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Olukolade Ehinmosan

JURISDICTION OF THE STATE HIGH COURTS ON TAX MATTERS[1]

Introduction

By section 272 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), state high courts have wide jurisdiction over civil and criminal matters.[2] Evidently in line with this provision, it is quite common for disputes pertaining either to taxes regarded as "state taxes" or taxes accruing to the revenue of a state government, to be brought before state high courts for determination.

Meanwhile, section 251(1)(b) of the 1999 Constitution (supra) gives ***exclusive*** jurisdiction to the Federal High Court in civil causes and matters "connected with or pertaining to the taxation of companies and other bodies, establishments or entities carrying on business in Nigeria and all other persons subject to Federal taxation". Apparently in line with this provision, section 59, and Item 11 of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act (FIRSEA) both empower the Tax Appeal Tribunal (TAT) to adjudicate disputes arising from the administration or enforcement of all federal tax statutes (made by the National Assembly), and subjects appeals from the TAT to the jurisdiction of the Federal High Court.

Also, some taxes, although provided for in statutes enacted by the National Assembly, also accrue to the revenue of each state government and are collected by the internal revenue service of each of these states. This quickly provokes a question as to the certainty of the jurisdiction of the state high courts to hear and determine tax matters, especially as it pertains to fiscal revenue which although, accruing to the state government, derives from the administration of a federal legislation.

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1 **Olukolade Ehinmosan,** Associate, Real Estate and Succession Department, SPA Ajibade & Co, Lagos, Nigeria.

2 The provision makes it subject to section 251 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) ("CFRN"). As such, the wide jurisdiction of State High courts is in respect of matters not covered by the said section 251 CFRN (supra), such as the revenue of the government of a state.

This uncertainty came to the fore in the conflicting 2018 cases of **Chemiron International Limited v. Lagos State Board of Internal Revenue (LIRS)** on one hand, and **Lagos State Board of Internal Revenue (LIRS) v. Ecoserve Limited (Ecoserve)** on the other hand, both decided by the High Court of Lagos State. This article briefly examines these decisions and offers an informed commentary on the jurisdiction of state high courts on tax matters.

Chemiron International Limited (Chemiron) v. LIRS[3]

In 2016, LIRS issued a demand notice on Chemiron for under-deduction and under-remittance of employees' personal income tax (PIT) to the tune of over 10 million Naira. In response, Chemiron went straight to challenge the demand notice at the High Court of Lagos State without regard to sections 58 and 60 of the Personal Income Tax Act (PITA) which both provide for the exploration of internal dispute resolution mechanisms by an aggrieved taxpayer. For clarity, the relevant sections are reproduced hereunder:

> *"58.* ***Revision in case of objection***
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> *(1) If a person disputes an assessment, he may apply to the relevant tax authority by notice of objection in writing, to review and revise the assessment, and the application shall state precisely the grounds of objection to the assessment and shall be made within thirty days from the date of service of notice of the assessment.*
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> *60. The Tax Appeal Tribunal established pursuant to section 59 of the Federal Inland Revenue Service (Establishment) Act 2007, shall have the powers to entertain all cases arising from the operations of this Act."*

The LIRS challenged the jurisdiction of the court on the grounds that Chemiron had failed to comply with sections 58 and 60 above and therefore, was barred from safely invoking the jurisdiction of the court to determine the action.

In its decision, the court ruled in favour of Chemiron, upholding the jurisdiction of the State High Court to hear matters relating to PIT as a court of first instance, citing section 272 of the 1999 Constitution (supra) which grants the said court general jurisdiction over civil and criminal matters. In addition, the court noted the internal dispute resolution mechanisms provided for under PITA but held that every citizen has the right to approach the court to air their grievances and seek redress and that a court of law should not allow the provisions of

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[3] <https://andersentax.ng/lagos-state-high-court-rules-on-power-to-determine-matters-relating-to-personal-income-tax/#:~:text=On%2020%20June%202018%2C%20in,a%20court%20of%20first%20instance> accessed on 2nd December 2020 at 5:52 pm.

an enactment to be construed in such a way as to deny citizens their inalienable right of access and audience to Courts.

Lagos State Board of Internal Revenue (LIRS) v. Ecoserve Limited

In 2013, LIRS instituted an action at the Lagos State High Court for non-remittance of PIT and Withholding Tax (WHT). Ecoserve on its part filed a counterclaim against the LIRS seeking, *inter alia*, the setting aside of demand notices issued by the LIRS as premised on wrong calculations. In response, the LIRS contended that Ecoserve's right to counterclaim was unripe and not exercisable as it had no exhausted all statutory remedies for tax disputes provided under sections 58 and 60 of PITA – objecting to assessments by the LIRS and instituting an action at the TAT.

The court agreed with the LIRS and held that the appropriate mechanism of redress available for a taxpayer is to object to an assessment by the LIRS and have the objection considered by the relevant tax authority (RTA), after which it may then be heard by the TAT. More incisively, the Court further held that the state high court had no specific original jurisdiction on complaints relating to PIT assessments and subsequently struck out the counterclaim.[4]

Brief Commentary/Conclusion

The two decisions of the high court of Lagos State above point to a lingering problem of non-specificity of tax jurisdiction. To bring it out simply but clearly, the Constitution gives the Federal High Court exclusive jurisdiction to hear matters pertaining to "revenue accruing to the *Federal Government*". The same Constitution clothes the state high courts with original and general jurisdiction to hear all civil matters not expressly provided for by the Constitution or an Act of the National Assembly. The FIRSEA meanwhile provides for the original jurisdiction of the TAT to hear disputes arising from the administration of PITA, to the exclusion of the state high courts. A fortiori, appeals from the TAT lie solely to the Federal High Court, which constitutionally has jurisdiction to hear only tax matters pertaining to revenue accruing to the Federal Government.

Meanwhile, a combined and objective perusal of sections 251(1)(b) and 272 of the 1999 Constitution (supra) of the first part, sections 58 and 60 of PITA of the second part, and section 59 and Item 11 of the FIRSEA of the third part, would reveal that nothing in any of these laws ousts or partially negatives the jurisdiction of state high courts to adjudicate tax issues not related to federal fiscal revenue, especially PIT. Indeed, this legal reasoning aligns with the decision of the Court of Appeal in ***Access Bank Limited v. Edo State Board***

[4] <https://mikedugeri.wordpress.com/2019/01/14/tax-tax-appeal-tribunal-has-original-jurisdiction-to-determine-matters-relating-to-personal-income-tax/> accessed on 1st December 2020 at 9:41 am.

of Internal Revenue[5] where the court ruled that the Federal High Court does not have the constitutional or statutory jurisdiction to hear any matter pertaining to or connected with the revenue of a state.

It is submitted that PIT which accrues to the government of a state (as against those accruing to the government of the federation such as personal income taxes paid by persons employed by the Nigerian Armed Forces [Army, Navy and Air Force], the Nigerian Police Force, officers of the Nigerian Foreign Service and persons resident outside Nigeria who derive profit or income from Nigeria) would form part of the "revenue of a state" in determining the jurisdiction of the court. This submission is predicated on the fact that the clause "revenue of the Government of the Federation"[6] appears better determined, not by recourse to the tier of government that enacts an enabling law,[7] but by the tier of government that specifically administers and receives the revenue in its coffers. Certainly, the fact that PITA is a federal enactment does not automatically mean that all PIT revenues would accrue to the Federal Government. Indeed, only PIT paid by persons employed by the Nigerian Armed Forces [Army, Navy and Air Force], the Nigerian Police Force, officers of the Nigerian Foreign Service and persons resident outside Nigeria who derive profit or income from Nigeria, accrues to the Federal Government; any other PIT revenue accrue to the coffers of the state government.

The above submission is further buttressed by the authority of ***NPA v. Eyamba***[8] where the court held that the exclusive constitutional jurisdiction of the FHC contained in section 251(1)(a) of the 1999 Constitution (as amended) extends only to "civil causes and matters relating to the revenue of the Government of the Federation". In describing the meaning and scope of Federal Government revenue, the Court further explained in the following way:

> "It is clear to me that the payment of rents as claimed by the respondents will obviously be a deduction from the purse of the appellant who admittedly is an agent of the Federal Government. Therefore, the claim of the respondents relate *(sic)* in essence to the revenue of the Federal Government.
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> I am fortified in my view by the decision in F.H.A. v. John Shoy International Ltd. (2005) 1 NWLR (Pt. 908) 637 at 650 where this court held that:
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> > 'Whatever proceeds, revenue or whatever name one would call it, accruing to the appellant, or is being paid to others by the appellant, must … be regarded to be addition to or

[5] (2018) LPELR-44156(CA).
[6] Section 251(1)(a), CFRN 1999 (as amended).
[7] In this case, PITA.
[8] (2005) 12 NWLR (Pt. 939) 411.

deduction from the purse of the Federal Government. It relates in essence, to the revenue of the Federal Government.'"[9]

From the excerpt, it is abundantly glaring that the determination of the meaning of revenue accruing to the government of the federation (especially in the determination of the jurisdiction of the FHC) would not necessarily depend on the tier of government that enacts the law in question (federal or state), but on the tier of government to which the fiscal revenue (tax) in question would lawfully accrue.

Therefore, as seemingly inferable as the jurisdiction of the state high courts to determine disputes pertaining to or connected with the fiscal revenue of a state government is, there is an urgent need to clearly settle any controversy that may arise therefrom by way of a legislative review. It seemed clear that the FIRSEA as a federal enactment emerged to settle any jurisdictional controversy by conferring original jurisdiction to the TAT (whose appeal goes to the FHC), thereby expressly removing the high court of a state in the scheme of things. However, the very fact that the Constitution confers wide/general jurisdiction to hear civil and criminal matters on the state high courts makes the controversy unabated.

In clearer terms, the FIRSEA or other relevant tax laws needs to be reviewed or amended. This is because the Federal High Court constitutionally has exclusive jurisdiction to entertain tax disputes involving "revenue accruing to the Federal Government". A similarly specific law empowering state high courts to exclusively entertain tax disputes involving revenue accruing to the state government does not exist. Therefore, it appears that the personal income tax jurisdiction of state high courts remains unclear.

Until any form of legislative review is undertaken, it is advisable for individuals and corporates to consistently seek the professional advice of both tax legal practitioners and competent dispute resolution advisors. The subject of jurisdiction as it pertains to PIT has clearly become the task of actors from both the fields of taxation and dispute resolution.

For further information on this article and area of law, please contact
Olukolade Ehinmosan at: S. P. A. Ajibade & Co., Lagos
by telephone (+234.1.4729890), fax (+234.1.4605092)
mobile (234.810.370.8623) or
email: oehinmosan@spaajibade.com
www.spaajibade.com

[9] (supra) p. 441, paras. C-E.