

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

APPEAL NO: TAT/LZ/005/2014

APPEAL NO: TAT/LZ/011/2014

BETWEEN:

**THE SHELL PETROLEUM DEVELOPMENT COMPANY
OF NIGERIA LTD**

.....

APPELLANT

AND

FEDERAL INLAND REVENUE SERVICE

.....

RESPONDENT

JUDGMENT

INTRODUCTION:

These are consolidated appeals contesting Notices of Additional Assessment issued by the Respondent namely, PPTBA/ED88 and PPTBA96 both dated 28th October, 2013 raising additional assessment on Education Tax for the years 2009-2010 in the sum of USD 5,723,409 on the basis of Disproportionate Intangible Costs were wrongly deducted and raising an additional PPT assessment for years 2009-2010 in the sum of USD 243,244,890 also on the basis of Disproportionate Intangible Costs were wrongly deducted.

BACKGROUND FACTS:

The Respondent in 2012 conducted an audit exercise on the Appellant relating to 2006-2011 years of Assessment. The final audit report was forwarded to the Appellant. In the course of the audit exercise, it was discovered that the Appellant in 2009 and 2010 claimed the following expenditure, as intangible costs in its tax returns: 2009=USD 185,490,000 and year 2010=USD 195,624,782. The Appellant claimed that these expenditures were in respect of cash call obligations of NNPC which were not met and under dispute and consequently, they were declared as bad debts.

ISSUE FOR DETERMINATION:

The parties formulated one issue for determination.

Whether or not the additional assessments issued on the Appellant, upon the conclusion of the audit exercise by the Respondent, were valid in law?



PARTIES' POSITIONS:

The Appellant argued that the expenses were in respect of cash call obligations of NNPC not met and under dispute, and consequently the expenses were declared as bad debts. The Appellant further submits that the debts were in accordance with the provisions of section 10 of PPTA, as being incurred wholly, exclusively and necessarily for the purpose of petroleum operations and that the Respondent does not dispute this fact.

The Appellant relied on and referred the Tribunal to the provisions of section 10 (1)(i) of the PPTA.

Section 10 (1)(i) of PPTA states as follows:

"In computing the adjusted profit of any company of any accounting period from its petroleum operations, there shall be deducted all outgoing and expenses wholly, exclusively and necessarily incurred, whether within or without Nigeria, during that period by such company for the purpose of those operations, including but without otherwise expanding or limiting the generality of the foregoing-

Debts directly incurred to the company and proved to the satisfaction of the Board to have become bad or doubtful in the accounting period for which the adjusted profits is being ascertained notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period:"

The Appellant urged the Tribunal to give section 10 (1)(i) of the PPTA a strict and narrow meaning as the Court of Appeal held in the case of **AHMADU V GOVERNOR OF KOGI STATE (2002) 3NWLR (Part 755)502 at 522 B-E** and hold that the Appellant is entitled to deduct the expenses incurred which can now be classified as bad or doubtful debts.

The Appellant submits that the expenses it incurred were wholly, exclusively and necessarily for petroleum operations in line with the decision of the Supreme Court in the case of **SPDC V FBIR (2009)1 TLRN 224 at 262**, which says that expenses incurred as payment of bank commissions imposed by the Central Bank of Nigeria were incidental to the Appellant's petroleum operations and therefore eligible for tax deduction under Section 10(1) of the PPTA.

The Appellant argues that following NNPC disputing the debt the Appellant entered into a compromise with NNPC to write off the debt in its books, in line with section 10 (1)(i) of the PPTA. Accordingly, when computing its adjusted profits for the years 2009 and 2010, it made deductions of the value of the debts on the ground that they had become bad or doubtful. The Appellant submits that it has satisfactorily proven to the Respondent that the debts are bad or doubtful, and therefore qualify for deduction.



The Respondent counters that no debt existed since the purported debtor, NNPC, did not acknowledge owing the Appellant at all, therefore, the amounts could not be regarded as bad or doubtful debts that could be claimed as deductible expenses under the provisions of section 10 of the PPTA. The Respondent argues that the Appellant failed to prove to the satisfaction of the Respondent as required by section 10 of the PPTA by way of evidence that NNPC is unable to pay the purported debt, or will be unable or unwilling to pay in the nearest future, or still by challenging NNPC for the non-payment of the amount under Arbitration and or any court of competent jurisdiction, or exercised any right of set off against NNPC. The Respondent referred this Tribunal to the case of **W.A.C.C. LTD V CAROLINE POULTRY FARM LTD (2002) 2 NWLR (Pt. 644)197 at 199** ratio 4 & 5 where the Court of Appeal said:

“Whoever asserts must prove to succeed in his claim and parties are bound by their pleadings...,,

“Where proof of an issue is left in doubt by the plaintiff so that the court would be required to speculate, the Plaintiff on whom the burden ultimately rests must lose...”

The Respondent referred this Tribunal to section 149 (d) of the Evidence Act to buttress this assertion.

The Respondent submits that the Appellant’s claim must fail as the Appellant has not made reference to portions of the Joint Venture Agreement that support the fact that the Appellant could convert a debt owed it to deductible expenses in its returns before the Respondent.

The Respondent submits that the Appellant did not have the mandate from the NNPC to incur the said expenses. The Respondent therefore urged this Tribunal to invalidate the deductions made by the Appellant and confirm the Respondent’s assessments accordingly.

ANALYSIS AND CONCLUSION:

The Appellant claimed that the Joint Venture Agreement empowers the Appellant to incur expenses whenever NNPC fails to meet up its cash call obligations, and that the Joint Venture Agreement allows the Appellant to convert the disputed expenses incurred on behalf of NNPC to a bad or doubtful debt.

The Joint Venture Agreement referred to and relied on by the Appellant was never tendered in evidence by the Appellant. The Appellant also did little or nothing to prove to the satisfaction of the Respondent that the expenses it incurred which was disputed by NNPC had become bad or doubtful debt. The Appellant also did not adduce any evidence to prove that NNPC gave the Appellant mandate to incur the said expenses on behalf of NNPC. The Appellant’s reliance on section 10 (1)(i) of the PPTA without cogent evidence will not avail the Appellant. The Appellant’s failure to take reasonable steps to recover the purported expenditure it claimed to



have incurred from NNPC lends credence to the rebuttal by the Respondent that no debt ever existed.

The position of the Appellant in the context of the evidence adduced is speculative and not backed by cogent basis upon which to impugn the additional assessments. In the circumstance, we dismiss the Appeal and invalidate the deductions made by the Appellant. We therefore order the Appellant to pay the tax as contained in the additional Notices of Assessment PPTBA/ED88 and PPTBA96.


LEGAL REPRESENTATION:

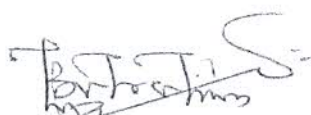
Chukwuka Ikwuazom Esq. with Shehu Mustafa Esq. and Mrs Oluwafikayomi Ogunrinde for the Appellant.

A. A. Iriogbe (Mrs) for the Respondent.


DATED AT LAGOS THIS 27TH DAY OF OCTOBER 2015


KAYODE SOFOLA, SAN (*Chairman*)


CATHERINE A. AJAYI (MRS)
Commissioner


MUSTAFA BULU IBRAHIM
Commissioner

D. HABILA GAPSISO
Commissioner


CHINUA ASUZU
Commissioner

