

True Copy
TAX APPEAL TRIBUNAL
NORTH EAST ZONE, BAUCHI

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Date 17/4/18

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

APP. NO.: TAT/NEZ/002/12

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
MAIDUUGURI INTERNATIONAL HOTELS.....RESPONDENT**

JUDGMENT

The Federal Inland Revenue Service (FIRS) (hereinafter referred to as the Appellant) through its Counsel, filed this appeal before this Tribunal claiming the sum of Nineteen Million, Seven Hundred and Six Thousand, Four Hundred and Fifty-Nine Naira, Fifteen Kobo (N19,706,459.15) only from Maiduguri International Hotels (hereinafter referred to as "the Respondent") being revenue said to be owed the Federal Republic of Nigeria.

The Notice of Appeal comprising their claim and some exhibits were filed in the Registry of the Tribunal and served on the Respondent. In the said Notice of Appeal, the appellant averred, among other things, that the Respondent was a going concern at the time of assessment and that it has failed, neglected or refused to the returns of Companies Income Tax, Education Tax and Valued Added Tax for the period under review despite service on it of assessment Notices and Demand Notes.

The Appellant also contended that by virtue of the provisions of Section 8 of the Federal Inland Revenue Service (Establishment) Act, 2007, it is empowered to recover revenue accruing to the coffers of the Federal Government from all statutory bodies, hence this appeal against the Respondent. The Appellant maintained that the Respondent was a taxable person at the time of assessment but could not remit the taxes due to the Appellant within the time stipulated by the law, and therefore urged the Tribunal to order the remittance of the sum claimed.

For record purpose, during the hearing of this appeal, learned Counsel for the Respondent objected to the tendering of some documents exhibited to the Notice of Appeal on the ground that being public documents, they ought to be certified in accordance with the provisions of Section 104(1) & (2) of the Evidence Act, 2011 as amended.

He also referred the Tribunal to the provisions of Section 102 of the said Act, which defines public documents. Arguments were made by learned Counsel on both sides in this regard. In the end the Tribunal agreed with the contention of Respondent's Counsel that the documents sought to be tendered by learned Counsel for the Appellant are public documents which require certification. However, the Tribunal invoked the provisions of Order 22, Rule 2 of the Tax Appeal Tribunal (Procedure) Rules, 2010 and ordered that the documents sought to be tendered be certified by the designated officers. This was done and the documents were tendered and admitted as exhibits.

Learned Counsel for the Respondent, contended that the Appellant could not have assessed the Respondent at the time they did so because according to him it was gutted by fire twice, that is, in 2010 and 2011, and was not a going concern. He further contended that as a result it is no more a legal personality in law. He cited some authorities in support of his contention. He urged the Tribunal to dismiss the Appeal.



We have heard the submission of learned Counsel for both parties. We have also gone through their briefs of arguments and heard their witnesses. It is now left for the Tribunal to consider the crux of the matter.

Going by the processes filed in this Tribunal, the subject matter is whether or not the Respondent is liable to remit the sum claimed. As earlier stated, we have heard the evidence of both parties and perused the exhibits.

In the Notice of Appeal, the Appellant is claiming the sum of Nineteen Million, Seven Hundred and Six Thousand, Four Hundred and Fifty-Nine Naira Fifteen Kobo (N19,706,459.15) only from the Respondent as tax for the years 2005 and 2006. This sum encompasses non-remittance of Company Income Tax, Education Tax and Value Added Tax for the period under review.

Usually, objections are made specifically for any sum not owed. Admissions are also made of the sum owed. But we have not had tacit denial or objection on the part of the Respondent so as to absolve it from liability in part or in whole.

The position of the law relating to assertions or pleadings is that, he who asserts must prove and that proof in civil matters is on the balance of probabilities, not beyond reasonable doubt as required in criminal matters. See section 131(1) of the Evidence Act, 2011 as amended.

Moreover, we are not moved by the claim of the Respondent that the hotel was gutted by fire. It is evidence from paragraph 3 of the Respondent witness Statement on Oath that the hotel was gutted by fire on the 88th of April, 2011. This was more than four years after all the taxes in question was long overdue. If the Respondent was serious about the payment of these taxes that are due which is the subject matter of this suit, four years is long enough for him to pay these taxes.

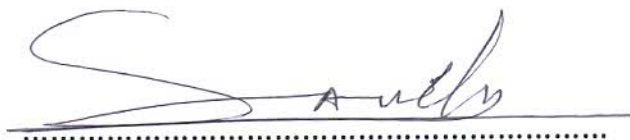
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From the evidence before us, the Appellant has established that the Respondent has not been remitting Company Income Tax, Education Tax and Valued Added Tax for the period under review. We have not had any evidence contrary to this. We therefore hold that the Respondent is liable to the Appellant in the sum claimed.

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.

Dated this 15th day of August, 2013.



CHAIRMAN

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*****CHUBINTEL*****