International Journal of Business & Law Research 3(2):73-81, April-June 2015

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NIGERIAN NATIONAL PETROLEUM CORPORATION (NNPC) V TAX APPEAL TRIBUNAL & 3 OTHERS – THE CONSTITUTIONALITY OF THE JURISDICTION OF THE TAX APPEAL TRIBUNAL REVISITED

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ABSTRACT

The Federal High Court (FHC) is a superior court of record with divisions spread across the Nation. It derives its jurisdiction mainly from Section 251 of the 1999 Constitution of Nigeria. Recently two different divisions of the Court gave two contradictory decisions on the Tax Appeal Tribunal (TAT). The Lagos Division of the FHC in NNPC v TAT and 3 others upheld the jurisdiction of TAT while the Abuja Division held otherwise in another case before it. As both Courts are of co-ordinate jurisdiction, the two contradictory decisions have thrown the sector into confusion. Accordingly it is necessary for the Court of Appeal, which is next in the hierarchy of Courts in Nigeria, to make a pronouncement on this matter. Thus to most respectfully contribute our humble opinion towards the resolution of this judicial logjam; this article will present arguments and authorities in support of the constitutionality of the Tax Appeal Tribunal, with the decision of the FHC in perspective.

Keywords: jurisdiction, establish, contradictory, court, tribunal, co-ordinate

INTRODUCTION

The applicant, Nigerian National Petroleum Corporation (NNPC) was joined as a party in this tax matter before the Tax Appeal Tribunal (TAT), it challenged the jurisdiction of the TAT to determine the tax appeal. Alternatively, it sought an order striking it out as a party to the tax appeal before the TAT. The TAT dismissed the objection to its jurisdiction and granted the alternative prayer thereby striking out NNPC as a party to the tax appeal. Dissatisfied, NNPC applied to the Federal High Court (FHC) Lagos Division for an order of certiorari to quash the decision of the 1st respondent (TAT) and an order of prohibition to prevent the respondents from continuing the proceedings. One of the issues formulated by the respondents for the determination of the Federal High Court, Lagos Division was whether the Tax Appeal Tribunal (TAT) has jurisdiction to determine the tax appeal brought before it.

In arguing this issue, the NNPC through its counsel contended that by virtue of the provisions of Section 251(1)(a), (b), (n) and (r) of the 1999 Constitution, matters or disputes relating to taxation are within the exclusive jurisdiction of the Federal High Court (FHC). They argued that any other body exercising adjudicatory powers over such lacked the jurisdictional competence to entertain any suit on such matters. It went further to submit through its counsel that the provisions of paragraph 11(1) and (2) of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act, FIRS(E)A which confers adjudicatory powers on the 1st respondent (TAT) over matters and disputes in respect of taxation violated the express provisions of section 251(1) of the 1999 Constitution and are therefore void. They further based their argument on decided authorities of *Stabilini Visinoni Ltd v. FBIR*[1] *and Cadbury (Nig) PLC v. FBIR*[2]

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[1] (2009) 2 CLRN 269; (2009) 13 NWLR (Pt 1157) 200; 1 TRLN 1

[2] (2010) 1 CLRN 215; (2010) 2 NWLR (Pt 1179) 561

However the 2nd and 3rd respondents through their counsel countered that the decisions sought to be relied upon by the NNPC to wit: *Stabilini Visinoni v. FBIR*[3] *and Cadbury (Nig PLC) v. FBIR*[4] are distinguishable as they are based on the provisions of paragraph 24(1), second schedule and section 20(2) & (3) of the Value Added Tax (VAT) Act[5] which had placed the VAT Tribunal and the Federal High Court (FHC) on equal footings as courts of co-ordinate jurisdiction by allowing appeals from VAT Tribunal to go directly to the Court of Appeal. They argued that that was a usurpation of the powers of the FHC as granted in Section 251(1) of the 1999 Constitution and was therefore void. They distinguished that from the provision of the FIRS (E) Act which established TAT as an administrative Tribunal through which taxpayers (and FIRS as well) could attempt to resolve their disputes with FIRS (or FIRS against the tax payer) before appealing to the FHC. They therefore submitted that the establishment of the TAT and the subsequent powers conferred on it do not derogate from the jurisdiction of the FHC but rather serves as a condition precedent to bringing an action before the FHC.

The FHC held validating the jurisdiction of TAT, that TAT was not a court of law, but an administrative tribunal established by statute to resolve taxation disputes between taxpayers and FIRS. The FHC stated as follows:

> Even if the Tax Appeal Tribunal is manned by legal minds it does not enjoy the status of court. It is like a retired justice of Supreme Court heading an arbitration. It does not elevate him to any status more than an arbitral tribunal.
>
> Therefore, this court is unable to agree with the applicant that the 1st respondent is acting in excess of jurisdiction and that only the Federal High Court has exclusive jurisdiction. Apart from the fact that Tax Appeal Tribunal is not a court, it is subject to appeal to the Federal High Court and is indeed supervised by the Federal High Court through judicial review as in the instant case. It is not like the Value Added Tax Tribunal that had triple jumped its decision to the Court of Appeal. Let me also say that this court prefers to follow the binding decision of Belgore JSC (as he then was) in *Eguamwense v Amaghizemwen*[6] and the equally persuasive decision of Auta C J in *Ocean & Oil Ltd v FBIR*.[7] This court so follow the line of decision.

The Decision of Abuja Division

So much ink and spittle have indeed been poured out on this issue of constitutionality or otherwise of the jurisdiction of TAT by the courts, lawyers, academics and tax professionals since the coming on stream of TAT following its inauguration in 2010.[8] Before we proceed further with our own commentary on the above decision of the Federal High Court, permit us to observe that we are not unaware of the opposite decision of the Abuja Division of the same Federal High Court on similar issues in *TSKJ 11 Construcoes Internacionais Sociedade Unipessoal LDA v FIRS*,[9] where it held that Section 59(1) and (2) of the FIRS (E) Act, which created the TAT is in direct conflict with Section 251(a) and (b) of the 1999 Constitution which confers exclusive jurisdiction on the Federal High Court on matters connected with or pertaining to federal taxation. It therefore held that the provision of the statute establishing the Tax Appeal Tribunal[10] were null and void. It therefore set aside the decision of TAT. In that decision, the FHC even went further

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[3] Cited above at foot note 1

[4] Cited above at foot note 2

[5] Chap VI Law of the Federation of Nigeria (LFN), 2004

[6] (1993) 9 NWLR (Pt 315)1; where the Supreme Court held that where a Statute prescribes a legal line of action for determining issues, be it administrative or matters of taxation, the aggrieved party must exhaust all the remedies in law before going to Court.

[7] (2011) 4 TLRN 135; where the case was struck out because the plaintiff jumped the stile by failing to seek remedy from the Body of Appeal Commissioners before approaching the Court.

[8] I O Okauru (Ed), *Federal Inland Revenue Service and Taxation Reforms in Democratic Nigeria*; 2012 Safari Books Ltd, Ibadan, 139

[9] (2014) 4 CLRN 220; 2014 TLRN (Vol 13) 1

[10] Section 59(1) & (2) Federal Inland Revenue Services (Establishment) Act, (FIRS (E)A), Chap F36 LFN, 2007

to restrain TAT from adjudicating on tax matters relating to the revenue of the Federal Government and it directed the federal minister of finance to disband all existing Tax Appeal Tribunals in Nigeria.

We are not unaware that of the above two contradictory decisions of the Federal High Court Divisions of coordinate jurisdiction that none is binding nor supersedes the other until the Court of Appeal makes a pronouncement one way or the other, on appeal in either or both of the cases, hence the necessity of agitations and illumination by lawyers on the issue before eventual calcification and/or resolution of the contradictory ding dong from the FHC by a decision of the appellate courts, the Court of Appeal and possibly the Supreme Court.

Permit us also to recognize and draw your attention to the considered expose on the matter by other esteemed learned writers through various media.[11] This commentary will most respectfully try to answer and negate most of the arguments and decisions made to advance and promote the view that the jurisdiction of the TAT is unconstitutional and void. But we will equally advance and present the better view of the constitutionality of the Tax Appeal Tribunal in line with the enabling statute and the decision of the Federal High Court under discussion in this article.

Commentary

1. Tribunals Are Not Courts

In as much as we align ourselves completely with the views of both the counsel to the respondents and that of the court in *NNPC V TAT & 3 Ors*[12] as being aptly definitive of the point in issue here; we take the arguments further for emphasis and for the avoidance of any doubts that Tribunals generally are not courts in law and in fact. This is notwithstanding the fact that both tribunal and courts perform the same or similar functions of adjudication and dispensation of justice. Accordingly Section 251(1) of the 1999 Constitution that empowers the Federal High Court to "exercise jurisdiction to the exclusion of any other court in civil causes and matters-" do not circumscribe tribunals therein. Thus TAT being an administrative and statutory tribunal inferior to the High Court is constitutional and can validly exercise its jurisdiction over tax matters and as granted by FIRS Act.

To elaborate the point further, tribunals are bodies with judicial or quasi-judicial functions set up by statute and existing outside the usual judicial hierarchy of Supreme Court and County Courts.[13] Thus tribunals are not courts and they cannot be brought in where the word "court" is used as in the constitution where the word "court" is defined and known, save in general terms. Even the Constitution recognized this fact clearly where it used in several places the phrase "court or tribunal"[14] showing that the two words do not mean the same thing. It is our view that if the framers of the constitution had meant to also exclude tribunals from entertaining matters under the exclusive jurisdiction of the Federal High Court as in tax matters, they could have so provided in the constitution by simply adding "or tribunal" after "court" in that sub-section.

Furthermore, it is trite that all courts of record are created by the constitution and these courts apart from powers granted them by the constitution have inherent powers and sanctions of courts of law;[15] Tribunals on the other hand are created by statutes and all their powers are contained in or derived from such

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[11] See for example B Atilola, "Reflections on the Constitutionality of the Newly Constituted Tax Appeal Tribunals". *Nigerian Journal of Business and Corporate Law – NJBCL* Vol. 1 No. 1 (2010), 9-21 where he posited inter alia that the jurisdiction of the Tax Appeal Tribunal is unconstitutional, null and void being inconsistent with the provisions of Section 251 of the 1999 Constitution of Nigeria and the exclusive jurisdiction of the Federal High Court derived therefrom.

[12](2014) 4 CLRN

[13]R Bird, *Osborn's Concise Law Dictionary*,(7th Ed (1992) London, Sweet & Maxwell) 329

[14] See for example Section 36(3), (4), 1999 Constitution of the Federal Republic of Nigeria (CFRN), as amended. Furthermore P A Oluyede, *Nigerian Administrative Law* (2002 University Press PLC, Ibadan) gave a great elucidation of the meaning and compass or distinguishing features of both Courts at pages 185-209 and Tribunals at pages 213-258. Thus showing that Tribunal are not Courts.

[15] Section (6) (6)(a) CFRN 1999, See also K K Ezeibe & M N Umenweke, "The Law of Contempt of Court in Nigeria" in G C Nwakoby et al (Ed), *Fundamentals of the Nigerian Legal System*, (2011 Bekaam Printers PVT Ltd, India) 281-303 at 284-285.

statutes or other statutes.[16] Thus Tribunals are not courts and cannot come under the purview of "courts" in Section 251(1) of the 1999 Constitution of the Federal Republic. The closest they can come to courts is to be referred or regarded to as specialized courts or courts in general terms or usage and not courts simpliciter.

Apart from the fact that tribunals generally and TAT as in this case are not courts but administrative and statutory tribunals established to resolve taxation disputes between taxpayers and FIRS,[17] their decision are subject to appeal to the Federal High Court.[18] The TAT is indeed supervised by the Federal High Court through judicial review, thus leaving the jurisdiction of the Federal High Court intact and unfettered; thereby establishing the TAT as condition precedent to bringing an action (in tax matters) before the Federal High Court. This is totally different and better than the old Value Added Tax Tribunal (VATT) regime[19] which preceded TAT. Which was indeed an affront on the exclusive jurisdiction of the FHC, as VATT was foisted by a military decree to be of co-ordinate jurisdiction with the FHC, thus appeal from VATT went straight to the Court of Appeal. This was rightly excoriated and voided by the court, as aforementioned, in *Stabilini Visinoni Ltd v. FBIR[20] and Cadbury (Nig) PLC V. FBIR[21]* under a democratic dispensation when military decrees lost their supremacy and became subordinated to the constitution.

Finally the point of tribunals not being a court is also aptly reflected in paragraph 20(3) of the Fifth Schedule to the Act[22] where it provided 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.

Thus inasmuch as any proceeding of the tribunal and the tribunal itself shall be deemed a judicial proceeding and a civil court respectively, it therefore means that the tribunal is not a court and it cannot be regarded or treated as such as to bring it within the contemplation of Section 251 of the constitution.

2. The Reason(s) for the Establishment of TAT

The judicial powers of the Federation are constitutionally vested in the court,[23] the Federal High Court and other superior courts of record inclusive.[24] However this cannot be construed as precluding the National Assembly from establishing other courts (or tribunals) with subordinate jurisdiction to that of a High Court[25] to adjudicate upon or determine matters affecting the rights of citizens. Accordingly the National Assembly is vested with the powers by the Constitution to establish courts other than the regular courts (as in this case a tribunal, TAT) inferior to the Federal High Court to exercise jurisdiction on all matters with respect to which the National Assembly may make laws.[26] This Constitutional provision is generally the basis for establishing special courts and tribunals where the existing court system is deemed inadequate in any manner, in addressing a need considered special[27] e.g. taxation. Thus establishing TAT under the Federal Inland Revenue Services Establishment Act by the National Assembly can be said to

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[16] See for example paragraphs 11, 12, 13 & 20 of the Fifth Schedule to the FIRS(E) Act, Chap F36, LFN 2004; see also Tribunals of Inquiry Act, Chap T21, LFN 2004

[17] Section 59(1) & (2) FIRS(E) Act, Chap F36 LFN, 2007; See generally the Fifth Schedule to the FIRS(E) Act for details of establishment composition, jurisdiction, procedure, etc of TAT. Accordingly TAT can be said to be similar to arbitration which is not a Court but the reference of a dispute or difference between not less than two parties for determination after hearing both sides in a judicial manner, by a person or persons other than a Court of competent jurisdiction – *Halsbury's Laws of England*, 3rd ed Vol 2; 2

[18] Paragraph 17(1), Fifth Schedule to the FIRS(E) Act, ibid

[19] Section 20 and Paragraph 24(1), Second Schedule, VAT Act Chap VI LFN 2004

[20] Cited above at foot note 1

[21] Cited above at foot note 2

[22] FIRS(E) Act Chap F36, LFN 2007

[23] Section 6(1) CFRN 1999

[24] Section 6(5)(a)-(j), ibid

[25] Section 6(4)(a), ibid

[26] Section 6(5)(j), ibid

[27] I O Okauru (Ed), cited above at footnote 8, at page 135

had been made under these powers and therefore valid. This is because the FHC as an ordinary or regular court with all the delays due to the congestion therein was grossly inadequate for taxation and government revenue matters which ought to be treated with every despatch, speed and required skill or expertise. This unfortunate sorry state of affairs and development is regrettable when you consider the fact that the FHC was originally created as the Federal Revenue Court.

Furthermore in accordance with this constitutional enablement TAT is vested with jurisdiction over matters which the National Assembly has powers to make law – Federal Tax dispute resolution and appeals therefrom lie to the Federal High Court, thus making TAT subordinate to the Federal High Court. The effect of this is that the Federal High Court remains the first Court of record in the tax dispute resolution process[28] in accordance with the provision of Section 251 of the Constitution. Thus the jurisdiction of TAT is valid; constitutional and needful. Moreover the critical utility of TAT from the time of establishment till now is not in doubt. Apart from the jurisdiction vested on it by FIRS(E) Act, TAT has strategically taken over the job of the bodies that handled disputes arising from the operation of Personal Income Tax Act[29] and Value Added Tax Act[30], that is to say the Body of Appeal Commissioners (BAC) and the Value Added Tax Tribunal (VATT)[31] respectively. Thus the defect in VAT Act that led to the decision in *Stabilini's* and *Cadbury's* cases was remedied by the establishment of TAT through FIRS(E) Act and subsequent Amendment of the VAT Act in 2007,[32] and replacing VATT with TAT.

3. Alas! Federal Inland Revenue Service is the First Culprit!

Assuming but not conceding that the jurisdiction of TAT is void and unconstitutional being an affront on the exclusive "and sacrosanct" jurisdiction of the Federal High Court granted it by Section 251 of the 1999 Constitution. The import according to that school of thought being that Section 251 excludes every other court or body from adjudicating on taxation in particular and federal revenue in general reserving such adjudication only for the Federal High Court. In fact the Federal High Court, Abuja Division even went to the extreme and ridiculous extent of ordering the minister of finance to disband all existing Tax Appeal Tribunals in Nigeria.[33] As aforesaid assuming but not conceding that the foregoing is correct and true, then TAT should not be the starting point or the first casualty of that judicial restriction and disbandment. The first culprit in the circumstance ought to be the Federal Inland Revenue Service. This is because the service apparently is the first body to infract the supposedly "sacrosanct" exclusive jurisdiction of the Federal High Court, being the first body to act and take decision upon Federal taxation matters over which appeal is had to the Tax Appeal Tribunal. In as much as the argument here may appear academic and like splitting hair. However Section 20 (2)(3) and (4) of VAT Act[34] and Paragraph 13(1) (2) of the fifth schedule to the FIRS (E) Act[35] made clear provisions for adjudicatory role of FIRS before recourse could be had to TAT. Nevertheless FIRS is not the Federal High Court and should not entertain and determine complaints on taxation from tax payers. Given the so called exclusive jurisdiction of Federal High Court, all disagreements and disputes should go straight to the Federal High Court for adjudication. Furthermore this determination by FIRS is hazy as the particular organ of FIRS that should determine the objection to assessment[36] for example, is not clear. Furthermore FIRS is also encumbered by the rule of fair hearing and natural justice, that one should not be a judge in his own cause. This is because FIRS is an interested party and it in fact took the action or decision that the tax payer is

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[28] I O Okauru (Ed), ibid, 136

[29] S. 60, Personal Income Tax Act Chap P8 LFN 2004 (as amended) established TAT in place of BAC to entertain all cases arising from the operations of the Personal Income Tax Act.

[30] S. 20, Value Added Tax Act Chap VI LFN 2004 (as amended) NB: reading the whole Section 20 together will show that VATT in Section 20(1) is an error or printer's devil and should read TAT.

[31] I O Okauru (Ed) cited above in footnote 28, at 135-148

[32] See the new section 20 of the VAT Act Chap VI LFN 2004 (as amended).

[33] *TSKJ II Construcoes Internacionais Sociedade Unipessoal LDA v. FIRS,* cited above at footnote 9

[34] Chap VI LF 2004 (as amended)

[35] Chap F36 LFN 2007. See also Section 69 Companies Income Tax Act Chap C21 LFN, 2004 (as amended) ; Nnamdi Ibegbu, "Handling Appeal at the Tax Appeal Tribunal". M.N. Umenweke, et al (Ed). *On the Bench, Judicial Imprints of Hon. Justice CEK Anigbogu & Contributing Essays*, (2013. SCOA Heritages Nig Limited, Awka); 369-382 at 369.

[36] Section 20(2), VAT Act Chap VI LFN, 2004 (as amended)

complaining about, so it may not validly, constitutionally or otherwise do justice or be seen to do justice to such objection or complaint, it should in fact disqualify itself and allow a neutral body like the Federal High Court to look into the matter. However the advocates of exclusive jurisdiction of Federal High Court, with due respect, did not consider this point. However, since there is no complaint or challenge so far against FIRS in this wise; one would therefore dare to ask even for academic purposes only, if there is nothing wrong with FIRS playing an adjudicatory role internally, as it were; what then could be wrong legally or otherwise, with a more independent, external, and specialized administrative body – the Tax Appeal Tribunal coming to play this very critical role; given the special circumstances of the over-burdened court system, nature of tax disputes and the critical need for such a body to the Nation?

The hardship such a position of exclusive exclusion with regard to the jurisdiction of the Federal High Court will occasion to FIRS, the citizens and the court in an already over burdened and clogged court system is better imagined than experienced. Accordingly it is our view that the present regime where FIRS is enabled to look into objections and complaints first before appeals could be had to TAT is good for our tax system and should be promoted and protected by the court. This is because first all, FIRS as a specialized taxation body is best suited to appreciate any objection from any taxpayer and resolve them to the satisfaction of the parties. However, where this is not achieved by FIRS, any dissatisfied party be it FIRS or the taxpayer may proceed further to TAT which is a specialized Tribunal exclusively dedicated and equipped to resolve taxation disputes. After which resort could be had to the Federal High Court in the event of the TAT not meeting the expectation of either of the parties. This regime, in our opinion, is worthy of support and entrenching by the courts as it will continue to be of a great service in decongesting the court, helping the course of justice and government revenue, as justice delayed is justice denied.

Furthermore, it is our opinion that the phrase "to the exclusion of any other court" in section 251(1) 1999 Constitution of the Federal Republic of Nigeria (CFRN) is an overkill and unnecessary. This is because even without that phrase, the section would equally grant jurisdiction only to the Federal High Court over matters listed therein and to the exclusion of other courts not mentioned. Moreover, it would not have created the present situation and problem for the Tax Appeal Tribunal and Federal Revenue, by making a leeway for professional litigants to assail the jurisdiction of TAT. Thus to remedy this present and future avoidable nuisance, it is our recommendation that the ongoing constitutional amendment by the National Assembly of Nigeria should delete that phrase from the constitution. Accordingly, that part of the subsection 251(1) would then read, "the Federal High Court shall have and exercise jurisdiction in civil causes and matters-". This will totally obliterate the basis for challenge to the jurisdiction of TAT. Supporting this recommendation are the dual facts that that phrase was not provided in the 1979 Constitution,[37] yet the jurisdiction of the Federal High Court was protected and was not invaded by other Courts; secondly it is trite law that a constitution being an organic law must be interpreted liberally so as not to defeat the clear intentions of its framers.[38] This is because none of the advocates of the exclusive jurisdiction of the Federal High Court has shown the harm or disservice of TAT vis-à-vis the Federal High Court or even the tax payers.

Other Issues Arising from the Jurisdiction of TAT as Enacted in FIRS (E) Act

1. Restriction of Appeals from TAT to "Points of Law"

By virtue of the provisions of paragraph 17(1) of the fifth schedule to the FIRS(E) Act appeals are allowed against the decision of the Tax Appeal Tribunal to the Federal High Court on point of law; thus implying that appeals are not allowed on points of fact. This in our view, is an abridgement of the constitutionally enshrined right of appeal and access to court of citizens[39] who are parties to the dispute and therefore unconstitutional and void. A party exercising his constitutional right of appeal ought to

[37] Section 230, 1979 Constitution of the Federal Republic of Nigeria
[38] C Okpaluba, *Judicial Approach to Constitutional Interpretation in Nigeria*, (1992 Matt Madek & Co, Enugu) 21-27
[39] Section 36, CFRN 1999

place the law and the facts before the appellate Court[40] for proper and holistic review. Thus it is wrong and it may be of a great dis-service to the cause of justice and of the parties to limit the appeal to point of law; thereby limiting the parties access to court. Furthermore this provision limiting appeals, before the Federal High Court from TAT to point of law is also an affront on the right and power of total judicial review of the proceeding of TAT by the Federal High Court. It is our view that if the TAT is inferior to the Federal High Court it should be totally subservient and should allow a total review on both points of law and fact as the Federal High Court is the first court of record in the tax dispute resolution processes. Accordingly, it is our view that this implied provision of the FIRS(E) Act limiting and fettering right of appeal and composite access to Court is unconstitutional and void. Thus inasmuch as we are convinced that the jurisdiction granted TAT by the FIRS(E) Act is constitutional and valid, we are however of the considered opinion that this provision limiting appeals to point of law only is unconstitutional and void being an affront on the right of appeal and access to court; and the right and powers of the Federal High Court over the Tax Appeal Tribunal. We therefore recommended a review of this part of the fifth schedule to the FIRS(E) Act to include "point of fact" or in the alternative expunge "on a point of law" so as to allow unfettered and unlimited appeals to the Federal High Court from decisions of the Tax Appeal Tribunal. In the interim however the Federal High Court may adopt a construction of that part of the schedule to the Act that will over look or gloss over the phrase "on point of law" and admit appeals on both points of law and facts.

2. Inclusion of Personal Income Tax Act and Taxes and Levies (Approved List for Collection) Act Under TAT Jurisdiction

The listing of the Personal Income Tax Act and the Taxes and Levies (Approved list for Collection) Act in the first schedule to the FIRS(E) Act among tax laws that disputes arising from their operation would go to the Tax Appeal Tribunal requires some commentary here.

First of all, on the inclusion or listing of Taxes and Levies (Approved List for Collection Act), which strictly speaking is not a tax law but an Act delineating taxes and/or levies due to every tier of government. However given the fact that all taxes and levies due the respective tiers of government are listed in the Taxes and Levies (Approved List for Collection) Act it would appear as if the Legislator could mean that disputes arising from the administration of all the taxes and levies listed therein will go to TAT. This would have been absurd and blatantly unconstitutional as it would be contrary to the federal nature of the country; and the FIRS(E) Act and the Schedule thereto would have indeed clearly over stepped their boundary. However a look at the Fifth Schedule to FIRS(E) Act delineating the nitty gritty of the establishment and jurisdiction of TAT, the Taxes and Levies (Approved List for Collection) Act is no longer listed among tax laws over which the TAT has jurisdiction to adjudicate on disputes and controversies arising therefrom.[41] Accordingly it would be proper to conclude that the inclusion of the law in the first schedule to the FIR(E) Act is an error and should be ignored by practitioners, instead the fifth schedule which infact dealt with jurisdiction and procedure of TAT in detail should be the law. Afterall it is not on record that TAT has made any attempt to exceed her jurisdiction as such. However the permanent remedy is to expunge the listing of Taxes and Levies (Approved list for collection) Act as No. 7 in the first schedule to the FIRS(E) Act.

With regard to the listing of the Personal Income Tax Act as one of the taxes under the jurisdiction of TAT; we note that the Act is listed both in the first and in the fifth schedule to the FIRS(E) Act. Accordingly it would appear at a first glance that the provision has contravened the Federal Constitution of Nigeria and the Taxes and Levies (Approved List for Collection) Act which delineated taxing powers by arrogating state tax matters to Federal Agencies (FIRS and TAT) as TAT would by that listing become seized of state personal income tax disputes which is outside the jurisdiction of FIRS. However it is our opinion that the listing of Personal Income Tax Act in the schedules to the FIRS(E) Act establishing TAT

[40] See B Atilola, "Reflections on Constitutionality of the Newly Constituted Tax Appeal Tribunals" cited above at foot note 11 at 9 -21, 9-21 at 19-20

[41] Paragraph 11(1), fifth schedule to the FIRS(E) Act, Chap F36 LFN, 2007

is proper, legal and constitutional. This is because FIRS is in charge of aspects of the Personal Income Tax Act[42] and it is our opinion that it is with regard to that aspect that the Personal Income Tax Act is listed in the FIRS(E) Act and TAT is seized of jurisdiction. Therefore to that extent the listing is valid and constitutional, any thing more than this interpretation will constitute an affront on the federal constitution of Nigeria and would be void and invalid. In the light of the foregoing the provision of Section 60 of Personal Income Tax Act[43] ceding to TAT without any qualification, powers to entertain all cases arising from the operations of the Personal Income Tax Act is therefore defective and contrary to the federal constitution of Nigeria[44]. Accordingly the section should be amended to restrict the jurisdiction of TAT to Federal Tax disputes. Furthermore the choice of State to resort to TAT should be left at the discretion of the states, or in the alternative the state Body of Appeal Commissioners should be allowed to remain or the Act should be amended to allow the States to establish their own Tax Appeal Tribunals. For the avoidance of any doubt, to rail-road every dispute arising from the Personal Income Tax Act to TAT is unconstitutional and totally against the federal constitution of Nigeria and should be revisited by the Legislature.

CONCLUSION

It baffles one indeed to see the vehemence and determination with which Nigerian National Petroleum Corporation (NNPC) sought to demolish the existence, jurisdiction and operation of the Tax Appeal Tribunal. It set one wondering whether this is not carrying inter agency competition and jealousy of government agencies *inter se* too far. This is because all things being equal such concerted challenge should not come from a sister agency of the same government. After all, these two agencies (NNPC and TAT by extension FIRS and by further extension the Ministry of Finance) are as they say "the herdsmen of the same *alhaji*[45] – the Federal Government Treasury", and ought to work in tandem with one another and as sister agencies of the same government. Accordingly more inter agency interaction, advocacy and sensitization is highly recommended so as to enable one agency to be abreast of what the other is doing and be carried along. This will go a long way to nip such disputes in the bud and make for better inter agency co-operation and effectiveness; and save the man-hour and resources expended in such avoidable disputes. Otherwise it is in very bad taste to say that NNPC is against FIRS collecting or administering Federal Government revenue through the Tax Appeal Tribunal. The foregoing is by the way however.

Finally, we have attempted to posit and we believe convincingly too the validity and constitutionality of the TAT and its jurisdiction as established by the enabling statute, the FIRS(E) Act. Save for the couple of defects in the parts of Act establishing TAT which we discussed *in extenso* above, that is to say - appeal on points of law only and the blanket inclusion of Personal Income Tax Act under the jurisdiction of TAT, over which we made some recommendations. We have passionately presented arguments and proofs grounding the validity and constitutionality of TAT. We solemnly and with all senses of responsibility do hope that the Court of Appeal will so uphold the validity of that jurisdiction whenever the opportunity presents itself. That will greatly boost the confidence of investors and taxpayers in the certainty and utility of our tax system; the resolution of disputes therefrom; and will equally shore up the vital revenue of government. As most taxpayers, corporate and otherwise in Nigeria needed to be coerced because they do not pay their taxes willingly. TAT will not be of any use without jurisdiction, as jurisdiction is key to the exercise of judicial power of any type by anybody be it court or tribunal, and without jurisdiction such an adjudicating body and any process or decision of it is nothing but an exercise in utter futility, null and void.

Moreover it was made clear that the Court of Appeal decisions in *Stabilini's* and *Cadbury's cases* are of no relevance to the cases in point. This is because the Value Added Tax Tribunal Regime which was voided by the Court of Appeal in those cases was totally different and was therefore distinguishable from the facts and law of the cases in point and the Tax Appeal Tribunal Regime. The reason being that the then supreme military decree which elevated VATT to the same level with the Federal High Court, triple jumping appeals against the decision of VATT straight to the Court of Appeal lost its supremacy and could no longer avail VATT by the coming into effect of the 1999 Constitution. Thus the hitherto

supreme VATT Decree descended to the pedestal of an Act of the National Assembly and became inferior to the constitution thereby rendering the obnoxious regime of VATT nugatory. However the FIRS(E) Act which established Tax Appeal Tribunal avoided the pitfall of Value Added Tax Decree infact it cured it by making the Tax Appeal Tribunal inferior to the Federal High Court. Thus appeals from the Tax Appeal Tribunal go to the Federal High Court instead of the Court of Appeal as it was with VATT. Accordingly the *Stabilinis* and *Cadbury's cases* cannot apply to the cases in point against the Tax Appeal Tribunal. Accordingly any attempt to rely on them to make any pronouncement against TAT is with every due respect, misguided and wrong, hence our preference and promotion of the decision of the Federal High Court in *NNPC v. TAT & 3 Ors.* That in our humble opinion is the better view and we hope the Court of Appeal will so hold whenever the occasion presents itself.

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[42] See S. 2(1)(b) & 2, Personal Income Tax Act Chap P8 LFN, 2004 (as amended) which deals with Personal Income Tax for members of the Nigerian Armed Forces, Nigerian Police, Officers of the Nigerian Foreign Service, every resident of the Federal Capital Territory, Abuja, etc; see also Nnamdi Ibegbu, cited above at footnote 35, at 370

[43] *Ibid*

[44] M N Umenweke & K K Ezeibe, "The Relevance of Residency in the Assessment of Tax liability in Nigeria" *Journal of International Law and Jurisprudence (2010) 1 UNIZIK J.I.L.J.* 8-31, at 25-30: for an illuminating discussion on other provisions of the FIRS(E) Act that contravenes the constitutional federalism of the Republic of Nigeria.

[45] Nigerian Moslem title of affluence, originally meant for Moslems who have been to Mecca for pilgrimage; here it connotes "boss"