Court reaffirmed that the reasons for the structuring of a transaction in the way it was carried out could not be taken into account).

Rikorsi 98 – 99/2011

10 December 2018

The taxpayers in these two cases were brothers who worked part-time as property developers. Some seven years after the filing of the appeals, and in perhaps unnecessarily long decisions totally in all some 60 pages of closely type-written script in a minimal case of estimated assessments, the ART held that taxpayers had not proved that the assessments complained of were excessive. This notwithstanding that they had to farm out much of the work involved as they had not manufacturing organization. They could also not obtain proper bank financing, while their activities were limited to small jobs in the less affluent parts of the country. Their trade records, however, appeared not to be dependable, and estimated assessments were

raised on the basis of 40% of turnover, which works out at 66.6% on costs. These were apparently the rates of profits made by the bigger developers who had a fully integrated operation not depending on third parties when working on luxury properties, and had adequate financing available. This contrasted with the method of working of appellants. *(Note: a fairly unsatisfactory decision particularly as the Revenue, had, after taking profits at 40% on turnover, added some extra profits to make good for other bank accounts which taxpayers **might have had**, but which had not been reported to, or not spotted by the Department).*

Rikors 123/2011

11 October 2018

In this case it once again took seven and a half years for a preliminary plea filed by appellant the assessments raised upon him for 1992 to 2004 had been *ultra vires* as the relative time limit for their raising had lapsed. *Prima facie* this was the case, but time limits for the raising of assessments could be superseded if the Revenue could prove that there had been ‘...fraud, art, contrivance or gross or willful neglect....’ when the relative returns were filed. The ART decided this burden of proof had been satisfied, and rejected the plea directing that the case be deferred for hearing on its merits. *(The extraordinarily dilated time which it had taken to arrive at this stage may be against the Constitutional ruling given in Income Tax case no 280 where a delay of 27 years in dealing with an objection was held to be against human rights and the entire assessments in dispute were cancelled. In the present case, the first year of assessment in dispute predates the ruling on a preliminary plea by 26 years).*

Rikord 128/2011

11 October 2018

This case was one of the few cases concerning a sale of immovable property where the appellant was not in the business of construction as a developer or as a trader in immovables. It took ten years to determine. The question to be determined was whether the taxpayer could prove that he had incurred expenditure on the property in transforming it into a retail shop between purchase and sale. The property had been bought on 9th October 1992, and sold on 11 January 2000. In the meantime, the retail premises had been known under two different trading names. It is not clear from the decision whether any had actually been carried on in the premises, and is so by whom. During the objection stage, the taxable amount had been reduced by the Revenue, but the Revenue had declared that it was not satisfied that the expenses claimed had in fact been incurred by taxpayer. The ART agreed that no tangible proof had been provided by the taxpayer apart from his evidence. It therefore confirmed the Revenue’s final assessment and the additional (penal) tax imposed.

Rikors 129/2011

29 October 2013

In this case, service of the notice of assessment was made just five days after the end of the period admitted by the law for the raising of an assessment. The Revenue tried to resurrect a decision which had later been over-ruled to the effect that statute barring in the law was limited to the working out of an assessment, but was not binding in respect of its service to the taxpayer. This interpretation had been originally accepted by the Court of Appeal, but was later

reversed by the same Court as it was untenable to accept that (at least in theory) an assessment could be worked out at the proper time, but then kept in the Revenue files, only to be sprung upon taxpayer's heirs some twenty-five years later. The current renewed attempt was not accepted by the ART, which however made no reference to case law on the subject.

The Revenue's alternate attack on the defence furnished by statute barring was that this was removed when it could be shown that a return had not been submitted or income omitted therefrom. This issue had been repeatedly dealt with by the ART which laid down the rules as to when statute barring could be defeated in such circumstances. The requirements for so doing had not been satisfied by the Revenue in this case, so that the ART ruled that the assessment was statute-barred and stood to be vacated.

Rikors 131/2011

A rather unusual case concerning the amnesty known by the name of Spontaneous Declaration, given in 1995. With due respect, the decision of the ART seems to flout entirely the purpose and scope of the amnesty at an equal level to that evident in Court of Appeal case no 192a, though obviously in different circumstances. Thus, applying the provisions of the amnesty *ad litteram*, the ART came to the conclusion that appellant was to be deprived of one of the most fundamental provisions of tax legislation, namely the arrangements regarding tax at source in respect of company profits declared as dividends. The ART did not seem to be worried by the fact that participation in the amnesty was thus deemed to be to appellant's disadvantage rather than to his advantage.

Rikors 133/2011

23 November 2017

This case essentially concerned a back duty exercise for the years of assessment 1995 to 2005. The appeal to the ART was filed in 2011, but only decided late in 2017. (*Note: in the context of the maxim "justice delayed is justice denied" one must query the huge time span of more than two decades which the case covers, but nothing on this point has so far emerged in this case, although a 32 page decision was by surely too long.*)

As a back duty exercise, the case was mostly argued on whether certain items should go into the computation or not. Some important points which emerged in the case included:

- (a) Even in back duty cases taxpayers can still enjoy the protection of statute barring if the Revenue does not specifically prove that there had been 'fraud, art, contrivance etc....'. Mere suspicions or allegations were not enough and the ART held that the Revenue had not proved anything definitive in this regards in respect of the first three years of assessment which were therefore declared statute barred,
- (b) In the computation, an immovable property was shown to have been acquired in basis 1994, but taxpayer had already listed the property in his return for the basis year 1993. The ART preferred to take basis year 1994 shown in the deed of acquisition as the date of purchase. The item had therefore to feature as an acquisition in 1994 in the computation.
- (c) Taxpayer alleged that three motor vehicles registered in his name actually belonged to his children who had reimbursed him for their purchase. Declarations by the children in this sense

were presented, but were not accepted by the ART as they were copies which had not been confirmed on oath. (*Note: surely this difficulty could have been got over*).

(d) Taxpayer claimed that part of the accretion had originated from an inheritance coming to his wife. The inheritance was proved, even if somewhat shakily, but the ART declared that actual receipt of proceeds from subsequent sale had not been proved.

(e) Appellant complained that the entire proceedings had infringed his constitutional rights. The ART refused to consider the point, declaring that it had no jurisdiction in the matter which was reserved for the Civil Court acting in its constitutional capacity.

(f) Most importantly of all, the ART had to consider whether appellant was a trader in investments, as he was claiming that the profit made was exempt from taxation by the ITA itself. The relevant amounts should therefore be eliminated from the capital exercise computation. The Revenue maintained that the number of transactions involved (covering four pages to list) indicated clearly that taxpayer was a trader in investments. The ART agreed that all the classical indications of the badges of trade seemed to be present, but it held that that did not close the matter in this particular field. Quoting extensively from U.K. case law on the subject, it held that transactions on the stock exchange by an individual were *prima facie* not to be held to be in trade. Unless there was clear evidence of the person involved having launched forth into the waters of trade, these transaction remained in the nature of gambling or gaming that had many years before been declared not to be taxable by Mr Justice Rowlatt. The ART accepted this principle and agreed that the profits were to be omitted from the computation as there was no connection with income earning.

(g) The Revenue had apparently issued notices of additional tax after, and separately from the principal assessments. The ART found nothing wrong in this procedure considering that the imposition of additional tax and interest was at that time automatic.

(h) Certain documentary evidence which had not been made available at the appropriate time and could not therefore, strictly speaking, be admitted before the ART was, nonetheless, and in the interest of justice, so admitted, and the Revenue agreed.

The relevant assessments were ordered to be revised in accordance with the ART decision, and costs were to be borne equally between the parties.

Rikors 138/2011

24 January 2013

This was a fairly confusing and unfortunate case which was rather difficult to judge. Taxpayer had been found guilty of the homicide of his wife in their residence, but while serving his term of imprisonment, he had met and fell in love with a police officer who was serving at the correction facility. On eventually obtaining his freedom, the two married and had children. Appellant had made arrangements with his children from the first marriage to buy their share in the property which he had built as the conjugal home, but his second wife put pressure upon him to seek a new residence. This he did by building a new house in a different locality. To meet the cost of the new house, appellant tried to sell his original home, but found no purchasers because of the tragedy which had taken place therein. Eventually he agreed with another builder (taxpayer was himself a stone mason) to pull down the house and substitute it with a block of six flats and two garages. He still found no buyers and eventually sold out the complex to a single buyer at what was clearly a price well below the going market price, though

he still made a profit. The Revenue claimed that this was a profit arising from a trade or business in property and claimed penalties and interest.

As taxpayer was semi illiterate, his wife represented him in dealing with the Revenue, and ended up fainting at the Revenue office on being given the bad news. Eventually, she accepted to sign an adjustment form to declare the profits as she was told that submission of the form would at least reduce or cancel their liabilities. The spouses then consulted their accountant who advised them to submit a second adjustment form to cancel the first.

The case eventually ended up before the ART which had to take several important decisions. The first was whether, during the proceedings, the Revenue could ask that a sizeable sum which had been allowed as a deduction in computing the profits should be clawed back as it had been wrongly allowed. The ART was not impressed with this claim which would actually involve reference to decades old transactions with the relative documents having long before been destroyed in the family's relief at having finally got rid of the property carrying such a stigma. The ART therefore abstained from taking cognisance of this claim, as it was being raised too late in the day, and it could not accept the Revenue's excuse that the issue had not been raised before due to a *lapsus calami*. (*Note: there is a decades old decision with the Board of Special Commissioners having taken the same line in another unfortunate case*). The ART then berated the Revenue for asking that taxpayer's accountant should give evidence, and trying to milk some argument from taxpayer's refusal to grant his permission that this be done. The ART pointed out that this was a right granted by the law and that it was not proper for the Revenue to make capital out of taxpayer's refusal. The ART was also clearly not happy with the way, and the circumstances, in which taxpayer's wife was asked to sign an adjustment form.

Finally, the ART had to decide whether the resulting profit was taxable as having arisen from a trade, or whether it was just a capital surplus. It is not clear why no issue was raised as to whether Capital Gains Tax was applicable if the surplus was not a taxable profit: presumably the Revenue had opted for the trading aspect and were not going to be diverted by other possibilities. (*Note: there was clearly no possibility of exemption from CGT on the grounds of taxpayer having disposed of his residence*). In any case, the ART made a review of case law, local and foreign, on the question whether such transactions constituted trade, and came down on the side of the surplus having constituted a capital accretion, consequently vacating the assessment.

Rikors 141/2011

9 April 2018

This is an exceptional case regarding capital gains tax on property transfers. Appellant bought premises to serve as his new family home. During the initial period of ownership, when minor repairs were being carried out, it was noted that the structure of the house was unsound, and professional advice was that he had better rebuild according to a new plan. Permits were obtained for reconstruction and demolition works were commenced. Taxpayer also changed his official address to the new site, but during demolition work the house next door collapsed and the sole resident was killed on the spot. The consequential legal procedures dragged on for several years, and appellant (who in the meantime was living in borrowed premises), finally

decided to sell the site and to build his new home elsewhere. On sale, the Revenue raised a CGT assessment, but appellant objected on the grounds that the site was his residence, and that therefore exemption applied. The facts, argued taxpayer, showed that it was only incidental and completely outside his powers that physically he could not move in. The Revenue insisted that facts were facts, and that sale did not take place within one year of his vacating the site. Indeed, it was doubtful whether he could ever be said to have resided therein.

The ART made a careful examination of the cases on residence which had come before the Courts and other Tribunals of Malta, and it noticed that these all required physical presence in a given place. No reference appears to have been made to Maltese case law on the subject, but the ART referred to the classic U.K. cases on residence (including an actual CGT case), which were brought to its notice. *(Note: in actual fact reference to U.K. residence cases may not be very fruitful in this matter, as U.K. case law always considered whether the individual considered was personally resident in the U.K. or not. On the other hand, the 'residence' referred to in the local Income Tax Acts re CGT concerned the building in which a taxpayer had resided: his postal address, or where he was registered to vote. These two aspects of residence are materially different: the U.K. concerns personal attribute of the individual, while the local CGT provisions concern objectively the house in which he resides. This difference is often referred to in U.K. case law).*

All in all, the ART felt that the facts made it impossible for the exemption contemplated in the law to be granted to the unfortunate taxpayer, who lost his case with costs.

Rikors 151/2011

7 January 2014

Taxpayer was employed with a leading firm of accountants. He was liable to be sent to work abroad as and when requested by his principals, and during the particular year in question he spent more than half the year working in Libya. He claimed the special rate of tax for work done abroad under legislation which has now been replaced. This had been stringently drafted in the late 1970s, but nowhere stated, as the Revenue seemed to require, that this condition had to be set out in writing in the relative contract of service. In actual fact, the law of Malta does not require that a contract of service (i.e. employment) had to be set out in writing. The ART lamented that the case had come up before it a long time after the relevant work had been performed, so that some facts may not have been very clear at the time of the appeal, but it came to the conclusion that appellant had not proved that it was a requirement of his contract of service that he was principally employed to act for his employer abroad, as required by the law. The appeal had therefore to be dismissed.

Rikors 152/2011

6 April 2017

An old Board of Special Commissioners case inherited by the ART. Amongst other pleas, appellant contended that the assessments complained of were statute barred. The ART decided to give a preliminary decision on this point. The issue was covered by rather unfortunate legislation which had been brought in when the Revenue failed to clear its backlog of cases. The ART decided that the new time limits could be made to apply provided that the

Revenue could reasonably have been of the opinion that income had been omitted from taxpayer's returns because of 'Fraud, art.....etc'. Without deciding that such income had in fact been left out of the returns, the ART accepted that the Revenue could have such reasonable doubts, and consequently left open the validity of the assessments from the perspective of statute barring, so that the case could continue to be heard on its real merits as to whether there in fact had been such income.

Rikors 154/2011

8 May 2018

The ART considered that this case required a massive 30 page decision given eight years after the filing of the appeal, and harking back to events happening some ten years further back. Its eventual outcome raises again the question whether the ART system is suitable as a first level appeal in tax matters, and as to whether it is superior to the Board of Special Commissioners which it replaced.

The appellant and the Revenue were at odds on four issues: (a) gains from an insurance business; (b) wife's earning as a beautician; (c) sale of an item of immovable property at Msida; and (d) fringe benefits through the ownership (and director-ship) of a company which owned a yacht that was used by appellant's his family. As regards (a), the ART had serious criticism to make regarding the Revenue's workings and computations, but finding some shortcomings in taxpayer's record keeping and presentation of documents required by the Revenue, it quoted a large number of Court of Appeal and Board cases to enable it to state that taxpayer had not proved that the assessment was excessive in this respect. (*Note: does this methodology provide 'parity at arms' for both parties before the ART?*). As regards (b) the only tangible fact brought forward by the Revenue was that, for previous years, estimated assessments on these gains had not been objected to. No other facts were brought forward and the Revenue seemed to be of the opinion that the business was carried on in tower Street, Sliema, while in fact it was carried on in Msida in two rooms situated above the premises where the insurance agency was carried on by the husband. The ART considered that no proof had been furnished by appellant and confirmed the assessment as raised. As regards (c) the ART considered that the premises which had been acquired and used by appellant for his business, had been the subject of a change of intention, and sold by appellant as an act of trade. With due respect, the ART' view on this matter and the cases and texts quoted on this point, are far from convincing, as also seems to be the case regarding the determination of the amount of the taxable profits. As regards (d) the ART had to ignore a government publication indicating that the application of this particular fringe benefit was to be revised, but it does not seem that this revision had ever been made.

Rikors 169/2011

22 May 2018

A rare, if not outright unique, case of an appellant company claiming that it should have been given benefits under the Business Development Act. It is not clear whether the Appeals Board set up under Articles 28 – 31 of Chapter 323 (originally the Industrial Development Act), still functioned, in which case the ART would seem to be excluded from taking cognizance of the appeal. In any case, this issue does not seem to have been brought up by any party and the

ART duly heard the case and delivered a decision thereon, albeit after another hefty lapse of time.

The main point at issue in the case was whether appellant was entitled to benefits under the B.D.A. in respect of certain beneficial capital allowances. The company was set up for the purpose of rock-cutting and excavation which it carried out on a large scale, and had required the acquisition of extensive and costly machinery for the purpose of its activities. Incidentally, the company also acquired and disposed of some minor items of immovable property. The company had no objection to paying tax on these transfers, but the Revenue held that this was itself a different trade from its principal activity of rock cutting on account of which it was claiming the benefits in question. As the incentives legislation seemed to require that beneficiaries thereunder carried on only one activity, this disqualified the company from obtaining the benefits. The ART accepted this line of reasoning, which seemed to be rather restrictive. The ART quoted some old decisions of the Court of Appeal and of the Board of Special Commissioners, as well as the provisions of the Commercial Code to the effect that all acts of a trader were considered to be in trade (unless otherwise proved or evident). These decisions may themselves have been rather restrictive in the context in which they were delivered, but much more so when applied in this unfortunate case.

Rikors 181/2011

12 January 2015

This case referred to tax on capital gains made by taxpayer on the sale of a house. The house did not belong to the community of acquests with his wife as taxpayer had purchased the land on which the house was later built before marriage. Taxpayer was by the time of the relevant transaction living apart from his wife and, according to their contract of separation, the house was to be at the disposal of the wife. Moreover, if he was later to sell the house, whatever was received from the sale was to be assigned to the wife as part of her share of the community of acquests.

On sale of the property, taxpayer reported nothing in his tax return, and was later faced with a stiff bill for duty and penalties. He argued that in terms of the contract of separation any profit resulting from the sale did not come to him but went straight to his wife. The ART, however, accepted that the theory of 'application of the income' as set out in Court of Appeal case no 72 (based on several U.K. cases, also mentioned by the ART) applied perfectly to the case. What taxpayer was bound to do in virtue of his private arrangements did not transform his income into income belonging to somebody else. The income, when it arose, belonged to him, and the ART could attribute no importance to the fact that the relative cash went straight to the wife and their common daughter. The ART could also find no relevance in the fact that the Court of Voluntary Jurisdiction had approved these arrangements.

The ART refused to accept any argument for exemption on the grounds that the house disposed of had been taxpayer's residence. Any benefit granted by the law in this regards had long exhausted itself as he had been living outside the house for several years. Remarks made by

the notary in his deed effecting the transfer stating that exemption applied as the property transferred had been taxpayer's residence were useless as they were incorrect.

The ART finally ordered that the case be also referred to the Commissioner for Police to investigate whether taxpayer had committed fraud against the Revenue. *(Note: perhaps this referral was ultra vires as such referral is reserved to the Commissioner for Taxes in terms of article 56 of Cap 372, the Income Tax Management Act. The entire decision was confirmed by the Court of Appeal on the 16th June 2017. The last point above was brushed off by the Court on the ground that the ART had merely referred the case to the Police to be investigated, and had not judged on guilt or otherwise: but, with all respect, this is precisely what the law reserves to the Commissioner).*

Rikors 273/2011

15 November 2012

An out of the ordinary case arising from the provisions of an unusual arrangement introduced by Legal Notice 428 of 2004 (now S.L. 123.79). This concerned Residents Scheme Regulations whereby, *inter alia*. The Commissioner of Inland Revenue was delegated under the Immigration Act to issue a certificate regarding residency for the purposes of the said Act. In this case, appellant was a foreigner who had been granted a permit accordingly. For some unspecified reason, this permit was revoked by the Commissioner, and appellant had recourse to the ART to challenge this revocation.

The recourse to the ART was made under the provisions of the Income Tax Management Act and against the Commissioner. On a preliminary point, the Revenue contended that no such appeal was competent at law. The ART agreed: the Income Tax Acts specifically provide for appeals to the ART to contest assessments and nothing else, so that another forum should have been utilized by the appellant in making an appeal on his complaint. Though not mentioned, this was a confirmation of the principle set out in case no 121 before the Court of Appeal, to the effect that the appeal provisions in the Income Tax Act concerned solely assessments and related procedures. Appellant contended that the ART had been established to hear appeals from individuals aggrieved by administrative decisions, and that therefore the ART was the proper forum to hear his grievances, irrespective of what the Income Tax Legislation stated. This stand was not accepted by the ART: the general laws of the land could not be invoked in special laws and in respect of matters which were provided for in such laws. The ART also gave a clear indication that it felt that the proper forum for the dispute was that contemplated under the Immigration Act itself once, in this case, the Commissioner had been acting under that law.

Rikors 278/2011

6 April 2017

In a rather important case, the Revenue successfully attacked a tax avoidance scheme. In a sense, this case may be viewed as a re-run of case no 85/2011 reviewed above, though in a different context. The case took well over a decade to finalise, partly due to its complexity and to the fact that it had originally been filed with the Board of Special Commissioners.

The ART confirmed that the Revenue could not ask, in terms of the ITA that appellants' accountant be asked to give evidence. It did point out, however, that opposition to the request

was hardly congruent with the repeated plea which appellants brought forward to the effect that they could not answer certain questions on facts and figures as matters fell within the province of their accountant.

The taxpayers claimed that the transactions involved had been made to benefit from the exemptions granted under article 5(9) of the ITA. Moreover, it was claimed that no order in writing had been made by the Commissioner as was required by art 51 of the ITA when this was invoked to combat what was presumed to be tax avoidance. The appellant company was also claiming that the assessed value was by far too high, particularly as it was post-transfer events which might have raised values. In any case, the company argued that under art 5 of the Act market values could not be taken into account and it was the actual transfer value which could be assessed.

The Revenue successfully argued that the transfer was part of appellants' normal business (*Note: very much as had happened in the old case reported at no 76*), so that it was taxable under art 4, not under art 5 of the Act. The whole transaction had been artificially structured so as to obtain the benefits of inter-company transfers provided under art 6, when these were not really due as the transfer had effectively been made to third parties via juggling between various companies and their amalgamation, as well as new subscriptions of capital, none of which made any real commercial sense. As regards values, then Revenue pointed out that they had not gone for market values, but merely used figures which appeared in the records of the various companies involved. Incongruences notable therein could not be explained by the appellants once they had refused to give their consent for their accountant to give evidence.

The ART found no problem in accepting the conclusion that the whole transaction was merely an act of trade and therefore taxable under art 4 of the ITA, and that the sequence of events clearly indicated that the anti avoidance provisions of art 51 were applicable. It must be pointed out, however, that the ART might have given too much weight to the wording of the companies' statutes: a practice which has long been out of date. In any case, the statutes were not much different from most company documents.

As in the earlier case, the ART quoted extensively from classic U.K. decisions regarding tax avoidance schemes. It also stated that the test laid down by the Court of Appeal in case no 241 (above) for the imposition of the anti-avoidance provisions had been satisfied. The ART also quoted the decision in case 241 to the effect that what the taxpayer considered a transaction to be was not very relevant, and one had to consider actual motives and happenings. Though in that case the transferred assets had been shares in limited liability companies, the same principles applied where the transaction concerned large chunks of immovable property. Moreover, all the real persons involved in the deals were recognized developers and they could not hide behind the corporate veils constituted by the companies which they had set up. The ART also noted that more or less the same principles had been applied in Court of Appeal case no 195.

The ART disposed rather cavalierly of a plea that the quoted provisions of art 51 required that an order in writing be prepared by the Commissioner and served on the taxpayer, and that this

had not been done. In the view of the ART, the issue of an assessment by the Revenue was sufficient for this purpose. *(In fact, art 51(2) clearly distinguishes between the two, and the ART may have been technically incorrect. In another case, the Board of Special Commissioners had stated clearly that an assessment could hardly be considered to be an 'order in writing', and the Court of Appeal had no comments to make on this point when the case arrived before it. This issue is definitely not closed by the current decision).*

Rikors 15/2012

23 January 2017

The case concerned time limits within which claims for refunds could be claimed in respect of tax comprised in what appellant claimed had been payments made to him which had been erroneously labelled 'salaries' when in fact these were merely the repayment of monies which he had advanced to the company. Presumably, FSS deductions had been made and paid to the Revenue. The years concerned were years of assessment 2004 to 2009. The ART had accepted a preliminary plea by the Revenue that the claim for 2006/2009 was null and void since there was no final decision to be brought to appeal. The ART decision was given on 20 October 2102, and was confirmed by the Court of Appeal on 25 February 2015 (case no 252). The Revenue had asked that the claims for 2004 and 2005 be held pending until the other years had been settled as above, and the current decision concerned precisely these years. Against the background of a very complex scenario, the ART came to the conclusion that the Revenue's plea of prescription ('dekadenza' in this case) was to be upheld and dismissed taxpayer's appeal accordingly.

Riokors 16/2012

Appellant in this case was the same person as that concerned in Rikors 15/2012 above. It appears that while his cases for several years were winding their way before the tribunals, he had participated in arrangements made in terms of an Exemption Order made by the Minister of Finance on the 4th September 2009 for the purpose of clearing up a massive backlog of arrears and objections which had been piling up for years. Taxpayer apparently had to pay a large sum of money as a result of signing an agreement with the Revenue as a condition of his participating in this scheme. *(He would also have obtained appreciable benefits in respect of tax which was being claimed from him, though contested at that time).* Following failure to obtain satisfaction from the tribunals, he now claimed a refund of the tax paid under the scheme, claiming that he had only done so to avoid the piling up of massive amounts of interest. The ART declined to consider a long list of pleas submitted by the Revenue, and stuck to the fundamental issue that it was not open to the taxpayer to re-open what had been closed by a very tight agreement voluntarily signed with the Revenue. There was no reason why the finality of an agreement properly reached should be set aside and the whole question re-opened. *(Note: there are various reported cases where this matter has been considered in income tax: sometimes reopening was accepted, sometimes not. It would be interesting to learn whether the taxpayer instead of benefitting from an exemption order ended by paying the tax twice over!).*

Rikors 317/12

18 October 2018

This case concerned two lawyers, husband and wife, who had estimated assessments raised upon them for 2006 to 2009. These were largely raised on what appeared to be capital accretions between the beginning and the end of the period which, in the opinion of the Revenue and of the ART, had not been satisfactorily explained. Appellants raised a several issues against these assessments, two of which do not appear to have been satisfactorily considered. These were to the effect that much of the information asked to be provided by them infringed the various laws relating to client confidentiality, and that the method of compiling capital accretions was not correct as it ignored facts occurring in the intervening period. Neither of these issues appears to have been satisfactorily dealt with by the ART which preferred just to quote the powers given to the Revenue by the Income Tax Acts on every issue raised. On the other hand, appellants could perhaps have been less reticent about their affairs, and more co-operative with the department. Certainly they were quite right in holding that a capital accretion exercise should not be made for a global period spanning several years. Such exercises should always be made on a yearly basis, as the details so emerging can give a much clearer picture of the actual happenings over the years – both in favour and against either party. At the end of a long drawn out process, the ART confirmed the assessments raised, without prejudice, however, to any adjustment which the Revenue might feel appropriate to make to the additional (penal) tax possibly chargeable.

Rikors 48/2013

9 April 2015

A preliminary decision delivered on a point raised by appellant to the effect that the assessment in question for the years 1995 to 2002 had been raised when they were already statute barred.

The question regarding time limits for the raising of assessments had been at that particular moment in time subject to various changes which are not easily understandable except within the context of the aftermath of the widespread raising of '*ex officio*' assessments earlier and the consequential backlog of work at the Revenue Department. The position was further complicated by the option given to taxpayers to submit adjustment forms, and the attendant regulations for their submission. Appellant claimed that he had filed adjustment forms for specific parts of his income but not for others, so that no argument could be adduced through their submission in respect of income not affected thereby. The ART could not accept this line of reasoning: adjustment forms covered everything regarding the relative year of assessment.

Without prejudice to the above issue, the ART had to consider whether the onus laid upon the Revenue to show reason why statute barred assessments could still be raised on the grounds that there had been willful fraud, neglect or omission, had been satisfied. The Revenue in fact explained to the ART how a back duty exercise had been carried out which showed that there had been unexplained increases in taxpayer's wealth. Without going into the matter of whether the results of the Revenue's computation were correct or not, the ART agreed that the Revenue had given sufficient *prima facie* evidence that they had acted correctly and within the law, and that they had consequently discharged the onus so laid upon them, thereby entitling them to overcome the barrier of statute barring. The ART therefore refused to cancel the

assessments complained of on this basis, and adjourned the case for further consideration regarding the issue of unexplained accumulations of wealth.

Rikorsi 134, 135, 136/2013

9 May 2016

As far as it can be seen the three cases and decisions all referred to the same assessment served on the same person, and for the same year of assessment. It is not known why such procedure was adopted in this case.

In his appeal, taxpayer submitted various issues, but the A.R.T. limited itself to considering a plea of nullity made against the assessment on the grounds that it had been raised outside the time limit established by law. It was however proved that the return for the year of assessment 2006 had been submitted on the 30th September 2010, and that the assessment was raised during 2011. There could therefore be no question of nullity on the grounds that it had been raised outside the prescribed time limit. The A.R.T. pronounced itself accordingly and deferred the case for continuation on the other points raised.

Rikors 59/2017

24 July 2018

Appellant in this case had received a demand note for payment of tax which had been assessed. There were various issues which were brought up, including an alleged error by the notary preparing a deed of transfer, and failure by the tax payer to file a return while an amendment could still be prepared. The ART dismissed the appeal and got around all problems by pointing out that, for Income Tax purposes, its only functions related to as to whether assessments had been properly and correctly raised, and were justifiable. Other issues, such as collection of an out, had to be dealt with by the ordinary courts. *(Note: the ART has repeatedly pointed out that since reference in the ITA to the Tribunal was specifically limited to assessments, it could not enter into general administrative questions as it could possibly do in respect of powers granted to the authorities under other legislation).*