IN THE TAX APPEAL TRIBUNAL
SOUTH-SOUTH ZONE
HOLDEN AT BENIN
ON THURSDAY THE 26TH DAY OF JUNE, 2014

BEFORE:

ADENIKE ADUKE EYOMA	AG.CHAIRMAN
EBERECHI ADELE, SAN	COMMISSIONER
DANIEL UGBABE UGBABE	COMMISSIONER
BARAU ABDULKARIM SALIHU	COMMISSIONER

APPEAL NO:TAT/SSZ/002/2010

BETWEEN:

FEDERAL INLAND REVENUE SERVICE = = APPELLANT

AND

AFRESCA ASSOCIATES LIMITED = = RESPONDENT

JUDGMENT

The Appeal by the Appellant is for the sum of ₦2,735,281.88 (Two million, Seven Hundred and Thirty Five Thousand, Two Hundred and Eighty One Naira,Eighty Eight Kobo) only being value added tax due from the Respondent to the Appellant for the period of January 1998 to December 1999 year of Assessment.

The amount is inclusive of interest and penalty payable on the principal tax due as is shown by a breakdown of the said amount below.

a. Principal tax due .....₦ 325,620.54
b. Interest ..... ₦ 84,661.34
c. Penalty ..... ₦ 2,235,000

Total ..... ₦ 2,735,281.88

This Appeal which was first instituted before the defunct VAT Tribunal sitting at Enugu, was transferred to this Tribunal. In accordance with the Tribunal's Rules of procedure, a fresh Appeal was filed on 31st March, 2011.

At a very early stage in these proceedings, 12th April, 2011, learned counsel for the Respondent, G.L Notoma Esq., applied to have the matter settled out of court and met with no opposition from the Appellant's counsel.

In fact on 27th November 2012, this Hon. Tribunal was constrained to observe that settlement was consuming an inordinate length of time in coming to a head. Learned counsel for the Appellant, in the absence of both the Respondent and his counsel, assured us that "robust discussion" on settlement had commenced but that the terms of settlement were yet to be concluded. Learned counsel for the Appellant further informed the Tribunal that the Managing Director of the Respondent had suffered a stroke.

Unfortunately all hopes of a settlement were dashed, mainly as a result of the serious health challenges that bedeviled both the Respondent and his counsel Mr. G.L Notoma. Mr. Notoma was indeed constrained to withdraw from the matter on 12th December, 2013.

In the face of this development, learned counsel for the Appellant sought to proceed to prove its case. The Tribunal ordered fresh hearing notices to be served on the Respondent.

In due course the Appellant called one witness Mr. Obibi Ogehneovo (PW1) who gave oral evidence in which he adopted his sworn witness statement dated 31st March, 2011. The witness further tendered a number of documents which were marked as Exhibits A to F. his Evidence is summarized as follows:-

The Appellant is a statutory body vested with the power to administer and manage the Value Added Tax Act, Cap. VI LFN 2004 as amended. THE Appellant is also empowered to do other things as may be necessary and expedient for the proper assessment and collection of Value Added Tax (VAT) and account for the amount so collected to the Federal Government of Nigeria.

The Respondent is a Limited liability Company which is duly registered as a VAT collection agent and is therefore a taxable person in accordance with the provisions of the VAT Act. It is therefore liable to pay tax and to file returns and to remit to the Service VAT collected on a monthly basis.

The Respondent failed to render returns for tax collected for the period of January, 1998 to December, 1999 year of assessment.Consequent upon such failure by the Respondent, the Appellant carried out a VAT Compliance/Monitoring Exercise.At the conclusion of exercise the sum of N2,735,281.88 was established against the Respondent and an Assessment Notice for the said sum raised and served upon it. The covering letter to the Notice and the Notice itself were admitted in evidence and marked as Exhibits D and D1.Prior to the issuance of

Exhibit D1 several letters were written to the Respondent urging it to fulfil its tax liability.Copies of these letters were admitted in evidence as Exhibit A, B, C, D. since the Respondent failed upon notice being given it to produce the originals.

By the letter dated 19th September 2000 (Exhibit E), the Appellant granted the Respondent a further 30 days period of grace after which it threatened legal action. The Respondent neither responded nor objected to the assessment thereby prompting the Appellant's legal Department to issue a further letter of demand dated 5th June 2001 giving the Respondent a further period of grace of 30 days after which legal action would ensue. A copy of the letter was admitted in evidence and marked Exhibit F.

We note that all Exhibits admitted in these proceedings were copies of the original documents the Respondent having failed to produce the originals upon notice to produce same.

At the close of evidence, learned counsel for the Appellant, filed his written address to which he gave oral amplification. He formulated two 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 as claimed.

On Issue one, learned counsel for the Appellant contended that the Respondent being a registered agent of the Appellant for the collection of VAT and remitting same failed in its duties and therefore came squarely within the ambit of section 18 of the VAT Act.Section 18 provides inter alia that where a taxable person failed to render returns or renders inaccurate returns, the Board shall assess to the best of its Judgment the amount of tax due. According to counsel, although the Appellant were well within their power to make a best of judgment assessment, they decided to go extra mile by adopting a less arbitrary form of assessment.

This he contended was conducted by a VAT Compliance/Monitoring Exercise in which the Respondent's tax liability was established from books made available by the Respondent during the exercise and with the Respondent's full co-operation. Counsel contended further that the Re-Assessment Notice (Exhibit D1) which was the outcome of the exercise was duly served on the Respondent who did not object to the assessment. He referred us to PW1's evidence.

Counsel therefore submitted that where a taxable person fails to collect and remit tax collected within the time stipulated under section 15 of the VAT Act and did not object to the assessment raised for that purpose within the time stipulated, then the assessment becomes final and conclusive. The Appellant is entitled to proceed to recover the amount as contained in the Re-Assessment Notice (Exhibit D1). Counsel cited in support sections 15 and 20 of the VAT Act and the cases of FBIR v. Texaco Nig, Plc. (2010) 3 TLRN 79 and FBIR v. Owena Motels Ltd. (2010) 2 TLRN87 at p.94.

In conclusion, learned counsel urged the Tribunal to place reliance to the authourities cited and on the evidence of PW1 that the Respondent failed to respond to Exhibits D and D1 and other Exhibits duly served on it and hold that the assessment had become final and conclusive. He urged the Tribunal to further hold that the tax liabilities established against the Respondent had become a debt due.

Issue Two is whether the Appellant is entitled to the reliefs claimed which are : -

(i) Remittance of the sum of N2,735,281.88k

(II) Cost of proceedings

(iii) Any other relief as the Tribunal may deem fit to grant in thecircumstances.

Learned counsel contended that the Re-Assessment Notice (Exhibit D1) contained the break-down of the assessment, interest and penalty and how they were derived. He submitted that Exhibits D and D1 were duly served on the Respondent and that the Respondent failed to object, neither did it respond to several letters of demand and reminders. He referred us to the evidence of PW1, with particular reference to paragraphs 8 to 17 of his witness statement on oath, which he submitted remain uncontroverted and uncontested since the Respondent failed to file any Reply to the Appeal.

To further buttress his submissions, learned counsel referred us to the following authourities.

1. FBIR v. Texaco Nig. Plc. (supra)
2. Omo v. J. S. Comm.(2000) 3 NSCQR 30.
3. City Express Bank Ltd. V. Fortune International Bank Plc &

Ors

4.Bamigboye&Ors v. Chief Awoyinka&Anor.(2000) FWLR (Pt.113) 396 @ 405.

Counsel urged the Tribunal to treat the evidence before it as admitted by the Respondent and regard the Appellant's claim as proved. He further urged us to grant all the reliefs sought.

We have given due regards to the testimony of PW1 before us and the address of learned counsel for the Appellant and have also taken note of the Respondent's failure to file a reply to the Appellant's Appeal. We have also considered the several authourities cited by counsel.

With regard to Issue 1 to wit – whether the assessment raised and served on the Respondent has become final and conclusive in the absence of any objection by the Respondent.

The evidence adduced before us shows that the Respondent is a registered agent of the Appellant for the purpose of collecting VAT and remitting same to the Appellant. It is also mandated by virtue of section 15 of the VAT Act to render returns on or before the 21st day of the month following that on which the goods and services were purchased and supplied.

Failure on the part of the Respondent in spite of several demands and reminders to file returns and remit taxes for the period January 1998 to December 1999 gave rise to the VAT Compliance/Monitoring exercise conducted on the Respondent in which it participated fully. (See paragraphs 7 to 11 of the PW1's sworn statement and Exhibits A, B & C.)

The VAT Compliance/Monitoring exercise gave rise to an assessment of the Respondent's tax liabilities inclusive of interest and penalties as contained in the Re-Assessment Notice (Exhibit D1). Both the covering letter and the Re-Assessment Notice (Exhibit D & D1) were duly served on the Respondent and it failed to register any objection to the assessment.

We now examine the provisions of sections 18, 19 and 20 of the VAT Act, which deal with the effect of failure to render returns and remit tax. In a nutshell, section 18 provides, inter alia, that failure to render returns attracts assessment by the Service on a best of judgment basis. Section 19(1) provides that a taxable person who fails to remit tax within the specified time will be liable to pay as penalty a sum equal to five percent (5%) per annum and interest at the commercial rate of the amount of tax due. Subsection (2) of that section provides for enforcement of payment if the tax together with penalty and interest is not paid within 30 days of notification of tax assessed. Finally, Section 20 provides for the machinery of recovery which is the Tax Appeal Tribunal.

After exhausting all avenues open to it the Appellant's legal department wrote a final letter of demand to the Respondent giving it 30 days within which to remit the tax due or face legal action (Exhibit F and paragraphs 13 and 14 of PW1's statement on oath).

We agree with the Appellant's counsel that Exhibit D1 – the Re-Assessment Notice – was the result of the Respondent's continued non-compliance with the provisions of sections 15 and 19 of the VAT Act. We are also of the view that failure on the part of the Respondent to file an objection to the assessment raised and his continued default to

remit the tax assessed renders the assessment final and conclusive within the meaning of section 19(2) of the Act and on the authourity of FBIR v. Owena Motels Ltd. (Supra).

We therefore resolve issue one in the Appellant's favour and hold that the Respondent's liability to pay the tax assessed has become final and conclusive.

We now turn to Appellant's second and final issue for determination. We are of the view that the Appellant's claim is consistent with the evidence adduced before us although we also observe that, the Respondent attended proceedings and was represented by counsel; it failed to file its defence even after it was granted an application to file its Reply out of time on 23rd January, 2013.

There is therefore no evidence before us in rebuttal of PW1's evidence. This has left the evidence of PW1 unchallenged and uncontroverted.

In the light of the evidence before us, we hold that the Appellant has proved its claim and therefore find in its favour and grant the relief sought with regard to the principal tax, in addition to interest and penalty imposed on the Respondent.

In conclusion, we hold that the Appellant has proved its case and hereby enter judgment for the Appellant in the sum of **N2,735,281.88k** (**Two million, Seven Hundred and Thirty Five Thousand, Two Hundred and Eighty One Naira, Eighty Eight Kobo**).

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

We make no order as to costs.

DATED AT BENIN THIS 26TH DAY OF JUNE, 2014

ADENIKE ADUKE EYOMA ..... Ag.Chairman

EBERECHI ADELE, SAN ..... Commissioner

DANIEL UGBABE UGBABE ..... Commissioner

BARAU ABDULKARIM SALIHU ..... Commissioner

APPEARANCES: **M.E GusauEsq**. with **D. Onukun** and **D. Ikuerowo** for Appellant,

Respondent unrepresented