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IN THE TAX APPEAL TRIBUNAL
SOUTH – SOUTH ZONE
HOLDEN AT BENIN – CITY
ON THURSDAY THE 16TH DAY OF OCTOBER, 2014

BEFORE:

ADENIKE ADUKE EYOMA	**AG. CHAIRMAN**
DANIEL UGBABE UGBABE	**COMMISSIONER**
BARAU ABDULKARIM SALIHU	**COMMISSIONER**

APPEAL NO. TAT/SSZ/014/2010

BETWEEN:

FEDERAL INLAND REVENUE SERVICES = = APPELLANT

AND

OTUOBA JOHN (Substituted for Otuoba Joseph)
Trading under the name and style of
Joe Fransco Nigeria Enterprise. = = RESPONDENT

JUDGMENT

By the Amended Notice and Grounds of Appeal filed by the Appellant with a Motion on the 19/2/2014 and granted by this Tribunal on the 26/2/2014, the Appellant is claiming the sum ₦3, 379,909.92 being unremitted Value Added Tax (VAT) from October 1999 to January 2002, inclusive of penalties and interest.

The original appeal was commenced at the Value Added Tax Tribunal on the 19/2/2007. When the Tax Appeal Tribunal was inaugurated the appeal was transferred to this Tribunal on the 14/10/2010.
Pursuant to the Rules of this Tribunal, the Appellant filed a fresh appeal on the 31/3/2011 on the prescribed forms. The records show that the new appeal was served on John Otuoba, the Respondent now on record, on the 5/4/2011 and he signed for it as Managing Director.

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The Respondent filed a Reply to the Notice of Appeal on the 24/7/2012 together with the Respondent's written Statement on Oath with accompanying documents to be relied upon.

After a series of adjournments, hearing in this matter eventually commenced on the 29/11/2012 with the evidence of PW1. The witness, Mr. Kennedy Iyoriobhe, in his evidence adopted his written deposition and tendered Exhibits A to K. In his deposition he maintained, inter-alia, that the Respondent is duty bound to render VAT returns and for the period of October 1999 – January 2002 years of assessment the Respondent failed or neglected to render its VAT returns. According to him, the unremitted VAT for the period together with penalty and interests amounts to ₦3, 379,909.92 which is the sum now being claimed. He maintained that despite several demand notices as exemplified by the exhibits tendered, the Respondent only made a paltry payment of ₦30, 000 to the Appellant. The PW1 was cross-examined by the Respondent's Counsel. Under cross-examination he said, among other things, that this Appeal was first filed at the Enugu VAT Tribunal in 2007 and that the Respondent in that Appeal was Joe Fransco (Nig. Ent) He did not know the Managing Director in person but his name is Joseph Otuoba. That in this Tribunal which inherited this Appeal from the Enugu VAT Tribunal, Joseph Otuoba was substituted with John Otuoba on 2nd August 2011.

He maintained that though he did know where Joe Fransco Nig. Ent. is situated, information in his office shows they were located sometime at Shell Road, Sapele Low Cost Housing Estate. Also, that recent evidence shows there is a company called Jeo Fransco. He does not know the Managing Director and from evidence in their office file this new company is yet to commence business. He said that the business of Joseph Otuoba was ongoing from 1999 to 2002 when the best of judgment assessment was raised. His cross-examination continued on the 13/02/2013 wherein he said that Joe Fransco Enterprises was upgraded to a limited liability company but that they are one and the same party.

He further said that it was the Respondent that told the officer in charge of Registration that the company had been upgraded. The Respondent was the person who paid the ₦30, 000. The payment before the ₦30, 000 was not annexed to the Appellant's exhibits because it was not disputed. Apart from Exhibit K (evidence of ₦30, 000) paid by the Respondent they have other things linking the

Respondent to this appeal namely the series of correspondence between the Respondent and the Appellant i.e. Exhibits A – J. Finally he maintained that the Appellant did not deceive the Respondent to pay ₦30, 000. It was paid in respect of Joe Fransco Nig. Enterprises' tax liability.

That was the case for the Appellant.

On the 17/09/2013 the Respondent opened his defence with the evidence of John Otuoba as DW1. He duly adopted his written Statement on Oath filed on the 24/7/2012. He said that he had seen Exhibits A–J tendered by the Appellant and that he had no knowledge of them. He referred to paragraph 18 of his written Statement on Oath and said that he was gainfully employed with Eternit Ltd. Sapele. He tendered Exhibit L as his Certificate of employment dated 10/06/10. He also tendered VAT registration Tax Payer Identification Number (TIN) and Income Tax Clearance Certificate as Exhibits M and N respectively.

He also tendered the Certificate of Incorporation of Jeo Fransco Nig. Ltd. as Exhibit O. He wants the appeal to be dismissed.
The foregoing is the summary of the evidence before the Tribunal.

Both Counsel filed and adopted written addresses.

The Respondent's Counsel in his written address formulated three issues for determination namely:

1. Whether Joseph Otuoba trading under the name and style of Joe Fransco Nig. Enterprises of Low Cost Housing Estate, Shell Road, Sapele is the same John Otuoba trading under the name and style of Jeo Fransco Nig. Ltd. of #1 Ohambe Street, Off Sapele/Warri Road, Amukpe, Sapele.

2. Whether the Tax liability of the Late Joseph Otuoba can be passed on to John Otuoba.

3. Whether by the Appellant's failure to produce any evidence linking John Otuoba to this appeal, this Tribunal can safely hold the Respondent liable to same.

On the other hand, the Appellant in their own address have raised two issues for determination, namely:

1) Whether the Appellant has proved its case on preponderance of evidence.
2) Whether the Tribunal has become functus officio having decided that the Respondent is a proper party in this Appeal.

We have carefully perused the evidence led in this case and the addresses of counsel and we are of the firm view that the three issues raised by the Respondent all deal with the same issue of whether the Respondent should be a party in this case. Those three issues can therefore be compressed into one issue. The Appellant's issues appear more appropriate. We therefore formulate two issues that can conveniently resolve this case namely:

1) Whether the Respondent is a proper party in these proceedings, and
2) Whether the Appellant has proved its case.

On the first issue, we must comment that the question whether the Respondent is a proper party or not has been a constant feature throughout these proceedings. It can be seen that the cardinal defence of the Respondent in this case is that the Respondent has no nexus with the original Respondent and therefore ought not to be a party in this case. The three issues for determination as formulated by the Respondent's Counsel in his written address all deal with the same issue. A close look at the record will assist this Tribunal in resolving this longstanding issue.

The Respondent, John Otuoba, was substituted for the original Respondent, Joseph Otuoba without objection from either John Otuoba or his counsel. Not being satisfied, the Respondent again filed a preliminary objection against this Appeal on grounds which included the complaint that the Respondent could not be liable because he had not acquired the assets and liabilities of the original Respondent. In other words, that he was not a proper party.

Pursuant thereto this Tribunal delivered a considered, Ruling on the 15th March, 2012 emphatically dismissing the objections and confirming the Respondent, John Otuoba as having been properly made a party in this Appeal. The Respondent did not challenge this Ruling.

With the greatest respect, this Tribunal having delivered a Ruling wherein it decided that the Respondent is a proper party to this

Appeal has become functus officio with respect to this lingering issue which the Respondent has persistently projected throughout this case. It seems quite trite that once a Tribunal or Court had decided an issue, that same Tribunal cannot review or howsoever revisit that issue. It is only an appellate Court that would have the jurisdiction to review such a decision. See First Bank Nigeria Plc v. T.S.A Industries Ltd. (2010) 15 NWLR (Pt.1216) at 255; see also Ukachukwu v. UBA (2005) 18 NWLR (Pt.95) at 55 and Mohammed Husseini (1998) 14 NWLR (Pt.584) 108 at 296.

In this case, the Respondent is unequivocally estopped from raising the same issue in this Appeal. This issue is accordingly resolved against the Respondent. John Otuoba is a proper party in this Appeal.

On the second issue, the Appellant called one witness, the PW1 in proof of its case. We already summarized his evidence earlier in this judgment. He tendered Exhibits A – Q. We have carefully looked at the numerous documents tendered by the Appellant's witness, PW1 and whilst it is unnecessary in this judgment to review each of the exhibits, it can be clearly seen that they are all documents requesting the Respondent to render his VAT returns. Following the Respondent's failure to fulfill its Tax obligations, the Appellants continued to write several reminders. The reminders included letters written by the Appellants legal department advising the Respondent of the legal consequences of his continuous failure to render VAT returns. According to the Appellant, the Respondent did not even favour the several letters and demand notices with even a reply, not to talk of satisfying the demands. The evidence shows that the Respondent only made a payment of ₦30, 000 through First Bank on the 30th September 2010.

Mention must also be made of Exhibits C1 to C28 which are VAT re-Assessment Notices which were served on the Respondent. It is important to observe that the Respondent did not at any time raise any objection to the Re-Assessment and indeed did not raise any objection to any other notice, demand or assessment served on him by Appellant. It must be noted that under the law, a taxpayer who does not collect and remit his VAT returns within 21 days of the preceding month in which the purchase or supply was made, and does not object to the assessments or re-assessments served him, then the tax liability becomes a debt due and the Appellant would be entitled to recover the amount as assessed. See Section 15 and 19 of the VAT Act (as amended); FBIR v. Texaco Nig. Plc (2010) 3 TLRN.

The assessment would be conclusive 30 days after the demand notices are served on the Respondent and he fails to raise objection in writing. See Sections 15 and 19 of the VAT Act (as amended); FBIR v. Owena Motels Ltd. (2010) 2 TLRN 87.

In this the failure of the Respondent to object to the assessments communicated to him within 30 days or at all, has rendered the assessments conclusive and the debt due recoverable. See Section 19 VAT Act (as amended); FBIR v IDS Ltd. (2010) 3 TLRN 1.

Coming to the Respondent's case it is unfortunate that the Respondent has not offered any credible defence to this action. See Omo v. JS. Comm. (2000) 3 NSCQR 30; Bamigboye & Ors v. Chief Awoyinka & Anor. (2002) FWLR (Pt.113) 396 at 405.

Throughout his evidence he is clearly more preoccupied with disconnecting himself from the original Respondent and thereby painting the picture that he is not the one that should have been sued in this action. We disagree with him. The consequence is that the Appellant has proved its case and we enter judgment accordingly. The Respondent is to pay the sum of ₦3, 379,909.92k as claimed.

There shall be no order as to costs.

DATED AT BENIN THIS 16TH DAY OF OCTOBER, 2014

ADENIKE ADUKE EYOMA AG. CHAIRMAN

DANIEL UGBABE UGBABE COMMISSIONER

BARAU ABDULKARIM SALIHU COMMISSIONER