

IN THE APPEAL TRIBUNAL

LAGOS ZONE

SITTING AT LAGOS

Between

Federal Inland Revenue Service (FIRS)

Appellant

and

Cityscape International Ltd

Respondent

JUDGMENT:

Introduction:

The Appellant being dissatisfied with the non-compliance of the Respondent to the Assessment and Demand Notice to wit, 3 Assessment Notices dated 31st December, 2003; 2 Assessment Notices dated 31st December, 2004; 3 Assessment Notices dated 31st December, 2005; and 2 Assessment Notices dated 31st December, 2006 based on audit for the period of 2003 - 2006, approached this Tribunal. The grounds of the Appeal as submitted by the Appellant are that the Respondent is in default of paying Company Income Taxes from 2003 - 2006, Education Tax from 2003 - 2006, Withholding Tax from 2003 - 2005, and VAT from 2003 - 2006.

The Appellant in its written address dated 20th March, 2012 is seeking the following reliefs:-

- i. A declaration that the Respondent, Cityscape International Ltd, defaulted by not paying its Company Income Tax (CIT), Education Tax (EDT), and Value Added Tax (VAT).
- ii. An order requesting the Respondent to pay the said tax amount of N238,921,231 (Two Hundred and Thirty Eight Million Nine Hundred and Twenty One Thousand Two Hundred and Thirty One Naira).
- iii. And such other orders as the Tribunal may deem fit in the circumstances.

Issues for Determination:

1. Whether the tax assessments raised on the Respondent were validly raised?
2. Whether the tax assessments raised are final and conclusive?



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Analysis and Determination of Issues:

Issue 1: Whether the tax assessments raised on the Respondent were validly raised?

The Appellant in its written address relied on Sections 9, 40(1), and 66 of the Companies Income Tax Act (CITA) Cap. 21 to proffer arguments on the validity of the Company Income Tax assessment raised on the Respondent. Sections 1(1) and 2(1) of the Education Tax Act as well as Sections 1 and 2 of the Value Added Tax Act (VATA) were relied upon to buttress same argument for the taxes thus mentioned. The Appellant maintained that the above provisions of the law, unequivocally bestows upon the Respondent the responsibilities to remit Company Income Tax, Education Tax, and Value Added Tax to the Federal Government of Nigeria. The case of **FBIR V Wilmer Publicity Ltd. (Nigerian Tax Cases Vol.1 at pg 332)** was quoted in support. Counsel however, neither made reference to the issue of Withholding Tax (WHT) in the reliefs sought nor was there any attempt to justify its validity in the written address.

The Respondent on its part did not dispute any of the assessments and thus accepted responsibility for it; pleaded for time and understanding to settle the liability.

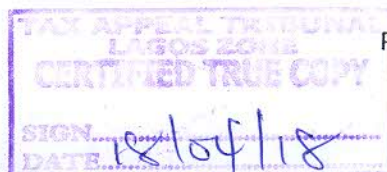
The Appellant in its written address sought the order of this Tribunal to declare that the taxpayer is in default by not paying its CIT, ET, and VAT, albeit, to the exclusion of Withholding Tax.

The Appellant in this Appeal has failed to convince this Tribunal on the veracity of the WHT and more so it is not one of the reliefs sought. In the circumstances, we therefore hold that the Withholding Tax Assessment of **N13,920,264.00** (Thirteen Million Nine Hundred and Twenty Thousand Two Hundred and Sixty Four Naira) raised on the Respondent, is invalid and cannot stand any grounds for enforcement.

The Appellant raised CIT Additional Assessments at 30% of Assessable Profits. Premised on this assessment computations, which documents are in evidence, the Assessable Profits for 2003 to 2006 are N27,042,639.00; N34,33,073.00; N78,567,266.00; and N108,877,496.00 respectively. The CIT arising from this computation is in concordance with the CIT amount pleaded by the Appellant which amounts to **N67,930,143.00** for 2003 to 2006 assessment years.

However, the Appellant relied on completely different set of figures in its determination of the Education Tax for the same period i.e. 2003 - 2006. Section 1(2) of the Education Tax Act states "Education tax which is taxed at a rate of 2 per cent shall **be charged on the assessable profit** of a company ..." In addition, Sub Section 3 stipulates that "The assessable profit shall be **ascertained** in manner specified in the Companies Income Tax Act ...". Thus, it is strange to our Laws that divergent assessable profits are tenable for the same company during the same period of assessments for the determination of CIT and ET. Accordingly, we reject the basis of the Education Tax Assessment and direct that the Education Tax liability of the company be determined on the bases of the assessable profits applied in the computation of CIT. We noted no evidence of ET assessment for 2004 on the Respondent, hence the sum of N1,356,700.00 quoted in the Appeal cannot stand. In consequence, the Education Tax liability is hereby adjusted to **N4,289,748.02**

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(Four Million Two Hundred and Eighty Nine Thousand Seven Hundred and Forty Eight Naira Two Kobo Only) in accordance with S1(2) & (3) of ETA. The computation is given hereunder:

Year of Assessment	Assessable Profit	Education Tax @ 2%
2003	27,042,639.00	540,852.78
2004	34,533,073.00	No Assessment
2005	78,567,266.00	1,571,345.32
2006	108,877,496.00	2,177,549.92
Total	249,020,474.00	4,289,748.02

In the absence of any argument countering the validity of the VAT Assessment in the sum of **N149,414,678.00** raised on the Respondent, we hold same to be valid in the circumstance.

Issue 2: Whether the tax assessments raised are final and conclusive?

The Appellant Counsel relied on Order 3 Rule of the Tax Appeal Tribunal (TAT) Rules as well as Section 76 of CITA Cap. C21 to substantiate the fact that the Respondent having not objected to the assessments raised on him within 30 days, the time allowed by law, the assessments are final and conclusive. Counsel also made reference to the oral admission of the liabilities by the Respondent's representative, on 12th September, 2011. Cases relied on in the address are: **FBIR V Gbolahan Bension and Ors (Nigerian Tax Cases Vol.1 at pg 335 and FBIR V Confidence Insurance Plc, 2 TLRN at pg 95.**

There is no evidence before this Tribunal to show that the Respondent has objected to the assessments, the subject matter of this Appeal.

All the assessments raised on the Respondent were neither disputed nor objected to. We have already determined that the Respondent was wrongly assessed to Withholding Tax. Similarly, the Education Tax assessment was wrongly computed and thus revised to agree with the relevant provisions of ETA.

We therefore, hold that CIT of **N67,930,143.00** and VAT of **N149,414,678.00** for 2003 - 2006 years of assessment validly raised on the Respondent which were not objected to are final and conclusive. The ET of **N7,656,146.00** for the same period which was not objected to, now revised to **N4,289,748.02** is equally final and conclusive in the sum so revised. However, we reject the WHT of **N13,920,264.00** for 2003 - 2006 on grounds of proof and lack of plea for relief.

Conclusion:

We enter judgment against the Respondent Company, Cityscape International Ltd in the sum **N221,634,569.02 (Two Hundred and Twenty One Million, Six Hundred and Thirty Four Thousand, Five Hundred and Sixty Nine Thousand Two Kobo)** being the cumulative CIT, ET, and VAT liabilities for 2003 to 2006 years of assessment. We dismiss the claim for WHT against the Respondent.

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Legal Representation:

Abisola Sodipo (Miss) for the Appellant.

Adebayo Adefeegbe for the Respondent.

DATED AT IKEJA THIS 21ST DAY OF JUNE, 2013.

Kayode Sofola, SAN.
Chairman

Catherine A. Ajayi (Mrs.)
Commissioner

D. H. Gapsiso, Esq.
Commissioner

Mustafa Bulu Ibrahim
Commissioner

Chinua Asuzu, Esq.
Commissioner



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