

29

IN THE TAX APPEAL TRIBUNAL.
SOUTH-SOUTH ZONE,
HOLDEN AT BENIN CITY

BEFORE:

<u>ADENIKE ADUKE EYOMA</u>	<u>AG. CHAIRMAN</u>
<u>EBERECHI ADELE (SAN)</u>	<u>COMMISSIONER</u>
<u>DANIEL UGBABE UGBABE</u>	<u>COMMISSIONER</u>

ON THURSDAY 26TH MARCH, 2015

APPEAL. NO. TAT/SSZ/001/2014

BETWEEN:

FEDERAL INLAND REVENUE SERVICE == APPELLANT

AND

QUANTUM ENERGY SERVICES LIMITED == RESPONDENT

JUDGEMENT

The Appellant commenced this Appeal against the Respondent on 25th March, 2014 seeking the following reliefs: -

1. The sum of N17,406,711.15k being unpaid Additional Assessment on Company Income Tax and Education Tax as per tax audit for the period of 2009 to 2011 years of Assessment.
2. Interest at the rate of 21% from the commencement of this suit and until judgement and 10% interest on the judgement debt until liquidated.
3. Cost of this suit.

The Respondent filed a Notice of Preliminary Objection on the 28th May, 2014 in which it challenged the jurisdiction of this Tribunal. The Appellant filed its Counter Affidavit in response on 26th June, 2014. The Preliminary Objection having been abandoned was struck out by the Tribunal for want of diligent prosecution at the instance of the Appellant. It should be noted that from the 23rd July 2014, both the Respondent and his Counsels F.C. Chigbo Esq. And C.N.



Okubor Esq, ceased to appear before the Tribunal and failed to file a reply to the Appeal.

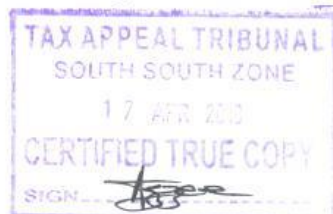
On the 21st August, 2014 the Appellant opened its case with Mr. Jude Ekpruke testifying for Appellant as P.W.1. He gave oral evidence in which he adopted his written statement on oath dated 25th March, 2014 and tendered a number of documents in evidence marked as Exhibits A to R.

In his evidence P.W.1 maintained, *inter alia*, that it was the failure on the part of the Respondent to properly file its Annual Returns on Self-assessment basis that resulted in the Appellant's rejection of the same in the belief that the Respondent had under assessed itself to tax.

This turn of events gave rise to the conduct of an audit exercise which was conducted on the Respondent at its premises on 25th September, 2012 with the Respondent's full and active participation. The out-come of the audit findings was that Notices of Additional Assessment to Company Income Tax and Education Tax for the period of 2009 to 2011 years of assessment were raised and served on the Respondent vide letter dated 21st August, 2013 (Exhibit Q).

Failure on the part of the Respondent to off-set its additional tax liability gave rise to the issuance of a letter of demand dated 7th November, 2013 (Exhibit R) from the Appellant's legal department. The Respondent's continued refusal to defray its tax liability resulted in the institution of this Appeal before the Tribunal. That was the case for the Appellant.

At the conclusion of evidence, learned counsels for the Appellant N. A. Evoh Esq. And Osatohan E. Ihensekhien Esq., filed their written address on 18th November, 2014. Subsequently, Osatohan E. Ihensekhien made a brief oral submission in amplification of the written address and urged the Tribunal to uphold the Appellant's claim and grant it all the reliefs sought.



Two issues were formulated by the Appellant's counsels for determination, namely:-

1. Whether the Respondent is liable to remit the sum of N17,406,711.15k being additional assessment on Company Income Tax and Education Tax as per tax audit for the period 2009 to 2011 years of assessment.
2. Whether the Appellant has proved its case on the preponderance of evidence to be entitled to the reliefs sought.

On the first issue, counsel for the Appellant submitted that it was failure on the part of the Respondent to file accurate and credible returns and accounts on self-assessment basis that triggered the Appellant's refusal to accept the same (see section 65(2) of CITA). This in turn initiated a tax audit investigation under Section 60(4) of the same Act.

Counsel further submitted that the Appellant is statutorily bound by section 66(1) CITA to make additional assessment where it discovers or it is of the opinion at anytime that any company liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged.

Counsel also drew the Tribunal's attention to the clear and unambiguous nature of the provisions of section 60(4), section 65(2) and section 66(1) of CITA; and urged us to give them their literal interpretation. He placed reliance on the following authorities: -

1. Phoenix Motors Limited vs. N.P.M.B. (1993)1NWLR Pt. 272., Pg.719., At Pg.731.
2. FBIR vs. IDS. Limited (2009)8NWLR Pt.1144., Pg.615., At Pg.637 - 638.
3. Mobil Oil Nigeria Limited vs. FBIR & Anor. (2011)5TLRN 167.
4. SPDC Nigeria Limited vs. FBIR (1996)8NWLR Pt.466., Pg.256.



He finally urged this Tribunal to give effect to the above mentioned provisions and hold that the additional assessments for Company Income Tax and Education Tax for 2009, 2010 and 2011 years of assessment were made in accordance with the extant law.

On the second issue, Counsel for the Appellant contended that the Appellant had extensively dealt with how the audit exercise was conducted on the Respondent resulting in the raising of additional tax liability. Counsel drew the attention of the Tribunal to the fact that in spite of being duly served with the Notices of Additional Assessment (Exhibit Q), Letter of demand (Exhibit R) and the Notice of Appeal the Respondent failed to respond or to transverse or deny any of the facts pleaded by the Appellant. He therefore, contended that in the absence of a valid and competent objection to the Additional Assessment raised and that in view of the fact that the Respondent failed to challenge or controvert the pleadings and evidence the Tribunal should hold that -

1. The Additional Assessment raised and served on the Respondent, has become final and conclusive.
2. The unchallenged and uncontroverted pleadings and evidence should be deemed to have been admitted by the Respondent.

Counsel cited a number of authorities in support of these submissions namely: -

1. FBIR vs. Texaco Nigeria Plc. (2010)3TLRN 73
2. Ezenwa vs. KSHSMB (2011)9NWLR(1251) Pg.89., At Pg.115 - 116
3. Bamigboye and Ors vs. Awoyinka and Anor (2002)FWLR(Pt.113) Pg.396. At Pg.405.
4. Agha vs. IGP(1997)10NWLR(Pt.524)

Counsel concluded by urging this Honourable Tribunal to hold that the Appellant is entitled to the reliefs sought in the Notice of Appeal, and that the cost of proceedings is incidental and should logically follow.



We have carefully considered all the evidence led in this Appeal and the submissions of learned counsel for the Appellant, as well as the authorities cited.

With regards to the first issue, we observe from the evidence before us that the Appellant having rejected the returns filed by the Respondent (see section 65(2)) and operating under the clear and unambiguous provisions of sections 60(4) and 66(1) of CITA conveyed its intention to conduct an audit exercise into the financial affairs of the Respondent. Towards this end a letter of invitation for a pre-audit meeting (Exhibit A) was sent to and received by the Respondent. As agreed between the parties the audit was held in the premises of the Respondent on 25th September, 2012 with the Respondent's full participation. The audit exercise revealed that Respondent did not keep proper accounts and the Respondent's audited accounts for years ended December, 2010 and 2011 (Exhibit E and F) were found to be unreliable.

On being requested to provide additional documents, the Respondent submitted its Bank Statements from Diamond and UBA (See Exhibit J and J2).

The audit exercise was eventually carried out using the documents provided by the Respondent. The findings contained in the Audit Report (Exhibit K) were communicated to the Respondent.

At a reconciliation meeting (Exhibit O) Respondent was informed that the Bank Statement would form the basis for additional assessment being more reliable than the Respondent's submitted financial statements.

Notices of additional assessment were raised and served on the Respondent vide Exhibit Q. The Respondent did not raise any objection to the additional assessments neither did it make any move to offset its tax liability.

We are satisfied that the Appellant has operated within the ambit of the clear and unambiguous provisions of the above cited



provisions of CITA. We are further satisfied that the Appellant carried the Respondent along at each stage of the re-assessment process and patiently explained the reasons for its actions.

Failure on the part of the Respondent to object to the Re-assessment notices within the time stipulated by law has made the assessment final and conclusive and crystallised the tax liability contained therein into a debt due to the Federal Government of Nigeria.

We therefore resolve the first issue in the Appellant's favour and hold that –

- (i) The additional assessments for Company Income Tax and Education Tax for the period 2009 to 2011 years of assessment are in accordance with the extant provisions of CITA and therefore valid, and
- (ii) The Respondent's liability to pay the tax assessed has become final and conclusive and has crystallized into a debt owed by the Respondent to the Federal Government of Nigeria.

We now turn to the second issue for determination. We are satisfied that the Appellant's claim is consistent with the evidence adduced before us. We note that although the Respondent and its counsel initially attended the proceedings they abruptly ceased to attend and failed to file a Reply to the Notice of Appeal. 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 on the preponderance of evidence and therefore find in its favour and grant the relief sought with regard to the sum of N17,406,711.15k being unpaid Additional Assessment on companies income tax and education tax as per audit for the period of 2009 to 2011 years of Assessment.



We now consider the first arm of the 2nd relief sought i.e., the request for interest at the rate of 21% from commencement of the Appeal until judgement. We observe that in the computation of taxes due for the relevant years of assessment, the Appellant had built in an interest charge of 17% and penalty of 10%. We cannot find any justification for the request for additional 21% interest; more so as they have failed to lay the necessary foundation.

We therefore, refuse to grant the relief for 21% interest charged from the commencement of the suit until judgement.

In conclusion, we hold that the Appellant is entitled to recover the sum of N17, 406,711.15k being unpaid Additional Assessment for the period of 2009 to 2011 years of assessment.

We further award post-judgment interest at rate of 10% per annum from the date of judgment until the judgement debt is paid in full.

There shall be no order as to costs.

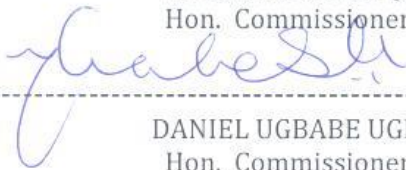
DATED THIS 26th DAY OF March 2015



ADENIKE A. EYOMA
Ag. Chairman



EBERECHI ADELE (SAN)
Hon. Commissioner



DANIEL UGBABE UGBABE
Hon. Commissioner

REPRESENTATION

N.A. Evoh. Esq., T. Onome-Iwuru (Mrs) & U. Brown (Mrs) -
Nil

 - Appellant
- Respondent

