

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

APPEAL NO: TAT/LZ/007/2014

APPEAL NO: TAT/LZ/010/2014

**BETWEEN**

**THE SHELL PETROLEUM DEV. CO. OF NIGERIA LTD.....APPELLANT**

**AND**

**FEDERAL INLAND REVENUE SERVICE.....RESPONDENT**

**JUDGMENT**

**INTRODUCTION**

These are consolidated appeals wherein the Appellant contests the following:

- (i) PPTBA/97 dated 28<sup>th</sup> October, 2013 setting out an additional Assessment of Education Tax for the years 2009-2010 on the basis of wrongly deducted Disproportionate Tangible Costs.
- (ii) PPTBA/98 dated 28 October, 2013 setting out an additional Assessment of PPT for years 2009-2010 on the basis that Petroleum Investment Allowance (PIA) was based on wrongly deducted Disproportionate Tangible Costs.

**BACKGROUND FACTS**

The Respondent in 2012 conducted an audit exercise on the Appellant relating to 2006-2011 Assessment Years. The Report of the audit exercise with the conclusion reached and the final report were forwarded to the Appellant. In the course of the audit exercise, it was discovered that the Appellant in 2009 and 2010 claimed the following expenditures in its tax returns: 2009=USD68,368,238 and 2010=USD20,715, 438 as tangible costs. Also in the course of the audit exercise, it was discovered that the Appellant in 2009 and 2010 claimed the following deductions as Petroleum Investment Allowance (PIA) on Qualifying Capital Expenditure (QCE) in its tax returns as follows: 2009=USD6,836,824, and 2010=USD2,045,772. The Appellant claimed that these expenditures were in respect of cash call obligations of NNPC which were not met due to the NNPC rejecting the related costs and consequently, they were declared as bad debts.



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### **ISSUES FOR DETERMINATION:**

1. Whether the Appellant is entitled to claim tax deductions in respect of the expenses in issue in these appeals which the Appellant claimed were incurred in the course of its petroleum operations?
2. Whether the Appellant is entitled to claim Petroleum Investment Allowance in respect of the expenses in issue in these appeals which the Appellant claimed were incurred in the course of its petroleum operations?

### **PARTIES' POSITIONS:**

The Appellant submits that it is entitled to tax deductions because the expenses it incurred on behalf of NNPC in respect of cash call obligation of NNPC, though disputed by NNPC, were incurred in the course of its petroleum operations and therefore, qualify to be classified as bad or doubtful debts.

The Appellant submits that the debts were in accordance with the provisions of section 10 of the Petroleum Profits Tax Act (PPTA), as being wholly, exclusively and necessarily incurred for the purpose of petroleum operations and that the Respondent does not and cannot dispute this fact. The Appellant corroborates its argument by citing the Supreme Court decision in the case of **SPDC V FBIR (2009)1 TLRN 224 at 262** which held 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 relied on and referred the Tribunal to the provisions of section 10(1)(i) of the PPTA which states thus:

*"In computing the adjusted profit of any company of any accounting period from its petroleum operations, there shall be deducted all outgoings 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 ordinary meaning as the Court of Appeal held in the case of **AHMADU V GOVERNOR OF KOGI STATE** (2002) 3 NWLR (Pt. 755)502 at 522 B-E , and hold that the Appellant is entitled to deduct the expenses incurred which now is a bad or doubtful debt.

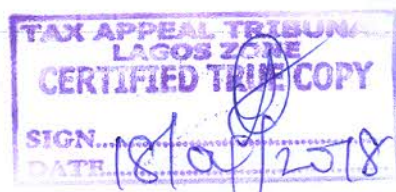
The Appellant submits that following NNPC disputing the debt as a result of which the Appellant entered into a compromise with NNPC to write off the debt in its books, which is in tandem with section 10(1)(i) of the PPTA, that when computing its adjusted profits for the years 2009 and 2010, it made deductions 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 Appellant submits that pursuant to the provisions of section 20 of the PPTA, and paragraph 5 of the second schedule to the PPTA, the Appellant is entitled to enjoy Petroleum Investment Allowance (PIA) on the grounds that the expenditures which form the basis of the PIA claim qualify as Qualifying Capital Expenditure (QCE) and the aggregate amount of allowances claimed fall within the limits specified by law.

The Appellant submits that there is no law that requires a claimant of PIA to be the owner of the assets before a claim of PIA can be sustained. The Appellant urged the Tribunal to hold that the Appellant is entitled to PIA relief provided by paragraph 5 of the Second Schedule to the PPTA on the basis of the QCE incurred by the Appellant, and therefore the deductions and PIA claimed by the Appellant were consistent with the law.

The Respondent counters that no debt existed since the purported debtor, NNPC, did not acknowledge owing the Appellant at all, therefore, the expenditures 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 adducing evidence that NNPC is either unable to pay the purported debts, 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 cites the Court of Appeal decision in the case of **W.A.C.C. LTD V CAROLINE POULTRY FARM LTD** (2002)2 NWLR (Pt. 644)197 at 199 ratio4and 5 where it was held that :





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

*The Respondent also cites section 149 (d) of the Evidence Act which states thus:*

*"The presumption in law is that evidence which could be produced and is not, would if produced, be unfavourable to the person who withholds it."*

The Respondent submits that the Joint Venture Agreement relied on by the Appellant is not in evidence and 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 further submits that the Appellant never had the mandate from the NNPC to incur the said expenses.

The Respondent submits that the Appellant cannot in law enjoy any benefits, including PIA, on the purported expenditures on which the PIA is based on the ground that NNPC on whose behalf the expenditures were incurred, disputed them. The Respondent further argues that since NNPC disputes owing the Appellant, such amount even if owed is at best a debt and not a Qualifying Capital Expenditure on the contrary, paragraph 5 of the second schedule to PPTA states that PIA is claimable on QCE and not on bad debt.' The Respondent further submits that paragraph 5 of the second schedule further states that QCE on asset must have been incurred by the owner and put in use. The Respondent added that the Appellant could not have been the owner of the asset relating to QCE purportedly incurred on behalf of the NNPC.

The Respondent submits that it has applied the correct principles in the transactions which culminate in the various additional assessments issued and therefore urged the Tribunal to dismiss the Appellant's claim and uphold the additional assessments raised by the Respondent.

#### **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 JVA 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 a bad or doubtful debt. The Appellant did not adduce any evidence to prove that NNPC gave the Appellant mandate



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to incur the said expenses on behalf of NNPC. The Appellant's reliance on section 10 (1)(i) of the PPTA without evidence will not profit 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.

On the claim of PIA by the Appellant that stemmed from the purported QCE incurred, the claim can only be sustained by documentary evidence of QCE incurred and perhaps evidence from one of the partners to the JVA, otherwise the dispute of the expenses by the NNPC certainly operates against the unsubstantiated claim of the Appellant. We find it hard to believe that expenses allegedly incurred which was disputed by NNPC and consequently became bad or doubtful debt could qualify as QCE to attract claim of PIA.

In the absence of any reasonable evidence from the Appellant, we are constrained to hold that the additional assessments issued on the Appellant by the Respondent were valid in law. In the circumstance, we dismiss the Appeal and invalidate the deductions by the Appellant. We order the Appellant to pay the tax as contained in the additional Notices of Assessment, PPTBA/97 in the sum of \$75,721,125 and PPTBA/98- in the sum of \$7,550,207.


**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

**D. HABILA GAPSISO**  
Commissioner

  
**MUSTAFA BULU IBRAHIM**  
Commissioner

  
**CHINUA ASUZU**  
Commissioner



  
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