IN THE TAX APPEAL TRIBUNAL
LAGOS ZONE
SITTING AT LAGOS

Appeal #TAT/LZ/004/2010

Between

Federal Inland Revenue Service Appellant

And

General Telecom plc Respondent

Judgment

By its amended Notice of Appeal, the Appellant claims from the Respondent ₦32,060,469.00 as unremitted Value Added Tax, plus penalty and interest elements. The Respondent denies liability. To prove its claims, the Appellant called one of its tax managers, Mr Kingsley Katule. In turn, the Respondent called its accounts manager, Mr Momodu David. Both witnesses filed witness statements with accompanying exhibits. Both were examined.

The Appellant claims that it arrived at the ₦32,060,469.00 figure from an audit of the Respondent's books, as well as, with apparent contradiction, on a best-of-judgment basis.

The Respondent says that its VAT liability for the 1994-1998 and 2000-2002 years of assessment, based on actual volume of services rendered, amounted to ₦1 million, and it has already paid this amount to the Appellant. The Appellant acknowledges this payment.

The Respondent also maintains that the amount the Appellant claims arose from a best-of-judgement computation. Relying on sections 4 to 6 of the Value Added Tax Act, the Respondent contends that nothing in those provisions permitted an assessment not based on actual value. At first sight, this argument appears to preclude best-of-judgment assessments, but the Respondent is saying that even a best-of-judgment assessment must have basis in reality- the reality being actual value or volume of supplies.

Again, as the Respondent admits, section 18 of the VAT Act empowers the Appellant to conduct best-of-judgment assessments on taxpayers who fail to file returns or who file incomplete or inaccurate returns. The Respondent's interpretation of this clause is that even a best-of-judgment assessment must still be anchored on "'actual volume' of taxable goods and services purchased or supplied by the taxable person." (See paragraph 4.9 of the Respondent's

brief).The Respondent says that the Appellant's purported best-of-judgment assessment was "without regard to actual volume of services rendered by the Respondent" and submits that this violates section 18 of the VAT Act.

Contrary to the Respondent's assumption, best of judgment does not mean that no accounts, books, or records are examined. Best-of-judgment assessment is not incompatible with looking at whatever information may be available. The Appellant's claim that it looked at some records does not necessarily contradict its having conducted a best-of-judgment assessment, nor does it preclude a best-of-judgment assessment. Best of judgment need not be worst of judgment. In paragraph 4.35, the Respondent blandly interprets best of judgment as meaning "without inspection of any records." This is a gross misconception. In trying to reach its best judgment because of absence or paucity of reliable information, the Appellant as tax collector may still examine whatever few records it can lay hands on.

A failed or inchoate audit may ground recourse to best of judgment.

The Respondent expends a lot of jurisprudential energy on its allegation that the assessment was based on best of judgment and not on actual audit. Nothing is wrong with best of judgment. It need not leave a sour taste in the mouth. And it is not excluded by evidence that an audit was attempted. The Appellant's witness's imprecision about the nature of the audit or other investigatory exercise conducted on the Respondent simultaneously with or before an assessment does not necessarily deny the assessment validity as one done on a best of judgment basis.

The Appellant arrived at its figure of ₦32,060,469.00 by adding ₦15,469,600 for 2000 to 2002 to ₦16,590,869 for 1994 to 1998. The Appellant's VAT Assessment of 28 March 2000 (**Exhibit FIRS-F**)charged the Respondent with the 1994-1998 figure. The Appellant's letter of 2 May 2002 (**Exhibit FIRS-G**) reminded the Respondent of this 1994-1998 assessment.

The Appellant's letter of 16 August 2002 (**Exhibit FIRS-I**) brought the Respondent's attention to the 2000-2002 assessment.

Section 1 of the VAT Act is clear as to the imposition of the Value Added Tax. The Appellant is the body empowered by the Act to administer value added taxes in Nigeria.

The Respondent is a public limited liability company registered under the Companies and Allied Matters Act, and by virtue of its business in the telecommunications sector is a VAT collector in accordance with section 8 of

the Act. The respondent is required to collect tax pursuant to section 14(1) of the Act, and also render returns to the Appellant under section 15. The Appellant contends that upon the Respondent's failure, neglect, or refusal to remit tax as required under the Act, the Appellant exercised its powers under the Act.

VAT is a percentage. A person claiming a percentage of any amount of money must first show what the amount is. If no amount is alleged, no percentage can reasonably be claimed. The Appellant has not shown any basis for its mathematics. Perhaps the Appellant expects the Tribunal to do its math for it. We refuse to get involved in the Appellant's arithmetic. Discretion, whether judicial, or, as in this case administrative, must be exercised reasonably and not arbitrarily. Best of judgment assessments are discretionary. Their discretionary nature does not permit the Appellant to pluck a figure out of thin air and fasten it on the Respondent.

Section 18 of the Act empowers the Appellant to apply best of judgment assessment "where a taxable person fails to render or renders an incomplete or inaccurate returns." In carrying out this statutory duty, the Appellant should assess the amount of tax due on the taxable goods and services purchased or supplied by the taxable person. If the Appellant could not ascertain the actual volume of services rendered by the Respondent, it should at least estimate that volume and assess its monetary value and base its judgment on that estimate and assessment. The Appellant's exhibits do not show the Respondent's volume or value of goods, services, or transactions.

The tax audit failed to establish any tax base and the best-of-judgment assessment failed to provide any estimation of the VATable supplies. Without any reasonable basis for an assessment on a best-of-judgment basis, the Appellant has concocted a worst-of-judgment imposition. This we are duty bound to refuse.

The Appellant has failed to produce before the Tribunal the quality of evidence or material to justify a finding that, on a balance of probability, the Appellant has proved its case.

Neither party has proved its allegations, whether offensive or defensive, satisfactorily. The Respondent's barren allusion to defaults by debtor third parties is supported by no iota of evidence. But the burden of proof is on the Appellant, not the Respondent.In the result the appeal fails. We dismiss the appeal.

Legal Representation:

TAX APPEAL TRIBUNAL
CERTIFIED TRUE COPY
SIGN.....
DATE 8/5/2018

AbisolaSodipo for the Appellant

M. D. Forteta for the Respondent

Dated at Lagos this 6th day of May 2014

Kayode Sofola SAN
Chairman

Catherine Ajayi (Mrs)
Commissioner

Dennis Habila Gapsiso Esq
Commissioner

Mustafa Bulu Ibrahim
Commissioner

Chinua Asuzu Esq
Commissioner