

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

**APP. NO. TAT/NEZ/006/2012**

**BETWEEN:**

**FEDERAL INLAND REVENUE SERVICE .....APPELLANT  
AND  
FINNI ALUMINIUM LIMITED .....RESPONDENT**

**BEFORE:**

HON. SULEMAN AUDU	-	-	-	-	CHAIRMAN
HON. MRS HALIMA SAADIYYA MOHAMMED	-				MEMBERS
HON. CHIEF NGOZI AMALIRI	-	-	-		MEMBER
HON. SUNDAY IDAM ISU	-	-	-		MEMBER
HON. ALHAJI ALIYU ABBAS BELLO	-	-			MEMBER

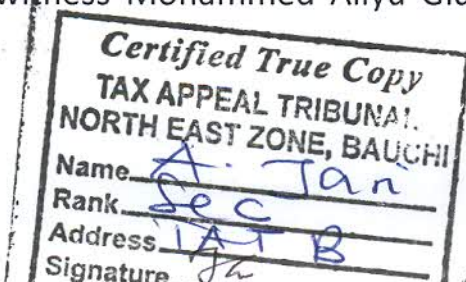
**JUDGEMENT**

**FACTS**

The Appellant's claim against the Respondent is for the sum of **N4,978,800.07** (four million, nine hundred and seventy-eight thousand, eight hundred naira, seven kobo only).

The claim was based on a Tax Audit exercise carried out on the Respondent from the period of 2007-2009, which showed a tax liability of **N4,978,800.07** made of up Company Income Tax (CIT) of **N3,571,214.89**, Value Added Tax of **N714,477.11** (VAT) and Education Tax of **N693,109.07** (EDT) including accrued interest and penalties .

It is pertinent to note, at this juncture, that the record shows that the Respondent failed to enter appearance and file its reply even after being duly served all relevant Tribunal processes. At the hearing of the Appeal on 3<sup>rd</sup> July, 2013, learned counsel for the Appellant, A. A. Al-Hashim called his first and only witness Mohammed Aliyu Gidado (Officer II) Micro and Small Taxpayer



The Appellant is a statutory body established under the Federal Inland Revenue Service Act, 2007 vested with the power to administer and manage (CIT) Act, (VAT) Act, and (EDT) Act as amended. The Appellant is also empowered to do other things as may be necessary and expedient for the proper assessment and collection of the (VAT), (CIT) and (EDT) and account for the entire amount so collected to the Federal Government of Nigeria.

The Respondent is a company registered under the Companies and Allied Matters Act with its office at Maiduguri Bye-pass, Bauchi, Bauchi State.

The Respondent is a going concern, particularly, for the period of 2007 to 2009, the period for which it refused, failed, or neglected to render returns or pay the tax due thereof.

The letters were admitted in evidence, as follows, **Exhibit A(1)** of 22<sup>nd</sup> June, 2009, **Exhibit A** of 7<sup>th</sup> January, 2010, **Exhibit A(1)** of 28<sup>th</sup> May, 2010, and **Exhibit A(2)** of 27<sup>th</sup> July, 2011.

(B4) for CIT. The notices of a

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to 2007 were admitted in evidence as **Exhibits (C), (C1), (C2) for EDT and Exhibit (A)** for VAT as computed on the Tax Audit Report.

The Appellant raised and assessed the Respondent based on its Audit Exercise in accordance with the law for the period of 2007 to 2009 vide various notices of assessment admitted in evidence.

The Appellant was therefore left with no other alternative than to refer the matter to its Legal Department for appropriate Legal action.

The Appellant closed its case on 12<sup>th</sup> September, 2013. The learned counsel to the Appellant in his written address which was highlighted in his oral address in court identified two issues for determination to wit;

1. Whether undisputed assessment becomes final and conclusive in the absence of any objection by the Respondent.
2. Whether the Appellant is entitled to the reliefs as claimed.

On issue No. 1 learned counsel for the Appellant submitted that it is trite law, that Assessment has a statutory time of thirty days, and at the expiration of the thirty days, it becomes final and conclusive. In other words, if the assessment has not been objected to within the specified statutory time, it becomes final and conclusive.

Counsel drew our attention to the fact that the Respondent failed to defend the Appeal even after being duly served. He also relied on the evidence of PW1 particularly his witness statement on oath which he adopted at the trial.

He submitted that where an assessment raised is not objected to within the stipulated period, the assessment becomes final and conclusive. According to counsel, the Appellant is therefore entitled to proceed to claim the amount.

Supreme Court in **MC ABOUD Vs. THE REGIONAL TAX BOARD (1966) NMLR page. 100 at 101** refers.

Counsel cited **J. H. DOHERTY LTD. Vs. FBIR (1973) INMLR page 162., FBIR Vs. SOLANKE (2011) 4TLRN page 165. COMMISSIONER OF INLAND REVENUE Vs. PEARLBERGE 34 TAX CASES pages 57 & 58. See also Sec 76 CITA Cap 21LFN 2007 (as amended).**

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Counsel further referred us to **section 60 CITA Cap C21 LFN 2007** as amended. Also **sections 62, 63 and 65 CITA**. Also **section 1(1-3) EDT 2007** as amended, also **sections 18, 19 & 20 VAT Cap V1 LFN 2007** (as amended).

On this note, counsel urged the Tribunal to resolve issue No. 1 in favour of the Appellant.

On issue No. 2, learned Counsel referred us to paragraph 3 (Appellant's Notice of Appeal). He argued that it is consistent with the evidence adduced; counsel argued the fact that the Respondent failed to defend the Appeal even after being duly served. Counsel also argued that the failure of the Respondent to object to all Exhibits and or indeed the failure to defend the Appeal/reply to it left the evidence of PW1 uncontested.

Counsel cited the cases of **OMO Vs. JUDICIAL SERVICE COMMISSION (2003) 3 NSCQR 30, FIRS Vs OBA INTERNATIONAL SERVICES LIMITED** Appeal No. **TAT/SSZ/0012/10. AJOWON Vs. AKANNI (1993) 9 NWLR pt. 306 page 183**. Counsel also cited **section 1 (1-3) EDT LFN 2007** as amended; **section 18, 19 & 20 VAT (Supra)**. Counsel to the Appellant urged the Tribunal to resolve the issue No.2 in the Appellant's favour.

With regard to issue No. 1, whether or not the assessment has become final and conclusive. Evidence adduced before this Tribunal shows that the Respondent is an on-going concern, registered as a taxable person and therefore liable to render to the Appellant true and accurate monthly returns, annual (CIT) and (EDT). **Failure on the part of Respondent**, in spite of several demands and reminders dated 7<sup>th</sup> January, 2010, 28<sup>th</sup> May, 2010 and 27<sup>th</sup> July, 2011 to file returns due for the period 2007 – 2009 gave rise to the Audit Exercise. **See paragraph 4, 7, & 10** of the witness statement on oath, **Exhibit A, Exhibit A1 and Exhibit A2**. **See section 76 CITA Cap 21 LFN 2007** (as amended) **section 18, 19 and 20 VAT (Cap V1) LFN 2007** as amended.

We now turn our attention to issue No. 2 to wit-whether the Appellant is entitled to the reliefs as claimed.

From the averments in paragraph 10 of the Notice of Appeal, the relief sought is consistent with the evidence adduced in favour of the Appellant. We note further that Respondent's failure to object to paragraph 12 of the witness

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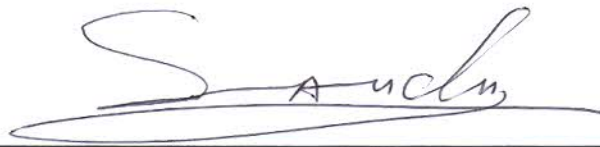
statement on oath and indeed his failure to defend the Appeal has left the evidence of PW1 unchallenged. We therefore find in favour of the Appellant with regard to the relief claimed under paragraph 12 of its Notice of Appeal.

In conclusion, we hold that the Appellant has proved its case and therefore enter judgment for the Appellant in the sum of N4,978,800.07 (four million, nine hundred and seventy-eight thousand, eight hundred naira seven kobo only) being the tax due from Respondent, as well as Interest and Penalties.

We hereby order the Respondent to pay the Appellant the said amount.

#### 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.*



**SULEMAN AUDU**  
**(CHAIRMAN)**

