

IN THE TAX APPEAL TRIBUNAL

SOUTH – EAST ZONE

HOLDEN AT ENUGU

SUIT NO. TAT/SEZ/011/14

BETWEEN:

FEDERAL INLAND REVENUE SERVICE APPELLANT

AND

PICOTEX FANCY NIG. LTD RESPONDENT

BEFORE THEIR HONOURS

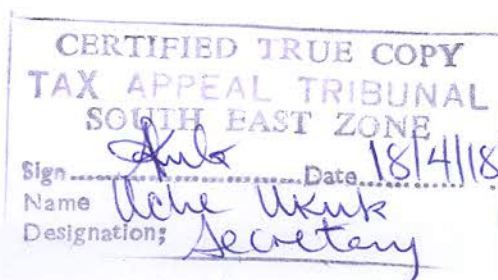
Chairman: Prof. C. J. Amasike

Commissioners: Ignatius Chibututu, Esq.
Dr. (Mrs.) Josephine A. A. Agbonika
Prof. Eddy Omolehinwa
Chief Ngozi I. Amaliri Esq.

JUDGMENT

The Appellant is a statutory body established under the Federal Inland Revenue Service Act, 2007 and is vested with the powers, inter alia, to administer and manage Education and Companies Income Tax Act. It is empowered by the Act to do such things as may be necessary and expedient for the proper assessment and collection of Education Tax and Companies Income Tax and account for the entire amount so collected to the Federal Government of Nigeria.

The Respondent is a company registered in Nigeria under the Companies and Allied Matters Act with its registered office at Plot 28 Asa Road, Aba, Abia State and at all times material to this suit, the Respondent carried on inter alia the business of trading. By virtue of the nature of its business the Respondent is liable to pay Companies Income Tax, Value Added Tax (VAT) and Education Tax but



refused to do so despite several letters and assessment notices served on the Respondent.

This matter was filed on 10th November, 2014, by FIRS [Appellant] before the Tax Appeal Tribunal South-East Zone, Enugu against PICOTEX FANCY CO. NIG. LTD. (Respondent) to recover the sum of **Two Million, Five Hundred and Twenty-Six Thousand, Seven Hundred and Two Naira and Fifty-two Kobo (₦2, 526,702.52)** from the Respondent being money due to the Federal Government of Nigeria as Companies Income Tax, Value Added Tax (VAT) and Education Tax for the period of 2003 and 2008. The Respondent had, despite several letters from the Appellant failed, refused or neglected to register, remit and render its monthly returns of taxable services to the Appellant as required by the Act for the period, consequent upon which a Best of Judgment assessment (BOJ) was raised against it by the Appellant for the period aforementioned.

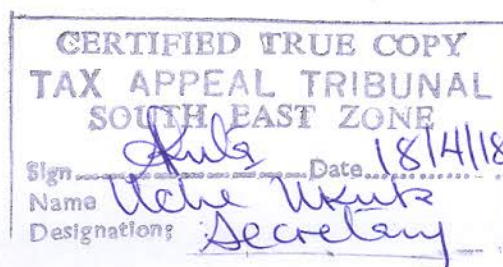
Notice of Assessment and several demand letters were served on the Respondent on 31st May 2011, 8th July 2011, 15th February 2013 and 12th August 2013 respectively to no avail.

The Appellant's grounds of appeal are hereunder summarised:

That the Respondent being a tax payer, refused, failed or neglected to file returns and remit relevant tax for the period between 2003 and 2008.

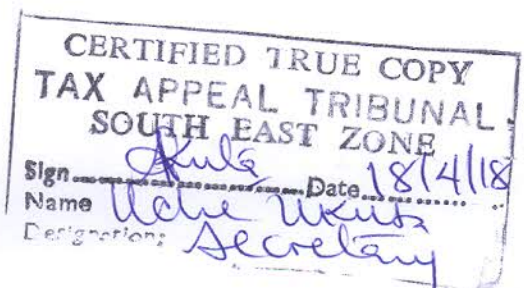
The Particulars are that;

- I. The Appellant being a statutory body established under the Federal Inland Revenue Service Act, 2007, is vested with the power to administer and manage the Value Added Tax Act 1993 as amended and Company Income Tax Act CAP 60, LFN 1990.
- II. The Appellant is empowered by the acts to do such things as may be necessary or expedient for the proper assessment and collection of the value added tax of 5%, education tax and company income tax and account for the entire amount so collected to the Federal Government of Nigeria.
- III. Sequel to II above the Appellant is also empowered by the Acts to conduct routine Value Added Tax and Companies Income tax



monitoring/compliance exercises on all companies that deal in taxable goods and services and ensure that the companies render returns to the Appellant as required by law.

- IV. The Respondent is a company registered under the Companies and Allied Matters Act with its registered office at plot 28 Asa Road, Aba, Abia State.
- V. At all material times the Respondent carried on business of trading, and thus has duty to pay companies income tax and education tax.
- VI. The Respondent has a duty to render to the Appellant true and accurate returns of all applicable taxes.
- VII. Routine audit of the accounts of the Respondent for the period between 2003 and 2008 revealed that the CIT, VAT and EDT liabilities stand as follows:
- Company Income Tax:** One Million, Five Hundred And Twenty Thousand, Seven Hundred And Sixty-Six Naira And Forty-Four Kobo only [N1, 520, 766.44]
- Value Added Tax:** Seven Hundred And Five Thousand, Five Hundred And Fifty One Naira And Thirty Five Kobo only [N705, 551.35]
- Education Tax:** Two Hundred And One Thousand, Three Hundred And Eighty-Four Naira And Forty Kobo [N201,384.40] thereby arriving at a total liability of Two Million, Five Hundred and Twenty-Six Thousand, Seven Hundred and Two Naira and Fifty-Two Kobo [N2, 526,702.52].
- Assessment notices were raised and served on the Respondent showing the said liabilities per VII above.
- VIII. The Appellant wrote letters dated 31st May 2011, 8th July 2011, 15th February 2013 and 12th August 2013 to the Respondent and informed the Respondent of the consequences of its failure, refusal or neglect to remit and render its monthly returns to the Appellant as required by Law.
- IX. The Respondent admitted the full liability to the Appellant and promised to pay same via a letter with reference number doc/gad/tm/2013/01, tiled IN RE: TAX AUDIT (2003-2008 ASSESSMENT YEARS) and dated December 2013



- X. The Respondent failed, refused and neglected to remit and render its monthly returns of taxable services to the as required by the act for the period.
- XI. Notice was given to the Respondent to provide the original copies of letters referred to at the hearing of this suit:

As a result of the above claims, the Appellant sought the following relief from the Tribunal:

An order of the tribunal compelling the Respondent to pay the Appellant:

The sum of **Two Million, Five Hundred and Twenty-six Thousand, Seven Hundred and Two Naira and Fifty-two Kobo (N2, 526, 702. 52)** as tax due from Respondent to Appellant for the period between 2003 and 2008.

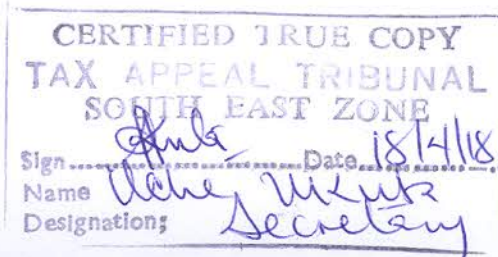
This matter came up on 12th November, 2014 and the Appellant was represented by N. K. Nwogu-Ikojo ESQ but the Respondent was neither in the Tribunal nor represented. Application for substituted service by pasting was granted to the Appellant and the matter was adjourned to 14/1/2015 for further mention.

On 14/1/2015, Appellant's counsel was in the Tribunal and the Respondent was represented by its chairman; Elder P. C. Okoro. The Respondent in its plea admitted liability and asked for an out of court settlement via a letter dated 13th January, 2015. The Respondent asked to be given the opportunity to pay the claim of the Appellant in four (4) installments. Consequently, the Tribunal adjourned the for judgment.

ISSUE FOR DETERMINATION

Whether from the facts and evidence before the Tribunal, the Appellant is entitled to the grant of its claims and relief sought.

From the facts and admission before the Tribunal, it is the view of the Tribunal that the Appellant is entitled to the grant of the relief sought in this matter.



The Respondent being a registered company in Nigeria is liable to pay certain taxes as enjoined by the law. Going by its nature of operation, the Respondent in this case is obliged to pay its Company Income Tax, Value Added Tax and Education Tax. See the following provisions of relevant statutes:

Section 40 (1) of the Companies Income Tax Act provides:

There shall be levied and paid for each year of assessment in respect of the total profits of every company, tax at the rate of thirty kobo for every naira.

Section 2 of the Value Added Tax Act Provides:

The tax shall be charged and payable on the supply of all goods and services (in this Act referred to as "taxable goods and services") other than those goods and services listed in the First Schedule to this Act.

By virtue of **Section 4** of Value Added Tax Act, the tax rate to be charged is 5 percent.

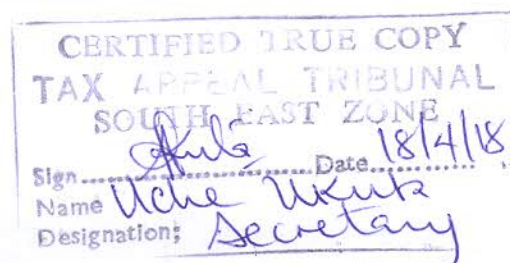
Section 2 (1) of the Education Tax Act provides:

The Federal Board of Inland Revenue (in this Act referred to as "the Board") shall assess and collect from a company the tax imposed by this Act and accordingly-

- (a) Shall, when assessing a company for companies income tax or petroleum profit tax for an accounting period of the company, also proceed to assess the company for the tax due under this Act.**

From the above provisions, it is apparent that the Respondent which is a trading company, is under obligation to pay the above listed forms of taxes as and when due.

Where a company such as the Respondent fails to pay its taxes, the Appellant is empowered by the law to institute action against it. As such, failure of the Respondent to pay its tax has necessitated the institution of this case.



Upon the institution of this case, the Respondent admitted liability via a letter dated 13th January, 2015. This is conclusive proof that the Respondents are liable to offset the claims of the Appellant, which the Appellant need not prove further.

The law is clear on the issue of admission of facts as conclusive proof of the facts so admitted. See the following cases:

AKOLEDOWO v. OJUBUTU (2013) All FWLR (Pt.692) 1820 at 1831, para E:

...What has been admitted need no further proof.

AGBOOLA v. STATE (2013) All FWLR (Pt.704) 139 at 164, paras C-D:

...the principle has thus remained that admitted facts require no further proof.

UKACHUKWU v. NKPADO (2013) All FWLR (Pt.706) 600 at 608, para F:

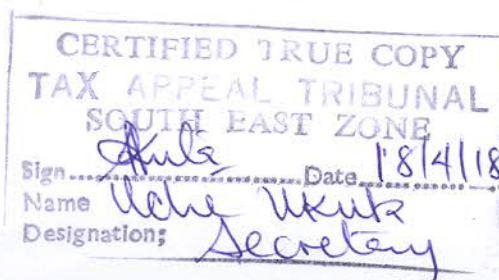
The learned counsel to the respondent conceded or admitted that the hearing notices served on the appellants were his letters, two (2) in number. It is trite that facts admitted need no further proof.

ATANDA v. ILIASU (2013) All FWLR (Pt.681) 1469 at 1482, para D:

The law is therefore well settled and as laid down in plethora of authorities that facts admitted need no proof and the court is expected to act thereon.

Therefore, going by the facts of this pleadings and the admission of the Respondent as well as the authorities cited above, it is clear that the Appellant needs no proof of an admitted fact, and is entitled to judgment. This appeal hereby succeeds and it is hereby ordered as follows:

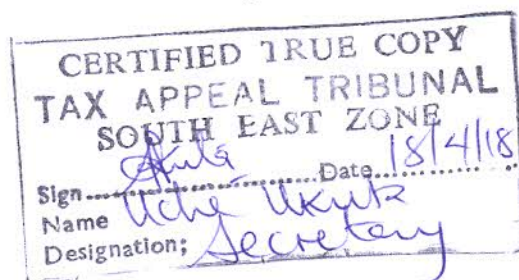
1. That the sum of Two Million, Five Hundred and Twenty-Six Thousand, Seven Hundred and Two Naira and Fifty-Two Kobo (N2, 526, 702. 52) has become due to the Appellant by the Respondent as best of judgment assessment for 2003 to 2008.



2. Judgment is entered for the payment of the sum of Two Million, Five Hundred and Twenty-Six Thousand, Seven Hundred and Two Naira and Fifty-Two Kobo [N2,526,702. 52] by the Respondent in favour of the Appellant.
3. Since Respondent had during the course of the trial paid the sum of Two Hundred and Sixty Thousand Naira [N260,000.00] the balance now to be paid is Two Million, Two Hundred and Sixty-Six Thousand, Seven Hundred and Two Naira, Fifty-Two Kobo [N2,266,702.52].
4. That in consideration of the Respondent plea for installmental payments, which the Tribunal hereby grants, the Respondent shall pay the balance of Two Million, Two Hundred and Sixty-Six Thousand, Seven Hundred and Two Naira, Fifty-Two Kobo [N2,266,702.52] in four equal monthly installments of Five Hundred and Sixty-Six Thousand Six Hundred and Seventy-Five Naira, Six Three Kobo [N566,675.63] before or on 30th of every month starting from 30th April to 30th July 2015.
5. That in the event of none compliance of any of the payments on the due date, the entire sums immediately become due and payable.
6. There shall be no order as to cost.
7. Parties are entitled to appeal against this judgment.

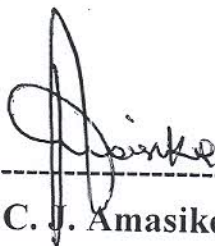
Noteworthy is the attitude of the Appellant with regards to preparation of processes filed in this matter. Therein, there were discrepancies as to certain facts stated which places the Tribunal in the position to determine which is correct.

For instance, in the amended notice of appeal, the Appellant in one breath stated that the period within which the Respondent failed to pay its tax was 2003 to 2008 and in another breath, under the grounds of appeal, stated that it was 2000 and 2006. The Tribunal decided to go with "2003 to 2008" only because it was repeated in other parts of the processes. Furthermore, while other processes bear "Picotex Fancy Co. Nig. Ltd" as the Respondent in the list of parties, the amended list of documents filed stated "Nneji & Sons Electricals Ltd" as the Respondent in the same matter.



The Appellant is therefore directed to desist from obvious cutting and pasting which could lead to filing shabbily prepared processes in this Tribunal.

This is the judgment of the Tribunal.

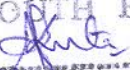
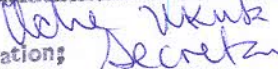


Prof. C. J. Amasike, Ph.D
Chairman
Tax Appeal Tribunal [S. E. Z.]

Dated 12th March, 2015.

COUNSEL:

N. K. Nwogu-Ikojo, For the Appellant.

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SOUTH EAST ZONE	
Sign 	Date 18/4/18
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