REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

ANTONIO VILLAN MANLY and RUBY ONG MANLY,
(No. 1173 Masangkay St. Sta Cruz, Manila)
Accused.

Criminal Case No. O-116
(I.S No. 2005-573)

For: *Violation of Section 254 of 1997 NIRC (Attempt to Evade or Defeat Tax) in relation to Sec. 248 (B) of NIRC.*

Members:

ACOSTA, *P.J.*
BAUTISTA, and
CASANOVA, *JJ.*.

Promulgated:

AUG 28 2009, 10:15 am

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RESOLUTION

For resolution of this Court are the following:

1. "Motion to Direct the BIR to Submit Tax Deficiency Assessment" filed by the accused-ANTONIO VILLAN MANLY and RUBY ONG MANLY on June 18, 2009;
2. "Supplement to the Motion to Direct the BIR to Submit Tax Deficiency Assessment with Motion to Dismiss" filed by the accused-ANTONIO VILLAN MANLY and RUBY ONG MANLY on June 24, 2009;

3. "Comment and/or Opposition (To Accused Motion to Direct the BIR to Submit Tax Deficiency Assessment and Supplement to the Motion to Direct the BIR to Submit Tax Deficiency Assessment with Motion to Dismiss)" filed by the plaintiff on July 16, 2009;
4. "Return of Warrant" filed by Police Chief Inspector Diogenes P. Amor, Jr. of the WMMCIDT on July 16, 2009 stating therein that subject accused cannot be located at the given address; and
5. "Reply to Comment/Opposition" filed by the accused -ANTONIO VILLAN MANLY and RUBY ONG MANLY on July 29, 2009.

In support of the instant motions, accused-ANTONIO VILLAN MANLY and RUBY ONG MANLY (SPOUSES MANLY) allege that no deficiency assessment notice was ever served by the BIR upon them. They further argue that without a deficiency tax assessment or a demand to pay deficiency taxes, accused are totally unaware of the amount for which they may be civilly liable.

In addition, accused-SPOUSES MANLY argue that the Court is bereft of any authority or power to hear and decide the present case. Thus, the Court should dismiss the present case on the ground of lack of jurisdiction.

On the other hand, plaintiff argues that the facts alleged in the Information constitute an offense and the proceedings in court for violation of Sections 254 of the National Internal Revenue Code (NIRC) may be commenced without an assessment.

After a careful and thorough evaluation of the arguments raised by both parties in their respective pleading, the Court finds the arguments of accused-SPOUSES MANLY meritorious.

Jurisprudence on the matter will show that it is not correct that the filing of the criminal complaint must be preceded by an assessment. Section 222 of

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the NIRC specifically states that in cases where a false or fraudulent return is submitted or in cases of failure to file a return, proceedings in court may be commenced, without an assessment[1].

However, in case the amount of tax deficiency is alleged in the Information, the same must be accurate and the truth, for the amount being claimed plays an important role. The amount claimed determines which Court has jurisdiction over the case. Accordingly, the amount must not be based on PRESUMPTIONS for **it will give undue power to the complainants to select the court** they feel will be in their favor. This fact holds true in the advent of the law creating the Court of Tax Appeals, Republic Act No. 1125 as amended by Republic Act No. 9282 otherwise known as the "The Expanded Jurisdiction of the Court of Tax Appeals". Sec. 7(b)(1) of said law specifically provides as follows:

> "**Sec. 7. JURISDICTION –** The CTA shall exercise:
>
> a) x x x
>
> b) Jurisdiction over cases involving Criminal Offenses as herein provided:
>
> 1) Exclusive Original Jurisdiction over all criminal offenses arising from violations of the NIRC or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties claimed is less than One Million Pesos (P 1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of the civil liability for taxes and penalties shall at all times be simultaneously instituted with and jointly determined in the same proceedings by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action,

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[1] CIR vs. Pascor Realty and Development Corporation, G.R. No. 128315, June 29, 1999.

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> and no right to reserve the filing of such civil action separately from the criminal action will be recognized."

From the above, it is crystal clear that before a taxpayer can be prosecuted for criminal offenses arising from violations of the NIRC or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue and the Bureau of Customs, the **principal amount of taxes** being claimed as **alleged** in the Information should only either be **definite** or **no specified amount at all at the time of the filing of the case** in Court. This is so because it determines the **jurisdiction of the Court**. In case the claim is One Million Pesos (P 1,000,000.00) or more, the CTA has exclusive original jurisdiction over the case. On the other hand, if the claim is less than One Million Pesos (P 1,000,000.00), or where no specified amount is claimed, the cases shall be tried before the regular courts and the jurisdiction of the CTA shall be appellate.

In addition, the amount of tax deficiency being claimed in the Information does not only determine the jurisdiction of the Court but also become one of the elements of the crime that must be proven beyond reasonable doubt by the prosecution.

As correctly pointed out by accused-SPOUSES MANLY, what was merely stated in the Information filed by the prosecution against them was their alleged substantial underdeclaration of income as they failed to fully declare therein their income in the amount of Php1,142,525.45. However, such amount is not the amount of the alleged tax deficiency due against the accused-SPOUSES MANLY, nor was it the amount claimed against them because as borne by the records of the case, there is no tax deficiency assessment as basis thereof.

WHEREFORE, premises considered, the "Motion to Dismiss" filed by the accused-ANTONIO VILLAN MANLY and RUBY ONG MANLY is hereby **GRANTED**. Accordingly, CTA Criminal Case No. O-116 entitled, *"People of the Philippines,*

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plaintiff vs. Antonio Villan Manly and Ruby Ong Manly" is hereby **DISMISSED** for lack of jurisdiction. The "Motion to Direct the BIR to Submit Tax Deficiency Assessment" and "Supplement to the Motion to Direct the BIR to Submit Tax Deficiency Assessment" is hereby rendered **MOOT** and **ACADEMIC**, and the "Return of Warrant" is hereby **NOTED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice