

IN THE TAX APPEAL TRIBUNAL
SOUTH-SOUTH ZONE
HOLDEN AT BENIN
ON THURSDAY THE 26TH DAY OF MAY, 2016

BEFORE:

ADENIKE ADUKE EYOMA
 EBERECHI ADELE, SAN
 BARAU ABDULKARIM SALIHU

AG. CHAIRMAN
 COMMISSIONER
 COMMISSIONER

APPEAL NO: TAT/SSZ/008/2013

BETWEEN:

FEDERAL INLAND REVENUE SERVICE = = APPELLANT

AND

PHENIX ASSOCIATES LIMITED

RESPONDENT

JUDGMENT



By way of a Motion on Notice filed on 28th April, 2015, the Appellant brought an application in which it sought to amend its Notice of Appeal filed on 10th December, 2013, and substitute its witness on record, Mr. Abubakar Sarkin with Mr. Ajayi Oluwatobi. Both prayers were granted by this Tribunal on 30th April, 2015.

In its amended Notice of Appeal, the Appellant is claiming as follows:-

- 1, The sum of N10,805.823.89k being unremitted company income tax, education tax and Value Added Tax for the period 2000 to 2006 and 2008 to 2013 years of assessment.
- 2, Interest at the rate of 21% from the commencement of this suit until judgment and 10% interest on the judgment debt until liquidated.
- 3, Cost of this suit.

After numerous adjournments, at the instance of both parties, with a view to reaching an amicable settlement, the matter came up for hearing on 23rd February, 2016. This was as result of breakdown in negotiations.

On that date the sole witness for the Appellant, Mr. Oluwatobi Ajayi (PW1), in his evidence adopted his witness statement on oath and Identified several documents which were tendered and admitted in evidence as the following exhibits –

1. Letter dated 19th November, 2007 – Exhibit A
2. Letter dated 4th February, 2008 – Exhibit B
3. Letter dated 22nd February, 2008 – Exhibit C
4. Letter dated 27th March, 2008 – Exhibit D
5. Letter dated 22nd February, 2011 – Exhibit E
6. Letter dated 1st February, 2011 – Exhibit F
7. Letter dated 11th December, 2012 – Exhibit G
8. Letter dated 17th September, 2013 – Exhibit H
9. Letter dated 10th October, 2013 – Exhibit J
10. Letter dated 30th June, 2014 – Exhibit K
11. Letter dated 10th July, 2014 – Exhibit L
12. Letter dated 22nd September, 2014 – Exhibit M
13. Letter dated 26th June, 2014 – Exhibit N
14. Minutes dated 14th July, 2014 – Exhibit O



The facts of this case are summarised as follows –
The Respondent being a Nigerian Company is a taxable person and liable to remit company income tax, education tax and value added tax to the Appellant as and when due.

Though engaged in active business for the period in dispute, the Respondent failed to remit its accurate and true tax or file its accurate tax returns. The failure caused the Appellant to conduct an audit exercise into the Respondent's financial affairs after giving Respondent due notice of its intention so to do (see Exhibits A and B).

The findings of the audit were communicated to the Respondent and the tax liabilities of the Respondent was computed in line with the

provisions of section 65(3) of the Company Income Tax Act and section 18 of the Value Added Tax Act for 2000 and 2006 Years of Assessment as the sum of N3,907.676.70k (Exhibit E).

As a result of persistent failure by the Respondent to defray its tax liabilities, penalty and interest were added, as prescribed by law, bringing the Respondent's tax liability to the sum of N4,581.171.40k. for 2000 to 2006 years of assessment.

This was duly communicated to the Respondent (Exhibit E). The Respondent in letters dated 1st February, 2011 (Exhibit F) and 11th December, 2012 (Exhibit G) admitted its liabilities and pleaded to be allowed to defray the amount by instalments and appealed for more time within which to settle its tax liabilities.

Despite all these promises the Respondent continued to fail to pay its tax, which failure cumulated in the institution of this Appeal by the Appellant.

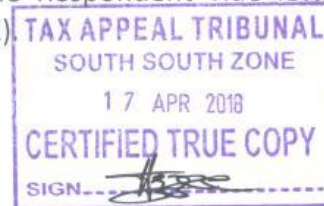
During the pendency of this Appeal and during settlement negotiations, the Respondent claimed that in 2010 Belbop Nigeria Limited remitted the sum of N25, 000.000.00 to the Appellant on its behalf as withholding tax. The Respondent therefore asked that the said remittance be used to off-set its outstanding tax liabilities.

On the issue of the alleged remittance of withholding tax both parties with the consent of this Tribunal embarked on a verification of the source of the said remittance with a view to establishing the Respondent's true and accurate tax liabilities.

The outcome of the verification was the discovery that the sum of N505, 344,854.00 was not reported in the Respondent's turnover and no records could be provided by Respondent of the transaction to enable the Appellant determine the tax due.

The Appellant was therefore left with no other alternative than to apply the deemed profit principle to determine the Respondent's assessable profit.

The final outcome of the verification was a computation of a revised tax assessment which was duly served on the Respondent vide letters dated 26th and 30th June, 2014 (Exhibits N and K).



The Respondent's liability was summarised as follows –

1. Old outstanding liability;
2001 to 2006 year of assessment: - N4,581,171.40
2. Additional liability;
2008 to 2013 year of assessment:- N31,710.395.22
3. Less withholding tax:- N25,485.742.73
- Net outstanding liability:- N10,805.823.89

The additional assessment precipitated a reconciliatory meeting between the parties (Exhibit O). The Respondent accepted the revised tax liability but failed to adhere to the agreement reached.

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

We have no doubt that the Appellant has assessed the tax owed in compliance with sections 65(3) of the Company Income Tax Act., section 18 of the Value Added Tax Act and section 30(1)(a) of CITA and established the Respondent's tax liability to the sum of N10,805.823.89k for 2000 to 2006 and 2008 to 2013 Years of Assessment (see Exhibit E and Exhibit N)

We are also convinced that the Respondent has failed to defray its tax liability which evidence shows that it admitted to owing (see Exhibits F, G and L).

Indeed the evidence shows that the Respondent despite several promises to liquidate the tax due failed to pay the tax.

In addition, the Respondent did not defend the action, although they filed a Reply, they failed to call any evidence. In law their reply will go to no issue. This Tribunal therefore has nothing before it which rebuts the Appellant's case. The Appellant's evidence in this appeal remains credible evidence being unchallenged and uncontradicted (see Monkom v. Oili (2010) 2 NWLR (Pt.1179) 419 @ 445

Agha v IGP (1997) 10 NWLR (Pt.524).

Mention must be made at this juncture of certain representations made by learned counsel to the Appellant before this Tribunal. On the 24th June, 2015, Appellant Counsel, N.A. Evoh Esq. informed this Tribunal that the Appellant would not proceed with the hearing on the said 24th June, 2015 because the Respondent had decided to honour an agreement with



the Appellant and had paid the first instalment of N1million on the 22nd June, 2015. In view of this, this Tribunal is duty bound in the interest of justice and all fairness to deduct the sum of N1million which the Appellant's Counsel confirmed had been paid to the Appellant, from the claimed tax in this appeal.

We therefore find in favour of the Appellant.

Judgment is hereby entered as follows:-

1. The Respondent is hereby ordered to pay to the Appellant the total sum of N9,805.823.89k (Nine Million, Eight Hundred and Five Thousand, Eight Hundred and Twenty-Three Naira, Eighty-Nine Kobo) being N1,000,000. (One Million Naira) less the total amount claimed.
2. The Respondent is further ordered to pay interest at the rate of 10% on the said amount from the date the Amended Notice of Appeal was filed (28th April, 2015) until judgment and thereafter interest at the rate of 10% from the date of judgment until the judgment debt is liquidated.

We make no order as to cost.

DATED AT BENIN THIS 26TH DAY OF MAY, 2016


ADENIKE ADUKE EYOMA Ag. Chairman


EBERECHI ADELE, SAN Commissioner


BARAU ABDULKARIM SALIHU Commissioner

