IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON MONDAY THE 22ND DAY OF MAY, 2017
BEFORE HIS LORDSHIP, HON. JUSTICE (DR.) NNAMDI O. DIMGBA
JUDGE

FHC/ABJ/TA/02/2016.
TAT/ABJ/004/2005

BETWEEN:

R & B FALCON EXPLORATION COMPANY LLC .... APPELLANT

AND

FEDERAL INLAND REVENUE SERVICE ... RESPONDENT

JUDGMENT

This is a judgment on an appeal against the decision of the Tax Appeal Tribunal sitting in Abuja ("The Tribunal" or "TAT") delivered on 1st June 2016 by which the Tribunal dismissed the Appellant's appeal in Suit No. TAT/ABJ/APP/004/2005 and awarded costs against the Appellant.

In the said dispute before the lower Tribunal, the Appellant, also as Appellant then, had appealed against the decision of the Respondent via its letter dated 20/10/05 rejecting the Appellants objection to the additional assessments to tax imposed on the Appellant, and under cover of said letter the Respondent had served on the Appellant Notices of Refusal to Amend Additional Assessment for the 1999 to 2001 Years of Assessment. These additional assessments which were basically to claw back on recharges which the Appellant had deducted from its turnover for the years in question were as follows:

YEAR OF ASSESSMEN	ASSESSMENT NUMBER	DATE ISSUED	AMOUNT OF ADDITONAL TAX CHARGED I US$
1999	IID/CT/BA/Add/06	12-04-05	117,928.36
2000	IID/CT/BA/Add/07	12-04-05	54,027.89
2001	IID/CT/BA/Add/07	12-04-05	74,321.85

The Appellant being aggrieved with the position of the Respondent on these additional assessments appealed to the Tax Appeal Tribunal on the following grounds:

(1) The assessment of the Appellant to additional tax liability by the Respondent is contrary to section 26 of the Companies Income Tax Act, No. 28 of 1979 as severally amended (hereinafter referred to as "CITA)**,** the interpretation given by the Respondent to that section 26 of CITA, and the representation, made by the Respondent to the Appellant as a tax payer on the import and application of section 26 of CITA, through the Respondent's Information Circular No. 93/02 dated 22nd March 1993, issued under powers the Respondent is authorized to exercise pursuant to sections 1, 1A, 2 and 3 of CITA, especially section 3(3) (4) of CITA, which representation the Respondent has relied upon in the conduct of its financial affairs since 1993.

(2) The Respondent cannot, in law, raise any additional assessment against the Appellant in respect of the 1999 year of assessment having regard to the provisions of section 48(1) of CITA. The assessment of the Appellant to additional tax by the Respondent in respect of the 1999 year of assessment is statute barred.

(3) The Respondent cannot retroactively apply its new interpretation of section 26 of CITA to the 1999, 2000 and 2001 years of assessment as the new interpretation seeks to incorporate recharges into the global turnover of the Appellant for purposes of assessment to tax on deemed profit basis under section 26 of CITA. The Appellant has a legitimate expectation that the Respondent, as a body established by statute, shall not arbitrarily change a policy which the Appellant has relied upon for several years, to the financial detriment of the Appellant.

By its judgment dated 1st June 2016, the Tribunal dismissed the Appellant's appeal. Being dissatisfied with the judgment of the Tribunal, the Appellant further appealed to this Court vide a Notice of Appeal dated 1st June 2016 and an Amended Notice of Appeal.

The parties filed and exchanged Briefs of Argument. On 20/03/17, learned counsel for the Appellant, Festus Onyia Esq.,, adopted the Appellant's main and Reply Briefs of Argument, while the Respondent's counsel, U.I. Okwori Esq.,, adopted and argued the Respondent's Brief of Argument.

In his Appellant's Brief of Argument, the Appellant formulated and argued the following issues:

1. **Whether the Tax Appeal Tribunal had the jurisdiction to entertain this matter being an appeal relating to revenue of the Federal Government of Nigeria and taxation of companies?**

2. **Whether the Tribunal was right when it held that the phrase "that part of the turnover attributable to the fixed base' as used in Section 30(1)(b)(i) of CITA means the entire Appellant's turnover from its Nigerian operations and that no allowance for any deduction including recharges was provided in that section"?**

3. **Whether the Tribunal was right when it held that the fair and reasonable requirement of section 30(1)(b)(i) of CITA is fulfilled by the Respondent's policy of excluding 80% of the entire Nigerian derived turnover of a foreign company including the Appellant as expenses and taxing the remaining 20% of the turnover at the rate of 6% ?**

4. **Whether the Tribunal was right when it relied on the definition of 'turnover' in the Section C Part V paragraph 88 of the Companies and Allied Matters Act (CAMA) as the basis for its conclusion that recharges reduces the turnover of the Appellant and can properly be disallowed by the Respondent?**

5. **Whether Tribunal was right when it held that tax liability being a statutory matter, it cannot be determined in a meeting between two parties or in a correspondence and, therefore, failed to**

consider whether the Appellant was entitled to a legitimate expectation based on correspondence and representations made by the Respondent, to the effect that the Respondent would not subject it to additional tax assessment based on recharges for the relevant years of assessment?

On his part, the Respondent's counsel in his Brief of Argument formulated and argued the following issues:

2.1. Whether the Tax Appeal Tribunal usurps the jurisdiction of the Federal High court as provided under Section 251 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), in relation to federal revenue and taxation of companies?

2.2. Whether under Section 26(1)(b) of CITA Cap 60 LFN 1990, "recharges" made by the Appellant, a non-Nigerian company to its subsidiary, RBF Nigeria Limited is deductible in ascertaining the assessable income of the Appellant under the deemed profit/turnover basis of assessment?

2.3. Whether the Respondent rightly exercised its discretion under Section 26(1)(b) of CITA in assessing the Appellant to tax by allowing 80% of

the Appellant's turnover as legitimate expenses and charging 20% to tax at the CIT rate of 30%, considering that the profit of the Appellant for the years of assessment was not disclosed or known to the Respondent.

Looking at the Judgment delivered by the lower Tribunal on 1/06/2016, I believe the issues raised by the Respondent correctly encapsulate what is in issue in this appeal, and that the arguments made by the Appellant in respect of the various issues formulated by the learned Appellant's counsel can be accommodated within the Respondent's issues. I will therefore dispose of this appeal on the basis of the issues formulated by the Respondent.

Whether the Tax Appeal Tribunal usurps the jurisdiction of the Federal High Court as provided under Section 251 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), in relation to federal revenue and taxation of companies?

Before examining and then resolving this issue, I must make the point that generally, for every ground raised in a Notice of Appeal, and then subsequently argued in a Brief of Argument, to be valid and entertained by an appellate court, that ground

must arise from the decision of the lower tribunal being complained against. See: **MBN Plc v. Nwobodo (2005) 14 NWLR (Pt. 945) 379 at 387; Plateau State Government v. Crest Hotel & Garden Ltd (2012) LPELR-9794.**

I have examined the entirety of the judgment of the lower tribunal of 1/06/16 and note that nowhere in the said judgment was any reference or opinion expressed as to whether the tribunal had jurisdiction or not. It would therefore appear that the ground on lack of jurisdiction does not arise from the decision of the lower tribunal. Ordinarily, this ground and all arguments supporting same will have been incompetent and not worthy of entertainment by the Court.

However, it is also trite that jurisdiction being a fundamental thing can be raised even on appeal for the very first time. See: **Nasir v. C.S.C., Kano State (2010) 6 NWLR (Pt. 1190) 253.**

That being the case, this Court is duty bound and will consider the merits of the ground and of the arguments anchored on jurisdiction. The summary of the Appellant's argument on this ground is that the Constitution of the Federal Republic of Nigeria, by Section 251 has conferred exclusive jurisdiction on the Federal High Court over all causes and matters relating or pertaining to the revenue of the Government of the Federation

in which the said Government or any organ thereof or a person suing on behalf of the said Government is a party and 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. Consequently, that the judgment of the Tribunal dated 1st June 2016 is null and void and of no effect whatsoever and liable to be set aside having been made without jurisdiction.

I have examined the opposing views of the Appellant's and Respondent's counsel on this issue. Without much ado, I must state that I do not agree with the learned Appellant's counsel, whose views I believe to be misconceived. I do not agree that Section 59 of the FIRS Establishment Act which set up the Tax Appeal Tribunal is a usurpation of the powers of the Federal High Court over revenue and taxation matters conferred on this Court by Section 251 of the Constitution. It is already well established in Nigerian jurisprudence that the exercise of jurisdiction by a Court might be subject to the fulfilment by a party invoking that jurisdiction of any condition precedents which statutory law or even the Constitution itself might have imposed on parties seeking to litigate issues before the Court. In this wise, that the FIRS Act requires parties who are not happy with assessments on their tax liability to first contest these assessments before the Tax Appeal Tribunal is in my

view in the nature of a condition precedent to adjudication before this Court. Only when the attempt to resolve the matter at the level of the lower tribunal is unsuccessful, either because any of the parties does not accept the verdict passed by the Tribunal, does it then become ripe to invoke the jurisdiction of the present Court as conferred by Section 251(a) and (b) of the Constitution. By Section 29 of the Federal High Court Act, this Court shall have appellate jurisdiction over the decisions of the Appeal Commissioners established under the Companies Income Tax Act, among others. And it is the dispute resolution functions of the Appeal Commissioners that the Tax Appeal Tribunal inherited. In my view, provisions such as in the FIRS Establishment Act viewed together with Section 29 of the Federal High Court Act, requiring parties to first try to resolve their disputes domestically within the framework of the Nigerian tax administration before the Tax Appeal Tribunal manned by people knowledgeable in tax matters, failing which they can then approach the present Court, is in consonance with the goal of overall efficiency of general dispute resolution within Nigeria's adjudicatory framework. Every decision taken by the Tax Appeal Tribunal which a party is not happy with, can then be subjected to a test before the present Court, and it is in this context that this Court can exercise its jurisdiction over the revenue of the Federation and the taxation of

companies as provided for under Section 251(a) & (b) of the Constitution. A party who is further not satisfied with the decision of this Court can appeal to the Court of Appeal.

I clearly do not see any question of usurpation arising here. Rather than usurp, I see the role of the Tax Appeal Tribunal as a facilitatory one to the exercise of the jurisdiction conferred on this Court. There is also something somewhat disingenuous in the position taken by the Appellant. If the jurisdiction of this Court had been usurped by the Tax Appeal Tribunal, then on what basis is the Appellant before this Court and asking the Court to upturn the decision of the Tax Appeal Tribunal and to grant it reliefs? The approach to this Court by the Appellant, I believe, is within the framework of the Court's powers under Section 251(a) &(b) of the Constitution. On what basis can a party who has approached the Court under the umbrella of the Court's jurisdictional powers under the Constitution come back to argue that this same Court has had its jurisdiction usurped?

Finally, it is worth noting that hardly anything is new in these matters. My Lord the Honourable Justice I.N. Buba, in ***Nigerian National Petroleum Corporation v. Tax Appeal Tribunal***, Suit No. FHC/L/CS/630/2013 delivered on December 3rd, 2013 had already considered this issue of the constitutionality of the Tax Appeal Tribunal trying to resolve tax

disputes before an approach is then made to the Court, and had upheld the constitutionality of the dispute resolution arrangement in the FIRS Act setting up the Tax Appeal Tribunal. I adopt in totality the reasoning of that decision because it reflects in totality my own appreciation of what the law is and should be in this area.

I resolve this issue against the Appellant.

Whether under Section 26(1)(b) of CITA Cap 60 LFN 1990, "recharges" made by the Appellant, a non-Nigerian company to its subsidiary, RBF Nigeria Limited is deductible in ascertaining the assessable income of the Appellant under the deemed profit/turnover basis of assessment?

The decision of the lower Tribunal is to the effect that: "*Turnover" is the total receipt of the main activity of an enterprise. And the Second Schedule to Companies and Allied Matters Act, 2004 (as amended) Section C Part V paragraph 88 provides that: "Turnover in relation to a company means the amount derived from the provision of goods and services falling within the company's ordinary activities after deduction of (a) Trade discount (b) Value Added Tax; and (c) any other taxes based on the amount so derived.*

In the light of the above finding, the lower tribunal then took the decision that "recharges" reduces the turnover from the Appellant's Nigerian contracts and can properly be disallowed by the Federal Inland Revenue Service.

The Appellant disagrees with the above position of the lower tribunal. The summary of the Appellant's arguments on this issue is that on a fair and reasonable construction of Section 30(1)(b)(i) of CITA, Cap C21, Laws of the Federation 2004, *recharges* ought not to be included as part of the turnover of a non-resident company, including the Appellant, for the purpose of assessment to tax on a deemed profit basis, and taxed as part of the taxable revenue of the non -resident company, while at the same time, taxing the same recharges as the taxable income of the Nigerian subsidiary of the non-resident company.

Needless to say, the Respondent's counsel disagrees with the above position, and argues that the lower Tribunal was right in its decision.

Now, it is important to state that since we are dealing with the interpretation of statutes, this Court playing a role as an appellate court, it is fundamental that parties argue on the basis of the exact legal provisions, including language, that is in issue before the lower tribunal, even if those provisions have

been subsequently revised or supplanted. In this wise, I note that the Appellant has argued this issue, and indeed formulated same on the basis of Section 30 of the extant Companies Income Tax Act (CITA), LFN 2004. But what was in issue before the lower tribunal was Section 26 of CITA, LFN 1990. The Appellant's counsel argues that Section 26 CITA, LFN 1990 is "now Section 30 of the LFN, 2004". On the basis that Section 26 of the 1990 Act and Section 30 of the 2004 Act are the same, the Appellant's counsel has presented his arguments before this Court on the basis of Section 30, CITA, 2004. I do not think this is the right thing to do. Since this is an appeal against the decision of the lower Tribunal, parties cannot on their own before an appellate court change what was presented before the lower tribunal and over which the decisions of the lower tribunal were made. This includes even the text of the legislation.

On this score, Section 26(1)(b) of CITA, 1990 provides as follows:

> *Notwithstanding section 29 of this Act, where in respect of any trade or business carried on in Nigeria by any company (whether or not part of the operations of the business are carried on outside Nigeria) it appears to the Board that for any year of assessment, the trade or*

business produces either no assessable profits or assessable profits which in the opinion of the Board are less than might be expected to arise from that trade or business or, as the case may be, the true amount of the assessable profits of the company cannot be ascertained, the Board may, in respect of that trade or business, and notwithstanding any other provisions of this Act if the company is a-

(a) Nigerian company, assess and charge that company for that year of assessment on such fair and reasonable percentage of the turnover of the trade or business as the Board may determine.

(b) company other than a Nigerian company, assess and charge that company for that year of assessment on such fair and reasonable percentage of that part of the turnover of the trade or business attributable to the operations carried on in Nigeria, as the Board may determine.

For context, Section 30(1)(b)(i) of CITA, LFN 2004 provides as follows:

30 (1) notwithstanding section 40 of this Act, where in respect of

any trade or business carried on in Nigeria by any company (whether or not part of the operations of the business are carried on outside Nigeria) it appears to the Board that for any year of assessment, the trade or business produces either no assessable profit or an assessable profits which in the opinion of the Board are less than might be expected to arise from that trade or business or as the case may be, the true amount of assessable profits of the company cannot be readily ascertained, the Board may, in respect of that trade or business, and notwithstanding any other provisions of this Act if the company is a –

(a) Nigerian company assess and charge that company for that year of assessment on such fair and reasonable percentage of the turnover of the trade or business as the Board may determine;

(b) If the company is a company other than a Nigerian company

and –

(i) that company has a fixed base of business in Nigeria, assess and charge that company for that year of assessment on such a fair and reasonable percentage of that part of the turnover attributable to that fixed base.

First of all, from a cursory look at the provisions set out above, it is clear that in terms of text, Section 26(1)(b) of CITA, LFN 1990 on which the lower tribunal based its decision being appealed against, is different from Section 30(1)(b)(i) of CITA, LFN 2004, around which the Appellant presented arguments to this Court seeking to upturn the decision of the lower tribunal. For example, quite some things were said by counsel on the phrase "fixed base of business in Nigeria". But this is a language which belongs to Section 30 of CITA, LFN 2004 and did not feature in the relevant provision of Section 26, CITA 1990. Certainly, it was not a language under consideration by the lower tribunal in its judgment of 1/06/16. To put it mildly, I do not think this conduct properly falls within what is expected of counsel in the best tradition of advocacy.

Now, looking at Section 26 of CITA, LFN 1990 or even Section 30 CITA, LFN 2004, the word "turnover" on the basis of which the Respondent can impose tax on taxable entities on a deemed basis, is a word which operates without any qualification. It does not say "net" turnover, nor does it say "gross turnover". That being the case, the word must be interpreted in its ordinary grammatical meaning. And in the absence of any definition of the term in the relevant provisions of CITA (LFN 1990), it is my view that the lower tribunal was right to call in aid the definition of the word "turnover" in the

Companies and Allied Matters Act (CAMA), as it did. Indeed, if the lower tribunal did not call in aid CAMA for the interpretation of languages which apply to companies as in this case, what statute then should the tribunal look to for guidance? I therefore see no merit in the contention of the Appellant that the lower tribunal was wrong to have been guided by the definition of turnover in the CAMA. Since the CITA itself did not define it at all or to the exclusion of any other definition, the lower tribunal was well within its right to have referred to CAMA as a guide.

Furthermore, there is also nothing in the provisions of Section 26 CITA LFN 1990 set out above which indicates, either explicitly or impliedly, that "recharges" should be backed out from turnover before the Inland Revenue Service can impose tax on a deemed basis on foreign entities. Any suggestion, as has been made by the Appellant, that this should be the case, in my view will do violence to the express provisions of the law of which I see no ambiguity. I am in agreement with the lower tribunal that Section 26(1)(b) of CITA LFN 1990 takes the total receipt as the source of income and then empowers the Respondent to determine a percentage on those receipts as the standard for assessing income. It is already an accepted norm that legislative provisions on taxation are construed strictly and literally. It is not for the Court as an interpreter of statutes

(and not a maker of one) to add or to take away from the statutory provisions, what the law-maker itself has neither thought fit to add or to take away. Within and beyond the realm of taxation, a Court of law doing so will have violated the sacred principles of separation of powers.

What is clear from a teleological construction of Section 26 CITA (or Section 30 of current CITA) is that for all companies whether domestic or foreign deriving any of their income from Nigeria, thereby opening themselves to Nigerian taxation, they have an option to be taxed either on an actual basis or on a deemed basis. If they chose to be taxed on an actual basis, the onus is on them to submit their audited accounts to the Inland Revenue Service for assessment. Where they fail to do so, then the assumption is that they have accepted to be taxed on a deemed basis, in which case their total revenue for the year in question becomes the base point to proceed. In this case, as the lower tribunal held, the Appellant did not submit any audited accounts to the Respondent, nor even to the tribunal. Having not done so, they brought themselves squarely under the law within the totality of the deemed taxing powers of the Respondent, and cannot complain. This includes the power of the Respondent to decide the percentage of the turnover of the Appellant to be allowed as expenses and not subject to taxation, and the percentage that should be the

subject of taxation. In this case, the Respondent decided on a ratio of 80:20 in favour of the Appellant. The decision to allow the Appellant the use of 80% of their turnover free from taxation, and 20% to be subject of taxation at the applicable rate is for me, one which the Respondent was perfectly entitled to make by reference to Section 26 of the Act. The decision of the lower tribunal on this point is correct, and I do not see how that can be faulted.

The Appellant has argued that 20% of turnover as assessable income on a deemed basis is unreasonable and unfair. In my view, that argument smacks of a broad generalization that is devoid of concretization. I did not see in the Appellant's arguments any demonstration of how this is unfair and unreasonable beyond stating that it is so. The question is what makes 20% of turnover as assessable income unfair and unreasonable? If it is unfair and unreasonable, what also makes the allowance of 80% to the Appellant free of taxation fair and reasonable? If 20% as assessable income is unfair and unreasonable, then in the Appellant's own calculation, what formula would have been fair and reasonable for all parties, and on what basis will it be so? Is it 5% of turnover that will be fair and reasonable? If so, why? Is it 9%? Is it 12%? And when we speak of fairness and reasonability, for whose benefit should that be? Is it to the Appellant or is it to the Respondent?

Or to the general public who look to tax revenues for the provision of government services?

The summary of this is that the Appellant needed to have done more, and clearly did not discharge the burden I believe was placed on it to demonstrate in concrete terms how the formula of 80:20% utilized by the Respondent to tax it on a deemed basis, having failed to submit its audited accounts, can be characterized as unfair and unreasonable. I see no merit in the Appellant's argument on this score, and which arguments therefore are worthy of a discountenance.

I have noted the argument on double taxation. In my view, this argument gathers no traction. Again the lower Tribunal cannot be faulted in its conclusion that the Appellant and its Nigerian subsidiary are separate legal entities. One cannot legally make a claim of double taxation in favour of the Appellant who is a foreign company by reference to an income in the hands of a domestic Nigerian company that has an independent tax obligation and responsibility to the Nigerian tax authorities. This applies even if the Nigerian company is a subsidiary of the foreign company as in this case, and the income which the Nigerian company has earned, and is subject of taxation, is one derived by it solely from its foreign parent company for services which the local company has rendered to

the foreign non-resident company. Since funds as inanimate objects have no DNA, how can the Appellant demonstrate that the funds which it had paid to its local subsidiary as *recharges* is not derived or form part of the 80% of its income which has already been exempted from tax as expenses by the Respondent, as against being a part of the remaining 20% of its income that has been assessed to taxation by the Respondent? It is this little puzzle that makes the claim of double taxation one that cannot stand. I agree with the lower tribunal that the contention of double taxation on the recharges lacks merit and is unsustainable.

On the issue of legitimate expectations derived from the Information Circular No. 9302 issued by the Respondent, I slightly disagree with the lower Tribunal. The lower tribunal took the view that the Information Circular is a mere explanatory note devoid of the force of law, and therefore presumably not binding on a regulator who issued it. It also held that tax liability being a statutory matter cannot be determined in a meeting between two parties or in a correspondence, and that the doctrine of legitimate explanation cannot erode the clear provision of an Act of the legislature.

The above position is generally correct. However, having appraised the countervailing arguments of the parties, I wish to

say a number of things. First is that looking at the legal effect of the Information Circular alone as the Appellant has done may be a simplistic approach, particularly in a situation where the Appellant itself did not provide any audited accounts from where its actual income could have been ascertained.

Secondly, as against the lower Tribunal's position that an Information Circular is just an explanatory note, implying that it might not be binding on the Respondent, my view is that in a highly regulated field such as taxation that is actively policed by a super-regulator such as the Respondent, any explanation issued out to the public by the regulator as to the regulator's own interpretation of any special provision of law that it is empowered to enforce, must be held as legally binding on the regulator. To decide the issue by drawing a dichotomy between explanatory notes and statutory provisions misses the point and can work injustice, especially in situations where the regulator has led those subject to the law to place reliance on the regulator's construction of the legal provisions. The fact of the matter is that it is actually the likely uncertainty surrounding a statutory provision that inspires or compels a regulator to issue a note to the relevant public explaining its approach or interpretation of that statutory provision. For, if the provision were otherwise clear, the question then becomes what is the need for the explanatory note?

My view, therefore, is that the statutory provision being unclear, and the regulator then issuing a circular stating an interpretation of that unclear provision, it would be unjust and work against the tenet of the rule of law for the regulator to go back on its word and apply the statute different to the manner it has earlier informed the public that it would apply same. Doing so would deny credibility and integrity to the regulated landscape. The Court must never let that happen.

The above is a statement of general principle. Now, what does the relevant provision of the Information Circular say? I stated that this is binding on the Respondent.

The contentious provision of the Information Circular is paragraph 5.2 (i) where the Respondent stated that:

> "For a non- resident company or individual with a fixed base in Nigeria, the turnover that can be assessed is only that portion that is attributable to the fixed base. In other words, it will be wrong to base the percentage considered "fair and reasonable" on the total turnover of such a company or individual once a fixed base is established".

This Information Circular was issued in March 1993, but the dispute between the parties was for the period of 1999 to 2001 Years of Assessment. What I find baffling though is how anybody can use the extracted portion of the Circular as a basis

to contend that recharges should not form part of the turnover of a non-resident company that is subject of taxation on a deemed basis. As is evident, there is nowhere in the said referenced paragraph of the Circular where it made any mention of recharges, let alone provide that tax subjects can back them out from their turnover before being assessed to tax on a deemed basis. What I believe the extracted portion to be saying is that for deemed income basis of taxation for foreign non-resident companies, the turnover that is relevant is only the turnover of income derived from their Nigerian operations, and not the entire turnover from their global operations. In short, I believe the reliance placed by the Appellant on this Circular to be entirely misplaced.

In addition to the above, I do not believe that there exist any circumstances that can validly give the Appellant any legitimate expectation that they are entitled to deduct the recharges paid to their subsidiary from the portion of their income that is assessable to tax. Indeed, the meeting of 20th September 1989 and 21st August 1990, and the letter dated July 19, 1994 all involved the representatives of the Respondent, and Sedco Forex International Inc. ("SFII"), Sedco Forex Nigeria Limited ("SFNL"), and Services Petroliers Schlumberger (SPS). The Appellant did not feature anywhere in those meetings or in the correspondence. No matter the relationship between the

Appellant and those other entities, the fact remains that they remain separate and distinct legal entities to the Appellant, and I fail to see how in law the Appellant could have reasonably derived any legitimate expectations from interactions existing between the Respondent and other legal entities which occurred several years before the relevant tax years that gave rise to the dispute that led to this appeal.

Finally, I also believe that the Tribunal was right that the assessment of the Appellant to additional tax in 2005 for the 1999, 2000 and 2001 years of assessment was not statute barred upon a proper construction of Section 48(1) of CITA, LFN 1990. This is because the said Section 48(1) allows such additional assessments to be made within six years after the expiration of the year of assessment, and 2005 is still within 6 years after the expiration of the 1999 year of assessment, which could only reasonably have been from 2000.

I resolve issue 2 against the Appellant, and in favour of the Respondent.

Whether the Respondent rightly exercised its discretion under Section 26(1)(b) of CITA in assessing the Appellant to tax by allowing 80% of the Appellant's turnover as legitimate expenses and charging 20% to tax at the CIT rate of 30%, considering that the profit

of the Appellant for the years of assessment was not disclosed or known to the Respondent.

This issue is very much connected to issue No 2 already decided above. For the reasons also explained under issue 2, I believe that issue 3 also needs to be resolved in favour of the Respondent as against the Appellant. I do not see any basis at all on which the lower tribunal's decision can be faulted on any score.

In sum, I see no merit in this appeal, which appeal is hereby dismissed.

Cost of N100,000 is awarded against the Appellant.

HON. JUSTICE (DR.) NNAMDI O. DIMGBA

JUDGE

22/05/17

PARTIES- Absent

APPEARANCES: **Festus Onyia Esq.,** with **Amina Ibrahim Esq.,** for the Appellant. **U.I. Okwori Esq.,** for the Respondent.