

**IN THE TAX APPEAL TRIBUNAL
IN THE NORTH - EAST ZONE
HOLDEN AT BAUCHI**

ON THE 18TH DAY OF FEBRUARY, 2014

BEFORE:	HON. SULEMAN AUDU	-	CHAIRMAN
	HON. HALIMA SA'ADIYYA MOH'D	-	MEMBER
	HON. ALH. ALIYU ABBAS BELLO	-	MEMBER
	HON. CHIEF NGOZI AMALIRI	-	MEMBER
	HON. CHIEF SUNDAY IDAM ISU	-	MEMBER

**FEDERAL INLAND REVENUE SERVICE..... APPELLANT
AND
INNOMACO PHOTO LAB.....RESPONDENT**

JUDGMENT

SUMMARY OF FACTS

The Appellant commenced this suit by a Notice of Appeal dated 12th day of September, 2013. The Appellant alleged that the Respondent has persistently refused, failed/neglected to remit Value added Tax (VAT) from July 2007 to February 2013. The Appellant further alleged that despite several reminders, letters of demand made to the Respondent by Micro and Small Tax office, Jalingo, the Respondent willfully refused to comply with the Appellant's directive for it to pay the sum of N475,800.00 (Four Hundred and Seventy Five Thousand Eight Hundred Naira Only) as Value Added Tax (VAT) being the money due to the Appellant as VAT from July 2007 to February 2013.

The Appellant sought the following reliefs from the Tribunal:

1. An order of the Tribunal compelling the respondent to pay to the Appellant the sum of N475,800.00 (Four Hundred and Seventy Five Thousand Eight Hundred Naira Only) as Tax due from the Respondent to the Appellant for the periods of July 2007 to February 2013.
2. Any other order(s) as the Tribunal may deem fit to make in the circumstances of the case.

The Appellant, at the beginning of the proceedings, filed a Notice of Appeal and a 14-paragraph witness statement on oath dated 12th day of September, 2013 deposed to by their sole witness Abubakar Abu, a staff of Federal Inland Revenue Service, Micro and Small Tax Office, Jalingo, Taraba State. The Appellant also filed a written address dated 20th day of January, 2014.

The Appellant's sole witness adopted his witness statement on oath, testified as AW1, tendered four (4) documents which were admitted in evidence and marked as follows:

1. Exhibit A — INNOMACO PHOTO LAB: Value Added Tax Act 102 of 2007 (as amended), Non rendition of VAT Returns- from June, 2007 to January, 2013.
2. Exhibit B - Federal Inland Revenue Service: VAT Re-Assessment Notice.
3. Exhibit B(1)— Re Value Added Tax Act (VAT) NO 102 of 2007(as amended).
4. Exhibit C-Non submission of Value Added Tax (VAT) returns from July 2007 to February 2013 Tax liability of N475,800.00 (Four Hundred and Seventy Five Thousand Eight Hundred Naira).

There was no representation for the Respondent despite service of processes on same.

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The learned counsel to the Appellant Mr. A. A. Al-Hashim in his written brief of argument formulated two (2) issues for determination by the Tribunal. These are:

1. *Whether undisputed Assessment becomes final and conclusive.*
2. *Whether the Appellant is entitled to the relief as claimed.*

Upon due consideration of facts and the documents filed in this suit, the Tribunal herein formulate a sole issue for determination;

Whether the Respondent is a taxable entity and if the answer is in the affirmative whether the Respondent has remitted its tax obligation to the Appellant.

All oral arguments and submissions of Appellant's counsel are as contained in the transcripts of this Tribunal which forms part of these proceedings.

In resolving this issue several factors came to the fore. However, before the Tribunal can do justice to this issue, it is pertinent to look at the powers and functions of the Appellant as a statutory regulatory agency. The Federal Inland Revenue Service is the regulator saddled with the powers of assessment, collection of, and accounting for revenues accruable to the Federation. The Appellant, as the apex regulatory body in the Nigerian Revenue sector is empowered to regulate the sector for the benefit of the entire Nigerians. These powers are so wide and include performing other functions expedient for giving full effect to the provisions of the Act.

It is therefore clear from the unambiguous provisions of Section 25 of the Federal Inland Revenue Act, 2007 which provides that:

The service shall have power to administer all the enactments listed in the first schedule to this Act and any other enactment or

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law on taxation in respect of which the National Assembly may confer power on the service.

In the same vein, Section 7 (1)(a)(b) of Federal Inland Revenue Act 2007 provides respectively as follows:

- (a) Provide the general policy guidelines relating to the functions of the service.*
- (b) Manage and superintend the policies of the service on matters relating to the administration or revenue, assessment, collection and accounting system under this Act or any enactment or law.*

Section 77 of Company Income Tax Act provide further provides that:

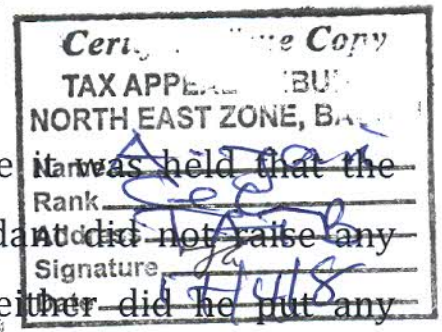
"Notwithstanding any other provision of this section, every Company shall not later than 3 months from the commencement of each year of assessment pay provisional tax of amount equal to the tax paid by such company in the immediate preceding year of assessment in one lump sum"

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See also Sections 52, 55 of Company Income Tax Act

In the instant appeal, it is the contention of the Appellant that it has carried out it's statutory duty of assessing the Respondent to determine its tax liability from July 2007 to February 2013, that the Respondent failed, neglected/refused to comply with Appellant's order to pay the sum of N475, 800.00 (Four Hundred and Seventy Five Thousand Eight Hundred Naira) which is the Tax liability of the Respondent covering the period mentioned above.

The Appellant's counsel contended further that all the assessment demand notes and reminders were duly served on the Respondent to which he failed to respond. Counsel refers the Tribunal to the case of



FBIR Vs MRS. O. A. ONAYEMI (1973) where it was held that the plaintiff is entitled to the claim as the defendant did not raise any objection and did not make any payment, neither did he put any appearance in court. Counsel posited that assessment has a statutory limit of 30 days and if it elapses it becomes final and conclusive. Counsel placed reliance in the case of **J. H. DOHERTY Vs FBIR (1973)** 1 NMLR Page 162 where the Court of Appeal held that uncontested assessment becomes final and conclusive.

Referring the Tribunal to paragraphs 8, 9 and 10 of the written statement on oath of the Appellant's witness and Exhibits A, B and B(1) counsel submitted that all the court processes were duly served on the Appellant. Counsel submitted finally that by the provisions of Section 19(2) of VATA Cap V1 LFN 2004 (as amended) the assessment notice has become final and conclusive.

Flowing from the foregoing, it is the view of the Tribunal that the germane issue in dispute is whether the Respondent has paid its Value Added Tax to the Appellant from July 2007 to February 2013 as assessed by the Appellant. In addressing this issue, we will have recourse to the provision of the Act establishing VAT. Section 2 of the Value added Tax Act 2007 provides for tax to be charged and payable on the supply of all goods and services.

In contest, it is an undisputed fact that the Respondent is a company duly registered to carry out business activities in Nigeria. The statute guiding operation of business by registered companies in Nigeria placed an obligation on them to pay their Value Added Tax. The Appellant is the agency of the Federal Government with powers to

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exercise this function. In the instant controversies, though the Respondent is not represented in the proceedings, the facts before the Tribunal point to the fact that the Respondent has not complied with the Appellant directives even though the Appellant has taken the necessary steps required of it to collect its VAT. This can be gleaned from the Exhibits before the Tribunal. In Exhibit A which is— INNOMACO PHOTO LAB: Value Added Tax Act 102 of 2007(as amended), non rendition of VAT Returns- from June, 2007 to January, 2013, the Respondent was served with a notice that the Respondent should remit its VAT as the remittance period has elapsed. More so, the contents of Exhibit B which is Federal Inland Revenue Service: VAT Re-Assessment Notice shows how the Respondent VAT liability was assessed with no opposition from the Respondent. Exhibit B(1)— Re Value Added Tax Act (VAT) NO 102 of 2007 (as amended) By this Exhibit, the Respondent was notified of contravention of the VAT Act by non notification of its change of name.

Finally Exhibit C non submission of Value Added Tax (VAT) returns from July 2007 to February 2013 Tax liability of N475,800.00 (Four Hundred and Seventy Five Thousand Eight Hundred Naira).

In all these Exhibits, none was controverted by the Respondent. And in all, the various steps taken by the Appellant are in line with the rule guiding recovery of VAT. We aligned ourselves with the decision of the court in the case of **FBIR Vs MRS. O. A. ONAYEMI (1973)** cited by Appellant's counsel that uncontested assessment becomes final and conclusive due to the failure of the company to object to the revenue or appeal to the Body of Appeal Commissioners.

However, the general rule is that where a plaintiff has filed a statement of claim making certain averments against a defendant or where the suit is commenced by an originating summons and he filed an affidavit in support of same, it behoves a defendant wishing to defend the claim to file a statement of defence or a counter affidavit as the case may be, stating his own side of the story which he intends the court to believe. Where the defendant fails to file a statement of defence or a counter affidavit, whichever is applicable, it is generally regarded that the defendant had admitted the claim of the plaintiff and for failing to controvert or contradict the facts in affidavit in support, that he has admitted same. See **L. S. W. C. Vs SAKAMORI CONSTRUCTION COMPANY (NIG) LTD.** (2011 12) NWLR (PART 1262) Pg 600, Paras: F-H.

Facts contained in an affidavit to which there is no counter affidavit are in law deemed to have been admitted. See **F. R. N. Vs ABACHA** (2008) 5 NWLR (1081) Pg568, Para; G.

In the instant case, the facts deposed to in all the paragraphs of the supporting affidavit were so compelling and the Respondent did not file a counter affidavit. The Respondent is deemed to have admitted these averments. It is also the law that in civil matters, no law compels any party to be physically present in court to prove his case or to defend it. Where, however, a party is seen to have been served not only with the processes filed but also with the hearing notice and he chose to stay away from court whilst the hearing in the case proceeds, he cannot be heard to complain after judgment has been

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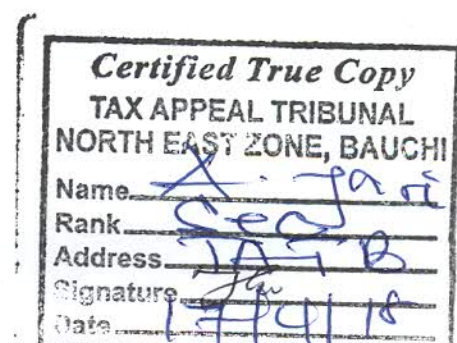
delivered, that he was not given fair hearing. See **AMADI Vs ACHO** (2005) 12 NWLR (Part 939) Page 404, Paras: G-H.

Having painstakingly examined all the issues raised, the affidavit evidence and with oral testimony of the Appellant, it is our considered view that failure of the Respondent to defend the appeal and reply to it has led the evidence of the Appellant Witness unchallenged and uncontroverted. We are also persuaded by Appellant's argument that the Appellant has proved his case successfully before this Tribunal.


Having thus come to the conclusion that the Respondent has no defence in this action, the Tribunal is left with no option than to accept all the depositions and arguments of the Appellant as they relate to the Respondent. We therefore resolve the sole issue formulated in favour of the Appellant.

Consequently, the Respondent, **INNOMACO PHOTO LAB** is hereby **ordered to pay to the Appellant the sum of N475,800.00 (Four Hundred and Seventy Five Thousand Eight Hundred Naira)** as its Tax obligation to the Appellant within 30 days from the day of Judgment.

This is the Judgment of the Tribunal.



Dated this 18th day of February, 2014.



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CHAIRMAN

RIGHT OF APPEAL

Any party dissatisfied with the decision of the Tribunal may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to the Secretary within thirty days from the date on which such decision was given.

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Signature	<u>[Signature]</u>
Date	<u>17/4/18</u>