

**IN THE TAX APPEAL TRIBUNAL
SOUTHWEST ZONE**



HOLDEN AT IBADAN

THIS WEDNESDAY, 29TH APRIL, 2015

APPEAL NO: TAT/IB/013/2010

BEFORE:

- | | |
|--------------------------------------|-----------------------|
| 1. Honourable Joseph A. Ushie | (Chairman) |
| 2. Honourable Cyril I. Ede | (Commissioner) |
| 3. Honourable Jibril N. Useni | (Commissioner) |

FEDERAL INLAND REVENUE SERVICE - APPELLANT

AND:

AGBARA ESTATE LIMITED - RESPONDENT

JUDGEMENT

1. This is the supplementary judgement which together with the Interlocutory judgement delivered on the 25th June, 2014, will dispose of all the contending issues in the appeal filed by the appellant. The interlocutory judgement was entered in favour of the Appellant for the sum of ₦10,507,602.28 (Ten million Five hundred and

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seven thousand, Six hundred and Two Naira Twenty Eight kobo) being the principal tax liability of the Respondent in respect of Company Income Tax, Value Added Tax and Education Tax for the period of 1996-2009, as agreed by both parties. This judgement is on the penalty and interest of ₦5,142,089.68 for Company Income Tax and Education Tax. The Tribunal had ordered the Appellant to file and furnish it with the facts and figures of the basis for the computation and application of the accrued penalty and interest amounting to ₦5,142,089.68 (Five million One Hundred and Forty Two Thousand Eighty Nine Naira and Sixty Eight kobo) within twenty one days from the date of that Judgement. The Respondent had objected to the interest and penalty and appealed to the Appellant headquarters to waive it since 2011.

2. On 15th December, 2014, the Appellant filed two applications before the Tribunal; the first pleaded for an order extending the time to file and serve the notice of compliance with the Tribunal's order, and the second contained additional facts on the basis of the computation and application of the accrued interest and penalty of ₦5,142,089.68. This second application was supported with two tables which tried to explain the breakdown of penalty and interest elements of ₦4,424,642.07 for Company Income Tax and ₦717,447.61 for Education Tax. The Company Income Tax element was further broken

down as penalty and interest of ₦1,556,332.62 and interest of ₦2,868,309.45 and the Education tax was broken down into penalty of ₦306,734.88 and interest of ₦410,712.73.

3. The Tribunal does not appreciate the basis of arriving at the above figures which showed neither the rates used nor the period properly covered for both interest and penalty. Above all, the actual assessed amounts for Income tax and Education tax on which penalty and interest were based are not disclosed under the different heads. For instance, the application stated that the breakdown of the period covered for interest and penalty for both Company Income Tax and Education Tax elements was as from 1999-2005. But in the application for consent judgment moved by the Appellant on 20th February, 2014, the period was stated as 1996-2009. The Appellant could not provide reconciled and convincing basis before closing the case on 20th January, 2015.

4. Issue for Determination

The only issue for determination is whether Interest and Penalty ought to be confirmed, reduced, increased or annulled.

5. **The** Respondent is praying the Tribunal to waive the interest and penalty under the inherent jurisdiction of this

Honourable Tribunal and paragraph 15(8) of the 5th Schedule to FIRS (Establishment) Act 2007; which provides as follows:

"The Tribunal may, after giving the parties an opportunity of being heard, confirm, reduce, increase or annul the assessment or make any such order as it deems fit."

- a) The Respondent, to support its prayers, also explained that it has been under severe financial crisis and it is now very difficult for it to pay the balance for the interest and penalty as it was only able to pay the principal tax liability through bank loan with heavy interest rate.
- b) The respondents went on to state that its present application falls within the judicial discretion of the Tribunal, relying on the cases of:

- I. Gen & Aviation Serv. Ltd v. Thahal (2004) 10 NWLR (pt 880)5 where the Supreme Court held that:

"A party who seeks an exercise of discretion by the court in his favour has the burden of presenting all the material facts necessary for the exercise of the discretion. This is so because the Court does not exercise its discretion in vacuum but on legal evidence or material placed before

applied to other Tax Act across the board, without specifying the rates applicable under each Act; Company Income Tax Act, Value Added Tax Act and Education Tax Act.

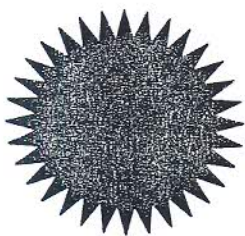
- d) The breakdown of the Interest and Penalty under dispute as submitted by the Appellant, to say the least, is mere guess work, arbitrary and unjustifiable, hence it failed to show the rates, the actual period covered and the amounts on which they were based on each of the Tax heads. Penalty and Interest constitute 50% of the total assessed tax liability of the Respondent. The doubt affecting the authenticity of the facts and figure of the basis for computation and application of the accrued Interest and Penalty amounting to ₦5,142,089.68 must be resolved in favour of the Respondent.
- e) The Respondent's Application on Notice before this Hon. Tribunal for waiver of Interest and Penalty is not opposed by the Appellant.
- f) The Respondent's application for the waiver of Interest and Penalty to the Appellant's Headquarters, is still pending since 2011.
- g) If the issue of Interest and Penalty is allowed to be hanging perpetually, it will definitely occasion miscarriage of justice on the part of the Respondent because the balance of Justice weighs more in favour of the Respondent. See Same Fam Finance Credit Supra.

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Taking the above facts and issues into consideration, it is only fair and reasonable for this Hon. Tribunal to exercise its discretionary powers under paragraph 15 (8) of the 5th schedule to the Federal Inland Revenue Service (Establishment) Act 2007 in favour of the Respondent by annulling the Interest and Penalty component of the Appellant's claim.

The Interest and Penalty amounting to ₦5,142,089.68 is hereby waived as prayed.

DATED AT IBADAN THIS 29TH DAY OF APRIL, 2015



1. Honourable Joseph A. Ushie

(Chairman)

2. Honourable Cyril I. Ede

(Commissioner)

3. Honourable Jibril N. Useni

(Commissioner)

1. DANIEL ONUKUN
Y. MATHEW (MRS)

For Appellant

2. F. A. BABATUNDE

For Respondents

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TAX APPEAL TRIBUNAL IBADAN