

**IN THE TAX APPEAL TRIBUNAL  
IN THE NORTH EAST ZONE  
HOLDEN AT BAUCHI**

APP NO.: TAT/NEZ/008/2014

**BETWEEN**

**FEDERAL INLAND REVENUE SERVICE. .... APPELLANT  
AND  
NICKVERO HOTEL LIMITED ..... RESPONDENT**

**BEFORE:**

**CHAIRMAN: HON. SULEMAN AUDU  
MEMBERS: HON. HALIMA SAADIYYA MOHAMMED  
HON. NGOZI AMALIRI  
HON. SUNDAY IDAM ISU  
HON. ALIYU ABBAS BELLO**

**JUDGMENT**

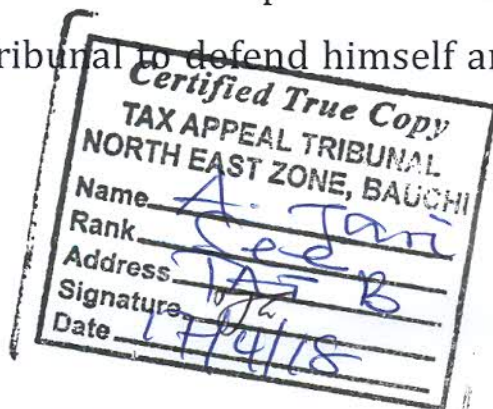
This notice of Appeal dated 4<sup>th</sup> day of May, 2014 was filed by the Appellant on the same day. The Appellant being dissatisfied with Respondent's refusal to remit Value Added Tax for the period of September 2012 to August 2013 totaling **₦2,112,000.00** (Two Million, One Hundred and twelve Thousand Naira only) filed this action to claim the above sum from the Respondent. The Appellant contended that despite repeated demand notices sent to the Respondent, the Respondent failed, refused and or neglected to file returns or remit same to the Appellant.

The Appellant sought the following reliefs from the Tribunal:



1. AN ORDER of the Tribunal compelling the Respondent to pay to the Appellant the sum of **₦2,112,000.00** (Two Million, One Hundred and twelve Thousand Naira only) for Valued Added Tax (VAT) only as Tax due from Respondent to the Appellant for the period of September 2012 to August 2013.
2. Any other order(s) as the Tribunal may deem fit to make in the circumstances of the case.

Alongside the notice of appeal, the Appellant filed a 14-paragraph affidavit deposed to by Abubakar Abu, a staff of Federal Inland Revenue Service, Micro Small Tax office, Jalingo. In its notice of appeal, the Appellant contended that by virtue of the nature of Respondent's business the Respondent has become a taxable person liable to render to the Appellant, true and accurate monthly returns. Referring to **EXHIBIT Z1, Z2, Z3 and Z4**, Appellant's counsel argued that even when several letters were written, demanding for the returns due, the Respondent still refused, failed and or neglected to render returns in line with the law. Appellant's counsel submitted finally that the Respondent's preliminary objection dated 5<sup>th</sup> August 2014 and filed on the 6<sup>th</sup> of August 2014 be struck out because the Respondent had repeatedly failed to appear before the Tribunal to defend himself and that Judgment be entered therefore,





in favour of the Applicant. Both prayers were granted by the Tribunal.

The Respondent's counsel filed a motion on notice dated 20<sup>th</sup> June 2014 seeking the indulgence of the Tribunal to extend time to enable him file his response and a preliminary objection dated 5<sup>th</sup> August 2014. The Respondent's counsel did not move any of the applications filed before abandoning proceedings. Neither did he file any written brief nor canvass oral argument.

The Tribunal having considered all the processes filed and oral submissions of counsel in this appeal, hereby formulate a sole issue for determination as follows:

*"Whether the Appellant's appeal is competent having regard to the issues raised therein"*

The crux of this appeal is anchored on the Respondent's refusal to remit its tax obligation to the Appellant.

The prayers of the Appellant before the Tribunal are clearly for the Respondent to remit the sum of **₦2,112,000.00** (Two Million, One Hundred and twelve Thousand Naira only) to the Appellant as VAT obligation that the Appellant raised and assessed the Respondent based on the Tax assessment notice for the period of September 2012 to August 2013.

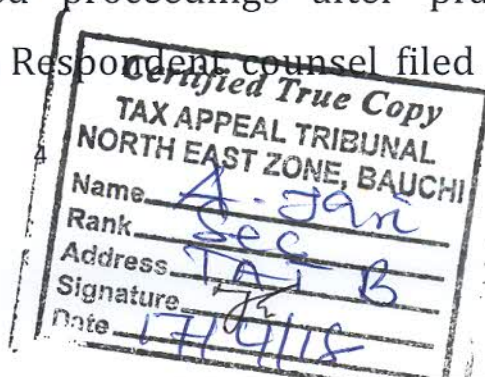


It is the law that where a tax payer fails to present an objection or an appeal within thirty days, the assessment becomes final and conclusive.

Uncontested assessment becomes final and conclusive due to the failure of the Respondent to object to the assessed sum submitted to it by the Appellant. Where a party fails to join issues with his opponent upon a fact pleaded by his opponent that fact is deemed admitted. The party making that assertion is no longer under a burden to establish such fact. Where depositions in an affidavit filed in support of an application are uncontroverted and unchallenged, same should be treated and deemed as the truth of the matter. See **ADAMU Vs AKUKALIA** (2005)11 NWLR Part 936, page 279 Paras: F-G

In the same vein, where a respondent fails to file a counter-affidavit to contradict or challenge the facts deposed to in an affidavit, a court of law will definitely act on the unchallenged and uncontradicted evidence except it is shown to be manifestly unreliable. See **TECHNIP V AIC LTD.** (2011) 16 NWLR (Part 1270) Pp 343; Paras: A-B, C-D

In the instant appeal, it is most regrettable that the learned counsel to the Respondent abandoned proceedings after praying the Tribunal for adjournment. The Respondent's counsel filed a motion

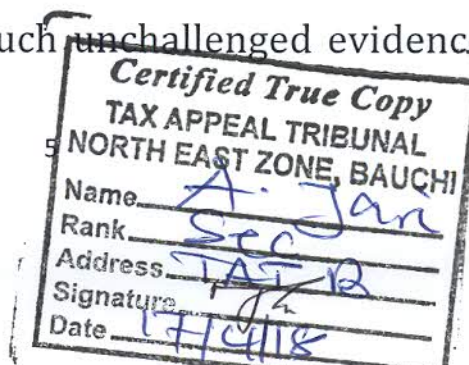




on notice dated 20<sup>th</sup> June, 2014 seeking the indulgence of the Tribunal to extend time to enable him file his response. The Respondent also filed a preliminary objection dated 5<sup>th</sup> August 2014 and filed on the 6<sup>th</sup> of August 2014. The Respondent's counsel sought for adjournment to enable him move his applications properly. To the dismay of the Tribunal, even though there were two adjournments granted by the Tribunal to enable the Respondent move his applications, he absconded and abandoned proceedings without proffering any reason to that effect.

The court will not indulge a nonchallant attitude from a defendant who wants to be absolved from liability. When preliminary objection is raised either by motion or notice the party raising it is not relieved of the duty to argue it during the oral hearing. The Respondent who desires to have the objection considered must move the court at the oral hearing for the relief prayed for, otherwise he is deemed to have abandoned the objection. See **NSIRIM Vs NSIRIM** (1990) 3 NWLR (PART 138) @ 285.

A trial court is always entitled to accept and act upon unchallenged and uncontradicted evidence. Where a party has every opportunity to challenge evidence given by the opposite party in any proceedings but failed to do so, he cannot complain if the court seised of the matter, acts on such unchallenged evidence before it.



See **SKYPOWER AIRWAYS LTD Vs OLIMA** (2005) 18 NWLR (PART 957) PAGE 294 PARAS: C-E.

However, The Tribunal has power to give judgment in default of pleadings or appearance and also has the right to exercise its power under Order 9 Rule 3 of the Procedure Rules of this Tribunal. See **BELLO Vs I.N.E.C.** (2010) 8 NWLR PART 1196 PAGE 419. PARAS: E-H

Though in this appeal, the parties informed the Tribunal that they have taken steps towards settlement, it is clear to the Tribunal that that settlement is not yet completed and the parties were still in the process of negotiating the terms and conditions which are to be agreed upon as the complete and final settlement of the case. The proper thing was therefore for the parties to have completed the steps towards settlement and then report back to the Tribunal, the final steps and conditions agreed upon by them which would be made the judgment in the case binding on the parties. Upon the time frame granted the parties to settle the matter out of court, they failed woefully to resolve their case. The Respondent has a duty in law to inform or notify the Tribunal of the efforts or moves by the parties to settle the matter amicably out of court and the Tribunal has a duty to encourage such settlement by the parties.





The Respondent, throughout the period permitted to explore the amicable resolution of the matter was incommunicado. Even the purported deposit note alleged to have deposited in the Tribunal could not suffice as evidence of compliance. The view of the Tribunal is that, the Respondent was not diligent in pursuing the amicable settlement of this case.

In the overall circumstances of this appeal, It is our firm view that the Respondent has not complied with the Appellant directives to remit its VAT obligations covering the aforementioned period to the Appellant, the Respondent has not adduced any evidence disputing facts deposed to in the Appellant's affidavits, therefore, the sole issue formulated is hereby resolved in favour of the Appellant.

Consequently, the Respondent NICKVERO HOTEL LIMITED, is hereby ordered to pay to the Appellant the sum of **₦2,112,000.00** (Two Million, One Hundred and twelve Thousand Naira only) for Valued Added Tax (VAT) as Tax due from Respondent to the Appellant from the period of September 2012 to August 2013 within 30 days from the day of judgment.

This is the judgment of the Tribunal.



### **RIGHT OF APPEAL**

Any party dissatisfied with the decision of the Tribunal may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to the Secretary within Thirty days from the date on which such decision was given.

**Dated this 18<sup>th</sup> day of November, 2014.**



**CHAIRMAN**

<b>Certified True Copy</b>	
<b>TAX APPEAL TRIBUNAL</b>	
<b>NORTH EAST ZONE, BAUCHI</b>	
Name	<u>A. Jari</u>
Rank	<u>Sec</u>
Address	<u>IAT B</u>
Signature	
Date	<u>17/4/18</u>