

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

Appeal No: TAT/LZ/014/2014

Between

Nigeria Agip Company Limited

Appellant

And

Federal Inland Revenue Service

Respondent

Judgment

Issue for determination

Agip paid dividends from its gas income. Agip paid tax on its gas income under the Companies Income Tax Act (CITA). After a tax audit, FIRS assessed Agip to withholding tax under CITA for 2006 to 2009 on the dividends Agip had paid from its gas income. Agip demurred, claiming that the Petroleum Profits Tax Act (PPTA) exempts it from paying any further tax and its taxation using the 30% CITA rate is an incentive against the 85% tax rate under PPTA.

Is Agip liable to withholding tax under CITA?

Introduction

Agip explores and produces crude oil and gas in Nigeria. FIRS assessed Agip to withholding tax on its gas-income dividends. FIRS reasoned that since Agip's gas income was taxed under CITA, then any dividend paid out from its gas income should be taxed under CITA. Agip nevertheless believes that it enjoys tax-exemption under section 60 PPTA.



Facts and Procedural History

After a tax audit in 2013, FIRS served an assessment notice for withholding tax on Agip's gas-income dividends for 2006 to 2009. The demand note (Exhibit OA1/02) contains an assessment for US\$3,375,496.

By a notice of objection (Exhibit OA1/03), Agip protested the assessment. FIRS then sent a notice of refusal to amend the assessment (Exhibit OA1/08). Agip filed a notice of appeal, supported by:

- A list of witnesses;
- Oluwole Agbede's witness statement;
- A list of documents:
 - FIRS's demand letter,
 - Withholding tax demand note No. LD/OG/US/withholding tax/13/39,
 - Agip's notice of objection,
 - FIRS's notice of refusal to amend,
 - Agip's PPT Returns for 2006,
 - Agip's PPT Returns for 2007,
 - Agip's PPT Returns for 2008, and
 - Agip's PPT Returns for 2009.

Parties' Positions

Agip argues that apart from the section 11(2) (d) incentive, PPTA governs its gas income.

Agip argues that FIRS was mistaken to have served a demand note for CITA-based withholding tax on gas-income dividends when PPTA, not CITA, governs Agip's taxation. Agip claims it paid gas-income tax under CITA because of this section 11(2) (d) PPTA incentive. Agip believes the incentive allows the CITA-based taxation at a lower rate (30%) than PPTA provides (85%). Agip maintains that taking advantage of the incentive under section 11(2) (d) of PPTA does not remove the section 60 PPTA umbrella beneath which Agip shields itself.

FIRS says that CITA governs Agip's gas income completely.

FIRS counters that since Agip's gas income was taxed under CITA, Agip's gas income is regarded as company income tax and not petroleum profits tax, and is



thus subject to CITA, not PPTA. FIRS argues that the effect of section 11 (2) (d) of PPTA is that the taxation of all associated gas profit would follow CITA. FIRS contends that any dividend paid out from gas income could not enjoy the protection section 60 PPTA offers against further tax.

FIRS submits that sections 80 and 9(1) (c) of CITA renders Agip liable to withholding tax on dividends from its gas income.

Analysis

What is the interpretation of section 11 (2) (d) of PPTA?

Agip argues that section 11 (2)(d) of PPTA is an incentive that allows it assess the tax due on profits from its gas operations with the 30% CITA tax rate.

FIRS says that section 11 (2) (d) of PPTA transfers taxation of associated natural gas profit to CITA regime.

Section 11 (2) (d) of PPTA is not ambiguous. It states:

The incentives specified under subsection (1) of this section shall be subject to the following conditions, that is:

(d) Expenses identified as incurred exclusively in the utilization of associated gas shall be regarded as gas expenses and be allowable against the gas income and profit to be taxed under the Companies Income Tax Act (our emphasis).

Section 11(2) (d) directs that a company must set aside expenses incurred for associated gas utilization and the company's gas income and profit should be taxed under CITA. The phrase *to be taxed under CITA* means what it says. It puts gas-income tax squarely under the whole of CITA including the withholding-tax provisions. If the Act intended only the CITA tax rate, rather than the whole Act, it would have expressly stated it. The subsection states that gas income would be taxed under CITA, not merely that CITA tax rate would govern.

Is section 60 PPTA applicable to gas income and profit?

Agip argues that section 60 of PPTA applies to its gas income because tax assessments on its gas operations remain subject to PPTA and no other law. It contends that the incentive in section 11 (2)(d) does not affect its enjoyment of the incentives granted by section 60 PPTA.



FIRS counters that Agip cannot pay taxes under one statute (CITA) and gain incentives from another (PPTA). FIRS argues that Agip's associated natural gas profit is not subject to PPTA and consequently it cannot enjoy reliefs from section 60 of PPTA.

Section 60 of PPTA states that under the provisions of PPTA, *no tax shall be charged under the provisions of the Personal Income Tax or any other Act in respect of any income or dividends paid out of any profits which are taken into account...in the calculation of the amount of any chargeable profit upon which tax is charged, assessed, and paid under this Act.*

Gas income and profit are taxed under CITA and subject to all the provisions of CITA. Section 60 of PPTA does not account for gas income and profit because gas income is not charged, assessed, or paid under PPTA.

Is Agip liable to pay withholding tax on its dividends from its gas income and profit?

Agip denies liability to pay withholding tax. It submits that FIRS should not read section 11 (2) (d) of PPTA so widely as to mean that Agip's gas income is subject to tax under CITA and subject to all the provisions of CITA—including withholding tax.

FIRS argues that section 80 and 9 (1)(c) of CITA provides that a company subject to CITA is liable to pay withholding tax on dividends. According to FIRS, since Agip is subject to CITA for its gas income, then it is liable to pay withholding tax on its dividends from its gas income.

Because Agip's gas income is liable to tax under CITA and section 60 of PPTA does not cover its gas income, Agip is subject to all the provisions of CITA in assessing its gas income tax. Therefore, Agip is liable to pay withholding tax on dividend which is chargeable under section 80 and section 9 (1)(c) CITA.

Conclusion

Agip misapprehends section 11 (2) (d) of PPTA as merely creating an incentive of 30% tax rate on its gas income, when the provision means that CITA governs gas income. So, section 60 of PPTA cannot apply to its gas income. Since CITA provides for withholding tax on dividend, Agip must pay the assessed withholding tax on dividend from its gas income.



We dismiss this appeal. We uphold the withholding-tax demand note. We order Agip to pay the assessed sum for withholding tax.

Legal Representation:


B. Fagbohunlu (SAN) with C. Ikwuazom Esq., S. Mustafa Esq.,
H. Abdulkareem Esq. And Mrs O. Ogunrinde for the Appellant

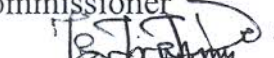
Ms A. Sodipo for the Respondent


Dated at Ikeja Lagos this 10th day of December 2014

Kayode Sofola, SAN
Chairman


Catherine A. Ajayi (Mrs)
Commissioner


D. H. Gapsiso
Commissioner


Mustafa Bulu Ibrahim
Commissioner


Chinua Asuzu
Commissioner

