



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

16

APPEAL NO: SSZ/005/2013

TERMS OF SETTLEMENT

BETWEEN

FEDERAL INLAND REVENUE SERVICE..... APPELLANT

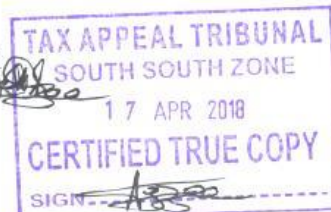
AND

MONAGO HOTEL AND CATERING SERVICES..... RESPONDENT

IN ATTENDANCE;

RESPONDENT:

1. Mr. Monago Maurice ;- Managing Director



APPELLANT:

1. Adebolu Ayodele Samuel :- Snr. Manager Tax
2. Tamunosaki Asah :- Officer 1 Legal
3. Mohammed Shuaibu Ahmed:- Officer II Tax

PREAMBLE

At the sitting of the Tribunal on the 1st August 2013, the respondent brought some dud cheques and a deed of conveyance of land. He explained to the Tribunal that the dud cheques were for payments captured by the VAT audit team which was never materialized. The conveyance was also for payment but it was found out that the land was sold to different people. He urged the Tribunal to assist him. The Tribunal thereafter ordered the parties to reconcile figures and payments before the next adjourned date.

INTRODUCTION

The meeting commenced by 10.31am on 12th September, 2013. The head/FDAE introduced himself, the Appellant team and welcomes the MD Monago Hotel (Respondent). He reiterated that the reason for reconciliatory meeting was to carry out the instruction of the Tribunal, Benin that parties should further explore other means of settlement, as directed on the 1st day of August '2013. This is to resolve area of differences as per the VAT audit assessment raised on the company by critically and objectively looking at the outstanding issues. He further stated that the company will have opportunity to forward additional documents or representation both verbal and written which shall be objectively reviewed. He mentioned that genuine verbal or written explanation/representation of the company shall be considered for the resolution as directed by the Tribunal. He concluded that VAT audit exercise is

Official

filed

21/01/2014

not a punitive measure against the company but a normal routine exercise to encourage voluntary compliance of the taxpayer.

The Respondent appreciates the FIRS and the Head/FDAE Unit. He stated that they are responsible organization that is always willing and ready to pay taxes if there are sales. He stated that he would have paid and complied with VAT payment before the audit if payment was received for services rendered to a group of politicians headed by Mr, Idiana Samuel West. He said he opted for out of court settlement to resolve the issue as there has never been near or remote intention or reason not to pay VAT. He said he was a victim of circumstances of the group of politicians who gave Dud Cheques for services rendered to them in 2011 which form the basis for the BOJ raised on his company. He further stated that a plot of land valued at N1, 200,000 traded in as part payment for the services rendered to the group of politician was found to be disputed land sold to several people. He said that he hopes this reconciliation shall produce a common ground to conclude this issue so that he can concentrate on his paid job which now needs his attention more than ever as the hotel business is not producing the desired result and the going concern of the hotel is no more guaranteed.

THE ISSUES ADDRESSED ARE AS STATED BELOW:

VAT LIABILITY: The turnover established for 2011 was confirmed to be N16, 369, 700 and VAT liability established by the VAT audit for 2011 was also confirmed to be N818, 485 as principal, N81, 848.50 as penalty at 10% and N171, 881.95 as interest at 21%. The Total outstanding liability for 2011 amounts to N1, 072, 215. 35

The turnover of 2011 N16, 369, 700 was extrapolated at 77.89% for 2010 to derive N12,750,000 for 2010, N 12,750,000 for 2010 was extrapolated at 82.35% to derive turnover for 2009 at N10,500,000 and N10,500,000 for 2009 was extrapolated as 61.90% to derive 2008 turnover as N6,500,000. These turnover figures for the respective years were then taken as BOJ turnover that formed the basis of VAT BOJ assessment for 2008 – 2010. Also the penalty (10%) and interest (21%) was calculated on these figures to derive the tax liability for the relevant years under consideration as stated below.

DETAILS	2008 (BOJ)	2009 (BOJ)	2010 (BOJ)	2011	TOTAL
TOTAL SALES	6,500,00	10,500,000	12,750,000	16, 369, 700	
VAT @ 5%	325, 000	525, 000	637, 500	818, 485	
LESS VAT PAID	NIL	NIL	NIL	NIL	
OUTSTANDING VAT	325, 000	525, 000	637, 500	818, 485	
PENALTY (10%)	32, 500	52, 500	63, 750	81, 848. 50	
INTEREST (21%)	68, 250	110, 250	122, 875	171, 881. 50	
TOTAL VAT LIABILITY	425, 750	687, 750	824, 125	1, 072, 215.35	3,009,840.35

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VAT PAYMENT

1. 2011: Turnover (N16, 369, 700) VAT @ 5 % (N818, 485) Penalty (N81, 848.50) and interest (N 171, 881. 85). The Respondent contested the turnover on the ground on the inaccuracy and subjectivity. He further stated that the services were rendered to a group of politicians headed by one Mr. Idiana Samuel West which were never paid for as he was given a dud (Bounced) cheques as stated below
 - a. Access Bank Plc: N2, 365, 500, Cheque no 00000038, security no 133273338 dated 30th August, 2012. This cheque bounced.
 - b. Sterling Bank Plc: N2, 765, 000, Cheque No 03981130, security No 03981130 dated 28th October, 2011. This Cheque bounced.
 - c. A parcel of land at Okhia- Akpo Iriebe, Obio/Akpor Local Government Area of Rivers State. Nigeria measuring an Area 1153.574sq mtrs. valued at N1, 200,000 traded in a part payment of the services rendered to this group of politicians was founded to be in dispute as several people claimed to have bought the land from the same Mr. Idiana Samuel West
2. 2008 – 2010: The Respondent stated that in the light of the above proof, evidential and aforementioned statement that the extrapolation of 2011 turnover and by extension interest and penalty for 2008 – 2010 by the audit team is based on unrealized sales. The financial and tax implication is that the sales was not realized and the VAT and associated penalty and interest not materialized.

INTEREST AND PENALTY: The head of the FDAE stated that the review of 2011 turnover shall be done by reducing the audit finding of N16,369,700 by N6, 330,000 to N10, 039, 700 and then extrapolated as previously done to determine the VAT liability of the company as stated below

DETAILS	2008 (BOJ)	2009 (BOJ)	2010 (BOJ)	2011	TOTAL
TOTAL SALES	3, 980, 549	6, 430, 612	7, 808, 879	10, 039, 700	
VAT @ 5%	199, 028	321, 531	390, 444	501, 985	
LESS VAT PAID	NIL	NIL	NIL	NIL	
OUTSTANDING VAT	199, 028	321, 531	390, 444	501, 985	
PENALTY (10%)	19, 903	32, 153	39, 044	50, 199	
INTEREST (21%)	41, 796	67, 522	81, 993	105, 417	
TOTAL VAT LIABILITY	260, 727	421, 206	511, 481	657, 601	1, 851, 015

THE RESPONDENT CONCLUDING STATEMENT: The Respondent said that FIRS can adopt any approach suitable to her but that the approach should be based on fact, fairness and objectivity as the approach used is not acceptable to him. He maintained that he is a responsible citizen that has obligation to pay taxes where there is basis for such taxes. He said he is prepared to moderate and reasonable VAT out of the salary received from his paid job. He also stated that



the period of BOJ in question also coincided with the period of no sales, over flooding of the hotel premises as a result of road construction and expansion activities. He said that he is prepared to pay 10% of the total VAT liability previously established by the audit team ie (N3, 009, 840 .35) or 15% of the newly established VAT liability as a result of post Tribunal review (N1, 851, 015)

VERIFICATION OF THE RESPONDENT'S CLAIM: The claim of the Respondent as regards the bounced cheques was verified by physically examining the cheques and copies of the cheques were made as evidence of the face value as stated by the Respondent. The Deed of Conveyance of the land made between Dr. Idiana West (Vendor) and Mr. Maurice and Mrs Benedette Monago (purchasers) was also verified and examined.

REMARK

The Respondent claim has been verified and the issues is therefore resolved in favour of the company to the tune of N6, 330, 000 being the face value of the document presented for verification.

RECOMMENDATION

Based on the strength of the above claim and the proposal of the Respondent to pay 10% of the previously established VAT liability or 15% of post Tribunal established liability, outstanding VAT liability is hereby agreed to be paid at 35% of the post Tribunal reviewed established VAT liability of N1, 851, 015 as opposed to the 15% earlier proposed by the company. This stem from the fact that the post Tribunal VAT established liability seems to be more scientifically approved and accepted to all the parties involved as the basis of which the agreed 35% can be applied.

GOING FORWARD

The 35% of the post Tribunal reviewed VAT established liability figure was agreed with the company and which the company accepts to pay. The amount to six hundred and forty seven thousand, six hundred and forty naira only (N647, 640) as extrapolated below

DETAILS	2008 (BOJ)	2009 (BOJ)	2010 (BOJ)	2011	TOTAL
TOTAL SALES @ 35%	1, 393, 192.15	2, 250, 714	2, 733, 108	3, 513, 895	
VAT @ 5%	69, 660	112, 356	136, 655	175, 695	
LESS VAT PAID	NIL	NIL	NIL	NIL	
OUTSTANDING VAT	69,660	112, 356	136, 655	175, 695	494, 366
PENALTY (10%)	6, 960	11, 254	13, 666	17, 570	49, 456
INTEREST (21%)	14,629	23,595	28,698	36,896	103,818
TOTAL VAT LIABILITY	91,255	147,205	179,019	230,161	647,640

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As stated above, it is hereby agreed that the Respondent shall pay the sum of N647, 640.00 to the Appellant as full settlement of the Respondent VAT liability for 2008, 2009, 2010 and 2011 assessments.

Dated.....20th..... DayJan..... 2014

Adebolu Samuel A.

ADEBOLU SAMUEL A.

For the Appellant

Maurice Monago

MAURICE MONAGO

for the Respondent

Ihensekhiem Osatohan

IHENSEKHIEN OSATOHAN
APPELLANT COUNSEL
SOUTH-SOUTH REGIONAL OFFICE
PORTHARCOURT
(COUNSEL TO THE APPELLANT)

FOR SERVICE ON
RESPONDENT:
THE MANAGING DIRECTOR
MONAGO HOTEL AND CATERING SERVICES
PLOT 206/207 EAST-WEST ROAD
PORTHARCOURT

