IN THE TAX APPEAL TRIBUNAL

SOUTH EAST ZONE

HOLDEN AT ENUGU

APPEAL NO. TAT/SEZ/001/17

BETWEEN

POLARIS BANK PLC	}	Appellant

AND

ABIA STATE BOARD OF INTERNAL REVENUE	}	Respondent

BARR. CHUKWUEMEKA EZE	-	**CHAIRMAN**
PROFESSOR J.O. ANYADUBA	-	**COMMISSIONER**
IDE JOHN C. UDEAGBALA	-	**COMMISSIONER**
MAZI NNAMDI OKWUADIGBO	-	**COMMISSIONER**
OBRI, FRANCIS OGAR	-	**COMMISSIONER**

REPRESENTATION

EMEKA IHEBIE, Esq.	-	**Appellant**
OBIKE ONYEMERE, Esq.	-	**Respondent**

JUDGEMENT

The Appellant is an employer of labour with its headquarters in Lagos and one of its branches in Umuahia , Abia State.

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The Respondent is a revenue generating agency and the tax authority of Abia State entitled to collect personal income tax of non-corporate taxpayers resident in Abia and withholding tax from transactions involving non-corporate entity or entities.

FACTS

The facts of this appeal as distilled from the processes before the Tribunal are as encapsulated below:

The Respondent upon completion of tax audit, on an undisclosed date, of the Appellant's tax liabilities for 2006-2011 comprising of PAYE, WHT, ETC., served the Appellant what the Respondent titled "DEMAND NOTICE".

The Respondent demanded N1,528,205,878.88. The breakdown of the calculations was attached to the Demand Notice hence the Respondent accompanied the Demand Notice with an ASSESSMENT.

The Appellant through its tax consultant, Ijewere & Co., raised a NOTICE OF OBJECTION dated April 24, 2017 against the Respondent's Demand Notice of April 4, 2017. The bases of the objection are:

(i) Duplication of the Appellant's staff in the assessment;
(ii) Some staff not in Abia State were included in the assessment;
(iii) Incomes used to assess the staff of the Bank were excessive;
(iv) PAYE tax remitted by the Bank for 2006-2007 was not captured by the Board;
(v) PAYE taxes paid on past tax audits were not deducted; and
(vi) Non-recognition of Staff Development Levy and Business Premises Levy earlier paid by the Appellant.

After making the objection, it took a definite tax position thus:

> ***"We have reviewed the records of the bank, taking into consideration the above points of objection and based on***

OUR REVIEW, THE TAX UNDERPAYMENT OF THE BANK IS IN THE SUM OF N39,110,717.77". (Capital letters are for emphasis)

The Appellant attached a breakdown of its calculations before coming to what it called "Total PAYE outstanding cumulated from end 2011". Nothing was calculated for penalty and interest.

The two parties are *ad idem* that there was no WHT liability. The Appellant by its objection did not recognize the Development Levy and Business Premises Levy, which the Respondent claims to be N59,800 and N120,000 respectively.

By its Demand Notice dated May 2, 2017, the Respondent mandated the the Appellant to pay the "undisputed sum" of N39,110,171.77 "within 48 hours of receipt of this letter".

The Appellant eventually paid the "undisputed sum" on May 9, 2017.

On May 15, 2017, the Respondent issued another Demand Notice for N254,375,478.06 and stated that the Appellant was required by law to pay the sum "within 7 days from the date of receipt of this notice".

The Appellant on the same May 15, 2017, objected to:

(i) Accumulated tax due from 2006 to date;

(ii) Accumulated penalty calculated from 2006 to date; and

(iii) Accumulated interest calculated from 2006 to date.

By a letter dated May 23, 2017, the Respondent reverted to the sum in the Demand Notice of April 4, 2017 and maintained that the Appellant must pay N254,375,478.06 as a condition precedent to attend the tax reconciliation meeting slated for May 30, 2017.

On May 30, 2017, the Respondent demanded, for the first time, the sum of N203,500,382.45 representing N254,375,478.06 less 20% waiver. The Respondent gave the Appellant 48 hours to make the payment, or the amount would become final, conclusive and binding.

The Appellant in the letter of its tax consultant to the Respondent dated May 31, 2017 appealed to the Respondent to issue its revised position reflecting the understanding and outcome of the TARC meeting of May 30, 2017 to enable it advise the Bank appropriately.

The Respondent on June 2, 2017 did a letter to the Appellant purporting to accept the request of the Appellant to pay the sum of N203,500,382.45 as outstanding tax liability. The Respondent served this letter on June 5, 2017.

Within 24 hours of service of the letter dated June 2, 2017, the Respondent issued its last Demand Notice, cancelled its offer dated June 2, 2017 and reverted to the sum of N1,528,205,878.88, which it had earlier demanded on April 4, 2017.

The Appellant was aggrieved and it filed this appeal dated June 14, 2017 on 20th June, 2017.

PROCEEDINGS AT THE TRIBUNAL

While the Appellant filed its Notice of Appeal on June 20, 2017, the Respondent filed its response on November 22, 2018. The appeal was called up in the Tribunal on the following dates:

November 22, 2018;
January 21, 2019;
February 12, 2019;
March 18, 2019;
May 17, 2019; and
June 17, 2019.

Hearing of the appeal was conducted on February 12 and March 18, 2019.

EXHIBITS TENDERED PURSUANT TO THE RELEVANT PARAGRAPHS OF THE WITNESS STATEMENT ON OATH

By the Appellant's sole witness statement on oath during his examination-in-chief:

Exhibit Polaris 1(Para. 3):	Respondent's Demand Notice to the Appellant dated April 4, 2017.
Exhibit Polaris 2 (Para. 4):	Objection from Ijewere & Co. on behalf of the Appellant to the Respondent dated April 24, 2017.
Exhibit Polaris 3 (Para. 6):	Respondent's letter dated May 2, 2017 to the Appellant.
Exhibit Polaris 4 (Para. 7):	Receipt evidencing payment of N39,110,717.77 by the Appellant to the Respondent.
Exhibit Polaris 5 (Para. 8):	Respondent's Demand Notice dated May 15, 2017 to the Respondent.
Exhibit Polaris 6 (Para. 9):	Appellant's objection dated May 15, 2017 to Exhibit Polaris 5.
Exhibit Polaris 7 (Para. 10):	Respondent's letter dated May 23, 2017 to the Appellant.
Exhibit Polaris 8 (Para. 11):	Respondent's letter dated May 30, 2017 to the Appellant.
Exhibit Polaris 9 (Para. 14):	Respondent's letter dated June 6, 2017 to the Appellant.

EXHIBITS TENDERED THROUGH THE APPELLANT'S WITNESS DURING CROSS EXAMINATION

Exhibit Polaris 10: Letter from the Appellant to the Respondent

Exhibit Polaris 11:	Letter from Respondent to the Appellant dated June 2, 2017.

EXHIBITS TENDERED BY THE RESPONDENT'S SOLE WITNESS ON MARCH 18, 2019 AND THE RELEVANT PARAGRAPHS OF HIS WITNESS STATEMENT ON OATH

Exhibit AB1 (Para. 9):	Demand Notice from Respondent dated April 4, 2017 to the Appellant. (Note: This is the same document already labelled exhibit Polaris 1).
Exhibit AB 2 (Para. 10):	Demand Notice from the Respondent dated May 23, 2017 to the Appellant. (Note: This is the same document already labelled Exhibit Polaris 2)
Exhibit AB 3 (Para. 13):	Letter from the Appellant's consultant dated May 31, 2017 to the Respondent. (Note: This document is the same as Exhibit Polaris 10).
Exhibit AB 4 (Paras. 14 and 15):	Letter dated June 2, 2017 from the Respondent to the Appellant. (Note: The document has been received in evidence as Exhibit Polaris 11).
Exhibit AB 5 (Para. 11):	Letter dated May 30, 2017 from the Respondent to the Appellant. (Note: It has already been received as Exhibit Polaris 8).

WRITTEN ADDRESSES

The Respondent filed its final written Address on April 17, 2019, while the Appellant filed its Appellant's final written address dated May 6, 2019 on May 9, 2019. The Respondent filed its Reply on Point of Law on May 24, 2019.

The parties adopted their written addresses on June 17, 2019 and the appeal was adjourned to today August 20, 2019 for Judgment.

APPELLANT'S ARGUMENTS AND RELIEFS

The Appellant's case is encapsulated thus:

The Respondent served the Appellant Exhibit Polaris 1 and the Appellant objected with Exhibit Polaris 2. In the same Exhibit Polaris 2, the Appellant admitted under-remittance in the sum of N39,110,717.77 and opted to pay the same to the Respondent.

The Respondent by Exhibit Polaris 3 mandated the Appellant to pay the under-remitted sum. After the Appellant complied with Exhibit Polaris 4, the Respondent issued it with Exhibit Polaris 5 for the payment of revised sum of N254,375,478.06 from the original sum of N1,528,205,878.88 that it earlier demanded through Exhibit Polaris 1. The Appellant raised a second objection with Exhibit Polaris 6.

The Respondent on May 23, 2017 through Exhibit Polaris 7 gave the Appellant the condition of paying N254,375,478.06 as part-payment of the original sum of N1,528,205,878.88 before attending the tax reconciliation meeting slated for May 30, 2017 at the Respondent's headquarters at Umuahia.

The Appellant ignored the condition and attended the TARC meeting on May 30th, 2017. THERE WAS NO WRITTEN RECORD OF THE PROCEEDINGS AND OUTCOME of the TARC meeting. Rather, after the meeting, the Respondent sent Exhibit Polaris 8 to the Appellant demanding for a discounted sum of N203,500,382.45 and claiming that that was the outcome of the TARC Meeting. The Appellant through Exhibit Polaris 10 sought for clarification of the contents of Exhibit Polaris 8.

The Respondent then served the Appellant Exhibit Polaris 11 dated June 2, 2017 on June 5, 2017 (See the first paragraph of Exhibit Polaris 9 to confirm this is the date of service) demanding for payment within 48 hours. Without waiting for its 48 hours to expire, the Respondent issued Exhibit Polaris 9 to the Appellant reverting to its original demand of N1,528,205,878.88 less the sum of N39,110,717.77 already paid by the Appellant as evidenced in Exhibit Polaris 4. Thus, by Exhibit Polaris 9, the Respondent demanded N1,489,095,161.10 from the Appellant. At trial, the

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Respondent abandoned entirely its demand as contained in Exhibits Polaris 1 and 9 and rather predicated its defence on the demand contained in Exhibit Polaris 8, which was not substantiated in evidence.

EVIDENCE OF THE APPELLANT

The Appellant's sole witness, Babatunde Odusanya, adopted his statement on oath deposed to on February 8, 2019 and Further Witness Statement on Oath also dated February 8, 2019. The Appellant had abandoned its Witness Statement on Oath sworn to on 20 June, 2017 by Adeyemi Shoyombo.

The Appellant's witness tendered nine exhibits labeled Exhibits Polaris 1 to 9.

Under cross-examination, the Respondent's Counsel through the Appellant's witness tendered Exhibits Polaris 10 and 11.

During the cross-examination of the Appellant's witness on February 12, 2019, the following transpired, among others:

> "***Respondent's Counsel:*** *In that Exhibit Polaris 10, you pleaded with the Respondent to accept the amount in Polaris 8 as full and final payment of your liability?*
>
> ***Appellant's Witness:*** *That is not correct. There is no where in that letter that we agreed to pay N203 million, or N254 million or N1.5 billion".*

During the cross-examination of the Respondent's witness on March 18, 2019, by the Appellant's Counsel, the following ensued, among others:

> "***Appellant's Counsel:*** *I want to ask, was there ever anytime the Respondent got back to the Appellant with respect to all these issues that were raised? In your documents is there anywhere the Respondent in writing responded to the Appellant's objections?*
>
> ***Respondent's Witness:*** *After the objection, there was a reconciliation meeting. It was there these issues were raised.*
>
> ***Appellant's Counsel:*** *You will recall I asked you questions before and you said that parties have been communicating in writing so, my question is simple: Is there anywhere the Respondent in writing*

wrote saying these are our decisions concerning the issues in your objections? Is there one anywhere?

Respondent's Witness: *I said there was a reconciliation meeting with the Board.*

Appellant's Counsel: *Was there any minutes for that reconciliation meeting, showing in writing what were discussed?*

Respondent's Witness: *Yes sir.*

Appellant Counsel: *Where is it among the documents that you have with you?*

Respondent's Witness: *It is not here.*

Appellant's Counsel: *That means there is none?*

Respondent's Witness: *[He kept mum]".*

During the examination-in-chief of the Respondent's sole witness on the same March 18, 2019, the following communications ensued:

Respondent's Counsel: *In paragraph 11 of your written deposition, you made reference to tax reconciliation meeting. The document is dated May 30, 2017. If you see the same will you be able to recognize it?*

Respondent's Witness: *Yes sir.*

Respondent's Counsel: *Tell the Tribunal what the document is?*

Respondent's Witness: *The document is for resolution given at a TARC meeting held on May 30, 2017.*

Respondent's Counsel: *I seek to tender them as exhibit.*

Appellant's Counsel: *Mr. Chairman, I will be objecting to this one, it is handwritten and secondly, there seem to be discrepancies between the date on the attendance sheet and the date on the minutes.*

Tribunal: *What are the dates?*

Appellant's Counsel: *The date on the minutes is June 30, 2017. The one on the attendance sheet is not clear enough. It seems to have* *been May 30, 2017 now changed to June 30, 2017. It is not clear enough and secondly there is a difference between the Attendance sheet and the Minutes itself. The minutes was not signed by the Appellant. That is my own observation.*

Tribunal: *Does it mean that the Minutes has no author?*

Appellant's Counsel: *Yes, the Minutes has no author apparently.*

Tribunal: *But is it relevant? Which section of the Evidence Act are you relying on, or is it not a matter of evidence? Refer us to relevant provision of the Evidence Act.*

Appellant's Counsel: *I may not be able to because I do not have my Evidence Act. But this is my concern about the document itself. We did not sign the document. They too did not sign it. So, it cannot be admissible.*

Respondent's Counsel: *May I humbly oppose the objection of my learned friend. The two documents are interwoven. The document and the attendance of the meeting were signed. The two document are together, they are not separate. My learned friend has not told the Tribunal that the two documents are different. He is only talking about date. But somehow, he has now agreed that the dates are the same.*

Tribunal: *Can we see the documents?*

Respondent's Counsel: *May I apply to withdraw the document.*

Tribunal: *Application granted."*

RESPONDENT'S EVIDENCE

The Respondent's evidence was not fundamentally at variance with that of the Appellant in many respects except for the portions highlighted and reproduced seriatim above. The witness of the Respondent re-tendered Exhibits Polaris 1, 7, 10, 11 and 8 as Exhibits AB1, AB2, AB3, AB4 and AB5 respectively.

The Witness sought to hinge his evidence on:

(a) That the TARC Meeting resolved all the issues contained in the objections of the Appellant on May 30, 2017;

(b) That N203,500,382.45 was the undisputed sum agreed to by the parties at the TARC meeting as the Appellant's outstanding liability.

APPELLANT'S ARGUMENTS AND RELIEFS SOUGHT

The Appellant raised the following issues for determination in its written Address:

(a) Whether the Respondent adhered to statutorily stipulated procedure in the circumstances of this case.

(b) Whether the Respondent can validly impose Development and Business Premises Levies on the Appellant

(c) Whether the Respondent can validly assess the Appellant for taxes allegedly outstanding post six years limitation.

(d) Whether a tax assessment can become final and conclusive before the resolution of the objection to the assessment by the taxpayer under the provisions of Personal Income Tax Act Cap P8, Laws of the Federation of Nigeria, 2004 (as amended).

(e) Whether the Respondent can validly impose interest and penalties on the Appellant.

It answered all the issues in the negative. On the first issue, the Appellant argued that the Respondent breached the principles of fair hearing. It cited the provisions of PITA (sections 57, 58 and 104) paragraphs 9 and 15 of the PAYE Regulations as well as paragraph 16(1)(3) of the 5th Schedule to the FIRS (Establishment) Act, 2007 as containing the procedures that the Respondent ought to have followed in satisfying the fundamental requirement of fair hearing. It cited several cases in support.

On the validity of collection of Development Levy and Business Premises Levy, the Appellant argued that Taxes and Levies (Approved List for Collection) Act, Cap T2, Laws of the Federation of Nigeria, 2004 cannot be the basis of such collection in the absence of a law made by the Abia State House of Assembly. The Appellant repeatedly and erroneously used the word "impose" and "imposed" in his argument.

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absence of a law made by the Abia State House of Assembly. [The Appellant repeatedly and erroneously used the word "impose" and "imposed" in his argument.]

The Appellant, on the 3rd issue argued, relying on the section 55 of PITA, that only the 2011assessment was valid as it fell within the six years backwards from 2017. It argued that 2006 -2010 assessments were invalid.

On the fourth issue of when a tax assessment can become final and conclusive, the Appellant submitted that under section 68 of PITA, a tax assessment cannot become final and conclusive where the objection of the tax payer has not been finally resolved. It also cited the case of Federal Board of Inland Revenue Vs Lotatronics Ltd, Vol 9, All NTC, page 351.

On the 5th issue of whether the Respondent can validly impose interest and penalties on the Appellant, the Appellant argued that under section 68(2) of PITA, collection of income tax in a case where notice of an objection or an appeal has been given by or on behalf of the person shall remain in abeyance until the objection or appeal is determined, except that the relevant tax authority may enforce payment of that portion, if any, of the tax which is not in dispute. The Appellant further argued that since the Appellant has not only objected to, but has appealed against the assessments from the Respondent within time, collection of the alleged tax liability has remained in abeyance pending the determination of the objections and appeal by the Appellant. In support, the Appellant cited Weatherford Services S.D.E.R.L. (WSSDRL) V. Federal Inland Revenue Service, Vol. 9, All NTC 605 @ 609; Tetra Pak West Africa Ltd V. FIRS (2016) 24 TLRN 95; and Federal Board of Inland Revenue V. Azigbo Brothers Limited, Vol.1, All NTC, pg. 131 @ 135.

The Appellant then prayed the Tribunal for the following reliefs:

(i) A decision of the Tribunal that the sums contained in the notices of assessment and demand notices dated 4 April, 2017 and 15 May, 2017 are not due and the Appellant is not liable to pay them.
(ii) A decision of the Tribunal that the Respondent acted arbitrarily and capriciously in its dealing with and treatment of the Appellant in the circumstances of this case.
(iii) A decision of the Tribunal that the Respondent did not grant the Appellant fair hearing in the circumstances of this case.
(iv) A decision of the Tribunal that the attempt by the Respondent to deem the undue tax assessment as having become final and conclusive is null and void and of no legal effect

(v) A decision of the Tribunal setting aside the notices of assessments and demand notices issued by the Respondent and dated 4 April 2017, 15 May 2017 and 6 June 2017 respectively.
(vi) A decision of the Tribunal setting aside the penalties and interest imposed by the Respondent.
(vii) Any other order or further orders as may be made by this Honorable Court.

RESPONDENT'S ARGUMENT AND COUNTER-ISSUES AND RELIEFS

The Respondent in its Written Address raised six (6) issues for determination to wit:

(1) Whether by the combined effects of the Respondent's demand notice of 30/5/2017, the Appellant's letter of 31/5/2017, and the Respondent's letter of 2nd June 2017, the liability of N203,500,382.45 was not a negotiated settlement of the outstanding liability for 2006-2011?

(2) Whether the objection of the Appellant to the demand notice of the Respondent dated 15/5/17 was not determined by reason of the negotiated amount of N203,500,382.45?

(3) Whether the penalty and interest elements of the Respondent's demand notice had not been resolved by the parties before the filing of the appeal?

(4) Whether the issue of development levy was an issue or ground in objection raised by the Appellant?

(5) Whether the Respondent is still insisting on the demand notice of 6/06/2017, having not made any case for it in the Respondent's reply and witness' written statement on oath?

(6) Whether this notice and grounds of appeal is competent, in view of the fact that the party sued is not a juristic person known to law?

On the first issue, the Respondent contended that by the combined effect of the Respondent's letter of May 30, 2017, the Appellant's letter of May 31, 2017 and that of June 2, 2017, the sum of N203,500,382.45 as conveyed by the Demand Notice of May 30, 2017 was a negotiated settlement of the outstanding liability for 2006-2011. The Respondent relied on section 123 of the Evidence Act to state that facts admitted need no further proof. It argued that Exhibit Polaris10 was the Appellant's admission

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of the Respondent's Demand Notice of May 30, 2017 (that is, Exhibit Polaris 8). It also stated that under the PAYE and WHT Schemes, as provided by sections 81 and 82 of PITA, service of assessment notice either on the employee or the employer was not necessary. He relied on 7Up Bottling Company PLC V. LSIRB (2000) 3 NWLR (Part 650) 565.

On issue 2, the Respondent on page 10 of its Written Address submitted:

> *"On the 30th day of May, 2017, the tax reconciliation meeting held between the Respondent and the Appellant's tax consultant, Ijewere & Co., the penalty and interest elements of the Respondent's Demand Notice of May 15, 2017 were discussed and finally resolved by the Respondent and the Appellant's tax consultants, Ijewere & Co."*

No reliance was placed on any provision of the PITA or decided case.

On issue 3, the Respondent stated that all the contending issues in the objection of the Appellant of May 15, 2017 with respect to the penalty and interest elements had been reconciled on May 30, 2017.

No reliance was placed on any statutory provision or decided case.

On issue 4, the Respondent found support in the relevant provisions of Taxes and Levies (Approved List for Collection) Act and argued that it has been empowered to collect the levies.

On issue 5, the Respondent submitted that the Tribunal should discard its Demand Notice dated June 6, 2017, which implies discarding the Demand Notice of 4th April, 2017 also. No authority was cited.

On issue 6, the Respondent argued that its name as expressed by the Appellant has deprived the Tribunal of a valid appeal hence the Tribunal lacked jurisdiction to determine the appeal as a result of the non-juristic nature of the Respondent.

The Respondent submitted that it was not established by section 87 of PITA, that section 87 of PITA is an enabling provision by which the various States of the Federation now established their own Revenue Service with specific corporate names (refer to page 4 of the Respondent's Reply on Points of Law). It cited several authorities to support the principles guiding the nature of jurisdiction.

In its Reply on Point of Law, the Respondent responded to some of the issues raised by the Appellant in its Written Address. All in all, the Respondent argued that the dispute between the parties had been settled on 30/5/17 and the alleged liability of the Appellant had been agreed upon and payable as N203,500,382.45.

THE ISSUES AS DISTILLED BY THE TRIBUNAL

(1) Whether the Respondent followed the procedure provided in tax laws and regulations in dealing with the Appellant.

(2) Whether the parties agreed to an undisputed and payable amount during their reconciliation meeting of 30/5/17.

(3) Whether the Respondent determined the objections raised by the Appellant.

(4) Whether the assessment was final and conclusive.

(5) Whether the Respondent was entitled to collect Development Levy and Business Premises Levy without enabling Laws of the State.

(6) Whether the Respondent was entitled to collect penalty and interest based on any of the notices it served on the Appellant.

(7) Whether the Respondent is a juristic person.

On issue 1, it is our position, and we agree with the Appellant, that the Respondent did not follow the relevant provisions of PITA, especially section 58, which requires the Respondent to take certain steps upon receipt of objection from the Appellant. The Appellant provided evidence that statutory steps were not followed and the Respondent did not discharge the evidential burden cast on it under the Evidence Act.

On issue 2, the Appellant gave evidence that neither Exhibit Polaris 8 nor Polaris 11 was the product of an agreement. The Respondent, who claimed that there was Minutes of the Meeting of 30/5/17 did not tender the same in evidence hence had nothing to disturb the evidence of the Appellant. Counsel to the Respondent voluntarily withdrew from tendering a document it purports to be the Minutes and attendance sheet. During cross-examination by the Appellant's Counsel, the Respondent's Witness claimed that such a document existed but was at home. When further prodded on the existence or otherwise of these documents, he went dumb. The obvious implication is the invocation of the presumption in section 167[d] of

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the Evidence Act, that is to say that if such document exist, the Respondent refused or failed or neglected to produce it because it knows the content will be against its defense if produced and tendered before the Tribunal. Issue 2 is resolved in favour of the Appellant as no agreement was reached by the parties on 30/5/17.

On issue 3, based on the reasoning of issue 2 above, the objections raised by the Appellant were not determined during the TARC meeting of 30/5/17.

On issue 4, the assessments were not final and conclusive as the Appellant objected within 30 days. The provision of section 68 PITA was not fulfilled by the Respondent to warrant the assessments to become final and conclusive.

On issue 5, Taxes and Levies (Approved List for Collection) Act, Cap T2, LFN 2004 is not a primary tax legislation like PITA, CITA, PPTA, etc. It has no charging section in the manner of section 3 of PITA which is the charging section of PITA. Under the Part II of the Schedule to the Act, eleven taxes and levies were listed. If we should buy the argument of the Respondent, it means that the Respondent will be at liberty to collect all the eleven taxes and levies therein without any other legislation. A *fortiori*, one can proceed to argue that the Respondent can also proceed to collect the 25 taxes and levies listed in the revised Part 11 of the Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) Order, 2015. Nothing can be further from the truth. In the absence of a primary tax legislation providing for imposition, assessment, collection and accounting of the tax or levy it has sought to collect from the Appellant, the Respondent cannot collect the tax or levy except for the Personal Income Tax and WHT, which collection have been covered by the provisions of the PITA. The fact that the Appellant had paid it in the past is not the answer- after all, the Appellant has not asked for refund.

On issue 6, we agree with the Appellant to the extent that the Demand Notices for which the Respondent wants the penalty and interest paid are invalid. Nevertheless, the Appellant by virtue of Exhibit Polaris 2 admitted under remittance of N39,110,717.77. In the computation of this under remittance, the Appellant did not include the penalty and interest on that sum. We ought to have invoked our power under Paragraph 15(8) of the 5th schedule to the FIRS (Establishment) Act (made pursuant to its section 59 and adopted by section 60 PITA) which provides:

> ***"The Tribunal may, after giving the parties an opportunity of being heard, confirm, reduce, increase or annul the assessment or make any such order as it deems fit"***, to order

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that penalty and interest be paid for the years under consideration but for the provision of section 55 PITA.

Under section 55(1) PITA as rightly argued by the Appellant, the Respondent had authority to conduct tax audit "within the year of assessment or within six years after the expiration thereof". The Respondent did not give evidence as to the year the audit was conducted, neither is it contained in any exhibit tendered by the parties hence in the face of such doubt, we have no option than to presume 2017, the year in which the Demand Notice was served as the year of audit. That being so, only the assessment of 2011 comes within the purview of section 55(1) PITA. Although the Respondent titled its exercise INVESTIGATION, which connotes finding with a view to discover a tax crime, the whole exercise, the documentation and the whole evidence made it bare that it was a tax audit.

A look at the computation made by the Appellant, which was attached and made part of Exhibit Polaris 2 shows that the Appellant made proper and adequate remittance for 2011 as and when due and its remittance for 2011 was not eventually disputed by the Respondent hence there has not arisen any penalty or interest against the Appellant for 2011. Consequently, even though penalty and interest would have arisen with respect to 2006-2010, but the period exceeded the six years allowed for tax audit by section 55(1) PITA, hence the Appellant is left off the hook.

On issue 7, we have answered that in the affirmative in our ruling and judgment in Nigeria Breweries PLC V. Abia State Board of Internal Revenue delivered on 20th June, 2019 by this Zone of the Tax Appeal Tribunal (TAT).

From the foregoing, the Tribunal resolves all the issues in favour of Appellant and consequently grants reliefs 1to 6 of the Appellant

Although the Respondent raised its own issues without leave of the Tribunal, we are still minded to answer them in the interest of justice. Issues 1 to 3 are answered in the negative. As for issue 4, the Respondent did not treat the objections and the levies have no legal foundation. It is, therefore, resolved in favour of the Appellant.

On issue 5, the Respondent impugned its own Demand Notice dated 6th June, 2017 which restored its Demand Notice of 4th April, 2017. The Respondent abandoned these Demand Notices and relied only on the purported agreement of the parties of

30th May, 2017 to the effect that the Appellant should pay N203,500,382.45 as full settlement of the alleged tax liability. There was no evidence to support the purported agreement. Though this issue is answered in favour of the Respondent, it has not helped its defence. The abandonment was even more injurious to its interest and has produced bitter result for the Respondent.

On issue 6, from our decision of 20th June, 2019 in Nigeria Breweries PLC V. Abia State Board of Internal Revenue, the notice and grounds of appeal are competent. One of the take-aways from that decision is that the Respondent is a juristic person.

We will not conclude this judgement without making the following observations and admonitions to the parties:

(a) To the Appellant:

(i) You should not wait for a tax audit before discovering and paying sums under-remitted.

(ii) A tax authority does not impose tax. A tax legislation imposes tax while a tax authority COLLECTS it (see section 1 PITA).

(b) To the Respondent:

(i) You should be mindful of how your approach to tax issues will impact on investment in your State. Giving a taxpayer 48 hours or 7 days or any other period less than what the statute provides and changing assessment figures like the colour of a chameleon reduces the confidence of the taxpayer in the tax system.

(ii) There is need to adhere to the provisions of PITA and relevant regulations in your dealing with taxpayers.

This is the judgement of the Tribunal.

Dated this 20th day of August, 2019.

CHUKWUEMEKA EZE
(Chairman, Tax Appeal Tribunal, South East Zone)

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IDE JOHN C. UDEAGBALA

I have read the judgment just delivered by the Chairman. I agree entirely with his reasoning and conclusion.

....

Signature

OBRI, FRANCIS OGAR:

I concur.

.... 21/8/19

Signature

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Name R. UCHE NWUTA
Designation: SECRETARY