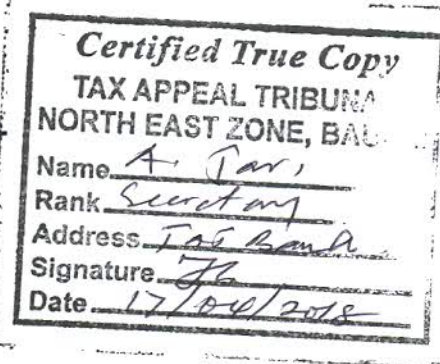


IN THE TAX APPEAL TRIBUNAL
IN THE NORTH EAST ZONE
HOLDEN AT BAUCHI

THIS 27TH DAY OF JANUARY, 2016



HON. HALIMA S. MOHAMMED	-	-	CHAIRMAN
HON. NGOZI AMALIRI	-	-	COMMISSIONER
HON. SUNDAY IDAM ISU	-	-	COMMISSIONER
HON. ALIYU ABBAS BELLO	-	-	COMMISSIONER

APP NO.: TAT/NEZ/007/2015

BETWEEN

FEDERAL INLAND REVENUE SERVICE APPELLANT

AND

FELIX FURNITURE RESPONDENT

JUDGMENT

The Appellant commenced this action by a Notice of Appeal dated 6th August 2014 seeking the following reliefs:

1. An order of the Tribunal compelling the Respondent to pay to the Appellant the sum of **₦764,025.00** (Seven Hundred and Sixty Four Thousand, Twenty Five Naira) only.

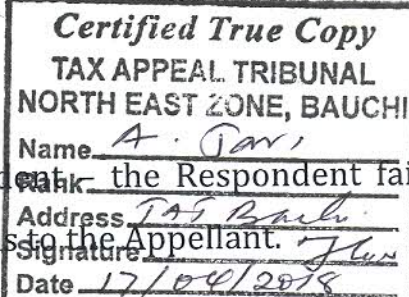
The Appellant's sole ground of appeal is that the Respondent being a taxable person has refused, failed and or neglected to remit Value Added Tax (VAT) for the period of November 2010 to December 2013.

SUMMARY OF FACTS

It is the case of the Appellant that the Respondent was a going concern, particularly for the period of November 2010 to December 2013. That several letters were written by the Appellant demanding for returns due and the consequences of failure to remit VAT as and when due. At the expiration

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JUDGEMENT BETWEEN FIRS VS FELIX FURNITURE



of the 14 days' notice given to the Respondent, the Respondent failed, refused and or neglected to render the returns to the Appellant.

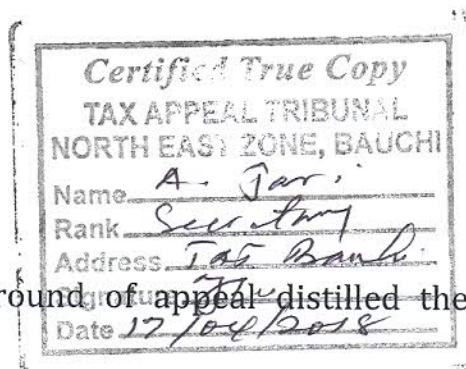
Consequent upon above, the Appellant raised and assessed the Respondent based on Tax enforcement exercise dated 13th February, 2014 for the period November 2012 to December 2013. The Appellant claimed that the result of the VAT monitoring exercise amounted to **₦764,025.00** (Seven Hundred and Sixty-Four Thousand, Twenty-Five Naira) only.

The Appellant filed the following process viz Notice of appeal and witness statement on Oath deposed to by Abubakar Abu of Federal Inland Revenue Service, Micro & Small Tax Office Jalingo, Taraba State dated 10th August, 2015. The Appellant filed 5 Exhibits namely Exhibits A, A1, B, C, D.

The Appellant was represented by Mr. A. A. Al-hashim Counsel while Mr I. C. Osuji appeared once for the Respondent. The Respondent thereafter informed the Tribunal that he will be representing himself at the proceedings.

Throughout the entire proceedings the Respondent did not take part in the trial neither did he file any process. However, in the course of the proceeding the Appellant's counsel informed the Tribunal that the Respondent had commenced payment by remitting the sum of **₦100,000.00** (One Hundred Thousand Naira) only out of the **₦764,025.00** (Seven Hundred and Sixty-Four Thousand, Twenty-Five Naira) only he owed the Appellant. Upon payment of the above sum, the Respondent failed to attend subsequent sittings of 13th October 2015 and 16th December 2015. On the latter date, the Tribunal adjourned the matter to 27th day of January, 2016 for default Judgment.

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DECISION

The Tribunal, from the Appellant's sole ground of appeal distilled the following issues for determination:

1. *whether the Respondent is a taxable person;*
2. *whether the assessment raised has become final and conclusive, and*
3. *whether the Appellant is entitled to the reliefs as claimed.*

ISSUE ONE

Whether the Respondent is a taxable person.

The Respondent is a registered company under the Companies and Allied Matters Act and also registered as a taxable person with the Federal Inland Revenue Service under the Value Added Tax Act and by virtue and nature of its business the Respondent has become a taxable person liable to render to the Appellant true and accurate monthly returns. See paragraphs 5, 6 and 7 of the sworn statement of the Appellant. We resolved this issue in favour of the Appellant.

ISSUE TWO

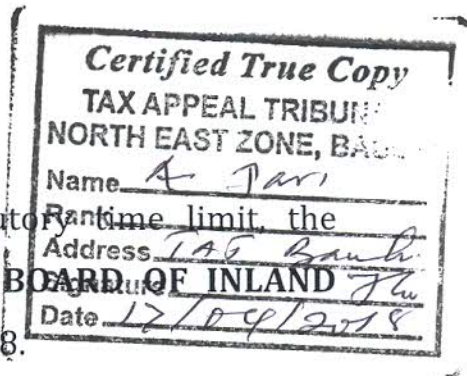
Whether the assessment raised has become final and conclusive.

It is the law that assessment has a statutory limit of 30 days, and if it lapses it becomes final and conclusive. Assessment not objected to within the specified statutory time, becomes final and conclusive. It is also the law that where a company fails to render returns, the Board will proceed to assess them to tax in respect of the year of assessment on best of Judgment basis. See **FEDERAL BOARD OF INLAND REVENUE Vs WILMER PUBLICITY LIMITED**¹ FRCR (1974) 107 FRC

Where a taxable person or company fails to deliver the prescribed returns of income, the Board is empowered to determine according to the best of its Judgment the amount of the chargeable income and where no valid objection

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becomes made or appeal lodged within the statutory
assessment is valid and conclusive See **FEDERAL BOARD OF INLAND REVENUE V AZIGHO BROTHERS** (1963) ALL NLR 198.



In this appeal, the Respondent was duly served with all the assessment/demand notes/reminders to which they failed to respond. See **Exhibit A, A1 to D**

The Appellant's evidence before this Tribunal is that the Respondent is a Taxable person. It failed to file tax returns for the period of November 2012 to December 2013 which led the Appellant raising a Best of Judgment assessment on the Respondent.

When admissible evidence has been adduced which remains uncontroverted, it becomes part of what will lead to a decision in the case and unless the evidence is incredible, the court is not only entitled to, but has no reason not to accept it. In other words, when evidence is unchallenged through cross examination and not controverted by other evidence, that is, when at the trial the plaintiff calls evidence but the defendant who has an opportunity to call evidence does not call evidence to contradict the evidence led by the Plaintiff and the evidence by itself is not incredible, the evidence does not only quality to be accepted by the trial court, the trial court must accept and act on the evidence. See **AFRIBANK (NIG) LTD. V M. ENT. LTD.** (2008) 11 NWLR Part 1098 Pp 243 Pg. -244 Paras: G-B

As against persistent default of the Respondent to defend this action and to remit its Tax due, we view the steps taken by the Appellant that the tax assessed has become final and conclusive and a debt due from the Respondent to the Appellant. We resolve this issue against the Respondent.

ISSUE THREE

Whether the Appellant is entitled to reliefs claimed

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It is the Tribunal's view that all the reliefs sought in paragraph 3 of the Appellant Notice of Appeal is consistent with the evidence adduced. The failure of the Respondent to defend the appeal and or reply to it left the Appellant's evidence unchallenged and uncontroverted. The Respondent has legally waived his right of defence by his deed and action.

The inaction or failure of the Respondent to defend this appeal is in breach of **Order 8 R 1-3 Tax Tribunal (Procedure) Rules 2010**. We therefore resolve this issue in favour of the Appellant.

The Tribunal, having resolved the three issues raised in this appeal in favour of the Appellant, herein grant the Appellant all the reliefs claimed.

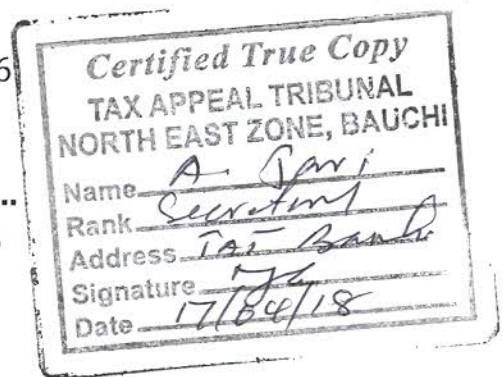
Consequently, we order the Respondent to pay to the Appellant a total sum of **N664,025.00** (Six Hundred and Sixty-Four Thousand Twenty-Five Naira) only within 60 days from the date of judgment.

This is the Judgment of the Tribunal.

Dated this 27th day of January, 2016

Halima

Hon. Halima Sadiyya Mohammed.
Presiding Chairman



RIGHT OF APPEAL

Any party dissatisfied with a 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 30 days from the date on which such decision was taken.