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IN THE TAX APPEAL TRIBUNAL

SOUTH WEST ZONE

HOLDEN AT IBADAN

31ST DAY OF MAY 2016

BEFORE THEIR HONOUR

HON. OLUSOLA IBIDAPO-OBE

PRESIDING CHAIRMAN

HON. CYRIL IKEMEFUNA EDE

COMMISSIONER

HON. JIBRIL NGATKYA USENI

COMMISSIONER

APPEAL NO. TAT/IB/023/2014

BETWEEN

AROUND 'D' CLOCK SECURITY COMPANY LIMITED

APPELLANT

AND

OGUN STATE INTERNAL REVENUE SERVICE

RESPONDENT

JUDGEMENT

By a Notice of Appeal dated the 16th day of June 2014, the Appellant prayed the Tribunal for the following orders:

- A. A declaration that the tax assessment on the Appellant by the Respondent for the year 2012 is not final and conclusive.
- B. An Order discharging the Appellant of the assessment and/or quashing the Demand Notice served on it by the Respondent in respect of the year 2012.
- C. An Order restraining the Respondent from giving effect to its threat to put its legal tax recovery machinery in motion to achieve an immediate total collection of the alleged liability from the petitioner.
- D. An Order to maintain status quo ante between the Appellant and Respondent pending the hearing and determination of this appeal.
- E. An Order Prohibiting the Respondent from using the general staff list of the Appellant to assess the Appellant's staff tax liability for the year 2012 and to deem the payment already paid for the staff of the Appellant who are resident in Ogun State as proper and sufficient.
- F. Such other or further orders as this Tribunal may deem fit to make in the circumstances.

Accompanying the Applicants application is a witness statement on oaths deposed to by a Mr. John Oluniyi. Appellants filed a list of document to be relied upon at the trial which included Affidavit of staff of the appellant.

The Respondent filed a notice of objection dated the 31st July of 2014. Accompanying the notice of objection is a written submission dated the 31st day of July 2014.

The Appellant filed a written address in opposition to the Respondents notice of objection dated 31st day July 2014.
Respondent filed a Reply dated the 24th April, 2015.

The Respondent also filed a witness statement on oath deposed by a Mrs. Elizabeth O. Ijitola dated 28th day of April 2015. Also a Respondent list of document to be relied on at the trial.

In furtherance of their argument, the Appellant raised the following issues for determination.

1. Whether the fact that the Appellant's corporate office is located in Magboro, Ogun State renders all its staff liable to pay their Personal Income Tax to Ogun State irrespective of where they live at?
2. Whether, the Employees of the Appellant who resides in Lagos State or any other state out of Ogun State are liable to pay their personal income Tax to Ogun State i.e. the Respondent?

On issue one the Appellant reiterated the relevant section of the that **Personal Income Tax Act Cap P8 Laws of the Federation of Nigeria 2004** which empowers the respondent to collect personal income tax which we shall reproduce:

"Section 2 (i) provides that:-

"Tax of an amount to be determined from the table set out in the sixth schedule (in this Act referred to as "Income Tax") shall be payable for each year of assessment on the total income of-

Every individual other than persons covered under paragraph (b) of this subsection or corporation sole or body of individuals deemed to be resident for that year in the relevant state under the provisions of this Act"

Section 2 (2) provides that:-

"In the case of an individual, other than an itinerant worker and persons covered under subsection (1) (b) of this section, tax for any year of assessment **may be imposed only by the state in which the individual is deemed to be resident for that year under the provisions** of the First Schedule to this Act and in the case of persons referred to in subsection (1) (b) of this section, tax shall be imposed by the Federal Board of Inland Revenue.

(Emphasis mine)"

From the above section it is clear that the respondent in this matter, the Ogun State Internal Revenue Service is empowered to collect tax within its jurisdiction.

The fact that not all of the staff of the appellant reside or pay their tax outside Ogun State is best known to the appellant and that such fact should be made available and proved to any authorized body empowered to so ask.

It is with interest that we note the appellants' submissions in paragraphs 9.0 and 10.0 of the appellants final written address and we reproduce herein:

"9.0 We submit with humility that the only burden that the law places on a person in the place of any of the employees of the Appellant was to show that he/she does not live in Ogun State.

"10.0" By this measure, the Appellant has discharged the burden of proof that the law places on it, to establish its claim that the employees of the Appellant reside in Lagos. They have no other additional burden in the case. There is no such burden placed on the employees to present evidence of their tax payment before this Honourable Tribunal since this Honourable Tribunal does not have jurisdiction over Lagos State tax matters."

It is erroneous for the appellant to presume that the only burden on it is to show that it's staff does not reside in Ogun State.

The burden of proof on the appellant extends to the fact that there is the need to also establish that the Personal Income tax of the staff of the appellant in contention was paid to Lagos State.

On the issue of burden of proof, the appellant directs the Tribunal to the case of

TSKJ NIGERIA LTD. Vs. OTOCHEM NIGERIA LIMITED (2008) 8 CLRN CAP 65

Where it was held that

["Burden of proof-although lie on the person who asserts, such burden would shift where the party who asserts adduces evidence to establish the existence of the fact alleged"].

However- we reiterate the case of **OWIE Vs IGHIWI (2005) MJSC Vol 3 pg 113 para-f** Where

It was stated that:

"Proof in a civil case is on the balance of probability or on the preponderance of evidence. This means that where the parties give evidence as to the claim before the Court, judgement will be given to the party that the evidence tilts in favour in the case]".

In another case EWO Vs ANI (2004)MJSC Vol 4 pg 132 para c, it was stated that:

"He who asserts must prove (see Section 134 of the Evidence Act). Again the burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side (see Section 135 of the Evidence Act].

The same case further stated:

"Again the burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side (**see Section 135 of the Evidence Act**). The Plaintiffs obviously from the nature of their cause are not saying that the Defendants do not own or control the land in dispute but are only saying that they (Plantiffs) own the land together with the Defendants communally. So the trial Court was right in placing the burden adequately where it belonged, on the Plaintiffs. They failed to discharge the burden and their claims were rightly in my view dismissed. This issue must as well be resolved against the Plaintiffs."

Per Kutigi,JSC (P. 132)para. C-E, Where It was further stated that:

" It is settled law that the onus of proof in civil cases lies on the Plaintiffs to satisfy the Court that he is entitled on the evidence called by him to his claim. And in doing so, he must rely on the strength of his own case and not on the weakness of the defence.

In this appeal, has the Appellant put all it should before the court to grant the order sought?

From the appellants final written Address in Paragraph 12.0 which we reproduce:

"12.0 The case of the Respondent as captured in their final written address does not disclose any basis for imposition of personal income tax on the Appellant's employees. There is no reference to the residency of the employees in issue, there was no reference to their work location or anything that could suggest such liability on the part of the employees. There was no evidence of a single effort by the Respondent to trace the resident of any of these staff and to be able to determine where they live. The Respondent merely grabbed a list of all the staff of the Appellant and issued a notice of tax assessment against the Appellant.

13.0 We submit that the style that the Respondent adopted is based on erroneous assumption that the employees resides within Ogun State. Therefore, the Respondent's style and basis for its claim of tax in this case is

very unreliable, whimsical, arbitrary, predicated on erroneous assumptions, unjustifiable and certainly unlawful."

The Appellant is relying on the Respondents perceived weakness as grounds for seeking the orders sought from the Tribunal.

We would rather regard the Crux of the matter to be :

1. Has the appellant staff said to be resident in another state been paying tax and for the year of assessment 2012 which is in dispute?
2. Has the appellant put in evidence, proof of such payment before the tribunal or to the inquiring tax revenue body?

The grouse of the Respondent is that no evidence has been given to support the position of the appellant that it's staff residing in Lagos has paid tax to Lagos State government, we reiterate paragraph 2.06 to paragraph 2.08 of the Respondents final written address dated 5th April, 2016:

- "2.06 Since the Claim of the Appellant was that it was remitting taxes of all its staff, but four, to Lagos State, the Respondent requested that the Appellant should substantiate same by producing evidence of tax remittance to Lagos State. Please see the resolution reached on Exh. R3.
- 2.07 By its letter of 28th April, 2014, the Respondent notified the Appellant of its refusal to amend the assessment because the Respondent neglected and/or refused to produce evidence of tax remittance in respect of its employees to Lagos State.
- 2.08 Rather than produce evidence to substantiate its claim, the Appellant filed a Notice of Appeal at the Tribunal placing reliance on the objection which it refused to substantiate.

After careful evaluation of all the arguments and the submissions by both parties and for the reasons given in this judgement the tribunal holds that the case of the Appellant fails and the reliefs sought by the Appellants in their appeal are hereby dismissed.

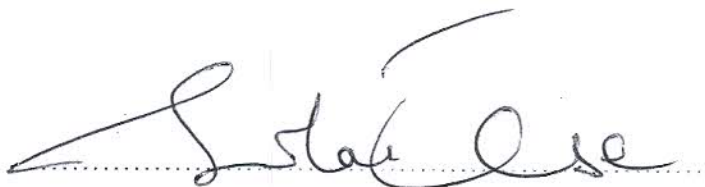
The Tribunal therefore orders as follows:

1. An order that the tax assessment on the Appellant by the Respondent for the year 2012 is final and conclusive.
2. An Order that the Appellant shall pay tax as assessed by the Respondent in respect of the year 2012 in the sum of N 1,034,956.85.

3. An Order that the Respondent is not prohibited from giving effect to its threat to put its legal tax recovery machinery in motion to achieve an immediate total collection of the alleged liability from the petitioner.
4. An Order that the Respondent is not prohibited from using the general staff list of the Appellant to assess the Appellant's staff tax liability for the year 2012 and an order not to deem the payment already paid for the staff of the Appellant who are resident in Ogun State as proper and sufficient.
5. An order that the tax assessment made for the appellant by the respondent for the year 2012 which is a total of **N 1,034,956.85** (One Million Thirty Four Thousand Nine Hundred and Fifty Six Naira Eighty Five Kobo) be made payable within 30 days of the delivery of this ruling.

This case is hereby dismissed.

Dated 31st Day of MAY 2016



Mrs. Olusola Ibidapo-Obe

Chairman