

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

TAT/LZ/005/2012;

TAT/LZ/014/2013;

TAT/LZ/072/2014;

TAT/LZ/003/2016

(CONSOLIDATED APPEALS)

BETWEEN

**STATOIL (NIGERIA) LIMITED  
TEXACO NIGERIA OUTER SHELF LIMITED**

APPELLANTS

AND

**FEDERAL INLAND REVENUE SERVICE**

RESPONDENT

**JUDGMENT**

**Issues for Determination**

In determining this appeal, this Tribunal has to address the following two questions:

**1. Can assessment notices be valid when they do not comply strictly with the law?**

The Petroleum Profits Tax Act (PPTA) and Deep Offshore and Inland Basin Production Sharing Contract Act (Deepshore Act) require assessment notices to: include taxpayers' names; be served on taxpayers; and split tax liability on profit ratio basis. They also require separate receipts. The Respondent's assessment notices for 2010-2013 did not meet any of these criteria.

**Are the assessment notices valid?**

**2. Should NNPC-reviewed tax returns to FIRS prevail over taxpayer-generated returns?**

Under the Production Sharing Contract (PSC) between NNPC and the Appellants, the Appellants as contractors were to prepare Petroleum Profits Tax (PPT) returns, send them to NNPC, which then forwards them to the Respondent. The Appellants prepared their 2010-2013 petroleum-profits tax returns and sent them to NNPC for filing with the Respondent. NNPC revised the returns and filed its revised edition with the Respondent. The Respondent assessed tax using NNPC's figures.



**Should the Respondent depend on NNPC's figures, irrespective of correctness?**

**Facts and Procedural History**

The Appellants are the Contractors of OML 128 under a Production Sharing Contract (PSC) with NNPC. The PSC required the Appellants to prepare PPT returns and submit them to NNPC for onward filing with the Respondent. The Appellants prepared and submitted to NNPC the PPT returns for 2010 to 2013. NNPC revised the returns and filed the revised returns with the Respondent.

Using the NNPC-revised returns, the Respondent prepared assessment notices and served these on NNPC, but not on the Appellants. The notices named the Contract Area as the taxpayer and did not show the tax liability split between the Appellants and NNPC. The Respondent never issued receipts to the Appellants.

The tax liability assessed by the Respondent differed from the one the Appellants had prepared because the Respondent had relied on NNPC's revised returns. The assessment resulted in higher tax liability for the Appellants.

The Appellants objected to the assessments. The Respondent refused to either discharge the assessment or issue an amended one.

The Appellants appealed the notices in four different suits, later consolidated. At the trial, the Appellants called one witness, Benedith Hadomeh, and tendered several documents. The Respondent did not call any witness or tender any documents.

**Parties' Positions**

The Appellants challenge the validity of the assessment notices for their improper issue and service. They also argue that the Respondent ought to have used the PPT returns prepared by them instead of relying on NNPC's version. They add that the Respondent liability computation is incorrect.

The Appellants submit that the assessments were improperly issued and served. They point out that the assessment notices did not bear their names as the companies engaged in the petroleum operations as required by sections 8 and 37(1) of PPTA and sections 11 and 12 of the Deepshore Act. The Appellants relied on this Tribunal's decision in *Total & Ors v FIRS* (TAT/LZ/010/2013). They contend that FIRS ought to have allocated the PPT payable according to the profit oil split in line with section 12 of the Deepshore Act and section 22(4) of PPTA. Pointing to another statutory infraction, the Appellants say that the Respondent failed to serve the assessments on them as required by section 38 of PPTA and





failed to issue separate tax receipts in compliance with section 11(2) of the Deepshore Act. They conclude that the assessments are invalid.

The Appellants attack the Respondent's reliance on NNPC's revised version of the PPT returns. They claim that they, not NNPC, ought to prepare the PPT returns under sections 30(1) and 33(1) of PPTA and clause 7.1(h) and Annex B, Article III(2)(e) of the PSC. the Respondent, they say, ought to have relied on the returns prepared by the Appellants. They allege that the Respondent's reliance on NNPC's revised returns led to the exclusion of some deductible expenses, reduction of some cost incurred, and improper computation of capital allowance and total investment allowance. They argue that section 3 of the Deepshore Act limits their PPT liability, determined under PPTA, which permits deductibility of cost incurred in their operation under section 10 of PPTA.

**The Respondent insists on the assessments' validity, maintains the soundness of its reliance on NNPC's revised returns, and says that its liability math is good.**

The Respondent counters that section 3 of the Deepshore Act validates its issuance of the assessments in the name of the Contract Area rather than in the names of the Appellants. The Respondent says that section 8 of PPTA should be read subject to section 3 of the Deepshore Act. The Respondent submits further that service on NNPC rather than on the Appellants was proper. The Respondent adds that it is authorized to accept returns from NNPC only, and that only during audits does it consider contractor-taxpayers' representations. It is however noteworthy that the Appellant did not as at that point in time submit its returns to the Respondent assuming that NNPC to whom itsent its returns would forward same verbatim to the Respondent.

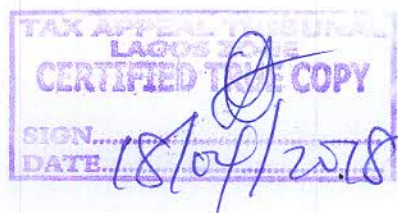
The Respondent contends that section 8 of the Deepshore Act allows the recovery of all operating costs of the Appellants from cost-oil allocation. It argues that all operating costs are deemed to have been covered by the cost oil; therefore, the exclusion or disallowance of some expenses is valid.

### **Analysis**

#### **Can tax assessments be valid when they do not follow the law?**

The Respondent argues that the OML 128 Contract Area is the taxpayer, and NNPC can receive assessment notices on the Appellants' behalf. The Appellants, for their part, believe, as the taxpayers, they deserve to be named as such on the assessment notices and to be served with the notices.

In *Total v FIRS* (TAT/LZ/010/2013), this Tribunal decided that as between a Contract Area and the Contractors, the Contractors are the taxpayers. The Tribunal relied on sections





37(1) and 38(1) of PPTA and sections 11(2) and 12 of the Deepshore Act. Section 37(1) of PPTA requires the names and addresses of the companies assessed to tax to be stated on the assessment notice. Section 38(1) of PPTA requires the Respondent to serve assessment notices on the parties to the contract area. Sections 11(2) & 12 of the Deepshore Act require the chargeable oil to be split in the same ratio as the profit oil and separate tax receipts to be issued for the respective amounts of PPT paid by the Appellants.

The Respondent failed to comply with these statutory requirements.

The Appellants are taxpayers of OML 128 and the Notices must bear their names. They are entitled to be served with assessment notices showing their respective PPT liability based on the split ratio. They should also receive separate receipts in their respective names.

We accordingly uphold the Appellant's objections at this point.

**Should NNPC-reviewed tax returns to the Respondent prevail over taxpayer-generated returns?**

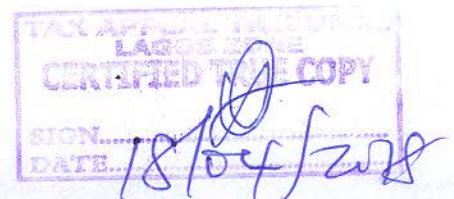
The Appellants contend that the PPT returns they prepared as the taxpayers should be the basis for the Respondent's computation of their PPT liability. The Respondent submits that the PPT returns filed by NNPC prevails.

The governing PSC requires the Appellants to prepare the PPT returns and submit them to NNPC for filing with the Respondent.

Clause 7.1(h) of the PSC stipulates that the Contractor shall submit estimated and final PPT returns to NNPC in accordance with PPTA. Paragraph 2(e) of Article III of the PSC says that "The Contractor shall prepare all returns required under the PPT Act and timely submit them to the Corporation [NNPC] for onward filing with the Federal Board of Inland Revenue ..."

The Appellants in *Total v FIRS* (TAT/LZ/010/2013) were in the analogous position to the Appellants here. And there, the Tribunal held:

The Appellants' PPT returns are the foundation for the determination of their tax affairs by the Respondent. NNPC is incompetent to interfere with the Appellants' tax documents. We find no provision in the PSC that empowers NNPC to amend or vary the PPT returns filed with it by the Appellants. The PPT returns filed by the Appellants with NNPC are meant to be delivered to the [the Respondent] and must be so delivered. If NNPC has cause to file returns other than the one submitted to it by the contractors of OML 138, it owes the contractors explanation or consultation.



The Respondent should investigate taxpayers' claims and promptly too.

The assessments are invalid. The Respondent should re-assess the Appellants using the PPT returns prepared and submitted by them subject to due verification.

### Conclusion

The appeal succeeds.

We set aside the Notices of Assessments PPTBA 27, PPTBA 32, PPTBA 35, and PPTBA 41.

We direct the Respondent to reassess the Appellants' PPT liability for 2010-2013 years of assessment. We direct the Respondent to name both Appellants in the assessment notices, serve notices showing each Appellant's separate PPT liability based on the split ratio, and issue separate receipts in their respective names.

### Legal Representation:

C. Ikwuazom Esq. with H. Abdulkareem Esq. Mrs O. Ogunrinde and M. Emedosi Esq. for the Appellants.

Mrs N. Ezeadili for the Respondent.

DATED THIS 31ST DAY OF MAY 2016



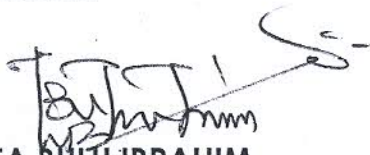
KAYODE SOFOLA, SAN (Chairman)



CATHERINE A. AJAYI (MRS)  
Commissioner



D. HABILA GAPSISO  
Commissioner



MUSTAFA BULU IBRAHIM  
Commissioner



CHINUA ASUZU  
Commissioner

