

The Role of the Nigerian Courts in Tax Administration: An Appraisal

Ierkwagh, Kwaghkehe,* and Shankyula, Tersoo Samuel **

Abstract

Worldwide, taxation has become an effective instrument in reshaping and redeeming economies, Nigeria not being an exception. The Constitution of the Federal Republic of Nigeria and the various tax statutes have consequently imposed certain rights and obligations on the taxpayer. Unfortunately, some taxpayers do not perform their obligations while tax authorities sometimes violate the rights of the taxpayers. These deviations from the law are usually resolved by the courts through judicial review and interpretation of taxing statutes. The courts therefore perform tax administrative duties by so doing. This paper has therefore identified the various courts vested with jurisdiction over tax matters and evaluated their performance. The paper has found that in terms of judicial review, the Nigerian courts demonstrated an uncompromising stand at ensuring that tax takes its proper place in the Nigerian economy. However, the paper found that the courts have not been consistent in interpreting the taxing statutes in terms of taxpayer's rights and obligations, and finally calls for a legislative intervention in order to ensure consistency and repositioned taxation to take its rightful place in the Nigerian economy.

Introduction

For both personal and corporate income tax, the taxpayer under the Nigerian tax laws and the 1999 Constitution of the Federal

* Associate Professor, Head, Department of Commercial Law, Benue State University, Makurdi

** Senior Research Fellow, Nigerian Institute of Advanced Legal Studies, Abuja, Nigeria.

Republic of Nigeria¹ has defined rights and obligations. The taxpayer has the obligation to file his tax returns promptly and regularly. He must disclose his true and total income for the purpose of assessment, and also under the obligation to make payment of his tax liability as at and when due.²

Equally, Nigerian Tax Laws have granted certain rights and privileges to the taxpayer. Protection is accorded him against arbitrary and unfair tax assessment through redress provisions in tax laws. The taxpayer has the right to appeal for an independent review of any disputed assessment raised on him.³ The right of privacy and confidentiality of his tax information is also granted.⁴ The right of privacy is however not absolute in view of the modern trends in radically checking tax avoidance and evasion schemes by taxpayers. In this regard, Section 29(1) of the Federal Inland Revenue Service (Establishment) Act⁵ authorises officers of the Federal Inland Revenue Service to have access to all lands, buildings, places, books and documents in custody or under the control of a public officer, institution or any person at all reasonable times for the purpose of inspecting the books or documents including those stored or maintained in computers or on digital, magnetic, optical or electronic media and any property for the purpose of collecting any tax. Furthermore, the Federal Inland Revenue (Establishment) Act⁶ has placed an obligation on the banks or any person carrying on banking business in Nigeria to prepare and send to the service on demand quarterly returns specifying all transactions involving the sum of ₦5,000,000.00 and above in case of an individual, and ₦10,000,000.00 in case of a corporate body including the names and

¹ Cap C23 LFN 2004 (as amended).

² Examples here are the provisions of Section 24(1) of the 1999 Constitution of the Federal Republic of Nigeria, and Section 41(2) of CITA, Cap C12 LFN 2004.

³ These rights are also provided for under Section 57 of CITA, 2004, and Section 42(2) PITA, 2004.

⁴ This provision is necessary in order to protect the tax-payer against arbitrary use of power by revenue against tax-payers.

⁵ Federal Inland Revenue Service (Establishment) Act, 2007.

⁶ *Ibid.* Section 28(1), (a), (b) and (c).

addresses of all customers connected with such transactions. The banker or bank must also submit to the service names and addresses of new customers on demand.

Regrettably, while many taxpayers flagrantly refuse or fail to fulfill their obligations, the revenue too, sometimes violate taxpayers' rights by way of excessive assessment mostly through best of judgment assessment on the ground that the taxpayer has either neglected, failed or refused to make a return. In some cases the issue involved may be that of a dispute as to deductible expenses while in others the issue involved may border on interpretation of a taxing statute. In other matters, the court may be called upon to perform its function of judicial review in form of declaratory orders as to the liability to tax while in others still, the court may be invited to make an order of certiorari and prohibition, quashing an assessment or prohibiting collection of a particular tax by a particular tax authority. In *Westoil Petroleum Service Limited V. Lagos State Board of Internal Revenue*⁷, the court captured the distinction between writ of certiorari and writ of prohibition in the following words:

A writ of prohibition restrains an inferior tribunal from proceeding further in excess of jurisdiction while a writ of certiorari requires the records or order of the inferior tribunal to be sent to the High Court to have its legality inquired into. The remedies of certiorari and prohibition are therefore available when anybody of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act exceeds or acts contrary to that authority.

The courts are thus, inevitably invited to resolve these contentious antagonising and conflicting interests, and by so doing, performs a valuable role in tax administration.

⁷ (2012) 6 TLRN 48.

The theme of this paper is therefore located within the context of the courts' performance evaluation in this regard. Also addressed in the ensuing discussion is the jurisdiction of the various Nigerian courts over tax matters since jurisdiction is the major determinant of powers of adjudication. In evaluating the courts performance of its role in tax administration, the mechanisms for performance have been identified and discussed in the paper. The paper has finally called for legislative intervention in order to properly position the court for effective adjudication of tax matters.

The Structure and Jurisdiction of Courts in Tax Matters

Jurisdiction simply means the authority or powers which a court has to adjudicate, upon matters that are litigated upon before it. In other words, the competence of the court to entertain or adjudicate upon specific subject matters. The competence is conferred on a court by the constitution or statute.⁸ Consequently, the issue of jurisdiction being radical in nature and at the foundation of adjudication cannot be defeated by the provisions of the rule of court.⁹ Jurisdiction of courts can be territorial or the subject matter or claim before the court in nature. For our present purposes, the theme of our discourse is subject matter and territorial jurisdiction.

In terms of the taxation of items over which the federal government has power to legislate or revenue of the federal government, Section 251(1) (a) and (b) of the Constitution provides¹⁰

-
- (1) Notwithstanding anything to the contrary in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal

⁸ See *Addeh V. NYSC*, 19 Nigerian Supreme Court Quarterly Law Reports (NSCQLR) Vol. 9 (July – September 2004) pp. 220-222, and *Osadebey V. AG Bendel State* (1991) 1 NWLR 525.

⁹ See *S.O. Akegboj & 3 Ors V. Dr. D.O. Ataga (Director NIFOR) & 3 Ors* (1998) 1 NWLR (pt. 534) 459 at 469.

¹⁰ The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

High Court shall have and exercise jurisdiction to the exclusion of any other court in causes and matters -

- a) relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party;
- b) connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to federal taxation;
- d) connected with or pertaining to customs and excise duties and export duties, including any claim by or against the Nigerian Customs Service or any member or officer thereof, arising from the performance of any duty imposed under any regulation relating to customs and excise and export duties.

In *Shell Exploration and Production & 3 Ors V. Federal Inland Revenue Service (FIRS) & 1 Or*¹¹, the Court of Appeal Abuja Division in interpreting Section 251(1) of the Constitution held that the provision is a clear spelling that when it comes to the revenue of the Government of Nigeria or its organ and on matters pertaining to taxation of companies and other bodies carrying on business in Nigeria, it is the Federal High Court that has exclusive jurisdiction to adjudicate upon same.

The provision of Section 251(1) of the Constitution is re-enforced by the provisions of the various tax laws. The Companies Income Tax Act in Part 10, the Personal Income Tax Act¹², the Value Added Tax Act¹³ and the Capital Gains Tax Act¹⁴ all confer on the court jurisdiction to adjudicate on matters in the various Acts.

¹¹ 2016 26TLRN 51 at 84.

¹² PITA Cap. 8 LFN 2004 (as amended by Act No. 20 2011).

¹³ Cap. VI LFN 2004.

¹⁴ Cap. C1 LFN 2004.

Similarly, in *Elf Oil (Nig.) Ltd V. Oyo State Board of Inland Revenue*¹⁵, the court held that by virtue of Section 77 of the Personal Income Tax Decree No. 104 of 1993¹⁶, provision is made for recovery of tax through institution of actions in court, and in this case, the Federal High Court.

Though Section 272 of the Constitution of the Federal Republic of Nigeria¹⁷ as amended confers unlimited jurisdiction on the State High Court, the provision nonetheless does not enable it to exercise jurisdiction over matters within the specific jurisdiction of the Federal High Court. In *Ademola V. Adetayo*¹⁸, the Court of Appeal stated that the unlimited nature of the jurisdiction conferred upon the State High Court as per Section 272 of the 1999 Constitution does not enable it to exercise jurisdiction over matters within the specific jurisdiction of the Federal High Court. In all, the position is that the Federal High Court has exclusive jurisdiction over matters involving revenue of the Federal Government. In other words, the Federal High Court is conferred with jurisdiction over federal taxes to the exclusion of the State High Courts by virtue of Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999.

In addition to the original jurisdiction of the Federal High Court on tax matters or revenue of the Federal Government, the court also has appellate jurisdiction. Where any party is not satisfied with the decision of the Tax Appeal Tribunal, formerly Body of Appeal Commissioners¹⁹, appeal lies to the Federal High Court.

The Tax Appeal Tribunal on the other hand has jurisdiction to adjudicate on disputes, and controversies arising from the Companies Income Tax Act, Personal Income Tax Act, Capital Gains Tax Act, Stamp Duties Act, Taxes and Levies (Approved List

¹⁵ (2003) All FWLR (pt. 138) 1352.

¹⁶ Now the Personal Income Tax Act, 2004.

¹⁷ CFRN 1999 (as amended).

¹⁸ (2005) All FWLR (pt. 259) 1966 at 1985.

¹⁹ See *Ocean and Oil Ltd V. The Federal Board of Inland Revenue* 2011 TLRN 135 at 140.

for Collection) Act, all tax regulations and notices issued by the Federal Government and its agencies, and any other law regulating the collection of revenue due to the Federal Government.²⁰ The issue that arises for our present purposes is whether or not the Tax Appeal Tribunal is a court. This issue was resolved by the Federal High Court sitting in Lagos in *Nigerian National Petroleum Corporation V. Tax Appeal Tribunal*²¹, when it held that:

There is no doubt whatsoever that the Tax Appeal Tribunal has jurisdiction to adjudicate on tax disputes. The Tax Appeal Tribunal is however, not a court though it sits to hear and determine matters in a judicial fashion manned and anchored by legally trained minds yet it is short of judicial teeth.

In *Federal Inland Revenue Service V. General Telecom Plc*²², the Tax Appeal Tribunal, Lagos Zone confirmed that the Tax Appeal Tribunal is not a court, and stated as follows:

...a factor which in addition necessitates and compels its existence and rational is that many, perhaps most of the cases that come before this Tribunal cannot even be commenced at the Federal High Court at the phase they are brought here. There are cases that are not ripe for litigation. An example is where a taxpayer appeals here against an assessment by the FIRS without first filing an objection to its assessment, let alone waiting for Notice of Refusal to amend. A normal court like the Federal High Court would jettison such a claim as premature.

²⁰ See paragraph 11 of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act, 2007.

²¹ 2015 20 TLRN 1 at 14-15.

²² 2012 7 TLRN 108 at 134.

In *Nigerian National Petroleum Corporation V. Tax Appeal Tribunal & 3 Ors*²³, the court held thus;

Even if the Tax Appeal Tribunal is manned by legal minds, it does not enjoy the status of a court. It is like a retired justice of Supreme of Court heading an arbitration tribunal. It does not elevate him to any status more than an arbitral tribunal.

Arising from the foregoing and closely connected is the issue as to whether paragraph 20 of the First Schedule of the Federal Inland Revenue Service (Establishment) Act is in conflict with Section 251(1) (a) (b) of the Constitution of the Federal Republic of Nigeria which vest exclusive jurisdiction on the Federal High Court in respect of the revenue of the Federal Government. This issue dominated the appeal of the Federal High Court, Lagos Division in *Nigerian National Petroleum Corporation V. CNOOC Exploration & Production (Nig.) Ltd & 2 Ors*²⁴, where it was held that since the Federal High Court is vested with exclusive jurisdiction in respect of civil causes and matters relating to the revenue of the Federal Government of Nigeria and connected with or pertaining to taxation of companies carrying on business in Nigeria, all other courts are therefore precluded from exercising original jurisdiction over that same matter, they must yield to the court conferred with exclusive jurisdiction. The implication here is that paragraph 20 to the Fifth Schedule to the Federal Inland Service (Establishment) Act, 2007 is in conflict with Section 251(1) of the 1999 Constitution of the Federal Republic of Nigeria. Consequently, the Tax Appeal Tribunal is not a court but a simple administrative body to hear appeals arising from disputes in respect of all Federal Government Revenue. The Tax Appeal Tribunal is therefore simply a body of Arbitrators. However, Section 20(3) of the Taxes and Levies Act deems the

²³ (2014) 13 TLRN 39 at 94.

²⁴ 2015 19 TLRN 32 at 54.

Tribunal as a court for the purpose of tax matters. This paper shall therefore, proceed on that basis.

The State High Court on the other hand has jurisdiction over state revenue within its territorial jurisdiction. Section 272(1) of the 1999 Constitution of the Federal Republic of Nigeria confers unlimited jurisdiction on State High Court as follows:

- 1) subject to the provisions of Section 251 and other provisions of the Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.
- 2) the reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a State and those which are brought before the High Court to be dealt with by the court in exercise of its appellate or supervisory jurisdiction.

The State revenue is therefore within the jurisdiction of the State High Court within particular territorial jurisdiction. Taxes and Levies to be collected by the State Government are provided for in Part II of the Taxes and Levies (Approved List for Collection) Act.²⁵ The Taxes and Levies provided thereof over which the State High Court has jurisdiction are as follows:

1. Personal Income Tax in respect of –
 - a) Pay-As-You-Earn (PAYE); and
 - b) direct taxation (self-assessment).
2. Withholding tax (individuals only).
3. Capital gains tax (individuals only).
4. Stamp duties on instrument executed by individuals.

²⁵ Cap. 12 (1998 No. 21).

5. Pools betting and lotteries, gaming and casino taxes.
6. Road taxes
7. Business premises registration fee in respect of:
 - a) urban areas as defined by each state maximum of –
 - i) ₦10,000 for registration; and
 - ii) ₦5,000 per annum for renewal of registration; and
 - b) rural areas –
 - i) ₦2,000 for registration; and
 - ii) ₦1,000 per annum for renewal of registration.
8. Development levy (individuals only) not more than ₦100 per annum on all taxable individuals.
9. Naming of street registration fees in the state capital
10. Right of occupancy fees on lands owed by the State Government in urban areas of the State.
11. Market taxes and levies where state finance is involved.

Consequently, sales tax which was held to be under the administration and collection powers of the State Government *in Exclusive Stores Ltd V. Edo State Board of Internal Revenue*²⁶ can properly fall within the jurisdiction of the relevant State High Court.

The mechanisms for the performance of the role of the courts therefore form the theme of the ensuing discourse.

²⁶ (2005) All FWLR (pt. 249) 1827 at 1829.

Mechanisms for the Performance of the Role of the Courts in Tax Administration

In performing its role in tax administration, the court is often invited to pronounce on disputes through Judicial Review or interpretation of taxing statutes.

Judicial Review in Tax Administration

In American Legal Language, Judicial Review refers primarily to the adjudication of constitutionality of statutes especially by the Supreme Court.²⁷

Judicial review simply refers to a type of judicial proceedings in which the court is called upon to review the lawfulness of the decision or action made by a public body or officer. This includes executive acts or acts of the legislature or even judicial acts. Simply put, judicial review is a challenge to the way a decision has been made rather than the rights or wrongs in the conclusion reached.

In *Nigerian National Petroleum Corporation V. Tax Appeal Tribunal & 5 Ors*²⁸, while an appeal which sought among other reliefs, the interpretation of the provisions of OML 118 Production Sharing Contract (“Bonga PSC”) as it relates to the revenue of the Federal Government of Nigeria was pending at the Tax Appeal Tribunal (TAT), the appellant by an application brought before the Federal High Court sought leave to apply for judicial review of the decision of the TAT. In its said application, the appellant prayed, inter alia, for an order of certiorari quashing the decision of the TAT in a Ruling that it is seised with the jurisdiction to determine the appeal, an order of prohibition to prohibit the TAT from further hearing or making any decision in the appeal and an order of –

²⁷ This is commonly held to have been established in the case of *Marbury V. Madison* (1803) SC 158. *Hylton V. U.S.* (1796) SC was the first American case on judicial review where the constitutionality of the Carriage Act of 1794 which imposed a Carriage Act was challenged.

²⁸ 2015 20 TLRN 1.

perpetual injunction restraining the TAT from adjudicating on the declaratory reliefs involving determination of tax obligations and liabilities in the Bonga PSC. The reliefs sought by the appellant were refused on the ground, inter alia, that stay of proceedings before the TAT would delay the country in getting its tax returns or tax issues handled “expeditiously so that revenue can ensue to this great country in these days of economic recession and global melt down”. Thus, the reliefs for certiorari which is meant to order that the issuing court may bring the proceedings of the TAT before it for inspection for the purpose of quashing same, and the reliefs of prohibition to restrain the TAT from proceeding further in what was argued to be in excess of its function were refused.

Similarly, an order of certiorari and prohibition to quashing assessment and prohibit payment of taxes was sought in the case of *Alitalia Airlines Ltd V. Federal Board of Inland Revenue*.²⁹ In both *Knight Frank and Rutley (Nig) V. Attorney-General, Kano State*³⁰, and *Attorney-General of Cross River State V. Ojua*³¹, the Supreme Court and Court of Appeal variously granted an injunction against the collection of tenement rates by the respective state governments for exceeding their taxing powers. An order of mandamus to compel tax authorities to stay action on tax collection was sought in *The Queen V. Western Urhobo Rating Authority*.³²

In all these cases, the courts demonstrated an uncompromising stand at ensuring that tax takes its proper place in the Nigerian economy by refusing any application for judicial review that is capable of denying the country of the required revenue³³, and that abuse of taxing powers is prevented. This is commendable. However, the court must be cautioned against this pro-revenue posture where it is obvious that the rights of the taxpayer are being

²⁹ INTC 122.

³⁰ (1998) 7 NWLR (pt. 556) 1.

³¹ (2011) All FWLR (pt. 544) 151 at pp. 167-169.

³² INTC 321.

³³ See particularly, *The Nigerian Petroleum Corporation V. Tax Appeal Tribunal & 5 Ors* (supra).

toyed with. The National interest and the individual interest, the need to encourage investment and growth must be balanced.

Interpretation of Taxing Statutes

In the course of adjudicating over the rights and obligations of the taxpayer, the courts are often invited to interpret tax statutes. Over the years, certain principles of interpretation of taxing statutes have been established by the British courts through judicial pronouncements. For instance, in *Coltress Iron Company V. Black*³⁴, it was held that no tax can be imposed on the subject without words in an Act of the parliament clearly showing an intention to lay a burden on him. Other principles include the fact that the words of the Act must be given their natural meaning³⁵, the court should not suppose any general principle underlying taxing statutes and remaining unexpressed as there is no room for intendment, there is no equity about a tax.³⁶ Also, is the principle that words in taxing statutes must be given their natural meaning even if such meaning encourages or validates tax avoidance.³⁷ These principles have been accepted and applied in Nigeria.

In *Halliburton Energy Services Nigeria Ltd. V. Federal Inland Revenue Service*³⁸, the Tax Appeal Tribunal, Lagos Zone was called upon to interpret Section 9 of the Companies Income Tax Act³⁹ which subjects companies to tax in Nigeria. By a Notice of Assessment dated 24th February, 2009 Exhibit ‘HE3’, the Respondent raised an assessment of US\$559,000,000 which it described as “Disallowable expenses” and “profits”.

The Appellant therefore challenged this assessment on the grounds, that she does not conduct any trade or business in Nigeria, or does not derive or accrue any income from Nigeria and does not

³⁴ (1881) 6 App. Cas. 315 LT. 145. 1 TC. 311.

³⁵ See *IRC V. Heinchy* (1978) 30 TC. 345, p. 369.

³⁶ See *Cape Brandy Syndicate V. IRC* (1921) 1 K.B. 64 at p. 71.

³⁷ *IRC V. Wolfson* (1949) All E.R. 865 at 868.

³⁸ (2012) 8 TLRN 15.

³⁹ CITA Cap. 60 LFN, 1990.

have a fixed base in Nigeria so as to be chargeable to tax in Nigeria for any purpose whatsoever within the contemplation of the Companies Income Tax Act (as amended). Section 9 of the Companies Income Tax Act⁴⁰, states that tax would be chargeable “upon profits of any company accruing in, derived from, brought into or received in Nigeria...” The Tribunal closely examined the evidence before it and found no ingredients of Section 9 established before it. There was no evidence that the sum in question, \$559 million, was profit or that it was accrued in, derived from, brought into or received in Nigeria. In upholding the appeal, the Tribunal citing with approval the decision in *Russel V. Scott*⁴¹, held as follows:

There is a maxim of income tax which, though it may sometimes be over-stressed, yet ought not to be forgotten. It is that the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax upon him. For the tax to be imposed on the sum in question, the law must unambiguously impose the tax on the party sought to be charged with it.⁴²

Similarly, in *JGC Corporation V. Federal Inland Revenue Service*⁴³, the Federal High Court, Lagos held that:

It is trite that liability to tax is determined by statutory provisions. This proposition flows from the fundamental principle of law that no fiscal measure can be imposed upon an individual or corporate whether in the name of tax, rates, or dues except such imposition is authorised by a statute.

⁴⁰ CITA Cap. 60 LFN, 1990.

⁴¹ (1948) 2 All E.R. pp. 1 at 5.

⁴² *Halliburton V. FIRS* (supra) at 28. See also *Alhaji Ahmadu & Anor V. The Government of Kogi State & Ors* (2002) 3 NWLR (pt. 755) p. 502 at 522.

⁴³ (2016) 22 TLN 37 at

The essence of this principle of interpretation of taxing statutes is to ensure certainty on the part of both taxpayers and the government so as to preserve and protect the taxpayer from the arbitrary use of government fiscal powers. However, the reservation expressed in the application of this principle by the tax Appeal Tribunal in *Halliburton V. FIRS*⁴⁴ appears to put its desirability in the Nigerian context to question. In essence, the principle must be applied with some level of caution particularly in a developing economy like ours where some emerging economic activities might not have been adequately anticipated by the legislature.

The Nigerian courts have also applied the principle of interpretation of taxing statutes to the effect that tax laws or words of the tax Acts must be given their natural meaning. In *Federal Board of Inland Revenue V. Halliburton (WA) Limited*⁴⁵, the Court of Appeal in interpreting Section 26 of the Companies Income Tax Act⁴⁶, held as per J.S. Ikyegh, JCA that;

It is obvious and settled that tax laws are construed narrowly or strictly sticking to the ordinary meaning of the words used therein without adding any gloss on them.

In this case, the Court of Appeal was called upon to interpret Section 26 of the Companies Income Tax Act which permits tax authorities to assess the taxpayer to additional assessment where found necessary, like in cases of discovered undeclared income not covered by the initial or first assessment to tax of a taxpayer. This provision, it is submitted serves as a check against tax evasion and is therefore desirable.

Closely related to the above principle is the principle of interpretation which postulates that words in taxing statutes must be given their natural meaning even if such meaning encourages or

⁴⁴ Supra.

⁴⁵ (2015) 17 TLRN 1 at 29.

⁴⁶ CITA Ibid.

validates tax avoidance. In *Nigerian National Petroleum Corporation V. CNOOC Exploration and Production Nigeria Ltd. & Ors*⁴⁷, the Federal High Court, Lagos Division held that;

Under the literal rule, an adjudicating body only has scope to consider what the statute actually says, rather than what it might mean. In order to achieve this, the adjudicating body will give the words in the statute a literal meaning that is their plain ordinary everyday meaning even if the effect of this is to produce what might be considered as an otherwise unjust or undesirable outcome.

This was an appeal from the Tax Appeal Tribunal to the Federal High Court. The crucial question was whether the Tax Appeal Tribunal is a court for the purpose of Section 251(1) of the 1999 Constitution. In resolving this issue, the Federal High Court resorted to paragraph 20(3) of the Fifth Schedule to the Federal Inland Revenue (Establishment) Act, which categorically confirms and leaves no doubt that; “Any proceeding before the Tribunal shall be deemed to be a judicial proceeding and the Tribunal shall be deemed to be a civil court for all purposes”. Since the wordings of Section 20(3) are clear, the court gave them their ordinary meaning and held that the Tax Appeal Tribunal be treated or deemed to be a civil court for all purposes, notwithstanding Section 251(1) of the 1999 Constitution.

However, the Nigerian courts have at certain instances had a rethink of this principle and tried to modify same to curtail some extreme cases of tax avoidance and evasion. In *Ikeja Hotels Plc V. Lagos State Board of Internal Revenue*⁴⁸, the Court of Appeal held, inter alia, that;

Where the words of statutory provision are clear, they must be given their literal, grammatical and

⁴⁷ (2015) 20 TLRN 17 at 37.

⁴⁸ (2005) FWLR (pt. 279) 1260.

natural meaning unless to do so would result in absurdity.

In this case, the plaintiff/respondent commenced an action before the Lagos High Court claiming arrears of sales tax and penalty that was assessed on Sheraton Hotels and Towers, a hotel within the claims of Ikeja Hotels. The defendant (now appellant) challenged the jurisdiction of the trial court to hear and determine the suit on the grounds, that the plaintiff had no locus standi and was not competent to institute the action. The Court of Appeal dismissed the appeal on the basis of Section 85B(1) of the Personal Income Tax Act⁴⁹ which provides as follows:

The Board shall be responsible for;

- a) ensuring the effectiveness and optimum collection of all taxes and penalties due to the Government under the relevant laws.

The interpretation of this statutory provision to permit the Lagos State Board of Internal Revenue to collect tax is very instructive in preventing absurdity. We are therefore, bound by the decision in *Ikeja Hotels Plc V. Lagos State Board of Internal Revenue*⁵⁰ in accordance with the doctrine of *stare decises*. By implication, there has to be human face in the interpretation of tax statutory provisions so as to give life to the provision. This view is supported by the Court of Appeal decision in the case of *Federal Board of Inland Revenue V. Integrated Data Services Ltd*⁵¹, where it was held that;

Since tax is deemed to be a debt recoverable by action, I do not agree that interest and penalty imposed on such as debt constitute an inhuman interpretation of the law.

⁴⁹ (Formerly Decree No. 104) LFN 1993.

⁵⁰ (Supra).

⁵¹ (2010) 3 TLRN 1 at 6.

Another principle of interpretation of taxing statutes propounded by the British courts and applied in Nigeria is that the court should not suppose any general principle underlying taxing statutes and remaining unexpressed as there is no room for intendment, there is no equity about a tax. There is no presumption about a tax.⁵²

In line with the above principles of interpretation of taxing statutes, both the English and Nigerian courts have held that, tax avoidance is permissible.⁵³ In *AGC Corporation V. Federal Board of Inland Revenue*⁵⁴, the Federal High Court, Lagos Division sitting over an appeal against the Tax Appeal Tribunal held that;

There is absolutely nothing wrong in the parties structuring their tax affairs by splitting the project into separate contract alongside onshore and offshore obligations even if the effect was to limit Appellant's tax exposure in Nigeria. It is now firmly established that a party may embark on a tax planning exercise so as to limit its tax incidence. This is premised on the fundamental principle of tax law that a party is at liberty to structure its affairs in such a manner as to reduce or eliminate its tax incidence.

However, there has emerged a line of judicial rethink towards the construction of tax statutory provisions to check tax avoidance and evasion. In *Mobil Oil Nigeria Ltd. V. Board of Inland Revenue*⁵⁵, in interpreting Section 30A of the Companies Income Tax Act⁵⁶, the Supreme Court as per Mohammed Bello, JSC (as he then was) held that;

⁵² As per Lord Cains in *Portington V. Attorney General* (1869) L.R.H.L. 100 p. 122.

⁵³ See Duke of West Minister (1936) AC 396, *Nasir V. FBIR* Unrep. Suit No. FHC/LJ76, and *JGC Corporation V. FIRS* (2016) 22 TLRN 37 at 93.

⁵⁴ (Supra).

⁵⁵ (2011) 5 TLRN 166.

⁵⁶ Companies Income Tax Act, Cap. C21 LFN, 2010.

In construing a statute, regard shall be given to the cause and necessity of the Act, then such construction shall be put upon it as would promote its purpose and arrest the mischief which it is intended to deter... some companies have been manipulating their accounts with intent to hide their true assessable profits and in that manner have been avoiding tax which they ought to have paid. The purpose of Section 30A (of the Companies Income Tax) is to deter companies from engaging in such a fraudulent practice.

In *Phoenix Motors Ltd. V. National Provident Fund Management Board*⁵⁷, the Court of Appeal was excited with the judgment in *Mobil Oil Nigeria Ltd V. Board of Internal Revenue*⁵⁸, and went further to introduce the dimension of public policy and general good and welfare in the construction of taxing statute. The court as per Niki Tobi JCA (as he then was) held that;

If a statute is revenue based or revenue oriented, it will be part of sound public policy for a court of law to construe the provisions of the statute liberally in favour of revenue or in favour of deriving revenue by the government. Unless there is a clear provision to the contrary. This is because it is in the interest of the generality of the public and to the common good and welfare of the citizenry for the Government to be in the revenue and affluence to cater for the people. That is the only way it can distribute wealth to the people to facilitate development to all and sundry. And this is more so in a country such as ours where most citizens open their mouths with all gluttony to receive assistance and welfare packages

⁵⁷ (1993) 1 NWLR (pt. 272) at 718.

⁵⁸ (Supra).

from government in all most all sectors of development in our frail and feeble economy. No court of law should lend its hands to a person or body bent on beating the efforts of Government at collecting revenue by relying on technicalities of the law with frugal aim to clear Government of its legislative income.

The judicial activism is revenue based, is meant to check tax avoidance and evasion and ensure that government raises enough revenue for development of the economy. This approach is commendable and a recognition of the fact that the courts have begun to realize that tax avoidance has serious consequences on the entire society, and that parliaments simply cannot legislate fast enough to combat every kind of tax avoidance scheme that taxpayers may invent. Prebble⁵⁹ consequently puts it blunt, that a strict adherence to the taxpayers' rights to pay less tax would result in a considerable loss of government revenue. However, in Nigeria, there is need for caution against this new approach so that it is not overstressed. This is in view of the fact that, in these days of oil revenue, not much is said or seem to be done from tax revenue by the various tiers of government in this country. Moreover, caution must be exercised in order not to overstep the bounds of the revenue authorities and make nonsense of the rights of the taxpayer.

Despite the dangers imbedded in the above developmental oriented interpretation of taxing statutes, tax avoidance schemes must be tracked down by the courts with all the desired seriousness. It is disturbing that some judges in Nigeria have ignored the dangers

⁵⁹ R. Prebble "Tax Avoidance, Common Law and Civil Law: Comparative Approach". In *International Journal of Tax Law, Fiscal Policies and Administrative Studies* (2005-2006) Vol. 2 pp. 2-36.

of tax avoidance and still maintained that it is legal and indeed worth celebrating.⁶⁰

In the United Kingdom and New Zealand, the courts have made a distinction between tax planning and tax avoidance. Tax planning or tax mitigation is legitimate reduction in one's tax liability while tax avoidance is reduction of a taxpayer's tax liability capable of defeating the intent and spirit of the law, and therefore illegal. For example, where a taxpayer enjoys a tax holiday and relocates to a more friendly tax jurisdiction or business at the expiration of the tax holiday, such an act is completely unacceptable, same having defeated the intent of the legislature in stimulating investment in a particular industry. As destructive as this may appear, it is tax avoidance and permissible under Nigerian law. In all, Nigerian courts must follow the New Zealand approach towards tax avoidance and sustain same if tax is to maintain its role as a tool for development of the economy. The Nigerian judges have probably not appreciated the distinction between tax avoidance and mitigation as the case in the United Kingdom and New Zealand. This judicial romance with tax avoidance schemes and undue foot dragging in checking same might probably be due to the fact that the Nigerian judges themselves being property owners may simply be demonstrating a fellow-feeling approach towards taxpayers.

Conclusion

This paper has identified and discussed the jurisdiction of the various courts over tax issues in Nigeria. For the purpose of tax adjudication, the Tax Appeal Tribunal is deemed to be a civil court. The issue of jurisdiction is so fundamental that it has to be established for the purpose of powers of the court to adjudicate on a matter.

The performance of the courts in tax administration has been appraised. The Nigerian courts seem not to be consistent in the

⁶⁰ See *Seven-Up Bottling Co. Plc V. Lagos State Board of Internal Revenue* (2000) 3 NWLR (pt. 650) 565.

interpretation of taxing statutes. While some courts consider tax avoidance as legal and commendable, others fault tax avoidance and have maintained that the statutes must be interpreted in a way as to prevent taxpayers from avoiding or evading taxes in public interest.

The issue therefore needs legislative intervention. The Nigerian legislature must follow the United Kingdom and New Zealand example and make a distinction between tax avoidance and tax planning or mitigation. With that judicial distinction, the courts will be properly guided and have no option but to pronounce against tax avoidance. It is therefore, instructive that tax avoidance be made an illegality. This legislative intervention has the capability to properly position the courts in the performance of their function of interpretation in such a manner as to enable taxation properly play its role as a tool for development and growth in Nigeria. Only then will the certainty and predictability required in any good tax system be achieved in Nigeria.