



IN THE TAX APPEAL TRIBUNAL  
LAGOS ZONE  
HOLDEN AT LAGOS  
BEFORE  
PANEL 1

HON. O. M. LASSISE-PHILLIPS, ESQ.  
HON. MARK A.C. DIKE  
HON. TITILOLA AKIBAYO  
HON. R. A. QUADRI  
HON. KANENG ADOLE, ESQ.

CHAIRMAN  
COMMISSIONER  
COMMISSIONER  
COMMISSIONER  
COMMISSIONER

APPEAL NO. TAT/LZ/PIT/054/2021

LAGOS STATE BOARD OF INTERNAL REVENUE

APPELLANT

AND

CRADLE PRODUCTIONS AND SERVICES LIMITED

RESPONDENT

JUDGMENT

**Background**

This Appeal was brought at the instance of the Appellant against the Respondent regarding the Respondent's failure to deduct and remit accurately the Personal Income Tax (PIT) of its employees, Withholding Tax from its transactions, and Development Levy due to the Appellant in the sum of N2,956,411.37 (Two Million, Nine Hundred and Fifty-six Thousand, Four Hundred and Eleven Naira, Thirty-Seven Kobo) covering the period of 2016.

This tax liability arose from an audit exercise conducted by the Appellant on the Respondent which established the afore-mentioned tax liability due to the Lagos State Government.

The Respondent failed to object the assessment though it was informed of its right to object within 30 days of receipt of the assessment and demand notice.

When the Respondent refused to pay the assessed liability, the Appellant filed its Notice of Appeal dated 5 July, 2021 at the Tribunal in Lagos. In the said Notice of Appeal, the Appellant seeks the following reliefs:

- a. A Declaration that by virtue of the provisions of the Personal Income Tax Act 2004 as amended, the Respondent is liable to the Appellant for the amount of tax deducted or deemed to have been deducted from the emoluments paid to its employees under PAYE and for withholding tax which have been or ought to have been deducted from payments made to individuals on contracts and other transactions under the Withholding Tax Scheme.
- b. A Declaration that the total sum of N2,956,411.37 (Two Million, Nine Hundred and Fifty-Six Thousand, Four Hundred and Eleven Naira, Thirty-Seven Kobo) is final and conclusive, unpaid and due as debt to the Government of Lagos State from the Respondent for the stated period.
- c. Interest on the said amount at the prevailing commercial bank rate until judgment and thereafter interest at the rate of 6% per annum until the whole amount is liquidated.
- d. And Such Other or Further Order(s) as this Tribunal may deem fit to make in the circumstance.

At the trial, the Appellant called one witness Folarin Durosinmi-Etti who adopted his Written Statements on Oath dated 5 July, 2021 as his evidence in the Appeal and tendered certain documents which were admitted and marked as *Exhibits LA1A-LA4*. The Tribunal directed the Appellant to file its Final Written Address which was eventually adopted on the 8<sup>th</sup> of December 2021. Thereafter, the Appeal was adjourned for Judgment.

#### **Issues for Determination**

The Appellant's Counsel formulated two issues for determination, to wit,

1. *Whether the Appellant has fulfilled all the statutory conditions to enable this Honourable Tribunal grant the Appellant all the reliefs sought in its Notice of Appeal.*
2. *Whether the Respondent is liable to pay penalty and interest for failure to remit tax under PAYE and WHT, non-deduction or remittance of State Development Levy and Business Premises Levy for the stated period*

## Argument of Issues

On Issue one, Learned Counsel for the Appellant, Vera Ohai, Esq., submitted that the Tribunal had unfettered jurisdiction to grant the appellant all the reliefs sought in its Notice of Appeal having established that there was a need for additional assessment by virtue of section 54 (5) Personal Income Tax Act (PITA) 2004 (as amended). She argued that the assessment was duly served on the Respondent in accordance with the provision of section 57 of PITA.

The Appellant's Counsel contended that the Respondent was an employee of labour with obligations to deduct and remit PIT from the emoluments it paid to its employees. She cited paragraph 17 of the Operation of Pay As You Earn (PAYE) Regulations, 2002 in support. Furthermore, Counsel argued that section 82 of PITA made an employer answerable for tax deducted from the emoluments paid to its employees and submitted that the effect of the foregoing provisions was to make the Respondent as an employer of labour answerable for the PIT of its employees.

She reiterated that the Appellant having served the Notice of Assessment as regulated by the provision of section 57 of the PITA, the Appellant had placed before the Tribunal evidence that the Respondent was properly served with the assessment. She referred the Tribunal to *Exhibits LA1, to LA4* and submitted that the Appellant had fulfilled all statutory requirements and the Respondent was liable to the assessed liability. She urged the Tribunal to so hold.

Counsel maintained that it was a question of law whether an assessment had become final and conclusive. She submitted that the Respondent failed to provide documents to support its grounds of objection and also failed to appeal against the assessment even when the Appellant served it NORA. She submitted further that the assessment had become final and conclusive and referred the Tribunal to *Lagos State Board of Internal Revenue Vs Shell Petroleum Development Company of Nigeria.*<sup>1</sup>

Relying on section 60 PITA and section 59 of the Federal Inland Revenue Service (Establishment) Act, 2007 (FIRS Act), she argued that the Tribunal had powers to entertain all cases arising from the operation of PITA. Learned Counsel also relied on paragraph 13 of the Fifth Schedule to the FIRS Act and submitted that despite the service of all the statutory notices, starting from September, 2019 through January 2020, the Respondent failed to effect payment of the outstanding taxes within the time specified in the demand. She submitted further that assessment had become final and conclusive. She urged this position on the Tribunal.

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<sup>1</sup> (2011) 5 TLRN 60.

On the second issue, learned Counsel submitted that penalty and interest become due on tax if not paid or remitted within the time prescribed by law relying on sections 82 and 74(1) of PITA.

She argued that by section 82 of PITA an employer was answerable for any tax deducted from the emoluments paid to its employees and that the failure to account for the tax deducted would attract penalty of 10% per annum plus interest. She drew attention to the provisions of paragraph 8 of the Operation of PAYE Scheme Regulations which prescribed time for remitting/paying PAYE, that is, the tax was to be paid within 10 days after the end of any month while contending that the time limited for the remittance of WHT was 30 days after deduction as stated in section 74(1) of the PITA.

It was Counsel's view that section 74(1) of the PITA and paragraph 8 of the Operation of PAYE Scheme Regulations buttressed the Appellant's position. She referred the Tribunal to the case of *Lagos State Board of Internal Revenue Vs Shell Petroleum Development Company of Nigeria*.<sup>2</sup>

She submitted further that section 82 of PITA reinforced the Appellant's position that failure to deduct and account for the tax deducted would attract penalty and interest as the two acts were forbidden to wit: failure to make deduction and failure to account properly for the amounts deducted. she submitted also that under-deduction was tantamount to failure to deduct as a law could not be obeyed partially. She cited *Shell Vs Lagos State Internal Revenue Service* as well as *Citi-Bank Vs LSBIR*.

Finally, she urged the Tribunal to find and hold that the Appellant was entitled to all the reliefs sought and to declare that the total sum of N2,956,411.37 (Two Million, Nine Hundred and Fifty-Six Thousand, Four Hundred and Eleven Naira, Thirty-Seven Kobo) was final and conclusive, unpaid and due as debt to the Government of Lagos State from the Respondent for 2016 year of assessment. She urged the Tribunal to order that same be paid into the coffers of the Lagos State Government.

### **Determination of Issues**

The issue necessary for the determination of this Appeal, in our view is -

*whether the Appellant is entitled to judgment in the sum of N2,956,411.37 (Two Million, Nine Hundred and Fifty-Six Thousand, Four Hundred and Eleven Naira, Thirty-Seven Kobo) together with interest and penalty in the circumstances of this case.*

The record of this Honourable Tribunal shows that the Respondent was served with the Notice of Appeal commencing this Appeal as well as hearing notices of the proceedings thus far. However, the Respondent in its own wisdom, elected to neither file a Reply to

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<sup>2</sup> 6 ALL NTC.

the Appellant's Notice of Appeal nor appear before this Honourable Tribunal to join issues with the Appellant. The implication of the failure to join issues with the Appellant, is that, the Appellant's appeal is unchallenged/uncontested.

Notwithstanding that the Appeal was not contested by the Respondent, the Appellant proceeded to discharge the burden placed on it to prove its case. The totality of the Appellant's witness testimony is that the Appellant conducted an audit exercise on the Respondent from which it discovered the Respondent's failure to deduct and remit accurately the PIT of its employees, WHT from its transactions, and Development Levy due to Lagos State Government. That as a result of the under deductions and under remittance, it served on the Respondent demand notice which notice was accompanied by a notice of assessment of the Respondent's liability for PIT, WHT, and Development Levies covering the period of 2016 in the sum of N2,956,411.37 (Two Million, Nine Hundred and Fifty-Six Thousand, Four Hundred and Eleven Naira, Thirty-Seven Kobo) only. That the Respondent objected to the said notice of assessment. That following the Respondent's objection, the Appellant demanded additional documents to support the Respondent's grounds of objection, a demand the Respondent failed, refused and/or neglected to honour. That following the Respondent's failure to provide the documents, the Appellant issued a notice of refusal to amend the assessment and directed the Respondent to pay the assessed liability. That the Respondent failed to pay the assessed liability: Consequent upon this failure, the Appellant then filed this Appeal seeking the reliefs endorsed on its Notice of Appeal.

The evidence led by the Appellant in proof of its Appeal was not in any way challenged or contradicted by the Respondent who neither filed any response nor appeared before this Honourable Tribunal despite proof of service of the Notice of Appeal and hearing notices on it.

From the facts before us, we believe that the Appellant had taken all necessary steps to bring the existence of this Appeal to the Respondent's notice.

It must be noted that appearance before this Tribunal is by filing a Reply as in Form TAT<sub>3</sub> within 30 days after service of a Notice of Appeal. See Order VIII rule 1 of the TAT Rules. See also *Tourist Company of Nigeria Limited Vs Federal inland Revenue Service*.<sup>3</sup> It is our opinion that the Respondent's failure to enter appearance when there is ample evidence that the Respondent had been duly notified of the existence of the Appeal raises a presumption that the Respondent never intended to contest the Appeal or did not have an answer to the Appellant's case.

We hold therefore that the Respondent is deemed to have admitted and/or conceded to the facts of the Appellant's Appeal.

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<sup>3</sup> Appeal No: TAT/LZ/CIT/022/2019 delivered by the Lagos Tribunal on the 10<sup>th</sup> of December 2021 (unreported).

Under the Personal Income Tax Act (PITA), an employer is required to deduct and account for personal income tax on the employment income of its employees through the Pay-As-You-Earn (PAYE) system. As an agent of the relevant tax authority, an employer performs this role by disclosing in a return, the total emoluments paid to its employees and the amount of tax that has been deducted on the emoluments. Under section 82 of PITA, it is provided that employers are answerable to the relevant tax authority for any amount (together with interest and penalty) they fail to deduct or properly account for.

There is uncontroverted evidence before this Tribunal that the Respondent is an employer on whom the law imposes certain obligations as rightly outlined by the Appellant's Counsel in her Final Written Address. The Respondent failed in these statutory obligations.

In view of the above, we hold that the Respondent's liability for PIT, WHT covering the period of 2016 in the sum of N2,956,411.37 (Two Million, Nine Hundred and Fifty-Six Thousand, Four Hundred and Eleven Naira, Thirty-Seven Kobo) only or so much of it as representing the Respondent's PAYE and WHT liabilities has been established by the Appellant.

The extant assessment raised by the Appellant was not objected to by the Respondent. The Respondent has neither defended nor called evidence at the hearing of the Appeal despite being served with the Tribunal's processes and or made aware of the proceedings before the Tribunal. We therefore agree with the Appellant's Counsel that the assessment has become final and conclusive. It is binding on the Respondent.

Accordingly, we hold that the assessment in the sum of N2,956,411.37 (Two Million, Nine Hundred and Fifty-Six Thousand, Four Hundred and Eleven Naira, Thirty-Seven Kobo) or so much of it as representing the Respondent's PAYE and WHT liabilities, in the absence of an objection or appeal by the Respondent has become final and conclusive and binding on the Respondent.

We hold further that cogent and relevant evidence in proof of the Appellant's case has been adduced by the Appellant. The evidence has not been controverted by the Respondent.

We hold also that the Appellant is entitled to judgment in the sum of N2,956,411.37 (Two Million, Nine Hundred and Fifty-Six Thousand, Four Hundred and Eleven Naira, Thirty-Seven Kobo) or so much of it as representing the Respondent's PAYE and WHT liabilities, together with a penalty of 10 per cent per annum of the amount plus interest at the prevailing commercial rate from the date the tax liabilities arose.

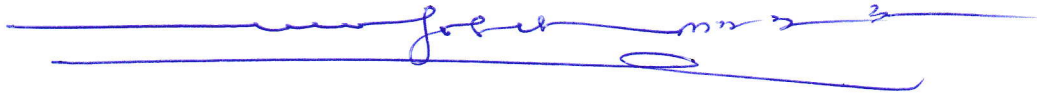
Finally, tax liabilities in respect of strict State taxes and or levies like Development Levy and Business Premises Levy are not within the remit of the Tribunal. In other words, the jurisdiction of the Tax Appeal Tribunal does not extend to hearing appeals in respect of a

State tax law. See *Edmund Chinonye Obiagwu Vs Lagos State Government & Anor.*<sup>4</sup> We advise State tax authorities appearing before this Tribunal to bear this in mind when filing appeals before the Tribunal.


In the final analysis, all the reliefs sought by the Appellant, to the extent that they are within the remit of the Tribunal, are hereby granted.

This is the Judgment of the Tribunal.

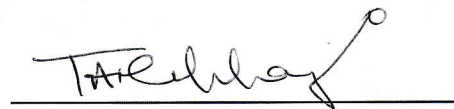
Dated this 5<sup>th</sup> day of April 2022.



O.M. LASSISE-PHILLIPS, ESQ.  
Chairman



M.A.C. DIKE  
Hon. Commissioner



MRS. T. AKIBAYO  
Hon. Commissioner

R.A. QUADRI  
Hon. Commissioner



MRS. KANENG ADOLE, ESQ.  
Hon. Commissioner

**Appearances**

Stella Olajiga, Esq. - for the Appellant  
None - for the Respondent

**Representation**

Appellant - Nil  
Respondent - Nil

<sup>4</sup> Appeal No. TAT/LZ/VAT/038/2015 delivered by the Lagos Zone on the 13<sup>th</sup> of January 2016 (Unreported).