



Milan, 25 March 2021

“Denied justice”: the last goal of the Pibe de Oro

On June 22, 1986 Maradona scored two memorable goals against England, one with the “Mano de Dios”. The hand touch was not sanctioned by the referee and the goal validated. It was the golden era of the Pibe de Oro but nobody would have expected that the seeds of Italian tax troubles had just been planted. After more than 30 years the Supreme Court has decided in favour of Maradona, who in the meanwhile has passed away, stating that an opposite decision would have led to a manifest case of “denied justice” and “double taxation”. Maybe ... the watch that was seized in 2006 by the Tax Police is still working!

The arrangement

The facts go back to 1984 when Maradona was hired by Naples football club (the “Club”). Two different contracts were signed: one for his activity as football player and one with a foreign company for the exploitation of his image rights. The same arrangement was implemented for Careca and Alemão, Brazilian champions that all football fans should remember.

Tax authorities argued that payments under both contracts had to be regarded as items of employment income paid by the Club to the players and a litigation started against the recipients and the Club, as withholding agent.

The litigation

Everybody appealed against the notice of assessments with the exception of Maradona. Starting from 1993, three payment notices were served to Maradona and finally he appealed the last one served in 2001. In 2005, however, the Supreme Court denied the appeal as the statutory terms for appealing the notices of assessment had expired.

As for the Club and the other players, the First Level Tax Court denied the appeal but the Second Level Tax Court accepted it. The notices of assessment related to years 1985 through 1990 were rejected as

far as the alleged withholding tax obligations committed by the Club were concerned.

On 1994, Naples was declared bankrupt and the bankruptcy trustee applied for the 2002 tax amnesty, paying 10% of the overall original claim.

The “dependent adhesive intervention”

The tax amnesty applied for by the Club concerned its duties as withholding agent for payments to the three players, including Maradona. The latter then filed an appeal to the Third Level Tax Court to extend the effects of the tax amnesty in his favour, being jointly and severally liable with the Club.

His request was denied in 2013, on the ground that his tax position was consolidated as he did not appeal the notices of assessment served to him. By contrast, the appeal was accepted for Careca and Alemao. In 2014 Maradona appealed this decision to the Supreme Court.

The 2021 Supreme Court decision

The Supreme Court with a 31 pages decision ruled in favour of Maradona. The motivation is highly technical but the conclusion is that “*there is no doubt that ... it cannot be left without judicial protection the taxpayer ... who intends to benefit from the tax amnesty of the withholding agent*”.

What strikes are the terms used by the Supreme Court:

- “*denying to Maradona the chance to ... benefit from the tax amnesty of his employer, would have lead to a manifest lack of effective protection of the taxpayer ... with the consequence of a **real and true denied justice***”;
- addition, this would have given rise to a “double taxation”, as the tax administration did already collect from the Club through the tax amnesty the withholding tax on the items of income never declared by Maradona.

Take aways

The Maradona case is the occasion for some thoughts:

- The case dates back to late 1980s and the final decision was taken end 2020 (although released in 2021). Maradona did not even have the chance to celebrate his last goal as it happened to many taxpayers who were not as famous as the Pibe de Oro. The reform of tax judicial system is a priority and this is recognised by all political parties and by the same Government. This should go along with a reform of the criminal tax laws;
- What should be the aim of tax authorities in litigation? Can they just aim to win “no matter what” or must they keep the bar straight and always affirm the centrality of the respect of tax laws and principles? Should they be more proud of collecting money even if undue or of acknowledging that the taxpayer has properly applied the law?
- What would be the reaction of investors, especially foreign, knowing that tax authorities pursue cases that might lead to a manifest case of “denied justice” and cause double taxation?

DISCLAIMER

This publication is provided by Gatti Pavesi Bianchi Ludovici studio legale associato and has been duly and professionally drafted. However, the information contained therein is not a legal advice and cannot be considered as such. Gatti Pavesi Bianchi Ludovici studio legale associato cannot accept any liability for the consequences of making use of this issue without a further cooperation and advice is taken.

GattiPavesiBianchiLudovici

MILAN - ROME - LONDON - LUXEMBOURG

[Home page](#) | [Highlights](#) | [Contacts](#) | [Linkedin](#)

© Copyright Gatti Pavesi Bianchi Ludovici 2021. All rights reserved.