

IN THE TAX APPEAL TRIBUNAL

LAGOS ZONE

HOLDEN AT LAGOS

APPEAL NO: TAT/LZ/008/2013

BETWEEN

FEDERAL INLAND REVENUE SERVICEAPPELLANT

AND

WATER PARKS LTD.....RESPONDENT

JUDGMENT

INTRODUCTION

The Appellant filed this action claiming the Respondent's refusal to pay **N2,191,752.00** Company Income Tax for 2007 to 2010 and remittance of **N17,300,000.00** Value Added Tax for 2004 to 2010.

The Respondent made appearances only twice. Processes were served on the Respondent for all subsequent adjourned dates but it failed to attend the proceedings. No reasons were given for its lack of appearance.

The Tribunal proceeded to hearing in accordance with Order 9 Rule 3 of the Tax Appeal Tribunal Procedure Rules 2010. The Appellant called in one witness to support its case. The Appellant's written address was filed and served on the Respondent.

The Appellant is seeking:

1. An Order of the Honorable Tribunal for the Respondent to pay **N2,191,752.00** outstanding Companies Income Tax and **N17,300,000.00** unremitted Value Added Tax.
2. And for such other orders as the Tribunal may deem fit to make.

ISSUE FOR DETERMINATION:



Whether the Best of Judgment Assessments raised on the Respondent were Valid, Final and Conclusive in the circumstance of this appeal?

FACTS

The Appellant claims from the Respondent ₦19,491,752 overdue taxes, made up as follows:

1. ₦2,191,752 Companies Income Tax for 2007 through 2010; and
2. ₦17,300,000 unremitted VAT for 2004 through 2010.

The figures are based on best-of-judgment assessments. The Respondent failed to file Companies Income Tax returns for the years 2007 through 2010. The Appellant resorted to best-of-judgment assessment as it is enabled to do by section 65 of the Companies Income Tax Act.

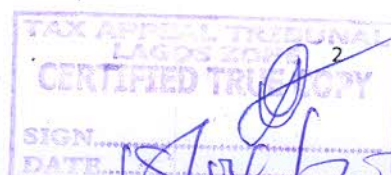
Following the Appellant's several demands, the Respondent had paid sums totaling ₦1 million by 30 November 2012 before this appeal was filed.

The Appellant had by letter of 9 March 2009 (Exhibit A) alerted the Respondent of its intention to raise best-of-judgment assessment if the Respondent failed to render tax returns for 2005, 2006, 2007, and 2009.

The Appellant wrote another letter dated 30 October 2009 (Exhibit B) bringing the Respondent's attention to its failure to remit VAT and Withholding Tax.

By the letter of 3 June 2011 (Exhibit D2), the Appellant invoked its statutory powers to raise best-of-judgment assessments of companies' income tax, and assessed the Respondent as follows.

Period	Estimated Profit	Tax at 30%
2007	₦2,000,000	₦600,000
2008	₦2,500,000	₦750,000
	Less Tax paid	(₦68,248)
	Tax Due	₦681,752
2009	₦2,700,000	₦810,000



2010	₦3,000,000	₦900,000
Total Income Tax Liability		₦2,991,752

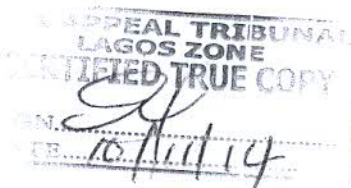
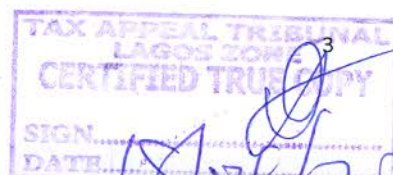
The estimation of profits and their progressive growth for companies' income tax, as shown in the table above, appears reasonable, unlike the escalation of turnover in the table below.

The Appellant served on the Respondent the VAT re-assessment notices for 2004 to 2010 (Exhibits D8-D14).

By its letter dated 6 June 2011 (Exhibit D7), the Appellant assessed the Respondent to VAT of ₦17,500,000 in line with the provision of section 14 of the Value Added Tax Act. At the VAT rate of 5%, the Appellant's B.O.J. Assessment puts the Respondent's VAT liability for 2004-2010 as follows:

Period	Estimated Turnover	VAT @ 5%
2004	₦20,000,000	₦1,000,000
2005	₦30,000,000	₦1,500,000
2006	₦40,000,000	₦2,000,000
2007	₦50,000,000	₦2,500,000
2008	₦60,000,000	₦3,000,000
2009	₦70,000,000	₦3,500,000
2010	₦80,000,000	₦4,000,000
Total VAT Liability		₦ 17,500,000

The escalation of turnover, and hence VAT, in this second table is patently arbitrary. Our law knows nothing of absolute or arbitrary discretion. All discretion, whether judicial, or administrative as in this case, must be exercised judiciously. This means



with prudence and reasonableness. Adding ₦10m every year to the Respondent's turnover, and then charging VAT accordingly, is neither prudent nor reasonable. We cannot accept such an ambitious and arbitrary use of discretion. Instead, we shall work with the Appellant's figure for 2004 and apply it for every year of the period under review. With this formula, we arrive at ₦20 million turnover *per annum* from 2004 to 2010. This gives us an annual VAT of ₦1 million, bringing the Respondent's total outstanding VAT to ₦7 million.

The Respondent's position is that its operation has been at a standstill since the death of the founder. We note that the date of the death of the founder, as stated in the Respondent's witness statement, is 18 May 2011. But the relevant years of assessment in this matter are from 2007 - 2010 for companies income tax, and 2004 - 2010 for VAT respectively. The death of the Respondent's founder cannot retroactively affect the Respondent's liability under the Act. If the Respondent had any objection to the Appellant's assessments, it should have raised that objection within the time required by law. This the Respondent never did. Even after the permitted time, the Respondent never objected to the assessments.

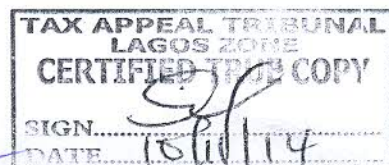
ANALYSIS

The Appellant submits that its best of judgment assessments are final and conclusive as the Respondent never objected to any of them within statutory timetable or at all.

Administrative discretion must be exercised prudently and reasonably. In the tax administration context, this includes the exercise of BOJ discretion in a manner that approximates commercial reality. Although the Appellant's assessments can become final and conclusive in the absence of objection, *best-of-judgment* assessments must be anchored on a reasonable exercise of discretion which cannot be said to be the case in this appeal. This enables the Tribunal to intervene as it is empowered to do by paragraph 15(8) of the 5th Schedule to the FIRS Act, by reducing the assessment.

Besides, a taxpayer's abject submission to the spectre of the tax collector will not preclude the Tribunal from pursuing substantial tax justice. This is not a default judgment where we can give judgment as prayed. The Respondent's failure to object to the imposed assessments still leaves the Tribunal with a duty to ensure just and reasonable outcome.

Accordingly, we give judgment to the Appellant and order the Respondent to pay to the Appellant ₦9,191,752 (Nine Million, One Hundred and Ninety One Thousand, Seven Hundred and Fifty Two Naira only) consisting of:-



1. ₦2,191,752 Companies Income Tax for 2007 to 2010; and
2. ₦7,000,000 unremitted VAT for 2004 to 2010.

Representation

Mrs V. M. Aderibigbe for the Appellant
Olusola Akiode Esq. for the Respondent

Dated this 16th day of May 2014



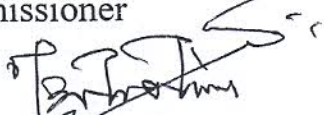
Kayode Sofola SAN
Chairman



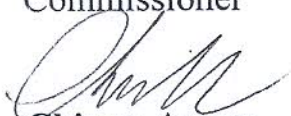
Catherine A. Ajayi (Mrs)
Commissioner



Dennis Habila Gapsiso
Commissioner



Mustafa Bulu Ibrahim
Commissioner



Chinua Asuzu
Commissioner

