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Interpretations: A Review of Niger Delta Development Commission v. Rivers State Board of Internal Revenue [2020] 3 NWLR (Pt. 1711), 371

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Introduction

The Pay-As-You-Earn (PAYE) Scheme, pursuant to which employers are statutory agents for deducting and remitting their employees' personal income taxes (PIT), is perhaps the unsung hero of the Nigerian tax administration system. According to the Nigerian Bureau of Statistics, PAYE remittances remain the most significant contributor of tax revenue to States. In Rivers State for instance in 2020, PAYE accounted for a staggering 87.7% of total tax collected.[1]

In a sense, it is similar to the withholding tax (WHT) system where companies and other categories of tax payers are mandated to deduct and remit a fixed percentage from payments to suppliers, to the relevant tax authority (RTA)[2] as advance payment of tax on behalf of the supplier. It is salutary to state at this point that PAYE is not a tax or levy *per se*, but a means to collect the PIT of employees in advance, from source.[3]

Mainly because of the way it operates, there has been a lot of confusion as to whether the employer or the employee is the tax-payer under the PAYE Scheme. This stems from the fact that tax authorities have apparent enforcement powers against the employers of labour that they consider are non-compliant. The Nigerian Courts have however, in a long line of cases, ruled that under the PAYE system, the employee is actually the tax payer, not the employer, who is at best an agent of government.[4]

Considering the importance of tax to the proper functioning of every government and especially PIT remitted *vide* PAYE for States in Nigeria, the ***Personal Income Tax Act***[5] ***(PITA)*** is structured to allow speedy enforcement and recovery of taxes due to the government.[6] This article reviews the recent decision of the Court of Appeal (CoA) in ***Niger Delta Development Commission (NDDC) v. Rivers State Board of Internal Revenue (RSBIR)*** and highlights new clogs that might have been unwittingly introduced in the machinery of PIT administration in Nigeria.

A. The PAYE Mechanism in Nigeria

Section 81 PITA, headed ***"P.A.Y.E"*** provides the primary statutory backing for PAYE in Nigeria. It stipulates that "*income tax chargeable on an employee by an assessment whether or not the assessment has been made, shall, if the relevant tax authority so directs, be recoverable from any emolument paid, or from any payment made on account of the emolument, by the employer to the employee.*" The aforementioned direction is to be in writing and either addressed to the employer or published in the State Gazette. The direction is to stipulate the emolument of the employee which it refers to and the income tax to be deducted.[8] The RTA is obligated by ***PITA*** to ensure that the total amount deducted is equal to the income tax chargeable in respect of all the tax payers' emoluments for that year.[9]

The RTA is at liberty, in calculating the amount to be deducted, to take into account income of the employee from any other source chargeable to tax under ***PITA***; but where such income is not taken into cognisance, the amount deducted from employment emoluments will be set-off against tax charged by an assessment.[10] However, these PAYE provisions are not exhaustive - as can be gleaned from ***section 81(6) PITA*** which empowers the Minister (of Finance) to make regulations generally for carrying out the provisions of the section.[11]

Regulation (Reg.) 1, Operation of Pay-As-You-Earn Regulations 2002 (OPAYER) imposes a *duty on the employer to register with the RTA for PAYE purposes, regardless of any formal notification from the tax authority*. The employer is expected to start deducting from employees emoluments and remitting PAYE within six (6) months of commencing business, or within six (6) of the commencement of the ***OPAYER.***[12]

[1] National Bureau of Statistics, ***'Internally Generated Revenue At State Level: Q4 & Full Year 2020, April 2021'***: https://www.proshareng.com/admin/upload/report/14588-Internally_Generated_Revenue_At_State_Level_Q4%20&%20Full%20Year%202020-proshare.pdf (accessed 30.08.2021).

[2] This term will refer, depending on the context to both or either of the Federal Inland Revenue Service (FIRS) and the States' Internal Revenue Services (SIRS).

[3] For history of the English PAYE, see Adam Hayes, ***'Pay As You Earn – PAYE,'*** *Investopedia, 12.06.2021*: https://www.investopedia.com/terms/p/pay-as-you-earn.asp (accessed 25.08.2021). The English civil servant, Sir Paul Chambers was credited with being the brain behind the current PAYE system as England tried to raise revenue during the Second World War.

[4] ***7Up Bottling Co. Plc v. Lagos SIRB [2000] 3 NWLR (Pt. 650), 565 at 618B***; and ***Nigerian Breweries Plc v. LSIRB [2002] 5 NWLR (Pt. 759), 1.***

[5] ***Cap. P8, Laws of the Federation of Nigeria (LFN) 2004.***

[6] For example, a taxpayer who disputes an assessment must do so within 30 days of service of notice of assessment according to ***section 58(1) PITA.*** Also, an appeal against the decision of the Tax Appeal Tribunal is on points of law alone as can be gleaned from ***Paragraph 17(1), Fifth Schedule, FIRS (Establishment) Act Cap. F36, LFN 2004 (FIRSEA).***

[7] ***Section 81(1) PITA.***

[8] ***Section 81(2).***

[9] ***Section 81(3) PITA.***

[10] ***Section 81(4) and (5).***

[11] The Minister exercised this power in 2002 with ***the Operation of Pay-As-You-Earn Regulations (OPAYER), Subsidiary Law 18 of 2002.*** It does not appear that there is an equivalent enabling provision for the State Commissioners of Finance.

[12] ***Reg. 2 OPAYER.*** The employer pursuant to ***Reg. 3*** is mandated to record certain particulars regarding the emoluments of his employee on the tax deduction card or such other form as may be authorised by the RTA, to *wit*: month of payment; amount of emolument; pension fund contribution; cumulative net; free and taxable emoluments to that date; corresponding cumulative tax, and any tax deducted or repaid in making the payment.

On the application of ***PITA*** provisions to PAYE situations, ***Reg. 9*** provides that "*if the [RTA] discovers or is of the opinion at any time that an employer has not been remitting taxes, the tax authority may within the year of assessment or within six years after the expiration thereof, assess the employer and the provisions of the Act as to notice of assessment, appeal and other proceedings shall apply to that assessment or additional assessment and to the tax thereunder.*" Curiously, ***Reg. 14*** on notice of assessment provides that "*the [RTA] shall serve a notice of assessment on every employee assessed every six years.*" And an employee aggrieved by an assessment shall within 30 days of the service of the notice give notice to the RTA, stating grounds for the objection.[13]

B. Niger Delta Development Commission (NDDC) v. Rivers State Board of Internal Revenue (RSBIR): The Facts

The facts of the case are not extensively set out in the part of the judgment captioned '*Facts*', but can be reasonably deciphered from a wholistic reading of the case. The NDDC (Appellant) had remitted the sum of ₦671,887,890.33 to the RSBIR (Respondent) as self-assessed PAYE and WHT for the 2012 – 2017 years of assessment (YoA); the Respondent accepted to collect same, subject to verification. It appears that the Appellant had an unremitted balance of ₦415, 255,289.82 which it failed or refused to pay. Sometime in 2018, the Respondent sought an order of the High Court (HC) to distrain on the property of the Appellant in order to recover the balance, a move which prompted the Appellant to pay the balance.

Subsequently, the Respondent wrote to the Appellants on 16th October 2018 conveying its intention to conduct a "*Field Tax Audit Exercise*" for 2012-2017. The said audit was to commence two weeks from the date of receipt of the letter. The Appellant received the letter on 12 November 2018 and replied on that same day informing the Respondent that the proposed start date was not convenient as their books were currently being reviewed by the office of the Auditor-General of the Federation (AGF). In that wise, the Appellant suggested April 2019 as a more realistic date for the audit exercise as the envisaged the statutory audit by the office of the AGF will spill over into 2019. The Respondent found the excuse unsatisfactory and informed the Appellant that they were still intent on carrying out the exercise, but were ignored.

Certainly enraged by this, the Respondent assessed the Appellant to an additional tax of ₦50 billion based on the "*best of its judgement*". The Respondent thereafter wrote two letters; first a demand notice dated 11th December 2018 and a final demand notice dated 8th February 2019. When the Appellant failed or refused to reply these correspondences, the Respondent instituted an action at the HC of Rivers State by an "*originating motion ex parte*" filed on 12 April 2019, praying the Court to grant two substantive reliefs, viz:

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"*An order that the respondent is indebted to the applicant to the tune of ₦50,000,000,000.00 (Fifty Billion Naira only) being outstanding tax liabilities owed the Government of Rivers*

State by the Respondent with respect to PAYE, Withholding Tax (WHT) and other taxes unpaid for the period; 2012 to 2017 and for the issuance of a warrant authorising the applicant to levy distress and distrain any land and or any other property howsoever described belonging to the respondent and to execute same in order to recover the said sum of ₦50,000,000,000.00 (Fifty Billion Naira only) owed the Government of Rivers State by the Respondent. The address of the Respondent is No. 167 Aba Road, Port Harcourt, Rivers State.

-The sum of ₦20, 000,000.00 (Twenty Million Naira only) as cost incidental to the recovery of the amount owed. And any other order or orders this honourable court may deem fit to make in the circumstances."

The trial Judge granted all the reliefs sought and issued a "*TAX DEFAULT ORDER*" accordingly. Aggrieved by the issuance of the tax default order *ex-parte*, the Appellant/ Respondent filed a notice of appeal challenging the decision of the HC.

C. Analysis of the Issues for Determination in NDDC v. RSBIR

The CoA was faced with two (2) issues for determination:

1. "*Whether the entire proceedings of 17 April 2019 conducted by the learned trial Judge without the participation and service of the originating processes on the Appellant did not amount to a breach of the Appellant's fundamental rights of fair hearing guaranteed under the* ***Constitution of the Federal Republic of Nigeria***."

2. "*Whether the mode by which the Respondent as Applicant at the lower Court initiated the suit was proper as to clad the trial Court with the requisite competence as well as jurisdiction to hear and determine the suit.*"

[13] ***Reg. 15 OPAYER***. This provision is similar to ***section 58(1) PITA*** which allows the taxpayer 30 days to file an objection to an assessment.

The Court's View

The CoA considered the two issues together. In addressing these issues, the CoA, *per Sanga JCA* posited that the questions considered pertinent here are:

> *"Did the Respondent exercised [sic] its power in accordance with the law establishing it? Was resort to the use of best of judgement in unilaterally assessing the tax liabilities of the Appellant for the period under review, the only option at the disposal of the Respondent? What is the position of the Appellant as it pertain [sic] to PAYE and WHT in relation to the Respondent?"*

In answering the last question *Sanga JCA*, stated that PAYE accrues in the hands of the Appellant (employer) as a debt owed the Respondent *per* ***section 82 PITA*** and that the Respondent acted overzealously and *ultra vires* its powers when it went for the "*jugular of the Appellants in seeking for the issuance of a warrant authorising it to levy distress and distrain any land and/or property of the said Appellant without observing the legal procedure of debt recovery.*"

Furthermore, the CoA stated that ***section 82 PITA*** is the relevant section on the liability of an employer under the PAYE system, whilst ***section 104(1) PITA*** applies to "*taxpayers*" under the PAYE system. Thus, the lower court is not empowered under the said ***section 104 PITA*** to issue a warrant of distress *via* an *ex parte* motion *against the Appellant who is not liable as a taxpayer under the PAYE system.*

In interpreting ***section 82 PITA*** the CoA stated that:

> *"This provision given its clear meaning, requires the employer of labour to make deductions from the salary and emoluments it paid its staff or employees as tax and remit such deductions to the tax authority in such manner as may be directed by the said tax authority. Failure by the employer to make the said deductions or after making same to properly account for it will attract punishment of the amount collected or supposed to be collected by the employer plus 10% interest per annum plus prevailing interest at the commercial rate. Such amount "shall be recoverable as a debt due by the employer to the relevant tax authority".*[14]

On the first question, the CoA highlighted that the Respondent failed to observe the provisions of ***section 57 PITA***[15] and also "*failed to give a breakdown of the amount due from PAYE, WHT or any other taxes as reflected in its letter dated 11/12/18.*" The CoA citing its earlier decision in ***Access Bank Plc v. Edo SBIR***[16] highlighted that the failure of the Respondent to breakdown figures into categories of tax on yearly basis, and the lack of connection between the figures or categories of tax whether PAYE, WHT or other taxes, amounted to fixing of an arbitrary amount contrary to the provisions of the ***PITA***.

On the second question, the CoA stated that "*the Respondent in its haste to perform its duties ought not to have resorted to the Best of Judgement Assessment method in connection to the Appellant as employer under the P.A.Y.E system*" because the Appellant did not refuse to make the required documents available, neither did the employees of the Appellant ask for the aid or interference of the Respondent under ***section 54(5)(a) PITA***.

Regarding the submission by the Appellant that ***section 104 PITA*** is contrary to ***section 36(1) 1999 Constitution*** and should be declared unconstitutional, the CoA relying on its earlier decision in ***Independent Television/Radio v. Edo SBIR***[17] maintained that ***section 104 PITA*** is constitutional, as other sections of ***PITA*** outline procedures to be adopted before effect can be given to ***section 104***.

In concluding, the CoA opined that the demand notice and the BoJ assessment contained therein issued to the Appellant by the Respondent were invalid for failure to comply with the provisions of ***PITA***. According to the CoA:

> *"The Respondent did not follow the provisions of the* ***PITA*** *when it filed an ex parte application against the Appellant before the trial court leading to the proceedings of 17/04/2019 wherein the said trial court, without the participation and service of the originating process on the Appellant, issued a Tax Default Order. The entire proceedings of 17th April 2019 and the said Tax Default Order issued by the lower court on the same date are hereby declared to be a nullity and are consequently set aside."*[18]

D. The Author's Thoughts

It is difficult to fault the decision of the CoA in this case considering the arbitrariness and highhandedness of the Respondent in its quest to raise revenue for the Rivers State Government. However, on a critical and dispassionate evaluation of the interpretation given certain provisions of the ***PITA*** and the seeming disregard of the ***OPAYER***, it becomes a little more difficult to completely agree with the underpinning arguments in support of the judgment. Hereafter, the Author provides detailed reasoning for his views.

I. The Efficacy of a Debt Recovery Suit

The CoA posited that the only option open to a tax authority in cases revolving around non-remittance of PAYE by an employer is to commence a debt recovery suit. However, the idea under ***PITA*** is clearly fast and efficient tax administration and resolution of tax dispute as can be gleaned from the provisions on tax assessment and settlement of tax dispute.[19] This author concurs that nothing stops a tax authority from commencing an action for debt recovery against an employer for non-remittance of PAYE, but the law does not restrict the tax man to that option solely as that will

[14] ***NDDC v. RSBIR, (supra), at 405H.***
[15] "*The [RTA] shall cause to be served or sent by registered post or courier service or electronic mail to each taxable person, or person in whose name a taxable person is chargeable, whose name appears in the assessment lists, a notice stating the amount of any assessable, total or chargeable income, the tax charged, the place at which payment should be made, and setting out the rights of that person as contained in sections 58 and 59 of this Act.*"
[16] ***(2018) LPELR-4156 (CA).***
[17] ***[2015] 12 NWLR (Pt.1474), 422.***
[18] ***NDDC v. RSBIR (supra), p. 411.***
[19] See for instance ***section 55 PITA*** dealing with assessments and ***section 58 PITA*** dealing with revision of an assessment where the taxpayer objects; also, ***section 103 and 104 PITA*** on the power of tax collectors under ***PITA***.

clearly be antithetical to the spirit and intent of ***PITA*** which seeks to ensure speedy administration of the tax system.[20] The reasoning of the CoA was predicated on the premise that there has to be a forum for an aggrieved tax payer to challenge an assessment which he disagrees with, and to their mind the best avenue is an action for debt recovery.

However, this seems to run *contra* the provisions of ***PITA*** and ***OPAYER***. Where the RTA is of the opinion that an employer is defaulting in his PAYE obligations, the law is trite that the RTA can assess the employer *and the provisions of* ***PITA*** *on notice of assessment, appeal and other proceedings shall apply to that assessment or additional assessment and to the tax thereunder.*[21] *In equating unremitted PAYE as a debt due to the tax authorities,* ***PITA*** *simply tries to point out that the liability for non-remittance (economic incidence) will be on the employer, and not the "tax paying" employee who bears the legal incidence.*

In ***D.S.A Agricultural Machinery Manufacturing Company Limited v. Lagos SIRB***[22] the CoA affirmed,[23] the ruling of the HC allowing the Lagos SBIR to distrain the Appellant (an employer), by its goods and chattels for non-payment and under remittance of PAYE.
A similar decision was reached in ***Independent Radio/Television Case (supra)*** where the CoA affirmed the *ex parte* order granted by the Edo State HC to the Respondent to distrain the Appellant by its chattels and goods pursuant to ***section 104 PITA***.

ii. Applicability of ***PITA*** *and* ***OPAYER*** *Provisions to an Employee*
Arguably, under the ***PITA*** and ***OPAYER***, the position of an employee as a "*taxpayer*" is *sui generis.* For instance, ***Reg. 14 OPAYER*** provides that "*the [RTA] shall serve a notice of assessment on every employee assessed* ***every six years"***.[24] If an employee is aggrieved by the assessment, he has the option of objecting to the assessment within thirty (30) days from the date of service. The RTA will review the assessment and may make amendments and then give notice of the amendment to the employee.[25]

According to ***section 54(5) PITA***, an employee is not to be assessed to PIT in respect of the employees' emolument or other income, if that tax is recoverable through the PAYE system. However, within six (6) years after the end of the year the RTA can assess the employee if the employee so demands, or where the RTA deems it necessary to arrive at the correct tax payable. Thus, although an employer bears the legal incidence of PIT, the economic incidence of the tax rest squarely on the employee.

Iii. Applicability of Section 104 in PAYE Scenarios
The CoA was of the view that although ***section 104 PITA*** is constitutional, *it applies only to the employee in a self-assessment scenario*. In terms of comparing a tax payer in a self-assessment scenario and an employee in PAYE situations, it is difficult to see the peculiar disadvantage that an employer who fails to remit PAYE suffers, since he will be entitled to all the notices and dispute settlement mechanisms to challenge the assessment prior to a ***section 104*** application. The gravamen of the provision according to the CoA, was that the word "*taxpayer*" was used in the section, a clear adherence to the strict constructionist school of thought.

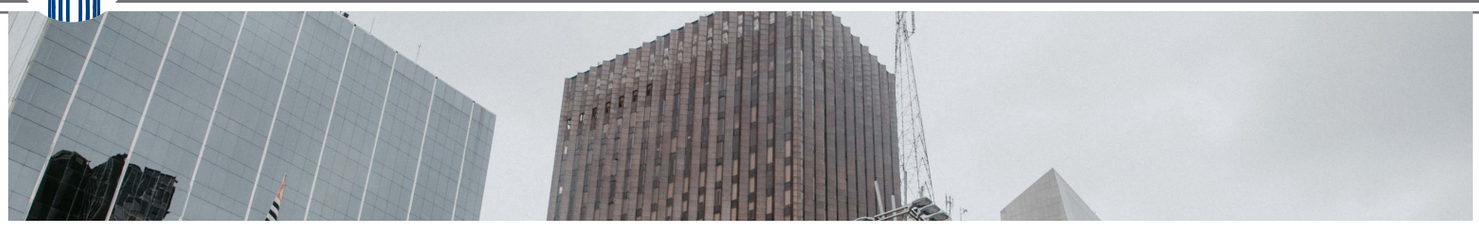
Regardless, ***section 104*** is a product of inelegant drafting as ***Part Xii*** provides generally for the enforcement powers of tax collectors under ***PITA*** and not the rights and obligations of taxpayers. However, the failure of the CoA to refer to the ***OPAYER*** creates doubts that it would have adopted a similar line of reasoning, considering the application of ***PITA*** in PAYE scenarios for assessment, appeal and ***other proceedings*** *a la* ***Reg. 9***. In my respectful view, it can be argued that proceedings as used here will also cover ***section 104*** proceedings; hence, making it possible for a tax authority to distrain on a recalcitrant employer.

There is an established rule that in the interpretation of provisions "*imposing*" tax on subjects, the provisions are to be construed strictly. Because there is no intendment or equity in tax,[26] any ambiguity in the provision will be interpreted in favour of the taxpayer. However, machinery, administrative or "*collecting*" provisions are not interpreted in the same way, rather such provisions are interpreted liberally.[27] This author posits that where a tax is clearly imposed as in this case and the employer with the duty to remit fails to remit PAYE, the taxman's endeavours towards efficient and effective collection of tax should not be frustrated by overly restrictive interpretations of enforcement provisions such as ***section 104 PITA***.[28]

iv. Condition for Best of Judgement (BoJ) Assessment
It was the view of the CoA that the Respondent ought not to have resorted to the BoJ approach, since the Appellant did not refuse to make the required documents available; neither did the employees of the Appellant ask for the aid of the Respondent under ***section 54(5)(a) PITA***. Whilst agreeing that there was no basis for the BoJ assessment, this writer begs to differ on the reason why.

Section 54(5)(a) PITA referred to by the CoA relates to the assessment of an employee and not an employer under the PAYE regime, and the assessment complained of in this case refers to an

[20]For instance, ***Order III (5) Federal High Court (Federal Inland Revenue Service) (FIRS-FHC) Practice Directions, 2021*** allows the FIRS to make an application to the FHC *ex parte* for an interim order forfeiting a taxpayer's property, freezing a taxpayer's account, and entering and sealing a taxpayer's business premises for tax default. It is noteworthy though that the legality of the ***FIRS-FHC Practice Directions*** is doubtful.
[21]***Reg. 9 OPAYER***.
[22]***(2013) 11 TLRN 115.***
[23]Relying on ***sections 50 and 56 PIT Law of Lagos State Cap. 142, 1994.***
[24]Emphasis supplied. The provision of a six year interval for assessments in the Writer's view is probably due to the high personnel and financial demand of conducting a yearly assessment when the RTA is already certain that reasonable remittances will be made by the employer on behalf of the employee every year.
[25]***Reg. 15 OPAYER***.
[26]In ***Ahmadu & Anor v. Gov of Kogi State and OrsRS [2002] 3 NWLR (Pt. 755), 502 at 522***, the CoA per *Oduyemi JCA*, stated thus: "*The law in question is, in its nature, a law which imposes pecuniary burden and is under the rules of interpretation, subject to the rule of strict construction. It is a well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language because in some degree they operate as penalties; the subject, is not to be taxed unless the language of the statute clearly imposes the obligation*".
[27]In ***Drummond v. Collins (Surveyor of Taxes) [1915] UKHL TC_6_525,*** *Lord Parker of Waddington* opined thus: "*This section is a collecting section and not a taxing section, and there is no reason in principle why it should not receive a liberal interpretation.*" Also, in ***The Commissioners Of Inland Revenue v. Longmans Green &Co., Ltd. (1928-1933) 17 TC 272, 282*** *Finlay, J.* held that: "*It was pointed out to me, and it was pointed out with truth, that you have got to get the charge imposed and you have got to get the necessary machinery for levying the tax. That is true, although, if you get the charge imposed, I see no reason why a specially rigorous construction should be imposed upon the machinery Section. I should have thought if there was any intendment in the matter it would be rather the other way, but the truth of the matter is that I do not think that these general rules with regard to construction help very much. What one has to do is to find out whether the charge is imposed and whether the machinery is adequate to support the charge and to enable the Crown to get its money.*"
[28]It is salutary to state that in interpreting collecting provisions, the departure from the strict constructionist school of thought does not in any way mean that the procedures laid down by law for fair and equitable administration of the tax will be jettisoned. Instead, it allows for the interpretation of ambiguous provisions in a way that will not frustrate the collection of a tax clearly imposed by law.



assessment of an employer. In addition, the CoA seemed not to appreciate the difference between an assessment *simpliciter* and a BoJ assessment, the former being what is contemplated under ***section 54(5)(a) PITA***. In this author's view, the Respondent ought not to have made a BoJ assessment because the Appellant had no accrued tax liability upon which it had failed to file its returns pursuant to ***section 54(3) PITA***; neither was it objecting to any tax assessment pursuant to ***section 58(3) PITA***.

E. Lessons from the Decision

I. Revenue Authority's Power to Inspect

The Respondent's ill spirited "*BoJ Assessment*" was fuelled by their inability to convince the Appellant to allow audit of its books when the Respondent wanted to. However, ***Reg. 20 OPAYER*** provides that an authorised officer of a tax authority may within working hours enter without warrant any business premises. In essence this means that the Respondent did not require permission from the NDDC to access its business premises as the law provides a clear cut solution which is not an arbitrary assessment.[29]

ii. Conflicting Decisions of the CoA

It is imperative to highlight that although the CoA held in the present case that the only option open to a revenue authority in instances where an employer has failed to remit PAYE is a debt recovery suit, there are authorities from the same CoA, allowing the tax authority to distrain an employer by his goods and chattels for failure to fulfil its PAYE obligations.[30] Hence, one has to be circumspect when relying on the present case.

iii. Efficacy of the Tax Administration System

The frequent friction between RTAs and employers of labour within their jurisdiction is not evidence of a functional and efficient Revenue Authority; rather it tells the sad tale of a dysfunctional tax administration mechanism. ***Section 81(5) PITA*** makes salient provisions for the smooth administration of PIT under the PAYE system, to wit: A direction from the RTA addressed to an employer or published in the Gazette specifying: (a) emolument of an employee or class of employees, (b) amount or amount of income tax to be deducted.

What this provision clearly aims to achieve is to remove any doubt as to the PAYE obligations of an employer under Nigerian tax jurisprudence. Thus, once data is available on staff, their grade level and place of residence, the RTA can easily determine the PAYE liability of an employer without needing to spin up humongous figures. This in turn allows the SRA to save time and money spent on needless audits, investigations and tax disputes which could sometimes go all the way to the Supreme Court. However, most RTAs appear to have failed to adhere to the clear wordings of this section, while some have partially complied by setting out deemed emolument of staff within their jurisdiction.

iv. Failure to Adhere to the Assessment Requirement

The failure of the Respondent to deliver a notice of assessment to the Appellant pursuant to ***section 57 PITA*** and also to breakdown the assessment to head of taxes and relevant years proved fatal. Although, ***section 57 PITA*** refers to a "*taxpayer*", and which according to the CoA does not capture the Appellant in this case; it nonetheless relied on the section to rightly hold that the failure of the Respondent to serve a notice of assessment on the Appellant nullified the Respondent's assessment.

In addition, the CoA maintained that *a notice of assessment must also breakdown the tax liability clearly into separate heads of taxes and relevant tax years, for it to be valid*. However, the Respondent failed to do any of this, instead it lumped the sums up to a hefty N50 billion liability without a breakdown of the figure on a yearly basis. This was a glaring case of arbitrary assessment.

Conclusion

The unique position of an employer under Nigerian PIT provisions continues to be a problematic issue in determining PIT liability and modalities of exercising enforcement powers vested in the RTAs. The position of an employer as an "*agent*" of the RTA and not a taxpayer, does not seem quite clear cut in the context of the ***OPAYER*** provisions. Even in the present case, the CoA while trying to draw this distinction still fell into the trap by relying on provisions which expressly relate to a "*taxpayer*" and not an employer such as ***section 57 PITA***.

The ruling also contradicts the CoA's earlier decision in the ***International Television Radio*** (***supra***) which it relied on to the dispel questions on the constitutionality of ***section 104 PITA***. In all, it is abundantly clear that the SC must lend a voice to this issue sooner rather than later, as the CoA seems to be unsettled on the applicability of ***PITA*** provisions on employers under the PAYE system. In the alternative, the ***PITA*** should be amended and provisions stating in clearer terms the rights and liabilities of an employer under the PAYE system incorporated into the ***PITA***.

[29] RTAs have been known to go the extra mile of sealing up the premises of Government establishments for failure to remit PIT of employees. See Kabir Adejumo, ***'Top Nigerian University, OAU, Shut for Alleged Tax Default'***, *Premium Times, 05.02.2018*: https://www.premiumtimesng.com/news/top-news/266933-top-nigeria-university-oau-shut-for-alleged-tax-default.html (accessed 26.08.2021); and Nsikak Nseyen, ***'Court Seals Michael Okpara University for Tax Default'***, *Daily Post, 05.02.2018*: https://dailypost.ng/2018/02/20/ court-seals-michael-okpara-university-tax-default/ (accessed 26.08.2021).

[30] ***D.S.A Agricultural case and Independent Television/Radio Case*** (*supra*).