IN THE TAX APPEAL TRIBUNAL
SOUTH-EAST ZONE
HOLDEN AT ENUGU

APPEAL NO: TAT/SEZ/008/2020

BETWEEN

ECOBANK NIGERIA LIMITED ---------- APPELLANT

AND

ENUGU STATE INTERNAL REVENUE SERVICE ---------- RESPONDENT

APPELLANT'S WRITTEN ADDRESS

PART ONE: INTRODUCION/STATEMENT OF FACTS

1.0 Introduction

1.1 The Appellant instituted this action vide a Notice of Appeal filed on the 31st day of December, 2020 which is predicated on 11 grounds of appeal upon which it seeks the following reliefs from this Honourable Tribunal:

I. *A DECLARATION that the Demand Notice and the Assessment are invalid and unjustifiable.*

II. *AN ORDER setting aside the Demand Notice and the Assessment.*

III. *AN ORDER of PERPETUAL INJUNCTION restraining the Respondent from acting or giving effect to the Demand Notice/the Assessment or seeking to take steps or any other action with the effect of recovering any part or the whole sum of **N1,373,870,745.79** from the Appellant including seeking exercise of the Respondent's power of distraint.*

1.2 In Defence of this appeal, the Respondent filed a reply dated the 8th day of July, 2021 and filed on the 12th day of July, 2021 alongside accompanying processes.

2.0 Statement of Facts:

2.1 **The Appellant's Case:** The crux of the Appellant's case is that on the 21st of day of August, 2020, the Appellant received a Demand Notice dated 18th day of August, 2020 from the Respondent requesting that the Appellant pays the sum of N1,373,870,745.79 (One Billion, Three Hundred and Seventy Three Million, Eight Hundred and Seventy Thousand, Seven Hundred and Forty Five Naira, Seventy-Nine Kobo) as additional Pay As You Earn (PAYE) tax liabilities **for the period between 2006 and 2011.**

The Respondent predicated this additional assessment on documents and information said to be furnished to the tax authority of another State – Abia State) by the Appellant in respect of the Appellant's employees in that State, and which said list had no business with the Appellant in Enugu State nor the Respondent. The Respondent relied on this third-party information to compute the Appellant's supposed additional PAYE tax liability without taking into cognizance the Appellant's structure, capacity and operations within Enugu State. The Respondent also quoted the Appellant's alleged failure to honour the Respondent's demand for additional information allegedly needed to conduct an investigation into the Appellant's tax affairs whereas the Appellant had furnished the Respondent with relevant documents during the pendency of various statutory audits conducted by the Respondent.

Upon receipt of the Demand Notice, the Appellant discovered several anomalies and raised a prompt objection to the additional assessment vide a Notice of Objection dated 23rd day of August, 2020.

Vide a Notice of Refusal to Amend (NORA), the Respondent refused to amend the liability contained in the original Demand Notice and the Appellant filed a Further Notice of Objection dated 3rd day of December, 2020 which the Respondent has not disputed.

The Appellant's vehement objection to the Respondent's Demand Notice and additional tax assessment are summarized in the points below, thus:

i. The Demand Notice and Assessment of N1,373,870,745.79 (One Billion, Three Hundred and Seventy Three Million, Eight Hundred and Seventy Thousand, Seven Hundred and Forty Five Naira, Seventy-Nine Kobo) for the period between 2006 and 2011 is statute barred having been raised outside 6 years of the respective assessment years.
ii. The Respondent failed to establish fraud, willful default or neglect against the Appellant.
iii. The Respondent erroneously relied on unverified third-party information purportedly furnished by the Appellant to the relevant tax authority of another State in respect of the Appellant's employees in that State.
iv. The Respondent acted in flagrant breach of the Appellant's right to fair hearing.
v. The Respondent disregarded the relevant provisions of the Personal Income Tax Act (PITA) in computing the Appellant's alleged tax liability including the determination of the number and actual taxable income of the Appellant's employees, actual remittances made by the Appellant including penalties and interest charged and certain post-audit payments made by the Appellant. The Respondent equally failed to recognize the sums paid by the Appellant as PAYE Tax for the period between 2006

and 2011 and by virtue of different statutory audits conducted by the Respondent.

2.2 **The Defence:** In opposition to this appeal, the Respondent contended in its reply that the Appellant's Notice of Objection is invalid for objecting to the tax investigation exercise as opposed to the Demand Notice.

The Respondent further claimed that the purported additional tax liability of the Appellant which is subject of the Demand Notice served on the Appellant was not statute barred and that the tax audit verification and investigation exercise carried out on the Appellant was based on the willful default and/or neglect on the part of the Appellant to furnish complete data and documents for the computation of PAYE, Withholding Taxes and Development Levies due from 2006 to 2011. According to the Respondent, it took cognizance of remittances already made by the Appellant for the period under review.

2.3 **Hearing:** The Appellant fielded a witness, one Dominic Aimasor Oshogwe who adopted two (2) depositions filed on 31st day of December, 2020 and 5th day of October 2021 which were respectively marked **Exhibits ECO 1A and ECO 1B.** The Appellant tendered 5 exhibits through its sole witness, marked as follows:

Demand Notice of 18th day of August, 2020	**Exhibit ECO 2**
Tax Audit dated 2nd day of July, 2012	**Exhibit ECO 3**
Notice of Objection dated 21st day of August, 2020.	**Exhibit ECO 4**
Letter dated 27th day of November, 2020	**Exhibit ECO 5**
Further Notice of objection dated 3rd day of December, 2020	**Exhibit ECO 6**

2.4 The Respondent failed to call any witness in defence of this case and on the 12th day of October, 2022, the Respondent was foreclosed from entering any Defence.

3.0 ISSUES FOR DETERMINATION

Having regard to the facts of this appeal, we respectfully submit the following sole issue for determination by this Honourable Tribunal:

i. Whether the Respondent's Additional Assessment of ***N1,373,870,745.79***, the Demand Notice dated 18th day of August, 2020 and the Notice of Refusal to Amend dated 27th day of November, 2020 issued to the Appellant is not unjustifiable and unlawful?

PART TWO: LEGAL ARGUMENT

4.0 ISSUE 1

*Whether the Respondent's Additional Assessment of **N1,373,870,745.79**, the Demand Notice dated 18th day of August, 2020 and the Notice of Refusal to Amend dated 27th day of November, 2020 issued to the Appellant is not unjustifiable and unlawful?*

4.1 We submit that the Respondent's Demand Notice dated 18th day of August, 2020, the accompanying additional assessment of N1,373,870,745.79 (One Billion, Three Hundred and Seventy Three Million, Eight Hundred and Seventy Thousand, Seven Hundred and Forty Five Naira, Seventy-Nine Kobo), and the Notice of Refusal to Amend dated 27th day of November, 2020 issued to the Appellant in relation to PAYE taxes for 2006-2011 tax years are unjustifiable and unlawful for several reasons.

Demand Notice caught by statutory limitation in Section 55(1) of PITA

4.2 The first leg of our argument is that considering the express provisions of ***Section 55(1)* of the *Personal Income Tax Act, 2011* ("PITA")** and the period of 2006 to 2011 within which the Respondent carried out an additional tax assessment on the Appellant, the Respondent's Demand Notice dated 18th August, 2020 and the **N1,373,870,745.79** (One Billion, Three Hundred and Seventy Three Million, Eight Hundred and Seventy Thousand, Seven Hundred and Forty Five Naira, Seventy-Nine Kobo) assessment of the Appellant is statute barred.

4.3 It is trite that the concept of "statute barred" presupposes that when a statute provides for certain acts or steps to be taken within a prescribed time limit, all acts done by a person contrary to the express time stipulation of statute becomes an exercise in futility.

4.4 In ***Araka v. Ejeagwu* (2000) LPELR-533 (SC) P.47, Paras. A-C**, the Supreme Court elucidated the above principle when it decided thus:

> *..."statute-barred' simply means barred by a provision of the statute. It is usually as to time i.e. the bar gives a time limit during which certain actions or steps should be taken, and one is barred from taking action after the period specified in the statute. Any action taken after or outside the specified limit or period is of no avail and has no valid effect. The bar can be lifted or the limit extended only if the statute allows it to be done. Where there was no such extension, the action carried out will be invalid, and the court will treat as such"*

4.5 The instant appeal is predicated on the additional tax assessment of the Appellant to P.A.Y.E tax for the period of 2006 to 2011 which is regulated by the PITA. ***Section 55 of PITA*** governs additional assessments of personal income tax on a taxable person and consequently becomes the primary point of reference.

4.6 The general principle guiding additional assessment of a taxable person by a tax authority is encapsulated in **Section 55(1) of *PITA*** which provides that:

> *"If the relevant tax authority discovers or is of opinion at any time that a taxable person liable to income tax has not been assessed or has been assessed at a less amount than which ought to have charged, the relevant tax authority may,* ***within the year of assessment or within six years after the expiration thereof*** *and as often as may be necessary, assess the taxable person at such amount or additional amount as ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings shall apply to that assessment or additional assessment and to the tax thereunder". (Emphasis Supplied)*

4.7 In relation to tax assessment on an employee's emolument otherwise called the PAYE scheme, **Section 54(5) of the PITA** similarly stipulates thus:

> *"Notwithstanding the provisions of this section, no assessment to income tax for a year of assessment shall be made by the relevant tax authority on an employee with respect to his emolument or other income if that tax is recoverable by deduction under the provisions of section 81 of this Act unless,* ***within six years after the end of that year****".*

4.8 A consideration of the above provisions make it clear that the imposition of additional tax liability on a taxable person does not lie in perpetuity and at the pleasure of the tax authority but is subject to a statutory limitation of 6 years from the assessment year. It therefore follows that for the purposes of calculating whether a tax authority is permitted or barred by **Section 55(1) of the PITA** from conducting an additional assessment, two facts must be clearly established, to wit:

1. The year of assessment.
2. Whether a period of 6 years has elapsed from the year of assessment.

4.9 One clearly undisputed fact in relation to the instant suit which is supported by the record of this Honourable Tribunal is that the Respondent served a Demand Notice **dated 18th day of August, 2020** on the Appellant requesting the sum of **N1,373,870,745.79** (One Billion, Three Hundred and Seventy Three Million, Eight Hundred and Seventy Thousand, Seven Hundred and Forty Five Naira, Seventy-Nine Kobo) purportedly representing the Appellant's additional tax liability for the **period between 2006 to 2011**.

4.10 From a consideration of the 2006 to 2011 period of assessment vis-à-vis the year 2020 when the Respondent decided to carry out its self-acclaimed additional tax assessment of the Appellant, it does not take much inquiry to discover that the 6-year window provided in **Section 55(1)** had long elapsed

before the Respondent woke up from its slumber and decided to carry out its purported investigation.

4.11 One of the underlying rationales for the statute of limitation principle is that a person who sleeps on his rights should not be allowed to wake up at his leisure and still be accorded assistance by the Courts. See the case of ***Skye Bank Plc v. Perone Nigeria Limited (2016) LPELR-41443 (CA), Pp.16-17, Paras. C-A.*** Clearly, it is to guard against the instant situation whereby an indolent tax authority such as the Respondent suddenly wakes up to enforce a taxable person's purported additional tax liability for years dating far back in time that the limitation safeguard in ***Section 55(1) of the PITA*** was introduced.

4.12 Our Courts have always insisted on strict adherence to the concept of the rule of law which presupposes that all actions be done in accordance with law. Consequently, the Courts have decided that tax liability can only be imposed on a person where the law clearly provides for it and to do otherwise amounts to an open show of arbitrariness.

4.13 In ***Best Children International Schools Ltd. v. FIRS (2018) LPELR-46727 (CA) Pp.6-8, Paras. F-C,*** the Court of Appeal was clear on the above principle when it held thus:

> *Taxation is a major issue in the economy of any nation. When issues come up requiring a determination on whether a person either natural or artificial is liable to pay taxes the Court is duty bound to explore the relevant laws and apply them accordingly. It is certain and well endorsed by our Court, that taxation is not on all comers an arbitrary issue.* ***No tax can be imposed on or collected from the subject without the words in an Act of parliament clearly showing intent on it to lay a burden on the subject.***

4.14 On the strength of the above authority, we submit that the Respondent's additional tax assessment of the Appellant in the sum of N1,373,870,745.79 (One Billion, Three Hundred and Seventy Three Million, Eight Hundred and Seventy Thousand, Seven Hundred and Forty Five Naira, Seventy-Nine Kobo) having not been backed up by statute is unknown to law and nothing short of an arbitrary tax which has been condemned by the Courts and we urge this Honourable Tribunal to so hold.

4.15 May we at this juncture commend to this Honourable Tribunal the decision of its sister TAT, South-South Zone, Benin in the case of ***Ecobank Nig. Ltd v. Delta State Board of Internal Revenue Unreported Appeal No. TAT/SSZ/005/2020*** which facts are almost on all fours with the instant suit. The summary of this case is that vide a letter dated 28th day of October, 2019 the Appellant was issued with a Best of Judgment Assessment in the sum of N2,618,624,186.66 (Two Billion, Six Hundred and Eighteen Million, Six Hundred

and Twenty Four Thousand, One Hundred and Eighty Six Naira, Sixty Six Kobo only) for the years 2000-2010. Dissatisfied with the said assessment, the Appellant appealed to the Tribunal and after a careful consideration of the facts and the relevant legislation relating thereto, the Tribunal unequivocally held that that the Respondent's Demand Notice was caught by the statute of limitation when it decided as follows:

> *"Finally, the Respondent's Demand Notice dated 28th October, 2019 of N2,618,624,186.66 (Two Billion, Six Hundred and Eighteen Million, Six Hundred and Twenty Four Thousand, One Hundred and Eighty Six Naira, Sixty Six Kobo only) has been caught by the statutory limitation period of 6 years as provided in Section 54(5) of the Personal Income Tax Act (PITA) 2011 (as amended) and the proviso of Section 55(2) of Personal Income Tax Act 2011 (as amended) cannot be activated in this case. If we take the year of the investigation as the year of assessment which is 2019, the period allowed by law as evaluated in this case, are the years 2013-2018 which do not fall within the years of contention as stated in Exhibit ENL 4- Notice of investigation dated 7th August 2019 and Exhibit ENL9- the Demand Notice dated 28th October, 2019. Consequently, we have no option but to give judgment in favour of the Appellant..."*

4.16 Also worthy of note is the fact that the Courts have also held that the essence of the principle of statute bar is to prevent an inequitable situation where a party can institute an action in Court in circumstances where the defendant would due to the passage of time, find it difficult to produce vital evidence in its defence. *See the case of* ***Power Holding Company of Nigeria Plc v. Arc. Gabriel Olufemi Ayodele & Anor. (2018) LPELR-44537 (CA) Per Georgwill J.C.A. Pp.12-24, Paras. E-A.***

4.17 Tax issues are predicated on documentary records and the implication of upholding a tax authority's right to investigate a taxable person's records without considering the passage of time would not serve the ends of justice. This is moreso as by virtue of the provisions of ***Section 332 of the Companies and Allied Matters Act, 1990 ("CAMA")*** which was in force in the relevant year when the Respondent purported to carry out its tax investigation on the Appellant, companies are only obliged to keep accounting records for six years from the date on which such records were made.

4.18 Considering the fact that the CAMA predates the promulgation of the PITA, we submit that it is not sheer coincidence but to create a harmony between both statutes that **Section 55(1)** of the PITA equally imposes a 6-year time limit on any assessment by the tax authority thereunder. This is because it would be an antithetical absurdity for the CAMA to impose a duty on companies to keep records beyond 6 years from the date of creation and the PITA provisions permit a demand for these same records 6 years after.

4.19 Consequently, contrary to the Respondent's argument in exhibits "ECO 2" and "ECO 5" about the Appellant's failure to produce certain requested documents, we submit that by ***Section 332 of CAMA***, the Appellant was not obliged to produce any document dating beyond a 6-year period. It therefore follows that the Respondent placed an undue demand on the Appellant for its records which superseded the 6-year period for record keeping provided in CAMA. The Respondent further erred and arrived at a wrong conclusion that this inability of the Appellant to furnish the requested documents was a deliberate act.

4.20 Quite notably in Exhibits "ECO 2" and "ECO 5", the Respondent in a bid to prevent its actions from being caught by the statutory limitation in ***Section 55(1) of PITA*** tried to rely on the proviso to ***Section 55(1)*** which is contained in ***Section 55(2) of PITA***. However, an examination of the peculiar facts of the instant case show clearly that this proviso cannot avail the Respondent in the circumstances.

4.21 **Section 55(2) of the PITA** makes for three exceptional circumstances in which a taxable person can be reassessed after the 6-year window closes. The said proviso states thus:

> *...Provided that where any form of fraud, willful default or neglect has been **committed** by or on behalf of a taxable person in connection with any tax imposed under this Act, the relevant tax authority may at any time and as often as may be necessary assess that taxable person at such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the fraud, willful default or neglect. (Emphasis Supplied)*

4.22 The implication of the above provision is to create an exception to the general rule in ***Section 55(1)*** by prescribing a window for the tax authority to make an assessment (in the case of a taxable person that has not been assessed) or an additional assessment on a taxable person at any time but **provided** a taxable person has been found culpable of *"any form of fraud, willful default or neglect."*

4.23 The usage of the word 'committed' in the above statute shows that the allegations imputed to the taxpayer ought not to be speculative but a clear communication from the tax authority that the taxable person has perpetuated the crime or wrongs specified above.

4.24 **A combined reading of the provisions of Sections 55(1) (2) and 55(4) of the PITA also makes it clear that a finding of fraud, willful default or neglect is the only recognizable basis upon which an additional assessment of a taxable person can be legally permissible after 6 years, following the expiration of the assessment year.** Consequently,

establishing the exceptions provided in **Sections 55(2) of the PITA** is a *sine qua non* to a lawful additional assessment after the 6-year window has elapsed.

4.25 The afore-stated principle was emphasized in the case of ***John Khawam Pools Co. Ltd v. Federal Board of Inland Revenue (ALL NTC), Vol. 2, Page 102***, where it was decided that a tax authority has no right to review previous assessments unless it establishes fraud, unlawful default or neglect in relation to the assessments in question.

4.26 We further contend that if the Respondent intended to invoke the proviso to **Section 55(1) of the PITA** and conduct tax investigations on the Appellant outside the statutory window on the basis of fraud, willful default or negligence, this fact should have been clearly communicated to the Appellant **at the first point of the Respondent's correspondence with the Appellant and before service of the Demand Notice dated 18th August, 2020**. By so doing, the Appellant would be aware of the rationale for an inquiry into its tax affairs after expiry of the 6-year window and would therefore be afforded the opportunity to defend itself before the commencement of the investigation.

4.27 The law is settled that the onus of proving specific facts lies on he that asserts, *See* ***Section 131(1) of the Evidence Act, 2011***. Consequently, the burden of proving fraud, willful default or negligence on the part of the Appellant lay with the Respondent. However the Respondent has not furnished any shred of evidence for the Tribunal to arrive at a finding that a prima facie case of fraud, willful default or negligence against the Appellant had been established by the Respondent and imputed to the Appellant at the onset. Consequently, we submit that the Respondent has not discharged the onus of proving that a legal basis existed *ab initio* for an investigation within the intendment of the proviso in **Section 55(1) of the PITA** and we urge this Honourable Tribunal to so hold.

4.28 On the strength of the afore-stated argument, it becomes clear that the basis upon which the Respondent proceeded with its investigation was clearly founded on speculation and unfounded assumptions. To further evidence this fact, we refer this Honourable Tribunal to paragraph 3a of the Respondent's NORA dated 27th November, 2020 (Exhibit ECO 5) excerpted below, thus:

> *The letter to your Bank, notifying it of your intention to carry out Tax investigation exercise was given when further documents emanating from the bank to another relevant Tax Authority in 2015 became available to the Service....*

4.29 The above extract shows that the Respondent hinged its investigation on information purportedly contained in a purported *further document emanating from the bank to another relevant Tax Authority in 2015*. However, the said document is not before this Honourable Tribunal and was never admitted as an Exhibit in the course of the trial.

4.30 In the absence of the purported document upon which the Respondent has based its purported investigation, this Honourable Tribunal can only arrive at a finding that the purported investigation conducted by the Respondent was unfounded and there is no basis on which to infer fraud, negligence or willful default on the part of the Appellant as to justify an additional investigation of the Appellant after closure of the 6-year window prescribed by law. We urge this Honourable Tribunal to hold.

Third Party Information used to compute the Appellant's purported outstanding tax liability

4.31 Assuming without conceding that the existence of this alleged *further documents emanating from the bank to another relevant Tax Authority in 2015* is anything to go by, it is important to reiterate that PAYE is tax recoverable from any emolument made from an employer to the employee and remittances under the PAYE scheme is tied to the employee's State of residence hence they are paid to the respective State tax authorities. Also, because the number of the Appellant's staff and the income of its employees differ from State to State, the information used to calculate PAYE tax in one State cannot be adopted in another. Consequently, the Respondent could not have rightly relied on information from another tax authority in recomputing the Appellant's tax liability in Enugu State.

4.32 It is trite that tax is an imposition on the financial affairs of a taxable person. Consequently, we submit that it is atrocious and inequitable for the Respondent to execute the all-important duty of calculating a taxpayer's tax liability by heavily relying on the information allegedly supplied to a sister tax authority. By depending on extraneous documents from the said third party, adopting it wholeheartedly as emanating from the Appellant's records and applying the information therein to arrive at the supposed tax liability of the Appellant, the Respondent apparently made its decision on a foundation that is patently erroneous.

4.33 Consequently, the Respondent's assessment of the Appellant's purported outstanding tax liability from 2006-2011 in the sum of N1,373,870,745.79 (One Billion, Three Hundred and Seventy Three Million, Eight Hundred and Seventy Thousand, Seven Hundred and Forty Five Naira, Seventy-Nine Kobo) cannot stand because as decided by Lord Denning in the locus classicus case of **UAC v. Macfoy** [1962] AC 152, you cannot put something on nothing and expect it to stand.

4.34 In the light of the above arguments, we humbly urge this Honourable Tribunal to hold that the Respondent's purported assessment and the demand notice issued to the Appellant was predicated on hearsay and cannot stand.

fair hearing

4.35 One of the cardinal principles of natural justice and fair hearing is encapsulated in the principle of *audi alterem partem* which connotes that both sides must be heard. See the case of ***Alhaji Chief Yekini Otapo v. Chief R.O. Sunmonu & Ors. (1987) LPELR-2822 (SC).***

4.36 The provisions of ***Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)*** makes it clear that the strict adherence to the tenets of fair hearing is not limited to our law Courts but extends to an administrative decision when it specifically provides thus:

> "**In the determination of his civil rights and obligations, including any question or determination by or against any** government **or authority**, a person shall be entitled to a fair hearing within a reasonable time by a Court or other tribunal established by law and constitute in such manner as to secure its independence and impartiality". (Emphasis Supplied)

4.37 The undisputed facts of this case reveal that the Appellant's complaint is predicated on the Respondent's determination of the Appellant's purported additional tax liability, and its refusal to amend same. Consequently, the Respondent in this regard, acted in a quasi-judicial or at best an administrative capacity and was bound to adhere to the tenets encapsulated in the doctrine of fair hearing.

4.38 In the case of ***F.R.N. v. Maishanu (2019) 7 NWLR Pt. 203 SC, p.222, par G-E.,*** the apex Court emphasized the importance of this principle of law when it held thus:

> *...This court made several pronouncements that the principle of fair hearing has been incorporated in our jurisprudence that a man cannot be condemned without being heard. The principle is applicable in all cases in which a decision is taken in any matter,* ***whether in a judicial, quasi-judicial or even in purely administrative proceeding involving a person's interest in a property, right, or personal liberty, Let the other party be heard!*** (Emphasis supplied)

4.39 The above principle was brought closer home in the case of ***Sampson Daniel Upkong & Anor. v. The Honourable Commissioner For Finance and Economic Development & Anor. Page 3551, Vol.4 ALL NTC*** where the Court held that an additional tax assessment without according fair hearing to the taxable person is vindictive and oppressive.

4.40 We submit that the Appellant was denied its right to fair hearing at several points leading up till the purported additional assessment issued against the Appellant but more specifically in two ways, to wit:

1. By demanding for records which the Appellant was not under a legal duty to provide and thereafter adopting the best of judgment assessment approach to assess the Appellant when the records were not provided.
2. By not giving the Appellant information and/or the documents upon which the Respondent's investigation was premised.

4.41 In the Demand Notice dated the 18th day of August, 2020, the Respondent made reference to additional information which it has requested from the Appellant in relation to the 2006 to 2011 tax years. The Respondent alleged that the Appellant failed and deliberately refused to furnish the said documents. Consequently, the Respondent raised a Best of Judgment assessment without relying on the Appellant's records.

4.42 Appellant most humbly submits that the Respondent breached the Appellant's right to fair hearing by demanding for records which the Appellant was not under a legal duty to maintain by virtue of the provisions of ***Section 332 CAMA*** and thereafter adopting the Best of Judgment assessment approach to assess the Appellant when the said records were not provided.

4.43 It is also important to note that the provisions of the PITA only provide for the use of the "Best of Judgment" approach in 3 recognizable situations to wit:

1. Where a return made by a taxable person is not accepted under **Section 54(2)(b)**
2. Where a taxable person who ought to be assessed does not deliver a return within the time allowed by the law- **Section 54(3)**
3. Where an assessment is revised in the case of an objection- **Section 58(3)**

4.44 Clearly, the three scenarios provided above do not relate to an additional assessment which is the subject matter herein. Consequently, we posit that the said provisions cannot be bent so far as to apply to the instant suit which relates to additional assessments governed by the provisions of ***Section 55 of the PITA***. It therefore follows that assuming without conceding that the Respondent had a right to carry out its tax investigation exercise, the Respondent did not have any statutory backing which could have enabled it to adopt "the best of judgment approach" in assessing the Appellant and arriving at the sum claimed in its demand notice.

4.45 The Appellant stated in its Notice of Objection (See Par.2 of Exhibit ECO 4) that the records being requested for had been provided during an earlier investigation exercise. This fact was not disputed in the Respondent's Notice of Refusal to Amend (Exhibit ECO 5). Yet the Respondent decided to ignore the Appellant's documents already in its records and issue an arbitrary assessment under the guise of a best of judgment assessment. We submit that by virtue of

this act, the Respondent breached the Appellant's rights to fair hearing, and we urge this Honourable Court to so hold.

4.46 The Respondent also breached the Appellant's right to fair hearing by not giving the Appellant information and/or the documents upon which the Respondent's investigation was allegedly premised. The Respondent in its correspondence with the Appellant hinged its investigation on documents allegedly provided by the Bank to a sister Tax Authority (See Paragraph 3 of Exhibit ECO 5).

4.47 The Respondent also claims that their investigation was allegedly predicated on fraud, willful default and negligence on the part of the Appellant. These are weighty allegations especially as fraud constitutes a crime. Consequently, it accords with the right to fair hearing that the Appellant should have been furnished with particulars and documents which the Respondent relies on as the basis for its investigation before any such inquiry is conducted. However, it is important to note that the Appellant was never served at any point in time before or after the investigation with a copy of the purported documents which the Respondent claimed had been sent by the Appellant to a sister tax authority during a similar exercise. Therefore, the Appellant had no opportunity to be heard on the said documents before the Respondent chose to embark on its investigation.

4.48 Rather than adhere to the rule of law, the Respondent held on to the purported documents from the sister authority from which it inferred fraud amongst others and in an ambush style investigation, requested for additional documents from the Appellant with which to compare the non-existing documents.

4.49 The Courts have decided that principle of *audi alterem partem* does not just entail hearing both sides but giving the opportunity to be heard. See the case of **Alhaji Chief Yekini Otapo v. Chief R.O. Sunmonu & Ors.** (supra). We submit that the Respondent's investigation is wholly questionable and the decision contained in the Demand Notice, a nullity for failing to provide the Respondent with the documents with which it alleged that the Appellant committed a crime thereby robbing the Appellant of the opportunity to defend itself in relation to the investigation. We most humbly urge this Honourable Tribunal to so hold in accordance with the authorities of **Salu v. Egeibon (1994) 6 NWLR (Pt.348) 23** and **Citec Int. Estates Ltd v. Francis (2014) 8 NWLR (Pt.1408) 139.**

estoppel

4.50 Without prejudice to our previous argument that the assessment in question is statute barred, it is our further submission assuming without conceding that statutory clock was on the side of the Respondent, the Respondent's additional assessment of the Appellant is nothing short of a tactful double taxation

unjustly imposed on the Appellant who had made several PAYE remittances to the Respondent in respect of the period said to be subject of investigation.

4.51 The Respondent failed to take cognizance of the various remittances made by the Appellant before conducting its additional assessment. Having severally acknowledged different assessments within the period of 2006 and 2011 as the Appellant's final liability, we submit that the Respondent is estopped by its conduct from imposing any additional tax liability on the Appellant by the Respondent under the guise of an investigation. To do otherwise becomes nothing short of a double taxation and we urge this Honourable Tribunal to so hold.

failure of the Respondent to defend the appeal

4.52 The law is settled that where a defendant fails to give evidence in support of his pleadings or in challenge of the evidence of the plaintiff, he is deemed to have accepted and rested his case on the facts adduced by the plaintiff notwithstanding the general traverse. We rely on the cases of **Ajibola v. Anisere & Anor. (2019) LPELR-48204 (CA); Ifeta v. SPDC (Nig) Ltd (2006) 8 NWLR (Pt. 983) 585; Akinbaded & Anor. v. Babatunde & Ors. (2007) LPELR-43463 (SC).**

4.53 The Respondent in this appeal filed a Reply to this appeal but refused to call any evidence in support of its Reply or to challenge the evidence of the appellant, it is submitted that the Respondent had admitted all the facts adduced by the Appellant. We urge this Honourable Tribunal to so hold and deliver judgment in favour of the appellant.

5. CONCLUSION

In the light of the above facts, we urge this Honourable Tribunal to allow the instant appeal and grant the Appellant's reliefs for the following reasons:

i. The Demand Notice and Assessment of N1,373,870,745.79 (One Billion, Three Hundred and Seventy Three Million, Eight Hundred and Seventy Thousand, Seven Hundred and Forty Five Naira, Seventy-Nine Kobo) for the period between 2006 and 2011 is statute barred having been raised outside 6 years of the respective assessment years.

ii. The Respondent failed to establish fraud, willful default or neglect against the Appellant.

iii. The Respondent erroneously relied on unverified third-party information purportedly furnished by the Appellant to the relevant tax authority of another state in respect of the Appellant's employees in that state.

iv. The Respondent acted in flagrant breach of the Appellant's right to fair hearing.

v. The Respondent disregarded the relevant provisions of the Personal Income Tax Act (PITA) in computing the Appellant's alleged tax liability and subjected the Appellant to double taxation by failing to recognize the sums previously paid by the Appellant as PAYE Tax for the period between 2006 and 2011 and by virtue of different statutory audits conducted by the Respondent.

Dated this 25th day of October, 2022.

CHIEF ANTHONY IDIGBE, SAN, PH.D
NNAMDI ORAGWU
ONYEKA EHIWUOGWU, MCIArb (UK)
ONYINYE MOLOKWU, (Mrs.) LL.M (UK)
BENSON OKORO, LL.M
PATIENCE OBIAGBAOSO
IFEANYI UJAH
APPELLANT'S COUNSEL
PUNUKA ATTORNEYS & SOLICITORS
No. 7 B.R.O Izegbu Road
Off Okpanam Road
Asaba, Delta State
Email: info@punuka.com; n.oragwu@nigerianbar.ng
Tel: 01-2704789; 2704791; 08023094721

Address for Service within Jurisdiction
Zannick Limited
1, Azu-Ogbunike Crescent
Independence Layout, Enugu

For Service on:
The Respondent
C/O RESPONDENT'S COUNSEL
SCAV UMEHA ESQ
SCAV UMEHA & Co,
Okwuejinaelo Chambers,
5 Nnaji Street, New Heaven Enugu.
07035580133

LIST OF AUTHORITIES

A. Statutes relied on:

1. Personal Income Tax Act 2011 (as amended), Sections 54, 55 and 58.

2. *Companies and Allied Matters Act, 1990 ("CAMA"), Section 332.*
3. *Evidence Act, 2011, Section 131(1) .*
4. *Constitution of the Federal Republic of Nigeria, 1999, Section 36(1).*

B. Cases relied on:

1. *Araka v. Ejeagwu* (2000) LPELR-533 (SC) P.47, Paras. A-C,
2. *Skye Bank Plc v. Perone Nigeria Limited (2016) LPELR-41443 (CA), Pp.16-17, Paras. C-A.*
3. *Best Children International Schools Ltd. v. FIRS (2018) LPELR-46727 (CA) Pp.6-8, Paras. F-C.*
4. *Ecobank Nig. Ltd v. Delta State Board of Internal Revenue Unreported Appeal No. TAT/SSZ/005/2020.*
5. *John Khawam Pools Co. Ltd v. Federal Board of Inland Revenue (ALL NTC), Vol. 2, Page 102.*
6. UAC v. Macfoy [1962] AC 152.
7. *Alhaji Chief Yekini Otapo v. Chief R.O. Sunmonu & Ors. (1987) LPELR-2822 (SC).*
8. F.R.N. v. Maishanu *(2019) 7 NWLR Pt. 203 SC, p.222, par G-E.*
9. *Sampson Daniel Upkong & Anor. V. The Honourable Commissioner For Finance and Economic Development & Anor. Page 3551, Vol.4 ALL NTC.*
10. Salu v. Egeibon (1994) 6 NWLR (Pt.348) 23.
11. Citec Int. Estates Ltd v. Francis (2014) 8 NWLR (Pt.1408) 139.
12. Ajibola v. Anisere & Anor. (2019) LPELR-48204 (CA).
13. Ifeta v. SPDC (Nig) Ltd (2006) 8 NWLR (Pt. 983) 585.
14. Akinbaded & Anor. v. Babatunde & Ors. (2007) LPELR-43463 (SC).