

SUPREME COURT OF NIGERIA

27TH SEPTEMBER. 1996. SC. 87/1994

**CORAM:- M. L. UWAIJ CJN, S. M.A. BELGORE, M. E.
OGUNDARE, E. O. OGWUEGBU, U. MOHAMMED, JJSC.**

SHELL PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LTD
AND
FEDERAL BOARD OF INLAND
REVENUE

..... APPELLANT

..... RESPONDENT

APPEALS - Concurrent finding lower courts - When held to be perverse.

CONTRACTS - Accord and Satisfaction Principle - Applies by virtue of the agreement - Between Appellant and the Federal Government.

CONTRACTS - Accord and Satisfaction Principle - Applies to compensate Appellant for the exchange losses - Not the provisions of the Petroleum Profits Tax Act.

JURISDICTION - Issue not presented - Whether the appellate Federal High Court lacked jurisdiction - Merely because it added "exclusively" - In determining the issue before it

TAX LAW - Exchange Charges - When not deductible - Under the provisions of S.10 Petroleum Profits Tax Act.

TAX LAW - Petroleum Profits Tax - Obligation to pay Petroleum Profit Tax - Is deemed as a debt to the Government of the Federation.

TAX LAW - Losses incurred - In sourcing Pound Sterling - For payment of Petroleum Tax - Is incidental to Appellant's operation - And therefore deductible.

TAX LAW - Bank charges - Where solely and inevitably incurred for petroleum operations - Whether they qualify for deduction - Under the Petroleum Profits Tax Law

TAX LAW - Scholarship Expenses - Whether expenses incurred for scholarship award - Is incidental to Petroleum Operation.

WORDS & PHRASES - *“All operations incidental thereto” - Cannot be circumscribed to drilling, mining, etc - As the ejusdem generis rule is not applicable.*

FACTS

The Appellant which is a company registered in Nigeria to carry on the business of Petroleum Operation by virtue of the provisions of the Petroleum Profits Tax Act, 1959 is required to pay tax yearly for profits on its operations. It is the duty of the Respondent to assess and approve the tax payable by the appellant yearly to the Federal Government. It was the decision of the Respondent denying the appellant certain deductions in tax assessment which the appellant claimed under section 2 of the Petroleum Profit Tax Act 1959 for the year 1973 that gave rise to this appeal. The appellant, who appealed to the Federal Body of Appeal Commissioners against the decision of the respondent and lost, further appealed to the Federal High Court which allowed the appeal on two items and dismissed that on the third item.

The respondent appealed against the decision of the Federal High Court on the two items granted to the appellant while the appellant appealed against the decision on the third item to the Court of Appeal. The Court of Appeal allowed the appeal of the respondent and restored the decision of the E Federal Body of Appeal Commissioners. Aggrieved by that decision of the Court of Appeal, the Appellant has further appealed to the Supreme Court. The Supreme Court had to determine the appeal on the three sets of issues, each set separately formulated for each items claimed, which all came up to 8 issues in all.

ISSUES FOR DETERMINATION

“(i) What is the effect of the agreement between Shell and the Federal Government on the liability of Shell to pay installments of Petroleum Profits Tax.

(ii) Whether the exchange losses incurred by Shell were “outgoings and expenses wholly, exclusively and necessarily” incurred for the purpose of its petroleum operations (as found by the Federal High Court) or whether they are expenses incurred in respect of tax on its profits (as found by the Court of Appeal.” Etc, see pp. 1781 & 1787

HELD (Unanimously allowing the appeal per lead of judgment of **UWAIS CJN**)

Exchange charges - When not deductible

1. There can be no doubt that if the exchange charges were incurred for

the purpose of paying the petroleum profits tax, they would not have been deductible since such outgoings cannot be said to be incurred for the purpose of petroleum operations as defined by section 2. Nor can they be said to have been incurred wholly, exclusively and necessarily for the purposes of petroleum operations. The outgoings would have fallen under the head of expenditure incurred after the petroleum operations had been carried out and would not, therefore, qualify as deductible expenditure under the provisions of section 10 of the Act. (p. 1777 E)

Contracts - Accord and satisfaction doctrine

2. It is clear that the profits tax to be paid by the Appellant for the 1973 period had been assessed. But for Exhibits I, 2, 3 and 4, the tax would have been paid in Nigeria and in Nigerian currency which is Naira. However, the Appellant was under the additional obligation by virtue of the Exhibits to effect payment in England. Failure to do so would have undoubtedly rendered the Appellant liable to sanction at the instance of and by the Federal Government. There is also the legal effect to be given to the agreements entered between the Appellant and the Federal Government. There is no doubt that the agreements (Exhibits 2 and 3) are not illegal contracts because their terms vary the obligations of the Appellant and the Respondent under the Petroleum Profits Tax Act, 1959; nor are they against public policy since the agreements are not illegal it follows that the principles of contract can rightly apply to them. Hence the issue of accord and satisfaction becomes pertinent to this case. The term accord and satisfaction has been judicially defined as follows: -

“Accord and satisfaction is the purchase of a release from an obligation whether arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative.”

Although the definition talks of the obligation arising from the contract or tort, yet the principle of accord and satisfaction extends to all obligations irrespective of their source, according to the learned authors of the Principles of the Law of Contracts by Salmond and Williams, 2nd Edition at page 496. (p. 1778 C)

Obligation to pay petroleum profit tax

3. By the provisions of section 41 subsection (1) of the Petroleum Profits Tax Act, 1959 the Respondent may sue for and recover tax in a court of competent jurisdiction. The tax is to be deemed “as a debt due to the

Government of the Federation.” It follows that the obligation to pay petroleum profits tax is the same as the obligation to pay debt. The payment of a debt by a going concern or company is undoubtedly incidental to the operations of such an organization. In the present case, it is incidental for the Appellant to pay debt for the purposes of its petroleum operations as defined by section 2 of the Petroleum Profits Tax Act, 1959. However, B section 11 subsection (1)(f) of the Act disallows any deduction on such debt. (p. 1779 A)

Losses incurred - In sourcing pound sterling

4. It must be made clear here that the loss in this case is not the tax or debt assessed but the loss incurred in sourcing the pound sterling for the payment of the tax. In my opinion such expenditure is necessary for the purpose of the Appellant undertaking its operations. This is made clearer by the fact that the payment of tax from year to year cannot be detached from the operations of the company. The Appellant could not have incurred the exchange losses but for Exhibits 1, 2, 3 and 4. If the payment of the tax were to have been made in local currency no such losses, would have arisen. Similarly, if the Federal Government had been paid the tax in Naira and it were to purchase pound sterling equivalent to the amount so paid it would have incurred the exchange losses. I, therefore, do not see the reason why the Respondent should not allow deductions in respect of the exchange losses suffered by the Appellant. (p. 1779 C)

Accord and satisfaction applies to compensate appellant

5. The facts of this case are distinguishable from those of the cases mentioned above on which the Respondent is relying. This has been made so by the fact that no agreements such as Exhibits 1, 2, 3, and 4 existed in them to raise the application of the principle of accord and satisfaction. By reason of the agreements and not the provisions of the Petroleum Profits Tax Act, 1959, as amended, the doctrine of equity will apply to compensate the Appellant for the Exchange Losses it incurred. (p. 1779 E)

“All operations incidental thereto”

6. The definition of the phrase “all operations incidental thereto” in section 2 of Petroleum Profits Tax Act, cannot be circumscribed to “*drilling, mining, extracting or other like operations*” as argued by the Respondent. To do so is to do violence to the true meaning of the definition of “*petroleum operations.*” The ejusdem generis rule must not be pushed too far. It is to be applied with caution, it is wrong to treat it as if it is

automatically applicable since it is a mere presumption in the absence of other indications of the intention of the Legislature. The modern tendency of the law is to attenuate the application of the rule. There must be a distinct genus or category before the rule of ejusdem generis can be invoked. A close examination of the definition of the words “petroleum operations” in section 2 B would show that the specific words therein are not limited to “drilling, mining, extracting or other like operations” but include in addition the phrase “or process, not including or refining at a refinery, in the course of a business carried on by the company engaged in such operations. In my view there is no distinct genus in the definition for the phrase “and all operations incidental C thereto” to allow the rule of ejusdem generis to apply. (p. 1784 E)

Whether bank charges qualify for deduction

7. According to ordinary dictionary meaning the words “wholly” and “exclusively” have virtually the same meaning. They can be said to mean “solely” D or entirely”. The dictionary meaning of the word “necessary” is the same as that of the word “inevitable” and “unquestionable”. Therefore, was the payment of Bank charges solely and inevitably incurred for the petroleum operations of the Appellant? As already seen the payment of the Central Bank Charges was imposed on the Appellant by the Federal Government vide Ex- E hibit 5. The Appellant is expected to receive directives from the Federal Government from time to time in the course of its business which is “petroleum operations”. Clearly this is incidental to such operations. I have no doubt whatsoever in my mind about that. The payment of Bank Charges to the Central Bank of Nigeria which had not rendered any service to the Appellant F but simply because the Federal Government had so directed was inevitable and was, therefore, incurred in the course of the Appellant’s business which was petroleum operations. In my respectful opinion, the Bank Charges qualify for deduction under the general provisions of section 10 subsection (1) of the Petroleum Profits Tax Act. (p. 1785 A)

G

Jurisdiction - Issue not presented

8. If the learned Judge lacked that jurisdiction he at least had the jurisdiction to consider whether the expenditure was “wholly” incurred for the purposes of the Appellant’s petroleum operations and this he did. There- H fore, his consideration, in addition, of the question whether the expenses were also “exclusively” incurred, which was not raised by the parties, without calling on counsel for the parties to address the court did not, in my opinion, vitiate the proceedings before the Federal High Court. In any event, I have already held that the words “wholly” and “exclusively”

virtually have the same meaning as per the dictionary meanings given to them. Consequently the issue of jurisdiction raised by the Appellant is no more than a storm in a tea cup. (p. 1788 C)

Scholarship expenses

9. It is very clear to me that the creation of the scholarship scheme and the award of scholarships to Nigerian citizens were incidental to the petroleum operations of the Appellant. It should be borne in mind that the definition of the words “petroleum operations” in Section 2 of the Petroleum Profits Tax Act is wide and not restricted to drilling, mining, extracting of other like operations” as contended by the Respondent. Once there is a statutory or contractual obligation, and in this case it is the former, for a company engaged in petroleum operations to perform, such obligation is “wholly, exclusively and necessarily” for the purpose of the operations of the company. None of the provisions of the relevant legislations applicable to awards of scholarship makes it obligatory for the Appellant to employ all those who benefited from its scholarship awards. What the relevant legislations provide is that the Appellant is enjoined to ensure that 75% of its employees in managerial, professional and supervisory grades are Nigerian citizens and that the number of Nigerian citizens in each of such grades should not be less than 60% of the total number. The lower courts were, therefore, in error when they based their decision on the reasoning that not all those awarded scholarship by the Appellant in 1973 were employed by it. (p. 1789 H)

Concurrent findings - Of lower courts

10. Again the concurrent findings by the lower courts that the expenditures incurred on awards of scholarship were not “wholly, exclusively and necessarily incurred” were wrong because there was a statutory duty on the Appellant to incur the expenditures and that is what the expenditure in question is about. It cannot, therefore, be held that the expenditures were not solely and inevitably incurred. Consequently, I hold, with respect, that the concurrent findings on the point made by lower courts are perverse. The appeal against the refusal by the Respondent to allow deduction in respect of expenses to the tune of ₦257,550.00 incurred in connection with the awards of scholarship by the Appellant succeeds. (p. 1790 D)

NOTABLE POINTS OF INTEREST

UWAIS CJN

1. Parties’ briefs of appeal - Whether ideal

It is well settled, as a rule of practice, that a well written brief of argument should be brief and concise, containing concise statement of the facts of the case which are material to the consideration of the questions presented for determination by the Court. It should also contain direct, concise and succinct statement of the argument in the appeal. But what are we confronted with in this appeal? The Appellant's brief consists of 70 pages while the Respondent's brief is made up of 435 pages (including the preliminaries). Surely these are, with respect, far from the ideal. Rather than assist the Court to easily follow the argument in support of the questions for determination, they helped in making the arguments complex. Had it been the circumstances herein were ordinary, we would have no difficulty in striking out the briefs for offending the Rules. Be that as it may, I consider the questions raised by the appeal as important and will, therefore, endeavour to consider the argument contained in the briefs as best as I can, but not without trepidation. The worse culprit in this respect is without doubt learned D Counsel for the Respondent. (p. 1765 E)

2. Appellant is not exempted from suffering the exchange losses

It is pertinent to point out that the Appellant is not exempted from suffering the Exchange Losses but that it should not pay petroleum tax on the E Exchange Losses because the obligations imposed by the agreements in question are incidental to petroleum operations as defined by section 2 of the Petroleum Profits Tax Act, 1959. (p. 1779 G)

3. The Tax Act did not incorporate all the term of the agreements

F Finally, although it is true that the Petroleum Profits Tax (Amendment) Act 1973 was promulgated to give effect to the agreements entered into between the Appellant and the Federal Military Government, it did not in fact incorporate all the terms of the agreements in question. (p. 1779 H)

G OGUNDARE JSC

4. Accord and satisfaction principle

In any event, it is my considered view that payments made by the Appellant to the account of the Central Bank of Nigeria with the Bank of England in London were in satisfaction of its obligations under Exhibits 3 and 4. By the agree- H ment, the Federal Government had discharged the Appellant of its liability under section 8 of the Act to pay tax in Lagos in Nigeria currency and had substituted therefore a new liability to make payment in London in pounds sterling. I agree entirely with Chief Williams that a case of accord and satisfaction is made out. The consideration for forgoing the Shell Petroleum

Government's right to tax under the Act was the payment, by the Appellant to the Government through its agent, the Central Bank of Nigeria, of a certain amount in pounds sterling in London. (p. 1802 A)

REPRESENTATION

Chief F.R.A. Williams, SAN with Dr. F.A. Ajayi, SAN F.R.A. Williams B Jnr. for the Appellant

J. A. Inyang, Assistant Chief Legal Officer, Federal with A. V. Nwangene, Senior Legal Officer, for the Respondent

CASES REFERRED TO

Carlen (Nig.) Ltd. v. Unijos, (1994) 2 KLR 96

Strong & Company of Romsey Limited v. Woodfield (Survey of Taxes), (1906) A.C. 448; 5 T.C. 215.

Lawal v. Ollivant (1972) 3 S.C. 124

Aya v. Henshaw (1972) 5 S.C. 87 at p. 95

Queen v. Onuegbu (1957) 2 F.S.C. 10 p. 12

Solanke v. Abed (1962) 1 All N.L.R. 230 at pp. 233 - 4

Trendtex Trading Corporation v. Central Bank of Nigeria (1977) 1 Q.B. 529; (1977)2 W.L.R. 356.

Anderson v. Anderson (1895) 1 Q.B. 749

Tillmans & Co. v. Knutsford (1908) 2 K.B. 385

Rosakaus v. Bennet, (1950) 31 T.C. 129;

Iyaji v. Eyigebe (1987) 18 NSCC Part 11, 1035

Olusanya v. Olusanya (1983) 14 NSCC 97

Mallalieu v. Drummond (1983) 2 A.C. 861

Aya v. Henshaw (1972) 5 S.C. 87, 95

STATUTES & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria 1979 Cap. 62 LFN 1990 ss.31, 69, & 76

Petroleum Profit Tax Act 1959, 2, 8, 9, 10, 11, 15, 16, 29, 31 & 41

Petroleum Profit Tax (Amendment) Act, 1973.

Supreme Court Rules 0.6 r. 5(l)(a)

LEAD JUDGMENT BY UWAIS JSC

This case arose from the decision of the Board of Inland Revenue, the respondent herein, not to allow deductions from the Petroleum Profits Tax for 1973 payable by the appellant in respect of exchange losses, Central Bank of Nigeria commissions and scholarships expenses

incurred by the appellant.

The facts of the case are not in dispute. They are as follows. The appellant was registered in Nigeria as a company. Its main object was to engage in petroleum operations. Its yearly profits therefore, became taxable by virtue of the provisions of the Petroleum Profits Tax B Act, 1959 (now Cap. 354 of the Laws of the Federation of Nigeria. 1990). Section 8 of the Act provides:-

“8. There shall be levied upon the profits of each accounting period of any company engaged in petroleum operations during that period a tax to be charged, assessed and payable in accordance with the C provisions of this Act.”

Pursuant to these provisions and those of Section 28 of the Act which provides in subsection (1) thereof as follows:-

“(1) Every company which is or has been engaged in petroleum operations shall for each accounting period of the company, make up accounts D of its profits or losses, arising from those operations, of that period”

The appellant submitted its Petroleum Profits Tax returns for the accounting period of 1st January, 1973 to 31st December, 1973 to the respondent (Exhibit 39). The returns contained the revised tax assessment which in the view of the appellant was payable by it. The respondent disallowed the following 4 items from the returns, which were incurred by the appellant, on the ground that such expenses were not deductible for the purpose of computing chargeable tax under the provisions of the Petroleum Profits Tax Act, 1959:-

F	1. Exchange losses on payment of	
	Petroleum Profits Tax N3,355,091.00
G	2. Central Bank Commission for	
	payment of Petroleum Profits Tax 2,915,429.00
	3. Scholarships expenses 257,550.00
	4. Gifts and donations 61,222.00

The appellant objected to the exclusion of these items in the computation made by the respondent for the tax payable on the adjusted profits for the period in question. They, therefore, appealed to the Federal Body of Appeal Commissioners.

At the hearing, the appeal in respect of the 4th item on *“Gifts H and Donations”* was abandoned by the appellant. In its ruling the Federal Body of Appeal Commissioners dismissed the appellant’s appeal and confirmed the revised assessment made by the respondent

The appellant appealed further to the Federal High Court (Ayinde, J.) against the ruling of the Federal Body of Appeal Commissioners. The

Federal High Court allowed the appeal in respect of exchange losses and Central Bank of Nigeria Charges, but dismissed the appeal against scholarships expenses as follows:

“In accordance with Section 35(8) of the Petroleum Profits Act (sic) 1959. I hereby annul the tax assessments on exchange losses of N3,355.091 (Sic) and Central Bank charges of N2,915,429 (Sic). I confirm the tax assessment on N257,550 (Sic) scholarship expenses.”

Both the appellant and the respondent were dissatisfied with the decision of the Federal High Court. They appealed to the Court of Appeal. The appellant, against the confirmation of the assessment on scholarship expenses and the respondent, against the annulment of the assessments on exchange losses and Central Bank of Nigeria charges.

In its judgment, the Court of Appeal (Akpata, Babalakin, JJ.C.A. as they were then, and Awogu, J.C.A.) dismissed the appeal by the appellant and allowed the appeal by the respondent and thus in effect setting aside the decision of Ayinde, J. in respect of Exchange Losses and Central Bank of Nigeria charges.

The appellant appeals to this court. As the 3 items of assessment were treated separately by the lower court and in the parties' briefs of argument, I too propose to deal with them accordingly. But before doing so I would like to make some observations on the briefs of argument filed by the parties. It is well settled, as a rule of practice, that a well written brief of argument should be brief and concise, containing concise statement of the facts of the case which are material to the consideration of the questions presented for determination by the court. It should also contain direct, concise and succinct statement of the argument in the appeal. But what are we confronted with in this appeal? The appellant's brief consists of 70 pages while the respondent's brief is made up of 435 pages (including the preliminaries). Surely these are, with respect, far from the ideal. Rather than assist the Court to easily follow the argument in support of the questions for determination, they helped in making the arguments complex. Had it been the circumstances herein were ordinary, we would have no difficulty in striking out the briefs for offending the rules. Be that as it may, I consider the questions raised by the appeal as important and will, therefore, endeavour to consider the argument contained in the briefs as best as I can, but not without trepidation. The worse culprit in this respect is without doubt learned counsel for the respondent.

1. Exchange Losses

The issues for determination formulated by the appellant in this regard are as follows:-

“(i) *What is the effect of the agreement between Shell and the Federal Government on the liability of Shell to pay instalments of petroleum profits tax.*

(ii) *Whether the exchange losses incurred by Shell were “outgoings and expenses wholly, exclusively and necessarily” incurred for the purpose of its petroleum operations (as found by the Federal High Court) or whether they are expenses incurred in respect of tax on its profits (as found by the Court of Appeal).*

While those formulated on behalf of the respondent are 15 in number even though the appellant filed only 6 grounds of appeal. Clearly this defeats the purpose of formulating questions for determination, which is to enable parties to an appeal to narrow the issues contained by the grounds of appeal in the interest of accuracy, clarity and brevity. A proliferation of questions for determination ought to be discouraged - See *Ogbuanyinya v. Okuda* (No.2) (1990) 4 NWLR (Pt.146) 551 and *Carlen* (Nig.) Ltd. v. *Unijos* (1994) 1 NWLR (Pt.323) 631 at p. 664 A-D per Onu, J .S.C. Therefore, in determining the questions here I will ignore the issues formulated by the respondent and rely on those by the appellant

It is common ground between the parties to this appeal that the tax payable by the appellant is assessable in Naira and that by the provisions of the Petroleum Profits Tax Act such tax if not paid constitutes a debt owed by the appellant, which is payable to the respondent Section 36 subsection (1) of the Petroleum Profits Tax Act provides:-

“(1) *The Board shall cause to be served personally on or sent by registered post to each person whose name appears on an assessment in the Assessment List a notice of assessment stating its accounting period and the amount of its chargeable profits, assessable tax and chargeable tax charged and assessed upon the company , the place at which payment of the tax should be made, and informing such company of its rights under subsection (2).”*

In compliance with these provisions the Board of Inland Revenue sent to the appellant a notice of assessment of tax in respect of the accounting period for the year 1973. The notice reads thus:-

*“Federal Inland Revenue Department.
Private Mail Bag, 12672,
Ajasa Street.
Lagos.*

H *Reference No. PC.1/Vol.4/2/1973/163 18th December, 1978.*
The Finance Manager,
Shell-BP Petroleum Development
Company of Nigeria Limited,

Freeman House,
21/22 Marina,
P. M. B. 2418,
LAGOS.
Dear Sir,

Petroleum Profits Tax 1973

B

I have carefully considered your grounds of objection to the above notice of assessment and have revised my computation of the profits you objected against by allowing the following items of expenses:-

Education Assistance	N311,664	
Ex - gratia Payment	17,148	C

The revised tax computation is as follows:

Chargeable Profits as per my letter dated 26/7/78	N841,783,332	
Less Expenses now allowed as above	<u>328,812</u>	
Chargeable Profits (revised)	<u>841,454,520</u>	D
Assessable Tax at 55%	N462,799,986	
Less Section 17 deductions	8,644,200	
Chargeable Tax	N454,155,786	
Less Tax already paid	<u>450,531,675</u>	
Balance Payable or Due	<u>N3,624,111</u>	E

The relevant notice of revised assessment and of refusal to amend the revised assessment are attached herewith to enable you settle the tax due without delay.

Yours faithfully,

(Signed)

F

(J. O. Akinmola)

Chief Inspector of Taxes & Pioneer

Branch."

Although by the provisions of section 36 subsection (1) of the Petroleum Profits Tax Act the Board of Inland Revenue is obliged to state the place where the payment of tax should be made, there are a number of formal agreements entered into by the Federal Government and the appellant, which alter the manner and indeed the place where the tax assessed was to be paid. The first of such agreements is Exhibit 1, dated the 25th day of April, 1967. The second is Exhibit 2, dated the 10th day of May, 1971 and the third is Exhibit 3 dated the 5th of June, 1972. There is also Exhibit 4 which is a letter addressed to companies engaged in petroleum operations. The letter was dated 15th March, 1968. It reads as follows:-

*“Ref: No. F.12215/255
Federal Ministry of Finance,
P. M. B. 12195,
Mosaic House,
Tinubu Square,
Lagos.
15th March, 1968.*

B

*The General Manager,
The Shell-BP Petroleum Development
Company of Nigeria Limited,*

C *40, Marina,
Lagos.*

*The Manager,
Philips Petroleum Company,
Western House,*

D *Third Floor Block “A”,
8/10, Broad Street,
Lagos.
The President,
Tenacco Oil Company of Nigeria,*

E *P. O. Box 2119,
Western House,
8/10, Broad Street,
Lagos.*

The Manager,

F *Nigerian Gulf Oil Company,
19, Tinubu Square,
Lagos.
The General Manager,
Mobil Exploration Nigeria Incorporation,*

G *P. O. Box 31, Industry Road,
Port Harcourt.
The Resident Manager,
SAFRAP (Nigeria) Limited,
Western Nigeria Development Corporation Building,*

H *21 Wharf Road,
Apapa.
Dear Sirs,*

NEW PROCEDURE FOR PAYMENTS OF ROYALTIES,
PETROLEUM PROFITS TAX AND RENTS TO THE

FEDERAL GOVERNMENT

I am directed to inform you that with effect from the 1st of January, 1968 and until further notice all payments due to the Federal Government of Nigeria from your company in respect of the three items mentioned above should be made to the account of the Central Bank of Nigeria with the Bank of England. As the amounts due are normally expressed in Nigerian Pound, the payer/company must ensure that enough Sterling is made available to make Nigerian Pound equivalent of the amount due from the company.

2. This letter supersedes all previous correspondence which your company has received from any Federal Government Department regarding the method and procedure for these payments.

Yours faithfully,

Abubakar Alhaji

Exchange Control Officer"

By reason of the agreements between the appellant and the Federal Government (Exhibits 1, 2 and 3) and the above letter (Exhibits 4) payments of petroleum profits tax made by the appellant, at all the times material to this case, were made in Pound Sterling into the account of the Central Bank of Nigeria with the Bank of England at London. This resulted in the appellant converting United States dollars into Naira and then converting Naira into Pound Sterling in order to be able to meet its obligation to the Federal Government. The conversion from United States dollars to Naira became necessary because the former was and still is the currency in which sale of petroleum is made. It is because of the conversions which the appellant had to undertake that it claimed that it incurred losses. Hence its demand that the losses should be deductible for tax purposes.

Section 10 subsection (1) of the Petroleum Profits Tax Act 1959 provides:

"(1) In computing the adjusted profit of any accounting period from its petroleum operations there shall be deducted all outgoings and expenses wholly, exclusively, and necessarily incurred, whether within or without Nigeria, during that period by such company for the purpose of those operations, including but without otherwise expanding or limiting the generality of the foregoing -

Furthermore clause 4 of Exhibit 3 reads thus:

"4(a) For purposes of the arrangements under which the company carries on its operations in Nigeria, posted prices stated in U.S. Dollars with respect to any complete or partial month of petroleum operations subsequent to the Effective Date shall be converted into Nige-

rian Currency at a rate of exchange equal to the arithmetic average as certified by the Central Bank of Nigeria of the mean of the buying and selling rates in respect of telegraphic transfers for U.S. Dollars to Nigerian Currency quoted by the Central Bank of Nigeria at 10.30a.m. G.M.T. on each day when such Bank is open during such complete or partial month.

B (b) The Nigerian Currency amounts determined under paragraph 4(a) above shall be the basis for determining the company's tax and royalty obligations.

(c) For purposes of satisfying obligations due to Government as stated in Nigerian currency and amount of U.S. Dollars or Pounds Sterling, as C determined below shall be deposited with the Federal Reserve Bank of New York or the Bank of England respectively for the account of the Central Bank of Nigeria. When such currency of deposit is U.S. Dollars there shall be deposited to the account of the Central Bank of Nigeria an amount of U.S. Dollars determined by converting such Nigerian Cur- D rency obligation into U.S. Dollars by using a rate of exchange equal to the arithmetic average as certified by the Central Bank of Nigeria of the mean of the buying and selling rates in respect of telegraphic transfers for U.S. Dollars to Nigerian currency quoted by the Central Bank of Nigeria at 10.30 a. m. G.M.T. on each day when such Bank is open E during the thirty day period ending on the 20th day of the month of the date of payment (d) When such currency of deposit of paragraph 4(c) above is Pounds Sterling, Nigerian currency obligations shall be converted firstly, into U.S. Dollars in accordance with the second sentence of Paragraph 4(c) above and such U.S. Dollar amount determined here- F under will be converted, secondly, into Pounds Sterling by using a rate of exchange equal to the arithmetic average as certified by the National Westminster Bank, London of the mean of the buying and selling rates in respect of telegraphic transfers for U.S. Dollars to Pounds Sterling quoted by the National Westminster Bank, London at 10.30 a. m. G.M.T. each G day when the London foreign exchange market is open during the third day period ending on 20th day of the month of the date of payment."

The question which arises is: should the determination of the deductions due to the appellant be limited to the interpretation of these provisions of the Act or should it be extended to the form agreements H (that is Exhibits 1, 2 and in particular 3 and also the letter Exhibit 4) as well? The Federal Body of Appeal Commissioners held in its ruling that the issue dealt exclusively with the interpretation of sections 2,8,9,10 and 11 of the Petroleum Profits Tax Act, 1959 and that Exhibit 3 could not apply to vary the provisions of the Act nor apply to the respondent which

was not a party to it. The Body reasoned as follows:-

“Counsel for the appellant strongly contended before us that the charge losses incurred by the company were caused by the separate obligation of Shell B. P. vis-a-vis the Federal Government in compliance with the specific requirements of Clauses 4(c) and 4(d) of the 1972 Agreement, these losses were wholly, exclusively and necessarily incurred by the company for the purposes of its petroleum operations and consequently qualify as allowable deduction under the provisions of section 10(1) of the P.P.T.A. 1959. The losses were incurred because of the Compliance with the 1972 Agreement, which was not part of the P.P.T.A. nor can any agreement not properly enacted into the legal (blurred) the respondent was not a party to the Agreement. In which case it cannot be bound by it. Also the Agreement cannot override the law. Any of its provisions which is in conflict with the law will be ultra vires the law.”

On appeal to the Federal High Court from this ruling, Ayinde, J. set aside the ruling and held thus:-

“... it is obvious that the combined effect of the letter Exhibit 4 and the Agreements Exhibits 2, and 3 is to abrogate the previous arrangement whereby Petroleum Profit Tax was to be paid to the respondent in Naira in Nigeria and to substitute, by way of accord and satisfaction, an agreement whereby the appellants were obliged to pay their profit tax obligation in Sterling into the account of the Central Bank of Nigeria with the Bank of England. In other words, the obligation of the appellants to pay their petroleum profit tax in Naira in Nigeria was dissolved and discharged. In view of the foregoing, I agree with the learned counsel for the appellants that various sums paid in Sterling by the appellants into the account of the Central Bank of Nigeria as detailed in Exhibit II were not actually payment of the tax assessment of the appellants for the accounting period ending 31st December, 1973 but were accord and satisfaction of their tax indebtedness for the accounting period.

As stated in the pleadings of the appellants, I agree that the parties to the accord and satisfaction were the Federal Government to whom the tax debt was owed and the appellants who owed the debt. I also agree that the fact that the respondent, Federal Board of Inland Revenue (which is only an agency of the Federal Government for the assessment and collection of tax) was not a party to the agreement which constituted the accord and satisfaction is irrelevant.

Having found that what the appellants paid in Sterling in London was accord and satisfaction of their tax indebtedness in Nigeria, I will now consider whether the amounts paid were expenses wholly, exclu-

sively and necessarily incurred for the petroleum operations of the appellants which according to the Section 10(1) of the PPTA should be deducted from the adjusted profit of the appellants for 1973 accounting period.

At the risk of being considered to be unduly repetitive, I will recite here again the definition of Petroleum Operations. Petroleum operations according to Section 2 of the PPTA 1959 means “

The winning and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process not including refining at a refinery, in the course of a business carried on by the company engaged in such operations and all operations incidental thereto and any sale of or any disposal of chargeable oil by or on behalf of the company.”

I agree with the submission of the learned counsel for the appellant that, if the appellants as an oil company (and like other oil companies) had not been required by the Agreement evidenced by Exhibits 2, 3 and 4 to pay their tax indebtedness in Sterling they would have incurred no losses. Apart from confirming the arrangement in Exhibit 4 whereby the appellants were directed to pay their tax liability in Sterling in London, the Agreements Exhibits 2 and 3 also regulated the petroleum operations of the appellants.

In view of the foregoing, I am of the view that the expenses incurred by the appellants in complying with the directive in Exhibit 4 that they should pay their tax liability in Sterling into the account of the Central Bank of Nigeria with the Bank of England which directive was confirmed by the Agreements, Exhibits 2 and 3, were expenses incurred wholly exclusively, and necessarily for the purpose of petroleum operations of the appellants.”

The respondent, being dissatisfied with this decision, appealed against it to the Court of Appeal. In allowing the appeal, the court below reversed the decision of the Federal High Court and held as follows, as per Awogu, J .C.A. who wrote the lead judgment-

“Petroleum operations are defined in Section 2 of the P.P. T. Act to mean:-

“The winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations and all operations incidental thereto, and any sale of or any disposal of chargeable oil by or on behalf of the company.”

By this definition, the two items in issue can only properly come under *"all operations incidental thereto."* It is difficult however to conceive of exchange losses and Central Bank charges as *"operations incidental to petroleum operations."* Profits come under Section 9, but under Section 11(1)(f), no deductions shall be allowed in respect of *"any amounts incurred in respect of any income tax, profits tax or other similar tax, whether charged within Nigeria or elsewhere."* Finally, any deductible expenses must pass the W.E.N. Test. Thus, by no stretch of the imagination can the two items in issue be said to pass the W.E.N. Test when they were not in operations incidental thereto, under Section 2 of the Act. Perhaps only in the context of Exhibits 1, 2, 3, 4, can such an inference be drawn." C

After examining Exhibits 1, 2, 3 and 4 in the judgment, the learned Justice of the Court of Appeal concluded as follows:-

"In other words, before Exhibit 3 of 5/6/72, Shell and the other five companies in Exhibit 4 had been paying their due tax abroad and in dollar or in sterling. Each company made the choice of whether to pay in dollar or in sterling Indeed, Exhibit 3, in Clause 4(c), made it clear that for the purposes of "satisfying obligations due to the Government as stated in Nigerian currency, an amount of U.S. Dollars or Pound Sterling, as determined below, shall be deposited." It is therefore clear to me that the choice of payment in sterling was voluntarily made by Shell. If any doubt remains on the issue, Exhibit 6 clears it. It was written by Shell on 5/6/72 (in response to Exhibit 3) and states that the company elects pounds sterling as the currency of deposit." Clearly, if Shell paid their tax in sterling abroad, as agreed, and the Board issued the necessary receipts in acknowledgement of the payments, how can it be argued that the payments did not discharge the tax obligations of the company? It was no longer open to the Board to approbate and reprobate. Ayinde, J. appears to have been right in so holding, but, was the issue really a matter of accord and satisfaction? As I understand it, the position might have been different if Shell were compelled by the Federal Government to pay in sterling. In other words had Exhibit 4 been the only directive on the issue, common sense would have dictated that any expenses incurred as a result should be deductible. But Exhibit 4 led later to Exhibits 2 and 3, which then became the basis of this accord and satisfaction. Thus, if Exhibits 2 and 3 do not provide for deduction of expenses incurred, how can one of the parties unilaterally do so. The true purport of the accord and satisfaction is exemplified by Exhibit 11, where Shell as a result, made an excess payment of N3,671,274.84K (sic). Had this been a deficit as a result of the varying exchange rates, the Federal Government would have similarly D E F G H

absorbed (sic) the loss and, having regard to accord and satisfaction, cannot call upon Shell to make up the deficit Accordingly the appeal on Exchange Losses is allowed and the decision of Ayinde, J. on the deduction is hereby set aside."

The appellant was aggrieved by this decision. It appealed before B us and argued thus: The definition in section 2 of the Petroleum Profits Tax Act, 1959 of the expression "*petroleum operations*" includes all operations that are incidental to petroleum operations. Therefore all activities of the appellant which are not strictly petroleum operations but which are activities occurring or liable to occur in connection with those operations C are deemed to be "*petroleum operations*". The section provides:-

"Petroleum operations" means the winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery, in D the course of a business carried on by the company engaged in such operations, and all operations incidental thereto and any sale of or any disposal of chargeable oil by or on behalf of the company."

The appellant argued further that the agreement between it and the Federal Government, which it claimed to constitute an accord and E satisfaction, is an agreement entered into by it in connection with its petroleum operations. Accordingly, the agreement, including the execution or performance of its terms, was incidental to the appellant's petroleum operations and, therefore, by the definition of the expression "*petroleum operations*" it should be deemed to be part of the appellant's petroleum F operations. It is contended that losses and charges incurred by the appellant in the discharge of its contractual obligations under the agreement in question are incurred for the purpose of petroleum operations. The appellant referred to the provisions of section 11 subsection (1)(f) of the Petroleum Profits Tax Act, 1959 which read:-

G "*11.(1) Subject to the express provisions of this Act, for the purpose of ascertaining the adjusted profit of any company of any accounting period from its petroleum operations, no deduction shall be allowed in respect of -*

(f) any amounts incurred in respect of any income tax, profits tax H or other similar tax whether charged within Nigeria or elsewhere;" .

And contended that the payments made by the appellant in pound sterling were based upon the amount of debt payable in Naira owed to the Federal Government. It was then submitted that it was misconception in both law and fact for the Court of Appeal to regard such payments as tax, as

envisaged under section 11(1)(f) of the Petroleum Profits Tax Act, 1959. It was contended further that section 11(1)(f) clearly intended to disallow deduction of amounts paid in respect of income tax, profits tax and other similar taxes. We were, therefore, urged to hold that section 11(1)(f) does not prevent the deduction of exchange losses.

The respondent, in reply, submitted that the payment of tax is a B mandatory statutory and constitutional obligation of all companies. To illustrate this, reference was made to sections 8, 15(1), 16(1) and (2), 17(1), 29(1) and 31(1) of the Petroleum Profits Tax Act, 1959 and sections 69, 31(3)(a) and 76(1) and (6) of the 1979 Constitution (Cap. 62 of the Laws of the Federation of Nigeria, 1990). With regard to the provisions of section 10 subsection (1) of C the Petroleum Profits Tax Act, 1959, it was argued that the phrase “*outgoings and expenses wholly, exclusive and necessarily incurred, whether within or without Nigeria, for the purpose of petroleum operation of an Oil Company*”, which the lower court tagged the “*W.E.N. Test*” was not applicable to both Exchange Losses and Central Bank Charges as found by the Court of D Appeal. This was so, because they were expenses incurred after profits had been earned and after the completion of the petroleum operations of the appellant. Nor were they incurred in the course or as a result of or within or during the business activities of the appellant. Again they were not expenses incurred on operations that were incidental to petroleum operations of the E appellant. An English authority which was said to be the locus classicus on the applicability of the “*W.E.N. Test*” was cited in support of the above contention of the respondent. It was *Strong & Company of Romsey Limited v. Woodfield (Surveyor of Taxes)* (1906) A.C. 448; 5 T.C. 215, per Lord Davey’s at pp. 453 and 220 respectively. F

Referring to the agreements between the appellant and the Federal Government and the latter’s letters (i.e. Exhibits 1, 2, 3, 4 and 6), the respondent argued that the principle of accord and satisfaction being relied upon by the appellant had no bearing on its statutory and primary G obligation to pay petroleum profits tax. It was argued further that the effect of Exhibits 2, 3, 4 and 6 was merely to modify the procedure for making the payment of the petroleum profits tax. Respondent contended that this modification came about by mutual agreement and did not in any way alter the character of the obligation from that of paying petroleum H profits tax by the appellant to the Federal Government. Therefore, no matter how Exhibits 2, 3, 4 and 6 were viewed, they were not intended to “*obliterate, transform or dwarf the primary obligation to pay tax.*” It followed, still being argued, that the obligation under the Exhibits to pay the tax assessed in foreign currency was at best “*an ancillary duty, a*

complementary, supplementary, adjunctive and supportive action to the primary civic duty of payment of P.P.T. to the respondent Board.” In construing the Exhibits they should be interpreted in a manner that renders them secondary to the statutory obligation of the appellant under the Petroleum Profits Tax Act, 1959. Reliance was placed on our decision in *B Salami Afolabi & Ors. v. Governor of Oyo State & Ors. (1985) 2 NWLR (Pt.9) 734* at p. 778. Numerous foreign cases were cited by the respondent to show the difference between form and substance and we were urged to hold that merely describing or labelling Exhibits 2, 3 and 4 as constituting accord and satisfaction was a misnomer since their substance as opposed C to their form failed to give rise to the principle of accord and satisfaction.

On the provisions of section 11 subsection (1) of the Petroleum Profits Tax Act, 1959, the respondent submitted that its wordings were clearly against the deduction from tax of the Exchange Losses. The case of *Gulf Oil Company of Nigeria Ltd. v. F.B.I.R., Suit No. FHC/L/3A/83* D (unreported) judgment delivered on 30th January, 1985, was cited in support and in particular where Belgore, CJ stated as follows:-

“..... *I have no doubt in my mind as to the meaning of the subsection. It may be unique or general in taxation legislation but it is clear, meaningful and unambiguous. Under this provision deduction allowed in E the Harrods (Buenos Aires) case (i.e .Harrods (Buenos Aires) Ltd. v. Taylor-Gooby (H. M. Inspector of Taxes) (1961-64) 41 T.C. 450 will not be allowed supposing one chooses or one is asked to post one’s tax assessment to the tax authority, the expense of postage will not be a deductible expense or if one chooses to drive one’s vehicle to a Government Treasury in order to pay one’s F tax, such expenses incurred by the travelling would not be allowed under subsection (1)(f) of Section 11. It is a notorious fact that when it comes to the issue of taxation, Government is usually of excessive sensitivity and unscrupulous thoroughness and the method and expenses of paying tax, though such method be laid down by the law is regarded as tax payer’s G burden and not that of the Government*”

The respondent also submitted that the principle of accord and satisfaction was not formulated with any tax law in mind. Therefore, it cannot supersede any statutory provision governing taxation.

It was contended that the agreement between the appellant and H the Federal Government (Exhibit 3) gave the appellant the option to pay the tax in either Pound Sterling or U.S. Dollars. Had the appellant chosen to pay in U.S. Dollars instead of Pound Sterling it would not have incurred any exchange losses. Therefore, the exchange losses suffered by the appellant were self-inflicted. For that reason the appellant cannot derive

any benefit therefrom.

The respondent referred to the Petroleum Profits Tax (Amendment) Act, 1973 (No. 15 of 1973) and argued that the Act incorporated the agreements entered between the appellant and the Federal Government (Exhibits 2 and 3). Reliance was placed on the “*Explanatory Note*” to the 1973 Act to support the argument. It was then submitted B that the provisions of the 1973 Act do not provide that there should be deduction from the adjusted profits of the appellant in respect of Exchange Losses, Central Bank Commissions and Scholarships Expenses.

Finally it was canvassed that the claim for deduction by the appellant cannot succeed on the ground that the items on which the claim was C based, that is, Exchange Losses, Central Bank Commission and Scholarships Award are not allowable deductions under the provisions of sections 2, 10(1)(g) and 11(i)(f) of the Petroleum Profits Tax Act, 1959, as amended.

Now by section 8 of the Petroleum Profits Tax Act, 1959 any company engaged in petroleum operations is liable to pay profits tax. D Section 2 of the Act defines “*petroleum operations*”. It includes not only winning or obtaining petroleum oil by drilling, mining etc, but all operations that are incidental to such operations. By Section 10 of the Act, all outgoings and expenses incurred wholly, exclusively and necessarily should be deducted in computing the adjusted profits to attract assessment for petroleum profits tax. The question, therefore, is: whether the exchange E losses suffered by the appellant are outgoings, that is expenditure, incurred necessarily, wholly and exclusively for petroleum operations?

There can be no doubt that if the exchange charges were incurred for the purpose of paying the petroleum profits tax, they F would not have been deductible since such outgoings cannot be said to be incurred for the purpose of petroleum operations as defined by section 2. Nor can they be said to have been incurred wholly, exclusively and necessarily for the purposes of petroleum operations. The outgoings would have fallen under the head of expenditure G incurred after the petroleum operations had been carried out and would not, therefore, qualify as deductible expenditure under the provisions of section 10 of the Act. See the cases of Strong & Company of Romsey Ltd. (supra) and the Gulf Oil Company of Nigeria Ltd. (supra); Potato Estates Ltd. v. Boland (B.M. Inspector of Taxes) H (1948) 30 T.C. 267; Usher’s Wiltshire Brewery Ltd. v. Bruce (Surveyors of Taxes) (1914) 6 T.C. 399 and Bentleys, Stokes and Lowless v. Beeson (H.M. Inspectors of Taxes) (1952) 33 T.C. 491 at p. 504.

The foregoing would have been the correct position in law had it

been that this case is being contested purely on the provisions of the Petroleum Profits Tax Act, 1959. For the principle of construction of statute is that if the words of the statute are plain, precise and unambiguous, they should be given their ordinary and natural meaning - see *Lawal v. G.B. Ollivant* (1972) 3 S.C. 124 at p. 137; *Aya v. Henshaw* (1972) 5 S.C. B 87 at p. 95; *Queen v. Onuegbu* (1957) SCNLR 130; 2 F.S.C. 10 at p. 12 and *Toriola v. Williams* (1982) 7 S.C. 27 at p. 46. However, the controversy in this case is not limited to the provisions of the Petroleum Profits Tax Act 1959, it extends to the terms of agreements entered into by the parties and their consequences vis-a-vis the Act.

C **It is clear that the profits tax to be paid by the appellant for the 1973 period had been assessed. But for Exhibits 1,2,3 and 4, the tax would have been paid in Nigeria and in Nigerian currency which is Naira. However, the appellant was under the additional obligation by virtue of the Exhibits to effect payment in England. Failure to do**
D **so would have undoubtedly rendered the appellant liable to sanction at the instance of and by the Federal Government. There is also the legal effect to be given to the agreements entered between the appellant and the Federal Government. There is no doubt that the agreements (Exhibits 2 and 3) are not illegal contracts because**
E **their terms vary the obligations of the appellant and the respondent under the Petroleum Profits Tax Act, 1959; nor are they against public policy - See *Solanke v. Abed* (1962) 1 SCNLR 371; (1962) 1 All NLR 230 at pp. 233-4. Since the agreements are not illegal it follows that the principles of contract can rightly apply to them. Hence the**
F **issue of accord and satisfaction becomes pertinent to this case. The term accord and satisfaction has been judicially defined as follows:-**

“Accord and satisfaction is the purchase of a release from an obligation whether arising under contract or tort by means of any valuable consideration, not being the actual performance of the obligation
G *itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative.” - See *British Russian Gazette and Trade Outlook Ltd. v. Associated Newspapers Ltd.* (1933) 2 K.B. 616 at pp. 643-4; (1933) All E.R. Rep. 320 at p. 328.*

H Although the definition talks of the obligation arising from contract or tort, yet the principle of accord and satisfaction extends to all obligations irrespective of their source, according to the learned authors of the *Principles of the Law of Contracts* by Salmond and Williams, 2nd Edition at page 496.

By the provisions of section 41 subsection (1) of the Petroleum Profits Tax Act, 1959 the respondent may sue for and recover tax in a court of competent jurisdiction. The tax is to be deemed “as a debt due to the Government of the Federation.” It follows that the obligation to pay petroleum profits tax is the same as the obligation to pay debt. The payment of a debt by a going-concern or company is undoubtedly incidental to the operations of such an organisation. In the present case, it is incidental for the appellant to pay debt for the purposes of its petroleum operations as defined by section 2 of the Petroleum Profits Tax Act, 1959. However, section 11 subsection (1)(f) of the Act disallows any deduction on such debt.

It must be made clear here that the lis in this case is not the tax or debt assessed but the loss incurred in sourcing the pound sterling for the payment of the tax. In my opinion such expenditure is necessary for the purpose of the appellant undertaking its operations. This is made clearer by the fact that the payment of tax from year to year cannot be detached from the operations of the company. The appellant could not have incurred the exchange losses but for Exhibits 1,2, 3 and 4. If the payment of the tax were to have been made in local currency no such losses, would have arisen. Similarly, if the Federal Government had been paid the tax in Naira and it were to purchase pound sterling equivalent to the amount so paid it would have incurred the exchange losses. I, therefore, do not see the reason why the respondent should not allow deductions in respect of the exchange losses suffered by the appellant.

The facts of this case are distinguishable from those of the cases mentioned above on which the respondent is relying. This has been made so by the fact that no agreements such as Exhibits 1,2,3 and 4 existed in them to raise the application of the principle of accord and satisfaction. By reason of the agreements and not the provisions of the Petroleum Profits Tax Act, 1959, as amended, the doctrine of equity will apply to compensate the appellant for the Exchange Losses it incurred.

It is pertinent to point out that the appellant is not exempted from suffering the Exchange Losses but that it should not pay petroleum tax on the Exchange Losses because the obligations imposed by the agreements in question are incidental to petroleum operations as defined by section 2 of the Petroleum Profits Tax Act, 1959.

Finally, although it is true that the Petroleum Profits Tax (Amendment) Act, 1973 was promulgated to give effect to the agreements entered into between the appellant and the Federal Military Government, it did not in fact

incorporate all the terms of the agreements in question.

I need not touch on whether the respondent and the Federal Government are the same for the purposes of this case since the former is an agent of the latter. The issue is not contentious before us because both the Court of Appeal and Federal High Court came to the same decision B on the point and there is no appeal on that by the respondent.

In conclusion, I am of the opinion that the appeal in respect of exchange losses succeeds and should be allowed.

2. Central Bank of Nigeria Charges

The letter Exhibit 4 (quoted above in extenso) was followed by C another letter dated 16th day of March, 1972 (Exhibit 5) addressed to the appellant by the Permanent Secretary, Federal Ministry of Finance. The letter directed that a commission of 0.5 per cent was payable with effect from December, 1971 in respect of pound sterling lodgments into the account of the Central Bank of Nigeria with the Bank of England. The D letter (Exhibit 5) reads as follows:

*“FEDERAL MINISTRY OF FINANCE
PETROLEUM DIVISION
LAGOS*

Tel: 56110/29

Ref. No: F. 10643/S. 53

E

16th March, 1972

The Managing Director

Shell-BP Petroleum Development Co. Nig. Ltd.,

40, Marina,

Lagos.

F *Dear Sir,*

**STERLING LODGEMENTS AT CENTRAL BANK'S
BUYING RATE**

I am directed to re-affirm this Ministry's undertaking to study closely any proposal for the de-escalation of the Central Bank of Nigeria's rate of G commission on the foreign exchange transactions of the oil companies.

2. In the meantime, I am to request that Sterling lodgements into the Federal Government of Nigeria's account with the Bank of England should, with effect from 1st December, 1971, be at the Central Bank of Nigeria's current buying rate of 117.25, which rate incorporated the H commission element of 0.5%.

3. Adjustments, one way or the other, will finally be made if and when the proposals for sliding scale commission rates are adopted, but, as of now, it will be appreciated if you will make good the resultant short falls in payments since December 1971, as well as adopt the current

buying rate of N100 to 117.2 Sterling in your future payments. The foregoing arrangement is designed to put Accounts in their proper position and eliminate the present muddle between the oil companies, the Federal Board of Inland Revenue and the Central Bank of Nigeria.

(Signed)

*W.O. Uwomu,
for Permanent Secretary."*

B

The rate of commission made payable to the Central Bank of Nigeria was reduced from 0.5 per cent to 0.25 per cent with effect from 1st April, 1975 vide a letter dated 9th May, 1975. However, this is immaterial to the case in hand since it does not affect or concern the C period which is material to this appeal.

The questions for determination which have been formulated in the alternative by the appellant read:-

"Whether the Central Bank charge incurred by Shell were -

*(a) outgoings and expenses wholly, exclusively and necessarily incurred D
for the purpose of its petroleum operations (as found by the Federal High Court) or whether they are expenses incurred in respect of tax on its profits (as found by the Court of Appeal)*

or

*(b) sums the liability for which were incurred to the Federal Government E
by Shell 'by way of any rate, impost, fee or other like charge.'*

The appellant argued that by their nature the Central Bank charges were not charges made by the Bank for services rendered to appellant; rather it was a sum fixed by the Federal Government without any real connection with or reference to any services rendered to the appellant. Reference was F made to section 10 subsection (1)(g) of the Petroleum Profits Tax Act, 1959, as amended, and it was submitted that the provisions thereof allow for the deduction of all outgoings and expenses which were wholly, exclusively and necessarily incurred whether within or without Nigeria for the purposes of petroleum operations. Furthermore, it was argued that the provisions of section 10 subsection (1)(g) allow deduction of any sum by way of "impost, fee or G other charges" incurred by the appellant. The allusion by the Court of Appeal to the provisions of section 11 subsection (1)(f) of the 1959 Act in connection with Central Bank Charges was said to cause confusion since the provisions apply to disallowance of deductions and have nothing to do with permissible deductions. H

In reply the respondent relied on the dictum of the Court of Appeal when giving judgment in this case, where Awogu, J.C.A. held as follows:-

“The argument in respect of Central Bank charges is similar (to the argument on Exchange Losses), save that it calls into question the status of the Central Bank of Nigeria. Shell claimed that it was deductible under section 10 (1) or section 10 (1)(g) of the P.P.T. Act In addition that it passed the W.E.N. Test. The Board does not agree, but Ayinde, J. B did. Section 10(1)(g) raises the question of the status of the Central Bank of Nigeria because expenses are deductible in respect of:-
 ‘(g) all sums the liability for which was incurred by the company during that period to the Federal Government of Nigeria, or to any State or Local Government, by way of any rate, impost, fee or other like charge.’
 C The question which arises is whether or not the Central Bank of Nigeria, which made the charges, is the same as the Federal Government of Nigeria. For this purpose, counsel cited *Trendtex Trading Corporation v. Central Bank of Nigeria* (1977) 1 Q. B. 529
 What calls for interpretation here is the language of sections 10(1)(g) and D 11(1)(f). The former makes deductible any expenses incurred in respect of -

‘all the sums the liability for which was incurred by the company during that period to the Government of Nigeria by way of duty (other than customs and excise duties) stamp duty, tax (other than the tax imposed by this Act) or any rate, impost, fee or any other like charge.’
 E By the canons of interpretation, the Central Bank charges must be one of the kinds envisaged in the section. It is clearly not a duty, stamp duty or tax. It is also not a rate, fee or any other like charge. It can only be an impost, and so Ayinde, J. held. But an impost cannot be a Bank Charge
 F in the context of section 10(1)(g), even if such a bank charge was paid to the Government in the process of fulfilling a tax obligation. It will be like paying one’s tax to the government by a personal cheque and charging government with the Bank commission. What is more, section 11(1)(f) only allows deductions for expenses incurred from ‘petroleum operations’
 G and one cannot readily see how bank charges incurred in the process of paying tax for profits made can be said to arise from ‘Petroleum Operations’ as defined in section 2 of P.P.T. Act. I am of the firm view that Ayinde, J. was wrong in treating the Commission charged by the Central Bank as an impost . It is clearly not deductible item of expenditure under
 H the Petroleum Profits Tax Act, and I so hold ”

It was argued that the commission payable to the Central Bank of Nigeria by the appellant in the course of paying its Petroleum Profits Tax to the Federal Government is not deductible expenditure under section 10 subsection (1) (g) of the Petroleum Profits Tax Act. This is so, it

was further argued, because the liability to pay the commission was not incurred to the Federal Government or a State Government or a Local Authority but to the Central Bank of Nigeria which was neither of the three authorities stated. It was then submitted that the Bank commission did not pass the test for deduction set in the phrase “*expenses wholly, exclusively and necessarily incurred*; “ nor did it pass the test under the phrase “*money wholly and exclusively expended for the petroleum operations*” of the appellant. Reliance was placed on the dictum of Collins, M.R. in the case of *Strong & Co. v. Woodfield* (Surveyor of Taxes) (1905) 2 K.B. 350 at p. 356 where he stated thus:-

“It seems to me, looking at these rules, that the root of the matter is that all expenses necessary for the purpose of earning the profits may properly be deducted, but that expenses to come out of the profits after they are earned cannot be deducted, unless there can be found some express provision of the Act authorising the deduction ... The cardinal distinction seems to me to be that those expenses were not a sum that had to be paid as a condition of earning the profits, but, in point of fact, a sum which the company were compelled to payout of the profits after they were earned.”

and the cases of *The Commissioners of Inland Revenue v. Alexander Von Glehn & Co. Ltd.* (1919) 12 T.C. 232 at pp. 243-244; *Gresham Life Assurance Society v. Styles* (1892) 3 T.C. 183 at p. 195 and *Strong v. Woodfield* (1906) 5 T.C. 215 at p. 220. The respondent then canvassed that Bank Commission, like Exchange Losses, being an expenditure or disbursement, was an unfortunate incident which followed the earning of petroleum profits after the conclusion of petroleum operations by the appellant.

The respondent further urged that the phrase “*all operations incidental thereto*” in section 2 of the Petroleum Profits Tax Act, which defines “*petroleum operations*” must not be read in isolation from the rest of the definition but that it must be read in conjunction with the various activities specified earlier in the definition in accordance with the construction rule of *ejusdem generis*. Therefore applying the rule to the phrase, the respondent submitted that the phrase would mean “*things or operations incidental to drilling, mining, extracting or other like operations as stipulated in section 2 of the Act.*”

It seems to me obvious that in computing the adjusted profit of the appellant, bank charges cannot be deducted under the provisions of section 10 subsection. (1)(g). This is because the Central Bank of Nigeria, as rightly held by the Court of Appeal (per Awogu, J.C.A.), is neither the Federal Government of Nigeria, nor Government of any State nor a Local Authority. - See the case of *Trendtex Trading Corporation v. Cen-*

tral Bank of Nigeria (1977) 1 Q. B. 529; (1977) 2 W.L.R. 356.

However, the situation differs with regard to the provisions of section 10 subsection (1) simpliciter. What needs to be determined thereunder is the question whether the payment of the bank charges arose in the course of the operations of the appellant as defined under the definition of “*petroleum B operations*” in section 2 of the Petroleum Profits Tax Act; and whether the expenses were incurred “*wholly, exclusively, and necessarily.*”

The directive given to the appellant to pay the bank charges did not come from the Central Bank of Nigeria but from the Federal Government. If it had come from the former, the appellant could have rightly queried such demand as it had no account with the Central Bank of Nigeria and the Bank had not performed any services on its behalf. In paying the Bank Charges the appellant merely carried out the directive of the Federal Government. The issue here is not whether the Federal Government had the power to give the directive. It is enough that the appellant was asked to pay the D charges to the Central Bank of Nigeria. The appellant had no choice than to comply and this it did. There can be no gainsaying that the payment of tax by the appellant to the Federal Government is certainly incidental to the business of the appellant which is petroleum operations. I have already so held earlier while considering the issue on Exchange Losses.

E **The definition of the phrase “*all operations incidental thereto*” in section 2 of the Petroleum Profits Tax Act, cannot be circumscribed to “*drilling, mining, extracting or other like operations*” as argued by the respondent. To do so is to do violence to the true meaning of the definition of petroleum operations. The ejusdem generis rule must not be pushed too far. It is to F be applied with caution. It is wrong to treat it as if it is automatically applicable since it is a mere presumption in the absence of other indications of the intention of the legislature. See Anderson v. Anderson (1895) 1 Q.B. 749 at pp. 753 and 755. The modern tendency of the law is to attenuate the application of the rule - See Craies on G Statute Law 7th Edition at p. 181. There must be a distinct genus or category before the rule of ejusdem generis can be invoked.**

A close examination of the definition of the words “*petroleum operations*” in section 2 would show that the specific words therein are not limited to “*drilling, mining, extracting or other like operations*” but include H in addition the phrase “*or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations*”. In my view there is no distinct genus in the definition for the phrase “*and all operations incidental thereto*” to allow the rule of ejusdem generis to apply - See Tillmans & Co. v. S. S. Knutsford, Limited (1908) 2 K.B. 385 at p.

403; (1908) A.C. 207 ..

The next question is whether the expenses were incurred “*wholly, exclusively and necessarily*”. According to ordinary dictionary meaning the words “*wholly*” and “*exclusively*” have virtually the same meaning. They can be said to mean “*solely*” or “*entirely*”. The dictionary meaning of the word “*necessarily*” is the same as that of the words “*inevitably*” and “*unquestionably*”. Therefore, was the payment of the Bank Charges solely and inevitably incurred for the petroleum operations of the appellant? As already seen the payment of the Central Bank Charges was imposed on the appellant by the Federal Government vide Exhibit 5. The appellant is expected to receive directives from the Federal Government from time to time in the course of its business which is “*petroleum operations*”. Clearly this is incidental to such operations. I have no doubt whatsoever in my mind about that. The payment of bank charges to the Central Bank of Nigeria which had not rendered any service to the appellant but simply because the Federal Government had so directed was inevitable and was, therefore, incurred in the course of the appellant’s business which was petroleum operations.

In my respectful opinion, the bank charges qualify for deduction under the general provisions of section 10 subsection (1) of the Petroleum Profits Tax Act. I am mindful of the decisions in the cases of Ricketts v. Coloquhoun (H. M. Inspector of Taxes) (1925) 10 T.C. 118; Rosakaus v. Bennet (1950) 31 T.C. 129; Blackwell (HM. Inspector of Taxes) v. Mills (1945) 26 T.C. 468 and Brown v. Bullock (H. M. Inspector of Taxes) (1961) 40 T.C. 1, which were cited by the respondent I find the facts of those cases not on all fours with those of the present case since the agreements and directives in question here have no counterparts in the former. The case of Gulf Oil Company (Nigeria) Ltd. v. Federal Board of Inland Revenue Suit No. FHC/L/3A/83 (unreported) was also cited by the respondent This being a local case, its facts may be the same as those of the present case, but, unfortunately, learned counsel for the respondent has not made the text of the judgment available to us. We, therefore, cannot say its facts are on all fours with this case. Furthermore, the decision was given by the Federal High Court. Although it may well be persuasive, it is not binding on this court.

I am of the firm view, in the light of the aforesaid, that the bank charges qualify for deduction under section 10 subsection (1) as claimed by the appellant.

Scholarship expenses

Paragraph 37 of the First Schedule to the Petroleum Act, 1969

(now Cap. 350 of the Laws of the Federation of Nigeria, 1990) provides:-

“37. *The holder of an oil mining lease shall ensure that -*

(a) *Within ten years from the grant of his lease-*

(i) *the number of citizens of Nigeria employed by him in connection with the lease in managerial professional and supervisory B grades (or any corresponding grades designated by him in a manner approved by the Minister) shall reach at least 75 per cent of the total number of persons employed by him in those grades, and*

(ii) *the number of citizens of Nigeria in anyone such grade shall be not less than 60 per cent of the total, and*

C (b) *all skilled, semi-skilled and unskilled workers are citizens of Nigeria.*

The Petroleum (Drilling and Production) Regulations, 1969 (now Cap. 350 of the Laws of the Federation, 1990) provide in regulations 26, 27, 28 and 29 as follows:-

“26.(1) *The licensee of an oil prospecting licence shall within D twelve months of the grant of his licence, and the lessee of an oil mining lease shall on the grant of his lease, submit for the Minister’s approval, a detailed programme for the recruitment and training of Nigerians.*

(2) *The programme shall provide for the training of Nigerians in all phases of petroleum operations whether the phases are handled directly E by the lessee or through agents and contractors.*

27. *Any scholarship schemes prepared, and any scholarships proposed to be awarded, by the licensee or lessee (whether or not related to the operations of the licensee or lessee or to the oil industry generally) shall be submitted for approval of the Minister.*

F 28. *Once a programme under regulation 26 of these regulations or a scholarship scheme under regulation 27 of these Regulations has been approved by the Minister, it may not be varied without his permission.*

29. *A report on the execution of the programme mentioned in regulation 26 of these Regulations and the progress of Nigerianisation G shall be submitted by the licensee or lessee at or about the end of June and December in every Calendar year.”*

In compliance with these provisions the appellant created a Scholarship Scheme. It incurred expenses in 1973 on the scheme amounting to N257,550.00 in respect of awards of various scholarships to Nigeri- H ans. The appellant claimed that the amount was deductible under section 10 of the Petroleum Profits Tax Act, for the purpose of computing its adjusted profits from petroleum operations. The claim was denied by the respondent. The denial was contested before the Federal Body of Appeal Commissioners which disallowed it. The Federal High Court as well as

the Court of Appeal upheld the decision of the Federal Body of Appeals Commissioners. Hence the appeal to this court. Three issues for determination have been formulated by the appellant. They read thus:-

“(i) What was the question for determination in the appeal before the Federal High Court?”

“(ii) In the light of the answer to Questions (i), has the Federal B High Court or the Court of Appeal jurisdiction to determine whether the scholarship expenses were incurred “exclusively” for the purpose of Shell’s petroleum operations.

“(iii) In the alternative to Question (i) and (ii) whether the scholarship expenses were outgoings and expenses incurred “wholly” and C “exclusively” for the purpose of Shell petroleum operations.”

The respondent formulated no less than 11 issues for determination. As the issues raised by the appellant appear sufficient to determine the question before us I do not deem it necessary to advert to or state the issues postulated by the respondent. D

In its judgment on the subject, the Court of Appeal held (per Awogu, J.C.A) as follows:-

“In any event, even if Ayinde, J. was wrong in finding that the expenses were not incurred ‘wholly’ and ‘exclusively’ no miscarriage of justice was thereby occasioned It is not in dispute that the scholar- E ship scheme is for non-employees of Shell/appellant. Appellant’s 2nd witness, Henry Omenai, made this clear when he said under cross examination (see page 224 of the Record):

“Our scholarship programme is for non-employees of the appel- lants while training programme is for employees. I believe that for the F years 1973 accounting period, training scheme expenses were allowed while scholarship expenses were disallowed in computing the chargeable profits of the appellant company. The approval for award of scholarship contained in Exhibits 27, 35 and all other exhibits relating to approval of scholarship did not permit them to deduct the expenses from the charge- G able profits”. Under re-examination, he added:

“The Government will not permit our operation if we failed to award scholarship for non-employees of the appellants”

I am therefore of the view that Ayinde, J. arrived at the correct decision in respect of the N257,550.00 claimed as expenses incurred on H the scholarship scheme, and his decision is hereby affirmed.”

The appellant complained that its case before the Federal Body of Appeal Commissioners was that the amount expended on the award of scholarship was “wholly” spent for the operations of the appellant and

the Commissioners decision was based on that submission. However, when the appeal from the Commissioners decision came before Ayinde, J. the learned Judge dealt with it on the basis whether the expenditure was “*wholly and exclusively*” for the operations of the appellant. In doing so the learned Judge did not call upon counsel for the parties to address him. It is submitted on the authority of *Iyaji v. Eyigebe* (1987) 3 NWLR (Pt. 61) 523; (1987) 18 NSCC Part 11, 1035; *Aluminium Industries Aktien Gesellschaft v. F.B.I.R.* (1971) 2 NCLR 122 at pp. 130-13 and *Olusanya v. Olusanya* (1983) 1 SCNLR 134; 14 NSCC 97 at pp. 102, that the Federal High Court had no jurisdiction to deal with the issue whether the expenditure in question was incurred “*exclusively*” for the petroleum operations of the appellant.

I think we need not consider the issue at this stage. **If the learned Judge lacked that jurisdiction he at least had the jurisdiction to consider whether the expenditure was “*wholly*” incurred for the purposes of the appellant’s petroleum operations and this he did. Therefore, his consideration, in addition, of the question whether the expenses were also “*exclusively*” incurred, which was not raised by the parties, without calling on counsel for the parties to address the court did not, in my opinion, vitiate the proceedings before the Federal High Court. In any event, I have already held that the words “*wholly*” and “*exclusively*” virtually have the same meaning as per the dictionary meanings given to them. Consequently the issue of jurisdiction raised by the appellant is no more than a storm in a tea cup.**

Appellant complained further that the Federal High Court, with which the Court of Appeal agreed, failed to hold that the scholarship awards were “*wholly and exclusively*” incurred as part of its petroleum operations because there were “*scholars who did not work with the company after completing their training*”. The Federal High Court went on to point out that “*the position would have been different if all the recipients of the awards were under bond to serve the appellant’s company on completion of their courses in return for the expenses incurred on them for their education.*” Appellant submitted that in upholding this decision the Court of Appeal failed to distinguish between the object of the expenditure and its effect. The object being that had all the beneficiaries of the awards obtained 1st class or 2nd class honours in their training, the appellant would have employed them. The effect of their failure to achieve 100% passes in 1st or 2nd class honours was that the scholars who did not attain the required grades were not employed. It was submitted that the effect should not be allowed to blur the object. The cases of *Bentleys. Stokes and Lowless v. Beeson* (Inspector of Taxes) (1952) 2

All E.R. 82 at p. 85A-B and *Mallalieu v. Drummond* (1983) 2 A.C. 861 at p. 870 were cited in support. The appellant argued further that it is erroneous to contend that the existence of scholars who are in fact not recruited by the appellant for its operations demonstrates that the expenditures on the scholarship awards were not “*wholly and exclusively*” incurred for the purposes of those operations. B

In reply, the respondent contended that the appellant’s scholarship scheme was made up of two categories. The first, being for the generality of the Nigerian public which concerns this appeal, and the second being for the employees of the appellant. The first category, it is argued, does not satisfy the requirements of section 10 subsection (1) of the Petroleum Profits Tax Act since it cannot be shown to satisfy the test of being wholly, exclusively and necessarily incurred for the petroleum operations of the appellant. Therefore, such expenditures are not allowable for deductions. It was urged upon us that there had been concurrent findings of fact that the expenditures on the scholarship awards were not wholly, exclusively and necessarily incurred for the operations of the appellant and, therefore, should not be interfered with by us. A number of cases were relied upon to buttress the argument. They include *Nigerian Bottling Company Ltd. v. Ngonadi* (1985) 1 NWLR (pt.4) 739 at p. 752; *Fasoro v. Abdallah* (1987) 3 NWLR (Pt.59) 134 and *Ogboodu v. The State* (1987) 2 NWLR (Pt.54) 20 at p. 29. C D E

Now, in determining whether expenses on awards of scholarship by the appellant should be deducted in computing its adjusted profits for 1973, the circumstances of the expenses must meet the requirements of section 10 subsection (1) of the Petroleum Profits Tax Act. In order words they must be “*expenses wholly, exclusively and necessarily incurred*” for the purpose of the petroleum operations of the appellant I have already alluded in this judgment to the meanings of the phrases “*petroleum operations*” and “*expenses wholly, exclusively and necessarily incurred*”. The meanings which I have ascribed to them also apply here. The creation of a scholarship programme is a statutory obligation to be observed by the appellant as indicated above. It is one of the things it had to perform as incidental to the carrying out of its business. It has no choice but to comply. The awards were not to be made after it made profits, for no provisions of the relevant legislations provide so. On the contrary, the appellant was enjoined to make the awards during the year and to submit a report to the Minister responsible in June as well as December, 1973. **It is very clear to me that the creation of the scholarship scheme and the award of scholarships to Nigerian citizens** F G H

were incidental to the petroleum operations of the appellant. It should be borne in mind that the definition of the words “*petroleum operations*” in section 2 of the Petroleum Profits Tax Act is wide and not restricted to “*drilling, mining, extracting of other like operations*” as contended by the respondent. Once there is a statutory or contractual obligation, and in this case it is the former, for a company engaged in petroleum operations to perform, such obligation is “*wholly, exclusively and necessarily*” for the purpose of the operations of the company. None of the provisions of the relevant legislations applicable to awards of scholarship makes it obligatory for the appellant to employ all those who benefited from its scholarship awards. What the relevant legislations provide is that the appellant is enjoined to ensure that 75% of its employees in managerial, professional and supervisory grades are Nigerian citizens and that the number of Nigerian citizens in each of such grades should not be less than 60% of the total number. The lower courts were, therefore, in error when they based their decision on the reasoning that not all those awarded scholarship by the appellant in 1973 were employed by it. Again the concurrent findings by the lower courts that the expenditures incurred on awards of scholarship were not “*wholly, exclusively and necessarily incurred*” were wrong because there was a statutory duty on the appellant to incur the expenditures and that is what the expenditure in question is about. It cannot, therefore, be held that the expenditures were not solely and inevitably incurred. Consequently, I hold, with respect, that the concurrent findings on the point made by the lower courts are perverse.

The appeal against the refusal by the respondent to allow deduction in respect of expenses to the tune of N257,550.00 incurred in connection with the awards of scholarship by the appellant succeeds.

On the whole the appeal on the three items of expenditure succeeds in its entirety. The decision of the Court of Appeal is hereby set aside. In its place I hold that the expenditure incurred by the appellant in respect of Exchange Losses Central Bank of Nigeria charges and Scholarship Awards in 1973 are deductible in computing the adjusted profits of the appellant for that year. The appellant is awarded N1,000.00 costs against the respondent.

H

BELGORE JSC

I have read the judgment of Hon. Chief Justice of Nigeria with which I am in full agreement. I do not have to restate the facts of the case in the lower courts as that judgment succinctly set out the relevant facts.

The respondent placed so much emphasis on the decision of the Federal High Court in *Gulf Oil Company of Nigeria v. Federal Board of Inland Revenue* (Suit No. FHC/L/3A/83, unreported). That case in its special circumstance was rightly decided in so far as it interpreted only the provisions of Petroleum Profits Tax Act, 1959. In this case now at hand the interpretation has shifted to the effect of special arrangement embodied in Exhibits 2 and 3 whereby the petroleum prospecting companies who hitherto paid their tax in Nigerian currency were to pay in pounds sterling. The agreement to my mind, have not derogated from the provisions of Petroleum Profits Tax Act because it has not been submitted that the tax payable would no longer be due, it only modifies the mode of payment of the tax. Despite section 2 of the Act it is clear that a separate arrangement was devised whereby the same amount due would now be paid in Pounds Sterling into the Federal Government's account with the Bank of England. The contention of the respondent that the Act has not provided for exchange losses, Central Bank Commissions and Scholarship Expenses to be deductible for tax computation sound ingenious but I regret to find it the other way. The Federal Board of Inland Revenue contends that the whole agreements between the government and the oil producing companies in respect of petroleum profits tax were void as they offended the provisions of the Act. The definition of "*petroleum operations*" in section 2 of the Act has not been derogated from in as much as the agreement has not varied the amount due as tax: the amount payable is only to be converted first into Naira and then into Pounds Sterling. The bone of contention now is whether in fulfilling the letters of the agreement between the parties, the extra expenses incurred must be taken into consideration in computing the amount due to the government as petroleum profits tax.

There is nothing ambiguous in the provisions of Petroleum Profits Tax Act and but for the obligation of the appellant under Exhibits 1, 2, 3 and 4, the tax would have been paid in Naira and that would have been the end of the matter. However, due to the terms of these exhibits the appellant was saddled with the additional responsibilities: first to pay in pounds sterling, and in furtherance of this to convert from American Dollar to Naira and then to pounds sterling. This exercise attracted substantial commission to the Central Bank of Nigeria in exchange conversion, and possibly loss in value due to the current exchange conversion (which happened in the instant case) and also deductions in respect of Scholarship awards made mandatory by statute but to come also from the petroleum profits. There would have been no problem we now face in this matter if not for these three elements brought about as a result of

Exhibits 1,2,3 and 4. But for them the law would have been complied with strictly, i.e. by payment of petroleum tax in Nigerian currency which is Naira, and there would have been no ambiguity [Aya v. Henshaw (1972) 5 S.C. 87,95; Toriola v. Williams (1982) 7 S.C. 27,46. The four exhibits aforementioned forced the appellant to look to overseas to Britain and America to source payment in Pounds Sterling. The agreement between the appellant and the Government has no air of illegality and was perfectly legal, because even though they vary the obligations of the parties under Petroleum Profits Tax Act, they retain the very spirit of the law i.e. to pay specific amount of tax assessed. The mode of payment may vary but none the less the tax must be paid. The expatriation of payment has not rendered the payment illegal. The respondent is an agent of the Federal Government and when its principal harvested the windfall in 1972, it never protested even though the appellant gained that year from Exchange rate and Central Bank Commission which it declared and was accordingly taxed upon then as Petroleum Profits Tax. It falls to reason that whenever the appellant incurred loss on these heads in any given tax year that must be deductible too. To now raise issue of illegality is unconscionable of the respondent. (Solanke v. Abed (1962) 1 SCNLR 371; (1962) 1 All NLR 230, 233, 234). The agreements to vary locus of payment were given by the Government and at their instance and it is not right and just for the respondent to fall back on illusory illegality. If there is any silence in the agreement, as given by the Government, on the three main issues canvassed, and an ambiguity arises, that ambiguity would be resolved in favour of the receiver, i.e. the appellant *Verbum Fortius Accipiuntur Contra Proferentem*.

The Honourable Chief Justice, in the lead judgment adverted to “*unbrief briefs*”, I agree that but for the importance of this appeal as a revenue matter of the government on strategic petroleum tax, the respondent’s brief of argument is not a brief for the purposes of our Rules. I would have discountenanced it; but I take it for what it is worth as some aide memoire. If the energy exerted in preparing it had been devoted to the study of the issues this court would have been greatly helped. I must confess that I find not much use in the brief for all its length of over five hundred pages.

I find therefore great merit in this appeal for the reasons advanced hereintofore and for the fuller reasons in the lead judgment of the Chief Justice of Nigeria which I adopt in addition to mine. I also allow the appeal on the three items of expenditure as deductible for the purpose of petroleum profits tax. I award against the respondent the costs of N1,000.00 in favour of the appellants.

The amount involved in this appeal is so minute as compared with the actual tax already paid, but I am of the view that the litigation is based on principle.

OGUNDARE JSC

B

I have had the privilege of a preview of the judgment of my learned brother Uwais C.J. N. just delivered. I agree with him that this appeal has merit and ought to succeed. I need say a few words of my own.

The facts are brief and not in dispute. The appellant company deals in the oil industry and carries on petroleum operations in Nigeria. In its operations, the Company is governed by the Petroleum Act and Regulations made, and ministerial directives given, thereunder. It pays taxes on its petroleum profits to the Government of the Federation in accordance with the provisions of the Petroleum Profits Tax Act, 1959 (now Cap.354). The Federal Board of Inland Revenue who is the respondent in the appeal now on hand, is the agency of Government responsible for raising and collecting taxes on petroleum profits from oil companies (including the appellant) in Nigeria.

A dispute arose between the appellant and the respondent in respect of tax payable for the 1973 Tax year. The dispute centred around the refusal by the respondent to allow for deductions for the purpose of tax computation on certain expenses incurred by the appellant in meeting its tax obligations to Government when it had to make payments in pounds sterling to the account of the Central Bank of Nigeria with the Bank of England in London as agreed to with Government, and in the award of scholarships for that year. The Exchange losses amounted to N3,355,091.00 while the Central Bank Commission amounted to N2,915,429.00. The scholarship expenses for the tax year in dispute came to N257,550.00. Following the refusal of the respondent to allow for the deductions, the appellant appealed unsuccessfully to the Federal Body of Appeal Commissioners which upheld the decision of the respondent. The appellant appealed further to the Federal High Court. The Federal High Court (Ayinde J.) allowed the appeal in respect of the Exchange Losses and Central Bank Commission but dismissed it in respect of the Scholarship Expenses. Both parties appealed to the Court of Appeal. That Court allowed the respondent's appeal in respect of the Exchange Losses and Central Bank Commission and dismissed appellant's appeal in respect of the Scholarship Expenses thus restoring the judgment of the Body of Appeal Commissioners in toto. It is against that judgment that the appellant has now appealed to this Court.

The appeal covers all the three items of expenditure in dispute.

Pursuant to the Rules of this Court both parties filed and exchanged their respective briefs of argument. The respondent's Brief runs into 411 pages. This can hardly be described as a brief. The document runs against all known rules of brief-writing. May I, for the benefit of B counsel for the respondent, draw attention once again to what this Court said in *Engineering Enterprises vs. Attorney-General of Kaduna State* (1987) 2 NWLR (Pt.57)381, per Eso JSC at p. 396:

"It is to be noted that all the Brief has said is to reproduce just a little portion of the dissenting judgment With utmost respect to learned C counsel and without meaning any offence there is a serious misconception on his part as to the reasons for the filing and presentation of Briefs to the Court. It is to be noted that the innovation of filing of Briefs of Argument was introduced in 1977 by the Supreme Court Rules 1977. Before then there was no filing of Briefs. Counsel came to Court to present their oral arguments. D This was found to be tedious and it did inhibit preparation of cases by opposing counsel, and research by the Court, prior to oral submissions, which are to be made before it And so, the system of brief filing was introduced by Order 9 and in particular Rules 3, 4 and 5. These Rules, after the revocation of 1977 Rules have now been replaced almost ipssisima verba in E Order 6 Rules 5,6 and 7 of the Supreme Court Rules, 1985 which are now the current Rules. The Rules require that the Brief so filed by the party -

- (a) shall be a succinct statement of his argument in the appeal*
- (b) shall contain the issues arising in the appeal".*

F Eso JSC at page 397 listed the requirements of a good brief as

- "(a) Introduction (which sets out the background);*
- (b) Issues in the Court of Appeal;*
- (c) Issues for determination in this Court;*
- (d) Arguments and references to in-depth authorities pro and con*

G *on the issues;*

- (e) Conclusion specifying the reasons why this Court should find for the appellant or for the respondent as the case may be;*

- (f) Authorities to be relied upon in course of arguments."*

and went on to comment thus:

H *"Briefs are meant to assist in the administration of justice by making the work of both counsel and court simpler once the matter has got to the oral hearing stage. It is to promote justice. Sometimes in the course of writing a brief the learned counsel involved in the case sees the futility of his course. The courts gain immense assistance from excellent*

briefs when it gets to the stage of the court undertaking research into the matter before it”

Oputa JSC at pages 413-414 commented thus:

“The lawyer confronted with the task of preparing a Brief would do well to remember what may be called the ABC of all legal writing, namely Accuracy, Brevity and Clarity.

B

Accuracy:

The statement of facts in a Brief must be accurate. There should be an honest and straightforward presentation of all the salient and relevant facts of the case. Facts are sacred. What is also important is that the statement of fact must be factual and not argumentative. The facts must be stated as they really and truly are without undue bias or/and embellishment. Unfavourable facts as well as favourable facts must be given equal emphasis otherwise the integrity of the Brief would have been seriously compromised and the effectiveness of the Brief will suffer, as the Court may then approach the Brief with a degree of skepticism or even disbelief. Honest and frank statement of all the facts (the good and the ugly) will no doubt inspire confidence. The statement of the facts affords counsel a wonderful opportunity to state the equities of the case in such a way that the Court will feel that justice will be done by deciding as is urged by the Brief-writer. The facts included in the Statement of Facts must of course be facts supported by the record and there should therefore be a cross-reference (on the right hand corner) to the pages of the record of proceedings where those facts can be found. Accuracy thus implies a correct, fair, straightforward and honest statement of the facts of the case.

C

E

Brevity:

F

As the name implies a Brief should be brief. It should however be short enough to be attractive and yet long enough to cover the substance. The goal of brevity is not easy to achieve unless counsel is very familiar with all the facts and circumstances of this case, can distinguish between the crucial and non-crucial, the important and the unimportant, the crux of the matter and the merely peripheral, the central issues and the subsidiary ones. Brevity does not imply what Mr. Ijaodola did in this case. He filed a one page Brief. Brevity here implies a flexible standard of conciseness in relation to the complexity of the case. Everything germane must be included. Counsel writing a Brief must bring to bear on such writing, time, effort and professional skill. A lazy or casual presentation of fact is of little help to the court and absolutely of no help to counsel. The goal here is to attain maximum brevity consistent with accuracy and clarity.

H

Clarity:

When counsel is easily understood then that is clarity. Clarity begins with straightforward thinking. When counsel does not understand himself, he cannot possibly make the Court understand him. Clarity of understanding must therefore and inevitably precede clarity of expression. No knowledge, however thorough of the art of legal composition or exposition will compensate for the want of knowledge of the facts and the law relating to the particular case in which counsel is called upon to prepare his Brief. Having the facts very clear in his mind and being in possession of the right words to use, clarity becomes easily attainable but not otherwise."

And in *Universal Vulcanising (Nig.)Ltd vs. IUTTC & Ors (1992) 9 NWLR (Pt. 266) 388, 397 Omo JSC* had cause to comment on an unduly long brief. He said:

"The brief of the plaintiff/appellant prepared and filed by Dr. F. A. Ajayi, SAN calls for some comment. It is a 70 page booklet which is more of a treatise than a brief. Commendable as it for the learning it exudes it does not conform to the definition of a brief of argument in Order 6 Rule 5, as 'being a succinct statement of his argument in the appeal'. The document filed by Dr. Ajayi is most certainly not succinct It is lengthy, otiose and not surprisingly, repetitive. This court will continue to insist that counsel should comply with the rules of court. It is to be hoped that this court will not be inflicted in the future with the tiresome task of wading through such a document."

The respondent's Brief in the appeal on hand, prepared and filed by U. A. Inyang Esqr. can hardly be described as a "*succinct statement of his argument in the appeal*" - See: Order 6 rule 5(1)(a) of the Supreme Court Rules, 1985. It is a book on diverse subjects full of sentiments, rather than hard legal arguments, and containing intemperate language against opposing counsel. I advise learned counsel to look into the Briefs filed in the number of cases listed by Eso JSC in *Engineering Enterprises* and to which list is to be added *Fawehinmi v. Akilu (No.1) (1987) 4 NWLR (pt.67) 797*. I am sure he will learn a lot from these cases on the art of brief writing. The appellant's Brief of argument is not without its own drawback, though to a lesser degree when compared to that of the respondent. Its own drawback is more in its length -70 pages; it could be shorter. So much for the written Briefs of arguments of the parties.

I shall consider this appeal under the three headings of Exchange Losses, Central Bank Commission and Scholarship Expenses.

Exchange Losses:

Sections 8-11 of the Petroleum Profits Tax Act, provide for the imposition of tax and the ascertainment of chargeable profits of oil com-

panies, such as the Appellant, operating in the country. Section 9, in particular provides:

“9(1) Subject to any express provisions of this Act, in relation to any accounting period, the profits of that period of a company shall be taken to be the aggregate of -

(a) the proceeds of sale of all chargeable oil sold by the company in that period;

(b) the value of all chargeable oil disposed of by the company in that period; and

(c) all income of the company of that period incidental to and arising from anyone or more of its petroleum operations.

(2) For the purposes of subsection (1)(b) of this section, the value of any chargeable oil so disposed of shall be taken to be the aggregate of-

(a) the value of that oil as determined, for the purpose of royalty, in accordance with the provisions of any enactment applicable thereto and any financial agreement or arrangement between the Federal Government of Nigeria and the company;

(b) any cost of extraction of that oil deducted in determining its value as referred to in paragraph (a) of this subsection; and

(c) any cost incurred by the company in transportation and storage of that oil between the field of production and the place of its disposal.

(3) The adjusted profits of an accounting period shall be the profits of that period after the deductions allowed by subsection (1) of section 10 of this Act and any adjustments to be made in accordance with the provisions of section 12 of this Act.

(4) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed by section 14 of this Act.

(5) The chargeable profits of an accounting period shall be the assessable profits of that period allowed after the deduction allowed by section 18.”

Section 10 makes provision for the deductions allowable out of the profits of an oil company. Section 11, on the other hand, provides for the deductions not allowable. I need to set out section 10 in extenso. It provides:

“10.(1) In computing the adjusted profit of any company of any accounting period from its petroleum operations, there shall be deducted all outgoings and expenses wholly, exclusively and necessarily incurred, whether within or without Nigeria, during that period by such company for the purpose of those operations, including but without otherwise expanding or limiting the generality of the foregoing-

(a) any rents (other than rents included in the definition in this

Act of royalties and non-productive rents incurred by the company for that period in respect of land or buildings occupied for its petroleum operations or compensation incurred under an oil prospecting licence or an oil mining lease for disturbance of surface rights or for any other like disturbance;

(b) *all royalties the liability for which was incurred by the company during that period in respect of crude oil exported from Nigeria (whether by the company or otherwise) or of casing head petroleum spirit so exported after injection into such crude oil;*

(c) *sums incurred by way of interest upon any money borrowed by such company where the Board is satisfied that the interest was payable on capital employed in carrying on its petroleum operations;*

(d) *any expense incurred for repair of premises, plant, machinery, or fixtures employed for the purpose of carrying on petroleum operations or for the renewal, repair or alteration of any implement, utensils or articles so employed*

(e) *debts directly incurred to the company and proved to the satisfaction of the Board to have become bad or doubtful in the accounting period for which the adjusted profit is being ascertained notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period:*

Provided that-

(i) *the deduction to be made in respect of a doubtful debt shall not exceed that portion of the debt which is proved to have become doubtful during that accounting period, nor in respect of any particular debt shall it include any amount deducted under the provisions of this paragraph in determining the adjusted profit of a previous accounting period;*

(ii) *all sums recovered by the company during that accounting period on account of amounts previously deducted in respect of bad or doubtful debts shall, for the purpose of sub-section (1)(c) of section 9 of this Act, be treated as income of that company of that period; and*

(iii) *it is proved to the satisfaction of the Board that the debts in respect of which a deduction is claimed were either -*

(a) *included as a profit from the carrying on of petroleum operations in the accounting period in which they were incurred; or*

(b) *advances made in the normal course of carrying on petroleum operations not being advances on account of any item falling within the provisions of section 11 of this Act;*

(f)(i) *any expenditure including intangible drilling costs directly incurred in connection with drilling an appraisal or development well but excluding any expenditure directly incurred on the first two appraisal*

wells referred to in sub-paragraph (ii) of this paragraph, and excluding expenditure which is qualifying plant or building expenditure, for the purpose of the second schedule, and excluding any sums deductible in ascertaining the tax under the provisions of section 20 of this Act and any expense or deduction in respect of a liability incurred which is deductible under any other provision of this section;

(ii) any expenditure (tangible or intangible) directly incurred in connection with the drilling of an exploration well and the next two appraisal wells in the same field whether the wells are productive or not;

(iii) where a deduction may be given under this section in respect of any such expenditure that expenditure shall not be treated as qualifying drilling expenditure for the purpose of the Second Schedule;

(g) any contribution to a pension, provident or other society, scheme or fund which may be approved, with or without retrospective effect, by the Board subject to such general conditions or particular conditions in the case of any such society, scheme or fund as the Board may prescribe:

Provided that any sum received by or the value of any benefit obtained by such company from any approved pension, provident or other society, scheme or fund, in any accounting period of that company shall, for the purposes of subsection (1)(c) of section 9 of this Act, be treated as income of that company of that accounting period:

(h) all sums the liability for which was incurred by the company during that period to the Federal Government of Nigeria or to any State or local government council in Nigeria by way of duty (other than customs and excise duties deductible in ascertaining the tax under the provision of section 20 of this Act) stamp duty, tax (other than the tax imposed by this Act) or any rate, impost, fee or other like charge;

(i) such other deductions as may be prescribed by any rule made under this Act.

(2) Where a deduction has been allowed to a company under this section in respect of any liability of the company and such liability or any part thereof is waived or released the amount of the deduction or the part thereof corresponding to such part of the liability shall, for the purposes of subsection (1) (c) of section 9 of this Act, be treated as income of the company of its accounting period in which such waiver or release was made or given."

Only sub-section (1) of section 11 is relevant for the purpose of this appeal and it reads:

"11.(1) Subject to the express provisions of this Act, for the ascertaining the adjusted profit of any company of any accounting period

from its petroleum operations, no deduction shall be allowed in respect of -

- (a) Any disbursements or expenses not being money wholly and exclusively laid out or expended, or any liability not being a liability wholly or exclusively incurred, for the purpose of those operations;
- B (b) any capital withdrawn or any sum employed or intended to be employed as capital;
- (c) any capital employed in improvements as distinct from repairs;
- (d) any sum recoverable under an insurance or contract of indemnity;
- C (e) rent of or cost of repairs to any premises or part of premises not incurred for the purpose of those operations;
- (f) any amounts incurred in respect of any income tax, profits tax or other similar tax whether charged within Nigeria or elsewhere;
- (g) the depreciation of any premises, buildings, structures, works
- D of a permanent nature, plant, machinery or fixtures;
- (h), any payment to any provident, savings, widows' and orphans' or other society, scheme or fund, except such payments as are allowed under subsection (1)(f) of section 10 of this Act;
- (i) any royalty or other sums deductible in ascertaining the tax
- E under the provisions of section 20 of this Act;
- (j) any expenditure for the purchase of information relating to the existence and extent of petroleum deposits."

As much argument was advanced by learned leading counsel for the parties as to the true meaning of the expression "petroleum operations,"

F I need to set out also the definition given that phrase in section 2 of the Act "Petroleum operations" is defined as meaning-

"the winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery, in the course of a business

G carried on by the company engaged in such operations, and all operations incidental thereto and any sale of or any disposal of chargeable oil by or on behalf of the company'"

It is not in dispute that the tax levied for 1973 was payable in

H Naira currency at the respondent's office in Lagos. By Exhibit II, Notice of Assessment issued by the respondent on the appellant, the tax chargeable was N450,531,675.00. If the appellant had paid this sum it would have discharged its obligations under the law. At the request of the Federal Government and in pursuance of an agreement dated 5th day of June

1972 between it and the appellant (Exhibits 3 & 4) the latter paid certain sums of money in pounds sterling into the account of the Central Bank of Nigeria with the Bank of England in London in accordance with the exchange formula laid down in the said agreement. These payments were in satisfaction of the appellant's tax liability. In the process of complying with the said agreement the appellant incurred a loss of N3,355,091.00 B due to exchange fluctuations in the value of the U.S. dollar vis-a-vis the pound sterling during the relevant period. This loss the Appellant sought to have taken into account by way of deduction in the computation of its final tax liability for 1973. The respondent rejected the appellant's claim on the ground that the loss was not incurred in the course of petroleum C operations but in the course of payment of tax and this was not deductible under section 11(1) (f) of the Act.

Chief F.R.A. Williams, SAN learned leading counsel for the appellant submitted, both in his brief and in oral argument that the payments made by the appellant in pounds sterling were not in the discharge of its D tax obligations but in the discharge of its obligations under Exhibits 3 & 4 which had replaced the tax debt. Learned Senior Advocate argued that a case of accord and satisfaction was made out and section 11(1)(f) would not apply.

Learned counsel for the parties referred us to a number of authorities. I have read through a number of these authorities many of which, particularly those relied on by the respondent, I find not relevant to the issue in this appeal. A lot of argument had been advanced which only beclouded the real issue in controversy. In my respectful view, the issue is rather simple. F

It is not in dispute that the appellant derived its income on which tax was imposed from its petroleum operations. It was part of this income that was used in carrying out its contractual obligations under Exhibits 3 & 4. Section 10 (1) of the Act, in my respectful view, is wide enough to encompass the "exchange losses" we are here concerned with. G The fact that it does not come within any of the items (a) - (g) specifically provided for in the sub-subsection 10 does not take it out of the wide embrace of the sub-section. The sub-section allows for deduction, "all outgoings and expenses, wholly, exclusively, and necessarily incurred, whether within or without Nigeria for the purpose of those operations, including but without otherwise expanding or limiting the generality of the foregoing" Payment of tax under the Act, whether directly or by way of accord and satisfaction, could only have been "wholly, exclusively and necessarily" for the purpose of petroleum operations. It is to H

avoid an absurdity that would arise where an oil company sought to deduct tax paid on its income that the law in section 11(1)(f) of the Act specifically excluded such payment from deductions to be made.

In any event, it is my considered view that payments made by the appellant to the account of the Central Bank of Nigeria with the Bank of England in London were in satisfaction of its obligations under Exhibits 3 and 4. By the agreement, the Federal Government had discharged the appellant of its liability under section 8 of the Act to pay tax in Lagos in Naira currency and had substituted therefore a new liability to make payment in London in pounds sterling. I agree entirely with Chief Williams that a case of accord and satisfaction is made out. The consideration for foregoing the Government's right to tax under the Act was the payment, by the appellant to the Government through its agent, the Central Bank of Nigeria of a certain amount in pounds sterling in London.

The court below, per Awogu J.C.A, was right when it observed:
"Clearly, if Shell paid their tax in sterling abroad, as agreed, and the Board issued the necessary receipts in acknowledgement of the payments, how can it be argued that the payments did not discharge the tax obligations of the Company? It was no longer open to the Board to approve and reprobate. Ayinde J. appears to have been right in so holding;"

It however fell into serious error when it held, again per Awogu JCA, that:
"One cannot therefore equate the present position based on accord and satisfaction with that in *Caltex Limited v. Federal Commissioner of Taxation*. 106 C.L.R., cited by Chief Williams, Where Taylor J. Said at page 239:

"The use of a trader's own dollar funds to discharge a dollar indebtedness overseas means, of course, that the trader is no longer in a position to convert the dollars used to Australian currency. And, expressed in terms of that currency, he incurs an additional cost which is just as real and significant as if it had been necessary for him to expend Australian currency to secure payment in question."

The difference between the above and the instant appeal is that the 'additional cost' resulted from an agreement voluntarily entered into by the parties. The agreement was the accord, the payment the satisfaction. That Court was led into this error by its reasoning, per Awogu JCA:

"As I understand it, the position might have been different if Shell were compelled by the Federal Government to pay in sterling. In other words, had Exhibit 4 been the only directive on the issue, common sense would have dictated that any expenses incurred as a result should be deductible. But Exhibit 4 led later to Exhibits 2 and 3, which then

became the basis of this accord and satisfaction. Thus, if Exhibits 2 and 3 do not provide for deduction of expenses incurred, how can one of the parties unilaterally do so. The true purport of the accord and satisfaction is exemplified by Exhibit 11 where Shell as a result, made an excess payment of N3,671,274,84k. Had this been a deficit as a result of the varying exchange rates, the Federal Government would have similarly absorbed the loss and, having regard to the accord and satisfaction, cannot call upon Shell to make up the deficit." B

To begin with, Exhibit 4 was a clear directive to the oil companies to pay royalties, petroleum profits tax and rents due to the Government in pounds sterling. Exhibits 2 and 3 only dealt with the formulae to be used in converting from Naira to US. dollar and pound sterling. I do not see that the oil companies were given a choice to pay in dollars or pounds sterling. Exhibit 4 reads: C

"I am directed to inform you that with effect from the 1st of January, 1968 and until further notice all payments due to the Federal D Government of Nigeria from your company in respect of the three items mentioned above should be made to the account of the Central Bank of Nigeria with the Bank of England. As the amounts due are normally expressed in Nigeria Pound, the payer/company must ensure that enough Sterling is made available to make Nigeria Pound equivalent of the amount E due from the company.

2. This letter supersedes all previous correspondence which your company has received from any Federal Government Department regarding the method and procedure for these payments."

Secondly, we were informed by learned counsel for the parties in the course of oral hearing of this appeal that in a previous year when the appellant had "exchange gains" as a result of fluctuation in exchange rates, these gains were added to its profit in the computation of the tax payable by it in that year. It thus becomes clear that the two grounds on which the Court below predicated its conclusion are untenable. The final conclusion I reach is that Ayinde F J. was right in his conclusion that the appellant was entitled to deduct from its profits for the purpose of computation of petroleum profits tax payable by it, the exchange losses it incurred in 1973 in making payments to the Government in pounds Sterling in London. G

Central Bank Commission:

By a letter dated 16th March 1972 (Exhibit 5) the Federal Ministry of Finance, on behalf of the Federal Government directed the appellant and other oil companies to pay a commission of 0.05% in respect of sterling lodgments into the account of the Central Bank of Nigeria with H

the Bank of England in London. In the 1973 tax year, the appellant paid a total of N2,915,429.00 as commission and claimed a deduction in this amount from its profits for that year for the purpose of computation of petroleum profits tax for the year. The respondent rejected the claim on the ground that it was not deductible under section 10 of the Act. The Court below upheld the respondent. Awogu, JCA in his lead judgment observed:

“The argument in respect of Central Bank charges is similar to the above, save that it calls into question the status of the Central Bank of Nigeria. Shell claimed that it was deductible under Section 10(1) or 10(1) (g) of the P.P.T. Act. In addition, that it passed the W.E.N. Test. The Board does not agree, but Ayinde J. did.

Section 10(1)(g) raises the question of the status of the Central Bank of Nigeria because expenses are deductible in respect of:

‘(g) all sums the liability for which was incurred by the company during that period to the Federal Government of Nigeria, or to any State or local authority, by way of any rate, impost, fee or other like charge. ‘The question which arises for determination is whether or not the Central Bank of Nigeria, which made the charges, is the same as the Federal Government of Nigeria For this purpose, counsel referred also to Exhibits 5, 7, 8 and 10, and cited Trendtex Trading Corporation v. Central Bank of Nigeria (1977) 1 Q.B. 529. It is of course clear that what Trendtex decided was that the Central Bank of Nigeria was not entitled to sovereign immunity in international law because it was not so related to the Government of Nigeria as to form part of it, or to turn it into an organ of the Nigerian State. Chief Williams drew our attention to Section 37(b) of the Central Bank of Nigeria Act, Cap.30, under which the Bank may act generally as agent for the Federal Government as may be agreed between the Bank and the Government concerned. He also submitted that Section 11(1)(f) of the P.P.T. Act did not prohibit the deduction of the charges made by the Central Bank. Again, the contention of the Board is that the charges were incurred in respect of profits already made, and not as a result of petroleum operations.

The position of the Central Bank of Nigeria is, to my mind, clear in international law, even if it may not be quite the same in the Municipal Law of Nigeria. What calls for interpretation here is the language of Sections 10(1)(g) and 11(1) (f). The former makes deductible any expenses incurred in respect of:

“all sums the liability for which was incurred by the company during that period to the Federal Government of Nigeria by way of duty (other than customs and excise duties), stamp duty, tax (other than the

tax imposed by this Act) or any rate, impost, fee or any other like charge.”

By the canons of interpretation, the Central Bank Charges must be one of the kinds envisaged in the Section. It is clearly not a duty, stamp duty or tax. It is also not a rate, fee or any other like charge. It can only be an impost, and so Ayinde J. held. But an impost cannot be a Bank charge in the context of section 10(1)(g), even if such a Bank charge was paid to the Government in the process of fulfilling a tax obligation. It will be like paying one’s tax to Government by a personal cheque and charging Government with the Bank commission! What is more, Section 11(1)(f) only allows deductions for expenses incurred from ‘petroleum operations,’ and one cannot readily see how Bank charges incurred in the process of paying tax for profits made can be said to arise from ‘petroleum operations,’ as defined in Section 2 of P.P.T Act. I am of the firm view that Ayinde J. was wrong in treating the commission charged by the Central Bank as an impost. It is clearly not a deductible item of expenditure under the Petroleum Profits Tax Act, and I so hold. Accordingly, the decision of Ayinde J. on the Central Bank commission is hereby set aside.”

This passage has come under attack in this appeal and the same arguments advanced before the Court below have again been proffered before us. With profound respect to their Lordships of the Court below, I think they fell into a number of errors in the reasoning leading to their conclusion. E

1. The Central Bank of Nigeria was not a banker to either party to these proceedings but an agent of the Federal Government for the purpose of receiving payments made to it by the appellant in London.

2. The commission was a directive from Government and not a charge for services rendered to the appellant by the Central Bank. Ayinde J. was right when he referred to the commission as an impost and I do not think it ceased to be so merely because it was referred to as commission or bank charge.

3. It was an impost payable to the Federal Government through its agent in London, that is, the Central Bank of Nigeria. The reason for the impost is not far-fetched. It is presumably to meet the charges the Federal Government, through its agent, the Central Bank, would have to pay to its London bankers, the Bank of England in respect of the payments made to it (Government) by the appellant

4. Being an impost, payable to the Federal Government, therefore, the amount of N2,915,429.00 was deductible under section 10(1) (g) of the Act from the profits of the appellant or the purpose of the computation of the petroleum profits tax payable by it for the relevant tax year, that is, 1973. H

Before I move to the third item, I need to comment briefly on the submission of learned leading counsel for the respondent to the effect that the expenditures incurred by the appellant under the Exchange Losses and Central Bank charges were incurred after the appellant's petroleum operations for the tax year. This submission, with profound respect to
B learned counsel, appears to conflict with the facts. It is common ground that payments were made by monthly installments with the final installment made after the end of the tax year concerned when accounts would be reconciled and final profits determined. It can therefore, not be correct to say that the expenditure were incurred after the profits had been made.

C Scholarship Expenses:

The respondent's opposition to this item appears to me the most puzzling of all. And the Board was upheld on this by the Federal Body of Appeal Commissioners, the High Court and the Court of Appeal! While admitting that the appellant had a legal obligation to award scholarships, it
D is the respondent's stand that the provisions of the law do not provide that expenses incurred thereby were deductible and that, in any event, as the appellant would not employ all those to whom scholarships were awarded the expenses incurred on scholarships would not be said to be "wholly, exclusively and necessarily incurred" for the purpose of its pe-
E troleum operations.

The Federal Body of Appeal Commissioners, in its judgment observed:

"Shell B.P. had very large requirement for technically qualified personnel in the conduct of its business. It therefore considered it necessary to
F grant scholarships in order to induce students to undertake higher technical education. In doing so, it incurred expenses to the tune of N257,550 which it requests to be admitted as deductible from chargeable profits." After referring to the appropriate legislation on the subject, the Body remarked:

G "We must make it quite clear that the mere fact that the Federal Government enacts a law which compels the company to award scholarship, and the company complies, would not ipso facto entitle the company to deduct the scholarship expenses from its chargeable profits. The expenses must fall under the relevant provisions of the tax laws."

H After examining some authorities cited before it, the Body held:

"In the Tate and Lyle case, the money was wholly, exclusively and necessarily held out for the campaign to prevent the company from losing its business and to preserve its assets intact. In the present case, Shell B.P. trains the scholars and employs some of them, not all. In fact the

evidence before us does not show that it employs up to 50% of the scholars. Can it then be said that the expenses were incurred wholly for the purpose of the company's operation. We say no. It would have been a different situation if all the scholars were ultimately employed by the company. The law says 'recruitment and training'. So, it would have also been a different situation if the individuals were first recruited and then trained. Furthermore, the B appellant cannot take the benefit of the act and not comply with the corresponding obligations as specified under Sections 26 & 27 of the Petroleum (D & P) 1960. This head of claim is also dismissed. "

On appeal to the High Court, Ayinde J. observed and held:

"There is evidence that the recipients of the awards were not C under any bond to work with the appellants' company after completing their education. The appellants too were not obliged to employ the scholars after their training. May be a small percentage of the scholars would be appointed by the appellants after completion of their courses. The remaining percentage of the scholars would have to seek employment D elsewhere. It is unarguable that the expenses incurred by the appellants on these scholars who did not work with the company after completing their training were expenses wholly and exclusively incurred for the petroleum operations of the appellants.

In view of the foregoing, I agree with the Body of Appeal Com- E missioners that the scholarship expenses of N257,550 incurred by the appellants were not "wholly and exclusively" incurred for the business of the appellants. The position would have been different if all the recipients of the awards were under bond to serve the appellants' company on completion of their courses in return for the expenses incurred on them F for their education.

The appellants may be fulfilling their social obligations by award- ing scholarships to deserving Nigerians, but if they were to satisfy their legal obligations it is certainly the intendment of Sections 26 and 27 of the Petroleum Decree 1967 the relevant provisions already reproduced G that the company should benefit from the knowledge and training acquired by all their scholars.

I therefore, find that the appeal fails in respect of the scholarship expenses of N257,550.00"

On further appeal to the Court of Appeal that court affirmed the H views of Ayinde J. on this item. The Contentions of the appellant all along is that as it was under a statutory duty to award scholarships expenses incurred thereby are deductible under section 10(1) of the Act as being expenses wholly, exclusively are necessarily incurred in its petroleum

operations.

With profound respect to the three appellate courts that have pronounced on this issue. I think they are all wrong.

Paragraph 37 of the 1st Schedule to the Petroleum Act Cap. 350 provides for the Nigerianisation of the labour force of the oil industry. And regulations 26 and 27. of the Petroleum (Drilling and Production) Regulations made & under the Act make provisions for putting into effect the policy laid down in paragraph 37. These statutory provisions read:

Paragraph 37:

“The holder of an oil mining lease shall ensure that-

(a) *within ten years from the grant of his lease -*

(i) *the number of citizens of Nigeria employed by him in connection with the lease in managerial, professional and supervisory grades (or any corresponding grades designated by him in a manner approved by the Minister) shall reach at least 75 per cent of the total number of persons employed by him in those grades, and*

(ii) *the number of citizens of Nigeria in any one such grade shall be not less than 60 per cent of the total, and*

(b) *all skilled, semi-skilled and unskilled workers are citizens of Nigeria,”*

Regulation 26:

(1) *The licensee of an oil prospecting licence shall within twelve months of the grant of his licence, and the lessee of an oil mining lease shall on the grant of his lease, submit for the Minister’s approval, a detailed programme for the recruitment and training of Nigerians.*

(2) *The programme shall provide for the training of Nigerians in all phases of petroleum operations whether the phases are handled directly by the lessee or through agents and contractors.”*

Regulation 27:

Any scholarship schemes prepared, and any scholarships proposed to be awarded; by the licensee or lessee (whether or not related to the operations of the licensee or lessee or to the oil industry generally) shall be submitted for the approval of the Minister.”

The purpose of these statutory provisions can only be to create a Nigerian labour market for the oil industry and such a purpose can only be in furtherance of the petroleum operations of the oil companies. Pronouncements made by the three appellate courts below appear to recognise this fact. It is, however, contended that because not all awardees of scholarship are subsequently employed by the oil company awarding the scholarships, expenses incurred thereby could not be “wholly, exclusively and necessarily incurred” for the

purpose of petroleum operations. I find this reasoning rather strange and absurd. Surely not all those awarded scholarship would measure up to the required standard. Some would fail their final examinations, some might even drop out of their institutions before the end was reached and some might only just make it at the end of their courses. No one would expect an oil company to employ any of the above classes of scholarship B
C awardees. Given the specialised nature of the oil industry only the awardees with good grades would be employable. Must an oil company be deprived of its rights to deductions under section 10(1) of the Petroleum Profits Tax Act in respect of expenses incurred by it in carrying out its statutory obligations by awarding scholarships, merely because some C
seeds fell by the wayside? I rather think not.

It is not in dispute that the appellant in furtherance of its statutory obligations under Regulations 26 and 27 drew out a scholarship scheme which was approved by the Minister and in pursuance of which it awarded scholarships in the tax year of 1973. It incurred expenses to D
the tune of N257,550.00. The appellant, in my respectful view, is entitled to have that sum deducted from its profits for that year in the computation of its tax liability for the year. I can see no justification for the stricture passed on the appellant by the Court below, per Awogu, JCA in the following passage:

*"It is of course clear that the aim of the scholarship scheme is E
the Nigerianisation of the personnel of the Company. Therefore, allowing the Company to pick and choose, by training 1,000 and employing 500, because of its policy, cannot but retard the Nigerianisation process. For this reason, the scholarship scheme cannot be judged subjectively F
but objectively. Nothing in Exhibits 28 to 37 can be said to lend support to this policy of the Company of retarded Nigerianisation."*

If the appellant by not taking in unemployable candidates, could be said to have "retarded" the Nigerianisation policy of the Federal Government the sanction lies not in denying it of its statutory benefit to deduction G
under section 10(1) but in other areas. Since the purpose of the scholarship scheme was in furtherance of its petroleum operations, the appellant was entitled to deduction of its scholarship expenses under section 10(1).

It is for the reasons above and the other reasons contained in the lead judgment of my learned brother Uwais, Chief Justice of Nigeria, a H
draft of which I had the privilege of reading ere now, that I too allow this appeal, set aside the judgment of the Court below and declare that the appellant was entitled to have all the three items of expenditure in dispute deducted from its profits for the purpose of the computation of the pe-

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troleum profit tax payable by the appellant in 1973.

I abide by the order for costs as contained in the lead judgment of the Honourable Chief Justice of Nigeria.

OGWUEGBU JSC

B I have had the advantage of a preview of the draft of the judgment just delivered by my learned brother Uwais, CJ.N. I am in full agreement with his reasoning and conclusions. I adopt them as mine and for those reasons, I will allow the appeal.

C The issues in controversy between the parties to this appeal centre upon whether three classes of expenses ought to be deducted from the earnings of the appellant (Shell Petroleum Development Corporation of Nigeria Ltd.) for the purpose of arriving at the amount of profit upon which petroleum profits tax is to be imposed in accordance with the law.
D Those expenses are Exchange Losses, Central Bank of Nigeria Charges and Scholarship Expenses.

The appellant claims that it is entitled to deduct the three items of expenditure before arriving at the balance of profits for the accounting year beginning from 1:1:73 and ending on 31: 12:73. It is the respondent's
E contention that the Petroleum Profits Act, 1959 made no provision for any such deduction.

By virtue of Exhibits 1,2,3 and 4 , the appellant is under an obligation to pay its petroleum tax in pounds sterling to the account of the Central Bank of Nigeria with the Bank of England in London instead of
F the naira in Nigeria. In compliance with the agreements, which involved the conversion of U.S. dollars into naira and the reconversion of naira into pounds sterling, the appellant incurred the Exchange Loss of N3,355,091.00. The payments made by the appellant to the account of the Central Bank of Nigeria with the Bank of England in London were in
G satisfaction of its obligation under Exhibits 2, 3 and 4.

As a general rule, the acceptance by a creditor of something different from that to which he is entitled may discharge the debtor from liability. Therefore, by virtue of Exhibits 2, 3 and 4, the Federal Government discharged the appellant from liability under section 8 of the Petroleum Profits Tax Act, 1959.
H There was therefore accord and satisfaction. The accord being the agreement by which the obligation was discharged and the satisfaction is the consideration which made the agreement operative, namely, the payment by the appellant in London. See *British Russian Gazette And Trade Outlook Ltd. v. Associated Newspapers Ltd. (1933) 2 K.B. 616.*

It seems to me clear that the exchange losses were incurred in complying with Exhibits 2, 3 and 4. Exhibit 4 is a directive which did not give the appellant any option. It is therefore my view that the exchange losses are deductible expenses incurred in complying with the above agreements (Exhibits 2 and 3) and the directive - Exhibit 4.

The Central Bank Charges are equally deductible under the general provisions of section 10(1) of the Act as outgoing or expenses incurred by the appellant in fulfilling the terms of Exhibits 2, 3 and 4. The same applies to Scholarship Expenses Regulations 26 - 29 of the Petroleum (Drilling and Production) Regulations, 1969, Legal Notice 69 of 1969 (now published as Cap 350, Laws of the Federation of Nigeria, 1990) impose on the appellant the duty of recruiting as well as the duty of training Nigerians through scholarship schemes. The law also stipulates that the number of Nigerians employed in certain grades should reach a certain percentage within the time prescribed by the regulations. It is my view that the sum of N257,550.00 incurred by the appellant in respect of the award of scholarships were deductible for the purpose of computing the adjusted profits for 1973. It was made exclusively for the purposes of petroleum operations. The fact that all the recipients of the scholarship awards were not employed by the appellant did not preclude the exclusivity of the business purposes. See *Mallalieu v. Drummond* (1983) 2 A.C. 861.

For the above reasons and the fuller reasons set out in the judgment of my learned brother Uwais, C.J.N. the appeal is hereby allowed. The judgment of the Court of Appeal is set aside. I subscribe to all the other orders made in the lead judgment

MOHAMMED JSC

I entirely agree with the opinion of my learned brother, Uwais, C.J.N., in the lead judgment, just delivered, that this appeal is meritorious and ought to be allowed. I have had a preview of the judgment, in draft, before now.

The Chief Justice, in his judgment has made a comprehensive review of all the issues of both law and fact involved in this appeal and had come to a conclusion which I adopt as mine.

It is plain from the facts of this case that the Federal Government brought about the exchange losses which the appellants incurred through the new guidelines communicated to all companies engaged in petroleum operations in this country. The new guidelines were given in Exhibit 4, in which the Government disclosed a new procedure for pay-

ments of Royalties, Petroleum Profits Tax and Rents to the Federal Government. At the risk of repeating what has been reproduced in the lead judgment, Exhibit 4 reads as follows:

“The General Manager,

The Shell-BP Petroleum Development

B Company of Nigeria Limited,

40, Marina,

Lagos.

Dear Sirs.

*NEW PROCEDURE FOR PAYMENTS OF ROYALTIES, PETROLEUM
C PROFITS TAX AND RENTS TO THE FEDERAL GOVERNMENT.*

*I am directed to inform you that with effect from the 1st of January, 1968 and until further notice all payments due to the Federal Government of Nigeria from your Company in respect of the three items mentioned above should be made to the account of the Central Bank of
D Nigeria with the Bank of England. As the amounts due are normally expressed in Nigerian Pound, the Payer/Company must ensure that enough Sterling is made available to make Nigerian Pound Equivalent of the amounts due from the Company.*

*2. This letter supersedes all previous correspondence which your
E Company has received from any Federal Government Department regarding the method and procedure for these payments.*

Yours faithfully,

Abubakar Alhaji

Exchange Control Officer”

*F In the letter above, the appellant was directed to pay Petroleum Profits Tax into the account of the Central Bank of Nigeria with the Bank of England in sterling. Hitherto such tax was assessable in Naira and that it was constituted as a debt owed and payable to the Federal Government, in Naira. It goes without saying that whenever the appellant pay Petroleum Tax in
G sterling in the Bank of England, unless the rate of exchange from Naira to a dollar and then to sterling are the same, some losses are bound to occur in the process. These are in the way of exchange rate differences.*

Under section 10(1) (g) of Petroleum Profits Tax Act it has been provided as follows:

H “(1) In computing the adjusted profit of any company of any accounting period from its petroleum operations there shall be deducted all outgoings and expenses wholly, exclusively, and necessarily incurred, whether within or outside Nigeria, during that period by such company for the purpose of those operations, including but without otherwise ex-

panding or limiting the generality of the foregoing -xxxxxxxxxx

All sums the liability for which was incurred by the company during that period to the Federal Government of Nigeria or to any State or local authority by way of any rate, impost, fee or other like charge."

It is my strong view that any compliance with the new directive in payment of Petroleum Profits Tax falls into the definition of Petroleum operations and those losses incurred by appellant in the process were expenses wholly, exclusively and necessarily incurred by the appellant. All depends on the value of sterling which the Federal Government agreed with the appellant to be the currency for the payment of Petroleum Profits Tax. When dealing with matter of currency exchanges I may refer to the universally adopted principle of nominalism by which the debtor is required to pay, in the designated money of payment, a sum equal to the nominal value of the money of account, regardless of fluctuations in the internal and external value of the money of account. In *Woodhouse A C Israel Cocoa Ltd. SA. And Another v. Nigerian Produce Marketing Co. Ltd.* (1972)A.C. 741 a debtor suffered exchange losses because he had to use his own depreciated currency to purchase a foreign money of account whose value had remained constant. In *Treseder - Griffin and Another v. Co-operative Insurance Society Ltd* (1956) 2 Q.B. 127 Denning LJ (as he then was) said:

"A man who stipulates for a pound must take a pound when payment is made, whatever the pound is worth at that time. Sterling is the constant unit of value by which in the eye of the law everything else is measured. Prices of commodities may go up or down, other currencies may go up or down, but sterling remains the same."

The respondent had chosen sterling for the payment of Petroleum Profits Tax and whatever losses appellant incurred during the process of such payments are deductible for the purpose of computing the petroleum profits tax liability.

I also agree with the opinion of Uwais, CJN that both Central Bank charges and scholarship expenses are deductible for the purpose of computing the amount of profit earned by the appellant upon which petroleum profits tax is to be imposed. For the above reasons and fuller reasons given in the judgment of my lord, the Chief Justice, this appeal is allowed. The judgment of the Court of Appeal is set aside. The judgment of Ayinde, J. in respect of Exchange Losses and Central Bank charges is hereby restored. The claim of the appellant in respect of scholarship expenses succeeds. I abide by all the consequential orders made in the lead judgment.

Appeal allowed.