

IN THE TAX APPEAL TRIBUNAL  
SOUTH-EAST ZONE  
HOLDER AT ENUGU

101 FEB 2014

APPEAL NO. TAT/SEZ/016/12

BETWEEN:

FEDERAL INLAND REVENUE SERVICE.....APPELLANT

AND

TRACAS NIGERIA LIMITED.....RESPONDENT

BEFORE THEIR LORDSHIPS

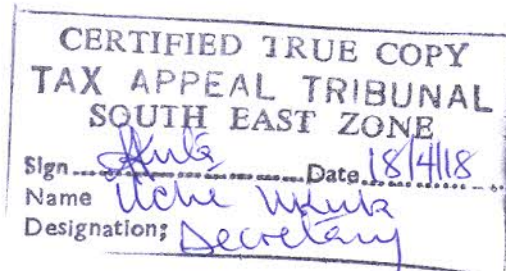
CHAIRMAN: Prof. C. J. Amasike

Commissioners: Ignatius Chibututu, Esq.

Dr. (Mrs) Josephine A.A Agbonika

Prof. Eddy Omolehinwa

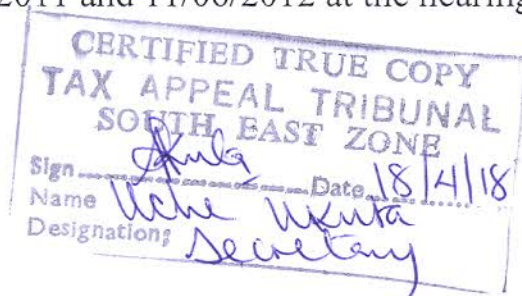
Chief Ngozi I. Amaliri Esq.



JUDGMENT

The Appellant is a statutory body established under the Federal Inland Revenue Service Act, 2007 and is vested with the power to administer and manage all the tax laws in Nigeria. It is empowered by the Tax Laws to do such things as any be necessary and expedient for the proper assessment and collection of the Value Added Tax of 5% and account for the entire amount so collected to the Federal Government of Nigeria. The Appellant is further entitled to raise Best Of Judgment [BOJ] Assessment on the Respondent where the Respondent fails or neglects or refuses to register for and pay the taxes accruable as and when due.

The Respondent is a company registered under the companies the Companies and Allied Matters Act with its office at No. 41/42 km 80, Enugu Onitsha Expressway, Awka, Anambra State. At all times material, the Respondent carried on business as a company registered under the Companies and Allied Matters Act by virtue of which it is liable to register and pay for Companies Income Tax and Value Added Tax on all VAT-able goods and services. Upon the company's refusal, neglect or failure to pay up its tax liability irrespective of efforts by the Appellant to get it to comply with the tax laws, the Appellant invoked its power under the tax laws, particularly Section 41[2] of the Companies Income Tax and Section 8[1] of Value Added Tax [As amended] to raise a Best Of Judgment Assessment as well as invoke penalties and interests to arrive at the total liability to **Seven Million, Six Hundred and Eighty-One Thousand , One Hundred and Eight Naira, Eighty-Six Kobo [N7,681,108,86.00]**. This was communicated to the Respondent vide a letter dated 09/05/2011, and a reminder dated 11/06/2012 and no response or objection emanated from the Respondent whatsoever save for its letter dated 23/03/2009 wherein it sought to deviate from a previously agreed mode for the payment of its established liabilities. The Appellant further stated that, since there was no objection from the Respondent for a period one year, on the Best Of Judgment Assessment used to arrive at the outstanding liabilities amounting to **Seven Million, Six Hundred and Eighty-One Thousand, One Hundred and Eight Naira, Eighty-Six Kobo [N7,681,108,86.00]**, the said amount had crystallized as a debt due to the Federal Republic of Nigeria for the period of 2005 to 2009. The Appellant gave Notice to the Respondent to produce the original copies of the letters dated 09/05/2011 and 11/06/2012 at the hearing of this suit.



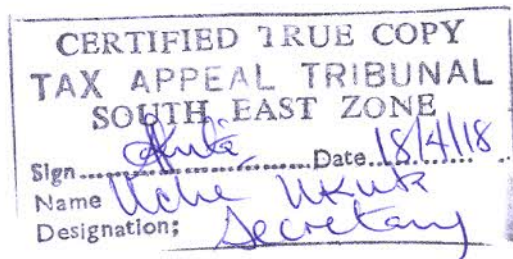


## GROUND OF APPEAL

The sole ground of appeal was that, the Respondent being a tax payer refused, failed or neglect to remit appropriate Tax for the period to 2005 to 2009.

The particulars were set out as follows:

- i. The Appellant as a statutory body established under the Federal Inland Revenue Service Act, 2007 is vested with the power to administer and manage all the tax laws in the country as provided through the FIRS Act 2007.
- ii. It is empowered by the Tax Laws to do such things as may be necessary or expedient for the entire amount so collected to be remitted to the Federal Government of Nigeria.
- iii. The Appellant is further entitled to raise Best Of Judgment Assessment on the Respondent where the Respondent fails or neglect to register for and pay the taxes accruable as and when due.
- iv. The Respondent is a company registered under the Companies and Allied Matters Act with its office at Km 41/42, Onitsha - Enugu Expressway, Awka, Anambra, State.
- v. At all times material the Respondent carried on the business as a company registered under the Companies and Allied Matters Act, by virtue of which it is liable to register and pay for Companies Income Tax and Value Added Tax on all Vat-able goods and services.
- vi. The company has refused, neglected or failed to pay up its tax liabilities despite all efforts by the Awka MSTO of the Appellant to get it to comply with the tax laws.

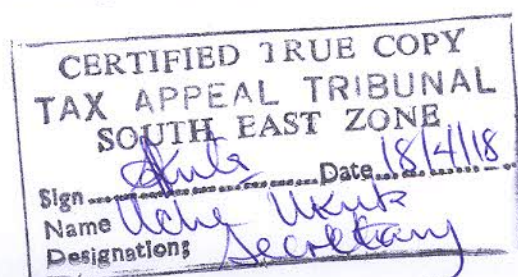


- vii. Due to the Respondent's failure, the Appellant invoked her power under the Tax laws, particularly Section 41[2] of the Companies Income Tax Act and Section 8[1] of the Value Added Tax Act as amended and raised a Best Of Judgment Assessment as well as penalties and interests thereby bringing the total liability to **Seven Million, Six Hundred and eighty-one Thousand, One Hundred and eight Naira, Eighty-six kobo [N761,108.86]** and same was communicated to the respondent vide a correspondence dated 09/05/2011 & 11/06/2012.
- viii. Letters dated 09/05/2011 and 11/06/2012 were written to the respondent as reminders to their tax obligation and no response or objection emanated from the respondent whatsoever save for her letter dated 23/03/2009 wherein they sought to deviate from a previously agreed mode for the payment of their established liabilities.
- ix. Due to non objection from the respondent for a period for superseding one year, the best of judgment assessment and all her outstanding liabilities amounting to **Seven Million, Six Hundred and Eighty-One Thousand, One Hundred and Eight Naira, Eight-Six Kobo [N7,681,108.86]**
- x. Notice was given to the Respondent to produce the original copies of the letters dated 09/05/2011 and 11/06/2012 at the hearing this suit.

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

An order compelling the Respondent to pay to the Appellant:

- I. **Seven Million, Six Hundred and Eight-One Thousand, One Hundred and Eight Naira, Eight-six Kobo [7,681,108.86]** as tax due from Respondent to the Appellant for the period 2005 to 2009.





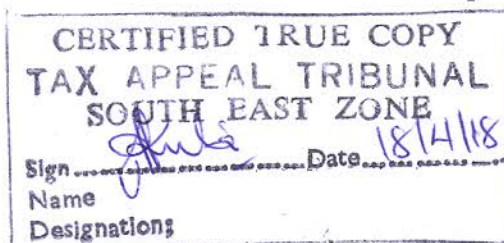
II. Any other order[s] as the tribunal may fit to make in the circumstance of the case.

On **18-09-13**, the Appellant was represented by Emmanuel I. Eze while Aniazoka M.C. representing the Respondent, denied liability and claimed that his client had even overpaid his taxes. The Appellant's counsel drew attention to the fact that the period under litigation for which it sued for N7,681,108.86 was from 2005 to 2009. The document which the Respondent intends to rely on, is that covering liabilities from 2007 to 2013. The Respondent sought an adjournment to put their house in order. The Case was adjourned to 23<sup>rd</sup> October, 2013.

On **23<sup>rd</sup> October, 2013**, the matter could not go on because the Respondent's counsel Aniazoka, M.C. sought an adjournment due to ill health.

On **16-12-13** Emmanuel Eze appeared for Appellant. Although Counsel for the Respondent was absent, Ademola Ogunleye and Mr Nosike Uyana the Respondent's Accountants announced appearance on the Respondent's behalf. Introducing a new twist, Ademola Ogunleye said he prepared the Respondent's financial records for period in question and admits that the FIRS figure of 7,681,108,86 falls clearly within the litigation period of 2005 to 2009. He said the amount includes penalties and interests and believes that the Respondent was liable and could pay Mr. Nosike Uyana also an Accountant of the company affirmed that by their calculation, the Respondent's is owing N7,681,108.96.00. That since it had paid part, the remaining liability was now N4,644,134.00.00

On **28<sup>th</sup> January, 2014**, Ademola Ogunleye, Accountant Representing the Respondent, proposed for adoption of a schedule for payment of N1,161,033.50 per month from February to May, 2014 to conclude the balance of payment.



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The Appellant rejected this proposal saying that the liability had been due since 2009. The Tribunal relying on the admission of the Respondent, ordered that the balance amount due being N4, 644,133.00, be paid in two installments. The first to be paid before the next adjourned date being 10<sup>th</sup> Feb 2014, by which time at least half [1/2] would have been paid.

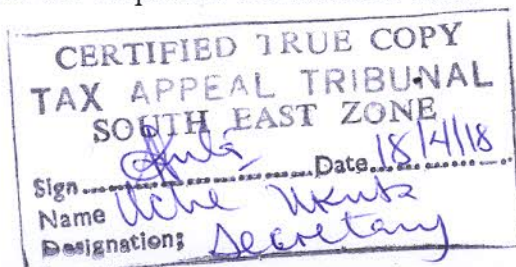
On 10-02-14 the Respondent informed the Tribunal that it had paid into Zenith Bank the sum of 1.2 Million Naira leaving a balance of **Three Million, Four Hundred and Forty Four Thousand, One Hundred and Thirty Three Naira, Fifty Four Kobo [3,444,133.54]**.

The Appellant's counsel asked for judgment on the admitted sum since there was no denial.

Upon listening to counsel for the Appellant Emmanuel Eze and Respondent's Accountant, Ademola Ogunleye, the total indebtedness as admitted on behalf of the Respondent on the last adjourned date was N4, 644,134.54, it was ordered by the Tribunal upon the admission of liability that the total sum be paid in two installments. Since the Respondents have failed to comply, the Appellant is entitled to the judgment sum which has been admitted. This sum not being denied has become due and payable to the Appellant. See **Anike Vs S.P.D.C. [Nig.] Ltd. [2012] AII FWLR [Pt.638] 975 at 984**, where in the Court of Appeal, per Eko JCA held that:

*By Virtue of section 75 of the Evidence Act, facts which are admitted need no further proof...*

See also the case of **Attorney-General Nasarawa v. Attorney-General Plateau [2012] AII FWLR [Pt.630] at 1288**, where the Supreme Court held that:



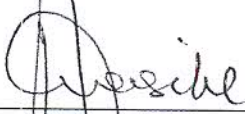
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*...the law is very certain and clear that facts admitted require no further proof.  
See S. 75 of the evidence Act...*

Judgment is hereby entered for the Appellant. The said amount should be paid immediately by the Respondent to the Appellant. Parties are entitled to appeal.

Signed



Prof. C.J Amasike, Ph.D  
Chairman

Tax Appeal Tribunal [S.E.Z]

