

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

TAT/LZ/CIT/EDT/037/2014

Between

Federal Inland Revenue Service

Appellant

And

Luri Oil & Gas Nigeria Ltd.

Respondent

Judgment

Introduction

The Appellant challenges the Respondent's non-compliance with the Appellant's CIT and EDT assessments of N20,914,444.28, N994,863.32, and N23,325,554.56 for 2009, 2010 & 2012 respectively. The Appellant filed this appeal on 8 July 2014 and an amended appeal on 31 July 2015. The Respondent filed its reply on 21 October 2014. The Appellant seeks this Tribunal's order on the Respondent to pay all the assessments totalling N45,234,862.16.

Facts of the Matter

The Respondent failed to file its returns for 2009, 2010, and 2012. The Appellant then conducted on-the-spot checks and raised an additional assessment for 2009 and 2010, anchored on the Respondent's bank statement from Zenith Bank. The Appellant raised "Administrative Assessment" on the Respondent for 2012. The Respondent did not object to the assessments.

At trial the Appellant relied on the testimonies of its witness – Osaze Igbinoba. The witness statement is marked Exhibit SZ and 4 other exhibits were tendered and admitted. At the close of trial, the Respondent requested adjournment to cross-examine the Appellant's witness and open its defence. The Tribunal accordingly adjourned to 22 January 2016. The Respondent did not appear that day. The Tribunal further adjourned to 16 February 2016. The Respondent was absent on this date, too. The Appellant requested and was granted permission



to file its written address. The Appellant filed its written address on 26 April 2016 and adopted it on 10 May 2016.

Parties' Positions

The Appellant posed 2 issues for our determination but we compressed it to one:

Are the additional tax assessments for 2009 and 2010; and the tax assessment for 2012, valid, final, and conclusive?

The Appellant submits that the Respondent is liable to tax by virtue of section 1(1) of the Education Tax Act, 2011 and sections 9 and 40(1) of CITA.

The Appellant argues that the Respondent filed its Zenith Bank Account (Nos. 1011315305 and 6115501607) statements for 2009 and 2010 along with its returns. The Appellant says it then invoked section 66(1) of CITA to raise the additional assessment based on the content of the Respondent's bank statement.

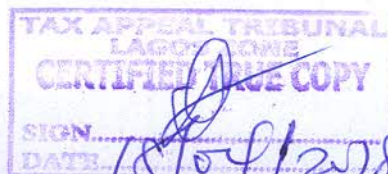
The Appellant also submits that because the Respondent did not file CIT returns for 2012, it relied on section 63(3) of CITA to raise best-of-judgment or administrative assessment. The Appellant adds that it relied on section 2(1)(a) of the Education Tax Act to raise the education tax for that year.

In its reply, the Respondent says that the Appellant neither requisitioned nor obtained the Respondent's books before resorting to assumed taxable profits. The Respondent also says that the Appellant had, but ignored, ample opportunity to determine the Respondent's precise taxable profit. The Respondent says it consistently complained that the tax was excessive and unreasonable.

The Appellant counters that the Respondent never raised any valid objection to the assessments. The Appellant cites Order 3 rule 1 of the TAT Rules (2010); section 76 of CITA; *FBIR v Owena Motels* (2010) 2TLRN 88; and *Mobil Oil Nig. Ltd v FBIR* (2011) 5TLRN 178.

Analysis

The Appellant states in paragraph 1.04 of its written address that it relied on the Respondent's Zenith Bank account statement to raise the 2009 and 2010 reassessment. In paragraph 1.09 the Appellant says it used best-of-judgment (or administrative) assessment for the 2012 assessment. But the Appellant's letter dated 30 September 2012 to the Respondent (Exhibit SZ1) shows that the



turnover of N187,876,865, which formed the basis of 2012 assessment, reads "Turnover as per Bank Statement". Not only in this practice, The Respondent's letter of 30th September, 2012 Exhibit A, assumes a gross profit N66,589,390.50 from a turnover of N67,384.520.50, a preposterous rate of profit well over 90%.

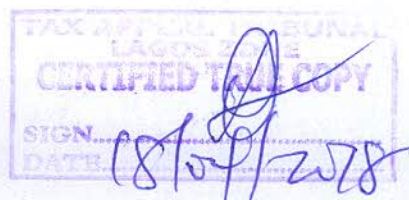
The Appellant asserts best-of-judgment in its written submission, but the underlying document shows that the figure was derived from non-existent bank statement.

Best-of-judgment assessment must be fair, rational, and true to industry context. In *FIRS v General Telecom* (Appeal No. TAT/LZ/004/2010) decided on 6 May 2014) this Tribunal said "Discretion, whether judicial, or, as in this case administrative, must be exercised reasonably and not arbitrarily. Best-of-judgment assessments are discretionary. Their discretionary nature does not permit the Appellant to pluck a figure out of thin air and fasten it on the Respondent. "In this appeal, the Appellant seemingly used figures that have not been justifiably established against the Respondent.

This assessment also suffers a legal *lacuna* undermining its very foundation. The Appellant, without justification, used basis period of assessment that are exceptions to the norm in all the three years of assessment. The basis period used for each of the notices of assessment issued by the Appellant are of 7 months duration –Exhibit SZ3. The details are in the table below:

Year of Assessment	Basis Period	Period Covered	Assessment No.
2009	1/7/2008 – 31/01/2009	7 Months	ALBA/CIT.
2010	1/7/2009 – 31/01/2010	7 Months	ALBA/CIT
2012	1/7/2011 – 31/01/2012	7 Months	ALBA/CIT

The Respondent's financial year as shown by its audited financial statements is from 1 July of one year to 30 June of the following year. Section 29 CITA is emphatic on the basis for computing assessable profits of companies and the




Appellant has not shown cause to do otherwise. Basis period of less than 12 months duration are exceptions to the general rule and those exceptions are effectively covered by section 29 of CITA. The Appellant did not provide those exceptions as its justification.

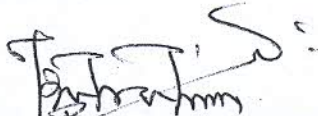
Conclusion:

In the circumstances we find the assessments invalid for substantial non-compliance with CITA. Thus, we set aside the assessments and direct the Appellant to assess the Respondent to tax in full compliance with the relevant provisions of CITA.


DATED AT LAGOS THIS 1ST DAY OF JUNE 2016


KAYODE SOFOLA SAN (Chairman)


CATHERINE A. AJAYI
Commissioner


MUSTAFABULU IBRAHIM
Commissioner


D. HABILA GAPSISO
Commissioner


CHINUA ASUZU
Commissioner

