

IN THE TAX APPEAL TRIBUNAL
IN THE SOUTH-SOUTH ZONE
HOLDEN AT BENIN CITY
ON FRIDAY 25TH APRIL, 2014

BEFORE

HON ADENIKE EYOMAACTING CHAIRMAN

HON UGBABE UGBABE..... COMMISSIONER

HON SALIHU.A.BARAU..... COMMISSIONER

APPEAL NO. TAT/SSZ/006/10

BETWEEN

FEDERAL INLAND REVENUE SERVICE APPELLANT

AND

MAC CONELS NIGERIA ENTERPRISES LTD RESPONDENT

JUDGMENT

This suit was initially filed at the defunct VAT Tribunal Enugu. Upon the establishment of the Tax Appeal Tribunal, the matter was transferred to this Tribunal on 14th October, 2010. Thereupon, the Tribunal ordered the filing of a fresh Appeal in accordance with the Tax Appeal Tribunal (Procedure) Rules 2010.



In its Notice of Appeal dated and filed on 31st March, 2011 the Appellant claims against the Respondent as follows:

“the sum of #2,227,867.37 (Two million, two hundred and twenty seven thousand eight hundred and sixty Naira, thirty seven kobo only, being the tax liability for the period January to December, 2000 year of Assessment contained in the Appellant’s Re-Assessment Notice dated 17th April 2001”

It is pertinent to note at this stage that inspite of being served with the Notice of Appeal, various Hearing Notices and other court processes by way of substituted service, the Respondent failed to attend the Tribunal proceeding throughout.

The Appellant called one witness, Mr Oghenoro Obibi, PW1, who gave oral evidence in which he adopted his sworn witness statement dated 14th February, 2013 and also tendered several documents which were admitted in evidence and marked Exhibits A-A1; B; C-C2, D-D1; E-E1 AND F-F1.

PW1’s evidence can be summarized in a nutshell as follows

The Respondent which is duly registered under the Value Added Tax Act No.102 of 1993(Exhibit B) is a Taxable person under the provisions of the said Act. By virtue of the Act is liable to remit and render to the Appellant true and accurate Monthly returns of all taxable goods and service supplied by it from 1994 to date.

The failure of the Respondent to file returns in the year 2000, prompted the Appellant to conduct compliance/monitoring exercise on



the Respondent (Exhibit A). An exercise in which the Respondent fully participated by making its financial books available.

Based on its findings at the conclusion of the exercise, the Appellant issued a Re-assessment Notice of January-December 2000, year of Assessment dated 17th April, 2001 amounting to #2,227,862.37 (Exhibit C-C2), the same was served on the Respondent. The Respondent did not respond and neither did it respond to the Appellant's letter enjoining it to defray its Tax liability (Exhibit D-D1)

This was in due course followed by a series of letters (Exhibits E-E1 and Exhibits F-F1) giving the respondent periods of grace within which to defray its tax liability.

Receiving no response to its demands and reminders, the Appellant was left with no other option than to resort to litigation.

The above is a synopsis of the Appellant's case which was closed on 20th November, 2013.

At the close of evidence, learned Counsel for the Appellant filed his written address to which he gave oral amplification, the raised two (2) issues for determination, to wit-

ISSUE 1

Whether the assessment raised and served on the Respondent has become final and conclusive in the absence of any objection by the Respondent.



ISSUE 2

Whether the Appellant is entitled to the reliefs claimed.

On issue No. 1 Learned Counsel for the Appellant relied on the evidence of PW1, in particular paragraphs 8-18 of his witness statement on oath. This evidence highlighted the events leading to the issuance of Exhibit C-C2 the Re-Assessment Notice.

Counsel also referred us to Section 18 of the VAT Act which provides: as follows-

“ Where a taxable person fails to render returns or renders incomplete returns, the Board shall assess, to the best of its judgment, the amount of tax due on the taxable goods and services purchased or supplied by the taxable person”

Counsel stressed that although the Appellant is empowered to assess a taxable person to tax based on best of judgement for failure to render returns in accordance with Section 18 of the VAT Act, that notwithstanding, they decided to verify the Respondent's financial books to ensure that arbitrary tax was not established against the Respondent.

Learned Counsel further stated that after the verification exercise, in which the Respondent fully participated, the findings and VAT Re-Assessment Notice were duly served on the Respondent and it did not raise any objection.

He submitted further that when a person fails to make returns and remit tax collected on or before the 30th day of the Month following that in which the purchase or supply was made a specified under



Section 15 of the VAT Act and does not object to the assessment raised for that purpose, the assessment becomes final and conclusive. According to Counsel, the Appellant is entitled to proceed to claim the amount stated in Exhibit C. In support of his submission, he referred us to the cases of FBIR V TEXACO NIG. PW6 (2010) 3 TLRN 79 and FBIR V OWENA MOTELS LTD (2010) 2 TLRN 87.

Learned Counsel urged us to place reliance on the authorities and hold that the assessment has become final and conclusive and the tax liabilities established against the Respondent have become a debt due.

On Issue No. 2, Learned Counsel for the Appellant referred us to the Appellant's claim before us as contained in the Appellant's Notice of Appeal namely-

- i) Remittance of the sum of #2,227,862.37k
- ii) Cost of proceedings
- iii) Any other relief as the Tribunal may deem fit to grant in the circumstances.

Counsel submitted that Exhibit C (the Re-Assessment Notice) contained a breakdown of the tax assessed as well as the interest and penalty; and that the Respondent failed to raise any objection to Exhibit C.

Our attention was also drawn to the failure of the Respondent to defend the Appeal even after being duly served; and the fact that the Appellant rather than moving the Tribunal for judgement in default of defence went ahead to prove its case.

Counsel further submitted that an uncontested affidavit or pleading is deemed admitted and needs no further proof. He placed reliance for



this submission on three authorities, namely City Express Bank Ltd V Fortune International Bank PLC and Ors (2002) FWLR(Pt 126) 922 at P.925 , Bamigboye and Ors V Chief Awoyinka and Anor (2002) FWLR (pt.113) 396 at 405 and Omo v.J.S.C (2000) 3 NSCQR 30.

The Tribunal was urged to resolve Issue 2 in the Appellant's favour.

We have carefully considered all evidence led in this Appeal, the submission of Learned Counsel for the Appellant as well as the authorities cited.

On Issue 1, is Whether the assessment raised against the Respondent in Exhibit C had become final conclusive in the absence of any objection With regards to issue 1, the evidence before this Tribunal shows that the Respondent is registered as a taxable person (Exhibit B) and as such is mandated by Section 15 of the VAT Act to render returns on or before the 30th day of the Month following that on which the goods and services were purchased and supplied. We note that by virtue of the provisions of Section 7(a) of No 53 of 2007 "30th" has been amended to read "21st". Incessant failure on the part of Respondent to comply with the provisions of Section 15 of the VAT Act resulted in a compliance/monitoring exercise in which the Respondent fully participated.

At the conclusion of the exercise, the Appellant issued a Re-Assessment Notice which was duly served on the Respondent amounting to #2,227,862.37k. see Paragraph 7 to 11 of witness statement on oath as well as Exhibits A,B,and C-C2).

The evidence before this Tribunal shows that inspite of repeated demands to pay the tax stated in the Re-Assessment Notice the



Respondent failed to remit the tax and neither did it object to the Re-Assessment.

We are of the view that the Respondent's failure to object to the assessment raised in the Re-Assessment Notice within the time stipulated under Section 20 of VAT Act renders the Assessment final and conclusive within the meaning of Section 19(2) of the Act and on the authority of **FBIR V Owena** Motels Ltd (supra)

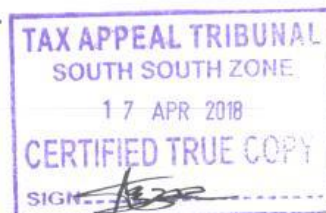
We therefore hold that the Respondent's liability to pay the tax assessed has become final and conclusive.

Issue No 1 is therefore resolved in the Appellant's favour.

We now turn our attention to the second and final issue for determination. We are of the view that the relief sought in paragraph 3 of the Notice of Appeal is consistent with the evidence adduced by the Appellant before this Tribunal. We note that the failure on the part of the Respondent to object to Exhibit C-the Re-Assessment Notice and the demand Notices within the time stipulated, has the effect of crystallizing the amount contained in Exhibit C that is #2,227,867.37K-tax assessed inclusive of interest and penalty into a debt due from the Respondent and payable to the Federal Government of Nigeria.

We note further that the Respondent's Failure to defend the Appeal has left the evidence of PW1 unchallenged and uncontroverted. This apart, it is our view that the Appellant has provided cogent and credible evidence in proof of its case.

We therefore find in favour of the Appellant with regard to the relief sought under paragraph 3(a) of its Notice of Appeal.



Now we address the relief as to cost of the proceeding. It would appear that our hands are tied by the provision of paragraph 22 of the fifth Schedule to the Federal Inland Revenue Service Act No 13 of 2007 which mandates that each party should bear its own cost.

In conclusion, we hold that the Appellant has proved its case and therefore enter judgement for the Appellant in the sum of #2,227,862,37K.

We hereby order the Respondent to pay the Appellant a total sum of #2, 227,862.37k (two million two hundred and twenty seven thousand eight hundred and sixty two naira and thirty seven kobo only). We also order the Respondent to pay 5% interest on the said amount from the date of this Judgement till date of payment.

We make no order as to cost.



HON ADENIKE EYOMA

..... SIGNED
ACTING CHAIRMAN

HON UGBABE DANIEL UGBABE

..... SIGNED
COMMISSIONER

HON SALIHU.A.BARAU

..... SIGNED
COMMISSIONER

Appellant Counsel: Osatohon Iheseikhien Esq.



Respondent was unrepresented.