REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

PEOPLE OF THE PHILIPPINES,
Complainant,

-versus-

ANTONIO VILLAN MANLY and RUBY ONG MANLY,
Accused.

Criminal Case No. 0-117
(I.S No. 2005-573)

For: *Violation of Section 254 in relation to Sec. 248 (B) of the National Internal Revenue Code of 1997.*

Members:

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

Promulgated:

OCT 2 1 2009 9:25am

x -- x

RESOLUTION

This resolves:

1. Accused's "**Motion to Direct the BIR to Submit Tax Deficiency Assessment**" filed on June 18, 2009";

2. Accused's "**Supplement to the Motion to Direct the BIR to Submit Deficiency Assessment with Motion to Dismiss**", filed on June 24, 2009;

306

3. Complainant's **"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 a Motion to Dismiss)"** filed on July 16, 2009;

4. Complainant's **"Motion for Leave to Amend Information"** filed on July 22, 2009;

5. Accused's **"Reply to Comment/Opposition"** and **"Comment/Opposition (Re: Motion for Leave to Amend Information)"** respectively filed on July 29, 2009 and August 17, 2009;

6. Complainant's **"Omnibus Motion (To Withdraw Information and the Motion for Leave to Amend Information)"** filed on August 28, 2009; and

7. Accused's **"Comment and/or Opposition (To State Prosecutor ['s] Motion to Withdraw Information)"** filed on October 9, 2009.

The accused in their **Motion to Direct the BIR to Submit Tax Deficiency Assessment** prays that this Court issue an Order directing the Bureau of Internal Revenue (BIR) to submit or provide a Tax Deficiency Assessment against the accused in the interest of fairplay and justice, claiming that they were kept in the dark as to the amount of taxes that may be collected from them.

Thereafter, accused filed a supplement to the first motion with a motion to dismiss, reiterating their right to know and be informed of the extent of their alleged civil liability and at the same time questioning the jurisdiction of the Court. They posit that the Information failed to state the amount of taxes being claimed by the BIR and pursuant to Section 7, paragraph b.1 of Republic Act (R.A.) No. 9282; P1,000,000.00 of taxes, exclusive of charges of penalties is the threshold

307

amount in determining whether this Court has jurisdiction or not. If the amount involved in the criminal offense is less than this threshold amount or where there is no specified amount claimed, the regular courts have jurisdiction. This Court's jurisdiction becomes appellate.

On the other hand, the crux of complainant's arguments in the **Comment/Opposition** lays on the fact that assessment is not required prior to criminal jurisdiction, citing several decided cases of the Supreme Court.

In their **Reply** to complainant's Comment/Opposition, the accused merely highlighted that complainant failed to the address the issue on jurisdiction.

In the meantime, complainant's filed the **Motion for Leave to Amend the Information**. The complainant alleged that the amendment relates to the recital of some facts, including the tax due, which were also mentioned in the body of the Resolution, but were inadvertently omitted in the original Information constituting the same offense charged for an attempt to evade or defeat tax. The accused filed their corresponding Comment on the said motion, counterpleading, among others, that since this Court has no jurisdiction from the very beginning, it cannot act on the prosecution's Motion for Leave to Amend the Information.

On August 28, 2009, the prosecution filed the **Omnibus Motion** withdrawing the Information and the Motion for Leave to Amend Information. The Omnibus Motion was filed in compliance with the directive/order of the Secretary of Justice, which directive, was issued upon the reversal of the Resolution

308

of the State Prosecutor dated August 31, 2006, finding probable cause in the instant case.

This Court will first resolve the accused's Motion to Dismiss and finds the same to be meritorious.

Criminal Jurisdiction is the authority to hear and try a particular offense and impose the punishment for it.[1] Requisites for its valid exercise:

> 1. Jurisdiction over the subject matter.[2] Philippine courts have no common law jurisdiction or power, but only those expressly conferred by the Constitution and statutes and those necessarily implied to make the express effective.[3] **The question of jurisdiction of the court over the case filed before it is to be resolved on the basis of the law or statute providing for or defining its jurisdiction.**[4] The jurisdiction of a court to try a criminal action is determined not by the law in force at the time of the commission of offense but by the law in force at the time of the institution of the action.[5] Once vested, jurisdiction cannot be withdrawn or defeated by a subsequent valid amendment of the information.[6]
>
> 2. Jurisdiction over the territory where the offense was committed; and
>
> 3. 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

---

[1] People v. Mariano, No. L-40527, June 30, 1976, 71 SCRA 600.

[2] Reyes v. Diaz, 73 Phil. 484 [1941].

[3] Velunta v. Chief, Philippine Constabulary, No. L-71855, January 20, 1988, 157 SCRA 147.

[4] People v. Mariano, *supra,* note 1.

[5] De La Cruz v. Moya, No. L-65192, April 27, 1988, 160 SCRA 838.

[6] People v. Chupeco, G. R. L-19568, March 31, 1964, 10 SCRA 640.

309

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 this case, the accused questions the jurisdiction of this Court over the subject matter of the case. Thus, a scrutiny of the pertinent law is a necessity.

The applicable law is Section 7 of R.A. No. 9282, as amended, which clearly sets forth the expanded jurisdiction of this Court in criminal cases, to wit:

"Sec. 7. Jurisdiction – The CTA shall exercise:

xxx xxx xxx

(a) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violation of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or 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 (P1,000,000.00) 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 civil; liability for taxes and penalties shall 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, and the right to reserve the filing of such action, and no right to reserve the filling of such civil

310

> action separately from the criminal action will be recognized." (*Emphasis supplied.*)

From the foregoing, it follows that this Court has jurisdiction over criminal offenses arising from the violations of, among others, the National Internal Revenue Code, if the principal amount of taxes, exclusive of charges and penalties is P1,000,000.00 or more. If less than the said amount or where there is no amount claimed, regular courts has jurisdiction, and the jurisdiction of this Court is appellate.

The Information in this case reads:

> "That on or about the month of April 2001, in the City of Manila, and within the jurisdiction of this Honorable Court, the above-named accused Antonio Villan Manly and Ruby Ong Manly, Filipino Citizens, are taxpayers who derived income from sources within the Philippines for taxable year 2000, and therefore subject to tax pursuant to Section 24 of the NIRC, did then and there, willfully, unlawfully and feloniously, through fraudulent means attempt to evade or defeat tax when accused deliberately filed a false income tax return by intentional, substantial under-declaration of income, as they failed to fully declare therein their income from their real property rental business in the amount of about PHP15,854,758.98 knowing fully well that they paid less taxes than that known to them to the damage and prejudice of the government.
>
> CONTRARY TO LAW."

The Information stated the amount of income which the accused allegedly failed to declare. However, there is no statement as to the specific amount of taxes being claimed. Verily, this Court has no jurisdiction over the case; rather,

311

jurisdiction lies with the regular courts. Therefore, this Court is left with no recourse but to dismiss the case.

With the dismissal of the case, the resolution of the other motions/issues are deemed moot.

WHEREFORE, accused's **Motion to Dismiss** is hereby **GRANTED.** Accordingly, the instant case is **DISMISSED** for lack of jurisdiction over the subject matter of the case. 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 bonds posted by the accused are hereby cancelled.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

312