

COURT OF APPEAL

SUMMARIES OF COURT OF APPEAL DECISIONS

RE INCOME TAX CASES

The Institute has taken a leading part in the publication in book form of decisions by the Court of Appeal in Income Tax cases. In fact, 240 cases have been published in six volumes covering more than half a century, with the last printed decision having been delivered in March 2009. Following the decrease in the number of cases going to appeal, and the introduction of the new system of online reporting of court decisions by the Ministry of Justice, it is evident that the publication of the seventh volume is still some way off. The Institute is therefore preparing summaries of the relevant cases, which are being presented in chronological order as delivered. For convenience sake, numbers, commencing with 241, have been assigned to the decisions, but it cannot be assumed that eventual publication in volume format will necessarily follow this numbering. Constitutional cases are included even if decided with finality at the level of the Civil Court, First Hall. A brief index of the topics discussed in the summaries is appended.

Case no 241

Judge: Philip Sciberras

17 April 2009

In this case a complicated deal in immovables was attacked by the Revenue as a scheme aimed at avoiding tax. A company purchased land on which it built a fairly large development. It sold one of these flats and a garage space to a different company. Six and a half years later, this company sold the immovables to a newly formed company within the same group, and hence there was no tax payable. A day later, the shareholding in the acquiring company was taken over by a nominee company whereupon the company exited from the group, and the ultimate owners of the property became unknown. The inter-company sale was attacked by the Revenue on the grounds that it was an artificial or fictitious transaction, and assessments were raised accordingly. The Board of Special

Commissioners noted that it had little help in determining the case from definitions in the law or from case law. The Board also noted that the Income Act required that the Revenue's views on the issue should be set out in an 'order in writing', and that this requirement was hardly satisfied by just the issue of an assessment. The Board finally decided that there was no proof forthcoming from the Revenue to show that the transaction, which was perfectly legal and had been correctly carried out, was not such that could be considered to be artificial or fictitious. In fact, the Board seemed to have felt that the final transaction whereby ownership was vested in a nominee company was merely intended to obtain anonymity for the eventual holders, and refused to draw any adverse conclusions therefrom.

The Board, however, noted that appellant company had been remiss in providing documentary evidence required by the Revenue, and imposed a fine of EUR 3,000 to be paid by the company to the Department.

Both parties appealed against the Board's decision. The taxpayer's appeal was limited to the penalty imposed by the Board as aforesaid. The Board had clearly no power to impose the penalty and, in any case, once it had decided that no tax was due on the transaction it made no sense to impose any penalties in respect of any documentary evidence connected with the case. The Court agreed.

As regards whether the inter-company transaction was to be attacked as being artificial or fictitious, the Court quoted case law to the effect that this issue was a point of fact and that, therefore, it was strictly speaking not a fit point to take to the Court. The Court did however analyse the provisions of article 51 of the Income Tax Act which dealt with the matter, to show that it was up to the Revenue to prove that its provisions were applicable in any given case. (*Note: the analysis and the consequences flowing therefrom may not be very limpid, but the decision regarding the onus of proof is important*).

The Court explained how circumstantial evidence could be useful in determining cases which the Revenue considered to be appropriate for investigation under the provisions of the said article 51 of the I.T.A. Mere suspicion or doubt could not, however, be accepted as proof. In this case, the Board had found no reason to go

beyond doubts and suspicions, and the Court was not entitled to do so itself. The Revenue appeal was therefore rejected.

Case no 242

Judge: Raymond C Pace

18 June 2009

This was a rather convoluted case which had already been before the Court in case no 213 (decision delivered 18 October 2006). The Court had then rescinded a decision of the Board of Special Commissioners on the grounds that it had rejected taxpayer's appeal because the company had been largely uncooperative with the Revenue. The Court had held that these were not sufficient grounds for the rejection of the appeal and had sent back the case to be judged afresh by the Board. The Board proceeded with vigour the hearing and determination of the case as instructed by the Court. The subject matter remained the same, namely whether certain transactions in land had been on revenue or capital account. The Board opted for trade and decided accordingly. The company again appealed to the Court (different presiding judge) on the grounds that: (a) the Board had clearly reverted to its original stance which the Court had over-ruled; (b) the Board had decided that the transactions were in the nature of trade with giving a definition of what, at least in its opinion, constituted trade; (c) there was in any case no trade involved as the company was merely disposing of its assets at the best possible price it could obtain; and (d) the Board had not given a fair hearing to the parties in this case as appellant's lawyer could not attend for the sole hearing held as he was unwell.

The Court rejected all these submissions and confirmed the Board's decision with costs. The Board had merely made a passing reference to its former stance, and had then gone deeply into the merits of the appeal. The Board had no obligation or brief to give a legal definition of trade as the expression was found in the Income Tax Act. Whether a set of circumstances and events constituted the carrying out of trade was a point of fact which had to be determined in each case, and the Court quoted several local and foreign cases to this effect. It also touched upon the difference between a point of law and a point of fact: largely to show how difficult it sometimes was to distinguish between the two, though in this case the Court had no doubt that only a point of fact was involved in the Board's

decision, and therefore not subject to appeal. The Court also reviewed the events which appellant had felt constituted an infringement of his right to a fair hearing, and came to the conclusion that this complaint could not be upheld as the Board's management of the case could not be considered tantamount to such infringement.

Case no 243

Judge: Philip Sciberras

12 February 2010

A case which essentially boiled down to procedural issues. Taxpayer had asked for the Chairman of the Board of Special Commissioners to abstain from taking cognizance of the case on the grounds that he had expressed himself in a prejudicial way on a letter that had been sent to the Revenue. The chairman had refused to do so and the Court, quoting case law at length, found no reason why it should overturn his decision. Taxpayer had also asked that his case be heard by the Board in conjunction with that of his brother who had also appealed. The reason given was that certain documents available in his brother's file were also useful for appellant's own case. The Board refused to do so, and the Court declined to intervene since procedure before the Board was something which the Board itself was authorised to regulate. There also did not seem to be any point of law involved in the matter which could be referred to the Court. (*Presumably, if appellant was dissatisfied on these issues, he could have gone to the Civil Court to obtain a ruling accordingly*). Appellant also submitted that if his brother's documents were made available for his case, they would show that his appeal against the assessments raised should be accepted. The Court, no doubt bearing in mind the rather poor record of appellant's attitude towards the Revenue's reasonable demands and requests for relevant information, held that this was pure conjecture. Moreover this issue was once again a point of fact which could not be appealed to the Court. The appeal was therefore rejected with costs.

Case no 244

Judge: Philip Sciberras

26 March 2010

Appellant appears to have been a rather recalcitrant taxpayer and apparently the brother of taxpayer in case no 243, owning the other half of a boutique business.

Following the issue of a refusal, the case was heard by two separate Boards. The first Board chose to give the benefit of the doubt to taxpayer who claimed (against what the Revenue were stating) that tax returns had been submitted in time. The second Board hearing the case could not accept that the documents presented by appellant during the hearing were in any way satisfactory or sufficient for tax purposes. On the other hand, it pointed out that the Revenue had given no indication whatsoever as to how they had arrived at the *ex officio* assessments. The Board therefore made its own computation and directed that assessments be raised accordingly. On further Appeal, the Court pointed out that the entire matter was one of fact on which no appeal lay and it consequently rejected the appeal with costs.

Case no 245

Judge: Philip Sciberras

9 April 2010

A most unusual and extraordinary decision! The case concerned an individual who claimed a deduction in respect of alimony paid to his separated wife. The same individual had made a claim for this deduction in respect of other years, but this had been refused in Case no 186 decided by the Court of Appeal in its Higher Jurisdiction on 27 February 2004. The whole point was that the relative law at that time required that separation had to be ‘ordered’ by the Court while in taxpayer’s case the Court of Voluntary Jurisdiction had merely countersigned the deed of separation as is normal – principally to confirm that there was nothing objectionable in the deed. Subsequently, tax law had been altered, on the request of the Ombudsman, to remove the requirement of an order by the Court. The taxpayer however again demanded a deduction for years not covered by the amendment. On receiving a notice of refusal (which also covered additional tax and interest in respect of the rejected deduction), the taxpayer once more went to the Board of Special Commissioners. This took it upon itself to decide that the highest court of the country had misguided itself in case no 186, as it had followed the English text of the law which required an ‘order’ by the Court, while the Maltese text spoke about ‘stabbilit’ by the court. In the Board’s opinion, this made all the difference, and it consequently resulted that the deduction had in fact always been allowable without any need of amendment in the law. The Revenue obviously appealed, but the Court (now in its Inferior Jurisdiction) was

obviously concerned with the Board's remark that the Revenue need not have been so rigid as, after all, this almost certainly a unique case. It therefore proceeded to overturn the higher court's decision (pointing out that it was in no way bound by the laws of precedent), even though it was clear that it did not quite agree with the Board's argumentation.

Case no 246

Judge: Philip Sciberras

18 June 2010

This was another case where taxpayer had pleaded, and the Board of Special Commissioners accepted, that though the assessment had been worked within the specified time limit, its service had taken place outside this time frame. Yet again the Revenue raised the horny plea that the time limit stipulated by law only covered the working out of the assessment, but not the service thereof which (according to the Revenue) could thereafter take place at any time in the future. No unsurprisingly, this appeal by the Revenue from the Board's decision was rejected with costs and the assessment in question cancelled.

Case no 247

Judge: Raymond C Pace

3 November 2011

In this case, appellant had been assessed for several years on a 'best of judgement' basis for various reasons. This was a fairly normal situation in tax matters with the argumentation swaying to and fro as events developed. Various questions, accounting and otherwise, arose and it emerged that taxpayer had received a refund of EUR 4,868 for one of the years in question. Taxpayer therefore sent an e-mail whereby he proposed to close the matter by returning the refund received. The Revenue replied, also by e-mail, that the Commissioner had granted his approval accordingly. This notwithstanding, discussions and negotiations went on until the Revenue issued a notice of Refusal. Before the Board, taxpayer took the stand that agreement had been reached as set out above, and in effect declined to co-operate with the various requests made to him by the Board for presentation of accounts and records and the holding of discussions with the Revenue. Finally, the Board confirmed the assessments as

raised, stating that no agreement had been reached with the Revenue during the objection stage as claimed by the taxpayer on the basis of the e-mails exchanged. The Board did however recognize that the Revenue's communication could have been couched in better and clearer language. It therefore reduced the assessments raised by 5% to take this factor into account.

Both parties appealed. The taxpayer maintained that the assessments were excessive, but he obviously harped on the fact that, according to him, agreement had been reached with the Revenue. The Revenue claimed that the Board had been right in not accepting that the matter had been closed by agreement as aforesaid, and that the assessments had been correctly raised as confirmed by the Board. The Revenue also pointed out that the Board had no legal powers to reduce the assessments by 5% to compensate for their poor letter-writing and, finally, that the whole issue was one of fact on which no appeal lay.

The Court held that there clearly was a point of law involved, as the case revolved round the interpretation to be given to an agreement. The Court confirmed that binding agreements could be reached by e-mail as set out in the relative legislation on the matter. The Court then went deeply into the theory and practice of contract law in Malta, quoting extensively from case-law. It concluded that the exchange of e-mails was clear enough and not subject to interpretation though taxpayer had, in fact, subsequently discussed further. The Board had wrongly concluded that the matter had not been conclusively closed via the exchange of e-mails. The Court also considered that the 5% reduction in the assessments had been wrongly made as such reduction had no basis at law – but the Court pointed out this remark need not be of general application. The Court confirmed the validity of the agreement by e-mail and gave instructions as to how the assessments to tax were to be worked out. It also gave instructions as to how any interest that was due was to be calculated.

Case no 248

Judge: Raymond C Pace

29 March 2012

This appeal was from the last decision delivered by the Board of Special Commissioners before the appellate system changed over to that of the ART. That decision had been delivered on the 24 March 2011.

In essence, the case as it finally reached the Court of Appeal was whether there had been capital gains made on the sale of certain company shares and, if so, in what amount. The Board had come to the conclusion that a complicated series of transactions in company shares and related bank liabilities, had effectively left no profit to appellant, even though on paper it might have seemed that there was such profit. The argumentation of the Board is far from clear, but the Court took the line that there was actually no point of fact involved in the case and refused to intervene.

Case no 249

Judge: Raymond C Pace

31May 2012

A rather confused and confusing case. Appellant company owned a quarry which had been rented out. Records and accounts were filed late, and the Revenue pleaded nullity of the appeal. The demand was for Lm6,750 tax, but in some documentation this was unaccountably reduced to Lm0. The Court passed over this clear *faux pas* and considered whether, in the complicated scenario of draconian provisions contained in the Income Tax Act regarding the submission of documents, and amnesties granted in this regards, the Board could inflict a penalty of Lm1,500 for late filing of the returns, and also whether it could direct the charge of interest. The Board had set out what amounts, in its opinion should be taken as turnover, gross profit and expenses (leaving a net loss), but stated that all the figures had to be confirmed by the Revenue. Appellant pointed out that it was absurd to have a penalty ordered when there was no tax payable (*Note: other cases had established that the Board had no power to impose penalties*). The Court agreed and cancelled both penalty and interest.

Judges: Chief Justice Silvio Camilleri

Giannino Caruana Demajo

Noel Cuschieri

An important Constitutional case with various repercussions. The Court, after deploring the current excessive verbosity in legal submissions, proceeded to deliver an admirably concise decision on several issues. First of all, the Court reaffirmed the principle that while technical income tax issues were not within its competence, the way in which the tax was levied and administered was very much so. The Court then proceeded to confirm the lower Court's decision that a delay of 27 years in determining an objection before the issue of a refusal, thereby opening the road to a possible recourse to appeal, infringed the taxpayer's human rights as its chance of success on appeal were severely prejudiced. The delay meant that the directors who were in charge of the company at the relevant time and knew all about the tax problems, had in the meantime died. Memories were naturally obfuscated after 27 years, trade records and other documents were lost or mislaid during this time and, in any case, the obligation for their retention in terms of law had long before lapsed. The lower Court had tried to make good the infringement of human rights by awarding the company compensation of EUR 30,000, but it does not appear that it tackled the finalisation of assessments in the way adopted in this case as such. This was swept aside by the full Constitutional Court, which cancelled the Revenue's notice of refusal, cancelled the decision of the Board of Special Commissioners, and cancelled also the lower court's decision awarding EUR 30,000 compensation as aforesaid. The final result was that the company's returns were confirmed and the 'ex officio' assessments cancelled. The Court also gave instructions regarding any interest that would emerge from this exercise.

The Court also made another important ruling. This was to the effect that so called "administrative fines" were nothing else but fines which were appealable in the normal way to the tribunals and the courts. This finally did away with the Revenue's claim that it had unappealable discretionary powers regarding the

application of such levies. The tribunals, in later cases, proceeded to amplify on this ruling. In this case, no additional charge was in fact due once the estimated assessments had been discharged.

**Case no 251
2015**

Judge: Edwina Grima

25 February

This was a ground breaking decision which could have long term possible repercussions. The individual taxpayer concerned had died during the course of an appeal and his heirs asked that the Department's file on taxpayer and the case be exhibited before the ART to safeguard the principles of administrative transparency and equality of arms. The ART accepted this request and decreed accordingly. The Revenue appealed against the decision on the grounds that the documentation requested was 'privileged'. The Court of Appeal did not accept the appeal and sent back the case for continuation before the ART. It is not known how the case was finally concluded.

Various laws and principles were involved. These were carefully analysed by the ART which found full support from the Court. The principle of privilege which is found in the Code of Organisation and Civil Procedure has been considerably restricted both by the Freedom of Information Act and by the provisions of the Administrative Justice Act under which the ART is constituted. It had been restricted to cases where "the public interest that is served by non disclosure outweighs the public interest in disclosure". The ART had also quoted Parliamentary debates in the regards which set out clearly how these issues were to be regulated in the future. In particular, it was explained that the principle of equality of arms required careful handling as the Revenue had far greater resources available to it than the individual taxpayers upon whom the onus of proving the assessments complained of to be excessive was imposed by law.

Case no 252

Judge: Edwina Grima

25 February 2015

Taxpayer's family company had effectively ceased trading some years before. Yet in its tax documentation it had consistently reported the payment of salaries,

inter alia to taxpayer. Appellant contended that this had been done in error, and filed adjustment forms to show that what he received was actually the repayment of loans which he had given the company when this found itself in financial difficulties. *(Note: this actually made more sense than the payment of salaries in the circumstances)*. A refund of the tax overpaid on the 'salaries' was claimed. The Revenue advised that the adjustment forms for some years were statute barred and that, as regards the other years, the matter was being examined, but that an audit enquiry was being opened. Taxpayer appealed to the ART on the grounds that this was tantamount to a refusal. The Revenue filed a preliminary plea to the effect that there had been no refusal which could be subject to an appeal to the ART. The ART noted that in terms of law it should not deliver preliminary judgements, but as this had become regular practice, it was convenient to do so when nullity of the appeal was being pleaded. It therefore proceeded to accept the Revenue plea and declared the appeal to be null and void. On a further appeal, the Court (tacitly or otherwise) accepted the delivery of preliminary decisions by the ART, and confirmed that there was no valid appeal to the ART since no sort of refusal had been issued by the Department. The appeal was therefore rejected with costs.

Case no 253

Judge: Edwina Grima

29 April 2015

This case was identical to that decided by the Court in case no 251 decided on 25 February 2015. The point at issue was whether the Revenue could be obliged to exhibit before the ART the entire departmental file regarding appellant. In case 251, the Court had confirmed the ART's decision that the Revenue was so obliged, and the present decision reaffirmed that stand.

Case no 254

Judge: Edwina Grima

27 May 2015

This, and the next succeeding decisions were appeals to the Court from decisions delivered by the ART on 3 May 2012 in Rikorsi nos 49 and 50 of 2011. The Director of appellant company claimed that cash deposits made in the company had originated from his family's personal funds, and were not unrecorded sales as

claimed by the Revenue. This had not been proved in any satisfactory way, and the ART had agreed that the assessment had been properly raised. The refusal (or inability) of the Director to provide evidence in support of his contention had eventually led the ART to confirm that the taxpayer had not proved that the assessment complained of was excessive. This was notwithstanding that the appellant company's records and internal controls were impeccable.

The ART had also refused to consider valid the plea that a corporate veil existed between the personal affairs of the Director and his company seeing that he owned 49,900 out of the issued 50,000 shares in the company.

The Revenue pleaded nullity of the appeal on the grounds that essentially the whole question was one of fact on which no appeal lay to the Court. The Court agreed and dismissed the plea that looking through the corporate veil had created a point of law. The Court found no substance in this argument and rejected the appeal with costs.

Case no 255

Judge: Anthony Ellul

29 January 2016

This was essentially a rerun of the case reported at no 254 dated 27 May 2015. The same appellant was concerned and the same arguments were used, but for a different year of assessment. It was no great surprise that the same decision was taken: appellant could not hide behind the corporate veil to explain heavy cash injections to his practically wholly owned company, and the appeal was rejected with costs.

Case no 256

Judge: Anthony Ellul

17 June 2016

The two cases being reported here concern the same appellant, but for different years of assessment. The five cases reported under no 257 also refer to the same appellant, but for further years of assessment – and with a different outcome.

These decisions have already been reported for the benefit of members in the Malta Tax Law Update, no 22, where it was explained the first appeal had been made to the Board of Special Commissioners, and that subsequently this had

been transferred to the ART. Whilst the appeal was still pending before the BSC, taxpayer submitted all books and records to the BSC in accordance with regulations, and he had retained evidence of having done so. When the case reached the ART, taxpayer based his claims on the classification of certain income which he had received (i.e. whether trading income or royalties). The ART agreed with taxpayer's legal classification of his income, but rejected the appeal because of lack of evidence. It pin pointed that taxpayer had failed to submit his books and records to it. Taxpayer appealed to the Court arguing that his appeal was on a point of law, namely failure to apply the onus of proof correctly. He argued that there was a mistake on the facts regarding evidence resulting in a defective judgement. The Court of Appeal held that, as a matter of fact, a receipt proving that taxpayer had submitted books and records was in the Court's file, indicating that, contrary to the ART's conclusion, that taxpayer had produced evidence. The Court found that the fact that the ART did not take vital evidence into consideration amounted to an infringement of his right to a fair hearing, cancelled the decision appealed and sent the case back to the ART for a rehearing.

Case no 257

Judge: Joseph R Micallef

29 September 2016

This case was decided by the Civil Court, First Hall, in its Constitutional Jurisdiction. Taxpayer attempted to by-pass the Administrative Review Tribunal and the provisions of the Income Tax Acts regarding the hearing of his appeal, claiming that his human rights were being broken by the procedures being adopted. The Court refused to accept any of the intricate (not to say confused) arguments brought before it, principally on the grounds that the provisions of the Income Tax Acts, and the procedures of the ART, provided adequate remedies for his complaints. The taxpayer might have lost some of his rights thereunder because of lapsing time-limits, but this was all his fault and he could not expect the Constitutional Court to intervene. *(Note: confirmed by the full Constitutional Court in case no 259 on 26 May 2017, decision below).*

The five decisions comprised in this appeal concerned the same taxpayer as that involved in case no 256, but obviously for different years of assessment. The substantial points involved in this appeal appear to have been: (a) whether certain income from a quarry was part of a trade and therefore qualified for deduction of expenses, and (b) whether the expenses claimed by taxpayer on this account should have all been allowed. The ART found for the appellant in principle as regards (a), but it did not allow more deductions than those allowed by the Department as it maintained that no proof had been furnished by appellant in this regards. In essence this meant that taxpayer had gained nothing from winning his point of principle. Both parties appealed, the Revenue by way of an incidental appeal. The Court dismissed the incidental appeal filed by the Revenue, confirming a previous Court decision which had held that it is logically impossible for a party to file an appeal when it had already won its case before the lower tribunal.

As regards the taxpayer's appeal, the Court did not accept a contention that this was on a point of fact rather than on a point of law. The change of taxation of the relative income from one part of the charging section regarding 'royalties' to another part regarding 'trade' had brought the entire dispute within the ambit of law rather than fact. The Court could not, however, change the actual refusal of the ART to allow deductions as it had been established by the ART, as a matter of fact, that taxpayer had not proved the expenses. Taxpayer claimed, with more than a little justification, that he had presented all documents and proof to the Revenue at the objection stage, as could be shown by receipts released by the Revenue. Invoking the harsh provisions of the Income Tax Act, the ART and the Court held that this was not the same as presenting documents and proof to the ART as required by law. Both Tribunals therefore rejected the appeal.

(Note: This decision may perhaps be considered somewhat retrograde in the sense that doubts have been judicially expressed about the constitutionality of the relative provisions. Moreover, both tribunals may have unintentionally reverted to old fashioned technical formalities. Later ART decisions may have confirmed this

unfortunate trend, while also setting up an almost unachievable standard of proof required from the taxpayer in terms of law).

Case no: 259
26 May, 2017

Judges: Silvio Camilleri (President)
Giannino Caruana Demajo
Noel Cuschieri

The Constitutional decision in this case was merely a confirmation of the decision given by the lower Court in case 257 above on 29th September, 2016. There was nothing very useful added, but once again the Court indicated that the old procedure of calling Ministers (including the Prime Minister in this case) into cases concerning Government, had long been superseded. Only the Head of the relative Department was to be cited, with the Attorney General stepping in where some doubts arose.

Case no: 260

Judge Anthony Ellul

16 June 2017

The Court in this case found no difficulty in confirming the decision of the ART in appeal case no 181/11 given on 12 January 2015. Nothing much was added to the ART's decision: the facts of the case were too clear to admit taxpayer's claim for exemption on the grounds that the proceeds from the sale of an immovable had been passed to his separated wife in terms of a Court approved deed of separation regarding the division of the community of acquests between the spouses. The application of income which had arisen could not exonerate the recipient from his liability to tax on the sale of the property. The Court, however, perhaps rather surprisingly confirmed that the ART had power to refer the case to the Police to see whether there had been criminal fraud. *(With respect, it seems that this power is vested by the law solely and clearly in the Commissioner).*

Case no: 261

Judge Anthony Ellul

16 March 2018

This is an appeal from The ART decision in Rikors no 69/2011 dated 18 May 2015.

Taxpayer had filed returns for 2000 and 2002 declaring profits from some quarrying activities which were apparently accepted by the Revenue. For 2001,

however, he had filed a blank return stating that he was in no position to declare anything for the year as his records had been lost in a fire. An estimated assessment was raised upon him, largely based on what he had deposited in bank during the year. The ART had upheld the assessment, noting that the alleged fire had taken place in the year 2006 and that he had made bank deposits which indicated a healthy turnover and income during the basis year 2000. In his evidence before the ART he had given conflicting evidence. The Court was not impressed by the arguments seeking to make legal issues brought before it, and rejected the appeal which was, after all, clearly one on a point of fact.

Case No: 262

Judge Anthony Ellul

16 October 2018

This was an appeal from the ART decision in Rikors 96/2011 dated 11 January 2011.

The case concerned Capital Gains from the sale of company shares. Taxpayer had contended that, following the rules of valuation contained in the DDTA, the declared value for the sale in the transfer instrument should have been reduced for income tax purposes. Like the ART, the Court held that the two laws, and what was done thereunder, could not be mixed up: one did not automatically follow the other. So also, the fact that only a part of the agreed price had been received in the year in question could not follow the old established principle of 'Receivability without receipt constitutes no income' which did not apply in this case. Any loss which eventually resulted would be a personal loss of the taxpayer not in any way connected with a business carried on by him. Also like the ART, the Court could not accept that part of the payment for the shares was in effect for the consequential loss of his office in the company concerned. If this was the case, the transaction should have been structured accordingly. Finally, the fact that payment had been agreed to be made by instalments was irrelevant. The appeal was consequently rejected with costs.

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