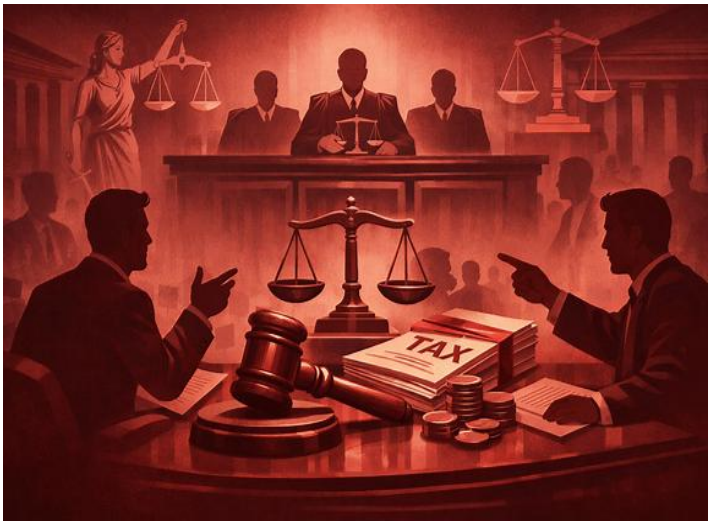
The Tax Appeal Tribunal's Jurisdiction Conundrum: Useful Lessons to Be Drawn from the Decision of the Federal Supreme Court in Chairman of the Board of Inland Revenue v. Joseph Rezcallah & Sons Ltd & 2 Ors

Paschal Ukah & Akinola Oladimeji



Abstract

*In the wake of the new tax regime[1], it will not be unexpected to see a challenge to the legality or validity of a tax assessment as opposed to challenging the computation of such assessment itself together with its appurtenant objections and notices of refusal to amend. The Joint Revenue Board of Nigeria (Establishment) Act, 2025 confers on the Tax Appeal Tribunal (TAT), jurisdiction and powers to settle **any** tax dispute and controversy arising from the administration of the Tax Acts or any other tax laws made by the National Assembly,[2] leaving to contention, issues that would otherwise be ensconced to be within the exclusive jurisdictional preserve of the Federal High Court (FHC) such as the powers to interpret tax laws, or enforce, suspend, preserve an order of court or exercise supervisory jurisdiction in matters within its exclusive jurisdiction. In all of these, it remains to be seen that there is an all-encompassing decision from our courts which considers or appreciates this increasingly relevant nuance as to circumstances where proceeding to the TAT is a condition precedent as opposed to situations where proceeding to the FHC as a forum of first resort is the proper action to take in a given circumstance. This article attempts to brings to fore, the relevant distinctions drawn by the then Federal Supreme Court in Chairman of the Board of Inland Revenue v. Joseph Rezcallah & Sons Ltd & 2 Ors.[3] ("Rezcallah case") on the recurring issue as to the proper forum to seek redress in each case.*

Statement of the Problem

Recent decisions have emanated from the courts which are to the effect that the exercise of jurisdiction by the TAT as an administrative tribunal, is not inconsistent with the exclusive jurisdiction of the FHC contemplated under section 251 (1) (b) of the Constitution of the Federal Republic of Nigeria, 1999 as amended ("the Constitution").[4] Prominent among them and perhaps, one of the most recent is the decision of the Supreme Court in ***TSKJ Construcoes Internacional Sociadade Uniperssoal LDA v. FIRS***[5] **("TSKJ case").**

The TSKJ case represents the current posture of the apex court and the court in that case held that it is erroneous, misleading and misconceived to say that the jurisdiction of the FHC has been eroded by conferring jurisdiction on the TAT to entertain tax disputes. The apex court also held that proceeding

[1] Joint Revenue Board of Nigeria (Establishment) Act, 2025; Nigeria Tax Act, 2025; Nigeria Tax Administration Act, 2025; and Nigeria Revenue Service (Establishment) Act, 2025

[2] Section 23 of the Joint Revenue Board of Nigeria (Establishment) Act, 2025.

[3] 1962 All Nigeria Law Reports SC 1; [1962] LPELR – 25159 [SC].

[4] CNOOC Exploration & Production (Nig) Ltd & Anor v. NNPC & Anor (2017) LPELR-50911(CA)

[5] [2025] LPELR – 81423 [SC].

first to the TAT serves as an administrative procedure or condition precedent to instituting tax related actions before the FHC.

The reasoning of the court in the TSKJ case was that section 251 (1) (b) of the Constitution begins with the prefix "to the exclusion of any other court". The court then surmised that since the TAT is not a "court" and having been excluded from the list of courts established under section 6(3) and (5) of the Constitution, the exercise of its administrative or quasi-judicial jurisdiction over tax matters cannot be seen to be in contravention of the exclusive jurisdiction of the FHC under section 251 (1) (b) of the Constitution. The court added that the FHC exercises appellate jurisdiction over appeals emanating from the TAT.

Evident from the TSKJ case is the fact that there are other decisions of the Supreme Court which were unanimous on the position of the law that the FHC can hear appeals from quasi-judicial and administrative decisions from such bodies as the TAT[6]. The court also noted that this structure where decisions from a tax tribunal gets reviewed by the Federal Courts is what is obtainable in other jurisdictions such as India, UK, Australia and as such, is not alien to the jurisprudence in other common law jurisdictions like ours.

While section 6(3) specifies the superior courts of record, which would then be listed in subsection (5)(a) to (i) of the Constitution, section 6(3) ought not to be read in isolation of section 6(1) and (2)[7] which respectively vest "judicial powers" of the federation and of a state in the courts to which the section relates. The provision of section 6(6) of the Constitution is clear as to what judicial powers connote.

It provides that: ***"(6) The judicial powers vested in accordance with the foregoing provisions of this section – a) shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a court of law; (b) shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."***

Indeed, as the Supreme Court observed, the fact that the TAT is not a court, should lend further credence to why it should not act like a court since section 6(1) and (2) of the Constitution are unequivocal on the fora that can exercise those judicial powers vested on only courts established under the judicature. Albeit one is not unmindful that there are courts not expressly mentioned in the list contained in section 6 (5) that exercise judicial powers such as those contemplated under 6(5)(j) and 6(5)(k).

It may still be useful to apply the *expressio unius* rule and the *ejusdem generis* rule[8]to canvass that the TAT has no constitutional powers to act like a court and this would not offend the reasoning of the apex court in the TSKJ case that every court is a tribunal but not every tribunal is a court. This view is expressed with reliance placed on the same section 6 which the apex court relied on to hold that the TAT is not a court.

[6] For instance, the decision of the Supreme Court in Ajayi v SEC [2023] 6 NWLR [Pt. 1881] 533 SC was relied on to ratify the propriety of appeals from the Investment and Securities Tribunal.

[7] Orakul Resources v. NCC [2022] 6 NWLR [Pt. 1827] 539 SC

[8] The *ejusdem generis* rule means that where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated – See *Kabirikim v. Emefor* [2009] LPELR – 902 (SC). The *expression unius* rule on the hand means that the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have been applied by implication, with regard to the same issue – See *Odu'a Investment Co. Ltd v. Michael* [2024] LPELR – 62622 (SC)

Since it is not in doubt that the TAT may not exercise judicial powers over the federation or the state, it leaves us with the burning question as to what distinction exists between the word "judicial" and the word "quasi-judicial".

The decision of the Supreme Court in ***Esiaga v. University of Calabar***[9] is instructive on that distinction. There, the court held that: **"A judicial decision consists of findings of facts and the application of the law thereto while a quasi- judicial decision consists of findings of facts and the application of administrative policy thereto." (emphasis ours)**

This distinction underscores the fact that the TAT acts under the executive arm of government whereas, the FHC acts under the judiciary. It would then appear that the TAT is an administrative tribunal set up to determine the correctness of tax assessment without undue fixation with formality.[10] The correctness of an assessment or the computation thereof, being *stricto sensu* a finding of fact, is not one and the same matter with the determination of the validity of such an assessment in the first place, which is a matter of law.

Accordingly, if one were to strictly follow the reasoning in the TSKJ case that the TAT only exercises quasi-judicial powers, it would then mean that by the same TSKJ case, where the TAT exercises judicial powers it would be acting *ultra vires.* Conversely, it would also mean that where it is the exercise of the court's judicial powers that is sought, one need not proceed to the TAT as a condition precedent before going to the FHC, since the FHC has the constitutionally vested judicial powers to so act in such matters.

The problem then, is a juxtaposition of judicial and quasi-judicial powers with respect to tax matters, and the suggestion that proceeding to the TAT is a condition precedent for all intents and purposes. This problem is aggravated by part of the often cited TSKJ case where it was held as follows: **"The Tribunal has the power to adjudicate on disputes and controversies arising from the operations of the FIRSEA 2007 and from the tax laws listed under the First Schedule to the FIRSEA 2007".** This conveniently brings us to decision in the *Rezcallah case* where this distinction was surgically drawn.

Facts and Ratio of the Rezcallah Case

The case was an appeal from a decision of the High Court of the Northern Region of Nigeria dismissing a claim by the Chairman of the Board of Inland Revenue for a sum of £2,520, being income tax and penalties for the years of assessment 1958-1959 and 1959-1960. The reason for the decision was that the two assessments upon which the claim was based were not made in accordance with law because the plaintiff did not prove that the defendants were given notice to deliver a return of income and that the Chief Inspector of Taxes did not exercise his discretion to the best of his judgment in making the assessment under section 53(3) (Section 55 (3) of the revised edition) of the Income Tax Act. Being dissatisfied with the decision, the appellant (Chairman of the Board of Inland Revenue) appealed to the Federal Supreme Court.

In reiterating the unfettered constitutional powers vested in the High Court of the then Northern Region of Nigeria as to not have been excluded by sections 59 and 60 of the Income Tax Act which provide the procedure for disputing an assessment, the Federal Supreme Court, explained that the power of the court to determine the validity of an assessment is not taken

[9] [2004] 7 NWLR [Part 872] 366 SC page 385, para. B

[10] See Addax Petroleum Development (Nigeria) Limited v. Federal Inland Revenue Service [2012] 7 TLRN 74, 85 also referred to in the TSKJ case.

away by the special procedure for disputing an assessment. The court held as follows:

> **"It is therefore necessary to examine the provisions of the Income Tax Act in order to ascertain whether this power of the Court has been taken away. Sections 59 and 60 (61 and 62 revised) provide a special procedure for disputing an assessment, but the sections do not say that this procedure is exclusive. In my view the relevant section is Section 61 (63 revised), which sets out the extent to which an assessment is conclusive. The section in the revised edition reads as follows: 63. Where no valid objection or appeal has been lodged within the time limited by Section 59, 61 or 62, as the case may be, against an assessment as regards the amount of the chargeable income assessed thereby, or where the amount of the chargeable income has been agreed to under subsection (4) of Section 59, or where the amount of such chargeable income has been determined on objection, revision, under the proviso to subsection (4) of Section 59, or appeal, the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Act as regards the amount of such chargeable income; and if the full amount of the tax in respect of any such final and conclusive assessment is not paid within the appropriate period or periods prescribed in this Act, the provisions thereof relating to the recovery of tax, and to any penalty under Section 67, shall apply to the collection and recovery thereof subject only to the set-off of the amount of any tax repayable under any claim, made under any provisions of this Act, which has been agreed to by the Board or determined on any appeal against a refusal to admit any such claim: Provided that- (a) where an assessment has become final and conclusive any tax overpaid shall be repaid; (b) nothing in Section 59 or in Part XII shall prevent the Board from making any assessment or additional assessment for any year of assessment which does not involve reopening any issue, on the same facts which has been determined, for that year of assessment, under subsection (4) of Section 59 by agreement or otherwise or on appeal. It will be noted that the section provides that the assessment is final, as regards the amount of the chargeable income. In my view however, it is not conclusive as to other matters, and the Court in subsequent proceedings can inquire into the validity of the assessment …"**

Bairamian FJ (of blessed memory) in his concurring judgment held that:

> **"It appears that sections 59, 61 and 62, on objections and appeal, were intended to provide a method for having an assessment reviewed and revised on the presupposition that the assessment was made with jurisdiction; they do not in my view contemplate a case where it was made without jurisdiction…Mr. Balogun's argument is that, as the Act provides a procedure in sections 59, 61 and 62 for questioning an assessment, that is the only procedure available to a person who is assessed. It does not distinguish between: (a) the case of a person who is assessed with jurisdiction, and (b) the case of a person who is assessed without jurisdiction. It can produce injustice: for there is no provision in section 62 enabling the Appeal**

Commissioners to refer a point of law to the High Court. I am therefore in no doubt that his argument goes too far."

The Useful Lessons to be drawn from the Rezcallah Case

Nothing in the quasi-judicial or administrative powers vested in the TAT precludes the exercise of judicial powers by the courts. This is apparently the distinction which the Federal Supreme Court sought to draw in the *Rezcallah case*. Indeed, challenging the legality of an assessment, without going into the accounting question of determining the correctness of the figures contained in the said assessment or an additional assessment, is one out of many judicial powers that may be exercised by the FHC as it pertains to the exclusive jurisdiction vested on it by section 251 (1) (b) of the Constitution. The reasons why the legality of an assessment may be challenged abound. In the *Rezcallah case,* it was that the assessment was arbitrary, having not been preceded by the submission of the return of income, as same was not asked for, which return of income would have served as the basis for the assessment.

The Decision in the TSKJ Case Distinguished

In the TSKJ case, the appellant, TSKJ Construcoes Internacional Sociadade Uniperssoal LDA (TSKJ), which is a Portuguese company and a non-resident taxpayer, obtained a contract for the execution of a Liquefied Natural Gas (LNG) project for the Nigerian LNG Limited (NLNG). In executing the said contract, the appellant incorporated TSKJ Nigeria Ltd to provide local logistics and other support services to effectively execute the contract. Within the duration of executing the project, the Appellant had filed and paid its taxes using a self-assessment on deemed profit basis (Turnover Assessment) and made deductions of what it called 'Recharges', being the cost paid to its local subsidiary, TSKJ Nigeria Ltd. Upon reviewing this self-assessed tax, the respondent (Federal Inland Revenue Service (FIRS)), disallowed the 'recharges' deduction made by the appellant on the ground that such a deduction is not allowed under the Turnover Basis of Assessment. It then went ahead to issue an additional assessment in respect of the wrong and/or erroneous deductions made by the appellant. Upon receipt of this additional assessment, the appellant objected and when the respondent issued a Notice of Refusal to Amend, TSKJ filed an appeal at the TAT to set aside the said assessment.

The relevant issue determined by the Supreme Court was whether the TAT was a mere administrative tax appeal tribunal. Having regard to the facts of the TSKJ case, the reasoning of the court was in fact, exhaustive as to the position of the law that the TAT is not a court and should not be seen as such. However, given that the TSKJ case has often been cited for wrong reasons, perhaps, more can be said as to circumstances where proceeding to the FHC as a forum of first instance is the proper thing to do. Moreover, the Supreme Court in the TSKJ case did not decide that the procedure of appeal to the TAT was exclusive. The court did not pronounce that the jurisdiction of the TAT ousts that of the FHC in all matters relating to tax disputes.

It is therefore the authors' view that the decision of the Federal Supreme Court in the Rezcallah case remains good law, having not been set aside or overruled by the Supreme Court.

Is the TAT Entirely Illegal?

To the extent that the TAT keeps within its merely quasi-judicial or administrative powers, the TAT would not be seen to be acting unconstitutionally. However, it would be indubitably unconstitutional for the TAT to be seen as having jurisdiction over *every* and *any* tax dispute emanating from any tax law as section 23 and paragraph 5 of the Second Schedule of the Joint Revenue Board (Establishment) Act, 2025 suggest, as that would inevitably intercept with

the exercise of judicial powers which the TAT does not, and cannot be seen to have until the Constitution is repealed or amended in that regard. The court in TSKJ case made this clear per Festus Ogbuinya JSC at page 46 of the electronic law report as follows:

> **"The provision of Section 6(5) of the Constitution, as amended, itemises exhaustively the existential superior Courts of record in the Federation. The Tax Appeal Tribunal (TAT) is not among those Courts calibrated in the Constitution supra, the fons et origo of our laws. The import is that that the TAT does not, in the least, wear the insignia/crest of a Court of law that is clothed with judicial powers. It, therefore, falls squarely within the expansive firmament of administrative tribunal. It is manned by professionals with the cognomen of commissioners, from different walks of life, appointed by the designated authority. The lawyers do not enjoy the monopoly of occupying the positions of TAT unlike in the Court where the Constitution, the grundnorm, has bequeathed to them the exclusive right to occupy the coveted judicial offices. In the light of these characteristics of TAT, it is impotent to usurp the judicial powers showered on the trial Federal High Court by the Constitution, as amended."**

Conclusion

Our view is that the powers vested on the TAT are merely quasi-judicial or administrative and should remain so. It should be clearly defined which forum to proceed to in each case. We suggest that nothing in the law precludes a litigant from proceeding straight to the FHC to resolve solely legal questions. This has been the position from the Rezcallah case, and while there are portions of the TSKJ case that may be susceptible to a wrong interpretation, a critical study of the case, particularly the contribution of Justice Ogbuinya, would reveal that the law remains that judicial powers of courts listed in the Constitution to entertain matters within their exclusive jurisdiction have not been eroded, nor is there any condition precedent to the exercise of those judicial powers on solely legal questions. There is, however, the lingering danger, that if this distinction is not properly and constantly drawn where similar opportunities arise, the TSKJ case may continue to be waved as a magic wand to canvass the erroneous view that proceeding to the TAT serves as a condition precedent to commencing any tax dispute at the FHC.

Disclaimer

Paschal Ukah
Senior Associate

paschal@sskohn.com

Akinola Oladimeji
Senior Associate

akinola@sskohn.com

STREAMSOWERS & KÖHN is a leading commercial law firm providing data audit and compliance services, legal advisory and advocacy services from its offices in Lagos, Abuja, and Port Harcourt. The firm has extensive experience in acting for Nigerian and international companies, government, and industry regulators in the firm's various areas of practice.

Contact us at:
852b Bishop Aboyade Cole St,
Victoria Island, Lagos
Tel: +234 1 271 2276; Fax: +234 1 271 2277
Email: info@sskohn.com; Website: www.sskohn.com