

IN THE TAX APPEAL TRIBUNAL
LAGOS ZONE
SITTING AT LAGOS

TAT/LZ/CIT/EDT/043/2015

BETWEEN

NIGERIAN BREWERIES PLC

APPELLANT

AND

FEDERAL INLAND REVENUE SERVICE

RESPONDENT

JUDGMENT

Issue for Determination

Quare whether a company's expenses outside Nigeria on another company's behalf are not allowable deductions under the Companies Income Tax Act (CITA) regime?

The Appellant paid buying commission and handling charges to International Beverages Corporation SA (IBECOR), a related foreign company, under an arrangement for procurement of goods outside Nigeria. In submitting its tax returns, the Appellant deducted these expenses. The Respondent disallowed them.

Are the deductions valid?

Introduction

Under an arrangement between the Appellant and IBECOR (both related entities in the Heineken Group), IBECOR procures goods outside Nigeria for the Appellant based on the Appellant's purchase orders. Then IBECOR recovers from the Appellant the cost of the purchased goods, plus handling charges. The Appellant adds 2% buying commission.

In 2014, the Respondent audited the Appellant's companies-income-tax-compliance profile for 2008-2014, and discovered that the Appellant had deducted from its tax returns the buying commission and handling charges paid to IBECOR for those years. The Respondent rejected the deductions and assessed the Appellant to additional Companies Income Tax (CIT) and Education Tax (EDT). It put the Appellant's outstanding tax liability at ₦2,605,527,403.



Facts and Procedural History.

After a tax audit exercise, the Respondent assessed the Appellant to CIT and EDT for 2008-2014 assessment years. The CIT & EDT were charged on the total amount paid as buying commission and handling charges to IBECOR by the Appellant in those years, the Respondent having disallowed the deduction of those expenses from the Appellant's taxable profit.

The Respondent served the Appellant with the assessment notices through a letter dated 21 October 2015. The computation of the Appellant's additional CIT is N2,442,681,940.00 and additional EDT is N162,845,463.00 making a total of N2,605,527,403.00.

The Appellant objected to the assessment by letter dated 9 November 2015. The Respondent refused to amend the assessments in its 1 December 2015 response to which it attached its final assessment for 2009-2014 years of assessment. The additional assessments are as follows:

TAX TYPE	ASSESSMENT NOTICE NUMBER	YOA	=N=
CIT	LTO/NON-OIL/LAG/AUD/GA/CIT/129F	2009	398,768,823
	LTO/NON-OIL/LAG/AUD/GA/CIT/129E	2010	310,706,289
	LTO/NON-OIL/LAG/AUD/GA/CIT/129D	2011	238,915,111
	LTO/NON-OIL/LAG/AUD/GA/CIT/129C	2012	442,979,948
	LTO/NON-OIL/LAG/AUD/GA/CIT/129B	2013	567,639,224
	LTO/NON-OIL/LAG/AUD/GA/CIT/129A	2014	483,672,545
			2,442,681,940
EDT	LTO/NON-OIL/LAG/AUD/GA/EDT/128F	2009	26,584,588
	LTO/NON-OIL/LAG/AUD/GA/EDT/128E	2010	20,713,753
	LTO/NON-OIL/LAG/AUD/GA/EDT/128D	2011	15,927,674
	LTO/NON-OIL/LAG/AUD/GA/EDT/128C	2012	29,531,997
	LTO/NON-OIL/LAG/AUD/GA/EDT/128B	2013	37,842,615
	LTO/NON-OIL/LAG/AUD/GA/EDT/128A	2014	32,244,836
			162,845,463
	GRAND TOTAL		2,605,527,403



The Appellant appealed to this Tribunal. At the trial, the Appellant called one witness, Sola Ismail. The Respondent did not call any witness. Both parties introduced documentary evidence.

Parties' Positions

The Appellant argues that section 27(i) of CITA relied upon by the Respondent does not govern this case; section 24 does.

The Appellant postulates that whenever a company incurs expenses outside Nigeria *for another* company, section 27(i) applies to preclude deductibility. But whenever a company incurs expenses *for itself* outside Nigeria, section 24 allows deductions if those expenses have been wholly, exclusively, necessarily, reasonably, and commercially incurred.

The Appellant contends that it is illogical to disallow *all* expenses incurred outside Nigeria. It submits that the appropriate interpretation of section 27(1) is that expenses incurred outside Nigeria by one company on behalf of another are not deductible from the incurring-company's profits for tax purposes.

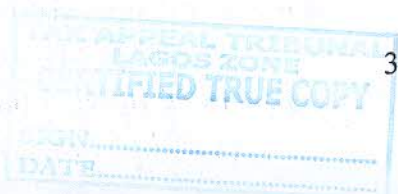
The Appellant argues that section 24 of CITA is the applicable section to the expenses in question. It states that section 24 makes it mandatory for expenses to be deducted if they have been wholly, exclusively, necessarily, and reasonably incurred for the purpose of generating profits.

The Respondent retorts that the buying commission and handling charges, having been incurred outside Nigeria by the Appellant, are not deductible under section 27(i) of CITA. It argues further that section 27 of CITA governs this context to the exclusion of all other sections including section 24 of CITA.

The Respondent argued that any expense incurred outside Nigeria for or on behalf of any company should be disallowed and taxed irrespective of the reasons for the expense, in light of section 27(i). The Respondent states that since the Appellant pays to IBECOR's Belgian account, the expense is incurred outside Nigeria and section 27(i) of CITA applies.

The Respondent considers section 24 of CITA irrelevant in determining the deductibility of the buying commission and handling charges because section 27(i) bars the application of other sections of CITA by use of the words 'Notwithstanding any other provisions of this Act'. The Respondent buttresses its position on the inapplicability of section 24 by pointing to the phrase 'any expense of any description' in section 27(i) of CITA.

Analysis



Section 27(i) provides:

27. Notwithstanding any other provision of this Act, no deduction shall be allowed for the purpose of ascertaining the profits of any company in respect of-

(i) any expense of description incurred outside Nigeria for and on behalf of any company except of a nature and to the extent as the Board may consider allowable.

The Respondent interprets this provision to mean that in ascertaining the profits of Company A, Company A would be disallowed from deducting any expense it incurred outside Nigeria. The Appellant, on the other hand, interprets it to mean that in ascertaining the profits of Company A, Company A would be disallowed from deducting any expense incurred outside Nigeria *for and on behalf of Company B*.

Section 27(i) of CITA refers to expenses incurred *for and on behalf of any company* by the taxable company. The appropriate interpretation, then, is to disallow deduction of any expense incurred by the taxable company outside Nigeria for another company. The provision does not apply to *all* expenses incurred by the taxable company outside Nigeria, only those incurred for another entity. At any rate this will be an ambiguity that will be resolved in favour of the taxpayer.

We hold that section 27(i) does not apply to the buying charges and commission paid to IBECOR for the 2009-2014 years of assessment.

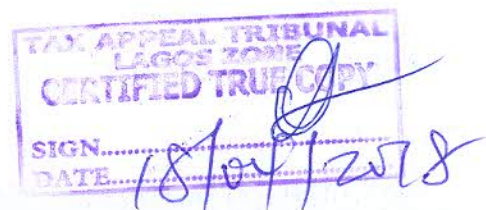
Is section 24 relevant in determining the deductibility of the buying commission and handling charges?

Section 24 represents the general rule on allowable deductions under CITA. It provides:

Save where the provisions of subsection (2) or (3) of section 14 or 16 of this Act apply, for the purpose of ascertaining the profits or loss of any company of any period from any source chargeable with tax under this Act, there shall be deducted all expenses for that period by that company wholly, exclusively, necessarily and reasonably incurred in the production of those profits including...

From the wordings above, generally all expenses incurred by a taxable company wholly, exclusively, necessarily, and reasonably in the production of profits are deductible. To remove any expense from the ambit of this general rule would require a specific provision to the contrary.

Section 27(i) of CITA is not that specific provision.



The buying commission and handling charges thus remain within the ambit of this general rule.

Has the Appellant met this statutory benchmark? The Appellant's testimonial and documentary evidence satisfies us that this standard was met. Those expenses were indeed incurred wholly, exclusively, necessarily, and reasonably for the purpose of generating profits.

The Respondent argued that the sums were not wholly, exclusively, necessarily, or reasonably incurred because the sums paid to IBECOR were outrageous as the goods could have been purchased directly from the product manufacturers or other unrelated vendors without paying such huge amounts. This is a speculation. The Respondent also argued that the arrangement is artificial. This is adventurous argument as the Respondent neither provided any material nor presented any evidence to support its position. The Respondent left the Appellant's evidence uncontroverted.

The buying commission and handling charges being expenses incurred wholly, exclusively, necessarily and reasonably in the production of profits are allowable deductions under section 24 of CITA.

Conclusion

We allow this appeal.

We set aside the Respondent's additional CIT and EDT assessments for 2009-2014.


Legal Representation:

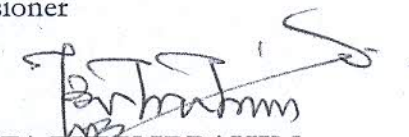
M. Olajide Esq. with F. O. Akinla Esq. and A. Akintobi Esq. for the Appellant.


Mrs Abisola Omeje for the Respondent.

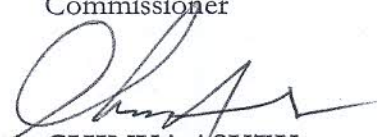
DATED AT LAGOS THIS 31ST DAY OF MAY 2016


KAYODE SOFOLA SAN (Chairman)


CATHERINE A. AJAYI
Commissioner


MUSTAFA BULU IBRAHIM
Commissioner


D. HABILA GAPSISO
Commissioner


CHINUA ASUZU
Commissioner

