Tax Appeal Tribunal sets aside additional withholding tax assessment against Ecobank in Akwa Ibom State

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In a significant victory for the banking sector, the Tax Appeal Tribunal (South-South Zone, Benin) delivered judgment in favour of Ecobank Nigeria Limited, setting aside a revised assessment of N102,693,667.15 issued by the Akwa Ibom State Internal Revenue Service (AKIRS) for alleged outstanding Withholding Tax (WHT) on credit interest for 1999 to 2020 years of assessment inclusive of penalty and interest.

The decision in Ecobank Nigeria Limited v. Akwa Ibom State Internal Revenue Service (TAT/SSZ/027/2023) underscores key principles of tax limitation periods, the burden of proving exceptions to statutory time bars, the sanctity of prior reconciliations, and the requirement for fair administrative processes.

Background

Ecobank, a licensed commercial bank with operations across Nigeria, including Akwa Ibom State, received a Demand Notice from AKIRS on 7 October 2021 for N117,396,448.32 (One Hundred and Seventeen Million, Three Hundred and Ninety-Six Thousand, Four Hundred and Forty-Eight Naira and Thirty-Two Kobo) in alleged outstanding WHT on credit interest covering 1999 to 2020 (inclusive of penalty and interest).

Following objections from the bank, AKIRS issued a Revised Assessment on 3 December 2021 for N102,693,667.15 (One Hundred and Two Million, Six Hundred and Ninety-Three Thousand, Six Hundred and Sixty-Seven Naira and Fifteen Kobo). Ecobank objected again through a letter dated 9th December 2021. After a lengthy exchange of correspondence, AKIRS issued a Notice of Refusal to Amend (NORA) on 9th June 2023, giving the bank 14 days to pay.

Being dissatisfied, Ecobank appealed to the Tribunal, challenging the assessment on multiple grounds, including that it was statute-barred for years prior to 2015, amounted to double taxation after prior audits and full payments, violated fair hearing principles under Section 36(1) of the 1999 Constitution, and featured erroneous penalty/interest computations.

Key issues and Tribunal's findings

The Tribunal adopted two broad issues for determination, focusing on whether the Revised Assessment and NORA should be set aside and whether Ecobank was entitled to the reliefs sought.

Statute of limitations (Section 55 PITA)

The Tribunal held that the additional assessment for 1999 to 2014 was statute-barred under Section 55 of the Personal Income Tax Act (PITA) 2011 (as amended). AKIRS failed to establish fraud, wilful default, or neglect required to lift the six-year limitation. Mere allegations or “intelligence” without concrete evidence presented to the taxpayer were insufficient.

The Tribunal cited precedents such as Delta Afrik Engineering Nigeria v. Akwa Ibom State Board of Internal Revenue and Umonam Nigeria Ltd v. Effiong, emphasizing that fraud or wilful default must be strictly proved.

Prior Audits, Reconciliation, and Estoppel

The Tribunal accepted Ecobank's evidence of prior statutory audits (2002 to 2016 and 2017 to 2019), reconciliation meetings, and full settlement of assessed liabilities (including N20,306,099.03 and N10.679,573.37 final demands).

These prior “final and conclusive” assessments created estoppel, preventing AKIRS from reopening the same periods in the absence of new, properly proven grounds. The bank had remitted over N596,621,184.04 in WHT during the relevant period.

Penalty and interest computation

The tribunal deemed the 21% flat rate applied by AKIRS arbitrary and contrary to Section 74 of Personal Income Tax Act (PITA), which provides for 10% penalty plus interest at the prevailing CBN Monetary Policy Rate. The Tribunal also rejected AKIRS's post-hearing mathematical justification.

Best of Judgment (BOJ) assessment and fair hearing

While AKIRS relied on BOJ powers under Section 54(3) PITA due to alleged incomplete documentation, the Tribunal found that Ecobank had provided substantial records and shown willingness to reconcile. The failure to share the basis of the “additional information” raised fair hearing concerns, though the statute-barred ruling was decisive.

Tribunal's orders

In a unanimous judgment delivered on 22nd May 2026, the Tribunal:

- Declared the Revised Assessment Notice and NORA invalid and unjustifiable.
- Set aside the assessment in its entirety.
- Held the additional assessments for 1999 to 2014 statute barred.
- Set aside the unlawful 21% penalty and interest.
- Refused the perpetual injunction sought but granted the core declaratory and setting-aside reliefs.
- Made no order as to costs.

Legal principles reinforced

1. **Strict Limitation Periods:** Tax authorities cannot lightly bypass the six-year rule without clear, proven evidence of fraud, wilful default, or neglect.

2. **Burden of Proof:** The onus lies on the revenue authority to justify exceptions to time limits and the correctness of additional assessments.

3. **Sanctity of Prior Reconciliations:** “Final and conclusive” assessments after audits and payments bind the authority in the absence of fresh, substantiated grounds.

4. **Fair Administrative Process:** Taxpayers must be afforded reasonable opportunity to know and respond to the case against them.

5. **Statutory Compliance with Penalties:** Penalty and interest rates must strictly follow statutory prescriptions.

Practical Implications

For Taxpayers/Banks: This judgment provides a strong precedent against repetitive audits and back-duty assessments without proper justification. Banks and companies with robust record-keeping and history of cooperation with tax authorities are better positioned to challenge overreach. Timely objections and documentation of payments remain critical.

For Revenue Authorities: The decision serves as a reminder to maintain transparent processes, preserve evidence of exceptions to limitation periods, and respect prior reconciliations. Over-reliance on vague “intelligence” or BOJ without supporting materials risks assessments being nullified.

Comment

The Tribunal's ruling in favour of Ecobank highlights the judiciary's role in balancing revenue collection with the rule of law and taxpayer rights. While tax authorities have broad powers to recover legitimate revenue, these powers are not unlimited and must be exercised within statutory boundaries and principles of fairness. Nigerian businesses, particularly in the financial sector, can draw comfort that properly documented compliance and prior settlements offer meaningful protection against indefinite tax exposure.

This case reinforces that taxation remains a creature of statute, not administrative discretion, and that procedural safeguards exist to prevent oppressive or arbitrary demands. Taxpayers should continue to engage proactively with authorities while being prepared to defend their positions vigorously before the Tribunal when necessary.

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