

IN THE TAX APPEAL TRIBUNAL (SOUTHWEST ZONE)

HOLDEN AT IBADAN

THIS WEDNESDAY, 18TH MAY, 2011

APPEAL NO: TAT/IB/014/2010

BETWEEN:

FEDERAL INLAND REVENUE SERVICE - APPELLANT

AND:

NIGERIAN BOTTLING CO. PLC - RESPONDENT

RULING:

Counsel to the Appellant/Applicant in this appeal brought a motion, for transfer of this appeal (Appeal No: TAT/IB/014/2010) from TAT Southwest Zone, Ibadan to TAT Lagos Zone, Lagos State.

In an 18 paragraph affidavit supporting the motion, deposed to by one ABAYOMI WRIGHT an Officer II(Admin) of the Appellant/Applicant, averments were made among others, that:

1. Since 2005, all depots of the respondent have been assessed and levied centrally via their head office at NBC House, Ebute Metta, Lagos; by the Lagos Large Tax Office (non-oil) without the involvement of Ikare district Integrated Tax Office.
2. Since 2005, all tax assessments, tax demands and tax collection pertaining to the respondent have been handled by the Lagos Large Tax Office (non-oil) without the involvement of Ikare Integrated Tax Office.
3. Since 2005, The Ikare Integrated Tax Office has ceded jurisdiction over affairs of the Respondent to the Lagos Large Tax Office (non-oil);
4. That the Tax Identification Number of the Respondent is 01062005-0001;
5. The above Tax Identification number is registered with the Lagos Large Tax Office (non-oil);

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6. The tax liability of a tax payer emanates from the tax office under which the tax payer is registered and Tax Identification Number issued;
7. The Lagos Large Tax Office (non-oil) is where this case emanated from and where any judgement debt would be payable to.

Counsel thereafter prayed the Tribunal to transfer the appeal to the Lagos Zone of the Tax Appeal Tribunal. Counsel relied on Order 4 rule 2 of TAT (Procedure) Rules, which provides that appeal filed in a wrong zone, may be transferred by the Tribunal where it was wrongly filed, to the appropriate zone.

FACTS: This appeal which was commenced at the defunct VAT Tribunal (Western Region) Ibadan on 13th June, 2006, was upon establishment of the new TAT, filed at the Lagos Zone on the assumption that it was under the Jurisdiction of TAT, Lagos Zone, but on 29th November, 2010, a full panel of the Lagos Zone of TAT found that the matter emanated from Ondo State, and invoked the provisions of Order 4 rule 2 of the TAT (Procedure) Rules to transfer the matter to Southwest Zone of The TAT, Ibadan.

Upon resuming jurisdiction on this appeal by TAT Southwest Zone, Ibadan, counsel to the Appellant brought this motion seeking transfer of the same appeal back to Lagos Zone of the TAT, on the afore stated grounds.

ISSUES FOR DETERMINATION:

1. **Jurisdiction:** whether an appeal could be taken in a zone which is outside the territorial jurisdiction under the Instruments establishing the TAT;
 2. **Administrative Policy:** whether the administrative policy of the Federal Inland Revenue Service could be employed to negate express provisions for the territorial jurisdiction and place of institution of appeals.
1. **Jurisdiction:** The issue of jurisdiction is fundamental to the validity of proceedings in any court or Tribunal. Matters taken in inappropriate jurisdiction go to no avail.

See the case of *Amadiume v. Ibok* (2006) 6NWLR (pt.975) page 163 to the effect that "where a court purports to exercise jurisdiction which it does not have, the proceedings before it and its judgement will amount to a nullity no matter how well decided."

See also the case of *NNPC v. Tijani* (2006) 17 NWLR (pt.1007) page 32, where their lordships held the view that jurisdiction of court is the lifeline of an action. If a court lacks jurisdiction, it automatically lacks the necessary competence to try the case.

Under the Rules and Instruments establishing the TAT, an appeal shall be commenced or filed in the zone from which it emanates. Per Order 4 rule 2 of the TAT (Procedure) Rules 2010, if an appeal is filed in a wrong zone, the Tribunal shall transfer such appeal to the zone where it properly belongs.

2. **Administrative Policy:** Every organization or agency may formulate administrative policies as may be convenient to it for purposes of managing its affairs. However, it is trite law that such policies cannot be employed to override express provisions of the Law or Statute.

In the instant case the categorization of Tax Offices as Large or Small by The Federal Inland Revenue Service for convenience in the collection of taxes could not be used to negate the express provisions of the TAT (Establishment) Order 2009 made pursuant to section 59 and the 5th schedule to the FIRS Establishment Act No 13 of 2007, which created 8 zones and the territorial jurisdiction for each zone and put Ondo State under Southwest Zone.

Worthy of Note, is the fact that the subject matter of this appeal is VAT returns. By section 40 of the Value Added Tax Act Cap VI LFN 2004, the proceeds from VAT is distributed on derivation basis, therefore, where VAT due to be collected at Ondo State is moved to be collected at Lagos State, then The Government of Ondo State would be robbed of the accruals that may result therefrom.

From the foregoing, it is difficult for this Tribunal to be swayed by the arguments of Counsel to the Appellant/Applicant to transfer this appeal back to Lagos Zone of the TAT because of some administrative arrangements within the FIRS (Appellant/Applicant), which enable a tax office in Lagos to collect taxes that arose in Ondo State and should ordinarily be collectible at Ikare Integrated Tax Office, Ondo State, in the face of clear territorial jurisdiction as contained in clause 1 (i) – (viii) of the TAT (Establishment) Order, 2009. This view obviously weighed in the mind of the full panel of the Lagos Zone of TAT, when the Tribunal transferred this appeal to the TAT, Southwest Zone, Ibadan, on the 29th of November, 2010.

This Application is misconceived and is therefore accordingly dismissed. No Order as to cost. Hearing and determination of this appeal shall continue in this TAT Southwest Zone, Ibadan. This is a unanimous decision of this Tribunal.

DATED at Ibadan this 29th day of June, 2011

HON. JOSEPH A. USHIE

(CHAIRMAN)

ALH. MOSHOOD O. OYELEKE

(MEMBER)

MR. CYRIL I. EDE

(MEMBER)

CHIEF JAMES O. OLOPADE

(MEMBER)

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