IN THE TAX APPEAL TRIBUNAL.
SOUTH-SOUTH ZONE,
HOLDEN AT BENIN CITY

BEFORE:
ADENIKE ADUKE EYOMA AG. CHAIRMAN
DANIEL UGBABE UGBABE COMMISSIONER
BARAU ABDULKARIM SALIHU COMMISSIONER
ON TUESDAY 30TH JULY, 2013

BETWEEN: APP. NO. TAT/SSZ/004/2011

GLOBAL MARINE BALTIC INCORPORATION — APPELLANT
AND
FEDERAL INLAND REVENUE SERVICE — RESPONDENT

JUDGMENT

This appeal originally commenced before the Body Of Appeal Commissioners which was dissolved by the Federal Inland Revenue Service (Establishment) Act 2007, while the appeal was pending. Upon the constitution of the Tax Appeal Tribunal established under this Act, the matter was assigned to the North – East Zone of the Tribunal in Bauchi, which for lack of territorial jurisdiction transferred it to the South- South Zone of the Tribunal in Benin City. Due to the similarity of the facts in this matter and the facts of another appeal number TAT/SSZ/003/2011, Global Marine International Drilling Corporation V. Federal Inland Revenue Service, the documents to be relied on being the same and having one and the same witness between them, the Tribunal consolidated the two matters on application by the Appellants without objection from the Respondents.

In their appeal the appellant seek the following reliefs:

(a) A DECLARATION that recharges in respect of the appellant's local logistics support company, Global Marine Offshore Drilling Limited, do not form part of the revenue of the Appellant derived from Nigeria for the purposes of taxation under section 26 CITA.

TAX APPEAL TRIBUNAL
SOUTH SOUTH ZONE
17 APR 2018
CERTIFIED TRUE COPY
SIGN

(b) A DECLARATION that the inclusion of Recharges as part of the taxable revenue/profit of the Appellant derived from Nigeria amounts to double taxation and therefore unjust, null and void.

(c) An ORDER setting aside the Respondents' Notices of Additional Assessment to tax liabilities on Recharges number PRBA 2, PRBA 4, AND PRBA 5 dated 27th JANUARY 2004 which was served on the Appellants for the 1997, 1998 and 2000 year of assessment.

The Appellant is an offshore drilling Company registered and organised in accordance with the laws of the state of Delaware in the United States of America. During the period relevant to this Appeal, the Appellant received logistic services from Global Offshore Drilling Limited, GODL, in Nigeria in the execution of its contract. For its services Global Offshore Drilling Limited, GODL, received from the Appellant a reimbursement of its operating costs plus a mark up of 10 per cent which payment the Appellant call 'Recharges'.

The Respondent is a statutory body charged with the responsibility, inter alia, of assessing and collecting taxes on behalf of the Federal Government of Nigeria.

The Appellant throughout the relevant periods 1997, 1998, 1999 and 2000 years of assessment, filed with the Respondent, self assessment returns, ostensibly, in full compliance with an Information Circular Number 9302 of 22nd March 1993, titled 'Taxation of Non-residents in Nigeria', Exhibit G, issued by the Respondent. The Appellant's witness in this matter Mr. Abiodun Bamiduro, a Chartered Accountant, adopted his witness statement on oath and testified that the Appellant in their Returns based their self-assessment computations on the provisions of Exhibit G in full knowledge of the Respondent who accepted and collected taxes so computed. He cites paragraph 5.2(i) of the information circular where the Respondent states -

> "for a non resident company or individual with a fixed base in Nigeria, the turnover that can be assessed and charged is only that portion that is attributable to the fixed base. In other words, it would be wrong to base the percentage considered "fair and reasonable" on the total turnover of such a company or individual once a fixed base is established".

In spite of this the Respondent served on the Appellant Notice of Additional Tax Assessments numbers PRBA 2, PRBA 3 and PRBA 5 dated 27th January 2004, for the years of

assessment 1997, 1998 and 2000.Exhibits D1 - 3. The additional Tax Liability was computed as follows;

Assessment year	2000	1998	1997
Turnover per Return (before audit)	37,472,328.67	47,857,749.28	36,834,034.15
Add Tax Audit Adjustment	4,287,582.33	29,262,199.84	17,822,600.89
Revised Turnover	41,759,909.00	77,119,949.12	54,656,635.04
Deemed at 20%	8,351,981.80	15,423,989.82	10,931,327.01
Tax Thereon at 30%	2,505,594.54	4,627,196.95	3,279,398.10
Less Tax Already Assessed	2,248,339.60	2,871,464.96	2,210,042.05
Additional Tax Payable	246,051.46	1,193,913.73	577,082.99

The Appellant said they were taken aback by these revised assessments as there are five reasons why the Respondents in their case cannot depart from the provisions of the Information Circular No 9302 , Exhibit G, namely -

(1) The deduction of 'Recharges' were fully disclosed to the Respondent.

(2) The appellants used the computations as contained in the Circular in making its tax returns and legitimately expected that the Respondents would not retroactively amend that policy to the detriment of those who have relied on it.

(3) The said recharges were not part of the profit or turnover of the Appellant because they were monies actually paid to the Appellant's subsidiary in Nigeria, GODL, for their services in executing drilling contracts from which the monies were earned.

(4) GODL also paid company tax on the same recharges.

(5) The Appellant in pricing its services to its clients factored in its tax liabilities based on the Circular.

Learned Counsel to the Appellant Festus Onyia, Esq.; in his address before the Tribunal formulated two issues for determination in the appeal:

ISSUE 1

Whether on a fair and reasonable construction of section 30(1)(b)(i) of the Companies Income tax Act(CITA) recharges ought to be included as part of the turnover of a non resident company, including the Appellant, for purposes of assessment to tax on a deemed profit basis and taxed as part of the taxable revenue of the non-resident Company, while at the same time taxing the same recharges as the taxable income of the Nigerian subsidiary of the non-resident Company, GODL?

ISSUE 2

Whether the Appellant is entitled to a legitimate expectation that the Respondent will not make additional assessment on the Appellant based solely and exclusively on the recharges for 2000, 1998 and 1997 years of assessment, given that the Appellant's

method of deducting recharges from its turnover was based on and permitted by the respondent's Circular 9302 of 22nd March 1993 and the practice of Respondent with tax payers?

With regards to Issue 1, Counsel to the Appellant urges us to interpret Section 30(1)(b)(i) of CITA in the Appellant's favour with emphasis on the phrase ".....that part of the turnover attributable to that fixed base" in section 30(1)(b)(i). To the Appellant by this phrase the legislature evinced a clear intention that 'Recharges' should not be considered as part of total assessable profit of the Appellant as the provision here is different from that of section 30(1)(a) which relates to a Nigerian Company in similar circumstances. We are then referred to a number of cases on the interpretation of statutes -

Anyakora & Ors V. **Obiakor & Ors** (1990) 2 NWLR (PT. 130) 52 AT 66

U.T.C (Nig.) Ltd, V. **Pamotel &Ors.** (1989) 2NWLR (Pt. 103) 244 at 303

Ogbunyiya & ors. V. **Okudo & Ors.** (1979 -1981) NSCC p. 77

Okupe V. **Federal Board of Inland Revenue** (1974) 4SC @ 930

Authority V. **Regional Tax Board** (1970) NCIR 276

To Mr. Onyia, the question whether recharges form part of the turnover of a non-Nigerian Company or whether it could be legitimately deducted from the revenue of the foreign Company has been conclusively decided by the Federal High Court in **Halliburton West Africa Limited V. Federal Board of Inland Revenue** Suit No FHC/L/1A/2005 (unreported) delivered by Hon. Justice Abdullahi Mustapha On 7th June 2006.

On Issue 2, learned counsel submits that the Respondent, as a body set up by statute, cannot, in law, change a policy which it has made tax payers to believe, and rely on for a long period of time in ordering their financial affairs, and based on such changes of policy, cause the tax payer to suffer financial detriment. Moreover, he adds, the doctrine of legitimate expectation is routed in fairness and reasonableness, and a public body will be held bound by the representation it has made, unless such representation is inconsistent with statutory duties imposed upon it. We are referred to a number of cases and the fact that the Nigerian Supreme Court in the case of **Stitch** V. **A.G. Federation & Others** (1986) pt. 11 NSCC p 1413 relied on the case of **Council of Civil**

Service Union and Others V. **Minister of Civil Service(1984) 3** All E. R. 135 as authority for the Doctrine of Reasonable Expectation "which may arise either from express undertaking given on behalf of a public authority or from the existence of a regular practice which the claimant may reasonably be expected to continue."

The Respondent called their witness, Mr. Okpai Iro Nnachi, who having been sworn, adopted his sworn statement on oath in full, and tendered the Notice of Refusal to Amend dated 31st December 1999, marked Exhibit D5. He testified on, cross examination, that the Deemed Profit basis though founded in law is for Companies who woefully fail to file their annual financial statements showing their assessable profits, thus leaving the Federal Inland Revenue Service (FIRS) to determine the deemed profit of the Company on a fair and reasonable percentage of turnover. The Deemed profit basis of assessment is applied, he added, where the following conditions are met, namely -

(1) Where a company fails to file its annual financial statement which shows its assessable profit,

(2) Where the FIRS does not accept the authenticity of the returns filed, and,

(3) When it is impossible for the company to determine its costs.

The Respondent avers that the Appellant was wrong to have made a deduction from the turnover under the Turnover Basis of assessment. This he said was reserved as deduction in more usual profit basis of assessment, and so additional assessment in respect of the wrong deductions made by the Appellant was raised. The Respondent also say that the Term 'Recharges' is alien to the Nigerian tax system and merely refers to reimbursable or payments by the Appellants, of cost incurred on their behalf and a mark up, to their company in Nigeria.

To the Respondent there are three issues for determination in this matter, namely-

(1)Whether the Appellant having filed self assessment based on section 26(1)(b) (Section 30(1)(b) CITA (deemed profit) is entitled to make any other deduction beside the 80% conceded by the Respondent as the cost of its turnover with the balance as the deemed profit?

(2)Whether the facts of this appeal are distinguishable from that of Halliburton West Africa Limited?

(3)Whether the evidence of the Appellant's witness PW 1 amounts to Hearsay?

Lead Counsel to the Respondent, Mr. Daniel Onukun, while addressing Issue 1 drew our attention to Section 55(1) of the Companies Income Tax Act 2004 Cap. 21 LFN. (CITA). This section enjoins "Every company, including a company granted exemption from incorporation, shall, at least once a year without notice or demand there from, file a return with the Board in the prescribed form ...containing ...the audited account, tax and capital allowance computations and a true and correct statement in writing the amounts of its profits from each and every source computed in accordance with the provisions of this Act and rules made there under" The appellant failed to comply with this mandatory provision and on its own took refuge in Section 26(1)(b) which is now section 30(1)(b) Cap. 21 LFN 2004. He continued that because the Appellant failed to comply with section 55(1) the Respondent was unable to determine the appellant's assessable profit and so resorted to Section 30(1)(b)(i) of CITA apportioning the turnover of the Appellant into 80% as costs and 20 percent as the deemed profit for the year. They also expressed reliance on the provisions of Section 24 of CITA. Of all three conditions stipulated before the application of section 30(1)(b) the Respondents say they relied on the fact that the true amount of the Appellant's profits had not been disclosed with their self assessment returns and could not otherwise be ascertained.

The respondent on its part refers us to a number of cases for the proper interpretation of section 30,

Ahmadu V. **Governor of Kogi State** (2003) 3 NWLR (pt. 755) 502

Mobil Oil Nigeria Ltd. V. **Federal Board of Inland Revenue**(1977) 3 SC 53

Phoenix Motors Ltd. V. **National Provident Fund Management Board** (1993) 1 NWLR (pt.272) 718, and prays the Tribunal for the following Orders:

(1) A Declaration that the Notices of Refusal to Amend and the Assessment No PRBA 5, PRBA 4, and PRBA 2, dated 27th January 2004 served on the Appellant on 11th March 2005 in respect of the Appellant's Company Income Tax for 1999 and 2000 are valid and made in accordance with the Law.

(2) A Declaration that the Additional Company Income Tax Assessment Notices in the sum of $577,082.99; $181,269.51 and $246,051.46 for 1997,1998 and 2000 years of Assessment respectively are valid and made in accordance with the Law.

(3) An Order mandating the Appellant to pay its tax liabilities in the sum of $577,082.99; $1,193,913.73 and $246,051.46 for the year of assessment 1997, 1998 and 2000 together with interest as provided by the Law.

(4) An Order dismissing the Appeal as frivolous, misconceived and abuse of the process of law.

(5) And for such Order and further orders as the Tribunal may deem fit to make in the circumstances.

The Respondent in their testimony deny the Appellant's claim that they had permitted any deduction of costs from the Turnover before the computation of deemed profit after amendment to the Companies Income Tax Act, CITA, and the issuance of the Information Circular No 9302.

To us issue 1 of the Respondent and the appellant are joined and though framed differently says, whether under the deemed profit basis of assessment to tax in section 30(1)(b) of the Companies Income Tax Act Cap. 22 LFN.2004, CITA, or its equivalent section 26(1) of CITA 1994, any expense or payment under a sub contract can rightly be deducted from the Turnover of a business entity in arriving at the deemed profit of that entity for tax purposes other than the fair and reasonable proportion as determined by the Respondent under powers conferred on them by this section?

The Appellant have argued for the exclusion of reimbursement of their associate company Global Offshore Drilling Limited, GODL, which they had engaged to provide logistic services in the execution of their Nigerian contracts a payment they have called "Recharges", from their own total income and only the remainder may be assessed to tax under section 30(1)(b). They lay particular emphasis on the phrase "...that part of the turnover attributable to that fixed base" to buttress their argument, they have said that the FIRS has always accepted this manner of computation. That, they, had allowed this in accepting their returns and the returns of other companies. That the Information Circular No 9302 directed this mode of computation and that the decision of the Federal High Court in Lagos, which we are bound to follow, interprets section 30(1)(b) to stipulate that in such circumstances as of this case payments made to a subcontractor support company cannot be added back to the turnover of the parent company. Thus they drew our attention to the case of **Halliburton West Africa Limited** V. **Federal Board of Inland Revenue**

(supra). The Appellant says unless this were done the Tribunal would be sanctioning an illegality as there would be double taxation of payments to GODL since this company would also be required to and did indeed pay their taxes on these payments to them. As well their legitimate expectation that the FIRS would keep to their representation to the general public would be unfairly shattered.

We are constrained to reject the arguments of the Appellants in each of these averments. We note that every company is obliged to make payments for the purpose of earning its turnover. Provisions of tax statutes provide for the set-off of all expenses wholly, exclusively and, necessarily incurred for the purpose of earning the turnover in arriving at the assessable profit of an enterprise. The success of the appellant's argument revolves in part around the meaning of 'turnover' in law. Another relevant question is: Are expenses of one Company forbidden to be taxed in the hands of other tax payers? One may also ask: Has the Respondent the right to review the Self assessment returns of tax payers and in this case of the Appellant? Finally one may ask: Has the respondent acted properly in their application of Section 30(1)(b)(i) of CITA by disallowing deductions made by the Appellant in their self assessment returns 1997, 1998 and 2000 years of assessment for subcontract payments to their associate GODL?

In the case of **Mobile Oil (Nig.) Ltd** V. **FBIR** (1977) 3SC 33 M. Bello JSC (as he then was) delivering the majority decision of the Supreme Court, considered the meaning of the provisions of section 30A of CITA 1961, an amendment introduced by virtue of section 2 of Decree No. 58 of 1968. That provision is in pari materia with the extant provisions of the law as contained in Section 30 of CITA, LFN 2004. The learned Justice had this to say at page 48 of his Judgment -

> "The literal meaning of the provisions of Section 30A is clear and unambiguous. It empowers the Board to assess a company subject to the conditions prescribed therein on such fair and reasonable percentage of turnover of the company as the Board may determine. In our view there is no injustice in assessing a company on a percentage of its turnover. Such legislation has received the approval of democratic society, for example, Section 28 of the

Australian Income Assessment Act 1922 – 34 and Section 80 of the English Tax Management Act, 1970".

The Learned JSC went further to adopt the meaning attached to the word Turnover as set out in an Australian Judgment which had also considered the Australian equivalent to section 30 CITA Nigeria i e, Section 28 of the Australian Income Assessment Act 1922-1934. In the Australian case of **British Imperial Oil Company Ltd** V. **Federal Commissioner of Taxation,** Starke J. stated that "the object of Section 28 is to prescribe a standard for fixing or estimating income in a particular case. It takes the total receipt as the source of income and then prescribes a percentage on those receipts as the standard for assessing income".

This decision equates 'Turnover' to 'Total Receipts'. Indeed this is what turnover truly is under the relevant Nigerian Tax statutes. Turnover is the total receipts of the main activity of an enterprise. The Second Schedule to the Companies and Allied Matters Act 2004 as amended, at Section C Part V and at paragraph 88 provided that "Turnover", in relation to a company, means the amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of---

(a) Trade discount;
(b) Value Added Tax; and
(c) Any other taxes based on the amounts so derived.'

Thus the only deduction permitted from turnover are taxes collected on behalf of Governments or discounts, which in their nature cannot be utilised by the business for its own purposes. The total turnover of the Appellant includes all monies paid to it from its Nigerian contracts assessable to tax in years 1997, 1998 and 2000. If they funded their contract of service from the proceeds of the Nigerian contracts as evidence before us shows, then they first received the total proceeds of the contract. It is clear that deductions made from the total receipts of their Nigerian contracts for payments of cost plus a mark up of 10 percent, which they term "Recharges," falsely reduces the turnover from their Nigerian contracts and can properly be disallowed by the FIRS.

The appellant harps on the fact that the FIRS had

initially accepted taxes paid by them based on their self assessment returns and so cannot raise additional assessment for 1997, 1998 and 2000.

Cases abound confirming the statutory authority of the Board, now FIRS, to review past years' tax returns. We think it now suffices to mention the decision of at the Supreme Court in the **Mobil Oil case** (supra). The Court held that the Board, (now FIRS), has powers to correct even its error by making additional assessment under section 30A CITA 1961. The powers granted to the FIRS under section 30 CITA LFN 2004 are reinforced by the provisions of section 66(1) CITA, formally section 50(1)of the 1990 Act. The non submission by the Appellants of their self assessment returns in line with the provisions of section 55(1)a) of CITA, compels the re-evaluation of their returns under section 30(1)(b)(I) of CITA, which is the alternative method as the true amount of the appellant's assessable income cannot be determined.

The appellant strenuously argues that in applying this section all payments made to their sub contractor and associated company must first be deducted from their total income and the difference only may be taxed. They draw our attentions to the decision in the case of **Halliburton West Africa Limited** V. **Federal Board of Inland Revenue** (Unreported) (Supra). In this case the Federal High Court found, to quote, that "-It has been shown that there are two turnovers in the contract executed between the Appellant and Halliburton Energy Services Nigeria Limited otherwise known as Halliburton Nigeria. There is the turnover that relates to the Appellant and also the turnover that relates to Halliburton Nigeria." The decision of the Learned Judge is clearly derived from the relationship between Halliburton West Africa Limited and their subsidiary subcontractor, Halliburton Nigeria on the one hand and those for whom work is carried out by Halliburton Nigeria on behalf of their principal, Halliburton West Africa Ltd. Both Halliburton West Africa and Halliburton Nigeria are on record to have signed, jointly, the major contracts executed in addition to the agreements between them. Third parties to the principal contracts were required to remit a portion of the contract fees to Halliburton Nigeria in Naira for its working capital. The Halliburton Nigeria is paid 100% of its operating expenses plus a management fee of the equivalent of 4% of the appellant's revenue derived from Nigeria under such contracts.

The decision in the **Halliburton case** is not on all fours and can be clearly distinguished from the case of the Appellant before us. In this case Global Offshore Drilling Limited, GODL, neither signed the principal agreements nor was it entitled to receive direct payments under them, which may be excluded from the total receipts of the Appellant. It received its payments out of the turnover of the Appellant.

The decision in this case cannot, therefore, go the way of the **Halliburton case** even if the phrase " that part of the turnover attributable to that fixed base" in section 30(1)(b)(i) were to be correctly interpreted according to the rules for interpretation of tax statutes in its proper context.

We note that the taxation of parts of an enterprise's turnover more than once frequently occurs in various guises, yet all tax regimes accept it just as the Nigerian tax system does. Payments out of total income or turnover happens for example in the form of employee wages, property rentals, payment to non-related subcontractors or the purchase of vehicles. These payments are taxable in the hand of their recipient just as payments by the appellant to GODL would. There is no question of double taxation in these instances. Nor is there double taxation where the Appellant pays tax on its total turnover and payments out of that turnover to GODL are taxed in the hand of this company. The Turnover Basis of assessment allows for a fair and reasonable percentage to cover the costs of earning the turnover. Double taxation can only happen where the same amount of income is taxed more than once in the hands of the same taxpayer. Taxation of payments made by the appellant to their subcontractor can rightly be subjected to tax in the hand of the subcontractor who for all purposes in this case are not different from other employees of the Appellant.

We have also considered the Appellant's claim that in compiling their returns, which were not even submitted according to provisions of CITA, they had taken the Information Circular No. 9302, Exhibit G, titled "The Taxation of Non-residents in Nigeria," into full consideration. The Circular itself says.

> "This Circular is issued for the information of the general public and in particular all taxpayers, taxpayer's representatives or advisers and the staff of the Revenue Services. The contents are based on the provisions of

various Nigerian Tax Acts as amended to date and the Double Taxation Agreements between Nigeria and other Countries."

Paragraph 4.1 of the Circular states -

" If a non-resident corporation has a "fixed base" from which it carries on its business or trade in Nigeria, the profits from such activities would be deemed to be derived from Nigeria".

Paragraph 5.2(i) adds -

"that for a non-resident company or individual with a fixed base in Nigeria **the turnover that can be assessed and charged is only that portion attributable to the fixed base. In other words, it would be wrong to base the percentage considered "fair and reasonable" on the total turnover of such a company or individual once a fixed base is established.** This means that the first step is to establish the fixed base. The second step is the determination of the turnover attributable to the operations carried on through the fixed base. The final step is to determine that percentage of the turnover considered fair and reasonable"

Paragraph 6.1 elaborates the position of -

"A Nigerian project awarded to a non-resident Company but subcontracted in part to a branch, a subsidiary or an d company. This is usually a single contract involving survey, supply and construction or installation. The whole profit on the contract will be taxable as a Nigerian profit with the sub contract allowable as an expense but limited to the actual cost to the main contractor."

The Circular is dated 22nd March 1993. A non-Nigerian company may and usually does business in a number of countries including Nigeria. Thus once a fixed base is established the turnover that can be assessed and charged is only that portion of its profits attributable to the fixed base not the total turnover of such a company. Only

the profits attributable to the Nigerian operations are taxable in Nigeria not the profits from operations throughout the world. While only the Nigerian profits would be taxed in Nigeria the subcontract payments "recharges" in the case of the Appellant in this case, will be allowable as expense. An expense is handled in the Profit and Loss Account not as a deduction from the turnover except as permitted as part of the fair and reasonable percentage of turnover for costs. The Appellant's self-interested interpretation cannot be held against the Respondent to contravene the relevant Nigerian Tax Statutes. Circular No. 9302 Exhibit G., cannot supersede the Laws of Nigeria even if correctly interpreted.

The authority of the Respondent in determining the fair and reasonable proportion is also not doubted by the Appellant. The Respondent as authorised by section 30, have used their discretion and applied it to the determined turnover of the Appellant. That is the proportion of 80% to all costs incurred in raising the turnover, while 20% is considered a fair and reasonable proportion to consider as the Appellant's deemed profit in the absence of their submission of accounts showing their audited net profits from their Nigerian operation. The doctrine of reasonable expectation cannot be held to mean or even suggest that the Respondent cannot change a policy on which tax payers have relied on over any length of time. Under some tax regimes tax policies are changed at each annual budget and practice direction changes with government tax policy, as in the United Kingdom (UK). The respondent must have the freedom to interpret the revenue laws and give general practice guidance to tax payers when the tax policy and enactment suggests.

We now consider the nature of the evidence of the sole witness for the Appellant. The Respondent has raised objection to the admissibility of this evidence on the ground that it amounts to hearsay evidence. We are however constrained to observe that such objection being crucial to the Case of Appellant ought to have been raised at the time the evidence was given.

Be that as it may, we are persuaded that the evidence of PW1 is evidence emanating from a person having full and direct knowledge of the facts to which he (PW1) deposed. We take cognisance of the fact that the witness had testified that he is an employee of an associate company of the Appellant who was requested to testify for the Appellant. He is also a member of the Institute of Chartered Accountants of

Nigeria which is a recognised professional body accepted under our tax laws to represent a taxpayer before this Tribunal. He is a witness deemed to be a tax expert. His evidence before the Tribunal cannot therefore be regarded as hearsay evidence.

In conclusion, it is clear that by not filing its tax returns in accordance with the provisions of Section 55 of CITA (LFN 2004), the Appellant has brought itself squarely within the ambit of the provisions of Section 30 CITA (LFN 2004), namely, assessment to tax based on the turnover basis. In this situation, it is the Respondent that is empowered by law to define what amounts to a fair and reasonable percentage of a turnover liable to tax. For this purposes, the Law makes an allowance of 80% of the turnover to cover costs and expenses incurred by the tax payer, leaving 20% of the turnover liable to tax.

We are also persuaded that the application of the turnover basis of assessment to tax forecloses any right to other exemptions; therefore, reimbursement for recharges cannot be contemplated under the provisions of Section 30 CITA (LFN 2004). We are further persuaded that the Information Circular, Exhibit G, is in the nature of an Explanatory Note and cannot by any stretch of statutory interpretation over ride or supersede the clear and unambiguous meaning of any statutory provision. Exhibit G, cannot, therefore, be clothed with any legal authority giving it a statutory flavour. As earlier stated, it remains in the nature of a mere explanatory note to the extant statutory provisions it purports to explain.

Accordingly, for the foregoing reasons and having regard to all the circumstances of this case, this Appeal cannot succeed.

This Tribunal hereby dismisses his Appeal filed by the Appellant and makes the following orders –

1. AN ORDER that the Appeal in this Suit No. TAT/SSZ/004/2011 is hereby dismissed.
2. AN ORDER that the Notices of Refusal to Amend and the Additional Assessment Notices Nos. PRBA 2, PRBA 3 and PRBA 5, dated 27th January, 2004 served on the Appellant on 11th March, 2005 in respect of the Appellant's Company Income Tax liability for 1997, 1998 and 2000 are valid and made in accordance with the law.
3. AN ORDER that the Assessment of Additional tax made by the Respondent on the Appellant is hereby upheld and that the Appellant shall pay the same forthwith to the Respondent in the sum of USD $577,082.29, (Five

Hundred and Seventy Seven Thousand and Eighty Two Dollars and Twenty Nine Cents), USD $1,193, 913.73, (One Million One Hundred and Ninety Three Thousand Nine Hundred and Thirteen Dollars and Seventy Three Cents), USD $ 246,051.46 (Two Hundred and Forty Six Thousand and Fifty One Dollars and Forty Six Cents) for the years of assessment 1997, 1998 and 2000 together with penalty and interest thereon as provided by the law.

We make no order as to the cost of this Appeal.

DATED THIS ..... DAY OF 2013

ADENIKE A. EYOMA
Ag. Chairman Tax Appeal Tribunal, South-South Zone

DANIEL UGBABE UGBABE
Hon. Commissioner

BARAU ABDULKARIM SALIHU
Hon. Commissioner

Counsel:
Festus Onyia, Esq., for the Appellant,
Daniel Onukun, Esq., (with him Nicholas Evoh, Esq., and Osatohan Ihensekhien,, Esq.,) for the Respondent.

TAX APPEAL TRIBUNAL
SOUTH SOUTH ZONE
17 APR 2018
CERTIFIED TRUE COPY
SIGN