

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

TAT/LZ/012/2013

Between

**CNOOC Exploration & Production Nigeria Limited
South Atlantic Petroleum Limited**

**1st Appellant
2nd Appellant**

And

Federal Inland Revenue Service (FIRS)

Respondent

Judgment

Introduction

The Appellants originated this appeal on September 16, 2013 on the following grounds:

1. The petroleum profit tax as contained in Notice of Assessment PPTBA 37 ("NOA PPTBA 37") is incorrect because the gross proceeds of chargeable oil stated in PPTBA 37 are wrong.
2. In NOA PPTBA 37, the Respondent wrongly calculated the deductible expenses in respect of the OML 130 contract area to be in the sum of USD549,840,693.60.
3. In NOA PPTBA 37, the Respondent wrongly calculated the capital allowances in respect of the OML 130 contract area to be in the sum of USD724,687,452.24.
4. The Respondent was wrong, as per NOA PPTBA 37, in applying Investment Tax Allowance to the OML 130 contract area.



5. By failing to list the Appellants on NOA PPTBA 37 and by not serving NOA PPTBA 37 on the Appellants, the Respondent improperly issued and served NOA PPTBA 37.

Essential Details:

The Appellants with NNPC and Total Upstream Nigeria Limited (the Operator) are bound by a Production Sharing Contract (PSC) on OML 130 contract area. The Operator on behalf of the Appellants filed their PPT returns for OML 130 for 2012 year of assessment with NNPC for onward filing with the Respondent. But NNPC, without recourse to the Appellants, filed a different version of returns for the contract area. The Respondent assessed the Appellants and issued NOA PPTBA 37 based on the NNPC returns. The NOA PPTBA 37 requires the Appellants to pay US\$931,230,356.50. The Appellants objected but the Respondent refused the objection.

At the hearing of this appeal, the Appellant relied on the evidence and documents tendered through Modeleola Jegede's written statement on oath dated September 16, 2013 and additional written statement on oath dated September 8, 2014. The Respondent relied on the evidence and documents tendered through Aniko Emmanuel's written statement on oath dated July 21, 2015.

Issues for Determination:

The Appellants seek this Tribunal to determine:

1. Whether the Respondent had any legal basis for refusing to use the gross proceeds of chargeable oil sold by the Appellants to assess the Appellants to tax?
2. Whether the Respondent applied the law correctly in its treatment of expenses incurred by the Appellants?
3. Whether the Respondent's calculation of capital allowance was correct in law?
4. Whether the Respondent was correct in applying Investment Tax Allowance instead of Investment Tax Credit?



5. Whether the failure of the Respondent to list the names of each of the taxpayers under the OML 130 PSC on NOA PPTBA 37 and serve the said assessment on each of them nullifies NOA PPTBA 37?

Parties' Arguments:

The Appellants argue that the discrepancies between their returns and the one filed by NNPC with the Respondent are the main cause of the dispute between the parties in this appeal. The Appellants maintain that:

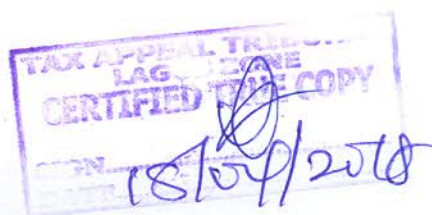
- i) The Respondent wrongly calculated the gross proceeds of chargeable oil as US\$3,136,988,858.83 instead of fiscal value of sales of US\$3,115,334,956.04 as contained in their PPT returns.
- ii) Their PPT returns contains "deductible expenses" of US\$641,509,087.62 which the Respondent ignored to treat as such in its assessment in NOA PPTBA 37.
- iii) The Respondent did not calculate annual allowances on the basis of 20% of QCE.
- iv) The Respondent failed to treat Non-Operators' sole costs as deductible expenses in NOA PPTBA 37.
- v) The Respondent did not grant any Investment Tax Credit in 2012 and instead it may have applied Investment Tax Allowance to the OML 130.

The Appellants submit that having delivered their returns to NNPC for onward filing with the Respondent, the Respondent is bound by the provisions of section 35(2) – (3) of the PPTA. The Appellants also commended this Tribunal to its judgment in **Total E & P Nig. Ltd & 3 Ors. v FIRS (unreported Appeal No. TAT/LZ/010/2013)**.

The Respondent submits that "the corporation is the person charged to file PPT returns with the Respondent in respect of the production sharing contract area OML 130". In support of this assertion, the Respondent at Paragraph 3.2 of its written address quoted section 6 of the Deep Offshore and Inland Basin (Production Sharing Contracts) Act (DOIBPSCA) which provides:

"Computation and payment of estimated and final petroleum profit tax shall be made in US dollars on the basis of the US dollars returns filed".

The Respondent acknowledges at Para 3.4 of its written address that it relied on the PPT returns filed by NNPC to raise NOA PPTBA 37 on the Appellants. The Respondent, at Para 3.5 of its written address, maintains that having relied on



PPT returns filed by NNPC, it has acted within the relevant law and the agreement between the Appellants and NNPC.

Analysis and Decision:

The Appellants' dissatisfaction with NOA PPTBA 37 is that the assessment was not based on their PPT returns submitted to the NNPC. And the Respondent never rebutted this position of the Appellant. Rather the Respondent, in its written address, admitted that it used NNPC's returns to raise NOA PPTBA 37 on the Appellants. The Respondent ironically believes that its decision to raise NOA PPTBA 37 based on NNPC's returns is sufficient justification for compliance with all the relevant laws, including the PPTA.

The PSC vest the Appellants with the right to prepare PPT returns for the contract area and NNPC the right of delivery of the PPT returns to the Respondent. Paragraph 2(e) of Article III of the PSC says *'The Contractor shall prepare all returns required under the PPT Act and timely submit them to the Corporation for onward filing with the Federal Board of Inland Revenue ...'*

We abide by our decision in **Total E & P Nig. Ltd & 3 Ors. v FIRS (unreported Appeal No. TAT/LZ/010/2013)** delivered on 20th March 2015 from which we quote as follows:

"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 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'¹. But the Respondent says it does not care whether the figures are wrong or not- it cares only that they were filed by NNPC who has the duty of filing it under the PSC.

Cooperative Compliance is the current global trend at stimulating voluntary compliance and enhancing the integrity of the tax authorities. The Respondent must make conscious efforts at building cooperative relationships with taxpayers. The Respondent must 'view the taxpayer's

¹ Judgment delivered in *Esso v FIRS TAT/LZ/001/2013*, on 20 November 2014



claims and objection within the overriding objective of its responsibilities for the entire tax regime'². The Respondent can 'direct NNPC to review the areas of the Appellants' objection and confirm the genuineness of their claims'³. It could also 'invite all parties to OML [138] Contract Area for round table discussion on the tax affairs where conflicting returns are presented to it'⁴.

PPT returns are triggered by section 30 of PPTA to originate from the taxpayers (Appellants) and be sent to the Respondent. The power to tinker with PPT returns is the realm of the Respondent under section 35 of PPTA. Taxation is about law and not contract or agreement. The Respondent has not established that the Appellants' PPT returns have failed to meet the requirements of section 30 of PPTA. A valid assessment in default of section 30 is the purview of section 35. The Respondent's assessment NOAPPTBA 40 meets neither. Thus, we nullify the Respondent's NOA PPTBA 40. We direct the Respondent to accept the Appellants' PPT returns for 2012 and use its inherent powers under the PPTA to assess the Appellants to PPT."

"...The Respondent should have been guided by sections 10 and 13 of the PPTA, section 11 of DOIBPSCA in treating the expenses incurred by the Appellants. We direct the Respondent to accept the Appellants' returns and along with the NNPC returns use its inherent statutory powers to assess the appropriate tax liability guided by the facts and the law applicable in the matter".

Conclusion:

We therefore revoke the Notice of Assessment - NOA PPTBA 37 and direct the Respondent to accept the Appellants PPT returns together with NNPC's returns and proceed in line with section 35 of the PPTA to assess the Appellants for 2012 tax year. The assessment must be in the respective names of the taxpayers under OML 130 contract area. The Respondent must also serve the Appellants with the revised notice of assessment in accordance with section 38 of the PPTA.

The other issues for determination are covered by issue one in the decision and answered in the affirmative.

² ibid

³ ibid

⁴ ibid



Legal Representation:

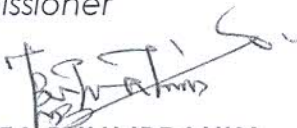
Mrs Olufunke Adekoya, SAN with T. I. Emuwa Esq., Godwin Etim Esq., Ibifubara Berenibara Esq. and Ms Adefolake Adewusi for the Appellants.

B. H. Oniyangi (Mrs) with B. D. Akintola (Mrs) for the Respondent.

DATED AT LAGOS THIS 18TH DAY OF NOVEMBER, 2015


KAYODE SOFOLA, SAN (Chairman)


CATHERINE A. AJAYI (MRS)
Commissioner


MUSTAFA BULU IBRAHIM
Commissioner


D. HABILA GAPSISO
Commissioner


CHINUA ASUZU
Commissioner

