

CASE DIGEST

TAX: PERSONAL INCOME TAX IS DETERMINED BY STATE OF RESIDENCE.

LONGE MEDICAL CENTRE; DR. SAMUEL OLANREWAJU BADANKI v. ATTORNEY GENERAL, OGUN STATE; INTERNAL REVENUE SERVICE, OGUN STATE

COURT OF APPEAL (NIGERIA)
(IBADAN DIVISION)

(BADA; TSAMMANI; OJO, JJ.CA)

On the 28th of September 2011, Ogun State Internal Revenue Service (2nd Respondent) invaded and locked up the premises of Longe Medical Centre (1st Appellant) a health institution registered with the Lagos State Private Hospital Registration Authority and managed by the 2nd Appellant, on the ground that the employees were residents of Ogun State and as such, the Personal Income Tax of the 2nd Appellant and other employees of the 1st Appellant should be paid to the 2nd Respondent in accordance with Section 2(2) of the Personal Income Tax Act. Prior to the invasion and locking up, the 2nd Respondent alleged that it had persistently demanded to no avail, that the Appellants pay their tax liability to the 2nd Respondent.

The Appellants in response vigorously maintained that it was not a resident in Ogun State and as such does not have a liability to pay tax to the 2nd Respondent, and its liability was to the Lagos State Internal Revenue Service. He pointed out that their employees were residents in Lagos State which fact he said was not controverted by the 2nd Respondent. He contended that the duties of the 2nd Respondent are restricted to individuals resident in Ogun State and they had no powers to enforce payment of tax on the 1st Appellant and its employees. He submitted further that the act of the 2nd Respondent in invading and closing down the hospital facility of the Appellants was a violation of their rights.

The trial court considered the arguments posited by both parties and upon the same, dismissed the application of the Appellants on grounds that the Appellants failed to establish their case as required by law and lacked merit. In this wise the trial Court awarded costs in favour of the 2nd Respondent.

Dissatisfied by the decision of the lower Court, the Appellant by a Notice of Appeal appealed to the Court of Appeal. One of the issues for determination *Whether having regards to the circumstances of this case, the learned trial judge was right in holding that the 2nd Respondent acted within the confines of the law as the 2nd Applicant is located at the boundary of Lagos and Ogun State having held earlier that it is not in dispute that the Appellants Hospital is located in Lagos State.*

In resolving the issue, the Court held that:

There is no gain saying that the issue of residence is very important for the purpose of payment of Personal Income Tax. Individual employees have an obligation to pay such tax in their respective states of residence. The tax authority of the state where an individual is resident is the relevant tax authority for the purpose of assessment and remittance of Personal Income Tax. In the case of *Ecodrill (Nig.) Ltd. v. Akwa Ibom Board of Internal Revenue* (2015) 11 NWLR (Pt. 1470) 303 AT 336, PARAS C-F; *Nweze JCA* (as he then was) held thus:

“In Nigeria's tax jurisprudence, the basis for the imposition and or collection of Personal Income Tax are two-fold; "residence" and "source". This is concerned only with the former, that is residence.

Under our tax law regime, one of the basis of tax liability on the part of a taxpayer and the power of an appropriate tax authority to collect personal income tax is "residence". Simply put, the principle of residence relates primarily to the existence of sufficient connection between a relevant tax authority and a taxable person. It is shown that a tax payer resides in any state in Nigeria, that States Board of Internal Revenue is the appropriate authority conferred with the power to collect Personal Income Tax from such tax payers, i. e. resident tax payers, are expected to give account of their worldwide earnings to the State Tax Authority".

It follows therefore that a resolution of the residency of the employees of the Appellants is germane in the determination of whether the 2nd Respondent is the relevant tax authority to collect their Personal Income Tax.

The First Schedule to PITA (supra) defines "place of residence" to mean a place available for his domestic use in Nigeria on a relevant day and does not include any hotel, rest house, or other places at which he is temporarily lodging unless no permanent place is available for his use on that day... It is that tax may be imposed by the State Government of the State in which an individual is a resident for the year of assessment. The question now is whether there is any evidence on record that the employees of the Appellants reside in Ogun State? There is none. It follows therefore that the 2nd Respondent is not the relevant tax authority to which the Appellants may remit tax deduction from emoluments of their employees and I so hold.

It is clear beyond any peradventure that the Appellants had no obligation to remit their tax to the 2nd respondent. Their obligation was to Lagos State. The 2nd Respondent acted ultra vires its powers when it disdained the property of the 1st Appellant situate in Lagos outside its jurisdiction. That it followed the laid down procedure under its laws is of no moment. The point is that the Appellants were not under its jurisdiction. It follows therefore that the 2nd Respondent did not act within the confines of the law when it violated the constitutionally preserved right of the Appellants when it levied distress against the 1st Appellant's premises situate in Lagos State and I so hold.

Issue resolved in favour of the Respondents

Chukwuyem Atewe for the Appellants

B. A. Oyefule for the 1st Respondent

T. O. Sokunbi with B. A. George for the 2nd Respondent

This summary is fully reported at (2021) 2 CLRN

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