

IN TAX APPEAL TRIBUNAL
IN THE NORTH WEST ZONAL TRIBUNAL
HOLDEN AT KADUNA

HONORABLE MEMBERS:

BASHIR ABDULLAHI ALBASU con, fwc, psc, AIG (Rtd) - CHAIRMAN

EBERECHI ADELE, SAN, JP - MEMBER 1

JOSHUA MUKTA WAKLEK, mni - MEMBER 2

KHADEEJA S. HALILU (MRS) - MEMBER 3

DR. OLUMHENSE IMOISILI - MEMBER 4

FEDERAL INLAND REVENUE SERVICE v AREWA TEXTILE PLC & 2 ORS
(TAT/NWZ/KD/CIT/01/10)

JUDGMENT ON 17TH APRIL, 2012

The matter was filed on the 7th June, 2005 in the defunct VAT Tribunal and transferred to the Tax Appeal Tribunal in 2010.

Reliefs sought by the Appellant is the sum of N224,480,908.85 (two hundred and twenty four million, four hundred and eighty thousand, nine hundred and eight naira eighty five kobo only) being unremitted VAT, penalty and interest for the period January 1995 to September, 2004. Added the sum of N312,011,518.00 (three hundred and twelve million, eleven thousand, five hundred and eighteen naira only) being unremitted Income Tax for 1996 to 2000 and N25,978,713.00 (twenty five million, nine hundred and seventy eight thousand, seven hundred and thirteen naira only being unremitted Education Tax for 1996 to 1999 (filed on 11th February, 2011).

This case started with the former VAT Tribunal. When the matter came before us the appellant refiled the appeal and abandoned all VAT claims. The Appeal now relevant before us is the one filed on the 11th day of February, 2011. The appeal was filed together with the Appellant's witness written Statement on Oath and list of exhibits in line with the extant Rules of this Tribunal.

The grounds of appeal are two.

In ground one, the Appellant claims that the Respondent has failed or refused to remit its Companies Income Tax for the period 1996 – 2000 and in ground two, they claim that the Respondent has also failed or refused to pay its Education Tax for the period 1996 – 1999.

CERTIFIED TRUE COPY
Certified by Hashim Abdullahi
Rank Assistant Secretary (Manager)
Sign: *[Signature]*

The Respondent was duly served with the Hearing Notice. On the 17th February 2011 when the matter came up for mention the tribunal was confronted with a letter for adjournment from the counsel to the Respondent, M.T. Ibitoye Esq. Accordingly and in the interest of justice the tribunal adjourned the matter and advised that all formalities must be completed before the next adjourned date so that hearing could commence.

On the next date for hearing being the 3rd May, 2011 the Respondent was absent and not represented. However, the Appellant asked for adjournment on the ground that the particular counsel handling the matter was held up in Lagos. This tribunal adjourned the case for the last time to the 4th July 2011.

On the 4th July 2011, both parties were represented by counsel. Mary Okpe appeared for the Appellant and M.T. Ibitoye appeared for the Respondent.

Whilst the Appellant was ready to go on with the matter, the Respondent again applied for adjournment on the excuse that there is a case pending at the Federal High Court to determine who are the Receivers for the Respondent. Although the Appellant opposed the application for adjournment, the tribunal adjourned the matter to the next day 5th July 2011 to enable the Respondent's counsel file in documents to show that the matter is pending before the Federal High Court.

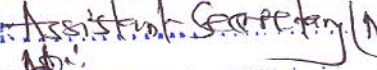
On the next date being the 5th July 2011 the Respondent's counsel, M.T. Ibitoye applied to tender an affidavit of facts from the bar to show that the matter is pending before the Federal High Court.

The Appellant's counsel opposed the application on the ground that the so called affidavit of facts was not filed before the tribunal and is not relevant to this case. This tribunal observed that the affidavit was wrongly headed in the Federal High Court and has no relevance to these proceedings. It was accordingly rejected and the matter was adjourned to 10th August, 2011 for definite hearing.

However, on the 10th August, 2011 the Respondent was absent but the Appellant requested an adjournment on the grounds that their witness had been transferred from Kaduna to Lagos. This tribunal once again adjourned the matter to the 4th October, 2011 for definite hearing.

It must be observed that the Respondent did not bother to file a defense to the action.

On the 4th October, 2011 the Respondent was once again absent and not represented. The tribunal directed the Appellant to go on with its case since the Respondent is not interested in defending the case.

CERTIFIED TRUE COPY
Certified by Hashim Abdullahi
Bank Assistant Secretary (Manager)
Sign: 

The Appellant therefore opened its case with its witness Anchi Apollos Dawum. He said he works with the Appellant as a Deputy Manager, Tax. He claimed that his work schedule includes examining the tax returns of tax payers, writing letters of demand for such returns and penalizing companies that do not submit tax returns as and when due. He also performs all duties contemplated by the FIRS Establishment Act, 2007 and all other Tax Laws. Continuing his evidence, he testified that he made a written Statement on the 11th February 2011 in connection with this case. He identified his written Statement on Oath and adopted it as his evidence. He also tendered several documents he referred to in his Written Statement. He tendered letter of demand dated 17th September, 1998 as Exhibit 1, Letter dated March 2001 was admitted as Exhibit 2, Letter of 25th April, 2001 was Exhibit 3, Letter of 15th March 2004 was Exhibit 4, Income Tax Assessment notices for 1996 – 2000 years of assessment were admitted as Exhibits 5^A, 5^B, 5^C, 5^D and 5^E.

This witness also identified and tendered assessment notices for Education Tax for the years 1996, 1997, 1998 and 1999 as Exhibits 6^A, 6^B, 6^C, and 6^D. The witness confirmed that all the assessment notices were duly served on the Respondent. The witness further tendered demand notices in respect of Income Tax for the years 1996 – 2000 as Exhibits 7^A – 7^E. Also, demand notices in respect of Education Tax for 1996 – 1999 were tendered and admitted as Exhibits 8^A, 8B, 8C and 8^D. Finally, the witness testified that the total company Income Tax and Education Tax liability of the Respondent is the sum of ₦337,990,231 (Three Hundred and Thirty Seven Million, Nine Hundred and Ninety Thousand, Two Hundred and Thirty One Naira) and this is the total sum now claimed. Although the Respondent and their counsel appear to have intentionally abandoned the case, this tribunal in the interest of justice adjourned the case to the 5th December, 2011 for cross-examination if the Respondent so wished.

On the 5th December, 2011 the Respondent and its counsel were again absent despite the service on them of a fresh Hearing Notice. The Respondent therefore did not cross-examine the witness.

However, on the same 5th December, 2011 the Appellant's counsel abandoned the Appellant's pending claim for Value Added Tax (VAT) and sustained the claims for Company Income Tax (CIT) and Education Tax.

At this juncture the tribunal drew the Appellant's Counsel's attention to possible discrepancies in the assessment notices issued to the Respondent by the Appellant. The Appellant's counsel admitted that the Tax Officer who did the assessment may have inadvertently over assessed the Respondent but that this tribunal has the discretion to correct any error in the assessment. The Tribunal granted the counsel the option of recalling his witness to resolve any discrepancy in the assessment or to address the tribunal

CERTIFIED TRUE COPY
Certified by Hashim Abdullahi
Rank Assistant Secretary (Manager)
Sign: *Hashim Abdullahi*

on the issue. The counsel preferred to recall his witness the next day being 6th December, 2011.

On the next date of 6th December, 2011 the Respondent continued to be absent. Meanwhile, the Appellant's counsel applied to recall his witness, Mr. Anchi Apollos Dawum as he indicated the previous day. The witness could not properly clarify the issue of wrong assessment. He and his counsel promised that they will tender the documentary evidence of Central Bank of Nigeria minimum rediscount rates from 1995 – 2000. The matter was then adjourned to the following day being 7th December 2011 for the witness to tender the document.

On the 7th December 2011 the witness claimed that all efforts to get the Central Bank of Nigeria document were not successful. The tribunal adjourned the matter again to the 19th January 2012 to enable the witness produce the Central Bank of Nigeria rediscount rate document and re-calculate assessments of the reliefs sought.

On the 19th January 2012 the Respondent's counsel surprisingly wrote for adjournment again. The application was vehemently opposed by the Appellant's counsel on the ground that the Respondent is not serious in their defense of this matter and that though the Respondent's counsel had previously appeared in the matter before abandoning same, they did not even bother to file a reply. This tribunal agreed with the Appellant's counsel and noted that the Respondent has consistently exhibited a lack of diligence in defending this important matter. He was granted several adjournments and up till now he has not even filed a reply to the Appeal. Accordingly this tribunal rejected the letter of adjournment and refused the application for adjournment. It would appear that this latest application is a mere ploy to continue to delay this case. This tribunal will not lend itself to such practice.

However, the tribunal further adjourned this case to the 21st February, 2012 to enable the Appellant produce the Central Bank of Nigeria document. On the 21st February, 2012 the Respondent was absent as usual. The Appellant's witness Mr. Anchi Apollos Dawum continued his testimony. He tendered a letter dated 7th February 2012 from the Federal Inland Revenue Service (FIRS) to the Central Bank requesting for information on the Central Bank of Nigeria minimum Re-discount rates for the period 1994 – 2001. This letter was admitted as Exhibit 9. He also tendered the reply by the Central Bank of Nigeria dated 16th February, 2012 and this was admitted as Exhibit 10. The witness thus concluded his evidence-in-chief. The Respondent being absent as usual, there was no cross-examination.

However, this tribunal observed that the minimum re-discount rates in Exhibit 10 are different from the rates used by the Appellant in computing interest and penalties. The

CERTIFIED TRUE COPY
Certified by Hashim Abdullahi
Bank Assistant Secretary (Manager)
Sign: *Hashim Abdullahi*

Appellant urged the tribunal to use the Central Bank of Nigeria rates. The matter was adjourned to the following day the 22nd February 2012 for adoption of written address.

On the 22nd February, 2012 Appellant's Counsel, Mr. Emem Udoh informed the tribunal that he had filed a written address pursuant to Order 18 Rule 1 of the Rules of this tribunal. He adopted the written address and urged the tribunal to grant the reliefs contained in the Notice of Appeal. He again confirmed that the Appellant is only pursuing Income Tax and Education Tax in this appeal. He said that they have not claimed for the years 2000 to date because the Respondent ceased to be in existence from that year.

In the written address, the Appellant counsel submitted that the case ought to succeed because the Appellant exercised its powers under the law to assess and demand companies Income Tax and Education Tax from the Respondent. He referred to Exhibits 1,2,5,6,7 and 8 as evidence of assessments and demand notices served on the Respondent for the relevant period. He stressed that despite the provisions of the Companies Income Tax Act stipulating that a company not in agreement with an assessment made could file a notice of objection within 30 days, the Respondent did not file any objection and that having failed to file an objection; the assessment shall be considered as final and conclusive.

He further submitted that the Respondent's counsel orally entered appearance for the Respondent in this case and did not file a Reply. Citing order 8 Rule 1 of the Rules of this tribunal, he maintained that the Respondent was duty bound to enter appearance in writing stating whether he contests the appeal.

The foregoing represents the case of the Appellant as presented in this tribunal. The written Statement on Oath of the Appellant's sole witness, which was duly adopted during the hearing, clearly shows that the Respondent had failed, refused and or neglected to pay its Companies Income Tax and Education Tax for the period 1996 – 2000.

Exhibits 1, 2, 3, and 4 are clear. They are repeated demand notices issued to the Respondent by the Appellant for the Respondent to pay both its Companies Income Tax and Education Tax for the various years. Exhibits 5^A, 5^B, 5^C, 5^D and 5^E show details of assessment notices also issued to the Respondent by the Appellants for the various years of assessment. Exhibits 7^A - 7^E are also demand notices. Exhibits 8^A - 8^D are also demand notices specifically for Education Tax.

We have carefully reviewed all the evidence and exhibits before us and we are of the firm view that the Respondent did not pay any tax, either for the Companies Income Tax or for the Education Tax for the years claimed by the Appellant.

CERTIFIED TRUE COPY
Certified by Hashim A. Abdullahi
Rank Assistant Secretary (Manager)
Sign: Hashim A. Abdullahi
Page 14 of 42

Furthermore, as submitted by the Appellant's counsel and we so hold, the Respondent did not file a Reply and did not defend the matter. This is despite the several adjournments granted by this tribunal at the instance of the Respondent and its counsel. We hold that the Respondent has no defense to this action and its failure or refusal to defend must be deemed to be intentional.

Having found that the Appellant has proved its case and the Respondent has not offered any defense whatsoever, this Tribunal hereby enters judgment in favour of the Appellant in the sum of N312,011,518.00 (three hundred and twelve million, eleven thousand, five hundred and eighteen naira only) for Companies Income Tax liability and another sum of N25,978,713.00 (Twenty five million, nine hundred and seventy eight thousand, seven hundred and thirteen naira only) for Education Tax liability.

BASHIR ABDULLAHI ALBASU
(CHAIRMAN)

CERTIFIED TRUE COPY
Certified by Hashim Abdullahi
Plaintiff Assistant Secretary (Manager)
Sign: Hashim Abdullahi