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IN THE TAX APPEAL TRIBUNAL

SOUTH-SOUTH ZONE HOLDEN AT BENIN CITY

ON WEDNESDAY, 12TH OCTOBER, 2011

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BEFORE

HON JUSTICE ABDUL SALAMI ABIRI (RTD).....CHAIRMAN

HON ADENIKE EYOMA ESQ.....COMMISSIONER

HON SALIHU A. BARAU.....COMMISSIONER

APPEAL NO: TAT/SSZ/007/10

BETWEEN

FEREDRAL INLAND REVENUE SERVICE..... APPELLANT

AND

NIGERIA SERVICES AND SUPPLIES LTD..... RESPONDENT

JUDGMENT

The appeal of the appellant against the respondent is for #96,761,822 (Ninety-Six Million, Seven Hundred and Sixty-One Thousand, Eight Hundred and Twenty –Two Naira only), being value added tax due from the respondent to the appellant, inclusive of penalty and interest payable on the principal tax amount.

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A break-down of the amount is as follows:

(a) Amount of tax due:#76,485,573

1.

(b)	Interest:	# 19,886,249
(c)	Penalty:	# 390,000
	Total	# 96,761,822

The original appeal had been filed before the defunct Value Added Tax Tribunal at Enugu on 9th February, 2006. That Tribunal was subsequently dissolved by the Federal Inland Revenue Service (Establishment) Act, 2007. (Sections 59 and 68 and Paragraph Eleven of the Fifth Schedule have this implied effect). The present Tax Appeal Tribunal was established under the 2007 Act with jurisdiction over all tax disputes.

In keeping with the Tax Appeal Tribunal (Procedure) Rules, 2010, the present appeal was filed afresh to replace the identical claim earlier filed. The said fresh appeal was filed on 16th March, 2011, and was served on the respondent on 31st March, 2011 by substituted means as ordered by the Tribunal. The mode of service used was by pasting the notice of appeal and all other processes in the appeal on the gate of No.1-3 Umuahia Avenue, Aba, being the residence of one of the respondent's Directors (Mr. E.C. Akwiwu). In spite of the service, the respondent failed to attend the Tribunal proceedings throughout. It was also not represented.

In due course, Mr. Ogheneovo Obibi testified for the appellant as P W 1. He gave oral evidence in which he adopted his sworn statement dated 14th March, 2011. He also tendered in evidence several documents which were marked as Exhibits A to G.
A summary of the evidence given on behalf of the appellant is as follows:

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The respondent is a limited liability company which is registered as a value added tax collection agent for the Federal Republic of Nigeria. It is a taxable person, liable to collect value added tax and remit same to the Federal Inland Revenue Service. It failed to render returns for the tax collected, or remit the tax collected to the Service for the period of January to December, 2000.

Consequent upon such failure, the appellant served on the respondent a Best-of Judgment Assessment notice dated 20th August, 2001, requiring it to pay the total value added tax out-lined above within thirty days. The covering letter to the notice and the notice itself were respectively admitted in evidence and marked as Exhibits A and C.

At the expiration of the thirty days notice, the respondent failed to pay the tax in question. There-upon, the appellant served on it a reminder dated 27th September, 2001, and gave it a further notice of thirty days to pay the tax. The said reminder was admitted in evidence as Exhibit B.

The respondent signed a proof of service each in respect of the assessment notice and the reminder. The proofs of service were respectively dated 20th August, 2001 and 28th September, 2001.They were respectively admitted in evidence as Exhibits F and G.

The further notice of thirty days expired, and still the respondent failed to pay the tax due. Besides, it failed to file an objection to the tax assessed, in spite of acknowledging receipt of the two notices.

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Much later, the Legal Department of the Federal Inland Revenue Service served on the respondent a demand notice dated 6th June, 2003, and a reminder dated 3rd October, 2003. The two documents were respectively admitted in evidence as Exhibits D and E. In these documents, the appellant respectively gave the respondent further grace periods of thirty days and fourteen days. They also contained threats to embark on litigation.

In spite of the further grace periods and the threats which they contained, the respondent failed to pay the tax due.

Exhibits A and B were file copies, while Exhibits C to G were photocopies of the originals. The respondent was given notice to produce the originals of the exhibits.

At the conclusion of evidence, learned counsel for the appellant, Osatohan Ihensekhien Esq., filed a written final address on its behalf.Subseqently, Daniel Onukun Esq., also counsel for appellant, made brief oral submissions to amplify the written address. In their written and oral submissions, counsel urged the Tribunal to uphold the appellant's claims and grant it all the reliefs claimed as well as the costs of the proceedings.

Counsel formulated three issues for determination by the Tribunal which were as follows:-

"1. Whether the respondent is a taxable person.

2. Whether the assessment raised has become final and conclusive in the absence of any objection by the respondent.

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3. Whether the appellant is entitled to the reliefs as claimed."

On issue One, learned Counsel for the appellant contended that the respondent was a registered company under the Companies And Allied Matters Act. They also contended that it had registered as a taxable person with the Federal Inland Revenue Service under the Value Added Tax Act, 1993. Counsel submitted, therefore, that the respondent was a taxable person with an obligation to remit the value added tax collected by it to the Federal Inland Revenue Service.

On Issue Two, learned Counsel relied on the sworn statement of PW.1, Ogheneovo Obibi, his oral testimony and Exhibits A to G.

Counsel contended that the respondent was a going-concern during the months of January to December, 2000. Counsel also contended that consequent upon the failure by the respondent to file tax returns and remit value added taxes collected within this period, the appellant raised an assessment notice dated 20th August, 2001 for #96,761,822= on the respondent, giving it thirty days grace period to settle the taxes due. According to counsel, the appellant followed up the assessment notice by issuing the respondent a reminder dated 27th September, 2001. When it still failed to make payment, the Legal Department of the appellant issued it a demand notice which was followed up by a reminder. These were respectively dated 6th June, 2003 and 3rd October, 2003.These respectively gave the respondent grace periods of thirty days and fourteen days within which to pay the tax due.

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Counsel contended that at the end of the grace periods given in these four exhibits, the respondent still failed to settle the tax due.

They submitted that, as the respondent did not (within thirty days) file an objection to the assessment raised, the assessment had become final and conclusive. They cited in support Sections 15 and 20 of the Value Added Tax, 1993 and the case of FBIR V Owena Motels Ltd (2010) 2 TLRW 87 at 94, para 4.

Counsel submitted further that the respondent having failed to remit the taxes due within the period of thirty days from the month of collection, the appellant was entitled to impose penalty and interest on it, as well as assess it on the basis of best of judgment. Counsel relied on the case of FBIR V Intergrated Data Services Ltd (2009) 8 NWLR p. 615.

Issue Three is whether the appellant is entitled to the reliefs claimed which are

(a)#96,761,822=,

(b)Cost of proceedings, and

(c)Any other reliefs the Tribunal may deem fit to grant.

Counsel contended that Exhibit C (the VAT Assessment Notice) contained a break-down of the amount claimed and that it was duly served on the respondent. They referred to the two appellant's letters of demand (Exhibits A and B) and its Solicitors' two demand notices (Exhibits D and E) which were also duly served on the respondent. They referred further to the sworn statement

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of P.W.1 (Ogheneovo Obibi) which was not challenged by the respondent. They stressed that all the evidence of the appellant (oral and documentary) were uncontested.

Counsel urged the Tribunal to treat the evidence as admitted by the respondent, and regard the appellant's claim as proved. He urged the Tribunal finally to uphold the appellant's claims and grant it all the reliefs sought.

We have carefully considered all the evidence led in this appeal and the submissions of learned counsel for the appellant, as well as the authorities cited.

Issue One is whether the respondent is a taxable person. There is evidence in Exhibit A that the respondent registered itself as a taxable person in compliance with Section 8 of the Value Added Tax Act, 1993.

In the sworn statement of PW1, he averred that the respondent is a going-concern which is duly registered with the Federal Inland Revenue Service in compliance with Section 8 of the Value Added Tax Act, 1993. See paragraphs 6, 7 and 8 of the sworn statement which he adopted as part of his evidence.

As observed earlier in this judgment, the respondent did not attend the proceedings of the Tribunal. It was not represented. This was so, even though it was served with all the relevant processes. It gave no evidence in rebuttal of the evidence in the sworn statement and in Exhibit A.

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Accordingly all the said evidence was unchallenged and uncontested. The evidence is deemed as having been admitted by the respondent. In weighing the evidence before it, this Tribunal has nothing to place on the imaginary scale to tilt the balance at all towards the side of the respondent. Accordingly, we hold that the appellant has proved that the respondent is a taxable person. Therefore, we resolve Issue One in favour of the appellant.

The second issue argued by the appellant is whether the assessment raised against the respondent had become final and conclusive, in the absence of any objection raised. In other words, whether the amount assessed has become a debt due from the respondent.

Under Section 8 of the Value Added Tax Act, 1993, a person becomes a taxable person upon registering itself with the Federal Inland Revenue Service. There is evidence in Exhibit A that the respondent so registered itself. A taxable person is required to render returns for goods or services purchased or supplied by it, to the Federal Inland Revenue Service on monthly basis. Such returns are required to be made on or before the 30th of the month in respect of the preceding month. (See Section 15 of Value Added Tax Act, 1993.) The net effect of Sections 15, 16 and 19 of the Act is that the taxable person is required to remit the taxes due from it to the Service latest within 30 days of the month following the month of deduction.

Where there is a default by a taxable person to render returns within the prescribed period, the Service is required to assess the

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amount of tax due from it on Best-of-Judgment basis. (See Section 18 of the Act.) The Service is also required to add a penalty at five percent and interest at commercial rate to the tax due. The Service is required to notify the taxable person of the total tax due, plus penalty and interest.

Where the taxable person does not pay the amounts due within thirty days of notification, the Service may recover the amounts by proceedings at the Tax Appeal Tribunal. (See Section 20(1) of the 1993 Act.)

By Section 20(2) of the Act, a taxable person aggrieved by an assessment on it by the Service, may file an objection before the Service, which objection should be determined within thirty days.

The cumulative effect of the provisions of Sections 15, 18, 19 and 20 of the Act is that where the matter of a taxable person's duty to pay a value added tax has gone through the full hog, from a failure to render returns, through failure to pay, a Best of Judgment assessment, notification of tax assessed and failure still to pay or object to assessment, the Service may exercise the only available option of recovery through proceedings at the Tax Appeal Tribunal.

The appellant's evidence before this Tribunal is that the respondent is a taxable person. It failed to file tax returns with the Service for the months of January to December, 2000. The appellant there-upon raised a best-of judgment assessment on it. The Service notified it of the tax, penalty and interest due. For

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nearly three years thereafter, the respondent failed to file an objection against the assessment and also failed to pay the tax due.

The appellant having exhausted all other measures to recover the tax due, it filed this appeal before the Tribunal. That last option is the one prescribed by Section 20(1) of the Value Added Tax Act, 1993.

The Tribunal's view of all the steps taken by the appellant on this matter, as against persistent default on the part of the respondent, inclusive of failure to file an objection to the assessment raised, is that the tax assessed has become final and conclusive. It has become a debt due from the respondent.

We may emphasize that the evidence of the appellant regarding the tax assessed and the respondent's failure to pay remains unchallenged. In the circumstances, the Tribunal has a duty to accept and act on the appellant's evidence. It has been held by the Federal High Court in Federal Board of Inland Revenue V. Owena Motels Ltd (2010) TRLN p.87 at pp 93 and 94 that where the Service has raised an assessment based on the best of its judgment, and no objection was raised by the person assessed thirty days after notification, the assessment has become final and conclusive.

We, therefore, hold that the respondent's liability to pay the tax assessed has become conclusive. We, accordingly, resolve appellant's issue two in its favour.

The appellant's third issue is whether it is entitled to the reliefs claimed.

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After evaluating the evidence before us, we came to the conclusion that the appellant's claims have been established. The appellant's evidence was unchallenged. We found no features in it to induce disbelief. We have held under Issue Two above that the assessment made has become conclusive. It has become a debt due from the respondent. We have no basis to vary the amounts claimed. We, therefore, answer Issue Three in the affirmative and hold that the appellant is entitled to the total amount claimed.

Having resolved all the Three issues raised in this appeal in favour of the appellant, we give judgment in its favour, and grant it all the reliefs claimed, i.e. the principal tax, as well as interest and penalty imposed on the respondent.

We order the respondent to pay the appellant a total sum of #96,761,822 (Ninety-Six Million, Seven Hundred and Sixty-One Thousand, Eight Hundred and Twenty –Two Naira only). We order the respondent to pay 5% interest on the said amount from the date the appeal was filed (9th February, 2006) till the date of payment. We make no order as to costs.

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HON JUSTICE ABDUL SALAMI ABIRI..... CHAIRMAN

2 _____ 12/10/11

HON ADENIKE EYOMA ESQ.....COMMISSIONER

3 _____ 12/10/11

HON SALIHU A. BARAU.....COMMISSIONER

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APPELLANT'S COUNSEL: DANIEL ONUKUN ESQ, WITH HIM OSATOHAN IHENSEKHIEN ESQ.

RESPONDENT WAS UNREPRESENTED.

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