

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

JOSEPH TYPINGCO,
Petitioner ,

C.T.A. EB CRIM NO. 005
(CTA Crim. Case No. 0-114)

Present:

-versus-

ACOSTA, Presiding Justice
CASTANEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JUN 24 2010

Prothonotario
3:40 p.m.

X ----- X

DECISION

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* by way of Petition for Review filed on Sept. 03, 2009 by Petitioner Joseph Typingco are the Resolutions promulgated on July 16, 2009 and Aug. 12, 2009 by the former Second Division of the Court of Tax Appeals, the dispositive portions of which read as follows: *f*

THE CASE

Resolution dated July 16, 2009:

“ WHEREFORE, accused’s “ MOTION TO QUASH” is hereby **DENIED** for lack of merit.
SO ORDERED”

Resolution dated Aug. 12, 2009:

“ WHEREFORE, finding no compelling reasons to set aside the Resolution dated July 16, 2009, Accused’s Motion for Reconsideration is hereby **DENIED** for lack of merit.
SO ORDERED.”

THE FACTS

On July 14, 2008, Manila Regional Revenue Director Alfredo Misajon, Pursuant to Revenue Delegation Authority Order (RDAO) No. 2-2007 forwarded to the City Prosecutor of Manila a verified letter charging petitioner, as President of Fiesta Pack Inc., for non-payment of deficiency income tax, deficiency value added tax (VAT) and deficiency expanded withholding tax (EWT).

On the same date, Atty. Gerlo C. Cacatian, Atty III of Revenue Region No. 6, Manila, formally executed an Affidavit recommending criminal prosecution of petitioner as president of Fiesta Pack, Inc. for failure to pay the following internal revenue tax obligations to wit:

Kind of tax	Assessment No. Demand No.	Year	Date	Amount
Deficiency Income	30-2000	2000	June 28, 2004	P 13,099,485.00
Deficiency Vat	30-2000	2000	June 28, 2004	5,152,715.15
Deficiency EWT	30-2000	2000	June 28, 2004	15,753.00



On Sept. 23, 2008, petitioner filed his Counter-Affidavit.

On Sept. 30, 2008, Asst. City Prosecutor John Erick Flordeliza filed with this Court an information charging petitioner with non-payment of deficiency income tax, deficiency VAT and EWT.

On May 20, 2009, petitioner filed a Motion To Quash the information alleging that the Court of Tax Appeals has no jurisdiction over the offense charged because the complaint affidavit executed by Atty. Gerlo C. Cacatian did not contain an affidavit of non-forum shopping and that the information was not signed by the Commissioner of Internal Revenue.

On July 16, 2009, the former First Division of this Court promulgated its resolution denying the Motion To Quash.

On July 21, 2009, petitioner filed a Motion for Reconsideration.

On August 12, 2009, the Motion for Reconsideration was denied.

Hence this Petition for Review before the Court En Banc.

THE ISSUES

1. Whether an affidavit of non-forum shopping is required in the Complaint Affidavit of Atty. Gerlo Cacatian.
 2. Whether the criminal information lacks the signature or approval of public respondent Commissioner of Internal Revenue.
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THE COURT EN BANC'S RULING

The petition is without merit.

**A complaint or Information filed
in a criminal case does not claim a
relief but charges a person of an
offense.**

The provisions in the Revised Rules of the Court of Tax Appeals which pertain to criminal cases are found specifically in Rule 9 – “*PROCEDURE IN CRIMINAL CASES*”¹, it provides:

“SEC. 1. Institution of Criminal Actions. – Criminal actions shall be instituted as follows:

- (a) For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting requisite preliminary investigation.
- (b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.

The Institution of the criminal action shall interrupt the period of prescription of the offense charged unless otherwise provided in special laws.”

“SEC. 2. The Complaint or Information. – The complaint or information shall be in writing, in the name of the People of 

¹ 2005 Revised Rules of the Court of Tax Appeals as Amended, 2009 Edition, p.32.

the Philippines and against all persons who appear to be responsible for the offense involved.”

The Revised Rules of Court in Sec 6, Rule 110 “PROSECUTION OF OFFENSES”² provides:

“SEC. 6. Sufficiency of Complaint or Information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.”

Nowhere in the above quoted provisions on criminal procedure is there any mention of the requirement of a certification against forum shopping for the sufficiency of a complaint or information while Section 5, Rule 7 of the Revised Rules of Civil Procedure as Amended specifically provides:

“Section 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading. Asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: ...” (underlining supplied)

The source of the rule is Administrative Circular No. 04-94 known as the Certificate of Non-Forum shopping.³ Paragraph 1 of said circular provides:

“1. The plaintiff, petitioner, applicant or principal party seeking relief in the complaint, petition, application or other initiatory pleadings shall certify under oath such original pleading, or in a sworn certification annexed thereto and simultaneously filed therewith, to the truth of the following facts and undertakings: (a) he has not therefore commenced any other action or proceeding involving the same issues in

² Remedial Law, Herrera, 2007, p.95-96.

³ Administrative Circular No. 04-94, p. 721, Remedial Law, Herrera 2007

the Supreme Court, the Court of Appeals, or any other tribunal or agency; (b) ...

The complaint and other initiatory pleadings referred to and subject of this Circular are the original civil complaint, counterclaim, cross-claim, third (fourth, etc.,) – party complaint, or complaint-in-intervention, petition or application wherein a party asserts his claim for relief.”
(underlining supplied)

As held by the Court in division the requirement of a certification against forum shopping applies only to civil cases wherein a party asserts his claim for relief and a complaint or information filed in a criminal case does not claim a relief but charges a person of an offense. Administrative Circular No. 04-94, from where the provision on the sworn certification against forum shopping originated clearly states that “The complaint and other initiatory pleadings referred to and subject of the Circular are the original civil complaint ...” In contrast, no such requirement is contained in any provisions on the prosecution/procedure in criminal cases.

The filing of the information bears
the approval of the Commissioner
of Internal Revenue as required by
law

Again, as correctly held by the Court in Division, the documents appended to the information filed in the above-captioned case show that the filing of the information bears the approval of the Commissioner of Internal Revenue as

required under Section 220 and 221 of the National Internal Revenue Code of 1997, as amended in relation to Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals.

Revenue Delegation Authority Order No. 2-2007 provides:

I. Delegated Authority

Pursuant to Section 7 of the Tax Reform Act of 1997 ("Tax Code") authorizing the Commissioner of Internal Revenue ("CIR") to delegate the powers vested in him under the Tax Code, his authority is hereby delegated to officials of the BIR, with regard to the institution of civil, administrative and criminal actions/cases for among others, the recovery of taxes or the enforcement of any fine, penalty or forfeiture under the Tax Code, with regard to defenses of the Bureau of Internal Revenue ("BIR") with respect to cases instituted against it, and with regard to other cases, as follows:

A. The Deputy Commissioner for Legal and Inspection Group is authorized to approve and sign the following:

1. Verify complaints and certify against forum shopping in civil actions for collection of taxes to be instituted by the National Office of the BIR with the courts, or quasi-judicial bodies such as, but not limited to, ...
2. Verify petitions for review or other pleadings which are required to be verified, and certify against forum shopping, in cases of appeal from court decisions or decisions of quasi-judicial bodies, such as, but not limited to, ...
3. Sign, approvals and referral letters to authorize the institution of criminal actions/cases for the National Office of the BIR as required by Section 220 thereof, with the Department of Justice or Prosecutor's Office or other quasi-judicial bodies for preliminary investigation and consequently, the filing of information in courts, involving violations of the provisions of the Tax Code, ... 

4. Verify petitions for review, comments or other pleadings, and/or certify against forum shopping, with respect to cases involving appeals of criminal actions from the decisions of the State of DOJ Prosecutors or the Secretary of Justice, decisions of the courts or decisions of other quasi-judicial bodies, ...

B. The Regional Directors are likewise authorized to approve and sign the same documents as mentioned above, with respect to civil, administrative and criminal actions/cases and other cases of whatever kind and nature, emanating from their respective Regional Offices, with the courts, government agencies or quasi-judicial bodies, ...

There being no factual or legal basis to overturn the Resolutions issued by the former Second Division, the Court *En Banc* finds no cogent reason to disturb the findings and conclusions spelled out in the assailed Resolutions.

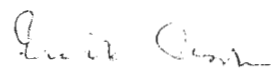
WHEREFORE, premises considered, the present Petition for Review is hereby DENIED DUE COURSE, and accordingly DISMISSED for lack of merit.

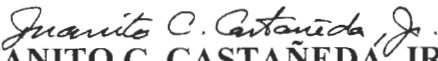
The July 16, 2009 and August 12, 2009 Resolutions of the former CTA Second Division in CTA Criminal Case No. 0-114 entitled "People of the Philippines vs. Joseph Typingco" are hereby AFFIRMED in *toto*.

SO ORDERED.


AMELIA COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice

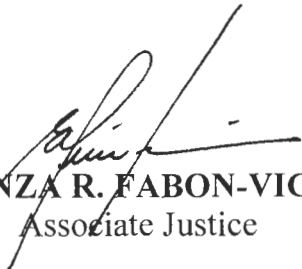

JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CEASAR C. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice