IN THE TAX APPEAL TRIBUNAL
IN THE NORTH – EAST ZONE
HOLDEN AT BAUCHI

ON THE 18TH DAY OF FEBRUARY, 2014

BEFORE:	**HON. SULEMAN AUDU**	-	**CHAIRMAN**
	HON. HALIMA SA'ADIYYA MOH'D	-	**MEMBER**
	HON. ALH. ALIYU ABBAS BELLO	-	**MEMBER**
	HON. CHIEF NGOZI AMALIRI	-	**MEMBER**
	HON. CHIEF SUNDAY IDAM ISU	-	**MEMBER**

L. M. ERICSSON - - - - APPELLANT

AND

BAUCHI STATE BOARD OF INTERNAL REVENUE - RESPONDENT

JUDGMENT

SUMMARY OF FACTS

The Appellant commenced this action by a Notice of Appeal dated the 14th day of February 2013 and filed in the Tribunal same day. The Appellant being dissatisfied with the Tax Assessment, Demand Notice and the decision of the Respondent to distrain its business, appealed to this Tribunal seeking the following reliefs:

a. A declaration that the Respondent's Tax Assessment is unlawful;
b. A perpetual order of injunction restraining the Respondent from further attempting to assess or distrain the business of the Appellant in respect of any Taxes for the period 1998 to 2008;
c. And for further or other consequential orders as the Tribunal may deem fit.

Accompanying the Notice of Appeal, the Appellant filed a 31-paragraph Affidavit deposed to by Ms. Ominiyi Adejoro, the Human Resources Manager of L. M. Ericsson of N0. 17 Walter Carrington Crescent, Victoria Island Lagos. The Appellant filed additional seven (7) paragraph witness statement on Oath sworn to by Ms. Ominiyi Adejoro, on 14th August, 2013 and subsequent reply dated 20th November, 2013.

The Appellant sole witness testified to the Tribunal and was cross-examined by Respondent's counsel. The Appellant tendered 8 documents which were admitted in evidence and marked as follows:

a. **Exhibit 1:** Respondent's Letter of November 9th, 2012 received by Appellant on November 15th, 2012;

b. **Exhibit 2:** Appellant's Letter to Respondent dated November 20th, 2012

c. **Exhibit 3:** Respondent's Letter of December 31st, 2012 received by Appellant on January 9th, 2013;

d. **Exhibit 4:** Letter from the Appellant's Tax Respresentative, Messrs Adepetun Caxton – Martins Agbor & Segun's to the Respondent dated January 16th, 2013;

e. **Exhibit 5:** A letter from the Appellant's Tax Consultant Messrs, Pricewaterhouse Coopers dated January 30th, 2013

f. **Exhibit 6:** Respondent's Letter of February 4th, 2013 received by Appellant on February 7th, 2013;

g. **Exhibit 7:** Appellant's Letter to Respondent dated February 7th, 2013 notifying Respondent of the details of its Tax Representative;

h. **Exhibit 7A**: Appellant's Letter to Respondent dated February 7th, 2013 notifying Respondent of the details of its Tax Consultant.

i. **Annexure I:** Letter of 21st November, 2011 from the Respondent as Demand Notice on Tax Liabilities for PAYE, Withholding Taxes etc., from Tax Investigation for the years ended 31st December, 1998 – 2008.

The issues distilled from the Appellant's ground of appeal are as follows:

a. Can the respondent lawfully assess the Appellant to tax based on Best of Judgement (BOJ).

   It is pertinent to mention that Best of Judgement is a penal provision evoked where any assessee fails to furnish a statutory return in compliance with the law or furnishes a delayed return or fails to comply with returns on Notice requiring him to produce the books of account and documents or fails to comply with directive of the Tax Authorities to audit his account and establish his tax liability by a nominated auditor.

b. In the unlikely event that question (a) above is answered in the affirmative, then can it be said that the Respondent satisfied the standard that is required of a BOJ assessment under Nigerian law in the present circumstance?

c. In the unlikely event that questions (a) and (b) above are answered in the affirmative, can the Respondent's BOJ assessment then be deemed to have become final and conclusive in the circumstance that the Appellant did not object to the BOJ assessment within thirty (30) days of receipt.

d. Still in the unlikely event that the questions (a), (b) and (c) above are all answered in the affirmative, can the Respondent then lawfully assess the Appellant for arrears of tax in excess of six (6) years from the date of the receipt of its first Demand Notice in Exhibit 1, being November 15, 2012?

On his part, the Respondent acknowledged receipt of Notice of Appeal dated 14th day of February, 2013, and filed his response on 12th March, 2013, including a witness list and a nineteen (19) paragraph affidavit deposed to by Oluseyi A. Adegoke of SRA and Associate, the Respondent's Tax Consultants.

The sole witness of the Respondent Mr. Oluseyi A. Adegoke testified for the Respondent and was cross-examined by Appellant's Counsel. They tendered five (5) Exhibits.

a. **Exhibit 'BOIR 1':** Notification of Tax Investigation Exercise for the period 1998 – 2008, which was dated 7th April, 2011 which was received by the Appellant on 14th April, 2011.

b. **Exhibit 'BOIR 2':** A Best of Jugdement assessment, due to the appellant's refusal to provide relevant documents for inspection as indicated in the letter of demand, dated 21st November, 2011. The letter of demand also notified the Appellant to object within

thirty (30) days as provided by law, if they have reasons for doing so.

c. **Exhibit 'BOIR 3':** A copy of Respondent's current account with Guaranty Trust Bank Plc which showed a lodgment of N22,946,604.52 (Twenty-Two Million, Nine Hundred and Forty-Six Thousand, Six Hundred and Four Naira, Fifty-Two Kobo Only) on 8th December, 2011.

d. **Exhibit 'BOIR 4':** Respondent's letter calling Appellant to offset the remaining balance of N427,627,849.61, (Four Hundred and Twenty-Seven Million, Six Hundred and Twenty-Seven Thousand, Eighty Hundred and Forty-Nine Naira Sixty-One Kobo Only), dated 9th November, 2012.

e. **Letter** from the Respondent to the Appellant indicating intention to levy warrant of distrain and commencement of the recovery of outstanding liabilities, dated 31st December, 2012 received on 9th January, 2013.

All oral arguments and submissions of parties' Counsel are as contained in the transcripts of this Tribunal which form part of these proceedings.

In the mind of the Tribunal, there are two main issues that are germane to the satisfactory determination of this Appeal. Although there could be some other corollary issues that could arise under each of the main issues which the Tribunal will consider simultaneously together alongside the major issues formulated.

The issues are as follows:

1. *Whether the Appellant was present in Bauchi State in the period 1998 to 2008 to be liable in Tax to the Respondent.*

2. *Whether the Respondent satisfied the standard required of a BOJ assessment under the Nigerian law.*

ISSUE ONE:

The crux of this Appeal centered on whether the Appellant was present in Bauchi in the period 1998 to 2008. This issue is crucial because it is the tripod on which all other issues in this controversy are hinged. This is to the effect that the determination of this very issue has the tendency of bringing this case to an early resolution. The question to be determined at this juncture is whether the Appellant was actually in Bauchi State for the aforementioned period. In this case, the Appellant has consistently prevailed on the Respondent to produce evidence that Appellant was in Bauchi and whether or not the Appellant maintained such presence in Bauchi State during the period, 1998 to 2008, as to be liable in tax to the Respondent. Appellant's Counsel contended that the onus is on the Respondent to prove that L. M. Ericsson had the requisite presence in Bauchi State in the period 1998 to 2008 as to be liable to tax to the Respondent and discharged rest of the burden.

Appellant' Counsel posited that when the tribunal ordered the Respondent's witness to disclose to them the documentary proof if any or his oral accounts on the Appellants taxable presence in Bauchi State, he, after a while finally admitted that there was none. Appellant's Counsel asked if the judgment of such a Tax Consultant can

be trusted? Appellant Counsel argued that much of the disputes on the appropriateness of the Respondent's BOJ assessment and demand or its contention as to the finality and conclusiveness of the assessment and demand are core legal questions. Appellant's Counsel argued that the issues that the Honourable Tribunal will correctly have to ask and answer in arriving at a just determination of this case borders on the following:

a. He is not aware of how many employees the appellant had in Bauchi State in the period 1998 to 2008 even though he disputes L. M. Ericsson's claim that it did not have any employees in Bauchi State in the said period;

b. He is unaware of the names, residences or other particulars of L. M. Ericsson employees that he alleges were resident in Bauchi State in the said period;

c. During the period 1996 – 2002 when he was the Financial Controller of Inland Bank, he often met certain persons who said they were employees of L. M. Ericsson at his club house;

d. He is unaware of any vendors that were resident in Bauchi State that L. M. Ericsson engaged in the same period, although he assumes that L. M. Ericsson should have engaged vendors to build its base stations in Bauchi State; this is in spite of L. M. Ericsson's case that it is not in the business of owning base stations, but in installing them. Even at that, it did not have any contract to install base stations in Bauchi State in the period aforementioned;

e. There were certain confidential information on L. M. Ericsson activities in Bauchi State in the same period which he was not inclined to disclose. This is in spite of the Tribunal's insistance that he should disclose any such information in order to assist the Tribunal at arriving at the truth of the case;

f. Even though by paragraphs 4, 5, 6 and 7 of Mr. Adegoke's witness statement, he deposed that L. M. Ericsson executed several contracts and projects with "NITEL, ECONET (AIRTEL) and MTN" in the period 1998 – 2008. At cross examination, he said he neither has in his possession nor has he seen any documentation of such contracts or projects, but based on hearsay;

g. Even though he maintained that L. M. Ericsson had several base station in Bauchi State during the period 1998 to 2008, when asked about the identities of these base stations, he was unable to specifically mention any.

h. No documents exist with which he is able to establish L. M. Ericsson's activities in Bauchi State in the period 1998 – 2008 but that L. M. Ericsson had provided the respondent with excerpts of the contract executed by L. M. Ericsson and Airtel Nigeria Ltd for services to be rendered between August 2009 and May, 2011; and that such a contract should presuppose that L. M. Ericsson might have been in Bauchi State between 1998 and 2008! This is in spite of L. M. Ericsson clear position that while some of its employees were indeed resident In Bauchi sate between the period August 2009 and May 2011, none were however resident in Bauchi State between the period of 1998 and 2008 which is in dispute.

The Respondent's Counsel on the other hand submitted that the Appellant was in Bauchi from 1998 to 2008 and engaged in business while having its staff resident as well. He stated that the Appellant deliberately refused to file any return as it affects Personal Income Tax of its employees and Withholding Tax (WHT) to the Board. He further submitted finally that the Statutory Notices were served on them which they equally ignored, when the tax became due and collectible but rather chose to run to the Tribunal seeking to be shielded from statutory obligation to the Board.

Having stated that the focal point of this appeal is woven around the Appellant's presence in Bauchi State, we shall now consider the parties argument as placed before the Tribunal. The Appellant has challenged the Respondent to furnish the Tribunal with the particulars and or necessary information of its presence in Bauchi State. In this case, it is the contention of the Respondent that the Appellant were in Bauchi State during the period earlier mentioned, But in disputing this contention, Appellant implored the Respondent to furnish it with facts establishing their presence in Bauchi State in the period 1998 to 2008.

However, in the defense of its contention, the Respondent claimed that the source of its information was from clubs, gossips and other unconventional means. Under cross-examination the Respondent's witness stated inter alia as recorded:

> *"I did not say I know the details of those staff, and even if I know them, it has been years since that time. I use to interact with them and they used to tell me that they are from L. M. Ericsson. I also know too that NITEL got a quarter for them, located inside the premises"*

Further cross- examination goes thus:

RESPONDENT' WITNESS: *They live in NITEL Premises. That is the answer.*

APPELLANT'S COUNSEL: *But you have no proof of that!*

RESPONDENT WITNESS: *I do not have documentary proof*

When asked further on cross examination, the Respondent witness was asked whether he knows the details of Appellant's staff, the Respondent replied thus:

RESPONDENT WITNESS: *I do not say I know the details of those staff, and even if I know them, it has been years since that time. I used to interact with them and they used to tell me that they are from Ericsson. I know too that NITEL got a quarter for them, located inside the same premises.* At this juncture the Respondent further admitted that he has no proof of them.

Arising from the foregoing, it is our considered view that the burden of proof lies on the Respondent to proved that the Appellant had the requisite presence in Bauchi State and had taxable employees during the period. This is to the effect that the Respondent has not proved to the Tribunal either by oral or documentary evidence that Appellant were in Bauchi State. More so, the Respondent has failed to place before the Tribunal detailed information regarding the suppliers or vendors who were resident in Bauchi State for purposes of Withholding tax, as to be liable for not deducting same from the relevant sums paid to the said suppliers or vendors and or remitting same to the Respondent;

In the same vein, the Respondent was unable to prove whether Appellant maintained any business premises in Bauchi State in the 1998 to 2008 years of assessment as to be liable for the payment of any business premises registration levy to the Bauchi State Government. The Respondent also was unable to supply any facts linking the Appellant to the ownership of any base station in Bauchi State. On the issue of contract execution by Appellant, the Respondent, though contended that Appellant executed several contracts in Bauchi State, the Respondent could not provide a single shred of evidence to establish this serious claim. The Respondent could not also confirm the residential address or place of business of the Appellant. The Respondent has severally stated in their written and oral submissions that Appellant was in Bauchi State but they have

not advanced any evidence, collateral or corroborative to support same.

It is the law that averments in pleadings are not evidence; evidence is not required to be pleaded. Hence, averment in pleadings in respect of which evidence is not led or adduced, are deemed abandoned. In other words, evidence adduced in a case must support the pleadings or be in line with the pleadings as a party is expected to give evidence that is within the periphery of his pleading and not beyond. Where evidence is adduced beyond party pleading, then the court must ignore such evidence as it must be regarded as going to no issue. More so a party failing to adduce evidence in support of averment in his pleading is deemed to have abandoned same. See **U. B. A. Plc. Vs G. S. INDUSTRIES (NIG) LTD.** (2011) 8 NWLR Part 1250; Pp 615 PARAS:B-D

Averments in pleadings are facts as perceived by the party by relying on them. However, there must be oral and or documentary evidence to show that the facts pleaded are true. Consequently, pleadings without evidence in support are worthless. See **CAMEROON AIRLINES Vs OTUTUIZU (**2011) 4 NWLR (Part 1238) Pp. 544 Para G.

In the instant case, as earlier stated the Respondent have failed to place before the Tribunal those convincing factors to enable the Tribunal to believe that indeed the Appellant were in Bauchi State in the period. There was no record placed before the Tribunal to prove emphatically that the Appellant were present in Bauchi State for the disputed years. What the Respondent have demonstrated is akin to an IFA Oracle, that is, taking to speculations, hearsay, conjecture and other unconventional means in order to establish the presence of Appellant in Bauchi State.

In this case the onus is on the Respondent to furnish this Tribunal with necessary details of Appellant purported activities in Bauchi during the period. The Respondent has failed to discharge this burden.

Where a party adduced evidence that goes to show the existence of a document in proof of his case, the document should be tendered. Pursuant to the provision of section 149(d) of the Evidence Act, evidence which could be produced but is not produced is presumed to be against the interest of the party withholding the same. In the instant case, under cross examination, the Respondent compounded his claim by stating that he possessed information that supports his claims which he is not going to disclose to the Tribunal. Even when the Tribunal insisted on same to be disclosed, the Respondent tactically dodged disclosing same to the Tribunal. This shows that the Respondent has no document to ground his claim.

It is our humble view that all of RW1, Mr. Adegoke's oral accounts of "projects and contracts" as contained in paragraphs 4,5,6 and 7 of his witness statement were during cross-examination discovered to be mere illusions. Unsubstantiated information that Mr. Adegoke said he got from his club house since 2002! Under cross –examination when asked whether for the purposes of his "tax investigation" he visited his named counterparties of the appellant to wit: "NITEL, ECONET (AIRTEL) AND MTN" in order to determine whether there were any such "projects and contracts" he responded that the information he got was confidential. In effect, the Respondent lacked the prerequisite evidence of Appellant's present in Bauchi State.

The court of Appeal in **UNION BANK PLC Vs PROF A. O. OZIGI** (1994) 3 NWLR (Part 333) @386 Ratio 2. Stated thus:

> *This onus, however does not remain static in civil cases, it shifts from side to side where necessary and the onus of adducing further evidence is on the person who will fall if such evidence was not adduced and if he fails to prove the assertion the proper order which the court should make is the one of dismissing the claim.*
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> See also **OKIRI Vs IFEAGHA** (2001) FWLR (Part 73)@140 Ratio 3&4.

Flowing from the foregoing, it is our considered view that the Respondent has failed to advance convincing evidence to show that

Appellant was present in Bauchi State for the period 1998 to 2008. We therefore resolve this issue in favour of the Appellant.

ISSUE TWO

Whether the Respondent satisfied the standard required of BOJ under the Nigerian law.

In this case, having established that the Appellant had no presence in Bauchi State in the period in dispute, it suffices that all the assessments or figures arrived at by the respondent are null and void as same are based on highest level of fabrication by the Respondent's Witness. It would be a mere academic exercise embarking on analysis or determination of this issue.

This is because having resolved the first issue in favour of Appellant, all other issues and contentions raised by the Respondent have collapsed in the face of the non existence of the Appellant in Bauchi during the period in contest.

Accordingly, it is desirable that the Tribunal in determining this issue would limit itself to Appellant's Tax liability in the period 1999 to 2011.

On this issue and for the avoidance of doubt, the Appellant is not a Taxable person as an employer by the provisions of PITA Section (3) (4) (5). This is with respect to emolument or other income recoverable by deduction.

However, the question to be determined at this Juncture is whether the Respondent was fair in assessing the Appellant on BOJ.

On this issue the Appellant's counsel submitted that in relation to PAYE tax, the law is that deductible taxes are as ascertained by a Relevant Tax Authority (RTA) and for which the RTA issues an employer, a Tax Deduction Card ("TDC") in respect of each employee

in the employer's employment. It is then the employer's responsibility to deduct the taxes due from the emoluments of its employees as required by RTA and remit same to it. He refers the Tribunal to section 56(4) and (5), and 81 of PITA; regulations 2, 3, 4, 5, 7 and 16 of the PAYE regulation and **NIGERIAN BREWERIES PLC Vs L. S. I. R. B.** (supra) at page 17, paragraph H.

The Counsel to the Appellant argued that the responsibility for the tax assessment of employee's resident within the jurisdiction of the RTA is that of the RTA. He stated that the tax assessment mentioned above has no basis in section 54 of PITA and accordingly a **BOJ** assessment is inconceivable. He submitted that upon assessment, the RTA imposes the *obligation* on the employer to deduct and remit certain ascertained sums from the emolument of the employees on a monthly basis; Tax Deduction Cards are meant to be kept for recording of the deductions made. He posited that it is where the employer fails to discharge its obligation that such obligation becomes a financial liability in the hands of the employer; The learned counsel to the Appellant submitted finally that where the employer fails to either discharge its obligation or settle its financial liability, the RTA after due demand, may institute a debt recovery action against the employer, for the sum that might have been ascertained by the RTA as the employer is expected to make good such non-deduction, under- deduction on non remittance of PAYE deduction to the RTA.

The Respondent's counsel in his response stated that it is apparent that the Respondent carried out a Tax assessment based on BOJ. And that the assessments in dispute were raised by the Board in default of

returns of income by Appellant. The learned counsel contended that it was open to Appellant on receiving the notices of assessment to apply by objection in writing to the Appellant under **Section 58 of PITA** to review and revise the assessment made by the Respondent. He stressed further that the Appellant did not object in writing to the assessments within the time stipulated by law. This is to the effect that the amounts of the estimated assessable income became final and conclusive when no valid objection or appeal had been lodged within the prescribed time. Counsel refers the Tribunal to the case of **FBIR V. AZIGBO BROTHERS LTD. (1962) ATC 88**

Learned Counsel to the Respondent submitted that the Respondent is not unmindful of the tax officers making best of judgment assessments must not be arbitrary and extraneous. And that they must ensure that it is based on a fair reasonable percentage of an individual income for the relevant year. Counsel submitted further that they must be able to take into consideration knowledge of the local environment in regard to the assessee's circumstance and his own knowledge of previous returns. He posited that under the law a tax payer has the right to disagree with assessment as being arbitrary or out of touch with reality. Notwithstanding the fact that the Appellant failed to object within the statutory period of thirty (30), the fact that the BOJ was nullifies and invalidates.

Flowing from the foregoing, the pertinent question to ask at this juncture is whether the **BOJ** carried meets the required standard and in line with the provisions of the law? The answer is in the negative. In this appeal it is crystal clear that Section 54(1) and (2) provide for

assessment of income Tax. It is under the above section that a BOJ is raised. By virtue of being an employer, the best of Judgment cannot be raised against the Appellant because the Appellant is not a taxable person. It is only when the employer fails to remit or deduct the Tax to the Respondent that an employer becomes chargeable. Failure to effect same does not also make him to be a Taxable person under Section 54 3& 4 of PITA. In view of the above, the assessment raised against the Respondent lacked merit as same is not a true reflection of the law. The issue of assessment of Personal Income Tax payable by a taxable person is a matter between the Tax authority where the person resides, and the Taxable person, the Tax payer. It has nothing to do with the employer. There is no doubt that charging of Tax is governed by statutes which ought to be followed strictly to avoid administering wrong principles of Taxation on Tax payers. Furthermore, it is the law that assessment of Tax is the duty of the Tax Authority and is the Tax payable by the Taxable person that the authority assesses. The Appellant owes no duty to the Respondent to give notice for any Tax assessment of the personal income recoverable from its employees. If such an assessment is required, it is a matter between the Tax authority and the employee. We therefore resolve and hold this sub issue against the Respondent.

The Respondent alleged that it served the Appellant notification of Tax investigation exercise for the year ended 31st December 1998 to 2008 schedule for 28th April, 2011.

In April, 2011 the Respondent contended that it served the Appellant a notice of its intension to carry out tax investigations on the activities

and operations of the Appellant for the period 1996 to 2008. The Respondent claimed that the Appellant refused to oblige her with the necessary information to enable her access the Appellant's tax liability. The Appellant was thereafter served with a demand notice on tax liabilities for the years 1998 to 2008 which were computed on a best of Judgment assessment (BOJ) to the tune of N450,574,452.13 (Four Hundred and Fifty Million, Five Hundred and Seventy-Four Thousand, Four and Fifty-Two Naira, Thirteen Kobo Only) due to the appellant's refusal to provide the relevant documents for inspection.

The contention in this sub issue is whether the schedule of Tax liability sent to the Appellant was for the period 1998 to 2008 or for year 1999 to 2011. The Appellant Counsel in his oral submission stated that they sent a schedule to Respondent Tax Consultant between July and August 2011 and the schedule was to particularized all the employees of Appellant that were in Bauchi State between August 2009 to May 2011 and the amount came to N22,000,000.00 (Twenty-Two Million Naira Only) which the Appellant paid to the Respondent in December 2011.

Appellant Counsel stated that the Respondent's reference to Appellant's payment of the sum of N22,946,604.52 (Twenty-Two Million, Nine Hundred and Forty-Six Thousand, Six Hundred and Four Naira Fifty-Two Kobo Only) to the Respondent on December 8th, 2011 is of no value as it is Appellant's case that the monies were paid in lieu of the Appellant's PAYE tax remittance to the Respondent in respect of employees of the Appellant who were resident in Bauchi State between August 2009 and May 2011; the period which is not the basis

of the dispute in this suit. Appellant stated that the N22,946,604.52 (Twenty-Two Million, Nine Hundred and Forty-Six Thousand, Six Hundred and Four Naira Fifty-Two Kobo Only) was paid in recognition of the Respondent's demand for the sum of N427,627,849.61 (Four Hundred and Twenty-Seven Million, Six Hundred and Twenty-Seven Thousand, Eight Hundred and Forty-Nine Naira, and Sixty-One Kobo Only). He submitted that for the Respondent to now consider the payment of this sum a tacit acknowledgement of *indebtedness* is absolutely illogical.

The Respondent on the other hand has contended that the sum of N22,000,000.00 (Twenty-Two Million Naira Only) the Appellant paid was in respect of its Tax liability on account of 1998 to 2008 years of assessment.

From a glossary look and consideration of this issue, the intendment of the Appellant's payment made is in response to its Tax obligations covering the period 2009 to 2011. This can be gleaned from the Appellant 's letter to the Respondent dated July 16th, 2003 after the Appellant received Respondent's notice stating the sum of N450,000,000.00 (Four Hundred and Fifty Million Naira Only) which was later scaled down to N427,000,000.00 (Four Hundred and Twenty-Seven Million Naira Only). On this issue, the Respondent could not explain which year of assessment the tax is being charged. The Respondent deliberately created the virement to make the Appellant liable to Tax in years 1998 to 2008.

From our humble opinion, the schedule the Appellant sent to the Respondent was in relation and response to 2009 and 2011 years of

assessment. The Respondent cannot result to virementon Appellant's Tax liability. The Respondent cannot claim any Tax in the period 1998 to 2008 because of the disability suffered by the 1998 to 2008 assessment which makes it to lack merit. The legitimate issue here is Appellant's Tax liability from 2009 to 2011 which the Appellant has complied with.

Another bone of contention is the Appellant's failure to respond within thirty (30) days. Appellant's counsel submitted that it is an error of law for the Respondent to state that its BOJ assessment has become final and conclusive if it received no objection after 30 days of service of a tax assessment. This is owing to the express repeal of the erstwhile applicable section 66 of PITA by section 15 of PITA 2011 before its amendment.

He stated that on June 14, 2011 and indeed before the Respondent BOJ assessment dated November 21, 2011 (see exhibit BOIR 1), a new dispensation in the Personal Income Tax regime took effect with the commencement of the Personal Income Tax (Amendment) Act, No. 20 of 2011 ("PITA 2011") Section 15 of PITA 2011 provides: "section 61-67 of the principal act are deleted"; thereby bringing to an end the final and conclusive tax element of our laws on personal income tax.

The learned Counsel to the Appellant stated that it is on the foregoing premise that we submit that the BOJ assessment received by the appellant from the respondent on November 28th, 2011 has not become final and conclusive in the circumstance that the appellant did not object to the assessment within thirty (30) days. Counsel stated

that the assessed sum can be legitimately disputed as is currently being done in this case.

In addressing this issue, we have perused the content of Exhibit 4, and arising from the foregoing it can be rightly said that the Appellant disputed BOJ assessment in the sum of ₦427,627,849.61 (Four Hundred and Twenty Seven Million, Six Hundred and Twenty Seven Thousand, Eight Hundred and Forty Nine Naira, Sixty One Kobo Only) as being frivolous and vexatious in the circumstance that no judgment founded on verifiable facts or a determinable standard of reasoning was utilized in raising the BOJ assessment. It is the reasoning of the Tribunal that the assessment was not final and conclusive and the Best of Judgment therein raised against the Appellant is of no effect considering the objection raised against same. The BOJ raised against the Appellant does not conform with the requirement of the law and as such is a complete misrepresentation of facts.

The next sub issue is on whether this action is statute barred. In order to determine the period of limitation, one has to look at the writ of summons and the statement of claim alleging when the wrong was committed which gave the plaintiff a cause of action by comparing that day with that in which the writ of summons was filed. If the time on the writ is beyond the period allowed by the limitation law then the action is statute barred. The period of limitation in respect of any particular action will begins to run from the date the cause of action accrued. And the period is not broken by any subsequent accruing disability. See **OGBORU Vs S. P. D. C.** (2005) 17 NWLR, Part 955, Pp. 615, Paras; C-D, 691-620, Paras: C-D

It is the contention of Appellant's counsel that the Respondent cannot make an argument that its claim in this Suit is for recovery of a debt in which case the law sets a limitation period of 6 years. He stated that Respondent has not rightly stated the position of Nigerian law in relation to the computation of time for purposes of limitation of actions.

The Respondent's counsel responding to Appellant contention above argued that the statute of limitation cannot avail the Appellant because a valid acknowledgment of debt has the effect of reviving the cause of action which would have been otherwise statute barred if not for the acknowledgement. Placing reliance on the case of **THADANI NATIONAL BANK** (1972) NSCC 28@32 the learned counsel submitted that before an act could be described as an acknowledgement to take the case out of the contemplation of the statute of limitation, the act by the debtor should recognized the existence of the debt or the right against him.

However, in the tax cases and without prejudice to the aforesaid, there is no debt that is statute-barred since the revenue belongs to the commonwealth of the state.

Arising from the foregoing, it is the decision of the Tribunal that Tax laws are strictly interpreted in accordance with the letters of the law. And since the BOJ is baseless ab initio, we resolve this case in favour of the Appellant.

On the whole we note the following:

1. That the Respondent has failed to prove satisfactorily that the Appellant maintained a presence in Bauchi State from 1998 to 2008.
2. That the Appellant is liable to pay Tax to Respondent only from 2009 to 2011.

The Tribunal holds that the purported assessment and Best of Judgment (BOJ) charged on Appellant (L. M. Ericsson Nigerian Limited) in the period 1998 to 2008 has no basis in law and accordingly same is hereby dismissed.

This is the Judgment of the Tribunal.

RIGHT OF APPEAL

Any party dissatisfied with the decision of the Tribunal may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to the Secretary within thirty days from the date on which such decision was given.

Dated this 19th day of February, 2014

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HON. SULEMAN AUDU

CHAIRMAN

Certified True Copy
TAX APPEAL TRIBUNAL
NORTH EAST ZONE, BAUCHI
Name A. Jari
Rank Sec
Address TAT B
Signature
Date 17/11/15