

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

THE PEOPLE OF THE PHILIPPINES, CTA CRIM CASE No. O- 056
Plaintiff, (I.S. No. 05F – 14102)

For: Violation of Sec. 255 of the
1997 Tax Code

-versus-

Members:

**Acosta, Chairman,
Bautista, and
Casanova, Jr.**

**ALICIA PAGUIO, BRENDA PAGUIO,
DIANA PAGUIO, EVELYN PAGUIO,
FREDERICK PAGUIO, CARMENCITA
PAGUIO,** All of No. 141 Cordillera St.,
Quezon City,

Promulgated:

Accused.

NOV 10 2008

x ----- x

RESOLUTION

ACOSTA, PJ:

With the preliminary hearing held last October 29, 2008, where the basic amount of deficiency Documentary Stamp Tax and Withholding Stamp Tax have been settled by the admission of respondent to be P145,500.00 and P727,552.00, respectively, now for resolution is the “Motion to Dismiss and/or Motion to Quash Information” filed by the accused on August 4, 2008, with Comment/Opposition thereto filed by the plaintiff on August 13, 2008 and the corresponding Reply filed by the accused on August 26, 2008.

The accused avers that in the Information charging them of violation of Section 255 of the National Internal Revenue Code (NIRC), they allegedly incurred, for their 1997 real property transaction, deficiency expanded withholding tax of P1,687,112.04 and deficiency documentary stamp tax of P218,250.00. However, according to the

accused, an examination of the documents, which the prosecutors have presented, will readily reveal that the principal/basic amount of deficiency taxes being claimed by the Bureau of Internal Revenue is less than One Million pesos. Citing Section 3(2)(b) of the Revised Rules of Court, in relation with Section 7(1)(b) of Republic Act No. 9282, the accused argues that this Court has no jurisdiction over the case, as its original jurisdiction in criminal cases is only in cases where the principal amount of taxes and fees, exclusive of charges and penalties claimed is One Million pesos and more. This, the accused contends, warrants the immediate dismissal of this case and the grant of the Motion to Quash the Information.

On the other hand, the plaintiff maintains that this Court has jurisdiction to take cognizance of the case. First, all the accused have voluntarily appeared and submitted themselves to the jurisdiction of the Court by posting cash bail bond for their provisional liberty and by entering their respective pleas. And second, while the Revised Rules of the Court of Tax Appeals (CTA) provides that the Court in division shall exercise exclusive original jurisdiction over cases involving criminal cases arising from violations of the NIRC, where the principal amount of taxes and fees, exclusive of charges and penalties claimed is One Million pesos or more, there is nothing in the said rules which deprive the CTA of jurisdiction in cases where the principal amount of taxes and fees claimed is less. Lastly, the prosecutors submit that taxes are the lifeblood of the government and should be collected without unnecessary hindrance.

In their Reply, the accused argue, among others, that the jurisdiction of the courts over the subject matter is conferred exclusively by the Constitution and by law. Thus, the fact that the accused posted bond and submitted themselves for arraignment, did not in any manner confer jurisdiction to the court.

The Court finds for the accused.

Sec. 7, (b) (1) of Republic Act No. 1125, as amended by Republic Act No. 9282 endows this Court with jurisdiction over criminal cases in this manner:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code 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 (P1,000,000) 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 action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of such civil action separately from the criminal action will be recognized. (*Emphasis Supplied*)

Clearly, it is only where the amount basic or principal amount being claimed is One Million pesos or more that the CTA has original exclusive criminal jurisdiction. Where the amount is less, or where there is no specified amount, it is the regular courts that has original jurisdiction. In the latter case, the CTA's jurisdiction is appellate.

Here, the basic or principal amount of taxes and fees, exclusive or charges and penalties being claimed are not disputed. The prosecutors and the accused both offered the same pieces of evidence to show that the amount of taxes and charges involved. In the Preliminary Assessment Notice marked as Exhibit "J" for the plaintiff, and "E" for the accused, show that the basic deficiency taxes being claimed are: P727,552.00 as creditable withholding tax due and P145,500.00 as documentary stamp taxes, these deficiency taxes totals P873,052.00. These deficiency taxes, as stated in the Information only amount to P2,008,487.99, when surcharges and interest are included in the computation. Note that the same amounts were being claimed in the Assessment Notice issued by the Bureau of Internal Revenue marked as Exhibits "L" and "N" for the plaintiff and "7" and "9" for the accused, as well as the 2nd Notice of Delinquent Account marked as Exhibits "S" for the plaintiff and "11" for the accused. Verily, the amount of the basic deficiency taxes in this case does not amount to One Million pesos, over which, under the law the CTA's jurisdiction is only appellate.

The arguments of the plaintiff that this Court has already taken cognizance and may therefore continue to assume jurisdiction, because all the accused have voluntarily appeared and submitted themselves to this Court's jurisdiction by posting bond and entering their plea; and that there is no provision of law denying this Court the authority to assume jurisdiction over cases the amount of which is less than One Million pesos, is bereft of merit.

It is a basic in remedial law that there are three elements of criminal jurisdiction: first, territorial jurisdiction; second, jurisdiction over the subject matter; and third, jurisdiction over the person of the accused. Territorial jurisdiction is determined by the geographical area over which the court presides. Jurisdiction over the subject matter is determined by the allegations of the complaint or information in accordance with the law in force at the time of the institution of the action, not at the time of its commission. It therefore, does not depend upon the consent or omissions of the parties to the action. It is a matter of legislative enactment which no one, but the legislature may change. Jurisdiction over the person is acquired by the voluntary appearance or surrender by the accused or by his arrest.

In the case, while the plaintiff correctly argued that the Court acquired jurisdiction over the persons of the accused, by their arraignment, and posting of bond, the jurisdiction of the Court on the subject matter does not necessarily follow. Here, it was questioned and attacked with the filing of the Motion to Dismiss and/or Quash. And as discussed above, a careful examination of the law bestowing this Court of its criminal jurisdiction vis-à-vis the Information and the documents supporting it, will show that this Court is without jurisdiction to hear and decide the case.

Further, it is elementary that jurisdiction over the subject matter cannot be derived by implication. Courts that exercise jurisdiction are expressly designated; such authority has always been conferred, either by the Constitution or by law, and the question of jurisdiction over the subject matter can be raised at any time even for the

first time on appeal.¹ This kind of jurisdiction is not for the courts, let alone the parties, to themselves determine or conveniently set aside.²

In *Francel Realty Corporation vs. Ricardo T. Sycip*³ the Supreme Court, speaking through no less than Chief Justice Panganiban, explained that:

“The ruling in *Sibonghanoy*⁴ on the matter of jurisdiction is, however, the exception rather than the rule. Estoppel by laches may be invoked to bar the issue of lack of jurisdiction only in cases in which the factual milieu is analogous to that in the cited case. In such controversies, laches should be clearly present; that is, lack of jurisdiction must have been raised so belatedly as to warrant the presumption that the party entitled to assert it had abandoned or declined to assert it. That *Sibonghanoy* applies only to exceptional circumstances is clarified in *Calimlim v. Ramirez*, which we quote:

‘A rule that had been settled by unquestioned acceptance and upheld in decisions so numerous to cite is that the jurisdiction of a court over the subject-matter of the action is a matter of law and may not be conferred by consent or agreement of the parties. *The lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal.* This doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in the cited case of *Sibonghanoy*. *It is to be regretted, however, that the holding in said case had been applied to situations which were obviously not contemplated therein.* The exceptional circumstance involved in *Sibonghanoy* which justified the departure from the accepted concept of non-waivability of objection to jurisdiction has been ignored and, instead a blanket doctrine had been repeatedly upheld that rendered the supposed ruling in *Sibonghanoy* not as the exception, but rather the general rule, virtually overthrowing altogether the time-honored principle that the issue of jurisdiction is not lost by waiver or by estoppel.’

¹ *Roxas vs. Rafferty*, 37 Phil. 957.

² *La Naval Drug Corporation vs. The Honorable Court of Appeals and Wilson C. Yao*, G.R. No. 103200. August 31, 1994.

³ G.R. No. 154684, September 8, 2005.

⁴ In this case estoppel by laches, has been used quite successfully in a number of cases to thwart dismissals based on lack of jurisdiction. It was in this case, *Tijam v. Sibonghanoy*, where this doctrine was espoused, and it was held that a party may be barred from questioning a court's jurisdiction after being invoked to secure affirmative relief against its opponent. In fine, the Supreme Court held that laches prevents the issue of lack of jurisdiction from being raised for the first time on appeal by a litigant whose purpose is to annul everything done in a trial in which it has actively participated.

Indeed, the general rule remains: a court's lack of jurisdiction may be raised at any stage of the proceedings, even on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action. Moreover, jurisdiction is determined by the averments of the complaint, not by the defenses contained in the answer." (Citations Omitted)

In the same Francel case the Supreme Court enunciated that Rule 9 of the Rules of Court requires that all defenses and objections -- except lack of jurisdiction over the subject matter, *litis pendentia*, bar by prior judgment and/or prescription -- must be pleaded in a motion to dismiss or in an answer; otherwise, they are deemed waived. As to the excepted grounds, the court may dismiss a claim or a case at any time "when it appears from the pleadings or the evidence on record" that any of those grounds exists.

WHEREFORE, having no jurisdiction over the subject matter of the case, this Court is constrained to **GRANT** the instant Motion to Dismiss and/or Quash. This dismissal of the case is however without prejudice to its re-filing with the proper court. Following Section 22 Rule 114 of the Revised Rules of Court, the personal/cash bail bond posted by the accused above-enumerated, are hereby cancelled.

SO ORDERED.



ERNESTO D. ACOSTA
Presiding Justice



LOVELL R. BAUTISTA
Associate Justice



CAESAR A. CASANOVA
Associate Justice