

TAX ALERT - JULY 2014 - TAX APPEAL TRIBUNAL CONSTITUTIONALITY?

INTRODUCTION

Two divergent decisions of the Federal High Court, in the Lagos and Abuja Divisions, on the constitutional authority of the Tax Appeal Tribunal to hear and determine tax appeals, have again highlighted the contentious nature of resolving tax disputes and any appeals arising from such disputes.

An examination of the applicable Statutes and relevant case law may provide a better appreciation of these Court decisions.

TAX APPEAL TRIBUNALS – STATUTORY PROVISIONS.

The Constitution of the Federal Republic of Nigeria 1999 (“the 1999 Constitution”), as the supreme law, confers on the National Assembly the exclusive authority to make laws on matters bordering on the taxation of income, profits and capital gains; amongst other matters. The National Assembly is further empowered to legislate on any matter that is/are incidental or supplementary to the matters of taxation, etc; which matters are enumerated in the Exclusive Legislation List, the Second Schedule, Part 1 of the 1999 Constitution.

In furtherance of the above ancillary authority, the Federal Inland Revenue Service (Establishment) Act, 2007 established the Tax Appeal Tribunal to settle disputes arising from the collection of taxes accruing to the Government.

Any person dissatisfied with a decision of the Tax Appeal Tribunal is entitled to appeal against such a decision, **only on point of law**, to the Federal High Court. Further appeals from such a decision are to be made to the Court of Appeal, from whence appeals go to the Supreme Court, which is the highest Court in Nigeria.

CASE LAW – TSKJ II CONSTRUCES INTERNACIONALS SOCIODADE LDA v. FEDERAL INLAND REVENUE SERVICE, T.L.R.N (VOL. 13) PAGE 1.

In October 2013, the Federal High Court seating in the Abuja Division held that Section 59 (1) and (2) of the Federal Inland Revenue Service (Establishment) Act, 2007 – which created the Tax Appeal Tribunal – is in direct conflict with Section 251 (a) and (b) of the 1999 Constitution which confers exclusive original jurisdiction on the Federal High Court, to the exclusion of all other Courts, on matters connected with or pertaining to taxation.

As a result of the above conflict, this Division of the Federal High Court held that the provisions of the Statute establishing the Tax

Appeal Tribunal, was null and void with the implication that the decision of the Tax Appeal Tribunal was set aside. The Tax Appeal Tribunal was further restrained from adjudicating on tax matters relating to the revenue of the Federal Government, with the Federal Minister for Finance directed to disband all existing Tax Appeal Tribunals in Nigeria.

As is to be expected, this decision is now on further appeal to the Court of Appeal.

CASE LAW 2 – NIGERIA NATIONAL PETROLEUM CORPORATION v. TAX APPEAL TRIBUNAL & 3 ORS, T.L.R.N (VOL. 13) PAGE 39.

In December 2013, a Federal High Court seating at the Lagos Division, held that the Tax Appeal Tribunal, as an inferior administrative panel from which appeals go to the Federal High Court in the first instance, has the constitutional authority to hear and determine tax appeals. This was contrasted with the Value Added Tax Tribunal from which appeals were taken directly to the Court of Appeal, thereby usurping the constitutionally guaranteed exclusive and original jurisdiction of the Federal High Court to hear and determine tax/revenue matters of the Government.

It is germane to observe that the application for Certiorari was found to be without any legal basis as the name of the Applicant was struck out at the Tax Appeal Tribunal thereby depriving the Applicant of the Locus Standi – legal authority – to file the Certiorari Application at the Federal High Court. On this ground alone, the Federal High Court could have determined this appeal without considering the constitutionality of the Tax Appeal Tribunal.

CONCLUSION

Congestion of the regular Courts, and continuing capacity building in specialised technical matters like taxation, has continued to make the Tax Appeal Tribunal a preferred option for tax appeals in Nigeria. Two conflicting decisions of two Judicial Divisions of the same Court may however hampered this objective.

The urgent decision of the Superior Appellate Court(s) to determine the current appeal, or amendments to the existing Statutes, will remove the conflict in the two Federal High Court decisions; and also remove the uncertainty over the constitutional authority of the Tax Appeal Tribunal to hear and determine tax appeals in Nigeria.

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