

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

APPEAL NO. TAT/LZ/VAT/082/2014

BETWEEN

FEDERAL INLAND REVENUE SERVICE

PLAINTIFF

AND

MOBITEL LIMITED

DEFENDANT

JUDGMENT

The Appellant filed this Appeal seeking the order of this Tribunal to enforce the payment of VAT liability (including interest and penalty) of **N4,451,642** for 2010* – 2012 due from the Respondent.

Parties' Submissions:

The Appellant submits that the Respondent was issued VAT assessment Notice Number VI/MSTO/ADD/2012/48 on 13/11/2012 for **N4,924,340**. The Respondent by its letter of May 20, 2013 agreed to settle the amount in six instalments but pleaded for waiver of the interest and penalty.

The Respondent paid **N1,700,000** as follows: N1,000,000 (on 21/06/2013); N500,000 (on 29/07/2013); and N200,000 (on 20/05/2014). But the Appellant recognized and deducted only **N1,500,000** from the initial liability of **N4,924,340** and added interest and penalty to arrive at **N4,451,642** as the balance due – **Exhibit FIRS 'D'**.

The Respondent in its written address argues that the Appellant has not proved the basis of the tax liability of **N4,451,642** due from the Respondent. But the Appellant submits that the Respondent's letter of acceptance dated May 20, 2013 agreeing to pay the tax due by instalments and the Respondent's consequential action to effect some payments are sufficient proof of the validity of the assessment.

Decision:

The Appellant's witness, Ernest Gbe, in his witness statement on oath, paragraph 4, testified that the Appellant raised the assessment of 13th November, 2012 in the sum of **N4,924,340.00**. This was admitted by the Respondent's witness, Gabriel Aseyomi, in paragraph 4 of his witness statement on oath. He only alludes in paragraph 5 that the Respondent company has



"financial constraints". The Respondent did not raise any objection. It began the process of unilateral instalmental repayment of its tax liability. Accordingly, the provisions of section 76 of CITA come into play, namely:

"Where no valid objection or appeal has been lodged against an assessment as regards the amount of the total profits assessed thereby, or where the amount of the total profits has been agreed to ... or where the amount of such total profits has been determined on objection, revision ... or on appeal, the assessment as made, agreed to, revised or determined on appeal ... shall be final and conclusive for all purpose of this act ...".

Thus, we are convinced that the assessment is valid and dully accepted by the Respondent as such. But there is no evidence before us to show that the Appellant computed the interest on the tax due at the minimum rediscount rate of the Central Bank of Nigeria plus spread to be determined by the Minister as provided for by Section 32 (1) (b) of the FIRS (Establishment) Act, 2007. Thus, we hold that the VAT assessment VI/MSTO/ADD/2012/48 of 13/11/2012 issued on the Respondent is valid but direct the Appellant:

- i. to deduct the additional **N200,000** paid by the Respondent on 20/05/2014 from the tax due; and
- ii. re-compute and charge interest at the minimum rediscount rate of the Central Bank of Nigeria plus spread to be determined by the Minister.

Legal Representations:

Mrs Nneka Ezeadili for the Appellant.

Adebola Adesanya Esq for the Respondent.

DATED AT LAGOS THIS 21ST DAY OF JANUARY 2016

KAYODE SOFOLA, SAN (Chairman)

CATHERINE A. AJAYI (MRS)
Commissioner

D. HABILA GAPSISO
Commissioner

MUSTAFABULU IBRAHIM
Commissioner

CHINUA ASUZU
Commissioner

