

**IN THE TAX APPEAL TRIBUNAL
SOUTHWEST ZONE**



**HOLDEN AT IBADAN
THIS TUESDAY, 22ND JUNE, 2015**

APPEAL NO: TAT/IB/024/2014

BEFORE:

- | | |
|--------------------------------------|-----------------------|
| 1. Honourable Joseph A. Ushie | (Chairman) |
| 2. Honourable Cyril I. Ede | (Commissioner) |
| 3. Honourable Jibril N. Useni | (Commissioner) |

CHEVRON NIGERIA LIMITED

- APPELLANT

AND:

**ONDO STATE BOARD OF INTERNAL
REVENUE**

- RESPONDENT

**RULING ON THE PRELIMINARY OBJECTION ON THE
JURISDICTION OF THE TRIBUNAL**

1. BACKGROUND

1.1. The Appellant filed this appeal on 27th August, 2014, against the Demand Notice served on the Appellant by the Respondent for an additional tax liability of ₦377,831,238.58, arising from the Tax Audits conducted

by the Respondent in respect of 2010, 2011, 2012 and 2013 years of assessment.

- 1.2. On 24th September, 2014, the Respondent filed preliminary objection on points of law, challenging the jurisdiction of this Hon. Tribunal. Written addresses have been filed and exchanged by both counsel **Mr. Olumayowa Oluwale** for the Appellant and **Mr. Adebayo Ogunsuyi** for the Respondent. At the Tribunal sitting of 17th December, 2014, both counsel adopted their written addresses.

2. ISSUES FOR DETERMINATION

- 2.1. The issues for determination as formulated by the Respondent are mere repetition of the grounds of the preliminary objection. This view is supported by the second issue of the two issues formulated by the Appellant for determination.

"Whether this Appeal is competent in view of the Respondent's preliminary Objection".

The Tribunal has therefore decided to consider the appeal on the basis of the grounds of the Preliminary Objection.

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3. CONSIDERATION OF THE GROUNDS OF PRELIMINARY OBJECTION

3.1. The subject-matter of this appeal is within the exclusive Jurisdiction of the Federal High Court.

It is settled law that the jurisdiction of courts or Tribunals is conferred by the constitution or statute, and neither a court or Tribunal can confer jurisdiction on itself. As **Oputa JSC** observed in the case of **OLOBA V AKERELE (1988) 3 NWLR (PT84) 508 at 527:**

"The jurisdiction of any court is granted ALIUNDE – from without and from within. Courts are creatures of statutes and it is the statute creating the court that determines and defines its jurisdiction"

The learned Justice of the Supreme Court gave guide on how to determine the jurisdiction of the court or tribunal to hear a given matter.

"The first step is to look at the jurisdiction conferred by statute the second is to look at the claims before the court. The third and final step is to find out whether those claims fall within or without the jurisdiction of the court"

Following the above guide by the Supreme Court, we agree with the submissions of the learned counsel for Appellant that:

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- (i) Sections II (1) (ii) of the Fifth Schedule to the FIRS (Establishment) Act, 2007, and 60 of the Personal Income Tax Act (As Amended) 2011 clearly determined, defined and conferred jurisdiction on TAT.
- (ii) That from the Appellant claim it is clear that the subject matter of the dispute relates to the deduction and remittance of PAYE by employees of the Appellant for 2011 – 2013 years of assessment to the Respondent – Ondo State.
- (iii) That the Respondent reliance on the provisions of section 251 (1) (b) is a clear misconception of the said section because the appeal before us relates to PAYE and not Taxation on Companies.
- (iv) That the facts of **TSKJ V FIRS (2014) 14TLRN 159** relied upon by the learned counsel for the Respondent are distinguishable from the facts of the present appeal before us that relate to employees personal income tax and not profit tax on corporate bodies.
- (v) That the judgment of the Federal High Court in **TSKJ** case has been overtaken by a latter judgment of the Federal High Court in **NNPC V TAT and 3 others (2013) 13 TLRN V39**, where **Buba J.** upheld the

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jurisdiction of TAT in all tax matters as contained in the enabling Acts creating it.

It is worthy to observe that this Hon. Tribunal relied on the authority of NNPC supra to dismiss the preliminary objection by the Respondent challenging the jurisdiction of the Tribunal in Appeal No. **TAT/IB/019/2013. OSUN STATE BOARD OF INTERNAL REVENUE Vs REGIONAL CENTRE FOR TRAINING IN AEROSPACE AND SURVEYS, ILE IFE, OSUN STATE** decided on Monday, 27th May 2014.

From the foregoing, it is clear that this Tribunal is clothed with ample jurisdiction to hear and determine this appeal. The appeal is competent and the Appellant is properly before us.

This ground of Preliminary Objection challenging the jurisdiction of Tax Appeal Tribunal lacks merit and is accordingly dismissed.

3.2. This Appeal is statute-barred by virtue of Order III Ruler 2 of the TAT (Procedure) Rules 2010.

On this ground the Respondent merely computed the period between the service of the Demand Notice on the Appellant on 24th June, 2014, and the filing of the Appeal on 26th August, 2014, and concluded that:

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"by implication this suit was filed outside the 30 days period allowed by Order III Rule 2 of TAT".

The Respondent did not consider the period during which steps were taken by both parties to resolve the tax dispute amicably. It is therefore necessary at this stage to mention a few instances that are relevant for the consideration of this ground of objection:

- On 24th June, 2014, Respondent served upon the Appellant a Demand Notice dated 20th June, 2014, for tax liability of ₦377,831,238.58.
- On 7th July, 2014, Appellant served upon the Respondent a Notice of Objection.
- As a result of the objection Respondent requested for a meeting with the Appellant for amicable settlement.
- On 24th July, 2014, Respondent requested the Appellant to supply information on a rig used on the water of Ondo State in 2004 to date.
- On 1st August, 2014, the Appellant informed the Respondent that Appellant does not own any rigs and that the rigs used by the Appellant were leased from third parties.
- On 14th August, 2014, the Respondent gave the Appellant an ultimatum to supply the information requested for within seven days otherwise the assessment will be made final and conclusive. There was palpable fear that the Respondent could levy

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distrain on the Appellant. This is the crux of the matter on this ground of objection.

The learned counsel for the Respondent did not take into consideration the period of interactions between the parties from 24th June, 2014, when the Demand Notice was served on the Appellant to August 14th 2014, when a 7 day ultimatum was served on the Appellant in computing the 30 days under order III Rule 2. TAT Rules 2010.

The Appellant rightly construed the 7 days ultimatum as constructive Notice of the Refusal to Amend by the Respondent. We agree with the submission of the learned counsel for the Appellant that the 30 days in respect of filing this appeal commenced from the 14th day of August, 2014, when the ultimatum was served on the Appellant.

We are also persuaded by the decision of Lagos Zone of TAT in the case of **Ondo Supply and Trading V FIRS (2010) 4 TLRN at 26**, where the Zone rightly affirmed the power of TAT to deem that the tax Authority may by conduct or correspondence communicate a Refusal to Amend or Revise an assessment.

Based on the foregoing, we are of the considered view that the Respondent Refused to Amend or Revise the tax

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assessment of ₦377,831,238.50 served on the Appellant on 24th June, 2014.

We hold that this Appeal is competent before us hence it was filed within the period stipulated by Tax Appeal Tribunal Rules. This issue is therefore resolved in favour of the Appellant.

3.3 PROVISIO to ORDER III RULE 2: TAX APPEAL TRIBUNAL RULES 2010: Provides thus:

"Provided that the Tribunal may entertain an Appeal after the expiration of the said period of 30 days if it is satisfied that there was sufficient cause for the delay."

The Respondent Counsel did not consider or address the discretionary power of the Tribunal under the proviso to Order III Rule 2 as stated above. Neither did he file a counter affidavit challenging the facts in the Appellant's supporting affidavit deposed to by one **Adanma Ezegbulam**, especially paragraph 15 – 19.

"15. That based on the treat of the Respondent detailed in paragraph 13 above, the Appellant had no choice than to file this Appeal.

16. That Respondent's letter dated 14th August was an indication that the Respondent has refused to

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amend or revise the assessment on the Appellant and this Honourable Tribunal is urged to deem it as a refusal to amend the assessment within the context of Section 13(1) of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act 2007.

17. That it is important to note that during a previous Tax issue between the Appellant and the Respondent 2010, the Respondent attempted to arrest the Appellant's Director who had come to attend a "settlement meeting" at the Respondent's instance.

18. That this record of bad faith on the part of the Respondent prompted the Appellant to file the present Appeal.

19. That if this Tribunal finds that the Appellant did not file this Appeal within the time limited by the Rules of the Tax Appeal Tribunal (Procedure) Rules, the Tribunal has the power to suo motu (on its own motion) extend the time and cure any irregularities that have occurred."

For the reasons stated above in 3.2, the facts deposed to in the supporting affidavit of the Appellant and in the interest of Justice and fair hearing, this Honourable

Tribunal could justifiably invoke its discretionary power under the proviso to Order III Rule 2 in favour of the Appellant.

We so hold that this Tribunal has Power to entertain this Appeal after the expiration of the said period of 30 days. The Appeal is not statue barred.

3.4 WHETHER THE APPEAL IS NOT PREMATURE FOR NON COMPLIANCE WITH THE PRECRIBED PROCEDURE

The submission of the Respondent Counsel that the Appellant has not exhausted nor complied with statutory requirements with its refusal to await the decision of the Respondent to determine whether to Amend or Refuse to Amend the assessment is misconceived and no longer sustainable because of the ruling under ground 2 above that the Respondent refused to Amend the Assessment.

The foundation on which ground 3 of the Preliminary Objection stood before has been destroyed. It cannot therefore stand on itself for any further consideration by this Honourable Tribunal.

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3.5 WHETHER THE APPEAL IS NOT INCOMPETENT FOR NON SERVICE OF PRE-ACTION NOTICE UNDER SECTION 61 OF PERSONAL INCOME TAX ACT.

It has to be observed that section 61 of Personal Income Tax Act was repealed along with other amendments to the Act. It has since been deleted from Personal Income Tax Act. The Tribunal cannot therefore rely on non existing piece of Legislation to adjudicate on this appeal.

The Tribunal agrees with the Learned Counsel to the Appellant's submissions on all the sections of Federal Inland Revenue Service (Establishment) Act 2007 cited by the Respondent Counsel, especially section 55(3), where he submitted that:

It is clear from the above provision that a litigant is only required to issue a pre-action notice when initiating an action against the persons stated therein; namely Executive Chairman, a member of the Board, or any other officer or employee of the Service. This does not extend to tax assessment/related disputes involving the Tax Authority as a body corporate..

See the case of **GARBA Vs SHUAIBU (2001) 8 NWLR (Pt 716) 730 CA**, where the Court of Appeal held that **Public Officers Protection Law** is not intended

to cover Public Bodies or Public Institutions, but Public Officers themselves.

4.0 CONCLUSION

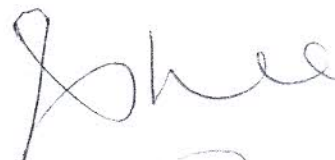
Once again, we hold that this appeal is competent before us and that this Tribunal is clothed with ample jurisdiction to hear and determine same.

This Notice of Preliminary Objection is hereby dismissed

The Respondent is hereby directed to file and serve a reply to the Appellant grounds of Appeal within 14 days with effect from the date of this Ruling.

DATED AT IBADAN THIS 22ND DAY OF JUNE, 2015

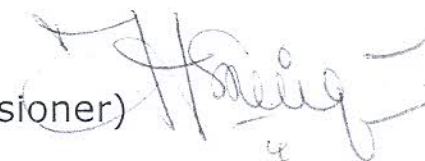
1. Honourable Joseph A. Ushie (Chairman)



2. Honourable Cyril I. Ede (Commissioner)



3. Honourable Jibril N. Useni (Commissioner)



1. OLUMAYOWA OLUWOLE
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For Appellant

2. A. OGUNSUYI

For Respondents