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IN THE TAX APPEAL TRIBUNAL  
SOUTH-SOUTH ZONE  
HOLDEN AT BENIN

APPEAL NO TAT/ SSZ/ 010/14

BETWEEN:

FEDERAL INLAND REVENUE SERVICE ..... APPELLANT

1. UDOFOT PETROLEUM LIMITED, and
2. IMO PAUL UDOFOT..... RESPONDENTS

Before

Adenike A. Eyoma

Ag. Chairman

Daniel Ugbabe Ugbabe

Commissioner

Barau A. Salihu

Commissioner

Judgment

The Appellant is the body statutorily charged with responsibilities inter alia for the assessment and collection of taxes for and on behalf of the Federal Government of Nigeria.

The first Respondent, on the other hand, is a Company engaged in petroleum product marketing and distribution for which it was incorporated on 28<sup>th</sup> October 1996, under the Companies and Allied Matters Act 1990. As a tax payer the Company is registered with the Appellant as number 0058233-0001. The Registered office of the Company is at no 23 Nwaniba Road, Uyo.

The Second Respondent is the Managing Director and Chairman of the First Respondent, a Company which has failed, refused or neglected to render its Company Income Tax and Education Tax returns in the way and manner prescribed by the relevant tax laws, and has thus failed to ensure effective management and control in financial reporting by the Company, thereby depriving the Federal Government of its legitimate income.



The Appellant being dissatisfied with the inaction of the Respondents, after the requisite notices to the Respondents, commenced this action against them before this Tribunal on 23<sup>rd</sup> September 2014 on the grounds, "That the Respondent has failed to remit outstanding Company Income Tax and Education Tax of N16, 383,851.05 for the period of 2006 to 2011 years of assessment in the way and manner prescribed by the Law."

The Respondents failed to reply to the Notice of Appeal filed before the Tribunal and were not represented at the Tribunal in any capacity throughout the proceedings despite being served all relevant notice at every stage.

The Appellant's Notice of Appeal is supported by a 39 paragraph Witness Statement on Oath, deposed to by John Osirenimhe Odior who testified before this Tribunal as PW 1, after being called witness by Counsel to the Appellant N. A. Evoh, sworn on the Holy Bible and cautioned under the Evidence Act. PW1 adopted his Witness Statement on Oath, which had been identified by him, as his testimony in this matter. Led in evidence by Counsel, PW1 identified several documents, all of which had been written to and served on the Respondent and few written by the Respondent, in support of the Appellant's testimony. These were tendered before the Tribunal, admitted and marked as follows;

1. Notice of Tax Audit Udofot Petroleum limited dated 29<sup>th</sup> October 2012 "Exhibit A".
2. Re Notice of Tax Audit Exercise. Dated 28<sup>th</sup> January 2013, "Exhibit B."
3. Another letter dated 19<sup>th</sup> February 2013, Re Notice of Tax Audit Exercise as "Exhibit C"
4. Minutes of the pre-Audit Meeting of 4<sup>th</sup> March 2013, between the Representatives of the Appellant and the Respondents, "Exhibit D"
5. Affidavit of Loss of International Passport, sworn to at Akwa Ibom State High Court, Uyo on 22<sup>nd</sup> May 2009, "Exhibit E"
6. A letter on Tax Audit Exercise (2005 – 2010 Accounts) dated 17<sup>th</sup> April 2013 inviting the Respondents to a reconciliation meeting, "Exhibits F to F6"
7. A letter of the Respondent's "Objection of the Tax Assessment" dated 15<sup>th</sup> October 2013 is "Exhibit G"



8. A letter in response from the Appellant "Re: Objection of the Tax Assessment" dated 31<sup>st</sup> October 2013, refusing to amend assessment is marked "Exhibit H"
9. 1<sup>st</sup> Reminder on your Tax Indebtedness for 2006 – 2011 Year(s) of Assessment dated 18<sup>th</sup> December 2013, "Exhibits J to J1"
10. 2<sup>nd</sup> Reminder on your Tax Indebtedness for 2006 – 2011 Year(s) of Assessment dated 17<sup>th</sup> February 2014 "Exhibits K to K1"
11. Letter marked DEMAND NOTE, Year of Assessment 2006 to 2011 and dated 5<sup>th</sup> May 2014, containing a Demand Note for Company Income Tax "Exhibits L to L1"
12. A letter also dated 5<sup>th</sup> May 2014 containing a Demand Notice for Education Tax is marked as "Exhibit M"
13. A letter from the Appellant's Legal Unit dated 3<sup>rd</sup> July 2014 on the Respondent's "Tax Liability of Company Income Tax and Education Tax ... 2006 - 2011" is "Exhibit N"
14. Notices of Assessment to Company Income Tax for the Years of Assessment 2006, 2007, 2008, 2009, 2010 and 2011 are marked "Exhibits O to O5" respectively
15. Notices of Assessment to Education Tax for the 2006, 2007, 2008, 2009, 2010 and 2011, Years of Assessment are "Exhibits P to P5", and
16. "Exhibits Q to Q5" record the Financial Statements of the Respondent for the Years Ended 31<sup>st</sup> December 2005, 2006, 2007, 2008, 2009 and 2010 respectively.

The evidence of the Appellant's Witness PW1 was not controverted and remains unchallenged before this Tribunal. The Appellant's Counsel sought in several instances to drive these facts home in the Appellant's Final Written Address.

Reiterating its grounds of appeal, the Appellant prayed the Tribunal for the following reliefs:

- a. The sum of N16, 383, 851.05k being unremitted Company Income Tax and Education Tax for 2006 to 2011 years of assessment including penalties and interests.
- b. Interest at the rate of 21 per cent from the date of commencement of this appeal to the date of judgment and 10 per cent interest on the judgment debt till liquidated.



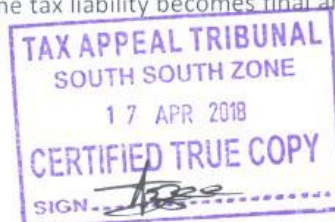


c. Cost of prosecution.

The Appellant's pleadings recount several steps taken by them to ascertain the true tax position of the Respondent. The Respondent had paid only the Minimum Tax in the relevant period 2006 to 2011 due to its consistent loss making position as shown in its Financial Statements for 2005 to 2010, in Exhibits Q to Q6. Yet the Respondent withheld all source documents required by the Appellant for their verification. The Auditors to the First Respondent even claimed ignorance of the existence of Mainstreet Bank Statements of the Respondent's Account for 2007 to 2010. The Respondent's pretext for failure, neglect or refusal to submit relevant documents for review was supported by their production of an irrelevant Affidavit of Loss of International Passport in transit because thieves carted away such documents from their offices in 2009, Exhibit E.

The Appellant believed that the failure of the first Respondent to make its full income available to tax assessment contravened **Section 9 of the Company Income Tax Act** but ignored its powers under **Section 65(3) Company Income Tax Act** to assess the Company to tax based on Best of judgement. Rather the Appellant decided to conduct a tax audit of the First Respondent's operations in accordance with **Sections 26 and 29 Federal Inland Revenue Service (Establishment) Act 2007** to ascertain the true and accurate tax liability of the first Respondent. The deemed profit of the First Respondent was compiled and subjected to tax after allowing for relevant cost deduction from the deemed turnover, in application of **Section 30 (1) (a) Companies Income Tax Act**. All findings, computations and resulting assessments were duly communicated to the First Respondent who was also offered a chance for a reconciliation meeting which held on 30<sup>th</sup> April 2014. Exhibit G indicates the First Respondent's Objection to the assessment raised by the Appellant which elicited the Appellant's refusal to amend the assessments in Exhibit H due to the Respondents none compliance with **Section 69(4) and (5)**.

Counsel to the Appellant avers that the law is settled that where a Company fails to comply with **Section 55(1)(a)&(b)** and **Section 55(2)(a) and (b) Company Income Tax Act**, by failing to file its tax returns within six months of the end of its accounting year and does not object to a tax assessment raised on it under **66 (1) Company Income Tax Act** within 30 days of notification as in **Section 69 (1) & (2) Company Income Tax Act**, the tax liability becomes final and the debt



due is recoverable. We are referred also to the cases of **FBIR V. TEXACO NIGERIA PLC. (2010) 3 TLRN 79** and **FBIR V. IDS LTD. (2010) 3 TLRN 1** and **Section 34 (1) Federal Inland Revenue Service (Establishment) Act 2007.**

Counsel continues that in such circumstances the quantum of the assessment cannot be reopened and since the Respondents did not contest the facts pleaded in the Appellant's Notice of Appeal and the Appellant's Witness Statement on Oath, the Tribunal ought to rely on the evidence of the Appellant particularly the admitted Exhibits. He places reliance on the following authorities in support of his case;

**EZENWA V. KSHSMB(2011) 9 NWLR (1251) P. 89 @115 -116 para.A-B.**

**OMO V. J. S. Comm. (2000) 3 NSCQR 30.**

**NSITFMB V. KLIFCO NIG. LTD. (2010) 14 NWLR (PT. 1211) 307 @332.**

**MONKOM V. ODILI (2010) 2 NWLR (PT. 1179) 419 @ 445 para.D-E.**

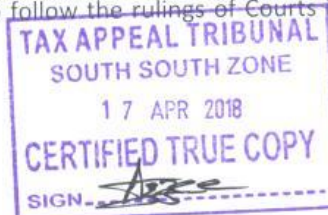
**CITY EXPRESS BANK LTD. V. FORTUNE INTERNATIONAL BANK PLC. &ORS.(2002) FWLR (PT. 126) 922 @ 925.**

**BAMIGBOYE @ ORS V. CHIEF AWOYINKA & ANOR. (2002) FWLR (PT. 113) 396 @ 405**

**AGHA V. IGP. (1997) 10 NWLR (PT. 524)**

Concluding counsel avers that drawing from these cases the tax liability of the Respondent has been established and the tax liability has become debt due to the Appellant since the courts have consistently held that evidence directly affecting the matter in contention and that is neither attacked nor successfully discredited is good and credible evidence that can be relied upon by court. He urges the Tribunal to rule in favour of the Appellant for the debt due to be paid with interest as claimed.

We have carefully considered the evidence presented before us in this appeal and also scrutinised the computation and aggregation of figures presented by the Appellant. These remained unchallenged and at no time throughout proceedings in this matter did the Respondent put up appearance. In these circumstances we elect to follow the rulings of Courts in the cases cited particularly;



NSITFMB v. KLIFCO NIGERIA LTD 14 NWLR (PT. 1211) 307 @ 332

MONKOM v. ODILI (2010) NWLR (PT. 1179) 419 @ 445 par. D-E

AGHA V. IGP (1997) 10 NWLR (PT. 524)

Where the courts ruled respectively that:

"Evidence that directly affects the matter in contention and that is neither attacked nor successfully discredited is good and credible evidence that can be relied upon by the Court."

"Where relevant' admissible and credible evidence stand unchallenged and uncontradicted, the Court has no alternative but to accept it and act on it to establish a fact or matter in issue."

"Where evidence of a witness has not been challenged, the court ought to accept such evidence in proof of the issue in contest or the fact it seeks to establish."

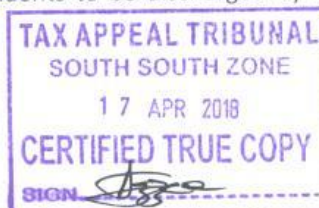
We disagree with Counsel that where the tax debt has become due the quantum of the assessment cannot be reopened.

Though the Respondent failed to discharge the onus placed on him to prove that the assessment made on him by the Service is excessive the Tribunal is given powers at **paragraph 15 (8) to the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act 2007** which states that, "*The Tribunal may, after giving the parties an opportunity of being heard, confirm, reduce, increase or annul the assessment or make any such order as it deems fit.*" We take power to review the assessment made by the Appellant as arbiters in this matter.

Doing so we find that where the appellant claims to levy interest at 15% on the tax due and unpaid the sum arrived at is a lot higher than should be charged at this rate and is, as a matter of fact, 15% of a much higher sum than the due tax. For example N1, 658, 981.83 computed as interest for the 2008 year of assessment is actually 15% of N11, 059, 878.90, a much higher sum than the amount calculated as due, which is a sum of N1,263,446.35. Thus reviewed, the interest charged reduces across the board with identical consequence for the total liability to Company Income Tax.

In addition the Appellant charges as penalty 10% of Company Income Tax assessed as due.

We accept that the Appellant has garnered sufficient evidence to establish the tax liabilities of the Respondents to be discharged by them in favour of the





Appellant. Both the Tribunal, and the Appellant who followed due process in ascertaining the true tax liabilities of the First Respondent, provided them ample opportunity to prove otherwise. We therefore do not hesitate to find in favour of the Appellant and so rule that;

The tax liabilities of the Respondent are established as follows;

Company Income Tax	N7,284,904.70
Education Tax	<u>417,461.01</u>
<b>Total</b>	<b><u>N7,702,365.71</u></b>

We hereby Order as follows;

That the Respondent shall pay and remit to the Appellant a total sum of seven million seven hundred and two thousand three hundred and sixty five naira seventy one kobo only, i.e. **N7,702,365.71**, being the total sum of Company Income Tax and Education Tax due from the Respondent for the 2006 to 2011 years of assessment.

We reject the Appellant's claim to a prejudgment interest of 21% as unproved but grant a post judgment interest of 10% per annum of the judgment debt until fully liquidated.

We award no cost.

Dated this 22<sup>nd</sup> day of October year 2015



X   
A. A. Eyoma (Mrs)  
Ag. Chairman

X   
D. U. Ugboabe  
Commissioner

X   
B. A. Salihu  
Commissioner

Statutes Referred to

Federal Inland Revenue Service (Establishment) ACT 2007

Company Income Tax Act

Cases cited.

FEDERAL INLAND REVENUE SERVICE v. OWENA MOTEL LTD.

FBIR V. IDS LTD (2010) 3 TLRN 1

EZENWA v. KSHSMB (2011) 9 NWLR (1251) P 89 @ 115 – 116 para. A-B

OMO v. J.S. COMM. (2000)3 NSCQR 30

NSITFMB v. KLIFCO NIGERIA LTD 14 NWLR (PT. 1211) 307 @ 332

MONKOM v. ODILI (2010) NWLR (PT. 1179) 419 @ 445 paras. D-E

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405. And

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FBIR v. TEXACO NIG. PLC. (2010) 3 TLRN 79

FBIR V. OWENA MOTELS LTD. (2010) 2 TLRN 87

