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IN THE TAX APPEAL TRIBUNAL

SOUTH –SOUTH ZONE

HOLDEN AT BENIN-CITY

ON THURSDAY 28TH DAY OF APRIL, 2016

BEFORE

- | | |
|----------------------------|--------------|
| 1. ADENIKE A. EYOMA | AG. CHAIRMAN |
| 2. EBERECHI ADELE SAN, JP. | COMMISSIONER |
| 3. ALHAJI SALIHU A. BARAU | COMMISSIONER |

APPEAL NO.TAT/SSZ/008/14

BETWEEN

FEDERAL INLAND REVENUE SERVICEAPPELLANT

VS

1. FIRST GLOBAL MICRO FINANCE BANK LTD....RESPONDENTS
2. MR. VICTOR W. ITONYO



JUDGMENT

The Appellant, Federal Inland Revenue Service, on 23rd September, 2014 filed an Appeal against three Respondents, namely First Global Micro Finance Bank Ltd., Dr. Goodwill G. Ofunne and Mr. Victor W. Itonyo., the 1st, 2nd and 3rd Respondents respectively.

The Appellant is claiming the sum of ₦12, 075,818.91k (Twelve million, seventy-five thousand and eight hundred and eighteen naira, ninety-one kobo), being unpaid additional assessment on Company Income Tax (CIT) and Education Tax (EDT) for the period of 2007 to 2009 years of assessment.

The Appellant is also claiming interest at the rate of 21% from the commencement of the Appeal until Judgment and thereafter 10% interest on the Judgment debt until liquidated and cost of the Appeal.

The 1st Respondent, is a Nigerian Company engaged in the business of micro finance banking and general contract therefore liable remit taxes to the Appellant as and when due. The 2nd Respondent is the chairman Board of Directors of the 1st Respondent Company, and the 3rd Respondent is the managing Director and chief Executive officer of the 1st Respondent. The 2nd and 3rd Respondent's failure, refusal and neglect to file its accurate tax returns as prescribed by law and thereby remit its accurate and true tax to the Appellant predicated the filing of this Appeal.

The 3rd (now 2nd) Respondent acknowledged service of the Notice of Appeal and hearing notice dated 14th November 2014 and filed on 18th November 2014 by his counsel one Mr. Charles Ewo-



Michaels. Thereafter 3rd Respondent and his counsel failed to appear or put forward any defence during the pendency of this Appeal.

Hearing of this Appeal commenced on 29/01/15 on the assumption that all parties (i.e. the Respondents) had been duly served. However, on 25/03/15 during the continuation of hearing, this Hon. Tribunal observed that the 1st and 2nd Respondents had not been duly served with the Notice of Appeal and other court processes and the Tribunal's Registry was ordered to ensure service. When the matter came up for hearing on 29/04/15, the Appellant's counsel's attention was drawn to the fact that the 1st and 2nd Respondents were yet to be served with the Notice of Appeal and the Appellant's motion on Notice dated and filed on the 25th March, 2015 seeking leave to amend its Notice of Appeal and to file additional witness statement. The Appellant's counsel thereupon- brought an oral application under Order 7 Rule 3 (d) and (e) of the Tax Appeal Tribunal (procedure) Rule, 2010 seeking an order to serve both the 1st and 2nd Respondent by means of substituted service. The application was granted.

At the next adjourned date 23/06/15, learned counsel for the Appellant, N.A Evoh, informed the Tribunal that in compliance with the Tribunal's Order, the 1st Respondent had been served by pasting the enrolled order at its last known place of business. Counsel admitted serious difficulty in serving the 2nd Respondent through courier service as the address could not be located. He therefore made an oral application seeking to strike out the 2nd Respondent as a party to the Appeal.



Hearing continued on 23rd July, 2015 with PW1 concluding his evidence. The Appellant's written address was adopted on 30th September, 2015 after which the Appeal was adjourned for Judgment.

On 10th December, 2015 when the matter was slated for Judgment, this Tribunal was concerned with the validity of service of the Tribunal processes on the 1st Respondent after the Appeal was at an advanced stage of hearing.

Counsel for the Appellant was asked to address us on this issue. This he did by way of an additional written address dated 22nd February, 2016 and filed on 23rd February, 2016.

On a careful examination of the points raised in the Appellant's additional written address, we are in agreement that service of the Tribunal process on the 3rd (now 2nd) Respondent being an executive Director of the 1st Respondent Bank is sufficient service on the 1st Respondent.

We now turn our attention to the merit of the Appeal before us

Hearing in this matter continued on 29/01/15 with the evidence of PW1. The witness, Mr. Mamuda Rufai, Manager Tax, Port-Harcourt, MSTO, in his evidence adopted his written statement on oath and tendered the following Exhibits namely-

1. Letter dated 7th October 2011 Re:valued Added Tax and Income Tax: 2007 – 2009 years of Assessment

Exhibit A1 – A4



2. Notice of Additional Assessment for CIT dated 14/2/2012- Exhibit B1 – B3

3. Notice of Additional Assessment for E.D.T dated 14/02/2012 - Exhibit C1 – C3

4. 2007 Annual Financial statement Exhibit D

5. Letter dated 21/02/12 R: Additional Assessments (CITA and EDT) 2007 – 2009 Exhibit E

6. Letter dated 18/09/2012 Re: Reminder of Indebtedness for 2007 to 2009 YOA Exhibit F

7. Letter dated 17/09/2013 from the Appellant's Legal Department on the Respondents nonpayment of outstanding Tax liability of N12,075,818.91k. Exhibit G

PW1 in his evidence maintained, inter alia, that the Respondents were in active business during the period under review (2007 to 2009 years of assessment) and as such were bound by law to file the 1st Respondent's accurate tax returns and remit its true tax liabilities.

The Respondents for the period of 2007 to 2009 accounting years failed, neglected and refused to remit to the Appellant its company income tax and Education tax for that period. Neither did it file its annual returns for that period. In fact it was not until 5th March 2010 that it filed financial statement for 2007. (Exhibit D).

The Respondents failed to file any annual returns for 2008 and 2009 accounting years. The Appellant examined the Respondent's 2007 accounts and at the conclusion of the examination, the



Respondent's self-assessment was rejected and claims and deductions wrongly made were added back to the profit of the Respondent and taxed accordingly. The result of the examination of 2007 accounts of the Respondent was communicated to their Accountants (Exhibit A1- A4).

The Respondents failed to respond. Consequently, the Appellant using the 2007 annual returns provided by the Respondents arrived at a basis for computing company income tax and Education tax arrived at the sum of N12,075,818.91k as the Respondent's tax liabilities for 2007 to 2009 years of assessment. The assessments were served on the Respondents (see Exhibits B1- B3 and C1 - C3 and E).

After a reminder to the Respondent of its indebtedness to the Appellant for unremitted tax, the Appellant's legal Department issued a letter of demand containing a threat to commence legal action upon failure to remit the tax within 14 days (Exhibit G).

That was the case for the Appellant.

Although the 2nd Respondent through his counsel, Mr. Charles Ewo-Michael, filed a reply acknowledging receipt of the Notice of Appeal dated 14 November, 2014 and filed on 15th November, 2014 in which he set down grounds on which he intended to contest the Appeal; it is pertinent to note that he provided no further evidence and failed to appear during the pendency of the Appeal.

The Appellant in their written address have raised just one issue for determination:



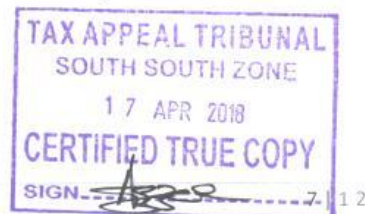
“whether on the preponderance of evidence led the Appellant has proved its case before this Tribunal to be entitled to the relief sought”

Counsel for the Appellant submitted that failure on the part of the Respondents to file their annual returns was in contravention of section 55 of CITA which mandates every company to file a self-assessment returns with the Service in the prescribed form at least once a year. He goes on to state that the 2007 annual report and Accounts of Respondents was not filed until March, 2010 and that no returns were filed for 2008 and 2009 years of assessment. Counsel further submits that after an examination of the 2007 annual accounts, the service rejected the audited accounts submitted by the Respondents by virtue of section 65(2) and to the best of its Judgment the claims and deductions wrongly made were added back to the profit of the Respondent and taxed accordingly.

He stated further that the Assessment Notices (Exhibits B1 – B3 AND C1 – C3) were served on the Respondents who failed to raise any objection to the assessment received or remit the tax due.

Counsel stresses that it is settled law that where a company fails to file returns within the time prescribed by section 55(2) (a) and (b) of CITA, and does not object to the assessment raised in accordance with section 66 of CITA, within 30 days then the tax liability becomes final and conclusive and a debt due and recoverable under section 34(1) of the Federal Inland Revenue Service (Establishment) Act 2007. Counsel relied on the following cases-

1. FBIR V Texaco Nig. Plc (2010) 3 TLRN79



2. FBIR V Owena Motels Ltd (2010) 2 TLRN 89 at p 94 paragraph 4

Learned counsel urges this Hon. Tribunal to place reliance on the authorities cited and hold that the assessments have become final and conclusive and the tax liability stated therein have become a debt due to the Federal Government.

Counsel submits further that the facts pleaded in the Appellant's Notice of Appeal and the Appellant witness statement on oath were neither traversed nor denied by the Respondents and it is therefore safe for the Tribunal to rely on the Appellant's evidence, particularly the Exhibits admitted in evidence. Counsel cites the following authorities-

1. Ezenwa V KSHSMB (2011) 9 NWLR (PT 1251) P 89 ER 115 – 116
PARAGRAPH a – B

2. Omo V JB Comm. (2000)3 NSCQR 30

3. N.S.I.T.F.M.B V Kilifco Nig Ltd (2010) 14 NWLR (pt 1211) 307 at 332

4. Monkom V. Odili (2010)2 NWLR(Pt 1179)419 at P.445 Para.D-E.

5. City Express Bank Ltd. V. Fortune International Bank Plc & Ors
(2000) FWLR (Pt126) 922 at 925.

6. Bamigboye & Ors.V. Chief Awoyinka &Anor (2002) FWLR (Pt113)
396 at 405.

Finally, counsel draws our attention to 2nd Respondent's Reply dated 14th November, 2014 and filed on 18th November, 2014 wherein he contested the Appeal on the ground that he is not liable to the claims against the 1st Respondent and submits that such claims are



erroneous and contrary to the express provisions of section 49(2) of the Federal Inland Revenue Service (Establishment) Act 2007 which provides, inter alia, that where an offence is committed under the Act by body corporate or firm or other association of individuals, every director, manager, secretary or other similar officer of a body corporate, shall be liable to be proceeded against..."

Counsel therefore submits that the 2nd Respondent being the Managing Director is liable for his failure to render returns on the 1st Respondent's tax liabilities owing to the fact that as Managing Director, he is the directing mind of the Company and in charge of the day to day affairs of the 1st Respondent company. He further directs us to Section 244 of the Company and Allied Matters Act Cap.C20 LFN 2004 and urges the Tribunal to so hold.

In conclusion learned counsel urged the Tribunal to hold that the Appellant has proved its case and is therefore entitled to the reliefs sought in its Notice of Appeal.

We have carefully considered the evidence led in this Appeal and the submissions of the learned counsel, in addition to the authorities cited.

The sole issue for determination is whether the Appellant has proved its case. In his evidence before us, PW1 testified that 1st Respondent is a Nigerian company and therefore liable to remit Company income tax and Education tax on annual basis, and to file annual returns for this purpose as mandated by the provisions of Section 55 of CITA.



In fact upon repeated requests to furnish its annual returns for 2007 to 2009 years of assessment, the returns for 2007 were not submitted until March 2010. Returns for 2008 and 2009 remained unfurnished.

The 2007 returns were rejected by the Service after due examination and the result of that exercise was communicated to the Respondents through their Accountant (Exhibit A1 to A4). The Respondents failed to issue any comments. Using the facts gathered, the Appellant issued Assessment Notices for the period 2007 to 2009 years of Assessment contained in Exhibits B1-B3 and C1 TO C3 highlighting the 1st Respondent's tax liabilities for both Company Income Tax and Education Tax, totaling the sum of #12,075,818.91k. The Assessment Notices were duly served on the Respondents who refused to respond thereto.

Under Section 55(2)(a)&(b) of CITA, where a company failed to file returns within the time prescribed by that provision and fails to object to the assessment raised in accordance with section 66(1)CITA within 30 days, the tax liabilities becomes final and conclusive and becomes a debt recoverable under Section 34(1) of Federal Inland Revenue Service (Establishment) Act 2007.

Upon repeated requests by the Service to the Respondents to remit the tax assessed (see Exhibits E and F), they continued in their refusal to remit their tax liability.

The Service was left with no other option than to issue a demand letter warning that, unless the tax was paid within 14 days, criminal action would be instituted against them to recover the tax owed.



We hold that failure on the part of the Respondents to raise any objection to the Assessment Notices within the period of 30 days as stipulated by Section 69(1) & (2) CITA, or to comment on the outcome of the examination conducted on its 2007 Annual Report and Accounts served on them, renders the Assessment final and conclusive and the Respondent's tax liabilities has become a debt due to the Federal Government and recoverable by virtue of Section 34(1) Federal Inland Revenue Service (Establishment) Act 2007 See FBIR v. Texaco Nigeria LTD (supra); FBIR V. Owena Motels Ltd (supra).

Mention must be made of the 2nd Respondent's Reply to the Appellant's Notice of Appeal and his attempt to raise grounds upon which he intended to contest the Appeal. The intended grounds, we view as mere expression of intent which by failing to appear and call evidence to concretize the same has led to a non -issue. This Tribunal therefore has nothing before it which rebuts the Appellant's case.

We therefore hold that the Appellant's evidence in this matter remains credible evidence being unchallenged and uncontradicted . We have no alternative but to accept it and rely upon it. See Monkom V. Odili {supra}.

In the light of the evidence before us, we hold that the Appellant has proved its case before this Honorable Tribunal, and is therefore entitled to judgment in the sum of ₦12, 075,818.91k being unremitted Company Income Tax and Education Tax. Judgment is hereby entered for the Appellant in the like sum.

We Order the Respondents to pay the Appellant the total sum of #12,075,818.91k.



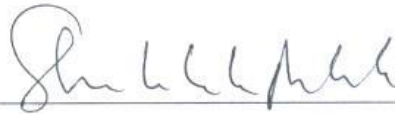
We further Order the Respondents to pay 10% interest on the said amount from the date the Appeal was filed (23rd September, 2014) till the date of payment.

We make no Order as to cost.

DATED AT BENIN THIS THURSDAY 28TH DAY OF APRIL, 2016



ADENIKE ADUKE EYOMA AG. CHAIRMAN



EBERECHI ADELE SAN, JP. COMMISSIONER



BARAU ABDULKARIM SALIHU COMMISSIONER

