

**IN THE TAX APPEAL TRIBUNAL
SOUTHWEST ZONE**



HOLDEN AT IBADAN

THIS WEDNESDAY, 25TH JUNE, 2014

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**

JUDGMENT

1. The Appellant filed the Notice of appeal on 31st January, 2011, claiming the sum of N2,400,000.00 representing unremitted VAT for the period of 2008-2009. Subsequently, in order to resolve all the issues pertaining

to the Respondent's tax obligations to the Appellant once and for all, both parties agreed to reconcile the accounts and determine the Respondent's liabilities for Company Income Tax, Education Tax and Value Added Tax.

2. Following the reconciliation exercise, the sum of N15,649,591.96 was established as the total tax liability outstanding and payable by the Respondent for the period of 1996-2009, under the three heads stated above, including interest and penalty which constitute N5,142,089.68 of the total amount.
3. Counsel for the Appellant, Mrs. Y. Adeyeoluwa Matthew filed an application under the INHERENT JURISDICTION of this Honourable Tribunal dated 11th February, 2014, and supported by a 9 paragraph affidavit deposed to by herself, praying the Tribunal to enter consent judgment in favour of the parties.
4. The relevant paragraphs of the affidavit are 6, 7 and 10 which state thus:
 6. *"That on the advice of the Tribunal, parties were advised to explore amicable settlement.*
 7. *That up till date, the respondent has demonstrated good faith and has paid a total of N10,507,602.28 (Ten Million, Five Hundred and Seven Thousand, Six Hundred and Two Naira and Twenty Eight Kobo only) being the agreeable sum by them.*

10. That the Respondent having admitted the liability of N10,507,602.28 (Ten Million, Five Hundred and Seven Thousand, Six Hundred and Two Naira and Twenty Eight Kobo only) and having remitted same amount, both parties now agree that consent judgment on the agreeable amount be entered into as judgment of court".

5. The Tribunal accepts the process and the finding that led to the reconciliation of the Principal tax liabilities of the Respondent under Company Income Tax, Education Tax, Value Added Tax and the Terms of Settlement as stated above in the supporting affidavit.
6. Judgment is hereby entered in favour of the Appellant for the sum of N10,507,602.28 being the total principal tax liability of the Respondent for the period of 1996-2009.
7. The Respondent, having remitted the said sum of N10,507,602.28 to the Appellant, is hereby discharged of his principal tax liabilities under Company Income Tax, Education Tax and Value Added Tax for the period of 1996-2009.

WAIVER OF INTEREST AND PENALTY

8. The Tribunal is of the considered opinion that paragraphs 9 of the supporting affidavit of the application for consent

judgment and 2 of the terms of settlement dated 14th October, 2011 vitiate the Principle of consent Judgment.

(a) Paragraph 9 of the affidavit states thus:

"That the balance outstanding is the sum of N5,142,089.68 (Five Million, One Hundred and Forty Two Thousand, and Eighty Nine Naira, Sixty Kobo) being penalty and interest"

(b) Paragraph 2 of terms of settlement states thus:

"In view of the Respondent's petition to the Appellant's Headquarters at Abuja to waive the Interest and Penalty element amounting to N5,142,089.68, the parties have agreed that:

(i) In order to give the Respondent time to pursue and resolve its petition, the date for payment of the Interest and Penalty element be deferred to 31st March, 2012.

(ii) That in the event that a waiver of the whole or part of the outstanding Interest and Penalty is obtained; the outstanding sum or part thereof shall be deemed settled. Provided that if only part of the sum is waived, the balance shall be payable on or before 31st March, 2012.

(iii) Where the Respondent is unable to obtain a waiver of the Interest and Penalty on or before 31st March, 2012, the whole outstanding sum shall become payable on the date.

9. There is ample evidence before the Tribunal that the Respondent's petition and reminders to the Appellant's Headquarters at Abuja have not been attended to since 2011. The Respondent is now seeking relief from the TAT by filing this application for the waiver of the said Interest and Penalty under the Inherent Jurisdiction of this

Honourable Tribunal and paragraph 15(8) of the 5th schedule of FIRS (Establishment) Act 2007.

10. There is no doubt that this Tribunal is seised of the jurisdiction to determine the issue at stake particularly under paragraph 15 (8) referred to above.

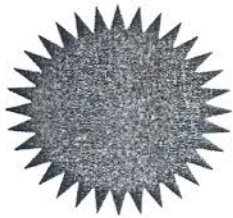
It provides that:

"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".

11. In MENAKAYA VS MENAKAYA (2001) 16 NWLR (Pt 738) 203 PARA. 13(A-B) The Supreme Court held that *"where there is a liquidated claim with interest and the debt is admitted but the interest chargeable is being disputed, the trial judge can enter judgment for the admitted sum and then order pleadings to be filed leading to calling of evidence to establish the interest"*.
12. We have entered judgment in favour of the Appellant for the sum of N10,507,602.28 being the total principal tax liability admitted and paid by the Respondent for the period of 1996-2009. This judgment is not conclusive and final judgment that disposed of all the contending issues including the interest and penalty. See KENLICK HOLDINGS LIMITED V R.E. INVESTMENT LIMITED (1997) IINWLR (PT.529) 438. Where the court of Appeal held that *"such a judgment is not final but interlocutory"*

13. On the authority of the above decision of the Supreme Court, we hereby call for further and better information and facts on the element of Interest and Penalty so as to enable us determine the issues on merit. The Appellant is hereby ordered to file and furnish the Tribunal with the facts and figures of the bases for the computation and application of the accrued Interest and Penalty amounting to N5,142,089.68 within 21 days from the date of this interlocutory judgment.
14. This is a unanimous judgment of the Tribunal.

DATED AT IBADAN THIS 25TH DAY OF JUNE, 2014



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

Joseph A. Ushie
Cyril I. Ede
Jibril N. Useni

Y. Adeyeoluwa-Mathew	-	For the Appellant
F. A. Babatunde	-	For the Respondent