

IN THE TAX APPEAL TRIBUNAL

SOUTH-EAST ZONE

HOLDEN AT ENUGU

APPEAL NO. TAT/SEZ/001/11

BETWEEN:

FEDERAL INLAND REVENUE SERVICE..... APPELLANT

AND

P.C OBIOHA FOUNDATION LTD ..... RESPONDENT

BEFORE THEIR HONOURS

Chairman: Prof. C. J. Amasike  
Commissioners: Ignatius Chibututu, Esq.  
Dr. (Mrs.) Josephine A. A. Agbonika  
Prof. Eddy Omolehinwa  
Ngozi I. Amaliri Esq.

JUDGMENT

The Appellant is a statutory body established under the Federal Inland Revenue Service Act, 2007 and is vested with the powers to among others, administer and manage Education and Companies Income Tax Act. It is empowered by the Act to do such things as may be necessary and expedient for the proper assessment and collection of Education tax and Companies Income Tax and account for the entire amount so collected to the Federal Government of Nigeria.

The Respondent is a company registered in Nigeria under the Companies and Allied Matters Act with its registered office at No. 11/13 Pat Amadi Crescent, Ikenegbu Layout Owerri and at all times material to this suit, the Respondent carried on inter alia the business of hospital, laboratory and other related services

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TAX APPEAL TRIBUNAL	
SOUTH EAST ZONE	
Sign <i>[Signature]</i>	Date <i>18/4/18</i>
Name <i>Uche Ukwu</i>	
Designation: <i>Secretary</i>	

By virtue of the nature of its business the Respondent is liable to pay companies income tax and Education tax but refused to do so despite several letters to wit, notice of assessments, demand notes and final demand note.

The matter was instituted on 13<sup>th</sup> July, 2011 by the Appellant claiming against the Respondent the sum of Four Million, Two Hundred and Ninety-six Thousand, Seven Hundred and Ninety-five Naira, Three Kobo (₦4,296,795.03) being companies income tax and education tax for the period of 2002 – 2007 respectively.

Throughout the proceedings, the only time the Respondent was represented was at the sitting of the Tribunal held on the 26<sup>th</sup> October, 2011. On this day, a representative of the Respondent named; Onuoha Solomon, an accountant in the Respondent company, came to the tribunal, to seek for an adjournment upon a claim that he did not understand the proceedings and wanted to consult a lawyer. Thereafter, no one appeared again for the Respondent.

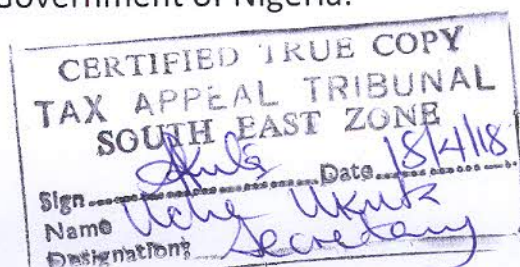
Various processes which were filed by the Appellant counsel included the Notice of Appeal dated 5<sup>th</sup> July, 2011, Witness Statement on Oath dated 20<sup>th</sup> April and filed on 13<sup>th</sup> July, 2011 and the Appellant Final Written Address dated 23<sup>rd</sup> November, 2012.

**The appellant's grounds of appeal are hereunder reproduced.**

THAT the Respondent has the responsibility to pay Companies Income Tax and Education Tax but refused, failed or neglected to settle his Companies Income and Education Tax for the period of May 2002 to May 2007 which amounts to the sum of Four Million, Two Hundred and Ninety-six Thousand, Seven Hundred and Ninety-five Naira, Three Kobo (₦4,296,795.03).

To support this claim, he stated the following particulars:

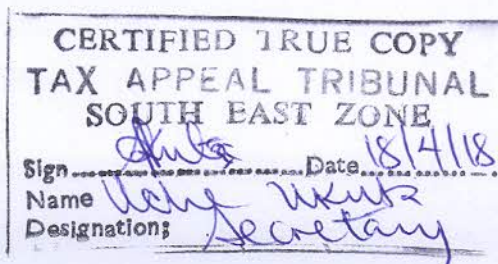
- i. The Appellant is a statutory body established under the Federal Inland Revenue Service Act, 2007 and is vested with the power to administer, manage and collect companies income and Education taxes.
- ii. The Appellant is empowered by the Act to do such things as may be necessary or expedient for the proper assessment and collection of company income tax and Education tax and account for the entire amount so collected to the Federal Government of Nigeria.





- iii. Sequel to (ii) above, the Appellant is also empowered by the Act to conduct a routine tax Monitoring/Compliance Exercise on all companies that deal in taxable goods and services and ensure that the companies pay their tax to the Appellant as required by the law.
- iv. The Respondent is a company registered in Nigeria under the Companies and Allied Matters Act with its registered office at No.11/13 Pat Amadi Crescent Ikenegbu Layout Owerri.
- v. At all times material to this suit, the Respondent carried on inter alia the business of Hospital and Laboratory services and by virtue of the nature of its business the Respondent has the Responsibility to pay company income tax and Education tax.
- vi. The Respondent failed, refused or neglected to pay its companies income and Education taxes for the period of 2002 – 2007 respectively despite several letters to wit; Notice of assessment for company income tax and Education tax for relevant years of assessments, Demand notes for company income tax and Education tax for the relevant years, Final Demand note dated 20<sup>th</sup> January, 2011. The Appellant gave notice to Respondent to produce the original copies of the letters at the trial.
- vii. Due to failure of the Respondent to comply with the provisions of the law, the Appellant referred the case to its legal department for commencement of recovery proceedings against the Respondent.
- viii. The failure and/or refusal of the Respondent to comply with the provision of the Law amounts to tax evasion and a gross violation of the law.
- ix. The said sum of Four Million, Two Hundred and Ninety-six Thousand, Seven Hundred and Ninety-five Naira, Three Kobo (₦4,296,795.03) is still outstanding and has become a debt owed by the Respondent to the Federal Government of Nigeria.
- x. The Appellant claims against the Respondent the immediate payment of Four Million, Two Hundred and Ninety-six Thousand, Seven Hundred and Ninety-five Naira, Three Kobo (₦4,296,795.03) as company income tax and Education tax for the period of 2002 – 2007 plus cost of prosecuting this suit.

As a result of the above claims, the appellant sought the following reliefs from the Tribunal:





- a. Order of the tribunal compelling the respondent to immediately pay the sum of Four Million, Two Hundred and Ninety-six Thousand, Seven Hundred and Ninety-five Naira, Three Kobo (~~N4~~,296,795.03) as company income tax and Education tax for the period of 2002 – 2007.
- b. Cost of this litigation.
- c. Any other Order(s) as the Tribunal may deem fit to make in the circumstance.

On 25<sup>th</sup> January, 2012, the Appellant moved its motion dated 5<sup>th</sup> July, 2011 and filed on 13<sup>th</sup> July, 2011 for regularization. Several hearing notices were thereupon served on the Respondent to enable them enter appearance all to no avail.

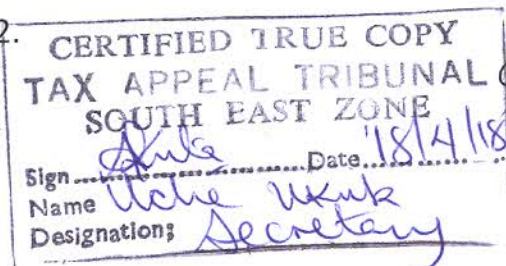
The Appellant thereupon applied to open his case, which was granted by the Tribunal. The Appellant called a witness, Augustine M. Embugu, a staff of the Federal Inland Revenue Service, in charge of Integrated Tax Office, Owerri Imo State.

In testifying, on 14<sup>th</sup> August, 2012, he adopted his Witness Statement on Oath dated 20<sup>th</sup> April, 2011 and tendered documents showing the debt of the Respondent and all the correspondence from the office including demand and assessment notices served on the Respondent to pay its debt. The documents tendered, and admitted included the Final Demand notice marked Exhibit "A" and "A1"; Notice of Assessment for 2002, marked Exhibits "B", "B1 to B4"; Notice of Assessment for Education Tax from 2002 - 2007 marked Exhibits "C", "C1 to C4" and Financial Statement for 2001 – 2006 marked Exhibits "D", "D1 to D5". The Appellant then closed its testimony.

The Tribunal thereupon adjourned to 13<sup>th</sup> September, 2012, for cross-examination of the witness.

The Appellant witness was discharged on 11<sup>th</sup> November, 2012 when the Respondent did not come to court on that day to cross-examine him. Matter was adjourned to 26<sup>th</sup> November, 2012, for defence. On 26<sup>th</sup> November, 2012, the Respondent did not show up to enter their defence.

On 25<sup>th</sup> June, 2013, the Appellant adopted its final written address dated 23<sup>rd</sup> November, 2012, and filed 26<sup>th</sup> November, 2012.



## ISSUES FOR DETERMINATION

THE SOLE ISSUE IDENTIFIED FOR DETERMINATION BY THE APPELLANT WAS;

- Whether the Appellant is entitled to claim Companies Income Tax and Education tax against the Respondent in this matter.

## ARGUMENT

To determine this, the Appellant's counsel submitted that it is empowered by the law to institute action against any company that fails to pay its companies income tax and education tax as provided by the law.

**Section 25 (1)** of the Federal Inland Revenue Service (Establishment) Act 2007 provides;

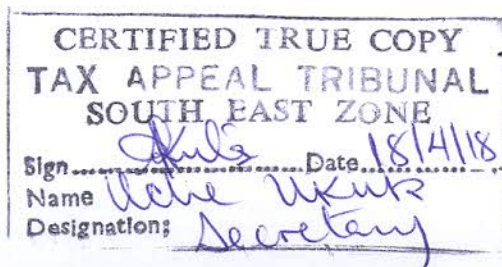
**The Service shall have power to administer all the enactments listed in the First Schedule to this Act and any other enactment or law on taxation in respect of which the national assembly may confer power on the service.**

Companies Income Tax Act is item number one in the First Schedule of Federal Inland Revenue Service (Establishment) Act 2007 which also governs companies income tax.

**Section 9 of C. I. T. A** provides;

**Subject to the provision of this Act, the tax shall for each year of assessment be payable at the rate specified in subsection (1) of section 40 of this Act upon the profit of any company accruing in, derived from, brought into or received in Nigeria in respect of (a) any trade or business.**

The Respondent is a company registered in Nigeria under the Companies and Allied Matters Act with its registered office at NO. 11/13 Pat Amadi Crescent, Ikenegbu Layout Owerri. At all times material, the Respondent carried on inter alia, the business of Hospital, laboratory and other related services. By virtue of the nature of its business the Respondent is liable to pay Companies income tax and Education tax but the Respondent failed to pay its tax liabilities for the period of 2002 - 2007 respectively.



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The Appellant maintained that based on the legal provisions cited above, the Service has the power to institute action against the Respondent for failure to pay the said taxes, and prayed the Tribunal for an order against the Respondent for the immediate payment of Four Million, Two Hundred and Ninety-six Thousand, Seven Hundred and Ninety-five Naira, Three Kobo (₦4, 296, 795. 03) as Company income tax and Education tax for the period of 2002-2007 plus cost of prosecuting this suit.

We have given a careful and insightful consideration to the sole issue formulated by the Appellant and adopt it as having been well founded.

The Appellant submitted that the tax debt of Four Million, Two Hundred and Ninety-six Thousand, Seven Hundred and Ninety-five Naira, Three Kobo (₦4, 296, 795. 03) standing against the Respondent has become due and payable to the Federal Government of Nigeria.

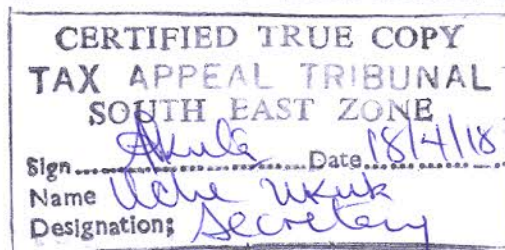
He argued that failure or refusal to render returns and remit companies income tax and Education tax all constitute a breach of the Companies Income Tax Act of 2004 As Amended and the Education Tax Act, which default attracts penalties. See Section 92, of Companies Income Tax Act And Sections 10 & 11 of The Education Tax Act.

#### Section 92CITA:

(1) Any person guilty of an offence against this Act or any person who contravenes or fails to comply with any of the provisions of this Act or of any rule made there under for which no other penalty is specifically provided, shall be liable on conviction to a fine of ₦20,000.00, and without prejudice to Section 55 (4) or (5), where such offence is the failure to furnish a statement or information or to keep records required, a further sum of ₦2,000.00 for each and everyday during which such failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order.

(2) Any person who-

(a) Fails to comply with the requirements of a notice served on him under this Act; or



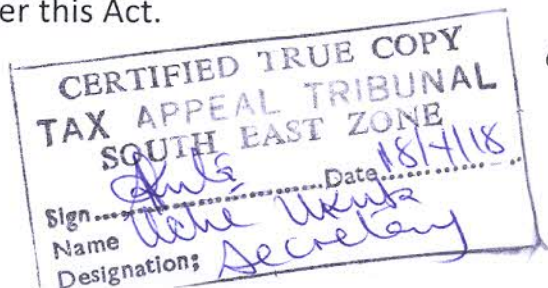
- (b) Without sufficient cause fails to attend in answer to a notice or summons served on him under this Act or having attended fails to answer any question lawfully put to him, shall be guilty of an offence against this Act.
- (3) Notwithstanding any of the provisions of the Criminal Procedure Act or any other applicable law, a magistrate may dispense with personal attendance of the defendant if he pleads guilty in writing or so pleads by a legal practitioner.
- (4) In the case of failure by a company to comply with the requirements of any notice given by the Board under the provisions of section 55 or 58 of this Act for the purpose of the tax to be charged upon the company for any year of assessment, the Board may, in lieu of the institution of proceedings under subsection (2) of this section, impose a penalty upon the company of an amount equal to the tax chargeable upon the company for the preceding year of assessment:

Provided that-

- (a) Written notice of the penalty shall be served upon the company;
- (b) Any amount of such penalty remaining unpaid thirty days after service of such notice may be sued for and recovered in a court of competent jurisdiction by the Board in its official name with full costs of action from the company liable thereto as a debt due to the Government of the Federation; and
- (c) A certificate signed by an officer of the Federal Inland Revenue Service duly authorized by the Board setting out the name and address of such company, the date of service of the said notice, and the amount of the penalty remaining unpaid shall be sufficient authority for the court to give judgment for that amount; and
- (d) The Board may remit the whole or any part of such penalty, before judgment, for any reason which appears to it to be adequate.

#### Section 10(1) ETA:

A person who contravenes or fails to comply with provisions of this Act is guilty of an offence under this Act.





## Section 11 ETA:

- (1) Except as otherwise provided in this Act, a person who is guilty of an offence under this Act shall on conviction be liable-
  - (a) For a first offence, to a fine of ₦10,000 or imprisonment for a term of three years;
  - (b) For a second and subsequent offence, to a fine of ₦20,000 or imprisonment for a term of five years or to both such fine and imprisonment.
- (2) The institution of proceedings or imposition of a penalty under this Act shall not relieve a company from liability to pay to the Board a tax which is or may become due under this Act.

It is the evidence, before this Tribunal that the Respondent between the year 2002-2007 failed, refused or neglected to pay its company income and Education tax, which sum totals Four Million, Two Hundred and Ninety-six Thousand, Seven Hundred and Ninety-five Naira, Three Kobo (₦4, 296, 795. 03).

He referred the Tribunal to the written statement on Oath of the witness as adopted and other documents attached. He also relied on assessment notices and demand notices for the Companies Income Tax and Education Tax for the relevant years which were also raised and served on the Respondent.

A perusal of the witness statement on oath especially from paragraphs 8-10, show the Companies Income Tax and Education Tax liabilities had arisen against the Respondent. They are hereby reproduced for clarity.

8. The Respondent failed, refused or neglected to pay its companies income and Education tax for the period of 2002 - 2007 respectively despite several letters to wit, Notice of assessment for Companies Income Tax and Education tax for relevant years of assessment, Demand notes for Company Income Tax and Education Tax for the relevant years, Final Demand notes dated 20<sup>th</sup> January, 2011. The Appellant gave notice to Respondent to produce the original copies of the letters at the trial.

9. Due to failure of the Respondent to comply with provision of the law, the Appellant referred the case to its legal department for commencement of recovery proceedings against the Respondent.

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Designation: <i>Secretary</i>	



10. The said sum of Four Million, Two Hundred and Ninety-six Thousand, Seven Hundred and Ninety-five Naira, Three Kobo (N4, 296, 795. 03) is still outstanding and has become a debt owed by the Respondent to the Federal Government of Nigeria.

In the face of unchallenged evidence of the Appellant in this regard, the evidence of the Appellant stands.

The case of **Yusuf vs State (2012) All FWLR (pt.641) 1478 at 1505** expressed the legality in a court's decision to go ahead to act on uncontroverted evidence where the Court of Appeal stated thus:

**The law gives a court the license to act and rely on unchallenged evidence to arrive at a decision; see also *Tanko vs. State (2009) All FWLR (Pt.456) 197*, which was relied on.**

In the same light the Supreme Court held that the Court has the duty to accord credibility to uncontroverted evidence of parties in **Akinboye vs. Adeko (2012) All FWLR (Pt.636) 522 at 540** thus:

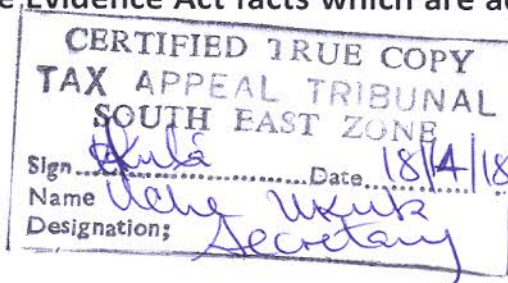
**It is trite that when evidence given by one party is not contradicted or controverted by the other party who has the opportunity to do so and such evidence is not inherently incredible and does not offend any rational conclusion or state of physical things, the court should accord credibility to such evidence.**

From the provisions of the authorities above cited it is obvious that uncontroverted evidence is deemed admitted. Similarly, admitted facts need no further proof. That is to say, an admission relieves the Appellant of the need to prove such facts. where facts are not challenged, they are deemed to be admitted.

The general rule is that facts which have been admitted need not be proved.

See also the case of **Anike vs. S.P.D.C. (Nig.) Ltd. (2012) All FWLR (Pt.638) 975 at 984** where the Court of Appeal stated that:

**By virtue of section 75 of the Evidence Act facts which are admitted need no further proof.**





In the same vein, see case of *P.H.R.C. Ltd. vs Okoro* (2012) All FWLR (Pt.606) 466 at 480, on needlessness to prove admitted facts:

...no fact need be proved in any civil proceedings which the parties thereto or their agents agree to admit at the hearing, or which by the rules of pleading in force at the time they are deemed to have admitted by their pleadings...it needs no further proof: *Maduabuchukwu vs. Umunakwe* (1990) 2 NWLR (Pt.134) 598 referred to. This class of evidence, as was held in *Igwe vs. A.C.B. PLC* (1999) 6 NWLR (Pt.605) 1 at pg.11, is the strongest proof.

See also; *Etuwew vs. Etuwew* (1993) 2NWLR (pt. 274) 184; *Alabe vs. Abimbola* (1978) 2 S.C.39.

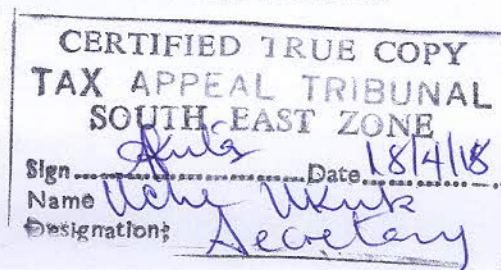
From the totality of the argument adduced and the authorities cited above, it is clear that the sum of Four Million, Two Hundred and Ninety-Six Thousand, Seven Hundred and Ninety-Five Naira, Three Kobo (N4, 296, 795. 03) raised as companies income and education tax on Respondent for the relevant accounting period being 2002-2007 has become due and payable and as such the Respondent is ordered to pay same.

In a matter that started in 2011, it is surprising that the Respondent chose to abandon or ignore the proceeding in totality.

On the strength of the testimony of the Appellant's witness, the exhibits tendered, the authorities and argument adduced in the Tribunal the Appellant has shown that the sum of Four Million, Two Hundred and Ninety-Six Thousand, Seven Hundred and Ninety-Five Naira, Three Kobo (N4, 296, 795. 03) arising from the Companies Income Tax and Education Tax have become due and payable by the Respondent.

This Tribunal is satisfied that the sum of Four Million, Two Hundred and Ninety-Six Thousand, Seven Hundred and Ninety-Five Naira, Three Kobo (N4, 296, 795. 03) charged by the Appellant as Companies Income Tax and Education Tax were done in accordance with the provisions of the Act.

That failure of the Respondent to remit the money as and when due is a violation of section 92 of the Companies Income Tax Act and Sections 10 & 11 of the Education Tax Act. The Appellant is entitled to the said amount.





The Tribunal cannot aid any person to beat the Government's effort to justifiably collect its revenue.

We are also guided by the Court of Appeal's warning in **Phonenix Motors Ltd. vs National Provident Fund Management Board (1993) 1 NWLR (pt. 272) pg. 718 at 731**, that:

**"No court of law should lend its hands to a person or body bent on beating the efforts of Government at collecting revenue by relying on technicalities of the law with a frugal aim to cheat Government of its legitimate income."**

In the ultimate analysis, the sole ground of appeal succeeds and it is hereby ordered as follows;

1. That the sum of Four Million, Two Hundred and Ninety-Six Thousand, Seven Hundred and Ninety-Five Naira, Three Kobo (N4, 296, 795. 03) has become due and payable as a debt arising from the Companies Income Tax and Education Tax for the relevant period being 2002 – 2007 and should be paid by the Respondent immediately.
2. Judgment is hereby entered for the immediate payment of the said sum of Four Million, Two Hundred and Ninety-six Thousand, Seven Hundred and Ninety-five Naira, Three Kobo (N4, 296, 795. 03) in favour of the Appellant by the Respondent.
3. There shall be no order as to cost.

Parties are entitled to appeal against this judgment.

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Prof. C.J. Amasike  
Chairman

18/12/2013

COUNSEL

Haruna Musa (with Emmanuel Eze)

For the Appellant.

No representation

for the Respondent.

