Ardova v. FIRS: TAT Rules that Taxpayers Need Not Claim Maximum Capital Allowance in any Assessment Year

Wednesday, 5th April, 2023

"...taxpayers cannot just rely on complying with the process or procedure of filing amended tax returns..."

The Tax Appeal Tribunal ("TAT" or "Tribunal") in Lagos, has held in the case between Ardova PLC ("the Company" or "Ardova") and Federal Inland Revenue Service ("FIRS") that the claim of capital allowance below the threshold of 662/3 per cent of assessable profit does not offend the Companies Income Tax Act (CITA).

Highlights of the Case

Ardova PLC is a leading indigenous and integrated energy Company in Nigeria. The Company is engaged in the marketing and distribution of petroleum products like fuels, production chemicals, lubricants, greases, etc. The Company filed its income tax returns for 2015 and 2016 assessment years as and when due. However, in November 2016, the Company filed amended tax returns in line with the provisions of Section 90 of CITA. The amended returns were aimed at correcting a mistake made in respect of capital allowance claimed by the Company in the annual tax returns for both years.

Sometime in 2019, the FIRS carried out a tax audit of the Company for 2017 and 2018 assessment years and raised additional assessments on the Company. The additional tax liability was based on its treatment of unrecouped capital allowance carried forward from 2016 assessment year amongst other issues. The Company filed an objection to the additional tax liability on the basis that it has correctly applied the provisions of paragraph 24(7) of CITA and filed an amended tax returns in line with the provisions of section 90 of CITA. The FIRS, on the other hand, disagreed with the objection that was filed by the Company against the additional assessment. Consequently, the Company proceeded to the TAT to file an appeal against the tax assessment.

At the tribunal, the Company requested to know amongst other prayers, whether:

- the Second Schedule to CITA provides a general minimum deduction that must be claimed by a Company from its available capital allowance; and
- the FIRS was right in law to disallow the capital allowances claimed by the Company in its restated tax returns.

In arguing its case, the FIRS stated that the decision of the Company to claim capital allowance below the unified percentage when it had sufficient assessable profit, is unreasonable, unjust, and a breach of paragraph 24(7) of the Second Schedule to the CITA. Therefore, the capital allowance carried forward to 2017 assessment year was disallowed.

The Decision of the Tribunal

In delivery its judgement, the TAT clarified that claiming capital allowances below the threshold of 662/3% does not offend the CITA, as the Act did not make provision for a minimum percentage of capital allowance to be claimed by a taxpayer. However, in taking a final position, the TAT held that the Company having claimed the maximum allowable capital allowances, self-assessed itself to Excess Dividend Tax, and paid the tax for the year in issue, could not file an amended tax return to reduce capital allowances, which had earlier been absorbed in previous tax returns. As a result, the TAT maintained that the Company cannot enjoy the relief contemplated by Section 90(1) of the CITA. The claim by the Company that the amended returns were filed to correct a mistake was not accepted by the TAT.

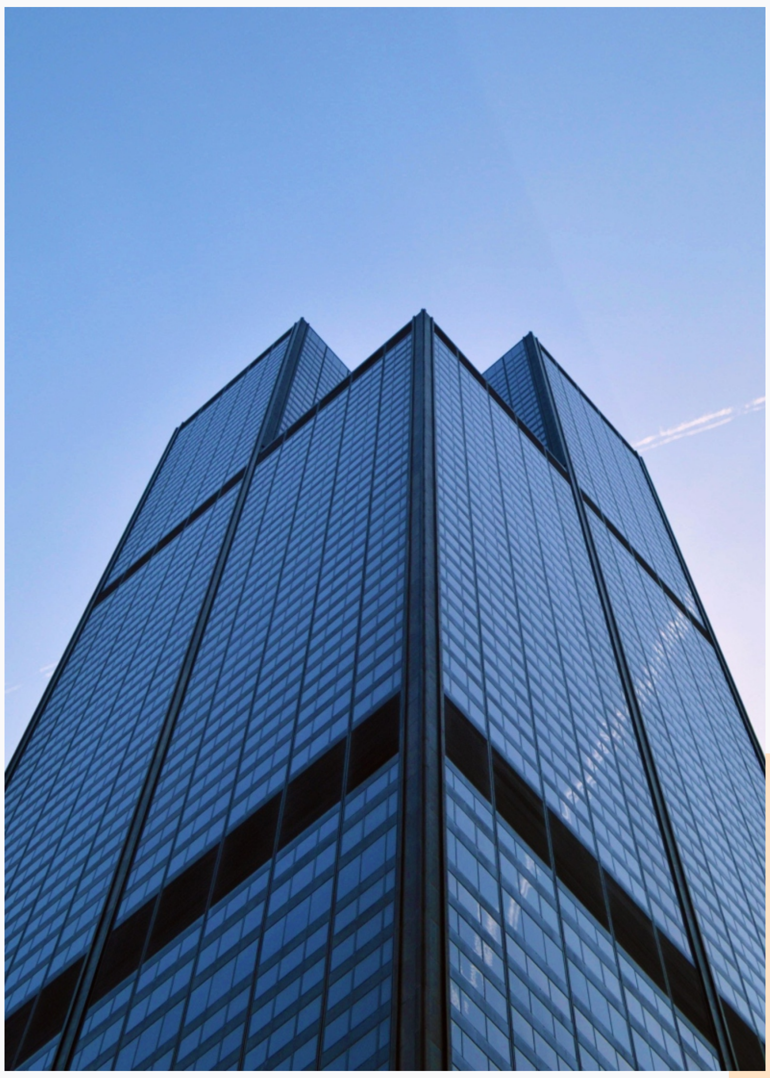
The Tribunal attempted to establish the essence of the provisions of Section 90(1) of the CITA by relying on the definition of “mistake” in the Black's Law Dictionary as “some unintentional act, omission or error arising from ignorance, surprise, imposition or misplaced confidence”. The TAT held that even though the right of the Company to file amended tax returns as enshrined under Section 90(1) of the CITA was not in dispute, the intention behind the act could not be deemed to be a “mistake” as envisaged by the law. The TAT believed that the Company could only take the benefit provided in the aforementioned Section if the mistake had resulted in the Company being assessed to excessive tax. Therefore, since the issue of excessive tax does not arise, the Company cannot seek the relief envisaged under Section 90(1) of the CITA.

Our Comments

Over the years, the issue of minimum threshold for the claim of capital allowance has continued to generate a lot of controversy between the FIRS and taxpayers. It is, therefore, laudable that the TAT has finally put the matter to rest by confirming that the CITA, indeed, did not specify the minimum percentage of capital allowance that is claimable by a taxpayer. However, the Company's appeal failed in part because the TAT held that the Company did not pay excessive tax as a result of the relief sought under Section 90(1) of the CITA.

Therefore, it appears from this decision of the TAT that taxpayers cannot just rely on complying with the process or procedure of filing amended tax returns, where they are of the opinion that an error has been made in their tax returns. They must also ensure that they satisfy conditions which have been established by the TAT in this case, that is they must:

- have paid tax in the year of assessment;
- be able to prove that a mistake or error has indeed occurred in its returns, statement, or account for the period;
- have paid excessive tax as a result of the error or mistake in its returns or statement; and
- apply for relief in writing within six years after the end of the year of assessment that the mistake occurred.



In the instant case, however, the amended tax returns of the Company did not relate to relief for overpayment of tax because a self-assessment was done, and the tax thereon was duly paid. Rather, the changes introduced by the amended tax returns of the Company was to effect 50% and 40% thresholds for the capital allowance absorbed for 2015 and 2016 assessment years. Consequently, the TAT held that the FIRS acted appropriately in disallowing the unrecouped capital allowance of the Company for those assessment years.

Notwithstanding the position of the TAT that the claim of capital allowance below the maximum threshold does not offend the CITA, it is important to note that Companies that are liable to pay minimum tax in any assessment year should take precaution in claiming capital allowance below the threshold provided under paragraph 24(7) of the Second Schedule of CITA. This is because Companies paying the minimum tax under Section 33 of the CITA are expected to claim their capital allowance as far as it can be absorbed by the assessable profit of the period.

It is yet to be determined whether the Company will file an appeal against the Tribunal's interpretation of Section 90(1) of the CITA. Notwithstanding, we advise taxpayers to seek professional advice, where there is uncertainty with regards to their applications and interpretations of the tax laws, to avoid incurring additional tax liabilities due to misinterpretation of the tax laws.

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