

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

TAT/LZ/EDT/036/2015

Between

**South Atlantic Petroleum Limited
Total Upstream Nigeria Limited
Brasoil Oil Services Company Limited**

**1st Appellant
2nd Appellant
3rd Appellant**

And

Federal Inland Revenue Service

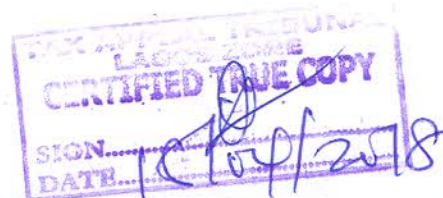
Respondent

Judgment

Introduction

The Appellants filed this appeal challenging the Respondent's Additional Education Tax Assessment Nos. PPTBA/ED 64, PPTBA/ED 66, and PPTBA/ED 67 dated December 16, 2014 raised on OML-130 PSA Contract Area for 2009, 2010 & 2011 tax years respectively.

- a. The Appellants disagree with the Respondent's decision to disallow the sums of \$151,345,130.54; \$148,173,010.91; and \$113,449,456.60 for 2009, 2010 & 2011 respectively which expenditure, the Appellants say were wholly, exclusively, and necessarily incurred by them for the purpose of petroleum operations.
- b. And as a result of disallowing the above expenses, the Respondent raised additional tertiary education tax assessments Nos. PPTBA/ED 64 for \$2,967,551.57; PPTBA/ED 66 for \$2,905,353.16; and PPTBA/ED 67 for \$2,224,499.15 for 2009, 2010, and 2011 tax years respectively, the subject matter of contention in this appeal.



Issues for Determination:

Did the Respondent apply the law correctly in its treatment of the expenses incurred by the Appellants to justify its issuance of additional tertiary education tax assessments on the Appellants?

Facts of the Matter in Brief:

The Appellants filed their PPT returns on OML-130 PSA Contract Area for 2009, 2010, and 2011 tax years and paid their Education Tax. The allowable expenses claimed in the returns included "sole costs" of \$151,345,130.54; \$148,173,010.91; and \$113,449,456.60 for the respective years – Exhibit 02 – 04. But the Respondent disallowed the "sole costs" and issued additional education tax assessments of \$2,967,551.57; \$2,905,353.16; and \$2,224,499.15 for 2009, 2010, and 2011 tax years respectively – **Exhibits 05**.

Parties' Arguments:

The Appellants submit that section 10 of PPTA allows all expenses wholly, exclusively, and necessarily incurred for the purpose of petroleum operations as deductible in the computation of adjusted profit of the OML-130 PSA contract area. Thus, an OML-130 party's solely paid expenses in the course of petroleum operations, which satisfy section 10 of the PPTA must be treated as deductible expenses in determining the PPT for the contract area. Also the said expenses incurred by the Appellants fall within the "operating costs" categorised under cost oil in section 8 of the Deep Offshore Act.

The Appellants also argue that the Respondent did not dispute or challenge the fact that the expenses were incurred by the Appellants for the purpose of petroleum operations. But the Respondent's disagreement is that the expenses were "sole costs".

The Appellants submit that section 3 of the Deep Offshore Inland Basin Production Sharing Contract Act, Chapter D3, Laws of the Federation of Nigeria 2004 (Deep Offshore Act) provides that: *"The petroleum profits tax payable under a production sharing contract shall be determined in accordance with the Petroleum Profits Tax Act ..."* The Appellants posit that this provision is applicable to the Appellants' OML 130 PSA by virtue of section 17 of the Deep Offshore Act.



The Appellants further argue that section 10 of PPTA and section 8 of DOIBA are neither inconsistent nor contradictory. That section 8 of DOIBA provides for allocation of cost oil and its quantum while section 10 of PPTA regulates allowable deductions in the determination of petroleum profit taxable. Thus the two provisions have not in any way limited or categorised costs or expenses to either "sole or joint cost". The Appellants assert that the yardstick for the determination of the deductibility of expenses is section 10 of PPTA and not any contract. The Appellants commend this Tribunal to its decision in **SPDC v FIRS Consolidated Appeals No. TAT/LZ/020/2014** delivered on October 27, 2015. Specifically where this Tribunal directed that *"the Respondent should discharge its duty to ascertain which expenses are wholly, exclusively and necessarily incurred for the purpose of petroleum operations in accordance with Section 20 of the PPT Act"*. The Appellants also cited **TAT/LZ/041/2014 – Mobil Producing Nigeria Unlimited v FIRS** – delivered on December 18, 2015 where this Tribunal held in summary that the only relevant consideration in determining whether an expense is deductible for tax purpose, is whether the law permits such deduction regardless of the dictates of the parties' contract.

The Respondent says that since the Appellants' sole cost are not allowed for cost oil allocations by the parties to the contract area, the same expenditure cannot be admissible for the determination of chargeable tax. The Respondent relied on section 8(1) of the Deep Offshore Act which provides that: *"Cost oil shall be allocated to the contractor in such quantum as shall generate an amount of proceeds sufficient for the recovering of operating costs in oil prospecting licences as defined in the production sharing contracts and any oil mining leases derived therefrom"*. Section 8(2) adds that *"All operating costs shall be recovered in US dollars through cost oil allocations in accordance with the terms of the production sharing contract"*. The Respondent believes that all costs for OML 130 have been settled through cost oil. Hence any other cost cannot be admissible for tax, even if the costs satisfies the wholly, exclusively, and necessarily tests, as it is inconsistent with the Deep Offshore Act. The Respondent also relies on section 15 of the Deep Offshore Act.

The Respondent also states that the PSC does not provide for sole costs as well since the parties operate a joint account.

Analysis and Decision:

The Appellants treated sole costs as deductible expenses in filing their PPT returns on OML 130 PSA for 2009, 2010, and 2011 tax years. But the Respondent



disallowed the sole costs and raised additional Education Tax assessments Nos. PPTBA/ED 64 for \$2,967,551.57; PPTBA/ED 66 for \$2,905,353.16; and PPTBA/ED 67 for \$2,224,499.15 for 2009, 2010, and 2011 tax years respectively.

The Respondent disallowed the sole costs because they are individual party's costs which are not recoverable under cost oil allocation. In addition, sole costs are not covered by the terms of OML 130 PSA. Thus, the Respondent says it doesn't matter even if the costs are wholly, exclusively, and necessarily incurred on petroleum operations on OML 130 PSA.

The Appellants maintain that section 10 of PPTA regulates deductibility of expenses in the determination of petroleum profit tax without exception. Thus, all costs, sole or joint, expended wholly, exclusively, and necessarily on petroleum operations are deductible.

In our past decisions on similar cases, we pronounced and upheld the supremacy of the PPTA in the determination of petroleum profit tax. In **SPDC v FIRS Consolidated Appeals Nos. TAT/LZ/020/2014 – TAT/LZ/023/2014** delivered on October 27, 2015 this Tribunal directed the Respondent to "... discharge its duty to ascertain which expenses are wholly, exclusively and necessarily incurred for the purpose of petroleum operations in accordance with Section 20 of the PPT Act". And this Tribunal's decision in **Total E & P Nig. Ltd & 3 Ors. v. FIRS – Appeal No. TAT/LZ/011/2013** delivered on 20th March, 2015 corroborates this position.

The Respondent foreclosed the import of section 10 of the PPTA in its decision to disallow the sole costs expended on OML 130 PSA by the Appellants. In computing petroleum profit tax, deductible expenses are determined on the basis of section 10 of PPTA i.e. WEN test, and not otherwise. The Respondent's decision to ignore section 10 of PPTA on the altar of it being "inconsistent" with sections 8 & 15 of DOIBA is lame. The DOIBA sections in context merely stipulate cost recovery process for the parties to OML 130 PSA and not petroleum profit tax computation mechanism.

Conclusion:

We vacate the additional education tax assessment Nos. PPTBA/ED 64 for \$2,967,551.57; PPTBA/ED 66 for \$2,905,353.16; and PPTBA/ED 67 for \$2,224,499.15 for 2009, 2010, and 2011 tax years respectively. Accordingly, we direct the Respondent to review the sole costs in the light of section 10 of PPTA and decide as appropriate.



Legal Representation:

Ibifubara Berenibara Esq. and Ms Adefolake Adewusi and J. Dasun Esq. for the Appellants.

Caroline Fabian for the Respondent.

DATED AT LAGOS THIS 1ST DAY OF MAY 2016



Kayode Sofola, SAN
Chairman



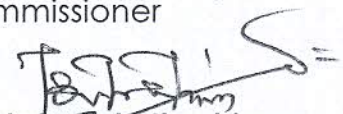
Catherine A. Ajayi (Mrs)
Commissioner



D. H. Gapsiso
Commissioner



Chinua Asuzu
Commissioner



Mustafa Bala Ibrahim
Commissioner

