

IN THE TAX APPEAL TRIBUNAL

SOUTH – EAST ZONE

HOLDEN AT ENUGU

SUIT NO. TAT/SEZ/009/12

BETWEEN:

FEDERAL INLAND REVENUE SERVICE APPELLANT

AND

HOTEL ROYAL DAMGRETE RESPONDENT

BEFORE THEIR HONOURS

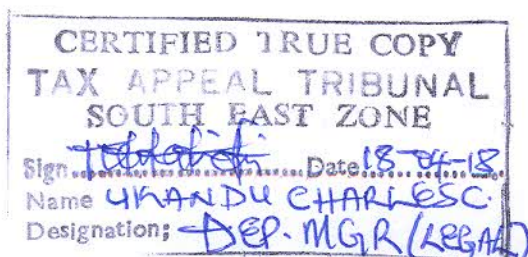
Chairman: Prof. C. J. Amasike

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

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 Value Added Tax and Companies Income Tax. It is empowered by the Act to do such things as may be necessary and expedient for the proper assessment and collection of Value Added 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. 13/14 Factory Road, Umuahia, Abia State. At all times material to this suit, the Respondent hotel carried on the business for which it is liable to Value Added Tax. By virtue of the nature of its business the Respondent is liable to register and pay Value Added Tax (VAT), but,



it refused to do so despite several letters of demand, notice of assessment, and demand notes.

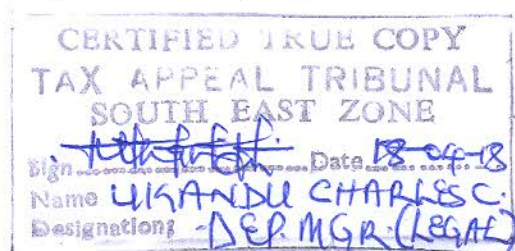
This matter was instituted vide a Notice of Appeal dated and filed 10th May, 2012 to recover the sum of Fourteen Million, Four Hundred and One Thousand, Three Hundred and Seventeen Naira (N14,401,317.00) from the Respondent being money due to the Federal Government of Nigeria as additional liability of Value Added Tax (VAT) for the period of January 2009 to December 2010. The Respondent had, despite several letters from the Appellant refused, or neglected to register, remit and render its additional liability of its VAT returns to the Appellant. As a result, a Best Of Judgment assessment (BOJ) was raised against it by the Appellant for the period aforementioned.

The Appellant was represented by Emmanuel Eze and the Respondent by Nwabueze Ajaegbu. The Appellant's motion dated 10th May, 2012 for regularization of its processes was moved by its counsel Emmanuel Eze and granted by the Tribunal. The matter was adjourned to 15th August, 2012.

On the said adjourned date, the Respondent brought documents to the Tribunal through its counsel claiming that they were to prove that they had paid their tax in full. The Appellant disagreed with these documents and so, the matter was adjourned to 12/9/12 to enable both parties have a second look at the documents presented before deciding whether or not to go in to trial.

On 12/9/12, the Respondent was not represented but the Appellant reported that there was no settlement in view. The matter was adjourned to 1/11/12 for hearing. After several other adjournments, on 26/11/12, 17/1/13, and 26/6/13 the Appellant opened its case on 24/7/13. On this day, PW1; Okoro Susan Chidiebere, a staff of the Appellant at the Appellant's office at Umuahia, adopted her witness statement on oath dated 10th May, 2012. Some letters which were addressed to the Respondent were tendered through PW1 and admitted as Exhibits A1 to A4 respectively. The matter was then adjourned to 19th September, 2013 for cross examination of PW1.

On 19/9/13, the Respondent informed the Tribunal of their wish to settle the matter out of Tribunal but the Appellant refused to accept the terms proposed. The matter



was adjourned to 22/10/13 to enable parties tidy up the Terms of Settlement or proceed to cross-examination.

The matter did not come up until 17/12/13 when the Respondent reported that it had paid the total sum of Eight Hundred Thousand Naira [N800,000] to the Appellant's account, adding that they had documents to show that the Appellant's assessment of N14,401,317 was grossly over bloated and had been reduced to Three Million, Five Hundred Thousand Naira (N3,500,000). when asked by the Tribunal to produce this, they failed to do so. Subsequently, PW1 was cross examined and re-examined. Under cross examination, the witness stated that he was not aware of payments by the Respondent but that he was in the team that carried out the audit except that he could not recollect the figures. With this, the Appellant closed its case. The matter was adjourned to 29th January, 2014 for Defence. The matter did not come up until 08/04/2014.

On 8/4/14, Respondent in defence, presented to the tribunal receipts showing that they had made a total payment of Two Million Naira [N2, 000,000]. With this, the Appellant asked for time to verify if the said payments were in respect of the case at hand. Matter was adjourned to 6th May, 2014 continuation.

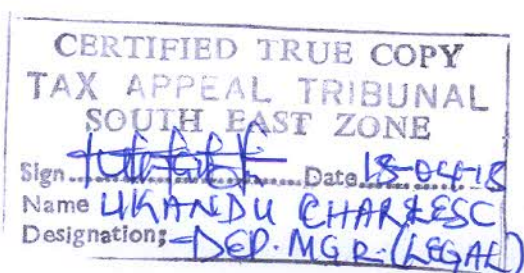
On 6/5/14, the Respondent was neither in court nor represented. The court granted the Appellant's application to adopt its own final written address.

THE APPELLANT'S GROUNDS OF APPEAL ARE HEREUNDER REPRODUCED:

- A. That the Respondent being a VAT collector and taxable person has refused, or neglected to file returns and remit VAT for the period of 2009 – 2010.

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 and manage all the tax laws particularly the Value Added Tax Act as amended as well as the Companies Income Tax Act.

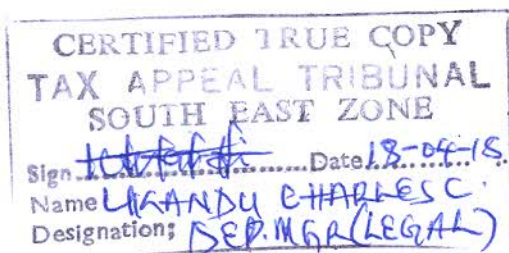


- x. Notice was given to the Respondent to provide the original copies of the correspondence dated 16/07/11, 19/07/11, 06/12/11 and 16/01/12 at the hearing of this suit.

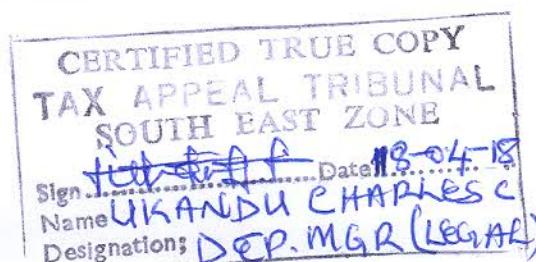
As a result of the above claims, the Appellant sought the following reliefs from the Tribunal:

An Order of the Tribunal compelling the Respondent to pay the Appellant:

- I. Fourteen Million, Four Hundred and One Thousand, Three Hundred and Seventeen Naira. (N14, 401,317.00) as the tax due from Respondent to the Appellant for the period of January 2009-December 2010.
- II. Any other Order(s) as the Tribunal may deem fit in the circumstances of the case.



- ii. The Appellant is empowered by the Tax Laws to do such things as may be necessary or expedient for the proper assessment and collection of the Value Added Tax of 5% and Companies Income Tax and account for the amount so collected to the Federal Government of Nigeria.
- iii. In furtherance to her duty in ii above the Appellant is further entitled to raise Best Of Judgment assessment on the Respondent where the Respondent has failed or neglected to file tax returns and pay the taxes accruable as and when due.
- iv. The Respondent is a company registered under the Companies and Allied Matters Act with their office at No. 13/14 Factory Road, Umuahia, Abia State.
- v. At all times material to this matter, the Respondent carried on business as company registered under the Companies and Allied Matters Act by virtue of which she is liable to register and pay Value Added Tax.
- vi. The company has refused, neglected or failed to file appropriate returns and pay for VAT for the period of January 2009 – December 2010 despite all efforts by the Umuahia Integrated Tax Office (ITO) of the Appellant to get it to pay for same.
- vii. Sequel to paragraph vi above, the Appellant invoked her powers under the Tax Laws by bringing this action to recover the sum of Fourteen Million, Four Hundred and One Thousand, Three Hundred and Seventeen Naira. (N14, 401,317.00) which sum was established as the liability of the Respondent during the Appellant's routine VAT monitoring exercise and duly communicated to the Respondent.
- viii. Letters dated 16/07/11; 19/07/11, 06/12/11 and 16/01/12 were written to the Respondent as reminders of their tax obligations and received no response or objection whatsoever.
- ix. Due to a non-objection from the Respondents for a period far superseding 30 days allowed by the Act, the Best Of Judgment assessment of Fourteen Million, Four Hundred and One Thousand, Three Hundred and seventeen Naira. (N14, 401,317.00) has now crystallized as a debt due to the Federal Republic of Nigeria for the period: January 2009- December 2010.



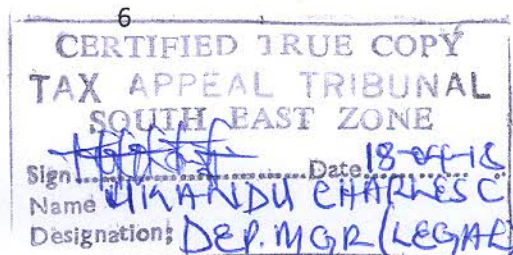
ISSUES FOR DETERMINATION

In addressing the Tribunal, the sole issue formulated for determination by the Appellant was: Whether The Respondent's Tax Arrears Has Become Due and Payable

The Tribunal has after a careful and insightful consideration of the sole issue formulated by the Appellant chosen to adopt it as having been well founded

The Appellant argued that, being dissatisfied with the Respondent's refusal to pay additional liability arising from the former's examination of the Company's book brought this action vide a Notice of Appeal dated and filed 10th May, 2012 seeking to recover the liability standing at Fourteen Million, One Thousand, Three Hundred and Seventeen Naira (N14,401,317.00). The Respondent was duly notified of the visit to examine the Company's book pursuant to which the additional assessment was raised, vide Exhibit A1. The Respondent was also duly notified of the additional assessment through exhibit A2. Demands for the said liability were also made on the Respondent vide letters marked exhibits A3 and A4. At the hearing, the Appellant called a witness, through whose testimonies before the Tribunal, such as his written statement on oath and all the documents filed before the Tribunal including exhibits A1-A4, showed that the due process of the law was followed in raising the additional statement and in notifying and demanding payment of same from the Respondent.

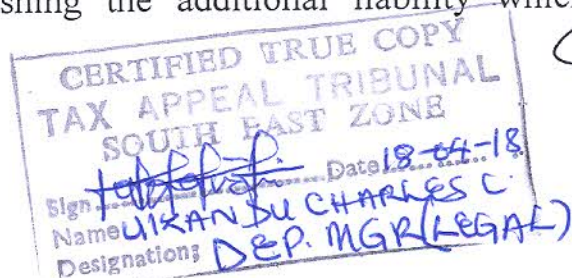
The Respondent on the other hand did not make any valid objection to the above additional assessment within the 30 days period statutorily allowed for such objection neither have they shown any evidence that the said liability has been liquidated. At the trial, the Respondent failed to either contradict the evidence laid before the tribunal by calling her own witness, impeaching the Appellant's witness' oral evidence during cross-examination or by validly tendering any document to that effect. The Respondent Counsel, however, sought to tender a letter of objection from the Company's accountants and a collection of tax receipts. **The Tribunal, upon objection by the Appellant, ruled that the documents being public documents could only be admissible in evidence if they are certified true copies.** Several adjournments were given



to the Respondent to enable him produce the certified true copies of the receipts but he failed to do so.

In further argument of the sole issue formulated for determination, the Appellant submitted that the tax liability of Fourteen Million, One Thousand, Three Hundred and Seventeen Naira (N14,401,317.00) standing against the Respondent has become due and payable to the Federal Government of Nigeria. It is trite that on failure of the tax payer to render appropriate returns thereby leading to under-remittance of tax, the Federal Inland Revenue Service is empowered to raise additional tax which is recoverable as a debt from such a tax payer (see Section 42(2) of the Federal Inland Revenue Service (Establishment) Act, 2007). As a debt, payable within one month of collection but still unpaid, proper notification and demand was placed on the Respondent all of which yielded no results. He referred the Tribunal to Exhibit A1-A4. He also referred the Tribunal to the case of **Federal Board of Inland Revenue Vs Integrated Data Service Ltd (2009)8NWLR (pt 1114) 615**; and Section 15(1) of the Value Added Tax Act of 1993 (as amended) where it was stated that the due time for remittance of Value Added Tax, as in this matter, is within one month of collection. The implication therefore is that this debt has become due and payable.

The Appellant further stated that they are entitled to all the reliefs sought in this matter, in view of the fact that all evidence presented by the Appellant in this case were uncontroverted since the Respondent neither called any witness nor placed any document before the Tribunal to that effect. The legal implication of uncontroverted evidence is that the court is bound to take same as the truth of the fact sought to be established or the true state of affairs between the between the parties. He referred the Tribunal to the case of **NIDB Ltd vs. Advance Beverages Industries Ltd [2005] 19 N.W.L.R (PT. 959)1**. Although documents were filed by the Respondent, they go to no issue, since they did not lead evidence or tender same through the due process of the law. Counsel for the Appellant argued further that even if they were tendered, they would have amounted to no issue since the objection notice sought to be tendered was invalid for falling outside the statutory time stipulated for such objection, whereas, the receipts would have shown only taxes paid and recognized before establishing the additional liability which payment is not in contention.



The Tribunal derives its authority to act on the Appellant's uncontroverted evidence from the case of **Yusuf v. State (2012) All FWLR (Pt.641) P.1478 at 1505** where the Court of Appeal held that;

The law gives a court the license to act and rely on unchallenged evidence to arrive at a decision.

Also in **Akinboye v Adeko (2012) All FWLR (Pt d636) 522 at 540**, the Supreme Court held that;

It is trite when evidence given by one party is not contradicted or controverted by the other party who has the opportunity to do so ...the court should accord credibility to such evidence.

From the evidence of the Appellant, given by PW 1, the Appellant has clearly established failure and refusal of Respondent to pay the sum of Fourteen Million Four Hundred And One Thousand, Three Hundred And Seventeen Naira (N 14,401,317.00) as additional assessment of Value Added Tax.

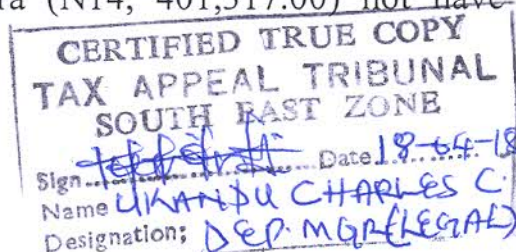
They did not only fail to cross examine the Appellant's witness but also failed to give any evidence in their defence other than the production of certain receipts for the payment of the Two Million Naira (N2,000,000.00) covering an unascertained period.

On the strength of unconverted documentary evidence, through written and oral testimonies of the Appellant's witness, the argument and legal authorities adduced and submissions of the Appellant, the cause of justice will be served by entering judgment to the tune of Fourteen Million, One Thousand, Three Hundred And Seventeen Naira (N14, 401,317.00) in favour of the Appellant and we so hold.

The Respondent was given several opportunities to defend but chose not to utilize them. It is our considered view that the Appellant has established its claim and is therefore entitled to the sum of Fourteen Million, One Thousand, Three Hundred And Seventeen Naira (N14, 401,317.00). It is hereby ordered as follows:

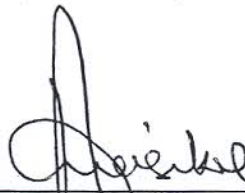
1. That the amount of Fourteen Million, Four Hundred and One Thousand, Three Hundred and Seventeen Naira (N14, 401,317.00) not have been

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challenged by the Respondent is deemed admitted and has therefore crystallized as a debt owed to the appellant by the Respondent.

2. Judgment is entered for the Appellant against the Respondent in the sum of Fourteen Million, Four hundred and one Thousand, Three Hundred And Seventeen Naira (N14, 401, 317.00) being amount assessed as additional VAT for the period between 2009 to 2010.
3. That the said amount should be paid immediately by the Respondent to the Appellant.
4. There shall be no order as to cost.
5. Parties are entitled to appeal against this judgment.



Prof. C.J. Amasike, Ph. D
Chairman
Tax Appeal Tribunal [S.E.Z]

Dated: 12th September, 2014

COUNSEL:

Emmanuel EzeFor The Appellant

Nwabueze Ajaegbu..... For The Respondent.

