

**IN THE TAX APPEAL TRIBUNAL  
IN THE LAGOS ZONE  
HOLDEN AT IKEJA**

APPEAL No.

TAT/LZ/CIT/061/2014

Between

**Bell-X Limited**

Appellant

And

**Federal Inland Revenue Service**

Respondent

**Judgment**

**Introduction:**

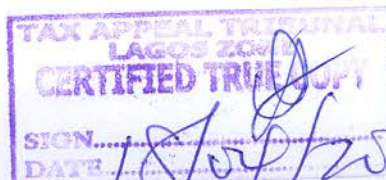
The Appellant attacks the Respondent's assessments on it because, the Appellant says:

- a) The Respondent failed to apply the turnover provisions of the Companies Income Tax Act (CITA) on alleged undisclosed income in the Appellant's financial statements with the rule of "deemed profit" under sections 30(1)(a) and 66; and
- b) The Respondent misconceives customers' deposits and deferred income.

**Issues for determination**

The following issues arise for determination:

1. Could the Respondent validly rely on its web portal to ascertain the Appellant's assessable and taxable profits?
2. Were the Notices of Refusal to Amend validly issued by the Respondent?



## Facts and Proceedings

The Respondent found discrepancies between the Appellant's turnover on the audited account and that on the web portal, for 2010, 2011 and 2013 years of assessments. Eventually, relying on the web-portal information, the Respondent raised additional CIT and EDT assessments on the Appellant for 2010, 2011, and 2013.

The additional assessments were as follows:

S/N	Year of Assessment	Assessment No.	=N=
1	2010	LTO/NON-OIL/LAG/AS PER A/C/GA/CIT/010	175,120,488.00
2	2010	LTO/NON-OIL/LAG/AS PER A/C/GA/EDT/004	11,674,699.21
3	2011	LTO/NON-OIL/LAG/AS PER A/C/GA/CIT/011	172,408,823.45
4	2011	LTO/NON-OIL/LAG/AS PER A/C/GA/EDT/005	11,493,921.56
5	2013	LTO/NON-OIL/LAG/AS PER A/C/GA/CIT/012	75,831,800.40
6	2013	LTO/NON-OIL/LAG/AS PER A/C/GA/EDT/006	5,055,453.36

The Appellant objected to the additional assessments and urged the Respondent to amend them. The Respondent refused. The Appellant sued the Respondent to discharge the additional assessments.

The Appellant filed the following:

1. its Notice of Appeal;
2. its witness Chukwuka Egbule's two witness statements; and
3. documentary exhibits.





The Respondent filed the following:

1. its Reply to the Notice of Appeal;
2. its witness Rasak Adelanwa Oki's witness statement; and
3. documentary exhibits.

*Pendente lite*, the Respondent wrote the Appellant calling for a reconciliation meeting on 18 July 2014.

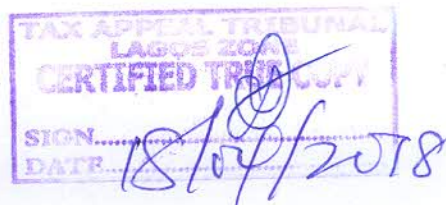
### **Parties' Positions**

The Appellant submits that the Respondent's web portal is unreliable and insufficient for ascertaining the Appellant's assessable and taxable profits. The Appellant pointed out:

- disparity in transaction dates;
- that the web portal was only a gross-up of withholding tax on payments made to the Appellant rather than the aggregate value of transactions invoiced to customers during the year;
- that the web portal cannot capture debts and costs to the Appellant; and
- the web portal is purely administrative and not statutory.

The Appellant further submits that sections 40(1) and 66 of CITA must be read together to ascertain legislative intent. The Appellant cited *Basinco Motors Ltd. V Woermann-Line* [2009]6 M.J.S.C (Part 1) 66, 86-88, per Alooma Mariam Murktah JSC (as she then was).

The Appellant argues that though the Respondent is statutorily empowered to raise additional assessments, the assessments must be on total profits, and not on revenue or turnover. The Appellant cites section 40(1) of CITA: "There shall be levied and paid for each year of assessment



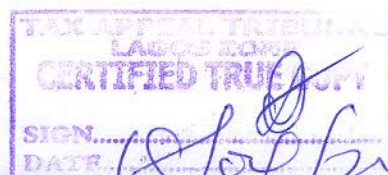
in respect of the total profits of every company, tax at the rate of thirty kobo for every naira."

The Respondent responds that its web portal is a proper and lawful means of ascertaining taxable income. The Respondent says that hidden profits, unsubstantiated amounts, and variances were taxable under section 30 of CITA. Citing section 66 of CITA, the Respondent asserts the validity of its additional assessments on the Appellant, which arose from the variance between the Appellant's submitted audited accounts and its record of transactions captured from the Respondent's web portal.

The Appellant submits that following its objection to the additional assessments, the Respondent failed to follow the due process prescribed in section 69(1), (2), and (4) of CITA. Instead, the Respondent started a field audit of the Appellant's annual returns and statements of accounts for 2010, 2011, and 2013. The Respondent started this field audit on 13 May 2014, the same date the Respondent issued its Notices of Refusal to Amend/Revised Assessments. This shows that the Respondent did not do all that was needful to ascertain the Appellant's total profits for tax assessment. The Appellant alleges that the Respondent's conduct evinced bad faith.

The Respondent counters that it validly issued the NORA/Revise Assessments. The Respondent says that by omitting its assessable and total profit from its objection, the Appellant breached section 69(1), (2), and (4) of CITA.

The Respondent submits that the variance referred to in this appeal was established after a desk examination of the Appellant's submitted accounts for the 2010, 2011 and 2013 years of assessment; and that the fact that a field audit commenced the same day the NORAs were issued did not





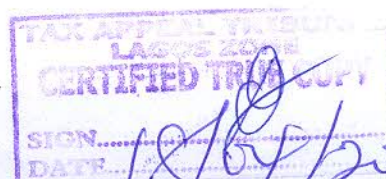
invalidate the NORA. On the allegation of bad faith, the Respondent claims good faith.

### Analysis and Decision

The Appellant is in the business of infrastructure development, construction, and telecommunications contracts. The Appellant receives deposits from its customers for jobs that may span periods that go beyond its accounting years. So the Appellant reports in its financial statements closing balances of such deposits and these have been referred to as Customers Deposits {Note 9(1)} on page 13 and Deferred Revenue (Note 7) on page 8 in the Appellant's Financial Statements for the year ended 31st December, 2010 and 2012 Exhibits BELL 5 and BELL 6 respectively.

The Respondent has not taken into consideration the impact of Customers Deposits/Deferred Revenue in treating the variances in the Appellant's revenue as purportedly captured on its web portal. Yet the Appellant's consultant had made this clear in the Appellant's objection, to which was attached "Schedule of Contract Jobs" for years 2010, 2011 and 2012, and in which was stated the fact that "No allowance as to cost was made to your assumed additional income/web-portal variance". The Respondent had chosen to repeatedly inform the Appellant that "Revenue maintains her position and refuses to amend or vacate the assessment".

In articulating the roles of tax authorities, paragraph 2.9 of the National Tax Policy states that *"the authorities should create a conducive tax atmosphere and environment which will engender taxpayer confidence at all levels of tax administration. In this regard, taxpayers shall be provided adequate time and space to review, challenge, and appeal every tax assessment or demand made by the tax authorities and every claim, objection, appeal, representation or the like made by any taxpayer must be sufficiently considered."*



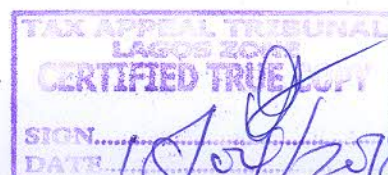
On the statutory validity (CITA and Education Tax Act) of the Respondent's reliance on its web portal for ascertaining the Appellant's assessable and taxable profits, we note that where, as in this case, there are Customers Deposits/Deferred Revenue, the Respondent must factor these into the calculation of the Appellant's revenue. Then the Respondent must calculate the assessable profit on that revenue.

Section 30(a) of CITA requires the Respondent to "assess and charge that company for that year of assessment on such fair and reasonable percentage of the turnover of the trade or business". There is no evidence that the Respondent has even calculated any percentage of the supposed additional turnover deduced from its web portal, rather it has equated the variance in turnover to assessable profit.

### **Conclusion:**

We nullify the following Notices of Refusal to Amend and Revised Assessment the Respondent issued against the Appellant, all dated 13 May 2014:

- a) LTO/NON-OIL/LAG/AUD/GA/CIT/001C in the sum of N175,120,488.00 for the 2010 year of assessment;
- b) LTO/NON-OIL/LAG/AUD/GA/EDT/001C in the sum of N11,674,699.21 for the 2010 year of assessment;
- c) LTO/NON-OIL/LAG/AUD/GA/CIT/001C in the sum of N172,408,823.45 for the 2011 year of assessment;
- d) LTO/NON-OIL/LAG/AUD/GA/CIT/001A in the sum of N11,493,921.56 for the 2011 year of assessment;
- e) LTO/NON-OIL/LAG/AUD/GA/CIT/001B in the sum of N75,831,800.40 for the 2012 year of assessment;
- f) LTO/NON-OIL/LAG/AUD/GA/CIT/001C in the sum of N5,055,453.36 for the 2012 year of assessment;






We order the Respondent to conduct a proper reconciliation of the Appellant's reported revenue with the Respondent's web portal information for 2010, 2011 and 2013; taking into consideration the Appellant's Customers Deposits/Deferred Revenue. If there is any variance arising from the reconciliation exercise, then the Respondent is to ascertain the assessable profit on such before applying the appropriate tax rate on it.


***Legal Representation:***


Olakunle Allison Esq. for the Appellant.

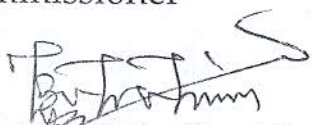
Aderibigbe V. M. (Mrs) with Foresythe M.O. (Mrs) for the Respondent.

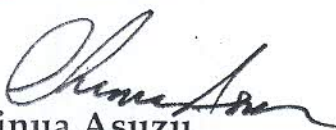
**DATED AT LAGOS THIS 15TH DAY OF MAY 2015**

  
**Kayode Sofola, SAN**  
Chairman

  
**Catherine A. Ajayi (Mrs)**  
Commissioner

  
**D. H. Gapsiso**  
Commissioner

  
**Mustafa Bulu Ibrahim**  
Commissioner

  
**Chinua Asuzu**  
Commissioner

