Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

RENATO E. HERRERA
(with last known address at
No. 540 Quirino Highway,
Brgy. Talipapa, Quezon City.)
Accused.

CTA Crim. Case No. 0-016
For: Non-filing of Income Tax Return for Taxable Year 2001

Members:
ACOSTA, *Chairperson*,
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

JUN 15 2007; 10:45 am

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RESOLUTION

Submitted for resolution is a "Motion to Quash"[1] filed by the accused on March 19, 2007. The motion pertains to the Information[2] filed by State Prosecutor Stewart Allan A. Mariano on November 25, 2005 against accused RENATO E. HERRERA, praying that the said motion be granted on the ground that more than one offense is charged, as provided for in Section 3 (f), Rule 117 of the Rules on Criminal Procedure, in relation to Section 13, Rule 110 of the same Code, respectively quoted hereunder, to wit:

> "**Sec. 3 Grounds**.- The accused may move to quash the complaint or information on any of the following grounds:
> (a) xxx
> (b) xxx
> (c) xxx

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[1] CTA First Division Rollo., pp. 329-332.
[2] CTA First Division Rollo., p. 1.

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(d) xxx
(e) xxx
(f) That more than one offense is charged except in those cases in which existing laws prescribed a single punishment for various offenses;
(g) Xxx
(h) Xxx
(i) Xxx."

"**Sec. 13. Duplicity of offense.**- A complaint or information must charge but one offense, except only in those cases in which existing laws prescribed a single punishment for various offenses."
(Underlining Ours)

In the present case, the information filed with the Court is as follows:

"The undersigned State Prosecutor, Department of Justice, hereby accuses RENATO E. HERRERA of attempting to evade or defeat tax and for non-filing of income tax return & pay tax for taxable year 2001 as punished under Sections 51 (A)(1)(a) and 74, in relation to Sections 254 and 255 of the National Internal Revenue Code committed, as follows:

On or about 15 April 2002 up to the present, within the jurisdiction of this Honorable Court, the accused, a registered taxpayer with Tax Identification Number 210-628-144-000 and with address at no. 540 Quirino Highway, Brgy. Talipapa, Quezon City, did then and there willfully and unlawfully refuse and fail to file his income tax return for taxable year 2001 in the amount of P150,490,301.26, as required under Section 51 of the National Internal Revenue Code.

CONTRARY TO LAW."

From the foregoing, it can be seen that accused RENATO E. HERRERA is charged with two violations of Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, particularly Sections 254 and 255 of the said Code, respectively quoted hereunder, to wit:

"**SECTION 254. Attempt to Evade or Defeat Tax**. — Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (P30,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

"**SECTION 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation**. — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

"Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

In the Minutes[3] of the scheduled March 20, 2007 hearing in the above-mentioned case, counsel for the accused moved for the deferment of the arraignment of the accused due to the instant Motion to Quash. Counsel for the plaintiff moved for a period of ten (10) days to file a Comment thereto. Accused's counsel moved for a period of five (5) days from receipt thereof to file a Reply. Counsel for the plaintiff filed, through registered mail, a Comment (Re: Accused's Motion to Quash)[4] on March 30, 2007, which was received by the Court on April 12, 2007. No Reply was filed by the counsel of the accused.

As a rule, a complaint or information must charge but one offense, except only in those cases in which existing laws prescribe single punishment for various offenses. A defendant in a criminal case should not be harassed with vain

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[3] CTA First Division Rollo., p. 333.
[4] CTA First Division Rollo., pp. 334-335.

prosecution based on the same act by splitting the same into various charges. (*People vs. Lizardo, 21 SCRA 1225*)

In the case at bar, accused RENATO E. HERRERA is charged with attempting to evade or defeat tax (Sec. 254 of the NIRC) and failure to file return, supply correct and accurate information, pay tax, withhold and remit tax and refund excess taxes withheld on compensation (Sec. 255 of the NIRC). The two violations of the 1997 Tax Code contained in two separate provisions providing for separate penalties is duplicitous therefore, quashable.

WHEREFORE, premises considered, accused's Motion to Quash is hereby **SUSTAINED**. Accordingly, in accordance with Section 5, Rule 117 of the Rules on Court, State Prosecutor Stewart Allan A. Mariano is hereby ordered to file another Information against accused RENATO E. HERRERA within fifteen (15) days from receipt of this Resolution. Furthermore, in case of failure to comply with this Resolution, bail bond of the accused will be cancelled.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

(Inhibited)
LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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