

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

APPEAL NO: TAT/LZ/CIT/EDT/038/2014

BETWEEN

FEDERAL INLAND REVENUE SERVICE APPELLANT

AND

VITAL NEED ENGINEERING SERVICES LIMITED RESPONDENT

JUDGMENT

INTRODUCTION

The Appellant challenged the non-compliance of the Respondent to various Notices of Assessment and Demand Notes issued upon it between 4th October 2012 and 29th October, 2013 by filing an Amended Notice of Appeal dated 28th November, 2014. The grounds of the appeal are that the Respondent was in default of filing its returns on time and paying its Company Income Tax (CIT) and Education Tax (EDT) for 2009 - 2011 years of assessment; and Value Added Tax (VAT) from January 2008 to September 2012.

ISSUE FOR DETERMINATION

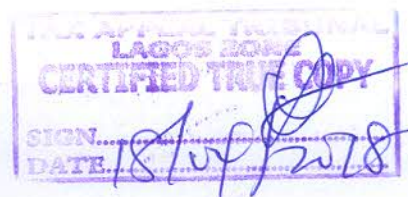
Are the tax assessments raised on the Respondent valid, final, and conclusive?

ESSENTIAL DETAILS

The Appellant is a statutory body established under the Federal Inland Revenue Service (Establishment) Act No. 13, 2007 and is vested with the power to administer, collect, regulate and to account for all taxes collected to the Federal Government of Nigeria. In line with its statutory powers, the Appellant is also empowered by the Act to do all such things as may be necessary and expedient for the proper assessment, collection of all tax and account for the entire amount so collected to the Federal Government.

The Respondent is a company registered in Nigeria under the Companies and Allied Matters Act with its registered office at Km 25, Badagry Express Way, By Bayuf Bus Stop, Ketu Ijanikin, Lagos, carrying on the business of engineering services, and thereby liable to render to the Appellant true and accurate monthly returns of all taxable services supplied by it in accordance with the provisions of the Act.

The Appellant filed a Written Statement on Oath dated 28th November 2014 by Kanu Ugonna Godwin with attached documents.



The Respondent filed its Reply dated 2nd February 2015 and Witness Statement dated 2nd February 2015 by Bayo Olawale with attached documents.

The matter proceeded to trial, pursuant to Order IX Rule 3 of the **Tax Appeal Tribunal (Procedure) Rules 2010**.

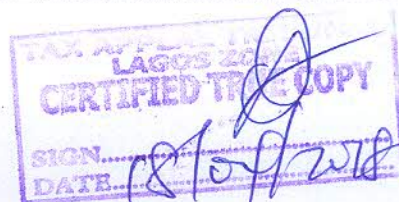
During trial, the Appellant and the Respondent called one witness each and tendered documentary evidence admitted as Exhibits.

PARTIES' POSITIONS

The Appellant submits that the Respondent failed to file returns on time and refused to pay CIT and EDT for 2009 - 2011 years of assessment; and VAT from January 2008 to September 2012. But the Appellant discovered through its Web Portal that the Respondent transacted/carried on services in the sum of **₦142,571,221.90** from 2008 to 2012. Based on the web portal information the Appellant assessed the Respondent to CIT of **₦7,935,976.99**; VAT of **₦12,283,012.12**; and EDT of **₦529,064.17** for the relevant periods. Accordingly, the Appellant served the Respondent with an Administrative Assessments and Demand Notes for the tax liability including penalty and interest.

The Appellant avers that the Respondent refused to respond to all the letters/reminders served on them but reluctantly filed their returns on 25th March 2014 for the 2009-2013 YOAs. The Appellant submits further that consequent upon the returns filed by the Respondent, it reconciled the accounts filed with the FIRS Web portal and maintains that the Respondent's tax liability for CIT, EDT and VAT including penalty and interest amounted to **₦18,307,028.14** (Eighteen Million, Three Hundred and Seven Thousand, Twenty Eight Naira and Fourteen Kobo), as shown below:

Year	TAX TYPE	TAX LIABILITY ₦	PENALTY ₦	INTEREST ₦	TOTAL ₦
2009	CIT EDT	1,139,065.15 75,937.68	113,906.52 7,593.77	227,813.03 15,187.40	1,480,784.70 98,718.85
2010	CIT EDT	2,097,025.00 139,801.00	209,702.00 13,980.10	419,405.00 27,960.20	2,726,132.00 181,741.30
2011	CIT EDT	2,868,507.92 191,233.86	286,850.79 19,123.39	573,701.58 38,246.77	3,729,060.29 248,604.02
TOTAL	CIT EDT	6,104,598.07 406,972.54	610,459.31 40,697.26	1,220,919.61 81,394.37	7,935,976.99 529,064.17
January 2008 - September 2012	Additional VAT	7,128,561.10	860,000.00	1,853,425.88	9,841,986.98
GRAND TOTAL					18,307,028.14



The Appellant argued further that it had acted in accordance with **Section 63(3) of the Companies Income Tax Act Cap C21 LFN 2004** when it assessed and served the Respondent with the Administrative/BOJ assessments including a penalty for late returns; as a return filed after 6 months of its due date is a late return by virtue of **Section 55 (1-3) of the Companies Income Tax Act Cap C21 LFN 2004**;

“(1) Every Company including a company granted exemption from incorporation shall, whether or not a company is liable to pay tax under this act for a year of assessment, with or without notice from the service, file a self-assessment returns with the service in the prescribed form at least once a year and such returns shall contain...”

The Appellant submits that the Respondent was assessed to tax and it failed to file objection to same within the time allowed by law, thereby making the assessment valid and payable. The Appellant also maintains that the **Exhibit KGU A** shows that the Respondent had transacted some businesses in the sum of **₦142,571,221.90** from 2008 to 2012 and did not deny their business transactions with UNILEVER Nigeria PLC and GLAXO SMITHKLINE CONSUMER NIGERIA PLC during cross examination. The Appellant submits that the Web Portal report (i.e. **Exhibit KGU A**) is to establish the fact that the Respondent was in active business during the said years of assessment.

The Appellant then urges the Tribunal to order the payment of the outstanding Companies Income Tax, Education Tax, and VAT liabilities with penalties and interest, plus the cost of the proceedings.

The Respondent claims that it could not have transacted business to the tune of **₦142,571,221.90** from 2008 to 2012. The Respondent kept stating that "whatever sum extracted from Federal Inland Revenue Service Web Portal is false and misleading."

The Respondent, in its final written address dated 5th January, 2016, states that the Appellant had failed the BOJ criteria by giving an arbitrary assessment without studying materials or carrying out proper enquiries relating to the Respondent's transactions over the period in question. The Respondent argues that "the Appellant acted dishonestly, vindictively and capriciously because it did not make honest estimate of the proper figure of the assessment for which the provisions of CITA and VATA applies". The Respondent maintains that it had demonstrated good faith by auditing its accounts for 2010, 2011 and 2012; and filing returns of CIT for 2009 to 2011 (VAT from January 2008 to December 2012 and EDT for 2009 to 2012)"

The Respondent argues that it has assessed itself through its auditors for the sum of **₦1,896,400** as its tax liability for the years under review. The Respondent therefore urges the Tribunal to uphold the tax liability arrived at by the Respondent's auditors, or order a re-assessment, involving the Respondent's auditors and the Appellant's representatives for the years under review.



ANALYSIS AND DECISION

The Appellant has argued that the Respondent, as a taxable person, is in default having neglected to pay its Companies Income Tax and Education Tax liabilities for the years 2009-2011; and refused to file returns and remit VAT from January 2008 to September 2012. In its letter dated 14th August 2013 admitted as **Exhibit KUG E**, the Appellant claims that **N18,307,028.14** was outstanding against the Respondent as CIT and EDT for 2009-2011 YOAs; and VAT with accruing penalty and interest due from January 2008 to September 2012. The Appellant has also shown evidence before this Tribunal of the various assessments that establish this claim.

We have no basis for ignoring or discarding the Web Portal Report as shown in **Exhibit KUG A**. The Respondent's returns are not helpful to its case because they were filed on 25th March 2014. Thus, the returns were belatedly filed after the assessment had become final and conclusive due to statutory time limit.

There is no evidence before us that the Respondent objected to the various assessments within the time allowed by law. The Respondent did not even make any submission on this point in its written address. Section 69 of CITA is emphatic on the time limit for objection and stipulates that:

1. "If any company disputes the assessment it may apply to the Board, by notice of objection in writing, to review and revise the assessment made upon it.
2. An application under subsection (1) of this section shall
 - a. Be made within thirty days from the date of service of the notice of assessment; ..."

Accordingly, we hold that the assessments for Company Income Tax and Education Tax for 2009 - 2011 tax years; and Value Added Tax from January 2008 to September 2012, which were not objected to by the Respondent, within the time allowed by law are valid and conclusive. We enter judgment for the sum assessed and order the Respondent to pay to the Appellant the sum of **N18,307,028.14 (Eighteen Million, Three Hundred and Seven Thousand, Twenty Eight Naira and Fourteen Kobo)**.

Legal Representation

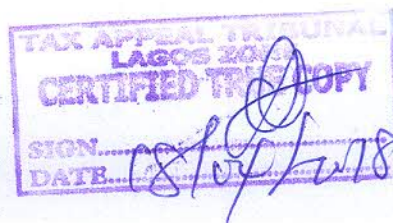
Ms Nwayikwe Umezuruike for the Appellant.

Taiye Ago Esq. for the Respondent.

Dated at Ikeja Lagos this 12th day of April, 2016

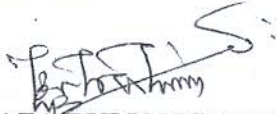


KAYODE SOFOLA, SAN (Chairman)

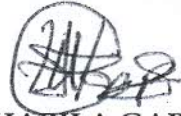




CATHERINE A. AJAYI (MRS)
Commissioner



MUSTAFA BULU IBRAHIM
Commissioner



D. HABILA GAPSISO
Commissioner



CHINUA ASUZU
Commissioner

