

DECISIONS ON VALUE ADDED TAX APPEALS

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Rikors 16/2011

6 March 2018

This decision was the latest stage in a long running VAT case. The VAT periods involved stretched from 2003 to 2005. A decision by the Board of Appeals under the VAT legislation had been quashed by the Court of Appeal and the case sent back for reconsideration. On the constitution of the ART the case ended up before the Tribunal. The Department had then entered a preliminary plea that appellant was excluded from presenting evidence before the ART as he had failed to do so before the Department at various stages of the procedures leading to a recourse to the appellate tribunals. The ART was asked to deliver a preliminary judgement on this point, which it did confirming that the evidence could not be presented at that point. This was not the end of the matter, however, as the case could still be heard – though not the evidence. *(Note: this seems to be the first time that this procedure was adopted, i.e. hearing the case without evidence, although the relative legislation had originated in income tax some four decades before).*

Rikors 46/2012

11 February 2019

The Tourist Authority of Malta, and its predecessors, had taken on lease from a limited liability company premises in Valletta for the purposes of their activities and duties. Such a transaction would have attracted the payment of VAT, but not if the Tourist Authority was not carrying out an economic activity. The Authority maintained that it was an administrative branch of a Government department engaged in the public administration of the public service, and that it was not involved in any economic activity. The ART, following case law, held that proof on this matter did not lie on the Authority, but on the Department which was alleging otherwise. The ART held that no such proof had been forthcoming, so that it upheld the appeal with costs against the department.

Rikors 47/2012

11 February 2019

This case was very similar to the immediately preceding appeal. However, part of other premises in which the Tourist Authority was involved could be said to have been used for some economic purposes. That part of the appeal was therefore rejected, but the principal part of the appeal was again approved. Costs were to be paid as to one fourth by the Authority and as to three fourths by the Department.

Appellant company had had severe problems with the Department, but these had been settled by way of a “letter of commitment” whereby the company accepted to pay a large sum of money in respect of tax, interest and penalties. Dues had been settled by the middle of August 2011. Under a subsequent Legal Notice (L.N. 456/2011) which came into effect from 1 January 2012, appellant company could have benefitted from an amnesty granted thereby in respect of penalties, but the Department refused a claim for refund as all liabilities had been settled and taxpayer had willingly done so in terms of its own letter of commitment. The ART explained that it was well accepted that all such amnesties had inherent in them a certain degree of discrimination, and quoted case law accordingly. Appellant company brought forward the questions of fairness and good faith, as well as that of legitimate expectations, but these could not impress the ART as it was clear that the letter of commitment although actually one sided had been accepted by the Department. This had attained the status of an agreement constituting the law regulating relation between the two parties. The ART further pointed out that the Legal Notice in question had stipulated that no refunds were to be paid as a result of the amnesty. The Department had all along acted ‘with fairness and good faith’ in the matter, though the ART did pull up the Department representatives when they sought to overturn the accepted principle that where doubts of interpretation exist, that most favourable to the taxpayer should hold sway. The claim for a refund was rejected with costs.

This was a case resulting from the proceedings of what was probably the largest corporate fraud in trade in Malta. Issues in this respect had already appeared several times before the ART itself.

One of the directors of the relevant company, long put into administration and declared bankrupt by the Court, had proceedings instituted against him to pay VAT still outstanding by the enterprise. Both appellant and the Department queried the ART’s competence to deal with the issues involved, which included a claim by appellant that the claim for payment had infringed his constitutional rights. The ART gave a preliminary decision indicating the points on which it had competence to take cognizance, where it felt that a constitutional case before the appropriate court could be opened, and where it felt that, if at all, a case before the normal civil court should be commenced. Of importance to note that once again the ART held that, in terms of its constitution, its functions in tax cases went beyond the mere determination of the tax payable, which had been the only function of the previous appellate Boards.

Rikors 65/2012**18 February 2017**

This case appears to have been blown out of all proportion by the Department. It related to invoices which appellant had submitted in support of its claims for input tax. The problem was that a few of these invoices lacked some of the details required by law. The ART quoted the decisions in cases 152 and 181 where the Court of Appeal had confirmed that this was the law, but had nonetheless allowed the set-off where it was proved that Input VAT had actually been paid by appellant. To do so in clear-cut cases would be inequitable and denying the taxpayer of his undoubted rights. Saving some adjustments in figures, the ART therefore accepted the appeal with costs against the Department.

Rikors 67/2012**22 October 2015**

The Department in this case raised a preliminary plea that the appeal had been filed late. The ART noted that, for some unknown reason, taxpayer had filed another objection after receiving a notice of refusal regarding his original notice of objection, when he should properly have filed an appeal to the ART. For some equally unknown reason, the Department had dealt with the matter as a fresh notice of objection and duly issued another notice of refusal. Taxpayer then appealed to the ART which, however, ruled that the second objection and refusal were invalid, and that the appeal had been filed late in respect of the first refusal. The appeal had therefore to be rejected with costs.

Rikors 70/2012**5 November 2015**

The appeal in this case turned out to be one on complicated preliminary pleas and other legal issues. These were that:

- (a) the appeal had been made on the wrong form;
- (b) an adjustment to a VAT return requested by taxpayer had exceeded the 5% margin allowed by law;
- (c) the adjustment requested had also been requested outside the time limit allowed for this purpose.

The ART noted that the Department did not seem to be interested in following up the first issue, but had not formally withdrawn the plea, so that the ART felt obliged to decide the point. The ART noted that the form to be used in making the appeal had actually been indicated by the Department itself in a letter which it had issued. Quoting case law, the ART showed that the Court of Appeal had accepted the validity an appeal so made and that, furthermore, it had been declared that filing an appeal on the wrong form would not necessarily invalidate the appeal. The ART therefore rejected the first preliminary plea. As regards points (b) and (c), the ART also quoted case law at some length, and came to the conclusion that, in the circumstances of this appeal, the appellant had not infringed the 5% limit insisted upon by the Department,

nor had the adjustment form been filed late. The appeal was therefore accepted as valid, with both parties being required to meet their own costs.

Rikors 74/2012

13 February 2014

Appellant was contesting the application of a fairly small administrative penalty imposed upon him for non-filing of a tax return within the stipulated time. He contended that non-filing had been due to a severe mental illness which led to confusion in his financial affairs. The ART noted that the VAT Appeals Board had already rejected the same grounds for failure to file another return. However, as the returns in question were not the same, it felt constrained to consider the matter all over again. As a matter of fact, it emerged that appellant's illness had progressed from "mental depression" to "schizophrenia" by the time that the return in question had to be filed, and the ART held that this had created a situation where the appellant had a reasonable excuse for the purposes of law, so that the administrative penalty fell to be remitted accordingly. Costs were to be borne by the Department.

Rikors 85/2012

18 February 2016

This case, which had been inherited by the ART from the VAT Appeals Board, must be fairly unique. Appellant was a distributor of Light Heating Oil purchased from Enemalta which was exempt from charging VAT. Appellant, however, should have charged VAT at 18% to his customers, against which he could not set off any input tax in view of Enemalta's status. He did not charge VAT, and assessments were raised upon him accordingly. During the hearing of the case, however, it resulted that Enemalta could, and did, fix appellant's buying and selling prices leaving him with minimal profits, but making no provision whatsoever regarding VAT to be charged on consumers. This would have left appellant heavily out of pocket, and the anomaly was recognized by Government, whereupon the Department cancelled the assessments. This was obviously accepted by appellant who, however, claimed that all costs should be borne by the Department. This was not accepted by the Department, and the ART ruled that each party was to bear its own costs since however ill conceived had been the issue of assessments, the Department had been legally correct in so doing in the first place.

Rikors 88/2012

16 January 2014

The Department submitted two preliminary pleas, namely that the appeal had been filed late, and that the draconian provisions of article 48(5) should be applied. The ART noted that appellant's defence against late filing was that he had been serving a prison term when the notice of refusal was sent to his home. There, however, the registered packet had been received and duly signed for by a close relative. The ART held that this constituted sufficient delivery both in terms of the relative VAT provisions, and for the purposes of the general law of Malta. Moreover, the appellant had waited a long time to file his appeal after having been

released from prison. In the circumstances, the first plea raised by the department was accepted by the ART and the appeal was declared null and void. The ART, therefore, had no need to consider the question as to whether the provisions of article 48(5) were applicable.

Rikors 89/2012

8 January 2019

Appellant in this case had problems regarding the classification of his sales into what was exempt, what was liable at the full rate, and what was liable at a reduced rate. Matters were complicated by the theft of his lap-top in which the relevant I data was stored. There was no question that the theft had existed and was reported to the police at the appropriate time. Attempts were made by the department and taxpayer's advisers to work backwards from the purchases which were fully documented but no agreement could be reached, particularly as it was claimed by appellant that a main line of business had not proved successful, and that he had disposed of this stock at half price. The ART in the end preferred the Department's workings, and rejected the appeal with costs.

Rikors 101/2012

8 November 2016

This case was said to be linked to case no 102/2012 which was decided on the same day, but which does not appear to have been listed in the MOJ web-site. The case also seems to have been tied up with a request made by the VAT Department to the Police authorities to commence fraud proceedings against a third party, but in which no progress was reported. Appellant was apparently expected to be a witness in that case.

In this case, the Department pleaded nullity as the appeal had been filed very late. Appellant claimed that he had filed the appeal within 30 days of a demand for payment issued against him, but the A.R.T. pointed out that the 30 days for appealing commenced as from the day when notice of confirmation of the provisional assessment was served upon him. Demands for payment were another matter, and the A.R.T. could not but accept the plea of nullity.

Rikors 104/2012

13 November 2012

A fairly confusing case where appellants had accounting problems concerning input VAT claimed as a deduction: these were mostly solved over the years and in the process of the appeal. A long series of reports by the Departmental inspectors produced agreed figures which the ART confirmed. The Department, however, imposed administrative penalties which the ART could only waive in so far as the tax originally charged had been wiped out.

Rikors 105/2012

28 February 2017

Appellant company claimed a refund of large sums amounts. The Department submitted that there were no time limits in the VAT legislation for the claiming of refunds, so that this question

had to be decided in terms of the Civil Code. The ART agreed in principle, but pointed out that the Department had itself broken prescription by repeatedly showing in its statements that amounts were due to the company. The only fundamental tax reason brought forward by the Department for the denial of a refund was that the company in Malta was a branch of a foreign company to which it rendered services, but it did not issue invoices to clients so that there was no economic activity as contemplated by the VAT legislation. It did not charge clients directly and all bills were issued by the parent company. The ECJ had however reviewed the question of mother-company / branch relationship, and had held that while the branch was carrying on an economic activity, it had no obligation to issue invoices to its parent company so as to create a 'turnover' in its books. The refund claimed was therefore due and the ART accepted the appeal.

Rikors 120/2012

28 October 2013

A rather unusual case of a small time furniture maker who claimed that he was practically illiterate, and that he was a 'social case' in the sense that he was fairly old and very weak, and had to help and support a large number of family members who were disabled or affected with debilitating illness one way or another. Moreover, several clients were religious institutions who only paid him for the materials used, but not for his labour. He was therefore pleading for the remission of his tax liabilities. Taxpayer had already been to the Appeals Board and the Court of Appeal with his problems, and was now seeking relief from the ART.

Obviously, the ART could not do anything much about this case, particularly as part of the payments which the Department was claiming referred to VAT which he had charged clients. On further investigation, the ART noticed that some of the persons claimed as dependents did not in fact depend on applicant, having their own spouses and Government financial aid as appropriate. Applicant had also disposed of an immovable for Lm40,000. The ART considered that there was not much to say about the Department's use of its discretionary powers, and felt that any order reducing applicant's liabilities would in fact be tantamount to a misappropriation of public funds.

Rikors 126/2012

15 November 2016

This case concerned a rather confused situation where appellant's affairs were intrinsically tied up with those of its holding company. Relatively minor amounts of input and output VAT were concerned in what turned out to be a complicated case which was examined by numerous departmental officials and appellant's own auditor who admitted that he had had to make an investigation himself. In the end, the A.R.T. was not convinced the Department's ruling on input and output VAT was wrong, and confirmed the assessment. It also confirmed an administrative penalty of 20% rather than at 10%, because adjustments had not been made on

time by appellant. No major decisions on points of law appear to have been made though the appeal had mentioned such issues which, however, seem to have been lost sight of during the proceedings.

Rikors 131/2012

18 February 2016

In this case, the Department contended that small amounts of Input VAT claimed by appellant had not been proved as required by law. Penalties were also applied. Appellant company was involved in waste removal services and the provision of clean water. The ART carried out an examination of the disputed claims, and accepted the department's stand that taxpayer had not satisfactorily proved all its claims within the stringent requirements of VAT law. The appeal, except in the case of items which had in fact been so proved, was therefore dismissed. The ART felt that appellant should bear all legal costs involved, as the dispute had been caused, in the first place, by some confused record keeping on its part.

Rikors 132/2012

25 June 2018

A massive 20 page decision where appellant, a supplier of paints, was alleged to have made excessive claim for deduction of input tax, and declared less output VAT than actually charged. The total discrepancy came to over Euros 200,000. During the period in question, appellant made use of an IT system which apparently could not clearly churn out the large volume of downloads required by the Department. The VAT inspectors refused an invitation to visit taxpayer's premises to extract what information they deemed to be necessary. The ART felt that they had no obligation to do so since, under the law, registered persons were required to keep records in a readily available and understandable form. Accusations and counter accusation were the order of the day, and the ART felt that there could be no budging from the precise requirements of the law, even if it was clear that these simply could not be met in a particular case. To a major extent, appellants were considered to be at fault in anything which they had done, or failed to do. The ART also felt that appellants were not precisely in good faith in putting forward certain submissions, which it thought were mostly intended to cause confusion and to derail proceedings. In the end, the ART rejected the appeal with costs against appellants in a complicated decision which was delivered seven years after the filing of the appeal.

Rikors 134/2012

5 December 2017

The case concerned certain draconian provisions intended to safeguard the payment of VAT in the future which may be imposed on a taxpayer who had at some time or other been found guilty of criminal fraud in relation to VAT. In such cases, the department may require that the person concerned is to give such bank guarantees as the minister may approve before he can further trade or provide services which may be likable to VAT. If the person goes ahead with his

business without giving such guarantees, this would constitute another crime. In the present case, a company director had been found guilty of VAT fraud. Subsequently he resigned as director but was employed as general manager, and the department took action against the company under these provisions. The ART agreed that the department had acted correctly in requesting a bank guarantee and in accordance with the aforesaid provisions, including guidelines validly issued thereunder. In terms of company law, a manager is as much an officer of a company as a director, while in terms of tax legislation, a company and its officers are responsible *in solidum* for all the requirements imposed by the law. It therefore followed that the department had every right to impose the requirement of a bank guarantee before appellant company could carry on with its trade. The ART also found that there was no question of ‘double jeopardy’ through the imposition of the requirement when the manager had already been found guilty in court, and paid the resulting penalty. Furthermore, there was no proof that the company was being discriminated against, or that the amount of the guarantee required was excessive.

(Note: there is no indication that these provisions have been successfully challenged on constitutional grounds. The case was inherited by the ART from the old VAT Board of Appeals, and that Board may not have been competent to hear the case. The ART, on the other hand, was fully competent to hear the case as part of its functions as a general appeals tribunal against administrative proceedings).

Rikors 135/2012

27 October 2014

A case where the Department insisted upon its pound of flesh: a penalty imposed for late filing and payment on acquisition of a yacht. The ART did not accept the only argument brought forward by the company, which was to the effect that the wife of the individual concerned was at that time diagnosed as terminally ill and in fact died within a few months. The ART pointed out that this reason should, in terms of law, have been brought up with the Department at the appropriate time for it to be considered. The company also had its own representative who could have attended to the matter in time, and the ART therefore refused to intervene. *(Note: it does not seem to have been brought to the ART’s attention that it was public knowledge that the representative was herself also diagnosed with a terminal illness and died a short time later).*

Rikors 149/2012

9 May 2017

The Central Bank of Malta entered into an agreement with a private company under which the latter was to provide “service of cash processing consisting of the authentication, sorting, counting and packaging of bank notes and coins”. The company claimed exemption from VAT on the grounds that the services were part of core banking and which had, in fact, been

previously carried out by the Central Bank itself. The Department refused the claim, basically because appellant was not itself a banker, and that it was simply carrying out an act of trade. The ART disagreed: it quoted ECJ decisions leading to the recognition that the transaction in question was a crucial part of banking operations. It did not matter that appellant was not itself licensed as a banker. What was important was the nature of the transaction not who carried it out, and appellant was therefore entitled to exemption without credit. *(Note: the ART tended to be influenced by relevant interpretations issued by the tax authorities in the United Kingdom. This appears to be against the rule established long ago by the Board of Special Commissioners in income tax in case no 70 decided on 18 October 1958).* The ART successfully glossed over the possibly inaccurate translation in the Maltese text of the law of the expression found in the Sixth Directive regarding “transactions” as “operazzjonijiet”, when the literal and perfectly idiomatic translation as “transazzjonijiet” would have been preferable.

Rikors 169/2012

1 September 2014

The ART decision in this case more or less approved various agreements reached between the parties during the course of the appeal regarding deductions claimed, and how these were to be applied. The Department also withdrew its request for the application of article 48(5) of the VAT law *(Note: which the ART has roundly refused to apply in other cases)*, and the ART only rejected some minor claims. Each party was to bear its own costs.

Rikors 176/2012

5 June 2018

This case appears to be one in which a mountain was made out of a mole hill. Appellant, who was given being a helping hand by her apparently incompetent husband, purchased a business which was run with negative results for a few months, spanning two periods. She then sold the business to somebody else and asked for deregistration. The usual credit control exercise was carried out by the department and following some mathematical computation by the VAT inspector, relatively minor charges were raised. Appellant claimed that the first period under review was statute barred, and that the second should be based on her returns. On the withdrawal of the claim for prescription for the first period, it was doubtful whether there remained any appeal for that period, but the ART accepted that the other grounds in the appeal could be made to apply to this period as well. The evidence given by, or on behalf of appellant, including that given by her husband, was fairly confused, and the ART rejected the claims made, with costs on the grounds that it had not been proved that the assessments were excessive.

Rikors 177/2012

5 December 2017

This case was identical to that decided under **Rikors 134/2012** on the same day. The present case was presumably filed by another company in the same group, and the appeal was likewise rejected with costs.

Rikors 185/2012

8 July 2016

A very minor case where the Department's resources seem to have been squandered rather unprofitably, and where the A.R.T. expressed itself rather strongly.

Taxpayer had opened a high fashion shop in Balzan, but the business collapsed within a few months. De-registration was duly obtained, but the Department years later demanded the production of documents and returns. Taxpayer seemed to have been in the process of personal separation from her husband at the time, and she claimed that the relative documents had been lost or misplaced in the meantime. The Department obtained information from various sources and applied a mark-up of 79% which was its bench-mark for that kind of business, after reregistering appellant. The A.R.T. was severely critical of the Department's handling of the case, but admitted that it had acted within its rights. The mark up of 79% was in the circumstances clearly excessive and the A.R.T. reduced it to 47%. The A.R.T. quoted both VAT case law and the Income Tax case of Argosy which had been regularly applied in Malta in support of its stand, but unfortunately could not see its way to total cancellation of the assessment which seemed to be justified in the circumstances.

Rikors 188/2012

15 November 2016

A long drawn out case covering both input and output VAT. Appellant company failed to give its co-operation with the Department in its investigations, and blamed all its problems on computers and computer programmes. Appointments were not kept and documents not presented. The A.R.T. was not greatly impressed with the company's excuses and explanations, and confirmed the assessments as raised, as well as the penalties and interest imposed. It also refused to reduce administrative penalties from 20% to 10% as it accepted that the adjustments made by appellant had not been made at the appropriate time. As rather large amounts were involved in this case, the company's attitude in the matter is not easily understandable.

Rikors 191/2012

17 October 2017

Another case relating to an Investigation Audit Report carried out by the Department's inspectors. Appellants were a large provider of transport services, with a busy turnover. This required that a large proportion of the work had to be subcontracted to various individuals who provided their own vehicles. The audit team seemed to expect a faultless audit trail with invoices moving to and fro with each party confirming the other. In particular, the Department insisted that all invoices should have been signed, but this was simply not mentioned by the law. The ART was quick to point out that this event reduced the value and validity of the audit report. The ART also pointed out that during the four year period covered by the report, only two transactions seemed to be suspect. This could hardly be considered to constitute proof of

radical shortcomings in appellant's records regarding input tax. The ART was surprised how both sides attempted to take advantage of the same set of facts, but it finalized the case by granting a deduction for a large amount of input tax, and showed what it thought of the extreme positions adopted by the Department by awarding all costs in favour of appellant, and hence to be borne by the Department.

Rikors 192/2012

17 October 2017

A complicated case concerning a trading company which kept its records on a computer system tailored for its purposes. The arising complications kept the VAT inspectors and all others concerned in the case involved in laborious computations. The ART obviously did its best to sort out matters, but all decisions taken, whether in favour, or against, either party, could, it seems, have equally gone the other way. The fact that directors of the company had been subject to criminal prosecutions by the Police Economic Crime Unit further complicated matters. The ART ordered various adjustments to tax, penalties and interest charged by the Department, but the allocation of costs as to $\frac{3}{4}$ to be borne by the appellant and as to $\frac{1}{4}$ to be borne by the Department reflects the overall result of the proceedings. In the midst of all complications, there was also some confusion caused by items in Maltese liri being deemed to have been erroneously translated into euros, or vice versa. The particular and specific features of this case indicate the hard work which has to be put in to solve accounting-related VAT complications, but can hardly shed any light on the general workings of the system.

Rikors 233/2012

17 May 2016

This appeal concerned a firm of lawyers who had been subject of an in-depth investigation by the Tax Compliance Unit. Large amounts of allegedly unreported output tax were brought to charge, and heavy interest and penalties applied. The same case was also subject to action under the Income Tax legislation where appellants contended that they had had better success with the Revenue than with the VAT Department but, on procedural grounds the ART refused to have the two cases dealt with in tandem. The issues involved were based on the fact that the firm's bank accounts did not distinguish between clients' monies and the firm's own private monies, and that the TCU had come out with a capital accretion exercise which seemed to be grossly exaggerated. The firm refused to give details of the bank accounts as they contended that the exercise would lead to an infringement of their confidentiality obligations towards their clients. The Department was not very helpful in sorting out this issue, which it is well known to arise often, and the ART basically told appellants that it was all their fault as they should have kept separate accounts. As regards the capital accretion exercise, appellants appeared to have successfully shown its serious defects, but the ART, perhaps stressing too much procedural points, refused to modify the TCU's conclusions and confirmed the assessments, with costs.

Rikors 234/2012

21 March 2013

The Department in this case filed a preliminary plea that the appeal was null and void having been filed late. Taxpayer and his family (and also his representatives) had several times indicated his desire to appeal from assessments raised upon him, but no formal appeal had been filed. The excuse put forward when an appeal was eventually filed was that of bad mental health of the taxpayer concerned. This was not doubted, but the ART went to great lengths to show that its hands were tied in this matter by our system of legislation which had been rigorously applied by case law. The appeal had therefore to be rejected with costs.

Rikors 236/2012

28 May 2015

This rather complicated and unusual case had been inherited by the ART from the Appeals Tribunal formerly constituted under the VAT law. The ART commenced its decision by throwing out a suggestion made by the Department in a note of submissions that the ART might not have been the proper forum for the hearing of the case. The ART pointed out that proper procedure would have been for the issue to be raised as a preliminary plea so as to safeguard the other party's right of contesting the issue. In any case, the ART was convinced that it was the proper forum for the case to be heard, and proceeded accordingly.

The real issue to be decided in this case involved the claim by the Department for the repayment of a large sum in respect of refunds granted to it over the years as a shipping and travel agent for the American navy, the British navy and ships belonging to other countries forming part of the NATO alliance. The matter had its origin in an arrangement made by the Department with appellant in 2004 in respect of the American navy whose agency it already had. When appellant had acquired the NATO agency in 2006, the same procedure was followed though no fresh arrangement was made. The same thing happened in 2009 when the agency of the British navy was acquired.

The first arrangement was made in 8 June 2004 and was signed by a high Departmental official (though not the head), appellant's representative, the permanent secretary of the Ministry for Foreign Affairs, and an official from the American Embassy. In terms of the arrangement it was recognised that American naval ships were entitled to certain exemptions, and that appellant company, as their agent, could claim refunds for the relative VAT paid. A similar arrangement had been entered into by the British Royal Fleet Auxiliary ships (which did not actually form part of the British Navy), and when appellant became agent for the British navy in 2009, the same procedure had been followed, as had happened in 2006 when the NATO agency had been acquired.

When appellant made its usual claim for refund in 2011, the Department noticed that some of the exemptions granted had not even been granted through an agreement. A repayment of

the refunds granted was therefore asked for, and a decision was made to terminate the 2004 agreement as from that day onwards. Appellant company was contesting both issues.

The ART pointed out that case law indicated that similar arrangements which went beyond (or outside) the law could be cancelled for the future by the appropriate authority. The ART therefore rejected appellant's plea that it was being deprived of an acquired right. The Department had acted properly, at least as regards procedure. An awkward point arose in the sense that the 2004 arrangement may have been made by officials not authorised to do so under tax and financial legislation. This point was not laboured much, though (most unusually) names were named. *(Note: it may be argued that if public officers had acted beyond their authority, they should have been disciplined, but third parties should not be made to suffer since there was nothing wrong or criminal in the arrangement).*

Appellant claimed that if the arrangements were withdrawn, Malta as a maritime nation would be at some disadvantage, but the ART found that this had not been proved. The ART also rejected a host of claims made by appellant regarding acquired rights, legitimate expectations, alleged discrimination, European law, and Malta's position as a neutral state as set out in the Constitution.

The ART concluded that the 2004 agreement had not been consonant with local legislation or with European law and directives. The arrangements could therefore be revoked for the future: no attempt had been made to give termination retroactive effect. Where no formal arrangements had been entered into by the Department, however, repayment of all refunds granted to appellant could be rightly claimed back.

Rikors 237/2012

2 May 2016

This appeal concerned an administrative penalty of some EUR 4,000 imposed for an overclaim of set-off regarding input VAT. This had been imposed in respect of what the Department considered to be an excessive claim for Input Tax of some EUR 20,000. Initially, the ART found it necessary to trace the changes in departmental structures and delegation of duties following the constitution of the office of Commissioner for Taxes, and came to the conclusion that there were no procedural issues to contest. On the question of the administrative penalty, the ART noted that the alleged overclaim for Input Tax had been dropped by the Department as it emerged that what had happened was only that the claim had been included in the wrong VAT period. From this point onwards, however, all concerned in the case were engulfed in a morass of never ending administrative complications. Major importance was given to an adjustment form which should, or should not, have been used, and whether the use of this form was binding. In actual fact, the ART pointed out that the form had only been prescribed on the day before its decision was delivered, thus (for the future) removing all doubts. This

notwithstanding, the ART felt that it had to sanction the administrative penalty as the fairly convoluted provisions of the legislation so required. The ART also refused to consider further arguments brought forward by the appellant on the grounds that the points raised had not been in contention between the parties. *(Note: with respect, this appears to be an exceptionally radical application of all norms on this matter, and a reversal of well established principles in tax cases. Moreover, the confirmation of a hefty penalty because of an administrative error which in no way affected the amount of tax payable is surely not consonant with the principles of substantive justice, or with the well established aphorism that “Justice must not only be done, it must also be seen to be done”).*

Rikors 238/2012

6 February 2014

This case did not concern the determination of tax (or its refund), but only whether applicant was liable for payment of tax, penalties etc in her capacity of secretary to the relevant company. This was a major departure from the structure of appeals under tax legislation. The old Boards of Special Commissioners (I.T.) and of Appeals (VAT) could only be concerned with the technical computation of the amounts payable. The ART, however, felt that the new arrangements made on its constitution just about brought such issues within its ambit, as it did not appear that any other court was vested with the power of resolving this dispute. The secretary of a company was, in this case, being threatened with civil and criminal action in respect of the liabilities of the company amounting to over one million euros, and she applied to the ART to obtain a declaration that she was not so liable.

The ART established that applicant did not have any powers or standing in respect of fiscal matters under the company’s statute – or in practice. Neither did she have any powers in respect of the immovable property owned by the company. It was also established that she was not being accused by the Department of having acted in any way in bad faith in any relevant matter connected with the company. In actual fact, she was barely connected with the company, being only a director of a company acting as secretary of the defaulting company.

As regards alleged failure to file a tax return for a particular period in 2006, the ART accepted that applicant had, through a genuine error, filed a return for the same period in 2007. By the time she realized her error, she no longer had any connection with the company.

Apart from the question of the said tax period, applicant had always acted in good faith as required by article 66 of the VAT law, and she never had any control over the property of the company so that, ‘on a practical and factual level’, she could never be held responsible for the payment of the tax, irrespective of what could possibly be read into the provisions of the VAT law. The ART therefore accepted the application made to it, with both parties having to bear their own costs.

Rikors 241/2012**5 December 2017**

A rather unusual and prolonged case characterised by unethical behaviour by appellant and his adviser. The real merits of the case concerned the failure of appellant to provide proof of input tax claimed as a deduction. Despite repeated requests by the department, and promises by the taxpayer, this documentary proof was never forthcoming, but just before the hearing, a stray letter was discovered by officials in their files purporting to provide some information. There was every indication that the letter had been slipped in by unauthorized person/s, but the ART simply declared that even if it had been genuine, the contents of the letter would not have substantially advanced appellant's case. The adviser had also claimed that e-mails which the department claimed to have sent to him must have been wrongly addressed as he never received them. It was however proved that at least one of the letters had been acknowledged by him. In view of all this, the ART had no difficulty in rejecting the appeal with costs.

Rikors 271/2012**15 November 2016**

A minor case taken to extreme limits. Appellant used to run a beauty shop which she closed as her husband was dying in 2009. She asked for, and apparently obtained de-registration for VAT purposes at the same time, but in 2011 she was asked to produce documents proving input VAT for years prior to closing down re capital goods, and credit notes for closing stock which she had returned to suppliers on closing down. Taxpayer and her family claimed that in the resulting confusion following this family upheaval, this documentation was lost, so that the law's requirements regarding the presentation of documents could not be enforced as this was due to an "irresistible force or a fortuitous event" as recognized by the general laws of Malta. The A.R.T., basing itself on printed court decision no 149, accepted the validity of this theory, but found itself unable to give the benefit of the doubt to appellants as the reasons given for the loss of the documents were held to be conflicting and not satisfactory.

Rikors 274/2012**24 April 2017**

In this case, a limited liability company was served with an estimated assessment. Appellant was one of the directors of the company, and the Department made use of its rights under the law to claim payment of the tax from him personally in virtue of his position. Taxpayer protested against this action and claimed that the provisions of the law in this respect did not apply to him. When he received no reply to his submissions, he had recourse to the ART. The Department put in a preliminary plea that payment was not a fit subject for an appeal to the ART. Case law appeared to back the Department, but the ART pointed out that while the Department had an executive titled against the company, it had not yet proceeded to enforce it as required by law. The taxpayer was therefore within his rights to appeal to the ART for its protection.

Rikors 279/2012

6 March 2018

Appellant had problem with the formulation of his profit and loss account. The one submitted to the income tax authorities showed profits much in excess of that submitted to the VAT Department. The latter had been prepared by an accountant who had worked diligently on source material. The Department, however, raised an assessment to VAT on the basis of what had been submitted for the purposes of income tax. All this was explained to the ART which inevitably asked what was being done about the income tax situation. Appellant replied that steps were being taken to have adjusted computations submitted to the other department. As these never seemed to be forthcoming, the ART confirmed the VAT assessments as raised. *(Note: it does not emerge how the income tax issue was settled).*

Rikors 288/2012

9 June 2016

A minor case concerning a penalty imposed for over declaration of input VAT. Taxpayer agreed with the amount of the tax payable, but contested the application of additional tax and interest. His business had been in the process of winding down, and this complicated the matter. The A.R.T. dealt fully with the rather naïve excuses brought forward by the taxpayer, but refused to accept that there were valid reasons why it should order the cancellation of interest and additional tax.

Rikors 292/2012

8 October 2013

A preliminary plea raised by appellant company in this case was to the effect that assessments had been sent to and left at the wrong address, and that the company was only informally advised that this had been done through copies given to it by the Department. The last point so set out does not appear clearly from the decision as the ART concentrated on the fact that “the wrong address” was a letter box at the company’s former premises, to which it apparently still had access. The assessments were left in this letter box by Departmental ‘inspectors’, and were duly collected by representatives of the company. Appeal proceedings were thereafter commenced within the time limit contemplated by law. The ART concluded that no prejudice had been suffered by appellants through the perhaps unusual method of notification, and rejected the preliminary plea with costs.

Rikors 300/2012

18 January 2016

Another case concerning tax legislation which sought to impede appellants from making use of documents when these had originally not been presented to the Department when requested. The repercussions of the possible application of the draconian provisions of article 48(5) of the VAT Act had been made worse in this case as taxpayer had been seriously ill following grievous bodily injuries which had also affected him psychologically. This had been proved by

documentary evidence as well as by evidence given before the ART by appellant's doctor. The ART had therefore little difficulty in refusing to apply the said provisions, and it deferred the case for continuation on its real merits.

Rikors 301/2012

25 November 2013

The case concerned a penalty imposed upon an individual who distributed milk to retailers. This was an 'exempt with credit' transaction, and no tax at all was chargeable. Taxpayer should however have entered figures in his tax return, not merely indicating what business he was engaged in. However, everything went smoothly in this regards for over a decade, with the Department extracting the relevant figures from other sources at its disposal. Suddenly, however, the Department slapped an administrative of EUR 900 on appellant which it collected from refunds due by it to taxpayer. The ART noted that administrative penalties were chargeable at the discretion of the Department, but it then went on to analyse what court decisions and authoritative text-books had laid down regarding the use of discretion. These established rules which were far more reasonable than what had been held in the past, besides ruling that the exercise of discretion could never be absolute and beyond questioning. In the present case, the facts spoke for themselves, and the ART ruled that appellant had a reasonable excuse against the imposition of a penalty, which it therefore cancelled with costs against the Department.

Rikors 303/2012

18 February 2016

During the course of the hearing of the appeal, the Department cancelled the assessments complained of as it accepted that these had been raised *ultra vires*. This was the result of a fine interplay between thresholds and liability/registration under articles 10 or 11 of the VAT Act. Appellant obviously accepted cancellation, but insisted upon all costs being paid by the Department. This was resisted, but the ART agreed with appellant as it was inconceivable that anybody but the Department should pay costs when it had accepted that the assessments complained of had been raised *ultra vires*.

Rikors 304/2012

9 May 2017

Appellant company was a wholesaler of foodstuffs and related items. The Department was not satisfied with the margin of profit shown in its books and held that this indicated a shortfall in sales reported, and hence less VAT being paid. An accountancy exercise made by the Department seemed to indicate that its conclusions were correct. No question arose as regards input tax, and appellant contended that the difference emerging from this exercise must have resulted from wrong handling of expenses by the Government advisers. The ART felt that this question had been properly considered in the audit exercise, and all in all it was satisfied that

the official calculations were more correct than those put forward by appellant. The appeal was therefore rejected with costs.

Rikors 310/2012

20 October 2016

A rather disappointing case regarding an ironmonger from Gudja who also kept some dairy cows. An extraordinarily minute examination of taxpayer's records revealed minor discrepancies and shortcomings on the basis of which assessments were raised on taxpayer assuming a profit of 20%. This was the accepted rate of profit and had been worked out as a bench mark by the Department. Appellant claimed that he only made a 15% profit, as he was forced to grant discounts to clients, while the E.U. actually recommended 13%. The A.R.T. pointed out that taxpayer had in fact recorded a profit of 13%, and in view of the discrepancies noted in the records, refused to alter the assessment in any way, rejecting the Appeal. The dairy side of appellants' activities does not seem to have been queried.

Rikors 311/2012

22 May 2018

In this case it seems that a mountain was made out of a mole-hill. Taxpayer had asked for de-registration, though it is not clear on what grounds. The Department made a Credit Control Exercise to check input VAT claimed as a deduction in what were presumably the few periods during which the trade was exercised. The expenses on which input VAT was reclaimed were apparently not proved by invoices to the extent of a few thousand euros (expenses), and taxpayer clearly tried to make arrangements with one of his suppliers to furnish him with an 'invoice' accordingly. This was spotted by the VAT inspectors and the ART eventually reported the matter to the police. (*Note: it is not known with what results*). Among the disallowed input VAT was the amount paid on the purchase of a computer, which the ART decided could not be used for the purposes of taxpayer's business which was agriculture. The appeal was rejected with costs.

Rikors 373/2012

6 March 2018

The appellant in this case asked the ART to revoke the Department's refusal to grant him benefits contemplated by an amnesty made available by Government. He claimed that the decision was null as it was not motivated and that. In any case, he was entitled to the benefits. The ART refused the appeal with costs against the appellant, rightly pointing out that the motivation of the decision was as clear as crystal, and that the taxpayer could not hope to benefit under the amnesty as he had not aligned himself with the factual requirements of submission of returns and of effecting payments as required by the relative legal notice.

Rikors 45/2013

21 July 2014

This was a preliminary decision in respect of a company which, by the time the notice of refusal was issued, had been put into liquidation. The refusal was correctly sent to the address of the liquidator, but rather loosely addressed to “The director XXLtd”, adding that it was for the attention of A.B. the company liquidator. The liquidator requested a preliminary decision as to whether the notice of refusal had, in the circumstances, been properly notified. The ART took the line that once the notice of refusal had been sent, and also addressed to the liquidator by name, and received at his address, the rather loose wording used did not really matter too much, and rejected the plea with costs.

Rikors 57/2013

24 February 2014

Appellant in this case had been served with a demand note for the payment of a substantial amount which would become an executive title within a few days. This sort of action (found in all fiscal legislation) is in line with the provisions of the normal law of Malta. The Department filed a preliminary plea in the sense that the matter did not fall within the competence of the ART. The ART agreed: its competence in respect of the VAT legislation was limited to matters concerning the establishment of what tax or refunds were due, and ancillary matters. It was also specifically excluded by its own constituent law from taking cognizance of issues falling within the competence of any other established court. The matter being appealed was a demand for payment which could not be referred to the ART, irrespective of whether the amount claimed was in accordance with the VAT law or not. The ART could only intervene on determining what was due, but not in its collection. *(Note: several of these cases turned up before the ART which really could do nothing but reject them all. It may well be that taxpayers would have failed to take appropriate steps to contest the assessments received by way of objection and appeal, and were trying to find an alternative way of appealing, but the ART cannot be expected to make good this failure).*

Rikors 63/2013

30 March 2015

This case was inherited by the ART from the old Appeals Board. It did not concern an assessment, but was a referral made by appellant company regarding the interpretation of certain provisions of the VAT legislation.

Appellant company had built five villas in a development project, with the initial intention being to rent 3 of the villas and to sell the other 2 to generate liquidity for the project. As such, input VAT suffered could only be set-off in respect of the proportion of the expenditure attributable to the villas intended for renting. On the acquisition of further finance, however, the company decided not to sell the 2 villas, but also to retain them for renting purposes. Following this ‘change of intention’, it made an adjusted claim for the set-off of the full expenditure. The

Department did not agree that there had been an appropriate “change of intention” sufficient to bring about deductibility, and a case recently decided by the Court of Appeal (so far unpublished) seemed to give the necessary judicial backing to this stand.

Appellant, however, made reference to various ECJ decisions which upheld its contentions. These had apparently not been brought to the attention of the Court in the said case, and the ART held that the Court may have been misguided in its decision, though there were some differences between the facts of the two cases. The ART held that in such cases the EU law as interpreted by the ECJ had to be deemed to be over-riding. As local law and EU law and directives had remained aligned throughout the various adjustments and modifications made to the original Sixth Directive in this regards, the ART ruled that the set-off claimed by appellant was to be granted, but it pointed out that this had to be worked out according to the special mechanism concerning capital expenditure. Costs were to be borne by the Department.

Rikorsi 84, 85, 86 and 90/2013

8 October 2013

These appeals to the ART were all made by connected companies, and the proceedings and decisions are identical in each case.

The Department filed a preliminary plea in each case to the effect that the subject matter of the disagreement between appellants and the Department did not fall within the jurisdiction of the ART. This concerned demand notes for payment which had assumed the status of an executive title in terms of the VAT law. The ART held that action for collection and payment had nothing to do with its functions which were essentially concerned with determining the quantum of the tax or of refunds due. The VAT law itself in article 58(1) set out that action for payment of tax and penalties was to be taken before the Civil Court. The Department had been clearly proceeding accordingly and the ART could not intervene. The ART, in its capacity as a general Administrative Review Tribunal, can only intervene where a law does not otherwise provide.

Rikors 67/2013

9 May 2013

The taxpayer had died before assessments could be raised. The Department was led a merry danced when seeking to finalise matters with his heirs. Finally, they managed to deliver assessment to “Ms X on behalf of the heirs of (the taxpayer)”. When an appeal to the ART was filed by Ms X, the Department submitted a preliminary plea that it had been filed late. The ART, however, ruled that this method of addressing the relative notice of assessments was itself defective, and the preliminary plea was therefore rejected.

A unique case regarding the method in which interest on VAT refunds (and arrears of payment) is to be computed. Appellant claimed that interest on refunds, which the law essentially fixed at 1% per month in both cases of arrears and refund of the tax, was to be calculated on the compound interest manner. This would have meant that unpaid interest was to be immediately added to the amount of the refund due, yielding higher amounts due month by month. The department on the other hand, insisted that the interest was to be calculated on the simple interest manner, with a like amount being chargeable every month during which non-payment existed. Where the amount of the refund due was large and/or refund took long to effect, as in this case, the difference between the two methods could be rather startling. During the proceedings before the ART it was factually proved that the department in the past had operated the compound manner of computation in both situations. This was also the case in appellant's own dealings with the department. It also emerged that at some stage the law had been changed to the effect that 'tax' would always mean pure tax shorn of all interest, penalties, etc. This change did not affect the present case, but it was clearly an argument in favour of appellant's viewpoint. The ART, however, held that the Department had been technically wrong in using the compound method of computation, both as regards arrears and as regards refunds. The fact that the law had been changed to remove all doubts on the matter was not a valid argument as to why a wrong procedure was to be utilized in cases which were still open. *(Note: a similar issue had been decided in income tax some years before in a case concerning trade in tax loss companies. It was there decided that although the case concerned a year of assessment previous to an amendment crystallizing the point, these transactions had already fallen under the arrangements concerning artificial or fictitious transaction which had long formed part of the legislation).* The department could not be faulted if it changed procedures to be in line with the law, and the appeal had to be rejected, with costs.

This was another appeal filed with the ART against collection proceedings taken by the Department in accordance with and under the normal law of Malta. The ART once again set out the process whereby it was vested with the hearing of appeals still pending before the Appeals Board under VAT law. It then repeated the conclusion already arrived at in various decisions that collection proceedings were not within its brief, but were regulated by the general laws of Malta regarding executive titles in respect of outstanding dues to Government. The appeal therefore had to be rejected with costs as the ART was not the proper forum for the consideration of such issues.

This case appears to result from the finalisation of the issues dealt with in case 85/2012. As a result of that case, the Department claimed nearly EUR 1 million in respect of interest on VAT which, as described in the first case, had been paid late. The case was further complicated by the fact that Enemalta and the foreign company concerned had entered into arrangements between them as to who would accept responsibility. The amount claimed had been paid 'under protest' and a refund was now being claimed. This was refused by the Department which tended to hold that payment of interest was automatic and that it had no power to reduce it. On the other hand, various smaller penalty charges were remitted in full.

Much of the argumentation in this case concerned the nature of the interest charged, that is whether it was penal or remunerative in respect of damages suffered. The question also arose as to whether normal civil law was to apply, and to what extent the fact that the interest was being charged by a special tax law should affect the issue. The ART tended to apply the second alternative, but in any case it held that the rate of 12% (i.e. 1% per month) was not so excessive as to constitute usury as known to civil law. The ART found that interest was chargeable in the circumstances, even though the appellant may not have been guilty of fraud or attempted evasion. Fault for some shortcomings had still to be shouldered by appellant, but the ART found that the Department had been seriously at fault in failing to give directives about the question of liability to pay tax on the supply of the fuel in question. The Department's opinion in the matter had also seemed to vary from time to time. The ART therefore restricted the period for which interest was to be paid, and ordered the repayment of the balance which had been paid 'under protest', thus firmly rejecting the Department's thesis that it had no power to effect refunds. Legal interest on the amount repayable was now also payable from the date of the decision to the date of its payment. Each party was to pay half of the costs of the case before the ART

In a case involving large amounts of tax charged, penalties imposed and interest accrued, the Department (obviously after a lot of soul searching) decided to request the ART to apply the draconian provisions of article 48(5) of the Value Added Tax Act. These are to the effect that where a taxpayer has been uncooperative with the Department, he may be prohibited from bringing forward documentary or other proof before the ART which he had been requested to make available during the assessment and review stages, but which he had unreasonably failed to provide. These provisions had originated in the Income Tax Act some forty years earlier, but in their current state in the VAT law their imposition may not be absolutely mandatory. The ART was clearly troubled with the demand, and made an extensive review of Court of Appeal cases on the subject. Lengthy quotations from these decisions were reproduced, which all

indicated that the courts were of the opinion that the right of every citizen to contest being deprived of proving his case could not be easily removed in such an arbitrary fashion. One of the judgements was to the effect that such prohibition was probably unconstitutional, but the Court could not give a decision on the issue as it was not sitting in its constitutional capacity. In this case, the ART pointed out that such action would, in fact, be contrary to the provisions of the law under which it was constituted. This not only insisted that the ART had to follow the rules of natural justice, but also to make certain that both parties appearing before it had full facility to make their case in whatever way they deemed most appropriate. The parity of arms principle was one which no Court or Tribunal could over-ride. Infringement of these basic rules was considered to be so serious as to lead to the annulment of any decision tainted with such shortcomings. After due consideration of all the relevant pros and cons, the ART refused the Department's preliminary submissions and directed the continuation of the case to be heard on its merits.

Rikorsi 142, 143, 144,145 and 146/2013

18 January 2016

All these Rikorsi were identical in substance and fact with Rikors 141/2013 summarized above, and all were also decided on the same day. All six appellants appear to be different individuals, though obviously the amounts in dispute were different in each case. The ART refused in all cases to impose the provisions of article 48(5) of the VAT Act.

Rikors 159/2013

18 February 2016

On a preliminary point, the Department contended that the company's appeal to the ART was null and void as it had been filed two days late. The ART ruled that in such cases, the onus of proof of nullity reversed itself and lay on the Department. There was no question that the notice of refusal had found its way to the registered office of the appellant, but the ART found that what happened in that place did not satisfy the requirements of law. The refusal was addressed to the director of the company, but on the date of 'service' he was abroad, and the 'inspectors' from the Department expected an individual whom they found on the premises to accept the refusal. She declined on the grounds that she was not an employee of the company and had no authority to do so, and had been warned by the director not to accept any letter packet. The 'inspectors' thereupon left the letter-packet on the reception desk of the company's office. The ART seems to have by-passed the provisions of the VAT legislation in this respect (something which had been debated several times before the Court of Appeal under both VAT and Income Tax, albeit with some unusual results), and had recourse to the provisions of the Code of Organisation and Civil Procedure in this regards. These had been used in non-tax cases to determine that when the addressee refused to receive a notice, he was nonetheless to

be deemed to have received it. The ART, however, decided that the provisions of the C.O.C.P. could only be invoked when the addressee himself refused to accept the notice. In this case, the addressee had been abroad and the person approached by the 'inspectors' had no standing in the company. The ART therefore decided that the provisions of the C.O.C.P. were not applicable. The 'inspectors' had no right to leave the letter packet on the company's reception desk and delivery of the refusal could not be deemed to have been successfully made. The Department's preliminary plea was therefore rejected.

(Note: the latest twist in the saga regarding delivery of notices connected with taxation which has been going on since the middle of the last century).

Rikors 327/2013

An important and ground breaking decision by the A.R.T. The Department had issued provisional assessments which it later confirmed by final assessments. Taxpayer had appealed on the grounds that the final assessments had been issued after the statutory six month time limit. Apparently, the Department accepted that this was correct, whereupon it informed the Tribunal that everything was being cancelled. Later, however, fresh provisional assessments were issued which were confirmed by final assessments – this time issued within the stipulated time limit. Taxpayer objected on the ground that this was exposing him to double jeopardy. The A.R.T. clearly felt that this could not be the case in the circumstances, but it went on to review and quote several Court decisions which had held that this procedure was not acceptable, and that it was unreasonable and inequitable for the Department to try to get around statute barring in this way. It was however argued by the Department that while case law was being correctly quoted, legislative action had since then been taken to allow this procedure to be followed. The A.R.T. acknowledged what the amendments had set out to achieve, but it still held that what had been ruled to be unreasonable and inequitable, could not be set right by any law stating that this notwithstanding, the procedure could still be followed. The taxpayer's request for the cancellation of the new set of assessments was therefore upheld. *(Note: An outstanding decision which has few, if any precedents. The only known similar case was one in the U.K. in which it is reported that the courts had "gleefully" found a defect in amending legislation seeking to overturn one of their decisions. The decision in the present case appears to go further as it rendered nugatory Parliament's attempt at over-riding reason and equity).*

Rikors 29/2014

29 May 2017

Appellant had had his registration to one under article 10 of the VAT legislation. This was done with retrospective effect and assessments were raised for three past years. Taxpayer appealed to the ART, but Department cancelled the assessments as it noted that it had not issued

provisional assessments as required by law, but had gone straight to the issue of final assessments. Taxpayer required the ART to give a decision on the original assessments which the Department had cancelled, possibly to influence other appeals which he apparently had outstanding, and certainly in view of the award of costs. As regards costs, the Department pointed out that the whole story had begun when appellant had not reported that a change of registration was due to an increase in turnover, and that therefore he should pay at least half of the costs. The ART could not accept this line of reasoning, and while quoting established case law that no decision could be given on assessments which had already been cancelled, it held that since the cancelled assessments had not followed the precise procedure set out in the law, all costs of that case had to be paid by the Department.

Rikors 35/2014

24 April 2017

With all due respect, the ART was asked in this case to give a preliminary decision in what can only be called an exercise in nitpicking by the Department. Taxpayer had accepted increases in its tax bill, but it appealed to the ART on the grounds that no penal additional tax or interest should have been charged. The Department put up all sorts of preliminary pleas in arguing that the appeal was null and void. Thus to everybody's astonishment (including the ART), it was argued that appellant should have identified precisely the articles of the law giving the right of appeal in the case in question. The ART gave short shrift to this approach, rejecting all preliminary pleas filed, with costs against the Department.

Rikors 101/2014

24 April 2017

Another case concerning alleged prescription in the raising of assessments. The ART gave a preliminary decision on this issue, deferring the hearing of the appeal on substantive issues to a later date. It resulted that both the provisional and the final assessments had been raised within the prescribed time limits, and a decrease in the amount of tax claimed in the final assessment, was in line with the specific provisions of the law, so that a decreased claim could not be held to be a new assessment reopening the entire procedures.

Rikors 5/2015

8 January 2019

This decision concerned a preliminary plea raised by the Department to the effect that the appeal had been filed late by some days. *(Note: a recurrent theme in tax appeals at the first instance, with most of the decisions not being published any more, but this case threw up a new twist which is worth recording).* It emerged that the delivery of the notice of refusal had been effected by two VAT inspectors by being slipped under the door of the flat to which it had been addressed. This method of service had been accepted as valid by the tribunals on various instances, but in this case the ART pointed out that, by the date of such notification, appellant had moved his residence elsewhere and had so notified the postal authorities, though no the

VAT department. The ART indicated that the method used could still be valid in virtue of the deeming provision regarding that method of service, but it was going too far to be acceptable when appellant had already moved his residence elsewhere. The proper procedure to be followed in these cases was for a notice to be published in the Government Gazette and another newspaper, calling upon appellant to attend at the department. The preliminary plea put in by the Department was therefore rejected with costs.

Rikors 15/2015

8 February 2018

This case concerned the likability of a secretary of a company for payment of the tax due by the company in consequence of the obligations laid down by law on such officers. Appellant had been encouraged to take up this post with the company, in which he did practically nothing, in the hope that he would eventually be appointed as accountant. This never materialised, and appellant then resigned from the post when he became aware that things were not being done as they should in the company. Relying on an earlier decision given in Rikors 239/2012, the ART held that, as in various court decisions on the matter given principally (if not always) in the case of directors, appellant had not managed to excuse himself from his responsibilities under the law, and it therefore rejected his plea for exemption from liability.

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