

IN THE TAX APPEAL TRIBUNAL

SOUTH- SOUTH ZONE

HOLDED AT BENIN

APPEAL NO. TAT/SSZ/009/2014

BETWEEN

FEDERAL INLAND REVENUE SERVICE APPELLANT

AND

FAPCO RESOURCES LIMITED RESPONDENT

Judgment

This matter was brought before the Tax Appeal Tribunal, south-South Zone, Benin, on September 23rd 2014 on the grounds "that the Respondent failed to render Company Income Tax, Value Added Tax, Education Tax and Capital Gains Tax returns for the period 2004 to 2007 Years of Assessment in the way and manner prescribed by the law."

The Appellant is a statutory body charged with the responsibility of assessment and collection of taxes on behalf of the Federal Republic of Nigeria.

The Respondent is a Nigerian company registered under the tax laws with the Appellant, and assigned with the Tax Identification Number 00624824, as a taxable person engaged in the fabrication and sales of Barges and Tugboat and Oil Field Services. The Respondent who resides at 26 Sokoh Estate, Airport Road, Warri Delta State, was a going concern during the 2004 to 2007 years of assessment but failed to render tax returns in the way and manner prescribed by the relevant tax laws and remit any tax to the Appellant. The failures of the



Respondent, the Appellant emphasises, contravened **Section 9** of the **Company Income Tax Act**. Whereupon the Appellant, disregarding its authority under **Section 65(3)** of the **Company Income Tax Act** and **Section 18** of the **Value Added Tax Act** to charge taxes based on the best of its judgment, chose to conduct a Tax Audit on the Respondent in accordance with **Sections 26 and 29** of the **Federal Inland Revenue (Establishment) Act 2007** for a more accurate determination of the Respondent's tax liabilities for the periods in dispute.

Consequently, the Appellant prayed the Tribunal for the following reliefs:

- a) The sum of ₦ 277,095,606.60 being the total of unremitted Company Income Tax, Education Tax, Value Added Tax and Capital Gains Tax for 2004, 2005, 2006 and 2007 inclusive of Penalties and Interest
- b) 176,603.62 American Dollars being unremitted Value Added Tax for the 2004, 2005, and 2006 years of assessment.
- c) Interest at the rate of 21% from the date of assessment till the date of this judgment, and
- d) Post judgment interest at the rate of 10%.

The Respondent failed to respond to the Notice of Appeal despite being served and was not moved by service of further processes even at the instance of the Tribunal. The Respondent failed to appear or be represented before the Tribunal throughout the proceedings.

In presenting his case, Counsel to the Appellant, N. A. Evoh esq, called as witness, Adamson Saidu Momodu, (PW 1) Officer Tax, at the Micro and Small Tax Office, Filing and Debt Enforcement Unit of the Appellant's Office at Warri.

Led in evidence PW 1 adopted his Written Statement on Oath as his evidence in this appeal and recognised several documents which were tendered by Counsel, admitted and marked as Exhibits as follows:

- 1) A letter to the Managing Director of the Respondent dated 25th June, 2007 on the subject of FAPCO RESOURCES LIMITED. TAX AUDIT EXERCISE 2000 – 2005 and attaching the company's "Tax Audit Exercise 2000 – 2005 Account". Marked **Exhibits A and A1**.



- 2) A letter to the Respondent dated 6th December 2007, the subject being OUTSTANDING LIABILITY, **Exhibit B**.
- 3) A reminder letter dated 29th July 2008 addressed to the Respondent on the OUTSTANDING LIABILITY and its accompanying proof of service are marked as **Exhibits C and C1**.
- 4) Another reminder of the outstanding liability dated 18th July 2011 marked as **Exhibit D** also demanding payment.
- 5) A letter to the Respondent's Managing Director reminding him of the outstanding tax liability dated 29th February 2012, **Exhibit E**.
- 6) A further reminder letter dated 3rd April 2012 on the outstanding liability marked **Exhibit F**.
- 7) **Exhibit G**, a letter dated 24th May 2012 to the Respondent, threatened legal action against them if the outstanding tax liabilities are not settled within 30 days from the receipt of the letter.
- 8) By **Exhibit F**, the Appellant on 13th August 2013 wrote inviting the Respondent and his Auditors/Consultants to an appraisal meeting.
- 9) A copy of the contract for sale of used equipment by the Respondent to a buyer made on 31st November 2004 is marked as **Exhibits J to J3**.
- 10) **Exhibit K to K7** are copies of Demand Notes for the year of assessment 2005 dated 31st January 2012.
- 11) Copies of Demand Notes for 2006 year of assessment are marked as **Exhibits L to L3**,
- 12) Demand Notes for 2007 year of assessment are marked as **Exhibits M to M3**.

The Respondent failed to avail himself of any of the means at his disposal to controvert the evidence of the Appellant in this appeal.

In its Final Written Address the Appellant formulated one Issue for Determination: "**Whether the Appellant has proved its case before this Tribunal to be entitled to the reliefs sought.**"

In arguing its case before the Tribunal Counsel to the Appellant, O. E. Ihensekhien esq. asserts that the Respondent being a perpetual tax defaulter had run afoul of the tax laws, particularly **Section 9** of the **Company Income**



Tax Act thus compelling the Appellant to resort to the Tax Audit of the respondents operations as provided for under **Sections 26 and 29 Federal Inland Revenue Service (Establishment) Act 2007** to ascertain the true and accurate tax liabilities of the Respondent. The audit was conducted with full participation of the Respondent. **Exhibits A through to M3** are replete of all of the Appellant's attempts to convince the Respondent to accept or negotiate the tax due debt and or pay up the liabilities. None of these moved the Respondent to any form of response. The Tax Audit also revealed an undeclared Assets sale on which a Capital Gains Tax liability accrued.

Counsel further asserts that these failures of the Respondent contravened **Sections 15 and 20 VAT Act and Section 55(2)(a) and (b) Company Income Tax Act** making the tax liabilities of the Respondent as found final and conclusive and recoverable by the Appellant as affirmed in the case of **FBIR V. TEXACO NIGERIA PLC. (2010) 3TLRN 79**. The Appellant further supports its case with the provisions of **Section 19 (1) & (2) Value Added Tax Act and Section 69 (1) & (2) Company Income Tax Act**. Other statutes and cases cited by the Appellant in support of its uncontested pleadings and evidence include:

Section 34 FIRS ACT 2007

FBIR V. IDS LTD (2010) 3 TLRN 1

EZENWA v. KSHSMB (2011) 9 NWLR (1251) P 89 @ 115 – 116 para. A-B

OMO v. J.S. COMM. (2000) 3 NSCQR 30

NSITFMB v. KLIFCO NIGERIA LTD 14 NWLR (PT. 1211) 307 @ 332

MONKOM v. ODILI (2010) NWLR (PT. 1179) 419 @ 445 paras. D-E

OGBIRI v. NAOC LTD.

CITY EXPRESS BANK LTD v. FORTUNE INTERNATIONAL BANK PLC. & ORS (2002) FWLR (PT. 126) 922 @ 925.

BAMGBOYE & ORS. V. CHIEF AWOYINKA & ANOR. (2002) FWLR (PT. 113) 396 @ 405. And

AGHA V. IGP (1997) 10 NWLR (PT. 524)

Concluding counsel avers that drawing from these cases the tax liability of the Respondent has been established and the tax liability has become debt due to



the Appellant since the courts have consistently held that evidence directly affecting the matter in contention and that is neither attacked nor successfully discredited is good and credible evidence that can be relied upon by court. He urges the Tribunal to rule in favour of the Appellant for the debt due to be paid with interest as claimed.

We have carefully considered the evidence presented before us in this appeal and also scrutinised the computation and aggregation of figures presented by the Appellant. These remained unchallenged and at no time throughout proceedings in this matter did the Respondent put up appearance. In this circumstance we elect to follow the rulings of Courts in the cases cited particularly;

NSITFMB v. KLIFCO NIGERIA LTD 14 NWLR (PT. 1211) 307 @ 332

MONKOM v. ODILI (2010) NWLR (PT. 1179) 419 @ 445 par. D-E

AGHA V. IGP (1997) 10 NWLR (PT. 524)

Where the courts ruled respectively that:

"Evidence that directly affects the matter in contention and that is neither attacked nor successfully discredited is good and credible evidence that can be relied upon by the Court."

"Where relevant' admissible and credible evidence stand unchallenged and uncontradicted, the Court has no alternative but to accept it and act on it to establish a fact or matter in issue."

"Where evidence of a witness has not been challenged, the court ought to accept such evidence in proof of the issue in contest or the fact it seeks to establish."

Though the Respondent failed to discharge the onus placed on him to prove that the assessment made on him by the Service is excessive the Tribunal is given powers at paragraph 15 (8) to the Fifth Schedule of the Federal Inland Revenue Service (Establishment) Act 2007 to, "... after giving the parties an opportunity of being heard, confirm, reduce, increase or annul the assessment ..." review the claims of the parties.

We have noted that the Appellant's computation of tax liabilities charged as penalty 150% of the Value Added Tax due. This charge was not justified before



us and we find no justification for this in the tax laws. We have tried to rationalise the charge by putting into effect the provisions of Section 32 (1) (a) (b) & (c), Section 27 (2), and Section 26 (5) of the Federal Inland Revenue Service (Establishment) Act 2007 but we see no grounds for the charge of 150% of the Value Added Tax due as penalty. A strict interpretation of the provisions in our opinion allows only a 110% penalty and we so approve in the case of the Value Added Tax liability computation. If there were additional penalties chargeable they were not in evidence before us. See UBN Plc. V. Ifeoluwa (Nigeria) Enterprises Ltd. 7 NWLR (2007) part 1032, 71 @ 75 (5) & (6).

In addition to the 10% charged as penalty on other tax liabilities of the Respondent other than the VAT, the Appellant also charged 26% in the case of the liabilities to the Company Income Tax and Education Tax as interest. Considering the provisions of Section 32 FIRS (Establishment) Act 2007 we find no bases in law for these high interest charges but accept the then current practise of an administrative charge of 20% as interest.

We accept that the Appellant has garnered sufficient evidence to establish the tax liabilities of the Respondent to be discharged by them in favour of the Appellant as follows,

Company Income Tax	₦173,113,301.65
Education Tax	11,515,859.09
Value Added Tax	28,728,189.05
Value Added Tax	\$ <u>142,082.90</u>
Capital Gains Tax	<u>11,146,396.90</u>
	₦ <u>224,503,746.69</u>

We hereby Order as follows; that the Respondent shall pay and remit to the Appellant a total sum of two hundred and twenty four million five hundred and three thousand seven hundred and forty six naira sixty nine kobo only, i.e. ₦224,503,746.69 being the total sum of Company Income Tax, Education Tax, Value Added Tax and Capital Gains Tax due from the Respondent for the 2004 to 2007 years of assessment. The Respondent shall also remit to the Appellant in the currency of collection, another sum of \$142,082.90 i.e. one hundred and forty two thousand and eighty two dollars and ninety cents.

We reject the Appellant's claim for a 21% pre judgment interest as already claimed by them in their computation of tax liabilities.



We further Order the payment of a Post Judgment Interest of 10% due until the judgment debts are liquidated.

No cost is granted.

Dated this 30th day of September year 2015

X 
A. A. Eyoma (Mrs)
Ag. Chairman

X 
D. U. Ugbabe
Commissioner

X 
B. A. Salihu
Commissioner



Statutes Referred to

Federal Inland Revenue Service (Establishment) ACT 2007

Company Income Tax Act

Value Added Tax Act

Cases cited.

FEDERAL INLAND REVENUE SERVICE v. OWENA MOTEL LTD.FBIR V. IDS LTD
(2010) 3 TLRN1

EZENWA v. KSHSMB (2011) 9 NWLR (1251) P 89 @ 115 – 116 para. A-B

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(2002) FWLR (PT. 126) 922 @ 925.

BAMGBOYE &ORS.V. CHIEF AWOYINKA & ANOR. (2002)FWLR (PT. 113 396 @
405.And

AGHA V. IGP (1997) 10 NWLR (PT. 524)

FBIR v. TEXACO NIG. PLC

UBA Ltd. V. IFEOLUWA (NIN.) ENTERPRISES Ltd. 7NWLR (2007) PART. 1032 71
@75 (5) & (6).

