

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

Consolidated
TAT/LZ/026/2014,
TAT/LZ/029/2014

Appeals#TAT/LZ/024/2014,
TAT/LZ/027/2014,

TAT/LZ/025/2014,
TAT/LZ/028/2014,

Between

Philips Oil Company Nigeria Limited

Appellant

And

Federal Inland Revenue Service (FIRS)

Respondent

Judgment

Issue for determination

Philips is an oil company taxable under the Petroleum Profits Tax Act (PPTA). Philips paid tax on its gas income at 30% tax rate under the Companies Income Tax Act (CITA). Then FIRS assessed Philips to CITA-based withholding tax on the dividends Philips paid from its gas income. Philips demurred, claiming that section 60 of the PPTA exempts it from further tax beyond the 30% already paid.

Is Philips liable to withholding tax under CITA?

Introduction

Philips made a self-assessment to tax on its gas income using the 30% tax rate chargeable under CITA. Later, FIRS assessed Philips for withholding tax on the dividends Philips paid from its gas income for 2006 to 2011. FIRS reasoned that by availing itself of the incentive in section 11(2) (d) of PPTA (which pointed to a lower CITA rate), Philips had subjected itself fully to the CITA tax regime.

Philips objected, claiming that section 11(2)(d) of PPTA was an incentive allowing it to benefit from the lower 30% CITA tax rate, while all other aspects of gas-income taxation remained governed by PPTA—including section 60 of PPTA.

FIRS refused to discharge the assessment. Philips brought this action.



Facts and Procedural History

Philips received a demand note from FIRS for withholding tax on dividends paid out from Philips's gas income. Philips objected to the assessment, but FIRS refused to amend it.

Philips supported its notice of appeal with:

- A list of witnesses;
- A list of documents:
 - Withholding tax demand note # LD/OG/US/withholding tax/13/33,
 - Philips's notice of objection,
 - FIRS's notice of refusal to amend, and
 - Chinwendu Enechi's witness statement for Philips.

FIRS replied, and filed:

- A list of documents:
 - Philips's notice of objection,
 - Philips's self-assessment return for 2008,
 - Philips's self-assessment return for 2009, and
 - Philips's self-assessment return for 2011.

Parties' Positions

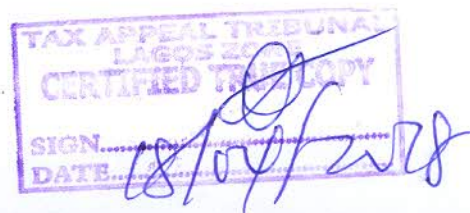
Philips contends that it is not taxable under CITA beyond the narrow extent of section 11(2)(d) of PPTA.

Philips argues that FIRS wrongly assessed it to withholding tax on its gas-income dividends under CITA. Philips says that since it carries out petroleum operations taxable under PPTA, the withholding-tax provisions of CITA cannot apply to its gas income. Philips argues that the section 11(2) (d) incentive of PPTA merely allows it to pay gas-income tax at the 30% tax rate of CITA. This incentive, says Philips, does not affect the application of section 60 of PPTA exempting Philips from paying any other tax than those assessed under PPTA.

Philips invites the tribunal to adopt a "holistic" approach in interpreting section 60 of PPTA and to carefully consider sections 2, 8, and 9(1) (c). This approach would show that section 11(2) (d) cannot override section 60 of PPTA, Philip concludes.

FIRS says that Philips must not only *enjoy*, but must also *endure* CITA.

FIRS contends that though Philips is an oil company ordinarily subject to taxation under PPTA, section 11(2)(d) of PPTA removes gas-income taxation from PPTA ambit and places it under the CITA regime. The result, says FIRS, is that gas income would be subject to all the provisions of CITA including withholding tax.



Analysis

What does the phrase *to be taxed under the Companies Income Tax Act* in section 11 (2) (d) PPTA mean?

Philips argues that section 11 (2)(d) of PPTA is an incentive allowing Philips to assess its gas-income tax using the 30% tax rate under CITA instead of 85% under PPTA. It interprets the phrase 'to be taxed under the Companies Income Tax Act' in section 11(2) (d) to mean only the tax rate (30%) under CITA.

Philips submits that despite its use of the 30% CITA tax rate, gas-income tax assessment remains subject to PPTA and no other law.

FIRS counters that section 11 (2) (d) of PPTA means that taxation of associated natural gas profit must follow all CITA provisions. This means that natural gas profit would be regarded as companies' income tax and not petroleum profits tax.

Section 11 (2) (d) PPTA is not ambiguous. It states:

The incentives specified under subsection (1) of this section shall be subject to the following conditions, that is:

(d) Expenses identified as incurred exclusively in the utilization of associated gas shall be regarded as gas expenses and be allowable against the gas income and profit to be taxed under the Companies Income Tax Act (our emphasis).

The phrase *to be taxed under CITA* means what it says. It puts gas income tax squarely within the application of the whole of CITA. If the Act intended only the tax rate of CITA to be applied rather than the entire statute, it would have expressly stated it. The subsection states that gas income would be taxed under CITA, not merely that CITA tax rate would govern.

Does the section 60 exemption apply to gas income and profit?

Philips argues that section 60 of PPTA applies to its gas income. It contends that its gas profits are taken into account in calculating the amount of its chargeable profits upon which tax is charged, assessed, and paid under PPTA. Philips submits that section 8 of PPTA levies tax on *profits of any company engaged in petroleum operation*, and section 9(1)(c) of PPTA states that *profits of a company includes all income arising from one or more of its petroleum operations*. Under section 2 of PPTA, petroleum operations involve *the winning or obtaining and transportation of 'petroleum'*. Section 2 of PPTA defines *petroleum* to include natural gas. According to Philips, these sections are conclusive that gas income is charged, assessed, and paid under the PPTA.



Philips then concludes that based on this analysis, crude oil and associated gas are both subject to PPTA regime.

FIRS, in response, submits that section 60 of PPTA does not govern Philips' gas profit. FIRS argues that Philips cannot hide under section 60 of PPTA to avoid withholding tax on its gas-income dividends because Philips cannot pay taxes under one statute (CITA) and gain incentives from another (PPTA).

Section 60 of the PPTA states that *no tax shall be charged under the provisions of the Personal Income Tax or any other Act in respect of any income or dividends paid out of any profits which are taken into account...in the calculation of the amount of any chargeable profit upon which tax is charged, assessed, and paid under this Act.*

We agree with Philips that PPTA was made to govern all petroleum operations, including those relating to natural gas. And if Philips wanted to be assessed to tax on the 85% tax rate applicable under PPTA, its analysis would have been apt.

But the effect of section 11(2) (d) is to create an alternative for gas income to be taxed under CITA instead of PPTA. This alternative means that PPTA directs gas income to be assessed, charged, and paid under CITA, thus excluding the application of section 60 of PPTA. Section 60 of PPTA does not account for gas income and profit because gas income is not charged, assessed, or paid under PPTA.

Is Philips liable to pay withholding tax on its gas-income dividends?

Philips argues that it is not liable to pay CITA-based withholding tax. It submits that only the 30% CITA tax rate applies to its gas income and it should pay no other tax, based on section 60 of PPTA.

FIRS argues that Philips is liable to pay withholding tax on the dividends derived from its gas income because CITA governs and withholding tax is payable under sections 80 and 9 (1)(c) of CITA.

We hold that Philips is liable to pay withholding tax on the dividends paid out from its gas income taxable under CITA.

We dismiss this appeal. We uphold all the withholding-tax assessment notices for 2006 to 2011. We order Philips to pay the assessed sums for withholding tax.

Legal Representation:

Adewale Atake Esq. with Dipo Komolafe Esq., Ms Igonikon H. Whyte Esq., Mrs Omolara Adewumi, Abimbola Atitebi Esq. Chukwuebuka Uyanwa Esq., Chidi Ejiofor Esq. and Ms Sesan Sulaiman for the Appellant



Ms Abisola Sodipo for the Respondent

Dated at Ikeja Lagos this 12th day of December 2014

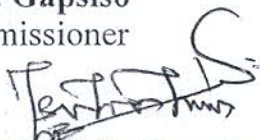
Kayode SofolaSAN
Chairman



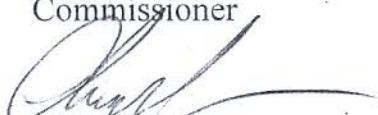
Catherine A. Ajayi (Mrs)
Commissioner



D. H. Gapsiso
Commissioner



Mustafa Bulu Ibrahim
Commissioner



Chinua Asuzu
Commissioner

