

**TAX APPEAL TRIBUNAL**

**LAGOS ZONE**

**SITTING AT LAGOS**

Appeal No: TAT/LZ/018/2013

BETWEEN

**FEDERAL INLAND REVENUE SERVICE(FIRS)**

Appellant

AND

**VOLEX A. NIGERIA LIMITED(Volex)**

Respondent

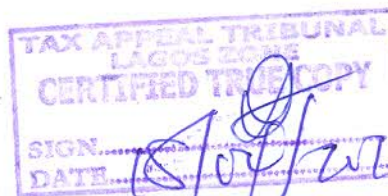
**Judgment**

**Introduction**

FIRS brought this appeal because:

- i. Volex did not file returns for companies' income tax (CIT) for 2010 to 2012 accounting years, and now owes ₦1.2million.
- ii. Volex did not file value added tax (VAT) returns and did not remit VAT from 2009 to 2011 accounting years, and now owes ₦5,706,000.
- iii. Volex's late-return penalty is ₦3,393,531.25
- iv. Volex is liable to pay ₦10,299,531.25, being unremitted VAT, CIT and penalty for late returns.

FIRS erroneously issued its initial notice of appeal against *Volvex* A. Nigeria Ltd (Volvex) instead of *Volex*. FIRS amended its notice of appeal to reflect the correct respondent: *Volex* A. Nigeria Ltd. The amended notice of appeal and all notices of the proceedings were served on Volex. Volex neither filed any documents nor made any appearance. The matter proceeded to trial under Order IX Rule 3 of the Tax Appeal Tribunal (Procedure) Rules 2010.



FIRS tendered 5 exhibits through its witness, Ismaila Adamu Isa. The exhibits were marked as **Exhibits IAI1-5**.

### **Issues for Determination**

FIRS formulated 2 issues for determination:

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

On the first question about validity of the assessments, FIRS says that as a registered company in Nigeria, Volex is liable to CIT under sections 9 and 40(1) of the Companies Income Tax Act (CITA). FIRS points out that Volex is also a duly registered company under the Value Added Tax (VAT) Act and is required to remit VAT by sections 1 and 2 of the VAT Act. Volex failed to file CIT returns for 2010 to 2012 years of assessment, and neglected to file VAT returns or remit VAT from 2009 to 2011 accounting years.

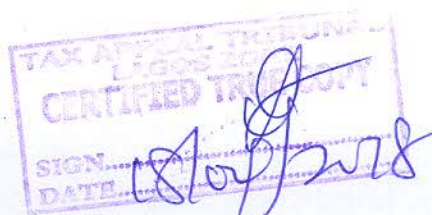
FIRS claims to have invoked section 63(3) of CITA to assess Volex to CIT for 2010 to 2012 years of assessment, and section 14 of the VAT Act to assess Volex to VAT.

On the second question about finality of the assessments, FIRS says that Volex never validly objected to the assessments, rendering them final and conclusive under section 76 of CITA. FIRS also cites *FBIR v Owena Motels* (2010) 2 TLRN 88 and *Mobil Oil Nigeria Ltd v FBIR* (2011) 5 TLRN 178.

### **Analysis**

FIRS made CIT assessments for 2010 to 2012 years of assessment against *Volvex*, but the respondent here is *Volex*. FIRS addressed 4 letters on CIT and VAT to *Volvex*. *Volvex* is a stranger to these proceedings. FIRS addressed only one letter to *Volex*. FIRS tendered all 5 letters and we admitted them as Exhibits IAI 1 to 5.

FIRS assessed *Volvex* to tax, and filed its appeal ultimately against *Volex*. Only one of FIRS's exhibits points to *Volex*, but that exhibit does not save FIRS's



case. It only conveyed FIRS's intention to assess Volex to tax. The preponderance of evidence FIRS offered relates to Volex, a non-party to these proceedings.

Conclusion

From the evidence before us, we find no assessment against Volex. All the useful evidence points to Volex as the liable taxpayer. We find no competent case against Volex. Accordingly, we strike out this appeal.


**Legal Representation:**

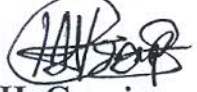
Appellant: Miss Nwayikwe Umezuruike

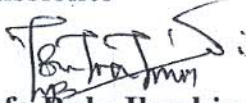
Respondent: Absent and unrepresented

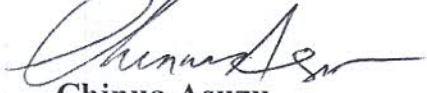
**DATED AT LAGOS THIS 10<sup>TH</sup> DAY OF DECEMBER 2014**

**KayodeSofola, SAN**  
Chairman

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

  
**D. H. Gapsiso**  
Commissioner

  
**Mustafa Bulu Ibrahim**  
Commissioner

  
**Chinua Asuzu**  
Commissioner

