

**IN THE TAX APPEAL TRIBUNAL
SOUTH-EAST ZONE
HOLDEN AT ENUGU**

APPEAL NO. TAT/SEZ/044/14

BETWEEN

FEDERAL INLAND REVENUE SERVICE.....APPELLANT

AND

BENCOV CONTRUCTION & CO LTD..... RESPONDENT

BEFORE THEIR LORDSHIP

Chairman: Prof. C.J. Amasike

Commissioners: Ignatius Chibututu, Esq.

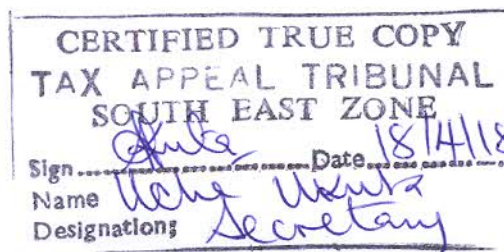
Dr. (Mrs.) Josephine A.A. Agbonika

Chief Ngozi I. Amaliri

Prof. Eddy Omolehinwa

JUDGMENT

The Appellant is a Federal Government of Nigeria statutory body established under the Federal Inland Revenue Service Act 2007, and is vested with the powers, inter alia, to administer and manage the Value Added tax, Companies Income Tax, Education Tax, Withholding Tax, among other taxes. It is therefore empowered by the Act to do such things as may be necessary or expedient for the proper assessment and collection of taxes as specified in the 5th Schedule of the said FIRS Act 2007 and to account for the entire sum 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 km 6, Old Aba/Owerri Road Aba, Abia State. The respondent at all times materials to this case carried on business as a company registered under the Companies And Allied Matters Act and was therefore under a legal obligation to render accurate tax returns and make prompt payment of all taxes it is enjoined to pay.

The respondent who carried on business of construction, it was alleged, failed to pay taxes amounting to Three Million, Three Hundred and Thirteen Thousand, Eight Hundred and Ninety-Seven Naira (₦3,313,897.00) made up of:

Companies Income tax	-	₦1,940,000.00
Education Tax	-	₦ 958,897.00
Value Added Tax	-	₦ 415,000.00

Despite letters and demand notices, the Respondents failed, refused and neglected to pay the taxes. Thereupon the Appellants filed this action on the 11th of December, 2014 claiming the sum of Three Million, Three Hundred and Thirteen Thousand, Eight Hundred and Ninety-Seven Naira (₦3,313,897.00).

The Appellant regularized her processes on 14th January, 2015 and on 4th Federal 2015, the Respondent's Counsel indicated a desire to settle the matter out of Tribunal which was granted. Exhibit A was generated in pursuance of the settlement out of Tribunal. The Respondent also asked for more time to enable the management of the company make necessary payment as he argued that his clients were facing hard times. After Four (4) adjournments at the instance of the Respondents, the Appellant filed a motion for Summary Judgment which was heard on 3rd November, 2015.

The Appellant's Counsel in arguing her case for Summary Judgement had informed the Tribunal that the Respondents had by their letter of 6th April 2015, signed by one Mr. Okey Onuigbo, admitted liability, and requested to liquidate same by six (6) monthly installments. The Appellant's Counsel going further told the Tribunal that from all indications the Respondents have no intention of doing so and they (Appellants) were no longer ready to wait and that judgment should be

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Name *Uche Ukur*
Designation *Secretary*

entered in their favour as facts admitted need no further proof. She cited Sections 21 and 169 of the Evidence Act.

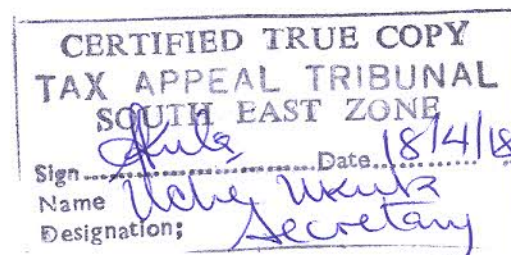
Responding the Counsel for the Respondent, while admitting that Exhibit 'A' (letter of 6th April, 2015) came from them, said that in an application for summary judgment such a document cannot be used and referred the Tribunal to Section 128 (1) of the Evidence Act. He also claimed that they had recently paid the sum of Two Hundred and Sixty thousand naira (₦260,000.00) and that the total amount so far paid was One Million, Seven Hundred and Fifty-Three Thousand, Eight Hundred and Ninety-seven Naira (₦1,753,897.00) leaving a balance of One Million, Five Hundred and Sixty Thousand Naira (₦1,560,000.00).

Replying Appellant's Counsel stated that Section 128 (1) of the Evidence Act was irrelevant to the issue, having earlier admitted liability by the letter of 6th April 2015 and that there was no confirmation as to the alleged Two Hundred and Sixty Thousand Naira (₦260,000.00) paid recently by the Respondent. She towards the summary judgment and were relevant to the matter and that the Tribunal had the power to allow her amend her processes. She further referred the Tribunal to Order 22 of the Tax Appeal Tribunal Procedure Rules 2010 which stipulates that the Tribunal may not be confined to the grounds set out in the notion but has the power to consider any matter arising from an appeal provided that opportunity was given to both parties. She submitted that opportunity had been given to the Respondent.

Having listened to both Counsel, and reviewed the authorities and law cited, we believe that the pivot round which this matter revolves is the letter of 6th April, 2015 – Exhibit A. This Honourable Tribunal agrees with the Appellant that the said letter is a clear admission of liability by the Respondents and that facts admitted need no further proof.

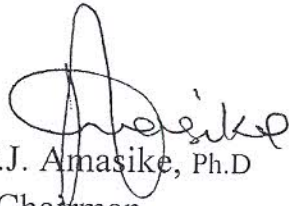
In view of the above, this Honourable Tribunal enters judgment in favour of the appellant and hereby orders the Respondent to pay the Appellant the sum of One Million, Five Hundred and Sixty Thousand Naira (₦1,560,000.00) immediately being the balance of the tax liability.

This is the judgment of this Honourable Tribunal.



There is no other as to cost and parties are at liberty to appeal this judgment.



Signed


Prof. C.J. Amasike, Ph.D
Chairman

Tax Appeal Tribunal, South East Zone

Date:

24th Nov. 2015

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SOUTH EAST ZONE	
Sign 	Date 18/4/18
Name 	
Designation: Secretary	